

(ORDER LIST: 589 U.S.)

MONDAY, MARCH 23, 2020

CERTIORARI -- SUMMARY DISPOSITIONS

19-6113 BAZAN, JOSE A. V. UNITED STATES

19-6431 BAZAN, JOSE A. V. UNITED STATES

The motions of petitioner for leave to proceed *in forma pauperis* and the petitions for writs of certiorari are granted. The judgments are vacated, and the cases are remanded to the United States Court of Appeals for the Fifth Circuit for further consideration in light of *Davis v. United States*, 589 U. S. ____ (2020) (*per curiam*).

ORDERS IN PENDING CASES

19M110 DOE, JOHN 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.

19M111 MAYES, TECUMSEH M. V. WINDOM, MARY, ET AL.

19M112 MEDINA, SAMUEL Z. V. UNITED STATES

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

19M113 CLOWERS, TOM V. CRADDUCK, KELLY, ET AL.

The motion to direct the Clerk to file a petition for a writ of certiorari out of time under Rule 14.5 is denied.

65, ORIG. TEXAS V. NEW MEXICO

The motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument is

granted.

- 19-267) OUR LADY OF GUADALUPE SCHOOL V. MORRISSEY-BERRU, AGNES
)
19-348) ST. JAMES SCHOOL V. BIEL, DARRYL

The motion of Virginia, et al. for leave to participate in oral argument as *amici curiae* and for divided argument is denied. The motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument is granted.

- 19-357 CHICAGO, IL V. FULTON, ROBBIN L., ET AL.

The motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument is granted.

- 19-431) LITTLE SISTERS OF THE POOR V. PENNSYLVANIA, ET AL.
)
19-454) TRUMP, PRESIDENT OF U.S., ET AL. V. PENNSYLVANIA, ET AL.

The motion of petitioner in No. 19-431 to dispense with printing the joint appendix is granted.

- 19-635 TRUMP, DONALD J. V. VANCE, CYRUS R., ET AL.
19-715) TRUMP, DONALD J., ET AL. V. MAZARS USA, LLP, ET AL.
)
19-760) TRUMP, DONALD J., ET AL. V. DEUTSCHE BANK AG, ET AL.

The motions of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument are granted.

- 19-6786 MORRIS, CAROL J. V. UNITED STATES

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

- 19-7310 SMITH, MICHAEL C. V. FLORIDA

The motion of petitioner for leave to proceed *in forma pauperis* is denied. Petitioner is allowed until April 13, 2020,

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

18-8804 RAYMOND, CARLOS A. V. ROY, MARTIN J., ET AL.
19-484 DOE 1, JOHN, ET AL. V. FEDERAL ELECTION COMMISSION
19-497 INCLUSIVE COMMUNITIES PROJECT V. LINCOLN PROPERTY CO., ET AL.
19-500 SIDDIQUI, AMEER V. NETJETS AVIATION, INC.
19-597 REESE, MORRIS V. SPRINT NEXTEL CORP., ET AL.
19-604 FRANCWAY, ERNEST L. V. WILKIE, SEC. OF VETERANS AFFAIRS
19-607 WOODCREST HOMES, INC. V. CAROUSEL FARMS METRO DIST.
19-646 ADKINS, ALAINA, ET AL. V. COLLENS, JESSE M.
19-735 TONG, ATT'Y GEN. OF CT V. TWEED-NEW HAVEN AIRPORT, ET AL.
19-756 TAYLOR, LOUIS V. PIMA COUNTY, AZ, ET AL.
19-763 ANGINO, RICHARD C., ET UX. V. TRANSUNION LLC
19-765 FAUST, MICHAEL V. B. K., ET AL.
19-852 MAXELL, LTD. V. FANDANGO MEDIA, LLC
19-858 GEMCAP LENDING I, LLC V. QUARLES & BRADY, LLP, ET AL.
19-861 SHUMSKI, MARK V. DAVIS, DIR., TX DCJ
19-876 RAMIREZ, FERNANDO A. V. HOGUE, DAVE, ET AL.
19-884 CALDWELL, RICK V., ET UX. V. UNUM LIFE INSURANCE CO.
19-885 SWARTZ, JAMIE, ET UX. V. HEARTLAND EQUINE RESCUE, ET AL.
19-886 NEGASH, ISRAEL K., ET AL. V. UNITED STATES
19-888 LONGMIRE, ERIC A. V. WARSHAW BURSTEIN COHEN
19-890 JENSEN, TOM V. BLUMENSTIEL, JUDGE, USBC, ET AL.
19-895 McDONALD, R. KIRK V. BELLCO CREDIT UNION
19-902 OCHOA, MICHAEL R. V. LEVINE, ARTHUR, ET AL.
19-911 CASTRO, IVON V. SIMON, DINA, ET AL.

19-913 SIDDIQI, GHAZALA, ET VIR V. UNITED STATES
19-915 SCOTT, DONALD HENDERSON, ET UX. V. U.S. BANK, ET AL.
19-918 LUCERO, ANTHONY J. V. KONCILJA, JAMES R., ET AL.
19-921 PAZ, JOHN M. V. DIR., DIVISION OF TAXATION
19-938 CLARK, SEAN A. V. NY COMM'R OF SOCIAL SERVICES
19-961 HASELRIG, KHASHON V. INSLEE, STEPHANIE
19-964 LAWRENCE, CHRISTOPHER V. UNIVERSITY HOSPITAL, ET AL.
19-979 CRICK, PATRICK S. V. KEY, SUPT., AIRWAY HEIGHTS
19-989 JOHNSON, KATHLEEN K., ET AL. V. UBS AG
19-991 PRIMM, SAMSON V. UNITED STATES
19-1005 HOTZE HEALTH WELLNESS, ET AL. V. ENVIRONMENTAL RESEARCH CENTER
19-1007 ABDUL-AZIZ, ZAID V. NATIONAL BASKETBALL ASSN.
19-1011 KELLY, ERIC F. V. UNITED STATES
19-1015 WALKER, JEREMY J. V. AMERIPRISE FINANCIAL SERV., INC.
19-1017 SOLUTRAN, INC. V. ELAVON, INC., ET AL.
19-1025 FERGUSON, MO V. FANT, KEILEE, ET AL.
19-1027 CASWELL, DAVID V. UNITED STATES
19-1032 WATERS, ALPHONSO I. V. UNITED STATES
19-1041 KHRAPKO, ROSTISLAV V. SPLAIN, KRISTIN, ET AL.
19-1068 INCHIERCHIERE, KEITH V. FL DOC, ET AL.
19-5487 NINO, MARTIN A. V. UNITED STATES
19-5926 QUINTANAR, REFUGIO V. UNITED STATES
19-5995 CLARK, JASON L. V. UNITED STATES
19-6236 EICHLER, CHRISTINA M. V. UNITED STATES
19-6282 SALAZAR-MARTINEZ, ALDO V. UNITED STATES
19-6296 HOLMES, MICHAEL V. UNITED STATES
19-6361 MCKOWN, GREGORY A. V. UNITED STATES
19-6363 PEARSON, DAVID V. UNITED STATES

19-6370 BENNETT, TROY V. UNITED STATES
 19-6464 GARCIA-JACOBO, ALEJANDRO V. FEATHER, WARDEN
 19-6465 JONES, QUINTIN P. V. DAVIS, DIR., TX DCJ
 19-6710 BOWLING, THOMAS F. V. CLARKE, DIR., VA DOC
 19-6740 RHOTON, GLENDAL V. BROWN, WARDEN
 19-6901) BARRERA-MONTES, ALONSO V. UNITED STATES
)
 19-6938) GARCIA-SOLAR, GABRIEL V. UNITED STATES
)
 19-7484) PEREZ-CRUZ, JOSE C. V. UNITED STATES
 19-6906 ALEXANDER, DATANYA D. V. UNITED STATES
 19-6918 NANCE, MICHAEL W. V. FORD, WARDEN
 19-6934 JOHNSON, DEXTER V. DAVIS, DIR., TX DCJ
 19-6942 CARTER, SAVON G. V. UNITED STATES
 19-6965 KINCAIDE, VONDALE L. V. UNITED STATES
 19-7011 GOLDEN, CARL V. UNITED STATES
 19-7021 HUNTER, OTIS, ET AL. V. UNITED STATES
 19-7022 CRUZ, JESUS D. V. UNITED STATES
 19-7045 JONES, MICHAEL V. UNITED STATES
 19-7222 RICHARDSON, TIMOTHY V. THOMAS, WARDEN
 19-7224 JONES, CHERYL V. GOLDBERG, STEPHEN, ET AL.
 19-7233 NASH, JAMEICE V. KENNEY, JAMES, ET AL.
 19-7262 MALLARI, DANILO V. VESSIGULT, TRACY, ET AL.
 19-7263 KHURANA, PRAVEEN K. V. IDAHO DEPT. OF HEALTH
 19-7279 OLIPHANT-JOHNS, CHARLOTTE V. GOOD DEAL REMODELING
 19-7280 JONES, DAVID E. V. INCH, SEC., FL DOC, ET AL.
 19-7281 GRANT, CLIFTON A. V. MTGLQ INVESTORS, L.P.
 19-7282 ARNOLD, JOHN A. V. VIRGINIA
 19-7286 CALDWELL, LEAH S. V. DOWNS, DORIS, ET AL.
 19-7290 GARLAND, TAMARKQUA V. NEW YORK

19-7295 JOHNSON, ROBERT W. V. NATIONWIDE INS. CO., ET AL.
19-7299 BARRERA, JOHN J. V. NAGY, WARDEN
19-7300 BOOKER, BILLY J. V. DAVIS, DIR., TX DCJ
19-7301 GOODRUM, MICHAEL V. HUTCHISON, WARDEN
19-7302 SHAMPINE, LATEFAH V. SARVER'S REALTY, ET AL.
19-7303 SMITH, MICHAEL W. V. ILLINOIS
19-7306 PRONIN, DMITRY V. WRIGHT, CHARLES, ET AL.
19-7308 MCGAVITT, JERRY L. V. TEXAS
19-7311 FRAZIER, ALPHONSO V. V. OMAHA POLICE DEPT., ET AL.
19-7317 CHAILLA, FLORENCE R. V. NAVIENT DEPT. OF ED., ET AL.
19-7319 WATERS, THOMAS B. V. STEWART, JOHN, ET AL.
19-7321 SNOWTON, PIPER L. V. UNITED STATES, ET AL.
19-7328 TAYLOR, APRIL V. COLONIAL HEIGHTS, VA
19-7338 MORAN, DAVID P. V. FLORIDA
19-7340 VAZQUEZ-SUAREZ, JUNIOR V. FLORIDA
19-7342 TURNER, RAY V. CADNEY, VERONICA, ET AL.
19-7344 WILLIAMS, JOHN L. V. JACKSON COUNTY, MO
19-7345 SANCHEZ, ROBERTO V. DAVIS, DIR., TX DCJ
19-7346 CLARK, PEGGY J. V. DEPT. OF ARMY, ET AL.
19-7347 MARSHALL, BRODERICK V. TEXAS
19-7348 ALSTON, RAYMOND V. NEW YORK
19-7349 OSORNIO, ANGEL V. SUPREME COURT OF U.S., ET AL.
19-7350 BATTENFIELD, BILLY V. OKLAHOMA
19-7353 OKON, ENAMIDEN C. V. KNUTSON, WARDEN
19-7354 MARTIN, LAWRENCE V. KELLEY, DIR., AR DOC
19-7355 GAINES, HERMAN L. V. JOHNSON, ADM'R, NJ, ET AL.
19-7358 HARRELL, JOSHUA N. V. FAIRFIELD POLICE DEPT., ET AL.
19-7360 SIMONTON, TERRY V. GARMAN, SUPT., ROCKVIEW, ET AL.

19-7362 REGALADO, JOHN A. V. TRUMP, PRESIDENT OF U.S., ET AL.
19-7373 TYAGI, SANJAY V. SMITH, MARC D., ET AL.
19-7377 ADGER, GERALD V. NEW YORK
19-7378 DIAZ, OCTAVIO V. SAN BERNARDINO CTY., CA, ET AL.
19-7379 CAPERS, LEE S. V. CALIFORNIA
19-7380 CONSTANCE, DINO V. USDC WD WA
19-7383 MAY, PARNELL V. ARKANSAS
19-7385 KIMBEL, ARTHUR L. V. TEXAS
19-7390 ELLIS, MARSHALL H. V. OKLAHOMA
19-7395 CRUMP, JEAN V. UNITED STATES, ET AL.
19-7397 HUDSON, BERT V. PA BD. OF PROBATION AND PAROLE
19-7398 GIBBONS, ANDREW J. V. KNUTSON, WARDEN
19-7407 BENNETT, PAULA V. BREWER, WARDEN
19-7413 CLANCY, BRENNEN V. FL DOC, ET AL.
19-7414 WHITLEY, LATRAY V. TEXAS
19-7415 DAVIS, DENNIS C. V. FAYETTE CTY. APPRAISAL, ET AL.
19-7428 O'LAUGHLIN, TIMOTHY V. UNITED STATES
19-7429 MITCHELL, LOUIS V. CALIFORNIA
19-7436 REEVES, RUTH E. V. SAUL, ANDREW M.
19-7443 MILTON, CHARLES V. INCH, SEC., FL DOC
19-7449 SMITH, JACK R. V. OREOL, HARRY
19-7463 BURLISON, TERRANCE A. V. ELLSPERMAN, DAVID R.
19-7471 BROWN, BARBARA E. V. SAN BERNADINO COUNTY, CA, ET AL.
19-7515 NGUYEN, ANDY V. CALIFORNIA
19-7516 MOSLEY, MARY V. UNITED STATES
19-7517 PALACIOS-CORDERO, MARIO V. UNITED STATES
19-7520 FEENEY, EDWARD S. V. UNITED STATES
19-7523 LAWSON, MICAH L. V. INCH, SEC., FL DOC

19-7526 SEGURA-RESENDIZ, GREGORIO V. UNITED STATES
 19-7528 SMITH, DAVID L. V. JACKSON, RICK
 19-7530 THOMPSON, ORANDO R. V. FLORIDA
 19-7536 SIMPSON, JAMES H. V. BISHOP, MARTESHA, ET AL.
 19-7543 OSBORN, EARL V. WILLIAMS, CHRISTOPHER, ET AL.
 19-7547 CASHION, PHILLIP B. V. TEXAS
 19-7548 CABRERA, RUDY O. V. UNITED STATES
 19-7551 HERRINGTON, DONALD A. V. VIRGINIA
 19-7558 WILSON, FREDDIE L. V. INCH, SEC., FL DOC, ET AL.
 19-7562 SMITH, DALTON L. V. UNITED STATES
 19-7571 WILLIAMS, RICHARD V. MAYS, WARDEN
 19-7574) BELTRAN, LUIS V. UNITED STATES
)
 19-7594) LOPEZ-CABRERA, FELIX V. UNITED STATES
 19-7580 CRISTO, CONSTANTINE G. V. CIR
 19-7584 YAZZIE, VINA V. MOHAVE COUNTY, AZ, ET AL.
 19-7585 ELLIS, JERRY V. BARLOW-HURST, WARDEN
 19-7586 DONAHUE, SEAN M. V. PA CIVIL SERVICE COMMISSION
 19-7588 BIBLE, ALEKSANDR V. UNITED STATES
 19-7593 YI, YOUNG V. UNITED STATES
 19-7599 SMITH-KILPATRICK, TRACEY V. UNITED STATES
 19-7602 HARRELL, JOSHUA N. V. BELYEA, MICHELLE, ET AL.
 19-7606 MCKINNON, ROBERT V. FLORIDA
 19-7608 PEREZ-ROMAN, JUAN V. UNITED STATES
 19-7614 PERRY, JASON V. BROWN, RICHARD
 19-7616 BLAJOS, FRED V. UNITED STATES
 19-7617 AMAYA-RIVAS, DONATO V. UNITED STATES
 19-7620 CAMPBELL, BRADLEY V. UNITED STATES
 19-7623 SILKEUTSABAY, SINYO, ET AL. V. UNITED STATES

19-7624 SHAW, JEROME V. UNITED STATES
19-7625 SWINTON, ROBERT L. V. FLORIDA
19-7630 HOLLINGSBED, PARIS V. UNITED STATES
19-7631 WOLGAMOTT, REGINA V. UNITED STATES
19-7634 HANKINS, AIMEE V. LOWE, TIM
19-7635 COURTNEY, TIMOTHY V. UNITED STATES
19-7638 PEREZ, RODRIGO C. V. UNITED STATES
19-7640 CARRIER, PHILLIP A. V. ROMERO, WARDEN
19-7646 FITZGERALD, DAVION V. UNITED STATES
19-7648 HARRIS, OTIS R. V. UNITED STATES
19-7650 D. W. V. WA DEPT. OF CHILDREN
19-7652 WHYTE, STEVEN C. V. UNITED STATES
19-7654 ELOI, JEAN R. V. UNITED STATES
19-7656 HUNTOON, MICHAEL V. UNITED STATES
19-7661 DERVISHAJ, REDINEL V. UNITED STATES
19-7662 ORELLANA, JUAN V. MADDEN, WARDEN
19-7663 LaSALLE, RYAN D. V. UNITED STATES
19-7664 BARNETT, YERVIN K. V. UNITED STATES
19-7667 WILLIAMS, ROBERT T. V. UNITED STATES
19-7675 JOHNSON, ALONZO L. V. UNITED STATES
19-7677 CODY, SANDCHASE V. UNITED STATES
19-7681 WASHINGTON, HOWARD A. V. UNITED STATES
19-7682 BEVERLY, ERIC V. UNITED STATES
19-7695 DELACRUZ, ARTURO V. UNITED STATES
19-7697 LOVELL, REBECCA L. V. CHILDREN'S CORNER DAYCARE
19-7698 CALDERON-ORTALEJO, MARTIN V. UNITED STATES
19-7705 BURGHARDT, MICHAEL R. V. UNITED STATES
19-7707 ARTHUR, ELIJAH L. V. UNITED STATES

19-7711 VESCUSO, JOHN P. V. UNITED STATES
19-7713 OUDEMS, RONELLE L. V. UNITED STATES
19-7716 WALLACE, TIMMY V. UNITED STATES
19-7718 REYES, DENNY V. UNITED STATES
19-7719 SHEAFE, ADAM C. V. UNITED STATES
19-7720 JONES, LAMONT V. UNITED STATES
19-7730 ALEXANDER, ELIZABETH V. BLOOMINGDALE'S, INC.
19-7733 DIAZ, GUSTAVO V. UNITED STATES
19-7737 WOLFE, CHARLES V. UNITED STATES
19-7744 RAI CHOWDHURI, PARTHA A. V. SGT, INC., ET AL.
19-7747 SUEIRO, CHRISTOPHER R. V. UNITED STATES
19-7749 BRIDGES, ANDREY L. V. GRAY, WARDEN
19-7750 BROWN, RUSSELL P. V. HUTCHISON, WARDEN
19-7752 OCHOA, DANIEL V. UNITED STATES
19-7754 PEETERS, ERIK L. V. UNITED STATES
19-7757 POPOOLA, BABATUNDE V. UNITED STATES
19-7760 ACHEY, JEREMY V. UNITED STATES

The petitions for writs of certiorari are denied.

19-723 WHITE, OLIVER L. V. UNITED STATES

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

19-869 WEBER, NICOLE V. ALLERGAN, INC.

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

19-6589 NORMAN, ALICIA, ET AL. V. UNITED STATES

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

19-6991 KE, LEI V. DREXEL UNIVERSITY

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*).

19-7254 SMITH, JOHN G. V. WASHINGTON

19-7403 SHOVE, THEODORE C. V. DAVIS, WARDEN

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.

19-7589 MONZEL, MICHAEL M. V. UNITED STATES

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

19-7604 LUMPKIN, RICHARD A. V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Sotomayor, with whom Justice Ginsburg joins, dissenting from the denial of certiorari: I dissent for the reasons set out in *Brown v. United States*, 586 U. S. ____ (2018) (Sotomayor, J.,

dissenting).

HABEAS CORPUS DENIED

19-932 IN RE JULIUS J. MURPHY

The petition for a writ of habeas corpus is denied.

MANDAMUS DENIED

19-7351 IN RE ALPHONZA L. THOMAS BEY

19-7411 IN RE LIONEL McCRAY

The petitions for writs of mandamus are denied.

19-7374 IN RE JOHN WALLACE

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

REHEARINGS DENIED

18-9645 BLACK, VICTOR J. V. DAVIS, DIR., TX DCJ

19-493 MAKSIMUK, JAMES J. V. CONNOR SPORT COURT INT'L, LLC

19-552 SALZWEDEL, WILLIAM A. V. CALIFORNIA, ET AL.

19-582 EDMONDSON, SARA A. V. LILLISTON FORD INC., ET AL.

19-637 SERNA, EMMA V. WEBSTER, MARGETTE, ET AL.

19-705 SHARPE, JOHN F. V. UNITED STATES

19-6329 BOYD, JACKIE L. V. MONROE, CAROL, ET AL.

19-6381 BROWN, ANTHONY T. V. MICHIGAN

19-6382 MARTINEZ-COVARRUBIAS, MANUEL V. BARR, ATT'Y GEN.

19-6438 TAPIA-FIERRO, JOSE L. V. BARR, ATT'Y GEN., ET AL.

19-6439 LOPEZ, ARTHUR V. MUFG UNION BANK, N.A., ET AL.

19-6495 SCHWERTZ, BRENT C. V. JENNINGS, WARDEN

19-6498 TOOTLE, ANDREA R. V. BEAUX ART INSTITUTE, ET AL.

19-6541 FORTES, STAR V. TX DEPT. OF FAMILY, ET AL.

19-6563 WAZNEY, ROBERT W. V. SOUTH CAROLINA

19-6575 ELLIOTT, DOROTHY W. V. FLORIDA

19-6579 SMITH, DAVID L. V. NORTH CAROLINA, ET AL.
19-6651 THOMPSON, SHAWN A. V. MCGINLEY, SUPT., COAL TOWNSHIP
19-6694 SUNDY, TIM V. CHRISTIAN, MARTHA C.
19-6698 MTAZA, AMON R. V. UNITED STATES
19-6702 IN RE RICARDO J. CALDERON-LOPEZ
19-6887 IN RE BRAD K. EDMONDS
19-7047 IN RE ANTWOYN SPENCER

The petitions for rehearing are denied.

Per Curiam

SUPREME COURT OF THE UNITED STATES

CHARLES EARL DAVIS *v.* UNITED STATES

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

No. 19–5421. Decided March 23, 2020

PER CURIAM.

In July 2016, police officers in Dallas, Texas, received a tip about a suspicious car parked outside of a house in the Dallas area. The officers approached the car and encountered Charles Davis in the driver’s seat. They ordered him out of the car after smelling marijuana. As Davis exited the car, the officers spotted a black semiautomatic handgun in the door compartment. They then searched Davis and found methamphetamine pills.

Davis had previously been convicted of two state felonies. In this case, a federal grand jury in the Northern District of Texas indicted Davis for being a felon in possession of a firearm, 18 U. S. C. §§922(g)(1), 924(a)(2), and for possessing drugs with the intent to distribute them, 21 U. S. C. §§841(a)(1), (b)(1)(C). Davis pleaded guilty to both counts. The presentence report prepared by the probation office noted that Davis was also facing pending drug and gun charges in Texas courts stemming from a separate 2015 state arrest. The District Court sentenced Davis to four years and nine months in prison and ordered that his sentence run consecutively to any sentences that the state courts might impose for his 2015 state offenses. Davis did not object to the sentence or to its consecutive nature.

Davis appealed to the U. S. Court of Appeals for the Fifth Circuit. On appeal, he argued for the first time that the District Court erred by ordering his federal sentence to run consecutively to any sentence that the state courts might impose for his 2015 state offenses. Davis contended that his 2015 state offenses and his 2016 federal offenses were

Per Curiam

part of the “same course of conduct,” meaning under the Sentencing Guidelines that the sentences should have run concurrently, not consecutively. See United States Sentencing Commission, Guidelines Manual §§1B1.3(a)(2), 5G1.3(c) (Nov. 2018).

In the Fifth Circuit, Davis acknowledged that he had failed to raise that argument in the District Court. When a criminal defendant fails to raise an argument in the district court, an appellate court ordinarily may review the issue only for plain error. See Fed. Rule Crim. Proc. 52(b).

But the Fifth Circuit refused to entertain Davis’ argument at all. The Fifth Circuit did not employ plain-error review because the court characterized Davis’ argument as raising factual issues, and under Fifth Circuit precedent, “[q]uestions of fact capable of resolution by the district court upon proper objection at sentencing can never constitute plain error.” 769 Fed. Appx. 129 (2019) (*per curiam*) (quoting *United States v. Lopez*, 923 F. 2d 47, 50 (1991) (*per curiam*)). By contrast, almost every other Court of Appeals conducts plain-error review of unpreserved arguments, including unpreserved factual arguments. See, e.g., *United States v. González-Castillo*, 562 F. 3d 80, 83–84 (CA1 2009); *United States v. Romeo*, 385 Fed. Appx. 45, 49–50 (CA2 2010); *United States v. Griffiths*, 504 Fed. Appx. 122, 126–127 (CA3 2012); *United States v. Wells*, 163 F. 3d 889, 900 (CA4 1998); *United States v. Sargent*, 19 Fed. Appx. 268, 272 (CA6 2001) (*per curiam*); *United States v. Durham*, 645 F. 3d 883, 899–900 (CA7 2011); *United States v. Sahakian*, 446 Fed. Appx. 861, 863 (CA9 2011); *United States v. Thomas*, 518 Fed. Appx. 610, 612–613 (CA11 2013) (*per curiam*); *United States v. Saro*, 24 F. 3d 283, 291 (CADDC 1994).

In this Court, Davis challenges the Fifth Circuit’s outlier practice of refusing to review certain unpreserved factual arguments for plain error. We agree with Davis, and we vacate the judgment of the Fifth Circuit.

Per Curiam

Rule 52(b) states in full: “A plain error that affects substantial rights may be considered even though it was not brought to the court’s attention.” The text of Rule 52(b) does not immunize factual errors from plain-error review. Our cases likewise do not purport to shield any category of errors from plain-error review. See generally *Rosales-Mireles v. United States*, 585 U. S. ____ (2018); *United States v. Olano*, 507 U. S. 725 (1993). Put simply, there is no legal basis for the Fifth Circuit’s practice of declining to review certain unpreserved factual arguments for plain error.

The petition for certiorari and the motion for leave to proceed *in forma pauperis* are granted, the judgment of the Fifth Circuit is vacated, and the case is remanded for further proceedings consistent with this opinion. We express no opinion on whether Davis has satisfied the plain-error standard.

It is so ordered.

Statement of KAVANAUGH, J.

SUPREME COURT OF THE UNITED STATES

EDWIN ARTHUR AVERY *v.* UNITED STATES

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

No. 19–633. Decided March 23, 2020

The petition for a writ of certiorari is denied.

Statement of JUSTICE KAVANAUGH respecting the denial of certiorari.

Federal prisoners can seek postconviction relief by filing an application under 28 U. S. C. §2255. State prisoners can seek federal postconviction relief by filing an application under §2254.

The issue in this case concerns second-or-successive applications. As relevant here, the law provides that a “claim presented in a second or successive habeas corpus application *under section 2254* that was presented in a prior application shall be dismissed.” §2244(b)(1) (emphasis added).

The text of that second-or-successive statute covers only applications filed by state prisoners under §2254. Yet six Courts of Appeals have interpreted the statute to cover applications filed by state prisoners under §2254 and by federal prisoners under §2255, even though the text of the law refers only to §2254. See *Gallagher v. United States*, 711 F. 3d 315 (CA2 2013); *United States v. Winkelman*, 746 F. 3d 134, 135–136 (CA3 2014); *In re Bourgeois*, 902 F. 3d 446, 447 (CA5 2018); *Taylor v. Gilkey*, 314 F. 3d 832, 836 (CA7 2002); *Winarske v. United States*, 913 F. 3d 765, 768–769 (CA8 2019); *In re Baptiste*, 828 F. 3d 1337, 1340 (CA11 2016).

After Avery’s case was decided, the Sixth Circuit recently rejected the other Circuits’ interpretation of the second-or-successive statute and held that the statute covers only applications filed by state prisoners under §2254. *Williams v.*

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United States, 927 F. 3d 427 (2019).

Importantly, the United States now agrees with the Sixth Circuit that “Section 2244(b)(1) does not apply to Section 2255 motions” and that the contrary view is “inconsistent with the text of Section 2244.” Brief in Opposition 10, 13. In other words, the Government now disagrees with the rulings of the six Courts of Appeals that had previously decided the issue in the Government’s favor.

In a future case, I would grant certiorari to resolve the circuit split on this question of federal law.