



To: Interested Persons  
From: Take Back the Court  
Date: August 17, 2022  
Subject: The Supreme Court Has Targeted Core Rights by Revoking Remedies

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## Another Dangerous Supreme Court Pattern

This summer, all eyes have rightfully been on three hugely influential (and disastrous) rulings from the Supreme Court on abortion, gun safety, and climate protections. But that means some of the right-wing Court's other heinous decisions have garnered much less attention — despite their frightening implications.

Before attention turns to the next term, we want to draw focus to a steady, insidious, and dangerous pattern the Supreme Court engaged in across its 2021-2022 term: revoking *remedies*.

Remedies are a means of enforcing rights by taking cases to courts. But this term, the Supreme Court issued a series of decisions that hamstrung core rights through remedies restrictions.

This term, the Court swung at:

- **The Sixth Amendment** right to effective assistance of counsel;
- **The Fourth Amendment** right against unreasonable search and seizure;
- **Miranda rights** read during arrests;
- **The rights of asylum applicants** and other noncitizens;
- **The habeas rights** of those fighting wrongful convictions;
- **The rights of people with disabilities** and those facing discrimination.

By making it more difficult to vindicate our rights — and by removing consequences for those who violate them — the Court made it more likely that those rights will be trampled. These backdoor methods are an attempt to obfuscate the Court's attacks on uncontroversial precedent and protections that have been in place for generations.

### A look at the remedies revoked:

**The Court took a swing at our Sixth Amendment right to effective assistance of counsel and the habeas rights of those fighting wrongful convictions.**

In *Shinn v. Ramirez*, the Court's conservatives gutted the Sixth Amendment right to effective assistance of counsel. The Court held that criminal defendants cannot bring forth evidence that was not in the state court record when filing federal habeas appeals for ineffective assistance of counsel claims — leaving those convicted in violation of their Sixth Amendment rights without a

remedy. In her dissent, Justice Sotomayor stated that the “perverse” decision “hamstrings the federal courts’ authority to safeguard [the Sixth Amendment] right” and that the **“Court’s decision will leave many people who were convicted in violation of the Sixth Amendment to face incarceration or even execution without any meaningful chance to vindicate their right to counsel.”**<sup>1</sup> By removing a remedy, in this case the opportunity to present evidence in an ineffective assistance of counsel claim, the Court attacked the Sixth Amendment.

**The Supreme Court also attacked our habeas rights in *Shoop v. Twyford* and *Brown v. Davenport* — cases that substantially limited remedies for those challenging convictions.**

In *Shoop v. Twyford*, the Court held that district courts cannot order states to provide medical testing to vulnerable incarcerated people under the All Writs Act<sup>2</sup> — testing that could result in habeas relief. By stripping away a potential remedy, the Court made it far more difficult for people awaiting execution to seek evidence that might demonstrate that their conviction or sentencing violated the Constitution, and made it more likely that those convicted in violation of the Constitution will be executed. And in *Brown v. Davenport*, the Court made it more difficult to obtain federal habeas relief by instituting a more difficult two-pronged test that courts must apply.<sup>3</sup> By making habeas remedies less accessible, the Court attacked our constitutional rights against wrongful convictions.

**The Court ripped crucial remedies away from noncitizens in *Garland v. Gonzalez*.**

The Court’s conservative supermajority ruled 6-3 that noncitizens are ineligible to receive classwide injunctive relief when the government violates the Immigration and Nationality Act (INA). In other words, in instances where the government violates the rights of a whole class of noncitizens, courts are unable to require immigration officers to provide remedies like bond hearings to all affected people; instead, each individual noncitizen must separately request and be given a bond hearing. By removing the remedy of classwide injunctive relief, the Court made it more difficult for noncitizens to vindicate their rights — and may make INA violations more common. And in *Patel v. Garland*, the Court ruled 6-3 that federal courts cannot review decisions made by immigration judges and the Board of Immigration Appeals — leaving some of the most vulnerable among us without a remedy to challenge unfair decisions and curtailing human rights in the process.

**The Court made officials less accountable by stripping the Fourth Amendment and *Miranda* rights of their teeth.** The conservatives on the Court took a swing at our *Miranda* rights in *Vega v. Tekoh*, ruling 6-3 that Americans cannot sue officers if they fail to inform them of their right to remain silent and right to an attorney during an arrest. By removing consequences for violating someone’s *Miranda* rights, the Court almost certainly made it more likely that law enforcement will infringe upon people’s rights and put their legal status and safety at risk. And in *Egbert v. Boule*, the Court likewise held 6-3 along ideological lines that border

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<sup>1</sup> *Shinn v. Ramirez*, 596 U.S. \_\_\_\_ (2022) (Sotomayor, J., dissenting).

<sup>2</sup> See 28 U.S.C. §1651(a).

<sup>3</sup> The Court held that federal courts must apply both the tests in *Brecht v. Abrahamson*, 507 U.S. 619, and the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), when deciding whether to grant habeas relief.

patrol officers who violate the Fourth Amendment right against unreasonable search and seizure are immune from suits — handing more power to these officers to illegally search the homes of anyone within 100 miles of a border (over two-thirds of Americans) without fear of consequence. By limiting the remedies for *Miranda* and Fourth Amendment violations, the Court strips them of their teeth.

**The Court made it more difficult for people with disabilities and people who are discriminated against to receive compensation when their rights are violated.**

In *Cummings v. Premier Rehab Keller, P.L.L.C.*, the Court held that emotional distress damages are not available for those suing under federal antidiscrimination laws. As Justice Breyer noted in his dissent, a key purpose of antidiscrimination laws is to “vindicate human dignity and not mere economics.”<sup>4</sup> The Court’s decision limits the ability of victims of discrimination to obtain remedies, stripping them of their dignity and curtailing their rights by limiting the scope of enforcement to just economic damages.

**To stop the evisceration of fundamental rights, we must expand the Court.**

We cannot allow the Court to attack our core rights through nefarious means by revoking remedies. Throughout the 2021-2022 term, this Court curtailed our Fourth and Sixth Amendment rights, our habeas rights, our *Miranda* rights, the rights of noncitizens, and the rights of the disabled and those who face discrimination by revoking remedies. **These duplicitous attacks on our core rights by this illegitimate Court will not go unnoticed.** We must expand the Court today.

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<sup>4</sup> *Cummings v. Premier Rehab Keller P.L.L.C.*, 596 U.S. \_\_\_ (Breyer, J. dissenting) (quoting *Heart of Atlanta Motel, Inc. v. United States*, 379 U. S. 241, 291) (internal quotes omitted)