

(ORDER LIST: 583 U.S.)

MONDAY, OCTOBER 16, 2017

CERTIORARI -- SUMMARY DISPOSITION

17-5575 WRIGHT, TAVARES J. V. FLORIDA

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the Supreme Court of Florida for further consideration in light of *Moore v. Texas*, 581 U. S. ____ (2017).

ORDERS IN PENDING CASES

17M44 MARTINEZ, JUAN R. V. ADULT CAREER & EDUCATION, ET AL.

17M45 DENHAM, ROBERT C. V. CEASE, RICHARD L., ET AL.

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

17M46 K. K. E. V. OR DEPT. OF HUMAN SERVICES

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

CERTIORARI GRANTED

16-1348 CURRIER, MICHAEL N. V. VIRGINIA

16-1454 OHIO, ET AL. V. AMERICAN EXPRESS CO., ET AL.

17-2 UNITED STATES V. MICROSOFT CORPORATION

The petitions for writs of certiorari are granted.

17-43 DAHDA, LOS R. V. UNITED STATES

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

CERTIORARI DENIED

16-1239 ROTHE DEVELOPMENT, INC. V. DEPT. OF DEFENSE, ET AL.
16-1441) CARRASCO, JAIME, ET AL. V. ATENCIO, ERNEST J., ET AL.
16-1474) HANLON, PATRICK, ET AL. V. ATENCIO, ERNEST J., ET AL.
16-1475) HATTON, ANTHONY, ET UX. V. ATENCIO, ERNEST J., ET AL.
16-1503 BLOOMINGDALE'S, INC. V. TANGUILIG, BERNADETTE
16-8327 LO, HENRY V. UNITED STATES
16-8386 CAMEZ, DAVID R. V. UNITED STATES
16-8895 RAGLIN, AARON V. UNITED STATES
16-8966 AL-NASHIRI, ABD V. TRUMP, PRESIDENT OF U.S., ET AL.
16-9167 MATTOX, ROZERICK E. V. WISCONSIN
16-9196 HARRIS, ANTONIO C. V. UNITED STATES
16-9584 CANO-ROMERO, MELVIN D. V. UNITED STATES
17-53) WALKER, SHAWN T. V. FARNAN, MICHAEL A., ET AL.
17-5116) WILLIAMS, CRAIG V. WETZEL, SEC., PA DOC, ET AL.
17-58 SESSIONS, ATT'Y GEN. V. LARIOS-REYES, RAFAEL A.
17-208 BARTELS, DUANE V. SOUTHERN MOTORS OF SAVANNAH
17-213 YU, XIAO-YING V. MD DEPT. OF HEALTH, ET AL.
17-218 KEY, TED, ET UX. V. PELICAN EYES HOLDING CO., ET AL.
17-219 KINNEY, CHARLES G. V. STATE BAR OF CA, ET AL.
17-224 FEIGNER, JENNIFER V. VINTAGE CONSTRUCTION, INC.
17-227 STEVENS, CHRISTOPHER V. RITE AID CORP.
17-239 WRIGHT, KENYOCK V. PHILADELPHIA, PA
17-245 MULVANIA, JOAN E., ET AL. V. ROCK ISLAND CTY. SHERIFF, ET AL.
17-246 MIZRACH, PHILLIP V. UNITED STATES
17-258 ELLIOTT, DAVID, ET AL. V. GOOGLE, INC.
17-314 JEFFERSON, JOE, ET AL. V. RIFE, CLYDE A.
17-315 WAITS, WILLIAM H. V. J&J MANAGEMENT SERVICE, INC.

17-319 MALCOLM, BERNICE V. HONEOYE FALLS-LIMA ED. ASS'N
17-322 TABB, TRIANDUS V. GARNETT, JASON
17-352 LIVELY, RILEY P. V. UNITED STATES
17-353 LYONS, SHEILA V. AMERICAN COLLEGE OF VETERINARY
17-359 BLOOM, ERIC A. V. UNITED STATES
17-386 SALAZAR, ADRIAN V. S. SAN ANTONIO INDEP. SCH. DIST.
17-390 HAYES, JAMES J. V. LBBW ASSET MANAGEMENT, ET AL.
17-5120 WHEELER, ROGER L. V. WHITE, WARDEN
17-5125 MELENDEZ, ANGELO M. V. CALIFORNIA
17-5197 CLARK, TROY V. DAVIS, DIR., TX DCJ
17-5546 PARKER, ROBERT B. V. OREGON
17-5556 STEWART, WILBERT P. V. DAVIS, DIR., TX DCJ
17-5558 RHODES, JACK V. KIRKPATRICK, SUPT., ET AL.
17-5560 RAMIREZ, RICARDO V. FLORIDA
17-5567 SHEA, SHAWN R. V. JONES, SEC. FL DOC, ET AL.
17-5577 ADKINS, VIOLA V. KODURI, VINAYA
17-5581 ROBERTSON, WADE A. V. STATE BAR OF CA
17-5593 LIGHTSEY, TYRONE B. V. FLORIDA
17-5596 BRASWELL, REBECCA G. V. ADAMS, ACTING WARDEN
17-5598 BIXBY, STEVEN V. V. SOUTH CAROLINA
17-5602 THOMAS, SHAWN M. V. MAHONING COUNTY JAIL, ET AL.
17-5603 VOLPE, OTTAVIO V. FLORIDA
17-5607 ABDEL-GHANI, MAZEN V. TARGET CORP., ET AL.
17-5611 MOORE, DENNIS V. GRUNDMANN, SUSAN T., ET AL.
17-5613 MCGEE, JEFFREY V. V. GEORGIA
17-5617 MORELAND, PAMELA V. LYNCHBURG DEPT. OF SOCIAL SERV.
17-5618 PETERSON, MICHAEL H. V. WOODS, WARDEN
17-5625 CANNON, JOHN C. V. DAVIS, DIR., TX DCJ

17-5626 LaMAR, KEITH V. OHIO
17-5628 BENITEZ, JESUS O. V. NEVADA
17-5696 ACEVEDO, ROBERT R. V. RAILROAD RETIREMENT BOARD
17-5697 LENA, MICHAEL A. V. CALIFORNIA
17-5752 BROOKS, PHARAOH E. V. ARNOLD, WARDEN
17-5780 SMITH, WALTER V. TICE, SUPT., SMITHFIELD, ET AL.
17-5782 RAMZEE, MYLES V. GILMORE, SUPT., GREEN, ET AL.
17-5794 WILLIAMS, CHAD L. V. MITCHELL, WARDEN
17-5916 KAHL, YORIE V. V. BUREAU OF NATIONAL AFFAIRS, INC.
17-5979 NORWOOD, MARION A. V. UNITED STATES
17-5991 SYKES, BRANDON J. V. UNITED STATES
17-6010 RAMDEO, SONNY A. V. UNITED STATES
17-6011 RENTZ, MIRANDA V. UNITED STATES
17-6013 HOUSE, SHAWN V. UNITED STATES
17-6018 GONSALVES, JOSHUA V. UNITED STATES
17-6020 BURROW, JAMES E. V. UNITED STATES
17-6035 CUETO-NUNEZ, JULIO V. UNITED STATES
17-6040 SALGADO-ROSALES, WALTER J. V. UNITED STATES

The petitions for writs of certiorari are denied.

16-1424 FOSTER, BRIAN V. TATUM, ROBERT L.

The motion of respondent for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is denied.

17-60 BLOOMFIELD, NM V. FELIX, JANE, ET AL.

17-310 DALE, CHAD, ET AL. V. RIFE, CLYDE A.

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

17-327 GRIFFIN, W. A. V. AETNA HEALTH, ET AL.

The petition for a writ of certiorari before judgment is denied.

17-5561 MICHUDA, STEPHEN V. BENSON, WARDEN

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.

17-5690 LESSARD, MARCUS V. CRAVITZ, TRACI, ET AL.

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

17-5855 DAKER, WASEEM V. BRYSON, COMM'R, GA DOC, 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.

HABEAS CORPUS DENIED

17-6060 IN RE JAMES R. YOUNG

The petition for a writ of habeas corpus is denied.

MANDAMUS DENIED

17-5703 IN RE JAMES D. VANDIVERE

The petition for a writ of mandamus is denied.

REHEARING DENIED

16-8948 GRIGSBY, PHILIP A. V. MARTEN, JUDGE, USDC KS, ET AL.

The petition for rehearing is denied. Justice Gorsuch took no part in the consideration or decision of this petition.

Statement of GORSUCH, J.

SUPREME COURT OF THE UNITED STATES

SCENIC AMERICA, INC. *v.* DEPARTMENT
OF TRANSPORTATION, ET AL.

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

No. 16–739. Decided October 16, 2017

The petition for a writ of certiorari is denied.

Statement of JUSTICE GORSUCH, with whom THE CHIEF JUSTICE and JUSTICE ALITO join, respecting the denial of certiorari.

Say an administrative agency contracts with an outside party. Later, the two sides wind up disagreeing over the meaning of an ambiguous term in their agreement. How should courts resolve the dispute? Usually, of course, judges look to the tested and pretty ancient rules of contract construction. For example, we often resolve contractual ambiguities against the party who wrote the agreement, in part on the theory that the drafter might have avoided the dispute by picking clearer terms. Sometimes, too, we consider testimony from the participants or proof about industry custom to help deduce the contested term’s meaning. But in relatively recent times some courts have sought to displace familiar rules like these in favor of a new one, suggesting that an administrative agency’s interpretation of an ambiguous contractual term should always prevail—at least so long as the agency’s interpretation falls within a (generously defined) zone of “reasonableness.”

Of course, courts sometimes defer to an agency’s interpretations of statutory law under *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837,

866 (1984), and its progeny. But whatever one thinks of that practice in statutory interpretation cases, it seems quite another thing to suggest that the doctrine (or something like it) should displace the traditional rules of contract interpretation too.

Indeed, there's a disagreement among the circuits on this very question. The court in this case agreed to defer to an agency's interpretation of a disputed contractual term. But other courts have rejected much the same sort of invitation. See, e.g., *Muratore v. Office of Personnel Management*, 222 F. 3d 918, 921 (CA11 2000) (recognizing split); *Koch Gateway Pipeline Co. v. FERC*, 136 F. 3d 810, 814, n. 10 (CADC 1998) (same); *Mid-Louisiana Gas Co. v. FERC*, 780 F. 2d 1238, 1243 (CA5 1986); *Meadow Green-Wildcat Corp. v. Hathaway*, 936 F. 2d 601, 604–605 (CA1 1991) (Breyer, C. J.) (declining to apply *Chevron* deference to “agency's interpretation of a contract that it makes with an outside party”).

Whether *Chevron*-type deference warrants a place in the canons of contract interpretation is surely open to dispute. For example, *Chevron* deference is often defended on the ground that statutory ambiguities reflect a kind of implicit decision by Congress to delegate lawmaking power to the agency to handle the problem on its own. But even assuming (without granting) the accuracy and propriety of that much, what's the case for supposing that Congress implicitly delegates to agencies the power to adjudicate their own contractual disputes too? Especially when independent judges in our legal order have traditionally performed just that job? Some defend *Chevron* deference in statutory interpretation cases on the theory that agencies are technical experts in the fields they are charged with regulating. But contracts usually represent compromises between two or more parties. And is it reasonable to suppose that one side to a compromise always has more expert insight into its meaning? Sometimes *Chevron* is

Statement of GORSUCH, J.

promoted on the premise that agencies have the public interest at heart when interpreting statutory texts. But does that logic extend with equal force to contract disputes where the contending parties are at least usually a little self-interested? See generally Armstrong, *Chevron Deference and Agency Self-Interest*, 13 Cornell J. L. & Pub. Pol’y 203 (2004). And, for that matter, aren’t our traditional rules of contract interpretation, at least at some level of generality, themselves all about promoting the public interest?

These are but a few of the questions posed by this case. No doubt good arguments might be presented on both sides. No doubt, too, the questions presented here are important ones. At the same time, this particular case also comes with some rather less significant and considerably more factbound questions. Questions that would, I fear, only complicate our effort to reach the heart of the matter, for these attendant questions include “difficult and close” jurisdictional issues that would have to be settled first. 983 F. Supp. 2d 170, 173 (DDC 2013). In this light, I am persuaded that the proper course is to deny certiorari in this particular case even though the issues lying at its core are surely worthy of consideration in a case burdened with fewer antecedent and factbound questions.

BREYER, J., dissenting

SUPREME COURT OF THE UNITED STATES

Nos. 16–9448 and 17–5083

QUENTIN MARCUS TRUEHILL

16–9448

v.

FLORIDA

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME
COURT OF FLORIDA

TERENCE OLIVER

17–5083

v.

FLORIDA

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME
COURT OF FLORIDA

[October 16, 2017]

The petitions for writs of certiorari are denied.

JUSTICE BREYER, dissenting from the denial of certiorari.

In part for the reasons set forth in my opinion in *Hurst v. Florida*, 577 U. S. ___, __ (2016) (concurring opinion in judgment), I would vacate and remand for the Florida Supreme Court to address the Eighth Amendment issue in these cases. I therefore join the dissenting opinion of JUSTICE SOTOMAYOR in full.

SOTOMAYOR, J., dissenting

SUPREME COURT OF THE UNITED STATES

Nos. 16–9448 and 17–5083

16–9448 **QUENTIN MARCUS TRUEHILL**
v.
FLORIDA

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

17–5083 **TERENCE OLIVER**
v.
FLORIDA

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

[October 16, 2017]

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG and JUSTICE BREYER join, dissenting from the denial of certiorari.

At least twice now, capital defendants in Florida have raised an important Eighth Amendment challenge to their death sentences that the Florida Supreme Court has failed to address. Specifically, those capital defendants, petitioners here, argue that the jury instructions in their cases impermissibly diminished the jurors’ sense of responsibility as to the ultimate determination of death by repeatedly emphasizing that their verdict was merely advisory. “This Court has always premised its capital punishment decisions on the assumption that a capital sentencing jury recognizes the gravity of its task,” and we have thus found unconstitutional under the Eighth Amendment comments that “minimize the jury’s sense of responsibility for determining the appropriateness of death.” *Caldwell v. Mississippi*, 472 U. S. 320, 341 (1985).

SOTOMAYOR, J., dissenting

Although the Florida Supreme Court has rejected a *Caldwell* challenge to its jury instructions in capital cases in the past, it did so in the context of its prior sentencing scheme, where “the court [was] the final decision-maker and the sentencer—not the jury.” *Combs v. State*, 525 So. 2d 853, 857 (1988). In *Hurst v. Florida*, 577 U. S. ___, ___ (2016) (slip op., at 10), however, we held that process, “which required the judge alone to find the existence of an aggravating circumstance,” to be unconstitutional.

With the rationale underlying its previous rejection of the *Caldwell* challenge now undermined by this Court in *Hurst*, petitioners ask that the Florida Supreme Court revisit the question. The Florida Supreme Court, however, did not address that Eighth Amendment challenge.

This Court has not in the past hesitated to vacate and remand a case when a court has failed to address an important question that was raised below. See, e.g., *Beer v. United States*, 564 U. S. 1050 (2011) (remanding for consideration of unaddressed preclusion claim); *Youngblood v. West Virginia*, 547 U. S. 867 (2006) (*per curiam*) (remanding for consideration of unaddressed claim under *Brady v. Maryland*, 373 U. S. 83 (1963)). Because petitioners here raised a potentially meritorious Eighth Amendment challenge to their death sentences, and because the stakes in capital cases are too high to ignore such constitutional challenges, I dissent from the Court’s refusal to correct that error.