**United States Supreme Court
Criminal & Immigration Law Decisions of the 2022-2023 Term**Updated: *Tuesday, June 27, 2023*

1. *Ciminelli v. United States et al.*, No. 21-1170, decided May 11, 2023 **[Fraud, Right-to-Control Theory]**Thomas majority, Alito concurring
Petitioner Louis Ciminelli was convicted of federal wire fraud for his involvement in a scheme to rig the bid process for obtaining state-funded development projects associated with then-New York Governor Andrew Cuomo’s Buffalo Billion initiative. The Buffalo Billion initiative was administered by the nonprofit Fort Schuyler Management Corporation. Investigations uncovered that Fort Schuyler board member Alain Kaloyeros paid lobbyist Todd Howe $25,000 in state funds each month to ensure that the Cuomo administration gave Kaloyeros a prominent role in administering projects for Buffalo Billion. Ciminelli’s construction company, LPCiminelli, paid Howe $100,000 to $180,000 each year to help it obtain state-funded jobs. In 2013, Howe and Kaloyeros devised a scheme whereby Kaloyeros would tailor Fort Schuyler’s bid process to smooth the way for LPCiminelli to receive major Buffalo Billion contracts by designating LPCiminelli as a “preferred developer” with priority status to negotiate for specific projects. Kaloyeros, Howe, and Ciminelli jointly developed a set of requests for proposal (RFPs) that effectively guaranteed LPCiminelli’s selection as a preferred developer by treating unique aspects of LPCiminelli as qualifications for preferred-developer status. With that status in hand, LPCiminelli secured the marquee $750 million “Riverbend project” in Buffalo. After the scheme was uncovered, Ciminelli, Kaloyeros, Howe, and others were indicted for, as relevant here, wire fraud in violation of 18 U. S. C. §1343 and conspiracy to commit the same under §1349. In the operative indictment and at trial, the Government relied solely on the Second Circuit’s right-to-control theory of wire fraud, under which the Government can establish wire fraud by showing that the defendant schemed to deprive a victim of potentially valuable economic information necessary to make discretionary economic decisions. Consistent with that theory, the District Court instructed the jury that the term “property” in §1343 “includes intangible interests such as the right to control the use of one’s assets,” which could be harmed by depriving Fort Schuyler of “potentially valuable economic information.” The jury convicted Ciminelli of wire fraud and conspiracy to commit wire fraud. On appeal, Ciminelli argued that the right to control one’s assets is not “property” for purposes of §1343. The Second Circuit affirmed the convictions on the basis of its longstanding right-to-control precedents. **Held:** Because the right to valuable economic information needed to make discretionary economic decisions is not a traditional property interest, the Second Circuit’s right-to-control theory cannot form the basis for a conviction under the federal fraud statutes.
2. *Counterman v. Colorado*, No. 22-138, decided June 27, 2023 **[First Amendment, Awareness of Threats]**
Kagan majority, Sotomayor concurring, Thomas dissenting, Barrett dissenting
Counterman sent hundreds of Facebook messages to C. W., a local singer and musician. The two had never met, and C. W. did not respond. In fact, she tried repeatedly to block him, but each time, Counterman created a new Facebook account and resumed contacting C. W. Several of his messages envisaged violent harm befalling her. Counterman’s messages put C. W. in fear and upended her daily existence: C. W. stopped walking alone, declined social engagements, and canceled some of her performances. C. W. eventually contacted the authorities. The State charged Counterman under a Colorado statute making it unlawful to “[r]epeatedly . . . make[] any form of communication with another person” in “a manner that would cause a reasonable person to suffer serious emotional distress and does cause that person . . . to suffer serious emotional distress.” Colo. Rev. Stat. §18–3–602(1)(c). Counterman moved to dismiss the charge on First Amendment grounds, arguing that his messages were not “true threats” and therefore could not form the basis of a criminal prosecution. Following Colorado law, the trial court rejected that argument under an objective standard, finding that a reasonable person would consider the messages threatening. Counterman appealed, arguing that the First Amendment required the State to show not only that his statements were objectively threatening, but also that he was aware of their threatening character. The Colorado Court of Appeals disagreed and affirmed his conviction. The Colorado Supreme Court denied review. **Held:** The State must prove in true-threats cases that the defendant had some subjective understanding of his statements’ threatening nature, but the First Amendment requires no more demanding a showing than recklessness. In this context, a recklessness standard—i.e., a showing that a person “consciously disregard[ed] a substantial [and unjustifiable] risk that [his] conduct will cause harm to another,” *Voisine v. United States*, 579 U. S. 686, 691(2016)—is the appropriate *mens rea*.
3. *Cruz v. Arizona*, No. 21-846, decided February 22, 2023 **[Failure to Give Jury Instruction Regarding Life Without Parole]**
Sotomayor majority, Barrett dissenting
Cruz was found guilty of capital murder by an Arizona jury and sentenced to death. Both at trial and on direct appeal, Cruz argued that under *Simmons v. South Carolina*, 512 U. S. 154 (1994), he should have been allowed to inform the jury that a life sentence in Arizona would be without parole. The trial court and Arizona Supreme Court held that Arizona’s capital sentencing scheme did not trigger application of *Simmons*. After Cruz’s conviction became final, this Court held in *Lynch v. Arizona*, 578 U. S. 613 (2016) (per curiam), that it was fundamental error to conclude that *Simmons* “did not apply” in Arizona. *Id*., at 615. Cruz then sought to raise the *Simmons* issue again in a state postconviction petition under Arizona Rule of Criminal Procedure 32.1(g), which permits a defendant to bring a successive petition if “there has been a significant change in the law that, if applicable to the defendant’s case, would probably overturn the defendant’s judgment or sentence.” The Arizona Supreme Court denied relief after concluding that *Lynch* was not “a significant change in the law.” **Held:** The Arizona Supreme Court’s holding that *Lynch* was not a significant change in the law is an exceptional case where a state-court judgment rests on such a novel and unforeseeable interpretation of a state-court procedural rule that the decision is not adequate to foreclose review of the federal claim.
4. *Dubin v. United States*, No. 22-10, decided June 8, 2023 **[Aggravated Identity Theft]**
Sotomayor unanimous, Gorsuch concurring
Dubin was convicted of healthcare fraud under 18 U. S. C. §1347 after he overbilled Medicaid for psychological testing performed by the company he helped manage. The question is whether, in defrauding Medicaid, he also committed “[a]ggravated identity theft” under §1028A(a)(1). Section 1028A(a)(1) applies when a defendant, “during and in relation to any [predicate offense, such as healthcare fraud], knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person.” The Government argued below that §1028A(a)(1) was automatically satisfied because Dubin’s fraudulent Medicaid billing included the patient’s Medicaid reimbursement number—a “means of identification.” Bound by Fifth Circuit precedent, the District Court allowed Dubin’s conviction for aggravated identity theft to stand, even though, in the District Court’s view, the crux of the case was fraudulent billing, not identity theft. The Fifth Circuit sitting *en banc* affirmed in a fractured decision, with five concurring judges acknowledging that under the Government’s reading of §1028A(a)(1), “the elements of [the] offense are not captured or even fairly described by the words ‘identity theft.’ ” 27 F. 4th 1021, 1024 (opinion of Richman, C. J.). **Held:** Under §1028A(a)(1), a defendant “uses” another person’s means of identification “in relation to” a predicate offense when the use is at the crux of what makes the conduct criminal.
5. *Dupree v. Younger*, No. 22-210, decided May 25, 2023 **[Post-Trial Motion Under Rule 50]**
Barrett unanimous
Respondent Kevin Younger claims that during his pretrial detention in a Maryland state prison, petitioner Neil Dupree, then a correctional officer lieutenant, ordered three prison guards to attack him. Younger sued Dupree for damages under 42 U. S. C. §1983, alleging excessive use of force. Prior to trial, Dupree moved for summary judgment under Federal Rule of Civil Procedure 56(a), arguing that Younger had failed to exhaust administrative remedies as required by law. Rule 56 requires a district court to enter judgment on a claim or defense if there is “no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” The District Court denied the motion, finding no dispute that the Maryland prison system had internally investigated Younger’s assault, and concluding that this inquiry satisfied Younger’s exhaustion obligation. At trial, Dupree did not present evidence relating to his exhaustion defense. The jury found Dupree and four codefendants liable and awarded Younger $700,000 in damages. Dupree did not file a post-trial motion under Rule 50(b), which allows a disappointed party to file a renewed motion for judgment as a matter of law. He appealed a single issue to the Fourth Circuit: the District Court’s rejection of his exhaustion defense. The Fourth Circuit—bound by its precedent which holds that any claim or defense rejected at summary judgment is not preserved for appellate review unless it was renewed in a post-trial motion—dismissed the appeal. **Held:** A post-trial motion under Rule 50 is not required to preserve for appellate review a purely legal issue resolved at summary judgment. In *Ortiz v. Jordan*, the Court held that an order denying summary judgment on sufficiency-of-the-evidence grounds is not appealable after trial. 562 U. S. 180, 184. Because the factual record developed at trial “supersedes the record existing at the time of the summary-judgment motion,” ibid., it follows that a party must raise a sufficiency claim in a post-trial motion in order to preserve it for appeal, id., at 191–192. That motion allows the district court to take first crack at the question that the appellate court will ultimately face: Was there sufficient evidence in the trial record to support the jury’s verdict? The same is not true for pure questions of law resolved in an order denying summary judgment. These conclusions are not “supersede[d]” by later developments in the litigation, id., at 184, and so such rulings merge into the final judgment, at which point they are reviewable on appeal, Quackenbush v. Allstate Ins. Co., 517 U. S. 706, 712. The reviewing court does not benefit from having a district court reexamine a purely legal pretrial ruling after trial, because nothing at trial will have given the district court any reason to question its prior analysis.
6. *Jones v. Hendrix, Warden*, No. 21-857, decided June 23, 2023 **[Successive Petitions Under 28 U.S.C. §2255]**
Thomas majority, Sotomayor dissenting, Jackson dissenting
In 2000, the District Court for the Western District of Missouri sentenced Jones after he was convicted on two counts of unlawful possession of a firearm by a felon, in violation of 18 U. S. C. §922(g)(1), and one count of making false statements to acquire a firearm. The Eighth Circuit affirmed Jones’ convictions and sentence. Jones then filed a motion pursuant to 28 U. S. C. §2255, which resulted in the vacatur of one of his concurrent §922(g) sentences. Many years later, this Court held in *Rehaif v. United States*, 588 U. S. \_\_\_, that a defendant’s knowledge of the status that disqualifies him from owning a firearm is an element of a §922(g) conviction. *Rehaif* ’s holding abrogated contrary Eighth Circuit precedent applied by the courts in Jones’ trial and direct appeal. Seeking to collaterally attack his remaining §922(g) conviction based on *Rehaif ’s* statutory holding, Jones filed a petition for a writ of habeas corpus under 28 U. S. C. §2241 in the district of his imprisonment, the Eastern District of Arkansas. The District Court dismissed Jones’ habeas petition for lack of subject-matter jurisdiction, and the Eighth Circuit affirmed. **Held:** Section 2255(e) does not allow a prisoner asserting an intervening change in interpretation of a criminal statute to circumvent the Antiterrorism and Effective Death Penalty Act of 1996’s (AEDPA) restrictions on second or successive §2255 motions by filing a §2241 habeas petition.
7. *Lora v. United States*, No. 22-49, decided June 16, 2023 **[Sentencing]**
Jackson unanimous
A federal court imposing multiple prison sentences typically has discretion to run the sentences concurrently or consecutively. See 18 U. S. C. §3584. An exception exists in §924(c), which provides that “no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment.” §924(c)(1)(D)(ii). Here, the Court considers whether §924(c)’s bar on concurrent sentences extends to a sentence imposed under a different subsection, §924(j). Lora was convicted of the federal crime of aiding and abetting a violation of §924(j)(1), which penalizes “a person who, in the course of a violation of subsection (c), causes the death of a person through the use of a firearm,” where “the killing is a murder.” A violation of subsection (c) occurs when a person “uses or carries a firearm” “during and in relation to any crime of violence or drug trafficking crime,” or “possesses a firearm” “in furtherance of any such crime.”§924(c)(1)(A). Lora was also convicted of a second federal crime, conspiring to distribute drugs. At sentencing, the District Court concluded that it lacked discretion to run the sentences for Lora’s two convictions concurrently, because §924(c)(1)(D)(ii)’s bar on concurrent sentences governs §924(j) sentences. The District Court sentenced Lora to consecutive terms of imprisonment for the drug-distribution-conspiracy count and the §924(j) count. The Court of Appeals affirmed. **Held:** Section 924(c)(1)(D)(ii)’s bar on concurrent sentences does not govern a sentence for a §924(j) conviction. A §924(j) sentence therefore can run either concurrently with or consecutively to another sentence. Subsection (c)’s consecutive-sentence mandate applies only to the terms of imprisonment prescribed within subsection (c).
8. *Percoco v. United States et al.*, No. 21-1158, decided May 11, 2023 **[Honest-Services Wire Fraud]**
Alito majority, Gorsuch concurring
Petitioner Joseph Percoco served as the Executive Deputy Secretary to New York Governor Andrew Cuomo from 2011 to 2016, a position that gave him a wide range of influence over state decision-making, with one brief hiatus. During an eight-month period in 2014, Percoco resigned from government service to manage the Governor’s reelection campaign. During this hiatus, Percoco accepted payments totaling $35,000 to assist a real-estate development company owned by Steven Aiello in its dealings with Empire State Development, a state agency. After Percoco urged a senior official at ESD to drop a requirement that Aiello’s company enter into a “Labor Peace Agreement” with local unions as a precondition to receiving state funding for a lucrative project, ESD informed Aiello the following day that the agreement was not necessary. When Percoco’s dealings came to the attention of the U. S. Department of Justice, he was indicted and charged with, among other things, conspiracy to commit honest-services wire fraud in relation to the labor-peace requirement (count 10). See 18 U. S. C. §§1343, 1346, 1349. Throughout the proceedings, Percoco argued unsuccessfully thata private citizen cannot commit or conspire to commit honest-services wire fraud based on his own duty of honest services to the public. Over Percoco’s objection, the trial court instructed the jury that Percoco could be found to have had a duty to provide honest services to the public during the time when he was not serving as a public official if the jury concluded, first, that “he dominated and controlled any governmental business” and, second, that “people working in the government actually relied on him because of a special relationship he had with the government.” As relevant here, the jury convicted Percoco on count 10. On appeal, the Second Circuit affirmed, explaining that the challenged jury instruction fit the Second Circuit’s understanding of honest-services fraud as adopted many years earlier in *United States v. Margiotta*, 688 F. 2d 108. **Held:** Instructing the jury based on the Second Circuit’s 1982 decision in *Margiotta* on the legal standard for finding that a private citizen owes the government a duty of honest services was error.
9. *Pugin v. Garland, Attorney General*, No. 22-23, decided June 23, 2023 **[Obstruction of Justice]**Kavanaugh majority, Jackson concurring, Sotomayor dissenting
In two immigration proceedings, noncitizens Cordero-Garcia and Pugin were determined removable from the United States on the ground that they had convictions for aggravated felonies—namely, offenses “relating to obstruction of justice.” See 8 U. S. C. §§1101(a)(43)(S), 1227(a)(2)(A)(iii). On appeal, the Ninth Circuit concluded that Cordero-Garcia’s state conviction for dissuading a witness from reporting a crime did not constitute an offense “relating to obstruction of justice” because the state offense did not require that an investigation or proceeding be pending. By contrast, the Fourth Circuit concluded that Pugin’s state conviction for accessory after the fact constituted an offense “relating to obstruction of justice” even if the state offense did not require that an investigation or proceeding be pending. **Held:** An offense may “relat[e] to obstruction of justice” under §1101(a)(43)(S) even if the offense does not require that an investigation or proceeding be pending. Federal law provides that noncitizens convicted of a federal or state crime constituting an “aggravated felony” are removable from the United States.
10. *Reed v. Goertz*, No. 21-422, decided April 19, 2023 **[Procedural Due Process Statute of Limitations]**
Kavanaugh majority, Thomas dissenting, Alito dissenting
A Texas jury found petitioner Reed guilty of the 1996 murder of Stacey Stites. The Texas Court of Criminal Appeals affirmed Reed’s conviction and death sentence. In 2014, Reed filed a motion in Texas state court under Texas’s post-conviction DNA testing law. Reed requested DNA testing on certain evidence, including the belt used to strangle Stites, which Reed contended would help identify the true perpetrator. The state trial court denied Reed’s motion, reasoning in part that items Reed sought to test were not preserved through an adequate chain of custody. The Texas Court of Criminal Appeals affirmed, and later denied Reed’s motion for rehearing. Reed then sued in federal court under 42 U. S. C. §1983, asserting that Texas’s post-conviction DNA testing law failed to provide procedural due process. Reed argued that the law’s stringent chain-of-custody requirement was unconstitutional. The District Court dismissed Reed’s complaint. The Fifth Circuit affirmed on the ground that Reed’s §1983 claim was filed too late, after the applicable 2-year statute of limitations had run. The Fifth Circuit held that the limitations period began to run when the Texas trial court denied Reed’s motion, not when the Texas Court of Criminal Appeals denied rehearing. **Held:** When a prisoner pursues state post-conviction DNA testing through the state-provided litigation process, the statute of limitations for a §1983 procedural due process claim begins to run when the state litigation ends, in this case when the Texas Court of Criminal Appeals denied Reed’s motion for rehearing.
11. *Samia, aka Samic v. United States*, No. 22-196, decided June 23, 2023 **[Confrontation Clause]**Thomas majority, Barrett concurring, Kagan dissenting, Jackson dissenting
Samia, along with Hunter and Stillwell, were arrested by the U. S. Drug Enforcement Administration and charged with a variety of offenses related to the murder-for-hire of Catherine Lee, a real-estate broker. The Government tried all three defendants jointly in the Southern District of New York. Prior to trial, the Government moved to admit Stillwell’s postarrest confession in which he admitted that he had been in the van in which Lee was killed, but he claimed that Samia had shot Lee. Since Stillwell would not be testifying on his own behalf and the full confession implicated Samia, the Government proposed that the confession be introduced through the testimony of a DEA agent, who would testify to the content of Stillwell’s confession in a way that eliminated Samia’s name while avoiding any obvious indications of redaction. The District Court granted the Government’s motion with additional alterations to conform to its understanding of this Court’s Confrontation Clause precedents.
At trial, the Government’s theory of the case was that Hunter had hired Samia and Stillwell to pose as real-estate buyers and visit properties with Lee and that Samia, Stillwell, and Lee were in a van driven by Stillwell when Samia shot Lee. As part of the Government’s case in chief, a DEA agent testified that Stillwell had confessed to “a time when the other person he was with pulled the trigger on that woman in a van that he and Mr. Stillwell was driving.” (Emphasis added.) Other portions of the agent’s testimony recounting Stillwell’s confession used the “other person” descriptor to refer to someone with whom Stillwell had traveled and lived and who carried a particular firearm. Both before the agent’s testimony and again prior to deliberations, the District Court instructed the jury that the agent’s testimony about Stillwell’s confession was admissible only as to Stillwell and should not be considered as to Samia or Hunter. Samia and his codefendants were convicted on all counts. On appeal, Samia argued that the admission of Stillwell’s confession was constitutional error because other evidence and statements at trial enabled the jury to immediately infer that the “other person” described in the confession was Samia himself. The Second Circuit, pointing to the established practice of replacing a defendant’s name with a neutral noun or pronoun in a nontestifying codefendant’s confession, held that the admission of Stillwell’s confession did not violate Samia’s Confrontation Clause rights. **Held:** The Confrontation Clause was not violated by the admission of a nontestifying codefendant’s confession that did not directly inculpate the defendant and was subject to a proper limiting instruction.
12. *Santos-Zacaria aka Santos-Sacarias v. Garland*, No. 21-1436, decided May 11, 2023 **[Non-Citizen Removal Proceedings]**
Jackson majority, Alito concurring
Petitioner Leon Santos-Zacaria (who goes by the name Estrella) is a noncitizen in removal proceedings. She sought protection from removal, which an Immigration Judge denied. Santos-Zacaria appealed to the Board of Immigration Appeals, which upheld the Immigration Judge’s decision. She then filed a petition for review in the Fifth Circuit under 8 U. S. C. §1252, alleging that the Board had impermissibly engaged in factfinding that only the Immigration Judge could perform. The Fifth Circuit dismissed Santos-Zacaria’s petition in part, findingthat she had not satisfied §1252(d)(1)’s exhaustion requirement. Section 1252(d)(1) provides that “[a] court may review a final order of removal only if . . . the alien has exhausted all administrative remedies available to the alien as of right.” The Fifth Circuit raised the exhaustion issue *sua sponte* based on its characterization of §1252(d)(1)’s exhaustion requirement as jurisdictional. And the Fifth Circuit concluded that Santos-Zacaria failed to exhaust because she failed to raise her impermissible-factfinding claim to the Board in a motion for reconsideration before filing her petition for judicial review. **Held:** Section 1252(d)(1)’s exhaustion requirement is not jurisdictional.
13. *Smith v. United States*, No. 21-1576. decided June 15, 2023 **[Improper Venue and Retrial]**
Alito unanimous
Smith was indicted in the Northern District of Florida for theft of trade secrets from a website owned by StrikeLines. Before trial, Smith moved to dismiss the indictment for lack of venue, citing the Constitution’s Venue Clause, Art. III, §2, cl. 3, and its Vicinage Clause, Amdt. 6. Smith argued that trial in the Northern District of Florida was improper because he had accessed StrikeLines’ website from his home in Mobile (in the Southern District of Alabama) and the servers storing StrikeLines’ data were located in Orlando (in the Middle District of Florida). The District Court concluded that factual disputes related to venue should be resolved by the jury and denied Smith’s motion to dismiss without prejudice. The jury found Smith guilty, and Smith moved for a judgment of acquittal based on improper venue. See Fed. Rule Crim. Proc. 29. The District Court denied the motion, reasoning that the effects of Smith’s crime were felt at StrikeLines’ headquarters, located in the Northern District of Florida. On appeal, the Eleventh Circuit determined that venue was improper, but disagreed with Smith that a trial in an improper venue barred reprosecution. The Eleventh Circuit therefore vacated Smith’s conviction for theft of trade secrets. **Held:** The Constitution permits the retrial of a defendant following atrial in an improper venue conducted before a jury drawn from the wrong district.
14. *Turkiye Halk Bankasi A.S. v. United States*, No. 21-1450, decided April 19, 2023 **[Foreign Sovereign Immunities Act of 1976 and Criminal Prosecution]**Kavanaugh majority, Gorsuch concurring in part and dissenting in part
The United States indicted Halkbank, a bank owned by the Republic of Turkey, for conspiring to evade U. S. economic sanctions against Iran. Halkbank moved to dismiss the indictment on the ground that as an instrumentality of a foreign state, Halkbank is immune from criminal prosecution under the Foreign Sovereign Immunities Act of 1976. The District Court denied the motion. The Second Circuit affirmed after first determining that the District Court had subject matter jurisdiction over Halkbank’s criminal prosecution under 18 U. S. C. §3231. The Second Circuit further held that even assuming the FSIA confers immunity in criminal proceedings, Halkbank’s charged conduct fell within the FSIA’s exception for commercial activities. **Held:** The District Court has jurisdiction under §3231 over this criminal prosecution of Halkbank. Section 3231 grants district courts original jurisdiction of “all offenses against the laws of the United States,” and Halkbank does not dispute that §3231’s text as written encompasses the charged offenses. Halkbank instead argues that because §3231 does not mention foreign states or their instrumentalities, §3231 implicitly excludes them. The Court declines to graft such an atextual limitation onto §3231’s broad jurisdictional grant. The scattered express references to foreign states and instrumentalities in unrelated U. S. Code provisions to which Halkbank points do not shrink the textual scope of §3231. And the Court’s precedents interpreting the Judiciary Act of 1789 do not support Halkbank, as the Court has not interpreted the jurisdictional provisions in the 1789 Act to contain an implicit exclusion for foreign state entities. Further, the FSIA’s comprehensive scheme governing claims of immunity in civil actions against foreign states and their instrumentalities does not cover criminal cases.
15. *United States v. Hansen*, No. 22-179, decided June 23, 2023 **[First Amendment]**
Barrett majority, Thomas concurring, Jackson dissenting
Hansen promised hundreds of noncitizens a path to U. S. citizenship through “adult adoption.” But that was a scam. Though there is no path to citizenship through “adult adoption,” Hansen earned nearly $2 million from his scheme. The United States charged Hansen with, inter alia, violating 8 U. S. C. §1324(a)(1)(A)(iv), which forbids “encourag[ing] or induc[ing] an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such [activity] is or will be in violation of law.” Hansen was convicted and moved to dismiss the clause (iv) charges on First Amendment overbreadth grounds. The District Court rejected Hansen’s argument, but the Ninth Circuit concluded that clause (iv) was unconstitutionally overbroad. **Held:** Because §1324(a)(1)(A)(iv) forbids only the purposeful solicitation and facilitation of specific acts known to violate federal law, the clause is not unconstitutionally overbroad.
16. *United States v. Texas*, No. 22-58, decided June 23, 2023 **[Standing]**
Kavanaugh majority, Gorsuch concurring, Barrett concurring, Alito dissenting
In 2021, the Secretary of Homeland Security promulgated new immigration-enforcement guidelines (Guidelines for the Enforcement of Civil Immigration Law) that prioritize the arrest and removal from the United States of noncitizens who are suspected terrorists or dangerous criminals or who have unlawfully entered the country only recently, for example. The States of Texas and Louisiana claim that the Guidelines contravene two federal statutes that they read to require the arrest of certain noncitizens upon their release from prison (8 U. S. C. §1226(c)) or entry of a final order of removal (§1231(a)(2)). The District Court found that the States would incur costs due to the Executive’s failure to comply with those alleged statutory mandates, and that the States had standing to sue based on those costs. On the merits, the District Court found the Guidelines unlawful and vacated them. The Fifth Circuit declined to stay the District Court’s judgment, and this Court granted certiorari before judgment. **Held:** Texas and Louisiana lack Article III standing to challenge the
17. Guidelines.