**(ORDER LIST: 601 U.S.)**

**MONDAY, APRIL 15, 2024**

**CERTIORARI -- SUMMARY DISPOSITIONS**

22-734 GOMEZ-VARGAS, RAFAEL V. GARLAND, ATT'Y GEN.

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Fifth Circuit for further consideration in light of *Wilkinson* v. *Garland*, 601 U. S. ___ (2024).

22-1038 GONZALEZ-RIVAS, HECTOR V. GARLAND, ATT'Y GEN.

The petition for a writ of certiorari is 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 *Wilkinson* v. *Garland*, 601 U. S. ___ (2024).

22-7658 SANTIBANEZ-SANCHEZ, JUANA V. GARLAND, ATT'Y GEN.

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 Fifth Circuit for further consideration in light of *Wilkinson* v. *Garland*, 601 U. S. ___ (2024).

23-26 ORTIZ, JORGE A. B. V. GARLAND, ATT'Y GEN.

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Fifth Circuit for further

consideration in light of *Wilkinson* v. *Garland*, 601 U. S. ___ (2024).

23-44 GARCIA-PASCUAL, ARTEMIO V. GARLAND, ATT'Y GEN.

The petition for a writ of certiorari is 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 *Wilkinson* v. *Garland*, 601 U. S. ___ (2024).

23-75 OSORIO, FIDEL U. V. GARLAND, ATT'Y GEN.

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Tenth Circuit for further consideration in light of *Wilkinson* v. *Garland*, 601 U. S. ___ (2024).

23-5673 MARTINEZ, JAVIER V. CLARK, WARDEN, ET AL.

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 Ninth Circuit for further consideration in light of *Wilkinson* v. *Garland*, 601 U. S. ___ (2024).

**ORDERS IN PENDING CASES**

23A829 (23-986) RUED, JOSEPH, D. ET AL. V. HATCHER, JUDGE, ET AL.

The application for writ of injunction addressed to Justice Thomas and referred to the Court is denied.

23M71 VILLAMONTE, MICHAEL L. V. UNITED STATES

The motion for leave to file a petition for a writ of certiorari with the supplemental appendix under seal is

granted.

23M72 CANTRELL, HARVEY D. V. O'MALLEY, COMM'R, SOCIAL SEC.

23M73 JAMERSON, ANTHONY D. V. LUMPKIN, DIR., TX DCJ

23M74 MSCHF PRODUCT STUDIO, INC. V. VANS, INC., ET AL.

23M75 NAYEE, ANIL V. ADM'R, NJ STATE PRISON, ET AL.

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

23M76 ING, MELISSA V. TUFTS UNIVERSITY

The motion for leave to file a petition for a writ of certiorari with the supplemental appendix under seal is granted.

23M77 JANAS, EDMUND J. V. DEPT. OF VA, ET AL.

23M78 JACOB, EMMANUEL V. INDECK POWER EQUIPMENT CO.

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

23M79 WOODS, JIMMY D. V. ARIZONA, ET AL.

23M80 LUNDQUIST, STEPHEN V. IDAHO

The motions for leave to proceed as a veteran are denied.

23-6035 IN RE KINLEY MACDONALD

The motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* is denied. Justice Barrett took no part in the consideration or decision of this motion.

23-6201 GREEN, COURTNEY V. GENERAL MILLS WORLD HEADQUARTERS

The motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* is denied.

23-6667 TOWNSEND, MICHAEL V. ESTERS, DEONDRE, ET AL.

23-7018 ASH, JULIAN V. BUTTIGIEG, SEC. OF TRANSP., ET AL.

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until May 6, 2024, 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**

22-617 BYSTRON, FRANCISZEK K. V. GARLAND, ATT'Y GEN.

23-452 MICHIGAN V. VEACH, ANTHONY J.

23-481 TEMPLE OF 1001 BUDDHAS, ET AL. V. FREMONT, CA

23-485 MUNERA-GOMEZ, JESUS A. V. UNITED STATES

23-500 GIMENEZ, JAMES V. FRANKLIN COUNTY, WA, ET AL.

23-541 DONNELLON, JOHN, ET AL. V. JORDAN, JOHN

23-552 AMBASSADOR ANIMAL HOSPITAL, LTD. V. ELANCO ANIMAL HEALTH, ET AL.

23-577 NORFOLK SOUTHERN RAILWAY CO. V. SURFACE TRANSP. BOARD, ET AL.

23-618 MEDINA, DELANO M. V. COLORADO

23-625 BOAM, TEL J. V. UNITED STATES

23-629 GORDON, DeANDRE V. MAY, WARDEN

23-635 NELSON, STEVEN L. V. LUMPKIN, DIR., TX DCJ

23-638 RAVENELL, KENNETH W. V. UNITED STATES

23-725 ) FRIEDLANDER, ERIC, ET AL. V. TRUESDELL, PHILLIP, ET AL.
)
23-844 ) TRUESDELL, PHILLIP, ET AL. V. FRIEDLANDER, ERIC, ET AL.

23-734 ROSE, JODY V. PSA AIRLINES, INC., ET AL.

23-755 CLYDE, ANDREW S., ET AL. V. McFARLAND, WILLIAM, ET AL.

23-812 ARIZONA, ET AL. V. BROWN, MACKENZIE

23-836 ALI-HASAN, SAMER V. PETER'S HEALTH PARTNERS, ET AL.

23-837 CAMPBELL, CASEY V. GARLAND, ATT'Y GEN., ET AL.

23-840 HOMESERVICES OF AMERICA, ET AL. V. BURNETT, SCOTT, ET AL.

23-841 EVANS, EMILY, ET AL. V. ANN ARBOR, MI, ET AL.

23-843 MILLER, ROBERT M. V. GRUENBERG, MARTIN J., ET AL.

23-848 PATIENCE, WEN L. V. JACKSON, SHANNON, ET AL.

23-854 NO CASINO IN PLYMOUTH, ET AL. V. NATIONAL INDIAN GAMING COMM.

23-856 MAGGITTI, URVE V. MAGGITTI, VICTOR J.

23-858 STEWART, MERRILEE V. SENTINEL INS. CO. LTD., ET AL.

23-860 HOLTAN, BRANDON, ET AL. V. NIETERS, MARK E.

23-869 LAND, TYLER V. EDENFIELD, SHERIFF, ET AL.

23-901 FRANK, JOHN C. V. LEE, DEBRA, ET AL.

23-911 HARRIS, MARY A. V. MONROE COUNTY LIB. BD., ET AL.

23-915 PLEASANT VIEW BAPTIST CHURCH V. BESHEAR, ANDREW

23-930 DURINGER LAW GROUP, ET AL. V. BROWN, JANEY, ET AL.

23-950 LINDELL, MICHAEL, ET AL. V. UNITED STATES, ET AL.

23-951 BLAKE, GORDON V. GAMBOA, WARDEN

23-956 BRACKEN, ROY, ET AL. V. KETCHUM, ID, ET AL.

23-960 INDEPENDENCE-ALLIANCE PARTY MN V. SIMON, MN SEC. OF STATE

23-962 OXNARD MANOR, LP, ET AL. V. SIGALA, ANNA, ET AL.

23-963 MORANCY, JEAN D. V. SALOMON, SABRINA A.

23-964 HANIK, FILIP V. HANIK, TERESA

23-967 BORGES-SILVA, QUENTIN V. REGAN, MICHAEL S.

23-979 FIELDS, GERALD D. V. FORSHEY, WARDEN

23-983 HARDING, NICHOLAS V. GOOGLE LLC

23-985 STOYANOV, YURI J. V. DEL TORO, SEC. OF NAVY, ET AL.

23-991 LONG BEACH, NY, ET AL. V. BENNY, RICKY J.

23-996 NORRIS, JEANNA, ET AL. V. STANLEY, SAMUEL L., ET AL.

23-1015 SEABROOK, NORMAN V. UNITED STATES

23-1019 McLAIN, DENNIS V. McDONOUGH, SEC. OF VA

23-1032 TOPOLEWSKI, GARY V. URS HOLDINGS, INC., ET AL.

23-1047 HSU CONTRACTING, LLC V. HOLTON-ARMS SCHOOL, INC.

23-5951 LOVE, RODNEY L. V. UNITED STATES

23-6110 FLOWERS, EULANDAS J. V. THORNELL, DIR., AZ DOC

23-6230 MORRIS, DANILLE V. UNITED STATES

23-6250 SPAETH, MATTHEW C. V. UNITED STATES

23-6278 RACLIFF, DEVONTAE N. V. UNITED STATES

23-6338 FISHMAN, MARC V. NEW YORK

23-6481 KOLHOFF, ASHLEY N. V. UNITED STATES

23-6642 POYDRAS, DAVID W. V. LOUISIANA

23-6646 ALBRECHT, DANA V. ALBRECHT, KATHERINE

23-6647 ETCHISONBROWN, DAVAUDRICK A. V. UNITED STATES

23-6650 GUZMAN, PABLO V. DIXON, SEC., FL DOC, ET AL.

23-6654 RAY, LANCEY D. V. QUISENBERRY, TERRY, ET AL.

23-6657 CRUZ, ERICK V. NEW YORK

23-6658 JOHNSON, RICKY V. MAY, WARDEN

23-6664 SINDACO, ROBERT E. V. FLORIDA

23-6666 COLE, JACKIE-DEVERE A. V. COLORADO

23-6668 LINCOLN, ROOSEVELT L. V. HARRIS COUNTY SHERIFF, ET AL.

23-6669 S.C., ET VIR V. TX DPRS

23-6671 FORD, RAYMOND A. V. NORTHAM, RALPH, ET AL.

23-6679 WILLIAMS, QUAYSEAN T. V. OKLAHOMA

23-6682 KELLEY, KARYN M. V. KELLEY, KEVIN M.

23-6684 RIDLEY, ANTHONY E. V. WILLIAMS, WARDEN

23-6691 SHAMPINE, LATEFAH V. CLEVELAND BD. OF ED., ET AL.

23-6698 HARRIS, REGINALD V. FNU WATSON, ET AL.

23-6704 LINDSEY, JOSHUA P. V. BARKER, JUDGE

23-6705 LOVETT, LAMAR V. TEXAS

23-6706 OHIO, EX REL. RARDEN V. OH COURT OF COMMON PLEAS, ET AL.

23-6708 VLOUTIS, GEORGIOS V. V. LUFTHANSA AKTIENGESELLSCHAFT

23-6710 AKERMAN, MARTIN V. DOIRON, SHERRI

23-6713 PHAM, TAI A. V. DIXON, SEC., FL DOC, ET AL.

23-6717 VAN HORNE, STEVE V. JONES, ROBERT, ET AL.

23-6718 DOAK, LARRY D. V. OKLAHOMA

23-6720 REMSEN, LAWRENCE, ET AL. V. NEWSOM, GOV. OF CA, ET AL.

23-6726 BATTLE, BRENDA D. V. CREEL, ATT'Y, ET AL.

23-6731 GONZALEZ, CARINA M. V. ENGLEWOOD LOCK AND SAFE, INC.

23-6736 CHIN-YOUNG, CHRISTOPHER R. V. DEPT. OF ARMY

23-6737 WAINWRIGHT, ANTHONY F. V. DIXON, SEC., FL DOC, ET AL.

23-6744 FISHER, DARREL R. V. LARSEN, JUDGE, USDC WD MO

23-6745 WILSON, RAYMOND V. FAIRHAVEN POLICE DEPT., ET AL.

23-6746 PEREZ, ALEXANDER I. V. HIJAR, WARDEN

23-6752 WHAREN, PATRICK W. V. DIXON, SEC., FL DOC, ET AL.

23-6758 JOHNSON, FRANK B. V. VIRGINIA

23-6765 HANNOLD, ETHAN A. V. SALAMON, SUPT., ROCKVIEW, ET AL.

23-6771 CHANG, WILD, ET AL. V. FARMERS INSURANCE CO., ET AL.

23-6772 COLE, JACKIE-DEVERE A. V. DIST. CT.

23-6773 SMITH, RITA R. V. MOUNT SINAI HOSPITAL, ET AL.

23-6775 REDFEARN, JESSE D. V. RANKINS, WARDEN

23-6782 R. R. V. WV DEPT. OF HEALTH, ET AL.

23-6812 HAMIDI, NIKI V. IQBAL, IKE M.

23-6813 HAMIDI, NIKI V. IQBAL, IKE M.

23-6828 LEVERING, WARREN J. V. NEBRASKA

23-6838 WARNER, DANNY L. V. MONTANA

23-6839 JOHNSON, DONTE V. NEVADA

23-6843 CRENSHAW, JOSEPH A. V. FLORIDA

23-6847 BELL, TYRONE A. V. WASHINGTON, DIR., MI DOC, ET AL.

23-6875 OBEGINSKI, AARON V. JOHNSON, GLENN

23-6897 NAVA, PEDRO A. V. UNITED STATES

23-6902 AKARD, JEFFREY V. UNITED STATES

23-6904 SENECA, CHANCE J. V. UNITED STATES

23-6905 HARRIS, PAUL V. SCHACHTER, ORAN, ET AL.

23-6906 THORNTON, THOMAS V. UNITED STATES

23-6907 THOMAS, TRYTON A. V. UNITED STATES

23-6908 CHRISTY, SHAWN V. UNITED STATES

23-6909 HOLLAND, ARNOLD D. V. UNITED STATES

23-6915 QUIROGA, RAYNALDO R. V. UNITED STATES

23-6916 SMITH, RUFARO C. V. BEASLEY, WARDEN

23-6919 PEREZ, RAUL V. UNITED STATES

23-6930 WILLIAMSON, ANTHONY B. V. PAYNE, DIR., AR DOC

23-6931 TILLERY, DARRELL V. HOOPER, WARDEN

23-6934 FREEMAN, CALVIN C. V. UNITED STATES

23-6936 AGUILLEN-SERVIN, JOSE E. V. UNITED STATES

23-6940 MARRARA, MICHAEL, ET AL. V. MURPHY, PHILIP D., ET AL.

23-6941 MARTINEZ-MUNOZ, RICARDO F. V. UNITED STATES

23-6942 GRANDA, PAULINO V. UNITED STATES

23-6943 KERLIN, MICHAEL L. V. UNITED STATES

23-6945 COSBY, RONNIE C. V. UNITED STATES

23-6949 MADRID-PAZ, JOSE S. V. UNITED STATES

23-6950 FLEMING, LAWRENCE G. V. UNITED STATES

23-6951 BARRON-BAUTISTA, JESUS V. UNITED STATES

23-6952 BRIFIL, FRANTZ V. FLORIDA

23-6953 MASON, ANTHONY L. V. UNITED STATES

23-6957 KELLY, MARCUS V. DIXON, SEC., FL DOC

23-6965 OROZCO-BARRON, ARMANDO V. UNITED STATES

23-6969 ANTONIO, JAMES P. V. UNITED STATES

23-6971 ANTONIUS, STEVEN, ET AL. V. UNITED STATES

23-6973 PICHON, OREN J. V. UNITED STATES

23-6974 DAMASO-SIXTOS, BARTOLO V. UNITED STATES

23-6977 COLEMAN, DASMORE T. V. UNITED STATES

23-6978 GALLARDO GRANADOS, JOSE S. V. UNITED STATES

23-6979 IVORY, KYSTON V. UNITED STATES

23-6980 MURPHY, MATTHEW V. UNITED STATES

23-6982 TELAMY, PAULIUS V. DIXON, SEC., FL DOC

23-6983 MICHELOTTI, CHRISTOPHER J. V. KNUDSEN, ATT'Y GEN. OF MT

23-6987 HILTON, MICHAEL T. V. AKERS, WARDEN

23-6989 McLEAN, LENROY V. UNITED STATES

23-6990 PUTNAM, KRISTOPHER D. V. UNITED STATES

23-6992 AVILA-GONZALEZ, REYNALDO V. UNITED STATES

23-6996 ANDERSON, BRIAN V. LONG, WARDEN

23-6998 SLAUGHTER, OSSIE L. V. WHITE, DANIEL

23-7001 WHITFIELD, TODD A. V. UNITED STATES

23-7002 WALI, AYOOB V. UNITED STATES

23-7003 WISE, KENNETH M. V. UNITED STATES

23-7013 KOKINDA, JASON S. V. UNITED STATES

23-7014 FORD, STANLEY V. UNITED STATES

23-7021 HENDERSON, DARRON V. UNITED STATES

23-7022 MOLINA, ELVIS E. V. UNITED STATES

23-7023 CALHOUN, JOHNNY M. S. V. FLORIDA

23-7026 VALENCIA-AYALA, PEDRO V. UNITED STATES

23-7028 BOESCH, HUNTER T. V. FLORIDA

23-7031 GREGORY, BRYAN L. V. UNITED STATES

23-7032 GREGORY, BRYAN L. V. UNITED STATES

23-7035 GARCIA, ANDERSON V. UNITED STATES

23-7036 DAIGLE, BRENT J. V. KALLIS, WARDEN

23-7046 CONLEY, PAMELA K. V. UNITED STATES

23-7047 LEWIS, RENAIRE R. V. UNITED STATES

23-7049 RODGERS, DANIEL A. V. UNITED STATES

The petitions for writs of certiorari are denied.

23-488 SANDS, BRUCE R. V. BRADLEY, WARDEN

The petition for a writ of certiorari is denied. Justice Kavanaugh would grant the petition for a writ of certiorari.

23-814 VISA INC., ET AL. V. NAT. ATM COUNCIL, INC., ET AL.

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

23-919 DiCROCE, KRISTIN V. McNEIL NUTRITIONALS, LLC, ET AL.

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

23-5950 CLARK, KENT L. V. UNITED STATES

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

23-6649 DAVIS, LARRY D. V. SIMS, JUDGE, 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. 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*).

23-6700 GREEN, COURTNEY V. WALT DISNEY CO.

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.

23-6929 WILMORE, HERVE V. UNITED STATES

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*).

23-6954 THOMAS, CHARLES B. V. UNITED STATES

23-6994 REYNOLDS, DONALD M. V. UNITED STATES

The petitions for writs of certiorari are denied. Justice Kagan took no part in the consideration or decision of these petitions. See 28 U. S. C. §455(b)(3) and Code of Conduct for Justices of the Supreme Court of the United States, Canon 3B(2)(e) (prior government employment).

**HABEAS CORPUS DENIED**

23-6997 IN RE RUSSELL ROPE

23-7067 IN RE TIMOTHY STRATTON

The petitions for writs of habeas corpus are denied.

**MANDAMUS DENIED**

23-887 IN RE EUGENE MISQUITH

23-890 IN RE BATIA ZAREH

23-6678 IN RE TINA WAGONER

23-6693 IN RE JOHN WALDON

23-6699 IN RE DERLON CRAIN

23-6778 IN RE REIDIE J. JACKSON

23-6811 IN RE MIGUEL A. GARCIA

The petitions for writs of mandamus are denied.

23-889 IN RE WILLIAM B. JOLLEY

23-6719 IN RE ANTHONY M. DELAROSA

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

23-6762 IN RE KINLEY MACDONALD

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

**PROHIBITION DENIED**

23-6760 IN RE KINLEY MACDONALD

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

**REHEARINGS DENIED**

22-7871 IN RE MICHAEL BOWE

22-7888 THOMAS, DESEAN L. V. MINNESOTA

23-486 POWELL, SIDNEY, ET AL. V. WHITMER, GOV. OF MI, ET AL.

23-588 MIRANDA, JESUS V. O'MALLEY, COMM'R, SOCIAL SEC.

23-609 SALGUERO, FRANDER V. COURT OF APPEAL OF CA, ET AL.

23-610 SALGUERO, FRANDER V. CALIFORNIA

23-647 KING, ADRIENNE S. V. META PLATFORMS, INC.

23-663 McDUFF, GARY L. V. UNITED STATES

23-673 IN RE JEFFREY L. HILL

23-680 IN RE FRANDER SALGUERO

23-5897 MACK, CEDRIC V. J.M. SMUCKERS CO., ET AL.

23-6009 AUSTIN, MARIO V. AMERICAN BUILDING CO.

23-6026 REHWALD, PHILLIP V. PENNSYLVANIA, ET AL.

23-6126 ENGLISH, WAYNE M. V. PARCEL EXPRESS, INC.

23-6163 AARONOFF, VIDALA V. OLSON, CURTIS

23-6228 WILLIAMS, BARBARA B. V. LANE, FRED, ET AL.

23-6369 CYR, JOSEPH R. V. HARPE, DIR., OK DOC

23-6432 MARTINEZ, CARLOS V. CALIFORNIA

The petitions for rehearing are denied.

23-6246 IN RE TONYA KNOWLES

The petition for rehearing is denied. The Chief Justice took no part in the consideration or decision of this petition.

# SUPREME COURT OF THE UNITED STATES

DERAY MCKESSON *v.* JOHN DOE

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

No. 23–373. Decided April 15, 2024

The petition for a writ of certiorari is denied.

Statement of JUSTICE SOTOMAYOR respecting the denial of certiorari.

Earlier in this case, the Fifth Circuit held that petitioner DeRay Mckesson, the leader of a Black Lives Matter protest in Baton Rouge, Louisiana, could be liable under a negligence theory for serious injuries sustained by a police officer when an unidentified individual attending that protest threw a hard object that hit the officer in the face. 945 F. 3d 818, 828–829 (2019). In so holding, the Fifth Circuit rejected Mckesson's argument that the First Amendment barred his liability in these circumstances absent a showing of intent to incite violence. *Id.*, at 832. Judge Willett dissented, explaining that the majority's theory of "'[n]egligent protest' liability against a protest leader for the violent act of a rogue assailant . . . clash[ed] head-on with constitutional fundamentals." *Id.*, at 846 (opinion concurring in part and dissenting in part).

This Court vacated the Fifth Circuit's judgment and remanded for certification of the underlying state-law questions to the Louisiana Supreme Court, recognizing that there would be no need to reach the constitutional question on which the panel had divided if Louisiana law did not provide for negligence liability in these circumstances. See *Mckesson* v. *Doe*, 592 U. S. 1, 4–6 (2020) (*per curiam*). The Court explained that "certification would ensure that any conflict in this case between state law and the First Amendment is not purely hypothetical." *Id.*, at 6.

When the Louisiana Supreme Court took up the question and concluded that state law did allow the claim, the Fifth Circuit once again had to answer the constitutional question. See 71 F. 4th 278, 282 (2023). The same divided panel then reaffirmed its prior holding that Mckesson could be liable in negligence to the officer, again rejecting Mckesson's argument that the First Amendment precluded the imposition of negligence liability in these circumstances. See *id.*, at 295–297. Judge Willett again dissented on this point, arguing that, under this Court's decision in *NAACP* v. *Claiborne Hardware Co.*, 458 U. S. 886 (1982), "a protest leader's simple negligence is far too low a threshold for imposing liability for a third party's violence." 71 F. 4th, at 306 (opinion concurring in part and dissenting in part). A negligence theory of liability for protest leaders, the dissent pointed out, "would have enfeebled America's street-blocking civil rights movement, imposing ruinous financial liability against citizens for exercising core First Amendment freedoms." *Id.*, at 313.

Less than two weeks after the Fifth Circuit issued its opinion, this Court decided *Counterman* v. *Colorado*, 600 U. S. 66 (2023). In *Counterman*, the Court made clear that the First Amendment bars the use of "an objective standard" like negligence for punishing speech, *id.*, at 78, 79, n. 5, and it read *Claiborne* and other incitement cases as "demand[ing] a showing of intent," 600 U. S., at 81. The Court explained that "the First Amendment precludes punishment [for incitement], whether civil or criminal, unless the speaker's words were 'intended' (not just likely) to produce imminent disorder." *Id.*, at 76 (citing *Claiborne*, 458 U. S., at 927–929, among other cases). Although the Court determined that a less-demanding recklessness standard was sufficient to punish speech as a "true threat," it emphasized that an objective standard like negligence would violate the First Amendment. See 600 U. S., at 82.

Mckesson now asks this Court to "grant certiorari and

confirm that *Claiborne* forecloses negligent-protest liability." Pet. for Cert. 15. Because this Court may deny certiorari for many reasons, including that the law is not in need of further clarification, its denial today expresses no view about the merits of Mckesson's claim. Although the Fifth Circuit did not have the benefit of this Court's recent decision in *Counterman* when it issued its opinion, the lower courts now do. I expect them to give full and fair consideration to arguments regarding *Counterman*'s impact in any future proceedings in this case.

# SUPREME COURT OF THE UNITED STATES

KURT MICHAELS *v.* RON DAVIS, WARDEN, ET AL.

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

No. 23–5038. Decided April 15, 2024

The petition for a writ of certiorari is denied.

JUSTICE JACKSON, dissenting from the denial of certiorari.

"A confession is like no other evidence." *Arizona* v. *Fulminante*, 499 U. S. 279, 296 (1991). It is not a mere recitation of facts, equivalent to a string of discrete witness statements or pieces of circumstantial evidence. Rather, "a full confession in which the defendant discloses the motive for and means of the crime" can also provide indelible intangible information about the defendant that can have a "profound impact . . . upon the jury." *Ibid.* Each and every mannerism—the way the defendant speaks or laughs about a horrific act, his pauses or intonations when describing gruesome details, his gestures or body language when recounting his rationale—might be significant to a jury tasked with deciding his fate. Consequently, this Court has long held that courts must "exercise extreme caution" when determining whether the admission at trial of an illegally obtained confession constitutes a harmless error. *Ibid.*

In this capital case, the Ninth Circuit failed to exercise the required degree of caution. The divided panel assessed a 2½-hour illegally obtained confession filled with disturbing details of a horrific crime like it was a compilation of factual information—no different from evidence introduced by other means. That was legal error. Therefore, I would grant the petition and summarily reverse the Ninth Circuit's decision as to the penalty phase, in order to facilitate a reassessment that involves the necessary rigor.

* * *

Petitioner Kurt Michaels killed JoAnn Clemmons, his girlfriend's mother. Shortly after the killing, Michaels was arrested and questioned by the police. Officers advised Michaels of his rights under *Miranda* v. *Arizona*, 384 U. S. 436 (1966), and, in the subsequent interview, he selectively invoked his right not to answer any questions about the incident. But the police continued to question Michaels even after he had invoked his *Miranda* rights. The resulting 2½-hour taped confession was admitted at both the guilt and penalty phases of his trial, and Michaels was convicted of murder and sentenced to death.

There is no dispute, at this stage of the litigation, that Michaels's constitutional rights were violated. The only question is whether the improper admission of Michaels's confession was harmless error. This Court made crystal clear in *Fulminante* that, for the purpose of harmless-error analysis, wrongfully admitted confessions cannot be treated like other evidence. 499 U. S., at 296. But the panel majority did just that here; inattentive to the uniquely prejudicial nature of confession evidence, it conducted a harmless-error review that involved, essentially, matching up the disturbing details from the confession with discrete pieces of evidence that broadly supported similar propositions, as if the confession was simply a collection of cumulative facts.

A few examples suffice to illustrate this legal error. Throughout the 2½-hour confession, Michaels described the crime in gruesome detail, with his mannerisms and callousness on full display. The panel majority ignored the powerfully demonstrative nature of the confession, concluding it was harmless simply and solely because other witness testimony corroborated the basic facts that Michaels's confession asserted. The panel nowhere considered the *level* of detail that Michaels provided, or the uniquely prejudicial nature of hearing *him* describe the crime in such specific,

horrific detail. See 51 F. 4th 904, 968 (CA9 2022) (Berzon, J., dissenting). Similarly, the panel discounted the potential effect on the jury of watching Michaels repeatedly laughing about disturbing details of the crime when the videotaped confession was unlawfully introduced. See *id.*, at 968–969. Instead, the panel concluded that, because other witnesses had testified that Michaels showed no remorse, the wrongful admission of his striking and unsettling responses did not have "a 'substantial and injurious effect or influence'" on the jury. *Id.*, at 945, 947 (quoting *Brecht* v. *Abrahamson*, 507 U. S. 619, 623 (1993)). But the gulf between a witness saying the defendant is not remorseful and a videotape of the defendant laughing about the crime is vast. By treating them as identical—and not appearing to grapple at all with the qualitative difference that a taped confession makes—the majority failed to apply the harmless-error standard properly.

To be clear: The heinous nature of the crime Michaels committed was fully established at trial, and this opinion is not meant to diminish that. But the Fifth Amendment protects everyone, guilty and innocent alike. I write because courts must be careful to safeguard the rights that our Constitution protects, even when (and perhaps especially when) evaluating errors made in cases stemming from a terrible crime. See *Spano* v. *New York*, 360 U. S. 315, 320–321 (1959) ("[L]ife and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves").

When an unconstitutionally obtained confession is wrongly presented to a jury, our case law is clear that rather than treating that evidence as equivalent to a compilation of other, far less weighty means of proof, courts must carefully evaluate the confession as a whole: how much detail it contained; the tangible and intangible information it communicated; the effect of the *entire* confession, not just pieces of it; and how it interacted with the other evidence

presented at trial to potentially impact the specific jury deliberations at issue.* Because the Ninth Circuit majority disregarded this mandate with respect to assessing the penalty phase of this case, I would summarily reverse.

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*This is not to say that the introduction of an illegally obtained confession can never be harmless. Here, for example, there is presently no dispute that the admission of Michaels's confession was harmless as to the guilt phase of trial because the error likely did not "'substantial[ly] . . . influence'" the jury's guilty verdict in light of other overwhelming evidence of Michaels's guilt. *Brecht* v. *Abrahamson*, 507 U. S. 619, 639 (1993) (alterations in original). Even at the penalty phase of a capital case, a short wrongfully admitted confession that contains little substantive or emotional information might turn out to be harmless. But the wrongful introduction of Michaels's 2½-hour graphic confession is a different thing entirely, and its potential impact on the jury's penalty phase deliberations needed to be properly assessed.

# SUPREME COURT OF THE UNITED STATES

## DILLION GAGE COMPTON *v.* TEXAS

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

No. 23–5682. Decided April 15, 2024

The petition for a writ of certiorari is denied.

JUSTICE SOTOMAYOR, with whom JUSTICE JACKSON joins, dissenting from the denial of certiorari.

"The Constitution forbids striking even a single prospective juror for a discriminatory purpose." *Flowers* v. *Mississippi*, 588 U. S. 284, 303 (2019). A pattern of strikes against jurors with the same race or sex suggests that a prosecutor is striking jurors based on impermissible stereotypes about those protected characteristics rather than the juror's individual views. "More powerful than these bare statistics, however, are side-by-side comparisons of [jurors with certain protected characteristics] who were struck and [jurors without those characteristics] allowed to serve." *Miller-El* v. *Dretke*, 545 U. S. 231, 241 (2005). "If a prosecutor's proffered reason for striking a [female] panelist applies just as well to an otherwise-similar [male] who is permitted to serve, that is evidence tending to prove purposeful discrimination." *Ibid.* A prosecutor may claim that he is striking a woman based on her hesitation to impose the death penalty. When the prosecutor fails to strike a man who has expressed even greater hesitancy, however, it indicates that the woman was struck based on unconstitutional stereotypes about women rather than objective facts.

In this capital case, prosecutors used 13 of their 15 peremptory strikes on women. They offered only one justification in each case: the woman's views on the death penalty. In reviewing the challenged jurors, the Texas Court of Criminal Appeals (TCCA) failed to conduct a side-by-side

comparison. Instead, it tested the prosecution's justification in the aggregate, looking to the women's views on capital punishment as a group instead of individually. That legal error hid the best indication of discriminatory purpose. Under a side-by-side comparison, it is clear that at least one woman struck by the State had more favorable views on the death penalty than at least one man the State did not strike. I would summarily vacate the decision below and remand for the TCCA to apply the proper comparative analysis.

## I

### A

Dillion Gage Compton was charged with capital murder for the death of a prison guard. After *voir dire*, there were 42 qualified venirepersons for a 12-person jury. Of those 42 potential jurors, 23 were women and 19 were men, making the initial pool 55% women. The State used 13 of its 15 strikes on women. After both sides submitted their strikes, the 12-person jury consisted of only four women and eight men, or 33% women.

Compton challenged the State's peremptory strikes based on *J. E. B.* v. *Alabama ex rel. T. B.*, 511 U. S. 127 (1994), arguing that the State had discriminated based on gender. In response, the prosecutor explained he was "certainly focused almost single-han[dedly] on the issue of the death penalty." 21 Tr. 16 (Sept. 25, 2018). The defense objected that the "gender basis has not been explained to the Court sufficiently." *Id.*, at 18. The trial court denied the challenge.

After trial, the jury convicted Compton of capital murder. The trial court sentenced him to death.

### B

On appeal, Compton again challenged the State's per-

emptory strikes under *J. E. B.* Compton identified four female potential jurors struck by the State for whom the record allegedly did not support the State's rationale. He identified three male potential jurors who expressed views on the death penalty as or less favorable than the struck women. The State defended its views-on-the-death-penalty rationale for each struck woman but never compared their views with those of the men it did not strike. Thus, it did not respond to Compton's comparative argument that the State had retained men with similar views on the death penalty to the struck women.

In evaluating the *J. E. B.* challenge, the TCCA determined that Compton had made a prima facie showing of bias under the first step of *Batson* v. *Kentucky*, 476 U. S. 79 (1986). Under the second step, the court reasoned that the State had provided a gender-neutral reason for the strikes: that "each individual . . . expressed more concern, hesitation, or opposition to imposing the death penalty than those venirepersons the State chose not to strike." 666 S. W. 3d 685, 711 (Tex. Crim. App. 2023).

In examining whether that reason was pretextual under the third step, the TCCA found the "statistical evidence . . . concerning." *Ibid.* It noted that the State's use of 13 of 15 peremptory strikes against women combined with "the fact that only four women made it onto the jury despite the panel having more women than men does raise concerns." *Ibid.*

The court then purported to examine "[s]ide-by-side comparisons of stricken and accepted venirepersons." *Ibid.* It declined to "engag[e] in an exhaustive comparative analysis of each prospective juror." *Ibid.* Despite claiming to "[c]ompar[e] [the male] venirepersons to the female venirepersons struck by the State," *id.*, at 712, the TCCA failed to examine individually the four female potential jurors identified by

Compton as having favorable views on the death penalty.[1] Instead, it conducted its analysis entirely in the aggregate. It concluded that "the State was, in fact, focused on death-penalty issues and struck *most* of the female venirepersons based on their responses" that indicated reservations about the death penalty. *Id.*, at 711 (emphasis added). The TCCA reasoned by bullet point that:

- "*Most* of the State-stricken female venirepersons rated themselves a three or four on a scale of one-to-six when asked about their support for the death penalty;
- "*Most* said they were generally opposed to the death penalty except in a few cases, or that they were neutral on the appropriateness of the death penalty;
- "*Nearly all* disagreed that the death penalty 'gives the criminal what they deserve;'
- "*Nearly all* expressed some favorable views about the option of life without parole, the possibility of rehabilitation, religious redemption, and/or the fact that life without parole forces offenders to live with the consequences of their crimes;
- "*Nearly all* agreed that life without parole could be an adequate punishment for capital murder;
- "*Some, but not all*, emphasized a defendant's background and upbringing as relevant factors in assessing whether the death penalty versus life without parole was appropriate." *Id.*, at 711–712 (emphasis added).

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[1] The TCCA knew how to conduct a side-by-side comparison. Compton also challenged three strikes based on *Batson* v. *Kentucky*, 476 U. S. 79 (1986), arguing that the State discriminated based on race. The State struck one Black man, one Black woman, and one Hispanic man. The resulting 12-person jury included 1 Hispanic man and 11 white people. The TCCA conducted side-by-side comparisons of the struck jurors and three unstruck white male comparators. See 666 S. W. 3d, at 700–710. It inexplicably failed to do so for the *J. E. B.* challenge, which required equally scrupulous consideration.

The TCCA held that "[c]omparatively speaking, the venirepersons—men and women—who were not struck by the State *generally* expressed more favorable views towards the death penalty and less favorable views towards the life-without-parole option and mitigating evidence than did the female venirepersons described above." *Id.*, at 712 (emphasis added). It distinguished the three male comparators not struck by the State as "*overall* favorable for the State's preferred punishment." *Ibid.* (emphasis added). It rejected Compton's *J. E. B.* claim and affirmed the trial court's judgment of conviction and sentence of death.

## II

This Court has repeatedly emphasized that the "Constitution forbids striking even a single prospective juror for a discriminatory purpose." *Flowers*, 588 U. S., at 303; *Foster* v. *Chatman*, 578 U. S. 488, 499 (2016); *Snyder* v. *Louisiana*, 552 U. S. 472, 478 (2008). Challenges to jury selection based on unconstitutional proxies like race, see *Batson*, 476 U. S., at 96, or gender, see *J. E. B.*, 511 U. S., at 128, exist to protect the equal protection rights of "potential jurors, as well as [defendants], . . . to jury selection procedures that are free from state-sponsored group stereotypes," *ibid.* These challenges guard against prosecutorial bias: not only the perception that a prospective juror might favor a defendant because they share a protected characteristic, but that a prospective juror might hold a particular view because of a stereotype based on race or gender. See *id.*, at 141–142; *Batson*, 476 U. S., at 104–105 (Marshall, J., concurring).

The third step of this Court's test in particular protects against impermissible stereotypes by checking the State's proffered reason against its other decisions. "If a prosecutor's proffered reason for striking a [female] panelist applies just as well to an otherwise-similar [male] who is permitted

to serve, that is evidence tending to prove purposeful discrimination to be considered at *Batson*'s third step." *Dretke*, 545 U. S., at 241.

Here, the TCCA failed to conduct that important side-by-side comparison of struck female jurors against male jurors permitted to serve. Before the trial court, the TCCA, and this Court, the State offered only one reason for striking these women: their hesitations about imposing the death penalty. If a struck female panelist's views on the death penalty were more favorable than an otherwise-similar man permitted to serve, that would be strong evidence of invidious discrimination under *Batson*'s third step. Yet the TCCA evaluated the strikes only in the aggregate, reasoning that "most" or "nearly all" struck women expressed views less favorable toward the death penalty than the men permitted to serve. That analysis directly contradicts the principle that striking even one prospective juror for a discriminatory reason violates the Constitution.

Considering only one example in this record suggests that the prosecutor's proffered reason was pretextual. V. P., a female juror struck by the prosecutors, strongly supported capital punishment. V. P. rated herself a five out of six in terms of her support for the death penalty. She endorsed punishment as more important than rehabilitation and agreed that capital punishment was "absolutely justified" and "just and necessary." 14 Record 5912. She was "concern[ed]" about life in prison instead of the death penalty because sometimes the prisoner could "continu[e] to do harm to others while in prison." *Id.*, at 5914. When questioned about mitigation during *voir dire*, she said that reading the mitigation special issues made her angry, because "some people use just whatever—you know, they blame—I don't like the blame game." 17 Tr. 180 (Sept. 17, 2018).

In contrast, the State did not strike a male prospective juror who expressed less favorable views of the death pen-

alty. That prospective juror, P. K., wrote that he was opposed to the death penalty except in some cases, and that he would be "very conflicted" about returning a verdict of death, underlining "very" for emphasis. 12 Record 5252, 5256. He agreed that "[c]apital punishment is not necessary in modern civilization" and embraced the idea that "[e]xecution of criminals is a disgrace to civilized society." *Id.*, at 5257. He thought that Texas used the death penalty "too often." *Id.*, at 5261.

This case illustrates the hazards of analysis by aggregate. The TCCA may have been right that most of the struck women expressed less favorable views on the death penalty than most of the men permitted to serve. When the State, however, extends a reason true of many female potential jurors to another female potential juror not based on what she says, but based on the fact that she is a woman, it crosses the line into invidious discrimination. Just because most female potential jurors had hesitations about the death penalty does not mean that V. P. did.

The State never offered any justification other than female potential jurors' views on the death penalty for its strikes.[2] The TCCA erred when it allowed the views of other female prospective jurors to infect its assessment of the State's justification for V. P.'s strike.

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[2] In the State's brief before the TCCA, it emphasized that V. P. "was struck by the State and the defense." Brief for Appellee in No. AP–77,087, p. 47. A strike by the defense, however, is irrelevant to a *Batson* or *J. E. B.* inquiry, which focuses "solely on evidence concerning the prosecutor's exercise of peremptory challenges." *Batson*, 476 U. S., at 96; see also *Miller-El* v. *Dretke*, 545 U. S. 231, 255, n. 14 (2005) ("[Defendant's] shuffles are flatly irrelevant to the question whether prosecutors' shuffles revealed a desire to exclude blacks"). Indeed, it makes sense that Compton sought to exclude a juror like V. P. who expressed such pro-death penalty views. Moreover, this evidence of potential bias against V. P. could have informed the challenges against the three other struck women Compton identified.

* * *

"America's trial judges operate at the front lines of American justice." *Flowers*, 588 U. S., at 302. They bear "the primary responsibility to enforce *Batson* and prevent . . . discrimination from seeping into the jury selection process." *Ibid.* That responsibility requires scrutinizing the prosecutor's proffered reason for a peremptory strike by comparing any struck juror challenged by the defense with a retained juror who does not share the same protected characteristic. When a court conducts a *Batson* or *J. E. B.* inquiry not based on individual comparisons but by aggregate, it too runs the risk of generalizing based on impermissible stereotypes. I would summarily vacate the decision below and remand for the TCCA to correct its legally erroneous analysis with respect to the *J. E. B.*-challenged jurors. I respectfully dissent.