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Sonia Supreme: The Sensible Jurisprudence of a Salsa Dancing, Spanish Speaking, Justice from the Bronx

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I. Introduction

Sonia Sotomayor is a rock-star.¹ She is such to women, Latinos and people of color, and her Americans alike. She is the first Latina, and only the third woman, to be appointed to the United States Supreme Court.² President Barack Obama nominated Sonia Sotomayor as an Associate Justice to the United States Supreme Court on May 26, 2009.³ Prior to her appointment, Justice Sotomayor served as a federal district judge in the Southern District of New York from 1992 until 1998 when she was then appointed to be a judge for the Court of Appeals for the Second Circuit, a position she held from 1998 until her appointment to the Supreme Court in 2009.⁴ Combined, this gave her almost two decades of experience on the bench before coming to the Supreme Court, as well as a long judicial and extrajudicial record that suggests that she is markedly less driven by ideology and respectful of technical and legal argument.⁵ However, perhaps even more important than her legal career in her approach to decision making, is Justice Sotomayor's unique (to the bench) upbringing. Justice Sotomayor grew up in the Bronxdale Housing Projects in the Bronx, New York, to Puerto Rican parents.⁶

Her jump from growing up in an area where she and her cousins were warned to stay away from the “stairwells with the junkies” to attending Princeton University on full

¹ Andrea Grossman, *The Judge and the Housewife: U.S. Justice Sonia Sotomayor and Eva Longoria in L.A.*, HUFFINGTON POST, JAN. 10, 2013, http://www.huffingtonpost.com/andrea-grossman/the-judge-and-the-housewi_b_2443741.html (“United States Justice Sonia Sotomayor is a rock star.”)

² Judgepedia

³ Judgepedia

⁴ Judgepedia

⁵ Justice Sotomayor: The Unjust Hearings

⁶ Sonia Sotomayor, *My Beloved World* 13 (Alfred A. Knopf 2013).

scholarship has been categorized as “living the American dream.”⁷ However, while that narrative alone undoubtedly stands for much of the reverence that surrounds Justice Sotomayor as a public figure, her upbringing gave her a unique insight into a world that many of the sitting Justice’s are far removed from – that of a Latina, that of a person of color, that of the woman, that of the poor, and including her lifelong battle with diabetes, that of the disabled.⁸ So much of her experiences, from growing up with a large extended family, to what she ate growing up, and the struggle of being raised by a single mother, and the navigation of two worlds, resonate with many people. Her understanding of what, in colloquial terms, the other side is like, interwoven with the experience she has had as a prosecutor and as a judge on the bench, brings an approach that mixes empathy, an interest in understanding, a deep respect for the law, and ultimately appeals to common sense and what is simply *right*, that gives Justice Sotomayor a transparency in her oral argument and writing that sheds light on her entire thought process.

II. Early Life

A. A Justice Grows in the Bronx

In her novel, *My Beloved World*, Justice Sotomayor describes the world that she was born into as a, “tiny microcosm of Hispanic New York City.”⁹ It was in 1944 when Sonia Sotomayor’s parents, Juan and Celina Sotomayor, left Puerto Rico to search for work and ended up landing in the Bronx. Celina gave birth to Sonia on June 25, 1954.¹⁰ A few years later Juan Luis, Jr., affectionately called “Junior” (even today) by Sotomayor, was born.¹¹

⁷ Note: Sotomayor’s Empathy Moves...

⁸ Sonia Sotomayor, *My Beloved World* 13 (Alfred A. Knopf 2013).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

It was around this time the family of four moved into the newly renovated Bronxdale Housing Projects.¹² Sonia also grew up with her *abuelita*, *tias*, *tios* and a plethora of cousins living in close proximity, so they spent every Sunday at abuelita's apartment for dinner and dancing.¹³

However, in her novel, Sotomayor opens up about the quiet war being fought in her home, due in large part to her father's battle with alcoholism and the effect that had on her parents' marriage.¹⁴ She had to learn early on to be responsible, to weigh in on the different feelings her mother, father, and little brother were feeling. She writes that, "My father's neglect made me sad, but I intuitively understood that he could not help himself..."¹⁵ It was at this young stage in her life that she began to hone her empathy for others, for understanding the different sides to the same story, all the while pushing her own personal feelings of neglect and frustration aside. She described her understanding of her home situation by sharing that she "...was a watchful child scanning the adults for cues and listening in on their conversations."¹⁶ Beyond what she heard verbalized, she knew there was much left unsaid, and goes on to explain, "My sense of security depended on what information I could glean, any clue dropped inadvertently when they didn't realize a child was paying attention."¹⁷ Much of her understanding of her parents' tensions was picked up on simply by feeling the sense of uneasiness between them, as well as the fact that they never had the family or friends over to their own home.¹⁸

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 14.

¹⁷ *Id.* at 14.

¹⁸ *Id.* at 15.

Justice Sotomayor was diagnosed with juvenile diabetes at the young age of seven.¹⁹ Sotomayor recounts staying in a hospital for testing and gaining a sense of the gravity of the disease because of the amount of time she was away from school. For Celina, “school was just as important as work, and she never once stayed home from work.”²⁰ Young Sonia also noticed when her mother brought her gifts, “equally worrying, she brought me a present almost every day I was in the hospital: a coloring book, a puzzle, once even a comic book, which meant she was thinking hard about what I would like instead of what she wanted me to have.”²¹ *My Beloved World* opens with an argument playing out in the Sotomayor kitchen between Sotomayor’s mother and father.²² Celina is angry that Juan does not want to administer Sonia’s insulin shots, but since Celina works during the day she is unable to.²³ Young Sonia addresses this dilemma by simply dragging a chair over to the stove to begin boiling water to sterilize the needle for the syringe.²⁴ While her mother initially responds with shock by stating, “Sonia! What are you doing? You’ll burn the building down, *nena!*,” Sonia plainly states, I’m going to give myself the shot, Mami.”²⁵ Right then, her mother showed her how to light the match to turn on the flame. Celina trusted seven-year old Sonia enough to let her give herself her insulin shots.

More profound however, is the awareness of a seven-year old to take on such an enormous responsibility for her life. Motivated by ending at least one of her parents arguments and determined to continue her weekend visits to her *abuelita*’s house, she has

¹⁹ *Id.* at 11.

²⁰ *Id.* at 7.

²¹ *Id.* at 8.

²² *Id.* at 4.

²³ *Id.* at 4.

²⁴ *Id.* at 5.

²⁵ *Id.* at 4.

been giving herself her insulin shots ever since. Sotomayor goes on to elaborate that “...the disease...inspired in me a kind of precocious self reliance that is not uncommon in children who feel the adults around them to be unreliable.”²⁶ From her very young age, Sotomayor was already learning to be independent, able to make decisions and judgment calls simply by observing her surroundings.

“*Dios se llevo,*” were the words spoken in response to Junior’s, “where’s Papi?” question, one day after he and Young Sonia arrived home from school to an apartment full of family members.²⁷ Sonia was only nine years old at the time.²⁸ Sonia was left confused by her mother’s profound sadness after his death, as they argued so much when he was alive.²⁹ She experienced much frustration, because although her mother changed her schedule to be with her children during the day, she was still absent. Sonia said that she, “couldn’t figure out what was wrong with Mami,” and it scared her.³⁰ Her mother was behaving like a “zombie,” and even though she cooked and cleaned, she would retire to her bedroom right after serving dinner. Sonia and Junior, “saw no more of her than when she’d been working late.”³¹ Young Sonia took it upon herself to get her mother up on the weekends to go grocery shopping, and she would be the one to put the groceries in the basket, remembering ingredients from her shopping trips with her father.³² That summer, Sonia found solace in the library, as she felt that she needed to, “stay close by and keep an

²⁶ *Id.* at 11.

²⁷ *Id.* at 41.

²⁸ *Id.*

²⁹ *Id.* at 46.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

eye on things.”³³ She describes the Parkchester Library as her “haven.”³⁴ Finally, frustrated with her mother’s absence, Sonia breaks down and pounds her fists on her mother’s door, screaming at her to snap out of it. She yells, “What’s wrong with you? Papi died. Are you going to die too?...Stop already, Mami, stop it!”³⁵ Afterwards, she notices an immediate change.

The early navigation of tensions between her parents, her sense of responsibility regarding her disease and the early loss of her father, all tested a very young Sonia. In the beginning of her novel she states that, “there are uses to adversity, and they don’t reveal themselves until tested. Whether it’s serious illness, financial hardship or the simple constraint of parents who speak limited English, difficulty can tap unsuspected strengths.”³⁶ Her profound sense of understanding at such an early age sheds much light on how her mind came to develop a system of weighing logic versus the different emotions parties may be feeling, and separating herself from her own personal feelings. The path towards judgeship was paved very early on.

B. Education, By Way of the American Dream

Justice Sotomayor’s interest in her own education sparked by the time she started fifth grade. This was due in part to the kindness exhibited to her after her father’s death, but also because her mother began making an effort to speak English at home.³⁷ She goes on to say that it was odd at first, but that as soon as, “she found the words to scold us, it began to

³³ *Id.* at 47.

³⁴ *Id.*

³⁵ *Id.* at 50.

³⁶ *Id.* at 11.

³⁷ *Id.* at 69.

seem natural enough.” While this is funny, she goes on to say that she understood that at the age of thirty-six, she understood that her mothers undertaking was a “mighty effort,” and that, “only her devotion to our education could have supplied such a force of will.”³⁸ As is common for many who migrate to the United States in hopes of bettering the lives of their children, Celina’s early devotion to her children’s education was a guiding light and seen as their way into that better life. Celina fostered that education further by purchasing the entire *Encyclopaedia Britannica*, Sotomayor describes the arrival of the two big boxes as, “Christmas come early.”³⁹

She also describes the other influence, “beyond the pleasure of reading, the influence of English, and my mother’s various interventions, that I finally started to thrive at school.”⁴⁰ And that is of Mrs. Reilly, her fifth grade teacher, who began giving out gold stars for whenever a student did something really well.⁴¹ It was after her first report card with As arrived that she vowed to have at least one more A on each one.⁴² Her competitive spirit helped compel her towards succeeding in education.

After she finished at Blessed Sacrament, Sotomayor went on to attend Cardinal Spellman High School. In her junior year she met Miss. Katz, a woman Sotomayor describes as the, “first progressive I’d ever encountered up close.”⁴³ She goes on to say that, “she was a teacher but still educating herself, learning about the world and actively engaging in it. I began to have an intimation that education could be for something other

³⁸ *Id.* at 70.

³⁹ *Id.*

⁴⁰ *Id.* at 71.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 105.

than opening doors of job opportunity, in the sense of my mother's constant refrain."⁴⁴ She helped Sotomayor develop out of rote learning, and pushed the mastery of abstract and conceptual thinking. Miss Katz asked her students to think critically and to analyze facts.⁴⁵ This was an important steering period in Sotomayor's education, as it was when she began to move away from simply reading and memorizing facts, and instead asking deeper questions. While at Cardinal Spellman she joined the Forensics Club, where she became friends with Ken Moy, who helped her develop debate skills.⁴⁶ Sotomayor reflects on the club as saying it was good training for a lawyer.⁴⁷ He taught her to see both sides of an argument, but equally as important, he stressed the skill of listening.⁴⁸ She describes listening as being second nature to her, and attributes it as a result of her position as the go-to friend for advice, and also as a key to survival from when she was little, and needed cues for the precarious world she was living in.⁴⁹ Cardinal Spellman also introduced her to philosophy where they were studying logic.⁵⁰ She discusses her surprising love of the philosophy class.⁵¹ She, "perceived beauty in [formal logic], the idea of an order that held under any circumstances."⁵² And what excited her most was how she could immediately apply it in her debate practice.⁵³

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 110.

⁴⁷ *Id.*

⁴⁸ *Id.* 111.

⁴⁹ *Id.*

⁵⁰ *Id.* at 110.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

Kenny graduated, but called Sonia long distance from Princeton, to describe his strange new world. He also encouraged her to, “try for the Ivy League.”⁵⁴ With a visit to the school guidance counselor offering no help other than parochial colleges that Sonia was not interested in, she navigated the college applications and SAT in the dark.⁵⁵ That November she received a “likely,” from Princeton. A few days later, when passing by the school nurse’s office, she was asked, “can you explain to me how you got a ‘likely’ and the two top-ranking girls in the school only got a ‘possible’?”⁵⁶ This statement was Sonia’s first interaction with affirmative action, as it was little over a decade old since it had been implemented in government contracting and was still experimental in Ivy League college admissions. It also hung over her head for the next several years.⁵⁷ However, this did not stop Sonia from moving onto the new world that was Princeton, and excelling, graduating *summa cum laude*.

Her friend Kenny Moy helped her understand that while they, as students of color and vastly different socioeconomic circumstances than their counterparts, had very different cultures, they were as smart as the other students.⁵⁸ Sotomayor went on to receive admittance to Phi Beta Kappa, the prestige of which her roommate had to explain to her as not being a scam. She also received the Pyne Prize, the highest honor a graduating senior at Princeton could receive.⁵⁹ While Princeton opened Sotomayor’s eyes to the disparity in wealth between her and her classmates, she did not let that stop her from following up

⁵⁴ *Id.* at 117.

⁵⁵ *Id.* at 118.

⁵⁶ *Id.* at 119.

⁵⁷ *Id.*

⁵⁸ *Id.* at 123.

⁵⁹ *Id.* at 162.

when she received a C on an exam, nor from practicing her vocabulary and developing better writing skills. She also took the time to be involved with the student group on campus, Accion Puertorriquena, a group that focused on freshman recruiting of diverse students, and also to convince the administration to increase the hiring of qualified Latinos.⁶⁰ Sotomayor found doubt with the campus protests, wondering if shouting tactics and hanging effigies were effective tactics, and she said, “if you shout too loudly, people tend to cover their ears.”⁶¹ Instead, she felt more comfortable being a mediator, and knew her strengths were, “reasoning, crafting compromises, and finding the good and the good faith on both sides of an argument to build a bridge.”⁶² Sotomayor left Princeton knowing that she would remain a student for life.⁶³

The last stop of her formal education landed Sotomayor at Yale. There she felt that she was part of a community, somewhere she did not feel isolated, credit attributed to the small class sizes.⁶⁴ She reflects on her education here as learning early on “if history involved more than memorizing names and dates, the practice of law was even more removed from merely learning a body of rules and statutes, as I had naively assumed it would be.”⁶⁵ She began to learn how that she needed to change the way she thought. While at Yale, Sotomayor also met Jose Cabranes, who she describes as her first true mentor.⁶⁶ She aspired to be like him, and learned through his living example. For her, the most agreeable and effective learning came from, “observing the nuances and complexity of live

⁶⁰ *Id.* at 147.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* 173

⁶⁵ *Id.* at 171

⁶⁶ *Id.* at 176.

action, the complete package of knowledge, experience, and judgment that is another human being.”⁶⁷ He is also the first chance she had to observe up close, someone who transcended the academic role but also managed to uphold his identity as a Puerto Rican, serving vigorously in both worlds.⁶⁸ She mentions how important it is to have someone that is relatable as a role model, and in developing her relationship with Jose Cabranes, learned how to balance her identities and that she was capable of being an attorney, a professional, and able to navigate the other world.

C. The Path to a Career in Justice

From a very young age, Justice Sotomayor knew that she wanted to be a judge. Her early love for Nancy Drew books sparked a light that made her want to be a detective.⁶⁹ However, her heart sank when she read a pamphlet that listed professions that were available, and unavailable, to those with diabetes. Police officer was among those that were not available to her.⁷⁰ However, in true Sotomayor style, she simply found another path. While watching *Perry Mason*, a show about an attorney, she became familiar with the role of an attorney, the prosecutor, and the judge.⁷¹ She describes her fascination with the judge, and that the “law was like a puzzle, a complex game with its own rules, one that intersected with grand themes of right and wrong.”⁷² Her fascination with discovering the truth, and being judicious, began all the way at the tender age of ten, but the skills towards being a

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* at 79.

⁷⁰ *Id.*

⁷¹ *Id.* at 80.

⁷² *Id.* at 81.

truth-finder, a balance, were being cultivated her entire life in both her personal life and in her education.

Justice Sotomayor went to the Supreme Court with seventeen years experience as a federal judge, as a trial judge, and as a judge on the Second Circuit.⁷³ However, before she gained all of that experience, she was first a prosecutor in the Manhattan District Attorney's office, serving under Robert Morgenthau, another of Justice Sotomayor's mentors.⁷⁴ After that, she went on to the small law firm of Pavia and Harcourt, where she focused on complex commercial litigation, and was able to learn about the workings of the global economy.⁷⁵ In his nomination speech, President Obama described Justice Sotomayor's experience on the bench as follows:

Walking in the door, she would bring more experience on the bench and more varied experience on the bench than anyone currently serving on the United States Supreme Court had when they were appointed. Judge Sotomayor is a distinguished graduate of two of America's leading universities. She's been a big-city prosecutor and a corporate litigator. She spent six years as a trial judge on the U.S. District Court, and would replace Justice Souter as the only justice with experience as a trial judge – a perspective that would enrich the judgments of the court.⁷⁶

In an interview given earlier this year, when asked about her most important formative experience, Justice Sotomayor pointed to her time “in the trenches,” of being a prosecutor. She discusses how it was where she learned that law should be announced on a factual record that exists, instead of a supposition of how a judge might like the case or

⁷³ A Conversation with Justice Sotomayor, The Yale Law Journal Forum, March 24, 2014, pg. 379

⁷⁵ Remarks by the President in Nominating Judge Sonia Sotomayor to the United States Supreme Court, May 26, 2009, available at, http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-in-Nominating-Judge-Sonia-Sotomayor-to-the-United-States-Supreme-Court/

⁷⁶ *Id.*

the principle to come out. In doing it this way, in grounding the principle in a record and in facts, it will permit flexibility in the future development of the law.⁷⁷ She describes herself as someone who, “appreciates the complexity and nuance of the human condition, [so] broad, absolute rules,” don’t really suit her.⁷⁸ Her experience as a prosecutor has proven to be valuable in being as transparent as possible, and helping others to be aware of what the process is, so that they feel some sort of efficacy. This has carried over into her opinions, and it is of no surprise that they are worked in a fashion to make the reader understand the process, the law, and the application of the law to the facts at hand.

III. Opinions, Concurrences and Dissents

Justice Sotomayor provides readers with a no-nonsense, easy to digest style of legal writing, without sacrificing any of the educational, historical or necessary framing that is traditional of explanations. Justice Sotomayor draws upon relevant research, amici briefs, the current status of the law as well as its history, and the details of the underlying case, as well as common sense, in order to come up with her pointed conclusions. Through her opinions, Justice Sotomayor walks readers through a comprehensive analysis, beginning with the facts, interweaving them with the decisions of the lower courts, an explanation of the current law, and finally a tight description of how the law applies to the facts at hand. This tends to leave her conclusions tightly knit so they are never overbroad. Her ability to

⁷⁷ Justice Sonia Sotomayor & Linda Greenhouse, *A Conversation with Justice Sotomayor*, 123 YALE L.J. F. 375 (2014), <http://yalelawjournal.org/forum/a-conversation-with-justice-sotomayor>.

⁷⁸ *Id.* at 379

draw the seams of her decisions together stems undoubtedly from her long career on the bench, and also from her upbringing and long history of weighing different sides.

A. Majority Opinions

1. *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011)

This case provides insight into Justice Sotomayor's clear-cut approach to her analysis prior to coming to a conclusion. In *J.D.B. v. North Carolina*, Justice Sotomayor addresses the question of whether the age of a child subjected to police questioning is relevant to the custody analysis identified in *Miranda v. Arizona*, 384 U.S. 436 (1966).⁷⁹ After a thorough review of the facts, relevant case law, and appeals to common sense and personal experience (after all, she points out that everyone has been a child at one point in their lives) Justice Sotomayor comes to the conclusion that a child's age does properly inform the *Miranda* custody analysis.⁸⁰

J.D.B. was a thirteen-year old, seventh-grade student attending Smith Middle School in Chapel Hill, North Carolina when he was removed from his social studies class by a uniformed police officer.⁸¹ J.D.B. had been questioned five days earlier concerning two home break-ins, where various items were reported stolen.⁸² Police stopped and questioned J.D.B. because of his proximity to one of the homes that was broken into.⁸³ On the day J.D.B. was questioned, Investigator DiCostanzo, a juvenile investigator with the local police force, went to the school specifically to question J.D.B.⁸⁴ The officer who

⁷⁹ *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2398 (2011)

⁸⁰ *Id.* at 2399, 2406.

⁸¹ *Id.* at 2399.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

removed J.D.B. from his classroom escorted him to a closed door-conference room, where school administrators and police officers were waiting, and then questioned for at least half an hour. After J.D.B. was questioned without his grandmother, who was his guardian, he was warned about the prospect of juvenile detention, and told by his assistant principal that he should “do the right thing,” he confessed that he and a friend were responsible for the break-ins.⁸⁵ It was not until the end of this entire exchange that Investigator DiCostanzo informed J.D.B. that he could refuse to answer questions and that he was free to leave. J.D.B. went home at the end of the school day.⁸⁶

Two juvenile petitions were then filed against J.D.B each alleging one count of breaking and entering, and one count of larceny.⁸⁷ J.D.B.’s public defender moved to suppress the statements and evidence obtained during his questioning by Investigator DiCostanzo, arguing the suppression was necessary because J.D.B. had been “interrogated by police in a custodial setting without being afforded his *Miranda* warnings.⁸⁸ The trial court denied the motion, deciding that J.D.B. was not in custody at the time of the school interrogation and that his statements were voluntary.⁸⁹ J.D.B. appealed to the North Carolina Court of Appeals, which affirmed the trial court’s holding that J.D.B. was not in custody when he was questioned by Investigator DiCostanzo. The North Carolina State Supreme Court also affirmed.⁹⁰

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

After a thorough description of the facts, Justice Sotomayor goes on to address the applicable law and precedent as they apply to the facts just described. She begins with the acknowledgement that any police interview of an individual suspected of a crime has coercive aspects to it.⁹¹ Justice Sotomayor quotes *Miranda, U.S., at 467, 86, S. Ct. 1602, 16 L. Ed. 2d 694*, and says that by its very nature, custodial police interrogation entails “inherently compelling pressures,” and that they, “can induce a frighteningly high percentage of people to confess to crimes they never committed.”⁹² Continuing along this line of reasoning, she then begins to narrow in on studies relating to custodial interrogations of juveniles, showing her tendency towards fully educating herself on an issue in order to come to the most judicial decision possible.⁹³ She finds it, “all the more troubling,” that recent studies suggest that the “custodial interrogations of juveniles illustrate the heightened risk of false confessions from youth.”⁹⁴ Justice Sotomayor is taking her time to describe in detail why youth should be a consideration in the custody analysis. She quotes Justice Breyer who argued that age “is a fact that “generates commonsense conclusions about behavior and perception.” *Alvarado, 541 U.S., at 674, 124 S. Ct. 2140, 158 L. Ed. 2d 938* (Breyer, J., dissenting). Such conclusions apply broadly to children as a class. And, they are self-evident to anyone who was a child once himself, including any police officer or judge.⁹⁵ It is no heavy feat for officers to determine who is a child and who is not a child in the initial in-the-moment judgment of when to administer *Miranda* warnings. She goes to on to further elaborate by saying, “time and again, this Court has

⁹¹ *Id.* at 2401

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.* at 2403.

drawn these commonsense conclusions for itself. We have observed that children “generally are less mature and responsible than adults,” Eddings, 455 U.S., at 115-116, 102 S. Ct. 869, 71 L. Ed. 2d 1; that they “often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them,” Belotti v. Baird, 443 U.S. 622, 635, 99 S. Ct. 3035, 61 L. Ed. 2d 797 (1979) (plurality opinion); that they “are more vulnerable or susceptible to . . . outside pressures” than adults, Roper, 543 U.S. at 569, 125 S. Ct. 1183, 161 L. Ed. 2d 925 (2010) (finding no reason to “reconsider” these observations about the common “nature of juveniles”).⁹⁶ Justice Sotomayor takes the time to explain that this is important in the twofold objective inquiry that officers must make when determining whether to administer *Miranda* warnings.⁹⁷

Justice Sotomayor grounds much of her argument in case law, historical treatment of children under the law, and appeals to common sense. She goes on to point out that, “[o]ur history is replete with laws and judicial recognition” that children cannot be viewed simply as miniature adults. Eddings, 455 U.S., at 115-116, 102 S. Ct. 869, 71 L. Ed. 2d 1.⁹⁸ When discussing the scenario presented in this case, the circumstances surrounding the custodial interrogation, such as the removal from a seventh-grade social studies class by a uniformed school resource officer, encouragement from an assistant principal to “do the right thing” and being told by a police investigator about the prospect of juvenile detention Justice Sotomayor underlines how unlikely it would be a to view this circumstance through the eyes of a reasonable person of average years when it is so specific to a certain age group

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

– that of a child.⁹⁹ The ultimate holding of the case, that as long as the age of a child was known to the officer at the time of the police questioning, or would have been objectively apparent to a reasonable officer, is consistent with the objective nature of the test, is grounded very much in common sense.¹⁰⁰ Justice Sotomayor finishes her explanation by stating:

To hold, as the State requests, that a child’s age is never relevant to whether a suspect has been taken into custody – and thus to ignore the very real differences between children and adults – would be to deny children the full scope of the procedural safeguards that *Miranda* guarantees to adults.¹⁰¹

Justice Sotomayor took the time to clearly lay out the existing state of the law, the existing test, the specific set of facts, and the lack of a detailed inquiry necessary on the part of the officer, and found a common sense answer that will help keep the *Miranda* inquiry as bright-line as possible within the circumstances.

2. *Michigan v. Bryant*, 131 S. Ct. 1143 (2011)

This case demonstrates how context specific Justice Sotomayor can prove to be when it comes to walking the tight rope between precedent and a new set of circumstances. This was a case involving the admission of out-of-court statements made to the police during a predawn shooting.¹⁰² Police officers responded to a radio dispatch at 3:25 a.m. and found the victim, Anthony Covington, lying on the ground with a mortal gunshot

⁹⁹ *Id.* at 2404.

¹⁰⁰ *Id.* at 2406.

¹⁰¹ *Id.* at 2408.

¹⁰² I. Bennett Capers, *Reading Michigan v. Bryant*, “*Reading*” *Justice Sotomayor*, YALE L.J. FORUM (Mar. 24, 2014), <http://yalelawjournal.org/forum/reading-michigan-v-bryant-reading-justice-sotomayor>.

wound to his abdomen.¹⁰³ In response to the officer’s questions, “what had happened, who had shot him, and where the shooting had occurred,” Covington disclosed that “Rick” shot him at around 3 a.m. and he also indicated that he had a conversation with Bryant, who shot him through the back door of his house.¹⁰⁴ At trial, the police officers who spoke with Covington testified about what Covington had told them, resulting in a guilty verdict.¹⁰⁵ Bryant appealed and the Court of appeals affirmed his conviction. He then appealed to the Supreme Court of Michigan, where they held that under *Crawford v. Washington*, 541 U.S. 36 (2004) and *Davis v. Washington*, 57 U.S. 813 (2006), Covington’s statements were inadmissible testimonial hearsay.¹⁰⁶ The Supreme Court granted certiorari to answer the question of whether the Sixth Amendment Confrontation Clause barred Covington’s statements.¹⁰⁷ Justice Sotomayor writing for the majority held that “Covington’s identification and description of the shooter and the location of the shooting were not testimonial statements, and their admission at Bryant’s trial did not violate the Confrontation Clause.”¹⁰⁸

Justice Sotomayor begins her analysis with a breakdown of the facts. She walks the reader through the full scene, and includes all of the available details. After a description of the date and time, she goes on to describe the officers response and the scene of Anthony Covington lying on the ground next to his car in a gas station parking lot with a gunshot wound to his abdomen, in great pain and having difficulty speaking.¹⁰⁹ The conversation

¹⁰³ *Michigan v. Bryant*, 131 S. Ct. 1143, 1150 (2011).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 1151.

¹⁰⁸ *Id.* at 1150.

¹⁰⁹ *Id.* at 1151.

with police ended within five to ten minutes, and emergency medical services then arrived to transport Covington to the hospital, where he died a few hours afterwards.¹¹⁰ The police then left the gas station to go to Bryant’s home, where they found blood and a bullet on the back porch, as well as a bullet hole in the back door.¹¹¹ They also found Covington’s wallet and identification outside of the house.¹¹² She then gives a quick description of the procedural posture of the case, and its traverse through the lower courts. Justice Sotomayor then goes on to a full discussion of the relevant case law. She begins by explaining that the Confrontation Clause of the Sixth Amendment provides criminal defendants the right to be confronted with the witnesses against them, and the binding on the states through the Fourteenth Amendment.¹¹³ She then goes on a journey through case law, discussing *Crawford v. Washington*, 541U.S. 36, 124, S. Ct. 1354, 158 L. Ed. 2d 177, where the Court examined the common-law history of the confrontation right, and explained that the principal evil which the Confrontation Clause was directed was the civil-law mode of criminal procedure, and particularly its use of *ex parte* examinations as evidence against the accused.¹¹⁴ She then goes on to discuss the definition of testimony and give a historical account of the root of the clause.¹¹⁵ In *Crawford*, the Court limited the Confrontation Clause’s reach to testimonial statements and held that in order for testimonial evidence to be admissible, the Sixth Amendment “demands what the common law required:

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.* In England, pretrial examinations of suspects and witnesses by government officials were “sometimes read in court in lieu of live testimony.” *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177

unavailability and a prior opportunity for cross-examination.”¹¹⁶ However, Justice Sotomayor explains that the Court left out a comprehensive definition of “testimonial.”¹¹⁷ Next, Justice Sotomayor discusses the Court’s decisions in *Davis v. Washington* and *Hammon v. Indiana*, 547 u.s. 813, 126 S. Ct. 2266, 165 L. Ed. 2d 224, and clarifies that in *Davis*, “not all those questioned by the police are witnesses and not all ‘interrogations by law enforcement officers, are subject to the Confrontation Clause.’”¹¹⁸ She further goes on to explain the differences in fact scenarios between *Davis* and *Hammon*, which were both domestic violence cases. Justice Sotomayor then goes on to explain that in *Davis*, the Court expanded on the meaning of “testimonial” and discussed the concept of an ongoing emergency:

Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.¹¹⁹

Justice Sotomayor states that this sheds light on the most important instances in which the Clause restricts the introduction of out-of-court statements, which are those where state actors are involved in a formal, out-of-court interrogation of a witness to obtain evidence for trial.¹²⁰ Even when interrogation is conducted with all good faith, it is unfair to the accused if they are untested by cross-examination.¹²¹ Justice Sotomayor then goes

¹¹⁶ *Id.* at 1152.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 1155.

¹²⁰ *Id.*

¹²¹ *Id.*

on to elaborate what the “ongoing emergency” circumstance means. At the time of *Davis* and *Hammon*, it was in the domestic violence cases that were ongoing, but in *Bryant* the Court was presented with an entirely new circumstance.¹²² Justice Sotomayor argues that the determine whether the “primary purpose” of an interrogation is “to enable the police assistance to meet an ongoing emergency,” the court must evaluate the circumstances in which the encounter occurs and the statements and actions of the parties.¹²³ The “ongoing emergency” at the time of the encounter is among the most important circumstances informing the “primary purpose” of an interrogation.¹²⁴ She also goes on to explain that the ongoing emergency is not the only factor, albeit an important one, but is simply one factor. Another important factor is the importance of informality in an encounter between the victim and the police.¹²⁵ This is because formality suggests the absence of an emergency. A third factor discusses are the actions between the declarant and the interrogators, the nature of what as asked and whether it was necessary to resolve an existing emergency were also discussed.¹²⁶

After she completes this explanation, Justice Sotomayor simply applies the law to the facts and finds that the combined approach, the lack of knowledge the police officers had about Covington when they got to the gas station, not knowing whether the assailant posed a continuing threat, the pain that Covington himself was in and the questions about medical services, all show that the “primary purpose” the officers had were not “to establish

¹²² *Id.*

¹²³ *Id.* at 1156.

¹²⁴ *Id.* at 1157.

¹²⁵ *Id.* at 1159.

¹²⁶ *Id.* at 1160.

or prove past events potentially relevant to later criminal prosecution.¹²⁷ She also makes sure to mention the informality of the situation and the interrogation, and comes to the conclusion that circumstances of the encounter as well as the statements and actions of the police objectively indicate that the “primary purpose of the investigation” was “to enable police to meet an ongoing emergency.”¹²⁸

When the dissent criticizes the complexity of the approach, Justice Sotomayor responds by stating, that, “simpler is not always better, and courts making a “primary purpose” assessment should not be unjustifiably restrained from consulting all relevant information, including the statements and actions of interrogators.”¹²⁹ This statement strikes at the heart of Justice Sotomayor’s jurisprudence – one that takes its time. She carefully after discusses existing law, applies it to the very specific facts at hand, and comes to the conclusion that will be most just for all parties involved. The ease of how to get to that conclusion is at the bottom of the totem pole.

3. *Dillon v. United States*, 130 S. Ct. 2683 (2010)

This case is an example of just how narrow Justice Sotomayor tends to frame her cases, and also sheds light on her deep regard for the other branches of government, specifically here, Congress. In *Dillon*, the Court faced the question of whether the decision in *United States v. Booker*, 543 U.S. 220, 125 S. Ct. 738, 160 L. Ed. 2d 621 (2005), which rendered the Sentencing Guidelines advisory to remedy the Sixth Amendment problems associated with a mandatory sentencing regime, required treating § 1B1.10(b) as

¹²⁷ *Id.*

¹²⁸ *Id.* at 1165.

¹²⁹ *Id.* at 1162.

nonbinding.¹³⁰ Justice Sotomayor held that given the limited scope and purpose of the statute at issue, the proceedings under the section did not implicate the interests identified in *Booker* and that the only sections of the Guidelines rendered invalid which generally required a sentencing court to impose a sentence within the applicable Guidelines range and which prescribed the standard of review on appeal, including *de novo* review of Guidelines departures.¹³¹ The Court left the other provisions of the Act intact, including the one at question in the case, which gave the Commission the authority to revise the Guidelines and to when and to what extent a revision will be retroactive.¹³²

Justice Sotomayor frames the opinion by opening with a background of the relevant law, and then goes on to discuss the facts. In 1993, a jury convicted Percy Dillon of conspiracy to distribute more than 500 grams of cocaine and more than 50 grams of crack cocaine, use of a firearm during a drug trafficking crime, and possession with intent to distribute more than 500 grams of cocaine. His conviction exposed him to a statutory sentencing range of 10 years to life for the conspiracy, 5 to 40 years for the cocaine possession, and a mandatory minimum sentence of 5 years for the firearm offense, to be served consecutively to the sentence for the drug offenses. At sentencing, additional findings of fact concluded that he was responsible for even higher quantities of the drugs, making Dillon's total offense level fall into the then-mandatory Guidelines range of 262-327 months' imprisonment for the drug counts.¹³³ The court felt constrained to impose a sentence within the prescribed range, and described the term of imprisonment as "entirely

¹³⁰ *Dillon v. United States*, 130 S. ct. 2683, 2687 (2010).

¹³¹ *Id.* at 2687.

¹³² *Id.*

¹³³ *Id.*

too high for the crime committed.”¹³⁴ The District Court reduced Dillon’s sentence by two levels, but held that it lacked the authority to reduce his sentence further. On appeal to the Third Circuit Court of Appeals, the conviction was affirmed.¹³⁵ After the Sentencing Commission made the amendment to the crack-cocaine Guidelines retroactive in 2008, Dillon filed his pro se motion for a sentence reduction pursuant to § 3582(c)(2), asking for a further reduction consistent with the sentencing factors found in § 3553(a), pointing to his respectable post-sentencing conduct as a reason.¹³⁶ He also urged that after *Booker*, the court was authorized to grant such a variance because the amended Guidelines range was advisory notwithstanding any contrary statement in § 1B1.10.¹³⁷ The Third Circuit affirmed, and noted that § 3582(c)(2) is codified in a different section than the provisions invalidated in *Booker* and there was no cross-reference to the provisions.¹³⁸

In her opinion, Justice Sotomayor writes clearly, and she sticks very closely to the law as it is written. Justice Sotomayor outlines how under 18 U.S.C. § 3852(b) a judgment of a conviction that includes a sentence of imprisonment constitutes a “final judgment” and may not be modified by a district court except in limited circumstances.¹³⁹ *Section 3582(c)(2)* establishes an exception that that general rule of finality “in the case of a defendant who has been sentenced to a term of imprisonment based on sentencing range that has subsequently been lowered by the Sentencing commission pursuant to 28 U.S.C. 994(o) and made retroactive pursuant to §994(u). In such cases, courts are authorized to

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

reduce the term of imprisonment after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.¹⁴⁰ While she outlines the law, she also points to the “substantial role” Congress gave the Commission with respect to sentence-modification proceedings as evidence supporting the conclusion that by its terms, § 3582(c)(2) does not authorize a sentencing or resentencing proceeding.¹⁴¹ She elaborates that the court’s power is dependent on the Commission’s decision *not* to adjust amend the Guidelines but to make the amendment retroactive.¹⁴² She says this reading does not undermine the narrow view of the proceedings under the former provision.¹⁴³ Sotomayor very precisely states the reasoning as to why the Act is read so narrowly, and points to the various factors that do not give the power to reduce sentencing further to the courts. Her reasoning is grounded in the formal law and she uses logical reasoning to argue that, despite the amount of time that Mr. Dillon must spend in prison, he was sentenced according to the guidelines in place. She shows a strict adherence to the law. She goes on to say that “given the limited scope and purpose of §3582(c)(2)...the proceedings under that section do not implicate the interests identified in *Booker*. Notably, the sentence-modification proceedings authorized by § 3582(c)(2) are not constitutionally compelled.”¹⁴⁴ Furthermore, the section represents a congressional act of lenity intended to give prisoners the benefit of later enacted adjustments to the judgments reflected in the Guidelines.¹⁴⁵

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 2690.

¹⁴² *Id.* at 2691.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 2692.

¹⁴⁵ *Id.*

Ultimately, she finished by firmly establishing that Dillon's contentions that the sentencing court failed to correct two mistakes in his original sentence is mistaken, as he misunderstands the scope of § 3582(c)(2).¹⁴⁶ She states that § 3582(c)(2) permits a sentence reduction within the narrow bounds established by the Commission.¹⁴⁷ The bottom line was that the aspects of Dillon's sentencing that he wanted to correct were not affected by the amendments to the Guidelines and are thus outside the scope of the proceedings authorized by § 3582(c)(2). This was a simple and straightforward opinion, where Justice Sotomayor exemplified that she feels comfortable leaving the Sentencing Guidelines to the Sentencing Commission, and also is another example of how she tends to write very narrowly when deciding opinions.

4. ***Wood v. Allen*, 130 S. Ct. 841**

This is another example of how Justice Sotomayor consistently applies the existing law to the facts in a narrow fashion, in order to come to the most just conclusion, without foreclosing the ability to revisit an issue later on. In this case, petitioner challenged the key factual findings made by the Alabama state court that denied his application for post conviction relief: that his attorney's failure to pursue and present mitigating evidence of his borderline mental retardation was a strategic rather than a negligent omission.¹⁴⁸ The Court granted certiorari to address the relationship between §§ 2254(d)(2) and (e)(1), and came to the conclusion that the state court's factual determination was reasonable even

¹⁴⁶ *Id.* at 2693, 2694.

¹⁴⁷ *Id.* at 2694.

¹⁴⁸ *Wood v. Allen*, 130 S. Ct. 841, 843 (2010)

under the petitioner's reading of the § 2254(d)(2) and therefore did not need to address the provisions relationship to §2254(e)(1).¹⁴⁹

In what has become true to Justice Sotomayor's style, she lays out the relevant law that governs federal-court review of state-court factual findings.¹⁵⁰ The Antiterrorism and Effective Death Penalty Act of 1996 contain two provisions that govern this type of review: § 2254(d)(2) and §2254(e)(1).¹⁵¹ Under §2254(d)(2), the only time a federal court may grant a state prisoner's application for a writ of habeas corpus based on a claim already adjudicated on the merits in state court is when that adjudication resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.¹⁵² Under §2254(e)(1), a determination of a factual issue made by a State court shall be presumed to be correct, and the petitioner shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.¹⁵³ Justice Sotomayor then goes on to a discussion of the facts. The petitioner, Holly Wood, broke into the home of his ex-girlfriend and shot her in the head and face as she lay in her bed.¹⁵⁴ She was pronounced dead on arrival at the hospital. Three court-appointed attorneys represented Wood at trial. One of those attorneys, Trotter, had been admitted to the bar five months prior to the time he was appointed. The jury convicted Wood and recommended a death sentence.¹⁵⁵ Wood petitioned for state postconviction relief under the Alabama Rule of Criminal Procedure 32, arguing that he was mentally retarded and therefore not eligible

¹⁴⁹ *Id.* at 845.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 847.

for the death penalty.¹⁵⁶ He also argued that his trial counsel were ineffective under *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)¹⁵⁷ The Rule 32 court conducted an evidentiary hearing and denied relief. As to his claim for mental retardation the court found that he had failed to show that he “has significant or substantial deficits in his adaptive functioning.”¹⁵⁸ The court also rejected the claim of ineffective assistance of counsel, concluding that petitioner Wood failed to establish that his counsel’s performance was deficient or that any deficiency prejudiced his defense. Instead, the court found that Trotter’s decision not to pursue evidence of his alleged mental retardation was a strategic decision, and that the decision was reasonable, so therefore Trotter had not performed deficiently.¹⁵⁹ Wood then filed for a petition for federal habeas relief under § 2254 where the District court rejected all of Wood’s claims except for the counsel’s failure to investigate and present mitigation evidence of his mental deficiencies during the penalty phase.¹⁶⁰ The Eleventh Circuit reversed the grant of habeas relief, finding that the, “federal habeas court’s review of findings of fact by the state court is even more deferential than under a clearly erroneous standard of review.”¹⁶¹

Justice Sotomayor then goes on to discuss the reasons the Court granted certiorari: to review the question of whether in order to satisfy § 2254(d)(2) a petitioner must establish only that the state-court factual determination on which the decision was based was “unreasonable,” or whether §2254 (e)(1) additionally requires petitioner to rebut a

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

presumption that the determination was correct with clear and convincing evidence. She then goes further to explain that while the Court did grant certiorari in order to resolve that question, it was unnecessary as the Court's view of the reasonableness of the state court's factual determination in the case did not turn on any interpretive difference regarding the relationship of the provisions.¹⁶² Justice Sotomayor states that, "reviewing all of the evidence, we agree with the State that even if it is debatable, it is not unreasonable to conclude that, after reviewing the Kirkland report, counsel made a strategic decision not to inquire further into the information contained in the report about Wood's mental deficiencies and not to present to the jury such information as counsel already possessed about these deficiencies."¹⁶³ This opinion was one of Justice Sotomayor's shortest, due in large part to the Court's decision not to address the question as it did not apply to the underlying facts. Justice Sotomayor shows a strong commitment in her analysis to the law as it is written, and also a strict adherence to the facts at hand. While petitioner Wood also discussed a different issue in the text of his petition for certiorari, since it was not presented for review, it was not to be brought before the Court.¹⁶⁴ Justice Sotomayor narrowly answered a narrow question, and purposefully so. In doing so, she exhibits an eye trained on the future for cases that might come before the Court on a similar topic that may need to be addressed in a different manner. She once again exhibits that complexity and attention to fact-specific circumstances should not stand as a bar against ruling in one form or another.

5. *Air Wis. Airlines Corp. v. Hoeper*, 131 S. Ct. 852

¹⁶² *Id.* at 848.

¹⁶³ *Id.* at 850, 851.

¹⁶⁴ *Id.* at 851.

Justice Sotomayor exhibits once again a narrow application of the law to the facts. In 2004, William Hoeper, a pilot for Air Wisconsin, failed three attempts to pass a proficiency test.¹⁶⁵ After the third failure he was put on notice that his employment was at “Air Wisconsin’s discretion.”¹⁶⁶ On the fourth attempt, Hoeper grew frustrated and angry with the simulator, and lashed out.¹⁶⁷ Hoeper describes the scene as him taking off his headset and throwing it on the glare shield, raising his voice to the simulator, and saying, “This is a bunch of shit, I’m sorry.”¹⁶⁸ When the simulator spoke with the airline’s Vice President of Operations, Kevin LaWare and other officials, about the incident, one of them mentioned that Hoeper was a Federal Flight Deck Officer (“FFDO”), a program that allowed the Government to deputize volunteer pilots of air carriers, and therefore permits a FFDO officer to carry a firearm.¹⁶⁹ The Air Wisconsin officials discussed two prior episodes in which disgruntled airlines employees had lashed out violently, once with a hammer, and another time with a gun.¹⁷⁰ They were concerned that Hoeper’s behavior exhibited a “fairly significant outburst” of a sort that hadn’t been witnessed before.¹⁷¹ With all of the facts at hand, the Air Wisconsin officials made the decision to call the Transportation Security Administration (TSA). Patrick Doyle, an Airline Wisconsin Official made the call and made two statements: the first was that Hoeper, “was an FFDO who may be armed,” and that the airline was “concerned about his mental stability and the

¹⁶⁵ *Air Wisc. Airlines Corp. v. Hoeper*, 134 S. Ct. 852, 858

¹⁶⁶ *Id.* at 858.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 859.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

whereabouts of his firearm;” and the second, that an “unstable pilot in the FFDO program was terminated today.”¹⁷² The TSA responded by ordering that Hoeper’s plane return to the gate, where officers boarded the plane, removed and searched Hoeper and questioned him about the location of his gun – which he stated was in his home.¹⁷³ A federal agent then went to retrieve it.¹⁷⁴

Hoeper sued Air Wisconsin on several claims, including defamation.¹⁷⁵ The question that eventually came before the Supreme Court was whether immunity provided to the TSA under the Aviation and Transportation Security Act (ATSA), 49 U.S.C. § 44901 *et seq.*, may be denied without a determination that a disclosure was materially false. The Court held that it may not.¹⁷⁶ In true Sotomayor fashion, Justice Sotomayor opens with a description of the relevant law, the describing ATSA, the Congressional Act that created the TSA, as providing immunity to TSA airlines and their employees immunity against civil liability for reporting suspicious behaviors.¹⁷⁷ However, the immunity does not attach to “any disclosure made with actual knowledge that the disclosure was false, inaccurate, or mislead” or “any disclosure made with reckless disregard as to the truth or falsity of hat disclosure.” § 44941(b).¹⁷⁸

Justice Sotomayor explains the history of the ATSA, as she opens her explanation by writing that Congress patterned ATSA immunity after the actual malice standard

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 858.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

that requires falsity.¹⁷⁹ Congress used the exact language in denying ATSA immunity to “(1) any disclosure made with actual knowledge that the disclosure was false, inaccurate, or misleading; or (2) any disclosure made with reckless disregard as to the truth or falsity of that disclosure.” § 44941(b). She acknowledged that the wording might be able to be construed differently, but that the Court has long held that actual malice entails falsity.¹⁸⁰ Justice Sotomayor also exhibits a strong adherence to the Congressional construction of the act, when she quotes, “It is a cardinal rule of statutory construction that, when Congress employs a term of art, it presumably know and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it is taken.”¹⁸¹ Justice Sotomayor applied the materially false standard that is consistent with the actual malice standard to the facts at hand, and ruled out any other interpretation of the language, showing a strict adherence to the intent of Congress and also to precedent.

B. Concurring Opinions

6. *Bullcoming v. New Mexico*, 131 S. Ct. 2705

Justice Sotomayor proves once more that she is a stickler to narrow decisions. In this case, Donald Bullcoming was arrested on charges of driving while intoxicated.¹⁸² His conviction was based on a forensic laboratory report certifying that his blood alcohol level was above the threshold for aggravated DWI.¹⁸³ He asserted that the new precedent established in *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 129 S. Ct. 2527, 174 L. Ed.

¹⁷⁹ *Id.* at 861.

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 861, 862. s

¹⁸² *Bullcoming v. New Mexico*, 131 S. Ct. 2705, 2709

¹⁸³ *Id.* at 2010.

2d 314 (2009), and the absence of the forensic analyst who prepared the report violated his *Sixth Amendment* Confrontation Clause.¹⁸⁴ The prosecution contended that the reporting analyst only transcribed the machine-generated test results.¹⁸⁵ The Court held that the admission of the report of the defendant’s blood alcohol level violated defendant’s right to confront the analyst who prepared the report.¹⁸⁶ The report was clearly testimonial in nature as a statement made in order to prove a fact at a defendant’s criminal trial, and the testimony of the substitute analyst who did not perform or observe the respond tests did not satisfy the right to confrontation. Nor did the report consist solely of the machine-generated information, but also contained notes from the analyst pertaining to protocols followed and circumstances and conditions that might affect the integrity of the sample.¹⁸⁷ In Justice Sotomayor’s concurrence she writes that she agree with the Court and, “writes separately first to highlight why [she] views the report at issue to be testimonial –specifically because its “primary purpose” is evidentiary – and second to emphasizes the limited reach of the Court’s opinion.”¹⁸⁸ She goes on to discuss the relevant case law that established “in making the primary purpose determination, standard rules of hearsay... will be relevant.”¹⁸⁹ She further elaborates that as applied to a scientific report, *Melendez-Diaz* explained pursuant to Federal of Evidence 803, that, “Documents kept in the regular course of business may be admitted at trial despite their hearsay status, except if the regularly conducted activity is the production of evidence for use at trial.”¹⁹⁰ Justice Sotomayor

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at 2719.

¹⁸⁹ *Id.* at 2720.

¹⁹⁰ *Id.*

walks the reader through the analysis so the law is clear to understand. She elaborates that the hearsay rule's recognition of the certificates' evidentiary purpose confirmed the decision that certificates were testimonial under the primary purpose analysis required by the Confrontation Clause.¹⁹¹ She also points to the formality inherent in certifications that suggest further the evidentiary purpose behind the, and explains that while formality is not the "sole touchstone of [the] primary purpose inquiry" the formality or informality of a statement can serve to shed light on whether a particular statement has a primary purpose of use at trial.¹⁹²

Justice Sotomayor then goes on to further narrow the holding, by explaining four different factual circumstances that the case does not present.¹⁹³ She is presumably doing this so that the holding is not read into as something other than what the Court means. Justice Sotomayor explains that the case is not to be read as suggesting an "alternate purpose," much less an alternate *primary* purpose for the BAC report.¹⁹⁴ She next explains that this is neither a case where the person testifying was a supervisor or someone else with a close, personal connection to the test at issue.¹⁹⁵ Justice Sotomayor explains that it would be a different case if the supervisor had observed an analyst conducting a test testified about the results or a report about the results, but she avoids addressing the degree of involvement that would be sufficient, as this was not the factual scenario. Once again, Justice Sotomayor exhibits a narrowing of the law to the exact facts at hand, and avoids creating a broad sweeping rule. Her third differentiation in factual scenarios touches on expert witnesses,

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.* at 2722.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

and states that this was not a case where an expert witness was asked for his independent opinion about the underlying testimonial reports.¹⁹⁶ Justice Sotomayor's final point is that the Court is not addressing how machine-generated results or other raw data generated by a machine could be introduced by the state.¹⁹⁷

Justice Sotomayor concurs with Justice Ginsburg's majority opinion, but also goes a step further in going through the facts and the law with a fine toothed comb, in order to narrow the scope of the holding, as has proven true of her approach many an opinion prior.

7. *Alleyne v. United States*, 570 U.S. ____ (2013)

This case is an example of how Justice Sotomayor goes to great effort in order to be transparent, and to explain the reasoning behind overturning a case. On October 1, 2009, Allen Ryan Alleyne and an accomplice robbed a store manager as he drove the store's daily deposits to a local bank.¹⁹⁸ Alleyne's accomplice had a gun, and had approached the manager with it to demand the store's deposits.¹⁹⁹ In April 2010, a grand jury indicted him for robbery and possessing a firearm. After a weeklong trial the jury convicted Alleyne on both counts and he was sentenced to 130 months of imprisonment.²⁰⁰ Justice Thomas explains why *Harris v. United States*, 536 U.S. 545 (2002) and *McMillan v. Pennsylvania*, 477 U.S. 79 (1986) were wrongly decided.²⁰¹ Justice Sotomayor writes a concurring opinion in order to further elaborate on the process. She explains that under *stare decisis*, establishing that a decision was wrong, does not, without more, justify overruling it.²⁰² She

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Alleyne v. United States*, 570 U.S. ____ (2013)

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

explains that a special justification is present in the *Alleyne*, as when procedural rules are at issue that do not govern primary conduct and do not implicate the reliance of private parties, the full force of *stare decisis* is reduced.²⁰³ Justice Sotomayor explains that because of the changes in the case law, “in this context, *stare decisis* does not compel adherence to a decision whose ‘underpinnings’ have been ‘eroded’ by subsequent developments in constitutional law. *Gaudin*, 515. U.S., at 521. Justice Sotomayor exhibits her appeals to sense here, as it would be unwise for the Court to continue to follow precedent simply because it is precedent, when the law itself has changed.

Justice Sotomayor puts great weight in her agreement on how much of an “outlier” the *Harris* case had become, and also on the reliance interests being so minimal.²⁰⁴ She further elaborates by stating that the, “Court overrules *McMillan* and *Harris* because the reasoning of those decisions has been thoroughly undermined by intervening decisions and because no significant reliance interests are at stake that might also justify adhering to their result.”²⁰⁵ Shedding even more light on the case at hand, she writes, “Rarely will a claim for *stare decisis* be as weak as it is here, where a constitutional rule of criminal procedure is at issue that a majority of the Court has previously recognized is incompatible with our broader jurisprudence.”²⁰⁶ Justice Sotomayor places great emphasis on the circumstances underlying the case, the glaring conflict in case law and is as transparent as she can be.

Dissenting Opinions

8. *Berghuis v. Thompkins*, 560 U.S. 370

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

Similar to the form of her majority opinions, Justice Sotomayor begins her dissent in *Berghuis* with an explanation of background. However, right before she does this, she also expresses her disappointment in the majority decision that held that a criminal suspect waives his right to remain silent, if, after sitting tacit and uncommunicative through nearly three hours of police interrogation, he utters a few one-word responses.²⁰⁷ The Court also concluded that a suspect who wished to guard his right to remain silent against the finding of such a “waiver” must, counter intuitively, speak, and must do so with sufficient precision to satisfy a clear-statement rule that construes ambiguity in favor of the police.²⁰⁸ Justice Sotomayor also goes on to denounce the broad rules of the Court, as she is such a proponent of narrowly ruling upon the facts. Justice Sotomayor shows her belief for a need to strictly adhere to precedent, when she states that part of her dissent stems from the Court answering the questions before it in an unfaithful departure from prior decisions.²⁰⁹

The facts in this case were that on January 10, 2000 a shooting took place outside of a Michigan mall, injuring two people and another deceased from multiple gunshot wounds.²¹⁰ When the suspect Thomkins was arrested a year later, he was interrogated by police officers for almost three hours.²¹¹ Thomkins was given a card with his *Miranda* rights that he refused to sign to show understanding of those rights.²¹² Thompkins spent most of the three hours quiet, save for the occasional “yeah,” “no,” or, “I don’t know.”²¹³

²⁰⁷ *Berghuis v. Thompkins*, 560 U.S. 370, 374

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.* at 375.

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

The police officer, after two hours and forty five minutes asked Thompkins if he believed in God and if he prayed to God, both of which Thompkins answered in the affirmative.²¹⁴ The officer then asked Thomkins, “Do you pray to God to forgive you for shooting that boy down?” to which Thomkins responded, “yes.” The interrogation ended later on and Thompkins refused to sign a written confession.²¹⁵ Thomkins was later charged with first-degree murder, assault with intent to commit murder, and other related offenses. Justice Kennedy held that Thomkins did not invoke his right to remain silent under *Miranda*, as he did not do so unambiguously.²¹⁶

Justice Sotomayor takes the time to explain existing precedent, and then displays her frustration with the parting from it. She states that:

Today’s decision “ignores the important interests *Miranda* safeguards. The underlying constitutional guarantee against self-incrimination reflects ‘many of our fundamental values and most noble aspirations,’ our society’s ‘preference for an accusatorial rather than an inquisitorial system of criminal justice’; a fear that self-incriminating statements will be elicited by inhumane treatment and abuses’ and a resulting ‘distrust of self-deprecatory statements’; and a realization that while the privilege is ‘sometimes a shelter to the guilty, [it] is often a protection of the innocent.” *Withrow v. Williams*, 507 U.S. 680, 692, 113 S. Ct. 1745, 123 L. Ed. 2d 407 (1993)²¹⁷

Justice Sotomayor agrees with the Sixth Circuit that she would not have reached the question of Thomkins argument that his conduct during the interrogation invoked his right to remain silent, requiring the police to terminate the question, but goes on to say that she disagrees with the much broader ruling that a suspect must clearly invoke his right to

²¹⁴ *Id.* at 376.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.* at 403.

silence by speaking.²¹⁸ Justice Sotomayor elaborates that the court “eschews” the narrow ground of decision and extends the clear statement rule from *Davis v. United States*, 512 U.S. 452, 461, 114 S. Ct. 2350, 129 L. Ed. 2d 362 (1994), that says that after a suspect has knowingly and voluntarily waived his *Miranda* rights, they may continue questioning until the suspect clearly requests an attorney.²¹⁹ The Court went beyond the narrow ruling and extended *Davis* to hold that police may continue questioning a suspect until he unambiguously invokes his right to remain silent.²²⁰ Justice Sotomayor then goes on to outline the factual differences from *Davis*. She also addresses common sense, when she explains that on the one hand telling someone they have the right to remain silent and on the other hand requiring them to speak, went against any type of intuition a person may have. She says, “the Court suggests Thomkins could have employed the “simple, unambiguous” means of saying “he wanted to remain silent” or “did not want to talk with the police...” but points out that the *Miranda* warnings give no hint that a suspect should use those specific words, and there, “is little reason to believe police – who have ample incentives to avoid invocation – will provide such guidance.”²²¹ Justice Sotomayor exhibits a realistic viewpoint of the world, and exhibits an understanding of what might actually be occurring in the world, as opposed to the idealistic notions of how it should function. She is profoundly bothered, as evinced by her saying, “today’s decision turns *Miranda* upside down,”²²² especially as the results, according to the Justice, “have no basis in *Miranda* or subsequent cases and are inconsistent with the fair-trial principles on which those

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.* at 406.

²²¹ *Id.* at 409, 410.

²²² *Id.* at 410.

precedents are grounded.”²²³ This perhaps is the worst part of the decision for Justice Sotomayor, who painstakingly grounds her arguments in existing precedent and stays close to the statutory meaning behind the laws.

9. *Wheaton College v. Burwell*, 134 S. Ct. 2806

This case is another example of where Justice Sotomayor views the majority as breaking with the traditional norms of the Court, therefore undermining the trust that the public has in relying on their cases.²²⁴ This was a request for an immediate injunction, on behalf of Wheaton College located in Illinois.²²⁵ Wheaton asserted that the simple exemption form required to qualify for exemption from providing contraception under the Patient Protection and Affordable Care Act, impermissibly burdened Wheaton’s free exercise of its religion in violation of the Religious Freedom Restoration Act of 1993 (RFRA). *107 Stat. 1488, 42 U.S.C. §2000bb et. seq.*²²⁶ Wheaton based their claim on the theory that the filing of the self-certification form made it complicit in the provision of contraceptives by triggering the obligation for someone else to provide the access to contraceptive services to which Wheaton objected.²²⁷ Justice Sotomayor explains that Wheaton ignored that the provision of contraceptive coverage is triggered by federal law, and not the completion of the form.²²⁸

²²³ *Id.* at 411.

²²⁴ *Wheaton College v. Burwell*, 134 S. Ct. 2806

²²⁵ *Id.* at 2807

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

Justice Sotomayor also goes on to exhibit her adherence to the law, by explaining that even acting under the assumption that Wheaton’s religious freedom was burdened, the accommodation is permissible under RFRA because it is the least restrictive means of furthering the Government’s compelling interests in public health and women’s well-being.²²⁹ She then goes on to quote directly from *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S., at ____, 2014 U.S. LEXIS 4505, decided in the same week, by saying that the accommodation system was described as, “a system that seeks to respect the religious liberty of religious nonprofit corporations while ensuring that the employees of these entities have precisely the same access to all Food and Drug Administration (FDA)-approved contraceptives as employees of companies whose owners have no religious objections to providing such coverage.”²³⁰ Justice Sotomayor exhibits her disappointment with the granting of the injunction by further pushing the point that those who are bound by the Supreme Court decisions usually believe they can take the Court at their word, and then goes on to say, “not so today.”²³¹ Justice Sotomayor also explains how rare and extreme a form of relief the injunction was, as it was an interlocutory injunction under the All Writs Act 28 U.S.C. §1651, blocking the operation of a duly enacted law and regulations, in a case in which the courts below have not yet adjudicated the merits of the claims and in which those courts have declined requests for similar injunctive relief.²³² The Court ordered the extraordinary relief, and Justice Sotomayor is extremely disappointed in the departure from the standard established in *Turner Broadcasting System, Inc., v. FCC*,

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

507 U.S. 1301, 1303, 113 S. Ct. 1806, 123 L. Ed. 2d 642 (1993), that established injunctions of that nature are only proper where, “the legal rights at issue are indisputably clear,” and Wheaton’s right to relief was in no way indisputably clear.²³³

It is of no surprise that Justice Sotomayor disagrees strongly with the decision of the Court. She has proven case after case that she believes the law should be applied faithfully, and that the system in place should be followed, the law and relevant policies should be applied to the underlying facts of a specific case. In addition to the extremely rare form of relief the Court provided in the injunction, the merits of the case were not before the Court, as they were still waiting review in the District Court, and even further she explains how Wheaton’s claims are likely to fail under any standard.²³⁴ Justice Sotomayor ends by saying that the injunction allows, “Wheaton’s beliefs about the effects of its actions to trump the democratic interest in allowing the Government to enforce the law.”²³⁵ She also appeals to common sense when she explains that the case, “creates unnecessary costs and layers of bureaucracy.”²³⁶ Justice Sotomayor also further shows her respect for the other branches of government when she goes on to say, “[t]he Government must be allowed to handle the basic tasks of public administration in a manner that comports with common sense. It is not the business of this Court to ensnare itself in the Government’s ministerial handling of its affairs in the manner it does here.”²³⁷ All of these factors come together to show that Justice Sotomayor cannot stand behind a decision that

²³³ *Id.*

²³⁴ *Id.* at 2811.

²³⁵ *Id.* at 2815.

²³⁶ *Id.*

²³⁷ *Id.*

she does not believe was fairly decided on its merits, and she believes there should be a separation and understanding between the different arms of government.

10. *Woodward v. Alabama*, 134 S. Ct. 405

In another dissent to a denial of a petition for writ of certiorari, Justice Sotomayor earlier this year called into question the Alabama sentencing scheme practice of allowing Judges to sentence a defendant to the death penalty after a jury has chosen not to, “constitutionally suspect.”²³⁸ Justice Sotomayor walks through the state law of Alabama, explaining the process a defendant convicted of capital murder is entitled to – an evidentiary sentencing hearing before a jury where the jury must prove beyond a reasonable doubt the existence of at least one aggravating circumstance; otherwise, the defendant cannot be sentenced to death and instead receives a sentence of life imprisonment without parole.²³⁹ *Ala.Code §§ 13A-5-46(2005)*. If it has found at least one aggravating circumstance, the jury then weights the aggravating and mitigating evidence and renders its advisory verdict.²⁴⁰ The trial judge then makes her own determination whether the aggravating circumstances outweigh the mitigating circumstances and imposes a sentence accordingly.²⁴¹ The facts of the case denied certiorari concerned the jury conviction of Mario Dion Woodward for capital murder, with an eight to four vote, against imposing the death penalty, but the judge overrode the jury’s decision and sentenced Woodward to the death penalty.²⁴² Justice Sotomayor discusses the history of the Alabama practice, and the

²³⁸ *Woodward v. Alabama*, 134 S. Ct. 405, 455

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id. at 405.*

high numbers of death penalty rates after a jury has chosen not to impose that sentence.²⁴³ Justice Sotomayor asks the question, “what could explain Alabama judges’ distinctive proclivity for imposing death sentences in cases where the jury has already rejected that penalty?”²⁴⁴ She then responds by saying, “the only answer that is supported by empirical evidence is one, that in my view, casts a cloud of illegitimacy over the criminal justice system: Alabama judges, who are elected in partisan proceedings, appear to have succumbed to electoral pressures.”²⁴⁵ Justice Sotomayor, whose faith in the justice system rests largely upon efficacy, fair application of the law to the facts, and common sense analysis, are all factors that go into the dissent from granting certiorari. She ends her dissent by speaking of the, “sanctity of the jury’s role in our system of criminal justice,” a testament to the elevated standard she holds the justice system to.

I. Conclusion

Quite a number of facts are revealed through a walkthrough of Justice Sotomayor’s majority, concurring and dissenting opinions. Among those are her deep reverence for precedent, and applying the law as it stands to the underlying facts at hand – as long as the law is a fair law, and believed to be valid. Justice Sotomayor also exhibits a strong tendency towards respecting the other branches of government, and spends much time writing upon the history and legislative intent when applying it to the facts. Along these lines, she also excels in narrow rulings, so as not to cast too wide a shadow, and also presumably to avoid unintended consequences. Justice Sotomayor also exhibits a strong sense of right and

²⁴³ *Id. at 451.*

²⁴⁴ *Id. at*

²⁴⁵ *Id. at 408.*

wrong, and when she believes that the direction the Court has taken moves away from the traditional practices of the Court, she speaks to them, and rests her arguments on case law upon case law speaking otherwise. Finally, Justice Sotomayor goes through great ordeal in order to ensure that the law as it stands, as it applies to the facts, and as it is to be interpreted after a ruling, is fully explained, and part of this seems like a huge effort on her part in order to keep the general public informed and aware of the reasoning behind the decisions. All in all, Justice Sotomayor exhibits all of the qualities one looks for in a Supreme Court Justice – that of explaining, of giving due reverence to precedent, of understanding common sense, and in helping to keep the balance of powers in check. Does a wise Latina have much to add to the Supreme Court? It seems that she does and will continue to do so.