(ORDER LIST: 592 U.S.)

MONDAY, MARCH 22, 2021

ORDERS IN PENDING CASES

20M62 LOPEZ, ARTHUR V. SUPERIOR COURT OF CA, ET AL.

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

20M63 WOODY, SAMUEL V. NEW JERSEY

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

20M64 PORTILLO, JOSUE V. UNITED STATES

The motion for leave to file a petition for a writ of certiorari under seal with redacted copies for the public record is granted.

CERTIORARI GRANTED

20-443 UNITED STATES V. TSARNAEV, DZHOKHAR A.

The petition for a writ of certiorari is granted.

20-794 SERVOTRONICS, INC. V. ROLLS-ROYCE PLC, ET AL.

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

CERTIORARI DENIED

20-409 MARINO, CHRISTOPHER M., ET UX. V. OCWEN LOAN SERVICING, LLC

20-587 WHITE, HOPE A. V. UNITED STATES, ET AL.

20-649 LEVEL THE PLAYING FIELD, ET AL. V. FEDERAL ELECTION COMMISSION

20-669 BELL, BILLY J. V. TEXAS

20-727 FACEBOOK, INC. V. DAVIS, PERRIN A., ET AL.

20-763 RICHARDSON, ERICKA, ET AL. V. COVERALL NORTH AMERICA, ET AL.

20-779 ARGENTUM PHARMACEUTICALS LLC V. NOVARTIS PHARMACEUTICALS CORP.

20-808 MILES, JOHNNY D. V. CALIFORNIA

20-839 GREENWAY, KENNETH V. SOUTHERN HEALTH PARTNERS, ET AL.

20-840 KNOWLES, KENNETH V. HART, JASON M.

20-919 SPINNENWEBER, RICHARD, ET AL. V. WILLIAMS, DAN

20-936 KNIGHT, JUDY V. WARD & GLASS, ET AL.

20-938 WALKER, VILMA, ET AL. V. DEUTSCHE BANK NATIONAL TRUST CO.

20-943 BARTON, JEAN, ET VIR V. JPMORGAN CHASE BANK, ET AL.

20-944 STARK, PAMELA D. V. STARK, JOE E.

20-945 RUSSELL, SAMUEL T. V. TEXAS

20-949 LIMCACO, ANGELICA C. V. WYNN LAS VEGAS, LLC, ET AL.

20-950 JAMES, H. RENEE V. MONTGOMERY, AL

20-954 OHIO, EX REL. BRINKMAN V. O'CONNOR, MAUREEN, ET AL.

20-959 THIGPEN, ANGELA V. BD. OF TRUSTEES OF LOCAL 807

20-968 R. M. S. V. MADISON CTY. DEPT OF HUMAN

20-972 IBEABUCHI, IKEMEFULA C. V. EGGLESTON, DIR. OF OPERATION

20-973 HAYWOOD-WATSON, RICKY V. TEXAS

20-974 SVRCINA, EMIL, ET AL. V. NAGO, SCOTT C., ET AL.

20-983 ALMEDA, CELESTINO G. V. DEPT. OF EDUCATION, ET AL.

20-985 FLYNN, KATHRYN A. V. DEPT. OF ARMY

20-991 ENGLAND, STEVIE L. V. HART, WARDEN

20-992 VIGNA, JOHN V. MARYLAND

20-993 MICKENS, JEREMY V. ARKANSAS

20-1030 BROWN, TOMMIE R. V. BROWN-THOMAS, DEANNA, ET AL.

20-1039 AVILES-WYNKOOP, ELIZABETH V. DEPT. OF DEFENSE

20-1042 HERNANDEZ, PEDRO V. NEW YORK

20-1050 POINT DU JOUR, SYLVESTRE E. V. GARLAND, ATT'Y GEN.

20-1053 PITTS, RONALD D. V. OHIO

20-1079 BOGGS, RICHARD E. V. UNITED STATES

20-1083 ROSSLEY, THOMAS V. DRAKE UNIVERSITY, ET AL.

20-1103 KISSELL, MICHAEL F. V. PA DOC

20-1121 SAYLOR, JAMES V. BOYD, INTERIM WARDEN

20-1128 WALSH, RALPH C. V. HODGE, LISA, ET AL.

20-1131 DIMORA, JAMES C. V. UNITED STATES

20-1154 TORRES-NIEVES, ADAN V. UNITED STATES

20-1177 NATIONAL MEDICAL IMAGING, LLC V. U.S. BANK, N.A, ET AL.

20-5375 HALL, CHARLES M. V. UNITED STATES

20-6296 LAGUE, DAVID V. UNITED STATES

20-6336 SNELL, ERIC T. V. UNITED STATES

20-6339 LARSEN, GEORGE B. V. UNITED STATES

20-6356 DENNIS, RYAN V. UNITED STATES

20-6367 ST. FLEUR, KISSINGER V. UNITED STATES

20-6515 PONTICELLI, ANTHONY V. FLORIDA

20-6533 REED, GROVER B. V. FLORIDA

20-6586 VANDERGROEN, SHANE M. V. UNITED STATES

20-6735 McCLUNG, FRANK A., ET UX. V. ESTEVEZ, ELIA E.

20-6793 PARKS, CURTIS V. CHAPMAN, WILLIS

20-6797 SEMBRAT, KEVIN V. STANTON, HEATHER

20-6806 MERCK, TROY V. FLORIDA

20-6812 McCOY, KEITH V. ATHERTON, MICHAEL, ET AL.

20-6819 STERLIN, FRANTZ V. UNITED STATES

20-6821 JACKSON, MATTHEW J. V. TEXAS

20-6824 BRIGHT, RAYMOND V. FLORIDA

20-6825 ANDERSEN, ANDREW V. MONTES, MARISELA, ET AL.

20-6826 DEAN-BAUMANN, MELISSA V. ESPINOZA, WARDEN

20-6833 FRANCE, CLOREY E. V. NORTH CAROLINA

20-6836 GUTIERREZ, JULIAN P. V. LUMPKIN, DIR., TX DCJ

20-6843 DAVIS, CEDRYCK V. ILLINOIS

20-6846 CAMPBELL, TYRONE V. FLORIDA

20-6847 TORRES, CHRISTOPHER B. V. LIVINGSTON, BRAD, ET AL.

20-6848 WHITLEY, DANA S. V. GRAHAM, WARDEN

20-6851 ATWATER, JEFFREY L. V. FLORIDA

20-6852 BAUER, CINDY V. McBROOM, EDWARD, ET AL.

20-6855 O'NEIL, STACIA V. BERQUIST, MARISA, ET AL.

20-6865 ROUSER, WILLIAM V. UNKNOWN

20-6866 SUTHERBY, KEVIN V. CAMPBELL, WARDEN

20-6874 MURPHY, JACOB E. V. ABBOTT, GOV. OF TX, ET AL.

20-6881 DOUGLAS, ALAN V. ZIMMERMAN, NANCY, ET AL.

20-6882 ZOU, BO V. LINDE ENGINEERING NORTH AMERICA

20-6886 ENSLOW, ZACHARY M. V. WASHINGTON, ET AL.

20-6892 WILLIAMS, VASHAUN V. ILLINOIS

20-6894 WILLIAMS, MACHO JOE V. SHINN, DIRECTOR, AZ DOC, ET AL.

20-6898 ANDERSON, LEWIS V. CALIFORNIA

20-6900 REINTS, JOHN V. SAYLER, JANET, ET AL.

20-6901 SIERRA, ANTONIO V. DANERI, JACK, ET AL.

20-6902 THOMAS, LAYW V. KENTUCKY

20-6904 JEFFRIES, BILLY S. V. JUSTICE AND PUBLIC SAFETY, ET AL.

20-6907 HINES, DASHON V. TOPSHELF MANAGEMENT, ET AL.

20-6910 ALSAEDI, EL-ASAD V. FLORIDA

20-6913 SMITH, TERRY V. VANNOY, WARDEN

20-6939 NEVIUS, THOMAS V. GREWAL, ATT'Y GEN. OF NJ, ET AL.

20-6963 MIDYETT, F. ALLAN V. McDONOUGH, SEC. OF VA

20-6966 JOHNSON, CHARLES E. V. UNITED STATES

20-6967 LOPER, JUSTIN V. UNITED STATES

20-6982 WEED, MISTY R. V. FLORIDA

20-6983 COLE, DEMARCUS V. MYERS, WARDEN

20-6984 ESPOSITO, RALPH F. V. ARIZONA

20-6987 RODRIGUEZ, NELSON N. V. GARLAND, ATT'Y GEN.

20-6999 BOUNCHANH, KANNHA V. WA HEALTH CARE AUTH., ET AL.

20-7001 BRESSI, AARON J. V. BRENNEN, JEFFREY, ET AL.

20-7004 MATA, CAMILLE T. V. MA COMMISSION

20-7009 REED, MARK R. V. TOOLE, WARDEN, ET AL.

20-7018 WESTBROOK, LAWRENCE V. UNITED STATES

20-7020 WHEELER, RICHIE V. UNITED STATES

20-7024 ANCHETA, RANDY M. V. UNITED STATES

20-7032 DELRIO, SALVADOR V. UNITED STATES

20-7033 CHRISTOFFERSON, OTTO E. V. UNITED STATES

20-7034 BULLARD, KELLI R. V. UNITED STATES

20-7037 RODRIGUEZ, ELIAS J. V. UNITED STATES

20-7041 GREEN, BRUCE K. V. UNITED STATES

20-7043 HALL, KEVIN V. UNITED STATES

20-7044 BARTUNEK, GREGORY V. HALL COUNTY, NE, ET AL.

20-7047 LOPEZ, JUAN F. V. GARLAND, ATT'Y GEN.

20-7048 GONZALES, ROMAN G. V. UNITED STATES

20-7049 GONZALEZ, EDWIN V. UNITED STATES

20-7052 WRIGHT, JOSHUA V. UNITED STATES

20-7063 DAMIANI-MELENDEZ, PABLO V. MAY, WARDEN, ET AL.

20-7064 PERRY, JUSTIN L. V. NORTH CAROLINA

20-7070 JEREMY S. V. WEST VIRGINIA

20-7073 MUSKETT, DONOVAN V. UNITED STATES

20-7076 OTTOGALLI, MICHAEL J. V. UNITED STATES

20-7080 ALEXANDER, JIMMY L. V. CALIFORNIA

20-7082 BISHOP, EDWARD V. UNITED STATES

20-7085 HOEY, THOMAS V. UNITED STATES

20-7086 FETHEROLF, MICHAEL V. SHOOP, WARDEN

20-7088 KHWEIS, MOHAMAD J. V. UNITED STATES

20-7090 OMONDI, MICHAEL D. V. UNITED STATES

20-7091 CHANEY, RAY A. V. UNITED STATES

20-7094 SHEFFEY, KENNETH R. V. IOWA

20-7095 COLLDOCK, GARY S. V. UNITED STATES

20-7096 REYNOLDS, BRIAN E. V. UNITED STATES

20-7100 ROBINSON, RYAN D. V. UNITED STATES

20-7102 AHMED, TOHEED V. UNITED STATES

20-7108 GAWLIK, JAN V. SEMPLE, SCOTT, ET AL.

20-7109 FLORES-VILLALVASO, RAUL V. UNITED STATES

20-7110 FALCON, DAVID V. McDOWELL, WARDEN

20-7112 MARTINEZ-CARRILLO, HECTOR M. V. UNITED STATES

20-7113 KELLEY, TROY X. V. UNITED STATES

20-7114 JOHNSON, AESHA V. UNITED STATES

20-7118 MILES, TERRY A. V. UNITED STATES

20-7119 MOLINE-BORROTO, JAVIER A. V. UNITED STATES

20-7121 MICHEL, GEORGES V. UNITED STATES

20-7122 COOPER, ADAM L. V. UNITED STATES

20-7124 CLOUD, GEORGE S. V. UNITED STATES

20-7128 REYNOSA-DENOVA, TEODORO V. UNITED STATES

20-7132 DYKES, ROY L. V. UNITED STATES

20-7135 REED, LAMONT R. V. FRAKES, DIR., NE DOC

20-7138 BEGAY, PATRICK V. UNITED STATES

20-7140 ACEVES, CESAR R. V. UNITED STATES

20-7141 BROWN, CURTIS J. V. UNITED STATES

20-7142 FOX, LEWIS R. V. GRAY, WARDEN

20-7146 GALLARDO, FRANK R. V. UNITED STATES

20-7150 HUBBARD, CREADELL V. RATLEDGE, WARDEN

20-7154 RAMSEUR, ROBERT E. V. UNITED STATES

20-7156 SABAR, FAIZAL V. UNITED STATES

20-7157 SMITH-GARCIA, DAVID V. BURKE, PAULA

20-7163 KERSHAW, GABRIEL Z. V. UNITED STATES

20-7164 HERNANDEZ-MARTINEZ, MARCELINO V. UNITED STATES

20-7166 JORDAN, CHARLES J. V. UNITED STATES

20-7167 MEJIA ROMERO, ELIN R. V. UNITED STATES

20-7168 McREYNOLDS, LOREN J. V. UNITED STATES

20-7171 CORREA-FIGUEROA, LUIS J. V. UNITED STATES

20-7174 LOPEZ, ANTONIO V. TEXAS

20-7177 DOYLE, SANDRA V. UNITED STATES

20-7180 WILSON, WILLIAM H. V. UNITED STATES

20-7181 TAYLOR, QUINCY O. V. UNITED STATES

20-7182 TUOMI, ANTON V. INCH, SEC., FL DOC, ET AL.

20-7186 LEE, BRIAN D. V. UNITED STATES

20-7187 MALIK, HASEEB V. UNITED STATES

20-7197 MARTINEZ, ROBERTO E. V. UNITED STATES

20-7199 BURKS, MAURICE D. V. UNITED STATES

20-7202 BAILEY, DEON A. R. V. UNITED STATES

20-7206 GONZALEZ-MENDOZA, PEDRO V. UNITED STATES

20-7208 HENDLER, BRUCE H. V. UNITED STATES

20-7215 NEWELL, SUNNI A. V. UNITED STATES

20-7216 SEAWOOD, ANTWAN V. UNITED STATES

20-7217 CISNEROS, FELIX V. UNITED STATES

20-7218 ZUNIGA, CRYSTAL V. UNITED STATES

20-7220 DIAZ-AGURCIA, ANTONIO V. UNITED STATES

20-7224 DAYE, LEON N. V. UNITED STATES

20-7226 SCANNELL, JOHN R. V. WA STATE BAR ASSN.

20-7230 THOMPSON, STANLEY J. V. UNITED STATES

20-7232 ALMANZA-PORTILLO, RAUL V. UNITED STATES

20-7237 BRADLEY, CLYDE E. V. KENNEDY, WARDEN

20-7240 HOLLAHAN, JOSEPH A. V. ILLINOIS

20-7242 LISTER, XAVIER V. UNITED STATES

20-7244 LANDRY, MELVIN V. UNITED STATES

20-7246 METCALF, RENALDO D. V. UNITED STATES

20-7255 ZUBIA-OLIVAS, SAMUEL V. UNITED STATES

The petitions for writs of certiorari are denied.

20-894 ANDERSEN, BARBARA V. GLENVIEW, IL, ET AL.

20-910 LEE, ANTHONY M. V. PARSHALL, HEATH

The petitions for writs of certiorari are denied. Justice Barrett took no part in the consideration or decision of these petitions.

20-955 NEWHOUSE, DELVA V. ETHICON INC., ET AL.

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

20-996 MARLING, RAYMOND V. VANIHEL, WARDEN

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

20-6622 MITCHELL, DEVON V. UNITED STATES

The petition for a writ of certiorari is denied. Justice

Kagan took no part in the consideration or decision of this petition.

20-6828 MURITHI, MWENDA V. GLECKLER, BRYAN, ET AL.

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

20-6830 JONES, DONALD V. BANK OF AMERICA, 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.

20-6849 TYLER, CASEY R. V. POOLE, KATY, 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*).

20-6853 ADKINS, DORA L. V. DULLES HOTEL CORP.

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.

20-6868 SUNDY, TIM V. FRIENDSHIP PAVILION, 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*).

20-7000 BROWN, FELIX V. FOLEY, WARDEN

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.

20-7010 SANTIAGO-LUGO, ISRAEL V. UNITED STATES

20-7068 DAVIS, JERRY V. UNITED STATES

20-7107 HUSBAND, JIMMY R. V. ORMOND, WARDEN

The petitions for writs of certiorari are denied. Justice Kagan took no part in the consideration or decision of these petitions.

HABEAS CORPUS DENIED

20-7209 IN RE RODOLFO A. LOPEZ

The petition for a writ of habeas corpus is denied.

20-7307 IN RE WAYNE M. BEATON

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.

MANDAMUS DENIED

20-933 IN RE JACK R. FINNEGAN

The petition for a writ of mandamus is denied.

20-6908 IN RE MICHAEL INGRAM EL

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

denied.

REHEARINGS DENIED

20-529 BOGGS, RICHARD E. V. UNITED STATES

20-621 CAI, HUA V. HUNTSMAN CORPORATION

20-739 LEVIN, ISAAC V. FRANK, KENNETH, ET AL.

20-757 ASHFORD, TIMOTHY L. V. OFFICE OF DSPLN. COUNSEL, ET AL.

20-765 WILLMAN, M. S. V. GARLAND, ATT'Y GEN.

20-6158 BROCKINGTON, CLARA L. V. SC DEPT. OF SOC. SERV., ET AL.

20-6159 BRUCE, NELSON L. V. PENTAGON FED. CREDIT UNION

20-6168 RAHAIM, CHRISTOPHER J. V. FLORIDA

20-6178 DAVIS, WILLIAM S. V. UNITED STATES

20-6207 COOPER, STEVEN V. BAY COUNTY, FL, ET AL.

20-6219 LYNCH, SASCHA V. CHAO, ALLEN, ET AL.

20-6503 RAUDENBUSH, GEORGE J. V. MONROE COUNTY, TN, ET AL.

The petitions for rehearing are denied.

20-5233 BURNS, MICHAEL R. V. UNITED STATES

The motion for leave to file a petition for rehearing is denied.

SUPREME COURT OF THE UNITED STATES

MASSACHUSETTS LOBSTERMEN'S ASSOCIATION, ET AL. *v.* GINA M. RAIMONDO, SECRETARY OF COMMERCE, ET AL.

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

No. 20–97. Decided March 22, 2021

The petition for a writ of certiorari is denied.

Statement of CHIEF JUSTICE ROBERTS respecting the denial of certiorari.

Which of the following is not like the others: (a) a monument, (b) an antiquity (defined as a "relic or monument of ancient times," Webster's International Dictionary of the English Language 66 (1902)), or (c) 5,000 square miles of land beneath the ocean? If you answered (c), you are not only correct but also a speaker of ordinary English. In this case, however, the Government has relied on the Antiquities Act of 1906 to designate an area of submerged land about the size of Connecticut as a monument—the Northeast Canyons and Seamounts Marine National Monument.

The creation of a national monument is of no small consequence. As part of managing the Northeast Canyons and Seamounts Marine National Monument, for example, President Obama banned almost all commercial fishing in the area with a complete ban to follow within seven years. Presidential Proclamation No. 9496, 3 CFR 262, 266–267 (2016). According to petitioners—several commercial fishing associations—the fishing restrictions would not only devastate their industry but also put severe pressure on the environment as fishing would greatly expand in nearby areas outside the Monument. Although the restrictions were lifted during this litigation, Presidential Proclamation No. 10049, 85 Fed. Reg. 35793 (2020), that decision is set to be reconsidered and the ban may be reinstated, Exec. Order

No. 13990, 86 Fed. Reg. 7037, 7039 (2021). Either way, the Monument remains part of a trend of ever-expanding antiquities. Since 2006, Presidents have established five marine monuments alone whose total area exceeds that of all other American monuments combined. Pet. for Cert. 7–8.

The Antiquities Act originated as a response to widespread defacement of Pueblo ruins in the American Southwest. Because there was "scarcely an ancient dwelling site" in the area that had not been "vandalized by pottery diggers for personal gain," the Act provided a mechanism for the "preservation of prehistoric antiquities in the United States." Dept. of Interior, Nat. Park Serv., R. Lee, The Antiquities Act of 1906, pp. 33, 48 (1970) (internal quotation marks omitted). The Act vests significant discretion in the President, who may unilaterally "declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated on land owned or controlled by the Federal Government to be national monuments." 54 U. S. C. §320301(a). The President may also reserve "parcels of land as a part of the national monuments," but those parcels must "be confined to the smallest area compatible with the proper care and management of the objects to be protected." §320301(b).

The broad authority that the Antiquities Act vests in the President stands in marked contrast to other, more restrictive means by which the Executive Branch may preserve portions of land and sea. Under the National Marine Sanctuaries Act, for example, the Secretary of Commerce can designate an area of the marine environment as a marine sanctuary, but only after satisfying rigorous consultation requirements and issuing findings on 12 statutory criteria. See 16 U. S. C. §1433(b). The President is even more constrained when it comes to National Parks, which may be established only by an Act of Congress. See 54 U. S. C. §100101 *et seq.*

While the Executive enjoys far greater flexibility in setting aside a monument under the Antiquities Act, that flexibility, as mentioned, carries with it a unique constraint: Any land reserved under the Act must be limited to the smallest area compatible with the care and management of the objects to be protected. See §320301(b). Somewhere along the line, however, this restriction has ceased to pose any meaningful restraint. A statute permitting the President in his sole discretion to designate as monuments "landmarks," "structures," and "objects"—along with the smallest area of land compatible with their management—has been transformed into a power without any discernible limit to set aside vast and amorphous expanses of terrain above and below the sea.

The Northeast Canyons and Seamounts Marine National Monument at issue in this case demonstrates how far we have come from indigenous pottery. The Monument contains three underwater canyons and four undersea volcanoes. The "objects" to be "protected" are the "canyons and seamounts themselves," along with "the natural resources and ecosystems in and around them." Presidential Proclamation No. 9496, 3 CFR 262.

We have never considered how a monument of these proportions—3.2 million acres of submerged land—can be justified under the Antiquities Act. And while we have suggested that an "ecosystem" and "submerged lands" can, under some circumstances, be protected under the Act, see *Alaska* v. *United States*, 545 U. S. 75, 103 (2005), we have not explained how the Act's corresponding "smallest area compatible" limitation interacts with the protection of such an imprecisely demarcated concept as an ecosystem. The scope of the objects that can be designated under the Act, and how to measure the area necessary for their proper care and management, may warrant consideration—especially given the myriad restrictions on public use this purely discretionary designation can serve to justify. See C. Vincent,

Congressional Research Service, National Monuments and the Antiquities Act 8–9 (2018) (detailing ways in which "management" of a monument limits recreational, commercial, and agricultural uses of the surrounding area).

* * *

Despite these concerns, this petition does not satisfy our usual criteria for granting certiorari. No court of appeals has addressed the questions raised above about how to interpret the Antiquities Act's "smallest area compatible" requirement. 54 U. S. C. §320301(b). The D. C. Circuit below held that petitioners did not plead sufficient facts to assess their claim that the Monument swept beyond the "smallest area compatible" with management of the ecosystem. To date, petitioners have not suggested what this critical statutory phrase means or what standard might guide our review of the President's actions in this area. And at the present time the issue whether to reinstate the fishing prohibition remains under consideration. Exec. Order No. 13990, 86 Fed. Reg. 7037, 7039.

We may be presented with other and better opportunities to consider this issue without the artificial constraint of the pleadings in this case. See Pet. for Cert. 34 (citing five other cases pending in federal courts concerning the boundaries of other national monuments). I concur in the denial of certiorari, keeping in mind the oft-repeated statement that such a denial should not be taken as expressing an opinion on the merits. See *Missouri* v. *Jenkins*, 515 U. S. 70, 85 (1995).

SUPREME COURT OF THE UNITED STATES

MARTIN ROGELIO LONGORIA *v.* UNITED STATES

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

No. 20–5715. Decided March 22, 2021

The petition for a writ of certiorari is denied.

Statement of JUSTICE SOTOMAYOR, with whom JUSTICE GORSUCH joins, respecting the denial of certiorari.

Under §3E1.1(b) of the Federal Sentencing Guidelines, a defendant whose offense level is 16 or greater may receive a one-level reduction if he timely notifies the prosecution of his intent to plead guilty, "thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently." United States Sentencing Commission, Guidelines Manual §3E1.1(b) (Nov. 2018). A district court can award this reduction only "upon motion of the government." *Ibid.* The commentary to the Guidelines specifies that the "government should not withhold such a motion based on interests not identified in §3E1.1, such as whether the defendant agrees to waive his or her right to appeal." §3E1.1, comment., n. 6.

This petition implicates an important and longstanding split among the Courts of Appeals over the proper interpretation of §3E1.1(b). Most Circuits have determined that a suppression hearing is not a valid basis for denying the reduction, reasoning that "preparation for a motion to suppress is not the same as preparation for a trial," even if "there is substantial overlap between the issues that will be raised." *United States* v. *Marquez*, 337 F. 3d 1203, 1212 (CA10 2003); see also 958 F. 3d 372, 376 (CA5 2020) (collecting cases). A minority of Circuits have concluded otherwise. See *id.*, at 376. In this case, for example, the Fifth Circuit accepted the Government's refusal to move for a re-

duction after it had to prepare for a 1-day suppression hearing, concluding that "'a suppression hearing [could be] in effect the substantive equivalent of a full trial.'" *Id.,* at 378.

The Sentencing Commission should have the opportunity to address this issue in the first instance, once it regains a quorum of voting members.* Cf. *Braxton* v. *United States*, 500 U. S. 344, 348 (1991). I write separately to emphasize the need for clarification from the Commission. The effect of a one-level reduction can be substantial. For the most serious offenses, the reduction can shift the Guidelines range by years, and even make the difference between a fixed-term and a life sentence. The present disagreement among the Courts of Appeals means that similarly situated defendants may receive substantially different sentences depending on the jurisdiction in which they are sentenced. When the Commission is able, it should take steps to ensure that §3E1.1(b) is applied fairly and uniformly.

---

*Currently, six of the seven voting members' seats are vacant. The votes of at least four members are required for the Commission to promulgate amendments to the Guidelines. See U. S. Sentencing Commission, Organization (Mar. 18, 2021), https://www.ussc.gov/about/who-we-are/organization.

SUPREME COURT OF THE UNITED STATES

CHARLES VICTOR THOMPSON *v.* BOBBY LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION

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

No. 20–5941. Decided March 22, 2021

The petition for a writ of certiorari is denied.

JUSTICE KAGAN, with whom JUSTICE BREYER and JUSTICE SOTOMAYOR join, concurring in the denial of certiorari.

A provision of the Antiterrorism and Effective Death Penalty Act of 1996, now codified at 28 U. S. C. §2254(e)(2), limits the availability of evidentiary hearings in federal habeas proceedings. "If the applicant has failed to develop the factual basis of a claim in State court proceedings," §2254(e)(2) states, then the habeas court "shall not hold an evidentiary hearing on the claim" unless it finds two conditions met. *Ibid.* First, the claim must rely on either "a new rule of constitutional law" or "a factual predicate that could not have previously been discovered through the exercise of due diligence." *Ibid.* Second, the facts underlying the claim must be "sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense." *Ibid.*

Notice how much rides on that provision's opening clause. The restriction of evidentiary hearings never kicks in, the clause says, unless "the applicant has failed to develop the factual basis of [his] claim in State court proceedings." *Ibid.*; see *Williams* v. *Taylor*, 529 U. S. 420, 430 (2000) ("By the terms of its opening clause the statute applies" only when "the prisoner has failed to develop the facts"). And this Court has held in no uncertain terms that the phrase

"failed to develop" implies a "lack of diligence"—or otherwise said, "some omission, fault, or negligence" attributable to the habeas applicant. *Id.*, at 430–431. So if an applicant's claim went "undeveloped in state court" because of something other than his own neglect—most typically, because of "the prosecution['s] conceal[ment of] the facts"—then §2254(e)(2)'s restriction of evidentiary hearings would not apply. *Id.,* at 434. In that case, the habeas petitioner does not have to meet the section's stringent demands. See *id.,* at 435 ("[O]nly a prisoner who has neglected his rights in state court need satisfy [§2254(e)(2)'s two] conditions"). Even if he cannot do so, he can obtain an evidentiary hearing.

In this case, the Court of Appeals for the Fifth Circuit rejected petitioner Charles Thompson's request for an evidentiary hearing on two claims relating to his capital sentence. See *Thompson* v. *Davis*, 916 F. 3d 444, 458 (2019). Thompson could not get a hearing, the court held, because he alleged errors only in his punishment proceeding. "Even if Thompson were to prevail on th[ose] claim[s]," the court explained, "his guilty verdict would remain untouched." *Ibid.* According to the Fifth Circuit, that meant Thompson could not satisfy §2254(e)(2) because its second condition demands that the applicant's claims refute his guilt.* And so, the court concluded, "the district court did not have discretion to grant [Thompson] a hearing." *Ibid.*

But that analysis skips a critical step. As just explained, §2254(e)(2)'s conditions never come into play if a habeas petitioner has pursued his claim with diligence in state court. And they therefore would not prevent an evidentiary hearing. Yet the Fifth Circuit decision says not a word about the question of diligence. The court did not discuss whether

---

* That issue is itself the subject of a Circuit split. Compare *Thompson*, 916 F. 3d, at 458, with *Thompson* v. *Calderon*, 151 F. 3d 918, 924 (CA9 1998) (en banc).

Thompson "made a reasonable attempt, in light of the information available at the time, to investigate and pursue [his] claims in state court." *Williams*, 529 U. S., at 435. Nor could the court have thought his lack of diligence so clear as to somehow go without saying. Consider that the court, just a few paragraphs earlier, granted a certificate of appealability (COA) on Thompson's two claims even though they were procedurally defaulted. It did so because "jurists of reason could debate" (as the COA standard requires) whether the default resulted not from Thompson's neglect but from the State's concealment of evidence. 916 F. 3d, at 457. That "debatable" question is the same one Thompson's request for a hearing raises. If Thompson's claims went undeveloped in state court not through his own fault, but because "the prosecution concealed the facts," then §2254(e)(2) would drop out of the picture. *Williams*, 529 U. S., at 434. So in failing to address the (concededly debatable) diligence issue, the Fifth Circuit may have wrongly deprived Thompson of an evidentiary hearing.

Still, I do not think this Court's intervention warranted. I doubt that the Fifth Circuit meant to adopt a novel view of §2254(e)(2), in conflict with how this Court has construed the provision and how every other Court of Appeals applies it. See, *e.g., Williams* v. *Jackson*, 964 F. 3d 621, 630–631 (CA7 2020) ("[F]ocusing on the innocence requirement skims over" another issue—that §2254(e)(2) "does not prohibit a hearing where the petitioner's failure to develop the factual basis for his claim was beyond his control"). Indeed, several prior Fifth Circuit decisions have gotten the law right. See, *e.g.*, *Harrison* v. *Quarterman*, 496 F. 3d 419, 428 (2007) (recognizing that §2254(e)(2) "is not operative" if the petitioner was diligent). And assuming the decision below is a one-off misapplication of law, our rules counsel against granting review. See Supreme Court Rule 10 (stating criteria for a writ of certiorari). That course is all the more appropriate here because a later decision in Thompson's

case raises serious questions about whether an evidentiary hearing would have led to granting him relief on the merits. See *Thompson* v. *Davis*, 941 F. 3d 813, 816 (CA5 2019). So, because I doubt the Fifth Circuit will repeat its error, and because that error probably made no difference, I concur in the denial of certiorari.

SUPREME COURT OF THE UNITED STATES

BYRON DAVID SMITH *v.* JEFF TITUS, WARDEN

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

No. 20–633. Decided March 22, 2021

The petition for a writ of certiorari is denied.

JUSTICE SOTOMAYOR, dissenting from denial of certiorari.

Because "the Sixth Amendment right to a public trial extends beyond the actual proof at trial," courts must meet a high standard "before excluding the public from any stage of a criminal trial." *Presley* v. *Georgia*, 558 U. S. 209, 212–213 (2010) (*per curiam*). At Byron Smith's trial, however, the judge cleared all members of the public from the courtroom before issuing a key evidentiary ruling. Even though the judge did not justify the closure in accordance with the dictates of this Court's precedents, the Minnesota Supreme Court found no constitutional error because it concluded that defendants have no public-trial right in so-called administrative proceedings. That ruling was manifestly incorrect. Because the Minnesota Supreme Court's decision contravened clearly established federal law, the Court of Appeals for the Eighth Circuit erred in denying Smith's application for a writ of habeas corpus. I would grant the petition for a writ of certiorari and summarily reverse.[1]

I

In the fall of 2012, Smith was the victim of a series of unsolved burglaries, including one that resulted in the theft of two firearms from his home. On Thanksgiving Day, two people again broke into Smith's house. Smith shot them multiple times at close range, killing them both. Although

[1] Absent summary reversal, the Court should, at the very least, grant certiorari to determine whether the Eighth Circuit's decision can be reconciled with this Court's precedents. If nothing else, Smith's petition makes clear that state and federal courts are in need of further guidance.

Smith apparently did not know it at the time, one of the intruders, Nicholas Brady, may have participated in the earlier burglaries.

A Minnesota grand jury indicted Smith on two counts of first-degree premeditated murder. The case was scheduled for trial, where Smith planned to argue that he used reasonable force in defending himself. During pretrial proceedings, the court ruled that evidence of Brady's involvement in the prior burglaries would be inadmissible at trial. The court reasoned that because Smith did not know or suspect that Brady had ever burglarized his home, that fact was not relevant to Smith's "state of mind at the time of the shooting." Electronic Case Filing in *Smith* v. *Smith*, No. 0:17–cv–00673 (D Minn.), Doc. 2–1, pp. 2, 7 (ECF).

The issue came up again at a pretrial hearing on the parties' motions *in limine*, when Smith proposed to call two witnesses, Jesse Kriesel and Cody Kasper, to testify that they were Brady's accomplices in the prior burglaries.[2] On the first day of Smith's trial, immediately after the deputy court administrator called the case (and before the jury was seated), the court ruled on the admissibility of Kriesel's and Kasper's testimony. Before issuing its ruling, however, the trial judge cleared the courtroom of all public spectators, leaving only the attorneys, court staff, and Smith. See ECF Doc. 12–4, p. 4, Tr. 749. Smith's attorney objected to the courtroom closure, but the court overruled him. See *ibid.* The court then gave its reasons for precluding the witnesses' testimony:

> "[T]he pretrial ruling of the court was that the defense had given notice that it . . . wants to offer testimony from Jesse Kriesel and Cody Kasper about their involvement in prior burglaries which, of course, would have involved Nick Brady as well as a co-perpetrator.

---

[2] Smith also argued that he should be permitted to call Brady's mother to testify about Brady's involvement in the prior burglaries.

> And the court has ruled the defendant will not disclose the names of Kriesel, Kasper or Brady involved in prior burglaries . . . . Disclosure can be made of the relevant facts of prior burglaries, including that they occurred . . . and items taken[, but t]he limitation is in effect because . . . the court . . . finds that the defendant did not know . . . the identity of those who had broken into his home on prior occasions; and, therefore, it would be prejudicial." *Id.*, at 4–5, Tr. 749–750.

The court went on to explain why it had overruled defense counsel's objection to the courtroom closure:

> "And for that reason . . . the court is not allowing the press in for this ruling, because otherwise it could be printed, . . . and then of course it runs the risk of getting to the jury if for some reason they don't adhere to their oath." *Id.*, at 6, Tr. 751.

Smith's attorney requested clarification, asking whether Smith could "call Cody Kasper as a witness and ask [him] about his involvement . . . in these burglaries and who he was with and what he saw." *Ibid.* The court responded: "[A]t this point, no, Cody Kasper would not be testifying to that." *Id.,* at 7, Tr. 752.

Immediately after making its oral ruling from the bench, the trial court posted a written order on the public docket that "reiterate[d] that evidence of prior bad acts by Nicholas Brady . . . , of which [Smith] was unaware at the time of the shooting, shall be inadmissible at trial." ECF Doc. 2–2, p. 1. Because Smith could present evidence that he was the victim of prior burglaries "through the testimony of . . . law enforcement agents," the court found "no need to seek its admission through more prejudicial means (*i.e.,* through the testimony of . . . a perpetrator of the prior break-ins)." *Id.,* at 3. The public order did not mention Kriesel or Kasper by name, nor did it explain that Smith had sought to present their testimony specifically.

The remainder of the trial was open to the public. The jury found Smith guilty of two counts of first-degree murder. The court sentenced him to life without the possibility of release.

On appeal, Smith argued that the court violated his public-trial right when it closed the courtroom to rule on the admissibility of Kriesel's and Kasper's testimony. The Minnesota Supreme Court rejected that argument on the theory that "'administrative' proceedings," including "routine evidentiary rulings," categorically "do not implicate the Sixth Amendment right to a public trial." *State* v. *Smith*, 876 N. W. 2d 310, 329 (2016). The court explained that the trial court's ruling "was administrative in nature" because the discussion covered "an issue of evidentiary boundaries, similar to what would ordinarily and regularly be discussed in chambers or at a sidebar conference." *Id.,* at 330. The court affirmed Smith's convictions. *Id.,* at 336.

Smith applied for a writ of habeas corpus in federal court, but the District Court denied relief,[3] and the Eighth Circuit affirmed. The Eighth Circuit concluded that the Minnesota Supreme Court's decision did not contravene clearly established federal law because this Court has never specifically "addressed whether . . . 'administrative' proceedings . . . implicate the Sixth Amendment right to a public trial." 958 F. 3d 687, 692 (2020). It further determined that the Minnesota Supreme Court did not "unreasonably apply" this Court's precedents, concluding that "[i]t was not objectively unreasonable" to allow the trial court "to explain the parameters of an earlier public order on evidentiary issues in

---

[3] Although the District Court determined that the "highly deferential standard" imposed by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) precluded habeas relief, it expressed serious concerns that the Minnesota Supreme Court's decision "[came] perilously close to satisfying AEDPA's strict standards" and "demonstrate[d] precisely the risk of a slow but steady erosion of constitutional rights." *Smith* v. *Smith*, 2018 WL 3696601, *10, *12 (D Minn., Aug. 3, 2018).

a brief nonpublic proceeding." *Id.*, at 692–693.

II

A

The Sixth Amendment guarantees that criminal defendants "shall enjoy the right to a . . . public trial." U. S. Const., Amdt. 6. To the Framers, secret trials "obviously symbolized a menace to liberty," and the public-trial right provided a necessary "safeguard against any attempt to employ our courts as instruments of persecution." *In re Oliver*, 333 U. S. 257, 269–270 (1948). Of course, the vast majority of judges and jurors would strive to uphold constitutional principles even if criminal proceedings were closed to the public. But "the public-trial guarantee embodies a view of human nature, true as a general rule, that judges, lawyers, witnesses, and jurors will perform their respective functions more responsibly in an open court than in secret proceedings." *Estes* v. *Texas*, 381 U. S. 532, 588 (1965) (Harlan, J., concurring). Indeed, that is why public-trial violations are among the narrow class of "structural defects" that "defy analysis by 'harmless-error' standards." *Arizona* v. *Fulminante*, 499 U. S. 279, 309 (1991).

Despite the importance of the public-trial right, this Court recognized in *Waller* v. *Georgia*, 467 U. S. 39 (1984), that "the right to an open trial may give way in certain cases to other rights or interests, such as the defendant's right to a fair trial or the government's interest in inhibiting disclosure of sensitive information." *Id.,* at 45. But *Waller* cautioned that "[s]uch circumstances will be rare, . . . and the balance of interests must be struck with special care." *Ibid.* To that end, *Waller* announced four requirements that must be satisfied before a trial court may close a courtroom: (1) the closure must "advance an overriding interest that is likely to be prejudiced," (2) the closure must "be no broader than necessary to protect that interest," (3) the court must "consider reasonable alternatives to

closing the proceeding," and (4) the court must "make findings adequate to support the closure." *Id.,* at 48.

Any doubt about the reach of *Waller*'s rule was dispelled by *Presley*. There, this Court reiterated *Waller*'s holding "that the Sixth Amendment right to a public trial extends beyond the actual proof at trial." 558 U. S., at 212. As such, *Waller*'s four-factor test "provide[s] standards for courts to apply before excluding the public from *any stage* of a criminal trial." 558 U. S., at 213 (emphasis added).

B

Waller and *Presley* straightforwardly govern the courtroom closure at issue in this case. During Smith's trial, the court removed all members of the public and media from the courtroom. The court then proceeded to issue an evidentiary ruling that precluded several defense witnesses from testifying.[4] Because the evidentiary ruling issued at what was undoubtedly a "stage of [Smith's] criminal trial," *Presley*, 558 U. S., at 213, and because the court failed to consider, much less satisfy, any of the requirements set forth by *Waller*, the courtroom closure clearly violated Smith's Sixth Amendment right to a public trial.

The Minnesota Supreme Court, however, thought differently. In its view, any proceeding that might be deemed

---

[4] No court—not the Minnesota Supreme Court, not the U. S. District Court, and not the Eighth Circuit—has suggested that the trial court's conjecture that the jurors might fail to "adhere to their oath," ECF Doc. 12–4, p. 6, Tr. 751, was sufficient to satisfy *Waller*'s four-factor test. It plainly was not. See 2018 WL 3696601, *11 ("Th[is] Court has little difficulty concluding that the trial court's sua sponte closure during Smith's trial fails the *Waller* test"); *State* v. *Smith*, 876 N. W. 2d 310, 341 (Minn. 2016) (Stras, J., concurring) ("If we were to apply the *Waller* factors to the courtroom closure in this case, there is little doubt that the closure would fail them"). Indeed, the State made no objection to the Federal Magistrate Judge's conclusion that "the trial court's closure would be unconstitutional under *Waller*." 2018 WL 3696601, *10.

"administrative in nature"—including "scheduling," "routine evidentiary rulings," and "matters traditionally addressed during private bench conferences or conferences in chambers"—fall outside the Sixth Amendment's protection entirely. *Smith*, 876 N. W. 2d, at 329–330. This novel exception sharply departs from this Court's precedents.

The Minnesota Supreme Court reasoned that courtroom closures during "administrative exchanges" "'do not hinder the objectives which the Court in *Waller* observed were fostered by public trials'" because such exchanges "'ordinarily relate to the application of legal principles to admitted or assumed facts so that no fact finding function is implicated.'" *Id.,* at 329 (quoting *United States* v. *Norris*, 780 F. 2d 1207, 1210 (CA5 1986)). But even if *Waller* could be read to apply only to factfinding proceedings (a dubious assertion), *Presley* plainly cannot. *Presley* held that "the Sixth Amendment right to a public trial extends to the *voir dire* of prospective jurors." 558 U. S., at 213. Jury selection hardly implicates a court's "fact finding function." That does not matter, of course, because "the Sixth Amendment right to a public trial extends beyond the actual proof at trial" to "any stage of a criminal trial." *Id.,* at 212–213. Indeed, it is telling that, to support its distinction between factfinding and law-application proceedings, the Minnesota Supreme Court primarily relied upon a case that predates *Presley* by almost 25 years. See *Smith*, 876 N. W. 2d, at 329 (citing *Norris*, 780 F. 2d, at 1210).

The Minnesota Supreme Court also relied on the fact that the closed-courtroom ruling at issue here was "an outgrowth of two previous public hearings" in which "the court explain[ed] the parameters of its . . . written decision." *Smith*, 876 N. W. 2d, at 330. The court thus implied that an unconstitutional courtroom closure can be cured by contemporaneous publication of the substance of the closed

proceedings.[5] That premise is false, as *Waller* made abundantly clear: Even though "the transcript of the [closed] suppression hearing was released to the public" in *Waller*, this Court nevertheless found that the defendant's Sixth Amendment right to a public trial had been violated. 467 U. S., at 43, 48.

That conclusion makes perfect sense in light of the origins and purposes of the Sixth Amendment public-trial right. "'The requirement of a public trial is for the benefit of the accused; that the public may see he is fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions.'" *In re Oliver*, 333 U. S., at 270, n. 25 (quoting 1 T. Cooley, Constitutional Limitations 647 (8th ed. 1927)). A written order is no substitute for a live proceeding, especially when the order has been curated by the same court that concealed its ruling from public view. "People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing." *Richmond Newspapers, Inc.* v. *Virginia*, 448 U. S. 555, 572 (1980) (plurality opinion).

Finally, the Minnesota Supreme Court drew an analogy between the closed proceeding in Smith's case and sidebar-like proceedings such as "private bench conferences or conferences in chambers." *Smith*, 876 N. W. 2d, at 329. That analogy is inapt. Sidebars smooth the flow of trial by allowing the court to have succinct, private discussions with counsel without having to remove the jury each time such a

---

[5] The trial court's order was not, in any event, a contemporaneous and complete record of the closed proceedings. As explained by the trial court, the very purpose of the courtroom closure was to shield certain information about Kriesel's and Kasper's proposed testimony from public disclosure. See ECF Doc. 12–4, at 6, Tr. 751.

conversation is necessary.[6] When sidebar discussions become too lengthy or too contentious, judges commonly excuse the jury and discuss the matter in open court. Sidebars are thus tools of expediency for the benefit of all parties to which, generally speaking, no party objects. In Smith's case, by contrast, the court closed the courtroom before the jury was even seated (and over Smith's objection), not to facilitate trial efficiency but for the stated purpose of concealing information from the public. Thus shielded from public view, the court proceeded to exclude the testimony of witnesses Smith thought critical to his self-defense theory. Therefore, even accepting the Minnesota Supreme Court's view that some classes of sidebar-like exchanges do not constitute part of "any stage of a criminal trial," *Presley*, 558 U. S., at 213, the trial court's ruling here was no sidebar.[7] The courtroom closure was therefore improper.

C

Where, as here, a habeas applicant's claim of legal error "was adjudicated on the merits in State court proceedings," AEDPA permits a federal court to grant habeas relief only if the state court's decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court." 28 U. S. C. §2254(d)(1). A state court's decision is "contrary to . . . clearly established precedent if the state court applies a rule that contradicts the governing law set forth in [this

---

[6] Notably, although sidebars happen out of the jury's earshot, they occur within full view of the public and the jurors. See, *e.g.*, *State* v. *Morales*, 2019 ND 206, ¶17, 932 N. W. 2d 106, 114 ("Where a bench conference is held in view of both the public and the jury, despite their inability to hear what is said, the public trial right is satisfied by prompt availability of a record of those proceedings").

[7] The analogy to an in-chambers conference is even more strained. Even assuming that certain matters related to a criminal trial may be resolved in the privacy of the judge's chambers, an evidentiary ruling on a motion *in limine* is wholly inappropriate to that setting.

Court's] cases." *Williams* v. *Taylor*, 529 U. S. 362, 405 (2000).

As explained above, the Minnesota Supreme Court's decision directly contradicted *Waller* and *Presley*. The court concluded that the trial court was not required to justify the courtroom closure because the public-trial right does not extend to proceedings that are "administrative in nature." *Smith*, 876 N. W. 2d, at 330. This Court, however, has held that "the Sixth Amendment's right to a public trial extends beyond the actual proof at trial," *Presley*, 558 U. S., at 212, and that "*Waller* provide[s] standards for courts to apply before excluding the public from *any stage* of a criminal trial," *id.,* at 213 (emphasis added). This Court has never suggested that the Sixth Amendment might countenance an exception for so-called administrative proceedings, much less that such an exception would extend to an important evidentiary ruling excluding testimony from multiple defense witnesses. The Minnesota Supreme Court's refusal to apply the *Waller* factors thus contravenes this Court's clear precedent.

The Eighth Circuit avoided this conclusion by artificially cabining *Waller* and *Presley* to their facts. In *Waller*, this Court found that the defendant's public-trial right was violated when the courtroom was closed during a suppression hearing; in *Presley*, the Court held the same when the courtroom was closed during jury *voir dire*. See *Waller*, 467 U. S., at 47; *Presley*, 558 U. S., at 213. In the Eighth Circuit's assessment, the only "'clearly established Federal law' under AEDPA" is that courtrooms may not be unjustifiably closed during "suppression hearings and jury selection proceedings, respectively." 958 F. 3d, at 692. Everything else in *Waller* and *Presley* is, according to the Eighth Circuit, mere "dicta." 958 F. 3d, at 692 (emphasis deleted).

The Eighth Circuit's cramped view of precedent is untenable. "When an opinion issues for the Court, it is not only the result but also those portions of the opinion necessary

to that result by which [courts] are bound." *Seminole Tribe of Fla.* v. *Florida*, 517 U. S. 44, 67 (1996). Lower courts must abide not only by the outcomes of *Waller* and *Presley* (*i.e.,* that the public-trial right extends to suppression hearings and *voir dire* proceedings) but also by the "rationale upon which the Court based [those] results," 517 U. S., at 66–67, (*i.e.,* that the public-trial right extends to any stage of a criminal trial). When this Court announces a legal principle and applies it to a particular factual situation, it is the legal principle itself, not the factual outcome, that becomes clearly established federal law.

The Eighth Circuit's interpretation of "dicta," moreover, contravenes both the terms of AEDPA itself and simple logic. Take this Court's explanation that, under AEDPA, a state-court decision is "contrary to . . . clearly established federal law" in either of two circumstances: "if the state court arrives at a conclusion opposite to that reached by this Court on a question of law *or* if the state court decides a case differently than this Court has on a set of materially indistinguishable facts." *Williams*, 529 U. S., at 413 (emphasis added). The Eighth Circuit's understanding of what constitutes dicta would collapse this disjunctive list into the same test. If the only "holdings" of this Court are fact-bound outcomes, then "a conclusion . . . reached by this Court on a question of law" and a decision of this Court "on a set of materially indistinguishable facts" would be one and the same.[8] Imagine, too, how a state-court defendant

---

[8] With respect to AEDPA's unreasonable-application prong, the Court has likewise cautioned lower federal courts against limiting the scope of "clearly established Federal law" to factually identical circumstances. See *Panetti* v. *Quarterman*, 551 U. S. 930, 953 (2007) (AEDPA does not "prohibit a federal court from finding an application of a principle unreasonable when it involves a set of facts 'different from those of the case in which the principle was announced'"); *White* v. *Woodall*, 572 U. S. 415, 427 (2014) (AEDPA does not "requir[e] an '"identical factual pattern before a legal rule must be applied,"'" and "state courts must reasonably apply the rules 'squarely established' by this Court's holdings to the facts

would fare under the Eighth Circuit's test if the courtroom were closed during nearly all phases of his trial—from opening arguments, to witness testimony and cross-examination, to closing arguments, to jury instructions and the reading of the verdict. By the Eighth Circuit's logic, so long as the courtroom remained open during jury selection (as required by *Presley*) and any suppression hearings (as required by *Waller*), the state court would not have run afoul of any clearly established federal law. The absurdity of this result speaks for itself.

In the end, the Eighth Circuit erred in asserting that "[n]either [*Waller* nor *Presley*] addressed whether a defendant enjoys a Sixth Amendment right to public 'administrative' proceedings of the type involved in this case." 958 F. 3d, at 692. Those cases unequivocally hold that courtrooms may not be closed (absent sufficient justification) during any phase of a criminal proceeding. It does not matter whether those proceedings are purportedly "administrative" or substantive, or whether they are focused on resolving questions of law or fact. Because the Minnesota Supreme Court's decision was contrary to *Waller* and *Presley*, the Eighth Circuit erred by affirming the denial of Smith's application for habeas relief.

* * *

Today's decision denying Smith's request for plenary review is the last in a long series of misguided rulings. First, the Minnesota trial court violated the Sixth Amendment by closing the courtroom without adequate justification. Next, the Minnesota Supreme Court wrongly exempted the closed proceeding from the Sixth Amendment entirely, relying on a brand new administrative-proceeding exception that finds no basis in the Constitution or this Court's precedent. Then, by creatively redefining the meaning of "dicta," the

---

of each case").

Eighth Circuit erroneously concluded that the Minnesota Supreme Court's decision was not contrary to clearly established Supreme Court precedent. And today, this Court misses the opportunity to correct these compounding injustices.

In reviewing Smith's habeas petition, the U. S. District Court for the District of Minnesota observed that "[t]he closure during Smith's trial is part of a broader and disturbing trend" in Minnesota, whose "courts are restricting public access to criminal trials more frequently and with greater severity." *Smith* v. *Smith*, 2018 WL 3696601, *11 (Aug. 3, 2018). Justices of the Minnesota Supreme Court, too, have expressed alarm about "'creeping courtroom closure'" in Minnesota trial courts. *State* v. *Silvernail*, 831 N. W. 2d 594, 609 (2013) (Anderson, J., dissenting); see also *State* v. *Brown*, 815 N. W. 2d 609, 624, 626 (2012) (Meyer, J., dissenting) (discussing the Minnesota Supreme Court's exception for "trivial" closures). I share these jurists' well-founded concerns, and I regret this Court's refusal to provide much needed guidance to the lower courts. I would grant Smith's petition for a writ of certiorari and summarily reverse the judgment of the Eighth Circuit.