**United States Supreme Court
Criminal & Immigration Law Decisions of the 2023-2024 Term**Updated: *October 4, 2024*

1. *Bassett v. Arizona*, No. 23-830, decided July 2, 2024 **[Juvenile Life Without Parole]**Sotomayor Dissenting from Denial of Certiorari“[M]andatory life-without-parole sentences for juveniles violate the Eighth Amendment.” *Miller v. Alabama*, 567 U. S. 460, 470 (2012). Sentencing courts therefore must have “discretion to impose a lesser punishment” on children who commit crimes before they turn 18. *Jones v. Mississippi*, 593 U. S. 98, 100 (2021). An Arizona court sentenced Lonnie Allen Bassett to life without parole for a crime he committed as a juvenile. At the time Bassett was sentenced, however, Arizona courts had no discretion to impose parole-eligible sentences because the State had completely abolished parole for people convicted of felonies. Arizona also agrees that “parole-eligibility is constitutionally required,” and that “Arizona law did not provide a parole eligible option at the time of Bassett’s sentencing.” Nevertheless, the Arizona Supreme Court denied Bassett’s petition for postconviction relief. Arizona Supreme Court’s decision departed from established precedents, and the petition for certiorari should be granted and the judgment below summarily reversed.
2. *Brown v. United States*, No. 22–6389. decided May 23, 2024 **[Armed Career Criminal Act]**
Alito majority, Jackson dissenting
These cases concern the application of the Armed Career Criminal Act (ACCA) to state drug convictions that occurred before recent technical amendments to the federal drug schedules. ACCA imposes a 15-year mandatory minimum sentence on defendants who are convicted for the illegal possession of a firearm and who have a criminal history thought to demonstrate a propensity for violence. As relevant here, a defendant with “three previous convictions” for “a serious drug offense” qualifies for ACCA’s enhanced sentencing. 18 U. S. C. §924(e)(1). For a state crime to qualify as a “serious drug offense,” it must carry a maximum sentence of at least 10 years’ imprisonment, and it must “involv[e] . . . a controlled substance . . . as defined in section 102 of the Controlled Substances Act.” §§924(e)(1), (2)(A)(ii). The question presented is whether a state crime constitutes a “serious drug offense” if it involved a drug that was on the federal schedules when the defendant possessed or trafficked in it but was later removed. At the time of Brown’s marijuana convictions, the federal and Pennsylvania law definitions of marijuana matched. But while Brown’s federal §922(g)(1) charge was pending, Congress modified the federal definition of marijuana. Similarly, Jackson’s presentence report identified several prior Florida convictions, however in 2015, the Federal Government amended the federal definition of cocaine, so the federal and Florida definitions no longer matched when Jackson committed his §922(g)(1) offense. In both cases, the District Courts sentenced petitioners to enhanced sentences, and the respective appellate courts ultimately affirmed. **Held:** A state drug conviction counts as an ACCA predicate if it involved a drug on the federal schedules at the time of that conviction.
3. *Campos-Chaves v. Garland, Attorney General*, No. 22-674, decided June 14, 2024 **[Removal of Alien, Notice]**
Alito majority, Jackson dissenting
To initiate the removal of an alien from the United States who is either “inadmissible” under 8 U. S. C. §1182 or “deportable” under §1227, the Federal Government must provide the alien with “written notice” of the proceedings. §§1229(a)(1), (2), either by giving the alien a written “ ‘notice to appear,’ ” or “in the case of any change or postponement in the time and place of such proceedings,” the agency must provide “a written notice” specifying “the new time or place of the proceedings” and “the consequences” of failing to attend. An alien who fails to attend a hearing despite receiving notice “shall be ordered removed *in absentia*” if the Government “establishes by clear, unequivocal, and convincing evidence” that “the written notice” was provided and that “the alien is removable.” §1229a(b)(5)(A). Three scenarios permit the rescinding of an *in absentia* removal order, one of which is when an alien “demonstrates that [he] did not receive notice in accordance with paragraph (1) or (2)” of §1229(a). §1229a(b)(5)(C)(ii). In these consolidated cases, each appellant moved to rescind their *in absentia* order of removal on the ground that they did not receive proper notice of the removal hearing. In each case, the Government provided an initial NTA that failed to specify the time and place of the removal hearing, but made subsequent notification which set out the specific time and place of the removal hearing. None of the aliens showed up for his hearing, and each was ordered removed *in absentia* by an Immigration Judge. Each then sought to rescind the removal order, arguing that he did not receive a proper NTA under §1229(a)(1). **Held:** Because each of the aliens in this case received a proper §1229(a)(2) notice for the hearings they missed and at which they were ordered removed, they cannot seek rescission of their *in absentia* removal orders on the basis of defective notice under §1229a(b)(5)(C)(ii).
4. *Chiaverini, et al. v. City of Napoleon, Ohio, et al.*, No. 23-50, decided June 20, 2024 **[Malicious Prosecution]**
Kagan majority, Thomas dissenting
Chiaverini, a jewelry store owner, was charged with three crimes: receiving stolen property, a misdemeanor; dealing in precious metals without a license, also a misdemeanor; and money laundering, a felony. After obtaining a warrant, the police arrested Chiaverini and detained him for three days, but county prosecutors later dropped the case. Chiaverini, believing that his arrest and detention were unjustified, then sued the officers, alleging a Fourth Amendment malicious-prosecution claim under 42 U. S. C. §1983. To prevail on this claim, he had to show that the officers brought criminal charges against him without probable cause, leading to an unreasonable seizure of his person. The District Court, however, granted summary judgment to the officers, and the Court of Appeals for the Sixth Circuit affirmed holding that Chiaverini’s prosecution was supported by probable cause for the two misdemeanors but did not address whether the officers had probable cause to bring the money-laundering charge. The appellate court held that so long as one charge was supported by probable cause a malicious-prosecution claim based on any other charge must fail. **Held:** The presence of probable cause for one charge in a criminal proceeding does not categorically defeat a Fourth Amendment malicious-prosecution claim relating to another, baseless charge.
5. *City of Grants Pass, Oregon v. Johnson, et al.*, No. 23-175, decided June 28, 2024 **[Eighth Amendment and Homelessness]**Gorsuch majority, Thomas concurring, Sotomayor dissenting
Grants Pass, Oregon, a city of roughly 38,000 people, about 600 of whom are estimated to experience homelessness on a given day, has public-camping laws that restrict encampments on public property. Initial violations can trigger a fine, while multiple violations can result in imprisonment. In a prior decision, *Martin v. Boise*, 20 F. 3d 584 (9th Cir. 2019), the Ninth Circuit held that the Eighth Amendment’s Cruel and Unusual Punishments Clause bars cities from enforcing public-camping ordinances like these against homeless individuals whenever the number of homeless individuals in a jurisdiction exceeds the number of “practically available” shelter beds. Plaintiffs (respondents here) filed a putative class action on behalf of homeless people living in Grants Pass, claiming that the city’s ordinances against public camping violated the Eighth Amendment. The District Court certified the class and entered a Martin injunction prohibiting Grants Pass from enforcing its laws against homeless individuals in the city. Applying *Martin’s* reasoning, the District Court found everyone without shelter in Grants Pass was “involuntarily homeless” because the city’s total homeless population outnumbered its “practically available” shelter beds. The beds at Grants Pass’s charity-run shelter did not qualify as “available” in part because that shelter has rules requiring residents to abstain from smoking and to attend religious services. A divided panel of the Ninth Circuit affirmed the District Court’s *Martin* injunction in relevant part. Grants Pass filed a petition for certiorari. Many States, cities, and counties from across the Ninth Circuit urged the Court to grant review to assess *Martin*. **Held:** The enforcement of generally applicable laws regulating camping on public property does not constitute “cruel and unusual punishment” prohibited by the Eighth Amendment.
6. *Culley et al . v. Marshall, Attorney General of Alabama et al.*, No. 22–585, decided May 9, 2024 **[Civil Forfeitures, Preliminary Hearings]**Kavanaugh majority, Gorsuch concurring, Sotomayor dissenting
Petitioners Culley and Sutton loaned their cars which were later involved in arrests for drug offenses. In both cases, petitioners’ cars were seized under an Alabama civil forfeiture law that permitted seizure of a car “incident to an arrest” so long as the State then “promptly” initiated a forfeiture case. Ala. Code §20–2–93(b)(1), (c). The State of Alabama filed forfeiture complaints less than two weeks after the seizures. While their forfeiture proceedings were pending, Culley and Sutton each filed purported class-action complaints in federal court seeking money damages under 42 U. S. C. §1983, claiming that state officials violated their due process rights by retaining their cars during the forfeiture process without holding preliminary hearings. In a consolidated appeal, the Eleventh Circuit affirmed the dismissal of petitioners’ claims, holding that a timely forfeiture hearing affords claimants due process and that no separate preliminary hearing is constitutionally required. **Held:** In civil forfeiture cases involving personal property, the Due Process Clause requires a timely forfeiture hearing but does not require a separate preliminary hearing.
7. *Cunningham v. Florida*, No. 23-5171, decided May 28, 2024 **[Jury Size]**
Gorsuch Dissenting from Denial of Certiorari
In *Williams v. Florida*, [399 U.S. 78 (1970)] this Court in 1970 issued a revolutionary decision approving for the first time the use of 6-member panels in criminal cases. 399 U. S. 78, 103. In doing so, the Court turned its back on the original meaning of the Constitution, centuries of historical practice, and a “battery of this Court’s precedents.” *Khorrami* [*v. Arizona*], 598 U.S. \_\_\_ (2022) (slip op., at 6)… Respectfully, we should have granted review in Ms. Cunningham’s case to reconsider *Williams*.
8. *Diaz v. United States*, No. 23-14, decided June 20, 2024 **[Federal Rule of Evidence 704, Opinion Evidence]**
Thomas majority, Jackson concurring, Gorsuch dissenting
Diaz was stopped at a port of entry on the United States-Mexico border. Border patrol officers searched the car and found more than 54 pounds of methamphetamine. Diaz was charged with importing methamphetamine in violation of 21 U. S. C. §§952 and 960, charges that required the Government to prove that Diaz “knowingly” transported drugs. In her defense, Diaz claimed not to know that the drugs were hidden in the car. To rebut Diaz’s claim, the Government planned to call Homeland Security Investigations Special Agent Andrew Flood as an expert witness to testify that drug traffickers generally do not entrust large quantities of drugs to people who are unaware they are transporting them. Diaz objected in a pretrial motion under Federal Rule of Evidence 704(b), which provides that “[i]n a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense.” The court ruled that Agent Flood could not testify in absolute terms about whether all couriers knowingly transport drugs, but could testify that most couriers know they are transporting drugs. At trial, Agent Flood testified that most couriers know that they are transporting drugs. The jury found Diaz guilty, and Diaz appealed, challenging Agent Flood’s testimony under Rule 704(b). The Court of Appeals held that because Agent Flood did not explicitly opine that Diaz knowingly transported methamphetamine, his testimony did not violate Rule 704(b). **Held:** Expert testimony that “most people” in a group have a particular mental state is not an opinion about “the defendant” and thus does not violate Rule 704(b).
9. *Erlinger v. United States*, No. 23-370, decided June 21, 2024 **[Armed Career Criminal Act/Jury Question]**
Gorsuch majority, Roberts concurring, Thomas concurring, Kavanaugh dissenting, Jackson dissenting
Erlinger pleaded guilty to being a felon in possession of a firearm in violation of 18 U. S. C. §922(g). At sentencing, the judge found Mr. Erlinger eligible for an enhanced sentence under the Armed Career Criminal Act, §924(e)(1), which increases the penalty for a 922(g) conviction from a maximum sentence of 10 years to a mandatory minimum sentence of 15 years when the defendant has three or more qualifying convictions for offenses committed on different occasions. Subsequently, the Seventh Circuit held in unrelated decisions that two of the offenses on which the government relied for Mr. Erlinger’s sentence enhancement no longer qualified as ACCA predicate offenses. The District Court vacated Mr. Erlinger’s sentence and scheduled resentencing. At the resentencing hearing, prosecutors again pursued an ACCA sentence enhancement based on a new set of 26-year-old convictions for burglaries committed by Mr. Erlinger over the course of several days. Mr. Erlinger protested that the burglaries were part of a single criminal episode and did not occur on separate occasions, and further the determination of whether he committed these prior burglaries during a single episode or on distinct occasions was a question for the jury. The District Court rejected Erlinger’s request for a jury and issued a 15-year enhanced sentence. On appeal, the government confessed error and that the Constitution requires a jury to decide unanimously and beyond a reasonable doubt whether Erlinger’s prior offenses were committed on different occasions. **Held:** The Fifth and Sixth Amendments require a unanimous jury to make the determination beyond a reasonable doubt that a defendant’s past offenses were committed on separate occasions for ACCA purposes.
10. *Federal Bureau of Identification, et al. v. Firke*, No. 22–1178, decided March 19, 2024 **[No-Fly List, Mootness]**Gorsuch unanimous, Alito concurring
Fikre, a U. S. citizen and Sudanese emigree, brought suit alleging that the government placed him on the No Fly List unlawfully. While traveling in Sudan two FBI agents informed him that he could not return to the United States because the government had placed him on the No Fly List. The agents questioned him extensively about the Portland mosque he attended, and they offered to take steps to remove him from the No Fly List if he agreed to become an FBI informant and to report on other members of his religious community. Mr. Fikre refused. Unable to fly back to the United States, he ultimately ended up in Sweden, where he remained until February 2015 and while there, he filed this suit, alleging that the government had violated his rights to procedural due process by failing to provide either meaningful notice of his addition to the No Fly List or any appropriate way to secure redress. He further alleged that the government had placed him on the list for constitutionally impermissible reasons related to his race, national origin, and religious beliefs. In May 2016, the government notified Mr. Fikre that he had been removed from the No Fly List and sought dismissal of his suit in district court, arguing that its administrative action had rendered the case moot. The district court agreed with the government, but the Ninth Circuit reversed, holding that a party seeking to moot a case based on its own voluntary cessation of challenged conduct must show that the conduct cannot “reasonably be expected to recur.” 904 F. 3d 1033, 1039. On remand, the government submitted a declaration asserting that, based on the currently available information, Mr. Fikre would not be placed on the No Fly List in the future, and the district court again dismissed Mr. Fikre’s claim as moot. The Ninth Circuit once again reversed, holding that the government had failed to meet its burden because the declaration did not disclose the conduct that landed Mr. Fikre on the No Fly List and did not ensure that he would not be placed back on the list for engaging in the same or similar conduct in the future. **Held:** The government has failed to demonstrate that this case is moot.
11. *Fischer v. United States*, No. 23-5572, decided June 28, 2024 **[Sarbanes-Oxley Act, January 6]**
Roberts majority, Jackson concurring, Barrett dissenting
The Sarbanes-Oxley Act of 2002 imposes criminal liability on anyone who corruptly “alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object’s integrity or availability for use in an official proceeding.” 18 U. S. C. §1512(c)(1), or “otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so.” §1512(c)(2). Fischer was charged with violating §1512(c)(2) for his conduct on January 6, 2021 based upon an allegation that he was among the group of people who forcefully entered the Capitol and assaulted police which delayed the certification of the 2020 presidential vote. Fischer moved to dismiss the obstructing an official proceeding charge, arguing that the provision criminalizes only attempts to impair the availability or integrity of evidence. The District Court granted his motion in relevant part. A divided panel of the D. C. Circuit reversed and remanded for further proceedings. **Held:** To prove a violation of §1512(c)(2), the Government must establish that the defendant impaired the availability or integrity for use in an official proceeding of records, documents, objects, or other things used in an official proceeding, or attempted to do so.
12. *Food and Drug Administration, et al. v. Alliance for Hippocratic Medicine, et al.*, No. 23-235, decided June 13, 2024 **[Standing]**
Kavanaugh unanimous, Thomas concurring
*Author’s note: While not strictly a criminal justice-related case, this case has huge societal implications and therefore has been included in this year’s materials.*
In 2000, the Food and Drug Administration approved mifepristone tablets (marketed as Mifeprex) for use in terminating pregnancies up to seven weeks and required a physician’s prescription or supervision in addition to three in-person visits by the patient. In 2016, FDA extended Mifeprex use up to 10 weeks, allowed other healthcare providers including nurse practitioners to prescribe Mifeprex; and reduced the in-person visits to one. In 2019, the FDA approved a generic mifepristone. In 2021, FDA no longer required in-person visits. Four pro-life medical associations and several individual doctors moved for a preliminary injunction seeking either a recission of the approval of mifepristone or the 2016 and 2021 regulatory actions. Danco Laboratories, which sponsors Mifeprex, intervened to defend FDA’s actions. The District Court agreed with the plaintiffs and in effect enjoined FDA’s approval of mifepristone, thereby ordering mifepristone off the market. FDA and Danco appealed and moved to stay the District Court’s order pending appeal, and the Supreme Court issued a stay pending the disposition of proceedings in the Fifth Circuit and beyond. The Fifth Circuit held that plaintiffs had standing and concluded that plaintiffs were unlikely to succeed on their challenge to FDA’s 2000 and 2019 drug approvals but were likely to succeed in showing that the 2016 and 2021 actions were unlawful. **Held:** Plaintiffs lack Article III standing to challenge FDA’s actions regarding the regulation of mifepristone. Because plaintiffs do not prescribe or use mifepristone, plaintiffs are unregulated parties who seek to challenge FDA’s regulation of *others* and thus fail to establish Article III standing.
13. *Garland, Attorney General, et al. v. Cargill*, No. 22-976, decided June 14, 2024 **[National Firearms Act of 1934, Bump Stocks]**Thomas majority, Alito concurring, Sotomayor dissenting
The National Firearms Act of 1934 defines a “machinegun” as “any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger.” 26 U. S. C. §5845(b). With a machinegun, a shooter can fire multiple times, or even continuously, by engaging the trigger only once. This capability distinguishes a machinegun from a semiautomatic firearm. With a semiautomatic firearm, the shooter can fire only one time by engaging the trigger. Using a technique called bump firing, shooters can fire semiautomatic firearms at rates approaching those of some machineguns. A shooter who bump fires a rifle uses the firearm’s recoil to help rapidly manipulate the trigger. Although bump firing does not require any additional equipment, a “bump stock” is an accessory designed to make the technique easier. A bump stock does not alter the basic mechanics of bump firing, and the trigger still must be released and reengaged to fire each additional shot. For many years, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) consistently took the position that semiautomatic rifles equipped with bump stocks were not machineguns under §5845(b). ATF abruptly changed course when a gunman using semiautomatic rifles equipped with bump stocks fired hundreds of rounds into a crowd in Las Vegas, Nevada, killing 58 people and wounding over 500 more. ATF subsequently proposed a rule that would repudiate its previous guidance and amend its regulations to “clarify” that bump stocks are machineguns. 83 Fed. Reg. 13442. ATF’s Rule ordered owners of bump stocks either to destroy or surrender them to ATF to avoid criminal prosecution. Michael Cargill surrendered two bump stocks to ATF under protest, then filed suit to challenge the Rule under the Administrative Procedure Act. As relevant, Cargill alleged that ATF lacked statutory authority to promulgate the Rule because bump stocks are not “machinegun[s]” as defined in §5845(b). After a bench trial, the District Court entered judgment for ATF. The Fifth Circuit initially affirmed, but reversed after rehearing *en banc*. A majority agreed that §5845(b) is ambiguous as to whether a semiautomatic rifle equipped with a bump stock fits the statutory definition of a machinegun and resolved that ambiguity in Cargill’s favor. **Held:** ATF exceeded its statutory authority by issuing a Rule that classifies a bump stock as a “machinegun” under §5845(b).
14. *Johnson v. Prentice, et al.*, No. 22-693, decided November 13, 2023 **[Eighth Amendment, Conditions of Confinement]**Jackson Dissenting from Denial of Certiorari
Johnson, a prisoner with “serious mental” illness, was held in solitary confinement for nearly three years in a windowless and perpetually lit cell. The cell was poorly ventilated resulting in significant heat and noxious odors, often caked with human waste. Johnson was compelled to purchase cleaning supplies from the commissary, otherwise he had to clean the filth with bare hands. He was allowed out of his cell once per week for a 10-minute shower and given no recreation time at all. Denied counsel by the Northern District of Illinois, he brought a *pro se* § 1983 action challenging his conditions of confinement. The District Court granted summary judgment against Johnson. The Seventh Circuit affirmed 2-1, then *en banc* denied the petition for rehearing with 5 judges dissenting. Because the Seventh Circuit failed to use the “deliberate indifference” standard established in *Estelle v. Gamble*, 429 U.S. 97 (1976), certiorari should have been granted and the Seventh Circuit’s decision reversed.
15. *King v. Emmons*, No. 23-668, decided July 2, 2024 **[*Batson* Challenge]**
Jackson Dissenting from Denial of Certiorari
Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), federal habeas courts must give substantial deference to factual determinations made by state courts. See 28 U. S. C. §§2254(d)(2), (e)(1). In this capital case, a Georgia prosecutor struck every Black woman and all but two Black men from a jury pool during voir dire. Responding to a challenge from the defendant based on *Batson v. Kentucky*, 476 U. S. 79 (1986), the prosecutor protested, arguing that it was “improper” for the court to inquire into his reasons for making the strikes. He then proceeded to explain that one of his “main reason[s]” for a specific strike was that “this lady is a black female.” The trial court determined that this racially discriminatory strike violated *Batson*. In response, the prosecutor erupted into a rant against *Batson*. He repeatedly asserted that it was “improper for this [c]ourt to tell me . . . that’s not a justifiable strike.” And he concluded: “I take issue with this entire whole process . . . . It’s improper and it’s wrong.” On appeal, the Supreme Court of Georgia found that none of the prosecutor’s other peremptory strikes were racially discriminatory—but nowhere did that court acknowledge the fact that one of the prosecutor’s strikes was explicitly discriminatory, nor did the court even mention the prosecutor’s drawn-out rants against *Batson*. The Eleventh Circuit then proceeded on federal habeas review to conclude that the state court did not make “an unreasonable determination of the facts” under §2254(d)(2), despite its having completely ignored those highly salient facts. That was error… when a state court fails to engage with critical evidence in rendering its factual findings, a federal habeas court should not hesitate to deem those findings unreasonable.
16. *McCrory v. Alabama*, No. 23-6232, decided July 2, 2024 **[Post Conviction Remedies/Junk Science]**
Sotomayor Respecting the Denial of Certiorari
McCrory was convicted of murder in 1985 based on forensic bitemark testimony that has now been roundly condemned by the scientific community and retracted by the expert who introduced it at his trial. McCrory argues to this Court that this now-discredited forensic evidence rendered his trial fundamentally unfair in violation of the Due Process Clause. Even if that were true, McCrory faces many procedural hurdles that could delay or even preclude relief based on existing state and federal postconviction statutes. I vote to deny this petition because due process claims like McCrory’s have yet to percolate sufficiently through the federal courts. Legislatures concerned with wrongful convictions based on faulty science, however, need not wait for this Court to address a constitutional remedy. Several States have already tackled this troubling problem through targeted postconviction statutes. These statutes create an efficient avenue for innocent people convicted based on forensic science that the scientific community has now largely repudiated.
17. *McElrath v. Georgia*, No. 22-721, decided February 21, 2024 **[Double Jeopardy/Inconsistent Verdicts]**
Jackson majority, Alito concurring
After petitioner Damian McElrath killed his mother, Georgia charged him with malice murder, felony murder, and aggravated assault. At trial, the jury returned a split verdict finding McElrath “not guilty by reason of insanity” with respect to malice-murder, and “guilty but mentally ill” as to the other counts. On appeal, the Supreme Court of Georgia determined that the jury’s verdicts were “repugnant” because the verdicts “required affirmative findings of different mental states that could not exist at the same time.” See 308 Ga. 104, 112, 839 S. E. 2d 573, 579. The court vacated both the malice-murder and felony-murder verdicts and authorized retrial. Ibid., 839 S. E. 2d, at 580. On remand, McElrath argued that the Double Jeopardy Clause of the Fifth Amendment prohibited Georgia from retrying him for malice murder given the jury’s prior “not guilty by reason of insanity” verdict on that charge. The Georgia courts rejected that argument.
**Held:** The jury’s verdict that McElrath was not guilty of malice murder by reason of insanity constituted an acquittal for double jeopardy purposes notwithstanding any inconsistency with the jury’s other verdict.
18. *Mcintosh v. United States*, No. 22–7386, decided April 17, 2024 **[Hobbs Act, Forfeiture]**Sotomayor unanimous
McIntosh was indicted on multiple counts of Hobbs Act robbery and firearm offenses. The indictment set forth the demand that McIntosh “shall forfeit . . . all property . . . derived from proceeds traceable to the commission of the [Hobbs Act] offenses.” After a jury convicted McIntosh, the District Court imposed a forfeiture of $75,000 and the BMW at the sentencing hearing. Although the District Court also ordered the Government to submit an order of forfeiture for the court’s signature within a week from the hearing, the Government failed to do so. On appeal, the Government moved for a limited remand to supplement the record with a written order of forfeiture. The Second Circuit granted the unopposed motion. Back in District Court, McIntosh argued that the failure to comply with Federal Rule of Criminal Procedure 32.2(b)(2)(B)—which provides that “[u]nless doing so is impractical,” a federal district court “must enter the preliminary order [of forfeiture] sufficiently in advance of sentencing to allow the parties to suggest revisions or modifications before the order becomes final as to the defendant”—meant that the District Court could not proceed with forfeiture at all. The District Court overruled McIntosh’s objections, finding that the Rule is a time-related directive, and that the failure to enter a preliminary order of forfeiture before sentencing did not prevent the court from ordering forfeiture because the missed deadline did not prejudice McIntosh. The Second Circuit affirmed in relevant part. **Held:** A district court’s failure to comply with Rule 32.2(b)(2)(B)’s requirement to enter a preliminary order before sentencing does not bar a judge from ordering forfeiture at sentencing subject to harmless-error principles on appellate review.
19. *Price v. Montgomery County*, No. 23-649, decided July 2, 2024 **[Prosecutorial Immunity]**
Sotomayor Respecting the Denial of Certiorari
Miller was charged with murder based on the false confession of a witness. The witness later recanted her coerced confession, including in jailhouse letters she sent to her husband. Upon learning about the letters, a court ordered the witness to retrieve and turn them over to Miller’s defense team. The lead prosecutor on Miller’s case, Keith Craycraft, instead allegedly encouraged the witness to destroy the letters in response to the court order. The witness destroyed the letters instead of turning them over. Miller spent two years in prison before the State dropped the charges against him. Miller then sued Craycraft and others under 42 U. S. C. §1983, for malicious prosecution, fabrication and destruction of evidence, due process violations, and conspiracy. The District Court dismissed the claims against Craycraft, concluding that he had absolute immunity as a prosecutor. The Sixth Circuit agreed, but noted that Craycraft’s “successful pressuring of [the witness] to destroy her jailhouse correspondence” was “difficult to justify and seemingly unbecoming of an official entrusted with enforcing the criminal law.” Miller filed a Petition for a Writ of Certiorari with the Supreme Court to decide whether absolute immunity is available under §1983 when, as here, a prosecutor knowingly destroys exculpatory evidence and defies a court order. Craycraft’s alleged misconduct of advising a witness to destroy evidence to thwart a court order is stunning. If this is what absolute prosecutorial immunity protects, the Court may need to step in to ensure that the doctrine does not exceed its “ ‘quite sparing’ ” bounds. *Buckley v. Fitzsimmons*, 509 U. S. 259, 269 (1993). Otherwise, we risk leaving “victims of egregious prosecutorial misconduct without a remedy.” *Michaels v. McGrath*, 531 U. S. 1118, 1119 (2001) (Thomas, J., dissenting from denial of certiorari).
20. *Pulsifer v. United States*, No. 22–340, decided March 15, 2024 **[Sentencing, “Safety Valve” Provision]**
Kagan majority, Gorsuch dissenting
After pleading guilty to distributing at least 50 grams of methamphetamine, Pulsifer faced a mandatory minimum sentence of 15 years in prison, however he sought to take advantage of the “safety valve” provision of federal sentencing law, which allows a sentencing court to disregard the statutory minimum if a defendant meets five criteria (18 U. S. C. §3553(f)(1)) found by the sentencing court, that: (1) the defendant does not have (A) more than 4 criminal history points, excluding any criminal history points resulting from a 1-point offense, as determined under the sentencing guidelines; (B) a prior 3-point offense, as determined under the sentencing guidelines; and (C) a prior 2-point violent offense, as determined under the sentencing guidelines. Pulsifer had two prior three-point offenses totaling six criminal-history points. In the Government’s view, each of those prior offenses disqualified him under Subparagraph B and the six total points disqualified him under Subparagraph A, but Pulsifer claimed he remained eligible because his criminal record lacked a two-point violent offense, as specified in Subparagraph C, claiming that only the combination of the items listed in the subparagraphs could prevent him from getting safety-valve relief. The District Court agreed with the Government, and the Eighth Circuit affirmed. **Held:** A defendant facing a mandatory minimum sentence is eligible for safety-valve relief under 18 U. S. C. §3553(f)(1) only if he satisfies each of the provision’s three conditions, or said more specifically, only if he does not have more than four criminal-history points, does not have a prior three-point offense, and does not have a prior two-point violent offense.
21. *Sandoval v. Texas*, No. 23–5618, decided May 13, 2024 **[Special Venire to Prequalify Potential Jurors]**
Jackson Dissenting from Denial of Certiorari
Criminal defendants have a “fundamental righ[t]” “to personal presence at all critical stages of the trial.” *Rushen v. Spain*, 464 U. S. 114, 117 (1983) (per curiam). We have long held that voir dire—the moment that “represents jurors’ first introduction” to the facts of a case—is one such stage. *Gomez v. United States*, 490 U. S. 858, 873–874 (1989). In this capital case, however, the Texas Court of Criminal Appeals (TCCA) determined that a defendant had no due process right to attend “special venire” proceedings held prior to voir dire, during which a judge preevaluated potential jurors who were summonsed specifically for that case and given information about the defendant and the allegations against him. The TCCA’s ruling raises a significant and certworthy question about whether criminal defendants have a due process right to be present in such circumstances. In my view, the answer is yes, and this Court should have granted the petition for certiorari to furnish that important holding.
22. *Smith v. Arizona*, No. 22–899, decided June 21, 2024 **[Sixth Amendment Confrontation Clause]**Kagan majority, Thomas concurring, Gorsuch concurring, Alito concurring
The Sixth Amendment’s Confrontation Clause guarantees a criminal defendant the right to confront the witnesses against him. In operation, the Clause protects a defendant’s right of cross-examination by limiting the prosecution’s ability to introduce statements made by people not in the courtroom. The Clause thus bars the admission at trial of an absent witness’s statements unless the witness is unavailable and the defendant had a prior chance to subject her to cross-examination. Arizona law enforcement officers found Smith with a large quantity of what appeared to be drugs and drug-related items. Analyst Rast ran forensic tests on the items and concluded that they contained usable quantities of methamphetamine, marijuana, and cannabis. Rast prepared a set of typed notes and a signed report about the testing, however Rast stopped working at the lab prior to trial, so another analyst, Longoni, testified, conveying to the jury what Rast’s records revealed about her testing, before offering his “independent opinion” of each item’s identity. Smith was convicted but argued on appeal that the State’s use of a substitute expert to convey the substance of Rast’s materials violated his Confrontation Clause rights. The Arizona Court of Appeals held that Longoni could constitutionally present his own expert opinions based on his review of Rast’s work because her statements were then used only to show the basis of his opinion and not to prove their truth. **Held:** When an expert conveys an absent analyst’s statements in support of the expert’s opinion, and the statements provide that support only if true, then the statements come into evidence for their truth.
23. *Thornell, Director, Arizona Department of Corrections v. Jones*, No. 22–982, decided May 30, 2024 **[Strickland Test for Ineffective Assistance of Counsel]**
Alito majority, Sotomayor dissenting, Jackson dissenting
Jones was convicted of the premeditated first-degree murders of Robert and Tisha Weaver and the attempted pre-meditated murder of Robert’s grandmother Katherine Gumina. Arizona law at the time required the trial court to “impose a sentence of death” if it found “one or more” statutorily enumerated “aggravating circumstances” and “no mitigating circumstances sufficiently substantial to call for leniency.” The trial court found three aggravating circumstance and also concluded that Jones had established four mitigating circumstances but that the mitigating circumstances were “not sufficiently substantial to outweigh the aggravating circumstances,” so it sentenced Jones to death. The conviction and sentence were affirmed by the Arizona Supreme Court. Jones later sought state postconviction review on the theory that defense counsel was ineffective, but the Arizona courts rejected the claims and on federal habeas the District Court concluded that Jones could not show prejudice. The Ninth Circuit reversed, but the Supreme Court vacated that judgment and remanded for the Ninth Circuit to determine whether, in light of *Cullen v. Pinholster*, 563 U. S. 170 (2011), it had been proper to consider the new evidence presented at the federal evidentiary hearing. On reconsideration, the Ninth Circuit again granted habeas relief, holding that it was permissible to consider the new evidence and concluded that there was a “ ‘reasonable probability’ ” that “Jones would not have received a death sentence” if that evidence had been presented at sentencing. Ten judges dissented from the denial of *en banc* review. One dissent asserted that the Ninth Circuit panel flouted *Strickland v. Washington*, 466 U.S. 688 (1984) by crediting “questionable, weak, and cumulative mitigation evidence” as “enough to overcome . . . weight[y] . . . aggravating circumstances.” **Held:** The Ninth Circuit’s interpretation and application of *Strickland* was in error as *Strickland* required a finding not only that counsel provided deficient performance, but that it resulted in prejudice as defined as a substantial likelihood of a different result.
24. *Trump v. United States*, No. 23-939, decided July 1, 2024 **[Presidential Immunity]**
Roberts majority, Thomas concurring, Barrett concurring, Sotomayor dissenting, Jackson dissenting
A federal grand jury indicted former President Donald J. Trump on four counts for conduct that occurred during his Presidency following the November 2020 election. The indictment alleged that after losing that election, Trump conspired to overturn it by spreading knowingly false claims of election fraud to obstruct the collecting, counting, and certifying of the election results. Trump moved to dismiss the indictment based on Presidential immunity, arguing that a President has absolute immunity from criminal prosecution for actions performed within the outer perimeter of his official responsibilities, and that the indictment’s allegations fell within the core of his official duties. The District Court denied Trump’s motion to dismiss, holding that former Presidents do not possess federal criminal immunity for any acts. The D. C. Circuit affirmed. Both the District Court and the D. C. Circuit declined to decide whether the indicted conduct involved official acts. **Held:** Under our constitutional structure of separated powers, the nature of Presidential power entitles a former President to absolute immunity from criminal prosecution for actions within his conclusive and preclusive constitutional authority. And he is entitled to at least presumptive immunity from prosecution for all his official acts. There is no immunity for unofficial acts.
25. *United States v. Rahimi*, No. 22-915, decided June 21, 2024 **[Second Amendment, Domestic Violence]**
Roberts majority, Sotomayor concurring, Thomas dissenting
Rahimi was indicted under 18 U. S. C. §922(g)(8) which prohibits individuals subject to a domestic violence restraining order from possessing a firearm. A prosecution under Section 922(g)(8) may proceed only if the restraining order meets certain statutory criteria. In particular, the order must either contain a finding that the defendant “represents a credible threat to the physical safety” of his intimate partner or his or his partner’s child, §922(g)(8)(C)(i), or “by its terms explicitly prohibit[ ] the use,” attempted use, or threatened use of “physical force” against those individuals, §922(g)(8)(C)(ii). Rahimi concedes here that the restraining order against him satisfies the statutory criteria but argues that on its face Section 922(g)(8) violates the Second Amendment. The District Court denied Rahimi’s motion to dismiss the indictment on Second Amendment grounds. While Rahimi’s case was on appeal, the Supreme Court decided *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U. S. 1 (2022). In light of *Bruen*, the Fifth Circuit reversed, concluding that the Government had not shown that Section 922(g)(8) “fits within our Nation’s historical tradition of firearm regulation.” 61 F. 4th 443, 460 (CA5 2023). **Held:** When an individual has been found by a court to pose a credible threat to the physical safety of another, that individual may be temporarily disarmed consistent with the Second Amendment.
26. *Wilkinson v. Garland, Attorney General*, No. 22–666, decided March 19, 2024 **[Immigration, Hardship Cancellation of Removal]**
Sotomayor majority, Jackson concurring, Roberts dissenting, Alito dissenting
Congress gives immigration judges discretionary power to cancel the removal of a noncitizen and instead permit the noncitizen to remain in the country lawfully. 8 U. S. C. §§1229b(a)–(b). Cancellation of removal is a two-step process, first determination of whether the noncitizen is eligible for cancellation of removal under the statutory criteria, then whether to exercise discretion and grant relief. There are four statutory criteria, one of which requires the noncitizen to “establis[h] that removal would result in exceptional and extremely unusual hardship to [the noncitizen’s] spouse, parent, or child,” who is a U. S. citizen or lawful permanent resident. §1229b(b)(1)(D). Wilkinson was arrested and detained for remaining in the United States beyond the expiration of his tourist visa. He applied for cancellation of removal based in part on hardship to his 7-year-old, U. S.-born son, M., who suffers from a serious medical condition and relies on Wilkinson for emotional and financial support. To meet the hardship standard, Wilkinson had to show that M. “would suffer hardship that is substantially different from or beyond that which would ordinarily be expected to result from [his] removal.” *In re* Monreal-Aguinaga, 23 I. & N. Dec. 56, 62. Considering all of the hardship factors presented by Wilkinson in the aggregate, the IJ held that M.’s situation did not meet the statutory standard for “exceptional and extremely unusual” hardship and denied Wilkinson’s application. The Board of Immigration Appeals affirmed. The Third Circuit held that it lacked the jurisdiction necessary to review the IJ’s discretionary hardship determination. The Supreme Court granted certiorari to determine whether the IJ’s “exceptional and extremely unusual” hardship determination is a mixed question of law and fact reviewable under §1252(a)(2)(D) or whether that determination is discretionary and therefore unreviewable under §1252(a)(2)(B)(i). **Held:** The Third Circuit erred in holding that it lacked jurisdiction to review the IJ’s determination in this case.