

(ORDER LIST: 577 U. S.)

MONDAY, NOVEMBER 16, 2015

**CERTIORARI -- SUMMARY DISPOSITION**

15-6134 MALDONADO, ANTONIO V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Fifth Circuit for further consideration in light of *Johnson v. United States*, 576 U. S. \_\_\_\_ (2015).

**ORDERS IN PENDING CASES**

15A370 ISRANI, ASH V. 960 CRYSTAL LAKE ASSOC.  
(15-6130)

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

15M52 STURDZA, ELENA V. UNITED ARAB EMIRATES, ET AL.

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

14-9973 BERGO, JUSTIN V. COURT OF APPEAL OF CA, ET AL.

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

15-5149 MAKI, ALLEN V. ANDERSON, BEVERLY, ET AL.

The motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* is granted. The order entered October 5, 2015, is vacated.

15-5284 MIERZWA, EDWARD J. V. WAL-MART, ET AL.

The motion of petitioner for reconsideration of order

denying leave to proceed *in forma pauperis* is denied.

15-5648 DIXON, LANDRY V. DISTRICT COURT OF LA, ET AL.  
15-6060 WOOD, JOHN W. V. FL ATL. UNIV. BD. OF TRUSTEES  
15-6068 SALAHUDDIN, AMNA V. ZONING HEARING BOARD, ET AL.  
15-6082 HERNANDEZ, JOSE J. V. DIGNITY HEALTH  
15-6181 FAISON, LOUIS T. V. UNITED STATES  
15-6211 WHITE, JOSEPH V. DETROIT EAST COMM. MENTAL HEALTH  
15-6593 MORRIS, GEORGE H. V. UNITED STATES

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until December 7, 2015, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

**CERTIORARI DENIED**

14-10029 KING, DIANE V. DEPT. OF VA  
14-10083 GLASGOW, ERMA L. V. OR DEPT. OF REVENUE  
14-10145 BONILLA, RICARDO V. UNITED STATES  
14-10150 NELSON, GORDON L. V. BRAZELTON, WARDEN  
14-10178 CRUTHIRDS, SHELIA Y. V. MILLER, KAREN, ET AL.  
14-10189 FLOWERS, DONTEZ S. V. UNITED STATES  
15-11 GARAY, BENNY V. NEW YORK  
15-59 CHEADLE, RONALD M. V. UNITED STATES  
15-175 AMERIJET INTERNATIONAL, INC. V. INT'L BROTHERHOOD OF TEAMSTERS  
15-187 PEREZ, LOUIS C. V. STEPHENS, DIR., TX DCJ  
15-227 YAMAHA MOTOR CORP., ET AL. V. McMAHON, JACKLYN  
15-282 MATHIS, TONY V. MORROW, GA, ET AL.  
15-288 CHUNGHWA PICTURE TUBES, LTD. V. EIDOS DISPLAY, LLC, ET AL.  
15-291 ARTHREX, INC. V. KFX MEDICAL CORPORATION

15-294 RAUB, BRANDON V. CAMPBELL, MICHAEL  
15-298 OMG, ET AL. V. HERITAGE AUCTIONS  
15-300 ELLRICH, DAVID J., ET AL. V. HAYS, MOLLY A.  
15-303 ZAVALA, CHRISTOPHER R. V. TEXAS, ET AL.  
15-311 HOUSTON, MICHAEL, ET AL. V. QUEEN, VERNETTA, ET AL.  
15-318 BAPTISTE, MICHELINE V. C & F PROPERTIES, LLC  
15-319 UNITEDHEALTH GROUP, INC., ET AL. V. DENBO, JONATHAN, ET AL.  
15-322 WU, LEWIS, ET UX. V. CAPITAL ONE, N.A., ET AL.  
15-332 LEWICKI, JOSEPH W., ET AL. V. WASHINGTON COUNTY, PA, ET AL.  
15-340 RAOUL, DAVID V. NEW YORK, ET AL.  
15-342 THOMAS, DEANTHONY, ET AL. V. U.S. BANK, N.A., ET AL.  
15-343 WONG, JAMES G., ET AL. V. WELLS FARGO BANK, N.A., ET AL.  
15-368 BEUKES, DIRK, ET UX. V. GMAC MORTGAGE, LLC, ET AL.  
15-393 LONG, BRIDGET M. V. LIBERTYWOOD NURSING, ET AL.  
15-417 PLEWS, DENNIS J., ET AL. V. LUHRSEN, JEFFREY, ET AL.  
15-427 LEE, WILLIAM W. V. CAIN, WARDEN  
15-434 DAVENPORT, KENNETH B. V. PENNSYLVANIA  
15-508 SEALED APPELLANT 2, ET AL. V. BP EXPLORATION, ET AL.  
15-519 AIRCRAFT CHECK SERVICES, ET AL. V. VERIZON WIRELESS, ET AL.  
15-5164 ALMANZA, ANTONIO V. CALIFORNIA  
15-5171 O'BRYANT, ANDREUS V. UNITED STATES  
15-5197 PICKETT, CLAUDE E. V. GALLAGHER, MICHAEL T., ET AL.  
15-5443 DEPPENBROOK, PAUL V. PENSION BENEFIT GUARANTY CORP.  
15-5610 LIU, AMY V. DEPT. OF INDUSTRIAL RELATIONS  
15-5989 SMITH, COY V. STEPHENS, DIR., TX DCJ  
15-5998 KIM, DANNY V. MONTGOMERY, WARDEN  
15-6003 PINKARD, EUGENIA V. NYC DEPT. OF EDUCATION, ET AL.  
15-6004 OSBORNE, EMERSON V. KING, SUPT., SOUTH MS

15-6012 WIMBERLY, ANTHONY V. JULIUS, JEFFREY B., ET AL.  
15-6014 BELL, DWIGHT D. V. NEW JERSEY, ET AL.  
15-6017 SOTO, JUAN R. V. D'LLIO, ADM'R, NJ, ET AL.  
15-6020 FIELDS, PHILIP V. STONE, BOB  
15-6026 IVY, JOHN V. BROWN, SUPT., WABASH VALLEY  
15-6031 TYSON, CHARLES V. CARTLEDGE, WARDEN, ET AL.  
15-6038 TAYLOR, DANIEL W. V. BARNARD, TERRY E., ET AL.  
15-6043 HILL, KEITH L. V. VIRGINIA  
15-6049 SMITH, ROY A. V. BROWN, RICHARD  
15-6051 RILEY, DAVID L. V. CALIFORNIA  
15-6055 DOUGLAS, HOUSTON V. WRIGHT, LESTER N., ET AL.  
15-6059 VEGA, VICTOR B. V. STEPHENS, DIR., TX DCJ  
15-6071 BURFEINDT, JEFFREY C. V. POSTUPACK, NINA, ET AL.  
15-6080 WATKINS, JOHNEIL V. STERN, JAMES, ET AL.  
15-6084 JACKSON, HARRY V. PENNSYLVANIA  
15-6096 MORRIS, CAROL J. V. COURT OF APPEALS OF TX  
15-6102 PICKENS, ANDRE D. V. CALIFORNIA  
15-6105 JOHNSON, PRESTON V. UNITED STATES  
15-6106 MOORE, JOSHUA D. V. OKLAHOMA  
15-6115 McCOY, LaKEITH L. V. O'NEILL, TONI C., ET AL.  
15-6116 FOX, THOMAS J. V. MINNESOTA  
15-6120 EVANS, ROBIN L. V. ELMER'S PRODUCTS, INC., ET AL.  
15-6124 AZIZ, ABDUL V. NEW JERSEY  
15-6126 BREAUX, STEVEN A. V. CLARKE, DIR., VA DOC  
15-6128 BOLDS, WILLIE V. CALIFORNIA  
15-6130 ISRANI, ASH V. 960 CRYSTAL LAKE ASSOC.  
15-6131 SCHEFFLER, TROY K. V. MINNESOTA  
15-6136 COLE, CURTIS J. V. UNITED STATES

15-6153 DAVIS, LAQUINCES D. V. STEVENSON, WARDEN  
15-6158 ALSTON, DAVID V. V. KEAN UNIVERSITY, ET AL.  
15-6174 GARCIA, JESUS V. MAHALLY, SUPT., DALLAS, ET AL.  
15-6203 UROSEVIC, MILOVAN R. V. DEPT. OF HOMELAND SECURITY  
15-6227 TAYLOR, TERRELL V. CROWLEY, SUPT., ORLEANS  
15-6246 CHRISTIAN, MAURICE B. V. DISTRICT COURT OF MI, ET AL.  
15-6255 McCORMICK, KINOLL V. MAHALLY, SUPT., DALLAS, ET AL.  
15-6257 LUCAS, JOHNNY V. CARTLEDGE, WARDEN  
15-6259 JOHNSON, ROBERT L. V. DEPT. OF LABOR, ET AL.  
15-6271 FLENOID, LARRY V. KOSTER, ATT'Y GEN. OF MO, ET AL.  
15-6274 ADAMS, NOEL V. FLORIDA  
15-6280 RILEY, JASON O. V. CARTLEDGE, WARDEN  
15-6332 WATSON, CURTIS L. V. UNITED STATES  
15-6343 ADKINS, ERNEST V. WETZEL, SEC., PA DOC, ET AL.  
15-6377 GRAY, JEFFREY V. NEW HAMPSHIRE  
15-6387 FABIAN, ALAN B. V. THOMAS, WARDEN  
15-6392 MASON, VICTOR E. V. UNITED STATES  
15-6400 LAMPKIN, ANTOINETTE R. V. AJILON PROFESSIONAL STAFFING  
15-6415 JULISON, MILES J. V. UNITED STATES  
15-6416 TALIK, EUGENE V. THOMAS, WARDEN, ET AL.  
15-6422 SHKAMBI, FRANCESK V. UNITED STATES  
15-6425 ZARECK, RAYMOND V. UNITED STATES  
15-6428 PRECIADO-OVALLES, RAUL V. UNITED STATES  
15-6433 GREEN, MARK V. UNITED STATES  
15-6434 BROWN, JAMES V. UNITED STATES  
15-6446 DEESE, CHARLES R. V. UNITED STATES  
15-6458 WILLIAMS, JAMES J. V. CARTLEDGE, WARDEN  
15-6463 VARGAS, PEDRO V. UNITED STATES

15-6481 LEE, DARRYL V. UNITED STATES  
15-6487 GONZALES, ARTHUR A. V. UTAH  
15-6489 HOWTON, JACK E. V. UNITED STATES  
15-6502 ADAMS, ARRON V. UNITED STATES  
15-6503 KILBURG, TERRANCE J. V. UNITED STATES  
15-6507 ASKEW, LOUIS V. UNITED STATES  
15-6512 PETTWAY, CLINTON L. V. FEATHER, WARDEN  
15-6513 PIROSKO, JOSEPH V. UNITED STATES  
15-6519 WILSON, FREDDIE V. UNITED STATES  
15-6522 JAMES, SANTANA V. UNITED STATES  
15-6523 KEATINGS, KENNETH V. UNITED STATES  
15-6524 MASTERS, RYAN V. UNITED STATES  
15-6525 SOTO, RUDY V. UNITED STATES  
15-6526 CAMACHO, RAYMOND V. UNITED STATES  
15-6527 DUQUE-DIAZ, SABINO V. UNITED STATES  
15-6528 PENA-AGUILAR, JUAN P. V. UNITED STATES  
15-6531 RODRIGUEZ, OTTO V. UNITED STATES  
15-6537 CAZY, JEAN V. UNITED STATES  
15-6543 RICHTER, AMANDA M. V. UNITED STATES  
15-6545 SIMMONS, JOHN V. UNITED STATES  
15-6550 KAISER, JOHN V. UNITED STATES  
15-6553 LUONG, JOHN T., ET AL. V. UNITED STATES  
15-6554 ROSS, BRYAN V. UNITED STATES  
15-6555 TINKER, DELVIN D. V. UNITED STATES  
15-6564 ROWE, KENNETH J. V. UNITED STATES  
15-6569 CHIBUKO, JOEY V. UNITED STATES  
15-6570 RICE, ROYLAND V. UNITED STATES  
15-6571 MARTINEZ, ARTURO V. UNITED STATES

15-6573 OUTLAW, EDDIE C. V. UNITED STATES  
15-6577 PEEL, GARY E. V. SEPANEK, WARDEN  
15-6580 TIBBS, MYRON D. V. UNITED STATES  
15-6585 VELIZ, CRISTOBAL V. UNITED STATES  
15-6589 TAYLOR, VERSIAH M. V. USDC ND FL  
15-6592 MCGEE, ANTHONY V. UNITED STATES  
15-6598 TREVINO MORALES, JOSE V. UNITED STATES  
15-6599 DOMINGUEZ-VALENCIA, OMAR V. UNITED STATES  
15-6601 HERNANDEZ-MALDONADO, MELVIN V. UNITED STATES  
15-6604 SALAM, RAUF A. V. UNITED STATES  
15-6609 HERRERA, ERICK V. UNITED STATES  
15-6610 FRANKLIN, RICHARD V. UNITED STATES  
15-6614 BULLARD, KENNETH V. UNITED STATES  
15-6616 CASTILLO, JOSE L. V. UNITED STATES  
15-6627 ROBINSON, EDWARD V. UNITED STATES  
15-6629 HAYES, JOHN D. V. UNITED STATES

The petitions for writs of certiorari are denied.

15-510 MESO SCALE DIAGNOSTICS, ET AL. V. ROCHE DIAGNOSTICS, ET AL.

The motion of Leonard A. White, et al. for leave to file a brief as *amici curiae* is granted. The petition for a writ of certiorari is denied.

15-6016 BRAINERD, CLAIRE V. SCHLUMBERGER TECHNOLOGY CORP.

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

15-6087 WILHELM, STEVEN H. V. FISHER, WARDEN

15-6122 DIXON, ECHO W. V. UNITED STATES

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.

15-6127 BREWER, VAN L. V. STEPHENS, DIR., TX DCJ

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*).

15-6205 CARLSON, STEPHEN W. V. DAYTON, GOV. OF MN, 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.

15-6494 ROUNDTREE, DEON D. V. UNITED STATES

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

#### **HABEAS CORPUS DENIED**

15-6665 IN RE MARCUS O. TATE

The petition for a writ of habeas corpus is denied.

#### **PROHIBITION DENIED**

15-6078 IN RE GREGORY JOHNSON

The petition for a writ of prohibition is denied.

**REHEARINGS DENIED**

14-9860 NIXON, TRACY V. ABBOTT, GOV. OF TX, ET AL.  
14-10045 RANTEESI, SIMON F. V. ARNOLD, ACTING WARDEN  
14-10105 RANTEESI, SIMON F. V. CONSTANCE, MARK, ET AL.  
15-124 BRADLEY, ELOUISE V. SABREE, JENNIFER, ET AL.  
15-172 HOWARD, MILLIE V. RAILROAD RETIREMENT BOARD  
15-5077 KEARNEY, RICHARD V. FISCHER, COMM'R, NY DOC, ET AL.  
15-5086 NESSELRODE, GREGORY P. V. DEPT. OF EDUCATION  
15-5111 LUNZ, JOSEPH V. O'MEARA, SUPT., GOUVERNEUR  
15-5201 SAUNDERS, MICHAEL J. V. VIRGINIA  
15-5212 BROWN, MONICA, ET VIR V. FL DEPT. OF CHILDREN & FAMILIES  
15-5295 STEVENSON, ROGER V. SAUNDERS, SORRELL  
15-5675 VOGT, SHELBY A. V. IOWA STATE PENITENTIARY, ET AL.  
15-5773 TURNER, COREY E. V. UNITED STATES  
15-5848 WEBB, KEITH B. V. UNITED STATES  
15-5939 IMPERATO, DANIEL V. SEC

The petitions for rehearing are denied.

THOMAS, J., dissenting

**SUPREME COURT OF THE UNITED STATES**

NEW HAMPSHIRE RIGHT TO LIFE *v.* DEPARTMENT  
OF HEALTH AND HUMAN SERVICES

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

No. 14–1273. Decided November 16, 2015

The petition for a writ of certiorari is denied.

JUSTICE THOMAS, with whom JUSTICE SCALIA joins,  
dissenting from the denial of certiorari.

The Freedom of Information Act (FOIA), 5 U. S. C. §552, requires federal agencies to “make [agency] records promptly available to any person” who requests them, unless the information that they contain falls under a specifically enumerated exemption. §§552(a)(3)(A), (b). One of those exemptions, Exemption 4, authorizes agencies to withhold documents that contain “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” §552(b)(4).

We have long maintained that “FOIA reflects a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language.” *Department of Defense v. FLRA*, 510 U. S. 487, 494 (1994) (internal quotation marks omitted). And we have rejected interpretations of other FOIA exemptions that diverge from the text. *E.g.*, *Milner v. Department of Navy*, 562 U. S. 562, 573 (2011) (rejecting interpretation due to its “patent flaw: It is disconnected from Exemption 2’s text”).

Though we often have considered other FOIA exemptions, we have never interpreted Exemption 4’s exception for “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” §552(b)(4). In the meantime, Courts of Appeals have declined to interpret the word “confidential” in Exemption

4 according to its ordinary meaning. Here, for instance, the Court of Appeals for the First Circuit upheld the Department of Health and Human Services’ refusal to disclose Planned Parenthood’s Manual of Medical Standards and Guidelines, a document that the Government had required Planned Parenthood to submit in connection with a non-competitive grant application. See *New Hampshire Right to Life v. Department of Health and Human Services*, 778 F. 3d 43, 49–52 (2015). The First Circuit based this conclusion not on the ordinary meaning of the term “confidential,” but on conjectures as to whether disclosure could harm Planned Parenthood’s competitive position. The court deemed the manual confidential because “[a] potential future competitor could take advantage of the institutional knowledge contained in the Manual” to compete with Planned Parenthood at some later date. *Id.*, at 51.

The decision below reflects a wider development. Courts of Appeals have embraced varying versions of a convoluted test that rests on judicial speculation about whether disclosure will cause competitive harm to the entity from which the information was obtained. In 1974, the Court of Appeals for the D. C. Circuit decided *National Parks and Conservation Assn. v. Morton*, 498 F. 2d 765, which construed the word “confidential” in Exemption 4 by looking to legislative history and the “legislative purpose which underlies the exemption.” *Id.*, at 767; see *id.*, at 766–770. That court determined that commercial information is “confidential” if, *inter alia*, disclosure would “cause substantial harm to the competitive position of the person from whom the information was obtained.” *Id.*, at 770. The D. C. Circuit later elaborated that there was no need to “show actual competitive harm,” and that “[a]ctual competition and the likelihood of substantial competitive injury” sufficed. *Public Citizen Health Research Group v. FDA*, 704 F. 2d 1280, 1291 (1983) (internal quotation

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marks omitted). Seven other Circuits adopted the *National Parks* test. See *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 876 (CA DC 1992) (en banc) (collecting cases).

In 1992, the D. C. Circuit granted rehearing en banc to reconsider *National Parks*, after two judges of that court described its test as “fabricated, out of whole cloth.” *Critical Mass*, 975 F.2d, at 875 (internal quotation marks omitted). The full court declined to overrule it entirely. *Id.*, at 876–877, 880. Instead, the court “confine[d]” the *National Parks* test “to information that persons are required to provide the Government,” and adopted a different test for voluntarily provided information. 975 F.2d, at 872, 880.

Since then, every Court of Appeals to consider Exemption 4 has interpreted it by parsing *National Parks*’ nebulous language about “actual competition” and a “substantial likelihood of competitive harm.” The courts’ reliance on *National Parks* to determine whether information is “confidential” commercial information has produced confusion. Courts cannot seem to agree on what kind of “actual competition” must be shown. Some require factual justifications and market definitions to show that there is “actual competition in the relevant market” in which the entity opposing the disclosure of its information operates. *Watkins v. Bureau of Customs and Border Protection*, 643 F.3d 1189, 1196 (CA9 2011). Others, including the First Circuit below, take an expansive view of what the relevant market is, and do not require any connection between that market and the context in which an entity supplied the requested information. 778 F.3d, at 51.

Courts of Appeals also disagree over what a “substantial likelihood of competitive harm” means. In some courts, there must be evidence that the entity whose information is being disclosed would likely suffer some defined competitive harm (like lost market share) if competitors used the

information. *E.g.*, *McDonnell Douglas Corp. v. Department of Air Force*, 375 F. 3d 1182, 1187 (CADC 2004); *GC Micro Corp. v. Defense Logistics Agency*, 33 F. 3d 1109, 1115 (CA9 1994). But the First Circuit here accepted that competitors’ possible use of the information alone constitutes harm—even if this would not likely result in any negative consequences for the entity whose information was disclosed. See 778 F. 3d, at 51. Similarly, some courts hold that competitive harm exists if a competitor could use the disclosed information to publicly embarrass the originator of the information. *E.g.*, *Nadler v. FDIC*, 92 F. 3d 93, 96–97 (CA2 1996). Others hold that this can never be competitive harm. *E.g.*, *United Technologies Corp. v. Department of Defense*, 601 F. 3d 557, 563–564 (CADC 2010). We should not leave the meaning of Exemption 4 up to an atextual test that has different limits in different Circuits.\*

By failing to address the Courts of Appeals’ abrogation of Exemption 4’s text, we have also created a disconcerting anomaly. We have interpreted FOIA Exemption 5—applicable to agency memoranda that “would not be available by law to a party . . . in litigation with the agency,” §552(b)(5)—to encompass a “privilege for confidential commercial information” created by the Government. *Federal Open Market Comm. v. Merrill*, 443 U. S. 340, 360 (1979). Yet, in that context, we defined confidential commercial information to mean information “generated in the process of awarding a contract,” which “would in fact be privileged in civil discovery.” *Id.*, at 361. It is odd for one definition of confidential commercial information to apply to Government-generated records and for a different test

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\*The Government apparently agrees. Rather than defending the Courts of Appeals’ tests, the Government’s brief opposing certiorari states that every court that has adopted the *National Parks* definition of “confidential” information has turned its back on the statutory text.

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to apply if nongovernmental actors created them. It is especially strange given our recognition that the only difference between confidential commercial information covered by Exemption 4 and Exemption 5 is that the latter “is necessarily confined to information generated by the Federal Government itself.” *Id.*, at 360.

\* \* \*

The First Circuit’s decision warrants review. It perpetuates an unsupported interpretation of an important federal statute and further muddies an already amorphous test. For these reasons, I respectfully dissent from the denial of certiorari.