

(ORDER LIST: 596 U.S.)

MONDAY, MAY 23, 2022

**ORDERS IN PENDING CASES**

21M115 COOKS, PETER V. CONTRA COSTA COUNTY, CA

21M116 AKARD, JEFFREY E. V. McDONOUGH, SEC. OF VA

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

21M117 McCOY, ARCHIE V. HI DEPT. OF HUMAN SERV., ET AL.

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

21M118 POWELL, TREMAYNE A. V. BISCUITVILLE, INC.

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

21M119 IN RE JOHN M. LEE

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

21-7421 JOLLY, LINDA V. WHITE, CARMELITA, ET AL.

The motion of petitioner for leave to proceed *in forma pauperis* is denied. Petitioner is allowed until June 13, 2022, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

**CERTIORARI DENIED**

21-11 ERITSIAN, ARMAN V. GARLAND, ATT'Y GEN.

21-557 BAHENA-BRITO, ALFREDO V. GARLAND, ATT'Y GEN.

21-596 ITECH U. S., INC. V. JADDOU, UR M.

21-791 EDGAR, TIMOTHY H., ET AL. V. HAINES, AVRIL D., ET AL.

21-817 LEON-LEON, JESUS H. V. GARLAND, ATT'Y GEN.

21-1003 F. F., ET AL. V. NEW YORK, ET AL.

21-1257 EVANS, BRIAN K. V. MARVIN, RONALD A., ET AL.

21-1260 PAKEYBEY, KENDI N. V. LUMINANT MINING CO.

21-1266 TALASEK, ERICA V. NATIONAL OILWELL VARCO, L.P.

21-1277 O'NEAL, DAVID A. V. CRAWFORD COUNTY, GA

21-1278 WRIGHT, JUDY V. MAY 27, 2011 ORDER, ET AL.

21-1290 FERRARI, JOSEPH V. UNITED STATES, ET AL.

21-1294 PENNY, DAVID H. V. PELOSI, NANCY, ET AL.

21-1302 DAWSON, KARLENA V. GARLAND, ATT'Y GEN.

21-1308 ROBERTSON, J. M. V. LARKSPUR COURTS, ET AL.

21-1309 MEIGS, WENDY V. ZUCKER, TODD, ET AL.

21-1348 BARBER, CLAUDIA A. V. DC COMM'N ON SELECTION

21-1362 GRAY, TIMOTHY V. WHITE, CRAIG, ET AL.

21-1385 ROBINSON, CAROLYN D. V. WALMART STORES EAST, LP

21-6594 HALD, JAMES A., ET AL. V. UNITED STATES

21-7039 SASSER, ANDREW V. PAYNE, DIR., AR DOC

21-7116 ACEVEDO, VICTOR A. V. UNITED STATES

21-7395 ZOGRAFIDIS, KONSTANTINOS V. UNITED STATES

21-7396 NGUYEN, HUNG M. V. YOLO CTY. DIST. ATTY.

21-7400 STRICKLIN, DERRICK U. V. NEBRASKA

21-7402 BIBBS, BRANDON L. V. BARNES, SHERIFF

21-7417 DAVIS, JAMES R. V. MORLEDGE, JUDGE, ET AL.

21-7426 SPEARS, ERIC J. V. CROW, DIR., OK DOC

21-7439 JOHNSON, CURTIS H. V. BENTON, PAUL

21-7489 VASQUEZ, RAUL R. V. FLORIDA

21-7503 VICTORINO-TISTA, LUCAS V. UNITED STATES

21-7508 GREENE, DRAVEN V. UNITED STATES

21-7513 CARVALHO, JONATHAN V. KENNEWAY, SUPT., SHIRLEY

21-7514 CLARK, SIDNEY J. V. KANSAS  
21-7546 EDDINGTON, RONALD S. V. TEWALT, DIR., ID DOC  
21-7566 JOHNSTON, ANDREW J. V. DEVRIES, JOHN  
21-7655 COMMITTE, BRUCE V. GENTRY, VICKIE  
21-7718 WINGER, MARK A. V. ILLINOIS  
21-7731 BELL, ALONZO V. ILLINOIS

The petitions for writs of certiorari are denied.

21-1021 PAYNE, DIR., AR DOC V. JACKSON, ALVIN B.

The motion of respondent for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is denied.

21-7422 WEST-EL, EDWARD S. V. IRS, ET AL.

21-7425 JOHNSON, JABARI J. V. GENTZLER, PATRICK, ET AL.

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

21-7436 LOGGINS, KEVIN D. V. ZMUDA, SEC., KS DOC, 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. Justice Gorsuch took no part in the consideration or decision of this motion and this petition.

#### **REHEARINGS DENIED**

21-515 KIM, ASHLEY Y. V. TRAN, HUONG, ET AL.

21-988 CRAWFORD, MARLA V. HENRICO CTY. PUBLIC SCH., ET AL.

21-1050 KOGER, FREDERICK S., ET AL. V. RICHARDSON, JUDGE, ET AL.

21-1101 NOWICKI, ALLAN J. V. TINICUM TOWNSHIP, ET AL.

21-1203 IN RE ROGER ROWE

21-6134 ROSALES, VICTOR V. LUMPKIN, DIR., TX DCJ

21-6414 MARIETTA, CHARLES W. V. LoBUE, LEANNE, ET AL.  
21-6837 RAGIN, JOHN M. V. CIRCUIT COURT OF VA  
21-6913 LITTLEJOHN, TIMOTHY D. V. BOWMAN, SGT., ET AL.  
21-7050 COZZI, GUY V. NY WORKERS' COMP. BD., ET AL.  
21-7077 KURKJIAN, CATHERINE V. WORMUTH, SEC. OF ARMY  
21-7125 KAETZ, WILLIAM F. V. UNITED STATES

The petitions for rehearing are denied.

Statement of BREYER, J.

**SUPREME COURT OF THE UNITED STATES**

JOE CLARENCE SMITH, JR. *v.* DAVID SHINN,  
DIRECTOR, ARIZONA DEPARTMENT OF  
CORRECTIONS, REHABILITATION  
AND REENTRY, ET AL.

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

No. 21–1268. Decided May 23, 2022

The petition for a writ of certiorari is denied.

Statement of JUSTICE BREYER respecting the denial of certiorari.

Joe Clarence Smith was first sentenced to death in 1977, more than 44 years ago. Pet. for Cert. 2. The Arizona Supreme Court vacated that sentence as unconstitutional and remanded for resentencing in 1979. *Id.*, at 3; App. to Pet. for Cert. 9. On remand, Smith was sentenced to death a second time. *Ibid.* Twenty years later in 1999, the Ninth Circuit vacated Smith’s second death sentence, again on constitutional grounds. *Smith v. Stewart*, 189 F. 3d 1004. Smith was then resentenced to death a third time in 2004. App. to Pet. for Cert. 10.

In 2007, 30 years after Smith was first sentenced to death, he petitioned this Court to review the constitutionality of his death sentence. He argued that it would be cruel and unusual to execute him after such a lengthy delay. The Court denied certiorari, and I dissented because I believed that Smith could “reasonably claim that his execution at this late date would be ‘unusual’ . . . particularly when much of the delay at issue seems due to constitutionally defective sentencing proceedings.” *Smith v. Arizona*, 552 U. S. 985, 986 (2007). In 2017, Smith again petitioned for certiorari on the same issue, and the Court again denied his petition. I wrote again to express my continued concern

Statement of BREYER, J.

that the length of time Smith had spent on death row raised serious constitutional questions. But I recognized that procedural obstacles (which had not been present in his first petition for certiorari 10 years earlier) now made it difficult for the Court to grant certiorari on that question. *Smith v. Ryan*, 581 U. S. \_\_\_, \_\_\_ (2017) (statement respecting denial of certiorari) (slip op., at 2).

Smith’s case is now before us for the third time. By now, more than 44 years have passed since his first death sentence. Pet. for Cert. 2. And he “has spent almost all of [that] time” in solitary confinement, “alone in a cell that . . . measures 86.4 square feet, or roughly the size of a compact parking space.” *Id.*, at 3–4 (footnote omitted). Smith tells us that only four other prisoners in all of the United States have been on death row longer than he has. *Id.*, at 4–5, and n. 2.

We have said that the uncertainty of waiting in prison under threat of execution for just four weeks is “one of the most horrible feelings to which [a person] can be subjected.” *In re Medley*, 134 U. S. 160, 172 (1890). On top of that, “[y]ears on end of near-total isolation exact a terrible price.” *Davis v. Ayala*, 576 U. S. 257, 289 (2015) (Kennedy, J., concurring). Smith has been subjected to those conditions, not for four weeks, but for *four decades*. While I recognize, as I did in 2017, that procedural obstacles make it difficult for us to grant certiorari here, I continue to believe that the excessive length of time that Smith and others have spent on death row awaiting execution raises serious doubts about the constitutionality of the death penalty as it is currently administered. See *Glossip v. Gross*, 576 U. S. 863, 908 (2015) (dissenting opinion); see also, *e.g.*, *Buntion v. Lumpkin*, 596 U. S. \_\_\_ (2022) (statement respecting denial of application for stay); *Hamm v. Dunn*, 583 U. S. \_\_\_ (2018) (statement respecting denial of application for stay and denial of certiorari).