

(ORDER LIST: 580 U.S.)

TUESDAY, FEBRUARY 21, 2017

**CERTIORARI -- SUMMARY DISPOSITION**

16-578 BISHOP, PAUL, ET AL. V. WELLS FARGO & CO., ET AL.

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 Second Circuit for further consideration in light of *Universal Health Services, Inc. v. United States ex rel. Escobar*, 579 U. S. \_\_\_\_ (2016).

**ORDERS IN PENDING CASES**

16A632 FISCH, ABRAHAM M. V. UNITED STATES

The application for stay addressed to Justice Kagan and referred to the Court is denied.

16A716 ARZU-SUAZO, RICARDO V. JOHNSON, SEC. OF HOMELAND SEC.

The application for injunctive relief addressed to Justice Sotomayor and referred to the Court is denied.

16M76 SMITH, STEPHENSON L. V. JACKSON, THEODORE

16M77 SALATA, CHRISTIE L. V. FULTON, ELIZABETH, ET AL.

16M78 ADAMS, CHARLES D., ET UX. V. CIR

16M79 GRIFFIN, MORRIS F. V. ADAMS, CHARLES D., ET AL.

16M80 SMITH, SCWYANA V. HOUSTON INDEPENDENT SCH. DIST.

16M81 FARLEY, AARON G. V. JOHNSON, WARDEN

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

16M82 ORTIZ, MARITZA V. JIMENEZ-SANCHEZ, NYDIA, ET AL.

The motion of petitioner for leave to proceed *in forma pauperis* with the declaration of indigency under seal is denied.

16M83 BLOCKER, COREY D. V. KELLEY, ELIZABETH, ET AL.

16M84 BLOCKER, COREY D. V. NASHVILLE RESCUE MISSION

The motions to direct the Clerk to file petitions for writs of certiorari out of time under Rule 14.5 are denied.

16M85 ROUSER, WILLIAM V. CALIFORNIA

16M86 HELVEY, ANGELA E. V. THOMPSON, KENNETH R.

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

142, ORIG. FLORIDA V. GEORGIA

The motion of the Special Master for allowance of fees and disbursements is granted, and the Special Master is awarded a total of \$213,547.35 for the period September 1, 2016, through December 31, 2016, to be paid equally by the parties.

15-214 MURR, JOSEPH P., ET AL. V. WISCONSIN, ET AL.

The motion of Nevada, et al. for leave to participate in oral argument as *amici curiae* and for divided argument is denied.

15-1039 ) SANDOZ INC. V. AMGEN INC., ET AL.

)  
15-1195 ) AMGEN INC., ET AL. V. SANDOZ INC.

The motion of the parties to dispense with printing the joint appendix is granted.

15-1503 ) TURNER, CHARLES S., ET AL. V. UNITED STATES

)  
15-1504 ) OVERTON, RUSSELL L. V. UNITED STATES

The motion of the parties to deem the court of appeals' joint appendix as supplemental volumes to the joint appendix filed with this Court is granted.

16-299 NAT'L ASS'N OF MANUFACTURERS V. DEPT. OF DEFENSE, ET AL.

The motion of petitioner to dispense with printing the joint appendix is granted.

16-529 KOKESH, CHARLES R. V. SEC

The motion of petitioner to dispense with printing the joint appendix is granted.

16-6179 CORRION, JOHN V. BERGH, WARDEN

16-6268 CARBAJAL, DEAN V. WELLS FARGO BANK, ET AL.

16-6806 WEST, DAVID V. CIR

16-6845 ADAMS, CHARLES D. V. MSPB, ET AL.

The motions of petitioners for reconsideration of orders denying leave to proceed *in forma pauperis* are denied.

16-7022 NOBLE, THOMAS E. V. VAUGHN, WARDEN, ET AL.

16-7069 ADKINS, DORA L. V. WHOLE FOODS MARKET GROUP, INC.

16-7155 SAMPLE, LEAH B. V. JPMORGAN CHASE BANK

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until March 14, 2017, 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.

16-7157 NOBLE, THOMAS E. V. USDC D DE

The motion of petitioner for leave to proceed *in forma pauperis* is denied. Petitioner is allowed until March 14, 2017, 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. Justice Alito took no part in the consideration or decision of this motion.

16-7269 BILLER, CLEVELAND V. TRIPLETT, JEFFERSON L., ET AL.

16-7278 MUA, JOSEPHAT, ET UX. V. CA CASUALTY EXCHANGE  
16-7281 UPADHYAY, VANDANA V. AETNA LIFE INSURANCE CO.  
16-7325 SOLIZ, PABLO V. TEXAS

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until March 14, 2017, 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.

16-7390 BAHREL, SANJAYA V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* is denied. Petitioner is allowed until March 14, 2017, 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. Justice Sotomayor took no part in the consideration or decision of this motion.

**CERTIORARI GRANTED**

16-424 CLASS, RODNEY V. UNITED STATES

The petition for a writ of certiorari is granted.

**CERTIORARI DENIED**

16-199 DENELSBECK, JAMES R. V. NEW JERSEY  
16-255 BISHWAKARMA, DAB B. V. SESSIONS, ATT'Y GEN.  
16-279 NEWSPAPER AND MAIL DELIVERERS' V. NLRB  
16-312 BANCO BILBAO VIZCAYA ARGENTARIA V. VERA, ALDO, ET AL.  
16-326 WILSON, RASHIA V. UNITED STATES  
16-364 ) BLACKMAN, JOSHUA V. GASCHO, AMBER, ET AL.  
          )  
16-383 ) ZIK, ROBERT J., ET AL. V. GASCHO, AMBER, ET AL.  
16-384 LEFT FIELD MEDIA LLC V. CHICAGO, IL, ET AL.  
16-470 BOSTON SCIENTIFIC CORP., ET AL. V. MIROWSKI FAMILY VENTURES, LLC

16-496 BIG BABOON, INC. V. LEE, MICHELLE K., ET AL.

16-497 SMITH, MARTIN V. IRS

16-513 TRASK, DONNA, ET AL. V. SHULKIN, SEC. OF VA

16-535 HUSE, HAYDEN V. TEXAS

16-544 VICINAY CADENAS, S.A. V. PETOBRAS AMERICA, INC., ET AL.

16-562 RINEHART, ALEX E., ET AL. V. LEHMAN BROTHERS HOLDINGS, INC.

16-567 AMERICAN BUSINESS USA CORP. V. FL DEPT. OF REVENUE

16-589 MORVA, WILLIAM C. V. ZOOK, WARDEN

16-613 TRUE THE VOTE, INC. V. LERNER, LOIS, ET AL.

16-619 WHITE, DAVID V. CONDUCT, NEWTON

16-620 CZECH REPUBLIC V. DIAG HUMAN S.E.

16-628 SEAHORN INVESTMENTS V. GOODMAN MANUFACTURING, ET AL.

16-632 HUTTO, GAIL M., ET AL. V. SC RETIREMENT SYSTEM, ET AL.

16-635 AM. FREEDOM LAW CENTER, ET AL. V. OBAMA, PRESIDENT OF U.S., ET AL.

16-674 HANSON, DIANE C. V. MEADOWS, GARY D.

16-680 PERKINS, WESLEY V. TEXAS

16-681 MCKAY, MARTIN S. V. GOINS, MARK, ET AL.

16-682 JENKINS, ELIZABETH V. GRANT THORNTON LLP, ET AL.

16-693 HARE, ROBERT R. V. NEUFELD, KATHRYN S.

16-694 UNITED STATES, EX REL. GAGE V. DAVIS S. R. AVIATION, ET AL.

16-695 ) MOLINA, STEVEN V. CALIFORNIA

16-7065 ) ) MCGUIRE, DAVID A. V. CALIFORNIA

16-711 OHIO V. HAND, ADRIAN L.

16-714 TAVARES, CHARLES V. BRICKELL COMMERCE PLAZA, ET AL.

16-718 ASAP SERVICES, INC., ET AL. V. COURT OF APPEAL OF CA, ET AL.

16-726 COHAN, GREGORY P. V. UNITED STATES

16-728 FAJARDO, DENNIS G. V. SESSIONS, ATT'Y GEN.

16-731 CAROLINAS ELEC. WKRS., ET AL. V. ZENITH AMERICAN SOLUTIONS, INC.

16-732 BUSTOS-CAMERO, HELMER N., ET AL. V. SESSIONS, ATT'Y GEN.  
16-734 CASTRO, ROBERT J. V. INDYMAC INDX MORTGAGE, ET AL.  
16-735 U.S., EX REL. LEE, ET AL. V. ERNST & YOUNG, ET AL.  
16-737 ELLIS, MELVIN C. V. TEXAS, ET AL.  
16-741 MAHDI, MIKAL D. V. SOUTH CAROLINA  
16-746 ADEMA, WAYNE P. V. DELL, LAURA A.  
16-747 BECTON, MARIE A. V. COLVIN, ACTING COMM'R, SSA  
16-748 BROWN, KENNETH M. V. TEXAS  
16-750 BACHARACH, KAREN V. SUNTRUST MORTGAGE, INC.  
16-752 NEWKIRK, CATHERINE B. V. CVS CAREMARK, ET AL.  
16-756 SUN, XIU J. V. UNITED STATES  
16-760 ENGLISH, MARILYNN V. BANK OF AMERICA, ET AL.  
16-763 KE KAILANI DEVELOPMENT, ET AL. V. KE KAILANI PARTNERS, ET AL.  
16-767 WILLIAMS, MICHAEL V. EPA, ET AL.  
16-769 FRENCH, MICHAEL J. V. NH INSURANCE CO.  
16-770 LOPEZ, PEDRO, ET AL. V. LAWRENCE, MA, ET AL.  
16-772 CHIROPRACTORS UNITED V. BESHEAR, ATT'Y GEN. OF KY  
16-774 MI CANNABIS LAW REFORM COMM. V. JOHNSON, RUTH, ET AL.  
16-777 FIRST MARBLEHEAD CORP., ET AL. V. HEFFERNAN, MA COMM'R OF REVENUE  
16-779 MARZETT, ROBERT E. V. TEXAS  
16-781 SARVIS, ROBERT C. V. ALCORN, JAMES B., ET AL.  
16-782 SANGSTER, LUMSDEN A. V. HALL, JAMES, ET AL.  
16-783 SCRIP, DAVID V. SENECA, DEBBIE O., ET AL.  
16-785 CLABAUGH, JUNE V. GRANT, JERRY  
16-788 ROUSE, AMBROSIO V. DEVLIN'S POINTE APARTMENTS  
16-794 SIMS, BARBARA V. MURPHY, TIM, ET AL.  
16-802 LEE, SOOK H. V. KIM, JONATHAN, ET AL.  
16-803 KELLY-BROWN, SIMONE, ET AL. V. WINFREY, OPRAH, ET AL.

16-804 STEVEN M. JOHNSON, P.C., ET AL. V. PLAINTIFFS' ADVISORY COMMITTEE  
16-817 HAMDAD, MOHAMED A. V. BUREAU OF OCCUPATIONAL AFFAIRS  
16-818 GAMCO INVESTORS, INC., ET AL. V. VIVENDI UNIVERSAL, S.A., ET AL.  
16-819 POBUDA, LAURA J. V. WELCH, FRANCES, ET AL.  
16-822 MILLER, LYNDON F. V. UNITED STATES  
16-829 RIZZO, VINCENT V. ILLINOIS  
16-835 ROBOL, RICHARD T. V. DISPATCH PRINTING CO.  
16-838 KIORKIS, PAUL V. ILLINOIS  
16-839 COPELAND, BRUCE V. STATE FARM INSURANCE CO., ET AL.  
16-842 WALSH, RORY M. V. SHULKIN, SEC. OF VA  
16-844 FRIEDMAN, WILBUR H., ET UX. V. COMPTROLLER OF THE TREASURY  
16-855 WILLIAMS, SYLVESTER V. USPS  
16-856 LORD, RYAN V. HIGH VOLTAGE SOFTWARE, INC.  
16-859 IPLEARN-FOCUS V. MICROSOFT CORP.  
16-861 TURNER, MARY A. V. U.S. CAPITOL POLICE  
16-870 DOUBT, TERRY V. NCR CORP.  
16-871 EILAND, DAPHNE F., ET AL. V. ANDERSON, ELOISE, ET AL.  
16-872 HALLORAN, DANIEL J. V. UNITED STATES  
16-873 HAN, YOOSUN V. EMORY UNIVERSITY  
16-882 WILLIAMSON, CLARENCE V. UNITED STATES  
16-892 NANOVAPOUR FUELS GROUP, ET AL. V. VAPOUR POINT, ET AL.  
16-893 PRATT, ERONY V. HARRIS COUNTY, ET AL.  
16-904 HABETLER, ANNA V. PRICE, SEC. OF H&HS  
16-922 BELMONT, JEFFREY V. UNITED STATES  
16-5631 ESTRADA, JUAN J. V. UNITED STATES  
16-5682 ALLEN, ROBERT E. V. BACA, WARDEN, ET AL.  
16-5769 WHITFIELD, ROBERT L. V. UNITED STATES  
16-5777 RUDD, MICHAEL V. PENNSYLVANIA

16-5804 ROBERTSON, KEITH V. CIR  
16-5891 LOCKHART, COLE C. V. TEXAS  
16-5927 BUTLER, REGINALD V. MURPHY, SUPT., OLD COLONY  
16-6080 CARABALLO-RODRIGUEZ, RICHARD V. UNITED STATES  
16-6133 MULLET, SAMUEL, ET AL. V. UNITED STATES  
16-6264 SHELTON, WILLIAM L. V. LEE, WARDEN  
16-6489 LAVE, JOSEPH R. V. DAVIS, DIR., TX DCJ  
16-6622 SEGUNDO, JUAN R. V. DAVIS, DIR., TX DCJ  
16-6813 MOSTAGHIM, CAMERON V. STATE BAR OF CA  
16-6856 WANG, LISHAN V. CONNECTICUT  
16-6887 TILLEY, THOMAS E. V. UNITED STATES  
16-6903 JORDAN, RICHARD, ET AL. V. FISHER, COMM'R, MS DOC, ET AL.  
16-6908 GUZEK, RANDY L. V. OREGON  
16-6922 SMITH, FRANKLIN C. V. DuBOISE, DUSTIN, ET AL.  
16-6927 MOFFIT, KELVIN D. V. MICHIGAN  
16-6930 VELAZQUEZ, ALEJANDRO V. VIRGIN ISLANDS  
16-6932 WIGGINS, TAVARENCE R. V. FLORIDA  
16-6941 TU, AN T. V. CIRCUIT COURT OF MD, ET AL.  
16-6944 MILLER, ULYSSES G. V. ARNOLD, ACTING WARDEN  
16-6952 BELTON, VERNON L. V. DAVEY, WARDEN  
16-6957 RODRIGUEZ, ALBERTO V. TEXAS  
16-6972 GALLUZZO, MICHAEL A. V. SAINT PARIS, OH  
16-6976 BARANY, DAVID V. INDIANA  
16-6984 LLOYD, WENDELL D. V. LOCKLEAR, SUPT., NEW HANOVER  
16-6987 ADAMIS, NIKOLAOS V. LAMPROPOULOU, FOTINI  
16-6991 GRAYS, ANTOINE C. V. CALIFORNIA  
16-6992 GRAY, DARREN K. V. MARYLAND  
16-6993 RABB, DAMEN V. SHERMAN, WARDEN



16-6996 WEAVER, HOWARD C. V. MONTGOMERY, ACTING WARDEN  
16-6999 DOLCE, KENEL V. JONES, SEC., FL DOC, ET AL.  
16-7000 TU, AN T. V. LEITH, RICK, ET AL.  
16-7001 SEALED V. SEALED  
16-7002 LACK, DAVID J. V. CALIFORNIA  
16-7012 WOODS, DIMETRIOUS L. V. NORMAN, WARDEN  
16-7016 RODRIGUEZ, JORGE V. FLORIDA  
16-7019 ELBERT, RICHARD M. V. KANSAS CITY, MO, ET AL.  
16-7020 PATTERSON, LAWRENCE W. V. FLORIDA  
16-7023 LOPEZ, JOSE P. V. TEXAS  
16-7028 SATTERFIELD, NATHANIEL V. BENEFICIAL FINANCIAL I INC.  
16-7034 MCKINNEY, EDWARD R. V. WOFFORD, WARDEN  
16-7035 BRACKETT, ROBERT B. V. IDAHO  
16-7036 BIRDSONG, DOMONICK T. V. CALIFORNIA  
16-7037 MIDDLEMISS, JOHN V. MONTANA, ET AL.  
16-7043 OSIE, GREGORY C. V. OHIO  
16-7046 ANTONIO K. V. ME DEPT. OF HEALTH  
16-7048 BLASSINGAME, TIMOTHY V. CARTLEDGE, WARDEN  
16-7053 QUINN, DUJUAN L. V. MICHIGAN  
16-7054 SMITH, ROBERT J. V. COURTNEY, ET AL.  
16-7055 SANCHEZ, RUBEN V. MASSACHUSETTS  
16-7056 SMITH, ARLANDA V. McDONOUGH, GA  
16-7059 JACKSON, GARVIN V. GUALTIERI, SHERIFF  
16-7060 MAYER, DENNIS J. V. BEEMER, ATT'Y GEN. OF PA, ET AL.  
16-7063 JONES, DONALD S. V. McFADDEN, WARDEN  
16-7064 PADILLA, FRANK J. V. DAVIS, DIR., TX DCJ  
16-7066 MONTGOMERY, TAMELA V. AMES, IA, ET AL.  
16-7071 LaHOOD, MICHAEL G. V. DAVIS, DIR., TX DCJ

16-7072 KUHN, MICHAEL A. V. GILMORE, SUPT., GREENE, ET AL.  
16-7073 JEANNIN, RICHARD A. V. FLORIDA  
16-7077 GARCIA, ELVIS L. V. CALIFORNIA  
16-7078 ALLANTE V. V. ILLINOIS  
16-7082 DUGDALE, TIMOTHY V. SESSIONS, ATT'Y GEN., ET AL.  
16-7083 GULBRANDSON, DAVID V. ARIZONA  
16-7087 RHODES, RICHARD W. V. JONES, SEC., FL DOC, ET AL.  
16-7088 RODRIGUEZ, SALVADOR A. V. ADAMS, WARDEN  
16-7093 JIMENA, CARL L. V. WONG, SAI HO, ET AL.  
16-7099 KISSNER, DONALD V. HARRY, WARDEN  
16-7100 RAGLAND, KIMARLO V. NASH-ROCKY MOUNT BD.  
16-7105 GIBSON, WILLIAM C. V. INDIANA  
16-7109 WILLIAMS, ORLANDO V. V. AL DOC  
16-7111 ENDERLE, CHAD L. V. LUDWICK, WARDEN  
16-7112 BUTLER, GARY V. NEW YORK  
16-7116 SORRELLS, KEVIN D. V. SPEARMAN, WARDEN  
16-7118 HARNAGE, JAMES A. V. DAVIS, MATTHEW, ET AL.  
16-7121 RANCEL, JAY V. COLVIN, ACTING COMM'R OF SSA  
16-7122 SMITH, GEORGE A. V. HOWERTON, WARDEN  
16-7123 SMITH, DARMEL L. V. BUTLER, WARDEN  
16-7125 LeBEAU, CONRAD E. V. UNITED STATES  
16-7127 PLANAS, ENIEL V. JONES, SEC., FL DOC, ET AL.  
16-7132 GUAJARDO, JUAN M. V. WINN, WARDEN  
16-7133 GIBSON, REGINALD V. SLOAN, WARDEN  
16-7134 GRACIA, ERIK V. BOUGHTON, WARDEN  
16-7136 CONSTANT, JOSEPH V. KUMAR, JUDGE, ETC.  
16-7137 STAPLES, RAHSON V. ACOLATZE, OFFICER, ET AL.  
16-7138 ROSA, CHARLENE V. FLORIDA

16-7141 DIXON, PAUL D. V. FLORIDA  
16-7144 LOVEDAY, STEVEN H. V. TEXAS  
16-7150 BARATI, ZOLTAN V. FLORIDA, ET AL.  
16-7152 CLEVELAND, GEORGE V. DUVALL, JEFFREY, ET AL.  
16-7154 RUSK, ZACHARY R. V. UTAH  
16-7163 STANTON, LUKE A. V. DAVIS, DIR., TX DCJ  
16-7165 STEPHENS, MARC A. V. JEREJIAN, JUDGE, ETC., ET AL.  
16-7166 COWHERD, JOHNNY V. KENTUCKY  
16-7167 BOONE, REBECCA V. KENNEDY, WARDEN  
16-7168 DUNLAP, TIMOTHY A. V. FRICK, DENNIS  
16-7169 CARDOZA, GABRIEL C. V. CALIFORNIA  
16-7172 TIMMONS, FRITZ V. SC EMPLOY. SEC. COMM'N, ET AL.  
16-7174 ZUVICH, CAROL-LEE V. LOS ANGELES, CA  
16-7175 WARREN, SHONARI V. OVERMYER, SUPT., FOREST, ET AL.  
16-7176 WILLIAMS, DANNY V. GEORGIA  
16-7179 MILLAN, DAVID G. V. JONES, SEC., FL DOC  
16-7181 BARTLETT, ANGEL V. ALLEGAN COUNTY COURTS, ET AL.  
16-7183 SCOTT, MARY V. MEMORIAL HEALTH CARE, INC.  
16-7186 STEVENS, THEODORE V. LeGRAND, WARDEN, ET AL.  
16-7187 SMITH, BRIAN D. V. ANDERSON, REBECCA S., ET AL.  
16-7189 PALMER, CONNIE R. V. TEXAS  
16-7191 WILLIAMS, ADRIAN F. V. JONES, SEC., FL DOC, ET AL.  
16-7195 ZUCK, WILLIAM W. V. PEART, MARIO, ET AL.  
16-7196 TWOBABIES, THOMAS A. V. ALLBAUGH, DIR., OK DOC  
16-7197 TORRES, VICTOR A. V. GREEN, WARDEN, ET AL.  
16-7198 WILLMAN, KENNETH L. V. SHERMAN, WARDEN  
16-7199 AFFLECK, GEORGE V. MISSISSIPPI  
16-7201 AVILA, EDWARD V. HIDALGO COUNTY, TX

16-7203 MANN, ERIC O. V. RYAN, DIR., AZ DOC  
16-7205 LOPEZ, ELVIS R. V. WHITMIRE, MEGAN A., ET AL.  
16-7206 ABEYTA, ANTHONY V. V. BAKER, WARDEN, ET AL.  
16-7207 BAILEY, DERRICK V. UNITED STATES  
16-7209 AJAI, SARAI H. V. PENNSYLVANIA, ET AL.  
16-7210 DIAZ, MARCELINA V. HUGHES, WARDEN  
16-7211 CREEL, JAMES V. MISSISSIPPI  
16-7219 ROBINSON, THOMAS V. PENNSYLVANIA  
16-7220 SHORT, TODD W. V. NORTH CAROLINA  
16-7221 STOLLER, LEO V. UNITED STATES  
16-7223 SANFORD, KENNETH L. V. FRANKLIN, VA  
16-7224 RITZ, ANTHONY V. FLORIDA  
16-7225 STORCK, RONALD E. V. MAHALLY, SUPT., DALLAS, ET AL.  
16-7228 UZAHODJAEV, HUSAN V. UNITED STATES  
16-7229 SIMS, ERNEST V. LIZARRAGA, WARDEN  
16-7230 WARE, REGINALD E. V. KERNAN, SEC., CA DOC  
16-7232 CANNON, LARRY V. BUNTING, WARDEN  
16-7233 CUEVAS, MANUEL V. CALIFORNIA  
16-7235 CULLEN, MATTHEW T. V. SADDLER, MICHELLE R., ET AL.  
16-7236 RANDALL, TYLER W. V. ALLBAUGH, DIR., OK DOC  
16-7244 EDWARDS, MICHAEL V. CALIFORNIA  
16-7245 DUBERRY, SHIRLEY A. V. BRENNAN, POSTMASTER GEN.  
16-7246 ARACENA, LUIS V. FLORIDA  
16-7251 MACKENZIE, THOMAS V. FLORIDA  
16-7252 KAMDEM-OUAFFO, RICKY V. PEPSICO INC., ET AL.  
16-7253 LANDEROS, MARTIN M. V. DICKERSON, KATHLEEN, ET AL.  
16-7256 COMFORT, RICARDO V. V. SHULKIN, SEC. OF VA  
16-7263 BOWLES, ARTHUR V. KANSAS, ET AL.

16-7264 BUCKLEY, RODNEY C. V. DAVEY, WARDEN  
16-7265 ARNOLD, WILLIAM T. V. FLORIDA  
16-7267 BARBEE, ROBERT C. V. NORTH CAROLINA  
16-7268 BURNS, DaJUAN V. EDDY, ANDREW, ET AL.  
16-7270 DICKEY, JOSEPH R. V. UNITED STATES  
16-7271 BARRETT, RAHMAT J. V. VIRGINIA  
16-7272 BACCUS, JOHN R. V. STIRLING, BRIAN P., ET AL.  
16-7274 DAVIS, KISHA M. V. MEDICAL UNIV. OF SC-PHYSICIANS  
16-7277 WELLS, DAVID E. V. FLORIDA, ET AL.  
16-7280 MORRISON, GLADSTONE V. UNITED STATES  
16-7282 DeJONGE, DAVID C. V. MICHIGAN  
16-7284 JAIME, FIDENCIO V. DAVIS, DIR., TX DCJ  
16-7285 MANUEL, CURTIS R. V. UNITED STATES  
16-7286 RASHID, AMIN A. V. UNITED STATES  
16-7287 RODGERS, ELZIE S. V. DUNN, COMM'R, AL DOC, ET AL.  
16-7288 SCOTT, JASON T. V. USDC D MD  
16-7289 HERNANDEZ, SERGIO L. V. PENNYWELL, WARDEN  
16-7291 CROOKER, MICHAEL A. V. UNITED STATES  
16-7292 DZIEDZIC, MICHELE V. SUNY AT OSWEGO, ET AL.  
16-7293 HORTON, DANTE C. V. MINNESOTA  
16-7294 HUNTER, JERMAINE V. GALAZA, WARDEN  
16-7295 GRANDBERRY, DAN V. DAVIS, DIR., TX DCJ  
16-7296 FRANCIS, OMAR V. CAMERON, SUPT., HOUTZDALE  
16-7297 HUGHES, REGINALD D. V. TENNESSEE  
16-7298 GONZALES, DAVID J. V. NEBRASKA  
16-7299 NAZARETTE-GARCIA, JULIO C. V. McCOY, T.  
16-7300 HARRIS, MARTHA J. V. HARDEMAN COUNTY, TN, ET AL.  
16-7301 HERNANDEZ, ANTHONY P. V. WALKER, WARDEN

16-7302 RODRIGUEZ, SALVADOR A. V. ADAMS, WARDEN  
16-7303 STEINBERG, MARTIN J. V. UNITED STATES  
16-7304 BRAXTON, SAVINO V. UNITED STATES  
16-7305 TILLISON, TAJ J. V. UNITED STATES  
16-7306 VELLAI-PALOTAY, EVA B. V. UNITED STATES  
16-7308 DAVIS, SALEEM V. UNITED STATES  
16-7309 ALANIZ, BENITO V. UNITED STATES  
16-7312 CLARK, RONALD W. V. JONES, SEC., FL DOC, ET AL.  
16-7313 SINGLETON, LEVELLE V. KELLY, SUPT., OR  
16-7315 CHEN, BING Y. V. UNITED STATES  
16-7316 JONES, BRUCE M. V. UNITED STATES  
16-7318 STOKES, SAMUEL E. V. McFADDEN, WARDEN, ET AL.  
16-7322 LINTZ, DEIDRA A. V. BRENNAN, POSTMASTER GEN., ET AL.  
16-7326 JACKSON, JERRELL L. V. UNITED STATES  
16-7329 WRIGHT, ANTWOYNE V. ILLINOIS  
16-7330 AGOLLI, ANNA M. V. OFFICE OF INSPECTOR GEN., ET AL.  
16-7331 McQUILLAN, BRIAN P. V. UNITED STATES  
16-7332 OLAVESON, JONATHAN E. V. UNITED STATES  
16-7333 JOHNSON, EARL V. VANNOY, WARDEN  
16-7334 GOLDBERG, MARK V. UNITED STATES  
16-7339 HICKS, MARCUS D. V. UNITED STATES  
16-7341 HINKEL, PAUL R. V. UNITED STATES  
16-7347 POLLARD, CEDRIC V. ILLINOIS  
16-7348 ODEH, MAJDI V. UNITED STATES  
16-7351 QUINONES, NORBERTO V. UNITED STATES  
16-7353 RICHARD, NAARL J. V. UNITED STATES  
16-7355 HAMILTON, ROHAN V. GRIFFIN, SUPT., GREEN HAVEN  
16-7356 INIGUEZ, SERGIO V. BITER, WARDEN

16-7357 GUILTE, DAVID J. V. UNITED STATES  
16-7358 HOWELL, CURTIS M. V. UNITED STATES  
16-7360 GUTIERREZ, LUIS A. V. CALIFORNIA  
16-7361 HILL, CARLOS C. V. UNITED STATES  
16-7362 BRADLEY, ELOUISE V. SABREE, JENNIFER, ET AL.  
16-7366 TREJO-GAMBOA, SAUL V. UNITED STATES  
16-7368 WICK, LAWRENCE S. V. CITIBANK, N.A.  
16-7369 LOPEZ, ERVIN M. V. LEWIS, WARDEN  
16-7374 PIPER, BRANDON V. WILSON, WARDEN  
16-7375 PHILLIPS, JAMES V. UNITED STATES  
16-7377 SCHREIBER, BENJAMIN E. V. LUDWICK, WARDEN  
16-7379 WHITE, ROBERT L. V. UNITED STATES  
16-7383 WHITE, CHARLES V. UNITED STATES  
16-7384 WHITE, HOWARD V. PEARSON, WARDEN  
16-7385 WRIGHT, EDWARD G. V. O'BRIEN, STEVEN J.  
16-7387 VASQUEZ, MARIBEL R. V. UNITED STATES  
16-7389 TAHER, MOHAMED V. UNITED STATES  
16-7395 SCOTT, TRAVIS V. UNITED STATES  
16-7396 QUINTEROS, JOSE M. V. UNITED STATES  
16-7397 HEATHER S. V. CT. DEPT. OF CHILDREN  
16-7398 WARREN, MORRIS J. V. SHARTLE, WARDEN  
16-7401 CONLEY, CASEY V. UNITED STATES  
16-7407 SCOTT, DARRELL A. V. UNITED STATES  
16-7409 CARMENATTY, ROBERTO V. UNITED STATES  
16-7410 MACKENZIE, EDWARD J. V. UNITED STATES  
16-7412 CANDELARIO-SANTANA, ALEXIS V. UNITED STATES  
16-7416 WILLIAMS, TERRY A. V. OPM  
16-7417 WASHINGTON, MARCUS D. V. UNITED STATES

16-7420 GROVO, STEVEN V. UNITED STATES  
16-7421 ONUNWOR, CLIFTON V. MOORE, WARDEN  
16-7422 MITCHELL, BLONDELL V. JOYNER, TOM, ET AL.  
16-7426 GORDON, GEORGE D. V. UNITED STATES  
16-7433 WOMACK, GREGORY C. V. UNITED STATES  
16-7434 WALKER, STEPHEN V. UNITED STATES  
16-7436 WILLIAMS, SHANNON E. V. UNITED STATES  
16-7438 BAKER, ERNEST H. V. TAYLOR, SUPT., EASTERN OR  
16-7439 BRYANT, DARNELL C. V. UNITED STATES  
16-7440 HILL, MARY V. TN DOT  
16-7441 PALOMAREZ, ALEXANDER S. V. YOUNG, WARDEN, ET AL.  
16-7442 McCLARTY, AURLIEAS D. V. JONES, SEC., FL DOC, ET AL.  
16-7443 GONZALEZ-MARES, JOSE L. V. UNITED STATES  
16-7444 FUENTES-CRUZ, NICOLAS V. UNITED STATES  
16-7445 ROBINSON, JUSTIN V. UNITED STATES  
16-7446 LANE, MARK A. V. MAYE, WARDEN  
16-7447 SMITH, DEMOND D. V. UNITED STATES  
16-7453 SUMMERHAYS, SCOTT H. V. UNITED STATES  
16-7455 SMITH, MARKESE D. V. UNITED STATES  
16-7464 VARELA, ISABEL I. V. ADAMS, WARDEN  
16-7467 RUIZ-MONTEZ, JAIME V. UNITED STATES  
16-7468 BAILEY, KAREEM V. UNITED STATES  
16-7473 HERRERA REYES, ANTONIO V. UNITED STATES  
16-7477 KAPLAN, JESSE D. V. UNITED STATES  
16-7478 JIMENEZ-AGUILAR, JACQUELINE V. UNITED STATES  
16-7485 HUNTER, ADRIAN D. V. MUNIZ, WARDEN  
16-7486 TATUM, ANTHONY T. V. UNITED STATES  
16-7490 McCURRY, PAUL V. UNITED STATES



16-7491 PINKERTON, JOHN S. V. UNITED STATES  
16-7493 VENABLE, DOMINIQUE V. UNITED STATES  
16-7494 TORRENCE, WANDA E. V. COMCAST CORP.  
16-7496 WILSON, ALPHONSO S. V. ARKANSAS  
16-7502 MARSHALL, MICHAEL A. V. UNITED STATES  
16-7504 RUTLEDGE, MATTHEW V. UNITED STATES  
16-7505 RADEMAKER, DAVID A. V. PARAMO, WARDEN  
16-7506 SKVARLA, NICHOLAS M. V. UNITED STATES  
16-7507 SOBCZAK-SLOMCZEWSKI, ROBERT V. WDH, LLC  
16-7510 DAVIS, JEROME E. V. GRANDLIENARD, WARDEN  
16-7511 CARMONA-LOPEZ, ROBERT D. V. UNITED STATES  
16-7515 JEFFERSON, CHRISTOPHER E. V. VIRGINIA  
16-7526 MANDELL, STEVEN V. UNITED STATES  
16-7531 SAMUELS, DAVID V. UNITED STATES  
16-7534 RUFFIN, ANDRE D. V. UNITED STATES  
16-7540 BLOCK, FRANCIS D. V. UNITED STATES  
16-7544 CASILLAS, DAVID V. UNITED STATES  
16-7546 ROWELL, SEAN F. V. RICHARDSON, WARDEN  
16-7555 BODISON, FREDRICK V. UNITED STATES  
16-7558 FRIERSON, GWAUN D. V. UNITED STATES  
16-7559 GORDON, RUSSELL V. UNITED STATES  
16-7562 CRISP, DAVID M. V. UNITED STATES  
16-7563 SCONIERS, DeANGELO V. UNITED STATES  
16-7566 DE LA CRUZ-TREVINO, FRANCISCO V. UNITED STATES  
16-7567 DE LA CRUZ, FRANCISCO V. UNITED STATES  
16-7568 RUIZ, JOSE V. TICE, ACTING SUPT., HUNTINGDON  
16-7571 BANKS, JOSEPH V. UNITED STATES  
16-7572 EPSKAMP, NICOLAS V. UNITED STATES

16-7573        MACON, LAMAR V. UNITED STATES  
16-7583        CHITWOOD, ANDREW G. V. WISCONSIN  
16-7584        MORROW, ASHLEY V. UNITED STATES  
16-7590        AGOSTO-LOPEZ, LUIS V. UNITED STATES  
16-7595        DEAN, JESSE V. UNITED STATES  
16-7596        CARTER, KENNETH I. V. UNITED STATES  
16-7597        LOPEZ-LOPEZ, MARIANO V. UNITED STATES  
16-7599        JACKSON, LORENZA V. UNITED STATES  
16-7600        WILLIAMS, JAMES E. V. TEXAS  
16-7602        VAZQUEZ, NORTON V. UNITED STATES  
16-7609        MEDINA, DANIEL R. V. UNITED STATES  
16-7611        HOUSE, DARRYL V. UNITED STATES  
16-7614        GORDON, JUAN V. UNITED STATES  
16-7618        BENITEZ, LAURENTINO V. UNITED STATES  
16-7621        TROTTER, TYSON B. V. UNITED STATES  
16-7622        WAYS, JOHN V. UNITED STATES  
16-7629        ROBERTS, JASON P. V. UNITED STATES  
16-7630        SANTANA-GARCIA, RAUL V. UNITED STATES  
16-7632        ENDRIS, AMAR V. UNITED STATES  
16-7636        NUNEZ, JOWENKY V. UNITED STATES  
16-7637        NUNEZ-DUENAS, JORGE V. UNITED STATES  
16-7640        DOOR, GARRETT D. V. UNITED STATES  
16-7646        HERRERA-VILLAREAL, ALFREDO V. UNITED STATES  
16-7648        WALKER, VALERIE A. V. AR DOC, ET AL.  
16-7653        ROBINSON, DEWAYNE R. V. UNITED STATES

          The petitions for writs of certiorari are denied.

16-686        BNSF RAILWAY CO. V. NOICE, LENARD

          The motion of The Association of American Railroads for

leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is denied.

16-905 E.I. DU PONT DE NEMOURS AND CO. V. MACDERMID PRINTING SOLUTIONS

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

16-6496 JOHNSON, STACEY, ET AL. V. KELLEY, DIR., AR DOC, ET AL.

The petition for a writ of certiorari is denied. Justice Sotomayor, with whom Justice Breyer joins, dissenting from the denial of certiorari: I dissent from the denial of certiorari for the reasons set out in *Arthur v. Dunn*, 580 U.S. \_\_\_\_ (2017) (Sotomayor, J., dissenting from denial of certiorari).

16-6943 VILLA, DANIEL V. DAVIS, DIR., TX DCJ

16-6958 AMIR-SHARIF, LaKEITH R. V. COLLIER, BRYAN, 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.

16-7188 LORDMASTER, FRANKIE J. V. SUSSEX II STATE PRISON, 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*).

16-7279 VANG, DA V. WISCONSIN

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.

16-7290 MAGWOOD, BOBBY L. V. FL COURTS, 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*).

16-7437 SANCHEZ-ROSADO, RAMON V. UNITED STATES

16-7492 RUDZAVICE, JAMES L. V. USDC ND TX

16-7591 AKERS, MONTGOMERY C. V. UNITED STATES

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

#### **HABEAS CORPUS DENIED**

16-7475 IN RE RICKY L. JACKSON

16-7483 IN RE DEVON BELL

16-7543 IN RE MICHAEL J. PENDLETON

16-7724 IN RE BRIAN STARKS

16-7728 IN RE MICHAEL A. ZONE

The petitions for writs of habeas corpus are denied.

**MANDAMUS DENIED**

16-7014 IN RE NATHANIEL JONES, III  
16-7030 IN RE ALAMIN SAMAD  
16-7107 IN RE RYAN L. ZATER  
16-7135 IN RE DONALD E. CARTER  
16-7190 IN RE LONNELL WIDEMAN

The petitions for writs of mandamus are denied.

16-7177 IN RE RUDOLPH KIDD

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

**REHEARINGS DENIED**

15-9313 CALKINS, SANDRA L. V. UNITED STATES  
15-9671 MOORE, KENNETH V. FLORIDA  
15-9894 HAGGERTY, LONNIE D. V. COURT OF COMMON PLEAS OF PA  
16-196 ELLSWORTH, CHRISTOPHER L. V. RAMOS, WARDEN, ET AL.  
16-363 GHOGOMU, MAAHNCHOOH V. DELTA AIRLINES  
16-421 MARTIN, ROWLAND J. V. BRAVENEC, EDWARD, ET AL.  
16-453 KUPERSMIT, BARBARA A. V. CIR  
16-622 PAUNESCU, IOAN, ET UX. V. ECKERT, GERHARD H., ET AL.  
16-717 PATEL, RAJESH V. GA DEPT. OF BEHAVIOR HEALTH  
16-5099 ADKINS, DORA L. V. JOCHEM, K., ET AL.  
16-5257 FELTON, RICHARD V. MASSACHUSETTS  
16-5337 RANDOLPH, BARRY, ET UX. V. SOLUTIA, INC.  
16-5473 HALL, CALVIN J. V. UNITED STATES  
16-5475 GOMILLION, MICHAEL V. GEORGIA  
16-5580 BROOM, ROMELL V. OHIO  
16-5588 OLUIGBO-BERNARDS, FESTUS O. V. UNITED STATES  
16-5653 STONE, BILLIE O. V. REYES, EDWARD F., ET AL.

16-5823 DOBBS, JOHN W. V. FLORIDA  
16-5829 THORNBERG, JAMES E. V. STATE FARM FIRE & CAS., ET AL.  
16-5849 STOCKWELL, DAN V. KEY, SUPT., AIRWAY HEIGHTS  
16-5915 LEGATE, JAMES V. COLLIER, BRYAN  
16-5926 VAN BUREN, IRVIN V. CALIFORNIA  
16-6030 CONNER, STACY L. V. TEXAS  
16-6068 HANSON-HODGE, PAULA V. COLVIN, ACTING COMM'R OF SSA  
16-6086 REMENAR, MARC R. V. EMPLOYMENT DEPARTMENT, ET AL.  
16-6173 MAYER, TROI J. V. BEEMER, ATT'Y GEN. OF PA.  
16-6240 DURHAM, ALFIE S. V. SUNY ROCKLAND, ET AL.  
16-6248 SELDEN, GLENN L. V. FLORIDA, ET AL.  
16-6282 WRIGHT, EARL L. V. CIRCUIT COURT OF MS  
16-6305 SMITH, ELBERT V. VIRGINIA  
16-6318 SEIBERT, STEVEN J. V. CRICKMAR, WARDEN  
16-6327 DAVISON, JESSE A. V. UNITED STATES  
16-6363 BRITFORD, CHARLIE V. ALABAMA  
16-6373 SANDLAIN, BLAKE J. V. UNITED STATES  
16-6402 HAMILTON, ALAN V. DAVILA, DANIEL  
16-6488 MAYES, ANTHONY V. UNITED STATES  
16-6529 LONGARIELLO, STEVE J. V. AURA AT MIDTOWN  
16-6660 HICKLIN, JAMES W. V. STEELE, WARDEN  
16-6698 CLAY, WILLIE V. McDONALD, SEC. OF VA  
16-6824 FISHER, TWANA V. IRONTON, OH  
16-6921 REMENAR, MARC R. V. SCARP, DANA  
16-7328 ANDREWS, CHRISTOPHER V. INDIRECT PURCHASER CLASS

The petitions for rehearing are denied.

16-431 WALSH, RORY M. V. GEORGE, BRIAN J., ET AL.

The petition for rehearing is denied. Justice Kagan took no

part in the consideration or decision of this petition.

**ATTORNEY DISCIPLINE**

D-2943 IN THE MATTER OF DISBARMENT OF ANTHONY PAUL LOCRCICCHIO

Anthony Paul Locricchio, of Kailua, Hawaii, having been suspended from the practice of law in this Court by order of November 7, 2016; and a rule having been issued and served upon him requiring him to show cause why he should not be disbarred; and a response having been filed;

It is ordered that Anthony Paul Locricchio is disbarred from the practice of law in this Court.

D-2946 IN THE MATTER OF DISCIPLINE OF HAROLD JAMES PICKERSTEIN

Harold James Pickerstein, of Fairfield, Connecticut, is suspended from the practice of law in this Court and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

D-2947 IN THE MATTER OF DISCIPLINE OF DAVID ERICKSON HUDGENS

David Erickson Hudgens, of Daphne, Alabama, is suspended from the practice of law in this Court and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

D-2948 IN THE MATTER OF DISCIPLINE OF MARVIN S. DAVIDSON

Marvin S. Davidson, of West Orange, New Jersey, is suspended from the practice of law in this Court and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

D-2949 IN THE MATTER OF DISCIPLINE OF RANKIN JOHNSON, IV

Rankin Johnson IV, of Portland, Oregon, is suspended from

the practice of law in this Court and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

D-2950

IN THE MATTER OF DISCIPLINE OF ROBERT THOMAS THOMPSON, JR.

Robert Thomas Thompson, Jr., of Atlanta, Georgia, is suspended from the practice of law in this Court and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

D-2951

IN THE MATTER OF DISCIPLINE OF JEFFREY SCOTT SCHWARTZ

Jeffrey Scott Schwartz, of San Diego, California, is suspended from the practice of law in this Court and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.



SOTOMAYOR, J., dissenting

**SUPREME COURT OF THE UNITED STATES**

THOMAS D. ARTHUR *v.* JEFFERSON S. DUNN,  
COMMISSIONER, ALABAMA DEPARTMENT  
OF CORRECTIONS, ET AL.

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

No. 16–602. Decided February 21, 2017

The motion of Certain Medical Professionals and Medical Ethicists for leave to file a brief as *amici curiae* is granted. The petition for a writ of certiorari is denied.

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

Nearly two years ago in *Glossip v. Gross*, 576 U. S. \_\_\_\_ (2015), the Court issued a macabre challenge. In order to successfully attack a State’s method of execution as cruel and unusual under the Eighth Amendment, a condemned prisoner must not only prove that the State’s chosen method risks severe pain, but must also propose a “known and available” alternative method for his own execution. *Id.*, at \_\_\_\_, \_\_ (slip op., at 13, 15).

Petitioner Thomas Arthur, a prisoner on Alabama’s death row, has met this challenge. He has amassed significant evidence that Alabama’s current lethal-injection protocol will result in intolerable and needless agony, and he has proposed an alternative—death by firing squad. The Court of Appeals, without considering any of the evidence regarding the risk posed by the current protocol, denied Arthur’s claim because Alabama law does not expressly permit execution by firing squad, and so it cannot be a “known and available” alternative under *Glossip*. Because this decision permits States to immunize their methods of execution—no matter how cruel or how unusual—from judicial review and thus permits state law to subvert the Federal Constitution, I would grant certiorari

SOTOMAYOR, J., dissenting

and reverse. I dissent from my colleagues' decision not to do so.

I  
A

Execution by lethal injection is generally accomplished through serial administration of three drugs. First, a fast-acting sedative such as sodium thiopental induces “a deep, comalike unconsciousness.” *Baze v. Rees*, 553 U. S. 35, 44 (2008) (plurality opinion). Second, a paralytic agent—most often pancuronium bromide—“inhibits all muscular-skeletal movements and, by paralyzing the diaphragm, stops respiration.” *Ibid.* Third, potassium chloride induces fatal cardiac arrest. *Ibid.*

The first drug is critical; without it, the prisoner faces the unadulterated agony of the second and third drugs. The second drug causes “an extremely painful sensation of crushing and suffocation,” see Denno, *When Legislatures Delegate Death: The Troubling Paradox Behind State Uses of Electrocution and Lethal Injection and What It Says About Us*, 63 *Ohio St. L. J.* 63, 109, n. 321 (2002); but paralyzes the prisoner so as to “mas[k] any outward sign of distress,” thus serving States’ interest “‘in preserving the dignity of the procedure,’” *Baze*, 553 U. S., at 71, 73 (Stevens, J., concurring in judgment). And the third drug causes an “excruciating burning sensation” that is “equivalent to the sensation of a hot poker being inserted into the arm” and traveling “with the chemical up the prisoner’s arm and . . . across his chest until it reaches his heart.” Denno, *supra*, at 109, n. 321.

Execution absent an adequate sedative thus produces a nightmarish death: The condemned prisoner is conscious but entirely paralyzed, unable to move or scream his agony, as he suffers “what may well be the chemical equivalent of being burned at the stake.” *Glossip*, 576 U. S., at \_\_\_ (SOTOMAYOR, J., dissenting) (slip op., at 2).

SOTOMAYOR, J., dissenting

## B

For many years, the barbiturate sodium thiopental seemed up to this task.<sup>1</sup> In 2009, however, the sole American manufacturer of sodium thiopental suspended domestic production and later left the market altogether. *Id.*, at \_\_\_–\_\_\_ (majority opinion) (slip op., at 4–5). States then began to use another barbiturate, pentobarbital. *Id.*, at \_\_\_ (slip op., at 5). But in 2013, it also became unavailable. *Id.*, at \_\_\_–\_\_\_ (slip op., at 5–6). Only then did States turn to midazolam, the drug at the center of this case.

Midazolam, like Valium and Xanax, belongs to a class of medicines known as benzodiazepines and has some anesthetic effect. *Id.*, at \_\_\_ (SOTOMAYOR, J., dissenting) (slip op., at 5). Generally, anesthetics can cause a level of sedation and depression of electrical brain activity sufficient to block *all* sensation, including pain. App. to Pet. for Cert. 283a–290a. But it is not clear that midazolam adequately serves this purpose. This is because midazolam, unlike barbiturates such as pentobarbital, has no analgesic—pain-relieving—effects. *Id.*, at 307a; see also *Glossip*, 576 U. S., at \_\_\_ (SOTOMAYOR, J., dissenting) (slip op., at 5). Thus, “for midazolam to maintain unconsciousness through application of a particular stimulus, it would need to depress electrical activity *to a deeper level* than would be required of, for example, pentobarbital.” App. to

---

<sup>1</sup>We examined the constitutionality of lethal injection in *Baze v. Rees*, 553 U. S. 35 (2008). There, the parties did not dispute that “proper administration of . . . sodium thiopental . . . eliminates any meaningful risk that a prisoner would experience pain” and results in a humane death. *Id.*, at 49 (plurality opinion). The petitioners nonetheless challenged Kentucky’s three-drug protocol on the ground that, if prison executioners failed to follow the mandated procedures, an unconstitutional risk of significant pain would result. *Ibid.* A plurality of the Court concluded that “petitioners ha[d] not carried their burden of showing that the risk of pain from maladministration of a concededly humane lethal injection protocol” would violate the prohibition on cruel and unusual punishments. *Id.*, at 41.

SOTOMAYOR, J., dissenting

Pet. for Cert. 307a.<sup>2</sup> Although it can be used to render individuals unconscious, midazolam is not used on its own to *maintain* anesthesia—complete obliviousness to physical sensation—in surgical procedures, and indeed, the Food and Drug Administration has not approved the drug for this purpose. *Glossip*, 576 U. S., at \_\_\_ (SOTOMAYOR, J., dissenting) (slip op., at 5).

Like the experts in *Glossip*, the experts in this case agree that midazolam is subject to a ceiling effect, which means that there is a point at which increasing the dose of the drug does not result in any greater effect. *Ibid.* The main dispute with respect to midazolam relates to how this ceiling effect operates—if the ceiling on midazolam’s sedative effect is reached before complete unconsciousness can be achieved, it may be incapable of keeping individuals insensate to the extreme pain and discomfort associated with administration of the second and third drugs in lethal-injection protocols. *Ibid.*

After the horrific execution of Clayton Lockett, who, notwithstanding administration of midazolam, awoke during his execution and appeared to be in great pain, we agreed to hear the case of death row inmates seeking to avoid the same fate. In *Glossip*, these inmates alleged that because midazolam is incapable of rendering prisoners unconscious and insensate to pain during lethal injection, Oklahoma’s intended use of the drug in their execu-

---

<sup>2</sup> Because “midazolam is not an analgesic drug, any painful stimulus applied to an inmate will generate and transmit full intensity pain signals to the brain without interference.” App. to Pet. for Cert. 309a. Arthur’s expert witness provides “a rough analogy”:

“[I]f being sedated is like being asleep, analgesia is like wearing earplugs. If two people are sleeping equally deeply, but only one is wearing earplugs, it will be much easier to shout and wake the person who is not wearing earplugs. If two people are sedated to equivalent levels of electrical brain activity, but only one has analgesia, the person sedated without analgesia will be much more easily aroused to consciousness by the application of pain.” *Ibid.*

SOTOMAYOR, J., dissenting

tions would violate the Eighth Amendment. The Court rejected this claim for two reasons.

First, the Court found that the District Court had not clearly erred in determining that “midazolam is highly likely to render a person unable to feel pain during an execution.” *Id.*, at \_\_\_\_ (slip op., at 16). Second, the Court held that the petitioners had failed to satisfy the novel requirement of pleading and proving a “known and available alternative” method of execution. *Id.*, at \_\_\_\_ (slip op., at 15).

Post-*Glossip*, in order to prevail in an Eighth Amendment challenge to a State’s method of execution, prisoners first must prove the State’s current method “entails a substantial risk of severe pain,” *id.*, at \_\_\_\_ (slip op., at 2), and second, must “identify a known and available alternative method of execution that entails a lesser risk of pain,” *id.*, at \_\_\_\_ (slip op., at 1).

## II

This case centers on whether Thomas Arthur has met these requirements with respect to Alabama’s lethal-injection protocol.

## A

Alabama adopted lethal injection as its default method of execution in 2002. Ala. Code §15–18–82.1(a) (2011); see also *Ex parte Borden*, 60 So. 3d 940, 941 (Ala. 2007). The State’s capital punishment statute delegates the task of prescribing the drugs necessary to compound a lethal injection to the Department of Corrections. §15–18–82.1(f). Consistent with the practice in other States following the national shortage of sodium thiopental and pentobarbital, the department has adopted a protocol involving the same three drugs considered in *Glossip*. See *Brooks v. Warden*, 810 F. 3d 812, 823 (CA11 2016).

Perhaps anticipating constitutional challenges, Ala-

SOTOMAYOR, J., dissenting

bama’s legislature enacted a contingency plan: The statute provides that “[i]f electrocution or lethal injection is held to be unconstitutional . . . all persons sentenced to death for a capital crime shall be executed by any constitutional method of execution.” §15–18–82.1(c).

## B

Thomas Douglas Arthur killed his paramour’s husband in 1982. 840 F. 3d 1268, 1272–1273 (CA11 2016). Over the next decade, two juries found Arthur guilty of murder, and each time, Arthur’s conviction was overturned on appeal. *Ibid.* After a third trial in 1992, Arthur was convicted and sentenced to death. *Ibid.* Since then, Arthur has been scheduled to die on six separate occasions, and each time, his execution was stayed. *Id.*, at 1275, n. 2. After 34 years of legal challenges, Arthur has accepted that he will die for his crimes. He now challenges only *how* the State will be permitted to kill him.

Arthur asserted two distinct claims in the District Court. First, Arthur asserted a *facial* challenge, arguing that midazolam is generally incapable of performing as intended during Alabama’s three-drug lethal-injection procedure. Second, Arthur asserted an *as-applied* challenge, arguing that because of his individual health attributes, midazolam creates a substantial risk of severe pain for him during the procedure.

The District Court considered these two claims separately. With respect to the facial challenge, the District Court ordered bifurcated proceedings, with the first hearing limited to the availability of a feasible alternative method of execution. App. to Pet. for Cert. 189a, and n. 2. Arthur’s initial complaint proposed a single dose either of pentobarbital or sodium thiopental rather than a three-drug protocol, but the District Court found that those methods were unavailable given the elimination of both drugs from the domestic market. *Id.*, at 203a–205a.

SOTOMAYOR, J., dissenting

Arthur then moved to amend his complaint to allege the firing squad as an alternative method of execution. The District Court denied the motion, holding that “execution by firing squad is not permitted by statute and, therefore, is not a method of execution that could be considered either feasible or readily implemented by Alabama at this time.” *Id.*, at 241a. Because Arthur’s claim failed on this ground, the court never considered Arthur’s evidence with respect to midazolam, despite later observing that it was “impressive.” *Id.*, at 166a.

In a separate order, the District Court considered Arthur’s as-applied challenge. Arthur alleged, based on the expert opinion of Dr. Jack Strader, that “his cardiovascular issues, combined with his age and emotional makeup, create a constitutionally unacceptable risk of pain that will result in a violation of the Eighth Amendment if he is executed under the [midazolam] protocol.” *Id.*, at 151a. Echoing its rationale with respect to Arthur’s facial challenge, the District Court found that Arthur failed to prove the existence of a feasible, readily available alternative.

The court then turned to the question it had avoided in the facial challenge: whether Alabama’s lethal-injection protocol created a risk of serious illness or needless suffering. But because the District Court considered the question as part of Arthur’s as-applied challenge, it focused on the protocol as applied to Arthur’s personal physical condition. The court rejected Dr. Strader’s opinion that the dose of midazolam required by Alabama’s protocol “will likely induce a rapid and dangerous reduction in blood pressure more quickly than it results in sedation,” and that during this time gap, Arthur—whom he believed to suffer from heart disease—would suffer a painful heart attack. *Id.*, at 169a. Because Dr. Strader’s experience was limited to *clinical* doses of midazolam, which typically range from 2 to 5 mg, the court concluded that he had no basis to extrapolate his experience to non-clinical, *lethal*

SOTOMAYOR, J., dissenting

doses, such as the 500-mg bolus required by Alabama’s lethal-injection protocol. *Id.*, at 177a.

The District Court expressly refused to consider the expert opinions that Arthur proffered as part of his facial challenge, noting that they “are untested in court, due to Arthur’s inability to provide a[n alternative] remedy in his facial, and now as-applied, challenges.” *Id.*, at 167a, n. 16.

The District Court therefore concluded that Arthur failed to meet the *Glossip* standard and entered judgment in favor of the State. App. to Pet. for Cert. 238a.

## C

The Eleventh Circuit affirmed. In a 111-page slip opinion issued the day before Arthur’s scheduled execution, the court first found that “Arthur never showed Alabama’s current lethal injection protocol, *per se* or as applied to him, violates the Constitution.” 840 F. 3d, at 1315. The court based this finding on Arthur’s failure to “satisfy the first [*Glossip*] prong as to midazolam” as part of his as-applied challenge, *ibid.*, and the fact that this Court “upheld the midazolam-based execution protocol” in *Glossip*, 840 F. 3d, at 1315. Like the District Court, the Eleventh Circuit *never* considered the evidence Arthur introduced in support of his facial challenge to the protocol. Then, “[a]s an alternative and independent ground,” *ibid.*, the Court of Appeals found that the firing squad is not an available alternative because that method is “beyond [the Department of Corrections’] statutory authority,” *id.*, at 1320. Finally, and as yet another independent ground for denying relief, the court held Arthur’s motion regarding the firing squad barred by the doctrine of laches. *Ibid.*, n. 35. According to the Eleventh Circuit, the “known and available” alternative requirement was made clear in *Baze*—not *Glossip*—and because Arthur failed to amend his complaint in 2008 when *Baze* was decided, his claim was barred by laches.



SOTOMAYOR, J., dissenting

On the day of his scheduled execution, Arthur filed a petition for certiorari and an application to stay his execution. The Court granted the stay, 580 U. S. \_\_\_\_ (2016), but now denies certiorari.

## III

## A

The decision below permits a State, by statute, to bar a death-row inmate from vindicating a right guaranteed by the Eighth Amendment. Under this view, even if a prisoner can prove that the State plans to kill him in an intolerably cruel manner, and even if he can prove that there is a feasible alternative, all a State has to do to execute him through an unconstitutional method is to pass a statute declining to authorize any alternative method. This cannot be right.

To begin with, it contradicts the very decisions it purports to follow—*Baze* and *Glossip*. *Glossip* based its “known and available alternative” requirement on the plurality opinion in *Baze*. *Baze*, in turn, states that “[t]o qualify, the alternative procedure must be feasible, readily implemented, and in fact significantly reduce a substantial risk of severe pain.” 553 U. S., at 52 (plurality opinion). The Court did not mention—or even imply—that a State must authorize the alternative by statute. To the contrary, *Baze* held that “[i]f a State refuses to adopt such an alternative in the face of these documented advantages,” its “refusal to change its method can be viewed as ‘cruel and unusual’ under the Eighth Amendment.” *Ibid.* (emphasis added). The decision below turns this language on its head, holding that if the State *refuses* to adopt the alternative legislatively, the inquiry ends. That is an alarming misreading of *Baze*.

Even more troubling, by conditioning federal constitutional rights on the operation of state statutes, the decision below contravenes basic constitutional principles.

SOTOMAYOR, J., dissenting

The Constitution is the “supreme law of the land”—irrespective of contrary state laws. Art. VI, cl. 2. And for more than two centuries it has been axiomatic that this Court—not state courts or legislatures—is the final arbiter of the Federal Constitution. See *Marbury v. Madison*, 1 Cranch 137, 177 (1803). Acting within our exclusive “province and duty” to “say what the law is,” *ibid.*, we have interpreted the Eighth Amendment to entitle prisoners to relief when they succeed in proving that a State’s chosen method of execution poses a substantial risk of severe pain and that a constitutional alternative is “known and available,” *Glossip*, 576 U. S., at \_\_\_–\_\_\_ (slip op., at 1–2). The States have no power to override this constitutional guarantee. While States are free to define and punish crimes, “state laws respecting crimes, punishments, and criminal procedure are . . . subject to the overriding provisions of the United States Constitution.” *Payne v. Tennessee*, 501 U. S. 808, 824 (1991).

Equally untenable are the differing interpretations of the Eighth Amendment that would result from the Eleventh Circuit’s rule. Under the Eleventh Circuit’s view, whether an inmate who will die in an intolerably cruel manner can obtain relief under *Glossip* depends not on the Constitution but on vagaries of state law. The outcome of this case, for instance, would turn on whether Arthur had been sentenced in Oklahoma, where state law expressly permits the firing squad, see Okla. Stat., Tit. 22, §1014 (Supp. 2016), rather than in Alabama, which—according to the Eleventh Circuit<sup>3</sup>—does not, see Ala. Code §15–18–

---

<sup>3</sup>I question the Eleventh Circuit’s conclusion that the statute does not authorize the firing squad as an available means of execution. In my view, the Alabama statute unambiguously reads as a codification of *Glossip*. If *either* of the specified methods—lethal injection *or* electrocution—is declared unconstitutional, the statute authorizes the State to execute prisoners by “*any* constitutional method of execution.” Ala. Code §15–18–82.1(c) (2016) (emphasis added). The state statute

SOTOMAYOR, J., dissenting

82.1. But since the very beginning of our Nation, we have emphasized the “necessity of uniformity” in constitutional interpretation “throughout the whole United States, upon all subjects within the purview of the constitution.” *Martin v. Hunter’s Lessee*, 1 Wheat 304, 347–348 (1816) (emphasis deleted). Nowhere is the need for uniformity more pressing than the rules governing States’ imposition of death.

## B

The Eleventh Circuit’s alternative holdings are unavailing.

First, the court erroneously concluded that Arthur failed to carry his burden on the first *Glossip* requirement—proving that Alabama’s midazolam-centered protocol poses a substantial risk of severe pain. The court used the District Court’s finding that Arthur failed to meet this prong with respect to his *as-applied* challenge to hold that Arthur’s *facial* challenge likewise failed. But it is undisputed that Arthur put forth “impressive” evidence to support his facial challenge that neither the District Court nor the Court of Appeals considered. This evidence included the expert testimony of Dr. Alan Kaye, chairman of the Department of Anesthesiology at Louisiana State University’s Health Sciences Center, who found the dose of midazolam prescribed in Alabama’s protocol insufficient to “cure . . . the *fundamental unsuitability* of midazolam as the first drug in [Alabama’s lethal-injection] protocol.” App. to Pet. for Cert. 302a (emphasis added). Dr. Kaye

---

thus permits exactly what the Court required in *Glossip*—if a condemned prisoner can prove that the lethal-injection protocol presents an unconstitutional risk of needless suffering, he may propose an alternative, constitutional means of execution, which may include the firing squad. Even assuming, however, that the Eleventh Circuit properly interpreted Alabama’s statute, the question remains whether States may legislatively determine what the Eighth Amendment requires or prohibits. That question is worthy of our review.

SOTOMAYOR, J., dissenting

concluded that “the chemical properties of midazolam limit its ability to depress electrical activity in the brain. The lack of another chemical property—analgesia—renders midazolam incapable of maintaining even that limited level of depressed electrical activity under the undiminished pain of the second and third lethal injection drugs.” *Id.*, at 311a.

The court next read *Glossip* as categorically “up[olding] the midazolam-based execution protocol.” 840 F. 3d, at 1315. *Glossip* did no such thing. The majority opinion in *Glossip* concluded that, based on the facts presented in that case, “[t]he District Court did not commit clear error when it found that midazolam is highly likely to render a person unable to feel pain during an execution.” 576 U. S., at \_\_\_ (slip op., at 16). The opinion made no determination whether midazolam-centered lethal injection represents a constitutional method of execution.

Finally, the court’s laches finding faults Arthur for failing to act immediately after *Baze*, which, according to the panel, “made clear in 2008 . . . that a petitioner-inmate had the burden to show that a proffered alternative was ‘feasible, readily implemented, and in fact significantly reduced a substantial risk of pain.’” 840 F. 3d, at 1320, n. 35 (quoting *Baze*, 553 U. S., at 41). But the District Court in this case—not to mention at least four Justices of this Court, see *Glossip*, 576 U. S., at \_\_\_–\_\_\_ (SOTOMAYOR, J., dissenting) (slip op., at 24–27)—did not read *Baze* as requiring an alternative. See Record in *Arthur v. Myers*, No. 2:11-cv-438 (MD Ala.), Doc. 195, p. 11 (“[T]he court does not accept the State’s argument that [a known and available alternative method of execution] is a specific pleading requirement set forth by *Baze* that must be properly alleged before a case can survive a motion to dismiss”). Arthur filed a statement within 14 days of our decision in *Glossip* informing the District Court of his belief that our decision would impact his case, see *id.*, Doc.

SOTOMAYOR, J., dissenting

245, and moved to amend his complaint a few weeks later, see *id.*, Doc. 256.

In sum, the Eleventh Circuit’s opinion rests on quicksand foundations and flouts the Constitution, as well as the Court’s decisions in *Baze* and *Glossip*. These errors alone counsel in favor of certiorari.

#### IV

The decision below is all the more troubling because it would put an end to an ongoing national conversation—between the legislatures and the courts—around the methods of execution the Constitution tolerates. The meaning of the Eighth Amendment’s prohibition on cruel and unusual punishments “is determined not by the standards that prevailed when the Eighth Amendment was adopted in 1791” but instead derives from “the evolving standards of decency that mark the progress of a maturing society.” *Kennedy v. Louisiana*, 554 U. S. 407, 419 (2008) (quoting *Trop v. Dulles*, 356 U. S. 86, 101 (1958) (plurality opinion)). Evolving standards have yielded a familiar cycle: States develop a method of execution, which is generally accepted for a time. Science then reveals that—unknown to the previous generation—the States’ chosen method of execution causes unconstitutional levels of suffering. A new method of execution is devised, and the dialogue continues. The Eighth Amendment requires this conversation. States should not be permitted to silence it by statute.

#### A

From the time of the founding until the early 20th century, hanging was the preferred practice. Gardner, *Executions and Indignities—An Eighth Amendment Assessment of Methods of Inflicting Capital Punishment*, 39 Ohio St. L. J. 96, 119 (1978). After several grotesque failures at the gallows—including slow asphyxiation and violent

SOTOMAYOR, J., dissenting

decapitation—revealed the “crude and imprecise” nature of the practice, *Campbell v. Wood*, 511 U. S. 1119, 1122 (1994) (Blackmun, J., dissenting from denial of certiorari), States sought to execute condemned prisoners “in a less barbarous manner” and settled on electrocution. See *In re Kemmler*, 136 U. S. 436, 444 (1890).

New York carried out the world’s first electrocution in ghastly fashion,<sup>4</sup> leading the New York Times to declare it “a disgrace to civilization.” See *Far Worse Than Hanging*, N. Y. Times, Aug. 7, 1890, p. 1. Electrocution nonetheless remained the dominant mode of execution for more than a century, until the specter of charred and grossly disfigured bodies proved too much for the public, and the courts, to bear.<sup>5</sup> See, e.g., *Dawson v. State*, 274 Ga. 327, 335, 554

---

<sup>4</sup>New York executed William Kemmler on August 6, 1890. According to the New York Times, “[p]robably no convicted murderer of modern times has been made to suffer as Kemmler suffered.” *Far Worse Than Hanging*, N. Y. Times, Aug. 7, 1890, p. 1. Witnesses recounted the execution:

“After the first convulsion there was not the slightest movement of Kemmler’s body. . . . Then the eyes that had been momentarily turned from Kemmler’s body returned to it and gazed with horror on what they saw. The men rose from their chairs impulsively and groaned at the agony they felt. ‘Great God! [H]e is alive!’ [S]omeone said[,] ‘Turn on the current,’ said another. . . .

“Again came that click as before, and again the body of the unconscious wretch in the chair became as rigid as one of bronze. It was awful, and the witnesses were so horrified by the ghastly sight that they could not take their eyes off it. The dynamo did not seem to run smoothly. The current could be heard sharply snapping. Blood began to appear on the face of the wretch in the chair. It stood on the face like sweat. . . .

“An awful odor began to permeate the death chamber, and then, as though to cap the climax of this fearful sight, it was seen that the hair under and around the electrode on the head and the flesh under and around the electrode at the base of the spine was singeing. The stench was unbearable.” *Ibid.* (paragraph break omitted).

<sup>5</sup>After a particularly gruesome electrocution in Florida, this Court granted certiorari on the question whether electrocution creates a

SOTOMAYOR, J., dissenting

S. E. 2d 137, 144 (2001) (“[W]e hold that death by electrocution, with its specter of excruciating pain and its certainty of cooked brains and blistered bodies, violates the prohibition against cruel and unusual punishment”).

The States then tried lethal gas. Although the gas chamber was initially believed to produce relatively painless death, it ultimately became clear that it exacted “exquisitely painful” sensations of “anxiety, panic, [and] terror,” leading courts to declare it unconstitutional. See, e.g., *Fierro v. Gomez*, 77 F. 3d 301, 308 (CA9 1996) (internal quotation marks omitted).<sup>6</sup>

Finally, States turned to a “more humane and palatable” method of execution: lethal injection. Denno, 63 Ohio St. L. J., at 92. Texas performed the first lethal injection in 1982 and, impressed with the apparent ease of the process, other States quickly followed suit. S. Banner, *The Death Penalty: An American History* 297 (2002). One prison chaplain marveled: “It’s extremely sanitary. . . . The guy just goes to sleep. That’s all there is to it.” *Ibid.* What cruel irony that the method that appears most humane may turn out to be our most cruel experiment yet.

## B

Science and experience are now revealing that, at least with respect to midazolam-centered protocols, prisoners executed by lethal injection are suffering horrifying deaths beneath a “medically sterile aura of peace.” Denno, *supra*,

---

constitutionally unacceptable risk of physical suffering in violation of the Eighth Amendment, see *Bryan v. Moore*, 528 U. S. 960 (1999), but later dismissed the writ as improvidently granted in light of an amendment to the State’s execution statute that permitted prisoners to choose lethal injection rather than electrocution, see *Bryan v. Moore*, 528 U. S. 1133 (2000). See also Fla. Stat. Ann. §922.10 (West 2001).

<sup>6</sup>This Court granted certiorari in *Fierro*, vacated the judgment, and remanded for consideration in light of the California Legislature’s adoption of lethal injection as the State’s primary method of execution. See *Gomez v. Fierro*, 519 U. S. 918 (1996).

SOTOMAYOR, J., dissenting

at 66. Even if we sweep aside the scientific evidence, we should not blind ourselves to the mounting firsthand evidence that midazolam is simply unable to render prisoners insensate to the pain of execution. The examples abound.

After Ohio administered midazolam during the execution of Dennis McGuire in January 2014, he “strained against the restraints around his body, and . . . repeatedly gasped for air, making snorting and choking sounds for about 10 minutes.” Johnson, *Inmate’s Death Called ‘Horrific’*, Columbus Dispatch, Jan. 17, 2014, pp. A1, A10.

The scene was much the same during Oklahoma’s execution of Clayton Lockett in April 2014. After executioners administered midazolam and declared him unconscious, Lockett began to writhe against his restraints, saying, “[t]his s\*\*\* is f\*\*\*ing with my mind,” “something is wrong,” and “[t]he drugs aren’t working.” *Glossip*, 576 U. S., at \_\_\_ (SOTOMAYOR, J., dissenting) (slip op., at 3).

When Arizona executed Joseph Rudolph Wood in July 2014 using a midazolam-based protocol, he “gulped like a fish on land.” Kiefer, *Botched Execution*, Arizona Dispatch, July 24, 2014, pp. A1, A9. A witness reported more than 640 gasps as Woods convulsed on the gurney for more than an hour and a half before being declared dead. *Ibid.*

Finally, and just over a month after this Court stayed Thomas Arthur’s execution, Alabama executed Ronald Bert Smith. Following the dose of midazolam, Smith “clenched his fist” and was “apparently struggling for breath as he heaved and coughed for about 13 minutes.” Berman & Barnes, *Alabama Inmate was Heaving, Coughing During Lethal-Injection Execution*, Washington Post, Dec. 10, 2016, p. A3.

It may well be that as originally designed, lethal injection can be carried out in a humane fashion that comports with the Eighth Amendment. But our lived experience



SOTOMAYOR, J., dissenting

belies any suggestion that midazolam reliably renders prisoners entirely unconscious to the searing pain of the latter two drugs. These accounts are especially terrifying considering that each of these men received doses of powerful paralytic agents, which likely masked the full extent of their pain. Like a hangman's poorly tied noose or a malfunctioning electric chair, midazolam might render our latest method of execution too much for our conscience—and the Constitution—to bear.

## C

As an alternative to death by midazolam, Thomas Arthur has proposed death by firing squad. Some might find this choice regressive, but the available evidence suggests “that a competently performed shooting may cause nearly instant death.” Denno, *Is Electrocution An Unconstitutional Method of Execution? The Engineering of Death Over the Century*, 35 Wm. & Mary L. Rev. 551, 688 (1994). In addition to being near instant, death by shooting may also be comparatively painless. See Banner, *supra*, at 203. And historically, the firing squad has yielded significantly fewer botched executions. See A. Sarat, *Gruesome Spectacles: Botched Executions and America's Death Penalty*, App. A, p. 177 (2014) (calculating that while 7.12% of the 1,054 executions by lethal injection between 1900 and 2010 were “botched,” none of the 34 executions by firing squad had been).

Chief Justice Warren famously wrote that “[t]he basic concept underlying the Eighth Amendment is nothing less than the dignity of man.” *Trop*, 356 U. S., at 100 (plurality opinion). States have designed lethal-injection protocols with a view toward protecting their own dignity, but they should not be permitted to shield the true horror of executions from official and public view. Condemned prisoners, like Arthur, might find more dignity in an instantaneous death rather than prolonged torture on a

SOTOMAYOR, J., dissenting

medical gurney.

To be clear, this is not a matter of permitting inmates to choose the manner of death that best suits their desires. It is a matter of permitting a death row inmate to make the showing *Glossip* requires in order to prove that the Constitution demands something less cruel and less unusual than what the State has offered. Having met the challenge set forth in *Glossip*, Arthur deserves the opportunity to have his claim fairly reviewed in court. The Eleventh Circuit denied him this opportunity, and in doing so, thwarted the Court's decision in *Glossip*, as well as basic constitutional principles.

\* \* \*

Twice in recent years, this Court has observed that it “has never invalidated a State’s chosen procedure for carrying out a sentence of death as the infliction of cruel and unusual punishment.” *Baze*, 553 U. S., at 48 (plurality opinion); *Glossip*, 576 U. S., at \_\_\_ (slip op., at 3) (same). In *Glossip*, the majority opinion remarked that the Court “did not retreat” from this nonintervention strategy even after Louisiana strapped a 17-year-old boy to its electric chair and, having failed to kill him the first time, argued for a second try—which this Court permitted. *Id.*, at \_\_\_—\_\_\_ (slip op., at 3–4). We should not be proud of this history. Nor should we rely on it to excuse our current inaction.

I dissent.