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Judge Amy Coney Barrett
Nominee for Associate Justice of the United States Supreme Court

Amy Coney Barrett
Female, Age 48. Born: New Orleans, LA. Notre Dame (J.D.) Rhodes (B.A.)
2017 – present, Judge, U.S. Court of Appeals, Seventh Circuit
2002 – 2017, Professor of Law, Notre Dame Law School
2007 (Oct – Nov) Visiting Assoc. Prof. of Law, U. Virginia School of Law
2001 – 2002, Fellow in Law at George Washington Univ. Law School
2001 spring, Adjunct Faculty, George Washington Univ. Law School
2001, private practice, Baker Botts, DC
1999 – 2000, private practice, Miller Cassidy, DC
1998 – 1999, Law Clerk, United States Supreme Court, Justice Antonin Scalia
1997 – 1998, Law Clerk, U.S. Court of Appeals, D.C. Circuit, Judge Laurence Silberman

Barrett Understands that a Judge's Duty is to Follow the Text of the Constitution Over Contrary Court Precedent. Barrett wrote in 2013:

> "I tend to agree with those who say that ***a justice's duty is to the Constitution*** and that it is thus ***more legitimate for her to enforce her best understanding of the Constitution rather than a precedent she thinks clearly in conflict with it***."[1]

Barrett Values the Original Public Meaning of Constitutional Text Over Judge Made Precedent. She wrote in 2016 that "[t]he legislator owes ***fidelity to the text***, not to ***precedent deviating from it***."[2] In the same article, she writes:

> Super precedent is what poses the supposedly intractable problem for originalism, because it is super precedent that ostensibly forces even the originalist to concede that an ***errant interpretation can sometimes virtually amend the text***. ***That is the claim we dispute***.[3]

She further explains that non-originalist precedent can be corrected:

[1] Amy Coney Barrett, *Precedent and Jurisprudential Disagreement*, 91 Tex. L. Rev. 1711 at 1728 (2013) (emphasis added).
[2] Amy C. Barrett, & John C. Nagle, *Congressional Originalism*, 19 U. Pa. J. Const. L. 1 at 31 (2016) (emphasis added).
[3] *Id* at 33 (emphasis added).

> Justice Scalia was right to say that originalists can be pragmatic about precedent. But that pragmatism is not, as is commonly assumed, a choice to ***treat erroneous precedent as law superseding the text it purports to interpret***. The pragmatism is one of timing. The office holder has the discretion to decide when the timing is right to correct the error. Until then, the office holder – be it the Supreme Court through the rules of adjudication or Congress with a presumption of constitutionality – can, as it were, assume arguendo that certain settled precedents are correct.[4]

She concludes by distinguishing between constitutional texts and interpretations and stating that interpretations are provisional only and can be changed: "The unbroken practice in the United States is to treat ***interpretations of the Constitution***, in contrast to ***the Constitution itself***, as ***provisional and subject to change***."[5] In other words, errant precedent is subject to change.

Barrett Says Church Prohibitions on Abortion are Absolute. Barrett says that the Catholic Church teaches that "[t]he prohibitions against abortion and euthanasia (properly defined) are absolute; those against war and capital punishment are not."[6]

In 2013, Barrett – Part of "Faculty for Life" – Reportedly Believed that Life Begins at Conception, *Roe* was Created by Judicial Fiat, and Abortion Deals with the Life of a Child. Barrett served on the Notre Dame's "University Faculty for Life (circa 2010-2016)"[7] and during "a week of campus observances of the 40th anniversary of the Supreme Court's *Roe v. Wade* decision," spoke about "Roe at 40: The Supreme Court, Abortion and the Culture War that Followed."[8] (A lengthy excerpt of the article is provided in the above footnote.) Barrett reportedly

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[4] *Id* at 43 (emphasis added).
[5] *Id* at 43 (emphasis added).
[6] John H. Garvey & Amy V. Coney, *Catholic Judges in Capital Cases*, 81 Marq. L. Rev. 303, 305-06 (1998).
[7] Amy Coney Barrett, Answers to the Senate Judiciary Questionnaire, at 6; available at: https://www.judiciary.senate.gov/imo/media/doc/Barrett%20SJQ(PUBLIC).pdf
[8] John Nagy, *Students, faculty mark 40 years of Roe.* NOTRE DAME MAGAZINE (Jan. 25, 2013); https://magazine.nd.edu/news/lazy-i-students-faculty-mark-40-years-of-roe/ (Emphasis added.) The report states:

> Barrett reviewed the debate over the Supreme Court's "institutional capacity" to resolve divisive questions like the legality of abortion. A constitutional law authority and mother of seven who clerked for Associate Justice Antonin Scalia, Barrett ***spoke both to her own conviction that life begins at conception and to the "high price of pregnancy" and "burdens of parenthood" that especially confront women before she asked her audience whether the clash of convictions inherent in the abortion debate is better resolved democratically***.
>
> By ***creating through judicial fiat*** a framework of abortion on demand in a political environment that was already liberalizing abortion regulations state-by-state, she said, the court's concurrent rulings in *Roe* and *Doe v. Bolton* "ignited a national controversy."
>
> Barrett noted that scholars from both sides of the debate have criticized *Roe* for unnecessarily creating the political backlash known colloquially as "*Roe* Rage," a dynamic that has since affected everything from federal and state elections to the federal judicial nominations process.
>
> Abortion opponents have found success in recent years passing and defending abortion restrictions such as informed consent laws, ultrasound requirements and the federal partial-birth abortion ban after rulings in *Casey v. Planned Parenthood* (1992), *Carhart v. Stenberg* (2000) and *Gonzales v. Carhart* (2007). ***But***

said: life begins at conception, *Roe* was created through judicial fiat and, although she is pro-life, she assessed it unlikely *Roe* would be reversed but foresaw certain abortion limitations.

Report: Barrett said Abortion Deals With Life of Child. The Irish Rover also covered Barrett's "Roe at 40: The Supreme Court, Abortion and the Culture War that Followed" speech and wrote:

> "Barrett said that one of the reasons that this decision was controversial was that in the past all cases dealing with the right to privacy drew from consensual situations such as marriage or the use of contraception. Abortion deals with the life of a child so it differs from the earlier case relating to privacy."[9]

Barrett says *Roe v. Wade* May be Reversed Because it is Not Settled by Society and, Therefore, Not a Super-Precedent. Barrett says that so-called "super-precedents" are cases that "no justice would overrule, even if she disagrees with the interpretive premises from which the precedent proceeds."[10] She lists several super-precedents, but specifically excludes *Roe v. Wade* because it was challenged in *Casey* and remains widely disputed today. This, she explains, demonstrates that *Roe* is not "super-precedent" because its validity is still questioned by the people and it may be overruled.[11]

Amy Coney Barrett wrote in the law review article:

> ***"Superprecedents are cases that no justice would overrule***, even if she disagrees with the interpretive premises from which the precedent proceeds. Michael Gerhardt offers the following explanation:
>
> > '[T]he point at which a well-settled practice becomes, by virtue of being well-settled, practically immune to reconsideration is the point at which that precedent has become a superprecedent. Nothing becomes a superprecedent, at least in my judgment, unless it has been widely and uniformly accepted by public authorities generally, including the Court, the President, and Congress.'
>
> "The following cases are included on most hit lists of superprecedent: *Marbury v. Madison*, *Martin v. Hunter's Lessee*, *Helvering v. Davis*, the *Legal Tender Cases*, *Mapp v. Ohio*, *Brown v. Board of Education*, and the *Civil Rights Cases*. [Barrett omits *Roe* from the list and specifically explains why below and in footnote 141.] These opinions are invoked as evidence that there are at least some occasions on which stare decisis undeniably and absolutely constrains the Court.

> ***Barrett believes it is "very unlikely" the court will ever overturn* Roe*'s core protection of abortion rights, and sees the political battle shifting toward matters of public and private funding.*** [Note: This was Barrett's assessment then of what would happen, not her belief of what should happen.]

[9] Erin Stoyell-Muholland, *40 Years of Roe: The legal background*, THE IRISH ROVER (Jan. 26, 2013); https://irishrover.net/2013/01/40-years-of-roe-the-legal-background/

[10] Amy Coney Barrett, *Precedent and Jurisprudential Disagreement*, 91 TEX. L. REV. 1711 at 1734 (2013).

[11] Amy Coney Barrett, *Precedent and Jurisprudential Disagreement*, 91 TEX. L. REV. 1711 at 1735 (2013).

> "In my view, however, 'superprecedents' do not illustrate a 'super strong' effect of stare decisis at all. Stare decisis is a self-imposed constraint upon the Court's ability to overrule precedent. The force of so-called superprecedents, however, does not derive from any decision by the Court about the degree of deference they warrant. Indeed, *Planned Parenthood of Southeastern Pennsylvania v. Casey* shows that the Court is quite incapable of transforming precedent into superprecedent by *ipse dixit* [a dogmatic and unproven statement] [Note 141]. The force of these [superprecedent] cases derives from the people, who have taken their validity off the Court's agenda. Litigants do not challenge them. If they did, no inferior federal court or state court would take them seriously, at least in the absence of any indicia that the broad consensus supporting a precedent was crumbling.

Note 141, written by Barrett in 2013, states:

> "In an op-ed in *The New York Times*, Senator Specter characterized *Roe v. Wade* as a superprecedent. Arlen Specter, Op-Ed., *Bringing the Hearings to Order*, N.Y. TIMES, July 24, 2005. Scholars, however, do not put *Roe* on the superprecedent list because the public controversy about Roe has never abated. *See, e.g.*, Fallon, *supra* note 51, at 1116 ("[A] decision as fiercely and enduringly contested as *Roe v. Wade* has acquired no immunity from serious judicial reconsideration, even if arguments for overruling it ought not succeed."); Gerhardt, supra note 129, at 1220 (asserting that Roe cannot be considered a superprecedent in part because calls for its demise by national political leaders have never retreated)."[12]

Barrett Voted to Uphold the Constitutionality of a Fetal Disposal Statute and an Anti-Eugenics Abortion Statute. In *Planned Parenthood of Indiana and Kentucky v. Commissioner of the Indiana State Dep't of Health*,[13] Barrett joined the dissenting opinion of Judge Easterbrooks along with Judges Sykes and Brennan. The case concerned two state statutes: one eugenics statute that "makes it illegal to perform an abortion for the purpose of choosing the sex, race, or (dis)abilities of a child," and a second disposal statute that "requires fetal remains to be cremated or buried."[14]

Barrett Wrote a Powerful Dissent Defending the Original Public Meaning of the Second Amendment. In a 2019 case before the U.S. Court of Appeals for the Seventh Circuit the court ruled by a 2-1 vote that the Second Amendment to the U.S. Constitution does not prevent federal and state law from barring gun ownership for non-violent felons. Barrett dissented and wrote a thoroughly well-researched dissent focusing on the text and original public meaning of the Second Amendment.

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[12] Amy Coney Barrett, *Precedent and Jurisprudential Disagreement*, 91 TEX. L. REV. 1711, note 141 at 1735(2013). (Emphasis added.)

[13] *Planned Parenthood of Indiana and Kentucky v. Commissioner of the Indiana State Dep't of Health*, 917 F.3d 532 (2018).

[14] *Planned Parenthood of Indiana and Kentucky v. Commissioner of the Indiana State Dep't of Health*, 917 F.3d 532, 536 (2018).

The plaintiff in the case was Rickey Kanter. Previously, Kanter pled guilty to one count of mail fraud for selling Medicare non-compliant therapeutic shoes and inserts. It is undisputed that Kanter pled guilty to a purely financial, non-violent crime. Yet federal and Wisconsin law bar all felons – whether violent or non-violent – from owning a gun.

Barrett began her dissent:

> History is consistent with common sense: it demonstrates that legislatures have the power to prohibit dangerous people from possessing guns. But that power extends only to people who are dangerous. Founding-era legislatures did not strip felons of the right to bear arms simply because of their status as felons. … In 1791 – and for well ***more than a century*** afterward – legislatures disqualified categories of people from the right to bear arms only when they judged that doing so was necessary to ***protect the public safety***.[15]

Her opinion concludes:

> At this point, however, neither Wisconsin nor the United States has presented any evidence that Kanter would be dangerous if armed. Instead, as the majority notes, "Kanter is a first-time, non-violent offender with no history of violence, firearm misuses, or subsequent convictions," and he is "employed, married, and does not use illicit drugs, all of which correspond with lower rates of recidivism." Maj. Op. at 23. ***Absent evidence that Kanter would pose a risk to the public safety if he possessed a gun, the governments cannot permanently deprive him of his right to keep and bear arms***.[16]

Contrary to False Claims that Barrett Would Recuse in Death Penalty Cases, Barrett Not only Ruled in a Death Penalty Case, But Affirmed the Imposition of the Death Penalty. In *Peterson v. Barr*,[17] a white supremacist convicted of murder and sentenced to death asked for a stay of execution. Barrett, along with Judges Sykes and Easterbrooks vacated the lower court injunction to stay the execution. Barrett did not recuse herself but fully participated in affirming the imposition of the death penalty. Accordingly, the claim that Barrett would recuse in death penalty cases is false and directly contradicted by Barrett's participating and vote in *Peterson*.

In 2016, Barrett Believes Scalia is what we Want in a Justice & Supreme Court Justices Should Adhere to the Rule of Law and not Impose their Political Preferences through Rulings. In a speech before the 2016 Presidential election, Barrett said: "the divergence between partisan politics or political preferences and ***adherence to the rule of law***, and to me, that's ***the quality that we should be looking*** at when we think about what ***Justices*** would fill these vacant and soon to be vacant spots on the Court." Barrett, a former law clerk to Justice Scalia continued and said that ***Scalia is "what we want in a Justice***, someone who applies the law, who follows the law where it goes and doesn't decide simply on the basis of partisan preference." [18]

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[15] *Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019). (Emphasis added.)
[16] *Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (emphasis added).
[17] *Peterson v. Barr*, Case No. 20-2252, July 12, 2020, ___ F.3d ___ (7th Cir. 2020).
[18] Amy Coney Barrett, *Justice Scalia and the Future of the Court*, Nov. 3, 2016, Presenter Hesburgh Lecture at Jacksonville University Public Policy Institute (emphasis added); available at https://www.youtube.com/watch?v=7yjTEdZ81lI

Barrett Believes Justices Must Resist the Temptation to Impose Their Policy Preferences and Must Simply Apply the Constitution. Barrett said: "We shouldn't be putting people on the Court that share our policy preferences, we should be putting people on the Court who want to apply the constitution …. [Justices must] have the courage and integrity to say, I'm not going to interfere in the Democratic process; if the Constitution doesn't restrict your ability to do, electorate, what you've decided to do in this particular statute you've enacted, then I'm going to not interfere, I will resist the temptation as a judge to impose my preferences on you and say that you are limited in the policies that you want to pursue."[19]

On the Transgender Bathroom Case, Barrett says the Intent of Congress and the Text do Not Require that "Physiological Males who Identify as Females" be Permitted in Female Bathrooms. Barrett said:

> "[In November 2016, Barrett said:] The court just took up that trans-gender bathroom case from North Carolina. That's a statutory question, that's a question involving the interpretation of Title IX … about whether ***physiological males who identify as females should be permitted in bathrooms, especially where there are young girls present*** …. [I]t's a "who decides" question. When Title IX was enacted, it's pretty clear that no one – including the Congress that enacted that statute – would have dreamed of that result at that time. … But it does seem to ***strain the text of the statute*** to say that Title IX demands it.

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[19] The full context of Barrett's comments is as follows:

> "We shouldn't be putting people on the Court that share our policy preferences, we should be putting people on the Court who want to apply the constitution, and by the way, on the individual rights or the minority rights, when the Constitution demands that minority rights be protected that's what we want Justices to do, that's their job.
>
> "I use the example with my Constitutional law students of Odysseus resisting the sirens. That the Constitution is like, Odysseus ties himself to the mast to resist the song of the sirens and he tells his crew, don't untie me no matter how much I plead. That's what we've done as the American people with the Constitution. We've said, you know it's the people sober appealing to the people drunk, that when you are tempted to get carried away by your passions and trample upon the First Amendment rights or minority rights this document will hold you back, and it's the job of the Justices, of judges generally, but then ultimately of the Supreme Court through the exercise of judicial review to tell us – like in the flag burning case – we understand you people, you American citizens, that you want to protect your flag, but you've made a more fundamental commitment to free speech that ties your hands and you can't do so.
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> "That's what it's about. It's not about 'I like flag desecration - I don't like flag desecration.' It's about, are you going to enforce the limits that are there, but then if the people do something you don't like, if it's not one of those situations where the hands are tied, Odysseus is tied to the mast, that you have the courage and integrity to say, I'm not going to interfere in the Democratic process; if the Constitution doesn't restrict your ability to do, electorate, what you've decided to do in this particular statute you've enacted, then I'm going to not interfere, I will resist the temptation as a judge to impose my preferences on you and say that you are limited in the policies that you want to pursue."

Amy Coney Barrett, *Justice Scalia and the Future of the Court*, Nov. 3, 2016, Jacksonville University Public Policy Institute; available at https://www.youtube.com/watch?v=7yjTEdZ81lI from 25:42 – 28:19.

> So, is that the kind of thing that the Court should interpret the statute to kind of update it, to pick sides in this public policy debate, or should we go to our Congress, should we go to our legislatures and say, if this is the policy that we want to have now, now we have ***new recognition of the rights of transgender people*** and we want to shift the policy? ***Is that kind of sea change the sort of thing that should come legislatively, or from the Court***?"[20]

Barrett Properly Criticized Roberts' Opinion in The ObamaCare Case. Barrett said Roberts "pushed the Affordable Care Act ***beyond its plausible meaning to save the statute***," his "approach is at odds with the ***statutory textualism*** to which most originalists subscribe," and "it is ***illegitimate for the Court to distort either the Constitution or a statute to achieve what it deems a preferable result***."[21]

Barrett Understands that Courts Have Limited Power and Can Exceed Their Interpretative Authority. Barrett stated:

> "***Reliance*** interests count, but they count ***far less*** when ***precedent clearly exceeds a court's interpretive authority*** than they do when precedent, though perhaps not the ideal choice, was nonetheless within the court's discretion."[22]

Barrett: Congress Has Authority to Change Court Made "Common Law." Barrett stated "Uniform federal procedural common law, like all federal common law, is wholly subject to congressional abrogation."[23]

Barrett is Pro-Life and Believes Life Begins at Conception. Barrett was a member of the University of Notre Dame's "Faculty for Life" group[24] and joined a letter to the "synod Fathers in Christ giving witness to "the Church's teachings – on the dignity of the human person and the value of the human person and the value of ***human life from conception to natural death***."[25] In addition, it is reported that she believes "life begins at conception."[26]

Barrett Opposed ObamaCare Requirement that Employers Provide Contraceptive Coverage in Health Care Plans. Barrett signed onto a statement entitled "Unacceptable" criticizing the above policy as "a grave violation of religious freedom [that] cannot stand." The statement also called the policy "morally obtuse" and "an insult to the intelligence of … people of

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[20] Amy Coney Barrett, *Justice Scalia and the Future of the Court*, Nov. 3, 2016, Jacksonville University Public Policy Institute (emphasis added); available at https://www.youtube.com/watch?v=7yjTEdZ81lI from 39:50 – 42:07. (Emphasis added.)

[21] Amy Coney Barrett, *Countering the Majoritarian Difficulty,* 32 Const. Comm. 61 (2017) (emphasis added); available at https://conservancy.umn.edu/bitstream/handle/11299/183482/4%20-%20Barrett.pdf?sequence=1&isAllowed=y

[22] Amy Coney Barrett, *Stare Decisis and Due Process*, 74 U. Colo. L. Rev. 1011, 1075 (2003). (Emphasis added.)

[23] Amy Coney Barrett, *Procedural Common Law,* 94 Virginia L. Rev. 813, 819 (2008).

[24] Amy Coney Barrett, Answers to the Senate Judiciary Questionnaire; available at: https://www.judiciary.senate.gov/imo/media/doc/Barrett%20SJQ(PUBLIC).pdf

[25] Letter from Catholic women, to Synod Fathers (Oct. 1, 2015), available at https://eppc.org/synodletter/

[26] John Nagy, *Students, faculty mark 40 years of Roe.* Notre Dame Magazine (Jan. 25, 2013); https://magazine.nd.edu/news/lazy-i-students-faculty-mark-40-years-of-roe/

faith and conscience to imagine that they will accept an assault on their religious liberty if only it is covered up by a cheap accounting trick."[27]

arrett Criticized Court Creation of Rights for Non-Citizens. Barrett criticized the Supreme Court's decision in *Boumediene*. She wrote: The case [*Boumedine*, which awarded non-citizens at Guantanamo Bay to ability to file a lawsuit in the U.S. challenging their detention] is controversial because ***its holding, which has significant implications for national security, is contrary to precedent and unsupported by the Constitution's text and history***." [28]

Barrett Rightly Characterizes Justice Kennedy as a "Moderate" not a "Conservative." Barrett stated: "Kennedy is a moderate Republican and he replaced a moderate Republican, Powell."[29]

Barrett Sided with the Dissent in *Obergefell* by Saying the Case was about "Who Decides?" She said "Justice Scalia was not a fan of substantive due process. … People were presenting it [the *Obergefell* decision purportedly creating the right to homosexual marriage] as a vote on the Court for or against same-sex marriage. But that's not what the opinion was about. What the opinion was about was ***who gets to decide*** whether we have same sex marriage or not – with the majority saying that it was a right guaranteed by the Constitution and so, therefore, states were not free … to say that marriage had to be between a man and a woman. And the dissenters weren't taking a view – in fact Chief Justice Roberts dissent was very explicit about that – he said those of you who want same sex marriage, you have every right to lobby in state legislatures to make that happen – but the dissent's view was that ***it wasn't for the Court to decide***. That the Constitution didn't speak to the question, and so that it was a change that should occur through the legislative process and indeed many states were already moving in that direction in making legislative changes. So, I think *Obergefell* and what we're talking about for the future of the Court, it's really a ***who decides*** question."[30]

Barrett makes it clear that she agrees with the dissent in *Obergefell* that the case was a "who decides" question.

Barrett on Eighth Amendment and Prison Guards. Barrett wrote a dissent in *McCottrell v. White*,[31] a lawsuit where two inmates sued prison guards for injuries after the guards discharged their guns during a disturbance in the prison cafeteria. Barrett followed Supreme Court precedent which sets an extremely high bar in cases involving prison discipline. Barrett stated that Supreme Court precedent required proof that the officers "maliciously and sadistically" intended to hurt the inmates. Barrett explained:

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[27] Statement from The Becket Fund, *Unacceptable* (Feb. 27, 2012), http://www.becketlaw.org/media/unacceptable/

[28] Amy Barrett, *The Scope of the Suspension Clause*, National Constitution Center's Interactive Constitution, (emphasis added); *available at* https://constitutioncenter.org/interactive-constitution/interpretation/article-i/clauses/763#the-suspension-clause-by-amy-barrett

[29] Fight Over Vacant SCOTUS Gets Ugly, CBS News, Feb. 15, 2016; available at https://www.youtube.com/watch?v=cL55t3YBGII.

[30] Amy Coney Barrett, "Justice Scalia and the Future of the Court," Nov. 3, 2016, Jacksonville University Public Policy Institute; available at https://www.youtube.com/watch?v=7yjTEdZ81lI from 30:32 - 32:26

[31] *McCottrell v. White*, 933 F.3d 651 (7th Cir. 2019). (Emphasis added.)

> "[t]he guards may have acted with deliberate indifference to inmate safety by firing warning shots into the ceiling of a crowded cafeteria in the wake of the disturbance. In the context of prison discipline, however, 'deliberate indifference' is not enough."[32]

Again, the standard in this case was a showing that the guards acted "maliciously and sadistically" rather than just with "deliberate indifference."

Barrett on Criminal Due Process Rights. Barrett wrote a dissent in *Sims v. Hyatte*,[33] a lawsuit involving federal review of state court decisions on identification of a shooter in an attempted murder case. This is a difficult case, but given the deference that federal courts must give to state courts in a case such as this, Barrett made the correct decision.

Barrett on Affirmance of Non-Asylum. Barrett wrote a majority opinion *Alvarenga-Flores v. Sessions*,[34] affirming the lower Board of Immigration's affirmance of the Immigration Judge's decision to deport an immigrant because of inconsistencies in his claim of asylum. The dissent thought the discrepancies of the applicant were not material and explainable. Barrett pointed out that the standard for overturning the lower findings requires "extraordinary circumstances" which were not present in this case.

The evidence in favor of the lower finding was: (1) a discrepancy between two defendant statements about where his friend was sitting during the alleged taxi attack, (2) a discrepancy between two statements about where attackers entered the bus during the alleged bus attack, and (3) the alleged corroborating statements of parents were in ***English*** – even though his parent did ***not speak English***. Barrett was correct to defer to the trial judge who was able to evaluate witness credibility first-hand.

Interestingly, *The Chicago Tribune* reported: "[a]mong those arrested in Indianapolis by ERO officials is a Salvadoran man identified in the statement as Gerson Eliseo Alvarenga-Flores, 27. Alvarenga-Flores was in search and capture in El Salvador for being ***a member of a gang***."[35]

Barrett on Sixth Amendment Assistance of Counsel. Barrett wrote a dissent in *Schmidt v. Foster*, deferring to the Wisconsin Court of Appeal that the defendant was not denied assistance

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[32] *Id*. at 671.
[33] *Sims v. Hyatte*, 914 F.3d 1078 (7th Cir. 2018).
[34] *Alvarenga-Flores v. Sessions*, 901 F.3d 922 (7th Cir. 2018).
[35] Marina Klauke, *Immigration and US Marshals arrest 45 international fugitives*, Chicago Tribune, June 24, 2016; available at https://www.chicagotribune.com/hoy/ct-hoy-8655138-inmigracion-y-us-marshals-arrestan-45-fugitivos-internacionales-story.html

Another interesting note is that the immigrant testified that he fled El Salvador for fear of being murdered, yet he says he travelled through multiple countries and travelled thousands of miles through the southern United States, all the way to Indianapolis, to allegedly escape his killers. The defendant alleged asylum path travelled through neighboring Guatemala, Southern Mexico, roughly 1,500 miles to the United States border. He then travelled through the U.S. at least another 1,400 miles to Indianapolis all to escape his alleged killers?

Moreover, it would be interesting to learn where the defendant went when he was deported: did he return to his hometown – where he alleges he fled to avoid murder – or did he flee to another country? If he returned to his hometown and remained there it would certainly undercut his claim that he needed asylum to prevent his murder.

of counsel. Schmidt admitted to shooting his wife seven times and murdering her, yet he claimed he was "adequately provoked" which would reduce the murder from first to second degree. The judge in the case received testimony on this point in a hearing without the prosecuting attorney, but with defense counsel in attendance without speaking (defense counsel did not object). Later, Schmidt claimed he was denied counsel in violation of the Sixth Amendment. The Wisconsin Court disagreed and Barrett wrote that since the U.S. Supreme Court has not address this exact issue, she was required to defer to the Wisconsin Court. Barrett wrote:

> "Perhaps the right to counsel should extend to a hearing like the one the judge conducted in Schmidt's case. But AEDPA precludes us from disturbing a state court's judgment on the ground that a state court decided an open question differently than we would – or, for that matter, differently than we think the Court would. Because the Court has never addressed the question that the Wisconsin Court of Appeals faced, there was no clearly established precedent for it to flout."

Although Barrett was in the minority of three judges in the above case, the state asked the entire Seventh Circuit to hear the case *en banc* which they did and reversed by a 7-3 majority. The e*n banc* decision took a slightly different approach than Barrett, but Barrett joined the opinion.[36]

Barrett on Consular Officer Denial for Attempted Smuggling of Children. Barrett wrote a majority panel decision and an *en banc* majority concurring opinion in *Yafai v. Pompeo*,[37] deferring to the consular officer who denied a visa application of a non-citizen woman from Yemen, married to a U.S. citizen because the woman "attempted to smuggle two children into the United States …."[38] Barrett's ruling was in fact a very simple ruling that followed Supreme Court precedent and deferred to the Executive Branch, consular officer who was best positioned to make the call. Barrett explained:

> "*Yafai* is about the amount of explanation that a consular official must provide when he denies a visa application that affects the constitutional right of an American citizen. The Supreme Court has held that, absent a showing of bad faith, a consular officer need only cite to a statute under which the application is denied. See *Kerry v. Din*, 135 S. Ct. 2128 (2015) (Kennedy, J., concurring); *Trump v. Hawaii*, 138 S. Ct. 2392, 2419 (2018). The officer in *Yafai* did that, but our dissenting colleagues would require more. They are not alone in pressing that argument: Supreme Court justices have made the same point in dissents from the controlling cases. The Court has repeatedly rejected it, however, so we are required to reject it too."[39]

The dissents in this case can only be described as dishonest and perhaps a calculated political attack against Barrett to harm her Supreme Court prospects. The panel dissent makes the irresponsible and unsupported claim:

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[36] *Schmidt v. Foster*, 911 F.3d 469 (7th Cir. 2018).
[37] Barrett's majority panel opinion is *Yafai v. Pompeo*, 912 F.3d 1018 (7th Cir. 2019), and her *En Banc* opinion is 924 F.3d 969 (7th Cir. 2019).
[38] *Yafai v. Pompeo*, 924 F.3d at 970.
[39] *Yafai v. Pompeo*, 924 F.3d at 970.

> On this record, we cannot tell whether the adjudicating officer undertook a careful examination or whether, without any examination, he simply issued a denial based solely on ***a generalized, stereotypical assumption of what, in his view, happens in that country***.[40]

There was zero evidence presented – zero – that the consular officer acted on a "stereotypical assumption of what, in his view, happens that country" and the dissenting judge had no basis to raise such speculation about the character of the executive officer. One thing is certain, observers – liberal opponents of Barrett to be more precise – were quick to cite the dissenting judge and to extend the unsupported speculation that the officer "may have merely relied on a 'stereotypical assumption' that Yeminis commit crimes."[41]

The *En Banc* dissent continued the baseless dishonest narrative:

> "Is it true that a consular officer has unfettered authority to reject a visa application, no matter what the reason – ***bias against a religious group, a bad headache, a unilateral decision that people from the country where the officer is stationed are undesirables***, or (at best) a solid factual basis for the decision – without any check from the courts? The panel majority in this case (despite its protestations to the contrary) says 'yes.'"[42]

Despite the above speculation, there is no evidence of bias in the record. In fact, the plaintiff themselves do not even claim there was any bias. Barrett explains:

> "[The plaintiffs] did not contend that the officer's decision resulted from ***racial, religious, political, or any other kind of bias***. Instead, their claim sounds in procedural due process …."[43]

But the record does not prevent the dishonest dissenting judges' from attempting to insert bias into the case. This was a simple matter of a consular officer finding that the plaintiff ***lied*** to the United States government and attempted to ***smuggle children into the country***. Trafficking of children is no small matter. For the judicial branch, this was a matter of a court simply deferring to the executive as required by Supreme Court precedent. Barrett concluded:

> The Supreme Court has repeatedly held that a citation to a statutory provision suffices to show a legitimate and bona fide reason for denying a visa application. It [the Supreme Court] is free to revisit that precedent, but we [a lower court] are not.[44]

Barrett on Immigration Enforcement. In *Ramos v. Barr*,[45] Barrett joined Diane Sykes in a simple one paragraph decision lifting the stay on the removal of an illegal alien since he was unlikely to prevail on the merits. Liberal Judge Hamilton dissented but essentially admitted that Ramos did not meet the legal standard. The legal standard required Ramos to prove he ***was likely***

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[40] *Yafai v. Pompeo*, 912 F.3d at 1030.
[41] Mark Joseph Stern, *Trump Bench: Amy Coney Barrett*, Slate.com, Jan 14, 2020; available at https://slate.com/news-and-politics/2020/01/trump-bench-amy-coney-barrett-7th-circuit.html
[42] *Yafai v. Pompeo*, 924 F.3d at 975 (emphasis added).
[43] *Yafai v. Pompeo*, 924 F.3d at 970.
[44] *Yafai v. Pompeo*, 924 F.3d at 974.
[45] *Ramos v. Barr*, No. 19-1728 (7th Cir. Jun. 5, 2019).

to prevail on the merits, but the best Judge Hamilton chose a radically different standard and said "it is ***not im***possible" for Ramos to prevail.[46]

A later panel opinion on the merits of the same case affirmed Barrett's decision:

> The statutory scheme of which Mr. Lopez complains survives the rational basis test. The Government has offered a plausible rationale for the distinction between children of one citizen parent and one noncitizen parent and children of two noncitizen, naturalizing parents. Accordingly, the decision of the BIA [Board of Immigration Appeals] is affirmed.[47]

Other Speeches: The following are other speeches by Barrett that give insight into the type of judge she would be:

- Notre Dame Club Speech, February 19, 2019, "A Conversation with Amy Coney Barrett," The Notre Dame Club of Washington, D.C. (interview about family, life with insight to temperament, values and character).
  https://www.youtube.com/watch?v=0HMAHnT-y7c

- Hillsdale Speech on May 21, 2019:
  https://www.youtube.com/watch?v=j0ZN532f9d0&list=PL75EF7AFBDBB663B7

- James Madison Program: The Constitution as Our Story, October 17, 2019:
  https://jmp.princeton.edu/events/constitution-our-story

- Heritage Interview, SCOTUS 101, on February 28, 2020, "The Dogma Lives Loudly with this Podcast"
  https://www.heritage.org/courts/commentary/scotus-101-the-dogma-lives-loudly-podcast from 15:10 – 32:42.

[46] *Ramos v. Barr,* No. 19-1728 (7th Cir. Jun. 5, 2019).
[47] *Ramon v. Barr,* 942 F.3d 376, 383 (2019).