UNITED STATES SUPREME COURT
PREVIEW
REVIEW
OVERVIEW

CRIMINAL CASES GRANTED REVIEW AND DECIDED DURING THE OCTOBER 2024-25 TERMS THRU MARCH 5, 2025

WITH *Hyperlinks* TO CASE DOCKETS, DOCUMENTS, ORAL ARGUMENTS & OPINIONS

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I. ART. II, SEC. 1, CL. 1

A. Presidential Immunity. ***Trump v. United States*, *No. 23-939*** (July 1, 2024). The backdrop of this case is best captured in the lead dissent of Justice Sotomayor, which describes the underlying indictment of Donald Trump as follows. "The indictment paints a stark portrait of a President desperate to stay in power. In the weeks leading up to January 6, 2021, then-President Trump allegedly 'spread lies that there had been outcome-determinative fraud in the election and that he had actually won,' despite being 'notified repeatedly' by his closest advisers 'that his claims were untrue.' When dozens of courts swiftly rejected these claims, Trump allegedly 'pushed officials in certain states to ignore the popular vote; disenfranchise millions of voters; legitimate electors; and ultimately, cause the ascertainment of and voting by illegitimate electors' in his favor. It is alleged that he went so far as to threaten one state election official with criminal prosecution if the official did not 'find' 11,780 votes' Trump needed to change the election result in that state. When state officials repeatedly declined to act outside their legal authority and alter their state election processes, Trump and his co-conspirators purportedly developed a plan to disrupt and displace the legitimate election certification process by organizing fraudulent slates of electors. As the date of the certification proceeding neared, Trump allegedly also sought to ;use the power and authority of the Justice Department' to bolster his knowingly false claims of election fraud by initiating 'sham election crime investigations' and sending official letters 'falsely claim[ing] that the Justice Department had identified significant concerns that may have impacted the election outcome' while 'falsely present[ing] the fraudulent electors as a valid alternative to the

legitimate electors.' When the Department refused to do as he asked, Trump turned to the Vice President. Initially, he sought to persuade the Vice President 'to use his ceremonial role at the January 6 certification proceeding to fraudulently alter the election results.' When persuasion failed, he purportedly 'attempted to use a crowd of supporters that he had gathered in Washington, D. C., to pressure the Vice President to fraudulently alter the election results.' Speaking to that crowd on January 6, Trump 'falsely claimed that, based on fraud, the Vice President could alter the outcome of the election results.' When this crowd then 'violently attacked the Capitol and halted the proceeding,' Trump allegedly delayed in taking any step to rein in the chaos he had unleashed. Instead, in a last desperate ploy to hold onto power, he allegedly 'attempted to exploit the violence and chaos at the Capitol' by pressuring lawmakers to delay the certification of the election and ultimately declare him the winner." The Supreme Court allowed the interruption of Trump's prosecution for this alleged misconduct, to consider a question of Presidential immunity never before considered, and failed to issue any opinion until Trump's continued prosecution was not feasible before the upcoming Presidential election. Then, with the Court split along the party lines of their presidential appointer, a 6-3 Court devined "enduring principles" to declare criminal immunity for former President Trump, even though such immunity is nowhere mentioned in the Constitution. The majority opinion was written by Chief Justice Roberts, joined by Thomas, Alito, Gorsuch, Kavanaugh & Barrett. The opinion begins: "This case concerns the federal indictment of a former President of the United States for conduct alleged to involve official acts during his tenure in office. We consider the scope of a President's immunity from criminal prosecution" -- an introduction that overlooks the attempted coup d'état set forth above. In the ensuing 43 pages, the majority judicially discerned "enduring principles," with which to cloak Trump with immunity, but, as the lead dissent recognized, the majority opinion simply "invents an atextual, ahistorical, and unjustifiable immunity that puts the President above the law." The majority holding: "**The President therefore may not be prosecuted for exercising his core constitutional powers, and he is entitled, at a minimum, to a presumptive immunity from prosecution for all his official acts."** The basis for the holding: "[E]nduring principles . . . guide our decision in this case." That said, "[t]he President enjoys no immunity for his unofficial acts, and not everything the President does is official. The President is not above the law. But Congress may not criminalize the President's conduct in carrying out the responsibilities of the Executive Branch under the Constitution. And the system of separated powers designed by the Framers has always demanded an energetic, independent Executive.

That immunity applies equally to all occupants of the Oval Office, regardless of politics, policy, or party." Justice Thomas filed a concurring opinion, which would have granted Trump greater relief. Justice Barrett concurred with the majority, yet would not sign on to that portion of the majority opinion contained in section III.C, which frees Trump from having *evidence* of his misconduct used against him in a criminal prosecution in which immunity is inapplicable. Justice Sotomayor dissented (joined by Kagan and Jackson) and Justice Jackson dissented separately, contending that neither a President nor a former President is above the law. Justice Sotomayor prefaced the dissenting view: "Today's decision to grant former Presidents criminal immunity reshapes the institution of the Presidency. It makes a mockery of the principle, foundational to our Constitution and system of Government, that no man is above the law. Relying on little more than its own misguided wisdom about the need for "bold and unhesitating action" by the President, ante, at 3, 13, the Court gives former President Trump all the immunity he asked for and more. Because our Constitution does not shield a former President from answering for criminal and treasonous acts, I dissent."

II. SECOND AMENDMENT

A. Second Amendment vs. 922(g)(8). ***United States v. Rahimi***, ***No. 22-915*** (June 23, 2024) (OA ***transcript*** & ***audio***). Rahimi was charged with a violation of 18 U.S.C. §922(g)(8), which criminalizes the possession of firearms by persons subject to domestic-violence restraining orders. The statute prohibits an individual subject to a domestic violence restraining order from possessing a firearm if that order includes a finding that he "represents a credible threat to the physical safety of [an] intimate partner," or a child of the partner or individual. He moved to dismiss the indictment, arguing that 922(g)(8) violates the Second Amendment on its face. The district court denied the motion under then-existing Fifth Circuit precedent. Rahimi pleaded guilty and was sentenced to 73 months imprisonment (followed by three years supervised release). He then appealed the Second Amendment ruling. The Fifth Circuit at first affirmed, reasoning that its prior precedent foreclosed Rahimi's Second Amendment challenge. But after the Supreme Court decided *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022), the Fifth Circuit withdrew its opinion, received supplemental briefing on *Bruen*, and then reversed the ruling. A month later, the court withdrew that opinion and issued an amended opinion that again reversed. The Supreme Court granted cert. **Question presented:** Whether 18 U.S.C. 922(g)(8), which prohibits the possession of firearms by persons subject to domestic-violence

restraining orders, violates the Second Amendment on its face. **In an 8-1 decision written by Chief Justice Roberts, the Court held that that statutory ban is consistent with the Second Amendment.** "When a restraining order contains a finding that an individual poses a credible threat to the physical safety of an intimate partner, that individual may—consistent with the Second Amendment—be banned from possessing firearms while the order is in effect. Since the founding, our Nation's firearm laws have included provisions preventing individuals who threaten physical harm to others from misusing firearms. As applied to the facts of this case, Section 922(g)(8) fits comfortably within this tradition." Justice Sotomayor filed a concurring opinion (joined by Kagan). Justices Gorsuch, Kavanaugh, Barrett and Jackson filed concurring opinions. Justice Thomas dissented.

B. Bump Stock Not a Machinegun. ***Garland v. Cargill***, ***No. 23-976*** (June 14, 2024). The National Firearms Act of 1934 defines a "machinegun" as "any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger." 26 U.S.C. §5845(b). With a machinegun, a shooter can fire multiple times, or even continuously, by engaging the trigger only once. This capability distinguishes a machinegun from a semiautomatic firearm. With a semiautomatic firearm, the shooter can fire only one time by engaging the trigger. Using a technique called bump firing, shooters can fire semiautomatic firearms at rates approaching those of some machineguns. A shooter who bump fires a rifle uses the firearm's recoil to help rapidly manipulate the trigger. Although bump firing does not require any additional equipment, a "bump stock" is an accessory designed to make the technique easier. A bump stock does not alter the basic mechanics of bump firing, and the trigger still must be released and reengaged to fire each additional shot. For ATF consistently took the position that semiautomatic rifles equipped with bump stocks were not machineguns under §5845(b). ATF abruptly changed course when a gunman using semiautomatic rifles equipped with bump stocks fired hundreds of rounds into a crowd in Las Vegas, Nevada, killing 58 people and wounding over 500 more. ATF subsequently proposed a rule that would repudiate its previous guidance and amend its regulations to "clarify" that bump stocks are machineguns. 83 Fed. Reg. 13442. ATF's Rule ordered owners of bump stocks either to destroy or surrender them to ATF to avoid criminal prosecution. Michael Cargill surrendered two bump stocks to ATF under protest. He then filed suit to challenge the final Rule, asserting a claim under the Administrative Procedure Act. As relevant, Cargill alleged that ATF lacked statutory authority to

promulgate the final Rule because bump stocks are not "machinegun[s]" as defined in §5845(b). After a bench trial, the District Court entered judgment for ATF. The court concluded that "a bump stock fits the statutory definition of a 'machinegun.'" The Court of Appeals initially affirmed, 20 F. 4th 1004 (CA5 2021), but later reversed after rehearing en banc, 57 F. 4th 447 (CA5 2023). The Supreme Court affirmed (6-3) in an opinion by Justice Thomas, holding that "a bump stock—an accessory for a semi- automatic rifle that allows the shooter to rapidly reengage the trigger (and therefore achieve a high rate of fire) [does not] convert[] the rifle into a 'machinegun'. . . . because it does not fire more than one shot 'by a single function of the trigger.'" The majority rejected the ATf's contrary ruling and found that the underlying statute does not equate such a device with the definition of machinegun. Justice Alito concurred: "because there is simply no other way to read the statutory language. There can be little doubt that the Congress that enacted 26 U.S.C. §5845(b) would not have seen any material difference between a machinegun and a semiautomatic rifle equipped with a bump stock. But the statutory text is clear, and we must follow it." Justice Sotomayor dissented (joined by Kagan and Jackson).

C. Nature of Regulated Firearms. ***Garland v. VanDerStok***, ***No. 23-852***, (cert. granted Apr. 22, 2024); decision below at 86 F.4th 179 (5th Cir. 2023). In the Gun Control Act of 1968, 18 U.S.C. 921 et seq., Congress imposed licensing, background-check, recordkeeping, and serialization requirements on persons engaged in the business of importing, manufacturing, or dealing in firearms. The Act defines a "firearm" to include "any weapon * * * which will or is designed to or may readily be converted to expel a projectile by the action of an explosive," as well as "the frame or receiver of any such weapon." 18 U.S.C. 921(a)(3)(A) and (B). In 2022, the Bureau of Alcohol, Tobacco, Firearms and Explosives issued a regulation clarifying that certain products that can readily be converted into an operational firearm or a functional frame or receiver fall within that definition. *See* 87 Fed. Reg. 24,652 (Apr. 26, 2022) (codified in relevant part at 27 C.F.R. 478.11, 478.12(c)). The Fifth Circuit held that those regulatory provisions are inconsistent with the Act. Questions presented: (1) Whether "a weapon parts kit that is designed to or may readily be completed, assembled, restored, or otherwise converted to expel a projectile by the action of an explosive," 27 C.F.R. 478.11, is a "firearm" regulated by the Act; (2) Whether "a partially complete, disassembled, or nonfunctional frame or receiver" that is "designed to or may readily be completed, assembled, restored, or otherwise converted to function as a frame or receiver," 27 C.F.R. 478.12(c), is a "frame or receiver" regulated by the Act.

III. FOURTH AMENDMENT

A. Excessive Force Claims. ***Barnes v. Felix***, ***No. 23-1239*** (cert. granted Oct. 4, 2024); decision below at 91 F.4th 393 (5th Cir. 2024). The Fourth Amendment prohibits a police officer from using "unreasonable" force. U.S. Const. amend. IV. In *Graham v. Connor*, the Court held that reasonableness depends on "the totality of the circumstances." 490 U.S. 386, 396 (1989) (quotation marks omitted). But four circuits--the Second, Fourth, Fifth, and Eighth-cabin *Graham*. Those circuits evaluate whether a Fourth Amendment violation occurred under the "moment of the threat doctrine," which evaluates the reasonableness of an officer's actions only in the narrow window when the officer's safety was threatened, and not based on events that precede the moment of the threat. In contrast, eight circuits -- the First, Third, Sixth, Seventh, Ninth, Tenth, Eleventh, and D.C. Circuits--reject the moment of the threat doctrine and follow the totality of the circumstances approach, including evaluating the officer's actions leading up to the use of force. In the decision below, Judge Higginbotham concurred in his own majority opinion, explaining that the minority approach "lessens the Fourth Amendment's protection of the American public" and calling on this Court "to resolve the circuit divide over the application of a doctrine deployed daily across this country." Pet. App. 10a-16a (Higginbotham, J., concurring). Question presented: Whether courts should apply the moment of the threat doctrine when evaluating an excessive force claim under the Fourth Amendment.

B. Malicious Prosecution. ***Chiaverini v. Napoleon***, ***No. 23-50*** (June 20, 2024) (OA ***transcript*** & ***audio***). To succeed on a Fourth Amendment malicious-prosecution claim under 42 U.S.C. §1983, a plaintiff must show that a government official charged him without probable cause, leading to an unreasonable seizure of his person. *See Thompson v. Clark*, 596 U.S. 36, 43, and n. 2 (2022). How does the rule apply, though, when the official brings multiple charges, only one of which lacks probable cause? Do the valid charges insulate the official from a Fourth Amendment malicious-prosecution claim relating to the invalid charge? In a 6-3 decision, with an opinion authored by Justice Kagan, the Court held that the answer is no: The valid charges do not create a categorical bar to the malicious prosecution claim. Pursuant to the Fourth Amendment and traditional common-law practice, the presence of probable cause for one charge in a criminal proceeding does not categorically defeat a Fourth Amendment malicious-prosecution claim relating to another, baseless charge. The Court deferred to another day the follow-on question of how to determine in those circumstances whether the baseless charge caused the requisite seizure.

Justice Thomas dissented (joined by Alito), and Gorsuch filed a separate dissenting opinion.

IV. SIXTH AMENDMENT

A. Confrontation Clause: Substitute Expert Testimony. ***Smith v. Arizona***, ***No. 22-899*** (June 21, 2024) (OA ***transcript*** & ***audio***). To prove the drug-related charges against Jason Smith, the state had the alleged drug evidence tested by crime lab analyst Elizabeth Rast. But by the time of trial, Rast was no longer employed by the crime lab—for reasons the State has never explained. The State called a substitute expert, Gregory Longoni, who reviewed only Rast's report and notes, who had not conducted or observed any of the tests at issue, nor conducted any quality assurance of those tests. Alhough Longoni acknowledged it would have taken him less than three hours to retest the evidence, the State did not have him do so prior to trial. Nonetheless, over Smith's objections, the trial court permitted Longoni to use Rast's notes and report, and recount from these documents the particular tests Rast performed on the evidence in Smith's case and the results she reached, reasoning that Longoni could testify to his "independent opinion" based on Rast's work without violating the Confrontation Clause. The Arizona Court of Appeals affirmed and held that Longoni's testimony did not violate the Confrontation Clause, even though Smith had no opportunity to cross-examine Rast. Cert was granted. **Question presented:** Whether the Confrontation Clause of the Sixth Amendment permits the prosecution in a criminal trial to present testimony by a substitute expert conveying the testimonial statements of a nontestifying forensic analyst, on the grounds that (a) the testifying expert offers some independent opinion and the analyst's statements are offered not for their truth but to explain the expert's opinion, and (b) the defendant did not independently seek to subpoena the analyst. In a fragmented unanimous decision, the Court recounted and refined its precedent. "The Sixth Amendment's Confrontation Clause guarantees a criminal defendant the right to confront the witnesses against him. The Clause bars the admission at trial of 'testimonial statements' of an absent witness unless she is 'unavailable to testify, and the defendant ha[s] had a prior opportunity' to cross-examine her. *Crawford v. Washington*, 541 U.S. 36, 53–54 (2004). And that prohibition applies in full to forensic evidence. So a prosecutor cannot introduce an absent laboratory analyst's testimonial out-of-court statements to prove the results of forensic testing. *See Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 307, 329 (2009). The question presented here concerns the application of those principles to a case in which an expert witness restates an absent lab analyst's factual assertions to support his own

opinion testimony. This Court has held that the Confrontation Clause's requirements apply only when the prosecution uses out-of-court statements for 'the truth of the matter asserted.' *Crawford*, 541 U. S., at 60, n. 9. Some state courts, including the court below, have held that this condition is not met when an expert recites another analyst's statements as the basis for his opinion. Today, we reject that view. When an expert conveys an absent analyst's statements in support of his opinion, and the statements provide that support only if true, then the statements come into evidence for their truth. As this dispute illustrates, that will generally be the case when an expert relays an absent lab analyst's statements as part of offering his opinion. And if those statements are testimonial too—an issue we briefly address but do not resolve as to this case—the Confrontation Clause will bar their admission."- The Court vacated the Arizona decision and remanded it for reconsideration in light of its holding: " . . .Arizona does not escape the Confrontation Clause just because Rast's records came in to explain the basis of Longoni's opinion. The Arizona Court of Appeals thought otherwise, and so we vacate its judgment. To address the additional issue of whether Rast's records were testimonial (including whether that issue was forfeited) . . ." The Court's opinion was subject to some disagreement: Justices Thomas and Gorsuch did not join the section of the majority opinion addressing the testimonial nature of the testimony and filed concurring opinions. Justice Alito concurred in the judgment (joined by C.J. Roberts).

V. EIGHTH AMENDMENT

A. Time Limits on Criminal Forfeitures Not Jurisdictional. ***McIntosh v. United States***, ***No. 22-7386*** (Apr. 17, 2024) (OA ***transcript*** & ***audio***). "In certain criminal cases, Congress has authorized the Government to seek forfeiture of a defendant's ill-gotten gains as part of the defendant's sentence. Federal Rule of Criminal Procedure 32.2 sets forth specific procedures for imposing criminal forfeiture in such cases. In particular, Rule 32.2(b)(2)(B) provides that, '[u]nless doing so is im-practical,' a federal district court 'must enter the preliminary order [of forfeiture] sufficiently in advance of sentencing to allow the parties to suggest revisions or modifications before the order becomes final as to the defendant.' The question presented in this case is whether a district court that fails to comply with Rule 32.2(b)(2)(B)'s requirement to enter a preliminary order before sentencing is powerless to order forfeiture against the defendant." In a unanimous decision authored by Justice Sotomayor, the Court held: "In light of the Rule's text and relevant precedents, . . . the failure to enter a preliminary order

does not bar a judge from ordering forfeiture at sentencing subject to harmless-error principles on appellate review."

VI. CRIMES

A. ACCA

1. **Double Jeopardy at Sentencing**. ***Barrett v. United States***, ***No. 24-5774*** (cert. granted Mar. 3, 2025); decision below at 102 F.4th 60 (2d Cir. 2024). Question presented: Whether the Double Jeopardy Clause permits two sentences for an act that violates 18 U.S.C. § 924(j) (murder using a firearm during a Hobbs Act robbery), and 924(c) (using a firearm during and in relation to the same Hobbs Act robbery). The answer to the question divides seven circuits, although here the Solicitor General and petitioner agree it is impermissible, with the SG arguing that that (c) is a lesser include offence of (j).

2. **Jury Trial Right for Proving Occasions of Priors.** ***Erlinger v. United States***, ***No. 23-370*** (June 21, 2024). Question presented: Whether the Constitution requires a jury trial and proof beyond a reasonable doubt to find that a defendant's prior convictions were "committed on occasions different from one another," as is necessary to impose an enhanced sentence under the Armed Career Criminal Act, 18 U.S.C. § 924(e)(1). In a very fragmented decision, with a majority opinion authored by Justice Gorsuch, the Court ruled 6-3 that the Fifth and Sixth Amendments require a unanimous jury to determine beyond a reasonable doubt whether predicate offenses were committed on different occasions for purposes of the Armed Career Criminal Act. The Chief Justice and Justice Thomas concurred to highlight their view that this principle is subject to harmless error, which may be considered on remand. Justice Kavanaugh dissented (joined by Alito, and partially by Jackson), arguing that the judge may decide the occasions issue instead of a jury. And Justice Jackson filed a separate dissenting opinion, contending that *Apprendi* was incorrectly decided!

3. **Applicable Statutory Version of Amended Predicate Offense**. ***Brown v. United States***, ***No. 22-6389*** (May 23, 2024) (OA ***transcript*** & ***audio***). The Armed Career Criminal Act provides that felons who possess a firearm are normally subject to a maximum 10-year sentence. But if the felon already has at least three "serious drug offense" convictions, then the minimum

sentence is fifteen years. The ACCA defines a "serious drug offense" as "an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment often years or more is prescribed by law." 18 U.S.C. § 924(e)(2)(A)(ii). Courts decide whether a prior state conviction counts as a serious drug offense using the categorical approach. That requires determining whether the elements of a state drug offense are the same as, or narrower than those of its federal counterpart. If so, the state conviction qualifies as an ACCA predicate. But federal drug law often changes – as in ***Brown***, where Congress decriminalized hemp, narrowing the federal definition of marijuana; and in a separate case involving ***Jackson***, narrowing the definition of cocaine derivatives both under the state and federal laws. In ***Brown***, choosing the earlier statutory version results in a categorical match between the state and federal offenses, meaning that the predicate for enhancement has been satisfied. But, under the amended statutory version, the offenses do not match-and the state offense is not an ACCA predicate. Should a sentencing court apply the original law or the amended law? In a 6-3 decision with an opinion authored by Justice Alito, the majority held that a state crime constitutes a "serious drug offense" if it involved a drug that was on the federal schedules when the defendant possessed or trafficked in it, even if it was later removed. In short: "[W]e hold that a state drug conviction counts as an ACCA predicate if it involved a drug on the federal schedules at the time of that offense." Justice Jackson dissented (joined by Kagan and, in part by Gorsuch).

4. **Attempted Murder, in violation of Violent Crimes in Aid of Racketeering Law, 18 U.S.C. 1959(a)(5).** ***Delligatti v. United States***, ***No. 23-825*** (cert. granted June 3, 2024); decision below at 83 F.4th 113 (2d Cir. 2023). Under 18 U.S.C. § 924(c)(3)(A), a felony qualifies as a "crime of violence" if it "has as an element the use, attempted use, or threatened use of physical force against the person or property of another." Courts have disagreed about how to apply use-of-force language to crimes that require proof of a victim's bodily injury or death but can be committed by failing to take action. In the decision below, the Second Circuit held that any crime requiring proof of death or bodily injury categorically involves the use of physical force, even if it can be committed through inaction-such as by failing to

provide medicine to someone who is sick or by failing to feed a child. That ruling reflects the law in eight circuits. Two courts of appeals, by contrast, have held that the use of force is not an element of such crimes if the crime may be committed by inaction. The question presented is: Whether a crime that requires proof of bodily injury or death, but can be committed by failing to take action, has as an element the use, attempted use, or threatened use of physical force.

B. Federal Wire Fraud and Bribery

1. **Federal Bribery.** ***Snyder v. United States***, ***No. 23-108*** (June 26, 2024) (OA ***transcript*** & ***audio***). 18 U.S.C. § 666 makes it a crime for state and local officials to "corruptly" solicit, accept, or agree to accept "anything of value from any person, intending to be influenced or rewarded" for an official act. §666(a)(1)(B). That law prohibits state and local officials from accepting bribes that are promised or given before the official act. Those bribes are punishable by up to 10 years' imprisonment. Question presented: Whether section 666 criminalizes gratuities, *i.e.,* payments in recognition of actions the official has already taken or committed to take, without any quid pro quo agreement to take those actions. In a 6-3 decision, with an opinion authored by Justice Kavanaugh, the Court held that a gratuity without a quid pro quo is not prohibited "The question in this case is whether §666 also makes it a crime for state and local officials to accept gratuities—for example, gift cards, lunches, plaques, books, framed photos, or the like—that may be given as a token of appreciation after the official act. The answer is no. State and local governments often regulate the gifts that state and local officials may accept. Section 666 does not supplement those state and local rules by subjecting 19 million state and local officials to up to 10 years in federal prison for accepting even commonplace gratuities. Rather, §666 leaves it to state and local governments to regulate gratuities to state and local officials." Justice Gorsuch concurred: He agreed with the result, but would have preferred the Court state explicitly that its decision is based on the rule of lenity. Justice Jackson dissented (joined by Sotomayor and Kagan).

2. **Fraudulent Inducement Theory of Mail Fraud**. ***Kousisis v. United States***, ***No. 23-909*** (cert. granted June 17, 2024); decision below at 82 F.4th 230 (3rd Cir. 2023). The circuits are split 6-5 on the validity of the fraudulent inducement theory of

mail and wire fraud. Questions Presented: (1) Whether deception to induce a commercial exchange can constitute mail or wire fraud, even if inflicting economic harm on the alleged victim was not the object of the scheme. (2) Whether a sovereign's statutory, regulatory, or policy interest is a property interest when compliance is a material term of payment for goods or services. (3) Whether all contract rights are "property."

C. **False Statements.** ***Thompson v. United States***, ***No. 23-1095*** (cert. granted Oct. 4, 2024); decision below at 89 F.4th 1010 (7th Cir. 2024). Section 1014 of Title 18, United States Code, covers the knowing making of false statements or willfully overvaluing any property or security for the purpose of influencing in any way the action of the enumerated agencies and organizations. Question presented: Whether 18 U.S.C. § 1014, which prohibits making a "false statement" for the purpose of influencing certain financial institutions and federal agencies, also prohibits making a statement that is misleading but not false."

D. **Witness Tampering Liability for Jan 6.** ***Fischer v. United States, No. 23-5572*** (June 28, 2024) (OA ***transcript*** & ***audio***). The Sarbanes-Oxley Act of 2002 imposes criminal liability on anyone who corruptly "alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding." 18 U.S.C. §1512(c)(1). The next subsection extends that prohibition to anyone who "otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so." §1512(c)(2). At issue in this case, arising out of the violent breaking-and-entry and assaults at the Halls of Congress on January 6, was whether this "otherwise" clause should be read in light of the limited reach of the specific provision that precedes it. In one count of Fischer's indictment, the government charged him with violating 18 U.S.C. §1512(c)(2). Fischer moved to dismiss that count, arguing that the provision criminalizes only attempts to impair the availability or integrity of evidence. The District Court granted his motion in relevant part. It concluded that the scope of Section 1512(c)(2) is limited by subsection (c)(1) and therefore requires the defendant to "'have taken some action with respect to a document, record, or other object.'" The D.C. Circuit reversed and remanded, but the Supreme Court granted cert. The question presented was, according to the Court, about the scope of the residual "otherwise" clause in Section 1512(c)(2). On the one hand, Fischer contended that (c)(2) "applies only to acts that affect the integrity or availability of evidence." On the other, the Government argued that (c)(2) "capture[s] all forms of obstructive conduct beyond

Section 1512(c)(1)'s focus on evidence impairment." To resolve that clash, the Court examined how the residual clause is linked to its "surrounding words." In doing so, the Court determined that it "must 'give effect, if possible, to every clause and word of [the] statute,'" considering both "the specific context" in which (c)(2) appears "and the broader context of the statute as a whole." In a 6-3 decision authored by Chief Justice Roberts, the Court held that "subsection (c)(2)'s 'surrounding words' suggest that we should not give this 'otherwise' provision the broadest possible meaning. . . . Although the Government's all-encompassing interpretation may be literally permissible, it defies the most plausible understanding of why (c)(1) and (c)(2) are conjoined, and it renders an unnerving amount of statutory text mere surplusage. Given that subsection (c)(2) was enacted to address the Enron disaster, not some further flung set of dangers, it is unlikely that Congress responded with such an unfocused and "grossly incommensurate patch." We therefore decline to adopt the Government's interpretation, which is inconsistent with "the context from which the statute arose." Instead, the Court concluded, "[t]o prove a violation of Section 1512(c)(2), the Government must establish that the defendant impaired the availability or integrity for use in an official proceeding of records, documents, objects, or as we earlier explained, other things used in the proceeding, or attempted to do so." Justice Jackson concurred, but Justice Barrett dissented (joined by Sotomayor and Kagan).

VII. TRIALS

A. Expert Testimony of Knowledge. ***Diaz v. United States***, ***No. 23-14*** (June 20, 2024). (OA ***transcript*** & ***audio***). An essential element of proving importation of illegal drugs in violation of the Controlled Substances Act is that the defendant knew she was transporting drugs. This element is "necessary to separate wrongful conduct from 'otherwise innocent conduct.'" *Ruan v. United States*, 142 S. Ct. 2370, 2377 (2022) (quoting *Elonis v. United States*, 575 U.S. 723, 736 (2015)). Diaz was apprehended at the Southern border, where investigators found methamphetamine hidden in the door panels of the car she was driving. For many years, the federal government has recognized that drug-trafficking organizations in Mexico sometimes use "blind mules"—people who do not know drugs are in the cars they are driving—to transport drugs across the border. She maintained at trial that that must have happened here. To rebut her defense, the government called a Homeland Security agent to testify in an expert capacity that "in most circumstances, the driver knows they are hired" to transport drugs and that drug-trafficking organizations do not entrust large quantities of drugs to unknowing drivers. Diaz argued that this testimony violated

Federal Rule of Evidence 704(b), which prohibits an expert witness in a criminal case from "stat[ing] an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged." Fed. R. Evid. 704(b). The district court and Ninth Circuit disagreed, holding that testimony implicates that rule only when it provides "an 'explicit opinion' on the defendant's state of mind." **The Supreme Court affirmed in a 6-3 decision authored by Justice Thomas:** "Federal Rule of Evidence 704(b) prohibits expert witnesses from stating opinions 'about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense.' In this drug-trafficking prosecution, petitioner argued that she lacked the mental state required to convict because she was unaware that drugs were concealed in her car when she drove it across the United States-Mexico border. At trial, the Government's expert witness opined that most drug couriers know that they are transporting drugs. Because the expert witness did not state an opinion about whether petitioner herself had a particular mental state, we conclude that the testimony did not violate Rule 704(b)." Justice Jackson concurred in her own opinion. Justice Gorsuch dissented (joined by Sotomayor and Kagan).

VIII. SENTENCING

A. **Safety Valve**. ***Pulsifer v. United States***, ***No. 22-340*** (Mar. 15, 2024) (OA ***transcript*** & ***audio***). The "safety valve" provision of the federal sentencing statute requires a district court to ignore any statutory mandatory minimum and instead follow the Sentencing Guidelines if a defendant was convicted of certain nonviolent drug crimes and can meet five sets of criteria. *See* 18 U.S.C. § 3553(f)(1)-(5). Congress amended the first set of criteria, in § 3553(f)(1), in the First Step Act of 2018, Pub. L. No. 115-391, § 402, 132 Stat. 5194, 5221, broad criminal justice and sentencing reform legislation designed to provide a second chance for nonviolent offenders. A defendant satisfies § 3553(f)(1), as amended, if he "does not have-(A) more than 4 criminal history points, excluding any criminal history points resulting from a 1-point offense, as determined under the sentencing guidelines; (B) a prior 3-point offense, as determined under the sentencing guidelines; and (C) a prior 2-point violent offense, as determined under the sentencing guidelines." 18 U.S.C. § 3553(f)(1) (emphasis added). Question presented: Whether the "and" in 18 U.S.C. § 3553(f)(1) means "and," so that a defendant satisfies the provision so long as he does not have (A) more than 4 criminal history points, (B) a 3-point offense, and (C) a 2-point offense (as the Ninth Circuit held), or whether the "and" means "or," so that a defendant satisfies the provision so long as he does not have (A) more

than 4 criminal history points, (B) a 3- point offense, or (C) a 2-point violent offense (as the Seventh and Eighth Circuits held). The Supreme Court held (6-3) that "and" means "or." In a majority opinion written by Justice Kagan, the Court decided that a defendant facing a mandatory minimum sentence is eligible for safety-valve relief under §3553(f)(1) only if he satisfies each of the provision's three conditions—or said more specifically, only if he does not have more than four criminal-history points, does not have a prior three-point offense, and does not have a prior two-point violent offense. The majority rejected the straightforward definition of words and simple construction offered by the defendant – that the word "and" joins these features of criminal history, so that a defendant is ineligible for safety valve only if he has all the items listed in A, B and C in combination. Instead, the majority accepted the government's reading that "and" connects three criminal history conditions, all of which must be satisfied thusly: A sentencing court must find the defendant does not have A, does not have B, and does not have C. The reasoning for the majority's decision is steeped in rules of statutory construction that, candidly, is just a bunch of talk; rules invoked to support a result that defies logic and grammar and Congressional intent, just to fulfill a government premise that Congress never really intended to limit punishment under a law it found to be unduly harsh. Justice Gorsuch dissented, forcefully, joined by Sotomayor and Jackson, making a pointed attack on the majority opinion: "Adopting the government's preferred interpretation guarantees that thousands more people in the federal criminal justice system will be denied a chance—just a chance—at an individualized sentence. For them, the First Step Act offers no hope. Nor, it seems, is there any rule of statutory interpretation the government won't set aside to reach that result. Ordinary meaning is its first victim. Contextual clues follow. Our traditional practice of construing penal laws strictly falls by the wayside too. Replacing all that are policy concerns we have no business considering." After a detailed and lengthy refutation of the majority's reasoning, the dissent concludes: "Today, the Court does not hedge its doubts in favor of liberty. Instead, it endorses the government's implicit distribution theory and elevates it over the law's ordinary and most natural meaning. It is a regrettable choice that requires us to abandon one principle of statutory interpretation after another. We must read words into the law; we must delete others. We must ignore Congress's use of a construction that tends to avoid, not invite, questions about implicit distribution. We must dismiss Congress's variations in usage as sloppy mistakes. Never mind that Congress distributed phrases expressly when it wanted them to repeat in the safety valve. Never mind that Congress used 'or' when it sought an efficient way to hinge eligibility for relief based on a single

characteristic. We must then read even more words yet into the law to manufacture a superfluity problem that does not exist. We must elevate unexpressed congressional purposes over statutory text. Finally, rather than resolve any reasonable doubt about statutory meaning in favor of the individual, we must prefer a more punitive theory the government only recently engineered. Today, the Court indulges each of these moves. All to what end? To deny some individuals a chance—just a chance—at relief from mandatory minimums and a sentence that fits them and their circumstances. It is a chance Congress promised in the First Step Act, and it is a promise this Court should have honored." In the end, both the majority and dissenting opinions must seem like a lot of double-talk to any criminal defendant seeking relief that Congress made them eligible to receive, but which is no longer available under the holding of this case.

B. **FSA's Application Following Vacated Sentence.** ***Hewitt v. United States***, ***No. 23-1002*** and ***Duffy v. United States***, ***No. 23-1150*** (consolidated) (cert. granted July 2, 2024); decisions below at 92 F.4th 304 (5th Cir. 2024). Question presented: Whether the First Step Act's sentencing reduction provisions apply to a defendant originally sentenced before the FSA's enactment when that original sentence is judicially vacated and the defendant is resentenced to a new term of imprisonment after the FSA's enactment.

C. **Sentencing Factors for Supervised Release Violation.** ***Esteras v. United States***, ***No. 23-7483*** (cert. granted Oct. 21, 2024); decision below at 88 F.4th 1163 (6th Cir. 2024). The supervised-release statute, 18 U.S.C. § 3583(e), lists factors from 18 U.S.C. § 3553(a) for a court to consider when sentencing a person for violating a supervised release condition. In that list, Congress omitted the factors set forth in section 3553(a)(2)(A – the need for the sentence to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense. Five circuit courts of appeals, including the panel orders below, have concluded that district courts may rely on the section 3553(a)(2)(A) factors. Four circuit courts of appeals, plus the dissents from orders denying rehearing en bane below, have concluded that they may not. Question presented: Even though Congress excluded section 3553(a)(2)(A) from section 3583(e)'s list of factors to consider when revoking supervised release, may a district court rely on the section 3553(a)(2)(A) factors when revoking supervised release?

IX. IMMIGRATION

A. Aggravated Felony Predicate Offenses. ***Pugin v. Garland***, ***No. 22-23*** (together with ***Garland v. Cordero-Garcia***, ***No. 22-331)*** (consolidated) (June 22, 2023) (OA ***transcript*** & ***audio***). Under the Immigration and Nationality Act (INA), a noncitizen who is convicted of an "aggravated felony" is subject to mandatory removal and faces enhanced criminal liability in certain circumstances. One aggravated felony is "an offense relating to obstruction of justice." 8 U.S.C. § 1101(a)(43)(S). The Court granted certiorari on these two cases, one filed as to a ruling adverse to the petitioner and another in a ruling adverse to the government. The Court reworded and limited the question presented as follows: **To qualify as "an offense relating to obstruction of justice," 8 U.S.C. § 1101(a)(43)(S), must a predicate offense require a nexus with a pending or ongoing investigation or judicial proceeding?** In other words, does an offense relate to obstruction of justice under §1101(a)(43)(S) even if the offense does not require that an investigation or proceeding be pending. That question arises because some obstruction offenses can occur when an investigation or proceeding is not pending, such as threatening a witness to prevent the witness from reporting a crime to the police. In a unanimous decision authored by Justice Kavanaugh, the Court held that an offense may relate] to obstruction of justice under §1101(a)(43)(S) even if the offense does not require that an investigation or proceeding be pending.

B. *In Absentia* Removal Orders. ***Campos Chavez v. Garland***, ***No. 22-674*** (June 14, 2024). When the Government seeks to remove an alien, it is required to notify the alien of the time and place of the removal hearings. Title 8 U. S. C. §1229(a) describes two types of notice—an initial notice to appear under paragraph (1), and, "in the case of any change or postponement in the time and place of" the removal proceedings, a notice of hearing under paragraph (2). When an alien fails to appear at his removal hearing despite receiving such notice, he "shall be ordered removed in absentia" if the Government can make certain showings. §1229a(b)(5)(A). The alien can seek to have that order rescinded, however, if the alien can demonstrate that he "did not receive notice in accordance with paragraph (1) or (2) of [§1229(a)]." Campos-Chavez and others received notice of a removal hearing that they failed to attend. Yet the court of appeals held that the removal orders entered in absentia may be rescinded for lack of notice. The Supreme Court granted cert to decide what it means to "demonstrat[e] that the alien did not receive notice in accordance with paragraph (1) or (2)." §1229a(b)(5)(C)(ii). In a divided case (5-4), the Court held that the paragraph 2

notice was sufficient for entry of an in absentia order. Justice Alito authored the opinion for the majority: "Each of the aliens in these cases argues that he may seek rescission because he did not receive a notice to appear that complies with paragraph (1). We hold that, to rescind an in absentia removal order on the ground that the alien 'did not receive notice in accordance with paragraph (1) or (2),' the alien must show that he did not receive notice under either paragraph for the hearing at which the alien was absent and ordered removed. Because each of the aliens in these cases received a proper paragraph (2) notice for the hearings they missed and at which they were ordered removed, they cannot seek rescission of their in absentia removal orders on the basis of defective notice under §1229a(b)(5)(C)(ii)." Justice Jackson dissented (joined by Sotomayor, Kagan and Gorsuch).

C. Time for Seeking Relief from Removal. ***Riley v. Garland***, ***No. 23-1270*** (cert. granted Nov. 4, 2024); decision below at 2024 WL 1826979 (4th Cir. 2024). Pierre Riley, ineligible for cancellation of removal or discretionary relief from removal, sought deferral in withholding-only proceedings, pursuant to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. After the Board of Immigration Appeals issued a decision reversing an immigration judge's grant of relief, Riley promptly petitioned for review by the U.S. Court of Appeals for the Fourth Circuit. Although both parties urged the court to decide the merits of the case, the Fourth Circuit dismissed Riley's petition for lack of jurisdiction pursuant to 8 U.S.C. 1252(b)(1), which states "[t]he petition for review must be filed not later than 30 days after the date of the final order of removal." This holding implicates two circuit splits. Questions presented adopted (from Government's response to petition): (1) Whether the 30-day deadline in 8 U.S.C. 1252(b)(1) for filing a petition for review of an order of removal is jurisdictional. (2) Whether a noncitizen satisfies the deadline in Section 1252(b)(1) by filing a petition for review challenging an agency order denying withholding of removal or protection

X. COLLATERAL RELIEF: HABEAS CORPUS, §§ 2241, 2254, 2255 and 1983

A. Second or Successive Habeas Applications.

1. Under 2244(b)(2)(j). ***Rivers v. Lumpkin***, ***No. 23-1345*** (cert. granted Dec. 6, 2024); decision below at 99 F.4th 216 (5th Cir. 2024). Under the federal habeas statute, a prisoner "always gets one chance to bring a federal habeas challenge to his conviction," *Banister v. Davis,* 590 U.S. 504, 509 (2020). After that, the

stringent gatekeeping requirements of 28 U.S.C. § 2244(b)(2) bar nearly all attempts to file a "second or successive habeas corpus application." Here, petitioner sought to amend his initial habeas application while it was pending on appeal. The Fifth Circuit applied § 2244(b)(2) and rejected the amended filing. The circuits are intractably split on whether § 2244(b)(2) applies to such filings. The Fifth, Sixth, Seventh, Eighth, Ninth, and Eleventh Circuits hold that § 2244(b)(2) categorically applies to all second-in-time habeas filings made after the district court enters final judgment. The Second Circuit disagrees, applying § 2244(b)(2) only after a petitioner exhausts appellate review of his initial petition. And the Third and Tenth Circuits exempt some second-in-time filings from § 2244(b)(2), depending on whether a prisoner prevails on his initial appeal (Third Circuit) or satisfies a seven-factor test (Tenth Circuit). Question presented: Whether § 2244(b)(2) applies (i) only to habeas filings made after a prisoner has exhausted appellate review of his first petition, (ii) to all second-in-time habeas filings after final judgment, or (iii) to some second-in-time filings, depending on a prisoner's success on appeal or ability to satisfy a seven-factor test.

2. **Under 2255(b)(1) & (3)(E).** ***Bowe v. United States***, ***No. 24-5438*** (cert. granted Jan. 17, 2025); order below unpublished. Under 28 U.S.C. § 2244(b)(1), "[a] claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed." (emphasis added). **The first question presented is: Whether 28 U.S.C. § 2244(b)(1) applies to a claim presented in a second or successive motion to vacate under 28 U.S.C. § 2255.** *** Under 28 U.S.C. § 2244(b)(3)(E), "[t]he grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition . . . for a writ of certiorari." (emphasis added). **The second question presented is: Whether 28 U.S.C. § 2244(b)(3)(E) deprives this Court of certiorari jurisdiction over the grant or denial of an authorization by a court of appeals to file a second or successive motion to vacate under 28 U.S.C. § 2255**.

B. ***Napue* Violation & Adequate and Independent Ground for State Judgment.** ***Glossip v. Oklahoma***, ***No. 22-7466*** (Feb. 25, 2025). An Oklahoma jury convicted petitioner Richard Glossip of paying Justin Sneed to murder Barry Van Treese and sentenced him to death. At trial, Sneed admitted he beat Van Treese to death, but testified that Glossip

had offered him thousands of dollars to do so. Glossip confessed he helped Sneed conceal his crime after the fact, but he denied any involvement in the murder. Nearly two decades later, the State disclosed eight boxes of previously withheld documents from Glossip's trial. These documents show that Sneed suffered from bipolar disorder, which, combined with his known drug use, could have caused impulsive outbursts of violence. They also established, the State agrees, that a jail psychiatrist prescribed Sneed lithium to treat that condition, and that the prosecution allowed Sneed falsely to testify at trial that he had never seen a psychiatrist. Faced with that evidence, Oklahoma's attorney general confessed error. Before the Oklahoma Court of Criminal Appeals (OCCA), the State conceded that the prosecution's failure to correct Sneed's testimony violated *Napue v. Illinois*, 360 U.S. 264 (1959), which held that prosecutors have a constitutional obligation to correct false testimony. The attorney general accordingly asked the court to grant Glossip a new trial. The OCCA declined to grant relief because, it held, the State's concession was not "based in law or fact." 2023 OK CR 5, ¶25, 529 P. 3d 218, 226. In a 5-1-2 decision authored by Justice Sotomayor (Barrett concurring in part and dissenting; Gorsuch recused;), the Court reversed the state judgment and remanded the case for a new trial, because the prosecution violated its obligations under *Napue*. The majority determined that the Court had jurisdiction because the independent-state-ground doctrine did not apply where the prosecution's confession of error was based on federal law (*Napue*) and any lack of clarity on this point in the state court's reasoning on this point is overcome by the presumption of federal law set forth in *Michigan v. Long*, 463 U.S. 1032, 1040-41 (1983). Having satisfied the jurisdictional prong, the Court then found that the prosecution's failure to correct false evidence constitutes reversible error under *Napue*. Justice Barrett concurred in much of the Court's analysis, but would not have remanded for a new trial; rather she would just have remanded for the Oklahoma court to properly apply *Napue* in the first instance. Thomas dissented from the Court's decision (joined by Alito and, in part, Barrett): "At the threshold, [the Court] concocts federal jurisdiction by misreading the decision below. On the merits, it finds a due process violation based on patently immaterial testimony about a witness's medical condition. And, for the remedy, it orders a new trial in violation of black-letter law on this Court's power to review state-court judgments."

C. Requisite Deference to District Court Findings. ***Thornell v. Jones***, ***No. 22-982*** (May 30, 2024). In order to steal a gun collection over thirty years ago, Jones beat Robert Weaver to death and also beat and strangled Weaver's 7-year-old daughter to death, for which he was

convicted and sentenced to death. The district court denied habeas relief following an evidentiary hearing on Jones's ineffective-assistance-of-sentencing-counsel claims. But a Ninth Circuit panel reversed the district court, giving no deference to the district court's detailed factual findings. In a 6-3 decision authored by Justice Alito, the majority overturned the writ of habeas corpus. "The Ninth Circuit held that the defendant's Sixth Amendment right to the effective assistance of counsel was violated during the sentencing phase of his capital trial. In reaching this conclusion, the Ninth Circuit substantially departed from the well-established standard articulated by this Court in *Strickland v. Washington*, 466 U.S. 668 (1984). Among other things, the Ninth Circuit all but ignored the strong aggravating circumstances in this case. As a result, we must reverse the judgment below." Justice Sotomayor dissented (joined by Kagan) and Justice Jackson filed a separate dissent.

D. 1983 Actions

1. **PLRA; Jury Trial Rights on Exhaustion Questions**. ***Perttu v. Richards***, ***No. 23-1324*** (cert. granted Oct. 4, 2024); decision below at 96 F.4th 911 (6th Cir. 2024). In cases subject to the Prison Litigation Reform Act, do prisoners have a right to a jury trial concerning their exhaustion of administrative remedies where disputed facts regarding exhaustion are intertwined with the underlying merits of their claim?

2. **Death Penalty; DNA Test Results.** ***Gutierrez v. Saenz***, ***No. 23-7809*** (cert. granted Oct. 4, 2024); decision below at 93 F.4th 267 (5th Cir. 2024). Gutierrez, a Texas death row inmate, sought and was denied post-conviction DNA testing. He filed a § 1983 action alleging that Texas's post-conviction DNA statute violated due process. As to standing for such claims, the Supreme Court had earlier held, in *Reed v. Goertz*, 598 U.S. 230, 234 (2023), that an earlier death-row inmate, Rodney Reed, had standing to pursue a declaratory judgment that Texas's post-conviction DNA statute was unconstitutional because "Reed suffered an injury in fact," the named defendant "caused Reed's injury," and if a federal court concludes that Texas's statute violates due process, it is "substantially likely that the state prosecutor would abide by such a court order." In this case, a divided panel of the United States Court of Appeals for the Fifth Circuit refused to follow that ruling over a dissent that recognized that this case was indistinguishable from *Reed*. The majority, however, grafted onto *Reed* an additional layer of standing analysis that led to the opposite result. Specifically, the

majority scrutinized the state court record, formulated its own novel test for Article III standing, which requires scouring the record of the parties' dispute and any legal arguments asserted, to predict whether the defendants in a particular case would actually redress the plaintiff's injury by complying with a federal court's declaratory judgment. *Gutierrez v. Saenz*, 93 F.4th 267, 274 (5th Cir. 2024). The Fifth Circuit's new test seemingly conflicts with *Reed* and creates a circuit split with the United States Courts of Appeals for the Eighth and Ninth Circuits, which have applied the standing doctrine exactly as the Court directed in *Reed*. *See Johnson v. Griffin*, 69 F.4th 506 (8th Cir. 2023); *Redd v. Guerrero*, 84 F.4th 874 (9th Cir. 2023). In the end, the Fifth Circuit panel majority held that Gutierrez could not meet the redressability prong of Article III standing. Question presented: Does Article III standing require a particularized determination of whether a specific state official will redress the plaintiff's injury by following a favorable declaratory judgment?