(ORDER LIST: 593 U.S.)

MONDAY, APRIL 19, 2021

CERTIORARI -- SUMMARY DISPOSITIONS

20-308 LA BOOM DISCO, INC. V. DURAN, RADAMES

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Second Circuit for further consideration in light of *Facebook, Inc.* v. *Duguid*, 592 U. S. ___ (2021).

20-723 PA HIGHER EDUCATION ASSISTANCE V. ALLAN, SUSAN, ET AL.

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Sixth Circuit for further consideration in light of *Facebook, Inc.* v. *Duguid*, 592 U. S. ___ (2021).

20-740 BOGNET, JIM, ET AL. V. DEGRAFFENREID, ACTING SEC. OF PA

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Third Circuit with instructions to dismiss the case as moot. See *United States* v. *Munsingwear, Inc.*, 340 U. S. 36 (1950).

ORDERS IN PENDING CASES

20M68 HUTCHINSON, ANTWAN L. V. UNITED STATES

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

20-609 GANNETT CO., INC., ET AL. V. QUATRONE, JEFFREY

The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States.

20-6366 RILEY, JAMES W. V. DELAWARE

The motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* is denied. Justice Alito took no part in the consideration or decision of this motion.

20-7116 DEL PINO ALLEN, ISABEL V. BD. OF TRUSTEES

20-7162 AGUILAR, JOSE, ET UX. V. SPECIALIZED LOAN SERV., ET AL.

20-7234 BARRETT, KERRIN V. PAE GOVT. SERV., INC., ET AL.

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until May 10, 2021, within which to pay the docketing fees required by Rule 38(a).

CERTIORARI GRANTED

20-637 HEMPHILL, DARRELL V. NEW YORK

The petition for a writ of certiorari is granted.

CERTIORARI DENIED

20-418 GLASSER, MELANIE V. HILTON GRAND VACATIONS CO.

20-479 SHINN, DAVID C. V. BAKER, RYAN R.

20-674 UZODINMA, TITO M. V. GARLAND, ATT'Y GEN.

20-768 SERRANO, GERARDO V. CUSTOMS AND BORDER PROTECTION

20-782 HOLLOWAY, RAYMOND V. GARLAND, ATT'Y GEN., ET AL.

20-812 FOLAJTAR, LISA M. V. GARLAND, ATT'Y GEN., ET AL.

20-877 KING, TRINELL V. PRIDMORE, RICKY, ET AL.

20-941 ATKINS, GREGORY, ET AL. V. WILLIAMS, KENNETH

20-948 KOBE V. BUSCEMI, BEVERLY, ET AL.

20-963 WALTON, STEPHEN K. V. VA INT'L TERMINALS, LLC

20-975 OWENS, FREDDIE V. STIRLING, DIR., SC DOC, ET AL.

20-1054 VALAMBHIA, VIPULA, ET AL. V. TANZANIA, ET AL.

20-1071 WV, EX REL. YURISH, ET AL. V. FAIRCLOTH, JUDGE, ETC., ET AL.

20-1072 THOMPSON, CHAD, ET AL. V. DeWINE, GOV. OF OH, ET AL.

20-1074 LINSANGAN, SEDFREY M. V. TAIJERON, ALICE M., ET AL.

20-1075 REICHARD, JOHN R., ET UX. V. BROWN, RUSSELL A.

20-1076 SE PROPERTY HOLDINGS, LLC V. GADDY, JERRY D.

20-1082 GARDNER, RAYMOND V. MGLEJ, MATTHEW T.

20-1085 STAFNE, SCOTT, E. V. ZILLY, JUDGE, USDC WD WA, ET AL.

20-1091 SCHULZ, ROBERT L. V. TOWN BD. OF QUEENSBURY, ET AL.

20-1096 FETNER, PHILIP J. V. HOTEL STREET CAPITAL, ET AL.

20-1097 HAN, KAREN C. V. CHO, YANGRAI

20-1098 HOUTHOOFD, TOD V. PARISH, WARDEN

20-1102 HANNA, MICHAEL J. V. LITTLE LEAGUE BASEBALL

20-1104 TESORIERO, IRINA V. CARNIVAL CORP.

20-1115 GRANTON, CHRISTOPHER R. V. WA STATE LOTTERY

20-1117 FETNER, PHILIP J. V. WILMINGTON SAVINGS FUND, ET AL.

20-1118 GRUNDSTEIN, ROBERT V. LAMOILLE SUPERIOR DOCKET, ET AL.

20-1122 FLEURY, EDWARD B. V. MASSACHUSETTS

20-1124 LEATHERWOOD, MICHAEL D. V. BRAGGS, WARDEN

20-1126 MARTILLO, JOACHIM, ET AL. V. UNKNOWN DEFENDANTS

20-1133 TRIANTOS, NICHOLAS L. V. DEUTSCHE BANK NAT. TRUST, ET AL.

20-1136 CAPOTE, PETER V. ALABAMA

20-1140 DeBOSE, ANGELA W. V. UNIV. OF SOUTH FLORIDA, ET AL.

20-1155 NELSON, JONAS D. V. MINNESOTA

20-1160 WEST VENTURES L.P., ET AL. V. CIR

20-1166 SHOPHAR, JOREL, ET UX. V. UNITED STATES, ET AL.

20-1178 PACIFIC CHOICE SEAFOOD CO. V. RAIMONDO, SEC. OF COMMERCE

20-1182 TAPIA-FELIX, LEONARDO V. GARLAND, ATT'Y GEN.

20-1225 WINSTON, E. JENEAN, ET AL. V. WALSH, MARK A.

20-1237 BROWN, BLANCHE A. V. UNITED STATES

20-1239 SMITH, EDWARD V. OHIO

20-1260 CASTILLO, MARIA R. V. GARLAND, ATT'Y GEN.

20-1269 RENFROE, AMANDA K., ET AL. V. PARKER, ROBERT D., ET AL.

20-1270 STAFNE, SCOTT E. V. BANK OF NEW YORK MELLON

20-1274 WERN, RICHARD G. V. SC COMM'N ON LAWYER CONDUCT

20-1280 COTROPIA, JOSEPH V. CHAPMAN, MARY

20-1281 DREDD, BYRON V. UNITED STATES

20-1283 TEMPONERAS, MARGARET V. UNITED STATES

20-1289 NETSCOUT SYSTEMS, INC., ET AL. V. PACKET INTELLIGENCE LLC

20-1300 LUQUE, EMILIO T., ET AL. V. CIR

20-1301 McNEIL, KENNETH C. V. UNITED STATES

20-1314 RICHARDSON, JOSHUA G. V. UNITED STATES

20-1319 SOLORZANO, VICTOR M. V. UNITED STATES

20-1321 LEE, JOHN C. V. UNITED STATES

20-6054 TRIBUE, ALEX C. V. UNITED STATES

20-6260 JOHNSON, SHERMAN V. UNITED STATES

20-6498 BARKSDALE, TONY V. DUNN, COMM'R, AL DOC

20-6563 STALLWORTH, ISAIAH D. V. UNITED STATES

20-6599 DOMINGUEZ, RANDY V. UNITED STATES

20-6640 PERRYMAN, JAMES D. V. UNITED STATES

20-6754 TARPLEY, ALFORD D. V. UNITED STATES

20-6773 SMITH, ARTAVIUS D. V. UNITED STATES

20-6780 AGUILAR, GUILLERMINA V. SPECIALIZED LOAN SERV., ET AL.

20-6791 PENN, ALVIN C. V. UNITED STATES

20-6871 GREEN, ANGNEM V. NEW YORK

20-7038 MARTINEZ, DAVID P. V. UNITED STATES

20-7051 ZAVALIDROGA, TOMAS V. USDC ND NY

20-7053 TORRES, HECTOR M. V. TEXAS

20-7056 MEHDIPOUR, FARAMARZ V. COYLE, HEATHER, ET AL.

20-7060 MOSIER, CHARLES L. V. TEXAS

20-7061 TOMLIN, FRANK D. V. ISHEE, TODD E.

20-7075 PARNELL, J. P. V. CHEN, DOCTOR, ET AL.

20-7084 HILL, MINDY V. GOOGLE LLC, ET AL.

20-7093 TURNER, NOEL C. V. LUMPKIN, DIR., TX DCJ

20-7104 BADKIN, VINCENT L. V. LOCKHEED CORPORATION, ET AL.

20-7111 LOPEZ-VANEGAS, CARLOS V. PENNSYLVANIA

20-7117 TROY-McKOY, DERVANNA H. A. V. MOUNT SINAI BETH ISRAEL

20-7123 HEDDLESTEN, KENNETH R. V. CROW, DIR., OK DOC

20-7131 ELKINS, SHEAN V. SHOOP, WARDEN

20-7139 ANDERSON, CHAYCE A. V. COLORADO

20-7143 SHI, HEYANGJING, ET AL. V. MASH, JIM J.

20-7144 HE, XUE JIE V. XUE, HAIRONG

20-7145 HARRIS, RASHEIK A. V. UNITED STATES

20-7147 ACOSTA, JOE A. V. LUMPKIN, DIR., TX DCJ

20-7149 GADDY, MICHAEL J. V. DUCART, WARDEN, ET AL.

20-7151 HEJAZI, HAMID M. V. HARROLD, SHERIFF

20-7153 FORBES, ANTHONY L. V. SEAWORLD ENTERTAINMENT, ET AL.

20-7155 SCOTT, JAMES V. ROBINSON, WARDEN

20-7158 RAMIREZ, RAYMOND J. V. INCH, SEC., FL DOC

20-7159 SMITH, DANNY L. V. ALABAMA, ET AL.

20-7161 ARTIS, TYRELL E. V. OHIO

20-7165 JACKSON, ROBIN E. V. JOSIAH, MARSHA

20-7176 DAVIS, JEFFREY S. V. SHINN, DIR., AZ DOC, ET AL.

20-7178 TURNER, NOLAN C. V. LOUISIANA

20-7179 VIERA, NELSON V. FL DOC

20-7192 SMITH, PHILLIP V. V. STEIN, JOSH

20-7193 STUART, JOHN C. V. BRNOVICH, ATT'Y GEN. OF AZ

20-7203 FRANCIS, CHIRON S. V. TEXAS

20-7221 CANNON, WILLIAM D. V. CLARKE, DIR., VA DOC

20-7241 GOSSELIN, RENE V. MASSACHUSETTS

20-7260 HOPKINS, AL R. V. FLORIDA

20-7262 STILLS, MELVIN V. PENNSYLVANIA

20-7274 GRIFFIS, MICHAEL D. V. PARISH, WARDEN

20-7275 HERRON, ALVIN V. INCH, SEC., FL DOC

20-7289 CAMPBELL, BOBBY V. BOTTLING GROUP, LLC

20-7295 SAUCEDA, ISIDRO V. SHINN, DIR., AZ DOC

20-7310 JOHNSON, DERRICK A. V. JOHNSON, WARDEN

20-7320 LASKOWSKI, ZBIGNIEW V. WA DEPT. OF LABOR

20-7343 WILLIAMS, JUSTIN D. V. UTAH

20-7345 LEWIS, WILLIE R. V. LEGRAND, WARDEN, ET AL.

20-7361 AYERS, ROBERT E. V. VIRGINIA

20-7364 BALDWIN, JAMES V. CLARK, SUPT., ALBION, ET AL.

20-7367 BOSTIC, SHERWOOD L. V. INCH, SEC., FL DOC, ET AL.

20-7370 BRADFORD, AVERY V. PERRY, WARDEN

20-7372 OCKERT, TERRY L. V. UNITED STATES

20-7380 WYATT, MICHAEL E. V. SUTTON, WARDEN

20-7384 TOLIVER, SAMUEL V. ADNER, K.

20-7395 WILLS, ANTONIO E. V. UNITED STATES

20-7400 BARTLETT, DRASHAWN V. VALENTINE, WARDEN

20-7404 SMITH, DE ANDRE V. UNITED STATES

20-7408 NAPPER, TRYSTAN K. V. UNITED STATES

20-7409 PENA-GARCIA, EDUARDO V. UNITED STATES

20-7415 GRIFFIN, KEITH V. NEW YORK

20-7417 PACE, ALLEN V. UNITED STATES

20-7418 JENNINGS, JAVON J. V. UNITED STATES

20-7419 JOHNSON, KAMIL V. MACKELBURG, WARDEN

20-7421 LEVINE, JEFFERSON V. UNITED STATES

20-7428 MARONES, ALDO V. FORD, ATT'Y GEN. OF NV, ET AL.

20-7438 STEGAWSKI, CHRISTOPHER V. UNITED STATES

20-7439 SUAREZ, MICHAEL L. V. UNITED STATES

20-7441 RUDENKO, KONSTANTIN V. SHANLEY, SUPT., COXSACKIE

20-7444 BRUCE, TODDREY V. UNITED STATES

20-7446 RIVERA ARREOLA, JUAN L. V. UNITED STATES

20-7448 JOHNSON, SHUNTARIO V. UNITED STATES

20-7449 NUNEZ, MICHAEL V. UNITED STATES

20-7451 JENNER, DAVID K. V. CO DOC, ET AL.

20-7452 LUCAS, DESPINA N. V. SOCIAL SECURITY ADMINISTRATION

20-7453 JACKSON, DOUGLAS D. V. UNITED STATES

20-7456 AYALA-SOLORIO, RAFAEL V. UNITED STATES

20-7457 MORRIS, MARK A. V. UNITED STATES

20-7458 RAJPUT, PROMILA V. TERRELL, TIFFANY

20-7459 ROSARIO, HERMAN V. UNITED STATES

20-7461 KENDRICK, DAVID V. UNITED STATES

20-7465 ASUNCIONI, JOHNNY A. V. UNITED STATES

20-7468 FEAZELL, AARON V. UNITED STATES

20-7469 HERNANDEZ-AYALA, JOAQUIN V. BAKER, WARDEN, ET AL.

20-7471 PEREZ, CHRISTIAN J. V. UNITED STATES

20-7472 MILNER, DAVID M. V. UNITED STATES

20-7473 OBREGON, IVAN D. V. UNITED STATES

20-7475 JESSIE, CORRY V. UNITED STATES

20-7476 CABRERA, JOSE A. R. V. UNITED STATES

20-7477 JABBAR, HAKIMAH V. GRAHAM, JUDGE, USDC SD OH

20-7483 MEDEL-GUADALUPE, LUIS A. V. UNITED STATES

20-7486 GUZMAN-MERCED, CARLOS V. UNITED STATES

20-7488 HAMPTON, WILLIAM D. V. WILLIAMS, WARDEN

20-7489 FORMICA, MICHAEL V. CLARKE, DIR., VA DOC

20-7493 SANCHEZ, JOSE L. V. HOLBROOK, DONALD, ET AL.

20-7494 SIMMONS, KIRK A. V. UNITED STATES

20-7496 SPRIGGS, MAURICE V. UNITED STATES

20-7498 ALMEIDA-OLIVAS, JOSE F. V. UNITED STATES

20-7501 ARROYO-HERNANDEZ, ALFREDO V. UNITED STATES

20-7503 JONES, MARK R. V. UNITED STATES

20-7507 FAELLA, CHRISTOPHER V. UNITED STATES

20-7508 CAMPBELL, JAMES W. V. BROWN, WARDEN

20-7509 DEL ANGEL, ERIK S. L. V. UNITED STATES

20-7516 PORTILLO, JOSUE V. UNITED STATES

20-7519 SALWAN, ANGADBIR S. V. HIRSHFELD, DREW

20-7521 LEWIS, LIONEL V. NEW YORK

20-7524 BYRD, MATTHEW R. V. UNITED STATES

20-7529 MOORE, BRIAN E. V. UNITED STATES

20-7546 SHUMPERT, REGINALD L. V. UNITED STATES

20-7551 BOLZE, DENNIS R. V. WARDEN, FCI COLEMAN

20-7552 ALVAREZ-REYES, HUGO R. V. CAIN, SUPT., SNAKE RIVER

20-7556 McKNIGHT, TERRENCE A. V. JOHNSON, R., ET AL.

20-7567 COLE, BRENT D. V. UNITED STATES

The petitions for writs of certiorari are denied.

20-8 DEUTSCHE BANK TRUST CO., ET AL. V. ROBERT R. McCORMICK FOUNDATION

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

20-209 GADELHAK, ALI V. AT&T SERVICES, INC.

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

20-902 FLICK, KENNETH E. V. GARLAND, ATT'Y GEN.

The motion of Firearms Policy Coalition, et al. for leave to file a brief as *amici curiae* is granted. The petition for a writ of certiorari is denied.

20-1008 STATE FARM LIFE INSURANCE CO. V. VOGT, MICHAEL G.

The motion of American Council of Life Insurers for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is denied.

20-1086 STEPHENS, RANDALL G. V. DOW CHEMICAL CO.

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

20-1107 MELVIN, RODDIE V. FEDERAL EXPRESS CORPORATION

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

20-7025 ALLEN, DERRICK M. V. HUDSON, ORLANDO

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.

20-7067 PENNINGTON-THURMAN, WILMA V. SANSONE GROUP DDR LLC

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*).

20-7092 WATFORD, MARLON L. V. PFISTER, RANDY, ET AL.

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8. As the petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). Justice Barrett took no part in the consideration or decision of this motion and this petition.

20-7148 FAWLEY, BENJAMIN W. V. JABLONSKI, DAVID, ET AL.

20-7437 RAMSEY, FREDERICO V. UNITED STATES

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

20-7467 CARVER, TIMOTHY W. 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

20-1282 IN RE KAYSHA F. N. DERY

20-1304 IN RE REXFORD TWEED

20-1342 IN RE TITUS L. RADCLIFF

20-7575 IN RE IVORY L. ROBINSON

20-7584 IN RE TERRIL L. GRAHAM

The petitions for writs of habeas corpus are denied.

20-7517 IN RE KHAYREE SMITH

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of habeas corpus is dismissed. See Rule 39.8.

MANDAMUS DENIED

20-1230 IN RE REGINALD L. SYDNOR

20-1290 IN RE ADESIJUOLA OGUNJOBI

20-7045 IN RE CYRUS L. BROOKS

20-7510 IN RE LEONARD ENGLISH

The petitions for writs of mandamus are denied.

20-1112 IN RE LAKSHMI ARUNACHALAM

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

20-7170 IN RE ABHIJIT PRASAD

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

REHEARINGS DENIED

19-8413 POPE, TROY V. DUNN, COMM'R, AL DOC

20-607 DREVALEVA, TATYANA E. V. ALAMEDA HEALTH SYSTEM

20-732 WYCHE, DAVID V. OSHA

20-758 REYNOLDS, AUDIE J. V. U.S. BANK NAT. ASSN.

20-781 U.S., EX REL. CSILO, ET AL. V. J.C. REMODELING, INC., ET AL.

20-863 AKEVA L.L.C. V. NIKE, INC., ET AL.

20-909 RANDHAWA, IQBAL S. V. BANK OF NEW YORK MELLON

20-932 FRANKLIN, BOBBY L. V. LAUGHLIN, D. J., ET AL.

20-942 BUIE, CHRISTOPHER L. V. DEPT. OF LABOR

20-978 METAXAS, POPPI V. UNITED STATES

20-5504 MARTIN, KEVIN L. V. CAPRON, CATHLEEN, ET AL.

20-5532 GOLDEN, LARRY V. UNITED STATES

20-5594 LUCY, WILLIAM N. V. ESTATE OF ANNIE D. FOX

20-6139 ALVARADO, PEDRO V. INCH, SEC., FL DOC

20-6325 DELIMA, KRYSTAL M. V. WALMART STORES ARKANSAS, LLC

20-6413 SHEPARD, MAXINE V. DEPT. OF VETERANS AFFAIRS

20-6423 LEE, BYRON V. AT&T SERVICES, INC., ET AL.

20-6501 RILEY, SHANNON V. MEEHAN, CARRIE K.

20-6525 ARANOFF, GERALD V. ARANOFF, SUSAN

20-6961 PFOFF, CHRISTOPHER S. V. UNITED STATES

20-6976 DOCTOR, TIMOTHY T. V. UNITED STATES

The petitions for rehearing are denied.

20-302 DOTSON, STEVEN V. UNITED STATES

20-976 PENNY, DAVID H. V. LINCOLN'S CHALLENGE ACADEMY

20-6487 JOHNSTON, ANDREW V. UNITED STATES

The petitions for rehearing are denied. Justice Barrett took no part in the consideration or decision of these petitions.

20-5989 KARNOFEL, ANN V. SUPERIOR WATERPROOFING, INC.

The motion for leave to file a petition for rehearing is denied.

SUPREME COURT OF THE UNITED STATES

SHARON LYNN BROWN *v.* POLK COUNTY, WISCONSIN, ET AL.

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

No. 20–982. Decided April 19, 2021

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

Statement of JUSTICE SOTOMAYOR respecting the denial of certiorari.

Petitioner Sharon Lynn Brown asks this Court to decide what degree of suspicion the Fourth Amendment requires to justify the physically penetrative cavity search of a pretrial detainee. While Brown was in pretrial detention, officials at Polk County Jail directed a male doctor to insert a speculum into her vagina, spread it open, and shine a flashlight inside to search for contraband. The doctor did the same to Brown's anus. The Court of Appeals for the Seventh Circuit held that mere reasonable suspicion justified this search. That is, for example, the same degree of suspicion required for police to stop someone on the street and ask a few, brief questions. See *Terry* v. *Ohio*, 392 U. S. 1, 21–22 (1968). Brown argues this much more invasive search required probable cause and a warrant or exigent circumstances. Those are, by comparison, the same prerequisites for police to draw blood from an unconscious motorist to determine his blood alcohol content. See *Mitchell* v. *Wisconsin*, 588 U. S. ___, ___ (2019) (slip op., at 16).

This petition raises an important question. Nonetheless, I agree with the Court's decision to deny certiorari, as "further consideration of the substantive and procedural ramifications of the problem by other courts will enable us to

deal with the issue more wisely at a later date." *McCray* v. *New York*, 461 U. S. 961, 962 (1983) (Stevens, J., statement respecting denial of certiorari).

It bears emphasis, however, that the degree of suspicion required for a search should be substantially informed by the availability of less intrusive alternatives. This Court does not lightly permit an entire category of warrantless, invasive searches when less offensive options exist. Particularly searches of those who have not been convicted of any crime. The courts below considered no such alternatives before holding that reasonable suspicion alone justified this degrading search into Brown's vagina and anus. Future courts presumably will not do the same.

I

In May 2017, police arrested Brown for shoplifting and took her to Wisconsin's Polk County Jail. The jail's written policy at the time permitted officials to direct medical personnel to perform "an inspection and penetration of the anal or vaginal cavity . . . by means of an instrument, apparatus, or object, or in any other manner" whenever they had "reasonable grounds" to believe a detainee was concealing "weapons, contraband, or evidence," or otherwise "believe[d] that the safety and security of the jail would benefit" from such a search. Electronic Case Filing in No. 3:18–cv–00391 (WD Wis.), Doc. 12–1, pp. 1, 6 (ECF). At least one correctional officer, respondent Steven Hilleshiem, sought permission for penetrative vaginal and anal searches "any time one inmate sa[id] another inmate ha[d] contraband on their person in a body cavity." ECF Doc. 14, p. 6, Tr. 19. He generally would not investigate the tipster's source, determine her reputation for honesty, or seek any other indicia of reliability. *Id.,* at 5–6, Tr. 17–19. In his view, the tip alone provided "reasonable grounds." *Id.,* at 7, Tr. 23. The jail administrator, respondent Wes Revels, similarly needed only Hilleshiem's word to approve a search. ECF

Doc. 19, pp. 7–8, Tr. 22–23, 26–28.

A day after Brown's arrest, two inmates told jail staff that Brown was hiding drugs in her body. Hilleshiem contacted Revels, who authorized a cavity search.[1] Brown was taken to the hospital, where a male doctor performed an ultrasound that revealed no foreign objects. The doctor then inserted a speculum into her vagina, spread open the vaginal walls, and shined his headlamp inside. He did the same to her anus. He found no contraband.

Brown testified that, when the doctor removed the speculum from her anus, "I immediately started crying. I couldn't stop. I cried myself to sleep. I cried all the way back to the jail. I cried the whole time I was getting dressed." ECF Doc. 17, p. 32, Tr. 121. When she returned to the jail, she "asked to stay in the holding cell because [she] couldn't quit crying." *Ibid.,* Tr. 124. This trauma left Brown with anxiety and depression. She slept just three hours a night. *Id.,* at 15, Tr. 55. She experienced flashbacks and feared leaving the house, terrified the police would pull her over and send her back to jail. *Id.,* at 15, Tr. 53; *id*., at Tr. 62–63. Nearly two years later, Brown was still afraid of being alone in a room with a man. Even her own brother. *Id.,* at 16–17, Tr. 59–61.

Brown sued Polk County, Hilleshiem, Revels, and others, alleging that they violated her Fourth Amendment right to be free from unreasonable searches. The District Court granted respondents' motion for summary judgment, concluding that a penetrative cavity search of a pretrial detainee requires only reasonable suspicion. The Seventh Circuit agreed. "[G]iven the heft of the security interest at stake," it reasoned, "the invasion to [Brown's] privacy was not so . . . grea[t] that it pushes the threshold suspicion requirement into probable cause." 965 F. 3d 534, 540 (2020).

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[1] Because it is irrelevant to the question presented, there is no need to address whether these tips in fact provided reasonable suspicion.

II

The Seventh Circuit nowhere considered whether something less intrusive than "prying open [Brown's] vagina and anus" was sufficient to ensure jail security. *Id.*, at 541. That was error. The necessity of a search and its extent cannot be determined in a vacuum. It must instead "be judged in light of the availability of . . . less invasive alternative[s]." *Birchfield* v. *North Dakota*, 579 U. S. ___, ___ (2016) (slip op., at 33). When such an option exists, the State must offer a "satisfactory justification for demanding the more intrusive alternative." *Ibid.* See also *Florida* v. *Royer*, 460 U. S. 491, 500 (1983) ("[T]he investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion").

This Court has thus held, for example, that the availability of a breath test to determine a suspect's blood alcohol content makes a blood draw for that purpose unreasonable, absent a warrant or exigent circumstances. *Birchfield*, 579 U. S., at ___ (slip op., at 33). Two Members of this Court have underscored the importance of considering less intrusive alternatives in the context of searching pretrial detainees. See *Florence* v. *Board of Chosen Freeholders of County of Burlington*, 566 U. S. 318, 341–342 (2012) (ALITO, J., concurring) ("[A]dmission to the general jail population, with the concomitant humiliation of a strip search, may not be reasonable" for those who will soon be released, "particularly if an alternative procedure is feasible," such as separating "minor offenders from the general population"); *id.,* at 340 (ROBERTS, C. J., concurring) (emphasizing that "there was apparently no alternative" to housing the arrestee with the general population).

This is a sensible rule, particularly where, as here, the State seeks a categorical exception to the Fourth Amendment's warrant requirement. If courts permit extraordinarily intrusive searches of pretrial detainees without a warrant, correctional officers may abandon less invasive,

but more burdensome, practices. Likewise, if officers are free to decide for themselves if they have the requisite degree of suspicion, some may cross the line, even if in perfectly good faith.[2] See *Brinegar* v. *United States*, 338 U. S. 160, 182 (1949) (Jackson, J., dissenting) ("We must remember that the extent of any privilege of search and seizure without warrant which we sustain, the officers interpret and apply themselves and will push to the limit"). The consequences will be borne by both the innocent and the guilty.

Consider Polk County Jail. Its official policy was to perform penetrative searches of pretrial detainees' vaginal and anal cavities based on mere reasonable suspicion. In practice, both Hilleshiem and Revels believed that even the barest accusations met that standard, with no corroboration needed. But see, *e.g., Alabama* v. *White*, 496 U. S. 325, 330 (1990) ("[I]f a tip has a relatively low degree of reliability, more information will be required to establish the requisite quantum of suspicion"). Anyone could have suffered the indignity of this practice. "If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender." *Atwater* v. *Lago Vista*, 532 U. S. 318, 354 (2001). Meanwhile, "criminal laws have grown so exuberantly and come to cover so much previously innocent conduct that almost anyone can be arrested for something." *Nieves* v. *Bartlett*, 587 U. S. ___, ___–___ (2019) (GORSUCH, J., concurring in part and dissenting in part) (slip op., at 1–2). An unbuckled seatbelt, a noisy muffler, an unleashed dog: Any one of countless petty misdemeanors might land you in jail. See *Florence*, 566 U. S., at 346–347 (BREYER, J., dissenting). Polk County did not distinguish between detainees. An unverified charge

[2] That said, "the authority which we concede to conduct searches and seizures without [a] warrant may be exercised by the most unfit and ruthless officers as well as by the fit and responsible." *Brinegar* v. *United States*, 338 U. S. 160, 182 (1949) (Jackson, J., dissenting).

from a stranger with unknown motives could send anyone to the hospital for a penetrative search, just like Brown.[3]

Given the degrading nature of the search in this case, less invasive possibilities abound. The court below did not address the option of a solely visual search, see *id.*, at 322, or multiple visual searches over time. Prison officials could order an X ray or transabdominal ultrasound, as occurred here. They could isolate the detainee and investigate further to obtain probable cause. They could await a monitored bowel movement. See *United States* v. *Montoya de Hernandez*, 473 U. S. 531, 534–535, 541, and n. 4 (1985) (upholding prolonged detention of a traveler at the border reasonably suspected of smuggling contraband in her body); *United States* v. *Booker*, 728 F. 3d 535, 547 (CA6 2013) (discussing Customs and Border Patrol policy to first "attempt an x-ray," then "engage in a monitored bowel movement," and "only engage in an involuntary body cavity search after obtaining a court order"). There are likely many other less invasive options worth considering.

Some of these searches would be, to different degrees, less effective than that performed here. As discussed above, this is not the case to decide whether a penetrative cavity search is necessarily unreasonable in light of these potential alternatives. Going forward, however, courts must consider less intrusive possibilities before categorically allowing warrantless searches. This obligation weighs particularly heavily for dehumanizing searches of pretrial detainees like that which Brown endured here.

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[3] People of color disproportionately bear these burdens. Brown is a member of the Fond du Lac Band of Lake Superior Chippewa. ECF Doc. 17, p. 17. Native American people are vastly overrepresented in Wisconsin jails and prisons. See Brief for National Alliance to End Sexual Violence et al. as *Amici Curiae* 12–13. Native American women, meanwhile, "experience sexual violence at higher rates than any other population in the United States." *Id.,* at 14. Consequently, "non-consensual body cavity searches are more likely to traumatize and retraumatize" Native American women and their communities. *Ibid.*

SUPREME COURT OF THE UNITED STATES

FREDERICK R. WHATLEY *v.* WARDEN, GEORGIA DIAGNOSTIC AND CLASSIFICATION PRISON

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

No. 20–363. Decided April 19, 2021

The petition for a writ of certiorari is denied.

JUSTICE SOTOMAYOR, dissenting from denial of certiorari.

A jury sentenced petitioner Frederick R. Whatley to death the morning after watching him reenact a murder while wearing unnecessary leg irons and manacles. When the State called Whatley to the stand during the sentencing proceeding, his attorney waved away the prosecutor's concerns about the visible shackles, then sat silent when the prosecutor handed Whatley a fake gun and asked him to reenact the murder for which he had just been convicted. Defense counsel's unreasonable failure to object to Whatley's shackling was plainly prejudicial under this Court's precedent. I would grant the petition, summarily reverse, and remand for a new sentencing proceeding.

I

Following Whatley's conviction for robbing and killing the owner of a Georgia bait shop and liquor store, the State asked the jury to impose a sentence of death. The sentencing proceeding involved just one day of evidence. The State relied on two, conceded statutory aggravating circumstances: Whatley committed the murder (1) during an armed robbery, Ga. Code Ann. §17–10–30(b)(2) (Supp. 2019), and (2) after having "escaped from [a] place of lawful confinement," §17–10–30(b)(9), because he had walked away from a halfway house to which he had been paroled a few months earlier. The State further showed that Whatley had prior convictions for forging a check, threatening a man

with a shotgun and taking his wallet, and simple assault. Finally, the State elicited testimony from a sheriff's deputy that Whatley once wondered aloud whether he would miss the Super Bowl while in custody. Electronic Case Filing in *Whatley* v. *Upton*, No. 3:09–cv–00074, Doc. 7–9, (ND Ga., July 28, 2009) pp. 15, 22 (ECF). This, the State argued, proved Whatley felt no remorse for his crimes. ECF Doc. 7–11, at 31.

Defense counsel called a number of Whatley's friends and family, followed by Whatley himself. Whatley had worn shackles throughout the guilt phase, but the court took care to ensure the jury did not see the restraints. See, *e.g.*, ECF Doc. 7–5, at 110, 135–138. When defense counsel called Whatley to testify at sentencing, the prosecutor sensibly asked if the court needed to "take the jury out before he takes the stand" in light of the "chains" and "shackles on him." Defense counsel waved off the prosecutor's concern. "Well, he's convicted now," he shrugged, referencing the jury's earlier guilty verdict. The trial court echoed that conclusion: "He's been convicted." ECF Doc. 7–9, at 106. The court never found that the restraints were even necessary, much less that there was no way to hide them from the jury.

Whatley hobbled to the witness stand. His leg irons and cuffs were in plain view. He testified for several hours in those restraints. Among other things, Whatley contested the State's version of the shooting for which he had been convicted. The State claimed that Whatley tried to execute the witnesses to his crime after the storeowner gave him the money, shooting the owner in the chest and nearly shooting an employee but hitting the counter instead. The storeowner, mortally wounded, pulled his own gun. Whatley ran, and the two exchanged shots in the parking lot before the owner died. Whatley, however, testified that the storeowner pulled a gun immediately after giving him the money, and Whatley reflexively fired a single shot that hit the counter before running away. The owner gave chase,

and Whatley killed him during the shootout outside.

On cross-examination, the prosecutor asked Whatley to "step down" from the witness box to demonstrate his version of events. The prosecutor handed Whatley a "toy pistol," noting, "Now, this is not the type of gun you had that day. I hope you'll understand why I don't want to give you a real gun." ECF Doc. 7–10, at 13. He told Whatley to "show this jury how you held a gun on [the victim] and told him to give you that money. Now, you go ahead and show them. You pretend I'm [the victim]. You pull the gun on me and show them how you did it." *Id.,* at 14. With no objection from his attorney, Whatley reenacted the armed robbery and shooting, shuffling around the courtroom with shackles on his legs and waving the gun around with cuffs on his wrists. The prosecutor maintained a running commentary. See *ibid.* ("Show me how you pointed it at him"); *id.,* at 15 ("I want you to point the gun at me just like you did him that day"). He ended his cross-examination shortly thereafter. *Id.,* at 19. Defense counsel never objected.

The next morning, the prosecutor argued in closing that the jury should sentence Whatley to death primarily because he posed a severe threat of future violence. See, *e.g.,* ECF Doc. 7–11, at 20 ("[I]f you think that a guard gets between him and life and he won't kill a guard, you'd better think again"). The court gave no curative instruction about Whatley's shackling. The jury deliberated for 90 minutes before recommending the death penalty.

On direct appeal, the Georgia Supreme Court found that Whatley forfeited his claim that his visible shackling violated his due process rights because his lawyer affirmatively waived any objection despite the prosecutor's stated concerns. *Whatley* v. *State*, 270 Ga. 296, 302, 509 S. E. 2d 45, 52 (1998).

Whatley then filed a state habeas petition, arguing that his trial attorney's failure to object to his unnecessary shackling constituted ineffective assistance of counsel. The

Georgia Supreme Court rejected the petition. *Whatley* v. *Terry*, 284 Ga. 555, 571–572, 668 S. E. 2d 651, 663 (2008). While acknowledging that unnecessary shackling is presumptively prejudicial when an objection is properly preserved, the court held that defendants retain their burden to show prejudice when they claim trial counsel was ineffective for failing to object. *Ibid.* The court summarily concluded that Whatley had not made that showing. *Ibid.*

Whatley filed a federal habeas petition, arguing that the state court's denial of his ineffective-assistance claim was contrary to and an unreasonable application of clearly established federal law. The Eleventh Circuit disagreed. 927 F. 3d 1150, 1184–1187 (2019). The court explained at length why Whatley was not entitled to a presumption of prejudice, and then determined in one short paragraph that Whatley's "violent criminal history" and failure to "turn things around," together with the crimes at issue, rendered the shackling "trivial." *Id.,* at 1187.

Judge Jordan dissented. In his view, the state court's ruling might have been reasonable "had the shackles merely been visible to the jury when Mr. Whatley walked to the witness box. Or if the trial court had given a curative instruction to the jury about the restraints. Or if Mr. Whatley was not forced to re-enact the murder in front of the jury while the prosecutor played the role of the victim. Or if the prosecutor had not explicitly made Mr. Whatley's future dangerousness a key theme in favor of his request for death." *Id.,* at 1193. But with these facts taken together, prejudice was "undeniable." *Ibid.*

II

To succeed on an ineffective-assistance-of-counsel claim, Whatley must show that his counsel's deficient performance prejudiced him. *Strickland* v. *Washington*, 466 U. S. 668, 688, 694 (1984). Prejudice means a "reasonable prob-

ability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.,* at 694. Because Georgia requires unanimity to impose a capital sentence, Whatley need only show a reasonable probability that one juror would have voted against the death penalty absent his counsel's deficiency.[1] See *Wiggins* v. *Smith*, 539 U. S. 510, 537 (2003). However, relief is only available under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) if the state court's conclusion that any deficiency was not prejudicial "was contrary to, or involved an unreasonable application of, clearly established Federal law." 28 U. S. C. §2254(d)(1). Under this standard, federal courts do not defer to a "state-court decision that correctly identifies the governing legal rule but applies it unreasonably to the facts of a particular prisoner's case." *Williams* v. *Taylor*, 529 U. S. 362, 407–408 (2000).

III

A

This Court long ago recognized that "no person should be

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[1] Georgia argued in state court that "counsel should not be regarded as having performed deficiently by failing to object to the shackling, because the practice had not yet been established as unconstitutional." *Whatley* v. *Terry*, 284 Ga. 555, 571, 668 S. E. 2d 651, 663 (2008). The Georgia Supreme Court all but rejected that argument, as it "had already strongly suggested in dictum that it was unconstitutional to place visible shackles on a death penalty defendant during the sentencing phase without a showing of particular need." *Ibid.*, and n. 38 (citing *Moon* v. *State*, 258 Ga. 748, 755, 375 S. E. 2d 442, 449 (1988)). Given its conclusion on prejudice, however, the court simply assumed deficiency. 284 Ga., at 571, 668 S. E. 2d, at 663. The State wisely does not raise this issue here. In addition to state-court decisions, this Court had several times emphasized the prejudicial nature of shackling, well before the trial in this case. See *Illinois* v. *Allen*, 397 U. S. 337, 344 (1970); *Holbrook* v. *Flynn*, 475 U. S. 560, 568–569 (1986). Indeed, the prosecutor himself suggested that the court excuse the jury so Whatley could take the stand outside their presence, thus hiding his chains. ECF Doc. 7–9, at 106. Certainly, a reasonable defense attorney would not have taken it upon himself to overrule the prosecutor's objection to the defendant's unfair treatment.

tried while shackled . . . except as a last resort," in part because "the sight of shackles . . . might have a significant effect on the jury's feelings about the defendant." *Illinois* v. *Allen*, 397 U. S. 337, 344 (1970). "Shackling" is "the sort of inherently prejudicial practice that . . . should be permitted only where justified by an essential state interest specific to each trial." *Holbrook* v. *Flynn*, 475 U. S. 560, 568–569 (1986).

In 2005, this Court held that needless, visible shackling at sentencing likewise violates a capital defendant's right to due process under the Fifth and Fourteenth Amendments. *Deck* v. *Missouri*, 544 U. S. 622, 633 (2005). In that case, Carman Deck was visibly "shackled with leg irons, handcuffs, and a belly chain" during his capital sentencing, over his attorney's objection and with no finding of specific need. *Id.,* at 625. This Court explained in no uncertain terms that shackling is highly likely to be prejudicial at a capital sentencing:

> "The Court has stressed the acute need for reliable decisionmaking when the death penalty is at issue. The appearance of the offender during the penalty phase in shackles, however, almost inevitably implies to a jury, as a matter of common sense, that court authorities consider the offender a danger to the community—often a statutory aggravator and nearly always a relevant factor in jury decisionmaking, even where the State does not specifically argue the point. It also almost inevitably affects adversely the jury's perception of the character of the defendant. And it thereby inevitably undermines the jury's ability to weigh accurately all relevant considerations—considerations that are often unquantifiable and elusive—when it determines whether a defendant deserves death." *Id.,* at 632–633 (citations and internal quotation marks omitted).

Because these prejudicial effects "'cannot be shown from

a trial transcript,'" the Court in *Deck* further held that "where a court, without adequate justification, orders the defendant to wear shackles that will be seen by the jury, the defendant need not demonstrate actual prejudice to make out a due process violation." *Id.,* at 635. The burden instead rests on the State to prove the shackling harmless. *Ibid.*

B

To be sure, *Deck* does not require reviewing courts to presume prejudice when the defendant fails to object to his shackling at trial. This Court has not decided to what extent such a presumption applies on collateral review, in the context of an ineffective assistance of counsel claim. Cf. *Weaver* v. *Massachusetts*, 582 U. S. ___, ___ (2017) (slip op., at 13). Both the Georgia Supreme Court and Eleventh Circuit held that the *Deck* presumption does not apply to ineffective-assistance-of-counsel claims. 284 Ga., at 571–572, 668 S. E. 2d, at 663; 927 F. 3d, at 1184–1187. That was not a clearly erroneous application of federal law.

What was clearly unreasonable, however, was to ignore entirely the ways in which visible shackling is likely to distort the outcome of a capital sentencing proceeding. As *Deck* explains, reasonable jurors confronted with a defendant in chains will assume court officials have determined those chains were necessary to prevent the defendant from trying to escape or attack the lawyers, the judge, or even the jurors. Chains paint a defendant as an immediate threat. Jurors faced with a defendant in shackles will find it more difficult to consider the defendant as a whole person and to weigh mitigating evidence impartially. If jurors think the court does not trust a capital defendant to avoid violence at his own sentencing proceeding, with his life on the line, they are unlikely to trust him to do so while serving a life sentence with no hope of parole. "In these ways, the use of shackles can be a thumb on death's side of the scale."

Deck, 544 U. S., at 633 (alteration and internal quotation marks omitted).

Absent a presumption, this may not matter in some cases. Other facts may overwhelmingly suggest a defendant's future dangerousness, or the circumstances surrounding the shackling may indicate it likely did not matter. Reasonable jurists faithfully applying *Strickland* in light of the observations in *Deck* might then disagree about whether counsel's failure to object may have caused prejudice. Under AEDPA, federal courts should defer to state-court decisions finding no prejudice in such cases.

That is not what happened here. For the grand finale of his cross-examination, the prosecutor handed Whatley a fake gun and had him reenact the murder, with the prosecutor playing the victim. Whatley's chains clanked and rattled with every move, constantly reminding the jury that the court apparently believed he might do more than just pretend to kill someone in the courtroom if left unrestrained. Leaving nothing to implication, the prosecutor remarked, "I hope you'll understand why I don't want to give you a real gun." ECF Doc. 7–10, at 13.

The prosecutor hammered this point home at length in closing. "Frederick Whatley," he told the jury, "is going to kill somebody else unless you execute him." ECF Doc. 7–11, at 17. Prison was "only going to make him smarter and meaner." *Id.,* at 27. "[D]o you think he won't kill a guard if that guard stands between him and freedom? He will be a threat until the day he is executed." *Ibid.* "This man should be given the death penalty because he is dangerous, he has had a history of violence, he's never going to get any better than what you've seen right now." *Id.,* at 28.

Whatley's chains, fresh in the jury's mind from the previous afternoon's spectacle, powerfully corroborated the prosecutor's argument. It is hard to imagine a more prejudicial example of needless shackling.

On the other hand, Whatley's criminal history was relatively minor and largely from his teenage years. The statutory aggravators in his case were less serious than in many other capital cases.[2] The State's only evidence of lack of remorse was that Whatley likes football. The evidence at the sentencing proceeding also showed that Whatley's mother abandoned him, he never knew his father, and he was experiencing homelessness when he committed this crime. Whatley's friends and family testified to his redeeming qualities and begged the jury to show mercy. If Whatley had testified free of chains, it is reasonably probable that at least one juror would have done so.

On these facts, defense counsel's failure to object to Whatley's unnecessary shackling renders his death sentence not only unreliable, but unconstitutional. The only way to conclude otherwise is to disregard this Court's clear precedent about the likely effect of visible, unnecessary shackling. Because I would not allow the State to put Frederick Whatley to death based on such a constitutionally flawed sentencing proceeding, I respectfully dissent.

[2] See, *e.g.,* Ga. Code Ann. §17–10–30(b)(7) (authorizing the death penalty for those who commit murders that involve "torture, depravity of mind, or an aggravated battery"); §17–10–30(b)(11) (authorizing the death penalty for those who commit murder and have prior convictions for "rape, aggravated sodomy, aggravated child molestation, or aggravated sexual battery").