(ORDER LIST: 587 U.S.)

MONDAY, MAY 13, 2019

ORDERS IN PENDING CASES

18M143 GRETHEN, MARK A. V. CLARKE, DIR., VA DOC, ET AL.

The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied.

18M144 OULTON, ROBERT V. FLORIDA

The motion for leave to proceed as a veteran is denied.

18M145 TAYLOR, EDDIE V. EDWARDS, WILLIAM J., ET AL.

18M146 CUNNINGHAM, BENJAMIN V. UNITED STATES MARSHALS SERVICE

The motions to direct the Clerk to file petitions for writs of certiorari out of time are denied.

18M147 SHOOP, DALE V. TERRY, ACTING WARDEN

18M148 CORDOBA, CARLOS V. UNITED STATES

The motions for leave to file petitions for writs of certiorari with the supplemental appendices under seal are granted.

18M149 GOSSAGE, HENRY E. V. MERIT SYSTEMS PROTECTION BOARD

The motion for leave to proceed as a veteran is denied.

18M150 ACEDO, DANIEL V. PINEDO, ERNEST, ET AL.

18M151 LONG, WILLIAM J. V. KEETON, WARDEN

18M152 BONANNO, LOUIS V. BARR, ATT'Y GEN., ET AL.

The motions to direct the Clerk to file petitions for writs of certiorari out of time are denied.

18M153 SEALED APPELLANT V. SEALED APPELLEE

The motion for leave to file a petition for a writ of

certiorari under seal with redacted copies for the public record is granted.

18-431 UNITED STATES V. DAVIS, MAURICE L., ET AL.

The motion for appointment of counsel is granted, and J. Joseph Mongaras, Esq., of Dallas, Texas, is appointed to serve as counsel for respondent Andre L. Glover.

18-8191 BURKE, MARIANNE E. V. RAVEN ELECTRIC, INC., ET AL.

18-8270 HETTINGA, WYLMINA L. V. LOUMENA, TIMOTHY P.

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until June 3, 2019, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

CERTIORARI DENIED

18-673 PRINCE, TERRENCE E. V. LIZARRAGA, WARDEN

18-766 BIERMAN, TERESA, ET AL. V. WALZ, GOV. OF MN, ET AL.

18-807 BASKINS, RANDOLPH S., ET UX. V. OKLAHOMA TAX COMMISSION

18-813 VELASQUEZ, MARIA S., ET AL. V. BARR, ATT'Y GEN.

18-830 MILLBURN, NJ, ET AL. V. PALARDY, MICHAEL J.

18-842 MENDEZ, GILBERT V. UNITED STATES

18-881 AM. FUEL & PETROCHEMICAL, ET AL. V. O'KEEFFE, JANE, ET AL.

18-944 TREE OF LIFE CHRISTIAN SCHOOLS V. UPPER ARLINGTON, OH

18-1017 ANGELEX, LTD. V. UNITED STATES

18-1117 KABANI & CO., INC., ET AL. V. SEC

18-1142 TOCZYLOWSKI, CASIMIR M. V. GIULIANO, SAMANTHA G., ET VIR

18-1144 NATURAL ALTERNATIVES INT'L V. IANCU, ANDREI

18-1147 BRUNSON, DERON V. HOGAN, L. D., ET AL.

18-1149 GALLENTHIN, GEORGE A. V. BOROUGH OF PAULSBORO, ET AL.

18-1152 ELAINE STEELE, ET AL. V. McCAULEY, SYLVESTER, ET AL.

18-1158 TAYLOR, JARROD V. DUNN, COMM'R, AL DOC

18-1168 FLORIMONTE, CAROLYN J. V. DALTON, PA

18-1172 WILLIAMS, TYNISA V. CLEVELAND, OH

18-1178 PAIGE, CHRISTOPHER, ET UX. V. LERNER MASTER FUND LLC, ET AL.

18-1179 MBAWE, JOHN V. FERRIS STATE UNIVERSITY, ET AL.

18-1180 NEW VISION HOME HEALTH, ET AL. V. ANTHEM, INC., ET AL.

18-1183 SMULLEY, DOROTHY A. V. FEDERAL HOUSING FINANCE, ET AL.

18-1184 KINNEY, CHARLES V. CLARK, MICHELE R.

18-1213 GARITA, JOSE J. V. BARR, ATT'Y GEN.

18-1217 WAPLES MOBILE HOME LTD., ET AL. V. DE REYES, ROSY G., ET AL.

18-1247 RIES, ROBERT A. V. OREGON

18-1250 LEA, COREY V. PERDUE, SEC. OF AGRIC.

18-1268 JHOKKE, PARAS V. LOS ANGELES, CA

18-1270 JAGOS, HENRY M., ET UX. V. CIR

18-1273 CALDAVADO, ALMA V. NEW YORK

18-1278 KERNS, COREY A., ET AL. V. CHESAPEAKE EXPLORATION, ET AL.

18-1282 SANDERS, DAVID L. V. ALABAMA

18-1286 BAUR, BRIAN D. V. PENNSYLVANIA

18-1312 MATESKI, STEVEN V. RAYTHEON CO.

18-6750 PULTRO, RITA V. PENNSYLVANIA

18-6993 BJERKE, JAMIE T. V. UNITED STATES

18-7130 ALDEN, MATTHEW G. V. MASSACHUSETTS

18-7232 SANCHEZ, ARTHUR V. UNITED STATES

18-7369 GHOSH, RASH B. V. BERKELEY, CA, ET AL.

18-7378 HILL, NATHAN V. DANIELS, WARDEN

18-7540 RILEY, DAVID D. V. ALABAMA

18-7542 HARNDEN, PAMELA S. V. ST. CLAIR COUNTY, MI, ET AL.

18-7584 MARBERRY, PAMELA V. STATE BAR OF CA

18-7613 ACKELL, DAVID V. UNITED STATES

18-7670 PORTER, THOMAS A. V. ZOOK, WARDEN

18-7680 CIRINO, HECTOR V. UNITED STATES

18-7695 WILLIAMS, LEROY O. V. WILKIE, SEC. OF VA

18-7809 WERE, JAMES V. OHIO

18-7907 HASSAN, JOHN V. MARKS, LAWRENCE K., ET AL.

18-8057 SHORT, DUANE A. V. OHIO

18-8090 ZAKRZEWSK, EDWARD J. V. FLORIDA

18-8153 WALCOTT, STEVEN A. V. NAQUIN, PAT, ET AL.

18-8178 JUSTISE, CHARLES E. V. LIEBEL, DAVID, ET AL.

18-8232 ROSALES, JESUS V. TEXAS

18-8235 LOPEZ, ARTHUR V. CALIFORNIA

18-8240 MONIZ, HOWARD A. V. MICHIGAN

18-8241 MORET, ANDREW G. V. GARRETT, PAT

18-8242 McCREARY, JODY F. V. DAVIS, DIR., TX DCJ

18-8248 JONES, HERSY V. SUPREME COURT OF LA, ET AL.

18-8249 MORGAN, RICKEY V. STEAGER, WV STATE TAX COMM'R

18-8251 PETERSON, ZACHARIAH J. V. CASSADY, WARDEN

18-8255 PONDER, DAVID E. V. AVALON CORR. SERV., ET AL.

18-8257 McCLAIN, IRIS V. WELLS FARGO BANK, ET AL.

18-8258 JACKSON, LOWELL E. V. CLIMMER, EDDIE, ET AL.

18-8271 HERNANDEZ, TONY V. SIMS, DARLENE S., ET AL.

18-8272 FAIRLEY, JULIETTE V. FORD, DON, ET AL.

18-8276 SAMPLE, DEREK V. JOHNSON, ADM'R, NJ

18-8278 SCHIEVE, TIMOTHY M. V. INDIANA

18-8283 BURLISON, TERRY A. V. ANGUS, PAM

18-8285 MARTINEZ, MIGUEL V. TEXAS

18-8288 ALLEN, DERRICK V. ENVIROGREEN LANDSCAPE

18-8295 LUMSDEN, RAYMOND V. TEXAS

18-8296 ALEXANDER, KEITH V. GILMORE, SUPT., GREENE

18-8303 ALFORD, THOMAS T. V. CARLTON, STEPHEN S., ET AL.

18-8304 BROACH, WHITNEY N. V. PEAKE, DAVID G.

18-8305 ZAINULABEDDIN, NAUSHEEN V. UNIVERSITY OF SOUTH FLORIDA BD.

18-8319 FLICK, JASON R. V. CLARK, SUPT., ALBION, ET AL.

18-8323 JENNINGS, BRYAN F. V. FLORIDA

18-8326 GRAY, DANA V. ROMERO, V., ET AL.

18-8334 GONZALEZ, ADA A. V. GONZALEZ, ALFREDO E.

18-8338 JACKSON, ANTHONY T. V. ILLINOIS

18-8340 ROBLERO, VICTOR V. DIAZ, ACTING SEC., CA DOC

18-8351 FRESSADI, AREK V. AZ RISK RETENTION POOL, ET AL.

18-8354 ANDERSON, ANTHONY K. V. HOWELL, WARDEN, ET AL.

18-8365 SCOTT, DERRICK V. STARK, ALLEN, ET AL.

18-8367 WILLIAMS, LAMAR V. AMERICAN AUTO LOGISTICS

18-8368 MARTIN, DESMOND V. GARMAN, SUPT., ROCKVIEW, ET AL.

18-8372 GREEN, DOMINIQUE V. TEXAS

18-8374 HILL, NAYKIMA T. V. BREWER, WARDEN

18-8375 HOLLAND, ZEBADIAH V. MICHIGAN

18-8379 DOBBS, JOHN A. V. TEXAS

18-8383 SOUTHGATE, JEREMY C. V. UNITED STATES, ET AL.

18-8385 REPELLA, SCOTT J. V. BERRYHILL, NANCY A.

18-8398 WATTERS, WILIAM O. V. MICHIGAN

18-8399 JONES, RANDALL S. V. FLORIDA

18-8409 MUNGIN, ANTHONY V. FLORIDA

18-8412 PERRYMAN, LAMAR V. GEORGIA, ET AL.

18-8413 AVOKI, FRANCISCO K. V. CAROLINAS TELCO, ET AL.

18-8414 DENNIS E. V. D'EMIC, ADMINISTRATIVE JUDGE, ET AL.

18-8420 BRIGGS, KEVIN A. V. MONTANA

18-8421 THOMAS, TIMOTHY M. V. INCH, SEC., FL DOC, ET AL.

18-8422 YOUNG, JOHNNY M. V. ALABAMA

18-8425 LUCAS, HENRY J. V. VIRGINIA

18-8438 COLE, ABDUL V. VIRGINIA

18-8444 NOVERO, PRIMO C. V. DUKE ENERGY FLORIDA INC., ET AL.

18-8446 WERNER, PATRICK J. V. GREEN BAY, WI

18-8459 BISSO, WAYNE A. V. FLORIDA

18-8460 AVILEZ, ANTONIO V. MASSACHUSETTS

18-8474 HENNEBERRY, JOHN V. ALAMEDA, CA, ET AL.

18-8479 FELS, ALEXANDER A. V. McCONNELL, MITCH, ET AL.

18-8482 GARCIA, LOURDES M. V. UNITED STATES

18-8497 LYNCH, LESLIE R. V. IDAHO

18-8509 KOMATSU, TOWAKI V. NTT DATA, INC., ET AL.

18-8510 THANIEL, TRAVIS V. MARYLAND

18-8533 WILLIAMS, LANCE V. CALIFORNIA

18-8535 HELEVA, DANIEL A. V. CLARK, SUPT., ALBION, ET AL.

18-8545 LOHRI, DEBRA A. V. SPECIALIZED LOAN SERVICING

18-8549 GOODMAN, KEITH D. V. HAMILTON, WARDEN

18-8559 SMITH, BETTY V. DANIEL, ZACHARY T.

18-8560 SULTAANA, HAKEEM V. HARRIS, WARDEN

18-8567 McDERMOTT, ROHAN V. SOTO, WARDEN

18-8571 PELLECER, JAVIER V. CALIFORNIA

18-8580 MARTS, SIDNEY V. INCH, SEC., FL DOC

18-8590 RAMOS, HARLIN A. V. UTAH

18-8592 GRISSOM, WENDELL A. V. CARPENTER, INTERIM WARDEN

18-8594 TISZAI, JASON A. V. INCH, SEC., FL DOC, ET AL.

18-8596 BERNAZARD, JOSE V. KOCH, JOSEPH

18-8606 SMITH, LESTER J. V. DOZIER, GREG, ET AL.

18-8620 HICKLIN, JOEL M. V. CLARKE, DIR., VA DOC

18-8633 GREENE, JAMES V. WALGREEN EASTERN CO., INC.

18-8635 WILLIS, BENNY L. V. ROSS, KENNETH, ET AL.

18-8644 FINCH, EMANUEL L. V. GRAHAM, BRADLEY, ET AL.

18-8656 HAMES, GENEVA E. V. YELDELL, WARDEN

18-8675 SEDILLO, JOSHUA V. UNITED STATES

18-8678 CAMPBELL, MIZELL V. FLORIDA BAR

18-8684 YOUNG, ROBERT E. V. BRENNAN, POSTMASTER GEN.

18-8688 McSHAN, FREDERICK A. V. UNITED STATES

18-8690 ONTIVEROS, DAGOBERTO V. PACHECO, WARDEN, ET AL.

18-8691 BOISVERT, EUGENE C. V. UNITED STATES

18-8694 HENDERSON, BRYAN G. V. UNITED STATES

18-8695 TATE, DEONTRAY V. V. TITUS, WARDEN

18-8696 BROWN, CODY R. V. LOUISIANA

18-8699 CHERY, MARCKENSON V. UNITED STATES

18-8700 GIVENS, DORIAN V. UNITED STATES

18-8703 JOHNSON, ALAN W. V. UNITED STATES

18-8708 CLARK, CHARLES V. COAKLEY, WARDEN

18-8711 LUSTER, BJORN C. V. UNITED STATES

18-8714 WHIGHAM, KENNETH V. UNITED STATES

18-8715 SPRAY, QUILLIE M. V. RYAN, SUPT., SHIRLEY

18-8716 DONAHUE, SEAN M. V. PA DEPT. OF LABOR AND INDUSTRY

18-8717 ACOSTA, HANOI B. V. UNITED STATES

18-8718 BARRETT, ANTHONY C. V. UNITED STATES

18-8721 REED, KELVIN V. TENNESSEE

18-8725 MUHAMMAD, SAIYDIN A. V. UNITED STATES

18-8729 THOMPSON, ALAN K. V. UNITED STATES

18-8740 MANLEY, MICHAEL V. DELAWARE

18-8741 APODACA, FRANCISCO F. V. UNITED STATES

18-8743 TORRES-CABRERA, ARTURO V. UNITED STATES

18-8747 AGUILAR-LOPEZ, VALENTIN V. UNITED STATES

18-8752 SANDHU, KULWANT S. V. UNITED STATES

18-8755 MURDOCH, MATTHEW R. V. UNITED STATES

18-8767 SLATON, ANTONIO V. UNITED STATES

18-8775 MAINES, SAMUEL W. V. UNITED STATES

18-8779 HUDSON, YAMURA D. V. UNITED STATES

18-8781 KALEY, KERRI L. V. UNITED STATES

18-8782 LOPEZ-RODRIGUEZ, CESAR V. UNITED STATES

18-8783 KENDRICKS, DANIEL R. V. UNITED STATES

18-8784 JOHNSON, DiANGELO V. UNITED STATES

18-8786 KRELL, STEPHEN V. LOUISIANA

18-8808 REDMOND, DERRICK V. ILLINOIS

18-8816 HOOPER, CHARLES R. V. UNITED STATES

18-8824 GONZALES, DARREN V. UNITED STATES

18-8829 DJUGA, LEONID V. UNITED STATES

18-8923 WATKINS, RYAN V. ROBINSON, WARDEN

The petitions for writs of certiorari are denied.

18-809 LOVELACE, CURTIS T. V. ILLINOIS

The motion of The Fines and Fees Justice Center, et al. for leave to file a brief as *amici curiae* is granted. The motion of The National Association of Criminal Defense Lawyers for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is denied.

18-983 MACKINAC ISLAND, MI, ET AL. V. FERC

The petition for a writ of certiorari is denied. Justice Kavanaugh took no part in the consideration or decision of this petition.

18-8297 BACCUS, JOHN V. CLEMENTS, EDGAR L., ET AL.

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8.

18-8300 EVERETT, PAUL G. V. FLORIDA

The petition for a writ of certiorari is denied. Justice Sotomayor, dissenting from the denial of certiorari: I dissent for the reasons set out in *Reynolds* v. *Florida*, 586 U. S. ___ (2018) (Sotomayor, J., dissenting).

18-8384 SMALL, BRUCE L. V. FLORIDA

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8. As the petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

18-8396 WEIDRICK, MARY JO V. TRUMP, PRESIDENT OF U.S.

The petition for a writ of certiorari before judgment is denied.

18-8486 MUNT, JOEL M. V. MILES, WARDEN

18-8713 WILLIAMS, BRIAND V. CALIFORNIA

The motions of petitioners for leave to proceed *in forma pauperis* are denied, and the petitions for writs of certiorari are dismissed. See Rule 39.8.

18-8738 MACHADO-ERAZO, NOE, ET AL. V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Kavanaugh took no part in the consideration or decision of this petition.

HABEAS CORPUS DENIED

18-8886 IN RE JAMES RODGERS, JR.

18-8922 IN RE EFRAIN CAMPOS

18-8960 IN RE ROBERT WINKEL

The petitions for writs of habeas corpus are denied.

18-8872 IN RE SAMUEL L. SURLES

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of habeas corpus is dismissed. See Rule 39.8.

18-8907 IN RE SAMUEL H. WILLIAMS

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of habeas corpus is dismissed. See Rule 39.8. As the petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

MANDAMUS DENIED

18-8452 IN RE HAROLD B. MASON

18-8485 IN RE MICHAEL D. HOWER

The petitions for writs of mandamus are denied.

18-1164 IN RE ALAN GIORDANI

18-1229 IN RE CAROLYN FJORD, ET AL.

The petitions for writs of mandamus and/or prohibition are denied.

18-1274 IN RE URVASHI BHAGAT

The motion of Mr. Marcos Gonzalez for leave to file a brief as *amicus curiae* is granted. The petition for a writ of mandamus is denied.

18-8724 IN RE ARCHIE CABELLO

The petition for a writ of mandamus and/or prohibition is denied.

REHEARINGS DENIED

18-793 BREWSTER, MARION Q. V. UNITED STATES

18-798 BLAUCH, JOANNA J. V. COLORADO

18-859 PEEL, EARNEST V. H.E. BUTT GROCERY CO.

18-869 LECUONA, SHAWN H. V. LECUONA, MARK R.

18-917 BENT, MICHAEL S. V. TALKIN, MARSHAL, USSC, ET AL.

18-5453 ELLIOTT, MARK V. PALMER, WARDEN

18-5818 KILPATRICK, GREGORY D. V. KONDAVEETI, HARIKA

18-5819 KILPATRICK, GREGORY D. V. FIELDS, JESSIE

18-5833 KILPATRICK, GREGORY D. V. VOLTERRA, FABIO

18-5834 KILPATRICK, GREGORY D. V. ROBINSON, KEITH

18-5877 STOLTZFOOS, LEVI L. V. WETZEL, SEC., PA DOC. ET AL.

18-5906 KILPATRICK, GREGORY D. V. WEISS, DAVID

18-5907 KILPATRICK, GREGORY D. V. ELIA, MARY E.

18-5908 KILPATRICK, GREGORY D. V. ZUCKER, HOWARD A.

18-6794 BRADSHAW, CHARLTON V. DAVIS, DIR., TX DCJ

18-7016 WASHINGTON, TUAD D. V. DAVIS, DIR., TX DCJ

18-7051 TAYLOR, JACQUELINE L. V. CVS CAREMARK CORPORATION

18-7063 IN RE CHARLES A. DREAD

18-7153 J. E. V. OR DEPT. OF HUMAN SERVICES

18-7191 PENDERGRAFT, SCOTT R. V. NON INC.

18-7213 DIXIT, AKASH V. BRASHER, JUDGE, ETC.

18-7236 STOUTAMIRE, DWAYNE V. LA ROSE, WARDEN

18-7325 ZINKAND, JOHN J. V. HERNANDEZ, SUPT., AVERY-MITCHELL

18-7486 MONTE, FRANK V. VANCE, CYRUS R., ET AL.

18-7539 ROSSI, JUSTIN M. V. THE CROWN

18-7580 NEAL, MOURICE V. WAYNE CTY. TREASURER

18-7601 CHHIM, JOSEPH V. GOLDEN NUGGETT LAKE CHARLES

18-7755 GARCIA, PAULINE V. WILKIE, SEC. OF VA

18-7756 CHAMBERS, ROSCOE V. SARCONE, NICHOLAS

18-7790 SIMPSON, MARCUS V. COOPER, JUDGE, ETC.

18-7824 KILLINGBECK, JOHN C. V. UNITED STATES

18-7859 MONSEGUE, FRANK D. V. UNITED STATES

18-7895 ANDERSON, JERRY V. MICHIGAN

18-8110 IN RE LaSHAWN ANDERSON

The petitions for rehearing are denied.

SUPREME COURT OF THE UNITED STATES

CHRISTOPHER LEE PRICE, PETITIONER *v.*
JEFFERSON S. DUNN, COMMISSIONER,
ALABAMA DEPARTMENT OF
CORRECTIONS, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 18–1249 Decided May 13, 2019

The petition for a writ of certiorari is denied.

JUSTICE THOMAS, with whom JUSTICE ALITO and JUSTICE GORSUCH join, concurring in the denial of certiorari.

I concur in the denial of certiorari. I write separately to set the record straight regarding the Court's earlier orders vacating the stays of execution entered by the District Court and the Court of Appeals in this case. See *Dunn* v. *Price*, 587 U. S. ___ (2019). In a late-night dissenting opinion accompanying one of those orders, JUSTICE BREYER asserted that petitioner's death sentence was being "carried out in an arbitrary way" and that Members of this Court deviated from "basic principles of fairness." *Id.*, at ___, ___ (slip op., at 1, 7). There is nothing of substance to these assertions. An accurate recounting of the circumstances leading to the now-delayed execution makes clear that petitioner's execution was set to proceed in a procedurally unremarkable and constitutionally acceptable manner.

I

The dissent omitted any discussion of the murder that warranted petitioner's sentence of death and the extensive procedural protections afforded to him before his last-minute, dilatory filings. I therefore begin by more fully recounting the "circumstances as they [were] presented to

our Court." *Id.*, at ___ (slip op., at 1).

On the evening of Sunday, December 22, 1991, Bill Lynn, a minister, and his wife Bessie returned home after church. *Price* v. *State*, 725 So. 2d 1003, 1011 (Ala. Crim. App. 1997). Bill began assembling Christmas toys for his grandchildren while Bessie prepared for bed. *Ibid.* After the electricity appeared to fail, Bill went outside to check the power box. *Ibid.* He was then brutally attacked with a sword and a knife by petitioner and his accomplice. *Id.*, at 1011, 1015. According to the trial court, Bill suffered a total of 38 "cuts, lacerations, and stab wounds." App. to Pet. for Cert., O.T. 2018, No. 18–8766, p. 230a (18–8766 App.). "One of his arms was almost severed," and "[h]is scalp was detached from [his] skull." *Ibid.* Bessie tried to call the police, but the phone lines were cut. *Price*, 725 So. 2d, at 1011. When she tried to escape and go get help, petitioner and his accomplice ordered her out of the van and attacked her, too. *Ibid.* They also stole checks, cash, and firearms, and even demanded Bessie hand over her wedding bands. *Id.*, at 1011–1012. Bill "died a slow, lingering and painful death." 18–8766 App., at 230a.

Petitioner later confessed, and an Alabama jury convicted him of capital murder and first-degree robbery. *Price*, 725 So. 2d, at 1011–1012. The jury recommended death, which the trial court imposed after finding that the killing was committed during the course of a robbery and that it was particularly heinous, atrocious, or cruel. *Id.*, at 1011, 1034–1035. Petitioner's conviction and sentence were affirmed on direct appeal and his conviction became final in 1999. See *Price*, 725 So. 2d 1003, aff'd, *Ex parte Price*, 725 So. 2d 1063 (Ala. 1998), cert. denied, 526 U. S. 1133 (1999).

Twenty years later, after multiple unsuccessful attempts to obtain postconviction relief,* petitioner brought

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*See *Price* v. *State*, 880 So. 2d 502 (Ala. Crim. App. 2003) (Table);

an action under 42 U. S. C. §1983 attacking the constitutionality of the State's lethal injection protocol. Record in *Price* v. *Dunn*, No. 14–cv–472 (SD Ala.), Doc. 1 (Record 14–cv–472). Following our decision in *Glossip* v. *Gross*, 576 U. S. ___, ___ (2015) (slip op., at 13), which confirmed that prisoners challenging a State's method of execution must "establish the existence of a known and available alternative method of execution that would entail a significantly less severe risk" of pain, petitioner amended his complaint to propose an alternative compounded drug. See Record 14–cv–472, Doc. 32, p. 19–20. The District Court entered judgment for the State, explaining that petitioner had failed to show that this alternative was readily available. App. to Pet. for Cert. 38a–39a.

While petitioner's appeal was pending before the Eleventh Circuit, Alabama enacted Act 2018–353, which approved nitrogen hypoxia as an alternative to lethal injection. Death-row inmates whose convictions were final before June 1, 2018, had 30 days from that date to elect to be executed via nitrogen hypoxia. Ala. Code §15–18–82.1(b)(2) (2018). As the Eleventh Circuit noted in affirming the District Court, petitioner did not do so. *Price* v. *Commissioner, Ala. Dept. of Corrections*, 752 Fed. Appx. 701, 703, n. 3 (2018).

According to JUSTICE BREYER, the warden may not have given petitioner an election form until "72 hours" before the June 30 deadline. *Price*, 587 U. S., at ___ (slip op., at 5). That "possibil[ity]," *ibid.*, even if true, is irrelevant. As an initial matter, petitioner (like all other individuals) is presumed to be aware of the law and thus the June 30 deadline. Moreover, the Alabama statute neither required special notice to inmates nor mandated the use of a particular form. It merely required that the election be "per-

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Price v. *Allen*, 679 F. 3d 1315 (CA11 2012), cert. denied, 568 U. S. 1212 (2013); *Price* v. *State*, 265 So. 3d 366 (Ala. Crim. App. 2017) (Table).

sonally made by the [inmate] in writing and delivered to the warden." Ala. Code §15–18–82.1(b)(2). Cynthia Stewart, the warden at Holman Correctional Facility, went beyond what the statute required by affirmatively providing death-row inmates at Holman a written election form and an envelope in which they could return it to her. 18–8766 App., at 181a. No fewer than 48 other inmates took advantage of this election. Petitioner did not, even though he was represented throughout this time period by a well-heeled Boston law firm.

It was not until January 27, 2019—two weeks after the State sought to set an execution date and six months after petitioner declined to elect nitrogen hypoxia—that petitioner's counsel asked the warden, for the first time, that petitioner be executed through nitrogen hypoxia instead of lethal injection. The warden explained that she was unable to accept the belated request under state law. Petitioner's counsel then approached the State's counsel, who gave the same response. On February 8, petitioner filed another §1983 action challenging the constitutionality of Alabama's lethal injection protocol under the Eighth Amendment and proposing nitrogen hypoxia as an alternative. See *Bucklew* v. *Precythe*, 587 U. S. ___, ___ (2019) (slip op., at 20) (requiring a prisoner bringing a §1983 method of execution claim to "identif[y] a feasible and readily implemented alternative method of execution the State refused to adopt without a legitimate reason, even though it would significantly reduce a substantial risk of severe pain"). On March 1, the Alabama Supreme Court set petitioner's execution date for April 11.

On April 5, the District Court denied petitioner's motion for a preliminary injunction to stay his execution pending resolution of his new §1983 claim. 18–8766 App., at 54a. The court found that nitrogen hypoxia could not be "readily implemented" because although Alabama had legally approved nitrogen hypoxia as a future method of execu-

tion, the State was still preparing its execution protocol. *Id.,* at 48a–49a. It also found that the State had "legitimate reason[s]" for declining to use nitrogen hypoxia—namely, that petitioner failed to comply with the statutory deadline. *Id.*, at 49a–50a. But the court stated that petitioner was likely to prevail on the question whether execution by nitrogen "would provide a significant reduction in the substantial risk of severe pain" as compared to execution by lethal injection. *Id.*, at 52a. That same day, petitioner filed a motion for reconsideration in which he proposed, for the first time, his own one-page "execution protocol" for nitrogen hypoxia. Record in *Price* v. *Dunn*, No. 19–0057, Doc. 33, at 4, and n. 2 (Record No. 19–0057). The court denied the motion because petitioner "still fail[ed] to show that [a nitrogen hypoxia execution protocol] may be readily implemented by the State and that the State does not have [a] legitimate reason for refusing his untimely request." 18–8766 App., at 28a.

On April 10, the Eleventh Circuit affirmed on alternative grounds and denied petitioner's motion to stay his execution. *Price* v. *Commissioner, Ala. Dept. of Corrections*, 920 F. 3d 1317 (2019). The court acknowledged that petitioner "did not come forward with sufficient detail about how the State could implement nitrogen hypoxia to satisfy *Bucklew*'s requirement where the inmate proposes a new method of execution." *Id.*, at 1328. But it concluded that this failure was irrelevant because the State had officially adopted that method of execution. *Id.*, at 1328–1329. Nonetheless, the court held that the District Court erred in concluding that petitioner had met his burden to show that his proposed alternative method would significantly reduce the risk of substantial pain. *Id.*, at 1329–1331. In particular, the court held that the District Court had before it "no reliable evidence" from which to conclude that nitrogen would reduce petitioner's risk of pain in execution, as compared to the lethal injection protocol.

Id., at 1330. It noted that in reaching the contrary conclusion, the District Court had relied on a preliminary draft report by East Central University marked "Do Not Cite." *Ibid.*

A few hours before his scheduled execution on April 11, petitioner filed a petition for a writ of certiorari and an accompanying application for a stay of his execution. *Price* v. *Dunn*, O.T. 2018, No. 18–8766 (18A1044). While that petition and application were pending here, and before any mandate issued from the Eleventh Circuit, petitioner filed yet another motion for a preliminary injunction in the District Court. Record No. 19–0057, Doc. 45. Petitioner attached several affidavits and a final version of the report by the East Central University. The District Court granted a stay approximately two hours before the scheduled execution time of 6 p.m. central time, holding that, in light of the Eleventh Circuit's opinion and the new submissions, petitioner had now demonstrated a likelihood of success on the merits. *Id.*, Doc. 49, at 9–10, 13. The State immediately filed in the Eleventh Circuit a motion to vacate on the ground that the District Court lacked jurisdiction over the case, which was still at the Eleventh Circuit. But the Eleventh Circuit entered its own stay "in light of the jurisdictional questions raised by the parties' motions." 2019 WL1591475, *1 (Apr. 11, 2019). The State then promptly filed an application to vacate the stays in this Court so that it could carry out the execution as planned before the warrant expired at midnight. *Dunn* v. *Price*, O.T. 2018, No. 18A1053.

II

We granted the State's application to vacate the stays. Consistent with our usual practice in resolving eleventh-hour applications, we did not issue a full opinion explaining our reasoning. Yet our brief order was not issued until hours after the execution warrant had already expired.

The Court's delay in issuing the order happens to have the same effect as JUSTICE BREYER's preferred course of action. As he explained in his dissent, he preferred to discuss the matter at Conference the following day, which would require the State to "obtain a new execution warrant, thus delaying the execution." *Price*, 587 U. S., at ___–___ (slip op., at 4–5). JUSTICE BREYER asserted that "delay was warranted" in part because the legal issues raised were "substantial." *Id.*, at ___ (slip op., at 5). That rationale does not withstand even minimal legal scrutiny.

JUSTICE BREYER framed the issue before the Court as "the right of a condemned inmate not to be subjected to cruel and unusual punishment in violation of the Eighth Amendment." *Id.*, at ___ (slip op., at 6). That framing was incorrect. The issue before the Court was whether the lower courts abused their discretion in staying the execution. For three independent reasons—all raised by the State in its application—the State was entitled to vacatur. The dissent failed to adequately address any of them.

First, the District Court abused its discretion in granting a preliminary injunction because it manifestly lacked jurisdiction over the case, which was pending in the Court of Appeals. It is well settled that "[f]iling a notice of appeal," as petitioner did, "transfers adjudicatory authority from the district court to the court of appeals." *Manrique* v. *United States*, 581 U. S. ___, ___ (2017) (slip op., at 3). "The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Griggs* v. *Provident Consumer Discount Co.*, 459 U. S. 56, 58 (1982) (*per curiam*). Thus, as the Eleventh Circuit has long recognized, "a district court generally is without jurisdiction to rule in a case that is on appeal"—even after the court has rendered a decision—"until the mandate has issued." *Zaklama* v. *Mt. Sinai Medical Center*, 906 F. 2d

645, 649 (1990); see also *Kusay* v. *United States*, 62 F. 3d 192, 194 (CA7 1995) (Easterbrook, J.) (until the Court of Appeals issues its mandate, the case remains in the Court of Appeals, and "any action by the district court is a nullity"); 16AA C. Wright & A. Miller, Federal Practice and Procedure §3987, p. 612 (3d ed. 2008) (Wright & Miller). In this case, there was no dispute that the Eleventh Circuit had not yet issued its mandate when petitioner sought a preliminary injunction from the District Court on the same issues pending in the Court of Appeals. The District Court therefore lacked authority to grant the preliminary injunction, and the Court of Appeals abused its discretion in granting a stay instead of vacating the preliminary injunction.

Even if the Eleventh Circuit believed that the jurisdictional issue was difficult, that belief still would not have been a sufficient reason to grant a stay. Under the traditional stay factors, a petitioner is required to make "'a strong showing that he is likely to succeed on the merits.'" *Nken* v. *Holder*, 556 U. S. 418, 434 (2009). It is not enough, as the dissent suggests, that the question be "substantial." *Price*, 587 U. S., at ___ (slip op., at 5). But the question is not even "substantial." The dissent relied only on an out-of-context quote from a treatise to support its position that this jurisdictional question was difficult. See *id.*, at ___ (slip op., at 6) ("'An interlocutory appeal ordinarily suspends the power of the district court to modify the order subject to appeal, but does not oust district-court jurisdiction to continue with proceedings that do not threaten the orderly disposition of the interlocutory appeal'" (quoting 16A Wright & Miller §3949.1, p. 50)). The section from which this statement is plucked, however, reiterates that a notice of appeal "'is an event of jurisdictional significance" that "divests the district court of its control over those aspects of the case involved in the appeal.'" See *ibid.* (quoting *Griggs*, *supra* at 58). The

exceptions to this rule pertain to matters outside the scope of the appeal or in aid of the Court of Appeals' jurisdiction, such as taxing costs, awarding attorney's fees, or reducing to writing an earlier oral decision without altering its substance. 16A Wright & Miller §3949.1. Those exceptions were not applicable to petitioner's case. The issue before the Eleventh Circuit was whether petitioner was entitled to a preliminary injunction based on petitioner's claim that he should be executed using nitrogen hypoxia—the exact claim petitioner raised in the District Court. There is no question that the District Court was deprived of jurisdiction to hear the identical claim and award the exact same relief petitioner sought from the Eleventh Circuit. To suggest that this question was difficult or that the Court was "deeply misguided" to follow black-letter law is at best disingenuous. See *Price*, 587 U. S., at ___ (slip op., at 6).

Second, the Eleventh Circuit did not consider how petitioner's unjustified delay in presenting his "new evidence" to the District Court factored into the equitable considerations of a stay. See *Hill* v. *McDonough*, 547 U. S. 573, 584 (2006) (equity weighs against a stay when "'a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay'"). Notably, the Eleventh Circuit did not conclude that petitioner's new affidavits or the "final" version of the report made him likely to succeed on the merits or that those materials were unavailable to him earlier. And more broadly, petitioner delayed in bringing this successive §1983 action until almost a year after Alabama enacted the legislation authorizing nitrogen hypoxia as an alternative method, six months after he forwent electing it as his preferred method, and weeks after the State sought to set an execution date. There is simply no plausible explanation for the delay other than litigation strategy. A stay under these circumstances—in which the petitioner inexcusably filed

additional evidence hours before his scheduled execution after delaying bringing his challenge in the first place—only encourages the proliferation of dilatory litigation strategies that we have recently and repeatedly sought to discourage. See *Bucklew*, 587 U. S., at ___–___ (slip op., at 30–31); *Dunn* v. *Ray*, 586 U. S. ___, ____ (2019) (slip op., at 1).

Third, petitioner was unlikely to succeed on the merits of his method-of-execution claim. The three-drug protocol petitioner attacks is the very one we upheld in *Glossip*. And the Eleventh Circuit's April 10 analysis about whether nitrogen hypoxia was "available" and could be "readily implemented" was suspect under our precedent. As we recently held, "the inmate's proposal must be sufficiently detailed to permit a finding that the State could carry it out relatively easily and reasonably quickly." *Bucklew*, *supra*, at ___ (slip op., at 21) (internal quotation marks omitted). Here, petitioner's haphazard, one-page proposed protocol—provided for the first time in his motion for reconsideration less than a week before his scheduled execution date—was, to put it charitably, untested. It contemplated that the execution team could use a "hose fitting" to "fill" a "hood" with nitrogen gas, and then attempt to "[p]lace [the] hood over [the] inmate's head" and "secure" it with an "elastic strap/drawstring to ensure seal." Record 19–0057, Doc. 33, at 4. Even if all the equipment were available on Amazon.com, as he alleged, many details remained unanswered, particularly regarding the actual process of administering the gas and, critically, the safety of the state employees administering it. For instance, what does "a robust yet controlled flow of nitrogen" mean? *Ibid.* How full of nitrogen gas should the hood be before placing it over the inmate's head? How does one prevent nitrogen from seeping out of the hood into the execution chamber before the hood is secured? The need to settle on details like these explains why the

State has repeatedly stated that it will not be ready to implement its nitrogen hypoxia method until the end of the summer or later (and why the State requested that inmates elect nitrogen within a set time period). Petitioner's proposal certainly fell short of showing a safe alternative that could be "readily implemented" by Alabama, particularly in the week before his scheduled execution.

The facts of this case cast serious doubt on the Eleventh Circuit's suggestion that the State bears a heavy burden of showing that a method of execution is unavailable as soon as its legislature authorizes it to employ a new method. That kind of burden-shifting framework would perversely incentivize States to delay or even refrain from approving even the most humane methods of execution.

As for petition No. 18–8766—the challenge to the original order denying petitioner a preliminary injunction—and its accompanying stay application, four Justices noted, without explanation, that they would have stayed the execution to allow consideration of this petition as well. It is unclear what legal issue they believed warranted our review. Petitioner did not identify a lower court conflict on an important question of law—certainly not one passed on by the Eleventh Circuit. Instead, petitioner asked the Court to engage in mere error correction about the scope of evidence that the District Court may consider in deciding whether to grant a preliminary-injunction motion, and about the scope of appellate review. The dissenting Justices made no attempt to explain how those issues warranted our review.

For these reasons, our decisions to vacate the stays entered by the lower courts and decline to grant a stay were undoubtedly correct.

III

Given petitioner's weak position under the law, it is difficult to see his litigation strategy as anything other

than an attempt to delay his execution. Yet four Members of the Court would have countenanced his tactics without a shred of legal support. Indeed, JUSTICE BREYER's six-page dissent musters only one, nonprecedential case citation for a proposition of law. See *Price*, 587 U. S., at ___ (slip op., at 6) (citing *Bowersox* v. *Williams*, 517 U. S. 345, 347 (1996) (GINSBURG, J., dissenting)). To be sure, the dissent gestures at a compressed timeframe, as if to suggest the legal issues were too complicated to allow reasoned consideration before the State's execution warrant expired. But as explained above, the legal issues were remarkably straightforward. And any blame for decisions "in the middle of the night," 587 U. S., at ___ (slip op., at 7), falls on petitioner, who filed the new preliminary injunction motion that resulted in the stays just *five hours* before his execution.

Insofar as JUSTICE BREYER was serious in suggesting that the Court simply "take no action" on the State's emergency motion to vacate until the following day, *id.*, at ___ (slip op., at 4), it should be obvious that *emergency* applications ordinarily cannot be scheduled for discussion at weekly (or sometimes more infrequent) Conferences. This approach would only further incentivize prisoners to file dilatory challenges to their executions by rewarding them with *de facto* stays of execution while requiring timely petitioners to meet the ordinary legal standards for a stay. JUSTICE BREYER's approach would also have significant real-world consequences. It would hamper the States' ability to carry out lawful judgments, while simultaneously flooding the courts with last-minute, meritless filings. And this practice would harm victims. Take Bessie Lynn, Bill's widow who witnessed his horrific slaying and was herself attacked by petitioner. She waited for hours with her daughters to witness petitioner's execution, but was forced to leave without closure. See Alabama, Running Out of Time, Halts Execution of Sword and Dag-

ger Killer of Pastor," CBS News, (Apr. 12, 2019), https://www.cbsnews.com/news/alabama-sword-dagger-killer-christopher-lee-price-execution-halted-pastor-bill-lynn/ (all Internet materials as last visited on May 9, 2019); Execution Called Off for Christopher Price; SCOTUS Decision Allowing It Came Too Late (Apr. 11 2019), https://www.al.com/news/birmingham/2019/04/christopher-price-set-to-be-executed-thursday-evening-for-1991-slaying-of-minister.html. This "injustice, in the form of justice delayed," *ibid.*, would become the norm if the Court were to regularly delay resolution of emergency applications.

Of course, the dissent got its way by default. Petitioner's strategy is no secret, for it is the same strategy adopted by many death-row inmates with an impending execution: bring last-minute claims that will delay the execution, no matter how groundless. The proper response to this maneuvering is to deny meritless requests expeditiously. The Court instead failed to issue an order before the expiration of the warrant at midnight, forcing the State to "cal[l] off" the execution. *Price*, 587 U. S., at ___ (slip op., at 5). To the extent the Court's failure to issue a timely order was attributable to our own dallying, such delay both rewards gamesmanship and threatens to make last-minute stay applications the norm instead of the exception. See *Bucklew*, 587 U. S., at ___ (slip op., at 30).

Perhaps those who oppose capital punishment will celebrate the last-minute cancellation of lawful executions. But "[t]he Constitution allows capital punishment," *id.*, 587 U. S., at ___, (slip op., at 8), and by enabling the delay of petitioner's execution on April 11, we worked a "miscarriage of justice" on the State of Alabama, Bessie Lynn, and her family. Governor Ivey Releases Statement on Stay of Execution for Death Row Inmate Christopher Lee Price, (Apr. 12, 2019), https://governor.alabama.gov/statements/

governor-ivey-releases-statement-on-stay-of-execution-for-death-row-inmate-christopher-lee-price.

SUPREME COURT OF THE UNITED STATES

D. DAHNE *v.* THOMAS W. S. RICHEY

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 18–761. Decided May 13, 2019

The petition for a writ of certiorari is denied.

JUSTICE ALITO, with whom JUSTICE THOMAS and JUSTICE KAVANAUGH join, dissenting from denial of certiorari.

Does the First Amendment require a prison to entertain a prisoner grievance that contains veiled threats to kill or injure a guard? Or may the prison insist that the prisoner rewrite the grievance to eliminate any threatening language? In this case, respondent Thomas Richey, an inmate currently serving a sentence for murder in Washington state prison, submitted a written prison grievance complaining that a guard had improperly denied him shower privileges. His grievance not only insulted the guard, referring to her as a "fat Hispanic," but contained language that may reasonably be construed as a threat. Specifically, the grievance stated:

> "It is no wonder [why] guards are assaulted and even killed by some prisoners. When guards like this fat Hispanic female guard abuse their position . . . it can make prisoners less civilized than myself to resort to violent behavior in retaliation." App. to Pet. for Cert. 109a–110a.

The prison refused to entertain the grievance, but permitted Richey to refile his complaint with the offensive language omitted. Richey refused to comply and instead submitted a second grievance that repeated much of the original language, adding, "[i]t is no wonder why guards are slapped and strangled by some prisoners." *Id.,* at

111a. The record reflects that Richey's grievance came "just a few months after an inmate actually did murder a DOC staff member" at a Washington state prison "by strangling her to death." *Id.*, at 106a.

Petitioner Dennis Dahne, a prison employee who processes inmate grievances, refused to accept Richey's modified grievance. Dahne later explained that his decision was based on the fact that the grievance contained "so much irrelevant, inappropriate, and borderline threatening extra language." *Ibid.* When Dahne refused to process Richey's modified grievance, Richey filed this action in Federal District Court, claiming that Dahne violated his First Amendment free-speech and petition rights. Although the District Court originally dismissed Richey's claim, that decision was reversed by the United States Court of Appeals for the Ninth Circuit, which held that Richey stated a valid claim for relief under the First Amendment. See *Richey* v. *Dahne*, 624 Fed. Appx. 525, 526 (2015). In the decision below, the Ninth Circuit doubled down on its earlier ruling, holding that prisoners have a clearly established constitutional right to use "disrespectful" language in prison grievances and that Richey was entitled to summary judgment on his First Amendment claim. 733 Fed. Appx. 881, 883–884 (2018).

We have made it clear that prisoners do not retain all of the free speech rights enjoyed by persons who are not incarcerated. See, *e.g., Shaw* v. *Murphy*, 532 U. S. 223, 229 (2001). Prisons are dangerous places. To maintain order, prison authorities may insist on compliance with rules that would not be permitted in the outside world. See *Turner* v. *Safley*, 482 U. S. 78, 89–91 (1987). Even if a prison must accept grievances containing personal insults of guards, a proposition that is not self-evident,* does it

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*Indeed, several courts have upheld prison rules barring or punishing prisoners' use of insolent, disrespectful, or profane language in written

follow that prisons must tolerate veiled threats? I doubt it, but if the Court is uncertain, we should grant review in this case. Perhaps there is more here than is apparent on the submissions before us, but based on those submissions, the decision of the Ninth Circuit defies both our precedents and common sense.

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grievances and complaints. See, *e.g.*, *Smith* v. *Mosley*, 532 F. 3d 1270, 1274, 1277 (CA11 2008); *Ustrak* v. *Fairman*, 781 F. 2d 573, 580 (CA7 1986); *In re Parmelee*, 115 Wash. App. 273, 283–285, 63 P. 3d 800, 806–807 (2003).

SUPREME COURT OF THE UNITED STATES

JAMES MYERS *v.* UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 18–6859. Decided May 13, 2019

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Eighth Circuit for further consideration in light of the position asserted by the Solicitor General in his brief for the United States filed on March 21, 2019.

CHIEF JUSTICE ROBERTS, with whom JUSTICE THOMAS, JUSTICE ALITO, and JUSTICE KAVANAUGH join, dissenting.

I dissent from the Court's decision to grant the petition, vacate the judgment, and remand the case. Nothing has changed since the Eighth Circuit held that Myers's conviction for first-degree terroristic threatening qualifies as a "violent felony" under the Armed Career Criminal Act, 18 U. S. C. §924(e). The Government continues to believe that classification is correct, for the same reasons that it gave to the Eighth Circuit. But the Solicitor General asks us to send the case back, and this Court obliges, because he believes the Eighth Circuit made some mistakes in its legal analysis, even if it ultimately reached the right result. He wants the hard-working judges of the Eighth Circuit to take a "fresh" look at the case, so that they may "consider the substantial body of Arkansas case law supporting the conclusion that the statute's death-or-serious injury language sets forth an element of the crime," and then re-enter the same judgment the Court vacates today. Brief for United States 9, 11.

I see no basis for this disposition in these circumstances.

See *Machado* v. *Holder*, 559 U. S. 966 (2010) (ROBERTS, C. J., dissenting); *Nunez* v. *United States*, 554 U. S. 911, 912 (2008) (Scalia, J., dissenting). Unless there is some new development to consider, we should vacate the judgment of a lower federal court only after affording that court the courtesy of reviewing the case on the merits and identifying a controlling legal error. This case does not warrant our independent review. If the Government wants to ensure that the Eighth Circuit does not repeat its alleged error, it should have no difficulty presenting the matter to subsequent panels of the Eighth Circuit, employing the procedure for en banc review should it be necessary.

I would deny the petition.

SUPREME COURT OF THE UNITED STATES

ABU-ALI ABDUR'RAHMAN, ET AL. *v.* TONY PARKER, COMMISSIONER, TENNESSEE DEPARTMENT OF CORRECTIONS, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TENNESSEE, MIDDLE DIVISION

No. 18–8332. Decided May 13, 2019

The petition for a writ of certiorari is denied.

JUSTICE SOTOMAYOR, dissenting from denial of certiorari.

I have already explained my opposition to the "perverse requirement that inmates offer alternative methods for their own executions." *McGehee* v. *Hutchinson*, 581 U. S. ___, ___ (2017) (opinion dissenting from denial of application for stay and denial of certiorari) (slip op., at 2); see generally *Glossip* v. *Gross*, 576 U. S. ___, ___–___ (2015) (slip op., at 13–15). I have likewise addressed the added perversity of the secrecy laws that Tennessee imposes on death-row prisoners seeking to meet this requirement. See *Zagorski* v. *Parker*, 586 U. S. ___, ___–___ (2018) (opinion dissenting from denial of application for stay and denial of certiorari) (slip op., at 4–5) (discussing prisoners' inability to depose those with firsthand knowledge of the State's efforts to procure an alternative drug or to learn which sellers the State had contacted).

The Court has recently reaffirmed (and extended) the alternative-method requirement. See *Bucklew* v. *Precythe*, 587 U. S. ___, ___–___ (2019) (slip op., at 14–20). And today, the Court again ignores the further injustice of state secrecy laws denying death-row prisoners access to potentially crucial information for meeting that requirement. Because I continue to believe that the alternative-method requirement is fundamentally wrong—and particularly so when compounded by secrecy laws like Tennessee's—I dissent.