UNITED STATES

REPORTS

546

OCT. TERM 2005

UNITED STATES REPORTS

VOLUME 546

CASES ADJUDGED

IN

THE SUPREME COURT

AT

OCTOBER TERM, 2005

BEGINNING OF TERM

OCTOBER 3, 2005, THROUGH FEBRUARY 27, 2006

TOGETHER WITH OPINION OF INDIVIDUAL JUSTICE IN CHAMBERS

FRANK D. WAGNER

REPORTER OF DECISIONS

WASHINGTON : 2008

Printed on Uncoated Permanent Printing Paper

For sale by the U. S. Government Printing Office
Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328

JUSTICES

OF THE

SUPREME COURT

DURING THE TIME OF THESE REPORTS

JOHN G. ROBERTS, JR., CHIEF JUSTICE.
JOHN PAUL STEVENS, ASSOCIATE JUSTICE.
SANDRA DAY O'CONNOR, ASSOCIATE JUSTICE.[1]
ANTONIN SCALIA, ASSOCIATE JUSTICE.
ANTHONY M. KENNEDY, ASSOCIATE JUSTICE.
DAVID H. SOUTER, ASSOCIATE JUSTICE.
CLARENCE THOMAS, ASSOCIATE JUSTICE.
RUTH BADER GINSBURG, ASSOCIATE JUSTICE.
STEPHEN BREYER, ASSOCIATE JUSTICE.
SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE.[2]

OFFICERS OF THE COURT

ALBERTO R. GONZALES, ATTORNEY GENERAL.
PAUL D. CLEMENT, SOLICITOR GENERAL.
WILLIAM K. SUTER, CLERK.
FRANK D. WAGNER, REPORTER OF DECISIONS.
PAMELA TALKIN, MARSHAL.
JUDITH A. GASKELL, LIBRARIAN.

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[1] JUSTICE O'CONNOR announced her retirement on July 1, 2005, "effective upon the nomination and confirmation of my successor."

[2] The Honorable Samuel A. Alito, Jr., of New Jersey, formerly a judge of the United States Court of Appeals for the Third Circuit, was nominated by President Bush on October 31, 2005, to be an Associate Justice of this Court; the nomination was confirmed by the Senate on January 31, 2006; he was commissioned and took the oaths of office and his seat on the same date. He was presented to the Court on February 16, 2006. See *post*, p. VII.

SUPREME COURT OF THE UNITED STATES

Allotment of Justices

It is ordered that the following allotment be made of the Associate Justices of this Court among the circuits, pursuant to Title 28, United States Code, Section 42, and that such allotment be entered of record, effective September 7, 2005, viz.:

For the District of Columbia Circuit, Ruth Bader Ginsburg, Associate Justice.

For the First Circuit, David H. Souter, Associate Justice.

For the Second Circuit, Ruth Bader Ginsburg, Associate Justice.

For the Third Circuit, David H. Souter, Associate Justice.

For the Fourth Circuit, Clarence Thomas, Associate Justice.

For the Fifth Circuit, Antonin Scalia, Associate Justice.

For the Sixth Circuit, John Paul Stevens, Associate Justice.

For the Seventh Circuit, John Paul Stevens, Associate Justice.

For the Eighth Circuit, Clarence Thomas, Associate Justice.

For the Ninth Circuit, Sandra Day O'Connor, Associate Justice.

For the Tenth Circuit, Stephen Breyer, Associate Justice.

For the Eleventh Circuit, Anthony M. Kennedy, Associate Justice.

For the Federal Circuit, Stephen Breyer, Associate Justice.

September 7, 2005.

(For next previous allotment, see 512 U. S., p. vi.)

(For next subsequent allotment, see *post*, p. v.)

SUPREME COURT OF THE UNITED STATES

ALLOTMENT OF JUSTICES

It is ordered that the following allotment be made of the Chief Justice and Associate Justices of this Court among the circuits, pursuant to Title 28, United States Code, Section 42, and that such allotment be entered of record, effective October 11, 2005, viz.:

For the District of Columbia Circuit, JOHN G. ROBERTS, JR., Chief Justice.

For the First Circuit, DAVID H. SOUTER, Associate Justice.

For the Second Circuit, RUTH BADER GINSBURG, Associate Justice.

For the Third Circuit, DAVID H. SOUTER, Associate Justice.

For the Fourth Circuit, JOHN G. ROBERTS, JR., Chief Justice.

For the Fifth Circuit, ANTONIN SCALIA, Associate Justice.

For the Sixth Circuit, JOHN PAUL STEVENS, Associate Justice.

For the Seventh Circuit, JOHN PAUL STEVENS, Associate Justice.

For the Eighth Circuit, CLARENCE THOMAS, Associate Justice.

For the Ninth Circuit, SANDRA DAY O'CONNOR, Associate Justice.

For the Tenth Circuit, STEPHEN BREYER, Associate Justice.

For the Eleventh Circuit, ANTHONY M. KENNEDY, Associate Justice.

For the Federal Circuit, JOHN G. ROBERTS, JR., Chief Justice.

October 11, 2005.

(For next previous allotment, see 545 U. S., p. VI.)

(For next subsequent allotment, see *post*, p. VI.)

SUPREME COURT OF THE UNITED STATES

ALLOTMENT OF JUSTICES

It is ordered that the following allotment be made of the Chief Justice and Associate Justices of this Court among the circuits, pursuant to Title 28, United States Code, Section 42, and that such allotment be entered of record, effective February 1, 2006, viz.:

For the District of Columbia Circuit, JOHN G. ROBERTS, JR., Chief Justice.

For the First Circuit, DAVID H. SOUTER, Associate Justice.

For the Second Circuit, RUTH BADER GINSBURG, Associate Justice.

For the Third Circuit, DAVID H. SOUTER, Associate Justice.

For the Fourth Circuit, JOHN G. ROBERTS, JR., Chief Justice.

For the Fifth Circuit, ANTONIN SCALIA, Associate Justice.

For the Sixth Circuit, JOHN PAUL STEVENS, Associate Justice.

For the Seventh Circuit, JOHN PAUL STEVENS, Associate Justice.

For the Eighth Circuit, SAMUEL A. ALITO, JR., Associate Justice.

For the Ninth Circuit, ANTHONY M. KENNEDY, Associate Justice.

For the Tenth Circuit, STEPHEN BREYER, Associate Justice.

For the Eleventh Circuit, CLARENCE THOMAS, Associate Justice.

For the Federal Circuit, JOHN G. ROBERTS, JR., Chief Justice.

February 1, 2006.

(For next previous allotment, see *ante*, p. v.)

APPOINTMENT OF JUSTICE ALITO

SUPREME COURT OF THE UNITED STATES

THURSDAY, FEBRUARY 16, 2006

Present: CHIEF JUSTICE ROBERTS, JUSTICE SCALIA, JUSTICE KENNEDY, JUSTICE SOUTER, JUSTICE THOMAS, JUSTICE GINSBURG, JUSTICE BREYER, and JUSTICE ALITO.

THE CHIEF JUSTICE said:

This special sitting of the Court is held today to receive the Commission of the newly appointed Associate Justice of the Supreme Court of the United States, Samuel A. Alito, Jr. The Court now recognizes the Attorney General of the United States, Alberto Gonzales.

Attorney General Gonzales said:

MR. CHIEF JUSTICE, and may it please the Court. I have the Commission which has been issued to the Honorable Samuel A. Alito, Jr., as an Associate Justice of the Supreme Court of the United States. The Commission has been duly signed by the President of the United States and attested by me as the Attorney General of the United States. I move that the Clerk read the Commission and that it be made part of the permanent records of this Court.

THE CHIEF JUSTICE said:

Thank you, General Gonzales, your motion is granted. Mr. Clerk, will you please read the Commission?

The Clerk read the Commission:

GEORGE W. BUSH,

PRESIDENT OF THE UNITED STATES OF AMERICA,

To all who shall see these Presents, Greeting:

KNOW YE; That reposing special trust and confidence in the Wisdom, Uprightness, and Learning of Samuel A. Alito, Jr., of New Jersey, I have nominated, and, by and with the advice and consent of the Senate, do appoint him an Associate Justice of the Supreme Court of the United States, and do authorize and empower him to execute and fulfill the duties of that Office according to the Constitution and Laws of the said United States, and to Have and to Hold the said Office, with all the powers, privileges and emoluments to the same of right appertaining, unto Him, the said Samuel A. Alito, Jr., during his good behavior.

In testimony whereof, I have caused these Letters to be made patent and the seal of the Department of Justice to be hereunto affixed.

Done at the City of Washington, this thirty-first day of January, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirtieth.

[SEAL] GEORGE W. BUSH

By the President:

ALBERTO GONZALES,
Attorney General

THE CHIEF JUSTICE said:

I now ask the Deputy Clerk of the Court to escort Justice Alito to the bench.

THE CHIEF JUSTICE said:

Are you ready to take the oath?

Justice Alito said:

I am.

THE CHIEF JUSTICE said:

Raise your right hand and repeat after me.

Justice Alito said:

I, Samuel A. Alito, Jr., do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as an Associate Justice of the Supreme Court of the United States under the Constitution and laws of the United States. So help me God.

SAMUEL A. ALITO, JR.

Subscribed and sworn to before me this sixteenth day of February, 2006.

JOHN G. ROBERTS, JR.
Chief Justice

THE CHIEF JUSTICE said:

JUSTICE ALITO, on behalf of all the members of the Court, it is my pleasure to extend to you a very warm welcome as the 110th Justice of the Supreme Court of the United States, and to wish you a long and happy career in our common calling.

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CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 2005

DYE *v.* HOFBAUER, WARDEN

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

No. 04–8384. Decided October 11, 2005

After petitioner Dye's state convictions for murder and firearm possession were affirmed on appeal, he was denied habeas relief in Federal District Court. Ultimately, the Sixth Circuit affirmed, holding that, although Dye had raised a prosecutorial misconduct claim in state court, the record did not show that it was presented as a violation of a federal right; and concluding that, even had Dye properly raised the claim in state court, the habeas petition's prosecutorial misconduct allegations were too vague and general to be considered fairly presented.

Held: Dye's federal claim was properly raised in state court, and his federal habeas petition presented that claim with sufficient clarity. Contrary to the Sixth Circuit's holding, the District Court record contains the brief Dye filed in state court, which sets out the federal claim, outlining specific prosecutorial misconduct allegations and citing the Fifth and Fourteenth Amendments and several relevant federal cases. That brief was clear that the prosecutorial misconduct claim was based, at least in part, on a federal right. The Sixth Circuit's alternative holding is also incorrect. The federal habeas petition made clear and repeated references to an appended supporting brief, which presented Dye's federal prosecutorial misconduct claim with more than sufficient particularity.

Certiorari granted; 111 Fed. Appx. 363, reversed and remanded.

PER CURIAM.

Tried by a jury for the third time, petitioner Paul Allen Dye was convicted in the Recorders Court in Detroit, Michigan, on two counts of murder and one count of possession of a firearm during commission of a felony. His defense in each of his three trials was that the crimes were committed by one of the prosecution's key witnesses, who was present at the scene of the crimes.

The Michigan Court of Appeals upheld the convictions on direct review, *People* v. *Dye*, No. 136707 (Nov. 28, 1995) *(per curiam)*, App. to Pet. for Cert. 109, and further review was denied by the Supreme Court of Michigan, *People* v. *Dye*, 453 Mich. 852, 551 N. W. 2d 189 (1996). Petitioner sought relief in habeas corpus in the United States District Court for the Eastern District of Michigan, alleging various federal constitutional claims. Denied relief, petitioner appealed to the United States Court of Appeals for the Sixth Circuit.

Over the next five years, the Court of Appeals issued various orders and two opinions in the case. 45 Fed. Appx. 428 (CA6 2002) *(Dye I);* 111 Fed. Appx. 363 (CA6 2004) *(Dye II)*. In *Dye I*, a majority of a divided three-judge panel ruled the state prosecutor had engaged in flagrant misconduct during the jury trial. On this ground it reversed the District Court's order denying habeas relief. The panel did not address petitioner's other claims. 45 Fed. Appx., at 428, n. 1.

Respondent moved for panel or en banc rehearing. In the time between this motion and its disposition one of the judges in the majority retired, and the record was returned to the District Court.

In *Dye II*, a reconstituted panel granted the petition for rehearing and ruled in favor of respondent. In an opinion authored by the original panel's dissenting judge, the Court of Appeals held that, although Dye had raised a prosecutorial misconduct claim in state court, the record did not show that he presented it there as a violation of a federal right. "Because the brief filed by the petitioner in his direct appeal to

the Michigan Court of Appeals is not in the record, we have no way of determining exactly how he framed the issue in state court." 111 Fed. Appx., at 364. As further support for its conclusion, the panel noted the Michigan Court of Appeals' decision analyzed the relevant claim only in terms of state law. The panel concluded, moreover, it would decline to address the claim even if Dye had properly raised it in state court because the federal habeas corpus petition's allegations were too vague and general to be considered fairly presented. *Ibid.* Stating that its previous opinion, *Dye I*, had disposed of any remaining claims, the *Dye II* panel vacated the prior judgment and affirmed the District Court's denial of the habeas corpus petition.

Dye seeks review here. There are two errors in *Dye II* meriting reversal of the judgment.

First, the Court of Appeals was incorrect in *Dye II* to conclude that, when seeking review in the state appellate court, petitioner failed to raise the federal claim based on prosecutorial misconduct. The Court of Appeals examined the opinion of the state appellate court and noted that it made no mention of a federal claim. That, however, is not dispositive. Failure of a state appellate court to mention a federal claim does not mean the claim was not presented to it. "It is too obvious to merit extended discussion that whether the exhaustion requirement . . . has been satisfied cannot turn upon whether a state appellate court chooses to ignore in its opinion a federal constitutional claim squarely raised in petitioner's brief in the state court . . . ." *Smith* v. *Digmon*, 434 U. S. 332, 333 (1978) *(per curiam)*.

Contrary to the holding of the Court of Appeals, the District Court record contains the brief petitioner filed in state court, and the brief sets out the federal claim. The fourth argument heading in his brief before the Michigan Court of Appeals states: "THE PROSECUTOR DENIED DEFENDANT DUE PROCESS OF LAW AND A FAIR TRIAL BY NUMEROUS INSTANCES OF MISCON-

DUCT." App. to Pet. for Cert. 80 (capitalization in original). Outlining specific allegations of prosecutorial misconduct, the text of the brief under this argument heading cites the Fifth and Fourteenth Amendments to the Constitution of the United States. It further cites the following federal cases, all of which concern alleged violations of federal due process rights in the context of prosecutorial misconduct: *Donnelly* v. *DeChristoforo,* 416 U. S. 637 (1974); *Berger* v. *United States,* 295 U. S. 78 (1935); *United States* v. *Valentine,* 820 F. 2d 565 (CA2 1987); *United States* v. *Burse,* 531 F. 2d 1151 (CA2 1976).

This is not an instance where the habeas petitioner failed to "apprise the state court of his claim that the . . . ruling of which he complained was not only a violation of state law, but denied him the due process of law guaranteed by the Fourteenth Amendment." *Duncan* v. *Henry,* 513 U. S. 364, 366 (1995) *(per curiam).* Nor is this a case where a state court needed to look beyond "a petition or a brief (or a similar document)" to be aware of the federal claim. *Baldwin* v. *Reese,* 541 U. S. 27, 32 (2004). The state-court brief was clear that the prosecutorial misconduct claim was based, at least in part, on a federal right. It was error for the Court of Appeals to conclude otherwise.

A second reason the *Dye II* panel denied relief was that the habeas petition filed in the United States District Court presented the prosecutorial misconduct claim in too vague and general a form. This alternative holding cannot rescue the *Dye II* judgment, for it, too, is incorrect. The habeas corpus petition made clear and repeated references to an appended supporting brief, which presented Dye's federal claim with more than sufficient particularity. See Fed. Rules Civ. Proc. 81(a)(2), 10(c). As the prosecutorial misconduct claim was presented properly, it, and any other federal claims properly presented, should be addressed by the Court of Appeals on remand.

The motion to proceed *in forma pauperis* and the petition for certiorari are granted. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Per Curiam

SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS *v.* SMITH

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

No. 04–1475. Decided October 17, 2005

Respondent Smith was convicted of murder, kidnaping, and sexual assault and was sentenced to death. His conviction and sentence were affirmed on direct appeal, and state postconviction relief was denied. In none of these proceedings did Smith argue that he was mentally retarded or that such retardation made him ineligible for the death penalty. Smith then sought federal habeas relief. After this Court's decision in *Atkins* v. *Virginia*, 536 U. S. 304, Smith began to assert that he is mentally retarded and cannot, under *Atkins*, be executed. The Ninth Circuit ordered suspension of all federal habeas proceedings, directed Smith to institute proceedings in the proper Arizona trial court, and ordered that the issue whether Smith is mentally retarded be determined by jury trial.

Held: The Ninth Circuit exceeded its limited habeas authority in commanding the Arizona courts to conduct a jury trial to resolve Smith's mental retardation claim. *Atkins* makes clear that "the task of developing appropriate ways to enforce the constitutional restriction upon [States'] execution of sentences" falls to the States in the first instance. 536 U. S., at 317.

Certiorari granted; vacated and remanded.

PER CURIAM.

In 1982, an Arizona jury convicted respondent Robert Douglas Smith of first-degree murder, kidnaping, and sexual assault. He was sentenced to death. The convictions and sentence were affirmed on direct appeal, and Smith's state petitions for postconviction relief proved unsuccessful. Smith then filed a petition for a writ of habeas corpus in the United States District Court for the District of Arizona. In none of these proceedings did Smith argue that he was mentally retarded or that his mental retardation made him ineligible for the death penalty. Smith had, however, presented

evidence in mitigation during the sentencing phase of his trial showing that he had low intelligence.

The District Court denied Smith's petition for habeas corpus in 1996. Following several rounds of appeals, remands, and petitions for certiorari to this Court (including one successful petition by the State, see *Stewart* v. *Smith*, 536 U. S. 856 (2002) *(per curiam)*), and after we had issued our decision in *Atkins* v. *Virginia*, 536 U. S. 304 (2002), the case returned to the Ninth Circuit. Shortly thereafter, Smith asserted in briefing that he is mentally retarded and cannot, under *Atkins*, be executed. The Ninth Circuit ordered suspension of all federal habeas proceedings and directed Smith to "institute proceedings in the proper trial court of Arizona to determine whether the state is prohibited from executing [Smith] in accordance with *Atkins*." App. to Pet. for Cert. A–2. The court further ordered that the issue whether Smith is mentally retarded must "be determined . . . by a jury trial unless the right to a jury is waived by the parties." *Ibid.*

The State's petition for certiorari is granted,* the judgment of the Court of Appeals is vacated, and the case is remanded. The Ninth Circuit erred in commanding the Arizona courts to conduct a jury trial to resolve Smith's mental retardation claim. *Atkins* stated in clear terms that "'we leave to the State[s] the task of developing appropriate ways to enforce the constitutional restriction upon [their] execution of sentences.'" 536 U. S., at 317 (quoting *Ford* v. *Wainwright*, 477 U. S. 399, 416–417 (1986); modifications in original). States, including Arizona, have responded to that challenge by adopting their own measures for adjudicating claims of mental retardation. While those measures might, in their application, be subject to constitutional challenge, Arizona had not even had a chance to apply its chosen proce-

*Smith's motion to proceed *in forma pauperis* is also granted.

dures when the Ninth Circuit pre-emptively imposed its jury trial condition.

Because the Court of Appeals exceeded its limited authority on habeas review, the judgment below is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

KANE, WARDEN *v.* GARCIA ESPITIA

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

No. 04–1538. Decided October 31, 2005

Respondent, a *pro se* criminal defendant, received no law library access while in jail before trial and only about four hours of access during trial. The California courts rejected his claim that such restricted access violated the Sixth Amendment. The Federal District Court subsequently denied him habeas relief, but the Ninth Circuit reversed, holding that his lack of pretrial access to law books violated his constitutional right to self-representation as established in *Faretta* v. *California*, 422 U. S. 806.

Held: The Ninth Circuit erred in holding, based on *Faretta*, that a violation of a law library access right is a basis for federal habeas relief. A necessary condition for such relief is that the state-court decision be "contrary to, or involv[e] an unreasonable application of, clearly established Federal law, as determined by" this Court. 28 U. S. C. § 2254(d)(1). While *Faretta* establishes a Sixth Amendment right to self-representation, it does not "clearly establis[h]" a law library access right.

Certiorari granted; 113 Fed. Appx. 802, reversed and remanded.

PER CURIAM.

Respondent Garcia Espitia, a criminal defendant who chose to proceed *pro se*, was convicted in California state court of carjacking and other offenses. He had received no law library access while in jail before trial—despite his repeated requests and court orders to the contrary—and only about four hours of access during trial, just before closing arguments. (Of course, he had declined, as was his right, to be represented by a lawyer with unlimited access to legal materials.) The California courts rejected his argument that his restricted library access violated his Sixth Amendment rights. Once his sentence became final, he petitioned in Federal District Court for a writ of habeas corpus under 28 U. S. C. § 2254. The District Court denied relief, but the

Court of Appeals for the Ninth Circuit reversed, holding that "the lack of any pretrial access to lawbooks violated Espitia's constitutional right to represent himself as established by the Supreme Court in *Faretta* [v. *California*, 422 U. S. 806 (1975)]." *Garcia Espitia* v. *Ortiz*, 113 Fed. Appx. 802, 804 (2004). The warden's petition for certiorari and respondent's motion for leave to proceed *in forma pauperis* are granted, the judgment below is reversed, and the case is remanded.

A necessary condition for federal habeas relief here is that the state court's decision be "contrary to, or involv[e] an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." § 2254(d)(1). Neither the opinion below, nor any of the appellate cases it relies on, identifies a source in our case law for the law library access right other than *Faretta*. See *id.*, at 804 (relying on *Bribiesca* v. *Galaza*, 215 F. 3d 1015, 1020 (CA9 2000) (quoting *Milton* v. *Morris*, 767 F. 2d 1443, 1446 (CA9 1985))); *ibid.* ("*Faretta* controls this case").

The federal appellate courts have split on whether *Faretta*, which establishes a Sixth Amendment right to self-representation, implies a right of the *pro se* defendant to have access to a law library. Compare *Milton*, *supra*, with *United States* v. *Smith*, 907 F. 2d 42, 45 (CA6 1990) ("[B]y knowingly and intelligently waiving his right to counsel, the appellant also relinquished his access to a law library"); *United States ex rel. George* v. *Lane*, 718 F. 2d 226, 231 (CA7 1983) (similar). That question cannot be resolved here, however, as it is clear that *Faretta* does not, as § 2254(d)(1) requires, "clearly establis[h]" the law library access right. In fact, *Faretta* says nothing about any specific legal aid that the State owes a *pro se* criminal defendant. The *Bribiesca* court and the court below therefore erred in holding, based on *Faretta*, that a violation of a law library access right is a basis for federal habeas relief.

The judgment below is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

EBERHART *v.* UNITED STATES

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

No. 04–9949. Decided October 31, 2005

On the last day available for post-trial motions after petitioner's conviction for conspiring to distribute cocaine, he moved for, *inter alia*, a new trial, raising a single ground for relief. Nearly six months later, he raised two additional grounds in a "supplemental memorandum." The District Court cited all three grounds in granting his motion. On appeal, the Government argued, for the first time, that the District Court had abused its discretion because Federal Rule of Criminal Procedure 33(b)(2) provides that any new trial motion "grounded on any reason other than newly discovered evidence must be filed within 7 days after the verdict or finding of guilty," and Rule 45(b)(2) provides that courts "may not extend" that time "except as stated" in Rule 33 itself. The Seventh Circuit reversed, finding that the District Court had lacked jurisdiction to grant a new trial. It relied on *United States* v. *Robinson*, 361 U. S. 220, and *United States* v. *Smith*, 331 U. S. 469, but expressed some misgiving that those cases had been undermined by *Kontrick* v. *Ryan*, 540 U. S. 443, in which this Court construed Federal Rules of Bankruptcy Procedure paralleling Rules 33 and 45 to be nonjurisdictional claim-processing rules that may be forfeited if not properly raised.

Held: Because the time prescriptions in Rules 33 and 45 are nonjurisdictional, claim-processing rules, the Government forfeited its untimeliness defense by failing to raise it until after the District Court had reached the merits. It is implausible that the Bankruptcy Rules construed in *Kontrick* can be claim-processing rules, while virtually identical Rules of Criminal Procedure can deprive federal courts of subject-matter jurisdiction. Nothing in Rules 33 and 45 or in this Court's cases requires such a dissonance. This result does not require the Court to overrule *Robinson* or *Smith*, which did not address the effect of untimely arguments in support of a motion for new trial when, as here, the district court is still considering post-trial motions and the case has not yet been appealed. Although its disposition was in error, the Seventh Circuit was prudent in adhering to its understanding of precedent while expressing grave doubts in light of *Kontrick*.

Certiorari granted; 388 F. 3d 1043, reversed and remanded.

PER CURIAM.

Federal Rule of Criminal Procedure 33(a) allows a district court to "vacate any judgment and grant a new trial if the interest of justice so requires." But "[a]ny motion for a new trial grounded on any reason other than newly discovered evidence must be filed within 7 days after the verdict or finding of guilty, or within such further time as the court sets during the 7-day period." Rule 33(b)(2). This deadline is rigid. The Rules provide that courts "may not extend the time to take any action under [Rule 33], except as stated" in Rule 33 itself. Rule 45(b)(2). The Court of Appeals for the Seventh Circuit has construed Rule 33's time limitations as "jurisdictional," permitting the Government to raise noncompliance with those limitations for the first time on appeal. 388 F. 3d 1043, 1049 (2004). However, there is "a critical difference between a rule governing subject-matter jurisdiction and an inflexible claim-processing rule." *Kontrick* v. *Ryan*, 540 U. S. 443, 456 (2004). Rule 33 is an example of the latter. We grant the petition for certiorari and the motion for leave to proceed *in forma pauperis*, and reverse the judgment of the Seventh Circuit.

I

Petitioner Ivan Eberhart was convicted of one count of conspiring to distribute cocaine. On the last day available for post-trial motions, he moved for judgment of acquittal or, in the alternative, for a new trial. That motion raised a single ground for relief—an alleged flaw in a transcript that had been published to the jury. Nearly six months later, petitioner filed a "supplemental memorandum" supporting his motion. Two additional grounds appeared in that filing—admission of potential hearsay testimony into evidence, and the District Court's failure to give a so-called "buyer-seller instruction" to the jury. 388 F. 3d, at 1047–1048. Rather than arguing, however, that the untimeliness of the supplemental memorandum barred the District Court from

considering the issues it raised, the Government opposed it on the merits.

The District Court granted the motion for a new trial, citing all three grounds raised by petitioner. The judge concluded that "'none of these concerns standing alone or in pairing would cause me to grant a new trial,'" but that taken together, they "'persuade me that the interests of justice require a new trial.'" *Id.*, at 1048. The judge also predicted that "'a new trial will quite likely lead to another conviction.'" *Ibid.*

On appeal, the Government pointed to the untimeliness of petitioner's supplemental memorandum, and argued that the District Court had abused its discretion in granting a new trial based on the arguments that the memorandum had raised. The Court of Appeals reversed the grant of a new trial, finding that the District Court had lacked jurisdiction to grant one. The Seventh Circuit observed: "The Supreme Court has held that Rule 45(b)'s prohibition on extensions of time is 'mandatory and jurisdictional.'" *Id.*, at 1049 (quoting *United States* v. *Robinson*, 361 U. S. 220, 229 (1960), and citing *United States* v. *Smith*, 331 U. S. 469, 474, n. 2 (1947)). Based on *Robinson* and *Smith*, the Seventh Circuit explained, "'[w]e have previously emphasized that [Rule 33's] 7-day period is jurisdictional, and that the court is without jurisdiction to consider even an amendment to a timely new trial motion if it is filed outside the seven day period, absent a timely extension by the court or new evidence.'" 388 F. 3d, at 1049 (quoting *United States* v. *Washington*, 184 F. 3d 653, 659 (CA7 1999)).

The Court of Appeals did, however, express some misgiving. After describing the holding of *Kontrick*, it commented that "[t]he reasoning of *Kontrick* may suggest that Rule 33's time limits are merely inflexible claim-processing rules that could be forfeited if not timely asserted." 388 F. 3d, at 1049. It concluded, however, that even if *Kontrick* had undermined *Robinson* and *Smith*, "we are bound to fol-

low them until expressly overruled by the Supreme Court." 388 F. 3d, at 1049 (citing *Agostini* v. *Felton*, 521 U. S. 203, 237 (1997)).

II

In *Kontrick*, we determined that defenses made available by the time limitations of Federal Rules of Bankruptcy Procedure 4004 and 9006 may be forfeited. 540 U. S., at 458–460. They are not "jurisdiction[al]," but are instead "claim-processing rules," that may be "unalterable on a party's application" but "can nonetheless be forfeited if the party asserting the rule waits too long to raise the point." *Id.*, at 456. In *Kontrick*, the debtor responded on the merits to a creditor's untimely objection to his discharge. He did not raise the untimeliness issue, and the court resolved the merits in favor of the creditor. On motion for reconsideration and on appeal, the debtor raised the argument that Rules 4004 and 9006 "have the same import as provisions governing subject-matter jurisdiction." *Id.*, at 455. We rejected this assertion and found that the debtor had forfeited the timeliness argument.

The Rules we construed in *Kontrick* closely parallel those at issue here. Like a defendant wishing to move for a new trial under Federal Rule of Criminal Procedure 33, a creditor wishing to object to a debtor's discharge in Chapter 7 liquidation proceedings has a set period of time to file with the court (measured, in the latter context, from "the first date set for the meeting of creditors"). Fed. Rule Bkrtcy. Proc. 4004(a). If a creditor so moves, "the court may for cause extend the time to file a complaint objecting to discharge." Rule 4004(b). And using language almost identical to Federal Rule of Criminal Procedure 45(b)(2)'s admonition that "[t]he court may not extend the time to take any action under Rules 29, 33, 34, and 35, except as stated in those rules," Bankruptcy Rule 9006(b)(3) states that "[t]he court may enlarge the time for taking action under Rules 1006(b)(2),

1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 8002, and 9033, only to the extent and under the conditions stated in those rules."

It is implausible that the Rules considered in *Kontrick* can be nonjurisdictional claim-processing rules, while virtually identical provisions of the Rules of Criminal Procedure can deprive federal courts of subject-matter jurisdiction. Nothing in Rules 33 or 45 or our cases requires such a dissonance. Moreover, our most recent decisions have attempted to brush away confusion introduced by our earlier opinions. "Clarity would be facilitated," we have said, "if courts and litigants used the label 'jurisdictional' not for claim-processing rules, but only for prescriptions delineating the classes of cases (subject-matter jurisdiction) and the persons (personal jurisdiction) falling within a court's adjudicatory authority." *Kontrick,* 540 U. S., at 455. We break no new ground in firmly classifying Rules 33 and 45 as claim-processing rules, despite the confusion generated by the "less than meticulous" uses of the term "jurisdictional" in our earlier cases. *Id.*, at 454.

The Seventh Circuit correctly identified our decisions in *Smith* and *Robinson* as the source of the confusion. 388 F. 3d, at 1049. Since we have not "expressly overruled" them, it held, petitioner's appeal had to be dismissed. *Ibid.* Those cases, however, do not hold the limits of the Rules to be jurisdictional in the proper sense that *Kontrick* describes. See 540 U. S., at 455. We need not overrule *Robinson* or *Smith* to characterize Rules 33 and 45 as claim-processing rules.

In *Smith,* the District Judge rejected a Rule 33 motion for a new trial, and the conviction was affirmed on appeal. 331 U. S., at 470. After the defendant was taken into custody, the District Judge changed his mind. Purporting to act under the authority of Rule 33, he issued an order vacating his earlier judgment and granting a new trial. *Id.*, at 471. Although we observed in a footnote that "[t]he policy of the Rules was not to extend power indefinitely but to confine

it within constant time periods," *id.*, at 473–474, n. 2, that observation hardly transforms the Rules into the keys to the kingdom of subject-matter jurisdiction. Rather, as we emphasized in the text, the District Judge could not use Rule 33 to sidestep a pre-existing basic principle of judicial process—that once a final judgment is issued and the court of appeals considers a case, a district court has no power to act on it further. This was a consequence, however, not of the Rule, but of the Rule's failure to alter prior law. *Smith* does not address the effect of untimely arguments in support of a motion for new trial when, as here, the district court is still considering post-trial motions and the case has not yet been appealed.

Nor does *Robinson* address that circumstance. Defendants were 11 days late in filing their notices of appeal under (what was then) Rule 37. The Government responded not by contesting the merits of the appeal, but by moving to dismiss on the basis of untimeliness. 361 U. S., at 221. The Court of Appeals determined that if the District Court found that the untimely notices of appeal sprang from "excusable neglect," it could allow the appeals. On remand, the District Court so found. *Id.*, at 222. We held that the Court of Appeals was wrong in having failed to dismiss under Rule 45(b). *Id.*, at 229–230. *Robinson* is correct not because the District Court lacked *subject-matter jurisdiction*, but because district courts must observe the clear limits of the Rules of Criminal Procedure when they are properly invoked. This does not mean that limits like those in Rule 33 are not forfeitable when they are *not* properly invoked. Despite its narrow and unremarkable holding, *Robinson* has created some confusion because of its observation that "courts have uniformly held that the taking of an appeal within the prescribed time is *mandatory and jurisdictional.*" *Id.*, at 229 (emphasis added). Indeed, we used the phrase "mandatory and jurisdictional" four times in the opinion. And subsequent opinions have repeated this phrase,

attributing it directly or indirectly to *Robinson*. See, *e. g.*, *Hohn* v. *United States*, 524 U. S. 236, 247 (1998); *Budinich* v. *Becton Dickinson & Co.*, 486 U. S. 196, 203 (1988); *Griggs* v. *Provident Consumer Discount Co.*, 459 U. S. 56, 61 (1982) *(per curiam)*; *Browder* v. *Director, Dept. of Corrections of Ill.*, 434 U. S. 257, 264, 271–272 (1978). But see *Houston* v. *Lack*, 487 U. S. 266, 269 (1988) (reversing an order dismissing an appeal as jurisdictionally out of time when "[n]either the District Court nor respondent suggested that the notice of appeal might be untimely"); *Thompson* v. *INS*, 375 U. S. 384, 386 (1964) *(per curiam)* (permitting appeal, when petitioner conceded that post-trial motions were served late, in part because petitioner "relied on the Government's failure to raise a claim of untimeliness when the motions were filed").

As we recognized in *Kontrick*, courts "have more than occasionally used the term 'jurisdictional' to describe emphatic time prescriptions in rules of court." 540 U. S., at 454. See also *ibid.* (citing *Robinson* as an example of when we have been "less than meticulous" in our use of the word "jurisdictional"). The resulting imprecision has obscured the central point of the *Robinson* case—that when the Government objected to a filing untimely under Rule 37, the court's duty to dismiss the appeal was mandatory. The net effect of *Robinson*, viewed through the clarifying lens of *Kontrick*, is to admonish the Government that failure to object to untimely submissions entails forfeiture of the objection, and to admonish defendants that timeliness is of the essence, since the Government is unlikely to miss timeliness defects very often.

Our more recent cases have done much to clarify this point. For instance, in *Carlisle* v. *United States*, 517 U. S. 416 (1996), we held that a court may not grant a postverdict motion for a judgment of acquittal that is untimely under Federal Rule of Criminal Procedure 29(c) *when the prosecutor objects*. As we pointedly noted in *Kontrick*, our holding in *Carlisle* did not "characterize [Rule 29] as 'jurisdic-

tional.'" 540 U. S., at 454–455. See also *Scarborough* v. *Principi*, 541 U. S. 401, 413–414 (2004) (relying on *Kontrick* to hold that time limitations on applications for attorney's fees under the Equal Access to Justice Act, 28 U. S. C. § 2412(d)(1), did not implicate subject-matter jurisdiction).

After *Kontrick*, it is difficult to escape the conclusion that Rule 33 motions are similarly nonjurisdictional. By its terms, Rule 45(b)(2) has precisely the same effect on extensions of time under Rule 29 as it does under Rule 33, and as we noted in *Kontrick*, Federal Rule of Criminal Procedure 45(b) and Bankruptcy Rule 9006(b) are both "modeled on Federal Rule of Civil Procedure 6(b)." 540 U. S., at 456, n. 10. Rule 33, like Rule 29 and Bankruptcy Rule 4004, is a claim-processing rule—one that is admittedly inflexible because of Rule 45(b)'s insistent demand for a definite end to proceedings. These claim-processing rules thus assure relief to a party properly raising them, but do not compel the same result if the party forfeits them. Here, where the Government failed to raise a defense of untimeliness until after the District Court had reached the merits, it forfeited that defense. The Court of Appeals should therefore have proceeded to the merits.

We finally add a word about the approach taken by the Court of Appeals. Although we find its disposition to have been in error, we fully appreciate that it is an error shared among the circuits, and that it was caused in large part by imprecision in our prior cases. Our repetition of the phrase "mandatory and jurisdictional" has understandably led the lower courts to err on the side of caution by giving the limitations in Rules 33 and 45 the force of subject-matter jurisdiction. Convinced, therefore, that *Robinson* and *Smith* governed this case, the Seventh Circuit felt bound to apply them, even though it expressed grave doubts in light of *Kontrick*. This was a prudent course. It neither forced the issue by upsetting what the Court of Appeals took to be our settled precedents, nor buried the issue by proceeding

in a summary fashion. By adhering to its understanding of precedent, yet plainly expressing its doubts, it facilitated our review.

* * *

The judgment of the Seventh Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

IBP, INC. *v.* ALVAREZ, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 03–1238. Argued October 3, 2005—Decided November 8, 2005*

After this Court ruled that the term "workweek" in the Fair Labor Standards Act of 1938 (FLSA) included the time employees spent walking from time clocks near a factory entrance to their workstations, *Anderson* v. *Mt. Clemens Pottery Co.*, 328 U. S. 680, 691–692, Congress passed the Portal-to-Portal Act of 1947, which, *inter alia*, excepted from FLSA coverage walking on the employer's premises to and from the location of the employee's "principal activity or activities," § 4(a)(1), and activities that are "preliminary or postliminary" to "said principal activity or activities," § 4(a)(2). The Act did not otherwise change this Court's descriptions of "work" and "workweek" or define "workday." Regulations promulgated by the Secretary of Labor shortly thereafter concluded that the Act did not affect the computation of hours within a "workday," 29 CFR § 790.6(a), which includes "the period between the commencement and completion" of the "principal activity or activities," § 790.6(b). Eight years after the enactment of the Portal-to-Portal Act and these interpretative regulations, the Court explained that the "term 'principal activity or activities' . . . embraces all activities which are 'an integral and indispensable part of the principal activities,'" including the donning and doffing of specialized protective gear "before or after the regular work shift, on or off the production line." *Steiner* v. *Mitchell*, 350 U. S. 247, 256.

In No. 03–1238, respondent employees filed a class action seeking compensation for time spent donning and doffing required protective gear and walking from the locker rooms to the production floor of a meat processing facility owned by petitioner IBP, Inc. (IBP), and back. The District Court found the activities compensable, and the Ninth Circuit affirmed. In No. 04–66, petitioner employees sought compensation for time spent donning and doffing required protective gear at a poultry processing plant operated by respondent Barber Foods, Inc. (Barber),

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*Together with No. 04–66, *Tum et al.* v. *Barber Foods, Inc., dba Barber Foods*, on certiorari to the United States Court of Appeals for the First Circuit.

as well as the attendant walking and waiting times. Barber prevailed on the walking and waiting claims. On appeal, the First Circuit found those times' preliminary and postliminary activities excluded from FLSA coverage by §§ 4(a)(1) and (2) of the Portal-to-Portal Act.

Held:

1. The time respondents in No. 03–1238 spend walking between changing and production areas is compensable under the FLSA. Pp. 30–37.

(a) Section 4(a)(1)'s text does not exclude such time from the FLSA's scope. IBP claims that, because donning is not the "principal activity" that starts the workday, walking occurring immediately after donning and immediately before doffing is not compensable. That argument, which in effect asks for a third category of activities—those that are "integral and indispensable" to a "principal activity" and thus not excluded from coverage by § 4(a)(2), but are not themselves "principal activities" as defined by § 4(a)(1)—is foreclosed by *Steiner*, which made clear that § 4 does not remove activities that are "integral and indispensable" to "principal activities" from FLSA coverage precisely because such activities are themselves "principal activities." 350 U. S., at 253. There is no plausible argument that these terms mean different things in § 4(a)(2) and in § 4(a)(1). Under the normal rule of statutory interpretation, identical words used in different parts of the same statute are generally presumed to have the same meaning; and in § 4(a)(2)'s reference to "said principal activity or activities," "said" is an explicit reference to the use of the identical term in § 4(a)(1). Pp. 33–34.

(b) Also unpersuasive is IBP's argument that Congress' repudiation of the *Anderson* holding reflects a purpose to exclude the walking time at issue. That time, which occurs after the workday begins and before it ends, is more comparable to time spent walking between two different positions on an assembly line than to the walking in *Anderson*, which occurred before the workday began. Pp. 34–35.

(c) The relevant regulations also support this view of walking. Contrary to IBP's claim, 29 CFR § 790.6 does not strictly define the workday's limits as the period from "whistle to whistle." And § 790.7(g), n. 49, which provides that postdonning walking time is not "necessarily" excluded from § 4(a)(1)'s scope, does not mean that such time is always excluded and is insufficient to overcome clear statements in the regulations' text that support the holding here. Pp. 35–37.

2. Because donning and doffing gear that is "integral and indispensable" to employees' work is a "principal activity" under the statute, the continuous workday rule mandates that the time the No. 04–66 petition-

ers spend walking to and from the production floor after donning and before doffing, as well as the time spent waiting to doff, are not affected by the Portal-to-Portal Act, and are instead covered by the FLSA. Pp. 37–40.

3. However, § 4(a)(2) excludes from the FLSA's scope the time employees spend waiting to don the first piece of gear that marks the beginning of the continuous workday. Such waiting—which is two steps removed from the productive activity on the assembly line—comfortably qualifies as a "preliminary" activity. The fact that certain preshift activities are necessary for employees to engage in their principal activities does not mean that those preshift activities are "integral and indispensable" to a "principal activity" under *Steiner*. No limiting principle allows this Court to conclude that the waiting time here is such an activity without also leading to the logical (but untenable) conclusion that the walking time in *Anderson* would also be a "principal activity" unaffected by the Portal-to-Portal Act. Title 29 CFR § 790.7(h) does not support a contrary view. Pp. 40–42.

No. 03–1238, 339 F. 3d 894, affirmed; No. 04–66, 360 F. 3d 274, affirmed in part, reversed in part, and remanded.

STEVENS, J., delivered the opinion for a unanimous Court.

Carter G. Phillips argued the cause for petitioner in No. 03–1238 and for respondent in No. 04–66. With him on the briefs in No. 03–1238 were *Joseph R. Guerra*, *Rebecca K. Wood*, *Michael J. Mueller*, and *Joel M. Cohn*. On the brief in No. 04–66 was *Graydon G. Stevens*.

Thomas C. Goldstein argued the cause for petitioners in No. 04–66 and for respondents in No. 03–1238. With him on the briefs in No. 04–66 were *Amy Howe*, *Kevin K. Russell*, *Pamela S. Karlan*, *Timothy B. Fleming*, *Lori B. Kisch*, and *William C. Nugent*. On the brief in No. 03–1238 were *David N. Mark*, *William Rutzick*, and *Kathryn Goater*.

Irving L. Gornstein argued the cause for the United States as *amicus curiae* supporting respondents in No. 03–1238 and petitioners in No. 04–66. With him on the brief were *Solicitor General Clement*, *Deputy Solicitor*

General Hungar, Howard M. Radzely, Allen H. Feldman, Steven J. Mandel, and *Michael P. Doyle.*†

JUSTICE STEVENS delivered the opinion of the Court.

These consolidated cases raise questions concerning the coverage of the Fair Labor Standards Act of 1938 (FLSA), as amended by the Portal-to-Portal Act of 1947, with respect to activities of employees who must don protective clothing on the employer's premises before they engage in the productive labor for which they are primarily hired. The principal question, which is presented in both cases, is whether the time employees spend walking between the changing area and the production area is compensable under the FLSA. The second question, which is presented only in No. 04–66, is whether the time employees spend waiting to put on the protective gear is compensable under the statute. In No. 03–1238, the Court of Appeals for the Ninth Circuit answered "yes" to the first question, 339 F. 3d 894 (2003); in No. 04–66, the Court of Appeals for the First Circuit answered "no" to both questions, 360 F. 3d 274, 281 (2004). We granted certiorari to resolve the conflict. 543 U. S. 1144 (2005).

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†A brief of *amici curiae* urging reversal in No. 04–66 was filed for the National Employment Lawyers Association et al. by *Sandra Thourot Krider, Marissa M. Tirona, Patricia A. Shiu,* and *Catherine K. Ruckelshaus.*

Briefs of *amici curiae* urging reversal in No. 03–1238 and affirmance in No. 04–66 were filed for the Chamber of Commerce of the United States of America et al. by *Samuel Estreicher, Meir Feder, Robin S. Conrad, Robert Costagliola,* and *Quentin Riegel;* and for the National Chicken Council et al. by *David R. Wylie* and *D. Christopher Lauderdale.*

Jonathan P. Hiatt, James B. Coppess, and *Laurence Gold* filed a brief for the American Federation of Labor and Congress of Industrial Organizations as *amicus curiae* urging reversal in No. 04–66 and affirmance in No. 03–1238.

I

As enacted in 1938, the FLSA, 29 U. S. C. § 201 *et seq.*, required employers engaged in the production of goods for commerce to pay their employees a minimum wage of "not less than 25 cents an hour," § 6(a)(1), 52 Stat. 1062, and prohibited the employment of any person for workweeks in excess of 40 hours after the second year following the legislation "unless such employee receives compensation for his employment in excess of [40] hours . . . at a rate not less than one and one-half times the regular rate at which he is employed," *id.*, § 7(a)(3), at 1063. Neither "work" nor "workweek" is defined in the statute.[1]

Our early cases defined those terms broadly. In *Tennessee Coal, Iron & R. Co.* v. *Muscoda Local No. 123*, 321 U. S. 590 (1944), we held that time spent traveling from iron ore mine portals to underground working areas was compensable; relying on the remedial purposes of the statute and Webster's Dictionary, we described "work or employment" as "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business." *Id.*, at 598; see *id.*, at 598, n. 11. The same year, in *Armour & Co.* v. *Wantock*, 323 U. S. 126 (1944), we clarified that "exertion" was not in fact necessary for an activity to constitute "work" under the FLSA. We pointed out that "an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen." *Id.*, at 133. Two years later, in *Anderson* v. *Mt. Clemens Pottery Co.*, 328 U. S. 680 (1946), we defined "the statutory workweek" to "includ[e] all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed workplace." *Id.*, at 690–691. Accord-

[1] The most pertinent definition provides: " 'Employ' includes to suffer or permit to work." 52 Stat. 1060, 29 U. S. C. § 203(g).

ingly, we held that the time necessarily spent by employees walking from timeclocks near the factory entrance gate to their workstations must be treated as part of the workweek. *Id.*, at 691–692.

The year after our decision in *Anderson*, Congress passed the Portal-to-Portal Act, amending certain provisions of the FLSA. Based on findings that judicial interpretations of the FLSA had superseded "long-established customs, practices, and contracts between employers and employees, thereby creating wholly unexpected liabilities, immense in amount and retroactive in operation," 61 Stat. 84, it responded with two statutory remedies, the first relating to "existing claims," *id.*, at 85–86, and the second to "future claims," *id.*, at 87–88. Both remedies distinguish between working time that is compensable pursuant to contract or custom and practice, on the one hand, and time that was found compensable under this Court's expansive reading of the FLSA, on the other. Like the original FLSA, however, the Portal-to-Portal Act omits any definition of the term "work."

With respect to existing claims, the Portal-to-Portal Act provided that employers would not incur liability on account of their failure to pay minimum wages or overtime compensation for any activity that was not compensable by either an express contract or an established custom or practice.[2]

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[2] Part II of the Portal-to-Portal Act, entitled "EXISTING CLAIMS," states in relevant part:

"SEC. 2. RELIEF FROM CERTAIN EXISTING CLAIMS UNDER THE FAIR LABOR STANDARDS ACT OF 1938 . . . —

"(a) No employer shall be subject to any liability or punishment under the Fair Labor Standards Act . . . (in any action or proceeding commenced prior to or on or after the date of the enactment of this Act), on account of the failure of such employer to pay an employee minimum wages, or to pay an employee overtime compensation, for or on account of any activity of an employee engaged in prior to the date of the enactment of this Act, except an activity which was compensable by either—

With respect to "future claims," the Act preserved potential liability for working time not made compensable by contract or custom but narrowed the coverage of the FLSA by excepting two activities that had been treated as compensable under our cases: walking on the employer's premises to and from the actual place of performance of the principal activity of the employee, and activities that are "preliminary or postliminary" to that principal activity.

Specifically, Part III of the Portal-to-Portal Act, entitled "FUTURE CLAIMS," provides in relevant part:

> "SEC. 4. RELIEF FROM CERTAIN FUTURE CLAIMS UNDER THE FAIR LABOR STANDARDS ACT OF 1938 . . . —
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> "(a) Except as provided in subsection (b) [which covers work compensable by contract or custom], no employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended, . . . on account of the failure of such employer to pay an employee minimum wages, or to pay an employee overtime compensation, for or on account of any of the following activities of such employee engaged in on or after the date of the enactment of this Act—
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> "(1) walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform, and
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> "(2) activities which are preliminary to or postliminary to said principal activity or activities,

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"(1) an express provision of a written or nonwritten contract in effect, at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer; or

"(2) a custom or practice in effect, at the time of such activity, at the establishment or other place where such employee was employed, covering such activity, not inconsistent with a written or nonwritten contract, in effect at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer." 61 Stat. 85 (codified at 29 U. S. C. § 252(a)).

> "which occur either prior to the time on any particular workday at which such employee commences, or subsequent to the time on any particular workday at which he ceases, such principal activity or activities." 61 Stat. 86–87 (codified at 29 U. S. C. § 254(a)).

Other than its express exceptions for travel to and from the location of the employee's "principal activity," and for activities that are preliminary or postliminary to that principal activity, the Portal-to-Portal Act does not purport to change this Court's earlier descriptions of the terms "work" and "workweek," or to define the term "workday." A regulation promulgated by the Secretary of Labor shortly after its enactment concluded that the statute had no effect on the computation of hours that are worked "within" the workday. That regulation states: "[T]o the extent that activities engaged in by an employee occur after the employee commences to perform the first principal activity on a particular workday and before he ceases the performance of the last principal activity on a particular workday, the provisions of [§ 4] have no application." 29 CFR § 790.6(a) (2005).[3] Simi-

[3] The regulation provides in full:

"Section 4 of the Portal Act does not affect the computation of hours worked within the 'workday' proper, roughly described as the period 'from whistle to whistle,' and its provisions have nothing to do with the compensability under the Fair Labor Standards Act of any activities engaged in by an employee during that period. Under the provisions of section 4, one of the conditions that must be present before 'preliminary' or 'postliminary' activities are excluded from hours worked is that they 'occur either prior to the time on any particular workday at which the employee commences, or subsequent to the time on any particular workday at which he ceases' the principal activity or activities which he is employed to perform. Accordingly, to the extent that activities engaged in by an employee occur after the employee commences to perform the first principal activity on a particular workday and before he ceases the performance of the last principal activity on a particular workday, the provisions of that section have no application. Periods of time between the commencement of the employee's first principal activity and the completion of his last principal activity on any workday must be included in the computation of

larly, consistent with our prior decisions interpreting the FLSA, the Department of Labor has adopted the continuous workday rule, which means that the "workday" is generally defined as "the period between the commencement and completion on the same workday of an employee's principal activity or activities." § 790.6(b). These regulations have remained in effect since 1947, see 12 Fed. Reg. 7658 (1947), and no party disputes the validity of the continuous workday rule.

In 1955, eight years after the enactment of the Portal-to-Portal Act and the promulgation of these interpretive regulations, we were confronted with the question whether workers in a battery plant had a statutory right to compensation for the "time incident to changing clothes at the beginning of the shift and showering at the end, where they must make extensive use of dangerously caustic and toxic materials, and are compelled by circumstances, including vital considerations of health and hygiene, to change clothes and to shower in facilities which state law requires their employers to provide . . . ." *Steiner* v. *Mitchell*, 350 U. S. 247, 248 (1956). After distinguishing "changing clothes and showering under normal conditions" and stressing the important health and safety risks associated with the production of batteries, *id.*, at 249, the Court endorsed the Court of Appeals' conclusion that these activities were compensable under the FLSA.

In reaching this result, we specifically agreed with the Court of Appeals that "the term 'principal activity or activities' in Section 4 [of the Portal-to-Portal Act] embraces all activities which are an 'integral and indispensable part of

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hours worked to the same extent as would be required if the Portal Act had not been enacted. The principles for determining hours worked within the 'workday' proper will continue to be those established under the Fair Labor Standards Act without reference to the Portal Act, which is concerned with this question only as it relates to time spent outside the 'workday' in activities of the kind described in section 4." § 790.6(a) (footnotes omitted).

the principal activities,' and that the activities in question fall within this category." *Id.*, at 252–253. Thus, under *Steiner*, activities, such as the donning and doffing of specialized protective gear, that are "performed either before or after the regular work shift, on or off the production line, are compensable under the portal-to-portal provisions of the Fair Labor Standards Act if those activities are an integral and indispensable part of the principal activities for which covered workmen are employed and are not specifically excluded by Section 4(a)(1)." *Id.*, at 256.

The principal question presented by these consolidated cases—both of which involve required protective gear that the courts below found integral and indispensable to the employees' work—is whether postdonning and predoffing walking time is specifically excluded by § 4(a)(1). We conclude that it is not.

II

Petitioner in No. 03–1238, IBP, Inc. (IBP), is a large producer of fresh beef, pork, and related products. At its plant in Pasco, Washington, it employs approximately 178 workers in 113 job classifications in the slaughter division and 800 line workers in 145 job classifications in the processing division. All production workers in both divisions must wear outer garments, hardhats, hairnets, earplugs, gloves, sleeves, aprons, leggings, and boots. Many of them, particularly those who use knives, must also wear a variety of protective equipment for their hands, arms, torsos, and legs; this gear includes chain link metal aprons, vests, plexiglass armguards, and special gloves. IBP requires its employees to store their equipment and tools in company locker rooms, where most of them don their protective gear.

Production workers' pay is based on the time spent cutting and bagging meat. Pay begins with the first piece of meat and ends with the last piece of meat. Since 1998, however,

IBP has also paid for four minutes of clothes-changing time.[4] In 1999, respondents, IBP employees, filed this class action to recover compensation for preproduction and postproduction work, including the time spent donning and doffing protective gear and walking between the locker rooms and the production floor before and after their assigned shifts.

After a lengthy bench trial, the District Court for the Eastern District of Washington held that donning and doffing of protective gear that was unique to the jobs at issue were compensable under the FLSA because they were integral and indispensable to the work of the employees who wore such equipment. Moreover, consistent with the continuous workday rule, the District Court concluded that, for those employees required to don and doff unique protective gear, the walking time between the locker room and the production floor was also compensable because it occurs during the workday.[5] The court did not, however, allow any recovery for ordinary clothes changing and washing, or for the "donning and doffing of hard hat[s], ear plugs, safety glasses, boots [or] hairnet[s]." App. to Pet. for Cert. in No. 03–1238, p. 65a.

The District Court proceeded to apply these legal conclusions in making detailed factual findings with regard to the different groups of employees. For example, the District

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[4] IBP does not contend that this clothes-changing time fully compensated respondents for the preproduction and postproduction time at issue in this case.

[5] The District Court explained:

"Walking time is compensable if it occurs after the start of the workday. 29 U. S. C. § 254(a). Walking time is excluded under the Portal to Portal Act only if it occurs 'either prior to the time on any particular work day at which such employee commences or subsequent to the time on any particular work day at which he ceases such principal activity or activities.' *Id.* The work day begins with the commencement of an employee's principal activity or activities and ends with the completion of the employee's activity . . . ." App. to Pet. for Cert. in No. 03–1238, pp. 53a–54a.

Court found that, under its view of what was covered by the FLSA, processing division knife users were entitled to compensation for between 12 and 14 minutes of preproduction and postproduction work, including 3.3 to 4.4 minutes of walking time.

The Court of Appeals agreed with the District Court's ultimate conclusions on these issues, but in part for different reasons. 339 F. 3d 894 (CA9 2003). After noting that the question whether activities "'are an integral and indispensable part of the principal activities'" within the meaning of *Steiner* is "context specific," 339 F. 3d, at 902, the Court of Appeals endorsed the distinction between the burdensome donning and doffing of elaborate protective gear, on the one hand, and the time spent donning and doffing nonunique gear such as hardhats and safety goggles, on the other. It did so not because donning and doffing nonunique gear are categorically excluded from being "principal activities" as defined by the Portal-to-Portal Act, but rather because, in the context of this case, the time employees spent donning and doffing nonunique protective gear was "'*de minimis* as a matter of law.'" *Id.*, at 904.

IBP does not challenge the holding below that, in light of *Steiner*, the donning and doffing of unique protective gear are "principal activities" under § 4 of the Portal-to-Portal Act. Moreover, IBP has not asked us to overrule *Steiner*. Considerations of *stare decisis* are particularly forceful in the area of statutory construction, especially when a unanimous interpretation of a statute has been accepted as settled law for several decades. Thus, the only question for us to decide is whether the Court of Appeals correctly rejected IBP's contention that the walking between the locker rooms and the production areas is excluded from FLSA coverage by § 4(a)(1) of the Portal-to-Portal Act.

IBP argues that the text of § 4(a)(1), the history and purpose of its enactment, and the Department of Labor's interpretive guidance compel the conclusion that the Portal-to-

Portal Act excludes this walking time from the scope of the FLSA. We find each of these arguments unpersuasive.

Text

IBP correctly points out that our decision in *Steiner* held only that the donning and doffing of protective gear in that case were activities "integral and indispensable" to the workers' principal activity of making batteries. 350 U. S., at 256. In IBP's view, a category of "integral and indispensable" activities that may be compensable because they are not merely preliminary or postliminary within the meaning of § 4(a)(2) is not necessarily coextensive with the actual "principal activities" which the employee "is employed to perform" within the meaning of § 4(a)(1). In other words, IBP argues that, even though the court below concluded that donning and doffing of unique protective gear are "integral and indispensable" to the employees' principal activity, this means only that the donning and doffing of such gear are themselves covered by the FLSA. According to IBP, the donning is *not* a "principal activity" that starts the workday, and the walking that occurs immediately after donning and immediately before doffing is not compensable. In effect, IBP asks us to create a third category of activities—those that are "integral and indispensable" to a "principal activity" and thus not excluded from coverage by § 4(a)(2), but that are not themselves "principal activities" as that term is defined by § 4(a)(1).

IBP's submission is foreclosed by *Steiner*. As noted above, in *Steiner* we made it clear that § 4 of the Portal-to-Portal Act does not remove activities which are "'integral and indispensable'" to "'principal activities'" from FLSA coverage precisely because such activities are themselves "'principal activities.'" *Id.*, at 253. While *Steiner* specifically addressed the proper interpretation of the term "principal activity or activities" in § 4(a)(2), there is no plausible argument that these terms mean something different in

§ 4(a)(2) than they do in § 4(a)(1).[6] This is not only because of the normal rule of statutory interpretation that identical words used in different parts of the same statute are generally presumed to have the same meaning. *E. g.*, *Sullivan* v. *Stroop*, 496 U. S. 478, 484 (1990). It is also because § 4(a)(2) refers to "*said* principal activity or activities." 61 Stat. 87 (emphasis added). The "said" is an explicit reference to the use of the identical term in § 4(a)(1).

Indeed, IBP has not offered any support for the unlikely proposition that Congress intended to create an intermediate category of activities that would be sufficiently "principal" to be compensable, but not sufficiently principal to commence the workday. Accepting the necessary import of our holding in *Steiner*, we conclude that the locker rooms where the special safety gear is donned and doffed are the relevant "place of performance" of the principal activity that the employee was employed to perform within the meaning of § 4(a)(1). Walking to that place before starting work is excluded from FLSA coverage, but the statutory text does not exclude walking from that place to another area within the plant immediately after the workday has commenced.

Purpose

IBP emphasizes that our decision in *Anderson* v. *Mt. Clemens Pottery Co.*, 328 U. S. 680, may well have been the proximate cause of the enactment of the Portal-to-Portal Act. In that case we held that the FLSA mandated compensation for the time that employees spent walking from timeclocks located near the plant entrance to their respective places of work prior to the start of their productive labor. *Id.*, at 690–691. In IBP's view, Congress' forceful repudia-

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[6] In fact, as noted above, in *Steiner* we specifically endorsed the view of the Court of Appeals that the definition of "principal activity or activities" in § 4 encompassed activities "'integral and indispensable'" to those principal activities. We did not make any distinction between § 4(a)(1) and § 4(a)(2). 350 U. S., at 253.

tion of that holding reflects a purpose to exclude what IBP regards as the quite similar walking time spent by respondents before and after their work slaughtering cattle and processing meat. Even if there is ambiguity in the statute, we should construe it to effectuate that important purpose.

This argument is also unpersuasive. There is a critical difference between the walking at issue in *Anderson* and the walking at issue in this case. In *Anderson* the walking preceded the employees' principal activity; it occurred before the workday began. The relevant walking in this case occurs after the workday begins and before it ends. Only if we were to endorse IBP's novel submission that an activity can be sufficiently "principal" to be compensable, but not sufficiently so to start the workday, would this case be comparable to *Anderson*.

Moreover, there is a significant difference between the open-ended and potentially expansive liability that might result from a rule that treated travel before the workday begins as compensable, and the rule at issue in this case. Indeed, for processing division knife users, the largest segment of the work force at IBP's plant, the walking time in dispute here consumes less time than the donning and doffing activities that precede or follow it. It is more comparable to time spent walking between two different positions on an assembly line than to the prework walking in *Anderson*.

Regulations

The regulations adopted by the Secretary of Labor in 1947 support respondents' view that when donning and doffing of protective gear are compensable activities, they may also define the outer limits of the workday. Under those regulations, the few minutes spent walking between the locker rooms and the production area are similar to the time spent walking between two different workplaces on the disassembly line. See 29 CFR § 790.7(c) (2005) (explaining that the Portal-to-Portal Act does not affect the compensability of

time spent traveling from the place of performance of one principal activity to that of another). See also § 785.38 (explaining, in a later regulation interpreting the FLSA, that "[w]here an employee is required to report at a meeting place to receive instructions or to perform other work there, or to pick up and to carry tools, the travel from the designated place to the work place is part of the day's work, and must be counted as hours worked . . . ").

IBP argues, however, that two provisions in the regulations point to a different conclusion—the use of the phrase "whistle to whistle" in discussing the limits of the "workday," § 790.6, and a footnote stating that postchanging walking time is not "necessarily" excluded from the scope of § 4(a)(1), § 790.7(g), n. 49.

The "whistle to whistle" reference does reflect the view that in most situations the workday will be defined by the beginning and ending of the primary productive activity. But the relevant text describes the workday as "*roughly* the period 'from whistle to whistle.' " § 790.6(a) (emphasis added). Indeed, the next subsection of this same regulation states: " 'Workday' as used in the Portal Act means, in general, the period between the commencement and completion on the same workday of an employee's principal activity or activities." § 790.6(b). IBP's emphasis on the "whistle to whistle" reference is unavailing.

The footnote on which IBP relies states:

> "Washing up after work, like the changing of clothes, may in certain situations be so directly related to the specific work the employee is employed to perform that it would be regarded as an integral part of the employee's 'principal activity.' This *does not necessarily mean*, however, that travel between the washroom or clothes-changing place and the actual place of performance of the specific work the employee is employed to perform, would be excluded from the type of travel to

which section 4(a) refers." § 790.7(g), n. 49 (emphasis added; citations omitted).

This footnote does indicate that the Secretary assumed that there would be some cases in which walking between a locker room where the employee performs her first principal activity and the production line would be covered by the FLSA and some cases in which it would not be. That assumption is, of course, inconsistent with IBP's submission that such walking is *always* excluded by § 4(a), just as it is inconsistent with respondents' view that such walking is *never* excluded. Whatever the correct explanation for the Secretary's ambiguous (and apparently ambivalent) statement may be, it is not sufficient to overcome the clear statements in the text of the regulations that support our holding. And it surely is not sufficient to overcome the statute itself, whose meaning is definitively resolved by *Steiner*.

For the foregoing reasons, we hold that any activity that is "integral and indispensable" to a "principal activity" is itself a "principal activity" under § 4(a) of the Portal-to-Portal Act. Moreover, during a continuous workday, any walking time that occurs after the beginning of the employee's first principal activity and before the end of the employee's last principal activity is excluded from the scope of that provision, and as a result is covered by the FLSA.

III

Respondent in No. 04–66, Barber Foods, Inc. (Barber), operates a poultry processing plant in Portland, Maine, that employs about 300 production workers. These employees operate six production lines and perform a variety of tasks that require different combinations of protective clothing. They are paid by the hour from the time they punch in to computerized timeclocks located at the entrances to the production floor.

Petitioners are Barber employees and former employees who brought this action to recover compensation for alleged

unrecorded work covered by the FLSA. Specifically, they claimed that Barber's failure to compensate them for (a) donning and doffing required protective gear and (b) the attendant walking and waiting violated the statute.

After extensive discovery, the Magistrate Judge issued a comprehensive opinion analyzing the facts in detail, and recommending the entry of partial summary judgment in favor of Barber. That opinion, which was later adopted by the District Court for Maine, included two critical rulings.

First, the Magistrate Judge held that "the donning and doffing of clothing and equipment required by the defendant or by government regulation, as opposed to clothing and equipment which employees choose to wear or use at their option, is an integral part of the plaintiffs' work [and therefore are] not excluded from compensation under the Portal-to-Portal Act as preliminary or postliminary activities." App. to Pet. for Cert. in No. 04–66, pp. 36a–40a.

Second, the Magistrate Judge rejected petitioners' claims for "compensation for the time spent before obtaining their clothing and equipment." *Id.*, at 33a. Such time, in the Magistrate Judge's view, "could [not] reasonably be construed to be an integral part of employees' work activities any more than walking to the cage from which hairnets and earplugs are dispensed . . . ." *Ibid.* Accordingly, Barber was "entitled to summary judgment on any claims based on time spent walking from the plant entrances to an employee's workstation, locker, time clock or site where clothing and equipment required to be worn on the job is to be obtained and any claims based on time spent waiting to punch in or out for such clothing or equipment." *Id.*, at 33a–34a.

The Magistrate Judge's opinion did not specifically address the question whether the walking time between the production line and the place of donning and doffing was encompassed by § 4 of the Portal-to-Portal Act, and thus excluded from coverage under the FLSA. Whatever the intended scope of the Magistrate's grant of partial summary judg-

ment, the questions submitted to the jury after trial asked jurors to consider only whether Barber was required to compensate petitioners for the time they spent actually donning and doffing various gear.

Before the case was submitted to the jury, the parties stipulated that four categories of workers—rotating, setup, meatroom, and shipping and receiving associates—were required to don protective gear at the beginning of their shifts and were required to doff this gear at the end of their shifts. The jury then made factual findings with regard to the amount of time reasonably required for each category of employees to don and doff such items; the jury concluded that such time was *de minimis* and therefore not compensable. The jury further concluded that two other categories of employees—maintenance and sanitation associates—were not required to don protective gear before starting their shifts.[7] Accordingly, the jury ruled for Barber on all counts.

On appeal, petitioners argued, among other things, that the District Court had improperly excluded as noncompensable the time employees spend walking to the production floor after donning required safety gear and the time they spend walking from the production floor to the area where they doff such gear. The Court of Appeals rejected petitioners' argument, concluding that such walking time was a species of preliminary and postliminary activity excluded from FLSA coverage by §§ 4(a)(1) and (2) of the Portal-to-Portal Act. 360 F. 3d, at 281. As we have explained in our discussion of IBP's submission, see Part II, *supra*, that categorical conclusion was incorrect.

Petitioners also argued in the Court of Appeals that the waiting time associated with the donning and doffing of clothes was compensable. The Court of Appeals disagreed, holding that the waiting time qualified as a "preliminary or postliminary activity" and thus was excluded from FLSA

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[7] The claims brought by these workers are no longer part of this case.

coverage by the Portal-to-Portal Act. 360 F. 3d, at 282. Our analysis in Part II, *supra*, demonstrates that the Court of Appeals was incorrect with regard to the predoffing waiting time. Because doffing gear that is "integral and indispensable" to employees' work is a "principal activity" under the statute, the continuous workday rule mandates that time spent waiting to doff is not affected by the Portal-to-Portal Act and is instead covered by the FLSA.

The time spent waiting to don—time that elapses *before* the principal activity of donning integral and indispensable gear—presents the quite different question whether it should have the effect of advancing the time when the workday begins. Barber argues that such predonning waiting time is explicitly covered by § 4(a)(2) of the Portal-to-Portal Act, which, as noted above, excludes "activities which are preliminary to or postliminary to [a] principal activity or activities" from the scope of the FLSA. 29 U. S. C. § 254(a)(2).

By contrast, petitioners, supported by the United States as *amicus curiae*, maintain that the predonning waiting time is "integral and indispensable" to the "principal activity" of donning, and is therefore itself a principal activity. However, unlike the donning of certain types of protective gear, which is *always* essential if the worker is to do his job, the waiting may or may not be necessary in particular situations or for every employee. It is certainly not "integral and indispensable" in the same sense that the donning is. It does, however, always comfortably qualify as a "preliminary" activity.

We thus do not agree with petitioners that the predonning waiting time at issue in this case is a "principal activity" under § 4(a).[8] As Barber points out, the fact that certain preshift activities are necessary for employees to engage in their principal activities does not mean that those preshift activities are "integral and indispensable" to a "principal ac-

[8] As explained below, our analysis would be different if Barber required its employees to arrive at a particular time in order to begin waiting.

tivity" under *Steiner*. For example, walking from a time-clock near the factory gate to a workstation is certainly necessary for employees to begin their work, but it is indisputable that the Portal-to-Portal Act evinces Congress' intent to repudiate *Anderson*'s holding that such walking time was compensable under the FLSA. We discern no limiting principle that would allow us to conclude that the waiting time in dispute here is a "principal activity" under § 4(a), without also leading to the logical (but untenable) conclusion that the walking time at issue in *Anderson* would be a "principal activity" under § 4(a) and would thus be unaffected by the Portal-to-Portal Act.

The Government also relies on a regulation promulgated by the Secretary of Labor as supporting petitioners' view. That regulation, 29 CFR § 790.7(h) (2005), states that when an employee "is required by his employer to report at a particular hour at his workbench or other place where he performs his principal activity, if the employee is there at that hour ready and willing to work but for some reason beyond his control there is no work for him to perform until some time has elapsed, waiting for work would be an integral part of the employee's principal activities." That regulation would be applicable if Barber required its workers to report to the changing area at a specific time only to find that no protective gear was available until after some time had elapsed, but there is no such evidence in the record in this case.

More pertinent, we believe, is the portion of § 790.7 that characterizes the time that employees must spend waiting to check in or waiting to receive their paychecks as generally a "preliminary" activity covered by the Portal-to-Portal Act. See § 790.7(g). That regulation is fully consistent with the statutory provisions that allow the compensability of such collateral activities to depend on either the agreement of the parties or the custom and practice in the particular industry.

In short, we are not persuaded that such waiting—which in this case is two steps removed from the productive activity on the assembly line—is "integral and indispensable" to a "principal activity" that identifies the time when the continuous workday begins. Accordingly, we hold that § 4(a)(2) excludes from the scope of the FLSA the time employees spend waiting to don the first piece of gear that marks the beginning of the continuous workday.

IV

For the reasons stated above, we affirm the judgment of the Court of Appeals for the Ninth Circuit in No. 03–1238. We affirm in part and reverse in part the judgment of the Court of Appeals for the First Circuit in No. 04–66, and we remand the case for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

UNITED STATES *v.* OLSON ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 04–759. Argued October 12, 2005—Decided November 8, 2005

Claiming that federal mine inspectors' negligence helped cause a mine accident, two injured workers (and a spouse) sued the United States under the Federal Tort Claims Act (Act), which authorizes private tort actions against the Government "under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred," 28 U. S. C. § 1346(b)(1). The District Court dismissed in part on the ground that the allegations did not show that Arizona law would impose liability upon a private person in similar circumstances. The Ninth Circuit reversed, reasoning from two premises: (1) Where unique governmental functions are at issue, the Act waives sovereign immunity if a state or municipal entity would be held liable under the law where the activity occurred, and (2) federal mine inspections are such unique governmental functions since there is no private-sector analogue for mine inspections. Because Arizona law would make a state or municipal entity liable in the circumstances alleged, the Circuit concluded that the United States' sovereign immunity was waived.

Held: Under § 1346(b)(1), the United States waives sovereign immunity only where local law would make a "private person" liable in tort, not where local law would make "a state or municipal entity" liable. Pp. 45–48.

(a) The Ninth Circuit's first premise is too broad, reading into the Act something that is not there. Section 1346(b)(1) says that it waives sovereign immunity "under circumstances where the United States, if a *private person*," not "the United States, if a state or municipal entity," would be liable. (Emphasis added.) This Court has consistently adhered to this "private person" standard, even when uniquely governmental functions are at issue. *Indian Towing Co.* v. *United States*, 350 U. S. 61, 64; *Rayonier Inc.* v. *United States*, 352 U. S. 315, 318. Even though both these cases involved Government efforts to *escape* liability by pointing to the *absence* of municipal entity liability, there is no reason for treating differently a plaintiff's effort to *base* liability solely upon the fact that a State would impose liability upon a state governmental entity. Nothing in the Act's context, history, or objectives or in this Court's opinions suggests otherwise. Pp. 45–46.

(b) The Ninth Circuit's second premise reads the Act too narrowly. Section 2674 makes the United States liable "in the same manner and to the same extent as a private individual under *like circumstances.*" (Emphasis added.) The words "like circumstances" do not restrict a court's inquiry to the *same circumstances*, but require it to look further afield. See, *e. g.*, *Indian Towing*, *supra*, at 64. The Government in effect concedes, and other Courts of Appeals' decisions applying *Indian Towing*'s logic suggest, that private person analogies exist for the federal mine inspectors' conduct at issue. The Ninth Circuit should have looked for such an analogy. Pp. 46–47.

(c) The lower courts should decide in the first instance precisely which Arizona tort law doctrine applies here. P. 48.

362 F. 3d 1236, vacated and remanded.

BREYER, J., delivered the opinion for a unanimous Court.

Deanne E. Maynard argued the cause for the United States. With her on the briefs were *Solicitor General Clement*, *Assistant Attorney General Keisler*, *Deputy Solicitor General Kneedler*, *Mark B. Stern*, and *Dana J. Martin.*

Thomas G. Cotter argued the cause and filed a brief for respondents.

JUSTICE BREYER delivered the opinion of the Court.

The Federal Tort Claims Act (FTCA or Act) authorizes private tort actions against the United States "under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U. S. C. § 1346(b)(1). We here interpret these words to mean what they say, namely, that the United States waives sovereign immunity "under circumstances" where local law would make a "*private person*" liable in tort. (Emphasis added.) And we reverse a line of Ninth Circuit precedent permitting courts in certain circumstances to base a waiver simply upon a finding that local law would make a "state or municipal entit[y]" liable. See, *e. g.*, *Hines* v. *United States*, 60 F. 3d 1442, 1448 (1995); *Cimo* v. *INS*, 16 F. 3d 1039, 1041 (1994); *Cameron* v. *Janssen Bros. Nurseries, Ltd.*, 7 F. 3d 821, 825

(1993); *Aguilar* v. *United States*, 920 F. 2d 1475, 1477 (1990); *Doggett* v. *United States*, 875 F. 2d 684, 689 (1989).

I

In this case, two injured mine workers (and a spouse) have sued the United States claiming that the negligence of federal mine inspectors helped bring about a serious accident at an Arizona mine. The Federal District Court dismissed the lawsuit in part upon the ground that their allegations were insufficient to show that Arizona law would impose liability upon a private person in similar circumstances. The Ninth Circuit, in a brief *per curiam* opinion, reversed this determination. It reasoned from two premises. First, where "'unique governmental functions'" are at issue, the Act waives sovereign immunity if "'a state or municipal entity would be [subject to liability] under the law [. . .] where the activity occurred.'" 362 F. 3d 1236, 1240 (2004) (citing *Hines*, *supra*, at 1448, and quoting *Doggett*, *supra*, at 689, and *Concrete Tie of San Diego, Inc.* v. *Liberty Constr., Inc.*, 107 F. 3d 1368, 1371 (CA9 1997)). Second, federal mine inspections being regulatory in nature are such "'unique governmental functions,'" since "there is no private-sector analogue for mine inspections." 362 F. 3d, at 1240 (quoting in part *Doggett*, *supra*, at 689). The Circuit then held that Arizona law would make "state and municipal entities" liable in the circumstances alleged; hence the FTCA waives the United States' sovereign immunity. 362 F. 3d, at 1240.

II

We disagree with both of the Ninth Circuit's legal premises.

A

The first premise is too broad, for it reads into the Act something that is not there. The Act says that it waives sovereign immunity "under circumstances where the United States, if a *private person*," not "the United States, if a state

or municipal entity," would be liable. 28 U. S. C. § 1346(b)(1) (emphasis added). Our cases have consistently adhered to this "private person" standard. In *Indian Towing Co.* v. *United States*, 350 U. S. 61, 64 (1955), this Court rejected the Government's contention that there was "no liability for negligent performance of 'uniquely governmental functions.'" It held that the Act requires a court to look to the state-law liability of private entities, not to that of public entities, when assessing the Government's liability under the FTCA "in the performance of activities which private persons do not perform." *Ibid.* In *Rayonier Inc.* v. *United States*, 352 U. S. 315, 318–319 (1957), the Court rejected a claim that the scope of FTCA liability for "'uniquely governmental'" functions depends on whether state law "imposes liability on municipal or other local governments for the negligence of their agents acting in" similar circumstances. And even though both these cases involved Government efforts to *escape* liability by pointing to the *absence* of municipal entity liability, we are unaware of any reason for treating differently a plaintiff's effort to *base* liability solely upon the fact that a State would impose liability upon a municipal (or other state governmental) entity. Indeed, we have found nothing in the Act's context, history, or objectives or in the opinions of this Court suggesting a waiver of sovereign immunity solely upon that basis.

B

The Ninth Circuit's second premise rests upon a reading of the Act that is too narrow. The Act makes the United States liable "in the same manner and to the same extent as a private individual under *like circumstances.*" 28 U. S. C. § 2674 (emphasis added). As this Court said in *Indian Towing*, the words "'like circumstances'" do not restrict a court's inquiry to the *same circumstances*, but require it to look further afield. 350 U. S., at 64; see also S. Rep. No. 1400, 79th Cong., 2d Sess., 32 (1946) (purpose of FTCA was to

make the tort liability of the United States "the same as that of a private person under like circumstance, in accordance with the local law"). The Court there considered a claim that the Coast Guard, responsible for operating a lighthouse, had failed "to check" the light's "battery and sun relay system," had failed "to make a proper examination" of outside "connections," had "fail[ed] to check the light" on a regular basis, and had failed to "repair the light or give warning that the light was not operating." *Indian Towing*, 350 U. S., at 62. These allegations, the Court held, were analogous to allegations of negligence by a private person "who undertakes to warn the public of danger and thereby induces reliance." *Id.*, at 64–65. It is "hornbook tort law," the Court added, that such a person "must perform his 'good Samaritan' task in a careful manner." *Ibid.*

The Government in effect concedes that similar "good Samaritan" analogies exist for the conduct at issue here. It says that "there are private persons in 'like circumstances'" to federal mine inspectors, namely, "private persons who conduct safety inspections." Reply Brief for United States 3. And other Courts of Appeals have found ready private person analogies for Government tasks of this kind in FTCA cases. *E. g.*, *Dorking Genetics* v. *United States*, 76 F. 3d 1261 (CA2 1996) (inspection of cattle); *Florida Auto Auction of Orlando, Inc.* v. *United States*, 74 F. 3d 498 (CA4 1996) (inspection of automobile titles); *Ayala* v. *United States*, 49 F. 3d 607 (CA10 1995) (mine inspections); *Myers* v. *United States*, 17 F. 3d 890 (CA6 1994) (same); *Howell* v. *United States*, 932 F. 2d 915 (CA11 1991) (inspection of airplanes). These cases all properly apply the logic of *Indian Towing.* Private individuals, who do not operate lighthouses, nonetheless may create a relationship with third parties that is similar to the relationship between a lighthouse operator and a ship dependent on the lighthouse's beacon. *Indian Towing, supra*, at 64–65, 69. The Ninth Circuit should have looked for a similar analogy in this case.

III

Despite the Government's concession that a private person analogy exists in this case, the parties disagree about precisely which Arizona tort law doctrine applies here. We remand the case so that the lower courts can decide this matter in the first instance. The judgment of the Ninth Circuit is vacated, and the case is remanded for proceedings consistent with this opinion.

It is so ordered.

Syllabus

SCHAFFER, A MINOR, BY HIS PARENTS AND NEXT FRIENDS, SCHAFFER ET VIR, ET AL. *v.* WEAST, SUPERINTENDENT, MONTGOMERY COUNTY PUBLIC SCHOOLS, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 04–698. Argued October 5, 2005—Decided November 14, 2005

To ensure disabled children a "free appropriate public education," 20 U. S. C. § 1400(d)(1)(A) (2000 ed., Supp. V), the Individuals with Disabilities Education Act (IDEA or Act) requires school districts to create an "individualized education program" (IEP) for each disabled child, § 1414(d), and authorizes parents challenging their child's IEP to request an "impartial due process hearing," § 1415(f), but does not specify which party bears the burden of persuasion at that hearing. After an IDEA hearing initiated by petitioners, the Administrative Law Judge held that they bore the burden of persuasion and ruled in favor of respondents. The District Court reversed, concluding that the burden of persuasion is on the school district. The Fourth Circuit reversed the District Court, concluding that petitioners had offered no persuasive reason to depart from the normal rule of allocating the burden to the party seeking relief.

Held: The burden of persuasion in an administrative hearing challenging an IEP is properly placed upon the party seeking relief, whether that is the disabled child or the school district. Pp. 56–62.

(a) Because IDEA is silent on the allocation of the burden of persuasion, this Court begins with the ordinary default rule that plaintiffs bear the burden regarding the essential aspects of their claims. Although the ordinary rule admits of exceptions, decisions that place the *entire* burden of persuasion on the opposing party at the *outset* of a proceeding—as petitioners urge the Court to do here—are extremely rare. Absent some reason to believe that Congress intended otherwise, the Court will conclude that the burden of persuasion lies where it usually falls, upon the party seeking relief. Pp. 56–58.

(b) Petitioners' arguments for departing from the ordinary default rule are rejected. Petitioners' assertion that putting the burden of persuasion on school districts will help ensure that children receive a free appropriate public education is unavailing. Assigning the burden to schools might encourage them to put more resources into preparing IEPs and presenting their evidence, but IDEA is silent about whether

marginal dollars should be allocated to litigation and administrative expenditures or to educational services. There is reason to believe that a great deal is already spent on IDEA administration, and Congress has repeatedly amended the Act to reduce its administrative and litigation-related costs. The Act also does not support petitioners' conclusion, in effect, that every IEP should be assumed to be invalid until the school district demonstrates that it is not. Petitioners' most plausible argument—that ordinary fairness requires that a litigant not have the burden of establishing facts peculiarly within the knowledge of his adversary, *United States* v. *New York, N. H. & H. R. Co.*, 355 U. S. 253, 256, n. 5—fails because IDEA gives parents a number of procedural protections that ensure that they are not left without a realistic chance to access evidence or without an expert to match the government. Pp. 58–61.

377 F. 3d 449, affirmed.

O'CONNOR, J., delivered the opinion of the Court, in which STEVENS, SCALIA, KENNEDY, SOUTER, and THOMAS, JJ., joined. STEVENS, J., filed a concurring opinion, *post*, p. 62. GINSBURG, J., *post*, p. 63, and BREYER, J., *post*, p. 67, filed dissenting opinions. ROBERTS, C. J., took no part in the consideration or decision of the case.

William H. Hurd argued the cause for petitioners. With him on the briefs were *Siran S. Faulders*, *Michael J. Eig*, and *Haylie M. Iseman*.

Gregory G. Garre argued the cause for respondents. With him on the brief were *Maree F. Sneed*, *Jonathan S. Franklin*, *Zvi Greismann*, *Judith S. Bresler*, *Eric C. Brousaides*, and *Jeffrey A. Krew*.

David B. Salmons argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Clement*, *Assistant Attorney General Keisler*, *Acting Assistant Attorney General Schlozman*, *Marleigh D. Dover*, *Stephanie R. Marcus*, and *Kent D. Talbert*.*

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*Briefs of *amici curiae* urging reversal were filed for the Commonwealth of Virginia et al. by *Judith Williams Jagdmann*, Attorney General of Virginia, *William E. Thro*, State Solicitor General, *Eric A. Gregory* and *Joel C. Hoppe*, Associate State Solicitors General, and *Maureen Riley Matsen*, Deputy Attorney General, and by the Attorneys General for their

JUSTICE O'CONNOR delivered the opinion of the Court.

The Individuals with Disabilities Education Act (IDEA or Act), 84 Stat. 175, as amended, 20 U. S. C. § 1400 *et seq.* (2000 ed. and Supp. V), is a Spending Clause statute that seeks to ensure that "all children with disabilities have available to them a free appropriate public education," § 1400(d)(1)(A) (2000 ed., Supp. V). Under IDEA, school districts must create an "individualized education program" (IEP) for each disabled child. § 1414(d). If parents believe their child's IEP is inappropriate, they may request an "impartial due process hearing." § 1415(f). The Act is silent, however, as to which party bears the burden of persuasion at such a hearing. We hold that the burden lies, as it typically does, on the party seeking relief.

I

A

Congress first passed IDEA as part of the Education of the Handicapped Act in 1970, 84 Stat. 175, and amended it

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respective States as follows: *Richard Blumenthal* of Connecticut, *Lisa Madigan* of Illinois, *Phill Kline* of Kansas, *Mike Hatch* of Minnesota, *Brian Sandoval* of Nevada, *Patricia Lynch* of Rhode Island, *Rob McKenna* of Washington, and *Peggy A. Lautenschlager* of Wisconsin; for The ARC of the United States et al. by *Drew S. Days III*, *Seth M. Galanter*, and *Linda A. Arnsbarger;* for the Council of Parent Attorneys and Advocates et al. by *Ankur J. Goel* and *M. Miller Baker;* and for Various Autism Organizations by *Gregory A. Castanias*, *Thomas F. Urban II*, and *Beth T. Sigall.*

Briefs of *amici curiae* urging affirmance were filed for the State of Hawaii et al. by *Mark J. Bennett*, Attorney General of Hawaii, and *Girard D. Lau*, Deputy Attorney General, and by the Attorneys General for their respective jurisdictions as follows: *David W. Márquez* of Alaska, *Douglas B. Moylan* of Guam, and *W. A. Drew Edmondson* of Oklahoma; for the Council of the Great City Schools et al. by *Julie Wright Halbert* and *Pamela Harris;* for the National School Boards Association by *Leslie Robert Stellman*, *Rochelle S. Eisenberg*, *Lisa Y. Settles*, *Julie Underwood*, *Naomi Gittins*, and *Thomas Hutton;* and for the Virginia School Boards Association et al. by *Joseph Thomas Tokarz II* and *Kathleen Shepherd Mehfoud.*

substantially in the Education for All Handicapped Children Act of 1975, 89 Stat. 773. At the time the majority of disabled children in America were "either totally excluded from schools or sitting idly in regular classrooms awaiting the time when they were old enough to 'drop out,'" H. R. Rep. No. 94–332, p. 2 (1975). IDEA was intended to reverse this history of neglect. As of 2003, the Act governed the provision of special education services to nearly 7 million children across the country. See Dept. of Education, Office of Special Education Programs, Data Analysis System, http://www.ideadata.org/tables27th/ar_ aa9.htm (as visited Nov. 9, 2005, and available in Clerk of Court's case file).

IDEA is "frequently described as a model of 'cooperative federalism.'" *Little Rock School Dist.* v. *Mauney*, 183 F. 3d 816, 830 (CA8 1999). It "leaves to the States the primary responsibility for developing and executing educational programs for handicapped children, [but] imposes significant requirements to be followed in the discharge of that responsibility." *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty.* v. *Rowley*, 458 U. S. 176, 183 (1982). For example, the Act mandates cooperation and reporting between state and federal educational authorities. Participating States must certify to the Secretary of Education that they have "policies and procedures" that will effectively meet the Act's conditions. 20 U. S. C. § 1412(a). (Unless otherwise noted, all citations to the Act are to the pre-2004 version of the statute because this is the version that was in effect during the proceedings below. We note, however, that nothing in the recent 2004 amendments, 118 Stat. 2674, appears to materially affect the rule announced here.) State educational agencies, in turn, must ensure that local schools and teachers are meeting the State's educational standards. §§ 1412(a)(11), 1412(a)(15)(A). Local educational agencies (school boards or other administrative bodies) can receive IDEA funds only if they certify to a state educa-

tional agency that they are acting in accordance with the State's policies and procedures. § 1413(a)(1).

The core of the statute, however, is the cooperative process that it establishes between parents and schools. *Rowley, supra,* at 205–206 ("Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process, . . . as it did upon the measurement of the resulting IEP against a substantive standard"). The central vehicle for this collaboration is the IEP process. State educational authorities must identify and evaluate disabled children, §§ 1414(a)–(c), develop an IEP for each one, § 1414(d)(2), and review every IEP at least once a year, § 1414(d)(4). Each IEP must include an assessment of the child's current educational performance, must articulate measurable educational goals, and must specify the nature of the special services that the school will provide. § 1414(d)(1)(A).

Parents and guardians play a significant role in the IEP process. They must be informed about and consent to evaluations of their child under the Act. § 1414(c)(3). Parents are included as members of "IEP teams." § 1414(d)(1)(B). They have the right to examine any records relating to their child, and to obtain an "independent educational evaluation of the[ir] child." § 1415(b)(1). They must be given written prior notice of any changes in an IEP, § 1415(b)(3), and be notified in writing of the procedural safeguards available to them under the Act, § 1415(d)(1). If parents believe that an IEP is not appropriate, they may seek an administrative "impartial due process hearing." § 1415(f). School districts may also seek such hearings, as Congress clarified in the 2004 amendments. See S. Rep. No. 108–185, p. 37 (2003). They may do so, for example, if they wish to change an existing IEP but the parents do not consent, or if parents refuse to allow their child to be evaluated. As a practical matter,

it appears that most hearing requests come from parents rather than schools. Brief for Petitioners 7.

Although state authorities have limited discretion to determine who conducts the hearings, § 1415(f)(1), and responsibility generally for establishing fair hearing procedures, § 1415(a), Congress has chosen to legislate the central components of due process hearings. It has imposed minimal pleading standards, requiring parties to file complaints setting forth "a description of the nature of the problem," § 1415(b)(7)(B)(ii), and "a proposed resolution of the problem to the extent known and available . . . at the time," § 1415(b)(7)(B)(iii). At the hearing, all parties may be accompanied by counsel, and may "present evidence and confront, cross-examine, and compel the attendance of witnesses." §§ 1415(h)(1)–(2). After the hearing, any aggrieved party may bring a civil action in state or federal court. § 1415(i)(2). Prevailing parents may also recover attorney's fees. § 1415(i)(3)(B). Congress has never explicitly stated, however, which party should bear the burden of proof at IDEA hearings.

B

This case concerns the educational services that were due, under IDEA, to petitioner Brian Schaffer. Brian suffers from learning disabilities and speech-language impairments. From prekindergarten through seventh grade he attended a private school and struggled academically. In 1997, school officials informed Brian's mother that he needed a school that could better accommodate his needs. Brian's parents contacted respondent Montgomery County Public Schools System (MCPS) seeking a placement for him for the following school year.

MCPS evaluated Brian and convened an IEP team. The committee generated an initial IEP offering Brian a place in either of two MCPS middle schools. Brian's parents were not satisfied with the arrangement, believing that Brian

needed smaller classes and more intensive services. The Schaffers thus enrolled Brian in another private school, and initiated a due process hearing challenging the IEP and seeking compensation for the cost of Brian's subsequent private education.

In Maryland, IEP hearings are conducted by administrative law judges (ALJs). See Md. Educ. Code Ann. §8–413(c) (Lexis 2004). After a 3-day hearing, the ALJ deemed the evidence close, held that the parents bore the burden of persuasion, and ruled in favor of the school district. The parents brought a civil action challenging the result. The United States District Court for the District of Maryland reversed and remanded, after concluding that the burden of persuasion is on the school district. *Brian S.* v. *Vance*, 86 F. Supp. 2d 538 (2000). Around the same time, MCPS offered Brian a placement in a high school with a special learning center. Brian's parents accepted, and Brian was educated in that program until he graduated from high school. The suit remained alive, however, because the parents sought compensation for the private school tuition and related expenses.

Respondents appealed to the United States Court of Appeals for the Fourth Circuit. While the appeal was pending, the ALJ reconsidered the case, deemed the evidence truly in "equipoise," and ruled in favor of the parents. The Fourth Circuit vacated and remanded the appeal so that it could consider the burden of proof issue along with the merits on a later appeal. The District Court reaffirmed its ruling that the school district has the burden of proof. 240 F. Supp. 2d 396 (Md. 2002). On appeal, a divided panel of the Fourth Circuit reversed. Judge Michael, writing for the majority, concluded that petitioners offered no persuasive reason to "depart from the normal rule of allocating the burden to the party seeking relief." 377 F. 3d 449, 453 (2004). We granted certiorari, 543 U. S. 1145 (2005), to resolve the fol-

lowing question: At an administrative hearing assessing the appropriateness of an IEP, which party bears the burden of persuasion?

II

A

The term "burden of proof" is one of the "slipperiest member[s] of the family of legal terms." 2 J. Strong, McCormick on Evidence § 342, p. 433 (5th ed. 1999) (hereinafter McCormick). Part of the confusion surrounding the term arises from the fact that historically, the concept encompassed two distinct burdens: the "burden of persuasion," *i. e.*, which party loses if the evidence is closely balanced, and the "burden of production," *i. e.*, which party bears the obligation to come forward with the evidence at different points in the proceeding. *Director, Office of Workers' Compensation Programs* v. *Greenwich Collieries*, 512 U. S. 267, 272 (1994). We note at the outset that this case concerns only the burden of persuasion, as the parties agree, Brief for Respondents 14; Reply Brief for Petitioners 15, and when we speak of burden of proof in this opinion, it is this to which we refer.

When we are determining the burden of proof under a statutory cause of action, the touchstone of our inquiry is, of course, the statute. The plain text of IDEA is silent on the allocation of the burden of persuasion. We therefore begin with the ordinary default rule that plaintiffs bear the risk of failing to prove their claims. McCormick § 337, at 412 ("The burdens of pleading and proof with regard to most facts have been and should be assigned to the plaintiff who generally seeks to change the present state of affairs and who therefore naturally should be expected to bear the risk of failure of proof or persuasion"); C. Mueller & L. Kirkpatrick, Evidence § 3.1, p. 104 (3d ed. 2003) ("Perhaps the broadest and most accepted idea is that the person who seeks court action should justify the request, which means that the plaintiffs bear the burdens on the elements in their claims").

Thus, we have usually assumed without comment that plaintiffs bear the burden of persuasion regarding the essential aspects of their claims. For example, Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e *et seq.*, does not directly state that plaintiffs bear the "ultimate" burden of persuasion, but we have so concluded. *St. Mary's Honor Center* v. *Hicks*, 509 U. S. 502, 511 (1993); *id.*, at 531 (SOUTER, J., dissenting). In numerous other areas, we have presumed or held that the default rule applies. See, *e. g.*, *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 561 (1992) (standing); *Cleveland* v. *Policy Management Systems Corp.*, 526 U. S. 795, 806 (1999) (Americans with Disabilities Act); *Hunt* v. *Cromartie*, 526 U. S. 541, 553 (1999) (equal protection); *Wharf (Holdings) Ltd.* v. *United Int'l Holdings, Inc.*, 532 U. S. 588, 593 (2001) (securities fraud); *Doran* v. *Salem Inn, Inc.*, 422 U. S. 922, 931 (1975) (preliminary injunctions); *Mt. Healthy City Bd. of Ed.* v. *Doyle*, 429 U. S. 274, 287 (1977) (First Amendment). Congress also expressed its approval of the general rule when it chose to apply it to administrative proceedings under the Administrative Procedure Act, 5 U. S. C. § 556(d); see also *Greenwich Collieries*, *supra*, at 271.

The ordinary default rule, of course, admits of exceptions. See McCormick § 337, at 412–415. For example, the burden of persuasion as to certain elements of a plaintiff's claim may be shifted to defendants, when such elements can fairly be characterized as affirmative defenses or exemptions. See, *e. g.*, *FTC* v. *Morton Salt Co.*, 334 U. S. 37, 44–45 (1948). Under some circumstances this Court has even placed the burden of persuasion over an entire claim on the defendant. See *Alaska Dept. of Environmental Conservation* v. *EPA*, 540 U. S. 461, 494 (2004). But while the normal default rule does not solve all cases, it certainly solves most of them. Decisions that place the *entire* burden of persuasion on the opposing party at the *outset* of a proceeding—as petitioners urge us to do here—are extremely rare. Absent some reason to believe that Congress intended otherwise, therefore,

we will conclude that the burden of persuasion lies where it usually falls, upon the party seeking relief.

B

Petitioners contend first that a close reading of IDEA's text compels a conclusion in their favor. They urge that we should interpret the statutory words "due process" in light of their constitutional meaning, and apply the balancing test established by *Mathews* v. *Eldridge*, 424 U. S. 319 (1976). Even assuming that the Act incorporates constitutional due process doctrine, *Eldridge* is no help to petitioners because "[o]utside the criminal law area, where special concerns attend, the locus of the burden of persuasion is normally not an issue of federal constitutional moment." *Lavine* v. *Milne*, 424 U. S. 577, 585 (1976).

Petitioners next contend that we should take instruction from the lower court opinions of *Mills* v. *Board of Education*, 348 F. Supp. 866 (DC 1972), and *Pennsylvania Association for Retarded Children* v. *Pennsylvania*, 334 F. Supp. 1257 (ED Pa. 1971) (hereinafter *PARC*). IDEA's drafters were admittedly guided "to a significant extent" by these two landmark cases. *Rowley*, 458 U. S., at 194. As the court below noted, however, the fact that Congress "took a number of the procedural safeguards from *PARC* and *Mills* and wrote them directly into the Act" does not allow us to "conclude . . . that Congress intended to adopt the ideas that it failed to write into the text of the statute." 377 F. 3d, at 455.

Petitioners also urge that putting the burden of persuasion on school districts will further IDEA's purposes because it will help ensure that children receive a free appropriate public education. In truth, however, very few cases will be in evidentiary equipoise. Assigning the burden of persuasion to school districts might encourage schools to put more resources into preparing IEPs and presenting their evidence. But IDEA is silent about whether marginal dollars should

be allocated to litigation and administrative expenditures or to educational services. Moreover, there is reason to believe that a great deal is already spent on the administration of the Act. Litigating a due process complaint is an expensive affair, costing schools approximately $8,000 to $12,000 per hearing. See Department of Education, J. Chambers, J. Harr, & A. Dhanani, What Are We Spending on Procedural Safeguards in Special Education 1999–2000, p. 8 (May 2003) (prepared under contract by American Institutes for Research, Special Education Expenditure Project). Congress has also repeatedly amended the Act in order to reduce its administrative and litigation-related costs. For example, in 1997 Congress mandated that States offer mediation for IDEA disputes. § 615(e) of IDEA, as added by § 101 of the Individuals with Disabilities Education Act Amendments of 1997, Pub. L. 105–17, 111 Stat. 90, 20 U. S. C. § 1415(e). In 2004, Congress added a mandatory "resolution session" prior to any due process hearing. § 615(f)(1)(B) of IDEA, as added by § 101 of the Individuals with Disabilities Education Improvement Act of 2004, Pub. L. 108–446, 118 Stat. 2720, 20 U. S. C. A. § 1415(f)(1)(B) (Supp. 2005). It also made new findings that "[p]arents and schools should be given expanded opportunities to resolve their disagreements in positive and constructive ways," and that "[t]eachers, schools, local educational agencies, and States should be relieved of irrelevant and unnecessary paperwork burdens that do not lead to improved educational outcomes." §§ 1400(c)(8)–(9).

Petitioners in effect ask this Court to assume that every IEP is invalid until the school district demonstrates that it is not. The Act does not support this conclusion. IDEA relies heavily upon the expertise of school districts to meet its goals. It also includes a so-called "stay-put" provision, which requires a child to remain in his or her "then-current educational placement" during the pendency of an IDEA hearing. § 1415(j). Congress could have required that a

child be given the educational placement that a parent requested during a dispute, but it did no such thing. Congress appears to have presumed instead that, if the Act's procedural requirements are respected, parents will prevail when they have legitimate grievances. See *Rowley*, *supra*, at 206 (noting the "legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP").

Petitioners' most plausible argument is that "[t]he ordinary rule, based on considerations of fairness, does not place the burden upon a litigant of establishing facts peculiarly within the knowledge of his adversary." *United States* v. *New York, N. H. & H. R. Co.*, 355 U. S. 253, 256, n. 5 (1957); see also *Concrete Pipe & Products of Cal., Inc.* v. *Construction Laborers Pension Trust for Southern Cal.*, 508 U. S. 602, 626 (1993). But this "rule is far from being universal, and has many qualifications upon its application." *Greenleaf's Lessee* v. *Birth*, 6 Pet. 302, 312 (1832); see also McCormick § 337, at 413 ("Very often one must plead and prove matters as to which his adversary has superior access to the proof"). School districts have a "natural advantage" in information and expertise, but Congress addressed this when it obliged schools to safeguard the procedural rights of parents and to share information with them. See *School Comm. of Burlington* v. *Department of Ed. of Mass.*, 471 U. S. 359, 368 (1985). As noted above, parents have the right to review all records that the school possesses in relation to their child. § 1415(b)(1). They also have the right to an "independent educational evaluation of the[ir] child." *Ibid.* The regulations clarify this entitlement by providing that a "parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency." 34 CFR § 300.502(b)(1) (2005). IDEA thus ensures parents access to an expert who can evaluate all the materials that the school

must make available, and who can give an independent opinion. They are not left to challenge the government without a realistic opportunity to access the necessary evidence, or without an expert with the firepower to match the opposition.

Additionally, in 2004, Congress added provisions requiring school districts to answer the subject matter of a complaint in writing, and to provide parents with the reasoning behind the disputed action, details about the other options considered and rejected by the IEP team, and a description of all evaluations, reports, and other factors that the school used in coming to its decision. § 615(c)(2)(B)(i)(I) of IDEA, as added by § 101 of Pub. L. 108–446, 118 Stat. 2718, 20 U. S. C. § 1415(c)(2)(B)(i)(I) (2000 ed., Supp. V). Prior to a hearing, the parties must disclose evaluations and recommendations that they intend to rely upon. 20 U. S. C. § 1415(f)(2). IDEA hearings are deliberately informal and intended to give ALJs the flexibility that they need to ensure that each side can fairly present its evidence. IDEA, in fact, requires state authorities to organize hearings in a way that guarantees parents and children the procedural protections of the Act. See § 1415(a). Finally, and perhaps most importantly, parents may recover attorney's fees if they prevail. § 1415(i)(3)(B). These protections ensure that the school bears no unique informational advantage.

III

Finally, respondents and several States urge us to decide that States may, if they wish, override the default rule and put the burden always on the school district. Several States have laws or regulations purporting to do so, at least under some circumstances. See, *e. g.*, Minn. Stat. § 125A.091, subd. 16 (2004); Ala. Admin. Code Rule 290–8–9–.08(8)(c)(6) (Supp. 2004); Alaska Admin. Code, tit. 4, § 52.550(e)(9) (2003); Del. Code Ann., Tit. 14, § 3140 (1999). Because no such law or regulation exists in Maryland, we need not decide this issue

today. JUSTICE BREYER contends that the allocation of the burden ought to be left *entirely* up to the States. But neither party made this argument before this Court or the courts below. We therefore decline to address it.

We hold no more than we must to resolve the case at hand: The burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief. In this case, that party is Brian, as represented by his parents. But the rule applies with equal effect to school districts: If they seek to challenge an IEP, they will in turn bear the burden of persuasion before an ALJ. The judgment of the United States Court of Appeals for the Fourth Circuit is, therefore, affirmed.

It is so ordered.

THE CHIEF JUSTICE took no part in the consideration or decision of this case.

JUSTICE STEVENS, concurring.

It is common ground that no single principle or rule solves all cases by setting forth a general test for ascertaining the incidence of proof burdens when both a statute and its legislative history are silent on the question. See *Alaska Dept. of Environmental Conservation* v. *EPA*, 540 U. S. 461, 494, n. 17 (2004); see also *ante*, at 57; *post*, at 63 (GINSBURG, J., dissenting). Accordingly, I do not understand the majority to disagree with the proposition that a court, taking into account "'policy considerations, convenience, and fairness,'" *post*, at 63 (GINSBURG, J., dissenting), could conclude that the purpose of a statute is best effectuated by placing the burden of persuasion on the defendant. Moreover, I agree with much of what JUSTICE GINSBURG has written about the special aspects of this statute. I have, however, decided to join the Court's disposition of this case, not only for the reasons set forth in JUSTICE O'CONNOR's opinion, but also because I believe that we should presume that public school officials

are properly performing their difficult responsibilities under this important statute.

JUSTICE GINSBURG, dissenting.

When the legislature is silent on the burden of proof, courts ordinarily allocate the burden to the party initiating the proceeding and seeking relief. As the Fourth Circuit recognized, however, "other factors," prime among them "policy considerations, convenience, and fairness," may warrant a different allocation. 377 F. 3d 449, 452 (2004) (citing 2 J. Strong, McCormick on Evidence § 337, p. 415 (5th ed. 1999) (allocation of proof burden "will depend upon the weight . . . given to any one or more of several factors, including: . . . special policy considerations[,] convenience, [and] fairness")); see also 9 J. Wigmore, Evidence § 2486, p. 291 (J. Chadbourn rev. ed. 1981) (assigning proof burden presents "a question of policy and fairness based on experience in the different situations"). The Court has followed the same counsel. See *Alaska Dept. of Environmental Conservation* v. *EPA*, 540 U. S. 461, 494, n. 17 (2004) ("No 'single principle or rule . . . solve[s] all cases and afford[s] a general test for ascertaining the incidence' of proof burdens." (quoting Wigmore, *supra*, § 2486, p. 288; emphasis deleted)). For reasons well stated by Circuit Judge Luttig, dissenting in the Court of Appeals, 377 F. 3d, at 456–459, I am persuaded that "policy considerations, convenience, and fairness" call for assigning the burden of proof to the school district in this case.

The Individuals with Disabilities Education Act (IDEA), 20 U. S. C. § 1400 *et seq.*, was designed to overcome the pattern of disregard and neglect disabled children historically encountered in seeking access to public education. See § 1400(c)(2) (congressional findings); S. Rep. No. 94–168, pp. 6, 8–9 (1975); *Mills* v. *Board of Ed. of District of Columbia*, 348 F. Supp. 866 (DC 1972); *Pennsylvania Assn. for Retarded Children* v. *Pennsylvania*, 334 F. Supp. 1257 (ED Pa. 1971),

and 343 F. Supp. 279 (ED Pa. 1972). Under typical civil rights and social welfare legislation, the complaining party must allege and prove discrimination or qualification for statutory benefits. See, *e. g.*, *St. Mary's Honor Center* v. *Hicks*, 509 U. S. 502, 511 (1993) (Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e *et seq.*); *Director, Office of Workers' Compensation Programs* v. *Greenwich Collieries*, 512 U. S. 267, 270 (1994) (Black Lung Benefits Act, 30 U. S. C. § 901 *et seq.*). The IDEA is atypical in this respect: It casts an affirmative, beneficiary-specific obligation on providers of public education. School districts are charged with responsibility to offer to each disabled child an individualized education program (IEP) suitable to the child's special needs. 20 U. S. C. §§ 1400(d)(1), 1412(a)(4), 1414(d). The proponent of the IEP, it seems to me, is properly called upon to demonstrate its adequacy.

Familiar with the full range of education facilities in the area, and informed by "their experiences with other, similarly-disabled children," 377 F. 3d, at 458 (Luttig, J., dissenting), "the school district is . . . in a far better position to demonstrate that it has fulfilled [its statutory] obligation than the disabled student's parents are in to show that the school district has failed to do so," *id.*, at 457. Accord *Oberti* v. *Board of Ed. of Borough of Clementon School Dist.*, 995 F. 2d 1204, 1219 (CA3 1993) ("In practical terms, the school has an advantage when a dispute arises under the Act: the school has better access to relevant information, greater control over the potentially more persuasive witnesses (those who have been directly involved with the child's education), and greater overall educational expertise than the parents."); *Lascari* v. *Board of Ed. of Ramapo Indian Hills Regional High School Dist.*, 116 N. J. 30, 45–46, 560 A. 2d 1180, 1188–1189 (1989) (in view of the school district's "better access to relevant information," parent's obligation "should be merely to place in issue the appropriateness of the IEP. The school board should then bear the burden of proving that

the IEP was appropriate. In reaching that result, we have sought to implement the intent of the statutory and regulatory schemes.").[1]

Understandably, school districts striving to balance their budgets, if "[l]eft to [their] own devices," will favor educational options that enable them to conserve resources. *Deal* v. *Hamilton County Bd. of Ed.*, 392 F. 3d 840, 864–865 (CA6 2004). Saddled with a proof burden in administrative "due process" hearings, parents are likely to find a district-proposed IEP "resistant to challenge." 377 F. 3d, at 459 (Luttig, J., dissenting). Placing the burden on the district to show that its plan measures up to the statutorily mandated "free appropriate public education," 20 U. S. C. § 1400(d)(1)(A), will strengthen school officials' resolve to choose a course genuinely tailored to the child's individual needs.[2]

The Court acknowledges that "[a]ssigning the burden of persuasion to school districts might encourage schools to put more resources into preparing IEPs." *Ante*, at 58. Curiously, the Court next suggests that resources spent on developing IEPs rank as "administrative expenditures" not as expenditures for "educational services." *Ante*, at 59. Costs entailed in the preparation of suitable IEPs, however, are

[1] The Court suggests that the IDEA's stay-put provision, 20 U. S. C. § 1415(j), supports placement of the burden of persuasion on the parents. *Ante*, at 59–60. The stay-put provision, however, merely preserves the status quo. It would work to the advantage of the child and the parents when the school seeks to cut services offered under a previously established IEP. True, Congress did not require that "a child be given the educational placement that a parent requested during a dispute." *Ibid.* But neither did Congress require that the IEP advanced by the school district go into effect during the pendency of a dispute.

[2] The Court observes that decisions placing "the *entire* burden of persuasion on the opposing party at the *outset* of a proceeding . . . are extremely rare." *Ante*, at 57. In cases of this order, however, the persuasion burden is indivisible. It must be borne *entirely* by one side or the other: Either the school district must establish the adequacy of the IEP it has proposed or the parents must demonstrate the plan's inadequacy.

the very expenditures necessary to ensure each child covered by the IDEA access to a free appropriate education. These outlays surely relate to "educational services." Indeed, a carefully designed IEP may ward off disputes productive of large administrative or litigation expenses.

This case is illustrative. Not until the District Court ruled that the school district had the burden of persuasion did the school design an IEP that met Brian Schaffer's special educational needs. See *ante*, at 55; Tr. of Oral Arg. 21–22 (Counsel for the Schaffers observed that "Montgomery County . . . gave [Brian] the kind of services he had sought from the beginning . . . once [the school district was] given the burden of proof."). Had the school district, in the first instance, offered Brian a public or private school placement equivalent to the one the district ultimately provided, this entire litigation and its attendant costs could have been avoided.

Notably, nine States, as friends of the Court, have urged that placement of the burden of persuasion on the school district best comports with the IDEA's aim. See Brief for Commonwealth of Virginia et al. as *Amici Curiae.* If allocating the burden to school districts would saddle school systems with inordinate costs, it is doubtful that these States would have filed in favor of petitioners. Cf. Brief for United States as *Amicus Curiae* Supporting Appellees Urging Affirmance in No. 00–1471 (CA4), p. 12 ("Having to carry the burden of proof regarding the adequacy of its proposed IEP . . . should not substantially increase the workload for the school.").[3]

One can demur to the Fourth Circuit's observation that courts "do not automatically assign the burden of proof to the side with the bigger guns," 377 F. 3d, at 453, for no such reflexive action is at issue here. It bears emphasis that "the vast majority of parents whose children require the benefits and protections provided in the IDEA" lack "knowledg[e]

[3] Before the Fourth Circuit, the United States filed in favor of the Schaffers; in this Court, the United States supported Montgomery County.

about the educational resources available to their [child]" and the "sophisticat[ion]" to mount an effective case against a district-proposed IEP. *Id.*, at 458 (Luttig, J., dissenting); cf. 20 U. S. C. § 1400(c)(7)–(10). See generally Department of Education, M. Wagner, C. Marder, J. Blackorby, & D. Cardoso, The Children We Serve: The Demographic Characteristics of Elementary and Middle School Students with Disabilities and their Households (Sept. 2002) (prepared under contract by SRI International, Special Education Elementary Longitudinal Study), http://www.seels.net/designdocs/SEELS_Children_We_Serve_ Report.pdf (as visited Nov. 8, 2005, and available in Clerk of Court's case file). In this setting, "the party with the 'bigger guns' also has better access to information, greater expertise, and an affirmative obligation to provide the contested services." 377 F. 3d, at 458 (Luttig, J., dissenting). Policy considerations, convenience, and fairness, I think it plain, point in the same direction. Their collective weight warrants a rule requiring a school district, in "due process" hearings, to explain persuasively why its proposed IEP satisfies the IDEA's standards. *Ibid.* I would therefore reverse the judgment of the Fourth Circuit.

JUSTICE BREYER, dissenting.

As the majority points out, the Individuals with Disabilities Education Act (Act), 20 U. S. C. § 1400 *et seq.*, requires school districts to "identify and evaluate disabled children, . . . develop an [Individualized Education Program] for each one . . . , and review every IEP at least once a year." *Ante*, at 53. A parent dissatisfied with "any matter relating [1] to the identification, evaluation, or educational placement of the child," or [2] to the "provision of a free appropriate public education" of the child, has the opportunity "to resolve such disputes through a mediation process." 20 U. S. C. §§ 1415(a), (b)(6)(A), (k) (2000 ed., Supp. V). The Act further provides the parent with "an opportunity for an im-

partial due process hearing" provided by the state or local education agency. § 1415(f)(1)(A). If provided locally, either party can appeal the hearing officer's decision to the state educational agency. § 1415(g). Finally, the Act allows any "party aggrieved" by the results of the state hearing(s) "to bring a civil action" in a federal district court. § 1415(i)(2)(A). In sum, the Act provides for school board action, followed by (1) mediation, (2) an impartial state due process hearing with the possibility of state appellate review, and (3) federal district court review.

The Act also sets forth minimum procedures that the parties, the hearing officer, and the federal court must follow. See, *e. g.*, § 1415(f)(1) (notice); § 1415(f)(2) (disclosures); § 1415(f)(3) (limitations on who may conduct the hearing); § 1415(g) (right to appeal); § 1415(h)(1) ("the right to be accompanied and advised by counsel"); § 1415(h)(2) ("the right to present evidence and confront, cross-examine, and compel the attendance of witnesses"); § 1415(h)(3) (the right to a transcript of the proceeding); § 1415(h)(4) ("the right to written . . . findings of fact and decisions"). Despite this detailed procedural scheme, the Act is silent on the question of who bears the burden of persuasion at the state "due process" hearing.

The statute's silence suggests that Congress did not think about the matter of the burden of persuasion. It is, after all, a relatively minor issue that should not often arise. That is because the parties will ordinarily introduce considerable evidence (as in this case where the initial 3-day hearing included testimony from 10 witnesses, 6 qualified as experts, and more than 50 exhibits). And judges rarely hesitate to weigh evidence, even highly technical evidence, and to decide a matter on the merits, even when the case is a close one. Thus, cases in which an administrative law judge (ALJ) finds the evidence in precise equipoise should be few and far between. Cf. *O'Neal* v. *McAninch,* 513 U. S. 432, 436–437 (1995). See also Individuals with Disabilities Education Im-

provement Act of 2004, Pub. L. 108–446, §§ 615(f)(3)(A)(ii)–(iv), 118 Stat. 2721, 20 U. S. C. §§ 1415(f)(3)(A)(ii)–(iv) (2000 ed., Supp. V) (requiring appointment of ALJ with technical capacity to understand Act).

Nonetheless, the hearing officer held that before him was that *rara avis*—a case of perfect evidentiary equipoise. Hence we must infer from Congress' silence (and from the rest of the statutory scheme) which party—the parents or the school district—bears the burden of persuasion.

One can reasonably argue, as the Court holds, that the risk of nonpersuasion should fall upon the "individual desiring change." That, after all, is the rule courts ordinarily apply when an individual complains about the lawfulness of a government action. *E. g.*, *ante*, at 56–61 (opinion of the Court); 377 F. 3d 449 (CA4 2004) (case below); *Devine* v. *Indian River County School Bd.*, 249 F. 3d 1289 (CA11 2001). On the other hand, one can reasonably argue to the contrary, that, given the technical nature of the subject matter, its human importance, the school district's superior resources, and the district's superior access to relevant information, the risk of nonpersuasion ought to fall upon the district. *E. g.*, *ante*, p. 63 (GINSBURG, J., dissenting); 377 F. 3d, at 456–459 (Luttig, J., dissenting); *Oberti* v. *Board of Ed. of Borough of Clementon School Dist.*, 995 F. 2d 1204 (CA3 1993); *Lascari* v. *Board of Ed. of Ramapo Indian Hills High School Dist.*, 116 N. J. 30, 560 A. 2d 1180 (1989). My own view is that Congress took neither approach. It did not decide the "burden of persuasion" question; instead it left the matter to the States for decision.

The Act says that the "establish[ment]" of "procedures" is a matter for the "State" and its agencies. § 1415(a). It adds that the hearing in question, an administrative hearing, is to be conducted by the "State" or "local educational agency." 20 U. S. C. § 1415(f)(1)(A) (2000 ed., Supp. V). And the statute as a whole foresees state implementation of federal standards. § 1412(a); *Cedar Rapids Community School Dist.* v.

Garret F., 526 U. S. 66, 68 (1999); *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty.* v. *Rowley*, 458 U. S. 176, 208 (1982). The minimum federal procedural standards that the Act specifies are unrelated to the "burden of persuasion" question. And different States, consequently and not surprisingly, have resolved it in different ways. See, *e. g.*, Alaska Admin. Code, tit. 4, § 52.550(e)(9) (2003) (school district bears burden); Ala. Admin. Code Rule 290–8–9–.08(8)(c)(6)(ii)(I) (Supp. 2004) (same); Conn. Agencies Regs. § 10–76h–14 (2005) (same); Del. Code Ann., Tit. 14, § 3140 (1999) (same); 1 D. C. Mun. Regs., tit. 5, § 3030.3 (2003) (same); W. Va. Code Rules § 126–16–8.1.11(c) (2005) (same); Ind. Admin. Code, tit. 511, Rule 7–30–3 (2003) (incorporating by reference Ind. Code § 4–21.5–3–14 (West 2002)) (moving party bears burden); 7 Ky. Admin. Regs., tit. 707, ch. 1:340, § 7(4) (2004) (incorporating by reference Ky. Rev. Stat. Ann. § 13B.090(7) (Lexis 2003)) (same); Ga. Comp. Rules & Regs., Rule 160–4–7–.18(1)(g)(8) (2002) (burden varies depending upon remedy sought); Minn. Stat. Ann. § 125A.091, subd. 16 (West Supp. 2005) (same). There is no indication that this lack of uniformity has proved harmful.

Nothing in the Act suggests a need to fill every interstice of the Act's remedial scheme with a uniform federal rule. See *Kamen* v. *Kemper Financial Services, Inc.*, 500 U. S. 90, 98 (1991) (citations omitted). And should some such need arise—*i. e.*, if nonuniformity or a particular state approach were to prove problematic—the Federal Department of Education, expert in the area, might promulgate a uniform federal standard, thereby limiting state choice. 20 U. S. C. § 1406(a) (2000 ed., Supp. V); *Irving Independent School Dist.* v. *Tatro*, 468 U. S. 883, 891–893 (1984); see also *Barnhart* v. *Walton*, 535 U. S. 212, 217–218 (2002); *NationsBank of N. C., N. A.* v. *Variable Annuity Life Ins. Co.*, 513 U. S. 251, 256–257 (1995); *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842–845 (1984).

Most importantly, Congress has made clear that the Act itself represents an exercise in "cooperative federalism." See *ante*, at 52–53 (opinion of the Court). Respecting the States' right to decide this procedural matter here, where education is at issue, where expertise matters, and where costs are shared, is consistent with that cooperative approach. See *Wisconsin Dept. of Health and Family Servs.* v. *Blumer*, 534 U. S. 473, 495 (2002) (when interpreting statutes "designed to advance cooperative federalism[,] . . . we have not been reluctant to leave a range of permissible choices to the States"). Cf. *Smith* v. *Robbins*, 528 U. S. 259, 275 (2000); *New State Ice Co.* v. *Liebmann*, 285 U. S. 262, 311 (1932) (Brandeis, J., dissenting). And judicial respect for such congressional determinations is important. Indeed, in today's technologically and legally complex world, whether court decisions embody that kind of judicial respect may represent the true test of federalist principle. See *AT&T Corp.* v. *Iowa Utilities Bd.*, 525 U. S. 366, 420 (1999) (BREYER, J., concurring in part and dissenting in part).

Maryland has no special state law or regulation setting forth a special IEP-related burden of persuasion standard. But it does have rules of state administrative procedure and a body of state administrative law. The state ALJ should determine how those rules, or other state law, applies to this case. Cf., *e. g.*, Ind. Admin. Code, tit. 511, Rule 7–30–3 (2003) (hearings under the Act conducted in accord with general state administrative law); 7 Ky. Admin. Regs., tit. 707, ch. 1:340, Section 7(4) (same). Because the state ALJ did not do this (*i. e.*, he looked for a federal, not a state, burden of persuasion rule), I would remand this case.

Syllabus

MARYLAND *v.* BLAKE

CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

No. 04–373. Argued November 1, 2005—Decided November 14, 2005

Certiorari dismissed. Reported below: 381 Md. 218, 849 A. 2d 410.

Kathryn Grill Graeff, Assistant Attorney General of Maryland, argued the cause for petitioner. With her on the briefs were *J. Joseph Curran, Jr.*, Attorney General, and *Annabelle L. Lisic* and *Diane E. Keller*, Assistant Attorneys General.

James A. Feldman argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Clement*, *Acting Assistant Attorney General Richter*, *Deputy Solicitor General Dreeben*, *John P. Elwood*, and *Joel M. Gershowitz.*

Kenneth W. Ravenell argued the cause for respondent. With him on the brief were *Ivan J. Bates*, *Matthew A. S. Esworthy*, and *Jeffrey T. Green.**

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*Briefs of *amici curiae* urging reversal were filed for the State of Texas et al. by *Greg Abbott*, Attorney General of Texas, *Barry R. McBee*, First Assistant Attorney General, *R. Ted Cruz*, Solicitor General, *Don Clemmer*, Deputy Attorney General, and *Gena Bunn*, *Edward L. Marshall*, and *Fredericka Sargent*, Assistant Attorneys General, and by the Attorneys General for their respective jurisdictions as follows: *M. Jane Brady* of Delaware, *Robert J. Spagnoletti* of the District of Columbia, *Charles J. Crist, Jr.*, of Florida, *Mark J. Bennett* of Hawaii, *Lawrence G. Wasden* of Idaho, *Lisa Madigan* of Illinois, *Michael A. Cox* of Michigan, *Jim Petro* of Ohio, *W. A. Drew Edmondson* of Oklahoma, *Hardy Myers* of Oregon, *Thomas W. Corbett, Jr.*, of Pennsylvania, *Henry D. McMaster* of South Carolina, *Lawrence E. Long* of South Dakota, *Mark L. Shurtleff* of Utah, and *William Sorrell* of Vermont; and for the Criminal Justice Legal Foundation by *Kent S. Scheidegger* and *Charles L. Hobson.*

Briefs of *amici curiae* urging affirmance were filed for the National Association of Criminal Defense Lawyers by *James J. Tomkovicz* and *Joshua L. Dratel;* and for the National Legal Aid and Defender Association by *Steven B. Duke.*

PER CURIAM.

The writ of certiorari is dismissed as improvidently granted.

It is so ordered.

Per Curiam

BRADSHAW, WARDEN *v.* RICHEY

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

No. 05–101. Decided November 28, 2005

Respondent was convicted in Ohio state court of aggravated murder, based on a theory of transferred intent, and he was sentenced to death. His petition for federal habeas relief was denied, but the Sixth Circuit reversed, holding (1) that transferred intent was not a permissible theory for aggravated felony murder under Ohio law at the time of his conviction, and (2) that the performance of respondent's trial counsel had been constitutionally deficient under *Strickland* v. *Washington*, 466 U. S. 668.

Held: The Sixth Circuit erred in holding that the transferred intent doctrine was inapplicable under state law and that respondent was entitled to relief under *Strickland*. The Ohio Supreme Court's interpretation of the relevant state statute, as announced in its review of respondent's case, directly contradicts the Sixth Circuit's analysis. The State Supreme Court's perfectly clear and unambiguous explanation that the transferred intent doctrine "'is firmly rooted in Ohio law'" is binding on a federal court sitting in habeas. See *Estelle* v. *McGuire*, 502 U. S. 62, 67–68. The Sixth Circuit also erred in its adjudication of the *Strickland* claim by, *inter alia*, relying on evidence not properly presented to the state habeas courts. Respondent contends that the State failed to preserve that objection before the Sixth Circuit. Because the relevant errors had not yet occurred, the Sixth Circuit has had no opportunity to address this argument, and it is better situated to do so in the first instance.

Certiorari granted; 395 F. 3d 660, vacated and remanded.

PER CURIAM.

In 1987, respondent Kenneth T. Richey was tried in Ohio for aggravated murder committed in the course of a felony. Evidence showed that respondent set fire to the apartment of his neighbor, Hope Collins, in an attempt to kill his ex-girlfriend and her new boyfriend, who were spending the night together in the apartment below. The intended victims escaped unharmed, but Hope Collins' 2-year-old daugh-

ter Cynthia died in the fire. At trial, the State presented evidence of respondent's intent to kill his ex-girlfriend and her boyfriend, but not of specific intent to kill Cynthia Collins. The State also offered expert forensic evidence to show that the fire had been started deliberately. Respondent did not contest this forensic evidence at trial because his retained arson expert had reported that the State's evidence conclusively established arson. Respondent was convicted of aggravated felony murder on a theory of transferred intent and sentenced to death. His conviction and sentence were affirmed on direct appeal, where he was represented by new counsel.

Respondent sought postconviction relief in state court. The state trial court denied his request for an evidentiary hearing and denied relief on all claims, and the state appellate court affirmed. Respondent then sought federal habeas relief. The District Court permitted discovery on certain issues, but ultimately denied all of respondent's claims. The Sixth Circuit reversed, holding that respondent was entitled to habeas relief on two alternative grounds. First, that transferred intent was not a permissible theory for aggravated felony murder under Ohio law, and that the evidence of direct intent was constitutionally insufficient to support conviction. Second, that the performance of respondent's trial counsel had been constitutionally deficient under *Strickland* v. *Washington*, 466 U. S. 668 (1984), in his retaining and mishandling of his arson expert and in his inadequate treatment of the State's expert testimony.

We now grant the State's petition for writ of certiorari and vacate the judgment below.

I

The Sixth Circuit erred in holding that the doctrine of transferred intent was inapplicable to aggravated felony murder for the version of Ohio Rev. Code Ann. §2903.01(B) (Anderson 1982) under which respondent was convicted.

See *Richey* v. *Mitchell*, 395 F. 3d 660, 675 (2005). The Ohio Supreme Court's interpretation of that section, as announced in its review of respondent's case, directly contradicts the Sixth Circuit's analysis:

> "The fact that the intended victims escaped harm, and that an innocent child, Cynthia Collins, was killed instead, does not alter Richey's legal and moral responsibility. 'The doctrine of transferred intent is firmly rooted in Ohio law.' Very simply, 'the culpability of a scheme designed to implement the calculated decision to kill is not altered by the fact that the scheme is directed at someone other than the actual victim.'" *State* v. *Richey*, 64 Ohio St. 3d 353, 364, 595 N. E. 2d 915, 925 (1992) (citations omitted).

This statement was dictum, since the only sufficiency-of-evidence claim raised by respondent pertained to his setting of the fire. Nonetheless, its explanation of Ohio law was perfectly clear and unambiguous. We have repeatedly held that a state court's interpretation of state law, including one announced on direct appeal of the challenged conviction, binds a federal court sitting in habeas corpus. *Estelle* v. *McGuire*, 502 U. S. 62, 67–68 (1991); *Mullaney* v. *Wilbur*, 421 U. S. 684, 691 (1975).

The Sixth Circuit held that the Ohio Supreme Court's opinion should not be read to endorse transferred intent in respondent's case because such a construction would likely constitute "an unforeseeable and retroactive judicial expansion of narrow and precise statutory language," *Bouie* v. *City of Columbia*, 378 U. S. 347, 352 (1964), in violation of the Due Process Clause. 395 F. 3d, at 677 (citing *United States* v. *Lanier*, 520 U. S. 259 (1997); *Bouie*, 378 U. S., at 351). It is doubtful whether this principle of fair notice has any application to a case of transferred intent, where the defendant's *contemplated* conduct was *exactly* what the rel-

evant statute forbade, see *id.*, at 351. And it is further doubtful whether the doctrine of constitutional doubt permits such a flatly countertextual interpretation of what the Ohio Supreme Court said, see *Salinas* v. *United States*, 522 U. S. 52, 59–60 (1997). But assuming all that, Ohio law at the time of respondent's offense provided fully adequate notice of the applicability of transferred intent. The relevant *mens rea* provision in § 2903.01(D) required only that "[n]o person shall be convicted of aggravated murder unless he is specifically found to have intended to cause the death *of another*." Ohio Rev. Code Ann. § 2903.01(D) (Anderson 1982) (emphasis added). Respondent's intention to kill his ex-girlfriend and her boyfriend plainly came within this provision. There was no reason to read "another" (countertextually) as meaning only "the actual victim," since the doctrine of transferred intent was "firmly rooted in Ohio law." *State* v. *Sowell*, 39 Ohio St. 3d 322, 332, 530 N. E. 2d 1294, 1305 (1988) (citing *Wareham* v. *State*, 25 Ohio St. 601 (1874)). Respondent could not plausibly claim unfair surprise that the doctrine applied in his case. See *Lanier*, *supra*, at 269–270 (requiring, as adequate notice for due process purposes, only "reasonable warning," rather than fundamentally similar prior cases).

The foregoing provision was in effect at the time of respondent's crime in 1986. The Sixth Circuit reasoned, however, that the following subsequent clause in the version of § 2903.01(D) that existed in 1986 foreclosed transferred intent in this case:

> "If a jury in an aggravated murder case is instructed that a person who commits or attempts to commit any offense listed in division (B) of this section *may be inferred*, because he engaged in a common design with others to commit the offense by force or violence or because the offense and the manner of its commission would be likely to produce death, *to have intended to*

> *cause the death of any person who is killed* during the commission of . . . the offense, the jury also shall be instructed that . . . it is to consider all evidence introduced by the prosecution to indicate the person's intent and by the person to indicate his lack of intent in determining *whether the person specifically intended to cause the death of the person killed* . . . ." Ohio Rev. Code Ann. §2903.01(D) (Anderson 1982) (emphasis added).

Contrary to the Sixth Circuit's reading, see 395 F. 3d, at 673, this clause by its terms did not apply to every case in which the defendant was charged with aggravated felony murder, but rather only to those in which intent to kill was sought to be proved from the inherent dangerousness of the relevant felony. See *State* v. *Phillips*, 74 Ohio St. 3d 72, 100, 656 N. E. 2d 643, 668 (1995) ("R. C. §2903.01(D) does not apply in this case because the trial court never instructed that the jury could infer purpose to kill from the commission of an underlying felony in a manner 'likely to produce death'"). Here, however, intent to kill was proved directly. It was not inferred from the dangerousness of the arson; it was shown to be the *purpose* of the arson.

The Sixth Circuit also argued that dicta in a case decided by an intermediate Ohio appellate court, prior to the Ohio Supreme Court's opinion here, rejected transferred intent for respondent's crime, and thus rendered its application in respondent's case unforeseeable and retroactive. 395 F. 3d, at 675–676 (citing *State* v. *Mullins*, 76 Ohio App. 3d 633, 602 N. E. 2d 769 (1992)). But that case was decided long after the 1986 offense for which respondent was convicted, and thus has no bearing on whether the law at the time of the charged *conduct* was clear enough to provide fair notice. *Lanier*, *supra;* see also *Marks* v. *United States*, 430 U. S. 188, 196 (1977).

Because the Sixth Circuit disregarded the Ohio Supreme Court's authoritative interpretation of Ohio law, its ruling on sufficiency of the evidence was erroneous.

II

The Sixth Circuit also held that respondent was entitled to relief on the ground that the state courts' denial of his *Strickland* claim was unreasonable. 395 F. 3d, at 688. As petitioner contends, the Sixth Circuit erred in its adjudication of this claim by relying on evidence that was not properly presented to the state habeas courts without first determining (1) whether respondent was at fault for failing to develop the factual bases for his claims in state court, see *Williams* v. *Taylor*, 529 U. S. 420, 430–432 (2000), or (2) whether respondent satisfied the criteria established by 28 U. S. C. § 2254(e)(2). See *Holland* v. *Jackson*, 542 U. S. 649, 653 (2004) *(per curiam)*. Similarly, the Sixth Circuit erred by disregarding the state habeas courts' conclusion that the forensic expert whom respondent's trial counsel hired was a "properly qualified expert," App. to Pet. for Cert. 347a, without analyzing whether the state court's factual finding had been rebutted by clear and convincing evidence. See 28 U. S. C. § 2254(e)(1). Compare App. to Pet. for Cert. 347a with 395 F. 3d, at 683. In addition, as petitioner contends, the Sixth Circuit erred in relying on certain grounds that were apparent from the trial record but not raised on direct appeal—namely, that trial counsel (1) inadequately cross-examined experts called by the State, (2) erred by prematurely placing the forensic expert counsel had hired on the witness list, and (3) failed to present competing scientific evidence against the State's forensic experts—without first determining whether respondent's procedural default of these subclaims could be excused by a showing of cause and prejudice or by the need to avoid a miscarriage of justice. See App. to Pet. for Cert. 340a–341a, 351a–354a (state courts' holding that these subclaims should have been raised on direct appeal); *id.*, at 109a–110a (District Court's holding that this default was not excusable under *Coleman* v. *Thompson*, 501 U. S. 722, 749–750 (1991)). Respondent, however, contends that the State failed to preserve its objection to the

Sixth Circuit's reliance on evidence not presented in state court by failing to raise this argument properly before the Sixth Circuit. See Brief in Opposition 24–26. Because the relevant errors had not yet occurred, the Sixth Circuit has had no opportunity to address the argument that the State failed to preserve its *Holland* argument. It is better situated to address this argument in the first instance.

* * *

For the foregoing reasons, the judgment of the Sixth Circuit is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

LINCOLN PROPERTY CO. ET AL. *v.* ROCHE ET UX.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 04–712. Argued October 11, 2005—Decided November 29, 2005

Title 28 U. S. C. § 1441 authorizes the removal of civil actions from state court to federal court when the state-court action is one that could have been brought, originally, in federal court. When federal-court jurisdiction is predicated on the parties' diversity of citizenship, see § 1332, removal is permissible "only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which [the] action [was] brought." § 1441(b).

Christophe and Juanita Roche, plaintiffs below, respondents here, leased an apartment in a Virginia complex, Westfield Village, managed by Lincoln Property Company (Lincoln). The Roches commenced suit in state court against diverse defendants, including Lincoln, asserting serious medical ailments from their exposure to toxic mold in their apartment, and alleging loss, theft, or destruction of personal property left in the care of Lincoln and the mold treatment firm during the remediation process. The Roches identified themselves as Virginia citizens and defendant Lincoln as a Texas corporation. Defendants removed the litigation to a Federal District Court, invoking that court's diversity-of-citizenship jurisdiction. In their consolidated federal-court complaint, the Roches identified themselves and Lincoln just as they did in their state-court complaints. Lincoln, in its answer, admitted that it managed Westfield Village, and did not seek to avoid liability by asserting that some other entity was responsible for managing the property. After discovery, the District Court granted defendants' motion for summary judgment, but before judgment was entered, the Roches moved to remand the case to state court. The District Court denied the motion, but the Fourth Circuit reversed, holding the removal improper on the ground that Lincoln failed to show the nonexistence of an affiliated Virginia entity that was a real party in interest.

Held: Defendants may remove an action on the basis of diversity of citizenship if there is complete diversity between all named plaintiffs and all named defendants, and no defendant is a citizen of the forum State. It is not incumbent on the named defendants to negate the existence of a potential defendant whose presence in the action would destroy diversity. Pp. 88–94.

Syllabus

(a) The Fourth Circuit correctly identified Lincoln as a proper party, but erred in insisting that some other entity affiliated with Lincoln should have been joined as a codefendant, and that it was Lincoln's obligation to name that entity and show that its joinder would not destroy diversity. This Court stresses, first, that the existence of complete diversity between the Roches and Lincoln is plain and no longer subject to debate. The Court turns next to the reasons why the Fourth Circuit erred in determining that diversity jurisdiction was not proved by the removing parties. Since *Strawbridge* v. *Curtiss*, 3 Cranch 267, this Court has read the statutory formulation "between . . . citizens of different States," 28 U. S. C. § 1332(a)(1), to require complete diversity between all plaintiffs and all defendants. While § 1332 allows plaintiffs to invoke diversity jurisdiction, § 1441 gives defendants a corresponding opportunity. The scales are not evenly balanced, however. An in-state plaintiff may invoke diversity jurisdiction, but § 1441(b) bars removal on the basis of diversity if any "part[y] in interest properly joined and served as [a] defendan[t] is a citizen of the State in which [the] action is brought." In this case, Virginia plaintiffs joined and served no Virginian as a party defendant. Hence, the action qualified for the removal defendants effected. Neither Federal Rule of Civil Procedure 17(a), captioned "Real Party in Interest," nor Rule 19, captioned "Joinder of Persons Needed for Just Adjudication," requires plaintiffs or defendants to name and join any additional parties to this action. Both Rules address party joinder, not federal-court subject-matter jurisdiction. The Fourth Circuit and the Roches draw from this Court's decisions a jurisdictional "real parties to the controversy" rule applicable in diversity cases to complaining and defending parties alike. But the Court is aware of no decision supporting the burden the Fourth Circuit placed on a properly joined defendant to negate the existence of a potential codefendant whose presence in the action would destroy diversity. Pp. 88–91.

(b) This Court's decisions employing "real party to the controversy" terminology bear scant resemblance to the Roches' action. No party here has been "improperly or collusively" named solely to create federal jurisdiction, see, *e. g.*, 28 U. S. C. § 1359, *Kramer* v. *Caribbean Mills, Inc.*, 394 U. S. 823, 830. Nor are cases in which actions against a state agency have been regarded as suits against the State itself, see *State Highway Comm'n of Wyo.* v. *Utah Constr. Co.*, 278 U. S. 194, 199–200, relevant to suits between private parties. Unlike cases in which a party was named to satisfy state pleading rules, *e. g.*, *McNutt ex rel. Leggett, Smith, & Lawrence* v. *Bland*, 2 How. 9, 14, or was joined only as designated performer of a ministerial act, *e. g.*, *Walden* v. *Skinner*, 101 U. S. 577, 589, or otherwise had no control of, impact, or stake in

the controversy, *e. g.*, *Wood* v. *Davis*, 18 How. 467, 469–470, Lincoln has a vital interest in this case. Indeed, Lincoln accepted responsibility, in the event the Roches prevailed on the merits, by admitting that it managed Westfield Village. In any event, the Fourth Circuit had no warrant in this case to inquire whether some other person might have been joined as an additional or substitute defendant. Congress, empowered to prescribe the jurisdiction of the federal courts, sometimes has specified that a named party's own citizenship does not determine its diverse status. But Congress has not directed that a corporation, for diversity purposes, shall be deemed to have acquired the citizenship of all or any of its affiliates. For cases like the Roches', Congress has provided simply and only that "a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business," § 1332(c)(1). The jurisdictional rule governing here is unambiguous and not amenable to judicial enlargement. Under § 1332(c)(1), Lincoln is a citizen of Texas alone, and under § 1441(a) and (b), this case was properly removed. Pp. 91–94.

373 F. 3d 610, reversed and remanded.

GINSBURG, J., delivered the opinion for a unanimous Court.

David C. Frederick argued the cause for petitioners. With him on the briefs were *Scott K. Attaway*, *Connie N. Bertram*, *Richard A. Dean*, and *Carol T. Stone.*

Gregory P. Joseph argued the cause for respondents. With him on the brief were *Sandra M. Lipsman* and *Douglas J. Pepe.**

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns 28 U. S. C. § 1441, which authorizes the removal of civil actions from state court to federal court when the action initiated in state court is one that could have been brought, originally, in a federal district court. § 1441(a). When federal-court jurisdiction is predicated on the parties' diversity of citizenship, see § 1332, removal is permissible "only if none of the parties in interest properly

*Briefs of *amici curiae* urging reversal were filed for the Real Estate Roundtable et al. by *Gregory G. Garre;* and for the Washington Legal Foundation by *Daniel J. Popeo* and *Richard A. Samp.*

joined and served as defendants is a citizen of the State in which [the] action [was] brought." § 1441(b).

Christophe and Juanita Roche, plaintiffs below, respondents here, are citizens of Virginia. They commenced suit in state court against diverse defendants, including Lincoln Property Company (Lincoln), a corporation chartered and having its principal place of business in Texas. The defendants removed the litigation to a Federal District Court where, after discovery proceedings, they successfully moved for summary judgment. Holding the removal improper, the Court of Appeals instructed remand of the action to state court. 373 F. 3d 610, 620–622 (CA4 2004). The appellate court so ruled on the ground that the Texas defendant failed to show the nonexistence of an affiliated Virginia entity that was the "real party in interest." *Id.*, at 622.

We reverse the judgment of the Court of Appeals. Defendants may remove an action on the basis of diversity of citizenship if there is complete diversity between all named plaintiffs and all named defendants, and no defendant is a citizen of the forum State. It is not incumbent on the named defendants to negate the existence of a potential defendant whose presence in the action would destroy diversity.[1]

I

Christophe and Juanita Roche leased an apartment in the Westfield Village complex in Fairfax County, Virginia.

[1] Defendants below, petitioners here, presented a second question in their petition for certiorari: Can a limited partnership be deemed a citizen of a State on the sole ground that the partnership's business activities bear a "very close nexus" with the State? Because no partnership is or need be a party to this action, that question is not live for adjudication. We note, however, that our prior decisions do not regard as relevant to subject-matter jurisdiction the locations at which partnerships conduct business. See *Carden* v. *Arkoma Associates*, 494 U. S. 185, 189, 192–197 (1990) (for diversity purposes, a partnership entity, unlike a corporation, does not rank as a citizen; to meet the complete diversity requirement, all partners, limited as well as general, must be diverse from all parties on the opposing side).

About a year after moving in, they discovered evidence of toxic mold in their apartment. Expert inspection confirmed the presence of mold, which the inspection report linked to hair loss, headaches, irritation of the respiratory tract, fatigue, and dermatitis. App. 184–190. The report stated that spores from toxigenic mold species were airborne in the apartment and had likely contaminated the carpeting and fabric surfaces throughout the dwelling. *Id.*, at 188. The Roches moved out of their apartment for the remediation process, leaving their personal belongings in the care of Lincoln, the designated property manager of Westfield Village, and the mold treatment firm. 373 F. 3d, at 612.

Some months later, the Roches commenced suit, filing two substantially similar complaints in the Circuit Court for Fairfax County, Virginia. App. 27–50, 53–75. Both complaints asserted serious medical ailments from the Roches' year-long exposure to toxic mold, and sought damages under multiple headings, including negligence, breach of contract, actual fraud, constructive fraud, and violations of Virginia housing regulations. *Id.*, at 38–48, 64–74. In addition, the Roches alleged loss, theft, or destruction of their personal property (including irreplaceable family keepsakes) during the remediation process. Regarding these losses, they sought damages for conversion and infliction of emotional distress. *Id.*, at 49–50, 74–75.

In state court, the Roches' complaints named three defendants: Lincoln; INVESCO Institutional, an investment management group; and State of Wisconsin Investment Board, the alleged owner of Westfield Village. *Id.*, at 26–28, 52–54. The complaints described Lincoln as "a developer and manager of residential communities, including . . . Westfield Village." *Id.*, at 27, 53. "[A]cting by and through [its] agents," the Roches alleged, Lincoln caused the personal injuries of which they complained. *Id.*, at 30, 56.

Defendants timely removed the twin cases to the United States District Court for the Eastern District of Virginia,

invoking that court's diversity-of-citizenship jurisdiction. See 28 U. S. C. §§ 1332(a)(1), 1441(a). The notice of removal described Lincoln as a Texas corporation with its principal place of business in Texas, INVESCO as a Delaware corporation with its principal place of business in Georgia, and State of Wisconsin Investment Board as an independent agency of Wisconsin. App. 81. In their consolidated federal-court complaint, the Roches identified themselves as citizens of Virginia and Lincoln as a corporation headquartered in Texas, just as they did in their state-court complaints. *Id.*, at 27, 53, 114–115.[2] Further, they stated affirmatively that the federal court "has jurisdiction of this matter." *Id.*, at 114. Lincoln, in its answer to the complaint, admitted that, through its regional offices, "it manages Westfield Village." *Id.*, at 137, 138. Lincoln did not seek to avoid liability by asserting that some other entity was responsible for managing the property.

In both their state- and federal-court complaints, the Roches stated that, "[u]pon further discovery in this case," they would "determine if additional defendant or defendants will be named." *Id.*, at 28, 54, 116. Although they engaged in some discovery concerning Lincoln's affiliates, their efforts in this regard were not extensive, Tr. of Oral Arg. 9, 14, 38–39, 48–49, 53, and at no point did they seek to join any additional defendant.

After discovery, the parties cross-moved for summary judgment. The District Court granted defendants' motion and denied plaintiffs' motion, noting that it would set forth its reasons in a forthcoming memorandum order. App. to Pet. for Cert. 20a–21a. The promised memorandum order

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[2] Some weeks after the removal, the District Court dismissed INVESCO as a defendant. App. 112. Nothing turns on the presence or absence of INVESCO as a defending party. State of Wisconsin Investment Board, alleged owner of Westfield Village, remains a defendant-petitioner. Its status as a Wisconsin citizen for diversity purposes is not currently contested.

issued a few months later, *id.*, at 22a–40a, and the District Court entered final judgment for the defendants the same day, *id.*, at 41a.

Six days after the District Court granted defendants' motion for summary judgment, but before final judgment was entered, the Roches moved to remand the case to the state court, alleging for the first time the absence of federal subject-matter jurisdiction.[3] Specifically, the Roches alleged that Lincoln "is not a Texas Corporation, but a Partnership with one of its partners residing in the Commonwealth of Virginia." App. 226.[4] The District Court denied the remand motion, concluding that Lincoln is a Texas corporation and that removal was proper because the requisite complete diversity existed between all plaintiffs and all defendants. App. to Pet. for Cert. 84a–93a.

The Court of Appeals for the Fourth Circuit reversed and instructed the District Court to remand the case to the state court. 373 F. 3d, at 622. Although recognizing that Lincoln is a Texas citizen and a proper party to the action, *id.*, at 620–621, the Court of Appeals observed that "Lincoln operates under many different structures," *id.*, at 617. Describing Lincoln as "the nominal party and ultimate parent company," the appellate court suspected that an unidentified

[3] The Roches state that they preferred to litigate in state court for two principal reasons: Virginia does not permit summary judgment based on affidavits or deposition testimony, and Virginia has not adopted the rule of *Daubert* v. *Merrell Dow Pharmaceuticals, Inc.*, 509 U. S. 579 (1993), to assess expert evidence. Brief for Respondents 3, and n. 1.

[4] Confusion about Lincoln's structure is understandable. Real estate businesses typically operate through a web of affiliated entities, see Brief for Real Estate Roundtable et al. as *Amici Curiae* 6–13, and certain Lincoln-affiliated responders to the Roches' discovery inquiries stated that Lincoln was a partnership, *e. g.*, App. 175, 176, 179. In response to the Roches' motion to remand, Lincoln proffered its 1979 Texas incorporation papers and an affidavit attesting to its status as a Texas corporation. *Id.*, at 238–246. That matter is no longer debated; at oral argument, counsel for the Roches acknowledged that Lincoln is a Texas corporation. Tr. of Oral Arg. 40–41.

"Virginia subsidiary, be it a partnership, corporation or otherwise, rather than the Texas parent" was "the real and substantial party in interest." *Id.*, at 620–621. Lincoln, the party invoking federal-court jurisdiction, had not demonstrated the nonexistence of "the Virginia sub-'partnership,'" the Court of Appeals reasoned, *id.*, at 621, and therefore had not met its burden of establishing diversity, *id.*, at 621–622.

We granted certiorari, 543 U. S. 1186 (2005), to resolve a division among the Circuits on the question whether an entity not named or joined as a defendant can nonetheless be deemed a real party in interest whose presence would destroy diversity. Compare 373 F. 3d, at 620–622, with *Plains Growers, Inc.* v. *Ickes-Braun Glasshouses, Inc.*, 474 F. 2d 250, 252 (CA5 1973) ("The citizenship of one who has an interest in the lawsuit but who has not been made a party . . . by plaintiff cannot be used by plaintiff on a motion to remand to defeat diversity jurisdiction."), and *Simpson* v. *Providence Washington Ins. Group*, 608 F. 2d 1171, 1173–1175 (CA9 1979) (Kennedy, J.) (upholding removal where Alaska plaintiff sued Rhode Island parent company without joining as well potentially liable Alaska subsidiary, and the parties did not act collusively to create diversity jurisdiction).

II

The Court of Appeals correctly identified Lincoln as a proper party to the action, but it erred in insisting that some other entity affiliated with Lincoln should have been joined as a codefendant, and that it was Lincoln's obligation to name that entity and show that its joinder would not destroy diversity.

We stress, first, that, at this stage of the case, the existence of complete diversity between the Roches and Lincoln is not in doubt. The Roches, both citizens of Virginia, acknowledge that Lincoln is indeed a corporation, not a partnership, and that Lincoln is chartered in and has its principal place of business in Texas. Tr. of Oral Arg. 40–41; see App.

114 ("Upon information and belief, Lincoln Property Company is a corporation with corporate headquarters [in] Texas."); 373 F. 3d, at 620. Accordingly, for jurisdictional purposes, Lincoln is a citizen of Texas and of no other State. 28 U. S. C. § 1332(c)(1) ("a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business").

We turn now to the reasons why the Fourth Circuit erred in determining that diversity jurisdiction was not proved by the removing parties. 373 F. 3d, at 612 (concluding that "[d]efendants failed to carry their burden of proof with respect to their allegedly diverse citizenship"). The principal federal statute governing diversity jurisdiction, 28 U. S. C. § 1332, gives federal district courts original jurisdiction of all civil actions "between . . . citizens of different States" where the amount in controversy exceeds $75,000. § 1332(a)(1).[5] Since *Strawbridge* v. *Curtiss*, 3 Cranch 267 (1806), we have read the statutory formulation "between . . . citizens of different States" to require complete diversity between all plaintiffs and all defendants. *Caterpillar Inc.* v. *Lewis*, 519 U. S. 61, 68 (1996); cf. *State Farm Fire & Casualty Co.* v. *Tashire*, 386 U. S. 523, 530–531 (1967) (explaining that complete diversity is not constitutionally required and upholding interpleader under § 1335 based on minimal diversity, *i. e.*, diversity between two or more adverse parties).

While § 1332 allows plaintiffs to invoke the federal courts' diversity jurisdiction, § 1441 gives defendants a corresponding opportunity. Section 1441(a) states: "Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending." The scales are not

[5] The Roches sought damages well in excess of the jurisdictional minimum. App. 40–50, 66–75, 131–134.

evenly balanced, however. An in-state plaintiff may invoke diversity jurisdiction, but § 1441(b) bars removal on the basis of diversity if any "part[y] in interest properly joined and served as [a] defendan[t] is a citizen of the State in which [the] action is brought."[6] In the instant case, Virginia plaintiffs Christophe and Juanita Roche joined and served no Virginian as a party defendant. Hence the action qualified for the removal defendants effected.

Neither Federal Rule of Civil Procedure 17(a), captioned "Real Party in Interest," nor Rule 19, captioned "Joinder of Persons Needed for Just Adjudication," requires plaintiffs or defendants to name and join any additional parties to this action. Both Rules, we note, address party joinder, not federal-court subject-matter jurisdiction. See Rule 82 ("[The Federal Rules of Civil Procedure] shall not be construed to extend or limit the jurisdiction of the United States district courts . . . ."); Advisory Committee's Notes on Fed. Rule Civ. Proc. 19, 28 U. S. C. App., pp. 696–698. Rule 17(a) directs that "[e]very action shall be *prosecuted* in the name of the real party in interest." (Emphasis added.) That Rule, as its text displays, speaks to joinder of *plaintiffs*, not defendants.

Rule 19 provides for the joinder of parties who should or must take part in the litigation to achieve a "[j]ust [a]djudication." See *Provident Tradesmens Bank & Trust Co.* v. *Patterson*, 390 U. S. 102, 118–123 (1968). The Roches place no reliance on Rule 19 and maintain that the Rule "played no part, explicitly or implicitly, in the Court of Appeals' conclusion." Brief for Respondents 36. Given Lincoln's admission that it managed Westfield Village when mold contam-

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[6] Although we have not addressed the issue, several lower courts have held that the presence of a diverse but in-state defendant in a removed action is a "procedural" defect, not a "jurisdictional" bar, and that the defect is waived if not timely raised by the plaintiff. See 14C C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 3739, pp. 451–457, and nn. 32–37 (3d ed. 1998).

inated the Roches' apartment, see *supra*, at 86, it does indeed appear that no absent person, formally or practically, was "[n]eeded for [j]ust [a]djudication." Fed. Rule Civ. Proc. 19; cf. *Simpson*, 608 F. 2d, at 1174 (diverse corporate defendant accepted full liability for any eventual adverse judgment; nondiverse subsidiary need not be joined as a defendant, although arguably it had joint liability with its parent); 16 J. Moore et al., Moore's Federal Practice § 107.14[2][c], p. 107–67 (3d ed. 2005) (hereinafter Moore) ("In general, the plaintiff is the master of the complaint and has the option of naming only those parties the plaintiff chooses to sue, subject only to the rules of joinder [of] necessary parties.").

While Rule 17(a) applies only to joinder of parties who assert claims, the Court of Appeals and the Roches draw from decisions of this Court a jurisdictional "real parties to the controversy" rule applicable in diversity cases to complaining and defending parties alike. See *Navarro Savings Assn.* v. *Lee*, 446 U. S. 458, 462, n. 9 (1980) (citing Note, Diversity Jurisdiction over Unincorporated Business Entities: The Real Party in Interest as a Jurisdictional Rule, 56 Texas L. Rev. 243, 247–250 (1978)). But no decision called to our attention supports the burden the Court of Appeals placed on a properly joined defendant to negate the existence of a potential codefendant whose presence in the action would destroy diversity.

III

Our decisions employing "real party to the controversy" terminology in describing or explaining who counts and who can be discounted for diversity purposes bear scant resemblance to the action the Roches have commenced. No party here has been "improperly or collusively" named solely to create federal jurisdiction, see 28 U. S. C. § 1359 ("A district court shall not have jurisdiction of a civil action in which any party, by assignment or otherwise, has been improperly or collusively made or joined to invoke the jurisdiction of such court."); *Kramer* v. *Caribbean Mills, Inc.*, 394 U. S. 823, 830

(1969) (assignment for collection only, motivated by desire to make diversity jurisdiction available, falls within the "very core" of § 1359); *Little* v. *Giles*, 118 U. S. 596, 600–607 (1886) (where land was purportedly sold to out-of-state farmer but no money or deed changed hands, quiet title action could not be maintained based on farmer's diverse citizenship), nor to defeat it, see *Chesapeake & Ohio R. Co.* v. *Cockrell*, 232 U. S. 146, 152 (1914) (diverse defendants, upon showing that joinder of nondiverse party was "without right and made in bad faith," may successfully remove the action to federal court).

Nor are the Roches aided by cases in which actions against a state agency have been regarded as suits against the State itself. See, *e. g.*, *State Highway Comm'n of Wyo.* v. *Utah Constr. Co.*, 278 U. S. 194, 199–200 (1929) ("[State] Commission was but the arm or *alter ego* of the State with no funds or ability to respond in damages."). Decisions of this genre are bottomed on this Court's recognition of a State's asserted Eleventh Amendment right not to be haled into federal court. See, *e. g.*, *Federal Maritime Comm'n* v. *South Carolina Ports Authority*, 535 U. S. 743, 769 (2002).[7] They are not pertinent to suits between private parties.

Unlike cases in which a party was named to satisfy state pleading rules, *e. g.*, *McNutt ex rel. Leggett, Smith, & Lawrence* v. *Bland*, 2 How. 9, 14 (1844), or was joined only as designated performer of a ministerial act, *e. g.*, *Walden* v. *Skinner*, 101 U. S. 577, 589 (1880), or otherwise had no control of, impact on, or stake in the controversy, *e. g.*, *Wood* v. *Davis*, 18 How. 467, 469–470 (1856), Lincoln has a vital inter-

[7] Similarly inapposite are cases invoking our original jurisdiction in which we have inquired into the capacity in which a sovereign party appears. See, *e. g.*, *Oklahoma ex rel. Johnson* v. *Cook*, 304 U. S. 387, 395–396 (1938) (original jurisdiction improper where State was acting as trustee for its citizens); *United States Fidelity & Guaranty Co.* v. *United States ex rel. Kenyon*, 204 U. S. 349, 358 (1907) (original jurisdiction upheld where United States was "a real and not a mere nominal plaintiff").

est in this case.[8] Indeed, Lincoln accepted responsibility, in the event that the Roches prevailed on the merits of their claims, by admitting that, "[since 1996,] it has managed Westfield Village Apartments." App. 137. A named defendant who admits involvement in the controversy and would be liable to pay a resulting judgment is not "nominal" in any sense except that it is named in the complaint. Cf. *Knapp* v. *Railroad Co.*, 20 Wall. 117, 122 (1874).

In any event, we emphasize, the Fourth Circuit had no warrant in this case to inquire whether some other person might have been joined as an additional or substitute defendant. See *ibid.* (federal courts should not "inquir[e] outside of the case in order to ascertain whether some other person may not have an equitable interest in the cause of action"); *Little*, 118 U. S., at 603 (if named party's interest is real, the fact that other interested parties are not joined "will not affect the jurisdiction of the [federal courts]"); 16 Moore § 107.14[2][c], p. 107–67 ("Ordinarily, a court will not interfere with the consequences of a plaintiff's selection in naming parties, unless the plaintiff has impermissibly manufactured diversity or used an unacceptable device to defeat diversity.").

Congress, empowered to prescribe the jurisdiction of the federal courts, sometimes has specified that a named party's own citizenship does not determine its diverse status. Thus, as a procedural matter, executors, administrators, and guardians "may sue in [their] own name[s] without joining the party for whose benefit the action is brought." Rule 17(a). As to diversity jurisdiction, however, § 1332(c)(2) directs that "the legal representative of [a decedent's]

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[8] The Roches' complaints cast Lincoln as the primary tortfeasor, alleging that Lincoln engaged in "a conscious and predetermined plan" to conceal the hazards of mold from apartment residents. App. 34, 60. Further, the Roches alleged that Lincoln ignored numerous mold-related maintenance requests they "personally" made to Lincoln, *id.*, at 29, 55, inquiries that, if followed up, might have prevented or lessened their injuries.

estate . . . shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same State as the infant or incompetent." Congress has also provided that in direct action suits against insurers to which the insured is not made a party, the "insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business." § 1332(c)(1).

But Congress surely has not directed that a corporation, for diversity-of-citizenship purposes, shall be deemed to have acquired the citizenship of all or any of its affiliates. For cases of the kind the Roches have instituted, Congress has provided simply and only this instruction: "[A] corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business." *Ibid.* The jurisdictional rule governing here is unambiguous and it is not amenable to judicial enlargement. Under § 1332(c)(1), Lincoln is a citizen of Texas alone, and under § 1441(a) and (b), this case was properly removed.

* * *

The Roches sued the entity they thought responsible for managing their apartment. Lincoln affirmed that it was so responsible. Complete diversity existed. The potential liability of other parties was a matter plaintiffs' counsel might have assiduously explored through discovery devices. It was not incumbent on Lincoln to propose as additional defendants persons the Roches, as masters of their complaint, permissively might have joined.

For the reasons stated, the judgment of the United States Court of Appeals for the Fourth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

WAGNON, SECRETARY, KANSAS DEPARTMENT OF REVENUE *v.* PRAIRIE BAND POTAWATOMI NATION

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 04–631. Argued October 3, 2005—Decided December 6, 2005

Kansas' motor fuel tax applies to the receipt of fuel by off-reservation non-Indian distributors who subsequently deliver it to the gas station owned by, and located on the Reservation of, the Prairie Band Potawatomi Nation (Nation). The station is meant to accommodate reservation traffic, including patrons driving to the casino the Nation owns and operates there. Most of the station's fuel is sold to such patrons, but some sales are made to persons living or working on the reservation. The Nation's own tax on the station's fuel sales generates revenue for reservation infrastructure. The Nation sued for declaratory judgment and injunctive relief from the State's collection of its tax from distributors delivering fuel to the reservation. Granting the State summary judgment, the District Court determined that the balance of state, federal, and tribal interests tilted in favor of the State under the test set forth in *White Mountain Apache Tribe* v. *Bracker*, 448 U. S. 136. The Tenth Circuit reversed, agreeing with the Nation that the Kansas tax is an impermissible affront to its sovereignty. The court reasoned that the Nation's fuel revenues were derived from value generated primarily on its reservation—*i. e.*, the creation of a new fuel market by virtue of the casino—and that the Nation's interests in taxing this reservation-created value to raise revenue for reservation infrastructure outweighed the State's general interest in raising revenues.

Held: Because Kansas' motor fuel tax is a nondiscriminatory tax imposed on an off-reservation transaction between non-Indians, the tax is valid and poses no affront to the Nation's sovereignty. The *Bracker* interest-balancing test does not apply to a tax that results from an off-reservation transaction between non-Indians. Pp. 101–115.

1. The Kansas tax is imposed on non-Indian distributors based upon their off-reservation receipt of motor fuel, not on the on-reservation sale and delivery of that fuel. Pp. 101–110.

(a) Under this Court's Indian tax immunity cases, the "who" and the "where" of a challenged tax have significant consequences. "The initial and frequently dispositive question . . . is *who* bears [a tax's] legal

incidence," *Oklahoma Tax Comm'n* v. *Chickasaw Nation*, 515 U. S. 450, 458 (emphasis added). Moreover, the States are categorically barred from placing a tax's legal incidence "*on a tribe or on tribal members* for sales made *inside Indian country*" without congressional authorization. *Id.*, at 459 (emphasis added). Even when a State imposes a tax's legal incidence on a non-Indian seller, the tax may nonetheless be pre-empted if the transaction giving rise to tax liability occurs on the reservation and the imposition of the tax fails to satisfy the *Bracker* interest-balancing test. See, *e. g.*, *Central Machinery Co.* v. *Arizona Tax Comm'n*, 448 U. S. 160. Pp. 101–102.

(b) The Court rejects the Nation's argument that it is entitled to prevail under *Chickasaw*'s categorical bar because the fairest reading of the Kansas statute is that the tax's legal incidence actually falls on the Tribe on the reservation. Under the statute, the tax's incidence is expressly imposed on the distributor that first receives the fuel. Such "dispositive language" from the state legislature is determinative of who bears a state excise tax's legal incidence. *Chickasaw*, *supra*, at 461. Even absent such "dispositive language," the Court would nonetheless conclude that the tax's legal incidence is on the distributor because Kansas law makes clear that it is the distributor, not the retailer, that is liable for the tax. The lower courts and the Kansas agency charged with administering the motor fuel tax reached the same conclusion. *Kaul* v. *State Dept. of Revenue*, 266 Kan. 464, 970 P. 2d 60, distinguished. Pp. 102–105.

(c) Also rejected is the Nation's alternative argument that the *Bracker* test must be applied irrespective of who bears the Kansas tax's legal incidence because the tax arises as a result of the *on-reservation* sale and delivery of fuel. The Nation presented a starkly different, and correct, interpretation of the statute in the Tenth Circuit, arguing that the balancing test is appropriate even though the tax's legal incidence is imposed on the Nation's non-Indian distributor and is triggered by the distributor's receipt of fuel *outside the reservation.* The Nation's argument here is rebutted by provisions of the Kansas statute demonstrating that the only taxable event occurs when the distributor first receives the fuel and by a final determination by the State reaching the same conclusion. The Nation's theory that the existence of statutory deductions for certain postreceipt transactions make it impossible for a distributor to calculate its ultimate tax liability without knowing whether, where, and to whom the fuel is ultimately sold or delivered suffers from several conceptual defects. For example, availability of the deductions does not change the nature of the taxable event, the distributor's receipt of the fuel. Pp. 105–110.

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2. The Tenth Circuit erred in concluding that the Kansas tax is nevertheless subject to *Bracker*'s test. That test applies only where "a State asserts authority over the conduct of non-Indians engaging in activity on the reservation." 448 U. S., at 144. It has never been applied where, as here, a state tax imposed on a non-Indian arises from a transaction occurring off the reservation. The Court's Indian tax immunity cases counsel against such an application. Pp. 110–115.

(a) Limiting the *Bracker* test exclusively to *on-reservation* transactions between a nontribal entity and a tribe or tribal member is consistent with this Court's unique Indian tax immunity jurisprudence, which relies "heavily on the doctrine of tribal sovereignty [giving] state law 'no role to play' within a tribe's territorial boundaries," *Oklahoma Tax Comm'n* v. *Sac and Fox Nation*, 508 U. S. 114, 123–124. The Court has taken an altogether different course, by contrast, when a State asserts its taxing authority outside of Indian country. *E. g.*, *Chickasaw*, *supra.* In such cases, "[a]bsent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State." *Mescalero Apache Tribe* v. *Jones*, 411 U. S. 145, 148–149. If a State may apply a nondiscriminatory tax to Indians who have gone beyond the reservation's boundaries, it may also apply a nondiscriminatory tax where, as here, the tax is imposed on non-Indians as a result of an off-reservation transaction. In these circumstances, *Bracker* is inapplicable. Cf. *Arizona Dept. of Revenue* v. *Blaze Constr. Co.*, 526 U. S. 32, 37. The application of the test here is also inconsistent with the Court's efforts to establish "bright line standard[s]" in the tax administration context. *Ibid.* The Nation is not entitled to interest balancing by virtue of its claim that the Kansas tax interferes with the Nation's own motor fuel tax. This is ultimately a complaint about the state tax's downstream economic consequences. The Nation cannot invalidate that tax by complaining about a decrease in its revenues. See, *e. g.*, *Washington* v. *Confederated Tribes of Colville Reservation*, 447 U. S. 134, 156. Nor would the Court's analysis change if legal significance were accorded the Nation's decision to label a portion of its gas station's revenues as tax proceeds. See *id.*, at 184, n. 9. Pp. 110–115.

(b) This Court rejects the Nation's contention that the Kansas tax is invalid notwithstanding the *Bracker* test's inapplicability because it exempts from taxation fuel sold or delivered to state and federal sovereigns and is therefore impermissibly discriminatory. The Nation is not similarly situated to the exempted sovereigns. While Kansas' tax pays for roads and bridges on the Nation's reservation, including the main highway used by casino patrons, Kansas offers no such services to the

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several States or the Federal Government. Moreover, to the extent Kansas retailers bear the tax's cost, that burden applies equally to all retailers within the State regardless of whether they are located on a reservation. P. 115.

379 F. 3d 979, reversed.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, O'CONNOR, SCALIA, SOUTER, and BREYER, JJ., joined. GINSBURG, J., filed a dissenting opinion, in which KENNEDY, J., joined, *post*, p. 116.

Theodore B. Olson argued the cause for petitioner. On the briefs were *Phillip Kline*, Attorney General of Kansas, and *John Michael Hale*, Special Assistant Attorney General.

Ian Heath Gershengorn argued the cause for respondent. With him on the brief was *David Prager III*.

Deputy Solicitor General Kneedler argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Clement*, *Acting Assistant Attorney General Johnson*, *Jeffrey P. Minear*, *M. Alice Thurston*, and *David C. Shilton*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of South Dakota et al. by *Lawrence E. Long*, Attorney General of South Dakota, and *John P. Guhin*, Assistant Attorney General, and by the Attorneys General for their respective States as follows: *David W. Márquez* of Alaska, *Bill Lockyer* of California, *Richard Blumenthal* of Connecticut, *Lawrence Wasden* of Idaho, *Michael A. Cox* of Michigan, *Jeremiah W. Nixon* of Missouri, *Brian Sandoval* of Nevada, *Patricia A. Madrid* of New Mexico, *Wayne Stenehjem* of North Dakota, *W. A. Drew Edmondson* of Oklahoma, *Thomas W. Corbett, Jr.*, of Pennsylvania, *Mark Shurtleff* of Utah, and *Pat Crank* of Wyoming; for the Multistate Tax Commission by *Frank D. Katz;* and for the National Association of Convenience Stores et al. by *William Perry Pendley* and *J. Scott Detamore*.

Briefs of *amici curiae* urging affirmance were filed for the Hoopa Valley Tribe et al. by *Thomas P. Schlosser* and *Rob Roy Smith;* for the Inter-Tribal Transportation Association by *Geoffrey D. Strommer*, *F. Michael Willis*, and *Charles A. Hobbs;* for the National Intertribal Tax Alliance et al. by *Richard A. Guest*, *Marcelino Gomez*, *Thomas Van Norman*, *Paul W. Shagen*, *Marjorie B. Gell*, *Gary S. Pitchlynn*, and *O. Joseph Williams;* for NCAI et al. by *Carter G. Phillips*, *Virginia A. Seitz*, *Reid Peyton*

JUSTICE THOMAS delivered the opinion of the Court.

The State of Kansas imposes a tax on the receipt of motor fuel by fuel distributors within its boundaries. Kansas applies that tax to motor fuel received by non-Indian fuel distributors who subsequently deliver that fuel to a gas station owned by, and located on, the Reservation of the Prairie Band Potawatomi Nation (Nation). The Nation maintains that this application of the Kansas motor fuel tax is an impermissible affront to its sovereignty. The Court of Appeals agreed, holding that the application of the Kansas tax to fuel received by a non-Indian distributor, but subsequently delivered to the Nation, was invalid under the interest-balancing test set forth in *White Mountain Apache Tribe* v. *Bracker*, 448 U. S. 136 (1980). But the *Bracker* interest-balancing test applies only where "a State asserts authority over the conduct of non-Indians engaging in activity on the reservation." *Id.*, at 144. It does not apply where, as here, a state tax is imposed on a non-Indian and arises as a result of a transaction that occurs off the reservation. Accordingly, we reverse.

I

The Nation is a federally recognized Indian Tribe whose reservation is on United States trust land in Jackson County, Kansas. The Nation owns and operates a casino on its reservation. In order to accommodate casino patrons and other reservation-related traffic, the Nation constructed, and now owns and operates, a gas station on its reservation next to the casino. Seventy-three percent of the station's fuel sales are made to casino patrons, while 11 percent of the station's fuel sales are made to persons who live or work on the reservation. The Nation purchases fuel for its gas station from non-Indian distributors located off its reservation. Those distributors pay a state fuel tax on their initial receipt of

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Chambers, and *Riyaz A. Kanji;* and for the Sac and Fox Nation of Missouri in Kansas and Nebraska et al. by *Thomas Weathers*.

motor fuel, Kan. Stat. Ann. § 79–3408 (2003 Cum. Supp.),[1] and pass along the cost of that tax to their customers, including the Nation.[2]

The Nation sells its fuel within 2 cents per gallon of the prevailing market price. *Prairie Band Potawatomi Nation* v. *Richards,* 379 F. 3d 979, 982 (CA10 2004). It does so notwithstanding the distributor's decision to pass along the cost of the State's fuel tax to the Nation, and the Nation's decision to impose its own tax on the station's fuel sales in the amount of 16 cents per gallon of gasoline and 18 cents per gallon of diesel (increased to 20 cents for gasoline and 22 cents for diesel in January 2003). *Ibid.* The Nation's fuel tax generates approximately $300,000 annually, funds that the Nation uses for "'constructing and maintaining roads, bridges and rights-of-way located on or near the Reservation,'" including the access road between the state-funded highway and the casino. *Ibid.*

The Nation brought an action in Federal District Court for declaratory judgment and injunctive relief from the State's collection of motor fuel tax from distributors who deliver fuel to the reservation. The District Court granted summary judgment in favor of the State. Applying the *Bracker* interest-balancing test, it determined that the balance of state, federal, and tribal interests tilted in favor of the State. The court reached this determination because "it is undisputed that the legal incidence of the tax is directed off-reservation at the fuel distributors," *Prairie Band Potawatomi Nation* v. *Richards,* 241 F. Supp. 2d 1295, 1311 (Kan.

[1] The Kansas Legislature recently amended the fuel tax statute. 2005 Kan. Sess. Laws ch. 46. The text of the sections to which we refer remains the same, although the subsection numbers have changed. For consistency, our subsection references are to the 2003 version applied by the lower courts and cited by the parties.

[2] The record does not clearly establish whether the distributor passed along the cost of the tax to the Nation's gas station. At oral argument, petitioner acknowledged that the record was unclear, but represented that the distributor was in fact passing along the cost of the tax to the Nation.

2003), and because the ultimate purchasers of the fuel, non-Indian casino patrons, receive the bulk of their governmental services from the State, *id.*, at 1309. The court held that the State's tax did not interfere with the Nation's right of self-government, adding that "a tribe cannot oust a state from any power to tax on-reservation purchases by nonmembers of the tribe by simply imposing its own tax on the transactions or by otherwise earning its revenues from the tribal business." *Id.*, at 1311.

The Court of Appeals for the Tenth Circuit reversed. 379 F. 3d 979 (2004). It determined that, under *Bracker*, the balance of state, federal, and tribal interests favored the Tribe. The Tenth Circuit reasoned that the Nation's fuel revenues were "derived from value generated primarily on its reservation," 379 F. 3d, at 984—namely, the creation of a new fuel market by virtue of the presence of the casino—and that the Nation's interests in taxing this reservation-created value to raise revenue for reservation infrastructure outweighed the State's "general interest in raising revenues," *id.*, at 986. We granted certiorari, 543 U. S. 1186 (2005), and now reverse.

II

Although we granted certiorari to determine whether Kansas may tax a non-Indian distributor's *off-reservation* receipt of fuel without being subject to the *Bracker* interest-balancing test, Pet. for Cert. i, the Nation maintains that Kansas' "tax is imposed not on the off-reservation receipt of fuel, but on its *on-reservation sale and delivery*," Brief for Respondent 11 (emphasis in original). As the Nation recognizes, under our Indian tax immunity cases, the "who" and the "where" of the challenged tax have significant consequences. We have determined that "[t]he initial and frequently dispositive question in Indian tax cases . . . is *who* bears the legal incidence of [the] tax," *Oklahoma Tax Comm'n* v. *Chickasaw Nation*, 515 U. S. 450, 458 (1995) (emphasis added), and that the States are categorically barred

from placing the legal incidence of an excise tax "*on a tribe or on tribal members* for sales made *inside Indian country*" without congressional authorization, *id.*, at 459 (emphasis added). We have further determined that, even when a State imposes the legal incidence of its tax on a non-Indian seller, the tax may nonetheless be pre-empted if the transaction giving rise to tax liability occurs on the reservation and the imposition of the tax fails to satisfy the *Bracker* interest-balancing test. See 448 U. S. 136 (holding that state taxes imposed on on-reservation logging and hauling operations by non-Indian contractor are invalid under the interest-balancing test); cf. *Central Machinery Co.* v. *Arizona Tax Comm'n*, 448 U. S. 160 (1980) (holding that the Indian trader statutes pre-empted Arizona's tax on a non-Indian seller's on-reservation sales).

The Nation maintains that it is entitled to prevail under the categorical bar articulated in *Chickasaw* because "[t]he fairest reading of the statute is that the legal incidence of the tax actually falls on the Tribe [on the reservation]." Brief for Respondent 17, n. 5. The Nation alternatively maintains it is entitled to prevail even if the legal incidence of the tax is on the non-Indian distributor because, according to the Nation, the tax arises out of a distributor's on-reservation transaction with the Tribe and is therefore subject to the *Bracker* balancing test. Brief for Respondent 15. We address the "who" and the "where" of Kansas' motor fuel tax in turn.

A

Kansas law specifies that "the incidence of [the motor fuel] tax is imposed on the distributor of the first receipt of the motor fuel." Kan. Stat. Ann. § 79–3408(c) (2003 Cum. Supp.). We have suggested that such "dispositive language" from the state legislature is determinative of who bears the legal incidence of a state excise tax. *Chickasaw*, *supra*, at 461. But even if the state legislature had not employed such "dispositive language," thereby requiring us instead to look

to a "fair interpretation of the taxing statute as written and applied," *California Bd. of Equalization* v. *Chemehuevi Tribe*, 474 U. S. 9, 11 (1985) *(per curiam)*, we would nonetheless conclude that the legal incidence of the tax is on the distributor.

Kansas law makes clear that it is the distributor, rather than the retailer, that is liable to pay the motor fuel tax. Section 79–3410(a) (1997) provides, in relevant part, that "[e]very distributor . . . shall compute and shall pay to the director . . . the amount of [motor fuel] taxes due to the state." While the distributors are "entitled" to pass along the cost of the tax to downstream purchasers, see § 79–3409 (2003 Cum. Supp.), they are not required to do so. In sum, the legal incidence of the Kansas motor fuel tax is on the distributor. The lower courts reached the same conclusion. 379 F. 3d, at 982 ("The Kansas legislature structured the tax so that its legal incidence is placed on non-Indian distributors"); 241 F. Supp. 2d, at 1311 ("[I]t is undisputed that the legal incidence of the tax is directed off-reservation at the fuel distributors"); see also *Sac and Fox Nation of Missouri* v. *Pierce*, 213 F. 3d 566, 578 (CA10 2000) ("[T]he legal incidence of the [Kansas] tax law as presently written falls on the fuel distributors rather than on the Tribes"); *Winnebago Tribe of Nebraska* v. *Kline*, 297 F. Supp. 2d 1291, 1294 (Kan. 2004) ("Under the Kansas statutory scheme, the legal incidence of the state's fuel tax falls on the 'distributor of first receipt' of such fuel"); *Sac and Fox Nation of Missouri* v. *LaFaver*, 31 F. Supp. 2d 1298, 1307 (Kan. 1998) ("[T]he statutes are extremely clear in providing that the tax in question is imposed upon the distributor"). And the Kansas Department of Revenue, the state agency charged with administering the motor fuel tax, has concluded likewise. See Letter from David J. Heinemann, Office of Administrative Appeals, to Mark A. Burghart, Written Final Determination in Request for Informal Conference for Reconsideration of Agency Action, *Davies Oil Co., Inc.*, Docket No. 01–970 (Jan. 3, 2002)

(hereinafter Kansas Dept. of Revenue Letter) ("The legal incidence of the Kansas fuel tax rests with Davies, the distributor, who is up-stream from Nation, the retailer").

The United States, as *amicus*, contends that this conclusion is foreclosed by the Kansas Supreme Court's decision in *Kaul* v. *State Dept. of Revenue*, 266 Kan. 464, 970 P. 2d 60 (1998). The United States reads *Kaul* as holding that the legal incidence of Kansas' motor fuel tax rests on the Indian retailers, rather than on the non-Indian distributors. And, under the United States' view, so long as the Kansas Supreme Court's "'definitive determination as to the operating incidence'" of its fuel tax is "'consistent with the statute's reasonable interpretation,'" it should be "'deemed conclusive.'" Brief for United States as *Amicus Curiae* 10 (quoting *Gurley* v. *Rhoden*, 421 U. S. 200, 208 (1975)).

We disagree with the United States' interpretation of *Kaul*. In *Kaul*, two members of the Citizen Band Potawatomi Tribe of Oklahoma sought to enjoin the enforcement of Kansas' fuel tax on fuel delivered to their gas station located on the Prairie Band Potawatomi Tribe of Kansas' Reservation. The Kansas Supreme Court determined that the station owners had standing to challenge the tax because the statute provided that the distributor was entitled to "'charge and collect such tax . . . as a part of the selling price.'" *Kaul*, *supra*, at 474, 970 P. 2d, at 67 (quoting Kan. Stat. Ann. §79–3409 (1995); emphasis deleted). The court determined that the station owners were not entitled to an injunction, however, because they were not members of a Kansas tribe and thus there had "been no showing by Retailers that payment of fuel tax to Kansas interferes with the self-government of a Kansas tribe or a Kansas tribal member." 266 Kan., at 477, 970 P. 2d, at 69. The court then noted that "the legal incidence of the tax on motor fuel rests on non-tribal members and does not affect the Potawatomi Indian reservation within the state of Kansas." *Ibid.*

Kaul does not foreclose our determination that the distributor bears the legal incidence of the Kansas motor fuel tax. As an initial matter, it is unclear whether the court's reference to "nontribal members" is a reference to the non-tribal-member retailers or the non-tribal-member distributors. At the very least, *Kaul*'s imprecise language cannot be characterized as a definitive determination. Moreover, the 1998 amendments to the Kansas fuel provisions, including the amendment to § 79–3408(c) that provides that "the incidence of this tax is imposed on the distributor," were not applied in *Kaul*. *Id.*, at 473, 970 P. 2d, at 66 (identifying provisions that were repealed in 1998 as being "in effect during the period relevant to this case"); *id.*, at 474, 970 P. 2d, at 67 (noting that a "critical statute" to its holding was the 1995 version of § 79–3409, which was amended in 1998). Accordingly, *Kaul* did not speak authoritatively on the provisions before us today.

B

The Nation maintains that we must apply the *Bracker* interest-balancing test, irrespective of the identity of the taxpayer (*i. e.*, the party bearing the legal incidence), because the Kansas fuel tax arises as a result of the *on-reservation* sale and delivery of the motor fuel. See Brief for Respondent 15. Notably, however, the Nation presented a starkly different interpretation of the statute in the proceedings before the Court of Appeals, arguing that "[t]he balancing test is appropriate even though the legal incidence of the tax is imposed on the Nation's non-Indian distributor and is triggered by the distributor's receipt of fuel *outside the reservation.*" Appellant's Reply Brief in No. 03–3218 (CA10), p. 3 (emphasis added); see also 241 F. Supp. 2d, at 1311 (District Court observing that "it is undisputed that the legal incidence of the tax is directed off-reservation at the fuel distributors"). A "fair interpretation of the taxing statute as written and applied," *Chemehuevi Tribe*, 474 U. S., at

11, confirms that the Nation's interpretation of the statute before the Court of Appeals was correct.

As written, the Kansas fuel tax provisions state that "the incidence of this tax is imposed on the distributor of the first receipt of the motor fuel and such taxes shall be paid but once. Such tax shall be computed on all motor-vehicle fuels or special fuels received by each distributor, manufacturer or importer in this state and paid in the manner provided for herein . . . ." Kan. Stat. Ann. § 79–3408(c) (2003 Cum. Supp.). Under this provision, the distributor who initially receives the motor fuel is liable for payment of the fuel tax, and the distributor's tax liability is determined by calculating the amount of fuel received by the distributor.

Section 79–3410(a) (1997) confirms that it is the distributor's off-reservation receipt of the motor fuel, and not any subsequent event, that establishes tax liability. That section provides:

> "[E]very distributor, manufacturer, importer, exporter or retailer of motor-vehicle fuels or special fuels, on or before the 25th day of each month, shall render to the director . . . a report certified to be true and correct showing the number of gallons of motor-vehicle fuels or special fuels received by such distributor, manufacturer, importer, exporter or retailer during the preceding calendar month . . . . Every distributor, manufacturer or importer within the time herein fixed for the rendering of such reports, shall compute and shall pay to the director at the director's office the amount of taxes due to the state on all motor-vehicle fuels or special fuels received by such distributor, manufacturer or importer during the preceding calendar month."

Thus, Kansas law expressly provides that a distributor's monthly tax obligations are determined by the amount of fuel received by the distributor during the preceding month. See *Kline*, 297 F. Supp. 2d, at 1294 ("The distributor must

compute and remit the tax each month for the fuel received by the distributor in the State of Kansas").

The Nation disagrees. It contends that what is taxed is not the distributors' (off-reservation) receipt of the fuel, but rather the distributors' use, sale, or delivery of the motor fuel—in this case, the distributors' (on-reservation) sale or delivery to the Nation. The Nation grounds support for this proposition in § 79–3408(a) (2003 Cum. Supp.). That section provides that "[a] tax . . . is hereby imposed on the use, sale or delivery of all motor vehicle fuels or special fuels which are used, sold or delivered in this state for any purpose whatsoever." But this section cannot be read in isolation. If it were, it would permit Kansas to tax the same fuel multiple times—namely, every time fuel is sold, delivered, or used. Section 79–3408(a) must be read in conjunction with subsection (c), which specifies that "the incidence of this tax is imposed on the distributor of the first receipt of the motor fuel *and such taxes shall be paid but once.*" (Emphasis added.) The identity of the single, taxable event is revealed in the very next sentence of subsection (c), which provides that "[s]uch tax shall be computed on all . . . fuels *received by each distributor.*" (Emphasis added.) In short, the "use, sale or delivery" that triggers tax liability is the sale or delivery of the fuel to the distributor. The Kansas Department of Revenue has issued a final determination reaching the same conclusion. See Kansas Dept. of Revenue Letter ("[P]ursuant to the Kansas Motor Fuel Tax Act . . . the state fuel tax was imposed on Davies, a distributor, *when Davies first received the fuel at its business, a site located off of Nation's reservation*" (emphasis added)).

The Nation claims further support for its interpretation of the statute in § 79–3408(d) (2003 Cum. Supp.). Section 79–3408(d) permits distributors to obtain deductions from the Kansas motor fuel tax for certain postreceipt transactions, such as sale or delivery of fuel for export from the State and sale or delivery of fuel to the United States.

§§ 79–3408(d)(1)–(2). The Nation argues that these exemptions make it impossible for a distributor to calculate its "ultimate tax liability" without knowing "whether, where, and to whom the fuel is ultimately sold or delivered." Brief for Respondent 15. The Nation infers from these provisions that the taxable event is actually the distributors' postreceipt delivery of fuel to retailers such as the Nation, rather than the distributors' initial receipt of the fuel.

The Nation's theory suffers from a number of conceptual defects. First, under Kansas law, a distributor must pay the tax even for fuel that sits in its inventory—fuel that is not (or at least has not yet been) used, sold, or delivered by the distributor.[3] But the Nation's interpretation presumes that the tax is owed *only* on a distributor's postreceipt use, sale, or delivery of fuel. As this interpretation cannot be reconciled with the manner in which the Kansas motor fuel tax is

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[3] This understanding of the application of the Kansas fuel tax is confirmed by the form that fuel distributors are required to fill out each month pursuant to Kan. Stat. Ann. § 79–3410 (1997). See Kansas Form MF–52, available at http://www.ksrevenue.org/pdf/forms/mf52.pdf (as visited Nov. 21, 2005, and available in Clerk of Court's case file). The form instructs distributors to enter in line 1 "the total net gallons of gasoline, gasohol and special fuel received or imported" during the preceding month. *Id.*, at 2. The distributors may then "[e]nter the deductions that apply to your business" in lines 2(a)-to-(e) for the preceding month. Those deductions include "[n]et gallons of fuel exported from Kansas," "[n]et gallons of fuel sold to the U. S. Government," "[n]et gallons of fuel sold for aviation purposes," and "[n]et gallons of dyed diesel fuel *received* for the month," the very deductions described in § 79–3408(d), *ibid.* (emphasis in original). The distributor's tax liability is then calculated by subtracting the total deductions from the total fuel received, and applying the 2.5 percent handling allowance to the difference. Thus, the event that generates a distributor's tax liability is its receipt of fuel. And the distributor must pay tax on that fuel even if it is not subsequently delivered or sold. While a distributor may decrease its tax liability by engaging in transactions that entitle it to deductions, such as by selling or delivering fuel to an exempt entity like the United States, its tax liability is unaffected by sales or deliveries to nonexempt entities like the Nation.

actually applied, it must be rejected.[4] Second, the availability of tax deductions does not change the nature of the taxable event, here the distributor's receipt of the fuel. By analogy, an individual federal income taxpayer may reduce his tax liability by paying home mortgage interest. But that entitlement does not render the taxable event anything other than the receipt of income by the taxpayer. See 26 U. S. C. § 1 (2000 ed. and Supp. II), § 163(h) (2000 ed.); cf. *North American Oil Consol.* v. *Burnet*, 286 U. S. 417, 424 (1932) (federal income tax liability arises when "a taxpayer . . . has received income").

Finally, the Nation contends that its interpretation of the statute is supported by Kan. Stat. Ann. § 79–3417 (1997), which permits a refund—in certain circumstances—for destroyed fuel. However, the Nation's interpretation is actually foreclosed by that section. Section 79–3417 entitles a distributor to a "refund from the state of the amount of motor-vehicle fuels or special fuels tax paid on any . . . fuels of 100 gallons or more in quantity, which are lost or destroyed at any one time while such distributor is the owner thereof," provided the distributor supplies the required notification and documentation to the State. This section illustrates that a distributor pays taxes for fuel in its possession that it has not delivered or sold, and is only entitled to the refund described in this section for tax it has already paid

[4] Indeed, the dissent acknowledges that tax is owed on fuel a distributor receives and holds in inventory—and thus implicitly concedes that the distributors' off-reservation receipt of motor fuel is the event that gives rise to tax liability. See *post*, at 120 (opinion of GINSBURG, J.). While the dissent contends that such tax is ultimately "effectively offset" by a subsequent delivery of the inventoried fuel, *ibid.*, the dissent does not explain the meaning of this opaque contention. A distributor's subsequent delivery of fuel to the Nation or any other fuel retailer in Kansas has *no effect* on tax that it has already paid in a preceding month. Indeed, the distributor does not report delivery to retailers on its monthly tax return. See Kansas Form MF–52. And a distributor must pay the tax even if the fuel is *never* delivered.

on fuel that is subsequently destroyed. While this section does not specify the event that gives rise to the distributor's tax liability, it forecloses the Nation's contention that such liability does not arise until fuel is sold or delivered to a nonexempt entity.

III

Although Kansas' fuel tax is imposed on non-Indian distributors based upon those distributors' off-reservation receipt of motor fuel, the Tenth Circuit concluded that the tax was nevertheless still subject to the interest-balancing test this Court set forth in *Bracker*, 448 U. S. 136. As *Bracker* itself explained, however, we formulated the balancing test to address the "difficult questio[n]" that arises when "a State asserts authority over the conduct of non-Indians engaging in activity *on the reservation.*" *Id.*, at 144–145 (emphasis added). The *Bracker* interest-balancing test has never been applied where, as here, the State asserts its taxing authority over non-Indians off the reservation. And although we have never addressed this precise issue, our Indian tax immunity cases counsel against such an application.

A

We have applied the balancing test articulated in *Bracker* only where "the legal incidence of the tax fell on a nontribal entity engaged in a transaction with tribes or tribal members," *Arizona Dept. of Revenue* v. *Blaze Constr. Co.*, 526 U. S. 32, 37 (1999), on the reservation. See *Bracker*, *supra* (motor carrier license and use fuel taxes imposed on on-reservation logging and hauling operations by non-Indian contractor); *Department of Taxation and Finance of N. Y.* v. *Milhelm Attea & Bros.*, 512 U. S. 61 (1994) (various taxes imposed on non-Indian purchasers of goods retailed on-reservation); *Cotton Petroleum Corp.* v. *New Mexico*, 490 U. S. 163 (1989) (state severance tax imposed on non-Indian lessee's on-reservation production of oil and gas); *Ramah Navajo School Bd., Inc.* v. *Bureau of Revenue of N. M.*, 458

U. S. 832 (1982) (state gross receipts tax imposed on private contractor's proceeds from the construction of a school on the reservation); *Washington* v. *Confederated Tribes of Colville Reservation*, 447 U. S. 134 (1980) (cigarette and sales taxes imposed on on-reservation purchases by nonmembers); *Central Machinery Co.*, 448 U. S. 160 (tax imposed on on-reservation sale of farm machinery to Tribe). Similarly, the cases identified in *Bracker* as supportive of the balancing test were exclusively concerned with the on-reservation conduct of non-Indians. See *Warren Trading Post Co.* v. *Arizona Tax Comm'n*, 380 U. S. 685 (1965) (gross proceeds tax imposed on non-Indian retailer on Navajo Indian Reservation); *Thomas* v. *Gay*, 169 U. S. 264 (1898) (state property tax imposed on cattle owned by non-Indian lessees of tribal land); *Williams* v. *Lee*, 358 U. S. 217 (1959) (holding the state courts lacked jurisdiction over dispute between non-Indian, on-reservation retailer and Indian debtors).[5]

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[5] Our recent discussion in *Oklahoma Tax Comm'n* v. *Chickasaw Nation*, 515 U. S. 450 (1995), regarding the application of the interest-balancing test to motor fuel taxes is not to the contrary. In *Chickasaw*, we noted in dicta that, "if the legal incidence of the tax rests on non-Indians, no categorical bar prevents enforcement of the tax; if the balance of federal, state, and tribal interests favors the State, and federal law is not to the contrary, the State may impose its levy, and may place on a tribe or tribal members 'minimal burdens' in collecting the toll." *Id.*, at 459 (citation omitted). *Chickasaw* did not purport to expand the applicability of *White Mountain Apache Tribe* v. *Bracker*, 448 U. S. 136 (1980), to an off-reservation tax on non-Indians. Indeed, the quoted sentence reveals that *Chickasaw* discussed the applicability of the interest-balancing test in the context of a tax that is collected by the tribe—a tax that necessarily arises from on-reservation conduct.

Moreover, in purporting to craft a "'bright-line standard'" in that case, we noted that Oklahoma "generally is free" to impose the legal incidence of its motor fuel tax on the consumer—who purchases fuel on the reservation—and then require the Indian retailers to "'collect and remit the levy.'" 515 U. S., at 460. If Oklahoma would have been free to impose the legal incidence of its fuel tax downstream from the Indian retailers, then Kansas should be equally free to impose the legal incidence of its fuel tax upstream from Indian retailers notwithstanding the applicability of

Limiting the interest-balancing test exclusively to *on-reservation* transactions between a nontribal entity and a tribe or tribal member is consistent with our unique Indian tax immunity jurisprudence. We have explained that this jurisprudence relies "heavily on the doctrine of tribal sovereignty . . . which historically gave state law 'no role to play' within a tribe's territorial boundaries." *Oklahoma Tax Comm'n* v. *Sac and Fox Nation*, 508 U. S. 114, 123–124 (1993) (quoting *McClanahan* v. *Arizona Tax Comm'n*, 411 U. S. 164, 168 (1973)). We have further explained that the doctrine of tribal sovereignty, which has a "significant geographical component," *Bracker*, *supra*, at 151, requires us to "revers[e]" the "'general rule'" that "'exemptions from tax laws should . . . be clearly expressed.'" *Sac and Fox*, *supra*, at 124 (quoting *McClanahan*, *supra*, at 176). And we have determined that the geographical component of tribal sovereignty "'provide[s] a backdrop against which the applicable treaties and federal statutes must be read.'" *Sac and Fox*, *supra*, at 124 (quoting *McClanahan*, *supra*, at 172). Indeed, the particularized inquiry we set forth in *Bracker* relied specifically on that backdrop. See 448 U. S., at 144–145 (noting that where "a State asserts authority over the conduct of non-Indians engaging in activity *on the reservation* . . . we have examined the language of the relevant federal treaties and statutes in terms of both the broad policies that underlie them and the notions of sovereignty that have developed from historical traditions of tribal independence" (emphasis added)).

We have taken an altogether different course, by contrast, when a State asserts its taxing authority outside of Indian country. Without applying the interest-balancing test, we

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the interest-balancing test. Indeed, the *Chickasaw* dicta should apply *a fortiori* here; the upstream approach is *less* burdensome on the Tribe because it does not include the collecting and remitting requirements that typically, and permissibly, accompany a consumer tax.

have permitted the taxation of the gross receipts of an off-reservation, Indian-owned ski resort, *Mescalero Apache Tribe* v. *Jones*, 411 U. S. 145 (1973), and the taxation of income earned by Indians working on reservation but living off reservation, *Chickasaw*, 515 U. S. 450. In these cases, we have concluded that "[a]bsent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State." *Mescalero Apache*, *supra*, at 148–149; *Chickasaw*, *supra*, at 465 (quoting *Mescalero Apache*, *supra*, at 148–149). If a State may apply a nondiscriminatory tax to Indians who have gone beyond the boundaries of the reservation, then it follows that it may apply a nondiscriminatory tax where, as here, the tax is imposed on non-Indians as a result of an off-reservation transaction. In these circumstances, the interest-balancing test set forth in *Bracker* is inapplicable. Cf. *Blaze Constr.*, 526 U. S., at 37 (declining to apply the *Bracker* interest-balancing test "where a State seeks to tax a transaction [on reservation] between the Federal Government and its non-Indian private contractor").

The application of the interest-balancing test to the Kansas motor fuel tax is not only inconsistent with the special geographic sovereignty concerns that gave rise to that test, but also with our efforts to establish "bright-line standard[s]" in the context of tax administration. 526 U. S., at 37 ("The need to avoid litigation and to ensure efficient tax administration counsels in favor of a bright-line standard for taxation of federal contracts, regardless of whether the contracted-for activity takes place on Indian reservations"); cf. *Chickasaw*, *supra*, at 460 (noting that the legal incidence test " 'provide[s] a reasonably bright-line standard' "); *County of Yakima* v. *Confederated Tribes and Bands of Yakima Nation*, 502 U. S. 251, 267–268 (1992). Indeed, we have recognized that the *Bracker* interest-balancing test

"only cloud[s]" our efforts to establish such standards. *Blaze Constr.*, *supra*, at 37. Under the Nation's view, however, any off-reservation tax imposed on the manufacture or sale of any good imported by the Nation or one of its members would be subject to interest balancing. Such an expansion of the application of the *Bracker* test is not supported by our cases.

Nor is the Nation entitled to interest balancing by virtue of its claim that the Kansas motor fuel tax interferes with its own motor fuel tax. As an initial matter, this is ultimately a complaint about the downstream economic consequences of the Kansas tax. As the owner of the station, the Nation will keep every dollar it collects above its operating costs. Given that the Nation sells gas at prevailing market rates, its decision to impose a tax should have no effect on its net revenues from the operation of the station; it should not matter whether those revenues are labeled "profits" or "tax proceeds." The Nation merely seeks to increase those revenues by purchasing untaxed fuel. But the Nation cannot invalidate the Kansas tax by complaining about a decrease in revenues. See *Colville*, 447 U. S., at 156 ("Washington does not infringe the right of reservation Indians to 'make their own laws and be ruled by them,' *Williams* v. *Lee*, 358 U. S. 217, 220 (1959), merely because the result of imposing its taxes will be to deprive the Tribes of revenues which they currently are receiving"). Nor would our analysis change if we accorded legal significance to the Nation's decision to label a portion of the station's revenues as tax proceeds. See *id.*, at 184, n. 9 (Rehnquist, J., concurring in part, concuring in result in part, and dissenting in part) ("When two sovereigns have legitimate authority to tax the same transaction, exercise of that authority by one sovereign does not oust the jurisdiction of the other. If it were otherwise, we would not be obligated to pay federal as well as state taxes on our income or gasoline purchases. Economic burdens on

the competing sovereign . . . do not alter the concurrent nature of the taxing authority").[6]

B

Finally, the Nation contends that the Kansas motor fuel tax is invalid notwithstanding the inapplicability of the interest-balancing test, because it "exempts from taxation fuel sold or delivered to all other sovereigns," and is therefore impermissibly discriminatory. Brief for Respondent 17–20 (emphasis deleted); Kan. Stat. Ann. §§ 79–3408(d)(1)–(2) (2003 Cum. Supp.). But the Nation is not similarly situated to the sovereigns exempted from the Kansas fuel tax. While Kansas uses the proceeds from its fuel tax to pay for a significant portion of the costs of maintaining the roads and bridges on the Nation's reservation, including the main highway used by the Nation's casino patrons, Kansas offers no such services to the several States or the Federal Government. Moreover, to the extent Kansas fuel retailers bear the cost of the fuel tax, that burden falls equally upon all retailers within the State regardless of whether those retailers are located on an Indian reservation. Accordingly, the Kansas motor fuel tax is not impermissibly discriminatory.

* * *

For the foregoing reasons, we hold that the Kansas motor fuel tax is a nondiscriminatory tax imposed on an off-reservation transaction between non-Indians. Accordingly, the tax is valid and poses no affront to the Nation's sovereignty. The judgment of the Court of Appeals is reversed.

It is so ordered.

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[6] These authorities also foreclose the Nation's contention that the Kansas motor fuel tax is invalid, irrespective of the applicability of *Bracker*, 448 U. S. 136, because it interferes with the Nation's right to self-government. See Brief for Respondent 45–47.

JUSTICE GINSBURG, with whom JUSTICE KENNEDY joins, dissenting.

The Kansas fuel tax at issue is imposed on distributors, passed on to retailers, and ultimately paid by gas station customers. Out-of-state sales are exempt, as are sales to other distributors, the United States, and U. S. Government contractors. Fuel lost or destroyed, and thus not sold, is also exempt. But no statutory exception attends sales to Indian tribes or their members. Kan. Stat. Ann. §§ 79–3408; 79–3409; 79–3417 (1997 and 2003 Cum. Supp.).

The Prairie Band Potawatomi Nation (hereinafter Nation) maintains a casino and related facilities on its reservation. On nearby tribal land, as an adjunct to its casino, the Nation built, owns, and operates a gas station known as the Nation Station. Some 73% of the Nation Station's customers are casino patrons or employees. *Prairie Band Potawatomi Nation* v. *Richards,* 379 F. 3d 979, 982 (CA10 2004). The Nation imposes its own tax on fuel sold at the Nation Station, pennies per gallon less than Kansas' tax. *Ibid.*[1]

Both the Nation and the State have authority to tax fuel sales at the Nation Station. See *Merrion* v. *Jicarilla Apache Tribe,* 455 U. S. 130, 137 (1982) (describing "[t]he power to tax [as] an essential attribute of Indian sovereignty[,] . . . a necessary instrument of self-government and territorial management," which "enables a tribal government to raise revenues for its essential services"). As a practical matter, however, the two tolls cannot coexist. 379 F. 3d, at 986. If the Nation imposes its tax on top of Kansas' tax, then unless the Nation operates the Nation Station at a substantial loss, scarcely anyone will fill up at its pumps. Effectively double-taxed, the Nation Station must operate as an unprofitable venture, or not at all. In these circum-

[1] The Federal Government also imposes a tax on the "removal, entry, or sale" of all motor fuel. 26 U. S. C. § 4081(a)(1). Neither the State nor the Nation contests the applicability of this tax to fuel destined for the Nation Station.

stances, which tax is paramount? Applying the interest-balancing approach described in *White Mountain Apache Tribe* v. *Bracker*, 448 U. S. 136 (1980), the Court of Appeals for the Tenth Circuit held that "the Kansas tax, as applied here, is preempted because it is incompatible with and outweighed by the strong tribal and federal interests against the tax." 379 F. 3d, at 983. I agree and would affirm the Court of Appeals' judgment.

I

Understanding *Bracker* is key to the inquiry here. *Bracker* addressed the question whether a State should be preempted from collecting otherwise lawful taxes from non-Indians in view of the burden consequently imposed upon a tribe or its members. In that case, Arizona sought to enforce its fuel-use and vehicle-license taxes against a non-Indian enterprise that contracted with the White Mountain Apache Tribe to harvest timber from reservation forests. 448 U. S., at 138–140. The Court recognized that Arizona's levies raised difficult questions concerning "the boundaries between state regulatory authority and tribal self-government." *Id.*, at 141. Determining whether taxes formally imposed on non-Indians are preempted, the Court instructed, should not turn "on mechanical or absolute conceptions of state or tribal sovereignty, but [calls] for a particularized inquiry into the nature of the state, federal, and tribal interests at stake." *Id.*, at 145. This inquiry is "designed to determine whether, in the specific context, the exercise of state authority would violate federal law," *ibid.*, or "unlawfully infringe 'on the right of reservation Indians to make their own laws and be ruled by them,'" *id.*, at 142 (quoting *Williams* v. *Lee*, 358 U. S. 217, 220 (1959)). Applying the interest-balancing approach, the Court concluded that "the proposed exercise of state authority [was] impermissible" because "it [was] undisputed that the economic burden of the asserted taxes will ultimately fall on the Tribe,"

"the Federal Government has undertaken comprehensive regulation of the harvesting and sale of tribal timber," and the state officials were "unable to justify the taxes except in terms of a generalized interest in raising revenue." 448 U. S., at 151.

The Court has repeatedly applied the interest-balancing approach described in *Bracker* in evaluating claims that state taxes levied on non-Indians should be preempted because they undermine tribal and federal interests.[2] In many cases, both pre- and post-*Bracker*, a balancing analysis has yielded a decision upholding application of the state tax in question. See, *e. g.*, *Cotton Petroleum Corp.* v. *New Mexico*, 490 U. S. 163, 183–187 (1989) (State permitted to impose a severance tax on a non-Indian company that leased tribal land for oil and gas production); *Washington* v. *Confederated Tribes of Colville Reservation*, 447 U. S. 134, 154–159 (1980) (State permitted to tax non-Indians' purchases of cigarettes from on-reservation tribal retailers); *Moe* v. *Confederated Salish and Kootenai Tribes of Flathead Reservation*, 425 U. S. 463, 481–483 (1976) (same). Sometimes, however, particularized inquiry has resulted in a holding that federal or tribal interests are superior. See, *e. g.*, *Ramah Navajo School Bd., Inc.* v. *Bureau of Revenue of N. M.*, 458 U. S. 832, 843–846 (1982) (State prohibited from imposing gross-receipts tax on a non-Indian contractor constructing an on-reservation tribal school).

Kansas contends that the interest-balancing approach is not suitably employed to assess its fuel tax for these reasons: (1) The Kansas Legislature imposed the legal incidence of

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[2] The Court has also applied the interest-balancing approach to other forms of state regulation relating to Indian tribal societies. See, *e. g.*, *California* v. *Cabazon Band of Mission Indians*, 480 U. S. 202, 216–217 (1987) (State prohibited from regulating non-Indian customers of tribal bingo operation); *New Mexico* v. *Mescalero Apache Tribe*, 462 U. S. 324, 333–343 (1983) *(Mescalero II)* (State barred from enforcing game laws against non-Indians for on-reservation hunting and fishing).

the tax on the distributor—here, a non-Indian enterprise—not on retailers or their customers; and (2) the distributor's liability is triggered when it receives fuel from its supplier—a transaction that occurs off reservation. Reply Brief 2–6. Given these circumstances, Kansas urges and the Court accepts, no balancing is in order. See *ante,* at 12–13; Brief for Petitioner 6, 14–21. It is irrelevant in the State's calculus that its approach would effectively nullify the tribal fuel tax.

I note first that Kansas' placement of the legal incidence of the fuel tax is not as clear and certain as the State suggests and the Court holds. True, the statute states that "the incidence of this tax is imposed on the distributor of the first receipt of the motor fuel." Kan. Stat. Ann. § 79–3408(c) (2003 Cum. Supp.). But the statute declares initially that the tax "is hereby imposed on the use, sale or delivery of all motor vehicle fuels . . . used, sold or delivered in this state for any purpose whatsoever," § 79–3408(a), and it authorizes distributors to pass on the tax to retailers, § 79–3409. Notably, the statute excludes from taxation several "transactions," including the "sale or delivery of motor-vehicle fuel . . . for export from the state of Kansas to any other state or territory or to any foreign country"; "sale or delivery . . . to the United States"; "sale or delivery . . . to a contractor for use in performing work for the United States"; and "sale or delivery . . . to another duly licensed distributor." § 79–3408(d). Kansas also excludes from taxation "lost or destroyed" fuel, which is never sold by the distributor. § 79–3417 (1997). These provisions indicate not only that the Kansas Legislature anticipated that distributors would shift the tax burden further downstream. They reveal as well where the Court's analysis of the fuel tax goes awry.

When all the exclusions are netted out, the Kansas tax is imposed not on all the distributor's receipts, but effectively *only* on fuel actually *resold* by the distributor to an in-state nonexempt purchaser. To illustrate: Suppose in January a distributor acquires 100,000 gallons of fuel and promptly sells

80,000 to in-state nonexempt purchasers and 20,000 to exempt purchasers, for example, the United States or a U. S. contractor. The distributor would compute its tax liability by "deducting" the 20,000 gallons, see *ante*, at 108, n. 3, but would *remit tax* only on the 80,000 gallons bought by in-state nonexempt retailers.[3] If the distributor elected to build inventory in January by holding an additional 10,000 gallons for resale in February, Kansas would tax in January, but the distributor would effectively offset in February the tax paid in January on the inventory buildup. Again, in the end, only fuel actually sold to in-state nonexempt buyers would be burdened by Kansas' fuel tax.[4]

Kansas' attribution of controlling effect to the formal legal incidence of the tax rests in part on the State's misreading of *Oklahoma Tax Comm'n* v. *Chickasaw Nation*, 515 U. S. 450 (1995). See Brief for Petitioner 8, 16–20. The Court in that case distinguished instances in which the legal incidence of a State's excise tax rests on a tribe or tribal members, from instances in which the legal incidence rests on non-Indians. When "the legal incidence . . . rests on a tribe or on tribal members for sales made inside Indian country," the Court said, "the tax cannot be enforced absent clear congres-

[3] The Court analogizes the fuel excise tax "deduction" of exempt sales to the federal income tax deduction for home mortgage interest. *Ante*, at 109. The analogy is misconceived. An excise tax "deduction" bears no realistic resemblance to a personal income tax deduction provided by Congress for a nonbusiness personal expense. An excise tax "deduction," however, may fairly be compared to the standard income tax treatment of merchandise returns. In any period, goods returned and held for resale offset goods sold, so that only net sales yield gross profits for taxation purposes. See 26 CFR § 1.446–1(a)(4)(i) (2005); cf. § 1.458–1(g) (adjustments under elective treatment of certain post-year-end returns of magazines, paperback books, and recordings).

[4] If in February, the 10,000 gallons were destroyed and thus not sold, Kansas would nonetheless offset the fuel tax burden as Kan. Stat. Ann. § 79–3417 (1997) provides, because these gallons would never be sold to in-state nonexempt buyers.

sional authorization." 515 U. S., at 459. This "bright-line standard," *id.*, at 460, is sensitive to the sovereign status of Indian tribes, and reflects the Court's recognition that "tribal sovereignty is dependent on, and subordinate to, only the Federal Government, not the States." *Colville*, 447 U. S., at 154.[5]

When a State places the legal incidence of its tax on non-Indians, however, no similarly overt disrespect for a tribe's independence and dignity is displayed. In cases of this genre, *Chickasaw Nation* recognized, the Court has resisted adoption of a categorical rule. In lieu of attributing dispositive significance to the legal incidence, the Court has focused on the particular levy, and has evaluated the federal, state, and tribal interests at stake. 515 U. S., at 459; see *Cotton Petroleum*, 490 U. S., at 176 (Instead of a "mechanical or absolute" test, the Court has "applied a flexible pre-emption analysis sensitive to the particular facts and legislation involved. Each case 'requires a particularized examination of the relevant state, federal, and tribal interests.'" (quoting *Ramah*, 458 U. S., at 838)).

Chickasaw Nation did observe that "if a State is unable to enforce a tax because the legal incidence of the impost is on Indians or Indian tribes, the State generally is free to amend its law to shift the tax's legal incidence." 515 U. S., at 460. Kansas took the cue. After our decision in *Chickasaw Nation*, Kansas amended its fuel tax statute to state that "the incidence of this tax is imposed on the distributor." Kan. Stat. Ann. § 79–3408(c) (2003 Cum. Supp.); see 1998 Kan. Sess. Laws, ch. 96, § 2, pp. 450–451; see also *Kaul*

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[5] The standard also accords with our repeated admonition that a State may not "unlawfully infringe 'on the right of reservation Indians to make their own laws and be ruled by them.'" *White Mountain Apache Tribe* v. *Bracker*, 448 U. S. 136, 142 (1980) (quoting *Williams* v. *Lee*, 358 U. S. 217, 220 (1959)). Accord *Mescalero II*, 462 U. S., at 332–333; *McClanahan* v. *Arizona Tax Comm'n*, 411 U. S. 164, 171–172 (1973).

v. *State Dept. of Revenue,* 266 Kan. 464, 474, 970 P. 2d 60, 67 (1998).[6]

Kansas is mistaken, however, regarding the legal significance of this shift. *Chickasaw Nation* clarified only that a State could shift the legal incidence to non-Indians so as to avoid the categorical bar applicable when a state excise tax is imposed directly on a tribe or tribal members for on-reservation activity. 515 U. S., at 460. At the same time, *Chickasaw Nation* indicated that a shift in the legal incidence of the kind Kansas has legislated would trigger—not foreclose—interest balancing. *Ibid.*[7]

Kansas and the Court heavily rely upon *Mescalero Apache Tribe* v. *Jones,* 411 U. S. 145 (1973) *(Mescalero I)*. That case involved a ski resort operated by the Mescalero Apache Tribe on off-reservation land leased from the Federal Government. This Court upheld New Mexico's imposition of a tax on the gross receipts of the resort. Balancing was not in order, the Court explained, because the Tribe had ventured outside its own domain, and was fairly treated, for gross receipts purposes, just as a non-Indian enterprise would be. In such cases, the Court observed, an express-preemption standard is appropriately applied. As the Court put it: "Absent express federal law to the contrary, Indians going

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[6] As earlier observed, *supra,* at 119, Kansas retained the opening declaration that the tax "is hereby imposed on the use, sale or delivery of all motor vehicle fuels . . . used, sold or delivered in this state for any purpose whatsover." Kan. Stat. Ann. § 79–3408(a) (2003 Cum. Supp.).

[7] The only "bright-line standard" *Chickasaw Nation* advanced is the categorical bar on tolls imposed directly on tribes or their members. 515 U. S., at 460. No doubt a tribal retailer may find an upstream state tax on its suppliers less burdensome than a downstream tax on its consumers. See *ante,* at 111, n. 5. But administrative ease is hardly the dispositive consideration. The Court has never limited interest balancing to state taxes imposed on the non-Indian consumers of tribal enterprises; it has also applied this approach to state regulation of the non-Indian suppliers of tribal enterprises. See, *e. g., Department of Taxation and Finance of N. Y.* v. *Milhelm Attea & Bros.,* 512 U. S. 61, 73–75 (1994).

beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State." *Id.*, at 148–149. Accord *Chickasaw Nation*, 515 U. S., at 462–465 (State permitted to tax income of tribal members residing outside Indian country). Cases of the *Mescalero I* kind, however, do not touch and concern what is at issue in the instant case: taxes formally imposed on nonmembers that nonetheless burden *on-reservation* tribal activity.

Conceding that "we have never addressed th[e] precise issue" this case poses, the Court asserts that "our Indian tax immunity cases counsel against" application of the *Bracker* interest-balancing test to Kansas' fuel tax as it impacts on the Nation Station. *Ante*, at 110. The Court so maintains on the ground that the Kansas fuel tax is imposed on a non-Indian and is unrelated to activity "on the reservation." *Ante*, at 110–113. As earlier explained, see *supra*, at 121, one can demur to the assertion that the legal incidence of the tax falls on the distributor, a nontribal entity. With respect to sales and deliveries to the Nation Station, however, the nontribal entity can indeed be described as "engaged in [an on-reservation] transaction with [a tribe]." *Arizona Dept. of Revenue* v. *Blaze Constr. Co.*, 526 U. S. 32, 37 (1999).

The reservation destination of fuel purchased by the Nation Station does not show the requisite engagement, in the Court's view, but I do not comprehend why. The destination of the fuel counts not only under § 79–3408(a) (2003 Cum. Supp.) (fuel tax "is hereby imposed on . . . all motor vehicle fuels . . . used, sold or delivered in this state").[8] To whom and where the distributor sells are the criteria that determine the "transactions" on which "[n]o tax is . . . imposed," § 79–3408(d), and, correspondingly, the transactions on which

[8] Because § 79–3408(a) (2003 Cum. Supp.) does not aid the Court's theory that the State's tax operates entirely off reservation, the Court essentially reads the provision out of the statute, or treats it as harmless surplus. See *ante*, at 107.

the tax is imposed. As earlier explained, see *supra*, at 119–120, the tax is in reality imposed only on fuel actually resold by the distributor to an in-state nonexempt purchaser. Here, that purchaser is the Nation Station, plainly an on-reservation venture.[9]

Balancing tests have been criticized as rudderless, affording insufficient guidance to decisionmakers. See *Colville*, 447 U. S., at 176 (Rehnquist, J., concurring in part, concurring in result in part, and dissenting in part) (criticizing the "case-by-case litigation which has plagued this area of the law"); Brief for Petitioner 30–32. Pointed as the criticism may be, one must ask, as in life's choices generally, what is the alternative. "The principle of tribal self-government, grounded in notions of inherent sovereignty and in congressional policies, seeks an accommodation between the interests of the Tribes and the Federal Government, on the one hand, and those of the State, on the other." *Colville*, 447 U. S., at 156. No "bright-line" test is capable of achieving such an accommodation with respect to state taxes formally

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[9] At the Court of Appeals level, the Nation presented no "starkly different interpretation of the statute." *Ante*, at 105. This Court, in citing Appellant's Reply Brief in No. 03–3218 (CA10), p. 3, to the contrary, apparently failed to read on. At page 12, the Reply Brief states: "The fact that the state tax is technically imposed off-reservation on a non-Indian is not controlling. The state tax is directed at and burdens reservation value." Moreover, it is surely putting words in the Nation's mouth to assert that "[u]nder the Nation's view . . . any off-reservation tax imposed on the manufacture or sale of any good imported by the Nation or one of its members would be subject to interest balancing." *Ante*, at 114. The Nation itself expressly "does not contend . . . that a non-discriminatory, off-reservation state tax of general applicability may be precluded simply because the tax has an adverse economic impact on a Tribe or its members." Brief for Respondent 1. As the Nation points out and the Court of Appeals comprehended, "the actual issue presented here [is] the permissibility of a state tax that effectively *nullifies* a Tribe's power to impose a comparable tax on fuel sold at market price by a tribally owned, on-reservation gas station." *Ibid.* (emphasis in original); see *Prairie Band Potawatomi Nation* v. *Richards*, 379 F. 3d 979, 986 (CA10 2004).

imposed on non-Indians, but impacting on-reservation ventures. The one the Court adopts inevitably means, so long as the State officially places the burden on the non-Indian distributor in cases of this order, the Tribe loses. *Faute de mieux* and absent congressional instruction otherwise, I would adhere to precedent calling for "a particularized inquiry into the nature of the state, federal, and tribal interests at stake." *Bracker*, 448 U. S., at 145.

II

I turn to the question whether the Court of Appeals correctly balanced the competing interests in this case. Kansas and the Nation both assert a substantial interest in using their respective fuel taxes to raise revenue for road maintenance. Weighing competing state and tribal interests in raising revenue for public works, *Colville* observed:

> "While the Tribes do have an interest in raising revenues for essential governmental programs, that interest is strongest when the revenues are derived from value generated on the reservation by activities involving the Tribes and when the taxpayer is the recipient of tribal services. The State also has a legitimate governmental interest in raising revenues, and that interest is likewise strongest when the tax is directed at off-reservation value and when the taxpayer is the recipient of state services." 447 U. S., at 156–157.

In *Colville*, it was "painfully apparent" that outsiders had no reason to travel to Indian reservations to buy cigarettes other than the bargain prices tribal smokeshops charged by virtue of their claimed exemption from state taxation. *Id.*, at 154–155. The Court upheld the State of Washington's taxes on cigarette purchases by nonmembers at tribal smokeshops. No "principl[e] of federal Indian law," the Court said, "authorize[s] Indian tribes . . . to market an exemption from state taxation to persons who would normally do their business elewhere." *Id.*, at 155.

This case, as the Court of Appeals recognized, bears scant resemblance to *Colville*. "[I]n stark contrast to the smokeshops in *Colville*," the Nation here is not using its asserted exemption from state taxation to lure non-Indians onto its reservation. 379 F. 3d, at 985. The Nation Station is not visible from the state highway, and it advertises no exemption from the State's fuel tax. Including the Nation's tax, the Nation Station sells fuel "'within 2¢ per gallon of the price prevailing in the local market.'" *Id.*, at 982 (quoting the Nation's expert's report); see also App. 36–40.[10] The Nation Station's draw, therefore, is neither price nor proximity to the highway; rather, the Nation Station operates almost exclusively as an amenity for people driving to and from the casino.

The Tenth Circuit regarded as valuable to its assessment the opinion of the Nation's expert, which concluded: "'[T]he Tribal and State taxes are mutually exclusive and only one can be collected without reducing the [Nation Station's] fuel business to virtually zero.'" 379 F. 3d, at 986. Kansas "submitted [no] contradictory evidence" and did not argue that the expert opinion offered by the Nation was "either incorrect or exaggerated." *Ibid.*[11] In this respect, the case

[10] Tribes, it should be plain, cannot prevail in the interest-balancing analysis simply because they tax the same product or activity that the State seeks to tax. See *Washington* v. *Confederated Tribes of Colville Reservation*, 447 U. S. 134, 156 (1980). Otherwise, "the Tribes could impose a nominal tax and open chains of discount stores at reservation borders, selling goods of all descriptions at deep discounts and drawing custom from surrounding areas." *Id.*, at 155; see *infra*, at 130.

[11] At oral argument, it was suggested that the Nation Station might pass on both taxes to its customers if it were willing to forgo some of its profits. Tr. of Oral Arg. 3–6, 25–27, 48–50. This speculation apparently did not take account of the opinion and explanation of the Nation's expert, which stands uncontradicted in the record developed in the lower courts. Moreover, the Nation's counsel informed the Court: "[T]he [T]ribe is being forced right now to subsidize the sales at the [Nation S]tation at a loss, which it's doing for the balance of this litigation." *Id.*, at 25; cf. *ante*, at 114–115.

is indeed novel. It is the first case in which a Tribe demonstrated below that the imposition of a state tax would prevent the Tribe from imposing its own tax. Cf. *Cotton Petroleum*, 490 U. S., at 185 (state and tribal taxes were not mutually exclusive because "the Tribe could, in fact, increase its taxes without adversely affecting on-reservation oil and gas development").

The Court of Appeals considered instructive this Court's decision in *California* v. *Cabazon Band of Mission Indians*, 480 U. S. 202 (1987). See 379 F. 3d, at 985. The Court there held that tribal and federal interests outweighed state interests in regulating tribe-operated facilities for bingo and other games. *Cabazon*, 480 U. S., at 219–220. Distinguishing *Colville*, the Court pointed out that the Tribes in *Cabazon* "[were] not merely importing a product onto the reservatio[n] for immediate resale to non-Indians"; they had "built modern facilities" and provided "ancillary services" so that customers would come in increasing numbers and "spend extended periods of time" playing their "well-run games." 480 U. S., at 219; see also *New Mexico* v. *Mescalero Apache Tribe*, 462 U. S. 324, 327, 341 (1983) *(Mescalero II)* (State barred from regulating hunting and fishing on-reservation where the Tribe had constructed a "resort complex" and developed wildlife and land resources).

As in *Cabazon*, so here, the Nation Station is not "merely importing a product onto the reservatio[n] for immediate resale to non-Indians" at a stand-alone retail outlet. 480 U. S., at 219. Fuel sales at the Nation Station are "an integral and essential part of the [Tribe's] on-reservation gaming enterprise." 379 F. 3d, at 984. The Nation built the Nation Station as a convenience for its casino patrons and, but for the casino, there would be no market for fuel in this otherwise remote area. *Id.*, at 982.

The Court of Appeals further emphasized that the Nation's "interests here are strengthened because of its need to raise fuel revenues to construct and maintain reservation

roads, bridges, and related infrastructure without state assistance." *Id.*, at 985. The Nation's fuel revenue comes exclusively from the Nation Station, and that revenue (approximately $300,000 annually) may be used only for "'constructing and maintaining roads, bridges and rights-of-way located on or near the reservation.'" *Id.*, at 985–986 (quoting Prairie Band Potawatomi Law and Order Code § 10–6–7 (2003)).

The Nation's interests coincide with "strong federal interests in promoting tribal economic development, tribal self-sufficiency, and strong tribal governments." 379 F. 3d, at 986. The United States points to the poor condition of Indian reservation roads, documented in federal reports, conditions that affect not only driving safety, but also the ability to furnish emergency medical, fire, and police services on an expedited basis, transportation to schools and jobs, and the advancement of economic activity critical to tribal self-sufficiency. Brief for United States as *Amicus Curiae* 26; see, *e. g.*, Dept. of Interior, Bureau of Indian Affairs, TEA–21 Reauthorization Resource Paper: Transportation Serving Native American Lands (May 2003). The shared interest of the Federal Government and the Nation in improving reservation roads is reflected in Department of the Interior regulations implementing the Indian Reservation Roads Program. See 69 Fed. Reg. 43090 (2004); 25 CFR § 170 *et seq.* (2005). The regulations aim at enhancing the ability of tribal governments to promote road construction and maintenance. They anticipate that tribes will supplement federal funds with their own revenues, including funds gained from a "[t]ribal fuel tax." § 170.932(d). Because the Nation's roads are integrally related to its casino enterprise, they also further federal interests in tribal economic development advanced by the Indian Gaming Regulatory Act, 102 Stat. 2467, 25 U. S. C. § 2701 *et seq.*

Against these strong tribal and federal interests, Kansas asserts only its "general interest in raising revenues." 379

F. 3d, at 986. "Kansas' interest," as the Court of Appeals observed, "is not at its strongest." *Id.*, at 987. By effectively taxing the Nation Station, Kansas would be deriving revenue "primarily from value generated on the reservation" by the Nation's casino. *Ibid.* Moreover, the revenue Kansas would gain from applying its tax to fuel destined for the Nation Station appears insubstantial when compared with the total revenue ($6.1 billion in 2004) the State annually collects through the tax. See *id.*, at 982; Brief for Respondent 12 (observing that "[t]he tax revenues at issue—roughly $300,000 annually—are less than one-tenth of one percent of the total state fuel tax revenues").

The Court asserts that "Kansas uses the proceeds from its fuel tax to pay for a significant portion of the costs of maintaining the roads and bridges on the Nation's reservation." *Ante*, at 115. The record reveals a different reality. According to the affidavit of the Director of the Nation's Road and Bridge Department, Kansas and its subdivisions have failed to provide proper maintenance even on their own roads running through the reservation. App. 79. As a result, the Nation has had to assume responsibility for a steadily growing number of road miles within the reservation (roughly 118 of the 212 total miles in 2000). *Ibid.;* see also Brief for Respondent 3, 40, 44–45. Of greater significance, Kansas expends *none* of its fuel tax revenue on the upkeep or improvement of tribally owned reservation roads. 379 F. 3d, at 986–987; cf. *Ramah*, 458 U. S., at 843, n. 7 ("This case would be different if the State were actively seeking tax revenues for the purpose of constructing, or assisting in the effort to provide, adequate [tribal services]."). In contrast, Kansas sets aside a significant percentage of its fuel tax revenues (over 40% in 1999) for counties and localities. Kan. Stat. Ann. § 79–3425 (2003 Cum. Supp.); see also § 79–34,142 (1997) (prescribing allocation formula); 1999 Kan. Sess. Laws, ch. 137, § 37, p. 1124. And, as indicated earlier, *supra*, at 118–120, Kansas accords the Nation no dispensation based

on the Nation's sovereign status. The Nation thus receives neither a state exemption so that it can impose its own fuel tax, nor a share of the State's fuel tax revenues. Accordingly, the net result of invalidating Kansas' tax as applied to fuel distributed to the Nation Station would be a somewhat more equitable distribution of road maintenance revenues in Kansas.

Kansas argues that, were the Nation to prevail in this case, nothing would stop the Nation from reducing its tax in order to sell gas below the market price. Brief for Petitioner 30. *Colville* should quell the State's fears in this regard. Were the Nation to pursue such a course, it would be marketing an exemption, much as the smokeshops did in *Colville*, and hence, interest balancing would likely yield a judgment for the State. See 447 U. S., at 155–157. In any event, as the Nation points out, the State could guard against the risk that "Tribes will impose a 'nominal tax' and sell goods at a deep discount on the reservation." Brief for Respondent 34–35. The State could provide a credit for any tribal tax imposed or enact a state tax that applies only to the extent that the Nation fails to impose an equivalent tribal tax. *Id.*, at 35.

Today's decision is particularly troubling because of the cloud it casts over the most beneficial means to resolve conflicts of this order. In *Oklahoma Tax Comm'n* v. *Citizen Band Potawatomi Tribe of Okla.*, 498 U. S. 505 (1991), the Court counseled that States and tribes may enter into agreements establishing "a mutually satisfactory regime for the collection of this sort of tax." *Id.*, at 514; see also *Nevada* v. *Hicks*, 533 U. S. 353, 393 (2001) (O'CONNOR, J., concurring in part and concurring in judgment) (describing various state-tribal agreements); Brief for United States as *Amicus Curiae* 28–29, and n. 12; Brief for National Intertribal Tax Alliance et al. as *Amici Curiae;* Ansson, State Taxation of Non-Indians Who Do Business With Indian Tribes: Why Several Recent Ninth Circuit Holdings Reemphasize the Need

for Indian Tribes to Enter Into Taxation Compacts With Their Respective States, 78 Ore. L. Rev. 501, 546 (1999) ("More than 200 Tribes in eighteen states have resolved their taxation disputes by entering into intergovernmental agreements.").[12] By truncating the balancing-of-interests approach, the Court has diminished prospects for cooperative efforts to achieve resolution of taxation issues through constructive intergovernmental agreements.

In sum, the Nation operates the Nation Station in order to provide a service for patrons at its casino without, in any way, seeking to attract bargain hunters on the lookout for cheap gas. Kansas' collection of its tax on fuel destined for the Nation Station will effectively nullify the Nation's tax, which funds critical reservation road-building programs, endeavors not aided by state funds. I resist that unbalanced judgment.

* * *

For the reasons stated, I would affirm the judgment of the Court of Appeals for the Tenth Circuit.

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[12] In 1992, Kansas and the Nation negotiated an intergovernmental tax compact. App. 20–26. When the initial five-year term expired, the State declined to renew the agreement. Brief for United States as *Amicus Curiae* 3–4.

Syllabus

MARTIN ET UX. *v.* FRANKLIN CAPITAL CORP. ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 04–1140. Argued November 8, 2005—Decided December 7, 2005

In removing petitioner Martins' state-court class action to federal court on diversity grounds, respondents (collectively, Franklin) acknowledged that the amount in controversy was not clear from the face of the state-court complaint, but argued that this requirement for federal diversity jurisdiction was nonetheless satisfied under precedent suggesting that punitive damages and attorney's fees could be aggregated in making the calculation. The District Court denied the Martins' motion to remand to state court and eventually dismissed the case with prejudice. Reversing and remanding with instructions to remand to state court, the Tenth Circuit agreed with the Martins that their suit failed to satisfy the amount-in-controversy requirement and rejected Franklin's aggregation theory under decisions issued after the District Court's remand decision. The latter court then denied the Martins' motion for attorney's fees because Franklin had legitimate grounds for believing this case fell within federal-court jurisdiction. Affirming, the Tenth Circuit disagreed with the Martins' argument that attorney's fees should be granted on remand as a matter of course under 28 U. S. C. § 1447(c), which provides that a remand order "may require payment of just costs and any actual expenses, including attorney fees," but provides little guidance on when fees are warranted. The court noted that fee awards are left to the district court's discretion, subject to review only for abuse of discretion; pointed out that, under Circuit precedent, the key factor in deciding whether to award fees is the propriety of removal; and held that, because Franklin had relied on case law only subsequently held to be unsound, its basis for removal was objectively reasonable, and the fee denial was not an abuse of discretion.

Held: Absent unusual circumstances, attorney's fees should not be awarded under § 1447(c) when the removing party has an objectively reasonable basis for removal. Conversely, where no objectively reasonable basis exists, fees should be awarded. This Court rejects the Martins' argument for adopting a strong presumption in favor of awarding fees. The reasons for adopting such a presumption in *Newman* v. *Piggie Park Enterprises, Inc.*, 390 U. S. 400, 402 *(per curiam)*, are absent here. Also rejected is Franklin's argument that § 1447(c) simply grants courts jurisdiction to award costs and attorney's fees when other-

Syllabus

wise warranted. Were the statute strictly jurisdictional, there would be no need to limit awards to "just" costs; any award authorized by other provisions of law would presumably be "just." The Court therefore gives the statute its natural reading: Section 1447(c) authorizes courts to award costs and fees, but only when such an award is just. That standard need not be defined narrowly, as the Solicitor General argues, by awarding fees only on a showing that the unsuccessful party's position was frivolous, unreasonable, or without foundation. *Christiansburg Garment Co.* v. *EEOC*, 434 U. S. 412, 422, and *Flight Attendants* v. *Zipes*, 491 U. S. 754, 762, distinguished. The fact that a § 1447(c) fee award is discretionary does not mean that there is no governing legal standard. When applying fee-shifting statutes, the Court has found limits in "'the large objectives'" of the relevant Act. *E. g.*, *id.*, at 759. The appropriate test for awarding fees under § 1447(c) should recognize Congress' desire to deter removals intended to prolong litigation and impose costs on the opposing party, while not undermining Congress' basic decision to afford defendants a right to remove as a general matter, when the statutory criteria are satisfied. In light of these "'large objectives,'" the standard for awarding fees should turn on the reasonableness of the removal. In applying the general rule of reasonableness, district courts retain discretion to consider whether unusual circumstances warrant a departure in a given case. A court's reasons for departing, however, should be "faithful to the purposes" of awarding fees under § 1447(c). *Fogerty* v. *Fantasy, Inc.*, 510 U. S. 517, 534, n. 19. Pp. 136–141.

393 F. 3d 1143, affirmed.

ROBERTS, C. J., delivered the opinion for a unanimous Court.

Sam Heldman argued the cause for petitioners. With him on the briefs were *Hilary E. Ball*, *Michael P. Malakoff*, and *James M. Pietz.*

Jan T. Chilton argued the cause for respondents. With him on the brief was *Ronald J. Segel.**

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*Briefs of *amici curiae* urging affirmance were filed for the United States by *Solicitor General Clement*, *Assistant Attorney General Keisler*, *Deputy Solicitor General Hungar*, *James A. Feldman*, *Michael Jay Singer*, and *Michael E. Robinson;* and for the Product Liability Advisory Council, Inc., by *Robert N. Weiner* and *Robert D. Rosenbaum.*

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

A civil case commenced in state court may, as a general matter, be removed by the defendant to federal district court, if the case could have been brought there originally. 28 U. S. C. § 1441 (2000 ed. and Supp. II). If it appears that the federal court lacks jurisdiction, however, "the case shall be remanded." § 1447(c). An order remanding a removed case to state court "may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal." *Ibid.* Although § 1447(c) expressly permits an award of attorney's fees, it provides little guidance on when such fees are warranted. We granted certiorari to determine the proper standard for awarding attorney's fees when remanding a case to state court.

I

Petitioners Gerald and Juana Martin filed a class-action lawsuit in New Mexico state court against respondents Franklin Capital Corporation and Century-National Insurance Company (collectively, Franklin). Franklin removed the case to Federal District Court on the basis of diversity of citizenship. See §§ 1332, 1441 (2000 ed. and Supp. II). In its removal notice, Franklin acknowledged that the amount in controversy was not clear from the face of the complaint—no reason it should be, since the complaint had been filed in state court—but argued that this requirement for federal diversity jurisdiction was nonetheless satisfied. In so arguing, Franklin relied in part on precedent suggesting that punitive damages and attorney's fees could be aggregated in a class action to meet the amount-in-controversy requirement. See App. 35.

Fifteen months later, the Martins moved to remand to state court on the ground that their claims failed to satisfy the amount-in-controversy requirement. The District Court denied the motion and eventually dismissed the case

with prejudice. On appeal, the Court of Appeals for the Tenth Circuit agreed with the Martins that the suit failed to satisfy the amount-in-controversy requirement. The Tenth Circuit rejected Franklin's contention that punitive damages and attorney's fees could be aggregated in calculating the amount in controversy, in part on the basis of decisions issued after the District Court's remand decision. The Court of Appeals reversed and remanded to the District Court with instructions to remand the case to state court. 251 F. 3d 1284, 1294 (2001).

Back before the District Court, the Martins moved for attorney's fees under § 1447(c). The District Court reviewed Franklin's basis for removal and concluded that, although the Court of Appeals had determined that removal was improper, Franklin "had legitimate grounds for believing this case fell within th[e] Court's jurisdiction." App. to Pet. for Cert. 20a. Because Franklin "had objectively reasonable grounds to believe the removal was legally proper," the District Court denied the Martins' request for fees. *Ibid.*

The Martins appealed again, arguing that § 1447(c) requires granting attorney's fees on remand as a matter of course. The Tenth Circuit disagreed, noting that awarding fees is left to the "wide discretion" of the district court, subject to review only for abuse of discretion. 393 F. 3d 1143, 1146 (2004). Under Tenth Circuit precedent, the "'key factor'" in deciding whether to award fees under § 1447(c) is "'the propriety of defendant's removal.'" *Ibid.* (quoting *Excell, Inc.* v. *Sterling Boiler & Mechanical, Inc.*, 106 F. 3d 318, 322 (CA10 1997)). In calculating the amount in controversy when it removed the case, Franklin had relied on case law only subsequently held to be unsound, and therefore Franklin's basis for removal was objectively reasonable. 393 F. 3d, at 1148. Because the District Court had not abused its discretion in denying fees, the Tenth Circuit affirmed. *Id.*, at 1151.

We granted certiorari, 544 U. S. 998 (2005), to resolve a conflict among the Circuits concerning when attorney's fees should be awarded under § 1447(c). Compare, *e. g., Hornbuckle* v. *State Farm Lloyds*, 385 F. 3d 538, 541 (CA5 2004) ("Fees should only be awarded if the removing defendant lacked objectively reasonable grounds to believe the removal was legally proper" (internal quotation marks omitted)), with *Sirotzky* v. *New York Stock Exchange*, 347 F. 3d 985, 987 (CA7 2003) ("[P]rovided removal was improper, the plaintiff is *presumptively* entitled to an award of fees"), and *Hofler* v. *Aetna U. S. Healthcare of Cal., Inc.*, 296 F. 3d 764, 770 (CA9 2002) (affirming fee award even when "the defendant's position may be fairly supportable" (internal quotation marks omitted)). We hold that, absent unusual circumstances, attorney's fees should not be awarded when the removing party has an objectively reasonable basis for removal. We therefore affirm the judgment of the Tenth Circuit.

II

The Martins argue that attorney's fees should be awarded automatically on remand, or that there should at least be a strong presumption in favor of awarding fees. Section 1447(c), however, provides that a remand order "may" require payment of attorney's fees—not "shall" or "should." As Chief Justice Rehnquist explained for the Court in *Fogerty* v. *Fantasy, Inc.*, 510 U. S. 517, 533 (1994), "[t]he word 'may' clearly connotes discretion. The automatic awarding of attorney's fees to the prevailing party would pretermit the exercise of that discretion." Congress used the word "shall" often enough in § 1447(c)—as when it specified that removed cases apparently outside federal jurisdiction "shall be remanded"—to dissuade us from the conclusion that it meant "shall" when it used "may" in authorizing an award of fees.

The Martins are on somewhat stronger ground in pressing for a presumption in favor of awarding fees. As they ex-

plain, we interpreted a statute authorizing a discretionary award of fees to prevailing plaintiffs in civil rights cases to nonetheless give rise to such a presumption. *Newman* v. *Piggie Park Enterprises, Inc.*, 390 U. S. 400, 402 (1968) *(per curiam)*. But this case is not at all like *Piggie Park*. In *Piggie Park*, we concluded that a prevailing plaintiff in a civil rights suit serves as a "'private attorney general,'" helping to ensure compliance with civil rights laws and benefiting the public by "vindicating a policy that Congress considered of the highest priority." *Ibid.* We also later explained that the *Piggie Park* standard was appropriate in that case because the civil rights defendant, who is required to pay the attorney's fees, has violated federal law. See *Flight Attendants* v. *Zipes*, 491 U. S. 754, 762 (1989) ("Our cases have emphasized the crucial connection between liability for violation of federal law and liability for attorney's fees under federal fee-shifting statutes").

In this case, plaintiffs do not serve as private attorneys general when they secure a remand to state court, nor is it reasonable to view the defendants as violators of federal law. To the contrary, the removal statute grants defendants a right to a federal forum. See 28 U. S. C. § 1441 (2000 ed. and Supp. II). A remand is necessary if a defendant improperly asserts this right, but incorrectly invoking a federal right is not comparable to violating substantive federal law. The reasons for adopting a strong presumption in favor of awarding fees that were present in *Piggie Park* are accordingly absent here. In the absence of such reasons, we are left with no sound basis for a similar presumption. Instead, had Congress intended to award fees as a matter of course to a party that successfully obtains a remand, we think that "[s]uch a bold departure from traditional practice would have surely drawn more explicit statutory language and legislative comment." *Fogerty*, *supra*, at 534.

For its part, Franklin begins by arguing that § 1447(c) provides little guidance on when fees should be shifted because

it is not a fee-shifting statute at all. According to Franklin, the provision simply grants courts jurisdiction to award costs and attorney's fees when otherwise warranted, for example when Federal Rule of Civil Procedure 11 supports awarding fees. Although Franklin is correct that the predecessor to § 1447(c) was enacted, in part, because courts would otherwise lack jurisdiction to award costs on remand, see *Mansfield, C. & L. M. R. Co.* v. *Swan*, 111 U. S. 379, 386–387 (1884), there is no reason to assume Congress went no further than conferring jurisdiction when it acted. Congress could have determined that the most efficient way to cure this jurisdictional defect was to create a substantive basis for ordering costs. The text supports this view. If the statute were strictly jurisdictional, there would be no need to limit awards to "just" costs; any award authorized by other provisions of law would presumably be "just." We therefore give the statute its natural reading: Section 1447(c) authorizes courts to award costs and fees, but only when such an award is just. The question remains how to define that standard.

The Solicitor General would define the standard narrowly, arguing that fees should be awarded only on a showing that the unsuccessful party's position was "frivolous, unreasonable, or without foundation"—the standard we have adopted for awarding fees against unsuccessful plaintiffs in civil rights cases, see *Christiansburg Garment Co.* v. *EEOC*, 434 U. S. 412, 421 (1978), and unsuccessful intervenors in such cases, see *Zipes*, *supra*, at 762. Brief for United States as *Amicus Curiae* 14–16. But just as there is no basis for supposing Congress meant to tilt the exercise of discretion in *favor* of fee awards under § 1447(c), as there was in *Piggie Park*, so too there is no basis here for a strong bias *against* fee awards, as there was in *Christiansburg Garment* and *Zipes*. The statutory language and context strike us as more evenly balanced between a pro-award and anti-award

position than was the case in either *Piggie Park* or *Christiansburg Garment* and *Zipes;* we see nothing to persuade us that fees under § 1447(c) should either usually be granted or usually be denied.

The fact that an award of fees under § 1447(c) is left to the district court's discretion, with no heavy congressional thumb on either side of the scales, does not mean that no legal standard governs that discretion. We have it on good authority that "a motion to [a court's] discretion is a motion, not to its inclination, but to its judgment; and its judgment is to be guided by sound legal principles." *United States* v. *Burr*, 25 F. Cas. 30, 35 (No. 14,692d) (CC Va. 1807) (Marshall, C. J.). Discretion is not whim, and limiting discretion according to legal standards helps promote the basic principle of justice that like cases should be decided alike. See Friendly, Indiscretion About Discretion, 31 Emory L. J. 747, 758 (1982). For these reasons, we have often limited courts' discretion to award fees despite the absence of express legislative restrictions. That is, of course, what we did in *Piggie Park*, *supra*, at 402 (A prevailing plaintiff "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust"), *Christiansburg Garment*, *supra*, at 422 ("[A] plaintiff should not be assessed his opponent's attorney's fees unless a court finds that his claim was frivolous, unreasonable, or groundless"), and *Zipes*, 491 U. S., at 761 (Attorney's fees should be awarded against intervenors "only where the intervenors' action was frivolous, unreasonable, or without foundation").

In *Zipes*, we reaffirmed the principle on which these decisions are based: "Although the text of the provision does not specify any limits upon the district courts' discretion to allow or disallow fees, in a system of laws discretion is rarely without limits." *Id.*, at 758. *Zipes* also explains how to discern the limits on a district court's discretion. When applying fee-shifting statutes, "we have found limits in 'the large ob-

jectives' of the relevant Act, which embrace certain 'equitable considerations.'" *Id.*, at 759 (citation omitted).*

By enacting the removal statute, Congress granted a right to a federal forum to a limited class of state-court defendants. If fee shifting were automatic, defendants might choose to exercise this right only in cases where the right to remove was obvious. See *Christiansburg Garment*, *supra*, at 422 (awarding fees simply because the party did not prevail "could discourage all but the most airtight claims, for seldom can a [party] be sure of ultimate success"). But there is no reason to suppose Congress meant to confer a right to remove, while at the same time discouraging its exercise in all but obvious cases.

Congress, however, would not have enacted § 1447(c) if its only concern were avoiding deterrence of proper removals. Instead, Congress thought fee shifting appropriate in some cases. The process of removing a case to federal court and then having it remanded back to state court delays resolution of the case, imposes additional costs on both parties, and wastes judicial resources. Assessing costs and fees on remand reduces the attractiveness of removal as a method for delaying litigation and imposing costs on the plaintiff. The appropriate test for awarding fees under § 1447(c) should recognize the desire to deter removals sought for the purpose of prolonging litigation and imposing costs on the opposing party, while not undermining Congress' basic decision to afford defendants a right to remove as a general matter, when the statutory criteria are satisfied.

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*In *Fogerty* v. *Fantasy, Inc.*, 510 U. S. 517 (1994), we did not identify a standard under which fees should be awarded. But that decision did not depart from *Zipes* because we granted certiorari to decide only whether the same standard applied to prevailing plaintiffs and prevailing defendants. See 510 U. S., at 521. Having decided this question and rejected the claim that fee shifting should be automatic, we remanded to the Court of Appeals to consider the appropriate test in the first instance. *Id.*, at 534–535.

In light of these "'large objectives,'" *Zipes, supra,* at 759, the standard for awarding fees should turn on the reasonableness of the removal. Absent unusual circumstances, courts may award attorney's fees under § 1447(c) only where the removing party lacked an objectively reasonable basis for seeking removal. Conversely, when an objectively reasonable basis exists, fees should be denied. See, *e. g.*, *Hornbuckle*, 385 F. 3d, at 541; *Valdes* v. *Wal-Mart Stores, Inc.*, 199 F. 3d 290, 293 (CA5 2000). In applying this rule, district courts retain discretion to consider whether unusual circumstances warrant a departure from the rule in a given case. For instance, a plaintiff's delay in seeking remand or failure to disclose facts necessary to determine jurisdiction may affect the decision to award attorney's fees. When a court exercises its discretion in this manner, however, its reasons for departing from the general rule should be "faithful to the purposes" of awarding fees under § 1447(c). *Fogerty*, 510 U. S., at 534, n. 19; see also *Milwaukee* v. *Cement Div., National Gypsum Co.*, 515 U. S. 189, 196, n. 8 (1995) ("[A]s is always the case when an issue is committed to judicial discretion, the judge's decision must be supported by a circumstance that has relevance to the issue at hand").

* * *

The District Court denied the Martins' request for attorney's fees because Franklin had an objectively reasonable basis for removing this case to federal court. The Court of Appeals considered it a "close question," 393 F. 3d, at 1148, but agreed that the grounds for removal were reasonable. Because the Martins do not dispute the reasonableness of Franklin's removal arguments, we need not review the lower courts' decision on this point. The judgment of the Court of Appeals is therefore affirmed.

It is so ordered.

Syllabus

LOCKHART *v.* UNITED STATES ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 04–881. Argued November 2, 2005—Decided December 7, 2005

In 2002, the Government began withholding a portion of petitioner's Social Security payments to offset his debt on federally reinsured student loans that were more than 10 years overdue. Petitioner sued, arguing that the offset was barred by the 10-year statute of limitations of the Debt Collection Act of 1982, 31 U. S. C. § 3716(e)(1). The Social Security Act generally exempts benefits from attachment or other legal process, 42 U. S. C. § 407(a), and provides that "[n]o other provision of law . . . may be construed to . . . modify . . . this section except to the extent that it does so by express reference," § 407(b). The Higher Education Technical Amendments of 1991 eliminated time limitations on suits to collect student loans, 20 U. S. C. § 1091a(a)(2)(D). In 1996, the Debt Collection Improvement Act subjected Social Security benefits to offset, "[n]otwithstanding [§ 407]," 31 U. S. C. § 3716(c)(3)(A)(i). The District Court dismissed petitioner's complaint, and the Ninth Circuit affirmed.

Held: The United States may offset Social Security benefits to collect a student loan debt that has been outstanding for over 10 years. Pp. 145–147.

(a) The Debt Collection Improvement Act makes Social Security benefits subject to offset, providing the sort of express reference that § 407(b) says is necessary to supersede the anti-attachment provision. P. 145.

(b) The Higher Education Technical Amendments remove the 10-year limit that would otherwise bar offsetting petitioner's Social Security benefits to pay off his student loan debt. Debt collection by Social Security offset was not authorized until five years after this abrogation of time limits, but the plain meaning of the Higher Education Technical Amendments must be given effect even though Congress may not have foreseen all of their consequences, *Union Bank* v. *Wolas*, 502 U. S. 151, 158. Though the Higher Education Technical Amendments, unlike the Debt Collection Improvement Act, do not explicitly mention § 407, an express reference is only required to authorize attachment in the first place. Pp. 145–146.

(c) Though the Debt Collection Improvement Act retained the Debt Collection Act's general 10-year bar on offset authority, the Higher Education Technical Amendments retain their effect as a limited exception

to the Debt Collection Act time bar in the student loan context. The Court declines to read any meaning into a failed 2004 congressional effort to amend the latter Act to explicitly authorize offset of debts over 10 years old. See, *e. g., United States* v. *Craft*, 535 U. S. 274, 287. Pp. 146–147.

376 F. 3d 1027, affirmed.

O'Connor, J., delivered the opinion for a unanimous Court. Scalia, J., filed a concurring opinion, *post*, p. 147.

Brian Wolfman argued the cause for petitioner. With him on the briefs was *Scott L. Nelson*.

Lisa S. Blatt argued the cause for respondents. With her on the brief were *Solicitor General Clement*, *Assistant Attorney General Keisler*, *Deputy Solicitor General Hungar*, *Barbara C. Biddle*, *Kent D. Talbert*, and *Arnold I. Havens*.*

Justice O'Connor delivered the opinion of the Court.

We consider whether the United States may offset Social Security benefits to collect a student loan debt that has been outstanding for over 10 years.

I

A

Petitioner James Lockhart failed to repay federally reinsured student loans that he had incurred between 1984 and 1989 under the Guaranteed Student Loan Program. These loans were eventually reassigned to the Department of Education, which certified the debt to the Department of the Treasury through the Treasury Offset Program. In 2002, the Government began withholding a portion of petitioner's Social Security payments to offset his debt, some of which was more than 10 years delinquent.

**Stuart Rossman* filed a brief for the National Consumer Law Center et al. as *amici curiae* urging reversal.

Petitioner sued in Federal District Court, alleging that under the Debt Collection Act's 10-year statute of limitations, the offset was time barred. The District Court dismissed the complaint, and the Court of Appeals for the Ninth Circuit affirmed. 376 F. 3d 1027 (2004). We granted certiorari, 544 U. S. 998 (2005), to resolve the conflict between the Ninth Circuit and the Eighth Circuit, see *Lee* v. *Paige*, 376 F. 3d 1179 (CA8 2004), and now affirm.

B

The Debt Collection Act of 1982, as amended, provides that, after pursuing the debt collection channels set out in 31 U. S. C. § 3711(a), an agency head can collect an outstanding debt "by administrative offset." § 3716(a). The availability of offsets against Social Security benefits is limited, as the Social Security Act, 49 Stat. 620, as amended, makes Social Security benefits, in general, not "subject to execution, levy, attachment, garnishment, or other legal process." 42 U. S. C. § 407(a). The Social Security Act purports to protect this anti-attachment rule with an express-reference provision: "No other provision of law, enacted before, on, or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section." § 407(b).

Moreover, the Debt Collection Act's offset provisions generally do not authorize the collection of claims which, like petitioner's debts at issue here, are over 10 years old. 31 U. S. C. § 3716(e)(1). In 1991, however, the Higher Education Technical Amendments, 105 Stat. 123, sweepingly eliminated time limitations as to certain loans: "Notwithstanding any other provision of statute . . . no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action initiated or taken," 20 U. S. C. § 1091a(a)(2), for the repay-

ment of various student loans, including the loans at issue here, § 1091a(a)(2)(D).

The Higher Education Technical Amendments, by their terms, did not make Social Security benefits subject to offset; these were still protected by the Social Security Act's anti-attachment rule. Only in 1996 did the Debt Collection Improvement Act—in amending and recodifying the Debt Collection Act—provide that, "[n]otwithstanding any other provision of law (including [§ 407] . . .)," with a limited exception not relevant here, "all payment due an individual under . . . the Social Security Act . . . shall be subject to offset under this section." 31 U. S. C. § 3716(c)(3)(A)(i).

II

The Government does not contend that the "notwithstanding" clauses in both the Higher Education Technical Amendments and the Debt Collection Improvement Act trump the Social Security Act's express-reference provision. Cf. *Marcello* v. *Bonds*, 349 U. S. 302, 310 (1955) ("Exemptions from the terms of the . . . Act are not lightly to be presumed in view of the statement . . . that modifications must be express[.] But . . . [u]nless we are to require the Congress to employ magical passwords in order to effectuate an exemption from the . . . Act, we must hold that the present statute expressly supersedes the . . . provisions of that Act"); *Great Northern R. Co.* v. *United States*, 208 U. S. 452, 465 (1908).

We need not decide the effect of express-reference provisions such as § 407(b) to resolve this case. Because the Debt Collection Improvement Act clearly makes Social Security benefits subject to offset, it provides exactly the sort of express reference that the Social Security Act says is necessary to supersede the anti-attachment provision.

It is clear that the Higher Education Technical Amendments remove the 10-year limit that would otherwise bar offsetting petitioner's Social Security benefits to pay off his student loan debt. Petitioner argues that Congress could

not have intended in 1991 to repeal the Debt Collection Act's statute of limitations as to offsets against Social Security benefits—since debt collection by Social Security offset was not authorized until five years later. Therefore, petitioner continues, the Higher Education Technical Amendments' abrogation of time limits in 1991 only applies to then-valid means of debt collection. We disagree. "The fact that Congress may not have foreseen all of the consequences of a statutory enactment is not a sufficient reason for refusing to give effect to its plain meaning." *Union Bank* v. *Wolas*, 502 U. S. 151, 158 (1991).

Petitioner points out that the Higher Education Technical Amendments, unlike the Debt Collection Improvement Act, do not explicitly mention § 407. But § 407(b) only requires an express reference to authorize attachment in the first place—which the Debt Collection Improvement Act has already provided.

III

Nor does the Debt Collection Improvement Act's 1996 recodification of the Debt Collection Act help petitioner. The Debt Collection Improvement Act, in addition to adding offset authority against Social Security benefits, retained the Debt Collection Act's general 10-year bar on offset authority. But the mere retention of this previously enacted time bar does not make the time bar apply in all contexts—a result that would extend far beyond Social Security benefits, since it would imply that the Higher Education Technical Amendments' abrogation of time limits was now a dead letter as to any kind of administrative offset. Rather, the Higher Education Technical Amendments retain their effect as a limited exception to the Debt Collection Act time bar in the student loan context.

Finally, we decline to read any meaning into the failed 2004 effort to amend the Debt Collection Act to explicitly authorize offset of debts over 10 years old. See H. R. 5025, 108th Cong., 2d Sess., § 642 (Sept. 8, 2004); S. 2806, 108th

Cong., 2d Sess., § 642 (Sept. 15, 2004). "[F]ailed legislative proposals are 'a particularly dangerous ground on which to rest an interpretation of a prior statute.'" *United States* v. *Craft*, 535 U. S. 274, 287 (2002) (quoting *Pension Benefit Guaranty Corporation* v. *LTV Corp.*, 496 U. S. 633, 650 (1990)). In any event, it is unclear what meaning we could read into this effort even if we were inclined to do so, as the failed amendment—which was not limited to offsets against Social Security benefits—would have had a different effect than the interpretation we advance today.

Therefore, we affirm the judgment of the Ninth Circuit.

It is so ordered.

JUSTICE SCALIA, concurring.

I agree with the Court that, even if the express-reference requirement in § 207(b) of the Social Security Act is binding, it has been met here; and I join the opinion of the Court because it does not imply that the requirement *is* binding. I would go further, however, and say that it is not.

"[O]ne legislature," Chief Justice Marshall wrote, "cannot abridge the powers of a succeeding legislature." *Fletcher* v. *Peck*, 6 Cranch 87, 135 (1810). "The correctness of this principle, so far as respects general legislation," he asserted, "can never be controverted." *Ibid.* See also *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803) (unlike the Constitution, a legislative Act is "alterable when the legislature shall please to alter it"); 1 W. Blackstone, Commentaries on the Laws of England 90 (1765) ("Acts of parliament derogatory from the power of subsequent parliaments bind not"); T. Cooley, Constitutional Limitations 125–126 (1868) (reprint 1987). Our cases have uniformly endorsed this principle. See, *e. g.*, *United States* v. *Winstar Corp.*, 518 U. S. 839, 872 (1996) (plurality opinion); *Reichelderfer* v. *Quinn*, 287 U. S. 315, 318 (1932) ("[T]he will of a particular Congress . . . does not impose itself upon those to follow in succeeding years"); *Manigault* v. *Springs*, 199 U. S. 473, 487 (1905); *Newton* v.

Commissioners, 100 U. S. 548, 559 (1880) (in cases involving "*public interests*" and "*public laws*," "there can be . . . no irrepealable law"); see generally 1 L. Tribe, American Constitutional Law § 2–3, p. 125, n. 1 (3d ed. 2000).

Among the powers of a legislature that a prior legislature cannot abridge is, of course, the power to make its will known in whatever fashion it deems appropriate—including the repeal of pre-existing provisions by simply and clearly contradicting them. Thus, in *Marcello* v. *Bonds*, 349 U. S. 302 (1955), we interpreted the Immigration and Nationality Act as impliedly exempting deportation hearings from the procedures of the Administrative Procedure Act (APA), despite the requirement in § 12 of the APA that "[n]o subsequent legislation shall be held to supersede or modify the provisions of this Act except to the extent that such legislation shall do so expressly," 60 Stat. 244. The Court refused "to require the Congress to employ magical passwords in order to effectuate an exemption from the Administrative Procedure Act." 349 U. S., at 310. We have made clear in other cases as well, that an express-reference or express-statement provision cannot nullify the unambiguous import of a subsequent statute. In *Great Northern R. Co.* v. *United States*, 208 U. S. 452, 465 (1908), we said of an express-statement requirement that "[a]s the section . . . in question has only the force of a statute, its provisions cannot justify a disregard of the will of Congress as manifested either expressly *or by necessary implication* in a subsequent enactment." (Emphasis added.) A subsequent Congress, we have said, may exempt itself from such requirements by "fair implication"—that is, *without* an express statement. *Warden* v. *Marrero*, 417 U. S. 653, 659–660, n. 10 (1974). See also *Hertz* v. *Woodman*, 218 U. S. 205, 218 (1910).

To be sure, legislative express-reference or express-statement requirements may function as background canons of interpretation of which Congress is presumptively aware. For example, we have asserted that exemptions from the

APA are "not lightly to be presumed" in light of its express-reference requirement, *Marcello*, *supra*, at 310; see also *Shaughnessy* v. *Pedreiro*, 349 U. S. 48, 51 (1955). That assertion may add little or nothing to our already-powerful presumption against implied repeals.

> "We have repeatedly stated . . . that absent a clearly established congressional intention, repeals by implication are not favored. An implied repeal will only be found where provisions in two statutes are in irreconcilable conflict, or where the latter Act covers the whole subject of the earlier one and is clearly intended as a substitute." *Branch* v. *Smith*, 538 U. S. 254, 273 (2003) (plurality opinion) (internal quotation marks and citations omitted).

See also *Morton* v. *Mancari*, 417 U. S. 535, 551 (1974). When the plain import of a later statute directly conflicts with an earlier statute, the later enactment governs, *regardless* of its compliance with any earlier-enacted requirement of an express reference or other "magical password."

For the reasons set forth in the majority opinion, in the Higher Education Technical Amendments and the Debt Collection Improvement Act, Congress unambiguously authorized, without exception, the collection of 10-year-old student-loan debt by administrative offset of Government payments. In doing so, it flatly contradicted, and thereby effectively repealed, part of §207(a) of the Social Security Act. This repeal is effective, regardless of whether the express-reference requirement of §207(b) is fulfilled.

Despite our jurisprudence on this subject, it is regrettably not uncommon for Congress to attempt to burden the future exercise of legislative power with express-reference and express-statement requirements. See, *e. g.*, 1 U. S. C. §109; 5 U. S. C. §559; 25 U. S. C. §1735(b); 42 U. S. C. §2000bb–3(b); 50 U. S. C. §§1547(a)(1), 1621(b). In the present case, it might seem more respectful of Congress to refrain from de-

claring the invalidity of the express-reference provision. I suppose that would depend upon which Congress one has in mind: the prior one that enacted the provision, or the current one whose clearly expressed legislative intent it is designed to frustrate. In any event, I think it does no favor to the Members of Congress, and to those who assist in drafting their legislation, to keep secret the fact that such express-reference provisions are ineffective.

Syllabus

UNITED STATES *v.* GEORGIA ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 04–1203. Argued November 9, 2005—Decided January 10, 2006*

Goodman, petitioner in No. 04–1236, is a paraplegic who sued respondent state defendants and others, challenging the conditions of his confinement in a Georgia prison under, *inter alia*, 42 U. S. C. § 1983 and Title II of the Americans with Disabilities Act of 1990. As relevant here, the Federal District Court dismissed the § 1983 claims because Goodman's allegations were vague, and granted respondents summary judgment on the Title II money damages claims because they were barred by state sovereign immunity. The United States, petitioner in No. 04–1203, intervened on appeal. The Eleventh Circuit affirmed the District Court's judgment as to the Title II claims, but reversed the § 1983 ruling, finding that Goodman had alleged facts sufficient to support a limited number of Eighth Amendment claims against state agents and should be permitted to amend his complaint. This Court granted certiorari to decide the validity of Title II's abrogation of state sovereign immunity.

Held: Insofar as Title II creates a private cause of action for damages against States for conduct that *actually* violates the Fourteenth Amendment, Title II validly abrogates state sovereign immunity. Pp. 157–160.

(a) Because this Court assumes that the Eleventh Circuit correctly held that Goodman had alleged actual Eighth Amendment violations for purposes of § 1983, and because respondents do not dispute Goodman's claim that this same conduct violated Title II, Goodman's Title II money damages claims were evidently based, at least in part, on conduct that independently violated § 1 of the Fourteenth Amendment. No one doubts that § 5 grants Congress the power to enforce the Fourteenth Amendment's provisions by creating private remedies against the States for actual violations of those provisions. This includes the power to abrogate state sovereign immunity by authorizing private suits for damages against the States. Thus, the Eleventh Circuit erred in dismissing those of Goodman's claims based on conduct that violated the Fourteenth Amendment. Pp. 157–159.

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*Together with No. 04–1236, *Goodman* v. *Georgia et al.*, also on certiorari to the same court.

Syllabus

(b) Once Goodman's complaint is amended, the lower courts will be best situated to determine in the first instance, on a claim-by-claim basis, (1) which aspects of the State's alleged conduct violated Title II; (2) to what extent such misconduct also violated the Fourteenth Amendment; and (3) insofar as such conduct violated Title II but did not violate the Fourteenth Amendment, whether Congress's purported abrogation of sovereign immunity in such contexts is nevertheless valid. P. 159.

120 Fed. Appx. 785, reversed and remanded.

SCALIA, J., delivered the opinion for a unanimous Court. STEVENS, J., filed a concurring opinion, in which GINSBURG, J., joined, *post*, p. 160.

Solicitor General Clement argued the cause for the United States in No. 04–1203. With him on the brief were *Acting Assistant Attorney General Schlozman*, *Patricia A. Millett*, *David K. Flynn*, and *Sarah E. Harrington*.

Samuel R. Bagenstos argued the cause for petitioner in No. 04–1236. With him on the briefs were *Drew S. Days III*, *Beth S. Brinkmann*, and *Seth M. Galanter*.

Gregory A. Castanias argued the cause for respondents in both cases. With him on the brief were *Thurbert E. Baker*, Attorney General of Georgia, *Kathleen M. Pacious*, Deputy Attorney General, *John C. Jones*, Senior Assistant Attorney General, and *David E. Langford*, Assistant Attorney General.

Gene C. Schaerr argued the cause and filed a brief for the State of Tennessee et al. as *amici curiae* urging affirmance in both cases. With him on the brief were *Paul G. Summers*, Attorney General of Tennessee, *Michael E. Moore*, Solicitor General, *Linda T. Coberly*, *E. King Poor*, *Roberto J. Sánchez Ramos*, Secretary of Justice of Puerto Rico, and the Attorneys General for their respective States as follows: *Troy King* of Alabama, *John W. Suthers* of Colorado, *M. Jane Brady* of Delaware, *Lawrence G. Wasden* of Idaho, *Mike Cox* of Michigan, *Brian Sandoval* of Nevada, *Kelly A. Ayotte* of New Hampshire, *W. A. Drew Edmondson* of Oklahoma,

Hardy Myers of Oregon, *Rob McKenna* of Washington, and *Patrick J. Crank* of Wyoming.†

JUSTICE SCALIA delivered the opinion of the Court.

We consider whether a disabled inmate in a state prison may sue the State for money damages under Title II of the Americans with Disabilities Act of 1990 (ADA or Act), 104 Stat. 337, as amended, 42 U. S. C. § 12131 *et seq.* (2000 ed. and Supp. II).

I

A

Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." § 12132 (2000 ed.). A "'qualified individual with a disability'" is defined as "an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services,

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†Briefs of *amici curiae* urging reversal in both cases were filed for ADAPT et al. by *Paul M. Smith*, *Mark R. Heilbrun*, *Stephen F. Gold*, *Elizabeth Alexander*, *David C. Fathi*, *Richard Taranto*, *Gerald Weber*, *Catherine Hanssens*, *Steve Banks*, *John Boston*, *Rhonda Brownstein*, and *Leonard Zandrow;* for the American Association on Mental Retardation et al. by *James W. Ellis*, *Michael B. Browde*, and *April Land;* for the American Bar Association by *Robert J. Grey, Jr.;* for former President George H. W. Bush by *C. Boyden Gray* and *A. Stephen Hut, Jr.;* for the Lawyers' Committee for Civil Rights Under Law et al. by *Charles Lester, Jr.*, *Barbara R. Arnwine*, *Michael L. Foreman*, *Ossai Miazad*, *Vincent A. Eng*, *Elliot M. Mincberg*, and *Angela Ciccolo;* for the National Disability Rights Network by *Kathleen Behan* and *Joan A. Magagna;* for Paralyzed Veterans of America et al. by *Jerrold J. Ganzfried* and *Elizabeth B. McCallum;* and for Dick Thornburgh et al. by *Charles D. Siegal*, *Bradley S. Phillips*, *Daniel P. Collins*, *Peter Blanck*, *Arlene Mayerson*, and *Eve Hill.*

meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." § 12131(2). The Act defines "'public entity'" to include "any State or local government" and "any department, agency, . . . or other instrumentality of a State," § 12131(1). We have previously held that this term includes state prisons. See *Pennsylvania Dept. of Corrections* v. *Yeskey*, 524 U. S. 206, 210 (1998). Title II authorizes suits by private citizens for money damages against public entities that violate § 12132. See 42 U. S. C. § 12133 (incorporating by reference 29 U. S. C. § 794a).

In enacting the ADA, Congress "invoke[d] the sweep of congressional authority, including the power to enforce the fourteenth amendment . . . ." 42 U. S. C. § 12101(b)(4). Moreover, the Act provides that "[a] State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in [a] Federal or State court of competent jurisdiction for a violation of this chapter." § 12202. We have accepted this latter statement as an unequivocal expression of Congress's intent to abrogate state sovereign immunity. See *Board of Trustees of Univ. of Ala.* v. *Garrett*, 531 U. S. 356, 363–364 (2001).

B

Petitioner in No. 04–1236, Tony Goodman, is a paraplegic inmate in the Georgia prison system who, at all relevant times, was housed at the Georgia State Prison in Reidsville. After filing numerous administrative grievances in the state prison system, Goodman filed a *pro se* complaint in the United States District Court for the Southern District of Georgia challenging the conditions of his confinement. He named as defendants the State of Georgia and the Georgia Department of Corrections (state defendants) and several individual prison officials. He brought claims under Rev. Stat. § 1979, 42 U. S. C. § 1983, Title II of the ADA, and other pro-

visions not relevant here, seeking both injunctive relief and money damages against all defendants.

Goodman's *pro se* complaint and subsequent filings in the District Court included many allegations, both grave and trivial, regarding the conditions of his confinement in the Reidsville prison. Among his more serious allegations, he claimed that he was confined for 23-to-24 hours per day in a 12-by-3-foot cell in which he could not turn his wheelchair around. He alleged that the lack of accessible facilities rendered him unable to use the toilet and shower without assistance, which was often denied. On multiple occasions, he asserted, he had injured himself in attempting to transfer from his wheelchair to the shower or toilet on his own, and, on several other occasions, he had been forced to sit in his own feces and urine while prison officials refused to assist him in cleaning up the waste. He also claimed that he had been denied physical therapy and medical treatment, and denied access to virtually all prison programs and services on account of his disability.

The District Court adopted the Magistrate Judge's recommendation that the allegations in the complaint were vague and constituted insufficient notice pleading as to Goodman's § 1983 claims. It therefore dismissed the § 1983 claims against all defendants without providing Goodman an opportunity to amend his complaint. The District Court also dismissed his Title II claims against all individual defendants. Later, after our decision in *Garrett*, the District Court granted summary judgment to the state defendants on Goodman's Title II claims for money damages, holding that those claims were barred by state sovereign immunity.

Goodman appealed to the United States Court of Appeals for the Eleventh Circuit. The United States, petitioner in No. 04–1203, intervened to defend the constitutionality of Title II's abrogation of state sovereign immunity. The Eleventh Circuit determined that the District Court had erred in dismissing all of Goodman's § 1983 claims, because Goodman's

multiple *pro se* filings in the District Court alleged facts sufficient to support "a limited number of Eighth-Amendment claims under § 1983" against certain individual defendants. App. A to Pet. for Cert. in No. 04–1236, p. 17a, judgt. order reported at 120 Fed. Appx. 785 (2004). The Court of Appeals held that the District Court should have given Goodman leave to amend his complaint to develop three Eighth Amendment claims relating to his conditions of confinement:

> "First, Goodman alleges that he is not able to move his wheelchair in his cell. If Goodman is to be believed, this effectively amounts to some form of total restraint twenty-three to twenty-four hours-a-day without penal justification. Second, Goodman has alleged several instances in which he was forced to sit in his own bodily waste because prison officials refused to provide assistance. Third, Goodman has alleged sufficient conduct to proceed with a § 1983 claim based on the prison staff's supposed 'deliberate indifference' to his serious medical condition of being partially paraplegic . . . ." App. A to Pet. for Cert. in No. 04–1236, pp. 18a–19a (citation and footnote omitted).

The court remanded the suit to the District Court to permit Goodman to amend his complaint, while cautioning Goodman not to reassert all the § 1983 claims included in his initial complaint, "some of which [we]re obviously frivolous." *Id.*, at 18a.

The Eleventh Circuit did not address the sufficiency of Goodman's allegations under Title II. Instead, relying on its prior decision in *Miller* v. *King*, 384 F. 3d 1248 (2004), the Court of Appeals affirmed the District Court's holding that Goodman's Title II claims for money damages against the State were barred by sovereign immunity. We granted certiorari to consider whether Title II of the ADA validly abrogates state sovereign immunity with respect to the claims at issue here. 544 U. S. 1031 (2005).

II

In reversing the dismissal of Goodman's § 1983 claims, the Eleventh Circuit held that Goodman had alleged actual violations of the Eighth Amendment by state agents on the grounds set forth above. See App. A to Pet. for Cert. in No. 04–1236, pp. 18a–19a. The State does not contest this holding, see Brief for Respondents 41–44, and we did not grant certiorari to consider the merits of Goodman's Eighth Amendment claims; we assume without deciding, therefore, that the Eleventh Circuit's treatment of these claims was correct. Moreover, Goodman urges, and the State does not dispute, that this same conduct that violated the Eighth Amendment also violated Title II of the ADA. See Brief for Petitioner in No. 04–1236, p. 46; Brief for Respondents 41–44. In fact, it is quite plausible that the alleged deliberate refusal of prison officials to accommodate Goodman's disability-related needs in such fundamentals as mobility, hygiene, medical care, and virtually all other prison programs constituted "exclu[sion] from participation in or . . . deni[al of] the benefits of" the prison's "services, programs, or activities." 42 U. S. C. § 12132; see also *Yeskey*, 524 U. S., at 210 (noting that the phrase "services, programs, or activities" in § 12132 includes recreational, medical, educational, and vocational prison programs). Therefore, Goodman's claims for money damages against the State under Title II were evidently based, at least in large part, on conduct that independently violated the provisions of § 1 of the Fourteenth Amendment. See *Louisiana ex rel. Francis* v. *Resweber*, 329 U. S. 459, 463 (1947) (plurality opinion) (the Due Process Clause of the Fourteenth Amendment incorporates the Eighth Amendment's guarantee against cruel and unusual punishment). In this respect, Goodman differs from the claimants in our other cases addressing Congress's ability to abrogate sovereign immunity pursuant to its § 5 powers. See *Tennessee* v. *Lane*, 541 U. S. 509, 543, n. 4 (2004) (Rehnquist, C. J., dissenting) (respondents were not actually denied constitutional

rights); *Nevada Dept. of Human Resources* v. *Hibbs*, 538 U. S. 721, 752, 755 (2003) (KENNEDY, J., dissenting) (Nevada provided family leave "on a gender-neutral basis"—"a practice which no one contends suffers from a constitutional infirmity"); *Garrett*, 531 U. S., at 362, 367–368 (failure to make the special accommodations requested by disabled respondents was not unconstitutional); *Kimel* v. *Florida Bd. of Regents*, 528 U. S. 62, 69–70, 83–84 (2000) (most petitioners raised nonconstitutional disparate-impact challenges to the State's age-related policies); *Florida Prepaid Postsecondary Ed. Expense Bd.* v. *College Savings Bank*, 527 U. S. 627, 643–644, and n. 9 (1999) (Florida satisfied due process by providing remedies for patent infringement by state actors); *City of Boerne* v. *Flores*, 521 U. S. 507, 512 (1997) (church building permit denied under neutral law of general applicability).

While the Members of this Court have disagreed regarding the scope of Congress's "prophylactic" enforcement powers under § 5 of the Fourteenth Amendment, see, *e. g.*, *Lane*, 541 U. S., at 513 (majority opinion of STEVENS, J.); *id.*, at 538 (Rehnquist, C. J., dissenting); *id.*, at 554 (SCALIA, J., dissenting), no one doubts that § 5 grants Congress the power to "enforce . . . the provisions" of the Amendment by creating private remedies against the States for *actual* violations of those provisions. "Section 5 authorizes Congress to create a cause of action through which the citizen may vindicate his Fourteenth Amendment rights." *Id.*, at 559–560 (SCALIA, J., dissenting) (citing the Ku Klux Klan Act of April 20, 1871, 17 Stat. 13); see also *Fitzpatrick* v. *Bitzer*, 427 U. S. 445, 456 (1976) ("In [§ 5] Congress is expressly granted authority to enforce . . . the *substantive provisions* of the Fourteenth Amendment" by providing actions for money damages against the States (emphasis added)); *Ex parte Virginia*, 100 U. S. 339, 346 (1880) ("The prohibitions of the Fourteenth Amendment are directed to the States . . . . It is these which Congress is empowered to enforce . . . "). This en-

forcement power includes the power to abrogate state sovereign immunity by authorizing private suits for damages against the States. See *Fitzpatrick*, *supra*, at 456. Thus, insofar as Title II creates a private cause of action for damages against the States for conduct that *actually* violates the Fourteenth Amendment, Title II validly abrogates state sovereign immunity. The Eleventh Circuit erred in dismissing those of Goodman's Title II claims that were based on such unconstitutional conduct.

From the many allegations in Goodman's *pro se* complaint and his subsequent filings in the District Court, it is not clear precisely what conduct he intended to allege in support of his Title II claims. Because the Eleventh Circuit did not address the issue, it is likewise unclear to what extent the conduct underlying Goodman's constitutional claims also violated Title II. Moreover, the Eleventh Circuit ordered that the suit be remanded to the District Court to permit Goodman to amend his complaint, but instructed him to revise his factual allegations to exclude his "frivolous" claims—some of which are quite far afield from actual constitutional violations (under either the Eighth Amendment or some other constitutional provision), or even from Title II violations. See, *e. g.*, App. 50 (demanding a "steam table" for Goodman's housing unit). It is therefore unclear whether Goodman's amended complaint will assert Title II claims premised on conduct that does *not* independently violate the Fourteenth Amendment. Once Goodman's complaint is amended, the lower courts will be best situated to determine in the first instance, on a claim-by-claim basis, (1) which aspects of the State's alleged conduct violated Title II; (2) to what extent such misconduct also violated the Fourteenth Amendment; and (3) insofar as such misconduct violated Title II but did not violate the Fourteenth Amendment, whether Congress's purported abrogation of sovereign immunity as to that class of conduct is nevertheless valid.

* * *

The judgment of the Eleventh Circuit is reversed, and the suit is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE STEVENS, with whom JUSTICE GINSBURG joins, concurring.

The Court holds that Title II of the Americans with Disabilities Act of 1990 validly abrogates state sovereign immunity at least insofar as it creates a private cause of action for damages against States for conduct that violates the Constitution. *Ante,* at 159. And the state defendants have correctly chosen not to challenge the Eleventh Circuit's holding that Title II is constitutional insofar as it authorizes prospective injunctive relief against the State. See Brief for Respondents 6; see also *Miller* v. *King,* 384 F. 3d 1248, 1264 (CA11 2004). Rather than attempting to define the outer limits of Title II's valid abrogation of state sovereign immunity on the basis of the present record, the Court's opinion wisely permits the parties, guided by *Tennessee* v. *Lane*, 541 U. S. 509 (2004), to create a factual record that will inform that decision.* I therefore join the opinion.

It is important to emphasize that although petitioner Goodman's Eighth Amendment claims provide a sufficient basis for reversal, our opinion does not suggest that this is

*Such definition is necessary because Title II prohibits "'a somewhat broader swath of conduct'" than the Constitution itself forbids. *Lane,* 541 U. S., at 533, n. 24 (quoting *Kimel* v. *Florida Bd. of Regents,* 528 U. S. 62, 81 (2000)). While a factual record may not be absolutely necessary to our resolution of the question, it will surely aid our understanding of issues such as how, in practice, Title II's "reasonableness" requirement applies in the prison context, cf. *Lane,* 541 U. S., at 531–532 (explaining that Title II requires only "'reasonable modifications'"), and therefore whether certain of Goodman's claims are even covered by Title II, cf. App. 83, ¶ 14 (complaining of lack of access to, among other things, "television, phone calls, [and] entertainment").

the only constitutional right applicable in the prison context and therefore relevant to the abrogation issue. As we explain, when the District Court and the Court of Appeals revisit that issue, they should analyze Goodman's claims to see whether they state "actual constitutional violations (under either the Eighth Amendment *or some other constitutional provision*)," *ante*, at 159 (emphasis added), and to evaluate whether "Congress's purported abrogation of sovereign immunity [in such contexts] is nevertheless valid," *ibid.* This approach mirrors that taken in *Lane*, which identified a constellation of "basic constitutional guarantees" that Title II seeks to enforce and ultimately evaluated whether Title II was an appropriate response to the "class of cases" at hand. 541 U. S., at 522–523, 531. The Court's focus on Goodman's Eighth Amendment claims arises simply from the fact that those are the only constitutional violations the Eleventh Circuit found him to have alleged properly. See App. A to Pet. for Cert. in No. 04–1236, pp. 18a–19a.

Moreover, our approach today is fully consistent with our recognition that the history of mistreatment leading to Congress' decision to extend Title II's protections to prison inmates was not limited to violations of the Eighth Amendment. See *Lane*, 541 U. S., at 524–525 (describing "backdrop of pervasive unequal treatment" leading to enactment of Title II); see also, *e. g.*, *Board of Trustees of Univ. of Ala.* v. *Garrett*, 531 U. S. 356, 391–424 (2001) (Appendixes to opinion of BREYER, J., dissenting) (listing submissions made to Congress by the Task Force on the Rights and Empowerment of Americans with Disabilities showing, for example, that prisoners with developmental disabilities were subject to longer terms of imprisonment than other prisoners); 2 House Committee on Education and Labor, Legislative History of Public Law 101–336: The Americans with Disabilities Act, 101st Cong., 2d Sess., 1331 (Comm. Print 1990) (stating that persons with hearing impairments "have been arrested and held in jail over night without ever know-

ing their rights nor what they are being held for"); *id.*, at 1005 (stating that police arrested a man with AIDS and "[i]nstead of putting the man in jail, the officers locked him inside his car to spend the night"); California Dept. of Justice, Attorney General's Commission on Disability: Final Report 103 (Dec. 1989) (finding that inmates with disabilities were unnecessarily "confined to medical units where access to work, job training, recreation and rehabilitation programs is limited"). In fact, as the Solicitor General points out in his brief arguing that Title II's damages remedy constitutes appropriate prophylactic legislation in the prison context, the record of mistreatment of prison inmates that Congress reviewed in its deliberations preceding the enactment of Title II was comparable in all relevant respects to the record that we recently held sufficient to uphold the application of that title to the entire class of cases implicating the fundamental right of access to the courts. See *Lane*, 541 U. S., at 533–534. And while it is true that cases involving inadequate medical care and inhumane conditions of confinement have perhaps been most numerous, courts have also reviewed myriad other types of claims by disabled prisoners, such as allegations of the abridgment of religious liberties, undue censorship, interference with access to the judicial process, and procedural due process violations. See, *e. g.*, *Vitek* v. *Jones*, 445 U. S. 480 (1980) (procedural due process); *May* v. *Sheahan*, 226 F. 3d 876 (CA7 2000) (access to judicial process, lawyers, legal materials, and reading materials); *Littlefield* v. *Deland*, 641 F. 2d 729 (CA10 1981) (access to reading and writing materials); *Nolley* v. *County of Erie*, 776 F. Supp. 715 (WDNY 1991) (access to law library and religious services).

Indeed, given the constellation of rights applicable in the prison context, it is clear that the Eleventh Circuit has erred in identifying only the Eighth Amendment right to be free from cruel and unusual punishment in performing the first step of the "congruence and proportionality" inquiry set

forth in *City of Boerne* v. *Flores*, 521 U. S. 507 (1997). See *Miller*, 384 F. 3d, at 1272, and n. 28 (declining to entertain United States' argument that *Lane* requires consideration of constitutional rights beyond those provided by the Eighth Amendment); App. A to Pet. for Cert. in No. 04–1236, p. 19a (relying on *Miller* to find Goodman's Title II claims for money damages barred by the Eleventh Amendment). By reversing the Eleventh Circuit's decision in these cases and remanding for further proceedings, we not only provide the parties an opportunity to create a more substantial factual record, but also provide the District Court and the Court of Appeals the opportunity to apply the *Boerne* framework properly. Given these benefits, I agree with the Court's decision to await further proceedings before trying to define the extent to which Title II validly abrogates state sovereign immunity in the prison context.

Syllabus

VOLVO TRUCKS NORTH AMERICA, INC. *v.* REEDER-SIMCO GMC, INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 04–905. Argued October 31, 2005—Decided January 10, 2006

Reeder-Simco GMC, Inc. (Reeder), an authorized dealer of heavy-duty trucks manufactured by Volvo Trucks North America, Inc. (Volvo), generally sold those trucks through an industry-wide competitive bidding process, whereby the retail customer describes its specific product requirements and invites bids from dealers it selects based on such factors as an existing relationship, geography, and reputation. Once a Volvo dealer receives the customer's specifications, it requests from Volvo a discount or "concession" off the wholesale price. Volvo decides on a case-by-case basis whether to offer a concession. The dealer then uses its Volvo discount in preparing its bid; it purchases trucks from Volvo only if and when the retail customer accepts its bid. Reeder was one of many regional Volvo dealers. Although nothing prohibits a Volvo dealer from bidding outside its territory, Reeder rarely bid against another Volvo dealer. In the atypical case in which a retail customer solicited a bid from more than one Volvo dealer, Volvo's stated policy was to provide the same price concession to each dealer. In 1997, after Volvo announced plans to enlarge the size of its dealers' markets and to reduce by almost half the number of its dealers, Reeder learned that Volvo had given another dealer a price concession greater than the discounts Reeder typically received.

Reeder, suspecting it was one of the dealers Volvo sought to eliminate, filed this suit under, *inter alia*, § 2 of the Clayton Act, as amended by the Robinson-Patman Act, 15 U. S. C. § 13, alleging that its sales and profits declined because Volvo offered other dealers more favorable price concessions. At trial, Reeder presented evidence of two instances when it bid against another Volvo dealer for a particular sale. In the first, although Volvo initially offered Reeder a lower concession, Volvo ultimately matched the concession offered to the competing dealer. Neither dealer won the bid. In the second, Volvo initially offered the two dealers the same concession, but increased the other dealer's discount after it, rather than Reeder, was selected. Reeder dominantly relied on comparisons between concessions it received on four occasions when it bid successfully against non-Volvo dealers (and thus purchased Volvo trucks), with more favorable concessions other successful Volvo

dealers received in bidding processes in which Reeder did not participate. Reeder also compared concessions Volvo offered it on several occasions when it bid unsuccessfully against non-Volvo dealers (and therefore did not purchase Volvo trucks), with more favorable concessions accorded other Volvo dealers who gained contracts on which Reeder did not bid. Reeder did not look for instances in which it received a larger concession than another Volvo dealer, but acknowledged it was "quite possible" that such instances occurred. Nor did Reeder offer any statistical analysis revealing whether it was disfavored on average as compared to other dealers. The jury found a reasonable possibility that discriminatory pricing may have harmed competition between Reeder and other Volvo dealers, that Volvo's discriminatory pricing injured Reeder, and that Reeder's damages from Volvo's Robinson-Patman violation exceeded $1.3 million. The District Court awarded treble damages on the Robinson-Patman Act claim, and entered judgment.

Affirming, the Eighth Circuit, among other things, noted the threshold requirement that Reeder show it was a "purchaser" within the Act's meaning; rejected Volvo's contention that competitive bidding situations do not give rise to Robinson-Patman claims; held that the four instances in which Reeder purchased trucks following successful bids rendered it a purchaser under the Act; determined that a jury could reasonably decide Reeder was in actual competition with favored dealers at the time price differentials were imposed; and held that the jury could properly find Reeder had proved competitive injury based on evidence that (1) Volvo intended to reduce the number of its dealers, (2) Reeder lost one contract for which it competed with another Volvo dealer, (3) Reeder would have earned more profits, had it received the concessions given other dealers, and (4) Reeder's sales declined over time.

Held: A manufacturer may not be held liable for secondary-line price discrimination under the Robinson-Patman Act in the absence of a showing that the manufacturer discriminated between dealers competing to resell its product to the same retail customer. The Act does not reach the case Reeder presents. It centrally addresses price discrimination in cases involving competition between different purchasers for resale of the purchased product. Competition of that character ordinarily is not involved when a product subject to special order is sold through a customer-specific competitive bidding process. Pp. 175–182.

1. Section 2 was enacted to curb financially powerful corporations' use of localized price-cutting tactics that gravely impaired other sellers' competitive position. *FTC* v. *Anheuser-Busch, Inc.*, 363 U. S. 536, 543, and n. 6. Augmenting § 2, the Robinson-Patman Act targeted the perceived harm to competition occasioned by the advent of large chain-

stores able to obtain lower prices for goods than smaller buyers could demand. Robinson-Patman does not ban all price differences charged to different purchasers of similar commodities, but proscribes only "price discrimination [that] threatens to injure competition," *Brooke Group Ltd.* v. *Brown & Williamson Tobacco Corp.*, 509 U. S. 209, 220. Of the three categories of competitive injury that may give rise to a Robinson-Patman claim, secondary-line cases, like this one, involve price discrimination that injures competition among the discriminating seller's customers (here, Volvo's dealerships). Reeder has satisfied the Act's first two requirements for establishing secondary-line injury: (1) The relevant Volvo truck sales were made in interstate commerce, and (2) the trucks were of "like grade and quality," 15 U. S. C. § 13(a). Because Reeder has not identified any differentially priced transaction in which it was both a "purchaser" under the Act and "in actual competition" with a favored purchaser for the same customer, see, *e. g., FTC* v. *Sun Oil Co.*, 371 U. S. 505, 518–519, Volvo and *amicus* United States maintain that Reeder cannot satisfy the Act's third and fourth requirements—that (3) Volvo "discriminate[d] in price between" Reeder and another purchaser of Volvo trucks, and (4) "the effect of such discrimination may be . . . to injure, destroy, or prevent competition" to the advantage of a favored purchaser, *i. e.*, one who "receive[d] the benefit of such discrimination," 15 U. S. C. § 13(a). Absent actual competition with a favored Volvo dealer, Reeder cannot establish the competitive injury the Act requires. Pp. 175–177.

2. The injury to competition targeted by the Robinson-Patman Act is not established by the selective comparisons Reeder presented at trial: (1) comparisons of concessions Reeder received for four successful bids against *non-Volvo* dealers, with larger concessions other successful Volvo dealers received for *different sales* on which Reeder did not bid (purchase-to-purchase comparisons); (2) comparisons of concessions offered to Reeder in connection with several unsuccessful bids against *non-Volvo* dealers, with greater concessions accorded other Volvo dealers who competed successfully for *different sales* on which Reeder did not bid (offer-to-purchase comparisons); and (3) comparisons of two occasions on which Reeder bid against another Volvo dealer (head-to-head comparisons). Pp. 177–180.

(a) Because the purchase-to-purchase and offer-to-purchase comparisons fail to show that Volvo sold at a lower price to Reeder's "competitors," those comparisons do not support an inference of competitive injury. See *Falls City Industries, Inc.* v. *Vanco Beverage, Inc.*, 460 U. S. 428, 435. Both types of comparisons fall short because in none of the discrete instances on which Reeder relied did it compete with beneficiaries of the alleged discrimination *for the same customer.* Nor

did Reeder even attempt to show that the compared dealers were consistently favored over it. Reeder simply paired occasions on which it competed with *non-Volvo* dealers for a sale to Customer A with instances in which other Volvo dealers competed with *non-Volvo* dealers for a sale to Customer B. The compared incidents were tied to no systematic study and were separated in time by as many as seven months. This Court declines to permit an inference of competitive injury from evidence of such a mix-and-match, manipulable quality. No similar risk of manipulation occurs in cases kin to the chainstore paradigm. Here, there is no discrete "favored" dealer comparable to a chainstore or a large independent department store—at least, Reeder's evidence is insufficient to support an inference that such a dealer exists. For all that appears, Reeder, on occasion, might have gotten a better deal vis-à-vis one or more of the dealers in its comparisons. While Reeder may have competed with other Volvo dealers for the opportunity to bid on potential sales in a broad geographic area, competition at that initial stage is based on a variety of factors, including the existence *vel non* of a relationship between the potential bidder and the customer, geography, and reputation. Once the customer has chosen the particular dealers from which it will solicit bids, the relevant market becomes limited to the needs and demands of the particular end user, with only a handful of dealers competing for the sale. Volvo dealers' bidding for sales in the same geographic area does not import that they in fact competed for the same customer-tailored sales. Pp. 178–179.

(b) Nor is a Robinson-Patman violation established by Reeder's evidence of two instances in which it competed head to head with another Volvo dealer. When multiple dealers bid for the business of the *same* customer, only one dealer will win the business and thereafter purchase the supplier's product to fulfill its contractual commitment. Even assuming the Act applies to head-to-head transactions, Reeder did not establish that it was *disfavored* vis-à-vis other Volvo dealers in the rare instances in which they competed for the same sale—let alone that the alleged discrimination was substantial. Reeder's evidence showed loss of only one sale to another Volvo dealer, a sale of 12 trucks that would have generated $30,000 in gross profits for Reeder. Per its policy, Volvo initially offered Reeder and the other dealer the same concession, but ultimately granted a larger concession to the other dealer after it had won the bid. In the only other instance of head-to-head competition, Volvo increased Reeder's initial discount to match the discount offered the other competing Volvo dealer, but neither dealer won the bid. If price discrimination between two purchasers existed at all, it was not of such magnitude as to affect substantially competition between Reeder and the "favored" Volvo dealer. Pp. 179–180.

3. The Robinson-Patman Act signals no large departure from antitrust law's primary concern, interbrand competition. Even if the Act's text could be construed as Reeder urges and the Eighth Circuit held, this Court would resist interpretation geared more to the protection of existing *competitors* than to the stimulation of *competition.* There is no evidence here that any favored purchaser possesses market power, the allegedly favored purchasers are dealers with little resemblance to large independent department stores or chain operations, and the supplier's selective price discounting fosters competition among suppliers of different brands. By declining to extend Robinson-Patman's governance to such cases, the Court continues to construe the Act consistently with antitrust law's broader policies. Pp. 180–181.

374 F. 3d 701, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and O'CONNOR, SCALIA, KENNEDY, SOUTER, and BREYER, JJ., joined. STEVENS, J., filed a dissenting opinion, in which THOMAS, J., joined, *post,* p. 182.

Roy T. Englert, Jr., argued the cause for petitioner. With him on the briefs were *Donald J. Russell, Max Huffman,* and *David L. Williams.*

Deputy Solicitor General Hungar argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Clement, Assistant Attorney General Pate, Deputy Assistant Attorney General Delrahim, Jonathan L. Marcus, Catherine G. O'Sullivan,* and *David Seidman.*

Carter G. Phillips argued the cause for respondent. With him on the briefs were *Richard D. Bernstein, Stephen B. Kinnaird,* and *Joe D. Byars, Jr.**

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*Briefs of *amici curiae* urging reversal were filed for the American Petroleum Institute by *Carolyn F. Corwin, Harry M. Ng,* and *Douglas W. Morris;* for the National Electrical Manufacturers Association by *Clark R. Silcox;* for the Truck Manufacturers Association et al. by *G. Michael Halfenger;* and for the Washington Legal Foundation by *Daniel J. Popeo* and *David Price.*

Briefs of *amici curiae* urging affirmance were filed for the National Automobile Dealers Association by *Paul R. Norman* and *Catherine*

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns specially ordered products—heavy-duty trucks supplied by Volvo Trucks North America, Inc. (Volvo), and sold by franchised dealers through a competitive bidding process. In this process, the retail customer states its specifications and invites bids, generally from dealers franchised by different manufacturers. Only when a Volvo dealer's bid proves successful does the dealer arrange to purchase the trucks, which Volvo then builds to meet the customer's specifications.

Reeder-Simco GMC, Inc. (Reeder), a Volvo dealer located in Fort Smith, Arkansas, commenced suit against Volvo alleging that Reeder's sales and profits declined because Volvo offered other dealers more favorable price concessions than those offered to Reeder. Reeder sought redress for its alleged losses under § 2 of the Clayton Act, 38 Stat. 730, as amended by the Robinson-Patman Price Discrimination Act, 49 Stat. 1526, 15 U. S. C. § 13 (Robinson-Patman Act or Act), and the Arkansas Franchise Practices Act, Ark. Code Ann. § 4–72–201 *et seq.* (2001). Reeder prevailed at trial and on appeal on both claims.

We granted review on the federal claim to resolve the question whether a manufacturer offering its dealers different wholesale prices may be held liable for price discrimination proscribed by Robinson-Patman, absent a showing that the manufacturer discriminated between dealers contemporaneously competing to resell to the same retail customer. While state law designed to protect franchisees may provide, and in this case has provided, a remedy for the dealer exposed to conduct of the kind Reeder alleged, the Robinson-Patman Act, we hold, does not reach the case Reeder presents. The Act centrally addresses price discrimination in cases involving competition between different purchasers for

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Cetrangolo; and for the North American Equipment Dealers Association et al. by *Wayne A. Mack.*

resale of the purchased product. Competition of that character ordinarily is not involved when a product subject to special order is sold through a customer-specific competitive bidding process.

I

Volvo manufactures heavy-duty trucks. Reeder sells new and used trucks, including heavy-duty trucks. 374 F. 3d 701, 704 (CA8 2004). Reeder became an authorized dealer of Volvo trucks in 1995, pursuant to a five-year franchise agreement that provided for automatic one-year extensions if Reeder met sales objectives set by Volvo. *Ibid.* Reeder generally sold Volvo's trucks through a competitive bidding process. *Ibid.* In this process, the retail customer describes its specific product requirements and invites bids from several dealers it selects. The customer's "decision to request a bid from a particular dealer or to allow a particular dealer to bid is controlled by such factors as an existing relationship, geography, reputation, and cold calling or other marketing strategies initiated by individual dealers." *Id.*, at 719 (Hansen, J., concurring in part and dissenting in part).

Once a Volvo dealer receives the customer's specifications, it turns to Volvo and requests a discount or "concession" off the wholesale price (set at 80% of the published retail price). *Id.*, at 704. It is common practice in the industry for manufacturers to offer customer-specific discounts to their dealers. *Ibid.;* App. 334, 337. Volvo decides on a case-by-case basis whether to offer a discount and, if so, what the discount rate will be, taking account of such factors as industry-wide demand and whether the retail customer has, historically, purchased a different brand of trucks. App. 348–349, 333–334.[1] The dealer then uses the discount offered by Volvo in prepar-

[1] To shield its ability to compete with other manufacturers, Volvo keeps confidential its precise method for calculating concessions offered to dealers. 374 F. 3d 701, 704–705 (CA8 2004); App. 337–338.

ing its bid; it purchases trucks from Volvo only if and when the retail customer accepts its bid. *Ibid.*

Reeder was one of many Volvo dealers, each assigned by Volvo to a geographic territory. Reeder's territory encompassed ten counties in Arkansas and two in Oklahoma. 374 F. 3d, at 709. Although nothing prohibits a Volvo dealer from bidding outside its territory, *ibid.*, Reeder rarely bid against another Volvo dealer, see *id.*, at 705; 5 App. in No. 02–2462 (CA8), pp. 1621–1622 (hereinafter C. A. App.). In the atypical event that the same retail customer solicited a bid from more than one Volvo dealer, Volvo's stated policy was to provide the same price concession to each dealer competing head to head for the same sale. 4 *id.*, at 1161–1162; 5 *id.*, at 1619, 1621.

In 1997, Volvo announced a program it called "Volvo Vision," in which the company addressed problems it faced in the market for heavy trucks, among them, the company's assessment that it had too many dealers. Volvo projected enlarging the size of its dealers' markets and reducing the number of dealers from 146 to 75. 374 F. 3d, at 705. Coincidentally, Reeder learned that Volvo had given another dealer a price concession greater than the concessions Reeder typically received, and "Reeder came to suspect it was one of the dealers Volvo sought to eliminate." *Ibid.* Reeder filed suit against Volvo in February 2000, alleging losses attributable to Volvo's violation of the Arkansas Franchise Practices Act and the Robinson-Patman Act.

At trial, Reeder's vice-president, William E. Heck, acknowledged that Volvo's policy was to offer equal concessions to Volvo dealers bidding against one another for a particular contract, but he contended that the policy "was not executed." 4 C. A. App. 1162. Reeder presented evidence concerning two instances over the five-year course of its authorized dealership when Reeder bid against other Volvo dealers for a particular sale. 374 F. 3d, at 705, 708–709. One of the two instances involved Reeder's bid on a sale to

Tommy Davidson Trucking. 4 C. A. App. 1267–1268. Volvo initially offered Reeder a concession of 17%, which Volvo, unprompted, increased to 18.1% and then, one week later, to 18.9%, to match the concession Volvo had offered to another of its dealers. 5 *id.*, at 1268–1272. Neither dealer won the bid. *Id.*, at 1272. The other instance involved Hiland Dairy, which solicited bids from both Reeder and Southwest Missouri Truck Center. *Id.*, at 1626–1627. Per its written policy, Volvo offered the two dealers the same concession, and Hiland selected Southwest Missouri, a dealer from which Hiland had previously purchased trucks. *Ibid.* After selecting Southwest Missouri, Hiland insisted on the price Southwest Missouri had bid prior to a general increase in Volvo's prices; Volvo obliged by increasing the size of the discount. *Id.*, at 1627. See also *id.*, at 1483–1488; 374 F. 3d, at 720 (Hansen, J., concurring in part and dissenting in part).

Reeder dominantly relied on comparisons between concessions Volvo offered when Reeder bid against non-Volvo dealers, with concessions accorded to other Volvo dealers similarly bidding against non-Volvo dealers for other sales. Reeder's evidence compared concessions Reeder received on four occasions when it bid successfully against non-Volvo dealers (and thus purchased Volvo trucks), with more favorable concessions other successful Volvo dealers received in connection with bidding processes in which Reeder did not participate. *Id.*, at 705–706. Reeder also compared concessions offered by Volvo on several occasions when Reeder bid unsuccessfully against non-Volvo dealers (and therefore did not purchase Volvo trucks), with more favorable concessions received by other Volvo dealers who gained contracts on which Reeder did not bid. *Id.*, at 706–707.

Reeder's vice-president, Heck, testified that Reeder did not look for instances in which it received a *larger* concession than another Volvo dealer, although he acknowledged it was "quite possible" that such instances occurred. 5 C. A. App. 1462. Nor did Reeder endeavor to determine by any sta-

tistical analysis whether Reeder was disfavored on average as compared to another dealer or set of dealers. *Id.*, at 1462–1464.

The jury found that there was a reasonable possibility that discriminatory pricing may have harmed competition between Reeder and other Volvo truck dealers, and that Volvo's discriminatory pricing injured Reeder. App. 480–486. It further found that Reeder's damages from Volvo's Robinson-Patman Act violation exceeded $1.3 million. *Id.*, at 486.[2] The District Court summarily denied Volvo's motion for judgment as a matter of law and the company's alternative motion for new trial or remittitur, awarded treble damages on the Robinson-Patman Act claim, and entered judgment.

A divided Court of Appeals for the Eighth Circuit affirmed. The appeals court noted that, "as a threshold matter[,] Reeder had to show [that] it was a 'purchaser' within the meaning of the [Act]," 374 F. 3d, at 708, *i. e.*, that "there were actual sales at two different prices[,] . . . a sale to [Reeder] and a sale to another Volvo dealer," *id.*, at 707–708. Rejecting Volvo's contention that competitive bidding situations do not give rise to claims under the Robinson-Patman Act, *id.*, at 708–709, the Court of Appeals observed that Reeder was "more than an unsuccessful bidder," *id.*, at 709. The four instances in which Reeder "actually purchased Volvo trucks following successful bids on contracts," the court concluded, sufficed to render Reeder a purchaser within the meaning of the Act. *Ibid.*

The Court of Appeals next determined that a jury could reasonably decide that Reeder was "in actual competition" with favored dealers. *Ibid.* "[A]s of the time the price differential was imposed," the court reasoned, "the favored

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[2] The jury also awarded Reeder damages of $513,750 on Reeder's state-law claim under the Arkansas Franchise Practices Act. No question is before us respecting that claim, which trained on Volvo's alleged design to eliminate Reeder as a Volvo dealer. See *supra*, at 171.

and disfavored purchasers competed at the same functional level . . . and within the same geographic market." *Ibid.* (quoting *Best Brands Beverage, Inc.* v. *Falstaff Brewing Corp.*, 842 F. 2d 578, 585 (CA2 1987)). The court further held that the jury could properly find from the evidence that Reeder had proved competitive injury from price discrimination. Specifically, the court pointed to evidence showing that (1) Volvo intended to reduce the number of its dealers; (2) Reeder lost the Hiland Dairy contract, for which it competed head to head with another Volvo dealer; (3) Reeder would have earned more profits, had it received the concessions other dealers received; and (4) Reeder's sales had declined over a period of time. 374 F. 3d, at 711–712. The court also affirmed the award of treble damages to Reeder. *Id.*, at 712–714.

Judge Hansen dissented as to the Robinson-Patman Act claim. "Traditional [Robinson-Patman Act] cases," he observed, "involve sellers and purchasers that carry inventory or deal in fungible goods." *Id.*, at 718. The majority, Judge Hansen commented, "attempt[ed] to fit a square peg into a round hole," *ibid.*, when it extended the Act's reach to the marketplace for heavy-duty trucks, where "special-order products are sold to individual, pre-identified customers only after competitive bidding," *ibid.* There may be competition among dealers for the opportunity to bid on potential sales, he noted, but "[o]nce bidding begins, . . . the relevant market becomes limited to the needs and demands of a particular end user, with only a handful of dealers competing for the ultimate sale." *Id.*, at 719. Violation of the Act, in Judge Hansen's view, could not be predicated on the instances Reeder identified in which it was a purchaser, for "there was no actual competition between" Reeder and another Volvo dealer at the time of Reeder's purchases. *Ibid.* "Without proof of actual competition" for the same customer when the requisite purchases were made, he concluded, "Reeder can-

not demonstrate a reasonable possibility of competitive injury." *Ibid.*

We granted certiorari, 544 U. S. 903 (2005), to resolve this question: May a manufacturer be held liable for secondary-line price discrimination under the Robinson-Patman Act in the absence of a showing that the manufacturer discriminated between dealers competing to resell its product to the same retail customer? Satisfied that the Court of Appeals erred in answering that question in the affirmative, we reverse the Eighth Circuit's judgment.

II

Section 2, "when originally enacted as part of the Clayton Act in 1914, was born of a desire by Congress to curb the use by financially powerful corporations of localized price-cutting tactics which had gravely impaired the competitive position of other sellers." *FTC* v. *Anheuser-Busch, Inc.*, 363 U. S. 536, 543, and n. 6 (1960) (citing H. R. Rep. No. 627, 63d Cong., 2d Sess., 8 (1914); S. Rep. No. 698, 63d Cong., 2d Sess., 2–4 (1914)). Augmenting that provision in 1936 with the Robinson-Patman Act, Congress sought to target the perceived harm to competition occasioned by powerful buyers, rather than sellers; specifically, Congress responded to the advent of large chainstores, enterprises with the clout to obtain lower prices for goods than smaller buyers could demand. See 14 H. Hovenkamp, Antitrust Law ¶ 2302, p. 11 (2d ed. 2006) (hereinafter Hovenkamp); P. Areeda & L. Kaplow, Antitrust Analysis ¶ 602, pp. 908–909 (5th ed. 1997) (hereinafter Areeda). The Act provides, in relevant part:

> "It shall be unlawful for any person engaged in commerce . . . to discriminate in price between different purchasers of commodities of like grade and quality, . . . where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or know-

> ingly receives the benefit of such discrimination, or with customers of either of them . . . ." 15 U. S. C. § 13(a).

Pursuant to § 4 of the Clayton Act, a private plaintiff may recover threefold for actual injury sustained as a result of a violation of the Robinson-Patman Act. See 15 U. S. C. § 15(a); *J. Truett Payne Co.* v. *Chrysler Motors Corp.*, 451 U. S. 557, 562 (1981).

Mindful of the purposes of the Act and of the antitrust laws generally, we have explained that Robinson-Patman does not "ban all price differences charged to different purchasers of commodities of like grade and quality," *Brooke Group Ltd.* v. *Brown & Williamson Tobacco Corp.*, 509 U. S. 209, 220 (1993) (internal quotation marks omitted); rather, the Act proscribes "price discrimination only to the extent that it threatens to injure competition," *ibid.* Our decisions describe three categories of competitive injury that may give rise to a Robinson-Patman Act claim: primary line, secondary line, and tertiary line. Primary-line cases entail conduct—most conspicuously, predatory pricing—that injures competition at the level of the discriminating seller and its direct competitors. See, *e. g.*, *id.*, at 220–222; see also Hovenkamp ¶ 2301a, pp. 4–6. Secondary-line cases, of which this is one, involve price discrimination that injures competition among the discriminating seller's customers (here, Volvo's dealerships); cases in this category typically refer to "favored" and "disfavored" purchasers. See *ibid.; Texaco Inc.* v. *Hasbrouck*, 496 U. S. 543, 558, n. 15 (1990). Tertiary-line cases involve injury to competition at the level of the purchaser's customers. See Areeda ¶ 601e, p. 907.

To establish the secondary-line injury of which it complains, Reeder had to show that (1) the relevant Volvo truck sales were made in interstate commerce; (2) the trucks were of "like grade and quality"; (3) Volvo "discriminate[d] in price between" Reeder and another purchaser of Volvo trucks; and (4) "the effect of such discrimination may be . . . to injure, destroy, or prevent competition" to the advantage of a fa-

vored purchaser, *i. e.*, one who "receive[d] the benefit of such discrimination." 15 U. S. C. § 13(a). It is undisputed that Reeder has satisfied the first and second requirements. Volvo and the United States, as *amicus curiae*, maintain that Reeder cannot satisfy the third and fourth requirements, because Reeder has not identified any differentially priced transaction in which it was both a "purchaser" under the Act and "in actual competition" with a favored purchaser for the same customer.

A hallmark of the requisite competitive injury, our decisions indicate, is the diversion of sales or profits from a disfavored purchaser to a favored purchaser. *FTC* v. *Sun Oil Co.*, 371 U. S. 505, 518–519 (1963) (evidence showed patronage shifted from disfavored dealers to favored dealers); *Falls City Industries, Inc.* v. *Vanco Beverage, Inc.*, 460 U. S. 428, 437–438, and n. 8 (1983) (complaint "supported by direct evidence of diverted sales"). We have also recognized that a permissible inference of competitive injury may arise from evidence that a favored competitor received a significant price reduction over a substantial period of time. See *FTC* v. *Morton Salt Co.*, 334 U. S. 37, 49–51 (1948); *Falls City Industries*, 460 U. S., at 435. Absent actual competition with a favored Volvo dealer, however, Reeder cannot establish the competitive injury required under the Act.

III

The evidence Reeder offered at trial falls into three categories: (1) comparisons of concessions Reeder received for four successful bids against *non-Volvo* dealers, with larger concessions other successful Volvo dealers received for *different sales* on which Reeder did not bid (purchase-to-purchase comparisons); (2) comparisons of concessions offered to Reeder in connection with several unsuccessful bids against *non-Volvo* dealers, with greater concessions accorded other Volvo dealers who competed successfully for *different sales* on which Reeder did not bid (offer-to-

purchase comparisons); and (3) evidence of two occasions on which Reeder bid against another Volvo dealer (head-to-head comparisons). The Court of Appeals concluded that Reeder demonstrated competitive injury under the Act because Reeder competed with favored purchasers "at the same functional level . . . and within the same geographic market." 374 F. 3d, at 709 (quoting *Best Brands*, 842 F. 2d, at 585). As we see it, however, selective comparisons of the kind Reeder presented do not show the injury to competition targeted by the Robinson-Patman Act.

A

Both the purchase-to-purchase and the offer-to-purchase comparisons fall short, for in none of the discrete instances on which Reeder relied did Reeder compete with beneficiaries of the alleged discrimination *for the same customer*. Nor did Reeder even attempt to show that the compared dealers were consistently favored vis-à-vis Reeder. Reeder simply paired occasions on which it competed with *non-Volvo* dealers for a sale to Customer A with instances in which other Volvo dealers competed with *non-Volvo* dealers for a sale to Customer B. The compared incidents were tied to no systematic study and were separated in time by as many as seven months. See 374 F. 3d, at 706, 710.

We decline to permit an inference of competitive injury from evidence of such a mix-and-match, manipulable quality. See Tr. of Oral Arg. 34–35, 55. No similar risk of manipulation occurs in cases kin to the chainstore paradigm. Here, there is no discrete "favored" dealer comparable to a chainstore or a large independent department store—at least, Reeder's evidence is insufficient to support an inference of such a dealer or set of dealers. For all we know, Reeder, on occasion, might have gotten a better deal vis-à-vis one or more of the dealers in its comparisons. See *supra*, at 172.

Reeder may have competed with other Volvo dealers for the opportunity to bid on potential sales in a broad geographic area. At that initial stage, however, competition is

not affected by differential pricing; a dealer in the competitive bidding process here at issue approaches Volvo for a price concession only after it has been selected by a retail customer to submit a bid. Competition for an opportunity to bid, we earlier observed, is based on a variety of factors, including the existence *vel non* of a relationship between the potential bidder and the customer, geography, and reputation. See *supra*, at 170.[3] We reiterate in this regard an observation made by Judge Hansen, dissenting from the Eighth Circuit's Robinson-Patman holding: Once a retail customer has chosen the particular dealers from which it will solicit bids, "the relevant market becomes limited to the needs and demands of a particular end user, with only a handful of dealers competing for the ultimate sale." 374 F. 3d, at 719. That Volvo dealers may bid for sales in the same geographic area does not import that they in fact competed for the same customer-tailored sales. In sum, the purchase-to-purchase and offer-to-purchase comparisons fail to show that Volvo sold at a lower price to Reeder's "competitors," hence those comparisons do not support an inference of competitive injury. See *Falls City Industries*, 460 U. S., at 435 (inference of competitive injury under *Morton Salt* arises from "proof of a substantial price discrimination between *competing purchasers* over time" (emphasis added)).

B

Reeder did offer evidence of two instances in which it competed head to head with another Volvo dealer. See *supra*, at 171–172. When multiple dealers bid for the business of the *same* customer, only one dealer will win the business and thereafter purchase the supplier's product to fulfill its

[3] A dealer's reputation for securing favorable concessions, we recognize, may influence the customer's bidding invitations. Cf. *post*, at 183, n. 2. We do not pursue that point here, however, because Reeder did not present—or even look for—evidence that Volvo consistently disfavored Reeder while it consistently favored certain other dealers. See *supra*, at 172–173.

contractual commitment. Because Robinson-Patman "prohibits only discrimination 'between different *purchasers*,'" Brief for Petitioner 26 (quoting 15 U. S. C. § 13(a); emphasis added), Volvo and the United States argue, the Act does not reach markets characterized by competitive bidding and special-order sales, as opposed to sales from inventory. See Brief for Petitioner 27; Brief for United States as *Amicus Curiae* 9, 17–20. We need not decide that question today. Assuming the Act applies to the head-to-head transactions, Reeder did not establish that it was *disfavored* vis-à-vis other Volvo dealers in the rare instances in which they competed for the same sale—let alone that the alleged discrimination was substantial. See 1 ABA Section of Antitrust Law, Antitrust Law Developments 478–479 (5th ed. 2002) ("No inference of injury to competition is permitted when the discrimination is not substantial." (collecting cases)).

Reeder's evidence showed loss of only one sale to another Volvo dealer, a sale of 12 trucks that would have generated $30,000 in gross profits for Reeder. 374 F. 3d, at 705. Per its policy, Volvo initially offered Reeder and the other dealer the same concession. Volvo ultimately granted a larger concession to the other dealer, but only after it had won the bid. In the only other instance of head-to-head competition Reeder identified, Volvo increased Reeder's initial 17% discount to 18.9%, to match the discount offered to the other competing Volvo dealer; neither dealer won the bid. See *supra*, at 172. In short, if price discrimination between two purchasers existed at all, it was not of such magnitude as to affect substantially competition between Reeder and the "favored" Volvo dealer.

IV

Interbrand competition, our opinions affirm, is the "primary concern of antitrust law." *Continental T. V., Inc.* v. *GTE Sylvania Inc.*, 433 U. S. 36, 51–52, n. 19 (1977). The Robinson-Patman Act signals no large departure from that

main concern. Even if the Act's text could be construed in the manner urged by Reeder and embraced by the Court of Appeals, we would resist interpretation geared more to the protection of existing *competitors* than to the stimulation of *competition*.[4] In the case before us, there is no evidence that any favored purchaser possesses market power, the allegedly favored purchasers are dealers with little resemblance to large independent department stores or chain operations, and the supplier's selective price discounting fosters competition among suppliers of different brands. See *id.*, at 51–52 (observing that the market impact of a vertical practice, such as a change in a supplier's distribution system, may be a "simultaneous reduction of intrabrand competition and stimulation of interbrand competition"). By declining to extend Robinson-Patman's governance to such cases, we continue to construe the Act "consistently with broader policies of the antitrust laws." *Brooke Group*, 509 U. S., at 220 (quoting *Great Atlantic & Pacific Tea Co.* v. *FTC*, 440 U. S. 69, 80, n. 13 (1979)); see *Automatic Canteen Co. of America* v. *FTC*, 346 U. S. 61, 63 (1953) (cautioning against Robinson-Patman constructions that "extend beyond the prohibitions of the Act and, in doing so, help give rise to a price uniformity and rigidity in open conflict with the purposes of other antitrust legislation").[5]

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[4] The dissent assails Volvo's decision to reduce the number of its dealers. *Post*, at 183. But Robinson-Patman does not bar a manufacturer from restructuring its distribution networks to improve the efficiency of its operations. If Volvo did not honor its obligations to Reeder as its franchisee, "[a]ny remedy . . . lies in state laws addressing unfair competition and the rights of franchisees, not in the Robinson-Patman Act." Brief for United States as *Amicus Curiae* 28.

[5] See also Hovenkamp ¶ 2333c, p. 109 (commenting that the Eighth Circuit's expansive interpretation "views the [Robinson-Patman Act] as a guarantee of equal profit margins on sales actually made," and thereby exposes manufacturers to treble damages unless they "charge uniform prices to their dealers").

* * *

For the reasons stated, the judgment of the Court of Appeals for the Eighth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE STEVENS, with whom JUSTICE THOMAS joins, dissenting.

Franchised dealers who sell Volvo trucks, like those who sell automobiles, farm equipment, washing machines, and a variety of other expensive items, routinely engage in negotiations with prospective purchasers. Sometimes the prospect is simultaneously negotiating with two Volvo dealers, sometimes with a Volvo dealer and a dealer representing another manufacturer, and still other times a satisfied customer who is generally familiar with the options available in a competitive market may negotiate with only one dealer at a time. Until today, the Robinson-Patman Act's prohibition of price discrimination[1] would have protected the dealer's ability to negotiate in all those situations. Today, however, by adopting a novel, transaction-specific concept of competition, the Court eliminates that statutory protection in all but those rare situations in which a prospective purchaser is negotiating with two Volvo dealers at the same time.

I

Setting aside for the moment the fact that the case involves goods specially ordered for particular customers

[1] Section 2 of the Clayton Act, as amended by § 1 of the Robinson-Patman Act, provides in relevant part:

"It shall be unlawful for any person . . . to discriminate in price between different purchasers of commodities of like grade and quality . . . where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them." 38 Stat. 730, as amended, 49 Stat. 1526, 15 U. S. C. § 13(a).

rather than goods stocked in inventory, the case is a rather ordinary Robinson-Patman suit. Respondent Reeder alleged a violation of the Act; the parties submitted a good deal of conflicting evidence to the jury; the trial judge properly instructed the jurors on the elements of price discrimination, competitive injury, and damages; and the jury returned a verdict resolving all issues in Reeder's favor. The Court of Appeals found no error in either the instructions or the sufficiency of the evidence. 374 F. 3d 701 (CA8 2004).

Two issues of fact bear particular mention.

First, Volvo does not challenge the jury's finding of price discrimination. Reeder's theory of the case was that Volvo sought to cut back its number of dealers and deemed Reeder expendable. To avoid possible violations of franchise agreements and state laws, Volvo chose to accomplish this goal by offering Reeder worse prices than other regional dealers.

Reeder introduced substantial evidence of this theory. It showed that Volvo had an explicit business strategy, known as the "Volvo Vision," of "fewer dealers, larger markets." App. 34. It showed that Volvo could afford to lose sales as it squeezed dealers out, since the boom years of the late 1990's left Volvo with about as many orders as it could fill. *Id.*, at 256–257. And it showed that Volvo frequently gave worse prices to it than to other regional dealers. On at least four occasions, Volvo sold trucks to Reeder at significantly higher prices than to other dealers buying similar trucks around the same time.[2] To give one example, in the spring of 1998 Volvo sold 20 trucks to Reeder at a 9% concession, but sold similar trucks to a Texas dealer at a 12.3% concession. *Id.*, at 132–134. This left Reeder paying $2,606 more per truck. *Id.*, at 134. Although the Court chides Reeder

[2] Additionally, on more than 12 other occasions, Volvo offered worse deals to Reeder than it gave to dealers who made comparable purchases. Arguably due to Volvo's stingy concessions, Reeder failed to close with its customers in these instances and thus never ended up buying the trucks at issue from Volvo.

for failing to perform statistical analyses, see *ante,* at 172–173, 178, the jury clearly had a sufficient basis for finding price discrimination. It could infer that Volvo's pricing policies were comparable to a secret catalog listing one set of low prices for its "A" dealers and a higher set for its "B" dealers like Reeder, with an exception providing for the same prices where an "A" dealer and a "B" dealer were engaged in negotiations with the same customer at the same time.

Second, the jury found that the favored dealers at issue in these comparisons were competitive players in the same geographic market as Reeder. This conclusion is implicit in the jury's finding of competitive injury, since the jury instruction on that element required Reeder to prove

> "a substantial difference in price in sales by defendant to plaintiff and other competing Volvo dealers over a significant period of time. This requires plaintiff to show that it and the other Volvo dealer(s) were retail dealers within the same geographic market and that the effect of the price differential was to allow the other Volvo dealer(s) to draw sales or profits away from plaintiff." App. 480, Instruction No. 18.

Volvo does not dispute that the evidence was sufficient to support the jury finding that Reeder and the favored dealers operated in the same geographic market.[3] Volvo's restraint is wise, as Reeder offered evidence that truck buyers are unsurprisingly mobile, that it delivered trucks to purchasers throughout the region, and that customers would sometimes solicit bids from more than one regional Volvo dealer.

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[3] Similarly, and despite its selective discussion of the extensive evidentiary record, *ante,* at 170–173, the Court does not question the sufficiency of the evidence supporting the jury's finding that Volvo engaged in price discrimination against Reeder relative to other regional Volvo dealers for a significant period of time.

II

For decades, juries have routinely inferred the requisite injury to competition under the Robinson-Patman Act from the fact that a manufacturer sells goods to one retailer at a higher price than to its competitors. This rule dates back to the following discussion of competitive injury in Justice Black's opinion for the Court in *FTC* v. *Morton Salt Co.*, 334 U. S. 37 (1948):

> "It is argued that the findings fail to show that respondent's discriminatory discounts had in fact caused injury to competition. There are specific findings that such injuries had resulted from respondent's discounts, although the statute does not require the Commission to find that injury has actually resulted. The statute requires no more than that the effect of the prohibited price discriminations 'may be substantially to lessen competition . . . or to injure, destroy, or prevent competition.' After a careful consideration of this provision of the Robinson-Patman Act, we have said that 'the statute does not require that the discriminations must in fact have harmed competition, but only that there is a reasonable possibility that they "may" have such an effect.' *Corn Products Co.* v. *Federal Trade Comm'n*, 324 U. S. 726, 742. Here the Commission found what would appear to be obvious, that the competitive opportunities of certain merchants were injured when they had to pay respondent substantially more for their goods than their competitors had to pay. The findings are adequate." *Id.*, at 45–47 (footnote omitted).

We have treated as competitors those who sell "in a single, interstate retail market." *Falls City Industries, Inc.* v. *Vanco Beverage, Inc.*, 460 U. S. 428, 436 (1983); cf. *Tampa Elec. Co.* v. *Nashville Coal Co.*, 365 U. S. 320, 327 (1961). Under this approach—uncontroversial until today—Reeder

would readily prevail. There is ample evidence that Volvo charged Reeder higher prices than it charged to competing dealers in the same market over a period of many months. That those higher prices impaired Reeder's ability to compete with those dealers is just as obvious as the injury to competition described by the Court in *Morton Salt*.

Volvo nonetheless argues that no competitive injury could have occurred because it never discriminated against Reeder when Reeder and another Volvo dealer were seeking concessions with regard to the same ultimate customer. In Volvo's view, each transaction was a separate market, one defined by the customer and those dealers whom it had asked for bids. For each specific customer who has solicited bids, Reeder's only "competitors" were the other dealers making bids. Accordingly, if none of these other dealers were Volvo dealers, then Reeder suffered no competitive harm (relative to other Volvo dealers) when Volvo gave it a discriminatorily high price.

Unlike the Court, I cannot accept Volvo's vision. Nothing in the statute or in our precedent suggests that "competition" is evaluated by a transaction-specific inquiry, and such an approach makes little sense. It requires us to ignore the fact that competition among truck dealers is a continuing war waged over time rather than a series of wholly discrete events. Each time Reeder managed to resell trucks it had purchased at discriminatorily high prices, it was forced either to accept lower profit margins than were available to favored Volvo dealers or to pass on the higher costs to its customers (who then might well go to a different dealer the next time). And we have long indicated that lost profits relative to a competitor are a proper basis for permitting the *Morton Salt* inference. See, *e. g.*, *Falls City Industries*, 460 U. S., at 435 (noting that to overcome the *Morton Salt* inference, a defendant needs "evidence breaking the causal connection between a price differential and lost sales *or profits*" (emphasis added)). By ignoring these commonsense points,

the Court gives short shrift to the Robinson-Patman Act's prophylactic intent. See 15 U. S. C. § 13(a) (barring price discrimination where "the effect of such discrimination *may* be substantially to lessen competition" (emphasis added)); see also, *e. g.*, *Morton Salt*, 334 U. S., at 46.

The Court appears to hold that, absent head-to-head bidding with a favored dealer, a dealer in a competitive bidding market can suffer no competitive injury.[4] It is unclear whether that holding is limited to franchised dealers who do not maintain inventories, or excludes virtually all franchisees from the effective protection of the Act. In either event, it is not faithful to the statutory text.

III

As the Court recognizes, the Robinson-Patman Act was primarily intended to protect small retailers from the vigorous competition afforded by chainstores and other large volume purchasers. Whether that statutory mission represented sound economic policy is not merely the subject of serious debate, but may well merit Judge Bork's characterization as "wholly mistaken economic theory."[5] I do not suggest that disagreement with the policy of the Act has played a conscious role in my colleagues' unprecedented decision today. I cannot avoid, however, identifying the irony in a decision refusing to adhere to the text of the Act in a case in which the jury credited evidence that discriminatory

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[4] Indeed, if Volvo's argument about the meaning of "purchaser," see *ante*, at 179–180, ultimately meets with this Court's approval, then the Robinson-Patman Act will simply not apply in the special-order context. Any time a special-order dealer fails to complete a transaction because the high price drives away its ultimate customer, there will be no Robinson-Patman violation because the dealer will not meet the "purchaser" requirement, and any time the dealer completes the transaction but at a discriminatorily high price, there will be no violation because the dealer has no "competition" (as the majority sees it) for that specific transaction at the moment of purchase.

[5] R. Bork, The Antitrust Paradox 382 (1978).

prices were employed as means of escaping contractual commitments and eliminating specifically targeted firms from a competitive market. The exceptional quality of this case provides strong reason to enforce the Act's prohibition against discrimination even if Judge Bork's evaluation (with which I happen to agree) is completely accurate.

Accordingly, I respectfully dissent.

Syllabus

EVANS, ACTING WARDEN *v.* CHAVIS

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 04–721. Argued November 9, 2005—Decided January 10, 2006

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) gives a state prisoner whose conviction has become final one year to seek federal habeas corpus relief, 28 U. S. C. §2244(d)(1)(A), but tolls this 1-year limitations period for the "time during which a properly filed application for State . . . collateral review . . . is pending," §2244(d)(2). Under California's collateral review scheme, the equivalent of a notice of appeal is timely if filed within a "reasonable time." In *Carey* v. *Saffold*, 536 U. S. 214, this Court held, *inter alia*, that (1) only a *timely* appeal tolls AEDPA's limitations period for the time between the lower court's adverse decision and the filing of a notice of appeal; (2) in California, "unreasonable" delays are not timely; and (most pertinently) (3) a California Supreme Court order denying a petition "on the merits" does not automatically indicate that the petition was timely filed.

Respondent Chavis, a California state prisoner, filed a state habeas petition on May 14, 1993, which the trial court denied. On September 29, 1994, the California Court of Appeal also held against him. He then waited more than three years before seeking review in the California Supreme Court. On April 29, 1998, that court issued an order stating simply that the petition was denied. On August 30, 2000, Chavis filed a federal habeas petition. After the case reached it, the Ninth Circuit concluded that the federal petition's timeliness depended on whether Chavis' state postconviction relief application was "pending," therefore tolling AEDPA's limitations period, during the 3-year period between the time the California Court of Appeal issued its opinion and the time he sought review in the State Supreme Court. The Ninth Circuit held that the state application was "pending" because under Circuit precedent a denial without comment or citation is treated as a denial on the merits, and a petition denied on the merits was not untimely.

Held: The Ninth Circuit departed from *Saffold*'s interpretation of AEDPA as applied to California's system. Pp. 197–201.

(a) Contrary to *Saffold*, the Circuit in this case said in effect that the California Supreme Court's denial of a petition "on the merits" *did* automatically mean that the petition was timely. More than that, it treated a State Supreme Court order that was silent on the grounds for

the court's decision as equivalent to an order in which the words "on the merits" appeared. If the appearance of "on the merits" does not automatically warrant a holding that the filing was timely, the *absence* of those words could not automatically warrant such a holding. Absent (1) clear direction or explanation from the California Supreme Court about the meaning of "reasonable time" in the present context, or (2) clear indication that a particular request for appellate review was timely or untimely, the Ninth Circuit must itself examine the delay in each case and determine what the state courts would have held in respect to timeliness. This is what this Court believes it asked the Circuit to do in *Saffold.* This is what this Court believes the Circuit should have done here. Pp. 197–198.

(b) Given the uncertain scope of California's "reasonable time" standard, it may not be easy for the Ninth Circuit to decide in each of the several hundred federal habeas petitions from California prisoners it hears annually whether a prisoner's state-court review petition was timely. However, for the reasons given in *Saffold*, the Circuit's attempt to create shortcuts looking to the label the California Supreme Court applied to the denial order, even where that label does not refer to timeliness, are not true, either to California's timeliness rule or to AEDPA's intent to toll the 1-year limitations period only when the state collateral review proceeding is "pending." *Saffold*, 536 U. S., at 220–221, 225–226. The California courts might alleviate the problem by clarifying the scope of "reasonable time" or by indicating, when denying a petition, whether the filing was timely. And the Ninth Circuit might seek guidance by certifying a question to the State Supreme Court in an appropriate case. *Id.*, at 226–227. Alternatively, the California Legislature might decide to impose more determinate time limits, conforming California law with that of most other States. Absent any such guidance from state law, however, the Ninth Circuit's only alternative is to simply ask and decide whether the state prisoner's filing was made within a reasonable time. In doing so, the Circuit must be mindful that, in *Saffold*, this Court held that timely filings in California fell within the federal tolling provision *on the assumption* that California's "reasonable time" standard would not lead to filing delays substantially longer than those in States with determinate timeliness rules. *Id.*, at 222–223. Pp. 198–200.

(c) Chavis did not file his petition for review in the California Supreme Court within a reasonable time. This Court's examination of the record refutes his claim that his 3-year, 1-month, delay was reasonable because he could not use the prison library to work on his petition during this period. And since Chavis needs all but two days of that

lengthy delay to survive the federal 1-year habeas filing period, he cannot succeed. Pp. 200–201.

382 F. 3d 921, reversed and remanded.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and O'CONNOR, SCALIA, KENNEDY, SOUTER, THOMAS, and GINSBURG, JJ., joined. STEVENS, J., filed an opinion concurring in the judgment, *post*, p. 202.

Catherine Baker Chatman, Deputy Attorney General of California, argued the cause for petitioner. With her on the briefs were *Bill Lockyer*, Attorney General, *Manuel M. Medeiros*, State Solicitor General, *Robert R. Anderson*, Chief Assistant Attorney General, *Mary Jo Graves*, Senior Assistant Attorney General, and *Janet E. Neeley*, *Stan Cross*, and *Julie A. Hokans*, Supervising Deputy Attorneys General.

Peter K. Stris, by appointment of the Court, 545 U. S. 1126, argued the cause for respondent. With him on the brief were *Jason H. Wilson*, *Paul J. Loh*, and *Shaun P. Martin*.*

JUSTICE BREYER delivered the opinion of the Court.

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA or Act) requires a state prisoner whose conviction has become final to seek federal habeas corpus relief within one year. 28 U. S. C. §2244(d)(1)(A). The Act tolls this 1-year limitations period for the "time during which a properly filed application for State post-conviction or other collateral review . . . is pending." §2244(d)(2). The time that an application for state postconviction review is "pending" includes the period between (1) a lower court's adverse determination, and (2) the prisoner's filing of a notice of appeal, *provided that* the filing of the notice of appeal is timely under state law. *Carey* v. *Saffold*, 536 U. S. 214 (2002).

In most States a statute sets out the number of days for filing a timely notice of appeal, typically a matter of a few

Jeffrey L. Fisher and *Russell D. Covey* filed a brief for the National Association of Criminal Defense Lawyers as *amicus curiae* urging affirmance.

days. See *id.*, at 219. California, however, has a special system governing appeals when prisoners seek relief on collateral review. Under that system, the equivalent of a notice of appeal is timely if filed within a "reasonable time." *In re Harris*, 5 Cal. 4th 813, 828, n. 7, 855 P. 2d 391, 398, n. 7 (1993); see also *Saffold*, *supra*, at 221.

In this case, the Ninth Circuit found timely a California prisoner's request for appellate review made *three years* after the lower state court ruled against him. *Chavis* v. *LeMarque*, 382 F. 3d 921 (2004). We conclude that the Circuit departed from our interpretation of the Act as applied to California's system, *Carey* v. *Saffold*, *supra*, and we therefore reverse its judgment.

I

We begin with our holding in *Carey* v. *Saffold*. In that case we addressed three questions.

A

We initially considered the question just mentioned: For purposes of tolling AEDPA's 1-year limitations period, is a state habeas application "pending" during the interval between (1) the time a lower state court reaches an adverse decision, and (2) the day the prisoner timely files an appeal? We answered this question "yes." 536 U. S., at 219–221. If the filing of the appeal is timely, the period between the adverse lower court decision and the filing (typically just a few days) is not counted against the 1-year AEDPA time limit.

B

We then pointed out that in most States a prisoner who seeks review of an adverse lower court decision must file a notice of appeal in a higher court, and the timeliness of that notice of appeal is measured in terms of a determinate time period, such as 30 or 60 days. *Id.*, at 219. As we explained, however, California has a different rule. In California, a state prisoner may seek review of an adverse lower court

decision by filing an original petition (rather than a notice of appeal) in the higher court, and that petition is timely if filed within a "reasonable time." *Id.*, at 221. We asked whether this distinction made a difference for AEDPA tolling purposes. We answered that question "no." *Id.*, at 222–223. California's system is sufficiently analogous to appellate review systems in other States to treat it similarly. See *id.*, at 222 ("The upshot is that California's collateral review process functions very much like that of other States, but for the fact that its timeliness rule is indeterminate"). As long as the prisoner filed a petition for appellate review within a "reasonable time," he could count as "pending" (and add to the 1-year time limit) the days between (1) the time the lower state court reached an adverse decision, and (2) the day he filed a petition in the higher state court. *Id.*, at 222–223. We added, "The fact that California's timeliness standard is general rather than precise may make it more difficult for federal courts to determine just when a review application (*i. e.*, a filing in a higher court) comes too late." *Id.*, at 223. Nonetheless, the federal courts must undertake that task.

C

We considered finally whether the state habeas petition at issue in the case had itself been timely filed. Saffold had filed that petition (a petition for review by the California Supreme Court) not within 30 or even 60 days after the lower court (the California Court of Appeal) had reached its adverse decision, but, rather, *4½ months* later. The filing was not *obviously* late, however, because the delay might have been due to excusable neglect—Saffold said he had taken 4½ months because he had not received timely notice of the adverse lower court decision. *Id.*, at 226.

We sent the case back to the Ninth Circuit to decide whether the prisoner had filed his California Supreme Court petition within a "reasonable time," thus making the filing timely under California law. We also set forth several legal

propositions that set the boundaries within which the Ninth Circuit must answer this question.

First, we pointed out that if "the California Supreme Court had clearly ruled that Saffold's 4½-month delay was 'unreasonable,' that would be the end of the matter." *Ibid.*

Second, we noted that the California Supreme Court order denying Saffold's petition had stated that the denial was " 'on the merits and for lack of diligence.' " *Id.*, at 225. But, we added, these words alone did *not* decide the question. *Id.*, at 225–226.

Third, we stated that the words "lack of diligence" did not prove that the California Supreme Court thought the petition was *untimely.* That is because those words might have referred to a totally different, earlier delay that was "irrelevant" to the timeliness of Saffold's California Supreme Court petition. *Id.*, at 226.

Fourth, we stated that the words "on the merits" did not prove that the California Supreme Court thought the petition was *timely.* That is because the California Supreme Court might have decided to address the merits of the petition even if the petition had been untimely. A "court," we said,

> "will sometimes address the merits of a claim that it believes was presented in an untimely way: for instance, where the merits present no difficult issue; where the court wants to give a reviewing court alternative grounds for decision; or where the court wishes to show a prisoner (who may not have a lawyer) that it was not merely a procedural technicality that precluded him from obtaining relief." *Id.*, at 225–226.

We ultimately concluded that *the Ninth Circuit must not take "such words" (i. e., the words "on the merits") as "an absolute bellwether"* on the timeliness question. *Id.*, at 226 (emphasis added). We pointed out that the Circuit's contrary approach (*i. e.*, an approach that presumed that an

order denying a petition "on the merits" meant that the petition was timely) would lead to the tolling of AEDPA's limitations period in circumstances where the law does not permit tolling. *Ibid.* And we gave as an example of the incorrect approach a case in which the Ninth Circuit had found timely a petition for review filed four years after the lower court reached its decision. *Ibid.* (citing *Welch* v. *Newland*, 267 F. 3d 1013 (CA9 2001)).

II

We turn now to the present case. Respondent Reginald Chavis, a California state prisoner, filed a state habeas corpus petition on May 14, 1993. The trial court denied the petition. He sought review in the California Court of Appeal, which also held against him. The Court of Appeal released its decision on September 29, 1994. Chavis then waited more than three years, until November 5, 1997, before filing a petition for review in the California Supreme Court. On April 29, 1998, the California Supreme Court denied the petition in an order stating simply, "Petition for writ of habeas corpus [*i. e.*, review in the California Supreme Court] is DENIED." App. G to Pet. for Cert. 1.

Subsequently, on August 30, 2000 (after bringing a second round of state habeas petitions), Chavis filed a federal habeas petition. The State asked the federal court to dismiss the petition on the ground that it was untimely. After all, AEDPA gives prisoners only one year to file their federal petitions, and Chavis had filed his federal petition more than *four* years after AEDPA became effective. Still, AEDPA also provides for tolling, adding to the one year those days during which an application for state collateral review is "pending." And the federal courts consequently had to calculate how many days Chavis' state collateral review applications had been "pending" in the state courts and add those days to the 1-year limitations period.

Ultimately, after the case reached the Ninth Circuit, that court concluded that the timeliness of the federal petition

turned upon whether the "pending" period included the 3-year period between (1) the time a lower state court, the California Court of Appeal, issued its opinion (September 29, 1994), and (2) the time Chavis sought review in a higher state court, the California Supreme Court (on November 5, 1997). The Ninth Circuit held that the state collateral review application was "pending" during this time; hence, it should add those three years to the federal 1-year limitations period, and the addition of those three years, along with various other additions, rendered the federal filing timely.

The Ninth Circuit's reasoning as to why it should add the three years consists of the following:

> "Under our decision in *Saffold*, *because Chavis's November 1997 habeas petition* to the California Supreme Court *was denied on the merits*, it was pending during the interval between the Court of Appeal decision and the Supreme Court petition and *he is entitled to tolling. See* [*Saffold* v. *Carey*, 312 F. 3d 1031, 1034–1036 (2002)]. When the California Supreme Court denies a habeas petition without comment or citation, *we have long treated the denial as a decision on the merits. Hunter v. Aispuro*, 982 F. 2d 344, 348 (9th Cir. 1992). *Therefore*, the California Supreme Court's summary denial was on the merits, and *the petition was not dismissed as untimely. See id.; see also Delhomme v. Ramirez*, 340 F. 3d 817, 819, 820 n. 2 (9th Cir. 2003) (noting that there was no indication that a state habeas petition was untimely where the California Supreme Court denied the petition without comment or citation). As a result, Chavis is entitled to tolling during [the relevant period]." 382 F. 3d, at 926 (emphasis added).

California sought certiorari on the ground that the Ninth Circuit's decision was inconsistent with our holding in *Saffold*. We granted the writ.

III

A

California argues that the Ninth Circuit's decision in this case is inconsistent with our decision in *Saffold*. Like California, we do not see how it is possible to reconcile the two cases.

In *Saffold*, we held that (1) only a *timely* appeal tolls AEDPA's 1-year limitations period for the time between the lower court's adverse decision and the filing of a notice of appeal in the higher court; (2) in California, "unreasonable" delays are not timely; and (3) (most pertinently) a California Supreme Court order denying a petition "on the merits" does not *automatically* indicate that the petition was timely filed. In addition, we referred to a Ninth Circuit case holding that a 4-year delay was reasonable as an example of what the law forbids the Ninth Circuit to do.

Nonetheless, the Ninth Circuit in this case said in effect that the California Supreme Court's denial of a petition "on the merits" *did* automatically mean that the petition was timely (and thus that a 3-year delay was reasonable). More than that, it treated an order from the California Supreme Court that was silent on the grounds for the court's decision as if it were equivalent to an order in which the words "on the merits" appeared. 382 F. 3d, at 926. If the appearance of the words "on the merits" does not automatically warrant a holding that the filing was timely, the *absence* of those words could not automatically warrant a holding that the filing was timely. After all, the fact that the California Supreme Court did not include the words "on the merits" in its order denying Chavis relief makes it *less* likely, not *more* likely, that the California Supreme Court believed that Chavis' 3-year delay was reasonable. Thus, the Ninth Circuit's presumption ("that an order decided entirely on the merits indicates that the state court did not find the petition

to be untimely," *post*, at 205 (STEVENS, J., concurring in judgment)) is not consistent with *Saffold*. See *supra*, at 194.

Neither do the cases cited by the Ninth Circuit provide it with the necessary legal support. The Circuit's opinion in *Saffold* (written on remand from this Court) said nothing about the significance of the words "on the merits." *Saffold* v. *Carey*, 312 F. 3d 1031 (2002). *Hunter* v. *Aispuro*, 982 F. 2d 344 (CA9 1992), predated AEDPA, not to mention our decision in *Saffold*, and in any event concerned an entirely different issue of federal habeas corpus law. *Delhomme* v. *Ramirez*, 340 F. 3d 817 (CA9 2003), addressed the timeliness issue in one sentence in a footnote, *id.*, at 820, n. 2, and did not discuss at any length our opinion in *Saffold*, which must control the result here.

In the absence of (1) clear direction or explanation from the California Supreme Court about the meaning of the term "reasonable time" in the present context, or (2) clear indication that a particular request for appellate review was timely or untimely, the Circuit must itself examine the delay in each case and determine what the state courts would have held in respect to timeliness. That is to say, without using a merits determination as an "absolute bellwether" (as to timeliness), the federal court must decide whether the filing of the request for state-court appellate review (in state collateral review proceedings) was made within what California would consider a "reasonable time." See *supra*, at 193. This is what we believe we asked the Circuit to do in *Saffold*. This is what we believe it should have done.

B

The discrepancy between the Ninth Circuit's view of the matter and ours may reflect an administrative problem. The Ninth Circuit each year must hear several hundred petitions by California prisoners seeking federal habeas relief.

Some of these cases will involve filing delays, and some of those delays will require the federal courts to determine whether a petition for appellate review in a related state collateral proceeding was timely. Given the uncertain scope of California's "reasonable time" standard, it may not be easy for the Circuit to decide in each such case whether the prisoner's state-court review petition was timely. And it is consequently not surprising that the Circuit has tried to create rules of thumb that look to the label the California Supreme Court applied to the denial order, even where that label does not refer to timeliness. For the reasons we gave in *Saffold*, however, we do not believe these shortcuts remain true, either to California's timeliness rule or to Congress' intent in AEDPA to toll the 1-year limitations period only when the state collateral review proceeding is "pending." 536 U. S., at 220–221, 225–226.

The California courts themselves might alleviate the problem by clarifying the scope of the words "reasonable time" in this context or by indicating, when denying a petition, whether the filing was timely. And the Ninth Circuit might seek guidance on the matter by certifying a question to the California Supreme Court in an appropriate case. *Id.*, at 226–227. Alternatively, the California Legislature might itself decide to impose more determinate time limits, conforming California law in this respect with the law of most other States. Indeed, either *state* body might adopt a state-law presumption of the kind the concurrence here suggests. See *post*, at 209. In the absence of any such guidance, however, we see no alternative way of applying state law to a case like this one but for the Ninth Circuit simply to ask and to decide whether the state prisoner made the relevant filing within a reasonable time. In doing so, the Circuit must keep in mind that, in *Saffold*, we held that timely filings in California (as elsewhere) fell within the federal tolling provision *on the assumption* that California law in this respect did not

differ significantly from the laws of other States, *i. e.*, that California's "reasonable time" standard would not lead to filing delays substantially longer than those in States with determinate timeliness rules. 536 U. S., at 222–223. California, of course, remains free to tell us if, in this respect, we were wrong.

IV

As we have pointed out, *supra*, at 195, Chavis had one year from the date AEDPA became effective (April 24, 1996) to file a federal habeas petition. Chavis did not actually file his petition in federal district court until August 30, 2000, four years and 128 days after AEDPA's effective date. Hence Chavis' federal petition was timely only if "a properly filed application for State post-conviction or other collateral review [was] pending" for at least three years and 128 days of this time. 28 U. S. C. § 2244(d)(2). Under the Ninth Circuit's reasoning Chavis' state collateral review proceedings were "pending" for three years and 130 days, which period (when added to the 1-year federal limitations period) makes the federal petition timely.

As we have explained, however, we find the Ninth Circuit's reasoning in conflict with our *Saffold* holding. And, after examining the record, we are convinced that the law does not permit a holding that Chavis' federal habeas petition was timely. Chavis filed his state petition for habeas review in the California Supreme Court approximately three years and one month after the California Court of Appeal released its decision denying him relief. Chavis tries to explain this long delay by arguing that he could not use the prison library to work on his petition during this time either because (1) his prison job's hours coincided with those of the library, or (2) prison lockdowns confined him to his cell. And, he adds, his inability to use the library excuses the three year and one month delay—to the point where, despite the delay, he filed his petition for California Supreme Court review within a "reasonable time."

Chavis concedes, however, that in March 1996, App. 38, about a year and a half after the California Court of Appeal denied his habeas petition, he was given a new prison job. He nowhere denies California's assertion, *id.*, at 68, that this new job's working hours permitted him to use the library. And he also concedes that the prison "remained relatively lockdown free" between February 1997 and August 1997, *id.*, at 39, a 6-month period. Thus, viewing every disputed issue most favorably to Chavis, there remains a totally unexplained, hence unjustified, delay of at least six months.

Six months is far longer than the "short period[s] of time," 30 to 60 days, that most States provide for filing an appeal to the state supreme court. *Saffold*, *supra*, at 219. It is far longer than the 10-day period California gives a losing party to file a notice of appeal in the California Supreme Court, see Cal. App. Ct. Rule 28(e)(1) (2004). We have found no authority suggesting, nor found any convincing reason to believe, that California would consider an unjustified or unexplained 6-month filing delay "reasonable." Nor do we see how an unexplained delay of this magnitude could fall within the scope of the federal statutory word "pending" as interpreted in *Saffold*. See 536 U. S., at 222–223. Thus, since Chavis needs all but two days of the lengthy (three year and one month) delay to survive the federal 1-year habeas filing period, see 382 F. 3d, at 927, he cannot succeed.

The concurrence reaches the same ultimate conclusion in a different way. Unlike the Ninth Circuit, it would not count in Chavis' favor certain days during which Chavis was pursuing a *second* round of state collateral review efforts. See *post*, at 210. Because, as the Ninth Circuit pointed out, the parties did not argue this particular matter below, 382 F. 3d, at 925, n. 3, we do not consider it here.

For these reasons, the judgment of the Ninth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE STEVENS, concurring in the judgment.

Today the Court holds that, in the absence of a clear statement by a California state court that a petition for habeas corpus was timely or untimely, a federal court "must itself examine the delay in each case" to determine whether the filing "was made within what California would consider a 'reasonable time.'" *Ante,* at 198. Contrary to the Court's admonition in its next sentence, this is not what we "asked the Circuit to do in *Saffold*," and it is not what "it should have done." *Ibid.* (citing *Carey* v. *Saffold,* 536 U. S. 214 (2002)).

The Ninth Circuit's decision in this case was both faithful to our decision in *Saffold* and consistent with our prior jurisprudence. Instead of endorsing an ad hoc approach to the interpretation of ambiguous judgments entered by California courts in the future, I believe we should direct the Ninth Circuit to apply the straightforward presumptions that I describe below. Rather than a *de novo* review of the record and California law, see *ante,* at 200–201, it is the application of these presumptions, buttressed by an independent error made by the Ninth Circuit, that convinces me that the judgment must be reversed.

I

As the Court has explained, both in *Saffold* and in its opinion today, California's postconviction procedures are unlike those employed by most other States. See 536 U. S., at 221–222; *ante,* at 191–193. California's time limit for the filing of a habeas corpus petition in a noncapital case is more forgiving and more flexible than that employed by most States. See *Saffold,* 536 U. S., at 222. Generally, such a petition "must be filed within a reasonable time after the petitioner or counsel knew, or with due diligence should have known, the facts underlying the claim as well as the legal basis of the claim." *In re Harris,* 5 Cal. 4th 813, 828, n. 7, 855 P. 2d 391, 398, n. 7 (1993). And the State Supreme Court apparently may exercise its jurisdiction to decide the merits of a petition for habeas corpus at any time whatsoever. See

Cal. Const., Art. VI, § 10 (giving California Supreme Court original jurisdiction over habeas petitions); *In re Clark*, 5 Cal. 4th 750, 764–765, 855 P. 2d 729, 738 (1993) (noting procedural rules governing habeas petitions are judicially created).

It is the existence of this flexible, discretionary timeliness standard in noncapital cases [1] that gave rise to both the issue presented in *Saffold* and the issue the Court addresses today. In *Saffold*, we considered whether a habeas petition filed in the California Supreme Court 4½ months after the lower state court made its decision was "pending" (and therefore tolled the federal statute of limitations in the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)) during that period. See 536 U. S., at 217. After concluding that a state habeas application is pending during the interval between an adverse lower court decision and the filing in the California Supreme Court, and that California's virtually unique system made no difference for purposes of tolling AEDPA's statute of limitations, we were faced with the question whether the state habeas petition in that case had been timely filed. See *id.*, at 221, 223, 225.

Rather than answering the question ourselves, we remanded the case to the Court of Appeals with instructions that it do so. *Id.*, at 226. We also explained why the answer was not entirely clear. In its order the California Supreme Court had stated that it had denied the petition both "on the merits and for lack of diligence." *Id.*, at 218 (internal quotation marks omitted). We pointed out that the fact that the State Supreme Court had reached the merits did not preclude the possibility that its alternative basis for decision—"lack of diligence"—expressed a conclusion that the

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[1] As California's Deputy Attorney General pointed out at oral argument, this problem does not arise in capital cases because the California Supreme Court has adopted separate rules for such cases. See Tr. of Oral Arg. 63. This is significant because, while prisoners on death row often have an incentive to adopt delaying tactics, those serving a sentence of imprisonment presumably want to obtain relief as promptly as possible.

4½-month delay was unreasonable and therefore that it had considered the petition untimely as a matter of state law. On the other hand, we also recognized that "lack of diligence" might have referred to the respondent's earlier failure to file his first postconviction petition more promptly, "a matter irrelevant to the question whether his application was 'pending' during the 4½-month interval." *Id.*, at 226. Our opinion requested the Court of Appeals to resolve the ambiguity, noting that it might be "appropriate to certify a question to the California Supreme Court for the purpose of seeking clarification in this area of state law." *Id.*, at 226–227.[2]

On remand in *Saffold*, after reviewing three fairly contemporaneous California Supreme Court orders that involved delays of 7 months, 18 months, and 15 months without mentioning any "lack of diligence," the Court of Appeals came to the quite reasonable conclusion that the State Supreme Court's "lack of diligence" notation in the order denying Saffold's petition referred to an earlier 5-year delay that was irrelevant to the tolling issue rather than to the 4½-month delay that had preceded his most recent filing. See *Saffold* v. *Carey*, 312 F. 3d 1031, 1035 (CA9 2002). It also noted "that we have not been asked to provide any bright-line rule for determining what constitutes 'unreasonable' delay under California's indeterminate timeliness standard. While such a bright-line rule would certainly be welcomed, . . . such an issue is more appropriately decided by the California Supreme Court or the California State Legislature." *Id.*, at 1036, n. 1.

As both Judge O'Scannlain—who wrote for the Court of Appeals—and I understood the rule of law that animated our remand, it was predicated on the assumption that the answer to the timeliness question depended on what the California Supreme Court had *actually decided* rather than on any con-

[2] This approach would apparently prove fruitless. See Tr. of Oral Arg. 31.

clusion that the Court of Appeals itself might reach concerning the reasonableness of the 4½-month delay under California law. See *id.*, at 1034. That assumption, also applied by the Ninth Circuit here, was consistent with the unequivocal assertion in our opinion that if the California Supreme Court had "clearly ruled" that the 4½-month delay was unreasonable, "that would be the end of the matter," even if the court had also ruled on the merits. *Saffold*, 536 U. S., at 226.

Similarly, there is no inconsistency between our conclusion in *Saffold* that the merits ruling "does not *automatically* indicate that the petition was timely filed," *ante*, at 197, and the presumption applied by the Court of Appeals in this case that an order decided entirely on the merits indicates that the state court did not find the petition to be untimely, see App. A to Pet. for Cert. 9, particularly when California allows the petitioner to advance a variety of reasons to excuse a late filing, see, *e. g.*, *In re Robbins*, 18 Cal. 4th 770, 780–782, 959 P. 2d 311, 318 (1998). Our rejection of the words "'on the merits'" as "an absolute bellwether" was made in a case in which the order itself indicated that the state court might have considered the petition untimely. *Saffold*, 536 U. S., at 226. Given that ambiguous order, *Saffold* did not foreclose the Court of Appeals' presumption that, by dismissing a petition solely on the merits, the state court necessarily found the filing to be timely. The Court of Appeals' opinion in this case was therefore completely consistent with both our holding and our reasoning in *Saffold*.

II

The Court of Appeals' opinion was also consistent with our prior habeas jurisprudence. While the present question requires us to apply the tolling provision of a federal statute, application of that provision ultimately rests on state-law procedural rules. See 28 U. S. C. § 2244(d)(2) (tolling federal statute while "properly filed" application for state postconviction relief is pending). To the extent that a possibly

decisive state-law requirement is at issue, application of AEDPA's tolling provision is analogous to the question whether denial of a state postconviction petition rested upon an adequate and independent state ground.

Faced with such a question, it has been our general practice to try to determine the actual basis for the state court's decision rather than to resolve the state-law issue ourselves. The mere fact that a federal petitioner failed to abide by a state procedural rule does not prevent a federal court from resolving a federal claim unless the state court actually relied on the state procedural bar "as an independent basis for its disposition of the case." *Harris* v. *Reed*, 489 U. S. 255, 261–262 (1989) (internal quotation marks omitted). This practice is consistent with the rule of *Michigan* v. *Long*, 463 U. S. 1032, 1042 (1983), that unless it is "clear from the opinion itself" that the state court's decision rested on an adequate and independent state ground, we have appellate jurisdiction to review its resolution of a federal constitutional question. And in cases in which a state-court order is silent as to the basis for its decision, we have resorted to a presumption to reflect the role intended for such orders by the state court that issued it. See *Ylst* v. *Nunnemaker*, 501 U. S. 797, 803–804 (1991).

Until today, however, we have not directed the lower federal courts to decide disputed issues of state procedural law for themselves instead of focusing on the actual basis for a state-court ruling. The Ninth Circuit's decision in this case was entirely consistent with our past practice, and I would adhere to that practice in confronting the question whether habeas petitions advancing federal claims in California courts were filed within a reasonable time as a matter of California law. Cf. *Brooks* v. *Walls*, 279 F. 3d 518, 522 (CA7 2002) (Easterbrook, J.) (applying *Harris* and *Ylst* to AEDPA's "properly filed" requirement). The inquiry, then, should focus on what the state court actually decided rather

than what a federal court believes it could, or should, have done.

III

Determining what the California Supreme Court has "actually" decided is sometimes easy and sometimes difficult. Its rulings denying habeas corpus petitions generally fall into three broad categories: those expressly deciding the timeliness question, those deciding the merits without comment on timeliness, and those that do not disclose the basis for the decision.[3] To simplify the inquiry, a straightforward rule can be applied to each type of order.

The easiest cases, of course, are those in which the state-court order expressly states that a petition was either untimely or timely. As we have explained, if the state court's untimeliness ruling is clear, "that would be the end of the matter," even if the court had also ruled on the merits. *Saffold*, 536 U. S., at 226. Conversely, an unequivocal holding that a delay was not unreasonable should be respected even if a federal judge would have decided the issue differently.[4] The decision that a petition has been untimely filed need not be explicitly stated; citation to a case in which a petition was dismissed as untimely filed certainly would suffice.[5] Cf. Brief for Petitioner 27; *Robbins*, 18 Cal. 4th, at 814, n. 34, 959 P. 2d, at 340, n. 34 (explaining California's practice of citing certain cases for certain propositions).

More difficult are those cases in which the state court rules on the merits without any comment on timeliness.

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[3] Orders resting on alternative grounds, such as the one in *Carey* v. *Saffold*, 536 U. S. 214 (2002), may require special consideration.

[4] At oral argument, California's Deputy Attorney General agreed that if the California Supreme Court had expressly decided that respondent Chavis' state habeas petition included a satisfactory explanation for the 3-year delay preceding his filing in that court, but decided against him on the merits, the federal statute of limitations would have been tolled. See Tr. of Oral Arg. 19–20.

[5] As I point out, *infra*, at 210, this is such a case.

The Ninth Circuit deals with this situation by applying the presumption that a ruling on the merits, *simpliciter*, means that the state court has concluded that the petition was timely. The Court today seemingly assumes—incorrectly—that we rejected that presumption in *Saffold*. Even if we did so *sub silentio*, however, I am convinced that the Court should now endorse the Ninth Circuit's presumption because it is both eminently sensible as a matter of judicial administration and entirely sound as a matter of law. Cf. *Robbins*, 18 Cal. 4th, at 814, n. 34, 959 P. 2d, at 340, n. 34 (explaining that when the State argues that a procedural bar applies, and the California Supreme Court's order does not cite a case imposing that bar, it means the claim is not barred on the asserted ground). The interest in the efficient processing of the dockets of overworked federal judges provides powerful support for relying on a presumption rather than engaging in *de novo* review of the questions whether the length of a delay was excessive, whether the petitioner's explanation for the delay would be considered acceptable by a California court, and whether a nonetheless unreasonable delay should be excused because the petition raises an unusually serious constitutional question. Cf. *id.*, at 779–782, 959 P. 2d, at 317–318.

There are, of course, cases in which the Ninth Circuit's presumption may not be accurate. For example, a state court may find the deficiencies in a claim so clear that it is easier to deny it on the merits than to decide whether excuses for an apparently unreasonable delay are sufficient. But whereas California judges may continue to follow the easier route, under today's holding federal judges apparently must answer the timeliness question no matter how difficult it may be and no matter how easy it is to resolve the merits. A simple rule, applicable to all unambiguous rulings on the merits, is surely far wiser than the novel ad hoc approach that the Court appears to endorse today.

A general rule could also apply to the most difficult situation, which arises when the state court denies a petition with no explanation or citation whatsoever. Unlike an order that indicates that a state court has ruled on the merits, a silent order provides no evidence that the state court considered and passed upon the timeliness issue. To resolve such cases, I would adopt a presumption that, if a California court issues an unexplained order denying a petition filed after a delay of less than six months, the court considered that petition to be timely; unexplained orders following a longer delay should be presumed to be decisions on timeliness grounds. California's use of a 6-month period for determining presumptive timeliness in postconviction capital litigation—the only specific time period mentioned in California's postconviction jurisprudence—provides a principled basis for such a double-barreled presumption. See Cal. Rules of Court Policy Statement 3, std. 1–1.1 (Deering 2005) ("A petition for a writ of habeas corpus [in a capital case] will be presumed to be filed without substantial delay if it is filed within 180 days after the final due date for the filing of appellant's reply brief on the direct appeal . . . "). Moreover, a 6-month presumption would be fully consistent with our holding in *Saffold* that the 4½-month delay in that case was not necessarily unreasonable.[6]

IV

The above standards provide me with two independently sufficient reasons for concluding that the California Supreme Court actually decided—not once, but twice—that the peti-

[6] The fact that a 6-month presumption would probably lead to the result that noncapital habeas petitions filed by California prisoners would be pending for somewhat longer periods than those filed in other States is attributable to the peculiar features of California's postconviction review procedures. It is far wiser to place the responsibility for that consequence on the State, which can readily modify its procedures, than unnecessarily to complicate the work of federal judges.

tions filed by respondent in that court were untimely. In one order, the State Supreme Court made its finding of untimeliness explicit; in the other, the 6-month presumption should control.

First, as the Court notes *ante*, at 195, the California Supreme Court entered an order denying respondent habeas relief on April 29, 1998, and respondent did not file his federal petition for habeas corpus until August 30, 2000—more than a year later. The Court of Appeals found that the federal statute of limitations was tolled during this 16-month period by a second set of state habeas petitions that respondent initiated in the California trial court on January 25, 1999, and that concluded with the entry of an order by the California Supreme Court on April 28, 2000. See App. A to Pet. for Cert. 11–12. That finding was erroneous.

The California Supreme Court's April 28, 2000, order, unlike its 1998 order, was not silent. Instead, the April 2000 order cited three earlier California Supreme Court cases, two of which stand for the proposition that a petition has been untimely filed. See *id.*, at 5; *Robbins*, 18 Cal. 4th, at 814, n. 34, 959 P. 2d, at 340, n. 34. Although the State did not argue that respondent's second habeas filing in the California Supreme Court was untimely, see App. A to Pet. for Cert. 8, n. 3, there is not even an arguable basis for disputing that the California Supreme Court found respondent's second habeas petition to have been untimely filed. Given this finding by the State Supreme Court, the Ninth Circuit clearly erred (although not for the reasons claimed by the Court).

Second, respondent's November 5, 1997, state habeas petition was filed with the California Supreme Court more than three years after the California Court of Appeal denied review. *Ante*, at 195. The State Supreme Court denied that petition without explanation. *Ibid.* The presumption I described above—that an unexplained order following a delay longer than six months was based on the state court's

conclusion that the petition was untimely—provides me with a sufficient reason for concluding that respondent's state habeas petition was not pending during that 3-year interval. Consequently, respondent's federal habeas petition was also untimely and should have been denied.

Accordingly, despite my profound disagreement with the reasoning in the Court's opinion, I concur in its judgment.

Syllabus

BROWN, WARDEN *v.* SANDERS

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 04–980. Argued October 11, 2005—Decided January 11, 2006

In convicting respondent Sanders of, *inter alia*, first-degree murder, the jury found four "special circumstances," each of which rendered him death eligible under Cal. Penal Code Ann. § 190.2. At the penalty phase, the jury was instructed to consider a list of sentencing factors, including "[t]he circumstances of the crime . . . and the existence of any special circumstances found to be true," § 190.3(a), and sentenced him to death. The State Supreme Court invalidated two of the special circumstances on direct appeal, but nonetheless affirmed the conviction and sentence. The Federal District Court subsequently denied Sanders habeas relief, rejecting his claim that the jury's consideration of invalid special circumstances rendered his death sentence unconstitutional. Reversing, the Ninth Circuit applied the rules for "weighing" States, see *Stringer* v. *Black*, 503 U. S. 222, rather than "non-weighing" States, see *Zant* v. *Stephens*, 462 U. S. 862, and found that Sanders had been unconstitutionally deprived of an individualized death sentence.

Held:

1. The requirement that States limit the class of murderers to which the death penalty may be applied, *Furman* v. *Georgia*, 408 U. S. 238 *(per curiam)*, is usually met when the trier of fact finds at least one statutory eligibility factor at either the guilt or penalty phase. Once this narrowing requirement has been satisfied, the sentencer must determine whether an eligible defendant should receive the death penalty; many States channel this function by specifying aggravating factors (sometimes identical to the eligibility factors) that are to be weighed against mitigating considerations. In answering the question confronted here—what happens when the sentencer imposes the death penalty after finding a valid eligibility factor, but under a scheme in which another eligibility factor is later held invalid—this Court has set forth different rules for so-called weighing and non-weighing States. In a weighing State, the sentencer could consider as aggravation only specified eligibility factors. Where the sentencer relied on an eligibility factor that was later invalidated, the sentencer was erroneously invited to count the invalid factor as weighing in favor of death, thus "skewing" the weighing process, *Stringer*, *supra*, at 232. Such automatic skewing would not necessarily occur in a non-weighing State, however, which

permitted the sentencer to consider aggravating factors different from, or in addition to, the eligibility factors. This weighing/non-weighing scheme seems needlessly complex and incapable of providing for the full range of variations. This Court is henceforth guided by the following rule: An invalidated sentencing factor (whether an eligibility factor or not) will render the sentence unconstitutional by reason of its adding an improper element to the aggravation scale in the weighing process unless one of the other sentencing factors enables the sentencer to give aggravating weight to the same facts and circumstances. Pp. 216–221.

2. The jury's consideration of invalid special circumstances in Sanders' case gave rise to no constitutional violation. In California, the "special circumstances" listed in § 190.2 are the eligibility factors designed to satisfy *Furman*'s narrowing requirement. If the jury finds the existence of one of those circumstances, it must "take into account" a *separate* list of sentencing factors, including § 190.3(a)'s "circumstances of the crime" factor. That factor has the effect of rendering all the specified factors nonexclusive, thus making California (in this Court's prior terminology) a non-weighing State. Setting aside the weighing/non-weighing dichotomy and applying the more direct analysis set out here, two of the four special circumstances were invalidated, but the remaining two are sufficient to satisfy *Furman*'s narrowing requirement and alone rendered Sanders death eligible. Moreover, all of the facts and circumstances admissible to prove the invalid eligibility factors were also properly adduced as aggravating facts and circumstances under the "circumstances of the crime" sentencing factor. Even if § 190.3(a)'s direction to consider "the existence of any special circumstances found to be true" placed special emphasis upon the facts and circumstances relevant to the invalid factors, that impact "cannot fairly be regarded as a constitutional defect in the sentencing process," *Zant*, *supra*, at 889. Pp. 221–225.

373 F. 3d 1054, reversed and remanded.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and O'CONNOR, KENNEDY, and THOMAS, JJ., joined. STEVENS, J., filed a dissenting opinion, in which SOUTER, J., joined, *post*, p. 225. BREYER, J., filed a dissenting opinion, in which GINSBURG, J., joined, *post*, p. 228.

Jane N. Kirkland, Deputy Attorney General of California, argued the cause for petitioner. With her on the briefs were *Bill Lockyer*, Attorney General, *Manuel M. Medeiros*, State Solicitor General, *Robert R. Anderson*, Chief Assistant Attorney General, *Mary Jo Graves*, Senior Assistant Attorney

General, and *Ward A. Campbell,* Supervising Deputy Attorney General.

Nina Rivkind, by appointment of the Court, 544 U. S. 1017, argued the cause for respondent. With her on the brief were *Cliff Gardner* and *Eric E. Jorstad.**

JUSTICE SCALIA delivered the opinion of the Court.

We consider the circumstances in which an invalidated sentencing factor will render a death sentence unconstitutional by reason of its adding an improper element to the aggravation scale in the jury's weighing process.

I

Respondent Ronald Sanders and a companion invaded the home of Dale Boender, where they bound and blindfolded him and his girlfriend, Janice Allen. Both of the victims were then struck on the head with a heavy, blunt object; Allen died from the blow. Sanders was convicted of first-degree murder, of attempt to murder Boender, and of robbery, burglary, and attempted robbery.

Sanders' jury found four "special circumstances" under California law, each of which independently rendered him eligible for the death penalty. See Cal. Penal Code Ann. § 190.2 (West Supp. 1995). The trial then moved to a penalty phase, at which the jury was instructed to consider a list of sentencing factors relating to Sanders' background and the nature of the crime, one of which was "[t]he circumstances of the crime of which the defendant was convicted in the present proceeding and the existence of any special circumstances found to be true." § 190.3(a) (West 1999). The jury sentenced Sanders to death.

On direct appeal, the California Supreme Court declared invalid two of the four special circumstances found by the

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**Kent S. Scheidegger* filed a brief for the Criminal Justice Legal Foundation as *amicus curiae* urging reversal.

jury. It nonetheless affirmed Sanders' death sentence, relying on our decision in *Zant* v. *Stephens*, 462 U. S. 862 (1983), which, it said, "upheld a death penalty judgment despite invalidation of one of several aggravating factors." *People* v. *Sanders*, 51 Cal. 3d 471, 520, 797 P. 2d 561, 589–590 (1990) (in bank). It affirmed the conviction and sentence in all other respects. We denied certiorari. *Sanders* v. *California*, 500 U. S. 948 (1991).

Sanders then filed a petition for a writ of habeas corpus pursuant to 28 U. S. C. § 2254 in the United States District Court for the Eastern District of California, arguing, as relevant here, that the jury's consideration of invalid special circumstances rendered his death sentence unconstitutional.[1] After Sanders exhausted various state remedies, the District Court denied relief.

The Court of Appeals for the Ninth Circuit reversed. *Sanders* v. *Woodford*, 373 F. 3d 1054 (2004). It concluded that "the California court erroneously believed that it could apply the rule of *Zant* v. *Stephens*, 462 U. S. 862 (1983)—which is applicable only to nonweighing states—and uphold the verdict despite the invalidation of two special circumstances because it was upholding other special circumstances." *Id.*, at 1064 (citations omitted). Finding California to be a weighing State, and applying the rules we have announced for such States, see *Stringer* v. *Black*, 503 U. S. 222, 232 (1992), the Ninth Circuit concluded that California courts could uphold Sanders' death sentence only by finding the jury's use of the invalid special circumstances to have been harmless beyond a reasonable doubt or by independently reweighing the sentencing factors under § 190.3. Since, it continued, the state courts had done neither, Sanders had been unconstitutionally deprived of an "individual-

[1] Because Sanders filed his habeas petition before April 24, 1996, we do not apply the substantive review standards required by the Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214. See *Lindh* v. *Murphy*, 521 U. S. 320, 327 (1997).

ized death sentence." 373 F. 3d, at 1064. We granted certiorari. 544 U. S. 947 (2005).

II

Since *Furman* v. *Georgia*, 408 U. S. 238 (1972) *(per curiam)*, we have required States to limit the class of murderers to which the death penalty may be applied. This narrowing requirement is usually met when the trier of fact finds at least one statutorily defined eligibility factor at either the guilt or penalty phase. See *Tuilaepa* v. *California*, 512 U. S. 967, 971–972 (1994).[2] Once the narrowing requirement has been satisfied, the sentencer is called upon to determine whether a defendant thus found eligible for the death penalty should in fact receive it. Most States channel this function by specifying the aggravating factors (sometimes identical to the eligibility factors) that are to be weighed against mitigating considerations. The issue in the line of cases we confront here is what happens when the sentencer imposes the death penalty after at least one valid eligibility factor has been found, but under a scheme in which an eligibility factor or a specified aggravating factor is later held to be invalid.

To answer that question, our jurisprudence has distinguished between so-called weighing and non-weighing States. The terminology is somewhat misleading, since we have held that in *all* capital cases the sentencer must be allowed to weigh the facts and circumstances that arguably

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[2] Our cases have frequently employed the terms "aggravating circumstance" or "aggravating factor" to refer to those statutory factors which determine death eligibility in satisfaction of *Furman*'s narrowing requirement. See, *e. g.*, *Tuilaepa* v. *California*, 512 U. S., at 972. This terminology becomes confusing when, as in this case, a State employs the term "aggravating circumstance" to refer to factors that play a different role, determining which defendants *eligible* for the death penalty will actually *receive* that penalty. See Cal. Penal Code Ann. § 190.3 (West 1999). To avoid confusion, this opinion will use the term "eligibility factor" to describe a factor that performs the constitutional narrowing function.

justify a death sentence against the defendant's mitigating evidence. See, *e. g.*, *Eddings* v. *Oklahoma*, 455 U. S. 104, 110 (1982). The terminology was adopted, moreover, relatively early in the development of our death-penalty jurisprudence, when we were perhaps unaware of the great variety of forms that state capital-sentencing legislation would ultimately take. We identified as "weighing State[s]" those in which the only aggravating factors permitted to be considered by the sentencer were the specified eligibility factors. See, *e. g.*, *Parker* v. *Dugger*, 498 U. S. 308, 313, 318–319 (1991) (citing Fla. Stat. § 921.141(3)(b) (1985)); *Richmond* v. *Lewis*, 506 U. S. 40, 47 (1992) (quoting Ariz. Rev. Stat. Ann. § 13–703(E) (1989)). Since the eligibility factors by definition identified distinct and particular aggravating features, if one of them was invalid the jury could not consider the facts and circumstances relevant to that factor as aggravating in some other capacity—for example, as relevant to an omnibus "circumstances of the crime" sentencing factor such as the one in the present case. In a weighing State, therefore, the sentencer's consideration of an invalid eligibility factor necessarily skewed its balancing of aggravators with mitigators, *Stringer*, 503 U. S., at 232, and required reversal of the sentence (unless a state appellate court determined the error was harmless or reweighed the mitigating evidence against the valid aggravating factors), *ibid.*

By contrast, in a non-weighing State—a State that permitted the sentencer to consider aggravating factors different from, or in addition to, the eligibility factors—this automatic skewing would not necessarily occur. It would never occur if the aggravating factors were entirely different from the eligibility factors. Nor would it occur if the aggravating factors *added* to the eligibility factors a category (such as an omnibus "circumstances of the crime" factor, which is quite common) that would allow the very facts and circumstances relevant to the invalidated eligibility factor to be weighed

in aggravation under a different rubric. We therefore set forth different rules governing the consequences of an invalidated eligibility factor in a non-weighing State.[3] The sen-

[3] JUSTICE BREYER contends that harmless-error review applies in *both* weighing and non-weighing States. See *post,* at 235–239 (dissenting opinion). It would be strange indeed to discover at this late stage that our long-held distinction between the two sorts of States for purposes of reviewing invalid eligibility factors in fact made no difference. Cf., *e. g.*, *Stringer* v. *Black*, 503 U. S. 222, 232 (1992) (weighing/non-weighing distinction is "of critical importance"). Not surprisingly, the Courts of Appeals have uniformly understood that different rules apply to weighing and non-weighing States, and that harmless-error review is necessary only in the former. See, *e. g.*, *Sanders* v. *Woodford*, 373 F. 3d 1054, 1059–1060 (CA9 2004); *Flamer* v. *Delaware*, 68 F. 3d 736, 746–749 (CA3 1995); *Williams* v. *Cain*, 125 F. 3d 269, 281 (CA5 1997).

Our own cases, moreover, are flatly inconsistent with requiring harmless-error review in both types of States. As JUSTICE BREYER notes, *post,* at 235, *Zant* v. *Stephens*, 462 U. S. 862 (1983), did endorse the Georgia Supreme Court's holding that attaching the statutory label "aggravating" to the invalid eligibility factor had an "inconsequential impact on the jury's decision regarding the death penalty," *id.*, at 889 (internal quotation marks omitted). But the core holding is what we said next: "More importantly, . . . *any possible impact* cannot fairly be regarded as a constitutional defect in the sentencing process." *Ibid.* (emphasis added); see also *post,* at 237–239. *Zant* must therefore be read not as holding that any constitutional error was harmless, but as rejecting respondent's claim of constitutional error.

Neither *Clemons* v. *Mississippi*, 494 U. S. 738 (1990), nor *Stringer* says anything to the contrary. JUSTICE BREYER points out that *Clemons*' harmless-error discussion focused on the emphasis given to the invalid factor, rather than on the fact that Mississippi is a weighing State, but that is hardly relevant: Our discussion of *how* harmless-error analysis should be conducted (the issue in the passage from *Clemons* that JUSTICE BREYER cites, 494 U. S., at 753–754) says nothing about *when* that analysis should be conducted (the issue addressed by the weighing/non-weighing distinction). On the latter question, *Clemons* maintains the distinction envisioned in *Zant*, see 462 U. S., at 890–891, between Georgia (a non-weighing State) and Mississippi (a weighing State), see *Clemons*, *supra*, at 745. Likewise, *Stringer* specifically distinguishes between non-weighing States, in which "the fact that [the jury] also finds an invalid aggravating

tencer's consideration of an invalid eligibility factor amounts to constitutional error in a non-weighing State in two situations. First, due process requires a defendant's death sentence to be set aside if the reason for the invalidity of the eligibility factor is that it "authorizes a jury to draw adverse inferences from conduct that is constitutionally protected," or that it "attache[s] the 'aggravating' label to factors that are constitutionally impermissible or totally irrelevant to the sentencing process, . . . or to conduct that actually should militate in favor of a lesser penalty." *Zant*, 462 U. S., at 885. Second, the death sentence must be set aside if the jury's consideration of the invalidated eligibility factor allowed it to hear evidence that would not otherwise have been before it. See *id.*, at 886; see also *Tuggle* v. *Netherland*, 516 U. S. 10, 13–14 (1995) *(per curiam)*.[4]

This weighing/non-weighing scheme is accurate as far as it goes, but it now seems to us needlessly complex and incapable of providing for the full range of possible variations. For example, the same problem that gave rise to our weighing-State jurisprudence would arise if it were a sentencing factor, and *not* an eligibility factor, that was later found to be invalid. The weighing process would just as

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factor does not infect the formal process of deciding whether death is an appropriate penalty," 503 U. S., at 232, and weighing States, in which "constitutional harmless-error analysis or reweighing at the trial or appellate level" is required, *ibid.*

[4] The fact that a sentencer's consideration of an invalid eligibility factor in a non-weighing State may nonetheless amount to constitutional error explains *Tuggle*'s characterization of *Zant* as holding "that a death sentence supported by multiple aggravating circumstances *need not always* be set aside if one aggravator is found to be invalid," 516 U. S., at 11 (emphasis added); cf. *post,* at 239 (BREYER, J., dissenting), as well as our related comment in *Clemons* that, "[i]n a [non-weighing] State like Georgia, . . . the invalidation of one aggravating circumstance *does not necessarily* require an appellate court to vacate a death sentence and remand to a jury," 494 U. S., at 744–745 (emphasis added); cf. *post,* at 241 (BREYER, J., dissenting).

clearly have been prima facie "skewed," and skewed for the same basic reason: The sentencer might have given weight to a statutorily or constitutionally invalid aggravator.[5] And the prima facie skewing could in appropriate cases be shown to be illusory for the same reason that separates weighing States from non-weighing States: One of the *other* aggravating factors, usually an omnibus factor but conceivably another one, made it entirely proper for the jury to consider as aggravating the facts and circumstances underlying the invalidated factor.

We think it will clarify the analysis, and simplify the sentence-invalidating factors we have hitherto applied to non-weighing States, see *supra*, at 218–219, if we are henceforth guided by the following rule: An invalidated sentencing factor (whether an eligibility factor or not) will render the sentence unconstitutional by reason of its adding an improper element to the aggravation scale in the weighing process[6] *unless* one of the other sentencing factors enables the sentencer to give aggravating weight to the same facts and circumstances.

This test is not, as JUSTICE BREYER describes it, "an inquiry based solely on the admissibility of the underlying evidence." *Post*, at 241 (dissenting opinion). If the presence

[5] This very problem may have been present in *Stringer* v. *Black*, *supra*. There, although the Mississippi courts invalidated an aggravating circumstance—whether the murder was "especially heinous, atrocious, or cruel," Miss. Code Ann. § 99–19–101(5)(h) (1993 Cum. Supp.)—that was *not* one of the specified eligibility factors, see § 97–3–19(2) (1994), we nonetheless treated Mississippi as a weighing State. Since, however, Mississippi law provided that the jury could not impose a death sentence unless it found the existence of at least one statutory aggravating factor, see § 99–19–101(3)(b) (1993 Cum. Supp.), it could be argued that the additional aggravating factors were converted into *de facto* eligibility factors.

[6] There may be other distortions caused by the invalidated factor beyond the mere addition of an improper aggravating element. For example, what the jury was instructed to consider as an aggravating factor might have "actually . . . militate[d] in favor of a lesser penalty," *Zant*, *supra*, at 885. See *supra*, at 219.

of the invalid sentencing factor allowed the sentencer to consider evidence that would not otherwise have been before it, due process would mandate reversal without regard to the rule we apply here. See *supra*, at 219; see also n. 6, *supra*.[7] The issue we confront is the skewing that could result from the jury's considering *as aggravation* properly admitted evidence that should not have weighed in favor of the death penalty. See, *e. g.*, *Stringer*, 503 U. S., at 232 ("[W]hen the sentencing body is told to weigh an invalid factor in its decision, a reviewing court may not assume it would have made no difference if the thumb had been removed from death's side of the scale"). As we have explained, such skewing will occur, and give rise to constitutional error, only where the jury could not have given aggravating weight to the same facts and circumstances under the rubric of some other, valid sentencing factor.

III

In California, a defendant convicted of first-degree murder is eligible for the death penalty if the jury finds one of the "special circumstances" listed in Cal. Penal Code Ann. § 190.2 (West Supp. 2005) to be true. These are the eligibility factors designed to satisfy *Furman*. See *People* v. *Baciga-*

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[7] This explains the footnote in *Clemons* v. *Mississippi*, *supra*, at 754, n. 5, on which JUSTICE BREYER relies, see *post*, at 240. That footnote addressed petitioner's argument that the Mississippi Supreme Court had arbitrarily refused to order jury resentencing, even though it had done so in an earlier case, *Johnson* v. *State*, 511 So. 2d 1333 (1987), rev'd, 486 U. S. 578 (1988), on remand, 547 So. 2d 59 (1989) (en banc). We distinguished the two cases, noting that in *Johnson*, "the jury was permitted to consider inadmissible evidence in determining the defendant's sentence," 494 U. S., at 754–755, n. 5, whereas in *Clemons*, "there is no serious suggestion that the State's reliance on the [invalid] factor led to the introduction of any evidence that was not otherwise admissible in either the guilt or sentencing phases of the proceeding," *id.*, at 755, n. 5. The crux of this distinction is that the sentencer's consideration of improper evidence is an error distinct from the one at issue here and in *Clemons*, to wit, the jury's weighing in favor of death a factor that should not have been part of its calculus.

lupo, 6 Cal. 4th 457, 467–468, 862 P. 2d 808, 813 (1993) (in bank). If the jury finds the existence of one of the special circumstances, it is instructed to "take into account" a *separate* list of sentencing factors describing aspects of the defendant and the crime. Cal. Penal Code Ann. § 190.3 (West 1999). These sentencing factors include, as we have said, "[t]he circumstances of the crime of which the defendant was convicted in the present proceeding."

The Court of Appeals held that California is a weighing State because "'the sentencer [is] restricted to a "weighing" of aggravation against mitigation' and 'the sentencer [is] prevented from considering evidence in aggravation other than discrete, statutorily-defined factors.'" 373 F. 3d, at 1061 (quoting *Williams* v. *Calderon*, 52 F. 3d 1465, 1478 (CA9 1995); brackets in original). The last statement is inaccurate. The "circumstances of the crime" factor can hardly be called "discrete." It has the effect of rendering all the specified factors nonexclusive, thus causing California to be (in our prior terminology) a non-weighing State. Contrary to Sanders' contention, and JUSTICE STEVENS' views in dissent, the mere fact that the sentencing factors included "the existence of any special circumstances [eligibility factors] found to be true," Cal. Penal Code Ann. § 190.3(a), did not make California a weighing State. That fact was redundant for purposes of our weighing jurisprudence because it in no way narrowed the universe of aggravating facts the jury was entitled to consider in determining a sentence.[8] But leaving

[8] JUSTICE STEVENS argues that § 190.3(a) may have affected the jury's deliberations in other ways, but we rejected each of these theories in *Zant* v. *Stephens*, 462 U. S. 862 (1983). The possibility that the jury would "coun[t] the nature of the crime twice," *post*, at 226 (STEVENS, J., dissenting), if it were instructed to consider both the facts of the crime and the eligibility circumstances was present in *Zant*. The jury there was told it could take into account all relevant circumstances, but also—much like the jury here—was instructed to consider "'any of [the] statutory aggravating circumstances [*i. e.*, eligibility factors] which you find are supported by the evidence.'" 462 U. S., at 866. Likewise, the jury in *Zant* might have

aside the weighing/non-weighing dichotomy and proceeding to the more direct analysis set forth earlier in this opinion: All of the aggravating facts and circumstances that the invalidated factor permitted the jury to consider were also open to their proper consideration under one of the other factors. The erroneous factor could not have "skewed" the sentence, and no constitutional violation occurred.

More specifically, Sanders' jury found four special circumstances to be true: that "[t]he murder was committed while the defendant was engaged in . . . Robbery," § 190.2(a)(17)(A) (West Supp. 2005); that it was "committed while the defendant was engaged in . . . Burglary in the first or second degree," § 190.2(a)(17)(G); that "[t]he victim [Allen] was a witness to a crime who was intentionally killed for the purpose of preventing . . . her testimony in any criminal . . . proceeding," § 190.2(a)(10); and that "[t]he murder was especially heinous, atrocious, or cruel," § 190.2(a)(14). The California Supreme Court set aside the burglary-murder special circumstance under state merger law because the instructions permitted the jury to find a burglary (and thus the burglary-murder special circumstance) based on Sanders' intent to commit assault, which is already an element of homicide, see *People* v. *Wilson*, 1 Cal. 3d 431, 439–440, 462 P. 2d 22, 27–28 (1969) (in banc). 51 Cal. 3d, at 517, 797 P. 2d, at 587. The court invalidated the "heinous, atrocious, or cruel" special circumstance because it had previously found that to be unconstitutionally vague. *Id.*, at 520, 797 P. 2d, at 589 (citing *People* v. *Superior Court*, 31 Cal. 3d 797, 647 P. 2d 76 (1982) (in bank)).

As the California Supreme Court noted, however, "the jury properly considered two special circumstances [eligibility factors] (robbery-murder and witness-killing)." 51 Cal.

"give[n] greater weight," *post*, at 226 (STEVENS, J., dissenting), to the facts underlying the eligibility circumstances, but we explicitly held that any such effect "cannot fairly be regarded as a constitutional defect in the sentencing process," 462 U. S., at 889. See *infra*, at 224–225.

3d, at 520, 797 P. 2d, at 589–590. These are sufficient to satisfy *Furman*'s narrowing requirement, and alone rendered Sanders eligible for the death penalty. Moreover, the jury's consideration of the invalid eligibility factors in the weighing process did not produce constitutional error because all of the facts and circumstances admissible to establish the "heinous, atrocious, or cruel" and burglary-murder eligibility factors were also properly adduced as aggravating facts bearing upon the "circumstances of the crime" sentencing factor. They were properly considered whether or not they bore upon the invalidated eligibility factors. See 51 Cal. 3d, at 521, 797 P. 2d, at 590.

Sanders argues that the weighing process was skewed by the fact that the jury was asked to consider, as one of the sentencing factors, "the existence of any special circumstances [eligibility factors] found to be true." Cal. Penal Code Ann. § 190.3(a) (West 1999). In Sanders' view, that placed special emphasis upon those facts and circumstances relevant to the invalid eligibility factor. Virtually the same thing happened in *Zant*. There the Georgia jury was permitted to "'conside[r] all evidence in extenuation, mitigation and aggravation of punishment,'" 462 U. S., at 871–872 (quoting *Zant* v. *Stephens*, 250 Ga. 97, 99–100, 297 S. E. 2d 1, 3–4 (1982)), but also instructed specifically that it could consider "'any of [the] statutory aggravating circumstances which you find are supported by the evidence,'" 462 U. S., at 866. This instruction gave the facts underlying the eligibility factors special prominence. Yet, even though one of the three factors (that the defendant had a "substantial history of serious assaultive convictions," *id.*, at 867) was later invalidated, we upheld the sentence. We acknowledged that the erroneous instruction "might have caused the jury to give somewhat greater weight to respondent's prior criminal record than it otherwise would have given," *id.*, at 888; indeed, we *assumed* such an effect, *ibid.* But the effect was "merely a consequence of the statutory label 'aggravating circumstanc[e].'"

We agreed with the Georgia Supreme Court that any such impact was "'inconsequential,'" *id.*, at 889, and held that it "cannot fairly be regarded as a constitutional defect in the sentencing process," *ibid.* The same is true here.

* * *

Because the jury's consideration of the invalid "special circumstances" gave rise to no constitutional violation, the Court of Appeals erred in ordering habeas relief. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE STEVENS, with whom JUSTICE SOUTER joins, dissenting.

Our prior cases have drawn a simple categorical distinction between a nonweighing State and a weighing State. In the former, the sole function of an aggravating circumstance finding is to make the defendant eligible for the death penalty. See, *e. g.*, *Zant* v. *Stephens*, 462 U. S. 862, 874 (1983) ("[I]n Georgia, the finding of an aggravating circumstance does not play any role in guiding the sentencing body in the exercise of its discretion [to impose the death penalty], apart from its function of narrowing the class of persons convicted of murder who are eligible for the death penalty"). In the latter, such a finding performs a second function—it provides a reason for deciding to impose that sentence on an eligible defendant. See, *e. g.*, *Clemons* v. *Mississippi*, 494 U. S. 738, 745 (1990) ("In Mississippi, unlike the Georgia scheme considered in *Zant*, the finding of aggravating factors is part of the jury's sentencing determination, and the jury is required to weigh any mitigating factors against the aggravating circumstances").

Thus, in a nonweighing State, the finding of four aggravating circumstances has the same legal significance as a finding

of three, and invalidation of one is presumptively harmless. See *Stringer* v. *Black*, 503 U. S. 222, 232 (1992) ("In a non-weighing State, so long as the sentencing body finds at least one valid aggravating factor, the fact that it also finds an invalid aggravating factor does not infect the formal process of deciding whether death is an appropriate penalty"). By contrast, when a jury is told to weigh aggravating circumstances against mitigating evidence in making its penalty decision, four aggravators presumptively are more weighty than three. See *ibid.* ("[W]hen the sentencing body is told to weigh an invalid factor in its decision, a reviewing court may not assume it would have made no difference if the thumb had been removed from death's side of the scale"). For example, when a jury, as here, is incorrectly informed that its finding that a killing was "heinous, atrocious, or cruel" provides a reason for imposing death, see generally Cal. Penal Code Ann. § 190.2(a)(14) (West Supp. 2005), that error may well affect the jury's deliberations. Having been told to weigh "[t]he circumstances of the crime . . . *and* the existence of any [aggravating] circumstances found to be true," § 190.3(a) (West 1999) (emphasis added), the jury may consider its conclusion that the killing was heinous separately from the "circumstances of the crime" underlying that erroneous conclusion, improperly counting the nature of the crime twice in determining whether a sentence of death is warranted. Or the jury, recognizing that the legislature has decided that a "heinous, atrocious, or cruel" murder, without more, can be worthy of the death penalty, may consider this a legislative imprimatur on a decision to impose death and therefore give greater weight to its improper heinousness finding than the circumstances of the crime would otherwise dictate. Under either scenario a weight has been added to death's side of the scale, and one cannot presume that this weight made no difference to the jury's ultimate conclusion.

There are, of course, different weighing systems. If a jury is told that only those specific aggravating circum-

stances making the defendant eligible for the death penalty may provide reasons for imposing that penalty, its consideration of an invalid factor is obviously more prejudicial than if the jury is told that it may also consider all of the circumstances of the crime. The fact that California sentencing juries may consider these circumstances increases the likelihood that their consideration of a subsequently invalidated aggravating circumstance will be harmless, but it does not take California out of the "weighing State" category.

The majority, however, has decided to convert the weighing/nonweighing distinction from one focused on the role aggravating circumstances play in a jury's sentencing deliberations to one focused on the evidence the jury may consider during those deliberations. Compare *Stringer*, 503 U. S., at 229 (explaining that Mississippi is a weighing State because the jury must weigh aggravating circumstances against mitigating evidence in choosing whether to impose the death penalty, while Georgia is a nonweighing State because "aggravating factors as such have no specific function in [that] decision"), with *ante*, at 220 ("An invalidated sentencing factor (whether an eligibility factor or not) will render the sentence unconstitutional by reason of its adding an improper element to the aggravation scale in the weighing process *unless* one of the other sentencing factors enables the sentencer to give aggravating weight to the same facts and circumstances" (footnote omitted)). But whether an aggravating circumstance finding plays a role in the jury's decision to impose the death penalty has nothing to do with whether the jury may separately consider "all the 'circumstances of the crime.' "

In this case, if the question had been presented to us, I might well have concluded that the error here was harmless. See generally *Brecht* v. *Abrahamson*, 507 U. S. 619, 638 (1993). But the State has merely asked us to decide whether California is a weighing State, see Pet. for Cert. i, and the Court of Appeals correctly decided that the statu-

tory text has unambiguously answered that question. Cf. § 190.3 (enumerating aggravating and mitigating circumstances and requiring "the trier of fact [to] impose a sentence of death if [it] concludes that the aggravating circumstances outweigh the mitigating circumstances").

Instead of heeding this plain language, the Court has chosen to modify our settled law, ignoring the dual role played by aggravating circumstances in California's death penalty regime. Because this decision is more likely to complicate than to clarify our capital sentencing jurisprudence, I respectfully dissent.

JUSTICE BREYER, with whom JUSTICE GINSBURG joins, dissenting.

The question before us is whether California's approach to imposing the death penalty makes California a "weighing" or a "nonweighing" State for purposes of determining whether to apply "harmless-error" review in a certain kind of death case—namely, a case in which the death sentence rests in part on an invalid aggravating circumstance. In my view, it does not matter whether California is a "weighing" or a "nonweighing" State, as ordinary rules of appellate review should apply. A reviewing court must find that the jury's consideration of an invalid aggravator was harmless beyond a reasonable doubt, regardless of the form a State's death penalty law takes.

I

To understand my answer, one must fully understand the question, including the somewhat misleading terminology in which the question is phrased.

A

Death penalty proceedings take place in two stages. At the first stage, the jury must determine whether there is something especially wrongful, *i. e.*, "aggravating," about the defendant's conduct. State statutes typically list these spe-

cific "aggravating" factors, and the jury typically must find at least one such factor present for the defendant to become eligible for the death penalty. "By doing so, the jury narrows the class of persons eligible for the death penalty according to an objective legislative definition," as required by the Eighth Amendment. *Lowenfield* v. *Phelps*, 484 U. S. 231, 244 (1988). If the jury finds that an aggravating factor is present and the defendant is consequently eligible for the death penalty, it proceeds to Stage Two. At Stage Two, the jury (or sometimes the judge) must determine whether to sentence the defendant to death or to provide a different sentence (usually, life imprisonment). At this stage, this Court has said, States divide as to their approach.

Weighing States. Some States tell the jury: "Consider all the mitigating factors and weigh them against the *specific aggravating factors* that you found, at Stage One, made the defendant eligible for the death penalty. If the aggravating factors predominate, you must sentence the defendant to death; otherwise, you may not." Because the law in these States tells the jury to weigh *only* statutory aggravating factors (typically the same factors considered at Stage One) against the mitigating factors, this Court has called these States "weighing States." This is something of a misnomer because the jury cannot weigh everything but is instead limited to weighing certain statutorily defined aggravating factors. The Court has identified Mississippi as a classic example of a weighing State. See *Stringer* v. *Black*, 503 U. S. 222, 229 (1992).

Nonweighing States. Other States tell the jury: "Consider all the mitigating factors and weigh them, not simply against the statutory aggravating factors you previously found at Stage One, but against *any and all* factors you consider aggravating." Because the balance includes *all* aggravating factors and not only those on the Stage One eligibility list, this Court has called such States "nonweighing States." Although it might be clearer to call these States "complete

weighing" States (for the jury can weigh *everything* that is properly admissible), I shall continue to use the traditional terminology. The Court has identified Georgia as the prototypical example of a State that has adopted this complete weighing approach. *Ibid.*

B

The question in this case arises under the following circumstances.

(1) At Stage One, a jury found several aggravating factors, the presence of any one of which would make the defendant eligible for the death penalty.

(2) At least one of those aggravating factors was an "improper" factor, *i. e.*, a factor that the law forbids the jury from considering as aggravating and that the jury's use of which (for this purpose) was later invalidated on appeal. The sentencing court made a mistake, indeed a mistake of constitutional dimensions, when it listed the "heinous, atrocious, or cruel," Cal. Penal Code Ann. § 190.2(a)(14) (West Supp. 2005), aggravating factor as one of the several factors for the jury to consider at Stage One. See *Godfrey* v. *Georgia*, 446 U. S. 420, 433 (1980) (plurality opinion). But that mistake did not, in and of itself, forbid application of the death penalty. After all, the jury also found *other* listed aggravating factors, the presence of any one of which made the defendant *eligible* for the death penalty.

(3) All the evidence before the sentencing jury at Stage Two was properly admitted. The evidence that supported the improper heinousness factor, for example, also showed how the crime was committed, and the jury is clearly entitled to consider it.

Given this outline of the problem, two questions follow. *Question One:* Is it possible that the judge's legal mistake at Stage One—telling the jury that it could determine that the "heinous, atrocious, or cruel" aggravator was present—prejudiced the jury's decisionmaking at Stage Two? In other words, could that mistake create harmful error, causing the

jury to impose a death sentence due to the fact that it was told to give special weight to its heinousness finding? The lower courts have read this Court's opinions to say that in a nonweighing State the answer *must* be "no"; but in a weighing State the answer *might* be "yes."

Question Two: Given the lower courts' answer to Question One, is California a nonweighing State? If so, the reviewing court can assume, without going further, that the error arising out of the sentencing judge's having listed an invalid aggravator was harmless. Or is California a weighing State? If so, the reviewing court should have gone further and determined whether the error was *in fact* harmless.

I would answer Question Two by holding that the lower courts have misunderstood this Court's answer to Question One. Despite the Court's occasional suggestion to the contrary, the weighing/nonweighing distinction has little to do with the need to determine whether the error was harmless. Moreover, given "the 'acute need' for reliable decisionmaking when the death penalty is at issue," *Deck* v. *Missouri*, 544 U. S. 622, 632 (2005), reviewing courts should decide if that error was harmful, regardless of the form a State's death penalty law takes.

II

To distinguish between weighing and nonweighing States for purposes of determining whether to apply harmless-error analysis is unrealistic, impractical, and legally unnecessary.

A

Use of the distinction is unrealistic because it is unrelated to any plausible conception of how a capital sentencing jury actually reaches its decision. First, consider the kind of error here at issue. It is not an error about the improper admission of evidence. See *infra*, at 239–241. It is an error about the importance a jury might attach to certain admissible evidence. Using the metaphor of a "thumb on death's side of the scale," we have identified the error as the "possi-

bility not only of randomness but also of bias in favor of the death penalty." *Stringer* v. *Black*, 503 U. S., at 236; see *Sochor* v. *Florida*, 504 U. S. 527, 532 (1992) ("Employing an invalid aggravating factor in the weighing process creates the possibility of randomness by placing a thumb on death's side of the scale, thus creating the risk of treating the defendant as more deserving of the death penalty" (internal quotation marks, citations, and alterations omitted)).

Second, consider why that error could affect a decision to impose death. If the error causes harm, it is because a jury has given special weight to its finding of (or the evidence that shows) the invalid "aggravating factor." The jury might do so because the judge or prosecutor led it to believe that state law attaches particular importance to that factor: Indeed, why else would the State call that factor an "aggravator" and/or permit it to render a defendant death eligible? See *Zant* v. *Stephens*, 462 U. S. 862, 888 (1983) (recognizing that statutory label "arguably might have caused the jury to give somewhat greater weight to respondent's prior criminal record than it otherwise would have given"); see also *ante*, at 226 (STEVENS, J., dissenting) (noting that jury may consider the aggravating label "a legislative imprimatur on a decision to impose death and therefore give greater weight to its improper heinousness finding . . . "); *Clemons* v. *Mississippi*, 494 U. S. 738, 753, 755 (1990) (noting that the prosecutor "repeatedly emphasized and argued the 'especially heinous' factor during the sentencing hearing" and remanding for the Mississippi Supreme Court to conduct harmless-error review).

The risk that the jury will give greater weight at Stage Two to its Stage One finding of an aggravating factor—a factor that, it turns out, never should have been found in the first instance—is significant in a weighing State, for the judge will explicitly tell the jury to consider that particular aggravating factor in its decisionmaking process. That risk may prove significant in a nonweighing State as well, for

there too the judge may tell the jury to consider that aggravating factor in its decisionmaking process.

The only difference between the two kinds of States is that, in the nonweighing State, the jury can also consider other aggravating factors (which are usually not enumerated by statute). Cf. Ga. Code Ann. § 17–10–30(b) (2004) (judge or jury "shall consider . . . any mitigating circumstances or aggravating circumstances otherwise authorized by law *and any of the following statutory aggravating circumstances* which may be supported by the evidence" (emphasis added)). But the potential for the same kind of constitutional harm exists in both kinds of States, namely, that the jury will attach special weight to that aggravator on the scale, the aggravator that the law says should not have been there.

To illustrate this point, consider the following two statements. *Statement One*—The judge tells the jury in a weighing State: "You can sentence the defendant to death only if you find one, or more, of the following three aggravating circumstances, X, Y, or Z. If you do, the law requires you to consider those aggravators and weigh them against the mitigators." *Statement Two*—The judge tells the jury in a nonweighing State: "You can sentence the defendant to death only if you find one, or more, of the following three aggravating circumstances, X, Y, or Z. If you do, the law permits you to consider all mitigating and aggravating evidence, including X, Y, and Z, in reaching your decision."

What meaningful difference is there between these two statements? The decisionmaking process of the first jury and that of the second jury will not differ significantly: Both juries will weigh the evidence offered in aggravation and the evidence offered in mitigation. Cf. Brief for Criminal Justice Legal Foundation as *Amicus Curiae* 4 ("In reality, all sentencers 'weigh' "). If Statement One amounts to harmful error because the prosecutor emphasized the importance of wrongfully listed factor Y, why would Statement Two not amount to similarly harmful error? In both instances, a

jury *might* put special weight upon its previous finding of factor Y. It is not surprising that commentators have found unsatisfactory the Court's efforts to distinguish between the two statements for harmless-error purposes. See, *e. g.*, Steiker & Steiker, Sober Second Thoughts: Reflections on Two Decades of Constitutional Regulation of Capital Punishment, 109 Harv. L. Rev. 355, 386–387 (1995) ("[T]he different doctrinal approaches to 'weighing' and 'non-weighing' schemes are difficult to justify given that the sentencer's decisionmaking process is likely to be similar under either scheme"); Widder, Hanging Life in the Balance: The Supreme Court and the Metaphor of Weighing in the Penalty Phase of the Capital Trial, 68 Tulane L. Rev. 1341, 1363–1365 (1994) (arguing that the distinction is largely an "illusion" that "appears to be derived from a fixation on the literal meaning of the metaphor of weighing, [which] remains a common means of describing the capital sentencing process even in decisions of state courts that rely on the non-weighing status of their statutory schemes to uphold [death] sentences resting on invalid factors").

B

The distinction is impractical to administer for it creates only two paradigms—States that weigh *only* statutory aggravators and States that weigh any and all circumstances (*i. e.*, statutory and nonstatutory aggravators). Many States, however, fall somewhere in between the two paradigms. A State, for example, might have a set of aggravating factors making a defendant eligible for the death penalty and an additional set of sentencing factors (unrelated to the eligibility determination) designed to channel the jury's discretion. California is such a State, as it requires the jury to take into account the eligibility-related aggravating factors and 11 other sentencing factors—including an omnibus factor that permits consideration of all of the circumstances of the crime. Cal. Penal Code Ann. § 190.3 (West 1999). And be-

cause many States collapse Stage One (eligibility) and Stage Two (sentence selection) into a single proceeding in which the jury hears all of the evidence at the same time, those States permit the prosecution to introduce and argue any relevant evidence, including evidence related to the statutory aggravators. Indeed, one State the Court has characterized as a weighing State (Mississippi) and one State the Court has characterized as a nonweighing State (Virginia) both fall into this intermediate category. Miss. Code Ann. § 99–19–101 (1973–2000); Va. Code Ann. § 19.2–264.4(B) (Lexis 2004). Efforts to classify these varied schemes, for purposes of applying harmless-error analysis, produce much legal heat while casting little light.

C

Our precedents, read in detail, do not require us to maintain this unrealistic and impractical distinction. The Court has discussed the matter in three key cases. In the first case, *Zant* v. *Stephens*, the Court considered an error that arose in Georgia, a nonweighing State. The Georgia Supreme Court had held that one of several statutory aggravating circumstances found by the jury—that the defendant had a "'substantial history of serious assaultive criminal convictions'"—was unconstitutionally vague. 462 U. S., at 867, and n. 5. The jury, however, had also found other aggravators present, so the defendant remained eligible for death. The Georgia Supreme Court concluded that the sentencing court's instruction on the unconstitutional factor, though erroneous, "had 'an inconsequential impact on the jury's decision regarding the death penalty.'" *Id.*, at 889 (quoting *Zant* v. *Stephens*, 250 Ga. 97, 100, 297 S. E. 2d 1, 4 (1982)).

This Court agreed with the Georgia Supreme Court's conclusion. The Court conceded that the label—"aggravating circumstance"—created the risk that the jury *might* place too much weight on the evidence that showed that aggravator. Indeed, it said that the statutory label "'aggravating circumstance[s]'" might "arguably . . . have caused the jury

to give somewhat greater weight to respondent's prior criminal record than it otherwise would have given." 462 U. S., at 888. But the Court concluded that, under the circumstances, the error was harmless. For one thing, Georgia's statute permitted the jury to consider more than just the specific aggravators related to Stage One. See *id.*, at 886. For another thing, the trial court's "instructions did not place particular emphasis on the role of statutory aggravating circumstances in the jury's ultimate decision." *Id.*, at 889 (citation omitted). In fact, it specifically told the jury to "'consider *all* facts and circumstances presented in ext[e]nuation . . . , mitigation and aggravation.'" *Ibid.* Finally, there was no indication at all that either the judge or the prosecutor tried to single out the erroneous aggravator for special weight. Because under the circumstances there was no real harm, the Court concluded that "any possible impact cannot fairly be regarded as a constitutional defect in the sentencing process." *Ibid.*

The Court in *Zant* did not say that the jury's consideration of an improper aggravator is *never* harmless in a State like Georgia. It did say that the jury's consideration of the improper aggravator was harmless *under the circumstances of that case.* And the Court's detailed discussion of the jury instructions is inconsistent with a rule of law that would require an *automatic* conclusion of "harmless error" in States with death penalty laws like Georgia's. See *id.*, at 888–889, and n. 25; see also *id.*, at 891 ("Under Georgia's sentencing scheme, *and under the trial judge's instructions in this case,* no suggestion is made that the presence of more than one aggravating circumstance should be given special weight" (emphasis added)).

The dissent in *Zant* also clearly understood the principal opinion to have conducted a harmless-error analysis. *Id.*, at 904–905 (opinion of Marshall, J., joined by Brennan, J.). And the Court repeated this same understanding in a case decided only *two weeks later. Barclay* v. *Florida,* 463 U. S. 939, 951, n. 8 (1983) (plurality opinion) (upholding death sen-

tence and concluding that "we need not apply the type of federal harmless-error analysis that was necessary in *Zant*").

The second case, *Clemons* v. *Mississippi*, involved a weighing State, Mississippi. The Mississippi Supreme Court upheld the petitioner's death sentence "even though the jury instruction regarding one of the aggravating factors pressed by the State, that the murder was 'especially heinous, atrocious, or cruel,' was constitutionally invalid." 494 U. S., at 741. Finding it unclear whether the state court reweighed the aggravating and mitigating evidence or conducted harmless-error review, the Court vacated and remanded to the Mississippi Supreme Court to conduct either procedure (or to remand to a sentencing jury) in the first instance. *Id.*, at 754.

As far as the Court's "harmless-error" analysis reveals, the reason the Court remanded—the reason it thought the error might not be harmless—had nothing to do with the fact that Mississippi was a so-called weighing State. Cf. *ante*, at 218–219, n. 3. Rather, the Court thought the error might be harmful because "the State repeatedly emphasized and argued the 'especially heinous' factor during the sentencing hearing," in stark contrast to the "little emphasis" it gave to the other valid aggravator found by the jury. 494 U. S., at 753. The Court concluded that, "[u]nder these circumstances, it would require a detailed explanation based on the record for us possibly to agree that the error in giving the invalid 'especially heinous' instruction was harmless." *Id.*, at 753–754.

The third case, *Stringer* v. *Black*, presented a different kind of question: For the purposes of *Teague* v. *Lane*, 489 U. S. 288 (1989), does the rule that a vague aggravating circumstance violates the Eighth Amendment apply to a weighing State like Mississippi in the same way it applies to a nonweighing State like Georgia? The Court answered this question "yes." In so doing, it described the difference between Mississippi's system and Georgia's system as follows:

> *"In a nonweighing State, so long as the sentencing body finds at least one valid aggravating factor, the fact that it also finds an invalid aggravating factor does not infect the formal process of deciding whether death is an appropriate penalty. Assuming a determination by the state appellate court that the invalid factor would not have made a difference to the jury's determination, there is no constitutional violation resulting from the introduction of the invalid factor in an earlier stage of the proceedings.* But when the sentencing body is told to weigh an invalid factor in its decision, a reviewing court may not assume it would have made no difference if the thumb had been removed from death's side of the scale. When the weighing process itself has been skewed, only constitutional harmless-error analysis or reweighing at the trial or appellate level suffices to guarantee that the defendant received an individualized sentence." 503 U. S., at 232 (emphasis added).

The first sentence in this statement is the first and only suggestion in our cases that the submission of a vague aggravating circumstance to a jury can *never* result in constitutional error in a nonweighing State. Indeed, the term "nonweighing State," and the significance attached to it, does not appear in the Court's jurisprudence prior to *Stringer*. The second sentence in the statement is less categorical than the first. It suggests that a state appellate court would have to make some form of a harmless-error inquiry to satisfy itself that the invalidated factor "would not have made a difference to the jury's determination" before it could conclude that there was "no constitutional violation." *Ibid.* Given this errant language in *Stringer*, I agree that it is "[n]ot surprisin[g]" that the lower courts have since operated under the assumption "that different rules apply to weighing and nonweighing States," and that harmless-error review is necessary only in the former. *Ante*, at 218, n. 3. My point is simply that such an assumption is unfounded based on our

prior cases. And regardless of the lower courts' interpretation of our precedents, I think it more important that our own decisions have not repeated *Stringer*'s characterization of those precedents. See, *e. g.*, *Tuggle* v. *Netherland*, 516 U. S. 10, 11 (1995) *(per curiam)* (characterizing *Zant* as holding "that a death sentence supported by multiple aggravating circumstances *need not always* be set aside if one aggravator is found to be invalid" (emphasis added)).

For the reasons stated in Parts II–A and II–B, *supra*, I would not take a single ambiguous sentence of dicta and derive from it a rule of law that is unjustified and that, in cases where the error is in fact harmful, would deprive a defendant of a fair and reliable sentencing proceeding.

III

The upshot is that I would require a reviewing court to examine whether the jury's consideration of an unconstitutional aggravating factor was harmful, regardless of whether the State is a weighing State or a nonweighing State. I would hold that the fact that a State is a nonweighing State may make the possibility of harmful error less likely, but it does not excuse a reviewing court from ensuring that the error was *in fact* harmless. Our cases in this area do not require a different result.

IV

The Court reaches a somewhat similar conclusion. It, too, would abolish (or at least diminish the importance of) the weighing/nonweighing distinction for purposes of harmless-error analysis. But then, surprisingly, it also diminishes the need to conduct any harmless-error review at all. If all the evidence was properly admitted and if the jury can use that evidence when it considers other aggravating factors, any error, the Court announces, must be harmless. See *ante*, at 220 (holding that when "one of the other sentencing factors enables the sentencer to give aggravating weight to the same facts and circumstances" that underlie the invalidated

aggravating factor, a reviewing court need not apply harmless-error review).

Common sense suggests, however, and this Court has explicitly held, that the problem before us is *not* a problem of the admissibility of certain evidence. It is a problem of the emphasis given to that evidence by the State or the trial court. If that improper emphasis is strong enough, it can wrongly place a "thumb on death's side of the scale" at Stage Two (sentencing). That is what the Court *said* in *Stringer*, that is what the Court *necessarily implied* in *Zant*, and that is what the Court *held* in *Clemons*. I believe the Court is right to depart from the implication of an errant sentence in *Stringer*. But it is wrong to depart without explanation from *Clemons*' unanimous holding—a holding that at least two Members of this Court have explicitly recognized as such. See *Pensinger* v. *California*, 502 U. S. 930, 931 (1991) (O'CONNOR, J., joined by KENNEDY, J., dissenting from denial of certiorari) (noting that the "'especially heinous' instruction did not change the mix of evidence presented to the jury in *[Clemons]*" and "that fact alone did not support a finding of harmlessness").

The Court cannot reconcile its holding with *Clemons*. That opinion makes clear that the issue is one of emphasis, not of evidence. Indeed, the Court explicitly disavowed the suggestion that Mississippi's "reliance on the 'especially heinous' factor led to the introduction of any evidence that was not otherwise admissible in either the guilt or sentencing phases of the proceeding. All of the circumstances surrounding the murder already had been aired during the guilt phase of the trial and a jury clearly is entitled to consider such evidence in imposing [the] sentence." 494 U. S., at 754–755, n. 5. And the entire Court agreed that the potentially improper emphasis consisted of the fact that "the State repeatedly emphasized and argued the 'especially heinous' factor during the sentencing hearing," while placing "little em-

phasis" on the sole valid aggravator of robbery for pecuniary gain. *Id.*, at 753–754; see also *id.*, at 773, n. 23 (Blackmun, J., joined by Brennan, Marshall, and STEVENS, JJ., concurring in part and dissenting in part).

The Court's only answer is to assert that "*Clemons* maintains the distinction envisioned in *Zant.*" *Ante*, at 218, n. 3 (citing *Clemons*, *supra*, at 745). But *Clemons* did no such thing. Although the Court did observe the differences between the statutory schemes of Georgia and Mississippi, it certainly did not, as the Court claims, suggest that harmless-error analysis should *never* be conducted in the former and *always* be conducted in the latter. Rather, the Court made the unremarkable statement that "[i]n a State like Georgia, where aggravating circumstances serve only to make a defendant eligible for the death penalty and not to determine the punishment, the invalidation of one aggravating circumstance *does not necessarily* require an appellate court to vacate a death sentence and remand to a jury." *Clemons*, *supra*, at 744–745 (emphasis added). Of course, the implication of the qualifier "necessarily" is that, in some cases, a jury's consideration of an invalidated aggravating circumstance *might* require that a death sentence be vacated, even "[i]n a State like Georgia."

In sum, an inquiry based solely on the admissibility of the underlying evidence is inconsistent with our previous cases. And as explained above, see *supra*, at 231–234, the potential for a tilting of the scales toward death is present even in those States (like Georgia and Virginia) that permit a jury to consider all of the circumstances of the crime.

V

It may well be that the errors at issue in this case were harmless. The State of California did not ask us to consider the Ninth Circuit's contrary view, and I have not done so. Given the fact that I (like the Court in this respect) would

abolish the weighing/nonweighing distinction, and in light of the explanation of the kind of error at issue, I would remand this case and require the Ninth Circuit to reconsider its entire decision in light of the considerations I have described.

Syllabus

GONZALES, ATTORNEY GENERAL, ET AL. *v.* OREGON ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 04–623. Argued October 5, 2005—Decided January 17, 2006

The Controlled Substances Act (CSA or Act), which was enacted in 1970 with the main objectives of combating drug abuse and controlling legitimate and illegitimate traffic in controlled substances, criminalizes, *inter alia*, the unauthorized distribution and dispensation of substances classified in any of its five schedules. The Attorney General may add, remove, or reschedule substances only after making particular findings, and on scientific and medical matters, he must accept the findings of the Secretary of Health and Human Services (Secretary). These proceedings must be on the record after an opportunity for comment. The dispute here involves controlled substances listed in Schedule II, which are generally available only by written prescription, 21 U. S. C. § 829(a). A 1971 regulation promulgated by the Attorney General requires that such prescriptions be used "for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice." 21 CFR § 1306.04. To prevent diversion of controlled substances, the CSA regulates the activity of physicians, who must register in accordance with rules and regulations promulgated by the Attorney General. He may deny, suspend, or revoke a registration that, as relevant here, would be "inconsistent with the public interest." 21 U. S. C. §§ 824(a)(4), 822(a)(2). In determining consistency with the public interest, he must consider five factors, including the State's recommendation, compliance with state, federal, and local law regarding controlled substances, and "public health and safety." § 823(f). The CSA explicitly contemplates a role for the States in regulating controlled substances. See § 903.

The Oregon Death With Dignity Act (ODWDA) exempts from civil or criminal liability state-licensed physicians who, in compliance with ODWDA's specific safeguards, dispense or prescribe a lethal dose of drugs upon the request of a terminally ill patient. In 2001, the Attorney General issued an Interpretive Rule to address the implementation and enforcement of the CSA with respect to ODWDA, declaring that using controlled substances to assist suicide is not a legitimate medical practice and that dispensing or prescribing them for this purpose is unlawful under the CSA. The State, a physician, a pharmacist, and

some terminally ill state residents challenged the Rule. The District Court permanently enjoined its enforcement. The Ninth Circuit invalidated the Rule, reasoning that, by making a medical procedure authorized under Oregon law a federal offense, it altered the balance between the States and the Federal Government without the requisite clear statement that the CSA authorized the action; and in the alternative, that the Rule could not be squared with the CSA's plain language, which targets only conventional drug abuse and excludes the Attorney General from medical policy decisions.

Held: The CSA does not allow the Attorney General to prohibit doctors from prescribing regulated drugs for use in physician-assisted suicide under state law permitting the procedure. Pp. 255–275.

(a) An administrative rule interpreting the issuing agency's own ambiguous regulation may receive substantial deference. *Auer* v. *Robbins*, 519 U. S. 452, 461–463. So may an interpretation of an ambiguous statute, *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842–845, but only "when it appears that Congress delegated authority to the agency generally to make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority," *United States* v. *Mead Corp.*, 533 U. S. 218, 226–227. Otherwise, the interpretation is "entitled to respect" only to the extent it has the "power to persuade." *Skidmore* v. *Swift & Co.*, 323 U. S. 134, 140. Pp. 255–256.

(b) The Interpretive Rule at issue is not entitled to *Auer* deference as an interpretation of 21 CFR § 1306.04. Unlike the underlying regulations in *Auer*, which gave specificity to a statutory scheme the Secretary of Labor was charged with enforcing and reflected the Labor Department's considerable experience and expertise, the underlying regulation here does little more than restate the terms of the statute itself. The CSA allows prescription of drugs that have a "currently accepted medical use," 21 U. S. C. § 812(b); requires a "medical purpose" for dispensing the least controlled substances of those on the schedules, § 829(c); and defines a "valid prescription" as one "issued for a legitimate medical purpose," § 830(b)(3)(A)(ii). Similarly, physicians are considered practitioners if they dispense controlled substances "in the course of professional practice." 21 U. S. C. § 802(21). The regulation just repeats two of these statutory phrases and attempts to summarize the others. An agency does not acquire special authority to interpret its own words when, instead of using its expertise and experience to formulate a regulation, it has elected merely to paraphrase the statutory language. Furthermore, any statutory authority for the Interpretive Rule would have to come from 1984 CSA amendments adding the "public

interest" requirement, but 21 CFR § 1306.04 was adopted in 1971. That the current interpretation runs counter to the intent at the time of the regulation's promulgation is an additional reason why *Auer* deference is unwarranted. Pp. 256–258.

(c) The Interpretive Rule is also not entitled to *Chevron* deference. The statutory phrase "legitimate medical purpose" is ambiguous in the relevant sense. However, *Chevron* deference is not accorded merely because the statute is ambiguous and an administrative official is involved. A rule must be promulgated pursuant to authority Congress has delegated to the official. The specific respects in which the Attorney General is authorized to make rules under the CSA show that he is not authorized to make a rule declaring illegitimate a medical standard for patient care and treatment specifically authorized under state law. Congress delegated to the Attorney General only the authority to promulgate rules relating to "registration" and "control" of the dispensing of controlled substances, 21 U. S. C. § 821 (2000 ed., Supp. V), and "for the efficient execution of his [statutory] functions," 21 U. S. C. § 871(b). Control means "to add a . . . substance . . . to a schedule," § 802(5), following specified procedures. Because the Interpretive Rule does not concern scheduling of substances and was not issued under the required procedures, it cannot fall under the Attorney General's control authority. Even if "control" were understood to signify something other than its statutory definition, it could not support the Interpretive Rule. Nor can the Interpretive Rule be justified under the CSA's registration provisions. It does not undertake the Act's five-factor analysis for determining when registration is "inconsistent with the public interest," § 823(f), and it deals with much more than registration. It purports to declare that using controlled substances for physician-assisted suicide is a crime, an authority going well beyond the Attorney General's statutory power to register or deregister physicians. It would be anomalous for Congress to have painstakingly described the Attorney General's limited authority to deregister a single physician or schedule a single drug, but to have given him, just by implication, authority to declare an entire class of activity outside the course of professional practice and therefore a criminal violation of the CSA. It is not enough that "public interest," "public health and safety," and "Federal law" are used in the part of the Act over which the Attorney General has authority. Cf. *Sutton* v. *United Air Lines, Inc.*, 527 U. S. 471. The first two terms do not call on the Attorney General, or any executive official, to make an independent assessment of the meaning of federal law. The Attorney General did not base the Interpretive Rule on an application of the five-factor test generally, or the "public health and safety" factor specifically. Even if he had, it is doubtful that he could cite those factors

to deregister a physician simply because he deemed a controversial practice permitted by state law to have an illegitimate medical purpose. The federal-law factor requires the Attorney General to decide "[c]ompliance" with the law but does not suggest that he may decide what the law is. To say that he can define the substantive standards of medical practice as part of his authority would also put 21 U. S. C. § 871(b) in considerable tension with the narrowly defined control and registration delegation. It would go, moreover, against the plain language of the text to treat a delegation for the "execution" of his functions as a further delegation to define other functions well beyond the Act's specific grants of authority. The authority desired by the Government is inconsistent with the Act's design in other fundamental respects, *e. g.*, the Attorney General must share power with, and in some respect defer to, the Secretary, whose functions are likewise delineated and confined by the Act. Postenactment congressional commentary on the CSA's regulation of medical practice is also at odds with the Attorney General's claimed authority. The Government's claim that the Attorney General's decision is a legal, not medical, one does not suffice, for the Interpretive Rule places extensive reliance on medical judgments and views of the medical community in concluding that assisted suicide is not a legitimate medical purpose. The idea that Congress gave him such broad and unusual authority through an implicit delegation is not sustainable. The importance of the issue of physician-assisted suicide makes the oblique form of the claimed delegation all the more suspect. Pp. 258–269.

(d) The Attorney General's opinion is unpersuasive under *Skidmore*. The CSA and this Court's case law amply support the conclusion that Congress regulates medical practice insofar as it bars doctors from using their prescription-writing powers as a means to engage in illicit drug dealing and trafficking as conventionally understood. Beyond this, the Act manifests no intent to regulate the practice of medicine generally, which is understandable given federalism's structure and limitations. The CSA's structure and operation presume and rely upon a functioning medical profession regulated under the States' police powers. The Federal Government can set uniform standards for regulating health and safety. In connection with the CSA, however, the only provision in which Congress set general, uniform medical practice standards, 42 U. S. C. § 290bb–2a, strengthens the understanding of the CSA as a statute combating recreational drug abuse, and also indicates that when Congress wants to regulate medical practice in the given scheme, it does so by explicit statutory language. The difficulty in defending the Attorney General's declaration that the CSA impliedly criminalizes physician-assisted suicide is compounded by the Act's consistent delegation of medical judgments to the Secretary and its otherwise careful

Syllabus

allocation of powers for enforcing the CSA's limited objectives. The Government's contention that the terms "medical" or "medicine" refer to a healing or curative art, and thus cannot embrace the intentional hastening of a patient's death, rests on a reading of 21 U. S. C. § 829(a)'s prescription requirement without the illumination of the rest of the statute. Viewed in context, that requirement is better understood as ensuring that patients use controlled substances under a doctor's supervision so as to prevent addiction and recreational abuse. To read prescriptions for assisted suicide as "drug abuse" under the CSA is discordant with the phrase's consistent use throughout the Act, not to mention its ordinary meaning. The Government's interpretation of the prescription requirement also fails under the objection that the Attorney General is an unlikely recipient of such broad authority, given the Secretary's primacy in shaping medical policy under the CSA and the Act's otherwise careful allocation of decisionmaking powers. Pp. 269–275.

368 F. 3d 1118, affirmed.

KENNEDY, J., delivered the opinion of the Court, in which STEVENS, O'CONNOR, SOUTER, GINSBURG, and BREYER, JJ., joined. SCALIA, J., filed a dissenting opinion, in which ROBERTS, C. J., and THOMAS, J., joined, *post*, p. 275. THOMAS, J., filed a dissenting opinion, *post*, p. 299.

Solicitor General Clement argued the cause for petitioners. With him on the briefs were *Assistant Attorney General Keisler*, *Deputy Solicitor General Kneedler*, *Deputy Assistant Attorney General Katsas*, *Douglas Hallward-Driemeier*, *Mark B. Stern*, and *Jonathan H. Levy*.

Robert M. Atkinson, Senior Assistant Attorney General of Oregon, argued the cause for respondents. With him on the brief for respondent State of Oregon were *Hardy Myers*, Attorney General, *Peter Shepherd*, Deputy Attorney General, and *Mary H. Williams*, Solicitor General. *Nicholas W. van Aelstyn*, *Aaron S. Jacobs*, and *Kathryn L. Tucker* filed a brief for Patient-Respondents. *Eli D. Stutsman* filed a brief for respondents Peter A. Rasmussen, M. D., et al.*

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*Briefs of *amici curiae* urging reversal were filed for the American Center for Law and Justice by *Jay Alan Sekulow*, *Colby M. May*, *James M. Henderson, Sr.*, *Walter M. Weber*, *Thomas P. Monaghan*, and *Charles E. Rice;* for Americans United for Life by *Nikolas T. Nikas;* for the Catho-

JUSTICE KENNEDY delivered the opinion of the Court.

The question before us is whether the Controlled Substances Act allows the United States Attorney General to

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lic Medical Association by *Teresa Stanton Collett;* for the Christian Medical Association et al. by *Steven H. Aden*, *Gregory S. Baylor*, and *Kimberlee W. Colby;* for Focus on the Family et al. by *William Wagner*, *Nelson P. Miller*, *Stephen W. Reed*, and *Patrick A. Trueman;* for the International Task Force on Euthanasia and Assisted Suicide by *Rita L. Marker;* for Liberty Counsel by *Mathew D. Staver*, *Erik W. Stanley*, *Rena M. Lindevaldsen*, and *Mary E. McAlister;* for the National Association of Pro-Life Nurses by *Daniel Avila;* for the National Legal Center for the Medically Dependent & Disabled, Inc., by *James Bopp, Jr.*, *Thomas J. Marzen*, and *Richard E. Coleson;* for Not Dead Yet et al. by *Max Lapertosa;* for the Pro-Life Legal Defense Fund et al. by *Dwight G. Duncan*, *Thomas M. Harvey*, and *Richard F. Collier, Jr.;* for the Thomas More Society by *Paul Benjamin Linton* and *Thomas Brejcha;* for the United States Conference of Catholic Bishops et al. by *Mark E. Chopko* and *Michael F. Moses;* and for Senator Rick Santorum et al. by *Donald A. Daugherty, Jr.*

Briefs of *amici curiae* urging affirmance were filed for the State of California et al. by *Bill Lockyer*, Attorney General of California, and *Taylor S. Carey*, Special Assistant Attorney General, and by the Attorneys General for their respective jurisdictions as follows: *Robert J. Spagnoletti* of the District of Columbia, *Jim Hood* of Mississippi, *Jeremiah W. (Jay) Nixon* of Missouri, and *Mike McGrath* of Montana; for the American Civil Liberties Union et al. by *Andrew L. Frey*, *David M. Gossett*, *Steven R. Shapiro*, and *Charles F. Hinkle;* for the American College of Legal Medicine by *Miles J. Zaremski;* for the American Public Health Association by *David T. Goldberg*, *Sean H. Donahue*, and *Daniel N. Abrahamson;* for Autonomy, Inc., et al. by *Amy R. Sabrin;* for the Cato Institute by *Pamela Harris;* for the Coalition of Medical Associations and Societies et al. by *Geoffrey J. Michael;* for the Coalition of Mental Health Professionals by *Steven Alan Reiss;* for Healthlaw Professors by *Arthur B. LaFrance;* for Members of the Oregon Congressional Delegation by *William R. Stein;* for Margaret P. Battin et al. by *Rebecca P. Dick* and *Ronald A. Lindsay;* for Richard Briffault et al. by *David W. Ogden* and *Paul R. Q. Wolfson;* and for 52 Religious and Religious Freedom Organizations and Leaders by *Gregory A. Castanias* and *Lawrence D. Rosenberg.*

Briefs of *amici curiae* were filed for Physicians for Compassionate Care Educational Foundation by *Gregory P. Lynch;* and for Surviving Family Members by *Robert A. Free* and *Katrin E. Frank.*

prohibit doctors from prescribing regulated drugs for use in physician-assisted suicide, notwithstanding a state law permitting the procedure. As the Court has observed, "Americans are engaged in an earnest and profound debate about the morality, legality, and practicality of physician-assisted suicide." *Washington* v. *Glucksberg*, 521 U. S. 702, 735 (1997). The dispute before us is in part a product of this political and moral debate, but its resolution requires an inquiry familiar to the courts: interpreting a federal statute to determine whether executive action is authorized by, or otherwise consistent with, the enactment.

In 1994, Oregon became the first State to legalize assisted suicide when voters approved a ballot measure enacting the Oregon Death With Dignity Act (ODWDA). Ore. Rev. Stat. § 127.800 *et seq.* (2003). ODWDA, which survived a 1997 ballot measure seeking its repeal, exempts from civil or criminal liability state-licensed physicians who, in compliance with the specific safeguards in ODWDA, dispense or prescribe a lethal dose of drugs upon the request of a terminally ill patient.

The drugs Oregon physicians prescribe under ODWDA are regulated under a federal statute, the Controlled Substances Act (CSA or Act). 84 Stat. 1242, as amended, 21 U. S. C. § 801 *et seq.* The CSA allows these particular drugs to be available only by a written prescription from a registered physician. In the ordinary course the same drugs are prescribed in smaller doses for pain alleviation.

A November 9, 2001, Interpretive Rule issued by the Attorney General addresses the implementation and enforcement of the CSA with respect to ODWDA. It determines that using controlled substances to assist suicide is not a legitimate medical practice and that dispensing or prescribing them for this purpose is unlawful under the CSA. The Interpretive Rule's validity under the CSA is the issue before us.

I

A

We turn first to the text and structure of the CSA. Enacted in 1970 with the main objectives of combating drug abuse and controlling the legitimate and illegitimate traffic in controlled substances, the CSA creates a comprehensive, closed regulatory regime criminalizing the unauthorized manufacture, distribution, dispensing, and possession of substances classified in any of the Act's five schedules. *Gonzales* v. *Raich*, 545 U. S. 1, 12–13 (2005); 21 U. S. C. § 841 (2000 ed. and Supp. II); 21 U. S. C. § 844. The Act places substances in one of five schedules based on their potential for abuse or dependence, their accepted medical use, and their accepted safety for use under medical supervision. Schedule I contains the most severe restrictions on access and use, and Schedule V the least. *Raich*, *supra*, at 14; 21 U. S. C. § 812. Congress classified a host of substances when it enacted the CSA, but the statute permits the Attorney General to add, remove, or reschedule substances. He may do so, however, only after making particular findings, and on scientific and medical matters he is required to accept the findings of the Secretary of Health and Human Services (Secretary). These proceedings must be on the record after an opportunity for comment. See 21 U. S. C. § 811 (2000 ed. and Supp. V).

The present dispute involves controlled substances listed in Schedule II, substances generally available only pursuant to a written, nonrefillable prescription by a physician. 21 U. S. C. § 829(a). A 1971 regulation promulgated by the Attorney General requires that every prescription for a controlled substance "be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice." 21 CFR § 1306.04(a) (2005).

To prevent diversion of controlled substances with medical uses, the CSA regulates the activity of physicians. To issue

lawful prescriptions of Schedule II drugs, physicians must "obtain from the Attorney General a registration issued in accordance with the rules and regulations promulgated by him." 21 U. S. C. §822(a)(2). The Attorney General may deny, suspend, or revoke this registration if, as relevant here, the physician's registration would be "inconsistent with the public interest." §824(a)(4); §822(a)(2). When deciding whether a practitioner's registration is in the public interest, the Attorney General "shall" consider:

> "(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.
>
> "(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.
>
> "(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.
>
> "(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.
>
> "(5) Such other conduct which may threaten the public health and safety." §823(f).

The CSA explicitly contemplates a role for the States in regulating controlled substances, as evidenced by its preemption provision.

> "No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates . . . to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision . . . and that State law so that the two cannot consistently stand together." §903.

B

Oregon voters enacted ODWDA in 1994. For Oregon residents to be eligible to request a prescription under

ODWDA, they must receive a diagnosis from their attending physician that they have an incurable and irreversible disease that, within reasonable medical judgment, will cause death within six months. Ore. Rev. Stat. §§ 127.815, 127.800(12) (2003). Attending physicians must also determine whether a patient has made a voluntary request, ensure a patient's choice is informed, and refer patients to counseling if they might be suffering from a psychological disorder or depression causing impaired judgment. §§ 127.815, 127.825. A second "consulting" physician must examine the patient and the medical record and confirm the attending physician's conclusions. § 127.800(8). Oregon physicians may dispense or issue a prescription for the requested drug, but may not administer it. §§ 127.815(1)(L), 127.880.

The reviewing physicians must keep detailed medical records of the process leading to the final prescription, § 127.855, records that Oregon's Department of Human Services reviews, § 127.865. Physicians who dispense medication pursuant to ODWDA must also be registered with both the State's Board of Medical Examiners and the federal Drug Enforcement Administration (DEA). § 127.815(1)(L). In 2004, 37 patients ended their lives by ingesting a lethal dose of medication prescribed under ODWDA. Oregon Dept. of Human Servs., Seventh Annual Report on Oregon's Death with Dignity Act 20 (Mar. 10, 2005).

C

In 1997, Members of Congress concerned about ODWDA invited the DEA to prosecute or revoke the CSA registration of Oregon physicians who assist suicide. They contended that hastening a patient's death is not legitimate medical practice, so prescribing controlled substances for that purpose violates the CSA. Letter from Sen. Orrin Hatch and Rep. Henry Hyde to Thomas A. Constantine (July 25, 1997), reprinted in Hearing on S. 2151 before the Senate Committee on the Judiciary, 105th Cong., 2d Sess., 2–3 (1999)

(hereinafter Hearing). The letter received an initial, favorable response from the director of the DEA, see Letter from Thomas A. Constantine to Sen. Orrin Hatch (Nov. 5, 1997), Hearing 4–5, but Attorney General Reno considered the matter and concluded that the DEA could not take the proposed action because the CSA did not authorize it to "displace the states as the primary regulators of the medical profession, or to override a state's determination as to what constitutes legitimate medical practice," Letter from Attorney General Janet Reno to Sen. Orrin Hatch, on Oregon's Death with Dignity Act (June 5, 1998), Hearing 5–6. Legislation was then introduced to grant the explicit authority Attorney General Reno found lacking; but it failed to pass. See H. R. 4006, 105th Cong., 2d Sess. (1998); H. R. 2260, 106th Cong., 1st Sess. (1999).

In 2001, John Ashcroft was appointed Attorney General. Perhaps because Mr. Ashcroft had supported efforts to curtail assisted suicide while serving as a Senator, see, *e. g.*, 143 Cong. Rec. 5589–5590 (1997) (remarks of Sen. Ashcroft), Oregon Attorney General Hardy Myers wrote him to request a meeting with Department of Justice officials should the Department decide to revisit the application of the CSA to assisted suicide. Letter of Feb. 2, 2001, App. to Brief for Patient-Respondents in Opposition 55a. Attorney General Myers received a reply letter from one of Attorney General Ashcroft's advisers writing on his behalf, which stated:

> "I am aware of no pending legislation in Congress that would prompt a review of the Department's interpretation of the CSA as it relates to physician-assisted suicide. Should such a review be commenced in the future, we would be happy to include your views in that review." Letter from Lori Sharpe (Apr. 17, 2001), *id.*, at 58a.

On November 9, 2001, without consulting Oregon or apparently anyone outside his Department, the Attorney General

issued an Interpretive Rule announcing his intent to restrict the use of controlled substances for physician-assisted suicide. Incorporating the legal analysis of a memorandum he had solicited from his Office of Legal Counsel, the Attorney General ruled:

> "[A]ssisting suicide is not a 'legitimate medical purpose' within the meaning of 21 CFR 1306.04 (2001), and that prescribing, dispensing, or administering federally controlled substances to assist suicide violates the Controlled Substances Act. Such conduct by a physician registered to dispense controlled substances may 'render his registration . . . inconsistent with the public interest' and therefore subject to possible suspension or revocation under 21 U. S. C. 824(a)(4). The Attorney General's conclusion applies regardless of whether state law authorizes or permits such conduct by practitioners or others and regardless of the condition of the person whose suicide is assisted." 66 Fed. Reg. 56608 (2001).

There is little dispute that the Interpretive Rule would substantially disrupt the ODWDA regime. Respondents contend, and petitioners do not dispute, that every prescription filled under ODWDA has specified drugs classified under Schedule II. A physician cannot prescribe the substances without DEA registration, and revocation or suspension of the registration would be a severe restriction on medical practice. Dispensing controlled substances without a valid prescription, furthermore, is a federal crime. See, *e. g.*, 21 U. S. C. §841(a)(1); *United States* v. *Moore*, 423 U. S. 122 (1975).

In response the State of Oregon, joined by a physician, a pharmacist, and some terminally ill patients, all from Oregon, challenged the Interpretive Rule in federal court. The United States District Court for the District of Oregon entered a permanent injunction against the Interpretive Rule's enforcement.

A divided panel of the Court of Appeals for the Ninth Circuit granted the petitions for review and held the Interpretive Rule invalid. *Oregon* v. *Ashcroft*, 368 F. 3d 1118 (2004). It reasoned that, by making a medical procedure authorized under Oregon law a federal offense, the Interpretive Rule altered the "'"usual constitutional balance between the States and the Federal Government"'" without the requisite clear statement that the CSA authorized such action. *Id.*, at 1124–1125 (quoting *Gregory* v. *Ashcroft*, 501 U. S. 452, 460 (1991), in turn quoting *Atascadero State Hospital* v. *Scanlon*, 473 U. S. 234, 242 (1985)). The Court of Appeals held in the alternative that the Interpretive Rule could not be squared with the plain language of the CSA, which targets only conventional drug abuse and excludes the Attorney General from decisions on medical policy. 368 F. 3d, at 1125–1129.

We granted the Government's petition for certiorari. 543 U. S. 1145 (2005).

II

Executive actors often must interpret the enactments Congress has charged them with enforcing and implementing. The parties before us are in sharp disagreement both as to the degree of deference we must accord the Interpretive Rule's substantive conclusions and whether the Rule is authorized by the statutory text at all. Although balancing the necessary respect for an agency's knowledge, expertise, and constitutional office with the courts' role as interpreter of laws can be a delicate matter, familiar principles guide us. An administrative rule may receive substantial deference if it interprets the issuing agency's own ambiguous regulation. *Auer* v. *Robbins*, 519 U. S. 452, 461–463 (1997). An interpretation of an ambiguous statute may also receive substantial deference. *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842–845 (1984). Deference in accordance with *Chevron*, however, is warranted only "when it appears that Congress delegated authority to the agency generally to make rules carrying the force of law,

and that the agency interpretation claiming deference was promulgated in the exercise of that authority." *United States* v. *Mead Corp.*, 533 U. S. 218, 226–227 (2001). Otherwise, the interpretation is "entitled to respect" only to the extent it has the "power to persuade." *Skidmore* v. *Swift & Co.*, 323 U. S. 134, 140 (1944).

A

The Government first argues that the Interpretive Rule is an elaboration of one of the Attorney General's own regulations, 21 CFR § 1306.04 (2005), which requires all prescriptions be issued "for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice." As such, the Government says, the Interpretive Rule is entitled to considerable deference in accordance with *Auer*.

In our view *Auer* and the standard of deference it accords to an agency are inapplicable here. *Auer* involved a disputed interpretation of the Fair Labor Standards Act of 1938 as applied to a class of law enforcement officers. Under regulations promulgated by the Secretary of Labor, an exemption from overtime pay depended, in part, on whether the employees met the "salary basis" test. 519 U. S., at 454–455. In this Court the Secretary of Labor filed an *amicus* brief explaining why, in his view, the regulations gave exempt status to the officers. *Id.*, at 461. We gave weight to that interpretation, holding that because the applicable test was "a creature of the Secretary's own regulations, his interpretation of it is, under our jurisprudence, controlling unless plainly erroneous or inconsistent with the regulation." *Ibid.* (internal quotation marks omitted).

In *Auer*, the underlying regulations gave specificity to a statutory scheme the Secretary of Labor was charged with enforcing and reflected the considerable experience and expertise the Department of Labor had acquired over time with respect to the complexities of the Fair Labor Standards

Act. Here, on the other hand, the underlying regulation does little more than restate the terms of the statute itself. The language the Interpretive Rule addresses comes from Congress, not the Attorney General, and the near equivalence of the statute and regulation belies the Government's argument for *Auer* deference.

The Government does not suggest that its interpretation turns on any difference between the statutory and regulatory language. The CSA allows prescription of drugs only if they have a "currently accepted medical use," 21 U. S. C. § 812(b); requires a "medical purpose" for dispensing the least controlled substances of those on the schedules, § 829(c); and, in its reporting provision, defines a "valid prescription" as one "issued for a legitimate medical purpose," § 830(b)(3)(A)(ii). Similarly, physicians are considered to be acting as practitioners under the statute if they dispense controlled substances "in the course of professional practice." § 802(21). The regulation uses the terms "legitimate medical purpose" and "the course of professional practice," *ibid.*, but this just repeats two statutory phrases and attempts to summarize the others. It gives little or no instruction on a central issue in this case: Who decides whether a particular activity is in "the course of professional practice" or done for a "legitimate medical purpose"? Since the regulation gives no indication how to decide this issue, the Attorney General's effort to decide it now cannot be considered an interpretation of the regulation. Simply put, the existence of a parroting regulation does not change the fact that the question here is not the meaning of the regulation but the meaning of the statute. An agency does not acquire special authority to interpret its own words when, instead of using its expertise and experience to formulate a regulation, it has elected merely to paraphrase the statutory language.

Furthermore, as explained below, if there is statutory authority to issue the Interpretive Rule it comes from the 1984 amendments to the CSA that gave the Attorney General au-

thority to register and deregister physicians based on the public interest. The regulation was enacted before those amendments, so the Interpretive Rule cannot be justified as indicative of some intent the Attorney General had in 1971. That the current interpretation runs counter to the "intent at the time of the regulation's promulgation" is an additional reason why *Auer* deference is unwarranted. *Thomas Jefferson Univ.* v. *Shalala*, 512 U. S. 504, 512 (1994) (internal quotation marks omitted). Deference under *Auer* being inappropriate, we turn to the question whether the Interpretive Rule, on its own terms, is a permissible interpretation of the CSA.

B

Just as the Interpretive Rule receives no deference under *Auer*, neither does it receive deference under *Chevron*. If a statute is ambiguous, judicial review of administrative rulemaking often demands *Chevron* deference; and the rule is judged accordingly. All would agree, we should think, that the statutory phrase "legitimate medical purpose" is a generality, susceptible to more precise definition and open to varying constructions, and thus ambiguous in the relevant sense. *Chevron* deference, however, is not accorded merely because the statute is ambiguous and an administrative official is involved. To begin with, the rule must be promulgated pursuant to authority Congress has delegated to the official. *Mead*, *supra*, at 226–227.

The Attorney General has rulemaking power to fulfill his duties under the CSA. The specific respects in which he is authorized to make rules, however, instruct us that he is not authorized to make a rule declaring illegitimate a medical standard for care and treatment of patients that is specifically authorized under state law.

The starting point for this inquiry is, of course, the language of the delegation provision itself. In many cases authority is clear because the statute gives an agency broad power to enforce all provisions of the statute. See, *e. g.*, *Na-*

tional Cable & Telecommunications Assn. v. *Brand X Internet Services*, 545 U. S. 967, 980 (2005) (explaining that a Federal Communications Commission regulation received *Chevron* deference because "Congress has delegated to the Commission the authority to . . . 'prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions' of the Act" (quoting 47 U. S. C. § 201(b))); *Household Credit Services, Inc.* v. *Pfennig*, 541 U. S. 232, 238 (2004) (giving *Chevron* deference to a Federal Reserve Board regulation where "Congress has expressly delegated to the Board the authority to prescribe regulations . . . as, in the judgment of the Board, 'are necessary or proper to effectuate the purposes of'" the statute (quoting 15 U. S. C. § 1604(a))). The CSA does not grant the Attorney General this broad authority to promulgate rules.

The CSA gives the Attorney General limited powers, to be exercised in specific ways. His rulemaking authority under the CSA is described in two provisions: (1) "The Attorney General is authorized to promulgate rules and regulations and to charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances and to listed chemicals," 21 U. S. C. § 821 (2000 ed., Supp. V); and (2) "The Attorney General may promulgate and enforce any rules, regulations, and procedures which he may deem necessary and appropriate for the efficient execution of his functions under this subchapter," 21 U. S. C. § 871(b). As is evident from these sections, Congress did not delegate to the Attorney General authority to carry out or effect all provisions of the CSA. Rather, he can promulgate rules relating only to "registration" and "control," and "for the efficient execution of his functions" under the statute.

Turning first to the Attorney General's authority to make regulations for the "control" of drugs, this delegation cannot sustain the Interpretive Rule's attempt to define standards of medical practice. Control is a term of art in the CSA.

"As used in this subchapter," § 802—the subchapter that includes § 821—

> "The term 'control' means to add a drug or other substance, or immediate precursor, to a schedule under part B of this subchapter, whether by transfer from another schedule or otherwise." § 802(5).

To exercise his scheduling power, the Attorney General must follow a detailed set of procedures, including requesting a scientific and medical evaluation from the Secretary. See 21 U. S. C. §§ 811, 812 (2000 ed. and Supp. V). The statute is also specific as to the manner in which the Attorney General must exercise this authority: "Rules of the Attorney General under this subsection [regarding scheduling] shall be made on the record after opportunity for a hearing pursuant to the rulemaking procedures prescribed by [the Administrative Procedure Act, 5 U. S. C. § 553]." 21 U. S. C. § 811(a). The Interpretive Rule now under consideration does not concern the scheduling of substances and was not issued after the required procedures for rules regarding scheduling, so it cannot fall under the Attorney General's "control" authority.

Even if "control" in § 821 were understood to signify something other than its statutory definition, it would not support the Interpretive Rule. The statutory references to "control" outside the scheduling context make clear that the Attorney General can establish controls "against diversion," *e. g.*, § 823(a)(1), but do not give him authority to define diversion based on his view of legitimate medical practice. As explained below, the CSA's express limitations on the Attorney General's authority, and other indications from the statutory scheme, belie any notion that the Attorney General has been granted this implicit authority. Indeed, if "control" were given the expansive meaning required to sustain the Interpretive Rule, it would transform the carefully described

limits on the Attorney General's authority over registration and scheduling into mere suggestions.

We turn, next, to the registration provisions of the CSA. Before 1984, the Attorney General was required to register any physician who was authorized by his State. The Attorney General could only deregister a physician who falsified his application, was convicted of a felony relating to controlled substances, or had his state license or registration revoked. See 84 Stat. 1255. The CSA was amended in 1984 to allow the Attorney General to deny registration to an applicant "if he determines that the issuance of such registration would be inconsistent with the public interest." 21 U. S. C. § 823(f). Registration may also be revoked or suspended by the Attorney General on the same grounds. § 824(a)(4). In determining consistency with the public interest, the Attorney General must, as discussed above, consider five factors, including: the State's recommendation; compliance with state, federal, and local laws regarding controlled substances; and public health and safety. § 823(f).

The Interpretive Rule cannot be justified under this part of the statute. It does not undertake the five-factor analysis and concerns much more than registration. Nor does the Interpretive Rule on its face purport to be an application of the registration provision in § 823(f). It is, instead, an interpretation of the substantive federal law requirements (under 21 CFR § 1306.04 (2005)) for a valid prescription. It begins by announcing that assisting suicide is not a "legitimate medical purpose" under § 1306.04, and that dispensing controlled substances to assist a suicide violates the CSA. 66 Fed. Reg. 56608. Violation is a criminal offense, and often a felony, under 21 U. S. C. § 841 (2000 ed. and Supp. II). The Interpretive Rule thus purports to declare that using controlled substances for physician-assisted suicide is a crime, an authority that goes well beyond the Attorney General's statutory power to register or deregister.

The Attorney General's deregistration power, of course, may carry implications for criminal enforcement because if a physician dispenses a controlled substance after he is deregistered, he violates § 841. The Interpretive Rule works in the opposite direction, however: It declares certain conduct criminal, placing in jeopardy the registration of any physician who engages in that conduct. To the extent the Interpretive Rule concerns registration, it simply states the obvious because one of the five factors the Attorney General must consider in deciding the "public interest" is "[c]ompliance with applicable State, Federal, or local laws relating to controlled substances." 21 U. S. C. § 823(f)(4). The problem with the design of the Interpretive Rule is that it cannot, and does not, explain why the Attorney General has the authority to decide what constitutes an underlying violation of the CSA in the first place. The explanation the Government seems to advance is that the Attorney General's authority to decide whether a physician's actions are inconsistent with the "public interest" provides the basis for the Interpretive Rule.

By this logic, however, the Attorney General claims extraordinary authority. If the Attorney General's argument were correct, his power to deregister necessarily would include the greater power to criminalize even the actions of registered physicians, whenever they engage in conduct he deems illegitimate. This power to criminalize—unlike his power over registration, which must be exercised only after considering five express statutory factors—would be unrestrained. It would be anomalous for Congress to have so painstakingly described the Attorney General's limited authority to deregister a single physician or schedule a single drug, but to have given him, just by implication, authority to declare an entire class of activity outside "the course of professional practice," and therefore a criminal violation of the CSA. See *Federal Maritime Comm'n* v. *Seatrain Lines, Inc.*, 411 U. S. 726, 744 (1973) ("In light of these specific

grants of . . . authority, we are unwilling to construe the ambiguous provisions . . . to serve this purpose [of creating further authority]—a purpose for which it obviously was not intended").

Sutton v. *United Air Lines, Inc.*, 527 U. S. 471 (1999), is instructive. The statute at issue was the Americans with Disabilities Act of 1990 (ADA), which, like the CSA, divides interpretive authority among various executive actors. The Court relied on "the terms and structure of the ADA" to decide that neither the Equal Employment Opportunity Commission (EEOC), nor any other agency, had authority to define "disability" in the ADA. *Id.*, at 479. Specifically, the delegating provision stated that the EEOC "shall issue regulations . . . to carry out this subchapter," 42 U. S. C. § 12116, and the section of the statute defining "disability" was in a different subchapter. The Court did not accept the idea that because "the employment subchapter, *i. e.*, '*this* subchapter,' includes other provisions that use the defined terms, . . . [t]he EEOC might elaborate, through regulations, on the meaning of 'disability' . . . if elaboration is needed in order to 'carry out' the substantive provisions of 'this subchapter.' " 527 U. S., at 514 (BREYER, J., dissenting). See also *Adams Fruit Co.* v. *Barrett*, 494 U. S. 638, 649–650 (1990) (holding that a delegation of authority to promulgate motor vehicle safety "*standards*" did not include the authority to decide the pre-emptive scope of the federal statute because "[n]o such delegation regarding [the statute's] enforcement provisions is evident in the statute").

The same principle controls here. It is not enough that the terms "public interest," "public health and safety," and "Federal law" are used in the part of the statute over which the Attorney General has authority. The statutory terms "public interest" and "public health" do not call on the Attorney General, or any other executive official, to make an independent assessment of the meaning of federal law. The Attorney General did not base the Interpretive Rule on an

application of the five-factor test generally, or the "public health and safety" factor specifically. Even if he had, it is doubtful the Attorney General could cite the "public interest" or "public health" to deregister a physician simply because he deemed a controversial practice permitted by state law to have an illegitimate medical purpose.

As for the federal-law factor, though it does require the Attorney General to decide "[c]ompliance" with the law, it does not suggest that he may decide what the law says. Were it otherwise, the Attorney General could authoritatively interpret "State" and "local laws," which are also included in 21 U. S. C. § 823(f), despite the obvious constitutional problems in his doing so. Just as he must evaluate compliance with federal law in deciding about registration, the Attorney General must as surely evaluate compliance with federal law in deciding whether to prosecute; but this does not entitle him to *Chevron* deference. See *Crandon* v. *United States*, 494 U. S. 152, 177 (1990) (SCALIA, J., concurring in judgment) ("The Justice Department, of course, has a very specific responsibility to determine for itself what this statute means, in order to decide when to prosecute; but we have never thought that the interpretation of those charged with prosecuting criminal statutes is entitled to deference").

The limits on the Attorney General's authority to define medical standards for the care and treatment of patients bear also on the proper interpretation of § 871(b). This section allows the Attorney General to best determine how to execute "his functions." It is quite a different matter, however, to say that the Attorney General can define the substantive standards of medical practice as part of his authority. To find a delegation of this extent in § 871 would put that part of the statute in considerable tension with the narrowly defined delegation concerning control and registration. It would go, moreover, against the plain language of the text to treat a delegation for the "execution" of his functions as a further delegation to define other functions well beyond

the statute's specific grants of authority. When Congress chooses to delegate a power of this extent, it does so not by referring back to the administrator's functions but by giving authority over the provisions of the statute he is to interpret. See, *e. g., National Cable & Telecommunications Assn.*, 545 U. S. 967; *Household Credit Services,* 541 U. S. 232.

The authority desired by the Government is inconsistent with the design of the statute in other fundamental respects. The Attorney General does not have the sole delegated authority under the CSA. He must instead share it with, and in some respects defer to, the Secretary, whose functions are likewise delineated and confined by the statute. The CSA allocates decisionmaking powers among statutory actors so that medical judgments, if they are to be decided at the federal level and for the limited objects of the statute, are placed in the hands of the Secretary. In the scheduling context, for example, the Secretary's recommendations on scientific and medical matters bind the Attorney General. The Attorney General cannot control a substance if the Secretary disagrees. 21 U. S. C. § 811(b). See H. R. Rep. No. 91–1444, pt. 1, p. 33 (1970) (the section "is not intended to authorize the Attorney General to undertake or support medical and scientific research [for the purpose of scheduling], which is within the competence of the Department of Health, Education, and Welfare").

In a similar vein the 1970 Act's regulation of medical practice with respect to drug rehabilitation gives the Attorney General a limited role; for it is the Secretary who, after consultation with the Attorney General and national medical groups, "determine[s] the appropriate methods of professional practice in the medical treatment of . . . narcotic addiction." 42 U. S. C. § 290bb–2a; see 21 U. S. C. § 823(g) (2000 ed. and Supp. II) (stating that the Attorney General shall register practitioners who dispense drugs for narcotics treatment when the Secretary has determined the applicant is qualified to treat addicts and the Attorney General has con-

cluded the applicant will comply with recordkeeping and security regulations); *Moore*, 423 U. S., at 144 (noting that in enacting the addiction-treatment provisions, Congress sought to change the fact "that 'criminal prosecutions' in the past had turned on the opinions of federal prosecutors"); H. R. Rep. No. 93–884, p. 6 (1974) ("This section preserves the distinctions found in the [CSA] between the functions of the Attorney General and the Secretary . . . . All decisions of a medical nature are to be made by the Secretary . . . . Law enforcement decisions respecting the security of stocks of narcotic drugs and the maintenance of records on such drugs are to be made by the Attorney General").

Postenactment congressional commentary on the CSA's regulation of medical practice is also at odds with the Attorney General's claimed authority to determine appropriate medical standards. In 1978, in preparation for ratification of the Convention on Psychotropic Substances, Feb. 21, 1971, [1979–1980] 32 U. S. T. 543, T. I. A. S. No. 9725, Congress decided it would implement the United States' compliance through "the framework of the procedures and criteria for classification of substances provided in the" CSA. 21 U. S. C. § 801a(3). It did so to ensure that "nothing in the Convention will interfere with ethical medical practice in this country as determined by [the Secretary] on the basis of a consensus of the views of the American medical and scientific community." *Ibid.*

The structure of the CSA, then, conveys unwillingness to cede medical judgments to an executive official who lacks medical expertise. In interpreting statutes that divide authority, the Court has recognized: "Because historical familiarity and policymaking expertise account in the first instance for the presumption that Congress delegates interpretive lawmaking power to the agency rather than to the reviewing court, we presume here that Congress intended to invest interpretive power in the administrative actor in the best position to develop these attributes." *Mar-*

tin v. *Occupational Safety and Health Review Comm'n*, 499 U. S. 144, 153 (1991) (citations omitted). This presumption works against a conclusion that the Attorney General has authority to make quintessentially medical judgments.

The Government contends the Attorney General's decision here is a legal, not a medical, one. This generality, however, does not suffice. The Attorney General's Interpretive Rule, and the Office of Legal Counsel memo it incorporates, place extensive reliance on medical judgments and the views of the medical community in concluding that assisted suicide is not a "legitimate medical purpose." See 66 Fed. Reg. 56608 (noting the "medical" distinctions between assisting suicide and giving sufficient medication to alleviate pain); Memorandum from Office of Legal Counsel to Attorney General (June 27, 2001), App. to Pet. for Cert. 121a–122a, and n. 17 (discussing the "Federal medical policy" against physician-assisted suicide), *id.*, at 124a–130a (examining views of the medical community). This confirms that the authority claimed by the Attorney General is both beyond his expertise and incongruous with the statutory purposes and design.

The idea that Congress gave the Attorney General such broad and unusual authority through an implicit delegation in the CSA's registration provision is not sustainable. "Congress, we have held, does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes." *Whitman* v. *American Trucking Assns., Inc.*, 531 U. S. 457, 468 (2001); see *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U. S. 120, 160 (2000) ("[W]e are confident that Congress could not have intended to delegate a decision of such economic and political significance to an agency in so cryptic a fashion").

The importance of the issue of physician-assisted suicide, which has been the subject of an "earnest and profound debate" across the country, *Glucksberg*, 521 U. S., at 735, makes the oblique form of the claimed delegation all the more sus-

pect. Under the Government's theory, moreover, the medical judgments the Attorney General could make are not limited to physician-assisted suicide. Were this argument accepted, he could decide whether any particular drug may be used for any particular purpose, or indeed whether a physician who administers any controversial treatment could be deregistered. This would occur, under the Government's view, despite the statute's express limitation of the Attorney General's authority to registration and control, with attendant restrictions on each of those functions, and despite the statutory purposes to combat drug abuse and prevent illicit drug trafficking.

We need not decide whether *Chevron* deference would be warranted for an interpretation issued by the Attorney General concerning matters closer to his role under the CSA, namely, preventing doctors from engaging in illicit drug trafficking. In light of the foregoing, however, the CSA does not give the Attorney General authority to issue the Interpretive Rule as a statement with the force of law.

If, in the course of exercising his authority, the Attorney General uses his analysis in the Interpretive Rule only for guidance in deciding when to prosecute or deregister, then the question remains whether his substantive interpretation is correct. Since the Interpretive Rule was not promulgated pursuant to the Attorney General's authority, its interpretation of "legitimate medical purpose" does not receive *Chevron* deference. Instead, it receives deference only in accordance with *Skidmore*. "The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." 323 U. S., at 140; see also *Mead*, 533 U. S., at 235 (noting that an opinion receiving *Skidmore* deference may "claim the merit of its writer's thoroughness, logic, and expertness, its fit with prior interpretations, and any other

sources of weight"). The deference here is tempered by the Attorney General's lack of expertise in this area and the apparent absence of any consultation with anyone outside the Department of Justice who might aid in a reasoned judgment. In any event, under *Skidmore*, we follow an agency's rule only to the extent it is persuasive, see *Christensen* v. *Harris County*, 529 U. S. 576, 587 (2000); and for the reasons given and for further reasons set out below, we do not find the Attorney General's opinion persuasive.

III

As we have noted before, the CSA "repealed most of the earlier antidrug laws in favor of a comprehensive regime to combat the international and interstate traffic in illicit drugs." *Raich*, 545 U. S., at 12. In doing so, Congress sought to "conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances." *Ibid.* It comes as little surprise, then, that we have not considered the extent to which the CSA regulates medical practice beyond prohibiting a doctor from acting as a drug "'pusher'" instead of a physician. *Moore*, 423 U. S., at 143. In *Moore*, we addressed a situation in which a doctor "sold drugs, not for legitimate purposes, but primarily for the profits to be derived therefrom." *Id.*, at 135 (quoting H. R. Rep. No. 91–1444, pt. 1, at 10; internal quotation marks omitted). There the defendant, who had engaged in large-scale overprescribing of methadone, "concede[d] in his brief that he did not observe generally accepted medical practices." 423 U. S., at 126. And in *United States* v. *Oakland Cannabis Buyers' Cooperative*, 532 U. S. 483 (2001), Congress' express determination that marijuana had no accepted medical use foreclosed any argument about statutory coverage of drugs available by a doctor's prescription.

In deciding whether the CSA can be read as prohibiting physician-assisted suicide, we look to the statute's text and design. The statute and our case law amply support the

conclusion that Congress regulates medical practice insofar as it bars doctors from using their prescription-writing powers as a means to engage in illicit drug dealing and trafficking as conventionally understood. Beyond this, however, the statute manifests no intent to regulate the practice of medicine generally. The silence is understandable given the structure and limitations of federalism, which allow the States "'great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons.'" *Medtronic, Inc.* v. *Lohr*, 518 U. S. 470, 475 (1996) (quoting *Metropolitan Life Ins. Co.* v. *Massachusetts*, 471 U. S. 724, 756 (1985)).

The structure and operation of the CSA presume and rely upon a functioning medical profession regulated under the States' police powers. The Attorney General can register a physician to dispense controlled substances "if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices." 21 U. S. C. § 823(f). When considering whether to revoke a physician's registration, the Attorney General looks not just to violations of federal drug laws; but he "shall" also consider "[t]he recommendation of the appropriate State licensing board or professional disciplinary authority" and the registrant's compliance with state and local drug laws. *Ibid.* The very definition of a "practitioner" eligible to prescribe includes physicians "licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices" to dispense controlled substances. § 802(21). Further cautioning against the conclusion that the CSA effectively displaces the States' general regulation of medical practice is the Act's pre-emption provision, which indicates that, absent a positive conflict, none of the Act's provisions should be "construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates . . . to the exclusion of any State law on the same subject mat-

ter which would otherwise be within the authority of the State." § 903.

Oregon's regime is an example of the state regulation of medical practice that the CSA presupposes. Rather than simply decriminalizing assisted suicide, ODWDA limits its exercise to the attending physicians of terminally ill patients, physicians who must be licensed by Oregon's Board of Medical Examiners. Ore. Rev. Stat. §§ 127.815, 127.800(10) (2003). The statute gives attending physicians a central role, requiring them to provide prognoses and prescriptions, give information about palliative alternatives and counseling, and ensure patients are competent and acting voluntarily. § 127.815. Any eligible patient must also get a second opinion from another registered physician, § 127.820, and the statute's safeguards require physicians to keep and submit to inspection detailed records of their actions, §§ 127.855, 127.865.

Even though regulation of health and safety is "primarily, and historically, a matter of local concern," *Hillsborough County* v. *Automated Medical Laboratories, Inc.*, 471 U. S. 707, 719 (1985), there is no question that the Federal Government can set uniform national standards in these areas. See *Raich*, *supra*, at 9. In connection to the CSA, however, we find only one area in which Congress set general, uniform standards of medical practice. Title I of the Comprehensive Drug Abuse Prevention and Control Act of 1970, of which the CSA was Title II, provides:

> "[The Secretary], after consultation with the Attorney General and with national organizations representative of persons with knowledge and experience in the treatment of narcotic addicts, shall determine the appropriate methods of professional practice in the medical treatment of the narcotic addiction of various classes of narcotic addicts, and shall report thereon from time to time to the Congress." § 4, 84 Stat. 1241, codified at 42 U. S. C. § 290bb–2a.

This provision strengthens the understanding of the CSA as a statute combating recreational drug abuse, and also indicates that when Congress wants to regulate medical practice in the given scheme, it does so by explicit language in the statute.

In the face of the CSA's silence on the practice of medicine generally and its recognition of state regulation of the medical profession it is difficult to defend the Attorney General's declaration that the statute impliedly criminalizes physician-assisted suicide. This difficulty is compounded by the CSA's consistent delegation of medical judgments to the Secretary and its otherwise careful allocation of powers for enforcing the limited objects of the CSA. See Part II–B, *supra*. The Government's attempt to meet this challenge rests, for the most part, on the CSA's requirement that every Schedule II drug be dispensed pursuant to a "written prescription of a practitioner." 21 U. S. C. § 829(a). A prescription, the Government argues, necessarily implies that the substance is being made available to a patient for a legitimate medical purpose. The statute, in this view, requires an anterior judgment about the term "medical" or "medicine." The Government contends ordinary usage of these words ineluctably refers to a healing or curative art, which by these terms cannot embrace the intentional hastening of a patient's death. It also points to the teachings of Hippocrates, the positions of prominent medical organizations, the Federal Government, and the judgment of the 49 States that have not legalized physician-assisted suicide as further support for the proposition that the practice is not legitimate medicine. See Brief for Petitioners 22–24; Memorandum from Office of Legal Counsel to Attorney General, App. to Pet. for Cert. 124a–130a.

On its own, this understanding of medicine's boundaries is at least reasonable. The primary problem with the Government's argument, however, is its assumption that the CSA

impliedly authorizes an executive officer to bar a use simply because it may be inconsistent with one reasonable understanding of medical practice. Viewed alone, the prescription requirement may support such an understanding, but statutes "should not be read as a series of unrelated and isolated provisions." *Gustafson* v. *Alloyd Co.*, 513 U. S. 561, 570 (1995). The CSA's substantive provisions and their arrangement undermine this assertion of an expansive federal authority to regulate medicine.

The statutory criteria for deciding what substances are controlled, determinations which are central to the Act, consistently connect the undefined term "drug abuse" with addiction or abnormal effects on the nervous system. When the Attorney General schedules drugs, he must consider a substance's psychic or physiological dependence liability. 21 U. S. C. § 811(c)(7). To classify a substance in Schedules II through V, the Attorney General must find abuse of the drug leads to psychological or physical dependence. § 812(b). Indeed, the differentiation of Schedules II through V turns in large part on a substance's habit-forming potential: The more addictive a substance, the stricter the controls. *Ibid.* When Congress wanted to extend the CSA's regulation to substances not obviously habit forming or psychotropic, moreover, it relied not on executive ingenuity, but rather on specific legislation. See § 1902(a) of the Anabolic Steroids Control Act of 1990, 104 Stat. 4851 (placing anabolic steroids in Schedule III).

The statutory scheme with which the CSA is intertwined further confirms a more limited understanding of the prescription requirement. When the Secretary considers Food and Drug Administration approval of a substance with "stimulant, depressant, or hallucinogenic effect," he must forward the information to the Attorney General for possible scheduling. Shedding light on Congress' understanding of drug abuse, this requirement appears under the heading "Abuse

potential." 21 U. S. C. §811(f). Similarly, when Congress prepared to implement the Convention on Psychotropic Substances, it did so through the CSA. §801a.

The Interpretive Rule rests on a reading of the prescription requirement that is persuasive only to the extent one scrutinizes the provision without the illumination of the rest of the statute. See *Massachusetts* v. *Morash*, 490 U. S. 107, 114–115 (1989). Viewed in its context, the prescription requirement is better understood as a provision that ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, the provision also bars doctors from peddling to patients who crave the drugs for those prohibited uses. See *Moore*, 423 U. S., at 135, 143. To read prescriptions for assisted suicide as constituting "drug abuse" under the CSA is discordant with the phrase's consistent use throughout the statute, not to mention its ordinary meaning.

The Government's interpretation of the prescription requirement also fails under the objection that the Attorney General is an unlikely recipient of such broad authority, given the Secretary's primacy in shaping medical policy under the CSA, and the statute's otherwise careful allocation of decisionmaking powers. Just as the conventions of expression indicate that Congress is unlikely to alter a statute's obvious scope and division of authority through muffled hints, the background principles of our federal system also belie the notion that Congress would use such an obscure grant of authority to regulate areas traditionally supervised by the States' police power. It is unnecessary even to consider the application of clear statement requirements, see, *e. g.*, *United States* v. *Bass*, 404 U. S. 336, 349 (1971); cf. *BFP* v. *Resolution Trust Corporation*, 511 U. S. 531, 544–546 (1994), or presumptions against pre-emption, see, *e. g.*, *Rush Prudential HMO, Inc.* v. *Moran*, 536 U. S. 355, 387 (2002), to reach this commonsense conclusion. For all these reasons, we conclude the CSA's prescription requirement does not au-

thorize the Attorney General to bar dispensing controlled substances for assisted suicide in the face of a state medical regime permitting such conduct.

IV

The Government, in the end, maintains that the prescription requirement delegates to a single executive officer the power to effect a radical shift of authority from the States to the Federal Government to define general standards of medical practice in every locality. The text and structure of the CSA show that Congress did not have this far-reaching intent to alter the federal-state balance and the congressional role in maintaining it.

The judgment of the Court of Appeals is

Affirmed.

JUSTICE SCALIA, with whom CHIEF JUSTICE ROBERTS and JUSTICE THOMAS join, dissenting.

The Court concludes that the Attorney General lacked authority to declare assisted suicide illicit under the Controlled Substances Act (CSA), because the CSA is concerned only with "*illicit* drug dealing and trafficking," *ante*, at 270 (emphasis added). This question-begging conclusion is obscured by a flurry of arguments that distort the statute and disregard settled principles of our interpretive jurisprudence.

Contrary to the Court's analysis, this case involves not one but *three* independently sufficient grounds for reversing the Ninth Circuit's judgment. First, the Attorney General's interpretation of "legitimate medical purpose" in 21 CFR § 1306.04 (2005) (hereinafter Regulation) is clearly valid, given the substantial deference we must accord it under *Auer* v. *Robbins*, 519 U. S. 452, 461 (1997), and his two remaining conclusions follow naturally from this interpretation. See Part I, *infra*. Second, even if this interpretation of the Regulation is entitled to lesser deference or no defer-

ence at all, it is by far the most natural interpretation of the Regulation—whose validity is not challenged here. This interpretation is thus correct even upon *de novo* review. See Part II, *infra.* Third, even if that interpretation of the Regulation were incorrect, the Attorney General's independent interpretation of the *statutory* phrase "public interest" in 21 U. S. C. §§ 824(a) and 823(f), and his implicit interpretation of the statutory phrase "public health and safety" in § 823(f)(5), are entitled to deference under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984), and they are valid under *Chevron.* See Part III, *infra.* For these reasons, I respectfully dissent.

I

The Interpretive Rule issued by the Attorney General (hereinafter Directive) provides in relevant part as follows:

> "For the reasons set forth in the OLC Opinion, I hereby determine that assisting suicide is not a 'legitimate medical purpose' within the meaning of 21 CFR § 1306.04 (2001), and that prescribing, dispensing, or administering federally controlled substances to assist suicide violates the CSA. Such conduct by a physician registered to dispense controlled substances may 'render his registration . . . inconsistent with the public interest' and therefore subject to possible suspension or revocation under 21 U. S. C. [§] 824(a)(4)." 66 Fed. Reg. 56608 (2001).

The Directive thus purports to do three distinct things: (1) to interpret the phrase "legitimate medical purpose" in the Regulation to exclude physician-assisted suicide; (2) to determine that prescribing, dispensing, and administering federally controlled substances to assist suicide violates the CSA; and (3) to determine that participating in physician-assisted suicide may render a practitioner's registration "inconsistent with the public interest" within the meaning of 21 U. S. C. §§ 823(f) and 824(a)(4) (which incorporates § 823(f) by refer-

ence). The Court's analysis suffers from an unremitting failure to distinguish among these distinct propositions in the Directive.

As an initial matter, the validity of the Regulation's interpretation of "prescription" in § 829 to require a "legitimate medical purpose" is not at issue. Respondents conceded the validity of this interpretation in the lower court, see *Oregon* v. *Ashcroft*, 368 F. 3d 1118, 1133 (CA9 2004), and they have not challenged it here. By its assertion that the Regulation merely restates the statutory standard of 21 U. S. C. § 830(b)(3)(A)(ii), see *ante*, at 257, the Court likewise accepts that the "legitimate medical purpose" interpretation for prescriptions is proper. See also *ante*, at 258 (referring to "legitimate medical purpose" as a "statutory phrase"). It is beyond dispute, then, that a "prescription" under § 829 must issue for a "legitimate medical purpose."

A

Because the Regulation was promulgated by the Attorney General, and because the Directive purported to interpret the language of the Regulation, see 66 Fed. Reg. 56608, this case calls for the straightforward application of our rule that an agency's interpretation of its own regulations is "controlling unless plainly erroneous or inconsistent with the regulation." *Auer*, *supra*, at 461 (internal quotation marks omitted). The Court reasons that *Auer* is inapplicable because the Regulation "does little more than restate the terms of the statute itself." *Ante*, at 257. "Simply put," the Court asserts, "the existence of a parroting regulation does not change the fact that the question here is not the meaning of the regulation but the meaning of the statute." *Ibid.*

To begin with, it is doubtful that any such exception to the *Auer* rule exists. The Court cites no authority for it, because there is none. To the contrary, our unanimous decision in *Auer* makes clear that broadly drawn regulations are entitled to no less respect than narrow ones. "A rule requir-

ing the Secretary to construe his own regulations narrowly would make little sense, *since he is free to write the regulations as broadly as he wishes, subject only to the limits imposed by the statute.*" 519 U. S., at 463 (emphasis added).

Even if there were an antiparroting canon, however, it would have no application here. The Court's description of 21 CFR § 1306.04 (2005) as a regulation that merely "paraphrase[s] the statutory language," *ante*, at 257, is demonstrably false. In relevant part, the Regulation interprets the word "prescription" as it appears in 21 U. S. C. § 829, which governs the dispensation of controlled substances other than those on Schedule I (which may not be dispensed at all). Entitled "[p]rescriptions," § 829 requires, with certain exceptions not relevant here, "the written prescription of a practitioner" (usually a medical doctor) for the dispensation of Schedule II substances (§ 829(a)), "a written or oral prescription" for substances on Schedules III and IV (§ 829(b)), and no prescription but merely a "medical purpose" for the dispensation of Schedule V substances (§ 829(c)).

As used in this section, "prescription" is susceptible of at least three reasonable interpretations. First, it might mean any oral or written direction of a practitioner for the dispensation of drugs. See *United States* v. *Moore*, 423 U. S. 122, 137, n. 13 (1975) ("On its face § 829 addresses only the form that a prescription must take. . . . [Section] 829 by its terms does not limit the authority of a practitioner"). Second, in light of the requirement of a "medical purpose" for the dispensation of Schedule V substances, see § 829(c), it might mean a practitioner's oral or written direction for the dispensation of drugs that the practitioner believes to be for a legitimate medical purpose. See Webster's New International Dictionary 1954 (2d ed. 1950) (hereinafter Webster's Second) (defining "prescription" as "[a] written direction for the preparation and use of a *medicine*"); *id.*, at 1527 (defining "medicine" as "[a]ny substance or preparation used in *treating disease*") (emphasis added). Finally, "prescription" might

refer to a practitioner's direction for the dispensation of drugs that serves an *objectively* legitimate medical purpose, regardless of the practitioner's *subjective* judgment about the legitimacy of the anticipated use. See *ibid.*

The Regulation at issue constricts or clarifies the statute by adopting the last and narrowest of these three possible interpretations of the undefined statutory term: "A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose . . . ." 21 CFR § 1306.04(a) (2005). We have previously *acknowledged* that the Regulation gives added content to the text of the statute: "The medical purpose requirement explicit in subsection (c) [of § 829] could be implicit in subsections (a) and (b). Regulation § [1]306.04 makes it explicit." *Moore*, *supra*, at 137, n. 13.[1]

The Court points out that the Regulation adopts some of the phrasing employed in unrelated sections of the statute. See *ante*, at 257. This is irrelevant. A regulation that significantly clarifies the meaning of an otherwise ambiguous statutory provision is not a "parroting" regulation, *regardless* of the sources that the agency draws upon for the clarification. Moreover, most of the statutory phrases that the Court cites as appearing in the Regulation, see *ibid.* (citing 21 U. S. C. §§ 812(b) ("'currently accepted medical use'"), 829(c) ("'medical purpose'"), 802(21) ("'in the course of professional practice'")), are inapposite because they do *not* "parrot" the *only* phrase in the Regulation that the Directive purported to construe. See 66 Fed. Reg. 56608 ("I hereby

[1] To be sure, this acknowledgment did not go far enough, because it overlooked the significance of the word "legitimate," which is most naturally understood to create an objective, *federal* standard for appropriate medical uses. See *Mississippi Band of Choctaw Indians* v. *Holyfield*, 490 U. S. 30, 43 (1989) ("We start . . . with the general assumption that in the absence of a plain indication to the contrary, . . . Congress when it enacts a statute is not making the application of the federal act dependent on state law" (internal quotation marks omitted)).

determine that assisting suicide is not a 'legitimate medical purpose' within the meaning of 21 CFR § 1306.04 . . . "). None of them includes the key word "legitimate," which gives the most direct support to the Directive's theory that § 829(c) presupposes a uniform federal standard of medical practice.[2]

Since the Regulation does not run afowl (so to speak) of the Court's newly invented prohibition of "parroting"; and since the Directive represents the agency's own interpretation of that concededly valid regulation; the only question remaining is whether that interpretation is "plainly erroneous or inconsistent with the regulation"; otherwise, it is "controlling." *Auer*, 519 U. S., at 461 (internal quotation marks omitted). This is not a difficult question. The Directive is assuredly valid insofar as it interprets "prescription" to require a medical purpose that is "legitimate" as a matter of *federal* law—since that is an interpretation of "prescription" that we ourselves have adopted. *Webb* v. *United States*, 249 U. S. 96 (1919), was a prosecution under the Harrison Act of a doctor who wrote prescriptions of morphine "for the purpose of providing the user with morphine sufficient to keep him comfortable by maintaining his customary use," *id.*,

[2] The only place outside 21 U. S. C. § 801 in which the statute uses the phrase "legitimate medical purpose" is in defining the phrase "valid prescription" for purposes of the reporting requirements that apply to mail orders of regulated substances. See § 830(b)(3)(A)(ii). The Regulation did not "parrot" this statutory section, because the Regulation was adopted in 1971 and the statutory language was added in 2000. See Brief for Petitioners 17 (citing the Children's Health Act of 2000, § 3652, 114 Stat. 1239, 21 U. S. C. § 830(b)(3)). But even if the statutory language had predated the Regulation, there would be no "parroting" of that phrase. In using the word "prescription" *without* definition in the much more critical § 829, Congress left the task of resolving any ambiguity in that word, used in that context, to the relevant executive officer. That the officer did so by deeming relevant a technically inapplicable statutory definition contained elsewhere in the statute does not make him a parrot. He has given to the statutory text a meaning it did not explicitly—and perhaps even not necessarily—contain.

at 99 (internal quotation marks omitted). The dispositive issue in the case was whether such authorizations were "prescriptions" within the meaning of § 2(b) of the Harrison Act, predecessor to the CSA. *Ibid.* We held that "to call such an order for the use of morphine a physician's prescription would be so plain a perversion of meaning that no discussion of the subject is required." *Id.*, at 99–100. Like the Directive, this interprets "prescription" to require medical purpose that is legitimate as a matter of federal law. And the Directive is also assuredly valid insofar as it interprets "legitimate medical purpose" as a matter of federal law to exclude physician-assisted suicide, because that is not only a permissible but indeed the most natural interpretation of that phrase. See Part II, *infra.*

B

Even if the Regulation merely parroted the statute, and the Directive therefore had to be treated as though it construed the statute directly, see *ante*, at 257, the Directive would still be entitled to deference under *Chevron.* The Court does not take issue with the Solicitor General's contention that no alleged procedural defect, such as the absence of notice-and-comment rulemaking before promulgation of the Directive, renders *Chevron* inapplicable here. See Reply Brief for Petitioners 4 (citing *Barnhart* v. *Walton,* 535 U. S. 212, 219–222 (2002); 5 U. S. C. § 553(b)(3)(A) (exempting interpretive rules from notice-and-comment rulemaking)). Instead, the Court holds that the Attorney General lacks interpretive authority to issue the Directive at all, on the ground that the explicit delegation provision, 21 U. S. C. § 821 (2000 ed., Supp. V), limits his rulemaking authority to "registration and control," which (according to the Court) are not implicated by the Directive's interpretation of the prescription requirement. See *ante*, at 259–262.

Setting aside the implicit delegation inherent in Congress's use of the undefined term "prescription" in § 829, the Court's

reading of "control" in § 821 is manifestly erroneous. The Court urges, *ante*, at 260, that "control" is a term defined in part A of the subchapter (entitled "Introductory Provisions") to mean "to add a drug or other substance . . . to a schedule *under part B of this subchapter*," 21 U. S. C. § 802(5) (emphasis added). But § 821 is not included in "part B of this subchapter," which is entitled "Authority to Control; Standards and Schedules," and consists of the sections related to *scheduling,* 21 U. S. C. §§ 811–814 (2000 ed. and Supp. V), where the statutory definition is uniquely appropriate. Rather, § 821 is found in *part C* of the subchapter, §§ 821–830, entitled "Registration of Manufacturers, Distributors, and Dispensers of Controlled Substances," which includes all and only the provisions relating to the "manufacture, distribution, and dispensing of controlled substances," § 821. The artificial definition of "control" in § 802(5) has no conceivable application to the use of that word in § 821. Under that definition, "control" must take a *substance* as its direct object, see 21 U. S. C. § 802(5) ("to add a drug or other substance . . . to a schedule")—and that is how "control" is consistently used throughout *part B.* See, *e. g.*, §§ 811(b) ("proceedings . . . to *control* a drug or other substance"), 811(c) ("each drug or other substance proposed to be *controlled* or removed from the schedules"), 811(d)(1) ("If *control* is required . . . the Attorney General shall issue an order *controlling* such drug . . . "), 812(b) ("Except where *control* is required . . . a drug or other substance may not be placed in any schedule . . . "). In § 821, by contrast, the term "control" has as its object, not "a drug or other substance," but rather the *processes* of "manufacture, distribution, and dispensing of controlled substances." It could not be clearer that the artificial definition of "control" in § 802(5) is inapplicable. It makes no sense to speak of "adding the manufacturing, distribution, and dispensing of substances to a schedule." We do not force term-of-art definitions into contexts where they plainly do not fit and produce nonsense. What

is obviously intended in § 821 is the ordinary meaning of "control"—namely, "[t]o exercise restraining or directing influence over; to dominate; regulate; hence, to hold from action; to curb," Webster's Second 580. "Control" is regularly used in this ordinary sense elsewhere in *part C* of the subchapter. See, *e. g.*, 21 U. S. C. §§ 823(a)(1), (b)(1), (d)(1), (e)(1), (h)(1) ("maintenance of effective *controls* against diversion"); §§ 823(a)(5), (d)(5) ("establishment of effective *control* against diversion"); § 823(g)(2)(H)(i) ("to exercise supervision or *control* over the practice of medicine"); § 830(b)(1)(C) ("a listed chemical under the *control* of the regulated person"); § 830(c)(2)(D) ("chemical *control* laws") (emphasis added).

When the word is given its ordinary meaning, the Attorney General's interpretation of the prescription requirement of § 829 plainly "relat[es] to the . . . *control* of the . . . dispensing of controlled substances," 21 U. S. C. § 821 (2000 ed., Supp. V) (emphasis added), since a prescription is the chief requirement for "dispensing" such drugs, see § 829. The same meaning is compelled by the fact that § 821 is the first section not of part B of the subchapter, which deals entirely with "control" in the artificial sense, but of part C, every section of which relates to the "registration and control of the manufacture, distribution, and dispensing of controlled substances," § 821. See §§ 822 (persons required to register), 823 (registration requirements), 824 (denial, revocation, or suspension of registration), 825 (labeling and packaging), 826 (production quotas for controlled substances), 827 (recordkeeping and reporting requirements of registrants), 828 (order forms), 829 (prescription requirements), 830 (regulation of listed chemicals and certain machines). It would be peculiar for the first section of this part to authorize rulemaking for matters covered by the *previous* part. The only sensible interpretation of § 821 is that it gives the Attorney General interpretive authority over the provisions of part C, all of which "relat[e] to the registration and control of the

manufacture, distribution, and dispensing of controlled substances." These provisions include *both* the prescription requirement of § 829, and the criteria for registration and deregistration of §§ 823 and 824 (as relevant below, see Part III, *infra*).[3]

C

In sum, the Directive's construction of "legitimate medical purpose" is a perfectly valid agency interpretation of its own regulation; and if not that, a perfectly valid agency interpretation of the statute. No one contends that the construction is "plainly erroneous or inconsistent with the regulation," *Bowles* v. *Seminole Rock & Sand Co.*, 325 U. S. 410, 414 (1945), or beyond the scope of ambiguity in the statute, see *Chevron*, 467 U. S., at 843. In fact, as explained below, the Directive provides *the most natural* interpretation of the Regulation and of the statute. The Directive thus definitively establishes that a doctor's order authorizing the dispensation of a Schedule II substance for the purpose of assisting a suicide is not a "prescription" within the meaning of § 829.

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[3] The Court concludes that "[e]ven if 'control' in § 821 were understood to signify something other than its statutory definition, it would not support the Interpretive Rule." *Ante*, at 260. That conclusion rests upon a misidentification of the text that the Attorney General, pursuant to his "control" authority, is interpreting. No one argues that the word "control" in § 821 gives the Attorney General "authority to define diversion based on his view of legitimate medical practice," *ibid.* Rather, that word authorizes the Attorney General to interpret (among other things) the "prescription" requirement of § 829. The question then becomes whether the phrase "*legitimate medical purpose*" (which all agree is included in "prescription") is at least *open* to the interpretation announced in the Directive. See *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 843 (1984). And of course it is—as the Court effectively concedes two pages earlier: "All would agree, we should think, that the statutory phrase 'legitimate medical purpose' is a generality, susceptible to more precise definition and open to varying constructions, and thus ambiguous in the relevant sense." *Ante*, at 258 (citing *Chevron*).

Once this conclusion is established, the other two conclusions in the Directive follow inevitably. Under our reasoning in *Moore*, writing prescriptions that are illegitimate under § 829 is certainly not "in the [usual] course of professional practice" under § 802(21) and thus not "authorized by this subchapter" under § 841(a). See 423 U. S., at 138, 140–141. A doctor who does this may thus be prosecuted under § 841(a), and so it follows that such conduct "violates the Controlled Substances Act," 66 Fed. Reg. 56608. And since such conduct is thus not in "[c]ompliance with applicable . . . Federal . . . laws relating to controlled substances," 21 U. S. C. § 823(f)(4), and may also be fairly judged to "threaten the public health and safety," § 823(f)(5), it follows that "[s]uch conduct by a physician registered to dispense controlled substances *may* 'render his registration . . . inconsistent with the public interest' and therefore subject to *possible* suspension or revocation under 21 U. S. C. [§] 824(a)(4)," 66 Fed. Reg. 56608 (emphasis added).

II

Even if the Directive were entitled to no deference whatever, the most reasonable interpretation of the Regulation and of the statute would produce the same result. Virtually every relevant source of authoritative meaning confirms that the phrase "legitimate medical purpose"[4] does not include intentionally assisting suicide. "Medicine" refers to "[t]he science and art dealing with the prevention, cure, or alleviation of disease." Webster's Second 1527. The use of the word "legitimate" connotes an *objective* standard of "medicine," and our presumption that the CSA creates a uniform federal law regulating the dispensation of controlled substances, see *Mississippi Band of Choctaw Indians* v. *Holy-*

[4] This phrase appears only in the Regulation and not in the relevant section of the statute. But as pointed out earlier, the Court does not contest that this is the most reasonable interpretation of the section—regarding it, indeed, as a mere "parroting" of the statute.

field, 490 U. S. 30, 43 (1989), means that this objective standard must be a federal one. As recounted in detail in the memorandum for the Attorney General that is attached as an appendix to the Directive (OLC Memo), virtually every medical authority from Hippocrates to the current American Medical Association (AMA) confirms that assisting suicide has seldom or never been viewed as a form of "prevention, cure, or alleviation of disease," and (even more so) that assisting suicide is not a "legitimate" branch of that "science and art." See OLC Memo, App. to Pet. for Cert. 113a–130a. Indeed, the AMA has determined that "'[p]hysician-assisted suicide is fundamentally incompatible with the physician's role as healer.'" *Washington* v. *Glucksberg*, 521 U. S. 702, 731 (1997). "[T]he overwhelming weight of authority in judicial decisions, the past and present policies of nearly all of the States and of the Federal Government, and the clear, firm and unequivocal views of the leading associations within the American medical and nursing professions, establish that assisting in suicide . . . is not a legitimate medical purpose." OLC Memo, *supra*, at 129a. See also *Glucksberg*, *supra*, at 710, n. 8 (prohibitions or condemnations of assisted suicide in 50 jurisdictions, including 47 States, the District of Columbia, and 2 Territories).

In the face of this "overwhelming weight of authority," the Court's admission that "[o]n its own, this understanding of medicine's boundaries is *at least reasonable*," *ante*, at 272 (emphasis added), tests the limits of understatement. The only explanation for such a distortion is that the Court confuses the *normative* inquiry of what the boundaries of medicine *should be*—which it is laudably hesitant to undertake—with the *objective* inquiry of what the accepted definition of "medicine" *is*. The same confusion is reflected in the Court's remarkable statement that "[t]he primary problem with the Government's argument . . . is its assumption that the CSA impliedly authorizes an executive officer to bar a use simply

because it may be inconsistent with *one reasonable understanding* of medical practice." *Ante*, at 272–273 (emphasis added). The fact that many in Oregon believe that the boundaries of "legitimate medicine" *should be* extended to include assisted suicide does not change the fact that the overwhelming weight of authority (including the 47 States that condemn physician-assisted suicide) confirms that they have not yet been so extended. Not even those of our Eighth Amendment cases most generous in discerning an "evolution" of national standards would have found, on this record, that the concept of "legitimate medicine" has evolved so far. See *Roper* v. *Simmons*, 543 U. S. 551, 564–567 (2005).

The Court contends that the phrase "legitimate medical purpose" *cannot* be read to establish a broad, uniform federal standard for the medically proper use of controlled substances. *Ante*, at 268. But it also rejects the most plausible alternative proposition, urged by the State, that any use authorized under state law constitutes a "legitimate medical purpose." (The Court is perhaps leery of embracing this position because the State candidly admitted at oral argument that, on its view, a State could exempt from the CSA's coverage the use of morphine to achieve euphoria.) Instead, the Court reverse-engineers an approach somewhere between a uniform national standard and a state-by-state approach, holding (with no basis in the CSA's text) that "legitimate medical purpose" refers to *all* uses of drugs unrelated to "addiction and recreational abuse." *Ante*, at 274. Thus, though the Court pays lipservice to state autonomy, see *ante*, at 269–271, its standard for "legitimate medical purpose" is in fact a hazily defined *federal* standard based on its purposive reading of the CSA, and extracted from obliquely relevant sections of the Act. In particular, relying on its observation that the criteria for scheduling controlled substances are primarily concerned with "addiction or abnormal effects on the nervous system," *ante*, at 273 (citing 21

U. S. C. §§ 811(c)(7), 812(b), 811(f), 801a), the Court concludes that the CSA's prescription requirement must be interpreted in light of this narrow view of the statute's purpose.

Even assuming, however, that the *principal* concern of the CSA is the curtailment of "addiction and recreational abuse," there is no reason to think that this is its *exclusive* concern. We have repeatedly observed that Congress often passes statutes that sweep more broadly than the main problem they were designed to address. "[S]tatutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed." *Oncale* v. *Sundowner Offshore Services, Inc.*, 523 U. S. 75, 79 (1998). See also *H. J. Inc.* v. *Northwestern Bell Telephone Co.*, 492 U. S. 229, 248 (1989).

The scheduling provisions of the CSA on which the Court relies confirm that the CSA's "design," *ante*, at 269, is not as narrow as the Court asserts. In making scheduling determinations, the Attorney General must not only consider a drug's "psychic or physiological dependence liability" as the Court points out, *ante*, at 273 (citing 21 U. S. C. § 811(c)(7)), but must also consider such broad factors as "[t]he state of current scientific knowledge regarding the drug or other substance," § 811(c)(3), and (most notably) "[w]hat, if any, risk there is to the public health," § 811(c)(6). If the latter factor were limited to addiction-related health risks, as the Court supposes, it would be redundant of § 811(c)(7). Moreover, in making registration determinations regarding manufacturers and distributors, the Attorney General "shall" consider "such *other* factors as may be relevant to and consistent with the public health and safety," §§ 823(a)(6), (b)(5), (d)(6), (e)(5) (emphasis added)—over and above the risk of "diversion" of controlled substances, §§ 823(a)(1), (a)(5), (b)(1), (d)(1), (d)(5), (e)(1). And, most relevant of all, in registering and deregistering *physicians*, the Attorney General "may deny an appli-

cation for such registration if he determines that the issuance of such registration would be inconsistent with the public interest," § 823(f); see also § 824(a)(4), and in making that determination "shall" consider "[s]uch other conduct which may threaten the public health and safety," § 823(f)(5). *All* of these provisions, not just those selectively cited by the Court, shed light upon the CSA's repeated references to the undefined term "abuse." See §§ 811(a)(1)(A), (c)(1), (c)(4), (c)(5); §§ 812(b)(1)(A), (b)(2)(A), (b)(3)(A), (b)(4)(A), (b)(5)(A).

By disregarding all these public-interest, public-health, and public-safety objectives, and limiting the CSA to "addiction and recreational abuse," the Court rules out the prohibition of anabolic-steroid use for bodybuilding purposes. It seeks to avoid this consequence by invoking the Anabolic Steroids Control Act of 1990, 104 Stat. 4851. *Ante,* at 273. But the only effect of that legislation is to make anabolic steroids controlled drugs under Schedule III of the CSA. If the only *basis* for control is (as the Court says) "addiction and recreational abuse," dispensation of these drugs for bodybuilding could not be proscribed.

Although, as I have described, the Court's opinion no more defers to state law than does the Directive, the Court relies on two provisions for the conclusion that "[t]he structure and operation of the CSA presume and rely upon a functioning medical profession regulated under the States' police powers," *ante,* at 270—namely, the registration provisions of § 823(f) and the nonpre-emption provision of § 903. Reliance on the former is particularly unfortunate, because the Court's own analysis recounts how Congress amended § 823(f) in 1984 in order to *liberate* the Attorney General's power over registration from the control of state regulators. See *ante,* at 261; 21 U. S. C. § 823(f); see also Brief for Petitioners 34–35. And the nonpre-emption clause is embarrassingly inapplicable, since it merely disclaims field pre-emption, and affirmatively *prescribes* federal pre-emption

whenever state law creates a conflict.[5] In any event, the Directive does not purport to pre-empt state law in any way, not even by conflict pre-emption—unless the Court is under the misimpression that some States *require* assisted suicide. The Directive merely interprets the CSA to prohibit, like countless other federal criminal provisions, conduct that happens not to be forbidden under state law (or at least the law of the State of Oregon).

With regard to the CSA's registration provisions, 21 U. S. C. §§ 823(f), 824(a), the Court argues that the statute cannot fairly be read to " 'hide elephants in mouseholes' " by delegating to the Attorney General the power to determine the legitimacy of medical practices in " 'vague terms or ancillary provisions.' " *Ante*, at 267 (quoting *Whitman* v. *American Trucking Assns., Inc.*, 531 U. S. 457, 468 (2001)). This case bears not the remotest resemblance to *Whitman*, which held that "Congress . . . does not alter *the fundamental details* of a regulatory scheme in vague terms or ancillary provisions." *Ibid.* (emphasis added). The Attorney General's power to issue regulations against questionable uses of controlled substances in no way alters "the fundamental details" of the CSA. I am aware of only four areas in which the Department of Justice has exercised that power to regulate uses of controlled substances *unrelated* to "addiction and recreational abuse" as the Court apparently understands that phrase: assisted suicide, aggressive pain management therapy, anabolic-steroid use, and cosmetic weight-loss therapy. See, *e. g.*, *In re Harline*, 65 Fed. Reg. 5665, 5667 (2000) (weight loss); *In re Tecca*, 62 Fed. Reg. 12842, 12846 (1997) (anabolic steroids); *In re Roth*, 60 Fed. Reg. 62262, 62263, 62267 (1995) (pain management). There is no indication that

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[5] Title 21 U. S. C. § 903 reads, in relevant part, as follows: "No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter . . . unless there is a positive conflict . . . ."

enforcement in these areas interferes with the prosecution of "drug abuse" as the Court understands it. Unlike in *Whitman*, the Attorney General's *additional* power to address other forms of drug "abuse" does *absolutely nothing* to undermine the central features of this regulatory scheme. Of course it was critical to our analysis in *Whitman* that the language of the provision did not bear the meaning that respondents sought to give it. See 531 U. S., at 465. Here, for the reasons stated above, the provision is most naturally interpreted to incorporate a uniform federal standard for legitimacy of medical practice.[6]

Finally, respondents argue that the Attorney General must defer to state-law judgments about what constitutes legitimate medicine, on the ground that Congress must speak clearly to impose such a uniform federal standard upon the States. But no line of our clear-statement cases is applicable here. The canon of avoidance does not apply, since the Directive does not push the outer limits of Congress's commerce power, compare *Solid Waste Agency of Northern Cook Cty.* v. *Army Corps of Engineers*, 531 U. S. 159, 172 (2001) (regulation of isolated ponds), with *United States* v. *Sullivan*, 332 U. S. 689, 698 (1948) (regulation of labeling of drugs shipped in interstate commerce), or impinge on a core aspect of state sovereignty, cf. *Atascadero State Hospital* v. *Scanlon*, 473 U. S. 234, 242 (1985) (sovereign immunity); *Gregory* v. *Ashcroft*, 501 U. S. 452, 460 (1991) (qualifications of state government officials). The clear-statement rule based on the presumption against pre-emption does not

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[6] The other case cited by the Court, *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U. S. 120 (2000), is even more obviously inapt. There we relied on the first step of the *Chevron* analysis to determine that Congress had spoken to the precise issue in question, impliedly repealing the grant of jurisdiction on which the Food and Drug Administration relied. 529 U. S., at 160–161. Here, Congress has not expressly or impliedly authorized the practice of assisted suicide, or indeed "spoken directly" to the subject in any way beyond the text of the CSA.

apply because the Directive does not pre-empt any state law, cf. *id.*, at 456–457; *Rush Prudential HMO, Inc.* v. *Moran*, 536 U. S. 355, 359 (2002). And finally, no clear statement is required on the ground that the Directive intrudes upon an area traditionally reserved exclusively to the States, cf. *BFP* v. *Resolution Trust Corporation*, 511 U. S. 531, 544 (1994) (state regulation of titles to real property), because the Federal Government has pervasively regulated the dispensation of drugs for over 100 years. See generally Brief for Pro-Life Legal Defense Fund et al. as *Amici Curiae* 3–15. It would be a novel and massive expansion of the clear-statement rule to apply it in a commerce case *not involving pre-emption or constitutional avoidance*, merely because Congress has chosen to prohibit conduct that a State has made a contrary policy judgment to permit. See *Sullivan*, *supra*, at 693.

III

Even if the Regulation did not exist and "prescription" in § 829 could not be interpreted to require a "legitimate medical purpose," the Directive's conclusion that "prescribing, dispensing, or administering federally controlled substances . . . by a physician . . . may 'render his registration . . . inconsistent with the public interest' and therefore subject to possible suspension or revocation under 21 U. S. C. [§] 824(a)(4)," 66 Fed. Reg. 56608, would nevertheless be unassailable in this Court.

Sections 823(f) and 824(a) explicitly grant the Attorney General the authority to register and deregister physicians, and his discretion in exercising that authority is spelled out in very broad terms. He may refuse to register or deregister if he determines that registration is "inconsistent with the public interest," 21 U. S. C. § 823(f), after considering five factors, the fifth of which is "[s]uch other conduct which may threaten the public health and safety," § 823(f)(5). See also *In re Arora*, 60 Fed. Reg. 4447, 4448 (1995) ("It is well established that these factors are to be considered in the disjunc-

tive, i. e., the Deputy Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate"). As the Court points out, these broad standards were enacted in the 1984 amendments for the specific purpose of *freeing* the Attorney General's discretion over registration from the decisions of state authorities. See *ante*, at 261.

The fact that assisted-suicide prescriptions are issued in violation of § 829 is of course sufficient to support the Directive's conclusion that issuing them may be cause for deregistration: such prescriptions would violate the fourth factor of § 823(f), namely, "[c]ompliance with applicable . . . Federal . . . laws relating to controlled substances," 21 U. S. C. § 823(f)(4). But the Attorney General did not rely solely on subsection (f)(4) in reaching his conclusion that registration would be "inconsistent with the public interest"; nothing in the text of the Directive indicates that. Subsection (f)(5) ("[s]uch other conduct which may threaten the public health and safety") provides an independent, alternative basis for the Directive's conclusion regarding deregistration—provided that the Attorney General has authority to interpret "public interest" and "public health and safety" in § 823(f) to exclude assisted suicide.

Three considerations make it perfectly clear that the statute confers authority to interpret these phrases upon the Attorney General. First, the Attorney General is solely and explicitly charged with administering the registration and deregistration provisions. See §§ 823(f), 824(a). By making the criteria for such registration and deregistration such obviously ambiguous factors as "public interest" and "public health and safety," Congress implicitly (but clearly) gave the Attorney General authority to interpret those criteria—*whether or not* there is any explicit delegation provision in the statute. "Sometimes the legislative delegation to an agency on a particular question is implicit rather than explicit. In such a case, a court may not substitute its own

construction of a statutory provision for a reasonable interpretation made by the administrator of an agency." *Chevron*, 467 U. S., at 844. The Court's exclusive focus on the *explicit* delegation provisions is, at best, a fossil of our pre-*Chevron* era; at least since *Chevron*, we have not conditioned our deferral to agency interpretations upon the existence of explicit delegation provisions. *United States* v. *Mead Corp.*, 533 U. S. 218, 229 (2001), left this principle of implicit delegation intact.

Second, even if explicit delegation were required, Congress provided it in § 821, which authorizes the Attorney General to "promulgate rules and regulations . . . relating to the *registration and control* of the manufacture, distribution, and dispensing of controlled substances . . . ." (Emphasis added.) Because "dispensing" refers to the delivery of a controlled substance "pursuant to the lawful order of, a practitioner," 21 U. S. C. § 802(10), the deregistration of such practitioners for writing impermissible orders "relat[es] to the registration . . . of the . . . dispensing" of controlled substances, 21 U. S. C. § 821 (2000 ed., Supp. V).

Third, § 821 also gives the Attorney General authority to promulgate rules and regulations "relating to the . . . control of the . . . dispensing of controlled substances." As discussed earlier, it is plain that the *ordinary* meaning of "control" must apply to § 821, so that the plain import of the provision is to grant the Attorney General rulemaking authority over all the provisions of part C of the CSA, §§ 821–830 (main ed. and Supp. 2005). Registering and deregistering the practitioners who issue the prescriptions necessary for lawful dispensation of controlled substances plainly "relat[es] to the . . . control of the . . . dispensing of controlled substances." § 821 (Supp. 2005).

The Attorney General is thus authorized to promulgate regulations interpreting §§ 823(f) and 824(a), both by implicit delegation in § 823(f) and by two grounds of explicit delegation in § 821. The Court nevertheless holds that this triply

unambiguous delegation cannot be given full effect because "the design of the statute," *ante*, at 265, evinces the intent to grant the Secretary of Health and Human Services exclusive authority over scientific and medical determinations. This proposition is not remotely plausible. The Court cites as authority for the Secretary's exclusive authority two specific areas in which his medical determinations are said to be binding on the Attorney General—with regard to the "scientific and medical evaluation" of a drug's effects that precedes its scheduling, § 811(b), and with regard to "the appropriate methods of professional practice in the medical treatment of the narcotic addiction of various classes of narcotic addicts," 42 U. S. C. § 290bb–2a; see also 21 U. S. C. § 823(g) (2000 ed. and Supp. II). See *ante*, at 265–266. Far from establishing a general principle of Secretary supremacy with regard to all scientific and medical determinations, the fact that Congress granted the Secretary specifically defined authority in the areas of scheduling and addiction treatment, *without otherwise mentioning him* in the registration provisions, suggests, to the contrary, that Congress envisioned *no* role for the Secretary in that area—where, as we have said, interpretive authority was both implicitly and explicitly conferred upon the Attorney General.

Even if we could rewrite statutes to accord with sensible "design," it is far from a certainty that the Secretary, rather than the Attorney General, ought to control the registration of physicians. Though registration decisions sometimes require judgments about the legitimacy of medical practices, the Department of Justice has seemingly had no difficulty making them. See *In re Harline*, 65 Fed. Reg. 5665; *In re Tecca*, 62 Fed. Reg. 12842; *In re Roth*, 60 Fed. Reg. 62262. But unlike decisions about whether a substance should be scheduled or whether a narcotics addiction treatment is legitimate, registration decisions are not exclusively, or even primarily, concerned with "medical [and] scientific" factors. See 21 U. S. C. § 823(f). Rather, the decision to register, or

to bring an action to deregister, an individual *physician* implicates all the policy goals and competing enforcement priorities that attend any exercise of prosecutorial discretion. It is entirely reasonable to think (as Congress evidently did) that it would be easier for the Attorney General occasionally to make judgments about the legitimacy of medical practices than it would be for the Secretary to get into the business of law enforcement. It is, in other words, perfectly consistent with an intelligent "design of the statute" to give the Nation's chief law enforcement official, not its chief health official, broad discretion over the substantive standards that govern registration and deregistration. That is *especially* true where the contested "scientific and medical" judgment at issue has to do with the legitimacy of physician-assisted suicide, which ultimately rests, not on "science" or "medicine," but on a naked value judgment. It no more depends upon a "quintessentially medical judgmen[t]," *ante*, at 267, than does the legitimacy of polygamy or eugenic infanticide. And it requires no particular *medical* training to undertake the objective inquiry into how the continuing traditions of Western medicine have consistently treated this subject. See OLC Memo, App. to Pet. for Cert. 113a–130a. The Secretary's supposedly superior "medical expertise" to make "medical judgments," *ante*, at 266, is strikingly irrelevant to the case at hand.

The Court also reasons that, even if the CSA grants the Attorney General authority to interpret § 823(f), the Directive does not purport to exercise that authority, because it "does not undertake the five-factor analysis" of § 823(f) and does not "on its face purport to be an *application* of the registration provision in § 823(f)." *Ante*, at 261 (emphasis added). This reasoning is sophistic. It would be improper—indeed, *impossible*—for the Attorney General to "undertake the five-factor analysis" of § 823(f) and to "appl[y] the registration provision" outside the context of an actual enforcement proceeding. But of course the Attorney Gen-

eral may issue regulations to clarify his interpretation of the five factors, and to signal how he will apply them in future enforcement proceedings. That is what the Directive plainly purports to do by citing § 824(a)(4), and that is why the Directive's conclusion on deregistration is couched in conditional terms: "Such conduct by a physician . . . *may* 'render his registration . . . inconsistent with the public interest' and therefore subject to *possible* suspension or revocation under 21 U. S. C. [§] 824(a)(4)." 66 Fed. Reg. 56608 (emphasis added).

It follows from what we have said that the Attorney General's authoritative interpretations of "public interest" and "public health and safety" in § 823(f) are subject to *Chevron* deference. As noted earlier, the Court does not contest that the absence of notice-and-comment procedures for the Directive renders *Chevron* inapplicable. And there is no serious argument that "Congress has directly spoken to the precise question at issue," or that the Directive's interpretations of "public health and safety" and "inconsistent with the public interest" are not "permissible." *Chevron*, 467 U. S., at 842–843. On the latter point, in fact, the condemnation of assisted suicide by 50 American jurisdictions supports the Attorney General's view. The Attorney General may therefore weigh a physician's participation in assisted suicide as a factor counseling against his registration, or in favor of deregistration, under § 823(f).

In concluding to the contrary, the Court merely presents the conclusory assertion that "it is doubtful the Attorney General could cite the 'public interest' or 'public health' to deregister a physician simply because he deemed a controversial practice permitted by state law to have an illegitimate medical purpose." *Ante*, at 264. But why on earth not?—especially when he has interpreted the relevant statutory factors in advance to give fair warning that such a practice is "inconsistent with the public interest." The Attorney General's discretion to determine the public interest in this

area is admittedly broad—but certainly no broader than other congressionally conferred executive powers that we have upheld in the past. See, *e. g.*, *National Broadcasting Co.* v. *United States*, 319 U. S. 190, 216–217 (1943) ("public interest"); *New York Central Securities Corp.* v. *United States*, 287 U. S. 12, 24–25 (1932) (same); see also *Mistretta* v. *United States*, 488 U. S. 361, 415–416 (1989) (SCALIA, J., dissenting).

* * *

In sum, the Directive's first conclusion—namely, that physician-assisted suicide is not a "legitimate medical purpose"—is supported both by the deference we owe to the agency's interpretation of its own regulations and by the deference we owe to its interpretation of the statute. The other two conclusions—(2) that prescribing controlled drugs to assist suicide violates the CSA, and (3) that such conduct is also "inconsistent with the public interest"—are inevitable consequences of that first conclusion. Moreover, the third conclusion, standing alone, is one that the Attorney General is authorized to make.

The Court's decision today is perhaps driven by a feeling that the subject of assisted suicide is none of the Federal Government's business. It is easy to sympathize with that position. The prohibition or deterrence of assisted suicide is certainly not among the enumerated powers conferred on the United States by the Constitution, and it is within the realm of public morality *(bonos mores)* traditionally addressed by the so-called police power of the States. But then, neither is prohibiting the recreational use of drugs or discouraging drug addiction among the enumerated powers. From an early time in our national history, the Federal Government has used its enumerated powers, such as its power to regulate interstate commerce, for the purpose of protecting public morality—for example, by banning the interstate shipment of lottery tickets, or the interstate transport of women for immoral purposes. See *Hoke* v. *United States*,

227 U. S. 308, 321–323 (1913); *Lottery Case*, 188 U. S. 321, 356 (1903). Unless we are to repudiate a long and well-established principle of our jurisprudence, using the federal commerce power to prevent assisted suicide is unquestionably permissible. The question before us is not whether Congress *can* do this, or even whether Congress *should* do this; but simply whether Congress *has* done this in the CSA. I think there is no doubt that it has. If the term "*legitimate* medical purpose" has any meaning, it surely excludes the prescription of drugs to produce death.

For the above reasons, I respectfully dissent from the judgment of the Court.

JUSTICE THOMAS, dissenting.

When Angel Raich and Diane Monson challenged the application of the Controlled Substances Act (CSA), 21 U. S. C. § 801 *et seq.*, to their purely intrastate possession of marijuana for medical use as authorized under California law, a majority of this Court (a mere seven months ago) determined that the CSA effectively invalidated California's law because "the CSA is a comprehensive regulatory regime specifically designed to regulate which controlled substances can be utilized for medicinal purposes, *and in what manner.*" *Gonzales* v. *Raich*, 545 U. S. 1, 27 (2005) (emphasis added). The majority employed unambiguous language, concluding that the "manner" in which controlled substances can be utilized "for medicinal purposes" is one of the "core activities regulated by the CSA." *Id.*, at 28. And, it described the CSA as "creating a comprehensive framework for regulating the production, distribution, and possession of . . . 'controlled substances,'" including those substances that "'have a useful and legitimate medical purpose,'" in order to "foster the beneficial use of those medications" and "to prevent their misuse." *Id.*, at 24.

Today the majority beats a hasty retreat from these conclusions. Confronted with a regulation that broadly re-

quires all prescriptions to be issued for a "legitimate medical purpose," 21 CFR § 1306.04(a) (2005), a regulation recognized in *Raich* as part of the Federal Government's "closed . . . system" for regulating the "manner" in "which controlled substances can be utilized for medicinal purposes," 545 U. S., at 13, 27, the majority rejects the Attorney General's admittedly "at least reasonable," *ante,* at 272, determination that administering controlled substances to facilitate a patient's death is not a "'legitimate medical purpose.'" The majority does so based on its conclusion that the CSA is only concerned with the regulation of "medical practice insofar as it bars doctors from using their prescription-writing powers as a means to engage in illicit drug dealing and trafficking as conventionally understood." *Ante,* at 270. In other words, in stark contrast to *Raich*'s broad conclusions about the scope of the CSA as it pertains to the medicinal use of controlled substances, today this Court concludes that the CSA is merely concerned with fighting "'drug abuse'" and only insofar as that abuse leads to "addiction or abnormal effects on the nervous system."[1] *Ante,* at 273.

The majority's newfound understanding of the CSA as a statute of limited reach is all the more puzzling because it rests upon constitutional principles that the majority of the Court rejected in *Raich.* Notwithstanding the States' "'traditional police powers to define the criminal law and to protect the health, safety, and welfare of their citizens,'" 545 U. S., at 30, n. 38, the *Raich* majority concluded that the CSA applied to the intrastate possession of marijuana for medicinal purposes authorized by California law because "Congress could have rationally" concluded that such an application was necessary to the regulation of the "larger interstate marijuana market." *Id.,* at 30, 32. Here, by contrast, the major-

[1] The majority does not expressly address whether the ingestion of a quantity of drugs that is sufficient to cause death has an "abnormal effec[t] on the nervous system," *ante,* at 273, though it implicitly rejects such a conclusion.

ity's restrictive interpretation of the CSA is based in no small part on "the structure and limitations of federalism, which allow the States '"great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons."'" *Ante*, at 270 (quoting *Medtronic, Inc.* v. *Lohr*, 518 U. S. 470, 475 (1996), in turn quoting *Metropolitan Life Ins. Co.* v. *Massachusetts*, 471 U. S. 724, 756 (1985)). According to the majority, these "background principles of our federal system . . . belie the notion that Congress would use . . . an obscure grant of authority to regulate areas traditionally supervised by the States' police power." *Ante*, at 274.

Of course there is nothing "obscure" about the CSA's grant of authority to the Attorney General. *Ante*, p. 275 (SCALIA, J., dissenting). And, the Attorney General's conclusion that the CSA prohibits the States from authorizing physician assisted suicide is admittedly "at least reasonable," *ante*, at 272 (opinion of the Court), and is therefore entitled to deference. *Ante*, at 284–285 (SCALIA, J., dissenting). While the scope of the CSA and the Attorney General's power thereunder are sweeping, and perhaps troubling, such expansive federal legislation and broad grants of authority to administrative agencies are merely the inevitable and inexorable consequence of this Court's Commerce Clause and separation-of-powers jurisprudence. See, *e. g.*, *Raich*, *supra; Whitman* v. *American Trucking Assns., Inc.*, 531 U. S. 457 (2001).

I agree with limiting the applications of the CSA in a manner consistent with the principles of federalism and our constitutional structure. *Raich*, *supra*, at 74 (THOMAS, J., dissenting); cf. *Whitman*, *supra*, at 486–487 (THOMAS, J., concurring) (noting constitutional concerns with broad delegations of authority to administrative agencies). But that is now water over the dam. The relevance of such considerations was at its zenith in *Raich*, when we considered whether the CSA could be applied to the intrastate possession of a controlled substance consistent with the limited federal pow-

ers enumerated by the Constitution. Such considerations have little, if any, relevance where, as here, we are merely presented with a question of statutory interpretation, and not the extent of constitutionally permissible federal power. This is particularly true where, as here, we are interpreting broad, straightforward language within a statutory framework that a majority of this Court has concluded is so comprehensive that it necessarily nullifies the States' "'traditional . . . powers . . . to protect the health, safety, and welfare of their citizens.'"[2] *Raich*, *supra*, at 30, n. 38. The Court's reliance upon the constitutional principles that it rejected in *Raich*—albeit under the guise of statutory interpretation—is perplexing to say the least. Accordingly, I respectfully dissent.

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[2] Notably, respondents have not seriously pressed a constitutional claim here, conceding at oral argument that their "point is not necessarily that [the CSA] would be unconstitutional." Tr. of Oral Arg. 44. In any event, to the extent respondents do present a constitutional claim, they do so solely within the framework of *Raich.* Framed in this manner, the claim must fail. The respondents in *Raich* were "local growers and users of state-authorized, medical marijuana," who stood "outside the interstate drug market" and possessed "'medicinal marijuana . . . not intended for . . . the stream of commerce.'" 545 U. S., at 62, 72 (THOMAS, J., dissenting). Here, by contrast, the respondent-physicians are active participants in the interstate controlled substances market, and the drugs they prescribe for assisting suicide have likely traveled in interstate commerce. If the respondents in *Raich* could not sustain a constitutional claim, then *a fortiori* respondents here cannot sustain one. Respondents' acceptance of *Raich* forecloses their constitutional challenge.

Syllabus

WACHOVIA BANK, NATIONAL ASSOCIATION *v.* SCHMIDT ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 04–1186. Argued November 28, 2005—Decided January 17, 2006

Petitioner Wachovia Bank, National Association (Wachovia), is a national banking association with its designated main office in North Carolina and branch offices in many States, including South Carolina. Plaintiff-respondent Schmidt and other South Carolina citizens sued Wachovia in a South Carolina state court for fraudulently inducing them to participate in an illegitimate tax shelter. Shortly thereafter, Wachovia filed a petition in Federal District Court, seeking to compel arbitration of the dispute. As the sole basis for federal-court jurisdiction, Wachovia alleged the parties' diverse citizenship. See 28 U. S. C. § 1332. The District Court denied Wachovia's petition on the merits. On appeal, the Fourth Circuit determined that the District Court lacked subject-matter jurisdiction over the action, vacated the judgment, and instructed the District Court to dismiss the case. The appeals court observed that Wachovia's citizenship for diversity purposes is controlled by § 1348, which provides that "national banking associations" are "deemed citizens of the States in which they are respectively located." As the court read § 1348, Wachovia is "located" in, and is therefore a "citizen" of, every State in which it maintains a branch office. Thus, Wachovia's South Carolina branch operations rendered it a citizen of that State. Given the South Carolina citizenship of the opposing parties, the court concluded that the matter could not be adjudicated in federal court.

Held: A national bank, for § 1348 purposes, is a citizen of the State in which its main office, as set forth in its articles of association, is located. Pp. 309–319.

(a) When Congress first authorized national banks, it allowed them to sue and be sued in federal court in any and all civil proceedings. State banks, however, could initiate actions in federal court only on the basis of diversity of citizenship or the existence of a federal question. Congress ended national banks' automatic qualification for federal jurisdiction in 1882, placing them "on the same footing as the banks of the state where they were located," *Leather Manufacturers' Bank* v. *Cooper*, 120 U. S. 778, 780. In an 1887 enactment, Congress first used the "located" language today contained in § 1348. Like its 1882 predecessor, the 1887 Act "sought to limit . . . the access of national banks to,

and their suability in, the federal courts to the same extent [as] non-national banks." *Mercantile Nat. Bank at Dallas* v. *Langdeau*, 371 U. S. 555, 565–566. In the Judicial Code of 1911, Congress combined two formerly discrete provisions on proceedings involving national banks, but retained without alteration the "located" clause. Finally, as part of the 1948 Judicial Code revision, Congress enacted § 1348 in its current form. Pp. 309–312.

(b) The Fourth Circuit advanced three principal reasons for deciding that Wachovia is "located" in, and therefore a "citizen" of, every State in which it maintains a branch office. First, consulting dictionaries, the court observed that the term "located" refers to "physical presence in a place." Next, the court noted that § 1348 uses two distinct terms to refer to the presence of a banking association: "established" and "located." The court concluded that, to give independent meaning to each word, "established" should be read to refer to the bank's charter location and "located," to the place where the bank has a physical presence. Finally, the court relied on *Citizens & Southern Nat. Bank* v. *Bougas*, 434 U. S. 35, in which this Court interpreted the term "located" in the former venue statute for national banks, see 12 U. S. C. § 94 (1976 ed.), as encompassing any county in which a bank maintains a branch office. Viewing the jurisdiction and venue statutes as pertaining to the same subject matter, the court concluded that, under the *in pari materia* canon, the two statutes should be interpreted consistently. Pp. 312–313.

(c) None of the Fourth Circuit's rationales persuade this Court to read § 1348 to attribute to a national bank, for diversity-jurisdiction purposes, the citizenship of each State in which the bank has established branch operations. First, the term "located," as it appears in the National Bank Act, has no fixed, plain meaning. In some provisions, the word unquestionably refers to the site of the banking association's designated main office, but in others, "located" apparently refers to or includes branch offices. Recognizing the controlling significance of context, this Court stated in *Bougas:* "There is no enduring rigidity about the word 'located.'" 434 U. S., at 44. Second, Congress may well have comprehended the words "located" and "established," as used in § 1348, as synonymous terms. When Congress enacted § 1348's statutory predecessors and § 1348 itself, a national bank was almost always "located" only in the State in which it was "established," under any of the proffered definitions of the two words. For with rare exceptions a national bank could not operate a branch outside its home State until 1994, when Congress broadly authorized national banks to establish branches across state lines. Congress' use of the two terms may be best explained as a coincidence of statutory codification. Deriving from separate provisions enacted in different years, the word "established" appearing in the first paragraph of § 1348 and the word "located" appearing in the

second paragraph were placed in the same section in the 1911 revision. The codifying Act stated that provisions substantially the same as existing statutes should not be treated as new enactments. Thus, it is unsurprising that, in 1947, this Court, referring to a national bank's citizenship under the 1911 Act, used the terms "established" and "located" as alternatives. See *Cope* v. *Anderson*, 331 U. S. 461, 467. Finally, *Bougas* does not control § 1348's meaning. Although it is true that, under the *in pari materia* canon, statutes addressing the same subject matter generally should be read "'as if they were one law,'" *Erlenbaugh* v. *United States*, 409 U. S. 239, 243, venue and subject-matter jurisdiction are not concepts of the same order. Venue, largely a matter of litigational convenience, is waived if not timely raised. Subject-matter jurisdiction, on the other hand, concerns a court's competence to adjudicate a particular category of cases; a matter far weightier than venue, subject-matter jurisdiction must be considered by the court on its own motion, even if no party raises an objection. Cognizant that venue "is primarily a matter of choosing a convenient forum," *Leroy* v. *Great Western United Corp.*, 443 U. S. 173, 180, the Court in *Bougas* stressed that its "interpretation of [the former] § 94 [would] not inconvenience the bank or unfairly burden it with distant litigation," 434 U. S., at 44, n. 10. Subject-matter jurisdiction, however, does not entail an assessment of convenience. It poses the question "whether" the Legislature empowered the court to hear cases of a certain genre. Thus, the considerations that account for the *Bougas* decision are inapplicable to § 1348, a prescription governing subject-matter jurisdiction, and the Court of Appeals erred in interpreting § 1348 *in pari materia* with the former § 94. Significantly, *Bougas*' reading of former § 94 effectively aligned the treatment of national banks for venue purposes with the treatment of state banks and corporations. By contrast, the Fourth Circuit's decision in this case severely constricts national banks' access to diversity jurisdiction as compared to the access generally available to corporations, for corporations ordinarily rank as citizens only of States in which they are incorporated or maintain their principal place of business, and are not deemed citizens of every State in which they maintain a business establishment. Pp. 313–318.

388 F. 3d 414, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which all other Members joined, except THOMAS, J., who took no part in the consideration or decision of the case.

Andrew L. Frey argued the cause for petitioner. With him on the briefs were *Charles A. Rothfeld*, *Evan M. Tager*, and *Robert W. Fuller III*.

Sri Srinivasan argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Clement*, *Assistant Attorney General Keisler*, *Deputy Solicitor General Hungar*, *Michael S. Raab*, *Julie L. Williams*, *Daniel P. Stipano*, and *Douglas B. Jordan.*

James R. Gilreath argued the cause for respondents. With him on the brief was *John P. Freeman.**

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns the citizenship, for purposes of federal-court diversity jurisdiction, of national banks, *i. e.*, corporate entities chartered not by any State, but by the Comptroller of the Currency of the U. S. Treasury. Congress empowered federal district courts to adjudicate civil actions between "citizens of different States" where the amount in controversy exceeds $75,000. 28 U. S. C. § 1332(a)(1). A business organized as a corporation, for diversity jurisdiction purposes, is "deemed to be a citizen of any State by which it has been incorporated" and, since 1958, also "of the State where it has its principal place of business." § 1332(c)(1). State banks, usually chartered as corporate bodies by a particular State, ordinarily fit comfortably within this prescription. Federally chartered national banks do not, for they are not incorporated by "any State." For diversity jurisdiction purposes, therefore, Congress has discretely provided that national banks "shall . . . be deemed citizens of the States in which they are respectively located." § 1348.

The question presented turns on the meaning, in § 1348's context, of the word "located." Does it signal, as the petitioning national bank and the United States, as *amicus curiae,* urge, that the bank's citizenship is determined by the

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*Briefs of *amici curiae* urging reversal were filed for the American Bankers Association by *Gregory F. Taylor;* for the Clearing House Association L. L. C. by *David B. Tulchin* and *Michael M. Wiseman;* and for JPMorgan Chase Bank, N. A., by *Carter G. Phillips*, *Eric A. Shumsky*, and *Bradley J. Johnson.*

place designated in the bank's articles of association as the location of its main office? Or does it mean, in addition, as respondents urge and the Court of Appeals held, that a national bank is a citizen of every State in which it maintains a branch?

Recognizing that "located" is not a word of "enduring rigidity," *Citizens & Southern Nat. Bank* v. *Bougas*, 434 U. S. 35, 44 (1977), but one that gains its precise meaning from context, we hold that a national bank, for § 1348 purposes, is a citizen of the State in which its main office, as set forth in its articles of association, is located. Were we to hold, as the Court of Appeals did, that a national bank is additionally a citizen of every State in which it has established a branch, the access of a federally chartered bank to a federal forum would be drastically curtailed in comparison to the access afforded state banks and other state-incorporated entities. Congress, we are satisfied, created no such anomaly.

I

Petitioner Wachovia Bank, National Association (Wachovia), is a national banking association with its designated main office in Charlotte, North Carolina.[1] Wachovia operates branch offices in many States, including South Carolina.[2]

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[1] A national bank, on formation, must designate, in its organization certificate and articles of association, the "place where its operations of discount and deposit are to be carried on." 12 U. S. C. § 22 (Second); see § 21; Office of the Comptroller of the Currency, Instructions—Articles of Association, Specific Requirements ¶ 12, available at http://www.occ.treas.gov/corpbook/forms/articles-conv.doc. (All Internet materials as visited Jan. 13, 2006, and included in Clerk of Court's case file.) The place so designated serves as the bank's "main office." Changes in the location of that office are effected by amendment to the bank's articles of association. See 12 U. S. C. §§ 21a, 30(b); 12 CFR § 5.40(d)(2)(ii) (2005). The State in which the main office is located qualifies as the bank's "home State" under the banking laws. 12 U. S. C. § 36(g)(3)(B).

[2] National banks originally lacked authority to operate branch offices. Act of Feb. 25, 1863, § 11, 12 Stat. 668. In 1865, Congress enacted an exception permitting a state bank that converted to a national bank to retain its pre-existing branches. Act of Mar. 3, 1865, § 7, 13 Stat. 484. Congress

The litigation before us commenced when plaintiff-respondent Daniel G. Schmidt III and others, citizens of South Carolina, sued Wachovia in a South Carolina state court for fraudulently inducing them to participate in an illegitimate tax shelter. Shortly thereafter, Wachovia filed a petition in the United States District Court for the District of South Carolina, seeking to compel arbitration of the dispute. As the sole basis for federal-court jurisdiction, Wachovia alleged the parties' diverse citizenship. See 28 U. S. C. § 1332. The District Court denied Wachovia's petition on the merits; neither the parties nor the court questioned the existence of federal subject-matter jurisdiction. On appeal, a divided Fourth Circuit panel determined that the District Court lacked diversity jurisdiction over the action; it therefore vacated the judgment and instructed the District Court to dismiss the case.

The Court of Appeals' majority observed that Wachovia's citizenship for diversity purposes is controlled by § 1348, which provides that "national banking associations" are "deemed citizens of the States in which they are respectively located." As the panel majority read § 1348, Wachovia is "located" in, and is therefore a "citizen" of, every State in which it maintains a branch office. Thus Wachovia's branch operations in South Carolina, in the majority's view, rendered the bank a citizen of South Carolina. Given the South

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authorized limited branch operations in the bank's home State in 1927 and 1933. McFadden Act (Branch Banks), 1927, § 7(c), 44 Stat. 1228; Glass-Steagall Act, 1933, § 23, 48 Stat. 189–190. These Acts, like the 1865 enactment, allowed interstate branching only under narrow "grandfather" provisions. McFadden Act, § 7(a)–(b), 44 Stat. 1228; see *Girard Bank* v. *Board of Governors of Fed. Reserve System*, 748 F. 2d 838, 840 (CA3 1984) (observing that only two national banks had "grandfathered" interstate branches). Not until 1994 did Congress grant national banks broad authority to establish branch offices across state lines. See Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, § 101, 108 Stat. 2339. See generally J. Macey, G. Miller, & R. Carnell, Banking Law and Regulation 18–19, 23, 32–33 (3d ed. 2001).

Carolina citizenship of the opposing parties, the majority concluded that the matter could not be adjudicated in federal court. 388 F. 3d 414, 432 (CA4 2004).

Circuit Judge King dissented. He read § 1348 and its statutory precursors to provide national banks with "the same access to federal courts as that accorded other banks and corporations." *Id.*, at 434. On his reading, Wachovia is a citizen only of North Carolina, the State in which its main office is located, not of every State in which it maintains a branch office; accordingly, he concluded, Wachovia's petition qualified for federal-court adjudication.[3]

We granted certiorari to resolve the disagreement among Courts of Appeals on the meaning of § 1348. 545 U. S. 1113 (2005). Compare *Horton* v. *Bank One, N. A.*, 387 F. 3d 426, 429, 431 (CA5 2004) (for § 1348 purposes, "a national bank is not 'located' in, and thus [is] not a citizen of, every state in which it has a branch"; rather, the provision retains "jurisdictional parity for national banks vis-à-vis state banks and corporations"), and *Firstar Bank, N. A.* v. *Faul*, 253 F. 3d 982, 993–994 (CA7 2001) (same), with 388 F. 3d, at 432 (§ 1348 renders national bank a citizen, not only of the State in which its main office is located, but also of every State in which it has branch operations), and *World Trade Center Properties, LLC* v. *Hartford Fire Ins. Co.*, 345 F. 3d 154, 161 (CA2 2003) (dictum) (same).

II

When Congress first authorized national banks in 1863, it specified that any "suits, actions, and proceedings by and against [them could] be had" in federal court. See Act of Feb. 25, 1863, § 59, 12 Stat. 681. National banks thus could "sue and be sued in the federal district and circuit courts

[3] Wachovia unsuccessfully moved for rehearing en banc. Six judges voted to grant the rehearing petition, three voted to deny it, and four recused themselves. Thus the petition failed to garner the required majority of the Circuit's 13 active judges. No. 03–2061 (CA4, Jan. 28, 2005), App. to Pet. for Cert. 57a–58a.

solely because they were national banks, without regard to diversity, amount in controversy or the existence of a federal question in the usual sense." *Mercantile Nat. Bank at Dallas* v. *Langdeau*, 371 U. S. 555, 565–566 (1963). State banks, however, like other state-incorporated entities, could initiate actions in federal court only on the basis of diversity of citizenship or the existence of a federal question. See *Petri* v. *Commercial Nat. Bank of Chicago*, 142 U. S. 644, 648–649 (1892).

Congress ended national banks' automatic qualification for federal jurisdiction in 1882. An enactment that year provided in relevant part:

> "[T]he jurisdiction for suits hereafter brought by or against any association established under any law providing for national-banking associations . . . shall be the same as, and not other than, the jurisdiction for suits by or against banks not organized under any law of the United States which do or might do banking business where such national-banking associations may be doing business when such suits may be begun[.]" Act of July 12, 1882, § 4, 22 Stat. 163.

Under this measure, national banks could no longer invoke federal-court jurisdiction solely "on the ground of their Federal origin," *Petri*, 142 U. S., at 649; instead, for federal jurisdictional purposes, Congress placed national banks "on the same footing as the banks of the state where they were located," *Leather Manufacturers' Bank* v. *Cooper*, 120 U. S. 778, 780 (1887).

In 1887 revisions to prescriptions on federal jurisdiction, Congress replaced the 1882 provision on jurisdiction over national banks and first used the "located" language today contained in § 1348. The 1887 provision stated in relevant part:

> "[A]ll national banking associations established under the laws of the United States shall, for the purposes of all actions by or against them, real, personal or mixed, and all suits in equity, *be deemed citizens of the States*

> *in which they are respectively located;* and in such cases the circuit and district courts shall not have jurisdiction other than such as they would have in cases between individual citizens of the same State." Act of Mar. 3, 1887, § 4, 24 Stat. 554–555 (emphasis added).[4]

Like its 1882 predecessor, the 1887 Act "sought to limit . . . the access of national banks to, and their suability in, the federal courts to the same extent to which non-national banks [were] so limited." *Langdeau*, 371 U. S., at 565–566.

In the Judicial Code of 1911,[5] Congress combined two formerly discrete provisions on proceedings involving national banks, but retained without alteration the clause deeming national banks to be "citizens of the States in which they are respectively located." Act of Mar. 3, 1911, § 24 (Sixteenth), 36 Stat. 1091–1093.[6] Finally, as part of the 1948 Judicial

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[4] The term "established under" did appear in the 1882 and 1887 formulations, in both texts as synonymous with the term "organized under." In neither measure is the word used in a locational sense.

[5] Earlier, in 1888, Congress had revised the 1887 prescription by adding as a separate paragraph this caveat: "The provisions of this section shall not be held to affect the jurisdiction of the courts of the United States in cases commenced by the United States or by direction of any officer thereof, or cases for winding up the affairs of any such bank." Act of Aug. 13, 1888, § 4, 25 Stat. 436.

[6] In full, the 1911 text stated:

"The district courts shall have original jurisdiction . . . [o]f all cases commenced by the United States, or by direction of any officer thereof, against any national banking association, and cases for winding up the affairs of any such bank; and of all suits brought by any banking association established in the district for which the court is held, under the provisions of title 'National Banks,' Revised Statutes, to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by said title. And all national banking associations established under the laws of the United States shall, for the purposes of all other actions by or against them, real, personal, or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located." 36 Stat. 1091–1093.

The first sentence of this formulation merged the 1888 caveat with text, including the word "established," originally contained in the Act of Dec. 1,

Code revision, Congress enacted § 1348 in its current form. Act of June 25, 1948, 62 Stat. 933. The provision now reads:

> "The district courts shall have original jurisdiction of any civil action commenced by the United States, or by direction of any officer thereof, against any national banking association, any civil action to wind up the affairs of any such association, and any action by a banking association established in the district for which the court is held, under chapter 2 of Title 12, to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by such chapter.
>
> "All national banking associations shall, for the purposes of all other actions by or against them, be deemed citizens of the States in which they are respectively located." 28 U. S. C. § 1348.

III

The Fourth Circuit panel majority advanced three principal reasons for deciding that Wachovia is "located" in, and therefore a "citizen" of, every State in which it maintains a branch office. First, consulting dictionaries, the Court of Appeals observed that "[i]n ordinary parlance" the term "located" refers to "physical presence in a place." 388 F. 3d, at 416–417 (internal quotation marks omitted). Banks have a physical presence, the Fourth Circuit stated, wherever they operate branches. *Id.*, at 417. Next, the court noted, "Section 1348 uses two distinct terms to refer to the presence of a banking association: 'established' and 'located.'" *Id.*, at 419. "To give independent meaning" to each word, the court said, "it is most reasonable to understand the place where a national bank is 'established' to refer to a bank's charter location, and to understand the place where it is 'located' to refer to the place or places where it has a physical

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1873, § 629 (Tenth to Eleventh), 18 Stat. 111. The second sentence, including the word "located," derives from the 1887 formulation.

presence." *Ibid.* Finally, the Court of Appeals stressed that in *Citizens & Southern Nat. Bank* v. *Bougas*, 434 U. S. 35 (1977), this Court interpreted the term "located" in the former venue statute for national banks, see 12 U. S. C. § 94 (1976 ed.), as encompassing any county in which a bank maintains a branch office. 388 F. 3d, at 419–420. Reasoning that "the jurisdiction and venue statutes pertain to the same subject matter, namely the amenability of national banking associations to suit in federal court," the panel majority concluded that, "under the *in pari materia* canon[,] the two statutes should be interpreted" consistently. *Id.*, at 422.

IV

None of the Court of Appeals' rationales persuade us to read § 1348 to attribute to a national bank, for diversity jurisdiction purposes, the citizenship of each State in which the bank has established branch operations. First, the term "located," as it appears in the National Bank Act, has no fixed, plain meaning. In some provisions, the word unquestionably refers to a single place: the site of the banking association's designated main office. See, *e. g.*, 12 U. S. C. § 52 (national bank's capital stock certificates must state "the name and location of the association"); § 55 (requiring notice of sale of capital stock "in a newspaper of the city or town in which the bank is located"); § 75 (bank's regular annual shareholders' meeting shall be rescheduled when it "falls on a legal holiday in the State in which the bank is located"); § 182 (requiring publication of a notice of dissolution "in the city or town in which the association is located"). In other provisions, "located" apparently refers to or includes branch offices. See, *e. g.*, § 36(j) (defining "branch" to include "any branch place of business located in any State"); § 85 (limiting interest rate charged by national bank to "rate allowed by the laws of the State, Territory, or District where the bank is located") (construed in OCC Interpretive Letter No. 822 (Feb. 17, 1998), [1997–1998 Transfer Binder] CCH Fed. Bank-

ing L. Rep. ¶ 81–265, pp. 90, 256–90, 257); 12 U. S. C. § 92 (permitting national bank to act as insurance agent in certain circumstances when bank is "located and doing business in any place the population of which does not exceed five thousand inhabitants") (construed in 12 CFR § 7.1001 (2005)).[7] Recognizing the controlling significance of context, we stated in *Bougas*, regarding a venue provision for national banks: "There is no enduring rigidity about the word 'located.'" 434 U. S., at 44.

Second, Congress may well have comprehended the words "located" and "established," as used in § 1348, not as contrasting, but as synonymous or alternative terms. When Congress enacted § 1348's statutory predecessors and then § 1348 itself, a national bank was almost always "located" only in the State in which it was "established," under any of the proffered definitions of the two words, for, with rare exceptions, a national bank could not operate a branch outside its home State. Not until 1994 did Congress provide broad authorization for national banks to establish branches across state lines. See *supra*, at 307–308, n. 2. Congress' use of the two terms may be best explained as a coincidence of statutory codification. Deriving from separate provisions enacted in different years, the word "established" appearing in the first paragraph of § 1348 and the word "located" appearing in the second paragraph were placed in the same section in the 1911 revision of the Judicial Code. See *supra*, at 311–312, n. 6. The codifying Act explicitly stated that "so far as [its provisions were] substantially the same as exist-

[7] The Court of Appeals did not overlook these nonuniform uses of the word "located" in various provisions of the National Bank Act. See 388 F. 3d 414, 425 (CA4 2004). Nevertheless, it declared that, in § 1348, "located" unambiguously means "physically present." *Ibid.* (internal quotation marks omitted). The court did not say what facilities other than branch offices, for example, storage sites or even automated teller machines, would suffice to establish a bank's physical presence. Cf. Tr. of Oral Arg. 36–37 (counsel for respondents stated that an ATM, although an arguable question, probably would suffice to locate a bank in a State for § 1348 purposes).

ing statutes," they should "be construed as continuations thereof, and not as new enactments." Act of Mar. 3, 1911, § 294, 36 Stat. 1167; see *Federal Intermediate Credit Bank of Columbia* v. *Mitchell*, 277 U. S. 213, 216 (1928) (1911 Act "was in substance a reenactment of the earlier provisions in respect of . . . jurisdiction"). In this light, it is unsurprising that, in 1947, this Court, referring to a national bank's citizenship under the 1911 Act, used the terms "located" and "established" as alternatives. See *Cope* v. *Anderson*, 331 U. S. 461, 467 ("For jurisdictional purposes, a national bank is a 'citizen' of the state in which it is established or located[.]").[8]

Finally, *Bougas* does not control the meaning of § 1348. In that case, we construed a now-repealed venue provision, which stated that actions against national banking associations could be filed "in any State, county, or municipal court in the county or city in which said association [was] located." 434 U. S., at 35–36 (quoting 12 U. S. C. § 94 (1976 ed.)). We held that, for purposes of this provision, a national bank was located, and venue was therefore proper, in any county or city where the bank maintained a branch office. 434 U. S., at 44–45. True, under the *in pari materia* canon of statutory

[8] Context also matters in assigning meaning to the word "established." See, *e. g.*, Convention Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains, S. Treaty Doc. No. 107–19, Art. 5, pp. 8–9 (2002) ("For the purposes of this Convention, the term 'permanent establishment' means a fixed place of business through which the business of an enterprise is wholly or partly carried on . . . ."). Given the character of the proceedings covered by the first paragraph of § 1348, see *supra*, at 312, one might read "established" as referring to the bank's main office as set forth in its articles of association. Other readings mentioned in Court of Appeals opinions are the bank's principal place of business and the place listed in the bank's organization certificate. See *Horton* v. *Bank One, N. A.*, 387 F. 3d 426, 434 (CA5 2004); *Firstar Bank, N. A.* v. *Faul*, 253 F. 3d 982, 992 (CA7 2001). Because this issue is not presented by the parties or necessary to today's decision, we express no opinion on it. Cf. *ibid.*

construction, statutes addressing the same subject matter generally should be read "'as if they were one law.'" *Erlenbaugh* v. *United States*, 409 U. S. 239, 243 (1972) (quoting *United States* v. *Freeman*, 3 How. 556, 564 (1845)). But venue and subject-matter jurisdiction are not concepts of the same order. Venue is largely a matter of litigational convenience; accordingly, it is waived if not timely raised. See, *e. g.*, *Heckler* v. *Ringer*, 466 U. S. 602, 638, n. 25 (1984) (STEVENS, J., concurring in judgment in part and dissenting in part); Fed. Rule Civ. Proc. 12(h)(1). Subject-matter jurisdiction, on the other hand, concerns a court's competence to adjudicate a particular category of cases; a matter far weightier than venue, subject-matter jurisdiction must be considered by the court on its own motion, even if no party raises an objection. See, *e. g.*, *Mansfield, C. & L. M. R. Co.* v. *Swan*, 111 U. S. 379, 382 (1884); Fed. Rule Civ. Proc. 12(h)(3).

Cognizant that venue "is primarily a matter of choosing a convenient forum," *Leroy* v. *Great Western United Corp.*, 443 U. S. 173, 180 (1979), the Court in *Bougas* stressed that its "interpretation of [the former] § 94 [would] not inconvenience the bank or unfairly burden it with distant litigation," 434 U. S., at 44, n. 10. Subject-matter jurisdiction, however, does not entail an assessment of convenience. It poses a "whether," not a "where" question: Has the Legislature empowered the court to hear cases of a certain genre? See *Neirbo Co.* v. *Bethlehem Shipbuilding Corp.*, 308 U. S. 165, 168 (1939) ("This basic difference between the court's power and the litigant's convenience is historic in the federal courts."). Thus, the considerations that account for our decision in *Bougas* are inapplicable to § 1348, a prescription governing subject-matter jurisdiction, and the Court of Appeals erred in interpreting § 1348 *in pari materia* with the former § 94.

Significantly, this Court's reading of the venue provision in *Bougas* effectively aligned the treatment of national banks

for venue purposes with the treatment of state banks and corporations. For venue in suits against state banks and other state-created corporations typically lies wherever those entities have business establishments. See 19 C. J. S., Corporations § 717(d), p. 374, n. 30 (1990) (under typical state venue statutes, "[v]enue in action against domestic corporation can be laid in any county where corporation maintains branch office"). By contrast, the Court of Appeals' decision in the instant case severely constricts national banks' access to diversity jurisdiction as compared to the access available to corporations generally. For purposes of diversity, a corporation surely is not deemed a citizen of every State in which it maintains a business establishment. See *Pennsylvania R. Co.* v. *St. Louis, A. & T. H. R. Co.*, 118 U. S. 290, 295–296 (1886). Rather, under 28 U. S. C. § 1332(c)(1), a corporation is "deemed to be a citizen" only of "any State by which it has been incorporated" and "of the State where it has its principal place of business." Accordingly, while corporations ordinarily rank as citizens of at most 2 States, Wachovia, under the Court of Appeals' novel citizenship rule, would be a citizen of 16 States. See FDIC Institution Directory, available at http://www2.fdic.gov/idasp/main.asp.[9] *Bougas* does not call for this anomalous result.

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[9] To achieve complete parity with state banks and other state-incorporated entities, a national banking association would have to be deemed a citizen of both the State of its main office and the State of its principal place of business. See *Horton*, 387 F. 3d, at 431, and n. 26; *Firstar Bank, N. A.*, 253 F. 3d, at 993–994. Congress has prescribed that a corporation "shall be deemed to be a citizen of any State by which it has been incorporated *and* of the State where it has its principal place of business." 28 U. S. C. § 1332(c)(1) (emphasis added). The counterpart provision for national banking associations, § 1348, however, does not refer to "principal place of business"; it simply deems such associations "citizens of the States in which they are respectively located." The absence of a "principal place of business" reference in § 1348 may be of scant practical significance for, in almost every case, as in this one, the location of a national bank's main office and of its principal place of business coincide.

V

To summarize, "located," as its appearances in the banking laws reveal, see *supra*, at 313–314, is a chameleon word; its meaning depends on the context in and purpose for which it is used.

In the context of venue, "located" may refer to multiple places, for a venue prescription, *e. g.*, the current and former 12 U. S. C. § 94, presupposes subject-matter jurisdiction and simply delineates *where* within a given judicial system a case may be maintained. See, *e. g.*, 28 U. S. C. § 1391(c) (for venue purposes, "a corporation shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced").

In contrast, in § 1348, "located" appears in a prescription governing not venue but federal-court subject-matter jurisdiction. Concerning access to the federal court system, § 1348 deems national banks "citizens of the States in which they are respectively located." There is no reason to suppose Congress used those words to effect a radical departure from the norm. An individual who resides in more than one State is regarded, for purposes of federal subject-matter (diversity) jurisdiction, as a citizen of but one State. See *Newman-Green, Inc.* v. *Alfonzo-Larrain*, 490 U. S. 826, 828 (1989) (an individual is deemed a citizen of the State of her domicil); *Williamson* v. *Osenton*, 232 U. S. 619, 625 (1914) (domicil is the "technically preeminent headquarters" of a person; "[i]n its nature it is one"). Similarly, a corporation's citizenship derives, for diversity jurisdiction purposes, from its State of incorporation and principal place of business. § 1332(c)(1). It is not deemed a citizen of every State in which it conducts business or is otherwise amenable to personal jurisdiction. Reading § 1348 in this context, one would sensibly "locate" a national bank for the very same purpose, *i. e.*, qualification for diversity jurisdiction, in the State designated in its articles of association as its main office.

Treating venue and subject-matter jurisdiction prescriptions as *in pari materia*, 388 F. 3d, at 422–423, the Court of Appeals majority overlooked the discrete offices of those concepts. See *supra*, at 315–316; cf. Cook, "Substance" and "Procedure" in the Conflict of Laws, 42 Yale L. J. 333, 337 (1933) ("The tendency to assume that a word which appears in two or more legal rules, and so in connection with more than one purpose, has and should have precisely the same scope in all of them, runs all through legal discussions. It has all the tenacity of original sin and must constantly be guarded against."). The resulting Fourth Circuit decision rendered national banks singularly disfavored corporate bodies with regard to their access to federal courts. The language of § 1348 does not mandate that incongruous outcome, nor does this Court's precedent.

* * *

For the reasons stated, the judgment of the United States Court of Appeals for the Fourth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE THOMAS took no part in the consideration or decision of this case.

Syllabus

AYOTTE, ATTORNEY GENERAL OF NEW HAMPSHIRE *v.* PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 04–1144. Argued November 30, 2005—Decided January 18, 2006

New Hampshire's Parental Notification Prior to Abortion Act, in relevant part, prohibits physicians from performing an abortion on a pregnant minor until 48 hours after written notice of such abortion is delivered to her parent or guardian. The Act does not require notice for an abortion necessary to prevent the minor's death if there is insufficient time to provide notice, and permits a minor to petition a judge to authorize her physician to perform an abortion without parental notification. The Act does not explicitly permit a physician to perform an abortion in a medical emergency without parental notification. Respondents, who provide abortions for pregnant minors and expect to provide emergency abortions for them in the future, filed suit under Rev. Stat. § 1979, 42 U. S. C. § 1983, claiming that the Act is unconstitutional because it lacks a health exception and because of the inadequacy of the life exception and the judicial bypass' confidentiality provision. The District Court declared the Act unconstitutional and permanently enjoined its enforcement, and the First Circuit affirmed.

Held: If enforcing a statute that regulates access to abortion would be unconstitutional in medical emergencies, invalidating the statute entirely is not always necessary or justified, for lower courts may be able to render narrower declaratory and injunctive relief. Pp. 326–332.

(a) As the case comes to this Court, three propositions are established. First, States have the right to require parental involvement when a minor considers terminating her pregnancy. Second, a State may not restrict access to abortions that are " 'necessary, in appropriate medical judgment for preservation of the life or health of the mother.' " *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833, 879 (plurality opinion). Third, New Hampshire has not taken issue with the case's factual basis: In a very small percentage of cases, pregnant minors need immediate abortions to avert serious and often irreversible damage to their health. New Hampshire has conceded that, under this Court's cases, it would be unconstitutional to apply the Act in a manner that subjects minors to significant health risks. Pp. 326–328.

Syllabus

(b) Generally speaking, when confronting a statute's constitutional flaw, this Court tries to limit the solution to the problem, preferring to enjoin only the statute's unconstitutional applications while leaving the others in force, see *United States* v. *Raines*, 362 U. S. 17, 20–22, or to sever its problematic portions while leaving the remainder intact, *United States* v. *Booker*, 543 U. S. 220, 227–229. Three interrelated principles inform the Court's approach to remedies. First, the Court tries not to nullify more of a legislature's work than is necessary. Second, mindful that its constitutional mandate and institutional competence are limited, the Court restrains itself from "rewrit[ing] state law to conform it to constitutional requirements." *Virginia* v. *American Booksellers Assn., Inc.*, 484 U. S. 383, 397. Third, the touchstone for any decision about remedy is legislative intent. After finding an application or portion of a statute unconstitutional, the Court must ask: Would the legislature have preferred what is left of its statute to no statute at all? See generally, *e. g.*, *Booker*, *supra*, at 227. Here, the courts below chose the most blunt remedy—permanently enjoining the Act's enforcement and thereby invalidating it entirely. They need not have done so. In *Stenberg* v. *Carhart*, 530 U. S. 914—where this Court invalidated Nebraska's "partial birth abortion" law in its entirety for lacking a health exception—the parties did not ask for, and this Court did not contemplate, relief more finely drawn, but here New Hampshire asked for and respondents recognized the possibility of a more modest remedy. Only a few applications of the Act would present a constitutional problem. So long as they are faithful to legislative intent, then, in this case the lower courts can issue a declaratory judgment and an injunction prohibiting the Act's unconstitutional application. On remand, they should determine in the first instance whether the legislature intended the statute to be susceptible to such a remedy. Pp. 328–331.

(c) Because an injunction prohibiting unconstitutional applications or a holding that consistency with legislative intent requires invalidating the statute *in toto* should obviate any concern about the Act's life exception, this Court need not pass on the lower courts' alternative holding. If the Act survives in part on remand, the Court of Appeals should address respondents' separate objection to the judicial bypass' confidentiality provision. P. 332.

390 F. 3d 53, vacated and remanded.

O'Connor, J., delivered the opinion for a unanimous Court.

Kelly A. Ayotte, Attorney General of New Hampshire, petitioner, argued the cause *pro se*. With her on the briefs

were *Michael A. Delaney*, Deputy Attorney General, *Daniel J. Mullen*, Associate Attorney General, and *Laura E. B. Lombardi* and *Anthony I. Blenkinsop*, Assistant Attorneys General.

Solicitor General Clement argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Assistant Attorney General Keisler*, *Kannon K. Shanmugam*, and *Marleigh D. Dover*.

Jennifer Dalven argued the cause for respondents. With her on the briefs were *Steven R. Shapiro*, *Louise Melling*, *Talcott Camp*, *Corinne Schiff*, *Brigitte Amiri*, *Diana Kasdan*, *Lawrence A. Vogelman*, and *Dara Klassel*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Texas et al. by *Greg Abbott*, Attorney General of Texas, *Barry R. McBee*, First Assistant Attorney General, *Edward D. Burbach*, Deputy Attorney General, *R. Ted Cruz*, Solicitor General, and *Joel L. Thollander*, Assistant Solicitor General, and by the Attorneys General for their respective States as follows: *Troy King* of Alabama, *Mike Beebe* of Arkansas, *John W. Suthers* of Colorado, *M. Jane Brady* of Delaware, *Charles J. Crist, Jr.*, of Florida, *Lawrence G. Wasden* of Idaho, *Phill Kline* of Kansas, *Michael A. Cox* of Michigan, *Jim Hood* of Mississippi, *Wayne Stenehjem* of North Dakota, *Jim Petro* of Ohio, *Thomas W. Corbett, Jr.*, of Pennsylvania, *Lawrence E. Long* of South Dakota, *Paul G. Summers* of Tennessee, *Mark L. Shurtleff* of Utah, *Judith Williams Jagdmann* of Virginia, and *Patrick J. Crank* of Wyoming; for the American Association of Pro Life Obstetricians and Gynecologists et al. by *Steven H. Aden;* for the American Center for Law and Justice by *Jay Alan Sekulow*, *Thomas P. Monaghan*, *Stuart J. Roth*, and *Walter M. Weber;* for the Association of American Physicians & Surgeons et al. by *Dorinda C. Bordlee*, *Nikolas T. Nikas*, and *James L. Hirsen;* for the Eagle Forum Education & Legal Defense Fund by *Andrew L. Schlafly;* for the Family Research Council, Inc., et al. by *Robert P. George;* for the National Legal Foundation by *Barry C. Hodge;* for New Hampshire Legislators by *Teresa Stanton Collett;* for the Rutherford Institute by *John W. Whitehead* and *James J. Knicely;* for the Thomas More Society by *Paul Benjamin Linton* and *Thomas Brejcha;* for the United States Conference of Catholic Bishops et al. by *Mark E. Chopko* and *Michael F. Moses;* for University Faculty for Life by *Richard G. Wilkins;* for Alaska Lieutenant Governor Loren Leman et al. by *Kevin Gilbert Clarkson;* for Minnesota Governor Tim Pawlenty et al. by *Ms. Collett;* for Harlon Reeves by *Kelly Shackelford;* for Margie Riley et al. by *James Joseph*

JUSTICE O'CONNOR delivered the opinion of the Court.

We do not revisit our abortion precedents today, but rather address a question of remedy: If enforcing a statute that regulates access to abortion would be unconstitutional in medical emergencies, what is the appropriate judicial response? We hold that invalidating the statute entirely is not always necessary or justified, for lower courts may be able to render narrower declaratory and injunctive relief.

I

A

In 2003, New Hampshire enacted the Parental Notification Prior to Abortion Act. N. H. Rev. Stat. Ann. §§ 132:24–132:28 (2005). The Act prohibits physicians from performing an abortion on a pregnant minor (or a woman for whom a guardian or conservator has been appointed) until 48 hours after written notice of the pending abortion is delivered

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Lynch, Jr.; for New Hampshire State Representative Kathleen Souza et al. by *Clarke D. Forsythe* and *Denise M. Burke;* and for James P. Weiers et al. by *Len L. Munsil.*

Briefs of *amici curiae* urging affirmance were filed for the American College of Obstetricians and Gynecologists et al. by *A. Stephen Hut, Jr.*, and *Kimberly A. Parker;* for the Center for Adolescent Health & the Law et al. by *Elizabeth B. McCallum, Susan Frietsche,* and *David S. Cohen;* for the Center for Reproductive Rights et al. by *Sanford M. Cohen, Simon Heller,* and *Priscilla Smith;* for the National Coalition Against Domestic Violence et al. by *Maria T. Vullo* and *Julie Goldscheid;* for Organizations Committed to Women's Equality by *Jennifer K. Brown;* for the Religious Coalition for Reproductive Choice et al. by *Caroline M. Brown;* for New Hampshire Governor John H. Lynch by *Katherine M. Hanna;* and for New Hampshire State Representative Terie Norelli et al. by *Kenneth J. Barnes.*

Briefs of *amici curiae* were filed for the Horatio R. Storer Foundation, Inc., by *James Bopp, Jr.*, and *Thomas J. Marzen;* for the Legal Defense for Unborn Children by *Alan Ernest;* for Liberty Counsel by *Mathew D. Staver, Erik W. Stanley, Rena M. Lindevaldsen,* and *Mary E. McAlister;* for NARAL Pro-Choice America Foundation et al. by *Elizabeth A. Cavendish, James P. Joseph,* and *Leslie M. Hill;* and for Maureen L. Curley et al. by *Philip D. Moran.*

to her parent or guardian. § 132:25(I). Notice may be delivered personally or by certified mail. §§ 132:25(II), (III). Violations of the Act are subject to criminal and civil penalties. § 132:27.

The Act allows for three circumstances in which a physician may perform an abortion without notifying the minor's parent. First, notice is not required if "[t]he attending abortion provider certifies in the pregnant minor's record that the abortion is necessary to prevent the minor's death and there is insufficient time to provide the required notice." § 132:26(I)(a). Second, a person entitled to receive notice may certify that he or she has already been notified. § 132:26(I)(b). Finally, a minor may petition a judge to authorize her physician to perform an abortion without parental notification. The judge must so authorize if he or she finds that the minor is mature and capable of giving informed consent, or that an abortion without notification is in the minor's best interests. § 132:26(II). These judicial bypass proceedings "shall be confidential and shall be given precedence over other pending matters so that the court may reach a decision promptly and without delay," and access to the courts "shall be afforded [to the] pregnant minor 24 hours a day, 7 days a week." §§ 132:26(II)(b), (c). The trial and appellate courts must each rule on bypass petitions within seven days. *Ibid.*

The Act does not explicitly permit a physician to perform an abortion in a medical emergency without parental notification.

B

Respondents are Dr. Wayne Goldner, an obstetrician and gynecologist who has a private practice in Manchester, and three clinics that offer reproductive health services. All provide abortions for pregnant minors, and each anticipates having to provide emergency abortions for minors in the future. Before the Act took effect, respondents brought suit under 42 U. S. C. § 1983, alleging that the Act is unconstitu-

tional because it fails "to allow a physician to provide a prompt abortion to a minor whose health would be endangered" by delays inherent in the Act. App. 10 (Complaint, ¶ 24). Respondents also challenged the adequacy of the Act's life exception and of the judicial bypass' confidentiality provision.

The District Court declared the Act unconstitutional, see 28 U. S. C. § 2201(a), and permanently enjoined its enforcement. It held, first, that the Act was invalid for failure "on its face [to] comply with the constitutional requirement that laws restricting a woman's access to abortion must provide a health exception." *Planned Parenthood of Northern New Eng.* v. *Heed*, 296 F. Supp. 2d 59, 65 (NH 2003). It also found that the Act's judicial bypass would not operate expeditiously enough in medical emergencies. In the alternative, the District Court held the Act's life exception unconstitutional because it requires physicians to certify with impossible precision that an abortion is "necessary" to avoid death, and fails to protect their good faith medical judgment.

The Court of Appeals for the First Circuit affirmed. Citing our decisions in *Stenberg* v. *Carhart*, 530 U. S. 914, 929–930 (2000), *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833, 879 (1992) (plurality opinion), and *Roe* v. *Wade*, 410 U. S. 113, 164–165 (1973), it observed: "Complementing the general undue burden standard [for reviewing abortion regulations], the Supreme Court has also identified a specific and independent constitutional requirement that an abortion regulation must contain an exception for the preservation of the pregnant woman's health." *Planned Parenthood of Northern New Eng.* v. *Heed*, 390 F. 3d 53, 58 (2004). It went on to conclude that the Act is unconstitutional because it does not contain an explicit health exception, and its judicial bypass, along with other provisions of state law, is no substitute. The Court of Appeals further found the Act unconstitutional because, in its view, the life exception forces physicians to gamble with their patients'

lives by prohibiting them from performing an abortion without notification until they are certain that death is imminent, and is intolerably vague. Because the district and appellate courts permanently enjoined the Act's enforcement on the basis of the above infirmities, neither reached respondents' objection to the judicial bypass' confidentiality provision.

We granted certiorari, 544 U. S. 1048 (2005), to decide whether the courts below erred in invalidating the Act in its entirety because it lacks an exception for the preservation of pregnant minors' health. We now vacate and remand for the Court of Appeals to reconsider its choice of remedy.

II

As the case comes to us, three propositions—two legal and one factual—are established. First, States unquestionably have the right to require parental involvement when a minor considers terminating her pregnancy, because of their "strong and legitimate interest in the welfare of [their] young citizens, whose immaturity, inexperience, and lack of judgment may sometimes impair their ability to exercise their rights wisely." *Hodgson* v. *Minnesota*, 497 U. S. 417, 444–445 (1990) (opinion of STEVENS, J.).[1] Accordingly, we have

[1] Forty-four States, including New Hampshire, have parental involvement (that is, consent or notification) laws. Thirty-eight of those laws have explicit exceptions for health or medical emergencies. Ala. Code § 26–21–5 (1992); Alaska Stat. § 18.16.060 (2004); Ariz. Rev. Stat. Ann. § 36–2152(G)(2) (West 2003); Ark. Code Ann. §§ 20–16–802(2), 20–16–805(1) (2005 Supp.); Cal. Health & Safety Code Ann. § 123450 (West 1996); Colo. Rev. Stat. § 12–37.5–103(5) (2004); Del. Code Ann., Tit. 24, §§ 1782(d), 1787 (1997); Fla. Stat. Ann. §§ 390.01114(2)(d), (3)(b) (West Supp. 2006); Ga. Code Ann. § 15–11–116 (2005); Idaho Code § 18–609A(1)(a)(v) (Lexis Cum. Supp. 2005); Ill. Comp. Stat., ch. 750, § 70/10 (West 2004); Ind. Code § 16–34–2–4 (West 2004); Iowa Code § 135L.3 (2005); Kan. Stat. Ann. § 65–6705(j)(1)(B) (2002); Ky. Rev. Stat. Ann. §§ 311.720, 311.732 (West Supp. 2005); La. Stat. Ann. § 40:1299.35.12 (West Supp. 2005); Mass. Gen. Laws, ch. 112, § 12S (West 2004); Mich. Comp. Laws Ann. §§ 722.902(b), 722.905 (West 2002); Miss. Code Ann. § 41–41–57 (2005); Mont. Code Ann. §§ 50–20–203(5), 50–20–208 (2005); Neb. Rev. Stat. § 71–6906(1) (2003); Nev. Rev. Stat.

long upheld state parental involvement statutes like the Act before us, and we cast no doubt on those holdings today. See, *e. g.*, *Lambert* v. *Wicklund*, 520 U. S. 292 (1997) *(per curiam); Casey*, *supra*, at 899 (joint opinion); *Ohio* v. *Akron Center for Reproductive Health*, 497 U. S. 502, 510–519 (1990); *Hodgson*, 497 U. S., at 461 (O'CONNOR, J., concurring in part and concurring in judgment in part); *id.*, at 497–501 (KENNEDY, J., concurring in judgment in part and dissenting in part).[2]

Second, New Hampshire does not dispute, and our precedents hold, that a State may not restrict access to abortions that are "'necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.'" *Casey*,

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§ 442.255(1) (2003); N. J. Stat. Ann. §§ 9:17A–1.3, 9:17A–1.6 (West 2002); N. M. Stat. Ann. § 30–5–1 (2004); N. C. Gen. Stat. Ann. § 90–21.9 (Lexis 2003); N. D. Cent. Code Ann. §§ 14–02.1–03(1), 14–02.1–03.1(2) (Lexis 2004); Ohio Rev. Code Ann. § 2919.121(D) (Lexis 2003); Okla. Stat., Tit. 63, § 1–740.2(B) (West Cum. Supp. 2006); 18 Pa. Cons. Stat. §§ 3203, 3206 (2002); R. I. Gen. Laws § 23–4.7–4 (1996); S. C. Code Ann. § 44–41–30(C)(1) (2002); 2005 S. D. Laws p. 189; Tenn. Code Ann. § 37–10–305 (2005); Tex. Occ. Code Ann. § 164.052(a)(19) (West Cum. Supp. 2005), Tex. S. B. 419, § 1.42(a)(19) (2005) (enrolled); Utah Code Ann. §§ 76–7–301(2), 76–7–305 (Lexis Supp. 2005); Va. Code Ann. § 18.2–76 (2004); W. Va. Code § 16–2F–5 (Lexis 2001); Wis. Stat. § 48.375 (2003–2004). Two States give physicians sufficient discretion to perform an abortion to protect minors' health. Me. Rev. Stat. Ann., Tit. 22, § 1597–A (2004); Md. Health Code Ann. § 20–103 (2005). Four, including New Hampshire, make no exception for minors' health in an emergency. N. H. Stat. § 132:26 (2005); Minn. Stat. § 144.343 (2004); Mo. Rev. Stat. § 188.028 (2000); Wyo. Stat. Ann. § 35–6–118 (2003).

[2] It is the sad reality, however, that young women sometimes lack a loving and supportive parent capable of aiding them "to exercise their rights wisely." *Hodgson*, 497 U. S., at 444 (opinion of STEVENS, J.); see *id.*, at 450–451, and n. 36 (opinion of the Court) (holding unconstitutional a statute requiring notification of both parents, and observing that "the most common reason" young women did not notify a second parent was that the second parent "was a child- or spouse-batterer, and notification would have provoked further abuse" (citation omitted)). See also Department of Health and Human Services, Administration on Children, Youth and Families, Child Maltreatment 2003, p. 63 (2005) (parents were the perpetrators in 79.7% of cases of reported abuse or neglect).

505 U. S., at 879 (plurality opinion) (quoting *Roe*, 410 U. S., at 164–165); see also *Thornburgh* v. *American College of Obstetricians and Gynecologists*, 476 U. S. 747, 768–769 (1986); *Planned Parenthood Assn. of Kansas City, Mo., Inc.* v. *Ashcroft*, 462 U. S. 476, 482–486 (1983) (opinion of Powell, J.); *Planned Parenthood of Central Mo.* v. *Danforth*, 428 U. S. 52, 79 (1976).

Third, New Hampshire has not taken real issue with the factual basis of this litigation: In some very small percentage of cases, pregnant minors, like adult women, need immediate abortions to avert serious and often irreversible damage to their health. See 296 F. Supp. 2d, at 65, n. 4.

New Hampshire has maintained that in most if not all cases, the Act's judicial bypass and the State's "competing harms" statutes should protect both physician and patient when a minor needs an immediate abortion. See N. H. Rev. Stat. Ann. § 627:3(I) (1996) (for criminal liability, "[c]onduct which the actor believes to be necessary to avoid harm to . . . another is justifiable if the desirability and urgency of avoiding such harm outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the statute defining the offense charged"); § 627:1 (similar for civil liability). But the District Court and Court of Appeals found neither of these provisions to protect minors' health reliably in all emergencies. 296 F. Supp. 2d, at 65–66; 390 F. 3d, at 61–62. And New Hampshire has conceded that, under our cases, it would be unconstitutional to apply the Act in a manner that subjects minors to significant health risks. See Reply Brief for Petitioner 2, 8, 11; Tr. of Oral Arg. 6, 14.

III

We turn to the question of remedy: When a statute restricting access to abortion may be applied in a manner that harms women's health, what is the appropriate relief? Generally speaking, when confronting a constitutional flaw in a statute, we try to limit the solution to the problem. We pre-

fer, for example, to enjoin only the unconstitutional applications of a statute while leaving other applications in force, see *United States* v. *Raines*, 362 U. S. 17, 20–22 (1960), or to sever its problematic portions while leaving the remainder intact, *United States* v. *Booker*, 543 U. S. 220, 227–229 (2005).

Three interrelated principles inform our approach to remedies. First, we try not to nullify more of a legislature's work than is necessary, for we know that "[a] ruling of unconstitutionality frustrates the intent of the elected representatives of the people." *Regan* v. *Time, Inc.*, 468 U. S. 641, 652 (1984) (plurality opinion). It is axiomatic that a "statute may be invalid as applied to one state of facts and yet valid as applied to another." *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282, 289 (1921). Accordingly, the "normal rule" is that "partial, rather than facial, invalidation is the required course," such that a "statute may . . . be declared invalid to the extent that it reaches too far, but otherwise left intact." *Brockett* v. *Spokane Arcades, Inc.*, 472 U. S. 491, 504 (1985); see also *Tennessee* v. *Garner*, 471 U. S. 1 (1985); *United States* v. *Grace*, 461 U. S. 171, 180–183 (1983).

Second, mindful that our constitutional mandate and institutional competence are limited, we restrain ourselves from "rewrit[ing] state law to conform it to constitutional requirements" even as we strive to salvage it. *Virginia* v. *American Booksellers Assn., Inc.*, 484 U. S. 383, 397 (1988). Our ability to devise a judicial remedy that does not entail quintessentially legislative work often depends on how clearly we have already articulated the background constitutional rules at issue and how easily we can articulate the remedy. In *United States* v. *Grace*, *supra,* at 180–183, for example, we crafted a narrow remedy much like the one we contemplate today, striking down a statute banning expressive displays only as it applied to public sidewalks near the Supreme Court but not as it applied to the Supreme Court Building itself. We later explained that the remedy in *Grace* was a "relatively simple matter" because we had previously dis-

tinguished between sidewalks and buildings in our First Amendment jurisprudence. *United States* v. *Treasury Employees*, 513 U. S. 454, 479, n. 26 (1995). But making distinctions in a murky constitutional context, or where line-drawing is inherently complex, may call for a "far more serious invasion of the legislative domain" than we ought to undertake. *Ibid.*

Third, the touchstone for any decision about remedy is legislative intent, for a court cannot "use its remedial powers to circumvent the intent of the legislature." *Califano* v. *Westcott*, 443 U. S. 76, 94 (1979) (Powell, J., concurring in part and dissenting in part); see also *Dorchy* v. *Kansas*, 264 U. S. 286, 289–290 (1924) (opinion for the Court by Brandeis, J.). After finding an application or portion of a statute unconstitutional, we must next ask: Would the legislature have preferred what is left of its statute to no statute at all? See generally *Booker*, *supra*, at 227; *Minnesota* v. *Mille Lacs Band of Chippewa Indians*, 526 U. S. 172, 191 (1999); *Alaska Airlines, Inc.* v. *Brock*, 480 U. S. 678, 684 (1987); *Champlin Refining Co.* v. *Corporation Comm'n of Okla.*, 286 U. S. 210, 234 (1932); *The Employers' Liability Cases*, 207 U. S. 463, 501 (1908); *Allen* v. *Louisiana*, 103 U. S. 80, 83–84 (1881); *Trade-Mark Cases*, 100 U. S. 82, 97–98 (1879). All the while, we are wary of legislatures who would rely on our intervention, for "[i]t would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside" to announce to whom the statute may be applied. *United States* v. *Reese*, 92 U. S. 214, 221 (1876). "This would, to some extent, substitute the judicial for the legislative department of the government." *Ibid.*

In this case, the courts below chose the most blunt remedy—permanently enjoining the enforcement of New Hampshire's parental notification law and thereby invalidating it entirely. That is understandable, for we, too, have previ-

ously invalidated an abortion statute in its entirety because of the same constitutional flaw. In *Stenberg*, we addressed a Nebraska law banning so-called "partial birth abortion" unless the procedure was necessary to save the pregnant woman's life. We held Nebraska's law unconstitutional because it lacked a health exception. 530 U. S., at 930 (lack of a health exception was an "independent reaso[n]" for finding the ban unconstitutional). But the parties in *Stenberg* did not ask for, and we did not contemplate, relief more finely drawn.

In the case that is before us, however, we agree with New Hampshire that the lower courts need not have invalidated the law wholesale. Respondents, too, recognize the possibility of a modest remedy: They pleaded for any relief "just and proper," App. 13 (Complaint), and conceded at oral argument that carefully crafted injunctive relief may resolve this case, Tr. of Oral Arg. 38, 40. Only a few applications of New Hampshire's parental notification statute would present a constitutional problem. So long as they are faithful to legislative intent, then, in this case the lower courts can issue a declaratory judgment and an injunction prohibiting the statute's unconstitutional application.

There is some dispute as to whether New Hampshire's legislature intended the statute to be susceptible to such a remedy. New Hampshire notes that the Act contains a severability clause providing that "[i]f any provision of this subdivision or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions or applications of this subdivision which can be given effect without the invalid provisions or applications." § 132:28. Respondents, on the other hand, contend that New Hampshire legislators preferred no statute at all to a statute enjoined in the way we have described. Because this is an open question, we remand for the lower courts to determine legislative intent in the first instance.

IV

Either an injunction prohibiting unconstitutional applications or a holding that consistency with legislative intent requires invalidating the statute *in toto* should obviate any concern about the Act's life exception. We therefore need not pass on the lower courts' alternative holding. Finally, if the Act does survive in part on remand, the Court of Appeals should address respondents' separate objection to the judicial bypass' confidentiality provision. The judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

RICE, WARDEN, ET AL. *v.* COLLINS

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 04–52. Argued December 5, 2005—Decided January 18, 2006

After the prosecutor struck a young, African-American woman, Juror 16, from the panel at respondent Collins' state-court drug trial, Collins objected that the strike was made on account of Juror 16's race. As race-neutral explanations for the strike, the prosecutor said that Juror 16 had rolled her eyes in response to a question from the court; that she was young and might be too tolerant of a drug crime; and that she was single and lacked ties to the community. In rejecting Collins' challenge, the trial court declared that it did not observe the complained-of demeanor by Juror 16, but noted that she was youthful, as was a white male juror also dismissed by peremptory challenge, and stated it would give the prosecutor "the benefit of the doubt." The prosecutor had also referred to Juror 16's gender in explaining the strike, but the trial court disallowed any reliance on that ground. The California Court of Appeal upheld the conviction and the trial court's ruling on the peremptory challenge, finding that the prosecutor permissibly excluded Juror 16 based on her youth. Even if youth was not a legitimate reason to exercise a peremptory challenge, said the court, Juror 16's demeanor supported the strike; nothing in the record suggested the trial court failed to conduct a searching inquiry of the prosecutor's reasons for striking her. The California Supreme Court denied review. The Federal District Court dismissed Collins' habeas petition with prejudice, but the Ninth Circuit reversed and remanded, concluding that, under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), the State Court of Appeal's affirmance was based on an unreasonable factual determination in light of the evidence presented at trial.

Held: The Ninth Circuit's attempt to use a set of debatable inferences to set aside the state court's conclusion does not satisfy AEDPA's requirements for granting habeas relief. Pp. 338–342.

(a) Under *Batson* v. *Kentucky,* 476 U. S. 79, 98, a defendant's challenge to a peremptory strike allegedly based on race requires, *inter alia,* that the trial court determine whether the defendant has carried his burden of proving purposeful discrimination. This involves evaluating "the persuasiveness of the [prosecutor's proffered] justification" for the strike, but "the ultimate burden of persuasion regarding racial motivation rests with, and never shifts from, the opponent of the strike."

Purkett v. *Elem*, 514 U. S. 765, 768. Because, under AEDPA, a federal habeas court must find the state-court conclusion "an unreasonable determination of the facts in light of the evidence presented in the State court proceeding," 28 U. S. C. § 2254(d)(2), a federal court can only grant Collins' petition if it was unreasonable to credit the prosecutor's race-neutral explanations for the *Batson* challenge. P. 338.

(b) Though the Ninth Circuit recited the proper standard of review, it improperly substituted its evaluation of the record for that of the state trial court, which, under § 2254(d)(2), did not make an unreasonable determination of the facts in light of the evidence presented. Noting that the trial court had not witnessed Juror 16's purported eye rolling, the Ninth Circuit concluded that no reasonable factfinder could have accepted the prosecutor's rendition of the alleged incident because the prosecutor had completely undermined her own credibility based on three considerations: her erroneous statement that another prospective African-American juror, Juror 19, was "young" when, in fact, she was a grandmother; the prosecutor's improper attempt to use gender as a basis for exclusion; and the Court of Appeals' skepticism toward the prosecutor's explanation that she struck Juror 16 in part because of her youth and lack of ties to the community. As to the first reason, because the prosecutor's reference to Juror 19's youth occurred during a discussion of three prospective jurors, two of whom were, indeed, young, it is quite plausible that the prosecutor simply misspoke. It is a tenuous inference to say that an accidental reference with respect to one juror undermines the prosecutor's credibility with respect to another. Second, the Ninth Circuit assigned the prosecutor's reference to Juror 16's gender more weight than it can bear, given that the prosecutor provided a number of other permissible and plausible race-neutral reasons for excluding her. Collins provides no argument why this matter demonstrates that a reasonable factfinder must conclude the prosecutor lied about the eye rolling and struck Juror 16 based on her race. Finally, even if the prosecutor's concerns about Juror 16's youth and lack of community ties were overly cautious, her wariness could be seen as race neutral, for she used a peremptory strike on a white male juror, Juror 6, with the same characteristics. Viewing the foregoing concerns together, the most generous reading would suggest only that the trial court had reason to question the prosecutor's credibility regarding Juror 16's alleged improper demeanor. That does not, however, compel the conclusion that the trial court had no permissible alternative but to reject the prosecutor's race-neutral justifications and conclude Collins had shown a *Batson* violation. Reasonable minds reviewing the record might disagree about the prosecutor's credibility, but on habeas review

that does not suffice to supersede the trial court's credibility determination. Pp. 339–342.

365 F. 3d 667, reversed and remanded.

KENNEDY, J., delivered the opinion for a unanimous Court. BREYER, J., filed a concurring opinion, in which SOUTER, J., joined, *post*, p. 342.

Bill Lockyer, Attorney General of California, argued the cause for petitioners. With him on the briefs were *Manuel M. Medeiros*, State Solicitor General, *Robert R. Anderson*, Chief Assistant Attorney General, *Pamela C. Hamanaka*, Senior Assistant Attorney General, *Kristofer Jorstad*, Deputy Attorney General, *Erika D. Jackson*, Deputy Attorney General, and *Donald E. De Nicola*, Deputy Solicitor General.

Mark R. Drozdowski, by appointment of the Court, *post*, p. 807, argued the cause for respondent. With him on the brief were *Maria E. Stratton* and *Karyn H. Bucur*.*

JUSTICE KENNEDY delivered the opinion of the Court.

Concerned that, in this habeas corpus case, a federal court set aside reasonable state-court determinations of fact in favor of its own debatable interpretation of the record, we granted certiorari. Our review confirms that the Court of Appeals for the Ninth Circuit erred, misapplying settled rules that limit its role and authority.

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*Briefs of *amici curiae* urging reversal were filed for the State of Arizona et al. by *Brian Sandoval*, Attorney General of Nevada, *David K. Neidert*, Senior Deputy Attorney General, by *Christopher L. Morano*, Chief State's Attorney of Connecticut, and by the Attorneys General for their respective States as follows: *Terry Goddard* of Arizona, *John W. Suthers* of Colorado, *Lawrence G. Wasden* of Idaho, *Tom Miller* of Iowa, *Thomas F. Reilly* of Massachusetts, *Mike Cox* of Michigan, *Jim Petro* of Ohio, *Hardy Meyers* of Oregon, *Henry D. McMaster* of South Carolina, *Larry Long* of South Dakota, *Paul G. Summers* of Tennessee, *Greg Abbott* of Texas, *Mark L. Shurtleff* of Utah, and *Rob McKenna* of Washington; and for the Criminal Justice Legal Foundation by *Kent S. Scheidegger* and *Charles L. Hobson*.

I

After a 4-day trial in the Superior Court of California for the County of Los Angeles, a jury convicted Steven Martell Collins on one count of possessing cocaine. The conviction was all the more serious because it subjected him to California's three strikes rule for sentencing. The question at issue in this federal habeas corpus action, however, is the California courts' rejection of Collins' argument that the prosecutor struck a young, African-American woman, Juror 16, from the panel on account of her race. A second African-American juror was also the subject of a peremptory strike, and although Collins challenged that strike in the trial court, on appeal he objected only to the excusal of Juror 16.

Even prior to this Court's decision in *Batson* v. *Kentucky*, 476 U. S. 79 (1986), California courts barred peremptory challenges to jurors based on race. *People* v. *Wheeler*, 22 Cal. 3d 258, 583 P. 2d 748 (1978). Although our recent decision in *Johnson* v. *California*, 545 U. S. 162 (2005), disapproved of the manner in which *Wheeler* and *Batson* were implemented in some California cases, the state courts in this case used the correct analytical framework in considering and ruling upon the objection to the prosecutorial strike.

As race-neutral explanations for striking Juror 16, the prosecutor said that Juror 16 had rolled her eyes in response to a question from the court; that Juror 16 was young and might be too tolerant of a drug crime; and that Juror 16 was single and lacked ties to the community. A further, more troubling part of the prosecutor's unorganized explanation was her reference to Juror 16's gender. The trial court, correctly, disallowed any reliance on that ground. The trial court, furthermore, which had the benefit of observing the prosecutor firsthand over the course of the proceedings, rejected Collins' challenge.

> "With regard to 016, the court, frankly, did not observe the demeanor of Ms. 016 that was complained of by

> the District Attorney; however, Ms. 016 was a youthful person, as was [a white male juror the prosecutor also dismissed by peremptory challenge]. And one or more prospective jurors also.
>
> "The Court is prepared to give the District Attorney the benefit of the doubt as to Ms. 016." 2 App. 14–15.

The California Court of Appeal upheld the conviction and the trial court's ruling on the peremptory challenge. *People* v. *Collins,* No. B106939 (Dec. 12, 1997), App. H to Pet. for Cert. 112–117. In its view, youth was a legitimate reason to exercise a peremptory challenge; and, even if it were not, Juror 16's demeanor also supported the strike. *Id.*, at 116. According to its review of the record, nothing suggested the trial court failed to conduct a searching inquiry of the prosecutor's reasons for striking Juror 16. *Id.*, at 116–117. The appeals court thus upheld the trial court's ultimate conclusion to credit the prosecutor. *Ibid.* Without comment, the Supreme Court of California denied Collins' petition for review. App. F, *id.*, at 96.

Collins sought collateral relief on this claim in federal court. The United States District Court for the Central District of California dismissed with prejudice Collins' petition for a writ of habeas corpus. App. D, *id.*, at 91. A divided panel of the Court of Appeals for the Ninth Circuit reversed and remanded with instructions to grant the petition. 348 F. 3d 1082 (2003), amended and superseded by 365 F. 3d 667 (2004). Noting that the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) governed Collins' petition, the panel majority concluded that it was an unreasonable factual determination to credit the prosecutor's race-neutral reasons for striking Juror 16. *Id.*, at 679. Judge Hall dissented, *id.*, at 687–691; and later, over the dissent of five judges, the Court of Appeals declined to rehear the case en banc, *id.*, at 670–673. Though it recited the proper standard of review, the panel majority improperly substituted its evaluation of the record for that of the state

trial court. We granted the petition for certiorari, 545 U. S. 1151 (2005), and now reverse.

II

A defendant's *Batson* challenge to a peremptory strike requires a three-step inquiry. First, the trial court must determine whether the defendant has made a prima facie showing that the prosecutor exercised a peremptory challenge on the basis of race. 476 U. S., at 96–97. Second, if the showing is made, the burden shifts to the prosecutor to present a race-neutral explanation for striking the juror in question. *Id.*, at 97–98. Although the prosecutor must present a comprehensible reason, "[t]he second step of this process does not demand an explanation that is persuasive, or even plausible"; so long as the reason is not inherently discriminatory, it suffices. *Purkett* v. *Elem*, 514 U. S. 765, 767–768 (1995) *(per curiam)*. Third, the court must then determine whether the defendant has carried his burden of proving purposeful discrimination. *Batson*, *supra*, at 98. This final step involves evaluating "the persuasiveness of the justification" proffered by the prosecutor, but "the ultimate burden of persuasion regarding racial motivation rests with, and never shifts from, the opponent of the strike." *Purkett*, *supra*, at 768.

On direct appeal in federal court, the credibility findings a trial court makes in a *Batson* inquiry are reviewed for clear error. *Hernandez* v. *New York*, 500 U. S. 352, 364–366 (1991) (plurality opinion) (holding that evaluation of a prosecutor's credibility "lies 'peculiarly within a trial judge's province' "). Under AEDPA, however, a federal habeas court must find the state-court conclusion "an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U. S. C. § 2254(d)(2). Thus, a federal habeas court can only grant Collins' petition if it was unreasonable to credit the prosecutor's race-neutral explanations for the *Batson* challenge. State-court factual findings, more-

over, are presumed correct; the petitioner has the burden of rebutting the presumption by "clear and convincing evidence." § 2254(e)(1). See *Miller-El* v. *Dretke*, 545 U. S. 231, 240 (2005). Although the Ninth Circuit assumed § 2254(e)(1)'s presumption applied in this case, 365 F. 3d, at 677, the parties disagree about whether and when it does. We need not address that question. Even assuming, *arguendo*, that only § 2254(d)(2) applied in this proceeding, the state-court decision was not an unreasonable determination of the facts in light of the evidence presented in the state court.

Because the California Court of Appeal accepted the trial court's credibility finding, the panel majority inquired whether the appellate court made an unreasonable factual determination. See *id.*, at 682. The panel majority's analysis and conclusions, however, depended entirely on its view of the trial court's credibility holding. The panel majority found no error in the trial court's proceedings or rulings in the first two steps of the *Batson* inquiry. 365 F. 3d, at 677–678. It disagreed, however, with the trial court's conclusions on the third step, holding that it was unreasonable to accept the prosecutor's explanation that Juror 16 was excused on account of her youth and her demeanor. *Id.*, at 678–687. We conclude the Ninth Circuit erred, for the trial court's credibility determination was not unreasonable.

Noting that the trial court had not witnessed Juror 16's purported eye rolling, the panel majority concluded that no reasonable factfinder could have accepted the prosecutor's rendition of the alleged incident because the prosecutor's conduct completely undermined her credibility. *Id.*, at 683. Having before it only the trial court record, the Court of Appeals majority drew this conclusion based on three considerations: first, the prosecutor's erroneous statement concerning another prospective African-American juror's age; second, the prosecutor's improper attempt to use gender as a basis for exclusion; and third, the majority's skepticism to-

ward the prosecutor's explanation that she struck Juror 16 in part because of her youth and lack of ties to the community. *Id.*, at 683–684.

The first reason the panel majority noted for rejecting the trial court's credibility finding pertained not to Juror 16, the subject of Collins' claim on appeal, but to another prospective African-American juror, Juror 19. The prosecutor referred to Juror 19 as "young" even though she was a grandmother. This reference to youth took place during a discussion about three prospective jurors, Jurors 6, 16, and 19. Jurors 6 and 16 were both young. As Judge Hall observed, it is quite plausible that the prosecutor simply misspoke with respect to a juror's numerical designation, an error defense counsel may also have committed. *Id.*, at 688; 2 App. 9. It is a tenuous inference to say that an accidental reference with respect to one juror, Juror 19, undermines the prosecutor's credibility with respect to Juror 16. Seizing on what can plausibly be viewed as an innocent transposition makes little headway toward the conclusion that the prosecutor's explanation was clearly not credible.

Second, the panel majority concluded that the trial court should have questioned the prosecutor's credibility because of her "attempt to use gender as a race-neutral basis for excluding Jurors 016 and 019." 365 F. 3d, at 684. Respondent's trial occurred in August 1996, over two years after our decision in *J. E. B.* v. *Alabama ex rel. T. B.*, 511 U. S. 127 (1994), made clear that discrimination in jury selection on the basis of gender violates the Equal Protection Clause. Although the record contains a somewhat confusing colloquy on this point, it can be read as indicating that one of the prosecutor's aims in striking Juror 16 was achieving gender balance on the jury. Concerned about the constitutionality of such a strike, the trial court made clear that it would not accept gender as a race-neutral explanation. The panel majority assigned the gender justification more weight than it

can bear. The prosecutor provided a number of other permissible and plausible race-neutral reasons, and Collins provides no argument why this portion of the colloquy demonstrates that a reasonable factfinder must conclude the prosecutor lied about the eye rolling and struck Juror 16 based on her race.

Finally, the panel majority believed to be unsupportable the prosecutor's stated concern that Juror 16 might, as a young and single citizen with no ties to the community, be too tolerant of the crime with which respondent was charged. 365 F. 3d, at 680–682, 684. This was so, the majority concluded, because during *voir dire* Juror 16 replied affirmatively when asked if she believed the crime with which respondent was charged should be illegal and disclaimed any other reason she could not be impartial. *Id.*, at 680. That the prosecutor claimed to hold such concerns despite Juror 16's *voir dire* averments does not establish that she offered a pretext. It is not unreasonable to believe the prosecutor remained worried that a young person with few ties to the community might be less willing than an older, more permanent resident to impose a lengthy sentence for possessing a small amount of a controlled substance. Accord, *id.*, at 690 (Hall, J., dissenting). Even if the prosecutor was overly cautious in this regard, her wariness of the young and the rootless could be seen as race neutral, for she used a peremptory strike on a white male juror, Juror 6, with the same characteristics. 2 App. 5, 14.

Viewing the panel majority's concerns together, the most generous reading would suggest only that the trial court had reason to question the prosecutor's credibility regarding Juror 16's alleged improper demeanor. That does not, however, compel the conclusion that the trial court had no permissible alternative but to reject the prosecutor's race-neutral justifications and conclude Collins had shown a *Batson* violation. Reasonable minds reviewing the record

might disagree about the prosecutor's credibility, but on habeas review that does not suffice to supersede the trial court's credibility determination.

The panel majority did not stop at the conclusion that the trial court rendered an unreasonable factual determination in light of the evidence presented. It further concluded that the state courts had unreasonably applied clearly established federal law as determined by this Court. 365 F. 3d, at 679; 28 U. S. C. § 2254(d)(1). The question whether a state court errs in determining the facts is a different question from whether it errs in applying the law. In this case there is no demonstration that either the trial court or the California Court of Appeal acted contrary to clearly established federal law in recognizing and applying *Batson*'s burden-framework. See 2 App. 14–15; App. H to Pet. for Cert. 114–116. The only question, as we have noted, is whether the trial court's factual determination at *Batson*'s third step was unreasonable. For the reasons discussed above, we conclude it was not.

III

The panel majority's attempt to use a set of debatable inferences to set aside the conclusion reached by the state court does not satisfy AEDPA's requirements for granting a writ of habeas corpus. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE BREYER, with whom JUSTICE SOUTER joins, concurring.

Twenty years ago Justice Thurgood Marshall warned that the test of *Batson* v. *Kentucky*, 476 U. S. 79 (1986), would fail to ferret out unconstitutional discrimination in the selection of jurors. *Id.*, at 102–103 (concurring opinion) ("The decision today will not end the racial discrimination that peremptories inject into the jury-selection process"). In my view,

history has proved Justice Marshall right. See *Miller-El* v. *Dretke*, 545 U. S. 231, 266–267 (2005) (BREYER, J., concurring). And today's case, like *Miller-El*, helps to illustrate *Batson*'s fundamental failings.

For one thing, the prosecutor's inability in this case to provide a clear explanation of why she exercised her peremptory challenges may well reflect the more general fact that the exercise of a peremptory challenge can rest upon instinct not reason. Insofar as *Batson* asks prosecutors to explain the unexplainable, how can it succeed? *Miller-El*, 545 U. S., at 267–268 (BREYER, J., concurring).

For another thing, the trial judge's uncertainty about the legal validity of the exercise of peremptory challenges in this case may reflect the more general fact that, sometimes, no one, not even the lawyer herself, can be certain whether a decision to exercise a peremptory challenge rests upon an impermissible racial, religious, gender-based, or ethnic stereotype. *Ibid.* See also *Batson*, *supra*, at 106 (Marshall, J., concurring) (noting unconscious internalization of racial stereotypes). How can trial judges second-guess an instinctive judgment the underlying basis for which may be a form of stereotyping invisible even to the prosecutor? *Miller-El*, *supra*, at 267–268 (BREYER, J., concurring).

Finally, the case before us makes clear that ordinary mechanisms of judicial review cannot ensure *Batson*'s effectiveness. The reasons are structural. The trial judge is best placed to consider the factors that underlie credibility: demeanor, context, and atmosphere. And the trial judge is best placed to determine whether, in a borderline case, a prosecutor's hesitation or contradiction reflect (a) deception, or (b) the difficulty of providing a rational reason for an instinctive decision. Appellate judges cannot on the basis of a cold record easily second-guess a trial judge's decision about likely motivation. These circumstances mean that appellate courts will, and must, grant the trial courts considerable leeway in applying *Batson*. See *Hernandez* v. *New*

York, 500 U. S. 352 (1991). As the present case illustrates, considerations of federalism require federal habeas courts to show yet further deference to state-court judgments. See 28 U. S. C. § 2254(d)(2) (state-court factual determination must stand unless "unreasonable").

The upshot is an unresolvable tension between, on the one hand, what Blackstone called an inherently "'arbitrary and capricious'" peremptory challenge system, *Miller-El*, *supra*, at 272 (BREYER, J., concurring) (quoting 4 W. Blackstone, Commentaries on the Laws of England 346 (1769)), and, on the other hand, the Constitution's nondiscrimination command. Given this constitutional tension, we may have to choose. *Miller-El*, *supra*, at 273 (BREYER, J., concurring); *Swain* v. *Alabama*, 380 U. S. 202, 244 (1965) (Goldberg, J., dissenting) ("Were it necessary to make an absolute choice between the right of a defendant to have a jury chosen in conformity with the requirements of the Fourteenth Amendment and the right to challenge peremptorily, the Constitution compels a choice of the former"); *Batson*, *supra*, at 107 (Marshall, J., concurring) (same).

I have argued that legal life without peremptories is no longer unthinkable. *Miller-El*, *supra*, at 272 (concurring opinion) (citing, *inter alia*, the experience of England). I continue to believe that we should reconsider *Batson*'s test and the peremptory challenge system as a whole. Nonetheless, because the Court correctly applies the present legal framework, I concur in its opinion.

Syllabus

WILL ET AL. *v.* HALLOCK ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 04–1332. Argued November 28, 2005—Decided January 18, 2006

In a warranted search of Susan and Richard Hallocks' residence, Customs Service agents seized computer equipment, software, and disk drives. No criminal charges were ever brought, but the equipment was returned damaged, with all of the stored data lost, forcing Susan to close her computer software business. She sued the United States under the Federal Tort Claims Act, invoking the waiver of sovereign immunity, 28 U. S. C. § 1346, and alleging negligence by the customs agents in executing the search. While that suit was pending, Susan also filed this action against the individual agents under *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388, alleging that the damage they caused to her computers deprived her of property in violation of the Fifth Amendment's Due Process Clause. After the District Court dismissed the first suit on the ground that the agents' activities fell within an exception to the Tort Claims Act's waiver of sovereign immunity, § 2680(e), the agents moved for judgment in the *Bivens* action. They relied on the Tort Claims Act's judgment bar, § 2676, which provides that "the judgment in an action under [§] 1346(b) . . . constitute[s] a complete bar to any action . . . against the employee of the government whose act or omission gave rise to the claim." The District Court denied the motion, holding that dismissal of the Tort Claims Act suit against the Government failed to raise the Act's judgment bar. The Second Circuit affirmed, after first ruling in favor of jurisdiction under the collateral order doctrine. Under this doctrine, appellate authority to review "all final decisions of the district courts," § 1291, includes jurisdiction over "a narrow class of decisions that do not terminate the litigation," but are sufficiently important and collateral to the merits that they should "nonetheless be treated as 'final,'" *Digital Equipment Corp.* v. *Desktop Direct, Inc.*, 511 U. S. 863, 867.

Held: A refusal to apply the Federal Tort Claims Act's judgment bar is not open to collateral appeal. Pp. 350–355.

(a) Three conditions are required for collateral appeal: the order must "'[1] conclusively determine the disputed question, [2] resolve an important issue completely separate from the merits . . . , and [3] be effectively unreviewable on appeal from a final judgment.'" *Puerto Rico Aqueduct and Sewer Authority* v. *Metcalf & Eddy, Inc.*, 506 U. S. 139, 144. Those

conditions are "stringent." *Digital Equipment*, *supra*, at 868. Unless they are kept so, the underlying doctrine will overpower the substantial finality interests § 1291 is meant to further. Pp. 349–350.

(b) Among the "small class" of orders this Court has held to be collaterally appealable are those rejecting absolute immunity, *Nixon* v. *Fitzgerald*, 457 U. S. 731, 742, qualified immunity, *Mitchell* v. *Forsyth*, 472 U. S. 511, 530, and a State's Eleventh Amendment immunity claim, *Puerto Rico Aqueduct*, *supra*, at 144–145. In each of these cases, the collaterally appealing party was vindicating or claiming a right to avoid trial, in satisfaction of the third condition: unless the order to stand trial was immediately appealable the right would be effectively lost. However, to accept the generalization that any order denying a claim of right to prevail without trial satisfies the third condition would leave § 1291's final order requirement in tatters. See *Digital Equipment*, *supra*, at 872–873. Pp. 350–351.

(c) Thus, only some orders denying an asserted right to avoid the burdens of trial qualify as orders that cannot be reviewed "effectively" after a conventional final judgment. The further characteristic that merits collateral appealability is "a judgment about the value of the interests that would be lost through rigorous application of the final judgment requirement." *Digital Equipment*, *supra*, at 878–879. In each case finding appealability, some particular value of a high order was marshaled in support of the interest in avoiding trial, *e. g.*, honoring the separation of powers, *Nixon*, *supra*, at 749, 758, preserving the efficiency of government and the initiative of its officials, *Mitchell*, *supra*, at 526, and respecting a State's dignitary interests, *Puerto Rico Aqueduct*, *supra*, at 146. It is not mere avoidance of a trial, but avoidance of a trial that would imperil a substantial public interest that counts. *Coopers & Lybrand* v. *Livesay*, 437 U. S. 463, 468. Pp. 351–353.

(d) The customs agents' claim here does not serve a weighty public objective. This case must be distinguished from qualified immunity cases. The nub of such immunity is the need to induce government officials to show reasonable initiative when the relevant law is not "clearly established," *Harlow* v. *Fitzgerald*, 457 U. S. 800, 817; a quick resolution of a qualified immunity claim is essential. There is, however, no such public interest at stake simply because the judgment bar is said to be applicable. It is the avoidance of litigation for its own sake that supports the bar, and if simply abbreviating litigation troublesome to Government employees were important enough, § 1291 would fade out whenever the Government or an official lost in an early round. Another difference between qualified immunity and the judgment bar lies in the bar's essential procedural element. While a qualified immunity claim is timely from the moment an official is served with a complaint, the

judgment bar can be raised only after a case under the Tort Claims Act has been resolved in the Government's favor. The closer analogy to the judgment bar is the defense of res judicata. Both are grounded in the perceived need to avoid duplicative litigation, not in a policy of freeing a defendant from any liability. But this rule of respecting a prior judgment by giving a defense against relitigation has not been thought to protect values so important that only immediate appeal can effectively vindicate them. See *Digital Equipment*, *supra*, at 873. Pp. 353–355.

387 F. 3d 147, vacated and remanded.

SOUTER, J., delivered the opinion for a unanimous Court.

Douglas Hallward-Driemeier argued the cause for petitioners. With him on the brief were *Solicitor General Clement*, *Assistant Attorney General Keisler*, *Deputy Solicitor General Kneedler*, and *Barbara L. Herwig.*

Allison M. Zieve argued the cause for respondents. With her on the brief were *Brian Wolfman* and *Scott L. Nelson.*

JUSTICE SOUTER delivered the opinion of the Court.

The authority of the Courts of Appeals to review "all final decisions of the district courts," 28 U. S. C. § 1291, includes appellate jurisdiction over "a narrow class of decisions that do not terminate the litigation," but are sufficiently important and collateral to the merits that they should "nonetheless be treated as final," *Digital Equipment Corp.* v. *Desktop Direct, Inc.*, 511 U. S. 863, 867 (1994) (internal quotation marks omitted). The issue here is whether a refusal to apply the judgment bar of the Federal Tort Claims Act is open to collateral appeal. We hold it is not.

I

The complaint alleges that Susan Hallock owned a computer software business that she and her husband, Richard, operated from home. After information about Richard Hallock's credit card was stolen and used to pay the subscription fee for a child pornography Web site, agents of the United States Customs Service, investigating the Web site, traced

the payment to Richard Hallock's card and got a warrant to search the Hallocks' residence. With that authority, they seized the Hallocks' computer equipment, software, and disk drives. No criminal charges were ever brought, but the Government's actions produced a different disaster. When the computer equipment was returned, several of the disk drives were damaged, all of the stored data (including trade secrets and account files) were lost, and the Hallocks were forced out of business.

In July 2002, Susan Hallock and her company brought an action against the United States under the Federal Tort Claims Act, invoking the waiver of sovereign immunity, 28 U. S. C. § 1346, and alleging negligence by the customs agents in executing the search. The merits of the claim were never addressed, for the District Court granted the Government's motion to dismiss, holding that the agents' activities occurred in the course of detaining goods and thus fell within an exception to the Act's waiver of sovereign immunity, § 2680(e). *Hallock* v. *United States*, 253 F. Supp. 2d 361 (NDNY 2003).

While the suit against the Government was still pending, Susan Hallock filed this action against the individual agents under *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388 (1971), alleging in her complaint that the agents had damaged her computers and thus deprived her of property including business income in violation of the Due Process Clause of the Fifth Amendment. After the District Court dismissed the first suit against the Government, the agents moved for judgment in the *Bivens* action, citing the judgment bar of the Tort Claims Act, that "the judgment in an action under [§] 1346(b) of this title shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of the government whose act or omission gave rise to the claim." § 2676.

The District Court denied the motion, holding that dismissal of the action against the Government under the Tort

Claims Act was solely on a procedural ground, and thus failed to raise the judgment bar. *Hallock* v. *Bonner*, 281 F. Supp. 2d 425, 427 (NDNY 2003). The Court of Appeals for the Second Circuit affirmed, after first finding jurisdiction under the collateral order doctrine. *Hallock* v. *Bonner*, 387 F. 3d 147 (2004). We granted certiorari to consider the judgment bar, 545 U. S. 1103 (2005), but now vacate for want of appellate jurisdiction on the part of the Court of Appeals.

II

The collateral order doctrine, identified with *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U. S. 541 (1949), is "best understood not as an exception to the 'final decision' rule laid down by Congress in § 1291, but as a 'practical construction' of it." *Digital Equipment*, *supra*, at 867 (quoting *Cohen*, *supra*, at 546). Whereas 28 U. S. C. § 1291 "gives courts of appeals jurisdiction over 'all final decisions' of district courts" that are not directly appealable to us, *Behrens* v. *Pelletier*, 516 U. S. 299, 305 (1996), the collateral order doctrine accommodates a "small class" of rulings, not concluding the litigation, but conclusively resolving "claims of right separable from, and collateral to, rights asserted in the action," *ibid.* (internal quotation marks omitted). The claims are "too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Cohen*, *supra*, at 546.

The requirements for collateral order appeal have been distilled down to three conditions: that an order "'[1] conclusively determine the disputed question, [2] resolve an important issue completely separate from the merits of the action, and [3] be effectively unreviewable on appeal from a final judgment.'" *Puerto Rico Aqueduct and Sewer Authority* v. *Metcalf & Eddy, Inc.*, 506 U. S. 139, 144 (1993) (quoting *Coopers & Lybrand* v. *Livesay*, 437 U. S. 463, 468 (1978)). The conditions are "stringent," *Digital Equipment*, *supra*,

at 868 (citing *Midland Asphalt Corp.* v. *United States*, 489 U. S. 794, 799 (1989)), and unless they are kept so, the underlying doctrine will overpower the substantial finality interests § 1291 is meant to further: judicial efficiency, for example, and the "sensible policy 'of avoid[ing] the obstruction to just claims that would come from permitting the harassment and cost of a succession of separate appeals from the various rulings to which a litigation may give rise.'" *Firestone Tire & Rubber Co.* v. *Risjord*, 449 U. S. 368, 374 (1981) (quoting *Cobbledick* v. *United States*, 309 U. S. 323, 325 (1940)).

Accordingly, we have not mentioned applying the collateral order doctrine recently without emphasizing its modest scope. See, *e. g.*, *Digital Equipment*, 511 U. S., at 868 ("[T]he 'narrow' exception should stay that way and never be allowed to swallow the general rule that a party is entitled to a single appeal, to be deferred until final judgment has been entered . . . " (citation omitted)). And we have meant what we have said; although the Court has been asked many times to expand the "small class" of collaterally appealable orders, we have instead kept it narrow and selective in its membership.

A

Prior cases mark the line between rulings within the class and those outside. On the immediately appealable side are orders rejecting absolute immunity, *Nixon* v. *Fitzgerald*, 457 U. S. 731, 742 (1982), and qualified immunity, *Mitchell* v. *Forsyth*, 472 U. S. 511, 530 (1985). A State has the benefit of the doctrine to appeal a decision denying its claim to Eleventh Amendment immunity, *Puerto Rico Aqueduct*, *supra*, at 144–145, and a criminal defendant may collaterally appeal an adverse ruling on a defense of double jeopardy, *Abney* v. *United States*, 431 U. S. 651, 660 (1977).

The examples admittedly raise the lawyer's temptation to generalize. In each case, the collaterally appealing party was vindicating or claiming a right to avoid trial, in satisfaction of the third condition: unless the order to stand trial was

immediately appealable, the right would be effectively lost. Those seeking immediate appeal therefore naturally argue that any order denying a claim of right to prevail without trial satisfies the third condition. But this generalization is too easy to be sound and, if accepted, would leave the final order requirement of § 1291 in tatters. We faced this prospect in *Digital Equipment*, *supra*, an appeal from an order rescinding a settlement agreement. Petitioner asserted a " 'right not to stand trial' requiring protection by way of immediate appeal," analogizing the rescission to a denial of immunity. *Id.*, at 869. We said no, however, lest "every right that could be enforced appropriately by pretrial dismissal [be] loosely . . . described as conferring a 'right not to stand trial.' " *Id.*, at 873. Otherwise, "almost every pretrial or trial order might be called 'effectively unreviewable' in the sense that relief from error can never extend to rewriting history." *Id.*, at 872.

> "Allowing immediate appeals to vindicate every such right would move § 1291 aside for claims that the district court lacks personal jurisdiction, that the statute of limitations has run, that the movant has been denied his Sixth Amendment right to a speedy trial, that an action is barred on claim preclusion principles, that no material fact is in dispute and the moving party is entitled to judgment as a matter of law, or merely that the complaint fails to state a claim. Such motions can be made in virtually every case." *Id.*, at 873 (citations omitted).

B

Since only some orders denying an asserted right to avoid the burdens of trial qualify, then, as orders that cannot be reviewed "effectively" after a conventional final judgment, the cases have to be combed for some further characteristic that merits appealability under *Cohen;* and as *Digital Equipment* explained, that something further boils down to "a judgment about the value of the interests that would be

lost through rigorous application of a final judgment requirement." 511 U. S., at 878–879 (citing *Van Cauwenberghe* v. *Biard*, 486 U. S. 517, 524 (1988)). See also *Lauro Lines s.r.l.* v. *Chasser*, 490 U. S. 495, 502 (1989) (SCALIA, J., concurring) ("The importance of the right asserted has always been a significant part of our collateral order doctrine").

Thus, in *Nixon*, *supra*, we stressed the "compelling public ends," *id.*, at 758, "rooted in . . . the separation of powers," *id.*, at 749, that would be compromised by failing to allow immediate appeal of a denial of absolute Presidential immunity, *id.*, at 743, 752, n. 32. In explaining collateral order treatment when a qualified immunity claim was at issue in *Mitchell*, *supra*, we spoke of the threatened disruption of governmental functions, and fear of inhibiting able people from exercising discretion in public service if a full trial were threatened whenever they acted reasonably in the face of law that is not "clearly established." *Id.*, at 526. *Puerto Rico Aqueduct*, 506 U. S. 139, explained the immediate appealability of an order denying a claim of Eleventh Amendment immunity by adverting not only to the burdens of litigation but to the need to ensure vindication of a State's dignitary interests. *Id.*, at 146. And although the double jeopardy claim given *Cohen* treatment in *Abney*, *supra*, did not implicate a right to be free of all proceedings whatsoever (since prior jeopardy is essential to the defense), we described the enormous prosecutorial power of the Government to subject an individual "to embarrassment, expense and ordeal . . . compelling him to live in a continuing state of anxiety," *id.*, at 661–662 (internal quotation marks omitted); the only way to alleviate these consequences of the Government's superior position was by collateral order appeal.

In each case, some particular value of a high order was marshaled in support of the interest in avoiding trial: honoring the separation of powers, preserving the efficiency of government and the initiative of its officials, respecting a State's dignitary interests, and mitigating the government's

advantage over the individual. That is, it is not mere avoidance of a trial, but avoidance of a trial that would imperil a substantial public interest, that counts when asking whether an order is "effectively" unreviewable if review is to be left until later. *Coopers & Lybrand*, 437 U. S., at 468 (internal quotation marks omitted).

C

Does the claim of the customs agents in this case serve such a weighty public objective that the judgment bar should be treated as an immunity demanding the protection of a collateral order appeal? One can argue, of course, that if the *Bivens* action goes to trial the efficiency of Government will be compromised and the officials burdened and distracted, as in the qualified immunity case: if qualified immunity gets *Cohen* treatment, so should the judgment bar to further litigation in the aftermath of the Government's success under the Tort Claims Act. But the cases are different. Qualified immunity is not the law simply to save trouble for the Government and its employees; it is recognized because the burden of trial is unjustified in the face of a colorable claim that the law on point was not clear when the official took action, and the action was reasonable in light of the law as it was. The nub of qualified immunity is the need to induce officials to show reasonable initiative when the relevant law is not "clearly established," *Harlow* v. *Fitzgerald*, 457 U. S. 800, 818 (1982); cf. *Saucier* v. *Katz*, 533 U. S. 194, 202 (2001); a quick resolution of a qualified immunity claim is essential.

There is, however, no such public interest at stake simply because the judgment bar is said to be applicable. It is not the preservation of initiative but the avoidance of litigation for its own sake that supports the judgment bar, and if simply abbreviating litigation troublesome to Government employees were important enough for *Cohen* treatment, collateral order appeal would be a matter of right whenever the Government lost a motion to dismiss under the Tort

Claims Act, or a federal officer lost one on a *Bivens* action, or a state official was in that position in a case under 42 U. S. C. § 1983, or *Ex parte Young*, 209 U. S. 123 (1908). In effect, 28 U. S. C. § 1291 would fade out whenever the Government or an official lost an early round that could have ended the fight.

Another difference between qualified immunity and the judgment bar lies in the bar's essential procedural element. While a qualified immunity claim is timely from the moment an official is served with a complaint, the judgment bar can be raised only after a case under the Tort Claims Act has been resolved in the Government's favor. If a *Bivens* action alone is brought, there will be no possibility of a judgment bar, nor will there be so long as a *Bivens* action against officials and a Tort Claims Act against the Government are pending simultaneously (as they were for a time here). In the present case, if Susan Hallock had brought her *Bivens* action and no other, the agents could not possibly have invoked the judgment bar in claiming a right to be free of trial. The closer analogy to the judgment bar, then, is not immunity but the defense of claim preclusion, or res judicata.

Although the statutory judgment bar is arguably broader than traditional res judicata, it functions in much the same way, with both rules depending on a prior judgment as a condition precedent* and neither reflecting a policy that a defendant should be scot free of any liability. The concern behind both rules is a different one, of avoiding duplicative litigation, "multiple suits on identical entitlements or obligations between the same parties." 18 C. Wright, A. Miller, &

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*The right to be free of double jeopardy is subject to an analogous condition, that jeopardy have attached in a prior proceeding, *Monge* v. *California*, 524 U. S. 721, 728 (1998), a characteristic that distinguishes the Fifth Amendment right from other immunities mentioned above. But, as we explained, double jeopardy deserves immunity treatment under § 1291 owing to the enormous advantage of a Government prosecutor who chooses to go repeatedly against an individual.

E. Cooper, Federal Practice and Procedure § 4402, p. 9 (2d ed. 2002) (internal quotation marks omitted). But this rule of respecting a prior judgment by giving a defense against relitigation has not been thought to protect values so great that only immediate appeal can effectively vindicate them. As we indicated in *Digital Equipment*, in the usual case, absent particular reasons for discretionary appeal by leave of the trial court, a defense of claim preclusion is fairly subordinated to the general policy of deferring appellate review to the moment of final judgment. 511 U. S., at 873.

The judgment bar at issue in this case has no claim to greater importance than the typical defense of claim preclusion; and we hold true to form in deciding what *Digital Equipment* implied, that an order rejecting the defense of judgment bar under 28 U. S. C. § 2676 cries for no immediate appeal of right as a collateral order.

We vacate the judgment of the Court of Appeals and remand the case with instructions to dismiss the appeal for lack of jurisdiction.

It is so ordered.

Syllabus

CENTRAL VIRGINIA COMMUNITY COLLEGE ET AL. *v.* KATZ, LIQUIDATING SUPERVISOR FOR WALLACE'S BOOKSTORES, INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 04–885. Argued October 31, 2005—Decided January 23, 2006

The Bankruptcy Clause, Art. I, § 8, cl. 4, empowers Congress to establish "uniform Laws on the subject of Bankruptcies throughout the United States." In *Tennessee Student Assistance Corporation* v. *Hood*, 541 U. S. 440, this Court, without reaching the question whether the Clause gives Congress the authority to abrogate States' immunity from private suits, see *id.*, at 443, upheld the application of the Bankruptcy Code, 11 U. S. C. § 101 *et seq.*, to proceedings initiated by a debtor against a state agency to determine the dischargeability of a student loan debt, see 541 U. S., at 451. In this case, a proceeding commenced by respondent Bankruptcy Trustee under §§ 547(b) and 550(a) to avoid and recover alleged preferential transfers by the debtor to petitioner state agencies, the agencies claim that the proceeding is barred by sovereign immunity. The Bankruptcy Court denied petitioners' motions to dismiss on that ground, and the District Court and the Sixth Circuit affirmed based on the Circuit's prior determination that Congress has abrogated the States' sovereign immunity in bankruptcy proceedings.

Held: A bankruptcy trustee's proceeding to set aside the debtor's preferential transfers to state agencies is not barred by sovereign immunity. Pp. 361–379.

(a) The Bankruptcy Clause's history, the reasons it was adopted, and the legislation proposed and enacted under it immediately following ratification demonstrate that it was intended not just as a grant of legislative authority to Congress, but also to authorize limited subordination of state sovereign immunity in the bankruptcy arena. Although statements in *Seminole Tribe of Fla.* v. *Florida*, 517 U. S. 44, reflect an assumption that that case's holding would apply to the Clause, careful study and reflection convince this Court that that assumption was erroneous. The Court is not bound to follow its dicta in a prior case in which the point at issue was not fully debated. *Cohens* v. *Virginia*, 6 Wheat. 264, 399–400. Pp. 362–363.

(b) States, whether or not they choose to participate, are bound by a bankruptcy court's order discharging the debtor no less than are other creditors. *Hood*, 541 U. S., at 448. Petitioners here, like the state

agency parties in *Hood*, have conceded as much. See *id.*, at 449. The history of discharges in bankruptcy proceedings demonstrates that these concessions, and *Hood*'s holding, are correct. The Framers' primary goal in adopting the Clause was to prevent competing sovereigns' interference with discharge: The patchwork of wildly divergent and uncoordinated insolvency and bankruptcy laws that existed in the American Colonies resulted in one jurisdiction's imprisoning debtors discharged (from prison and of their debts) in and by another jurisdiction. The absence of extensive debate at the Convention over the Clause's text or its insertion into the Constitution indicates that there was general agreement on the importance of authorizing a uniform federal response to the problems and injustice that system created. Pp. 363–369.

(c) Bankruptcy jurisdiction, as understood today and at the framing, is principally *in rem*. See, *e. g.*, *Hood*, 541 U. S., at 447. It thus does not implicate States' sovereignty to nearly the same degree as other kinds of jurisdiction. See *id.*, at 450–451. The Framers would have understood the Bankruptcy Clause's grant of power to enact laws on the entire "subject of Bankruptcies" to include laws providing, in certain limited respects, for more than simple adjudications of rights in the res. Courts adjudicating disputes concerning bankrupts' estates historically have had the power to issue ancillary orders enforcing their *in rem* adjudications. See, *e. g.*, *id.*, at 455–456. The interplay between *in rem* adjudications and orders ancillary thereto is also evident in this case. Whether or not actions such as this are properly characterized as *in rem*, those who crafted the Bankruptcy Clause would have understood it to give Congress the power to authorize courts to avoid preferential transfers and to recover the transferred property. Pp. 369–373.

(d) Insofar as orders ancillary to the bankruptcy courts' *in rem* jurisdiction, like orders directing turnover of preferential transfers, implicate States' sovereign immunity from suit, the States agreed in the plan of the Constitutional Convention not to assert that immunity. That is evidenced not only by the Bankruptcy Clause's history, but also by legislation considered and enacted in the immediate wake of the Constitution's ratification. For example, the Bankruptcy Act of 1800 specifically granted federal courts habeas authority to release debtors from state prisons at a time when state sovereign immunity was preeminent among the Nation's concerns, yet there appears to be no record of any objection to that grant based on an infringement of sovereign immunity. This history demonstrates that the power to enact bankruptcy legislation was understood to carry with it the power to subordinate state sovereignty, albeit within a limited sphere. Pp. 373–378.

(e) The Court need not consider the question *Hood* left open: whether Congress' attempt to "abrogat[e]" state sovereign immunity in 11

Syllabus

U. S. C. § 106(a) is valid. The relevant question is not abrogation, but whether Congress' determination that States should be amenable to preferential transfer proceedings is within the scope of its power to enact "Laws on the subject of Bankruptcies." Beyond peradventure, it is. Congress' power, at its option, either to treat States in the same way as other creditors or exempt them from the operation of bankruptcy laws arises from the Clause itself; the relevant "abrogation" is the one effected in the plan of the Convention, not by statute. Pp. 378–379.

106 Fed. Appx. 341, affirmed.

STEVENS, J., delivered the opinion of the Court, in which O'CONNOR, SOUTER, GINSBURG, and BREYER, JJ., joined. THOMAS, J., filed a dissenting opinion, in which ROBERTS, C. J., and SCALIA and KENNEDY, JJ., joined, *post*, p. 379.

William E. Thro, State Solicitor General of Virginia, argued the cause for petitioners. With him on the briefs were *Judith Williams Jagdmann*, Attorney General, *Bernard L. McNamee II*, Chief Deputy Attorney General, *Maureen Riley Matsen*, Deputy Attorney General, *Brian J. Goodman* and *Cynthia H. Norwood*, Assistant Attorneys General, and *Matthew M. Cobb*, *Carla R. Collins*, *Eric A. Gregory*, *Joel C. Hoppe*, *Courtney M. Malveaux*, *Valerie L. Myers*, *A. Cameron O'Brion*, *Ronald N. Regnery*, *D. Mathias Roussy, Jr.*, and *William R. Sievers*, Associate State Solicitors General.

Kim Martin Lewis argued the cause for respondent. With her on the brief were *Jon L. Fleischaker*, *Mark A. Vander Laan*, *Jeremy S. Rogers*, and *G. Eric Brunstad, Jr.**

*Briefs of *amici curiae* urging reversal were filed for the State of Ohio et al. by *Jim Petro*, Attorney General of Ohio, *Douglas R. Cole*, State Solicitor, and *Elise W. Porter*, Assistant Solicitor, and by the Attorneys General for their respective States as follows: *Troy King* of Alabama, *David W. Márquez* of Alaska, *Terry Goddard* of Arizona, *Mike Beebe* of Arkansas, *Bill Lockyer* of California, *John W. Suthers* of Colorado, *Richard Blumenthal* of Connecticut, *M. Jane Brady* of Delaware, *Charles J. Crist, Jr.*, of Florida, *Thurbert E. Baker* of Georgia, *Mark J. Bennett* of Hawaii, *Lawrence G. Wasden* of Idaho, *Lisa Madigan* of Illinois, *Steve Carter* of Indiana, *Thomas J. Miller* of Iowa, *Phill Kline* of Kansas, *Gregory D. Stumbo* of Kentucky, *Charles C. Foti, Jr.*, of Louisiana, *G. Steven*

JUSTICE STEVENS delivered the opinion of the Court.

Article I, § 8, cl. 4, of the Constitution provides that Congress shall have the power to establish "uniform Laws on the subject of Bankruptcies throughout the United States." In *Tennessee Student Assistance Corporation* v. *Hood*, 541 U. S. 440 (2004), we granted certiorari to determine whether this Clause gives Congress the authority to abrogate States' immunity from private suits. See *id.*, at 443. Without reaching that question, we upheld the application of the Bankruptcy Code to proceedings initiated by a debtor against a state agency to determine the dischargeability of a student loan debt. See *id.*, at 451. In this case we consider whether a proceeding initiated by a bankruptcy trustee to set aside preferential transfers by the debtor to state agencies is barred by sovereign immunity. Relying in part on our reasoning in *Hood*, we reject the sovereign immunity defense advanced by the state agencies.

Rowe of Maine, *J. Joseph Curran, Jr.*, of Maryland, *Thomas F. Reilly* of Massachusetts, *Michael A. Cox* of Michigan, *Mike Hatch* of Minnesota, *Jim Hood* of Mississippi, *Jeremiah W. (Jay) Nixon* of Missouri, *Mike McGrath* of Montana, *Jon Bruning* of Nebraska, *Brian Sandoval* of Nevada, *Kelly A. Ayotte* of New Hampshire, *Peter C. Harvey* of New Jersey, *Patricia A. Madrid* of New Mexico, *Eliot Spitzer* of New York, *Roy Cooper* of North Carolina, *Wayne Stenehjem* of North Dakota, *W. A. Drew Edmondson* of Oklahoma, *Hardy Myers* of Oregon, *Thomas W. Corbett, Jr.*, of Pennsylvania, *Patrick C. Lynch* of Rhode Island, *Henry Dargan McMaster* of South Carolina, *Lawrence E. Long* of South Dakota, *Paul G. Summers* of Tennessee, *Greg Abbott* of Texas, *Mark L. Shurtleff* of Utah, *William H. Sorrell* of Vermont, *Rob McKenna* of Washington, *Darrell V. McGraw, Jr.*, of West Virginia, *Peggy A. Lautenschlager* of Wisconsin, and *Patrick J. Crank* of Wyoming; for the American Association of State Colleges and Universities et al. by *Robert A. Bartlett* and *Lawrence S. Ebner;* and for the National Conference of State Legislatures et al. by *Richard Ruda* and *James I. Crowley.*

Briefs of *amici curiae* urging affirmance were filed for the National Association of Bankruptcy Trustees by *Martin P. Sheehan;* and for Susan Block-Lieb et al. by *Susan M. Freeman* and *Richard Lieb.*

Brady C. Williamson filed a brief of *amicus curiae* for Bruce H. Mann.

I

Petitioners are Virginia institutions of higher education that are considered "arm[s] of the State" entitled to sovereign immunity. See, *e. g.*, *Alden* v. *Maine*, 527 U. S. 706, 756 (1999) (observing that only arms of the State can assert the State's immunity). Wallace's Bookstores, Inc., did business with petitioners before it filed a petition for relief under chapter 11 of the Bankruptcy Code, 11 U. S. C. § 101 *et seq.* (2000 ed. and Supp. III), in the United States Bankruptcy Court for the Eastern District of Kentucky. Respondent, Bernard Katz, is the court-appointed liquidating supervisor of the bankrupt estate. He has commenced proceedings in the Bankruptcy Court pursuant to §§ 547(b) and 550(a) to avoid and recover alleged preferential transfers to each of the petitioners made by the debtor when it was insolvent.[1] Petitioners' motions to dismiss those proceedings on the basis of sovereign immunity were denied by the Bankruptcy Court.

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[1] A preferential transfer is defined as "any transfer of an interest of the debtor in property—

"(1) to or for the benefit of a creditor;

"(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;

"(3) made while the debtor was insolvent;

"(4) made—

"(A) on or within 90 days before the date of the filing of the petition; or

"(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and

"(5) that enables such creditor to receive more than such creditor would receive if—

"(A) the case were a case under chapter 7 of this title;

"(B) the transfer had not been made; and

"(C) such creditor received payment of such debt to the extent provided by the provisions of this title." 11 U. S. C. § 547(b).

Respondent also instituted adversary proceedings against some of the petitioners to collect accounts receivable. He has, however, filed a letter with this Court indicating his intent not to pursue those claims further.

The denial was affirmed by the District Court and the Court of Appeals for the Sixth Circuit, judgt. order reported at 106 Fed. Appx. 341 (2004), on the authority of the Sixth Circuit's prior determination that Congress has abrogated the States' sovereign immunity in bankruptcy proceedings. See *Hood* v. *Tennessee Student Assistance Corporation*, 319 F. 3d 755 (2003). We granted certiorari, 544 U. S. 960 (2005), to consider the question left open by our opinion in *Hood:* whether Congress' attempt to abrogate state sovereign immunity in 11 U. S. C. § 106(a)[2] is valid. As

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[2] Section 106(a), as amended in 1994, provides in part as follows:

"Notwithstanding an assertion of sovereign immunity, sovereign immunity is abrogated as to a governmental unit . . . with respect to the following:

"(1) Sections 105, 106, 107, 108, 303, 346, 362, 363, 364, 365, 366, 502, 503, 505, 506, 510, 522, 523, 524, 525, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 722, 724, 726, 728, 744, 749, 764, 901, 922, 926, 928, 929, 944, 1107, 1141, 1142, 1143, 1146, 1201, 1203, 1205, 1206, 1227, 1231, 1301, 1303, 1305, and 1327 of this title.

"(2) The court may hear and determine any issue arising with respect to the application of such sections to governmental units.

"(3) The court may issue against a governmental unit an order, process, or judgment under such sections of the Federal Rules of Bankruptcy Procedure, including an order or judgment awarding a money recovery, but not including an award of punitive damages. . . . "

The term "governmental unit" is defined to include a "State," a "municipality," and a "department, agency, or instrumentality of . . . a State." § 101(27).

The above-quoted version of § 106(a) is the product of revisions made in the wake of some of our precedents. The Bankruptcy Reform Act of 1978, 92 Stat. 2549, contained a provision indicating only that "governmental unit[s]," defined to include States, were deemed to have "waived sovereign immunity" with respect to certain proceedings in bankruptcy and to be bound by a court's determinations under certain provisions of the Act "notwithstanding any assertion of sovereign immunity." *Id.*, at 2555–2556. This Court's decisions in *Hoffman* v. *Connecticut Dept. of Income Maintenance*, 492 U. S. 96 (1989), and *United States* v. *Nordic Village, Inc.*, 503 U. S. 30 (1992), which held that Congress had failed to make sufficiently clear in the predecessor to § 106(a) its intent either to "abrogate" state sovereign immunity or to waive the Federal Government's

we shall explain, however, we are persuaded that the enactment of that provision was not necessary to authorize the Bankruptcy Court's jurisdiction over these preference avoidance proceedings.

Bankruptcy jurisdiction, at its core, is *in rem.* See *Gardner* v. *New Jersey*, 329 U. S. 565, 574 (1947) ("The whole process of proof, allowance, and distribution is, shortly speaking, an adjudication of interests claimed in a *res*"). As we noted in *Hood*, it does not implicate States' sovereignty to nearly the same degree as other kinds of jurisdiction. See 541 U. S., at 450–451 (citing admiralty and bankruptcy cases). That was as true in the 18th century as it is today. Then, as now, the jurisdiction of courts adjudicating rights in the bankrupt estate included the power to issue compulsory orders to facilitate the administration and distribution of the res.

It is appropriate to presume that the Framers of the Constitution were familiar with the contemporary legal context when they adopted the Bankruptcy Clause[3]—a provision which, as we explain in Part IV, *infra*, reflects the States' acquiescence in a grant of congressional power to subordinate to the pressing goal of harmonizing bankruptcy law sovereign immunity defenses that might have been asserted in bankruptcy proceedings. The history of the Bankruptcy Clause, the reasons it was inserted in the Constitution, and

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immunity, see 492 U. S., at 101; 503 U. S., at 39, prompted Congress in 1994 to enact the text of § 106(a) now in force. See generally Gibson, Congressional Response to *Hoffman* and *Nordic Village:* Amended Section 106 and Sovereign Immunity, 69 Am. Bankr. L. J. 311 (1995).

[3] In *Cannon* v. *University of Chicago*, 441 U. S. 677, 699 (1979), we endorsed the presumption "that Congress was thoroughly familiar" with contemporary law when it enacted Title IX of the Civil Rights Act of 1964. It is equally proper to presume that the delegates to the Constitutional Convention were fully aware of the potential for injustice, discussed in Part II, *infra*, presented by the nonuniform state laws authorizing imprisonment as a remedy for the nonpayment of an insolvent's debts.

the legislation both proposed and enacted under its auspices immediately following ratification of the Constitution demonstrate that it was intended not just as a grant of legislative authority to Congress, but also to authorize limited subordination of state sovereign immunity in the bankruptcy arena. Foremost on the minds of those who adopted the Clause were the intractable problems, not to mention the injustice, created by one State's imprisoning of debtors who had been discharged (from prison and of their debts) in and by another State. As discussed below, to remedy this problem, the very first Congresses considered, and the Sixth Congress enacted, bankruptcy legislation authorizing federal courts to, among other things, issue writs of habeas corpus directed at state officials ordering the release of debtors from state prisons.

We acknowledge that statements in both the majority and the dissenting opinions in *Seminole Tribe of Fla.* v. *Florida*, 517 U. S. 44 (1996), reflected an assumption that the holding in that case would apply to the Bankruptcy Clause. See also *Hoffman* v. *Connecticut Dept. of Income Maintenance*, 492 U. S. 96, 105 (1989) (O'Connor, J., concurring). Careful study and reflection have convinced us, however, that that assumption was erroneous. For the reasons stated by Chief Justice Marshall in *Cohens* v. *Virginia*, 6 Wheat. 264 (1821), we are not bound to follow our dicta in a prior case in which the point now at issue was not fully debated. See *id.*, at 399–400 ("It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision").

II

Critical features of every bankruptcy proceeding are the exercise of exclusive jurisdiction over all of the debtor's

property, the equitable distribution of that property among the debtor's creditors, and the ultimate discharge that gives the debtor a "fresh start" by releasing him, her, or it from further liability for old debts. See, *e. g.*, *Local Loan Co.* v. *Hunt*, 292 U. S. 234, 244 (1934). "Under our longstanding precedent, States, whether or not they choose to participate in the proceeding, are bound by a bankruptcy court's discharge order no less than other creditors." *Hood*, 541 U. S., at 448. Petitioners here, like the state agencies that were parties in *Hood*, have conceded as much. See *id.*, at 449 (noting concession that "States are generally bound by a bankruptcy court's discharge order"); Tr. of Oral Arg. 8–9.

The history of discharges in bankruptcy proceedings demonstrates that the state agencies' concessions, and *Hood*'s holding, are correct. The term "discharge" historically had a dual meaning; it referred to both release of debts and release of the debtor from prison. Indeed, the earliest English statutes governing bankruptcy and insolvency authorized discharges of persons, not debts. One statute enacted in 1649 was entitled "An Act for discharging Poor Prisoners unable to satisfie their Creditors." 2 Acts and Ordinances of the Interregnum, 1642–1660, pp. 240–241 (C. Firth & R. Rait eds. 1911). The stated purpose of the Act was to "Discharge . . . the person of [the] Debtor" "of and from his or her Imprisonment." *Ibid.* Not until 1705 did the English Parliament extend the discharge (and then only for traders and merchants) to include release of debts. See 4 Ann., ch. 17, § 7, 11 Statutes at Large 165 (D. Pickering ed. 1764) (providing that upon compliance with the statute, "all and every person and persons so becoming bankrupt . . . shall be discharged from all debts by him, her, or them due and owing at the time that he, she, or they did become bankrupt"); see also McCoid, Discharge: The Most Important Development in Bankruptcy History, 70 Am. Bankr. L. J. 163, 167 (1996).

Well into the 18th century, imprisonment for debt was still ubiquitous in England[4] and the American Colonies. Bankruptcy and insolvency laws remained as much concerned with ensuring full satisfaction of creditors (and, relatedly, preventing debtors' flight to parts unknown[5]) as with securing new beginnings for debtors. Illustrative of bankruptcy laws' harsh treatment of debtors during this period was that debtors often fared worse than common criminals in prison; unfortunate insolvents, unlike criminals, were forced to provide their own food, fuel, and clothing while behind bars. See B. Mann, Republic of Debtors: Bankruptcy in the Age of American Independence 78–108 (2002).

Common as imprisonment itself was, the American Colonies, and later the several States, had wildly divergent schemes for discharging debtors and their debts. *Id.*, at 79 ("The only consistency among debt laws in the eighteenth century was that every colony, and later every state, permitted imprisonment for debt—most on *mesne* process, and all on execution of a judgment"). At least four jurisdictions offered relief through private Acts of their legislatures. See *Railway Labor Executives' Assn.* v. *Gibbons*, 455 U. S. 457, 472 (1982). Those Acts released debtors from prison upon surrender of their property, and many coupled the release from prison with a discharge of debts. Other jurisdictions enacted general laws providing for release from prison and, in a few places, discharge of debt. Others still granted re-

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[4] Imprisonment for debt was not abolished in England until 1869, and then only subject to certain exceptions. See Debtors Act, 1869, 32 & 33 Vict., ch. 62, § 4; see also Cohen, The History of Imprisonment for Debt and its Relation to the Development of Discharge in Bankruptcy, 3 J. Legal Hist. 153, 164 (1982).

[5] The legislation widely acknowledged to be the first English bankruptcy statute, 34 & 35 Hen. 8, ch. 4, § 1 (1542), contained a provision explaining that the statute was needed to deal with the growing number of debtors who, after "craftily obtaining into their Hands great Substance of other Mens *[sic]* Goods, do suddenly flee to Parts unknown."

lease from prison, but only in exchange for indentured servitude. Some jurisdictions provided no relief at all for the debtor. See generally P. Coleman, Debtors and Creditors in America: Insolvency, Imprisonment for Debt, and Bankruptcy, 1607–1900 (1999).[6]

The difficulties posed by this patchwork of insolvency and bankruptcy laws were peculiar to the American experience. In England, where there was only one sovereign, a single discharge could protect the debtor from his jailer and his creditors. As two cases—one litigated before the Constitutional Convention in Philadelphia and one litigated after it—demonstrate, however, the uncoordinated actions of multiple sovereigns, each laying claim to the debtor's body and effects according to different rules, rendered impossible so neat a solution on this side of the Atlantic.

In the first case, *James* v. *Allen*, 1 Dall. 188 (C. P. Phila. Cty. 1786), Jared Ingersoll, an attorney who a year later would become a delegate to the Philadelphia Convention,[7] represented a Pennsylvania creditor seeking recovery from a debtor who had been released from prison in New Jersey. Shortly after his release, the debtor traveled to Pennsylvania, where he was arrested for nonpayment of the Pennsylva-

[6] "At the time of the Revolution, only three of the thirteen colonies . . . had laws discharging insolvents of their debts. No two of these relief systems were alike in anything but spirit. In four of the other ten colonies, insolvency legislation was either never enacted or, if enacted, never went into effect, and in the remaining six colonies, full relief was available only for scattered, brief periods, usually on an *ad hoc* basis to named insolvents." Coleman, Debtors and Creditors in America, at 14.

[7] Ingersoll was admitted to the Philadelphia bar in 1773 and elected a member of the Continental Congress in 1780. After serving as a delegate to the Constitutional Convention, he became a member of the Philadelphia Common Council. He served as attorney general of Pennsylvania from 1790 to 1799 and again from 1811 to 1817. From March 1821 until his death in 1822 he served as a judge in the District Court for the City and County of Philadelphia. Among the cases he litigated before this Court was *Chisholm* v. *Georgia*, 2 Dall. 419 (1793)—for the State of Georgia, see *ibid.* See also 9 Dictionary of American Biography 468–469 (1932).

nia debt. In seeking release from the Pennsylvania prison, he argued that his debt had been discharged by the New Jersey court. Ingersoll responded that the order granting relief under New Jersey's insolvency laws "only discharged the person of the debtor from arrest within the State of New Jersey." *Id.*, at 190. The court agreed: Whatever effect the order might have had in New Jersey, the court said, it "goes no further than to discharge [the debtor] from his imprisonment in the Gaol of Essex County in the State of New Jersey; which, if the fullest obedience were paid to it, could not authorize a subsequent discharge from imprisonment in another Gaol, in another State." *Id.*, at 192. The court further observed that "[i]nsolvent laws subsist in every State in the Union, and are probably all different from each other . . . . Even the Bankrupt Laws of England, while we were the subjects of that country, were never supposed to extend here, so as to exempt the persons of the Bankrupts from being arrested." *Id.*, at 191.

In the second case, *Millar* v. *Hall*, 1 Dall. 229 (Pa. 1788), which was decided the year after the Philadelphia Convention, Ingersoll found himself arguing against the principle announced in *James*. His client, a debtor named Hall, had been "discharged under an insolvent law of the state of Maryland, which is in the nature of a general bankrupt[cy] law." 1 Dall., at 231. Prior to his discharge, Hall had incurred a debt to a Pennsylvanian named Millar. Hall neglected to mention that debt in his schedule of creditors presented to the Maryland court, or to personally notify Millar of the looming discharge. Following the Maryland court's order, Hall traveled to Pennsylvania and was promptly arrested for the unpaid debt to Millar.

Responding to Millar's counsel's argument that the holding of *James* controlled, Ingersoll urged adoption of a rule that "the discharge of the Defendant in one state ought to be sufficient to discharge [a debtor] in every state." 1 Dall., at 231. Absent such a rule, Ingersoll continued, "perpetual

imprisonment must be the lot of every man who fails; and all hope of retrieving his losses by honest and industrious pursuits, will be cut off from the unfortunate bankrupt." *Ibid.* The court accepted this argument. Allowing a creditor to execute "upon [a debtor's] person out of the state in which he has been discharged," the court explained, "would be giving a superiority to some creditors, and affording them a double satisfaction—to wit, a proportionable dividend of his property there, and the imprisonment of his person here." *Id.*, at 232. Indeed, the debtor having already been obliged to surrender all of his effects, "to permit the taking [of] his person here, would be to attempt to compel him to perform an impossibility, that is, to pay a debt after he has been deprived of every means of payment,—an attempt which would, at least, amount to perpetual imprisonment, unless the benevolence of his friends should interfere to discharge [his] account." *Ibid.*

These two cases illustrate the backdrop against which the Bankruptcy Clause was adopted. In both *James* and *Millar*, the debtors argued that the earlier discharge should be given preclusive effect pursuant to the Full Faith and Credit Clause of the Articles of Confederation. See *James*, 1 Dall., at 190; *Millar*, 1 Dall., at 231. That possibility was the subject of discussion at the Constitutional Convention when a proposal to encompass legislative Acts, and insolvency laws in particular, within the coverage of the Full Faith and Credit Clause of the Constitution was committed to the Committee of Detail[8] together with a proposal "'[t]o establish uniform laws upon the subject of bankruptcies, and respecting the damages arising on the protest of foreign bills of exchange.'" See Nadelmann, On the Origin of the Bankruptcy Clause, 1 Am. J. Legal Hist. 215, 216–217, 219 (1957); see also Plank, The Constitutional Limits of Bankruptcy, 63

[8] The Committee of Detail was created by the Convention on July 25, 1787, to prepare a draft text of the Constitution based on delegates' proposals.

Tenn. L. Rev. 487, 527–528 (1996). A few days after this proposal was taken under advisement, the Committee of Detail reported that it had recommended adding the power "'[t]o establish uniform laws upon the subject of bankruptcies'" to the Naturalization Clause of what later became Article I. *Id.*, at 527.

The Convention adopted the Committee's recommendation with very little debate two days later. Roger Sherman of Connecticut alone voted against it, apparently because he was concerned that it would authorize Congress to impose upon American citizens the ultimate penalty for debt then in effect in England: death. See J. Madison, Notes of Debates in the Federal Convention of 1787, p. 571 (Ohio Univ. Press ed. 1966). The absence of extensive debate over the text of the Bankruptcy Clause or its insertion indicates that there was general agreement on the importance of authorizing a uniform federal response to the problems presented in cases like *James* and *Millar*.[9]

III

Bankruptcy jurisdiction, as understood today and at the time of the framing, is principally *in rem* jurisdiction. See *Hood*, 541 U. S., at 447; *Local Loan Co.*, 292 U. S., at 241; *Straton* v. *New*, 283 U. S. 318, 320–321 (1931); *Hanover Nat.*

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[9] Of course, the Bankruptcy Clause, located as it is in Article I, is "'intimately connected'" not just with the Full Faith and Credit Clause, which appears in Article IV of the Constitution, but also with the Commerce Clause. See *Railway Labor Executives' Assn.* v. *Gibbons*, 455 U. S. 457, 466 (1982) (quoting The Federalist No. 42, p. 285 (N. Y. Heritage Press 1945)). That does not mean, however, that the state sovereign immunity implications of the Bankruptcy Clause necessarily mirror those of the Commerce Clause. Indeed, the Bankruptcy Clause's unique history, combined with the singular nature of bankruptcy courts' jurisdiction, discussed *infra*, have persuaded us that the ratification of the Bankruptcy Clause does represent a surrender by the States of their sovereign immunity in certain federal proceedings. That conclusion is implicit in our holding in *Tennessee Student Assistance Corporation* v. *Hood*, 541 U. S. 440 (2004).

Bank v. *Moyses*, 186 U. S. 181, 192 (1902); *New Lamp Chimney Co.* v. *Ansonia Brass & Copper Co.*, 91 U. S. 656, 661–662 (1876). In bankruptcy, "the court's jurisdiction is premised on the debtor and his estate, and not on the creditors." *Hood*, 541 U. S., at 447. As such, its exercise does not, in the usual case, interfere with state sovereignty even when States' interests are affected. See *id.*, at 448.

The text of Article I, § 8, cl. 4, of the Constitution, however, provides that Congress shall have the power to establish "uniform Laws on the subject of Bankruptcies throughout the United States." Although the interest in avoiding unjust imprisonment for debt and making federal discharges in bankruptcy enforceable in every State was a primary motivation for the adoption of that provision, its coverage encompasses the entire "subject of Bankruptcies." The power granted to Congress by that Clause is a unitary concept rather than an amalgam of discrete segments.

The Framers would have understood that laws "on the subject of Bankruptcies" included laws providing, in certain limited respects, for more than simple adjudications of rights in the res. The first bankruptcy statute, for example, gave bankruptcy commissioners appointed by the district court the power, *inter alia*, to imprison recalcitrant third parties in possession of the estate's assets. See Bankruptcy Act of 1800, § 14, 2 Stat. 25 (repealed 1803). More generally, courts adjudicating disputes concerning bankrupts' estates historically have had the power to issue ancillary orders enforcing their *in rem* adjudications. See, *e. g.*, 2 W. Blackstone, Commentaries on the Laws of England 486 (1766) (noting that the assignees of the bankrupt's property—the 18th-century counterparts to today's bankruptcy trustees—could "pursue any *legal* method of recovering [the debtor's] property so vested in them," and could pursue methods in equity with the consent of the creditors); Plank, 63 Tenn. L. Rev., at 523 (discussing state insolvency and bankruptcy laws in the 18th century empowering courts to recover preferential trans-

fers); see also *Ex parte Christy*, 3 How. 292, 312, 314 (1844) (opinion for the Court by Story, J.) (describing bankruptcy jurisdiction under the 1841 Act in broad terms); *Wright* v. *Union Central Life Ins. Co.*, 304 U. S. 502, 513–514 (1938) (defining "bankruptcy" as the "'subject of the relations between an insolvent or nonpaying or fraudulent debtor and his creditors, *extending to his and their relief*'" (emphasis added)).

Our decision in *Hood* illustrates the point. As the dissenters in that case pointed out, it was at least arguable that the particular procedure that the debtor pursued to establish dischargeability of her student loan could have been characterized as a suit against the State rather than a purely *in rem* proceeding. See 541 U. S., at 455–456 (THOMAS, J., dissenting). But because the proceeding was merely ancillary to the Bankruptcy Court's exercise of its *in rem* jurisdiction, we held that it did not implicate state sovereign immunity. The point is also illustrated by Congress' early grant to federal courts of the power to issue *in personam* writs of habeas corpus directing States to release debtors from state prisons, discussed in Part IV, *infra*. See *Braden* v. *30th Judicial Circuit Court of Ky.*, 410 U. S. 484, 494–495 (1973) ("The writ of habeas corpus does not act upon the prisoner who seeks relief, but upon the person who holds him in what is alleged to be unlawful custody").

The interplay between *in rem* adjudications and orders ancillary thereto is evident in the case before us. Respondent first seeks a determination under 11 U. S. C. § 547 that the various transfers made by the debtor to petitioners qualify as voidable preferences. The § 547 determination, standing alone, operates as a mere declaration of avoidance. That declaration may be all that the trustee wants; for example, if the State has a claim against the bankrupt estate, the avoidance determination operates to bar that claim until the preference is turned over. See § 502(d). In some cases, though, the trustee, in order to marshal the entirety of the

debtor's estate, will need to recover the subject of the transfer pursuant to § 550(a). A court order mandating turnover of the property, although ancillary to and in furtherance of the court's *in rem* jurisdiction, might itself involve *in personam* process.

As we explain in Part IV, *infra*, it is not necessary to decide whether actions to recover preferential transfers pursuant to § 550(a) are themselves properly characterized as *in rem*.[10] Whatever the appropriate appellation, those who crafted the Bankruptcy Clause would have understood it to give Congress the power to authorize courts to avoid preferential transfers and to recover the transferred property. Petitioners do not dispute that that authority has been a core aspect of the administration of bankrupt estates since at least the 18th century. See, *e. g.*, *Rust* v. *Cooper*, 2 Cowp. 629, 633–634, 98 Eng. Rep. 1277, 1280 (K. B. 1777); *Alderson* v. *Temple*, 1 Black. W. 660, 661–663, 96 Eng. Rep. 384, 385

[10] The proper characterization of such actions is not as clear as petitioners suggest. The Court in *Nordic Village, Inc.*, 503 U. S., at 38, stated, as an alternative basis for rejecting a bankruptcy trustee's argument that a suit to avoid a preferential transfer made to the Internal Revenue Service was an action *in rem*, that any *in rem* "exception" to sovereign immunity was unavailable in that case because the trustee sought to recover a "sum of money, not 'particular dollars.'" There was, in the Court's view, "no *res* to which the [bankruptcy] court's *in rem* jurisdiction could have attached." *Ibid.* In making that determination, the Court distinguished our earlier decision in *United States* v. *Whiting Pools, Inc.*, 462 U. S. 198 (1983), which held that the debtor's "estate," the res, "includes property of the debtor that has been seized by a creditor prior to the filing of a [bankruptcy] petition." *Id.*, at 209; see also *Begier* v. *IRS*, 496 U. S. 53, 58 (1990) ("'property of the debtor' subject to the preferential transfer provision is best understood as that property that would have been part of the estate had it not been transferred before the commencement of bankruptcy proceedings"). We observe that the trustee in this case, unlike the one in *Nordic Village*, seeks, in the alternative, both return of the "value" of the preference, see 11 U. S. C. § 550(a), and return of the actual "property transferred," *ibid.* See Brief for Respondent 37 ("Respondent invokes the *in rem* jurisdiction of the bankruptcy court to recover under section 550 'the property transferred'").

(K. B. 1768); see also McCoid, Bankruptcy, Preferences, and Efficiency: An Expression of Doubt, 67 Va. L. Rev. 249, 251–253 (1981) (discussing English precedents, dating back to Sir Edward Coke's discussion in *The Case of Bankrupts*, 2 Co. Rep. 25a, 76 Eng. Rep. 441 (K. B. 1584), addressing bankruptcy commissioners' power to avoid preferences); *In re Dehon, Inc.*, 327 B. R. 38, 62–65 (Bkrtcy. Ct. Mass. 2005) (collecting historical materials). And it, like the authority to issue writs of habeas corpus releasing debtors from state prisons, see Part IV, *infra*, operates free and clear of the State's claim of sovereign immunity.

IV

Insofar as orders ancillary to the bankruptcy courts' *in rem* jurisdiction, like orders directing turnover of preferential transfers, implicate States' sovereign immunity from suit, the States agreed in the plan of the Convention not to assert that immunity. So much is evidenced not only by the history of the Bankruptcy Clause, which shows that the Framers' primary goal was to prevent competing sovereigns' interference with the debtor's discharge, see Part II, *supra*, but also by legislation considered and enacted in the immediate wake of the Constitution's ratification.

Congress considered proposed legislation establishing uniform federal bankruptcy laws in the first and each succeeding Congress until 1800, when the first Bankruptcy Act was passed. See C. Warren, Bankruptcy in United States History 10 (1935) ("[I]n the very first session of the 1st Congress, during which only the most necessary subjects of legislation were considered, bankruptcy was one of those subjects; and as early as June 1, 1789, a Committee of the House was named to prepare a bankruptcy bill"). The Bankruptcy Act of 1800 was in many respects a copy of the English bankruptcy statute then in force. It was, like the English law, chiefly a measure designed to benefit creditors. Like the English statute, its principal provisions permitted

bankruptcy commissioners, on appointment by a federal district court, to arrest the debtor, see § 4, 2 Stat. 22; to "cause the doors of the dwelling-house of [the] bankrupt to be broken," § 4, *id.*, at 22–23; to seize and collect the debtor's assets, § 5, *id.*, at 23; to examine the debtor and any individuals who might have possession of the debtor's property, §§ 14, 18, 19, *id.*, at 25–27; and to issue a "certificate of discharge" once the estate had been distributed, § 36, *id.*, at 31.

The American legislation differed slightly from the English, however. That difference reflects both the uniqueness of a system involving multiple sovereigns and the concerns that lay at the core of the Bankruptcy Clause itself. The English statute gave a judge sitting on a court where the debtor had obtained his discharge the power to order a sheriff, "Bailiff or Officer, Gaoler or Keeper of any Prison" to release the "Bankrupt out of Custody" if he were arrested subsequent to the discharge. 5 Geo. 2, ch. 30, ¶ 13 (1732). The American version of this provision was worded differently; it specifically granted federal courts the authority to issue writs of habeas corpus effective to release debtors from state prisons. See § 38, 2 Stat. 32; see also *In re Comstock*, 6 F. Cas. 237, 239 (No. 3,073) (Vt. 1842) (observing that Bankruptcy Act of 1800, then repealed, would have granted a federal court the power to issue a writ of habeas corpus to release a debtor from state prison if he had been arrested following his bankruptcy discharge).

This grant of habeas power is remarkable not least because it would be another 67 years, after Congress passed the Fourteenth Amendment, before the writ would be made generally available to state prisoners. See *Ex parte Royall*, 117 U. S. 241, 247 (1886).[11] Moreover, the provision of the

[11] The Judiciary Act of 1789 authorized issuance of the writ, but only to release those held in *federal* custody. See Haines, The Uniformity Power: Why Bankruptcy is Different, 77 Am. Bankr. L. J. 129, 179–181 (2003) (hereinafter Haines). Also, in the interim between 1800 and 1867, Congress authorized limited issuance of the writ in response to two crises it

1800 Act granting that power was considered and adopted during a period when state sovereign immunity could hardly have been more prominent among the Nation's concerns. *Chisholm* v. *Georgia*, 2 Dall. 419, the case that had so "shock[ed]" the country in its lack of regard for state sovereign immunity, *Principality of Monaco* v. *Mississippi*, 292 U. S. 313, 325 (1934), was decided in 1793. The ensuing five years that culminated in adoption of the Eleventh Amendment were rife with discussion of States' sovereignty and their amenability to suit. Yet there appears to be no record of any objection to the bankruptcy legislation or its grant of habeas power to federal courts based on an infringement of sovereign immunity. See Haines 184–185.

This history strongly supports the view that the Bankruptcy Clause of Article I, the source of Congress' authority to effect this intrusion upon state sovereignty, simply did not contravene the norms this Court has understood the Eleventh Amendment to exemplify. Cf. *Blatchford* v. *Native Village of Noatak*, 501 U. S. 775, 779 (1991) ("[W]e have understood the Eleventh Amendment to stand not so much for what it says, but for the presupposition of our constitutional structure which it confirms . . . ").[12] Petitioners, ignoring

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viewed as sufficiently pressing to warrant a federal response: the South Carolina nullification controversy of 1828–1833 and the imprisonment of a foreign national by New York State a few years later. See 4 Stat. 632 (1833); 5 Stat. 539 (1842); see also W. Duker, A Constitutional History of Habeas Corpus 187–189 (1980). The 1833 statute made the writ available to U. S. citizens imprisoned by States for actions authorized by federal law, while the 1842 statute gave federal judges the power to release foreign nationals imprisoned for actions authorized by foreign governments.

[12] Further evidence of the Framers' intent to exempt laws "on the subject of Bankruptcies" from the operation of state sovereign immunity principles can be gleaned from § 62 of the Bankruptcy Act of 1800. That section provided that "nothing contained in this law shall, in any manner, effect the right of preference to prior satisfaction of debts due to the United States as secured or provided by any law heretofore passed, nor shall be construed to lessen or impair any right to, or security for, money due to the United States or to any of them." 2 Stat. 36. That Congress

this history, contend that nothing in the *words* of the Bankruptcy Clause evinces an intent on the part of the Framers to alter the "background principle" of state sovereign immunity. *Seminole Tribe of Fla.*, 517 U. S., at 72. Specifically, they deny that the word "uniform" in the Clause implies anything about pre-existing immunities or Congress' power to interfere with those immunities. See Brief for Petitioners 32–42. Whatever the merits of petitioners' argument,[13] it

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felt the need to carve out an exception for States' preferences undermines any suggestion that it was operating against a background presumption of state sovereign immunity to bankruptcy laws. Indeed, one contemporary commentator read this section of the Act as requiring that the protected "priorit[ies]" would have to be "specifically given by some act of the Legislature of the Union" before they would be exempt from operation of the Act's provisions. T. Cooper, The Bankrupt Law of America, Compared with the Bankrupt Law of England 334 (1801) (reprint 1992) ("But I do not apprehend [that] this extends to give any priority to the United States, not specifically given by some act of the Legislature of the Union; nor will the English doctrine of priorities in favour of the crown be extended by analogy into this country").

[13] Petitioners make much of precedents suggesting that the word "uniform" represents a limitation, rather than an expansion, of Congress' legislative power in the bankruptcy sphere. See, *e. g.*, *Gibbons*, 455 U. S., at 468 ("Unlike the Commerce Clause, the Bankruptcy Clause itself contains an affirmative limitation or restriction upon Congress' power: bankruptcy laws must be uniform throughout the United States"). They also cite Justice Frankfurter's concurring opinion in *Vanston Bondholders Protective Comm.* v. *Green*, 329 U. S. 156 (1946), for the proposition that "[t]he Constitutional requirement of uniformity is a requirement of geographic uniformity," *id.*, at 172. Based on these authorities, petitioners argue that the word "uniform" in the Bankruptcy Clause cannot be interpreted to confer upon Congress any greater authority to impinge upon state sovereign immunity than is conferred, for example, by the Commerce Clause. See Brief for Petitioners 33.

Petitioners' logic is not persuasive. Although our analysis does not rest on the peculiar text of the Bankruptcy Clause as compared to other Clauses of Article I, we observe that, if anything, the mandate to enact "uniform" laws supports the historical evidence showing that the States agreed not to assert their sovereign immunity in proceedings brought pur-

misses the point; text aside, the Framers, in adopting the Bankruptcy Clause, plainly intended to give Congress the power to redress the rampant injustice resulting from States' refusal to respect one another's discharge orders. As demonstrated by the First Congress' immediate consideration and the Sixth Congress' enactment of a provision granting federal courts the authority to release debtors from state prisons, the power to enact bankruptcy legislation was understood to carry with it the power to subordinate state sovereignty, albeit within a limited sphere.

The ineluctable conclusion, then, is that States agreed in the plan of the Convention not to assert any sovereign immunity defense they might have had in proceedings brought pursuant to "Laws on the subject of Bankruptcies." See *Blatchford*, 501 U. S., at 779 (observing that a State is not "subject to suit in federal court unless it has consented to suit, either expressly or in the 'plan of the convention' ");

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suant to "Laws on the subject of Bankruptcies." That Congress is constrained to enact laws that are uniform in application, whether geographically or otherwise, cf. *Gibbons*, 455 U. S., at 470 (invalidating a bankruptcy law aimed at "one regional bankrupt railroad" and no one else), does not imply that it *lacks power* to enact bankruptcy legislation that is uniform in a more robust sense. See Haines 158–172. As our holding today demonstrates, Congress has the power to enact bankruptcy laws the purpose and effect of which are to ensure uniformity in treatment of state and private creditors. See *Sturges* v. *Crowninshield*, 4 Wheat. 122, 193–194 (1819) (opinion for the Court by Marshall, C. J.) ("The peculiar terms of the grant certainly deserve notice. Congress is not authorized merely to pass laws, the operation of which shall be uniform, but to *establish* uniform laws on the subject throughout the United States"); see also *In re Dehon, Inc.*, 327 B. R. 38, 57–58 (Bkrtcy. Ct. Mass. 2005) (discussing *Lathrop* v. *Drake*, 91 U. S. 516 (1876)); The Federalist Nos. 32 and 81, pp. 197–201, 481–491 (C. Rossiter ed. 1961) (A. Hamilton) (pointing to the "uniform[ity]" language of the Naturalization Clause, which appears in the same clause of Article I as the bankruptcy provision, as an example of an instance where the Framers contemplated a "surrender of [States'] immunity in the plan of the convention").

Alden v. *Maine*, 527 U. S., at 713 (same).[14] The scope of this consent was limited; the jurisdiction exercised in bankruptcy proceedings was chiefly *in rem*—a narrow jurisdiction that does not implicate state sovereignty to nearly the same degree as other kinds of jurisdiction. But while the principal focus of the bankruptcy proceedings is and was always the res, some exercises of bankruptcy courts' powers—issuance of writs of habeas corpus included—unquestionably involved more than mere adjudication of rights in a res. In ratifying the Bankruptcy Clause, the States acquiesced in a subordination of whatever sovereign immunity they might otherwise have asserted in proceedings necessary to effectuate the *in rem* jurisdiction of the bankruptcy courts.[15]

V

Neither our decision in *Hood*, which held that States could not assert sovereign immunity as a defense in adversary proceedings brought to adjudicate the dischargeability of student loans, nor the cases upon which it relied, see 541 U. S., at 448–449 (discussing *New York* v. *Irving Trust Co.*, 288 U. S. 329 (1933); *Gardner*, 329 U. S. 565; and *Van Huffel* v. *Harkelrode*, 284 U. S. 225 (1931)), rested on any statement Congress had made on the subject of state sovereign immu-

[14] One might object that the writ of habeas corpus was no infringement on state sovereignty, and would not have been understood as such, because that writ, being in the nature of an injunction against a state official, does not commence or constitute a suit against the State. See *Ex parte Young*, 209 U. S. 123, 159–160 (1908). While that objection would be supported by precedent today, it would not have been apparent to the Framers. The *Ex parte Young* doctrine was not finally settled until over a century after the framing and the enactment of the first bankruptcy statute. Indeed, we have recently characterized the doctrine as an expedient "fiction" necessary to ensure the supremacy of federal law. See *Pennhurst State School and Hospital* v. *Halderman*, 465 U. S. 89, 114, n. 25 (1984); see also *Idaho* v. *Coeur d'Alene Tribe of Idaho*, 521 U. S. 261, 281 (1997).

[15] We do not mean to suggest that every law labeled a "bankruptcy" law could, consistent with the Bankruptcy Clause, properly impinge upon state sovereign immunity.

nity. Nor does our decision today. The relevant question is not whether Congress has "abrogated" States' immunity in proceedings to recover preferential transfers. See 11 U. S. C. § 106(a).[16] The question, rather, is whether Congress' determination that States should be amenable to such proceedings is within the scope of its power to enact "Laws on the subject of Bankruptcies." We think it beyond peradventure that it is.

Congress may, at its option, either treat States in the same way as other creditors insofar as concerns "Laws on the subject of Bankruptcies" or exempt them from operation of such laws. Its power to do so arises from the Bankruptcy Clause itself; the relevant "abrogation" is the one effected in the plan of the Convention, not by statute.

The judgment of the Court of Appeals for the Sixth Circuit is affirmed.

It is so ordered.

JUSTICE THOMAS, with whom THE CHIEF JUSTICE, JUSTICE SCALIA, and JUSTICE KENNEDY join, dissenting.

Under our Constitution, the States are not subject to suit by private parties for monetary relief absent their consent or a valid congressional abrogation, and it is "settled doctrine" that nothing in Article I of the Constitution establishes those preconditions. *Alden* v. *Maine*, 527 U. S. 706, 748 (1999). Yet the Court today casts aside these long-established principles to hold that the States are subject to suit by a rather unlikely class of individuals—bankruptcy trustees seeking recovery of preferential transfers for a bankrupt debtor's estate. This conclusion cannot be justified by the text, structure, or history of our Constitution. In addition, today's ruling is not only impossible to square with this Court's settled state sovereign immunity jurispru-

[16] Cf. *Hoffman*, 492 U. S., at 101 (holding that, in an earlier version of 11 U. S. C. § 106, Congress had failed to make sufficiently clear its intent to abrogate state sovereign immunity).

dence; it is also impossible to reach without overruling this Court's judgment in *Hoffman* v. *Connecticut Dept. of Income Maintenance*, 492 U. S. 96 (1989).

The majority maintains that the States' consent to suit can be ascertained from the history of the Bankruptcy Clause. But history confirms that the adoption of the Constitution merely established federal power to legislate in the area of bankruptcy law, and did not manifest an additional intention to waive the States' sovereign immunity against suit. Accordingly, I respectfully dissent.

I

The majority does not appear to question the established framework for examining the question of state sovereign immunity under our Constitution. The Framers understood, and this Court reiterated over a century ago in *Hans* v. *Louisiana*, 134 U. S. 1 (1890):

> "'It is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent. This is the general sense and the general practice of mankind; and the exemption, as one of the attributes of sovereignty, is now enjoyed by the government of every State in the Union. *Unless, therefore, there is a surrender of this immunity in the plan of the convention, it will remain with the States . . . .*'" *Id.*, at 13 (quoting The Federalist No. 81, pp. 548–549 (J. Cooke ed. 1961) (hereinafter The Federalist No. 81); emphasis added and deleted).

See also *Ex parte New York*, 256 U. S. 490, 497 (1921) ("That a State may not be sued without its consent is a fundamental rule of jurisprudence having so important a bearing upon the construction of the Constitution of the United States that it has become established by repeated decisions of this court that the entire judicial power granted by the Constitution does not embrace authority to entertain a suit brought by

private parties against a State without consent given"); *Seminole Tribe of Fla.* v. *Florida*, 517 U. S. 44, 54 (1996).

These principles were further reinforced early in our Nation's history, when the people swiftly rejected this Court's decision in *Chisholm* v. *Georgia*, 2 Dall. 419 (1793), by ratifying the Eleventh Amendment less than two years later. See *Hans*, *supra*, at 11; *Reid* v. *Covert*, 354 U. S. 1, 14, n. 27 (1957) (plurality opinion). Thus, "[f]or over a century [since *Hans*] we have reaffirmed that federal jurisdiction over suits against unconsenting States 'was not contemplated by the Constitution when establishing the judicial power of the United States.'" *Seminole Tribe*, *supra*, at 54 (quoting *Hans*, *supra*, at 15); see also *Seminole Tribe*, *supra*, at 54–55, n. 7 (collecting cases).

The majority finds a surrender of the States' immunity from suit in Article I of the Constitution, which authorizes Congress "[t]o establish . . . uniform Laws on the subject of Bankruptcies throughout the United States." §8, cl. 4. But nothing in the text of the Bankruptcy Clause suggests an abrogation or limitation of the States' sovereign immunity. Indeed, as this Court has noted on numerous occasions, "[t]he Eleventh Amendment restricts the judicial power under Article III, and Article I cannot be used to circumvent the constitutional limitations placed upon federal jurisdiction." *Seminole Tribe*, *supra*, at 72–73. "[I]t is settled doctrine that neither substantive federal law nor attempted congressional abrogation under Article I bars a State from raising a constitutional defense of sovereign immunity in federal court." *Alden*, *supra*, at 748. See also *Kimel* v. *Florida Bd. of Regents*, 528 U. S. 62, 80 (2000); *Board of Trustees of Univ. of Ala.* v. *Garrett*, 531 U. S. 356, 364 (2001). And we have specifically applied this "settled doctrine" to bar abrogation of state sovereign immunity under various clauses within §8 of Article I. See, *e. g.*, *Seminole Tribe*, *supra* (the Interstate and Indian Commerce Clauses); *Florida Prepaid Postsecondary Ed. Expense Bd.*

v. *College Savings Bank*, 527 U. S. 627 (1999) (the Patents Clause).

It is difficult to discern an intention to abrogate state sovereign immunity through the Bankruptcy Clause when no such intention has been found in any of the other clauses in Article I. Indeed, our cases are replete with acknowledgments that there is nothing special about the Bankruptcy Clause in this regard. See *Seminole Tribe*, 517 U. S., at 72–73, n. 16; see also *id.*, at 93–94 (STEVENS, J., dissenting) ("In confronting the question whether a federal grant of jurisdiction is within the scope of Article III, as limited by the Eleventh Amendment, I see no reason to distinguish among statutes enacted pursuant to the power granted to Congress to regulate commerce among the several States, and with the Indian tribes, the power to establish uniform laws on the subject of bankruptcy, [or] the power to promote the progress of science and the arts by granting exclusive rights to authors and inventors" (citations omitted)); *id.*, at 77–78, and n. 1 (STEVENS, J., dissenting); *Hoffman*, 492 U. S., at 105 (SCALIA, J., concurring in judgment). Today's decision thus cannot be reconciled with our established sovereign immunity jurisprudence, which the majority does not purport to overturn.

The majority's departure from this Court's precedents is not limited to this general framework, however; the majority also overrules *sub silentio* this Court's holding in *Hoffman*, *supra*. The petitioner in *Hoffman*, *id.*, at 99—like respondent Katz here—sought to pursue a preference avoidance action against a state agency pursuant to 11 U. S. C. § 547(b). The plurality opinion, joined by four Members of this Court, held that Eleventh Amendment immunity barred suit because Congress had failed to enact legislation sufficient to abrogate that immunity, and expressed no view on whether Congress possessed the constitutional power to do so. *Hoffman*, *supra*, at 104. JUSTICE SCALIA concurred in the judgment, arguing that there was no need to examine the statute

because the Bankruptcy Clause does not empower Congress to enact legislation abrogating state sovereign immunity. See 492 U. S., at 105; see also *ibid.* (O'CONNOR, J., concurring) ("I agree with JUSTICE SCALIA that Congress may not abrogate the States' Eleventh Amendment immunity by enacting a statute under the Bankruptcy Clause"). Thus, a majority of the Court in *Hoffman* agreed: (1) that a preference action in bankruptcy against a state agency is barred by sovereign immunity; and (2) that, at a minimum (and absent the State's consent), overcoming that immunity would require a clearer statutory abrogation than Congress had provided.[1]

After today's decision, however, *Hoffman* can no longer stand. For today's decision makes clear that *no action* of Congress is needed because the Bankruptcy Clause itself manifests the consent of the States to be sued. *Ante*, at 378.

II

The majority supports its break from precedent by relying on historical evidence that purportedly reveals the Framers' intent to eliminate state sovereign immunity in bankruptcy proceedings. *Ante*, at 362–363, 373. The Framers undoubtedly wanted to give Congress the authority to enact a national law of bankruptcy, as the text of the Bankruptcy Clause confirms. But the majority goes further, contending that the Framers found it intolerable that bankruptcy laws could vary from State to State, and demanded the enactment of a single, uniform national body of bankruptcy law. *Ante*, at 365–368. The majority then concludes that, to achieve a uniform national bankruptcy law, the Framers must have intended to waive the States' sovereign immunity against suit. *Ante*, at 362. Both claims are unwarranted.

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[1] The parties in *Hoffman* likewise agreed that the suit was barred by Eleventh Amendment immunity absent some further action by Congress. 492 U. S., at 101.

A

In contending that the States waived their immunity from suit by adopting the Bankruptcy Clause, the majority conflates two distinct attributes of sovereignty: the authority of a sovereign to enact legislation regulating its own citizens, and sovereign immunity against suit by private citizens.[2] Nothing in the history of the Bankruptcy Clause suggests that, by including that clause in Article I, the founding generation intended to waive the latter aspect of sovereignty. These two attributes of sovereignty often do not run together—and for purposes of enacting a uniform law of bankruptcy, they need not run together.

For example, Article I also empowers Congress to regulate interstate commerce and to protect copyrights and patents. These provisions, no less than the Bankruptcy Clause, were motivated by the Framers' desire for nationally uniform legislation. See James Madison, Preface to Debates in the Convention of 1787, reprinted in 3 M. Farrand, Records of the Federal Convention of 1787, pp. 539, 547–548 (1911) (hereinafter Farrand's Debates) (noting lack of national regulation of commerce and uniform bankruptcy law as defects under the Articles of Confederation); M. Farrand, The Framing of the Constitution of the United States 48 (1913) (noting that the Articles of Confederation failed to provide for uniform national regulation of naturalization, bankruptcy, copyrights, and patents). Thus, we have recognized that "[t]he need for uniformity in the construction of patent law is undoubtedly important." *Florida Prepaid*, 527 U. S., at 645. Nonetheless, we have refused, in addressing patent law, to give the need for uniformity the weight the majority today

[2] Immunity against suit is just "one of the attributes of sovereignty, . . . enjoyed by the government of every state in the union." The Federalist No. 81, at 549. The sovereign power to legislate is a distinct attribute of sovereignty; it is discussed, for example, in a completely separate portion of the Federalist than immunity from suit. See, *e. g., id.,* No. 32.

assigns it in the context of bankruptcy, instead recognizing that this need "is a factor which belongs to the Article I patent-power calculus, rather than to any determination of whether a state plea of sovereign immunity deprives a patentee of property without due process of law." *Ibid.*

Nor is the abrogation of state sovereign immunity from suit necessary to the enactment of nationally uniform bankruptcy laws. The sovereign immunity of the States against suit does not undermine the objective of a uniform national law of bankruptcy, any more than does any differential treatment between different categories of creditors. Cf. *Railway Labor Executives' Assn.* v. *Gibbons*, 455 U. S. 457, 469 (1982) ("The uniformity requirement is not a straightjacket that forbids Congress to distinguish among classes of debtors, nor does it prohibit Congress from recognizing that state laws do not treat commercial transactions in a uniform manner").

B

The majority also greatly exaggerates the depth of the Framers' fervor to enact a national bankruptcy regime. The idea of authorizing Congress to enact a nationally uniform bankruptcy law did not arise until late in the Constitutional Convention, which began in earnest on May 25, 1787. 1 Farrand's Debates xi. The Convention charged the Committee of Detail with putting forth a comprehensive draft Constitution, which it did on August 6. *Ibid.;* 2 *id.*, at 177. Yet the Convention did not consider the language that eventually became the Bankruptcy Clause until September 1, *id.*, at 483–485, and it adopted the provision with little debate two days later, *id.*, at 489. Under the majority's analysis, which emphasizes the Framers' zeal to enact a national law of bankruptcy, this timing is difficult to explain.

The majority's premise fares even worse in explaining the postratification period. The majority correctly notes that the practice of the early Congresses can provide valuable

insight into the Framers' understanding of the Constitution. *Ante*, at 373, 374. But early practice undermines, rather than supports, the majority's theory. "For over a century after the Constitution, . . . the Bankruptcy Clause [authority] remained largely unexercised by Congress. . . . Thus, states were free to act in bankruptcy matters for all but 16 of the first 109 years after the Constitution was ratified." Tabb, The History of the Bankruptcy Laws in the United States, 3 Am. Bankr. Inst. L. Rev. 5, 13–14 (1995). And when Congress did act, it did so only in response to a major financial disaster, and it repealed the legislation in each instance shortly thereafter. *Id.*, at 14–21.[3] It was not until 1898, well over a century after the adoption of the Bankruptcy Clause, that Congress adopted the first permanent national bankruptcy law. 30 Stat. 544.

The historical record thus refutes, rather than supports, the majority's premise that the Framers placed paramount importance on the enactment of a nationally uniform bank-

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[3] For over a dozen years after the ratification of the Constitution, Congress failed to adopt a single bankruptcy law. See, *e. g.*, 9 Annals of Congress 2671 (1799) (noting that Congress had "not . . . passed [bankruptcy legislation] for these ten years past, and the States [have] legislated upon it in their own way" (statement of Rep. Baldwin)); 3 Farrand's Debates 380 (same). It was not until April 4, 1800, that the Sixth Congress finally adopted our Nation's first bankruptcy law, ch. 19, 2 Stat. 19, and even that law left an ample role for state law, § 61, *id.*, at 36. (By contrast, the very first Congress enacted, *inter alia*, patent and copyright legislation. 1 Stat. 109, 124.)

Moreover, that first Act was short lived; Congress repealed it just three years later. 2 Stat. 248. And over a decade later, this Court confirmed what Congress' inattention had already communicated—that the Bankruptcy Clause does not vest exclusive power in Congress, but instead leaves an ample role for the States. See *Sturges* v. *Crowninshield*, 4 Wheat. 122 (1819). It was not until 1841 that Congress would enact another bankruptcy law, ch. 9, 5 Stat. 440, only to repeal it less than two years later, ch. 82, *id.*, at 614. The economic upheaval of the Civil War caused Congress to pass another bankruptcy law in 1867, ch. 176, 14 Stat. 517, but that too was repealed after just over a decade, ch. 160, 20 Stat. 99.

ruptcy law. In reality, for most of the first century of our Nation's history, the country survived without such a law, relying instead on the laws of the several States.

Moreover, the majority identifies *no* historical evidence suggesting that the Framers or the early Legislatures, even if they were anxious to establish a national bankruptcy law, contemplated that the States would subject themselves to private suit as creditors under that law. In fact, the historical record establishes that the Framers held the opposite view. To the Framers, it was a particularly grave offense to a State's sovereignty to be hauled into court by a private citizen and forced to make payments on debts. Alexander Hamilton, the author of Federalist No. 81, followed his general discussion of state sovereign immunity by emphasizing that the Constitution would be especially solicitous of state sovereignty within the specific context of payment of state debts:

> "'[T]here is no color to pretend that the state governments would, by the adoption of that plan, be divested of the privilege of paying their own debts in their own way, free from every constraint but that which flows from the obligations of good faith. The contracts between a nation and individuals are only binding on the conscience of the sovereign, and have no pretension to a compulsive force. They confer no right of action independent of the sovereign will. To what purpose would it be to authorize suits against States for the debts they owe? How could recoveries be enforced? It is evident that it could not be done without waging war against the contracting State; and to ascribe to the federal courts by mere implication, and in destruction of a pre-existing right of the state governments, a power which would involve such a consequence, would be altogether forced and unwarrantable.'" *Hans,* 134 U. S., at 13 (quoting The Federalist No. 81, at 549).

C

The majority attempts to bolster its historical argument by making three additional observations about the bankruptcy power: (1) Congress' early provision of habeas corpus relief in bankruptcy to forbid the imprisonment of a debtor by one State, in violation of a discharge order issued by the courts of another State, *ante*, at 365–366, 374–375; (2) the inability of debtors, first in the American Colonies and then under the Articles of Confederation, to enforce in one state court a discharge order issued by another state court, *ante*, at 366–368; and (3) the historical understanding that bankruptcy jurisdiction is principally *in rem*, *ante*, at 369–373. The implication is that, if these specific observations about bankruptcy are correct, then States must necessarily be subject to suit in transfer recovery proceedings, if not also in other bankruptcy settings. *Ante*, at 370; *ante*, at 377–378. But none of these observations comes close to demonstrating that, under the Bankruptcy Clause, the States may be sued by private parties for monetary relief.[4]

1

The availability of habeas relief in bankruptcy between 1800 and 1803 does not support respondent's effort to obtain monetary relief in bankruptcy against state agencies today.[5] The habeas writ was well established by the time

[4] To be sure, the majority opinion adds, in a footnote, that "[w]e do not mean to suggest that every law labeled a 'bankruptcy' law could, consistent with the Bankruptcy Clause, properly impinge upon state sovereign immunity." *Ante*, at 378, n. 15. But the majority offers no explanation of this statement; certainly it offers no principled basis on which to draw distinctions in future cases.

[5] This is particularly so given the absence of any known application of that law (let alone any test of its validity) during that time. The provision was enacted into law on April 4, 1800, ch. 19, 2 Stat. 19, and repealed on December 19, 1803, ch. 6, *id.*, at 248. The sole reference cited by the majority is *In re Comstock*, 6 F. Cas. 237 (No. 3,073) (Vt. 1842), see *ante*, at 374, but that ruling, issued nearly 40 years after the 1800 Act's repeal, merely noted in dicta the prior existence of the habeas provision.

of the framing, and consistent with then-prevailing notions of sovereignty. In *Ex parte Young*, 209 U. S. 123 (1908), this Court held that a petition for the writ is a suit against a state official, not a suit against a State, and thus does not offend the Eleventh Amendment:

> "The right to so discharge has not been doubted by this court, and it has never been supposed there was any suit against the State by reason of serving the writ upon one of the officers of the State in whose custody the person was found. In some of the cases the writ has been refused as matter of discretion; but in others it has been granted, while the power has been fully recognized in all." *Id.*, at 168 (collecting cases).

This Court has reaffirmed *Young* repeatedly—including in *Seminole Tribe*, 517 U. S., at 71, n. 14. Although the majority observes that *Young* was not issued "until over a century after the framing and the enactment of the first bankruptcy statute," *ante*, at 378, n. 14, this observation does nothing to reconcile the majority's analysis with *Young*, as the majority does not purport to question the historical underpinnings of *Young*'s holding. The availability of federal habeas relief to debtors in state prisons thus has no bearing whatsoever on whether the Bankruptcy Clause authorizes suits against the States for money damages.[6]

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[6] The majority also contends that the provision for habeas relief in the 1800 bankruptcy law is "remarkable not least because it would be another 67 years, after Congress passed the Fourteenth Amendment, before the writ would be made generally available to state prisoners." *Ante*, at 374. The implication is that the Bankruptcy Clause shares a similar pedigree with the Fourteenth Amendment, which (unlike Article I of the Constitution) authorizes Congress to abrogate state sovereign immunity against suit. See, *e. g.*, *Fitzpatrick* v. *Bitzer*, 427 U. S. 445 (1976). But as the majority recognizes, *ante*, at 374–375, n. 11, Congress *did* enact other habeas provisions prior to the Fourteenth Amendment. See 4 Stat. 632; 5 Stat. 539; see generally W. Duker, A Constitutional History of Habeas Corpus 187–189 (1980) (discussing the 1833 and 1842 Acts). The Fourteenth Amendment bears no relevance to this discussion in any event,

2

The majority's second observation—that the Framers were concerned that, under the Articles of Confederation, debtors were unable to obtain discharge orders issued by the court of one State that would be binding in the court of another State, *ante*, at 366–368—implicates nothing more than the application of full faith and credit, as is apparent from the majority opinion itself. Accordingly, it has nothing to do with state sovereign immunity from suit.

To support its observation, the majority describes at length two Pennsylvania court rulings issued under the Articles of Confederation. See *James* v. *Allen*, 1 Dall. 188 (C. P. Phila. Cty. 1786); *Millar* v. *Hall*, 1 Dall. 229 (Pa. 1788). But as the majority's explanation makes clear, the problem demonstrated by these cases is the need for recognition of sister-state judgments by state courts, not disregard for state sovereign immunity against suit in federal courts. Both *James* and *Millar* involved litigation between a private debtor and a private creditor. In both cases, the creditor filed suit in a Pennsylvania court to enforce a debt. And in both cases, the debtor sought but failed to obtain recognition of a judgment of discharge that had previously been entered by a court of another State. *Ante*, at 368.

Accordingly, it is unsurprising that, when the issue of bankruptcy arose at the Constitutional Convention, it was also within the context of full faith and credit. See *ante*, at 368–369.[7] As the majority correctly points out, the Framers

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because as I have explained above, habeas relief simply does not offend the Framers' view of state sovereign immunity. See also *Young*, 209 U. S., at 150 ("[A] decision of this case does not require an examination or decision of the question whether [the] adoption [of the Fourteenth Amendment] in any way altered or limited the effect of the [Eleventh] Amendment").

[7] The same point was made in *Railway Labor Executives' Assn.* v. *Gibbons*, 455 U. S. 457 (1982): "Prior to the drafting of the Constitution, at least four States followed the practice of passing private Acts to relieve individual debtors. Given the sovereign status of the States, questions

"plainly intended to give Congress the power to redress the rampant injustice resulting from States' refusal to respect one another's discharge orders." *Ante*, at 377. But redress of that "rampant injustice" turned entirely on binding state courts to respect the discharge orders of their sister States under the Full Faith and Credit Clause, not on the authorization of private suits against the States.

3

Finally, the majority observes that the bankruptcy power is principally exercised through *in rem* jurisdiction. *Ante*, at 369–373. The fact that certain aspects of the bankruptcy power may be characterized as *in rem*, however, does not determine whether or not the States enjoy sovereign immunity against such *in rem* suits. And it certainly does not answer the question presented in this case: whether the Bankruptcy Clause subjects the States to transfer recovery proceedings—proceedings the majority describes as "ancillary to and in furtherance of the court's *in rem* jurisdiction," though not necessarily themselves *in rem*, *ante*, at 372.

Two years ago, this Court held that a State is bound by a bankruptcy court's discharge order, notwithstanding the State's invocation of sovereign immunity, because such actions arise out of *in rem* jurisdiction. See *Tennessee Student Assistance Corporation* v. *Hood*, 541 U. S. 440, 448 (2004). In doing so, however, the Court explicitly distinguished recovery of preferential transfers, noting that the debt discharge proceedings there were "unlike an adversary proceeding by the bankruptcy trustee seeking to recover

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were raised as to whether one State had to recognize the relief given to a debtor by another State [citing *James* and *Millar*]. Uniformity among state debtor insolvency laws was an impossibility and the practice of passing private bankruptcy laws was subject to abuse if the legislators were less than honest. Thus, it is not surprising that the Bankruptcy Clause was introduced during discussion of the Full Faith and Credit Clause." *Id.*, at 472 (citations omitted).

property in the hands of the State on the grounds that the transfer was a voidable preference." *Id.*, at 454.

The fact that transfer recovery proceedings fall outside any possible *in rem* exception to sovereign immunity is confirmed by *United States* v. *Nordic Village, Inc.*, 503 U. S. 30 (1992), which involved similar facts. There, the Bankruptcy Trustee filed a transfer avoidance action against the United States, in order to recover a recent payment the debtor had made to the Internal Revenue Service on a tax debt. See *id.*, at 31. After determining that the United States had not waived its sovereign immunity, the Court rejected the trustee's alternative argument based on *in rem* jurisdiction. As the Court explained, "[r]espondent sought to recover a sum of money, not 'particular dollars,' so there was no *res* to which the court's *in rem* jurisdiction could have attached." *Id.*, at 38 (quoting *Begier* v. *IRS*, 496 U. S. 53, 62 (1990); citations omitted and emphasis deleted).[8]

The majority attempts to evade *Nordic Village* by claiming that "the trustee in this case, unlike the one in *Nordic Village*, seeks, in the alternative, both return of the 'value' of the preference, . . . and return of the actual 'property transferred.'" *Ante*, at 372, n. 10 (quoting 11 U. S. C. § 550(a)). But where, as here, the property in question is

[8] *Begier* involved funds held by the debtor in statutory trust for the United States—so its analysis of those "particular dollars" does not help the respondent in this case. 496 U. S., at 62 (emphasis deleted). Nor does *United States* v. *Whiting Pools, Inc.*, 462 U. S. 198 (1983), support the majority's effort. In *Whiting Pools*, the United States waived its immunity by filing suit. See *id.*, at 200–201; see also *Nordic Village*, 503 U. S., at 39 ("The Court's opinion in *Whiting Pools* contains no discussion of § 106(c) [the waiver provision]"). Furthermore, in *Whiting Pools* the Government possessed merely a secured interest in the property on the basis of a tax lien, see 462 U. S., at 202. By contrast, here, as in *Nordic Village*, it is uncontested that the State owns the funds, barring any subsequent transfer by operation of bankruptcy law. See 503 U. S., at 39 ("A suit for payment of funds from the Treasury is quite different from a suit for the return of tangible property in which the debtor retained ownership").

money, there is no practical distinction between these two options, and surely we did not reach the result in *Nordic Village* because of an accident of pleading. Moreover, it is hardly clear that the trustee in *Nordic Village* failed to ask for a "return" of the "'property transferred,'" *ante*, at 372, n. 10, and the majority does not cite anything to support its assertion. See also *Nordic Village*, *supra*, at 31 ("[T]he trustee . . . commenced an adversary proceeding . . . seeking to recover, among other transfers, the $20,000 paid . . . to the IRS"); *In re Nordic Village, Inc.*, 915 F. 2d 1049, 1051 (CA6 1990) ("The trustee subsequently initiated a proceeding to recover several unauthorized post-petition transfers, including the transfer to the IRS").

In light of the weakness of its historical evidence that the States consented to be sued in bankruptcy proceedings, the majority's effort to recast respondent's action as *in rem* is understandable, but unconvincing.

* * *

It would be one thing if the majority simply wanted to overrule *Seminole Tribe* altogether. That would be wrong, but at least the terms of our disagreement would be transparent. The majority's action today, by contrast, is difficult to comprehend. Nothing in the text, structure, or history of the Constitution indicates that the Bankruptcy Clause, in contrast to all of the other provisions of Article I, manifests the States' consent to be sued by private citizens.

I respectfully dissent.

Syllabus

UNITHERM FOOD SYSTEMS, INC. *v.* SWIFT-ECKRICH, INC., DBA CONAGRA REFRIGERATED FOODS

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 04–597. Argued November 2, 2005—Decided January 23, 2006

After respondent ConAgra warned companies selling equipment and processes for browning precooked meats that it intended to protect its rights under its patent for that process, petitioner Unitherm, whose president had invented the process six years before ConAgra filed its patent application, and one of ConAgra's direct competitors jointly filed suit in an Oklahoma federal court. As relevant here, they sought a declaration that ConAgra's patent was invalid and unenforceable and alleged that ConAgra had violated § 2 of the Sherman Act by attempting to enforce a patent obtained by fraud on the Patent and Trademark Office, see *Walker Process Equipment, Inc.* v. *Food Machinery & Chemical Corp.*, 382 U. S. 172, 174. The District Court found the patent invalid and allowed the *Walker Process* claim to proceed to trial. Before the case was submitted to the jury, ConAgra moved for a directed verdict under Federal Rule of Civil Procedure 50(a) based on legal insufficiency of the evidence. The court denied the motion, the jury returned a verdict for Unitherm, and ConAgra neither renewed its motion for judgment as a matter of law pursuant to Rule 50(b) nor moved for a new trial on antitrust liability pursuant to Rule 59. On appeal to the Federal Circuit, ConAgra maintained that there was insufficient evidence to sustain the *Walker Process* verdict. The court applied Tenth Circuit law, under which a party that has failed to file a postverdict sufficiency of the evidence challenge may nonetheless raise such a claim on appeal, so long as the party filed a Rule 50(a) motion before submission of the case to the jury. The only available relief in such a circumstance is a new trial. Freed to examine the sufficiency of the evidence, the Federal Circuit vacated the judgment and ordered a new trial.

Held: Since respondent failed to renew its preverdict motion as specified in Rule 50(b), the Federal Circuit had no basis for reviewing respondent's sufficiency of the evidence challenge. Rule 50 sets forth the requirements, establishing two stages, for challenging the sufficiency of the evidence in a civil jury trial. Rule 50(a) allows a challenge prior to the case's submission to the jury, authorizing the district court to grant the motion at the court's discretion. Rule 50(b), by contrast, sets forth

the requirements for renewing the challenge after the jury verdict and entry of judgment. A party's failure to file a Rule 50(b) postverdict motion deprives an appellate court of the "power to direct the District Court to enter judgment contrary to the one it had permitted to stand." *Cone* v. *West Virginia Pulp & Paper Co.*, 330 U. S. 212, 218. It also deprives an appellate court of the power to order the entry of judgment in favor of that party where the district court directed the jury's verdict, *Globe Liquor Co.* v. *San Roman*, 332 U. S. 571, and where the district court expressly reserved a party's preverdict directed verdict motion and then denied it after the verdict, *Johnson* v. *New York, N. H. & H. R. Co.*, 344 U. S. 48. A postverdict motion is necessary because determining "whether a new trial should be granted or a judgment entered under Rule 50(b) calls for the judgment in the first instance of the judge who saw and heard the witnesses and has the feel of the case which no appellate printed transcript can impart." *Cone*, *supra*, at 216. Moreover, the requirement "is not an idle motion" but "an essential part of the rule, firmly grounded in principles of fairness." *Johnson*, *supra*, at 53. These authorities require reversal of the judgment below. This Court's observations about the postverdict motion's necessity and the benefits of the district court's input at that stage apply with equal force whether a party is seeking judgment as a matter of law or simply a new trial. Contrary to respondent's argument, the *Cone*, *Globe Liquor*, and *Johnson* outcomes underscore this holding. Those litigants all secured new trials, but they had moved for a new trial postverdict in the district court and did not seek to establish their entitlement to a new trial based solely on a denied Rule 50(a) motion. This result is further validated by the purported basis of respondent's appeal, namely, the District Court's denial of its Rule 50(a) motion. *Cone*, *Globe Liquor*, and *Johnson* unequivocally establish that the precise subject matter of a party's Rule 50(a) motion cannot be appealed unless that motion is renewed pursuant to Rule 50(b). Respondent, rather than seeking to appeal the claim raised in its Rule 50(a) motion, seeks a *new trial* based on legal insufficiency of the evidence. If a litigant that has failed to file a Rule 50(b) motion is foreclosed from seeking the relief sought in its Rule 50(a) motion, then surely respondent is foreclosed from seeking relief it did not and could not seek in its preverdict motion. Rule 50(b)'s text confirms that respondent's Rule 50(a) motion did not give the District Court the option of ordering a new trial, for it provides that a district court may only order a new trial based on issues raised in a Rule 50(a) motion when "ruling on a renewed motion" under Rule 50(b). If the District Court lacked such power, then the Court of Appeals was similarly powerless. Rule 50(a)'s text and application also support this result. A district court may enter judgment as a matter of law when it concludes

that the evidence is legally insufficient, but it is not required to do so. Thus, the denial of respondent's Rule 50(a) motion was not error, but merely an exercise of the District Court's discretion. Pp. 399–407.

375 F. 3d 1341, reversed.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and O'CONNOR, SCALIA, SOUTER, GINSBURG, and BREYER, JJ., joined. STEVENS, J., filed a dissenting opinion, in which KENNEDY, J., joined, *post*, p. 407.

Burck Bailey argued the cause for petitioner. With him on the briefs were *Greg A. Castro*, *Jay P. Walters*, and *Dennis D. Brown*.

Malcolm L. Stewart argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Clement*, *Assistant Attorney General Keisler*, *Deputy Solicitor General Hungar*, *Marleigh Dover*, and *August Flentje*.

Robert A. Schroeder argued the cause for respondent. With him on the briefs were *John R. Reese*, *Leigh Otsuka Curran*, and *John P. Passarelli*.

JUSTICE THOMAS delivered the opinion of the Court.

Ordinarily, a party in a civil jury trial that believes the evidence is legally insufficient to support an adverse jury verdict will seek a judgment as a matter of law by filing a motion pursuant to Federal Rule of Civil Procedure 50(a) before submission of the case to the jury, and then (if the Rule 50(a) motion is not granted and the jury subsequently decides against that party) a motion pursuant to Rule 50(b). In this case, however, the respondent filed a Rule 50(a) motion before the verdict, but did not file a Rule 50(b) motion after the verdict. Nor did respondent request a new trial under Rule 59. The Court of Appeals nevertheless proceeded to review the sufficiency of the evidence and, upon a finding that the evidence was insufficient, remanded the case for a new trial. Because our cases addressing the requirements of Rule 50 compel a contrary result, we reverse.

I

The genesis of the underlying litigation in this case was ConAgra's attempt to enforce its patent for "A Method for Browning Precooked Whole Muscle Meat Products," U. S. Patent No. 5,952,027 ('027 patent). In early 2000, ConAgra issued a general warning to companies who sold equipment and processes for browning precooked meats explaining that it intended to "'aggressively protect all of [its] rights under [the '027] patent.'" 375 F. 3d 1341, 1344 (CA Fed. 2004). Petitioner Unitherm sold such processes, but did not receive ConAgra's warning. ConAgra also contacted its direct competitors in the precooked meat business, announcing that it was "'making the '027 Patent and corresponding patents that may issue available for license at a royalty rate of 10¢ per pound.'" *Id.*, at 1345. Jennie-O, a direct competitor, received ConAgra's correspondence and undertook an investigation to determine its rights and responsibilities with regard to the '027 patent. Jennie-O determined that the browning process it had purchased from Unitherm was the same as the process described in the '027 patent. Jennie-O further determined that the '027 patent was invalid because Unitherm's president had invented the process described in that patent six years before ConAgra filed its patent application.

Consistent with these determinations, Jennie-O and Unitherm jointly sued ConAgra in the Western District of Oklahoma. As relevant here, Jennie-O and Unitherm sought a declaration that the '027 patent was invalid and unenforceable, and alleged that ConAgra had violated § 2 of the Sherman Act, ch. 647, 26 Stat. 209, as amended, 15 U. S. C. § 2, by attempting to enforce a patent that was obtained by committing fraud on the Patent and Trademark Office (PTO). See *Walker Process Equipment, Inc.* v. *Food Machinery & Chemical Corp.*, 382 U. S. 172, 174 (1965) (holding that "the enforcement of a patent procured by fraud on the Patent Office may be violative of § 2 of the Sherman Act provided

the other elements necessary to a § 2 case are present"). The District Court construed the '027 patent and determined that it was invalid based on Unitherm's prior public use and sale of the process described therein. 35 U. S. C. § 102(b). After dismissing Jennie-O for lack of antitrust standing, the District Court allowed Unitherm's *Walker Process* claim to proceed to trial. Prior to the court's submission of the case to the jury, ConAgra moved for a directed verdict under Rule 50(a) based on legal insufficiency of the evidence. The District Court denied that motion.[1] The jury returned a verdict for Unitherm, and ConAgra neither renewed its motion for judgment as a matter of law pursuant to Rule 50(b), nor moved for a new trial on antitrust liability pursuant to Rule 59.[2]

On appeal to the Federal Circuit, ConAgra maintained that there was insufficient evidence to sustain the jury's *Walker Process* verdict. Although the Federal Circuit has concluded that a party's "failure to present the district court with a post-verdict motion precludes appellate review of sufficiency of the evidence," *Biodex Corp.* v. *Loredan Biomedical, Inc.*, 946 F. 2d 850, 862 (1991), in the instant case it was bound to apply the law of the Tenth Circuit, 375 F. 3d, at 1365, n. 7 ("On most issues related to Rule 50 motions . . . we generally apply regional circuit law unless the precise

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[1] Petitioner contends that respondent's Rule 50(a) motion pertained only to the fraud element of petitioner's *Walker Process* claim, and that it did not encompass the remaining antitrust elements of that claim. Because we conclude that petitioner is entitled to prevail irrespective of the scope of respondent's Rule 50(a) motion, we assume without deciding that that motion pertained to all aspects of petitioner's § 2 claim. But see Amendments to Federal Rules of Civil Procedure, 134 F. R. D. 525, 687 (1991) ("A post-trial motion for judgment can be granted only on grounds advanced in the pre-verdict motion").

[2] While ConAgra did file a postverdict motion seeking a new trial on antitrust damages, that motion did not seek to challenge the sufficiency of the evidence establishing antitrust liability and thus has no bearing on the instant case.

issue being appealed pertains uniquely to patent law"). Under Tenth Circuit law, a party that has failed to file a postverdict motion challenging the sufficiency of the evidence may nonetheless raise such a claim on appeal, so long as that party filed a Rule 50(a) motion prior to submission of the case to the jury. *Cummings* v. *General Motors Corp.*, 365 F. 3d 944, 950–951 (2004). Notably, the only available relief in such a circumstance is a new trial. *Id.*, at 951.

Freed to examine the sufficiency of the evidence, the Federal Circuit concluded that, although Unitherm had presented sufficient evidence to support a determination that ConAgra had attempted to enforce a patent that it had obtained through fraud on the PTO, 375 F. 3d, at 1362, Unitherm had failed to present evidence sufficient to support the remaining elements of its antitrust claim. *Id.*, at 1365 ("Unitherm failed to present any economic evidence capable of sustaining its asserted relevant antitrust market, and little to support any other aspect of its Section 2 claim"). Accordingly, it vacated the jury's judgment in favor of Unitherm and remanded for a new trial. We granted certiorari, 543 U. S. 1186 (2005), and now reverse.

II

Federal Rule of Civil Procedure 50 sets forth the procedural requirements for challenging the sufficiency of the evidence in a civil jury trial and establishes two stages for such challenges—prior to submission of the case to the jury, and after the verdict and entry of judgment. Rule 50(a) allows a party to challenge the sufficiency of the evidence prior to submission of the case to the jury, and authorizes the district court to grant such motions at the court's discretion:

> "(a) JUDGMENT AS A MATTER OF LAW.
>
> "(1) If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against

> that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.
>
> "(2) Motions for judgment as a matter of law may be made at any time before submission of the case to the jury. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment."

Rule 50(b), by contrast, sets forth the procedural requirements for renewing a sufficiency of the evidence challenge after the jury verdict and entry of judgment.

> "(b) RENEWING MOTION FOR JUDGMENT AFTER TRIAL; ALTERNATIVE MOTION FOR NEW TRIAL. If, for any reason, the court does not grant a motion for judgment as a matter of law made at the close of all the evidence, the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. The movant may renew its request for judgment as a matter of law by filing a motion no later than 10 days after entry of judgment—and may alternatively request a new trial or join a motion for a new trial under Rule 59. In ruling on a renewed motion, the court may:
>
> "(1) if a verdict was returned:
>
> "(A) allow the judgment to stand,
>
> "(B) order a new trial, or
>
> "(C) direct entry of judgment as a matter of law . . . ."

This Court has addressed the implications of a party's failure to file a postverdict motion under Rule 50(b) on several occasions and in a variety of procedural contexts. This Court has concluded that, "[i]n the absence of such a motion" an "appellate court [is] without power to direct the District

Court to enter judgment contrary to the one it had permitted to stand." *Cone* v. *West Virginia Pulp & Paper Co.*, 330 U. S. 212, 218 (1947). This Court has similarly concluded that a party's failure to file a Rule 50(b) motion deprives the appellate court of the power to order the entry of judgment in favor of that party where the district court directed the jury's verdict, *Globe Liquor Co.* v. *San Roman*, 332 U. S. 571 (1948), and where the district court expressly reserved a party's preverdict motion for a directed verdict and then denied that motion after the verdict was returned, *Johnson* v. *New York, N. H. & H. R. Co.*, 344 U. S. 48 (1952). A postverdict motion is necessary because "[d]etermination of whether a new trial should be granted or a judgment entered under Rule 50(b) calls for the judgment in the first instance of the judge who saw and heard the witnesses and has the feel of the case which no appellate printed transcript can impart."[3] *Cone*, *supra*, at 216. Moreover, the "requirement of a timely application for judgment after verdict is not an idle motion" because it "is . . . an essential part of the rule, firmly grounded in principles of fairness." *Johnson*, *supra*, at 53.

The foregoing authorities lead us to reverse the judgment below. Respondent correctly points out that these authorities address whether an appellate court may enter judgment in the absence of a postverdict motion, as opposed to whether an appellate court may order a new trial (as the Federal Cir-

[3] Neither *Neely* v. *Martin K. Eby Constr. Co.*, 386 U. S. 317 (1967), nor *Weisgram* v. *Marley Co.*, 528 U. S. 440 (2000), undermine our judgment about the benefit of postverdict input from the district court. In those cases this Court determined that an appellate court may, in certain circumstances, direct the entry of judgment when it reverses the district court's denial of a Rule 50(b) motion. But in such circumstances the district court will have had an opportunity to consider the propriety of entering judgment or ordering a new trial by virtue of the postverdict motion. Moreover, these cases reiterate the value of the district court's input, cautioning the courts of appeals to be "'constantly alert' to 'the trial judge's first-hand knowledge of witnesses, testimony, and issues.'" *Id.*, at 443 (quoting *Neely*, *supra*, at 325).

cuit did here). But this distinction is immaterial. This Court's observations about the necessity of a postverdict motion under Rule 50(b), and the benefits of the district court's input at that stage, apply with equal force whether a party is seeking judgment as a matter of law or simply a new trial. In *Cone*, this Court concluded that, because Rule 50(b) permits the district court to exercise its discretion to choose between ordering a new trial and entering judgment, its "appraisal of the bona fides of the claims asserted by the litigants is of great value in reaching a conclusion as to whether a *new trial* should be granted." 330 U. S., at 216 (emphasis added). Similarly, this Court has determined that a party may only pursue on appeal a particular avenue of relief available under Rule 50(b), namely, the entry of judgment *or a new trial*, when that party has complied with the Rule's filing requirements by requesting that particular relief below. See *Johnson*, *supra*, at 54 ("Respondent made a motion to set aside the verdict and for new trial within the time required by Rule 50(b). It failed to comply with permission given by 50(b) to move for judgment *n. o. v.* after the verdict. In this situation respondent is entitled only to a new trial, not to a judgment in its favor").[4]

[4] The dissent's suggestion that 28 U. S. C. § 2106 permits the courts of appeals to consider the sufficiency of the evidence underlying a civil jury verdict notwithstanding a party's failure to comply with Rule 50 is foreclosed by authority of this Court. While the dissent observes that § 2106 was enacted after *Cone* and *Globe Liquor Co.* v. *San Roman*, 332 U. S. 571 (1948), *post*, at 408 (opinion of STEVENS, J.), it fails to note that it was enacted prior to *Johnson*. *Johnson* explicitly reaffirmed those earlier cases, concluding that "in the absence of a motion for judgment notwithstanding the verdict made in the trial court within ten days after reception of a verdict [Rule 50] forbids the trial judge or an appellate court to enter such a judgment." 344 U. S., at 50. Moreover, in *Neely*, this Court observed that § 2106 is "broad enough to include the power to direct entry of judgment *n. o. v.* on appeal," 386 U. S., at 322, but nonetheless reaffirmed that *Cone*, *Globe Liquor*, and *Johnson* "make it clear that an appellate court may not order judgment *n. o. v.* where the verdict loser has failed strictly to comply with the procedural requirements of Rule

Despite the straightforward language employed in *Cone*, *Globe Liquor*, and *Johnson*, respondent maintains that those cases dictate affirmance here, because in each of those cases the litigants secured a new trial. But in each of those cases the appellants moved for a new trial postverdict in the District Court, and did not seek to establish their entitlement to a new trial solely on the basis of a denied Rule 50(a) motion. See *Cone*, *supra*, at 213 (noting that respondent moved for a new trial);[5] *Globe Liquor*, *supra*, at 572 ("The

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50(b)," 386 U. S., at 325. Contrary to the dissent's suggestion, *Neely* confirms that the broad grant of authority to the courts of appeals in § 2106 must be exercised consistent with the requirements of the Federal Rules of Civil Procedure as interpreted by this Court.

The dissent's approach is not only foreclosed by authority of this Court, it also may present Seventh Amendment concerns. The implication of the dissent's interpretation of § 2106 is that a court of appeals would be free to examine the sufficiency of the evidence regardless of whether the appellant had filed a Rule 50(a) motion in the district court and, in the event the appellant had filed a Rule 50(a) motion, regardless of whether the district court had ever *ruled* on that motion. The former is squarely foreclosed by *Slocum* v. *New York Life Ins. Co.*, 228 U. S. 364 (1913), and the latter is inconsistent with this Court's explanation of the requirements of the Seventh Amendment in *Baltimore & Carolina Line, Inc.* v. *Redman*, 295 U. S. 654, 658 (1935) (explaining that "under the pertinent rules of the common law the court of appeals could set aside the verdict for error of law, such as the trial court's *ruling* respecting the sufficiency of the evidence, and direct a new trial, but could not itself determine the issues of fact and direct a judgment for the defendant, for this would cut off the plaintiff's unwaived right to have the issues of fact determined by a jury" (emphasis added)). Indeed, Rule 50 was drafted with such concerns in mind. See 9A C. Wright & A. Miller, Federal Practice and Procedure § 2522, pp. 244–246 (2d ed. 1995) (hereinafter Federal Practice).

[5] While the precise nature of the new trial motion at issue in *Cone* is difficult to ascertain from this Court's description of that motion, the Court of Appeals opinion in that case confirms that the movant had properly objected to the admission of certain evidence, and then moved postverdict "for a new trial [on the basis of the inadmissible evidence] and later renewed this motion upon the basis of newly-discovered evidence." *West Virginia Pulp & Paper Co.* v. *Cone*, 153 F. 2d 576, 580 (CA4 1946). This Court did not disturb the Court of Appeals' holding that formed the

respondents . . . moved for a new trial on the ground . . . that there were many contested issues of fact"). Indeed, *Johnson* concluded that respondent was *only* entitled to a new trial by virtue of its motion for such "within the time required by Rule 50(b)." 344 U. S., at 54. Accordingly, these outcomes merely underscore our holding today—a party is not entitled to pursue a new trial on appeal unless that party makes an appropriate postverdict motion in the district court.

Our determination that respondent's failure to comply with Rule 50(b) forecloses its challenge to the sufficiency of the evidence is further validated by the purported basis of respondent's appeal, namely, the District Court's denial of respondent's preverdict Rule 50(a) motion. As an initial matter, *Cone*, *Globe Liquor*, and *Johnson* unequivocally establish that the precise subject matter of a party's Rule 50(a) motion—namely, its entitlement to judgment as a matter of law—cannot be appealed unless that motion is renewed pursuant to Rule 50(b). Here, respondent does not seek to pursue on appeal the precise claim it raised in its Rule 50(a) motion before the District Court—namely, its entitlement to judgment as a matter of law. Rather, it seeks a *new trial* based on the legal insufficiency of the evidence. But if, as in *Cone*, *Globe Liquor*, and *Johnson*, a litigant that has failed to file a Rule 50(b) motion is foreclosed from seeking the relief it sought in its Rule 50(a) motion—*i. e.*, the entry of judgment—then surely respondent is foreclosed from seeking a new trial, relief it did not and could not seek in its preverdict motion. In short, respondent never sought a new trial before the District Court, and thus forfeited its right to do so on appeal. *Yakus* v. *United States*, 321 U. S. 414, 444 (1944) ("No procedural principle is more familiar to this Court than that a . . . right may be forfeited . . . by the

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basis of the movant's entitlement to a new trial, namely, "the Circuit Court of Appeals' holding that there was prejudicial error in the admission of evidence." 330 U. S., at 215.

failure to make timely assertion of the right before a tribunal having jurisdiction to determine it").

The text of Rule 50(b) confirms that respondent's preverdict Rule 50(a) motion did not present the District Court with the option of ordering a new trial. That text provides that a district court may only order a new trial on the basis of issues raised in a preverdict Rule 50(a) motion when "ruling on a renewed motion" under Rule 50(b). Accordingly, even if the District Court was inclined to grant a new trial on the basis of arguments raised in respondent's preverdict motion, it was without the power to do so under Rule 50(b) absent a postverdict motion pursuant to that Rule. Consequently, the Court of Appeals was similarly powerless.

Similarly, the text and application of Rule 50(a) support our determination that respondent may not challenge the sufficiency of the evidence on appeal on the basis of the District Court's denial of its Rule 50(a) motion. The Rule provides that "the court *may* determine" that "there is no legally sufficient evidentiary basis for a reasonable jury to find for [a] party on [a given] issue," and "*may* grant a motion for judgment as a matter of law against that party . . . ." (Emphasis added.) Thus, while a district court is permitted to enter judgment as a matter of law when it concludes that the evidence is legally insufficient, it is not required to do so. To the contrary, the district courts are, if anything, encouraged to submit the case to the jury, rather than granting such motions. As Wright and Miller explain:

> "Even at the close of all the evidence it may be desirable to refrain from granting a motion for judgment as a matter of law despite the fact that it would be possible for the district court to do so. If judgment as a matter of law is granted and the appellate court holds that the evidence in fact was sufficient to go to the jury, an entire new trial must be had. If, on the other hand, the trial court submits the case to the jury, though it thinks the evidence insufficient, final determination of the case is

> expedited greatly. If the jury agrees with the court's appraisal of the evidence, and returns a verdict for the party who moved for judgment as a matter of law, the case is at an end. If the jury brings in a different verdict, the trial court can grant a renewed motion for judgment as a matter of law. Then if the appellate court holds that the trial court was in error in its appraisal of the evidence, it can reverse and order judgment on the verdict of the jury, without any need for a new trial. For this reason the appellate courts repeatedly have said that it usually is desirable to take a verdict, and then pass on the sufficiency of the evidence on a post-verdict motion." 9A Federal Practice § 2533, at 319 (footnote omitted).

Thus, the District Court's denial of respondent's preverdict motion cannot form the basis of respondent's appeal, because the denial of that motion was not error. It was merely an exercise of the District Court's discretion, in accordance with the text of the Rule and the accepted practice of permitting the jury to make an initial judgment about the sufficiency of the evidence. The only error here was counsel's failure to file a postverdict motion pursuant to Rule 50(b).[6]

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[6] Respondent claims that its failure to renew its Rule 50(a) motion was in reliance on the Tenth Circuit's determination that it could order a new trial in the absence of a Rule 50(b) motion. But respondent cannot credibly maintain that it wanted the Court of Appeals to order a new trial as opposed to entering judgment. And, as the Tenth Circuit has recognized, respondent could not obtain the entry of judgment unless it complied with Rule 50(b). *Cummings* v. *General Motors Corp.*, 365 F. 3d 944, 951 (2004). Respondent therefore had every incentive to comply with that Rule's requirements. Accordingly, we reject its contention that our application of Rule 50(b) to the instant case is impermissibly retroactive. See also *Harper* v. *Virginia Dept. of Taxation*, 509 U. S. 86, 97 (1993) ("[W]e can scarcely permit the substantive law to shift and spring according to the particular equities of individual parties' claims of actual reliance on an old rule and of harm from a retroactive application of the new rule" (internal quotation marks and brackets omitted)).

* * *

For the foregoing reasons, we hold that since respondent failed to renew its preverdict motion as specified in Rule 50(b), there was no basis for review of respondent's sufficiency of the evidence challenge in the Court of Appeals. The judgment of the Court of Appeals is reversed.[7]

It is so ordered.

JUSTICE STEVENS, with whom JUSTICE KENNEDY joins, dissenting.

Murphy's law applies to trial lawyers as well as pilots. Even an expert will occasionally blunder. For that reason Congress has preserved the federal appeals courts' power to correct plain error, even though trial counsel's omission will ordinarily give rise to a binding waiver. This is not a case, in my view, in which the authority of the appellate court is limited by an explicit statute or controlling rule. The spirit of the Federal Rules of Civil Procedure favors preservation of a court's power to avoid manifestly unjust results in exceptional cases. See *Johnson* v. *New York, N. H. & H. R. Co.*, 344 U. S. 48, 62 (1952) (Frankfurter, J., dissenting) ("'Procedure is the means; full, equal and exact enforcement of substantive law is the end'" (quoting Pound, The Etiquette of Justice, 3 Proceedings Neb. St. Bar Assn. 231 (1909))). Moreover, we have an overriding duty to obey statutory commands that unambiguously express the intent of Congress even in areas such as procedure in which we may have special expertise.

Today, relying primarily on a case decided in March 1947, *Cone* v. *West Virginia Pulp & Paper Co.*, 330 U. S. 212, and a case decided in January 1948, *Globe Liquor Co.* v. *San*

[7] We reject respondent's contention that it is entitled to a remand for reconsideration in light of *Phillips* v. *AWH Corp.*, 415 F. 3d 1303 (CA Fed. 2005). The Federal Circuit has already denied respondent's petition for rehearing raising this issue.

Roman, 332 U. S. 571, the Court holds that the Court of Appeals was "powerless" to review the sufficiency of the evidence supporting the verdict in petitioner's favor because respondent failed to file proper postverdict motions pursuant to Rules 50(b) and 59 of the Federal Rules of Civil Procedure in the trial court. *Ante*, at 405. The majority's holding is inconsistent with a statute enacted just months after *Globe Liquor* was decided. That statute, which remains in effect today, provides:

> "The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances." 28 U. S. C. § 2106.

Nothing in Rule 50(b) limits this statutory grant of power to appellate courts; while a party's failure to make a Rule 50(b) motion precludes the *district court* from directing a verdict in that party's favor, the Rule does not purport to strip the courts of appeals of the authority to review district court judgments or to order such relief as "may be just under the circumstances." Nor do general principles of waiver or forfeiture have that effect. Cf. *ante*, at 404–405. It is well settled that a litigant's waiver or forfeiture of an argument does not, in the absence of a contrary statutory command, preclude the courts of appeals from considering those arguments. See *Singleton* v. *Wulff*, 428 U. S. 106, 121 (1976). Arguments raised for the first time on appeal may be entertained, for example, if their consideration would prevent manifest injustice. *Ibid.**

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*The Court suggests that the Seventh Amendment limits appellate courts' power to review judgments under 28 U. S. C. § 2106. See *ante*, at 402–403, n. 4. I disagree with the Court's analysis in two respects.

For the reasons articulated by the Court in *Cone*, 330 U. S., at 216, it may be unfair or even an abuse of discretion for a court of appeals to direct a verdict in favor of the party that lost below if that party failed to make a timely Rule 50(b) motion. Likewise, it may not be "just under the circumstances" for a court of appeals to order a new trial in the absence of a proper Rule 59 motion. Finally, a court of appeals has discretion to rebuff, on grounds of waiver or forfeiture, a challenge to the sufficiency of the evidence absent a proper Rule 50(b) or Rule 59 motion made in the district court. None of the foregoing propositions rests, however, on a determination that the courts of appeals lack "power" to review the sufficiency of the evidence and order appropriate relief under these circumstances, and I can divine no basis for that determination.

I respectfully dissent.

First, although the right to trial by jury might be implicated if no Rule 50(a) motion had been made, such a motion *was* made in this case. The Rule 50(a) motion triggered the automatic reservation of "legal questions," Fed. Rule Civ. Proc. 50(b), and that reservation, in turn, averted any Seventh Amendment problem, see *Baltimore & Carolina Line, Inc.* v. *Redman*, 295 U. S. 654 (1935). Second, the Seventh Amendment imposes no greater restriction on appellate courts than it does on district courts in these circumstances; "[a]s far as the Seventh Amendment's right to jury trial is concerned, there is no greater restriction on the province of the jury when an appellate court enters judgment *n. o. v.* than when a trial court does." *Neely* v. *Martin K. Eby Constr. Co.*, 386 U. S. 317, 322 (1967).

Syllabus

WISCONSIN RIGHT TO LIFE, INC. *v.* FEDERAL ELECTION COMMISSION

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 04–1581. Argued January 17, 2006—Decided January 23, 2006

Appellant Wisconsin Right to Life, Inc. (WRTL), sought a judgment declaring § 203 of the Bipartisan Campaign Reform Act of 2002 (BCRA) unconstitutional as applied to broadcast advertisements that it intended to run during the 2004 election, arguing that BCRA cannot be constitutionally applied to its particular electioneering communications. In dismissing WRTL's complaint, the District Court read a footnote in *McConnell* v. *Federal Election Comm'n*, 540 U. S. 93, 190, n. 73, as foreclosing any "as-applied" challenges to the prohibition on electioneering communications.

Held: WRTL's as-applied challenge is not foreclosed by *McConnell.* The District Court misinterpreted the *McConnell* footnote, which merely notes that because this Court found BCRA's primary definition of "electioneering communication" facially valid when used with regard to BCRA's disclosure and funding requirements, it was unnecessary to consider the constitutionality of the backup definition Congress provided. The Court did not purport to resolve future as-applied challenges. Contrary to the Federal Election Commission's argument, it is not clear that the District Court's dismissal also rested on an alternative ground.

Vacated and remanded.

James Bopp, Jr., argued the cause for appellant. With him on the briefs were *Richard E. Coleson* and *M. Miller Baker.*

Solicitor General Clement argued the cause for appellee. With him on the brief were *Deputy Solicitor General Garre, Malcolm L. Stewart, Lawrence H. Norton, Richard B. Bader, David Kolker,* and *Harry J. Summers.**

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*Briefs of *amici curiae* urging reversal were filed for the American Civil Liberties Union by *Steven R. Shapiro, Mark J. Lopez,* and *Joel M. Gora;* for the American Federation of Labor and Congress of Industrial Organizations by *Jonathan P. Hiatt, Laurence E. Gold,* and *Michael B. Trister;* for the Center for Competitive Politics et al. by *Erik S. Jaffe;* for the Chamber of Commerce of the United States of America by *Jan Witold Baran, Thomas W. Kirby, Caleb P. Burns, Stephen A. Bokat,* and *Amar D. Sarwal;* for Citizens United et al. by *Herbert W. Titus, William J. Olson,* and *John S. Miles;* and for Senator Mitch McConnell by *Theodore B. Olson* and *Douglas R. Cox.*

PER CURIAM.

The Bipartisan Campaign Reform Act of 2002 (BCRA), § 203, as amended, 116 Stat. 91, prohibits corporations from using their general treasury funds to pay for any "electioneering communications." 2 U. S. C. § 441b(b)(2) (2000 ed., Supp. III). BCRA § 201 defines "electioneering communications" as any broadcast, cable, or satellite communication that refers to a candidate for federal office and that is broadcast within 30 days of a federal primary election or 60 days of a federal general election in the jurisdiction in which that candidate is running for office. 2 U. S. C. § 434(f)(3) (2000 ed., Supp. III). Appellant Wisconsin Right to Life, Inc. (WRTL), brought this action against the Federal Election Commission (FEC), seeking a judgment declaring BCRA unconstitutional as applied to several broadcast advertisements that it intended to run during the 2004 election. WRTL also sought a preliminary injunction barring the FEC from enforcing BCRA against those advertisements. WRTL does not dispute that its advertisements are covered by BCRA's definition of prohibited electioneering communications. Instead, it contends that BCRA cannot be constitutionally applied to its particular communications because they constitute "grassroots lobbying advertisements." Brief for Appellee 35 (internal quotation marks omitted). Although the FEC has statutory authority to exempt by regulation certain communications from BCRA's prohibition on electioneering communications, § 434(f)(3)(B)(iv), at this point, it has not done so for the types of advertisements at issue here.

The three-judge District Court denied the motion for a preliminary injunction and subsequently dismissed WRTL's

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Briefs of *amici curiae* urging affirmance were filed for AARP et al. by *Daniel R. Ortiz;* for Douglas L. Bailey by *Randy L. Dryer;* for Frances R. Hill by *J. Gerald Hebert;* for Senator John McCain et al. by *Bradley S. Phillips, Seth P. Waxman, Randolph D. Moss, Roger M. Witten, Fred Wertheimer, Donald J. Simon, Alan Morrison, Charles G. Curtis, Jr., Trevor Potter, Paul Ryan,* and *Scott L. Nelson;* and for Norman Ornstein et al. by *H. Christopher Bartolomucci.*

Briefs of *amici curiae* were filed for the Alliance for Justice by *Ruth Eisenberg;* and for the Coalition of Public Charities by *Robert F. Bauer.*

complaint in an unpublished opinion. We noted probable jurisdiction, 545 U. S. 1164 (2005). Appellant asks us to reverse the judgment of the District Court because that court incorrectly read a footnote in our opinion in *McConnell* v. *Federal Election Comm'n*, 540 U. S. 93 (2003), as foreclosing any "as-applied" challenges to the prohibition on electioneering communications. We agree with WRTL that the District Court misinterpreted the relevance of our "uphold[ing] all applications of the primary definition" of electioneering communications. *Id.*, at 190, n. 73. Contrary to the understanding of the District Court, that footnote merely notes that because we found BCRA's primary definition of "electioneering communication" facially valid when used with regard to BCRA's disclosure and funding requirements, it was unnecessary to consider the constitutionality of the backup definition Congress provided. *Ibid.* In upholding § 203 against a facial challenge, we did not purport to resolve future as-applied challenges.

The FEC argues that the District Court also rested its decision on the alternative ground that the facts of this case "suggest that WRTL's advertisements may fit the very type of activity *McConnell* found Congress had a compelling interest in regulating." No. 04–1260 (DC, Aug. 17, 2004), App. to Juris. Statement 8a. It is not clear to us, however, that the District Court intended its opinion to rest on this ground. For one thing, the court used the word "may." For another, its separate opinion dismissing WRTL's challenge with prejudice characterized its previous opinion as holding that "WRTL's 'as-applied' challenge to BCRA is foreclosed by the Supreme Court's decision in *McConnell*." *Id.*, at 3a. Given this ambiguity, we cannot say with certainty that the District Court's dismissal was based on this alternative ground.

We therefore vacate the judgment and remand the case for the District Court to consider the merits of WRTL's as-applied challenge in the first instance.

It is so ordered.

ALASKA *v.* UNITED STATES

ON BILL OF COMPLAINT

No. 128, Orig. Decided June 6, 2005—Decree entered January 23, 2006

Opinion reported: 545 U. S. 75.

The Report of the Special Master is received and ordered filed. The joint motion for entry of decree is granted, and the proposed decree is entered. Gregory E. Maggs, Esq., of Washington, D. C., the Special Master in this case, is hereby discharged with the thanks of the Court. THE CHIEF JUSTICE took no part in the consideration or decision of this case.

DECREE

On June 12, 2000, the Court granted the State of Alaska leave to file a bill of complaint to quiet title relating to certain marine submerged lands in southeast Alaska. 530 U. S. 1228. The Court appointed a Special Master to direct subsequent proceedings and to submit such reports as he deemed appropriate. 531 U. S. 941 (2000). On January 8, 2001, the Court granted the State of Alaska leave to file an amended complaint. 531 U. S. 1066. On March 5, 2001, the Court referred the State of Alaska's amended complaint and the United States' answer to the Master. 532 U. S. 902. From 2001 to 2004, the Special Master oversaw extensive briefing of motions for summary judgment relating to the various counts of the amended complaint. On April 26, 2004, the Court received and ordered filed the Report of the Special Master on Six Motions for Partial Summary Judgment and One Motion for Confirmation of a Disclaimer of Title (Mar. 2004). 541 U. S. 1008. On June 6, 2005, this Court overruled the State of Alaska's exceptions and directed the parties to prepare and submit an appropriate decree to the Master for the Court's consideration. 545 U. S. 75, 110. The

parties have prepared a proposed decree, and the Master recommends its approval.

Accordingly,

IT IS ORDERED, ADJUDGED, AND DECREED

1. On counts I and II of the amended complaint of the State of Alaska, judgment is granted to the United States, and the State of Alaska shall take nothing. As between the State of Alaska and the United States, the United States has title to the marine submerged lands underlying the pockets and enclaves of water at issue in counts I and II of the State of Alaska's amended complaint, which are those marine submerged lands that are more than three geographical miles from every point on the coastline of the mainland or of any individual island of the Alexander Archipelago. See 545 U. S. 75, 80 (2005). For purposes of determining the United States' title:

(a) the term "marine submerged lands" means all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide (Submerged Lands Act, § 2(a)(2), 67 Stat. 29 (43 U. S. C. § 1301(a)(2)));

(b) the term "coast line" means "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters," as defined in § 2(c) of the Submerged Lands Act, *ibid.* (43 U. S. C. § 1301(c)); and

(c) the line marking the seaward limit of inland waters shall be determined in accordance with the Court's rulings that: (i) the waters of the Alexander Archipelago do not constitute historic inland waters; and (ii) "North Bay," "South Bay," Sitka Sound, and Cordova Bay, as designated in this action, do not constitute juridical bays. See 545 U. S., at 81–96.

2. On count IV of the amended complaint of the State of Alaska, judgment is granted to the United States, and the

State of Alaska shall take nothing. As between the State of Alaska and the United States, the United States has title to the marine submerged lands within the exterior boundaries of Glacier Bay National Monument as those boundaries existed on the date of the State of Alaska's admission to the Union. See 545 U. S., at 96–110. For purposes of determining the United States' title, the term "marine submerged lands" means all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide (Submerged Lands Act, § 2(a)(2), 67 Stat. 29 (43 U. S. C. § 1301(a)(2))).

3. The motion of the State of Alaska for summary judgment on count III is dismissed as moot, and count III is dismissed for lack of jurisdiction. In accordance with 28 U. S. C. § 2409a(e), the following disclaimer of the United States is confirmed:

DISCLAIMER

(1) Pursuant to the Quiet Title Act, 28 U. S. C. § 2409a(e), and subject to the exceptions set out in paragraph (2), the United States disclaims any real property interest in the marine submerged lands within the exterior boundaries of the Tongass National Forest, as those boundaries existed on the date of Alaska Statehood.

(2) The disclaimer set out in paragraph (1) does not disclaim:

(a) any submerged lands that are subject to the exceptions set out in § 5 of the Submerged Lands Act, 67 Stat. 32 (43 U. S. C. § 1313);

(b) any submerged lands that are more than three geographic miles seaward of the coastline;

(c) any submerged lands that were under the jurisdiction of an agency other than the United States Department of Agriculture on the date of the filing of the complaint in this action;

(d) any submerged lands that were held for military, naval, Air Force, or Coast Guard purposes on the date that Alaska entered the Union.

(3) For purposes of this disclaimer:

(a) The term "coast line" means "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters," as defined in § 2(c) of the Submerged Lands Act, *id.*, at 29 (43 U. S. C. § 1301(c)).

(b) The term "submerged lands" means "lands beneath navigable waters" as defined in § 2(a) of the Submerged Lands Act, *ibid.* (43 U. S. C. § 1301(a)).

(c) The term "marine submerged lands" means "all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide." See Submerged Lands Act, *ibid.* § 2(a)(2), (43 U. S. C. § 1301(a)(2)).

(d) The term "jurisdiction" has the meaning of that word in the Quiet Title Act, 28 U. S. C. § 2409a(m).

(e) The exception set out in § 5(a) of the Submerged Lands Act, 67 Stat. 32 (43 U. S. C. § 1313(a)), for lands "expressly retained by or ceded to the United States when the State entered the Union" does not include lands under the jurisdiction of the Department of Agriculture unless, on the date Alaska entered the Union, that land was:

(i) withdrawn pursuant to Act of Congress, Presidential Proclamation, Executive Order, or public land order of the Secretary of Interior, other than Presidential Proclamation No. 37, 32 Stat. 2025, which established the Alexander Archipelago Forest Reserve; Presidential Proclamation of Sept. 10, 1907 (35 Stat. 2152), which created the Tongass National Forest; or Presidential Proclamations of Feb. 16, 1909 (35 Stat. 2226), and June 10, 1925

(44 Stat. 2578), which expanded the Tongass National Forest; or

(ii) subject to one or more of the following pending applications for withdrawal pursuant to 43 CFR pt. 295 (1954 rev. and Supp. 1958), designated by Bureau of Land Management serial numbers: AKA 022828; AKA 026916; AKA 029820; AKA 031178; AKA 032449; AKA 033871; AKA 034383; AKJ 010461; AKJ 010598; AKJ 010761; AKJ 011157; AKJ 011168; AKJ 011203; AKJ 011210; AKJ 011212; AKJ 011213; AKJ 011291.

4. The Court retains jurisdiction to entertain such further proceedings, enter such orders, and issue such writs as from time to time may be deemed necessary or advisable to effectuate and supplement this Decree and the rights of the respective parties. In all other respects, this Decree is final.

Syllabus

GONZALES, ATTORNEY GENERAL, ET AL. *v.* O CENTRO ESPIRITA BENEFICENTE UNIAO DO VEGETAL ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 04–1084. Argued November 1, 2005—Decided February 21, 2006

Congress enacted the Religious Freedom Restoration Act of 1993 (RFRA) in response to *Employment Div., Dept. of Human Resources of Ore.* v. *Smith*, 494 U. S. 872, where, in upholding a generally applicable law that burdened the sacramental use of peyote, this Court held that the First Amendment's Free Exercise Clause does not require judges to engage in a case-by-case assessment of the religious burdens imposed by facially constitutional laws, *id.*, at 883–890. Among other things, RFRA prohibits the Federal Government from substantially burdening a person's exercise of religion, "even if the burden results from a rule of general applicability," 42 U. S. C. § 2000bb–1(a), except when the Government can "demonstrat[e] that application of the burden to the person—(1) [furthers] a compelling governmental interest; and (2) is the least restrictive means of furthering that . . . interest," § 2000bb–1(b).

Members of respondent church (UDV) receive communion by drinking *hoasca*, a tea brewed from plants unique to the Amazon Rainforest that contains DMT, a hallucinogen regulated under Schedule I of the Controlled Substances Act, see 21 U. S. C. § 812(c), Schedule I(c). After U. S. Customs inspectors seized a *hoasca* shipment to the American UDV and threatened prosecution, the UDV filed this suit for declaratory and injunctive relief, alleging, *inter alia*, that applying the Controlled Substances Act to the UDV's sacramental *hoasca* use violates RFRA. At a hearing on the UDV's preliminary injunction motion, the Government conceded that the challenged application would substantially burden a sincere exercise of religion, but argued that this burden did not violate RFRA because applying the Controlled Substances Act was the least restrictive means of advancing three compelling governmental interests: protecting UDV members' health and safety, preventing the diversion of *hoasca* from the church to recreational users, and complying with the 1971 United Nations Convention on Psychotropic Substances. The District Court granted relief, concluding that, because the parties' evidence on health risks and diversion was equally balanced, the Government had failed to demonstrate a compelling interest justifying the substantial burden on the UDV. The court also held

that the 1971 Convention does not apply to *hoasca.* The Tenth Circuit affirmed.

Held: The courts below did not err in determining that the Government failed to demonstrate, at the preliminary injunction stage, a compelling interest in barring the UDV's sacramental use of *hoasca.* Pp. 427–439.

1. This Court rejects the Government's argument that evidentiary equipoise as to potential harm and diversion is an insufficient basis for a preliminary injunction against enforcement of the Controlled Substances Act. Given that the Government conceded the UDV's prima facie RFRA case in the District Court and that the evidence found to be in equipoise related to an affirmative defense as to which the Government bore the burden of proof, the UDV effectively demonstrated a likelihood of success on the merits. The Government's argument that, although it would bear the burden of demonstrating a compelling interest at trial on the merits, the UDV should have borne the burden of disproving such interests at the preliminary injunction hearing is foreclosed by *Ashcroft* v. *American Civil Liberties Union*, 542 U. S. 656, 666. There, in affirming the grant of a preliminary injunction against the Government, this Court reasoned that the burdens with respect to the compelling interest test at the preliminary injunction stage track the burdens at trial. The Government's attempt to limit the *Ashcroft* rule to content-based restrictions on speech is unavailing. The fact that *Ashcroft* involved such a restriction in no way affected the Court's assessment of the consequences of having the burden at trial for preliminary injunction purposes. Congress' express decision to legislate the compelling interest test indicates that RFRA challenges should be adjudicated in the same way as the test's constitutionally mandated applications, including at the preliminary injunction stage. Pp. 427–430.

2. Also rejected is the Government's central submission that, because it has a compelling interest in the *uniform* application of the Controlled Substances Act, no exception to the DMT ban can be made to accommodate the UDV. The Government argues, *inter alia*, that the Act's description of Schedule I substances as having "a high potential for abuse," "no currently accepted medical use," and "a lack of accepted safety for use . . . under medical supervision," 21 U. S. C. § 812(b)(1), by itself precludes any consideration of individualized exceptions, and that the Act's "closed" regulatory system, which prohibits all use of controlled substances except as the Act itself authorizes, see *Gonzales* v. *Raich*, 545 U. S. 1, 13, cannot function properly if subjected to judicial exemptions. Pp. 430–437.

(a) RFRA and its strict scrutiny test contemplate an inquiry more focused than the Government's categorical approach. RFRA requires

the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law "to the person"—the particular claimant whose sincere exercise of religion is being substantially burdened. 42 U. S. C. § 2000bb–1(b). Section 2000bb(b)(1) expressly adopted the compelling interest test of *Sherbert* v. *Verner*, 374 U. S. 398, and *Wisconsin* v. *Yoder*, 406 U. S. 205. There, the Court looked beyond broadly formulated interests justifying the general applicability of government mandates, scrutinized the asserted harms, and granted specific exemptions to particular religious claimants. *Id.*, at 213, 221, 236; *Sherbert*, *supra*, at 410. Outside the Free Exercise area as well, the Court has noted that "[c]ontext matters" in applying the compelling interest test, *Grutter* v. *Bollinger*, 539 U. S. 306, 327, and has emphasized that strict scrutiny's fundamental purpose is to take "relevant differences" into account, *Adarand Constructors, Inc.* v. *Peña*, 515 U. S. 200, 228. Pp. 430–432.

(b) Under RFRA's more focused inquiry, the Government's mere invocation of the general characteristics of Schedule I substances cannot carry the day. Although Schedule I substances such as DMT are exceptionally dangerous, see, *e. g.*, *Touby* v. *United States*, 500 U. S. 160, 162, there is no indication that Congress, in classifying DMT, considered the harms posed by the particular use at issue. That question *was* litigated below. Before the District Court found that the Government had not carried its burden of showing a compelling interest in preventing such harm, the court noted that it could not ignore the congressional classification and findings. But Congress' determination that DMT should be listed under Schedule I simply does not provide a categorical answer that relieves the Government of the obligation to shoulder its RFRA burden. The Controlled Substances Act's authorization to the Attorney General to "waive the requirement for registration of certain manufacturers, distributors, or dispensers if he finds it consistent with the public health and safety," 21 U. S. C. § 822(d), reinforces that Congress' findings with respect to Schedule I substances should not carry the determinative weight, for RFRA purposes, that the Government would ascribe to them. Indeed, despite the fact that everything the Government says about the DMT in *hoasca* applies in equal measure to the mescaline in peyote, another Schedule I substance, both the Executive and Congress have decreed an exception from the Controlled Substances Act for Native American religious use of peyote, see 21 CFR § 1307.31; 42 U. S. C. § 1996a(b)(1). If such use is permitted in the face of the general congressional findings for hundreds of thousands of Native Americans practicing their faith, those same findings alone cannot preclude consideration of a similar exception for the 130 or so American members of the UDV who want to practice theirs. See *Church of Lukumi Babalu Aye*,

Inc. v. *Hialeah*, 508 U. S. 520, 547. The Government's argument that the existence of a *congressional* exemption for peyote does not indicate that the Controlled Substances Act is amenable to *judicially crafted* exceptions fails because RFRA plainly contemplates court-recognized exceptions, see § 2000bb–1(c). Pp. 432–434.

(c) The peyote exception also fatally undermines the Government's broader contention that the Controlled Substances Act establishes a closed regulatory system that admits of no exceptions under RFRA. The peyote exception has been in place since the Controlled Substances Act's outset, and there is no evidence that it has undercut the Government's ability to enforce the ban on peyote use by non-Indians. The Government's reliance on pre-*Smith* cases asserting a need for uniformity in rejecting claims for religious exemptions under the Free Exercise Clause is unavailing. Those cases did not embrace the notion that a general interest in uniformity justified a substantial burden on religious exercise, but instead scrutinized the asserted need and explained why the denied exemptions could not be accommodated. See, *e. g.*, *United States* v. *Lee*, 455 U. S. 252, 258, 260. They show that the Government can demonstrate a compelling interest in uniform application of a particular program by offering evidence that granting the requested religious accommodations would seriously compromise its ability to administer the program. Here the Government's uniformity argument rests not so much on the particular statutory program at issue as on slippery slope concerns that could be invoked in response to any RFRA claim for an exception to a generally applicable law, *i. e.*, "if I make an exception for you, I'll have to make one for everybody, so no exceptions." But RFRA operates by mandating consideration, under the compelling interest test, of exceptions to "rule[s] of general applicability." § 2000bb–1(a). Congress' determination that the legislated test is "workable . . . for striking sensible balances between religious liberty and competing prior governmental interests," § 2000bb(a)(5), finds support in *Sherbert*, *supra*, at 407, and *Cutter* v. *Wilkinson*, 544 U. S. 709, 722. While there may be instances where a need for uniformity precludes the recognition of exceptions to generally applicable laws under RFRA, it would be surprising to find that this was such a case, given the longstanding peyote exemption and the fact that the very reason Congress enacted RFRA was to respond to a decision denying a claimed right to sacramental use of a controlled substance. The Government has not shown that granting the UDV an exemption would cause the kind of administrative harm recognized as a compelling interest in, *e. g.*, *Lee*. It cannot now compensate for its failure to convince the District Court as to its health or diversion concerns with the bold argument that

there can be no RFRA exceptions at all to the Controlled Substances Act. Pp. 434–437.

3. The Government argues unpersuasively that it has a compelling interest in complying with the 1971 U. N. Convention. While this Court does not agree with the District Court that the Convention does not cover *hoasca*, that does not automatically mean that the Government has demonstrated a compelling interest in applying the Controlled Substances Act, which implements the Convention, to the UDV's sacramental use. At this stage, it suffices that the Government did not submit any evidence addressing the international consequences of granting the UDV an exemption, but simply relied on two affidavits by State Department officials attesting to the general (and undoubted) importance of honoring international obligations and maintaining the United States' leadership in the international war on drugs. Under RFRA, invocation of such general interests, standing alone, is not enough. Pp. 437–438.

389 F. 3d 973, affirmed and remanded.

ROBERTS, C. J., delivered the opinion of the Court, in which all other Members joined, except ALITO, J., who took no part in the consideration or decision of the case.

Deputy Solicitor General Kneedler argued the cause for petitioners. With him on the brief were *Solicitor General Clement*, *Assistant Attorney General Keisler*, *Deputy Assistant Attorney General Katsas*, *Patricia A. Millett*, *Michael Jay Singer*, and *Matthew M. Collette*.

Nancy Hollander argued the cause for respondents. With her on the brief were *John W. Boyd* and *Zachary A. Ives*.*

**Marci A. Hamilton* filed a brief for the Tort Claimants' Committee et al. as *amici curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the Baptist Joint Committee et al. by *Gene C. Schaerr*, *Linda T. Coberly*, *Thomas C. Berg*, and *Gregory S. Baylor;* for the Council on Spiritual Practices et al. by *David T. Goldberg;* for the United States Conference of Catholic Bishops by *Mark E. Chopko* and *Jeffrey Hunter Moon;* for Dr. John H. Halpern et al. by *Roy S. Haber;* and for Douglas Laycock by *Mr. Laycock*, *pro se.*

Briefs of *amici curiae* were filed for the International Academy for Freedom of Religion and Belief et al. by *Lee Boothby*, *Derek Davis*, *Robert*

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

A religious sect with origins in the Amazon Rainforest receives communion by drinking a sacramental tea, brewed from plants unique to the region, that contains a hallucinogen regulated under the Controlled Substances Act by the Federal Government. The Government concedes that this practice is a sincere exercise of religion, but nonetheless sought to prohibit the small American branch of the sect from engaging in the practice, on the ground that the Controlled Substances Act bars all use of the hallucinogen. The sect sued to block enforcement against it of the ban on the sacramental tea, and moved for a preliminary injunction.

It relied on the Religious Freedom Restoration Act of 1993, which prohibits the Federal Government from substantially burdening a person's exercise of religion, unless the Government "demonstrates that application of the burden to the person" represents the least restrictive means of advancing a compelling interest. 42 U. S. C. §2000bb–1(b). The District Court granted the preliminary injunction, and the Court of Appeals affirmed. We granted the Government's petition for certiorari. Before this Court, the Government's central submission is that it has a compelling interest in the *uniform* application of the Controlled Substances Act, such that no exception to the ban on use of the hallucinogen can be made to accommodate the sect's sincere religious practice. We conclude that the Government has not carried the burden expressly placed on it by Congress in the Religious Freedom Restoration Act, and affirm the grant of the preliminary injunction.

A. Destro, and *W. Cole Durham, Jr.;* for the Liberty Legal Institute by *Kelly Shackelford;* for Various Religious and Civil Rights Organizations by *Anthony R. Picarello, Jr.;* and for Robert Gable et al. by *Peter D. Kennedy.*

I

In *Employment Div., Dept. of Human Resources of Ore.* v. *Smith*, 494 U. S. 872 (1990), this Court held that the Free Exercise Clause of the First Amendment does not prohibit governments from burdening religious practices through generally applicable laws. In *Smith*, we rejected a challenge to an Oregon statute that denied unemployment benefits to drug users, including Native Americans engaged in the sacramental use of peyote. *Id.*, at 890. In so doing, we rejected the interpretation of the Free Exercise Clause announced in *Sherbert* v. *Verner*, 374 U. S. 398 (1963), and, in accord with earlier cases, see *Smith*, 494 U. S., at 879–880, 884–885, held that the Constitution does not require judges to engage in a case-by-case assessment of the religious burdens imposed by facially constitutional laws. *Id.*, at 883–890.

Congress responded by enacting the Religious Freedom Restoration Act of 1993 (RFRA), 107 Stat. 1488, as amended, 42 U. S. C. §2000bb *et seq.*, which adopts a statutory rule comparable to the constitutional rule rejected in *Smith*. Under RFRA, the Federal Government may not, as a statutory matter, substantially burden a person's exercise of religion, "even if the burden results from a rule of general applicability." §2000bb–1(a). The only exception recognized by the statute requires the Government to satisfy the compelling interest test—to "demonstrat[e] that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." §2000bb–1(b). A person whose religious practices are burdened in violation of RFRA "may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief." §2000bb–1(c).[1]

[1] As originally enacted, RFRA applied to States as well as the Federal Government. In *City of Boerne* v. *Flores*, 521 U. S. 507 (1997), we held the application to States to be beyond Congress' legislative authority under §5 of the Fourteenth Amendment.

The Controlled Substances Act, 84 Stat. 1242, as amended, 21 U. S. C. § 801 *et seq.* (2000 ed. and Supp. I), regulates the importation, manufacture, distribution, and use of psychotropic substances. The Act classifies substances into five schedules based on their potential for abuse, the extent to which they have an accepted medical use, and their safety. See § 812(b) (2000 ed.). Substances listed in Schedule I of the Act are subject to the most comprehensive restrictions, including an outright ban on all importation and use, except pursuant to strictly regulated research projects. See §§ 823, 960(a)(1). The Act authorizes the imposition of a criminal sentence for simple possession of Schedule I substances, see § 844(a), and mandates the imposition of a criminal sentence for possession "with intent to manufacture, distribute, or dispense" such substances, see §§ 841(a), (b).

O Centro Espírita Beneficente União do Vegetal (UDV) is a Christian Spiritist sect based in Brazil, with an American branch of approximately 130 individuals. Central to the UDV's faith is receiving communion through *hoasca* (pronounced "wass-ca"), a sacramental tea made from two plants unique to the Amazon region. One of the plants, *psychotria viridis*, contains dimethyltryptamine (DMT), a hallucinogen whose effects are enhanced by alkaloids from the other plant, *banisteriopsis caapi*. DMT, as well as "any material, compound, mixture, or preparation, which contains any quantity of [DMT]," is listed in Schedule I of the Controlled Substances Act. § 812(c), Schedule I(c).

In 1999, United States Customs inspectors intercepted a shipment to the American UDV containing three drums of *hoasca*. A subsequent investigation revealed that the UDV had received 14 prior shipments of *hoasca*. The inspectors seized the intercepted shipment and threatened the UDV with prosecution.

The UDV filed suit against the Attorney General and other federal law enforcement officials, seeking declaratory and injunctive relief. The complaint alleged, *inter alia*, that applying the Controlled Substances Act to the UDV's sacra-

mental use of *hoasca* violates RFRA. Prior to trial, the UDV moved for a preliminary injunction, so that it could continue to practice its faith pending trial on the merits.

At a hearing on the preliminary injunction, the Government conceded that the challenged application of the Controlled Substances Act would substantially burden a sincere exercise of religion by the UDV. See *O Centro Espirita Beneficiente Uniao do Vegetal* v. *Ashcroft*, 282 F. Supp. 2d 1236, 1252 (NM 2002). The Government argued, however, that this burden did not violate RFRA, because applying the Controlled Substances Act in this case was the least restrictive means of advancing three compelling governmental interests: protecting the health and safety of UDV members, preventing the diversion of *hoasca* from the church to recreational users, and complying with the 1971 United Nations Convention on Psychotropic Substances, a treaty signed by the United States and implemented by the Act. Feb. 21, 1971, [1979–1980] 32 U. S. T. 543, T. I. A. S. No. 9725. See 282 F. Supp. 2d, at 1252–1253.

The District Court heard evidence from both parties on the health risks of *hoasca* and the potential for diversion from the church. The Government presented evidence to the effect that use of *hoasca*, or DMT more generally, can cause psychotic reactions, cardiac irregularities, and adverse drug interactions. The UDV countered by citing studies documenting the safety of its sacramental use of *hoasca* and presenting evidence that minimized the likelihood of the health risks raised by the Government. With respect to diversion, the Government pointed to a general rise in the illicit use of hallucinogens, and cited interest in the illegal use of DMT and *hoasca* in particular; the UDV emphasized the thinness of any market for *hoasca*, the relatively small amounts of the substance imported by the church, and the absence of any diversion problem in the past.

The District Court concluded that the evidence on health risks was "in equipoise," and similarly that the evidence on diversion was "virtually balanced." *Id.*, at 1262, 1266. In

the face of such an even showing, the court reasoned that the Government had failed to demonstrate a compelling interest justifying what it acknowledged was a substantial burden on the UDV's sincere religious exercise. *Id.*, at 1255. The court also rejected the asserted interest in complying with the 1971 Convention on Psychotropic Substances, holding that the Convention does not apply to *hoasca*. *Id.*, at 1266–1269.

The court entered a preliminary injunction prohibiting the Government from enforcing the Controlled Substances Act with respect to the UDV's importation and use of *hoasca*. The injunction requires the church to import the tea pursuant to federal permits, to restrict control over the tea to persons of church authority, and to warn particularly susceptible UDV members of the dangers of *hoasca*. See Preliminary Injunction ¶¶ 2, 5–12, 32–33, App. F to App. to Pet. for Cert. 249a, 250a–252a, 258a–259a. The injunction also provides that "if [the Government] believe[s] that evidence exists that *hoasca* has negatively affected the health of UDV members," or "that a shipment of *hoasca* contain[s] particularly dangerous levels of DMT, [the Government] may apply to the Court for an expedite[d] determination of whether the evidence warrants suspension or revocation of [the UDV's authority to use *hoasca*]." *Id.*, at 257a, ¶ 29.

The Government appealed the preliminary injunction and a panel of the Court of Appeals for the Tenth Circuit affirmed, *O Centro Espirita Beneficiente Uniao do Vegetal* v. *Ashcroft*, 342 F. 3d 1170 (2003), as did a majority of the Circuit sitting en banc, 389 F. 3d 973 (2004). We granted certiorari. 544 U. S. 973 (2005).

II

Although its briefs contain some discussion of the potential for harm and diversion from the UDV's use of *hoasca*, the Government does not challenge the District Court's factual findings or its conclusion that the evidence submitted on

these issues was evenly balanced. Instead, the Government maintains that such evidentiary equipoise is an insufficient basis for issuing a preliminary injunction against enforcement of the Controlled Substances Act. We review the District Court's legal rulings *de novo* and its ultimate decision to issue the preliminary injunction for abuse of discretion. See *McCreary County* v. *American Civil Liberties Union of Ky.*, 545 U. S. 844, 867 (2005).

The Government begins by invoking the well-established principle that the party seeking pretrial relief bears the burden of demonstrating a likelihood of success on the merits. See, *e. g.*, *Mazurek* v. *Armstrong*, 520 U. S. 968, 972 (1997) *(per curiam); Doran* v. *Salem Inn, Inc.*, 422 U. S. 922, 931 (1975). The Government argues that the District Court lost sight of this principle in issuing the injunction based on a mere tie in the evidentiary record.

A majority of the en banc Court of Appeals rejected this argument, and so do we. Before the District Court, the Government conceded the UDV's prima facie case under RFRA. See 282 F. Supp. 2d, at 1252 (application of the Controlled Substances Act would (1) substantially burden (2) a sincere (3) religious exercise). The evidence the District Court found to be in equipoise related to two of the compelling interests asserted by the Government, which formed part of the Government's affirmative defense. See 42 U. S. C. § 2000bb–1(b) ("Government may substantially burden a person's exercise of religion only if *it demonstrates* that application of the burden to the person—(1) is in furtherance of a compelling governmental interest . . . " (emphasis added)); § 2000bb–2(3) ("[T]he term 'demonstrates' means meets the burdens of going forward with the evidence and of persuasion"). Accordingly, the UDV effectively demonstrated that its sincere exercise of religion was substantially burdened, and the Government failed to demonstrate that the application of the burden to the UDV would, more likely than not, be justified by the asserted compelling interests.

See 389 F. 3d, at 1009 (Seymour, J., concurring in part and dissenting in part) ("[T]he balance is between actual irreparable harm to [the] plaintiff and potential harm to the government which does not even rise to the level of a preponderance of the evidence").

The Government argues that, although it would bear the burden of demonstrating a compelling interest as part of its affirmative defense at trial on the merits, the UDV should have borne the burden of disproving the asserted compelling interests at the hearing on the preliminary injunction. This argument is foreclosed by our recent decision in *Ashcroft* v. *American Civil Liberties Union*, 542 U. S. 656 (2004). In *Ashcroft*, we affirmed the grant of a preliminary injunction in a case where the Government had failed to show a likelihood of success under the compelling interest test. We reasoned that "[a]s the Government bears the burden of proof on the ultimate question of [the challenged Act's] constitutionality, respondents [the movants] must be deemed likely to prevail unless the Government has shown that respondents' proposed less restrictive alternatives are less effective than [enforcing the Act]." *Id.*, at 666. That logic extends to this case; here the Government failed on the first prong of the compelling interest test, and did not reach the least restrictive means prong, but that can make no difference. The point remains that the burdens at the preliminary injunction stage track the burdens at trial.

The Government attempts to limit the rule announced in *Ashcroft* to content-based restrictions on speech, but the distinction is unavailing. The fact that *Ashcroft* involved such a restriction was the reason the Government had the burden of proof at trial under the First Amendment, see *id.*, at 665, but in no way affected the Court's assessment of the consequences of having that burden for purposes of the preliminary injunction. Here the burden is placed squarely on the Government by RFRA rather than the First Amendment, see 42 U. S. C. §§ 2000bb–1(b), 2000bb–2(3), but the conse-

quences are the same. Congress's express decision to legislate the compelling interest test indicates that RFRA challenges should be adjudicated in the same manner as constitutionally mandated applications of the test, including at the preliminary injunction stage.

III

The Government's second line of argument rests on the Controlled Substances Act itself. The Government contends that the Act's description of Schedule I substances as having "a high potential for abuse," "no currently accepted medical use in treatment in the United States," and "a lack of accepted safety for use . . . under medical supervision," 21 U. S. C. § 812(b)(1), by itself precludes any consideration of individualized exceptions such as that sought by the UDV. The Government goes on to argue that the regulatory regime established by the Act—a "closed" system that prohibits all use of controlled substances except as authorized by the Act itself, see *Gonzales* v. *Raich*, 545 U. S. 1, 13 (2005)—"cannot function with its necessary rigor and comprehensiveness if subjected to judicial exemptions." Brief for Petitioners 18. According to the Government, there would be no way to cabin religious exceptions once recognized, and "the public will misread" such exceptions as signaling that the substance at issue is not harmful after all. *Id.*, at 23. Under the Government's view, there is no need to assess the particulars of the UDV's use or weigh the impact of an exemption for that specific use, because the Controlled Substances Act serves a compelling purpose and simply admits of no exceptions.

A

RFRA, and the strict scrutiny test it adopted, contemplate an inquiry more focused than the Government's categorical approach. RFRA requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law "to the person"—the particular

claimant whose sincere exercise of religion is being substantially burdened. 42 U. S. C. § 2000bb–1(b). RFRA expressly adopted the compelling interest test "as set forth in *Sherbert* v. *Verner*, 374 U. S. 398 (1963) and *Wisconsin* v. *Yoder*, 406 U. S. 205 (1972)." § 2000bb(b)(1). In each of those cases, this Court looked beyond broadly formulated interests justifying the general applicability of government mandates and scrutinized the asserted harm of granting specific exemptions to particular religious claimants. In *Yoder*, for example, we permitted an exemption for Amish children from a compulsory school attendance law. We recognized that the State had a "paramount" interest in education, but held that "despite its admitted validity in the generality of cases, we must searchingly examine the interests that the State seeks to promote . . . and the impediment to those objectives that would flow from recognizing *the claimed Amish exemption.*" 406 U. S., at 213, 221 (emphasis added). The Court explained that the State needed "to show with more particularity how its admittedly strong interest . . . would be adversely affected by granting an exemption *to the Amish.*" *Id.*, at 236 (emphasis added).

In *Sherbert*, the Court upheld a particular claim to a religious exemption from a state law denying unemployment benefits to those who would not work on Saturdays, but explained that it was not announcing a constitutional right to unemployment benefits for "*all* persons whose religious convictions are the cause of their unemployment." 374 U. S., at 410 (emphasis added). The Court distinguished the case "in which an employee's religious convictions serve to make him a nonproductive member of society." *Ibid.;* see also *Smith*, 494 U. S., at 899 (O'Connor, J., concurring in judgment) (strict scrutiny "at least requires a case-by-case determination of the question, sensitive to the facts of each particular claim"). Outside the Free Exercise area as well, the Court has noted that "[c]ontext matters" in applying the compelling interest test, *Grutter* v. *Bollinger*, 539 U. S. 306, 327 (2003), and has

emphasized that "strict scrutiny *does* take 'relevant differences' into account—indeed, that is its fundamental purpose," *Adarand Constructors, Inc.* v. *Peña*, 515 U. S. 200, 228 (1995).

B

Under the more focused inquiry required by RFRA and the compelling interest test, the Government's mere invocation of the general characteristics of Schedule I substances, as set forth in the Controlled Substances Act, cannot carry the day. It is true, of course, that Schedule I substances such as DMT are exceptionally dangerous. See, *e. g., Touby* v. *United States*, 500 U. S. 160, 162 (1991). Nevertheless, there is no indication that Congress, in classifying DMT, considered the harms posed by the particular use at issue here—the circumscribed, sacramental use of *hoasca* by the UDV. The question of the harms from the sacramental use of *hoasca* by the UDV *was* litigated below. Before the District Court found that the Government had not carried its burden of showing a compelling interest in preventing such harms, the court noted that it could not "ignore that the legislative branch of the government elected to place materials containing DMT in Schedule I of the [Act], reflecting findings that substances containing DMT have 'a high potential for abuse,' and 'no currently accepted medical use in treatment in the United States,' and that '[t]here is a lack of accepted safety for use of [DMT] under medical supervision.'" 282 F. Supp. 2d, at 1254. But Congress' determination that DMT should be listed under Schedule I simply does not provide a categorical answer that relieves the Government of the obligation to shoulder its burden under RFRA.

This conclusion is reinforced by the Controlled Substances Act itself. The Act contains a provision authorizing the Attorney General to "waive the requirement for registration of certain manufacturers, distributors, or dispensers if he finds it consistent with the public health and safety." 21 U. S. C. § 822(d). The fact that the Act itself contemplates that ex-

empting certain people from its requirements would be "consistent with the public health and safety" indicates that congressional findings with respect to Schedule I substances should not carry the determinative weight, for RFRA purposes, that the Government would ascribe to them.

And in fact an exception has been made to the Schedule I ban for religious use. For the past 35 years, there has been a regulatory exemption for use of peyote—a Schedule I substance—by the Native American Church. See 21 CFR § 1307.31 (2005). In 1994, Congress extended that exemption to all members of every recognized Indian Tribe. See 42 U. S. C. § 1996a(b)(1). Everything the Government says about the DMT in *hoasca*—that, as a Schedule I substance, Congress has determined that it "has a high potential for abuse," "has no currently accepted medical use," and has "a lack of accepted safety for use . . . under medical supervision," 21 U. S. C. § 812(b)(1)—applies in equal measure to the mescaline in peyote, yet both the Executive and Congress itself have decreed an exception from the Controlled Substances Act for Native American religious use of peyote. If such use is permitted in the face of the congressional findings in § 812(b)(1) for hundreds of thousands of Native Americans practicing their faith, it is difficult to see how those same findings alone can preclude any consideration of a similar exception for the 130 or so American members of the UDV who want to practice theirs. See *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah*, 508 U. S. 520, 547 (1993) ("It is established in our strict scrutiny jurisprudence that 'a law cannot be regarded as protecting an interest 'of the highest order' . . . when it leaves appreciable damage to that supposedly vital interest unprohibited' " (quoting *Florida Star* v. *B. J. F.*, 491 U. S. 524, 541–542 (1989) (SCALIA, J., concurring in part and concurring in judgment))).

The Government responds that there is a "unique relationship" between the United States and the Tribes, Brief for Petitioners 27; see *Morton* v. *Mancari*, 417 U. S. 535 (1974),

but never explains what about that "unique" relationship justifies overriding the same congressional findings on which the Government relies in resisting any exception for the UDV's religious use of *hoasca*. In other words, if any Schedule I substance is in fact *always* highly dangerous in any amount no matter how used, what about the unique relationship with the Tribes justifies allowing their use of peyote? Nothing about the unique political status of the Tribes makes their members immune from the health risks the Government asserts accompany any use of a Schedule I substance, nor insulates the Schedule I substance the Tribes use in religious exercise from the alleged risk of diversion.

The Government argues that the existence of a *congressional* exemption for peyote does not indicate that the Controlled Substances Act is amenable to *judicially crafted* exceptions. RFRA, however, plainly contemplates that *courts* would recognize exceptions—that is how the law works. See 42 U. S. C. §2000bb–1(c) ("A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government"). Congress' role in the peyote exemption—and the Executive's, see 21 CFR §1307.31 (2005)—confirms that the findings in the Controlled Substances Act do not preclude exceptions altogether; RFRA makes clear that it is the obligation of the courts to consider whether exceptions are required under the test set forth by Congress.

C

The well-established peyote exception also fatally undermines the Government's broader contention that the Controlled Substances Act establishes a closed regulatory system that admits of no exceptions under RFRA. The Government argues that the effectiveness of the Controlled Substances Act will be "necessarily . . . undercut" if the Act is not uniformly applied, without regard to burdens on religious exercise. Brief for Petitioners 18. The peyote excep-

tion, however, has been in place since the outset of the Controlled Substances Act, and there is no evidence that it has "undercut" the Government's ability to enforce the ban on peyote use by non-Indians.

The Government points to some pre-*Smith* cases relying on a need for uniformity in rejecting claims for religious exemptions under the Free Exercise Clause, see Brief for Petitioners 16, but those cases strike us as quite different from the present one. Those cases did not embrace the notion that a general interest in uniformity justified a substantial burden on religious exercise; they instead scrutinized the asserted need and explained why the denied exemptions could not be accommodated. In *United States* v. *Lee*, 455 U. S. 252 (1982), for example, the Court rejected a claimed exception to the obligation to pay Social Security taxes, noting that "mandatory participation is indispensable to the fiscal vitality of the social security system" and that the "tax system could not function if denominations were allowed to challenge the tax system because tax payments were spent in a manner that violates their religious belief." *Id.*, at 258, 260. See also *Hernandez* v. *Commissioner*, 490 U. S. 680, 700 (1989) (same). In *Braunfeld* v. *Brown*, 366 U. S. 599 (1961) (plurality opinion), the Court denied a claimed exception to Sunday closing laws, in part because allowing such exceptions "might well provide [the claimants] with an economic advantage over their competitors who must remain closed on that day." *Id.*, at 608–609. The whole point of a "uniform day of rest for all workers" would have been defeated by exceptions. See *Sherbert*, 374 U. S., at 408 (discussing *Braunfeld*). These cases show that the Government can demonstrate a compelling interest in uniform application of a particular program by offering evidence that granting the requested religious accommodations would seriously compromise its ability to administer the program.

Here the Government's argument for uniformity is different; it rests not so much on the particular statutory program at issue as on slippery-slope concerns that could be invoked

in response to any RFRA claim for an exception to a generally applicable law. The Government's argument echoes the classic rejoinder of bureaucrats throughout history: If I make an exception for you, I'll have to make one for everybody, so no exceptions. But RFRA operates by mandating consideration, under the compelling interest test, of exceptions to "rule[s] of general applicability." 42 U. S. C. § 2000bb–1(a). Congress determined that the legislated test "is a workable test for striking sensible balances between religious liberty and competing prior governmental interests." § 2000bb(a)(5). This determination finds support in our cases; in *Sherbert*, for example, we rejected a slippery-slope argument similar to the one offered in this case, dismissing as "no more than a possibility" the State's speculation "that the filing of fraudulent claims by unscrupulous claimants feigning religious objections to Saturday work" would drain the unemployment benefits fund. 374 U. S., at 407.

We reaffirmed just last Term the feasibility of case-by-case consideration of religious exemptions to generally applicable rules. In *Cutter* v. *Wilkinson*, 544 U. S. 709 (2005), we held that the Religious Land Use and Institutionalized Persons Act of 2000, which allows federal and state prisoners to seek religious accommodations pursuant to the same standard as set forth in RFRA, does not violate the Establishment Clause. We had "no cause to believe" that the compelling interest test "would not be applied in an appropriately balanced way" to specific claims for exemptions as they arose. *Id.*, at 722. Nothing in our opinion suggested that courts were not up to the task.

We do not doubt that there may be instances in which a need for uniformity precludes the recognition of exceptions to generally applicable laws under RFRA. But it would have been surprising to find that this was such a case, given the longstanding exemption from the Controlled Substances Act for religious use of peyote, and the fact that the very reason Congress enacted RFRA was to respond to a decision

denying a claimed right to sacramental use of a controlled substance. See 42 U. S. C. § 2000bb(a)(4). And in fact the Government has not offered evidence demonstrating that granting the UDV an exemption would cause the kind of administrative harm recognized as a compelling interest in *Lee*, *Hernandez*, and *Braunfeld*. The Government failed to convince the District Court at the preliminary injunction hearing that health or diversion concerns provide a compelling interest in banning the UDV's sacramental use of *hoasca*. It cannot compensate for that failure now with the bold argument that there can be no RFRA exceptions at all to the Controlled Substances Act. See Tr. of Oral Arg. 17 (Deputy Solicitor General statement that exception could not be made even for "rigorously policed" use of "one drop" of substance "once a year").

IV

Before the District Court, the Government also asserted an interest in compliance with the 1971 United Nations Convention on Psychotropic Substances, Feb. 21, 1971, [1979–1980] 32 U. S. T. 543, T. I. A. S. No. 9725. The Convention, signed by the United States and implemented by the Controlled Substances Act, calls on signatories to prohibit the use of hallucinogens, including DMT. The Government argues that it has a compelling interest in meeting its international obligations by complying with the Convention.

The District Court rejected this interest because it found that the Convention does not cover *hoasca*. The court relied on the official commentary to the Convention, which notes that "Schedule I [of the Convention] does not list . . . natural hallucinogenic materials," and that "[p]lants as such are not, and—it is submitted—are also not likely to be, listed in Schedule I, but only some products obtained from plants." U. N. Commentary on the Convention on Psychotropic Substances 387, 385 (1976). The court reasoned that *hoasca*, like the plants from which the tea is made, is sufficiently distinct from DMT itself to fall outside the treaty. See 282 F. Supp. 2d, at 1266–1269.

We do not agree. The Convention provides that "a preparation is subject to the same measures of control as the psychotropic substance which it contains," and defines "preparation" as "any solution or mixture, in whatever physical state, containing one or more psychotropic substances." See 32 U. S. T., at 546, Art. 1(f)(i); *id.*, at 551, Art. 3. *Hoasca* is a "solution or mixture" containing DMT; the fact that it is made by the simple process of brewing plants in water, as opposed to some more advanced method, does not change that. To the extent the commentary suggests plants themselves are not covered by the Convention, that is of no moment—the UDV seeks to import and use a tea brewed from plants, not the plants themselves, and the tea plainly qualifies as a "preparation" under the Convention.

The fact that *hoasca* is covered by the Convention, however, does not automatically mean that the Government has demonstrated a compelling interest in applying the Controlled Substances Act, which implements the Convention, to the UDV's sacramental use of the tea. At the present stage, it suffices to observe that the Government did not even *submit* evidence addressing the international consequences of granting an exemption for the UDV. The Government simply submitted two affidavits by State Department officials attesting to the general importance of honoring international obligations and of maintaining the leadership position of the United States in the international war on drugs. See Declaration of Gary T. Sheridan (Jan. 24, 2001), App. G to App. to Pet. for Cert. 261a; Declaration of Robert E. Dalton (Jan. 24, 2001), App. H, *id.*, at 265a. We do not doubt the validity of these interests, any more than we doubt the general interest in promoting public health and safety by enforcing the Controlled Substances Act, but under RFRA invocation of such general interests, standing alone, is not enough.[2]

[2] In light of the foregoing, we do not reach the UDV's argument that Art. 22, ¶ 5, of the Convention should be read to accommodate exceptions under domestic laws such as RFRA.

* * *

The Government repeatedly invokes Congress' findings and purposes underlying the Controlled Substances Act, but Congress had a reason for enacting RFRA, too. Congress recognized that "laws 'neutral' toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise," and legislated "the compelling interest test" as the means for the courts to "strik[e] sensible balances between religious liberty and competing prior governmental interests." 42 U. S. C. §§ 2000bb(a)(2), (5).

We have no cause to pretend that the task assigned by Congress to the courts under RFRA is an easy one. Indeed, the very sort of difficulties highlighted by the Government here were cited by this Court in deciding that the approach later mandated by Congress under RFRA was not required as a matter of constitutional law under the Free Exercise Clause. See *Smith*, 494 U. S., at 885–890. But Congress has determined that courts should strike sensible balances, pursuant to a compelling interest test that requires the Government to address the particular practice at issue. Applying that test, we conclude that the courts below did not err in determining that the Government failed to demonstrate, at the preliminary injunction stage, a compelling interest in barring the UDV's sacramental use of *hoasca*.

The judgment of the United States Court of Appeals for the Tenth Circuit is affirmed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE ALITO took no part in the consideration or decision of this case.

Syllabus

BUCKEYE CHECK CASHING, INC. *v.* CARDEGNA ET AL.

CERTIORARI TO THE SUPREME COURT OF FLORIDA

No. 04–1264. Argued November 29, 2005—Decided February 21, 2006

For each deferred-payment transaction respondents entered into with Buckeye Check Cashing, they signed an Agreement containing provisions that required binding arbitration to resolve disputes arising out of the Agreement. Respondents sued in Florida state court, alleging that Buckeye charged usurious interest rates and that the Agreement violated various Florida laws, rendering it criminal on its face. The trial court denied Buckeye's motion to compel arbitration, holding that a court rather than an arbitrator should resolve a claim that a contract is illegal and void *ab initio*. A state appellate court reversed, but was in turn reversed by the Florida Supreme Court, which reasoned that enforcing an arbitration agreement in a contract challenged as unlawful would violate state public policy and contract law.

Held: Regardless of whether it is brought in federal or state court, a challenge to the validity of a contract as a whole, and not specifically to the arbitration clause within it, must go to the arbitrator, not the court. *Prima Paint Corp.* v. *Flood & Conklin Mfg. Co.*, 388 U. S. 395, and *Southland Corp.* v. *Keating*, 465 U. S. 1, answer the question presented here by establishing three propositions. First, as a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract. See *Prima Paint*, 388 U. S., at 400, 402–404. Second, unless the challenge is to the arbitration clause itself, the issue of the contract's validity is considered by the arbitrator in the first instance. See *id.*, at 403–404. Third, this arbitration law applies in state as well as federal courts. See *Southland*, *supra*, at 12. The crux of respondents' claim is that the Agreement as a whole (including its arbitration provision) is rendered invalid by the usurious finance charge. Because this challenges the Agreement, and not specifically its arbitration provisions, the latter are enforceable apart from the remainder of the contract, and the challenge should be considered by an arbitrator, not a court. The Florida Supreme Court erred in declining to apply *Prima Paint*'s severability rule, and respondents' assertion that that rule does not apply in state court runs contrary to *Prima Paint* and *Southland*. Pp. 443–449.

894 So. 2d 860, reversed and remanded.

Syllabus

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. THOMAS, J., filed a dissenting opinion, *post*, p. 449. ALITO, J., took no part in the consideration or decision of the case.

Christopher Landau argued the cause for petitioner. With him on the briefs were *Amy L. Brown* and *Pierre H. Bergeron.*

F. Paul Bland, Jr., argued the cause for respondents. With him on the brief were *Michael J. Quirk*, *Arthur H. Bryant*, *E. Clayton Yates*, *Christopher C. Casper*, and *Richard A. Fisher.**

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*Briefs of *amici curiae* urging reversal were filed for the Chamber of Commerce of the United States of America et al. by *Seth P. Waxman*, *Christopher R. Lipsett*, *Eric J. Mogilnicki*, *Robin S. Conrad*, and *Amar D. Sarwal;* for the Community Financial Services Association of America by *James T. McIntyre;* for the Florida Bankers Association et al. by *Erik S. Jaffe;* and for the Financial Service Centers of America, Inc., et al. by *Gerald Goldman* and *Robert E. Rochford.*

Briefs of *amici curiae* urging affirmance were filed for the State of Florida et al. by *Charles J. Crist, Jr.*, Attorney General of Florida, *Christopher M. Kise*, Solicitor General, and *Erick M. Figlio*, Deputy Solicitor General, by *Roberto J. Sánchez Ramos*, Secretary of Justice of Puerto Rico, and by the Attorneys General for their respective jurisdictions as follows: *David W. Márquez* of Alaska, *Terry Goddard* of Arizona, *Mike Beebe* of Arkansas, *Bill Lockyer* of California, *John Suthers* of Colorado, *Richard Blumenthal* of Connecticut, *M. Jane Brady* of Delaware, *Robert Spagnoletti* of the District of Columbia, *Thurbert E. Baker* of Georgia, *Mark J. Bennett* of Hawaii, *Lawrence Wasden* of Idaho, *Lisa Madigan* of Illinois, *Steve Carter* of Indiana, *Tom Miller* of Iowa, *Gregory D. Stumbo* of Kentucky, *Steve Rowe* of Maine, *J. Joseph Curran, Jr.*, of Maryland, *Tom Reilly* of Massachusetts, *Mike Hatch* of Minnesota, *Jim Hood* of Mississippi, *Jeremiah W. (Jay) Nixon* of Missouri, *Mike McGrath* of Montana, *Brian Sandoval* of Nevada, *Kelly Ayotte* of New Hampshire, *Patricia Madrid* of New Mexico, *Eliot Spitzer* of New York, *Roy Cooper* of North Carolina, *Wayne Stenehjem* of North Dakota, *Jim Petro* of Ohio, *Hardy Myers* of Oregon, *Tom Corbett* of Pennsylvania, *Patrick Lynch* of Rhode Island, *Larry Long* of South Dakota, *Paul Summers* of Tennessee, *Greg Abbott* of Texas, *Mark L. Shurtleff* of Utah, *Rob McKenna* of Washington, *Darrell V. McGraw, Jr.*, of West Virginia, *Peggy A. Lautenschlager* of Wisconsin, and *Patrick J. Crank* of Wyoming; for AARP by *Deborah*

JUSTICE SCALIA delivered the opinion of the Court.

We decide whether a court or an arbitrator should consider the claim that a contract containing an arbitration provision is void for illegality.

I

Respondents John Cardegna and Donna Reuter entered into various deferred-payment transactions with petitioner Buckeye Check Cashing (Buckeye), in which they received cash in exchange for a personal check in the amount of the cash plus a finance charge. For each separate transaction they signed a "Deferred Deposit and Disclosure Agreement" (Agreement), which included the following arbitration provisions:

> "1. *Arbitration Disclosure* By signing this Agreement, you agree that i[f] a dispute of any kind arises out of this Agreement or your application therefore or any instrument relating thereto, th[e]n either you or we or third-parties involved can choose to have that dispute resolved by binding arbitration as set forth in Paragraph 2 below . . . .
>
> "2. *Arbitration Provisions* Any claim, dispute, or controversy . . . arising from or relating to this Agreement . . . or the validity, enforceability, or scope of this Arbitration Provision or the entire Agreement (collectively 'Claim'), shall be resolved, upon the election of you or us or said third-parties, by binding arbitration . . . . This arbitration Agreement is made pursuant to a transaction involving interstate commerce, and shall be gov-

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Zuckerman and *Michael Schuster;* for Law Professors by *Richard M. Alderman*, *Brian H. Bix*, *Robert W. Gordon*, *Jeffrey W. Stempel*, and *Katherine V. W. Stone;* for the National Association of Consumer Advocates et al. by *Amanda Quester;* for the University of Wisconsin Law Professors by *David S. Schwartz* and *Joel Rogers;* and for Samuel Glazer by *Kenneth D. Schwartz.*

A brief of *amicus curiae* was filed for Theis Research, Inc., by *Paul R. Johnson.*

> erned by the Federal Arbitration Act ('FAA'), 9 U. S. C. Sections 1–16. The arbitrator shall apply applicable substantive law constraint *[sic]* with the FAA and applicable statu[t]es of limitations and shall honor claims of privilege recognized by law . . . ." App. 36, 38, 40, 42.

Respondents brought this putative class action in Florida state court, alleging that Buckeye charged usurious interest rates and that the Agreement violated various Florida lending and consumer-protection laws, rendering it criminal on its face. Buckeye moved to compel arbitration. The trial court denied the motion, holding that a court rather than an arbitrator should resolve a claim that a contract is illegal and void *ab initio*. The District Court of Appeal of Florida for the Fourth District reversed, holding that because respondents did not challenge the arbitration provision itself, but instead claimed that the entire contract was void, the agreement to arbitrate was enforceable, and the question of the contract's legality should go to the arbitrator.

Respondents appealed, and the Florida Supreme Court reversed, reasoning that to enforce an agreement to arbitrate in a contract challenged as unlawful "'could breathe life into a contract that not only violates state law, but also is criminal in nature . . . .'" 894 So. 2d 860, 862 (2005) (quoting *Party Yards, Inc.* v. *Templeton*, 751 So. 2d 121, 123 (Fla. App. 2000)). We granted certiorari. 545 U. S. 1127 (2005).

II

A

To overcome judicial resistance to arbitration, Congress enacted the Federal Arbitration Act (FAA), 9 U. S. C. §§ 1–16. Section 2 embodies the national policy favoring arbitration and places arbitration agreements on equal footing with all other contracts:

> "A written provision in . . . a contract . . . to settle by arbitration a controversy thereafter arising out of such

> contract . . . or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."

Challenges to the validity of arbitration agreements "upon such grounds as exist at law or in equity for the revocation of any contract" can be divided into two types. One type challenges specifically the validity of the agreement to arbitrate. See, *e. g.*, *Southland Corp.* v. *Keating*, 465 U. S. 1, 4–5 (1984) (challenging the agreement to arbitrate as void under California law insofar as it purported to cover claims brought under the state Franchise Investment Law). The other challenges the contract as a whole, either on a ground that directly affects the entire agreement (*e. g.*, the agreement was fraudulently induced), or on the ground that the illegality of one of the contract's provisions renders the whole contract invalid.[1] Respondents' claim is of this second type. The crux of the complaint is that the contract as a whole (including its arbitration provision) is rendered invalid by the usurious finance charge.

In *Prima Paint Corp.* v. *Flood & Conklin Mfg. Co.*, 388 U. S. 395 (1967), we addressed the question of who—court or arbitrator—decides these two types of challenges. The issue in the case was "whether a claim of fraud in the inducement of the entire contract is to be resolved by the federal

[1] The issue of the contract's validity is different from the issue whether any agreement between the alleged obligor and obligee was ever concluded. Our opinion today addresses only the former, and does not speak to the issue decided in the cases cited by respondents (and by the Florida Supreme Court), which hold that it is for courts to decide whether the alleged obligor ever signed the contract, *Chastain* v. *Robinson-Humphrey Co.*, 957 F. 2d 851 (CA11 1992), whether the signor lacked authority to commit the alleged principal, *Sandvik AB* v. *Advent Int'l Corp.*, 220 F. 3d 99 (CA3 2000); *Sphere Drake Ins. Ltd.* v. *All American Ins. Co.*, 256 F. 3d 587 (CA7 2001), and whether the signor lacked the mental capacity to assent, *Spahr* v. *Secco*, 330 F. 3d 1266 (CA10 2003).

court, or whether the matter is to be referred to the arbitrators." *Id.*, at 402. Guided by § 4 of the FAA,[2] we held that "if the claim is fraud in the inducement of the arbitration clause itself—an issue which goes to the making of the agreement to arbitrate—the federal court may proceed to adjudicate it. But the statutory language does not permit the federal court to consider claims of fraud in the inducement of the contract generally." *Id.*, at 403–404 (internal quotation marks and footnote omitted). We rejected the view that the question of "severability" was one of state law, so that if state law held the arbitration provision not to be severable a challenge to the contract as a whole would be decided by the court. See *id.*, at 400, 402–403.

Subsequently, in *Southland Corp.*, we held that the FAA "create[d] a body of federal substantive law," which was "applicable in state and federal courts." 465 U. S., at 12 (internal quotation marks omitted). We rejected the view that state law could bar enforcement of § 2, even in the context of state-law claims brought in state court. See *id.*, at 10–14; see also *Allied-Bruce Terminix Cos.* v. *Dobson*, 513 U. S. 265, 270–273 (1995).

B

Prima Paint and *Southland* answer the question presented here by establishing three propositions. First, as a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract. Second, unless the challenge is to the arbitration clause it-

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[2] In pertinent part, § 4 reads:

"A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court [with jurisdiction] . . . for an order directing that such arbitration proceed in a manner provided for in such agreement . . . . [U]pon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement . . . ."

self, the issue of the contract's validity is considered by the arbitrator in the first instance. Third, this arbitration law applies in state as well as federal courts. The parties have not requested, and we do not undertake, reconsideration of those holdings. Applying them to this case, we conclude that because respondents challenge the Agreement, but not specifically its arbitration provisions, those provisions are enforceable apart from the remainder of the contract. The challenge should therefore be considered by an arbitrator, not a court.

In declining to apply *Prima Paint*'s rule of severability, the Florida Supreme Court relied on the distinction between void and voidable contracts. "Florida public policy and contract law," it concluded, permit "no severable, or salvageable, parts of a contract found illegal and void under Florida law." 894 So. 2d, at 864. *Prima Paint* makes this conclusion irrelevant. That case rejected application of state severability rules to the arbitration agreement *without discussing* whether the challenge at issue would have rendered the contract void or voidable. See 388 U. S., at 400–404. Indeed, the opinion expressly disclaimed any need to decide what state-law remedy was available, *id.*, at 400, n. 3 (though Justice Black's dissent *asserted* that state law rendered the contract void, *id.*, at 407). Likewise in *Southland*, which arose in state court, we did not ask whether the several challenges made there—fraud, misrepresentation, breach of contract, breach of fiduciary duty, and violation of the California Franchise Investment Law—would render the contract void or voidable. We simply rejected the proposition that the enforceability of the arbitration agreement turned on the state legislature's judgment concerning the forum for enforcement of the state-law cause of action. See 465 U. S., at 10. So also here, we cannot accept the Florida Supreme Court's conclusion that enforceability of the arbitration agreement should turn on "Florida public policy and contract law," 894 So. 2d, at 864.

C

Respondents assert that *Prima Paint*'s rule of severability does not apply in state court. They argue that *Prima Paint* interpreted only §§3 and 4—two of the FAA's procedural provisions, which appear to apply by their terms only in federal court—but not §2, the only provision that we have applied in state court. This does not accurately describe *Prima Paint.* Although §4, in particular, had much to do with *Prima Paint*'s understanding of the rule of severability, see 388 U. S., at 403–404, this rule ultimately arises out of §2, the FAA's substantive command that arbitration agreements be treated like all other contracts. The rule of severability establishes how this equal-footing guarantee for "a written [arbitration] provision" is to be implemented. Respondents' reading of *Prima Paint* as establishing nothing more than a federal-court rule of procedure also runs contrary to *Southland*'s understanding of that case. One of the bases for *Southland*'s application of §2 in state court was precisely *Prima Paint*'s "reli[ance] for [its] holding on Congress' broad power to fashion substantive rules under the Commerce Clause." 465 U. S., at 11; see also *Prima Paint*, *supra,* at 407 (Black, J., dissenting) ("[t]he Court here holds that the [FAA], as a matter of *federal substantive law* . . . " (emphasis added)). *Southland* itself refused to "believe Congress intended to limit the Arbitration Act to disputes subject only to *federal*-court jurisdiction." 465 U. S., at 15.

Respondents point to the language of §2, which renders "valid, irrevocable, and enforceable" "a written provision in" or "an agreement in writing to submit to arbitration an existing controversy arising out of" a "contract." Since, respondents argue, the only arbitration agreements to which §2 applies are those involving a "contract," and since an agreement void *ab initio* under state law is not a "contract," there is no "written provision" in or "controversy arising out of" a "contract," to which §2 can apply. This argument ech-

oes Justice Black's dissent in *Prima Paint:* "Sections 2 and 3 of the Act assume the existence of a valid contract. They merely provide for enforcement where such a valid contract exists." 388 U. S., at 412–413. We do not read "contract" so narrowly. The word appears four times in § 2. Its last appearance is in the final clause, which allows a challenge to an arbitration provision "upon such grounds as exist at law or in equity for the revocation of any *contract.*" (Emphasis added.) There can be no doubt that "contract" as used this last time must include contracts that later prove to be void. Otherwise, the grounds for revocation would be limited to those that rendered a contract voidable—which would mean (implausibly) that an arbitration agreement could be challenged as voidable but not as void. Because the sentence's final use of "contract" so obviously includes putative contracts, we will not read the same word earlier in the same sentence to have a more narrow meaning.[3] We note that neither *Prima Paint* nor *Southland* lends support to respondents' reading; as we have discussed, neither case turned on whether the challenge at issue would render the contract voidable or void.

* * *

It is true, as respondents assert, that the *Prima Paint* rule permits a court to enforce an arbitration agreement in a contract that the arbitrator later finds to be void. But it is equally true that respondents' approach permits a court to deny effect to an arbitration provision in a contract that

[3] Our more natural reading is confirmed by the use of the word "contract" elsewhere in the United States Code to refer to putative agreements, regardless of whether they are legal. For instance, the Sherman Act, ch. 647, 26 Stat. 209, as amended, states that "[e]very contract, combination . . . , or conspiracy, in restraint of trade [is] hereby declared to be illegal." 15 U. S. C. § 1. Under respondents' reading of "contract," a bewildering circularity would result: A contract illegal because it was in restraint of trade would not be a "contract" at all, and thus the statutory prohibition would not apply.

the court later finds to be perfectly enforceable. *Prima Paint* resolved this conundrum—and resolved it in favor of the separate enforceability of arbitration provisions. We reaffirm today that, regardless of whether the challenge is brought in federal or state court, a challenge to the validity of the contract as a whole, and not specifically to the arbitration clause, must go to the arbitrator.

The judgment of the Florida Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE ALITO took no part in the consideration or decision of this case.

JUSTICE THOMAS, dissenting.

I remain of the view that the Federal Arbitration Act (FAA), 9 U. S. C. § 1 *et seq.*, does not apply to proceedings in state courts. See *Allied-Bruce Terminix Cos.* v. *Dobson*, 513 U. S. 265, 285–297 (1995) (dissenting opinion); *Doctor's Associates, Inc.* v. *Casarotto*, 517 U. S. 681, 689 (1996) (same); *Green Tree Financial Corp.* v. *Bazzle*, 539 U. S. 444, 460 (2003) (same). Thus, in state-court proceedings, the FAA cannot be the basis for displacing a state law that prohibits enforcement of an arbitration clause contained in a contract that is unenforceable under state law. Accordingly, I would leave undisturbed the judgment of the Florida Supreme Court.

Per Curiam

MINISTRY OF DEFENSE AND SUPPORT FOR ARMED FORCES OF ISLAMIC REPUBLIC OF IRAN *v.* ELAHI

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

No. 04–1095. Decided February 21, 2006

Respondent Elahi obtained a federal-court judgment for money damages against the Islamic Republic of Iran. He then intervened in a separate federal suit that Iran's Ministry of Defense had brought to confirm an arbitration award it had obtained against a third party. Elahi sought to impose a lien upon the award. The Ministry opposed the attachment on the ground that the Foreign Sovereign Immunities Act (FSIA) grants it immunity, but the District Court ruled that the Ministry had waived its immunity. Relying on a ground not argued by the parties, the Ninth Circuit found the Ministry's immunity claim barred under an FSIA section providing that the property of an "agency or instrumentality" of a foreign state is "not . . . immune from attachment" if the agency is "engaged in commercial activity in the United States." 28 U. S. C. § 1610(b).

Held: The Ninth Circuit erred in implicitly concluding that the Ministry was an agency or instrumentality of Iran under § 1610(b). FSIA's "engaged in commercial activity" exception applies only where the property at issue is held by an agency or instrumentality of a foreign state, not by a foreign state itself. The Circuit did not explain what in the record might demonstrate that the Ministry is an agency or instrumentality of Iran rather than an integral part of the state itself. Because that court did not consider, and the Ministry had no opportunity to argue, this critical legal point, the judgment is vacated and the case is remanded.

Certiorari granted; 385 F. 3d 1206, vacated and remanded.

PER CURIAM.

A private citizen seeks to attach an asset belonging to Iran's Ministry of Defense in order to help satisfy a judgment for money damages. The question raised is whether the Foreign Sovereign Immunities Act of 1976 (Act), 28 U. S. C. § 1602 *et seq.* (2000 ed. and Supp. III), forbids that attachment.

The judgment for money damages consists of a default judgment against the Islamic Republic of Iran (for about

$300 million) that the private citizen, Dariush Elahi, obtained in a federal-court lawsuit claiming that the Republic had murdered his brother. *Elahi* v. *Islamic Republic of Iran*, 124 F. Supp. 2d 97, 103 (DC 2000). The asset is an arbitration award (against a third party), which Iran's Ministry of Defense obtained in Switzerland. *Ministry of Defense and Support for Armed Forces of Islamic Republic of Iran* v. *Cubic Defense Systems, Inc.*, 385 F. 3d 1206, 1211 (CA9 2004). The Ministry asked the Federal District Court for the Southern District of California to confirm the award. *Ministry of Defense and Support for Armed Forces of Islamic Republic of Iran* v. *Cubic Defense Systems, Inc.*, 236 F. Supp. 2d 1140 (2002). The court did so. And Elahi then intervened, seeking to impose a lien upon the award. The Ministry opposed the attachment on the ground that the Act grants it immunity from such a claim.

The Federal District Court rejected the Ministry's immunity defense on the ground that, by suing to enforce the award, the Ministry had waived any such immunity. On appeal the Ninth Circuit disagreed with the District Court about waiver. But it then found against the Ministry on a different ground—a ground that the parties had not argued. The Act says that under certain conditions the property of an "*agency or instrumentality*" of a foreign government is "*not . . . immune from attachment*" if the agency is "engaged in commercial activity in the United States." 28 U. S. C. § 1610(b) (emphasis added). The Court of Appeals found that the Ministry engages in commercial activity and that the other conditions were satisfied. 385 F. 3d, at 1219–1222 (applying § 1610(b)(2)). And it held that this section of the Act barred the Ministry's assertion of immunity. *Ibid.*

The Ministry filed a petition for certiorari asking us to review that decision. The Solicitor General agrees with the Ministry that we should grant the writ but limited to the Ministry's Question 1, namely, whether "the property of a foreign state *stricto sensu*, situated in the United States," is "immune from attachment . . . as provided in the For-

eign Sovereign Immunities Act." Pet. for Cert. i (citing §§ 1603(a), 1610(a)). The Solicitor General also asks us to vacate the judgment of the Court of Appeals and remand the case for consideration of whether the Ministry is simply a "*foreign state*" (what the Ministry calls "a foreign state *stricto sensu*") or whether the Ministry is an "*agency or instrumentality*" of a foreign state (as the Ninth Circuit held). Brief for United States as *Amicus Curiae* 15–17. We grant the writ limited to Question 1.

The Act, as it applies to the "property in the United States of a *foreign state,*" § 1610(a) (emphasis added), does *not* contain the "engaged in commercial activity" exception that the Ninth Circuit described. That exception applies only where the property at issue is property of an "*agency or instrumentality*" of a foreign state. Compare § 1610(b) ("property . . . of an agency or instrumentality of a foreign state engaged in commercial activity") with § 1610(a) ("property . . . of a foreign state . . . *used for a commercial activity*" (emphasis added)). The difference is critical. Moreover, in the Solicitor General's view a defense ministry (unlike, say, a government-owned commercial enterprise) generally is not an "agency or instrumentality" of a foreign state but an inseparable part of the state itself. Brief for United States as *Amicus Curiae* 8–11; see also *Transaero, Inc.* v. *La Fuerza Aerea Boliviana*, 30 F. 3d 148, 153 (CADC 1994) ("hold[ing] that armed forces are as a rule so closely bound up with the structure of the state that they must in all cases be considered as the 'foreign state' itself, rather than a separate 'agency or instrumentality' of the state").

We shall not now determine whether the Solicitor General is correct about the status of the Ministry, for the Ninth Circuit did not address the question nor did the parties argue the matter before the Circuit. Neither can we fault the Ministry for that failure. As we said, *supra,* at 451, the District Court based its denial of immunity upon waiver. The

parties' Ninth Circuit briefs focused on matters not relevant here (such as the waiver question), with one exception. The exception consists of a footnote in Elahi's brief mentioning the Act's "agency and instrumentality" provision. That footnote, however, does not ask for affirmance on that basis; nor did it provide the Ministry with clear notice that a reply was necessary. Answering Brief for Appellee in No. 03–55015 (CA9), p. 45, n. 27 (stating that "*[i]f* [the Ministry] is considered 'an agency or instrumentality of a foreign state,' rather than the foreign state itself, Mr. Elahi's attachment still is valid" (emphasis added)).

The Ninth Circuit said that it was free to affirm on "any ground supported by the record." 385 F. 3d, at 1219, n. 15. But the court did not explain what in the record might demonstrate that the Ministry is an "agency or instrumentality" of the state rather than an integral part of the state itself. The court noted that "Elahi appears to concede" that the Ministry is an "agency and instrumentality," *id.*, at 1218, n. 13, but any relevant concession would have to have come from the Ministry, not from Elahi, whose position the concession favors. Thus, in implicitly concluding that the Ministry was an "agency or instrumentality" of the Republic of Iran within the meaning of § 1610(b), the Ninth Circuit either mistakenly relied on a concession by respondent that could not possibly bind petitioner, or else erroneously presumed that there was no relevant distinction between a foreign state and its agencies or instrumentalities for purposes of that subsection. See §§ 1603(a), (b). Either way, the Ninth Circuit committed error that was essential to its judgment in favor of respondent.

Because the Ninth Circuit did not consider, and the Ministry had no reasonable opportunity to argue, the critical legal point we have mentioned, we vacate the judgment of the Ninth Circuit, and remand the case for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

ASH ET AL. *v.* TYSON FOODS, INC.

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

No. 05–379. Decided February 21, 2006

African-American petitioners Ash and Hithon filed suit, alleging that respondent Tyson Foods, Inc., violated 42 U. S. C. § 1981 and Title VII of the Civil Rights Act of 1964 when it promoted two white males to fill shift manager positions sought by petitioners. At the close of petitioners' evidence, the District Court denied Tyson's motion for judgment as a matter of law pursuant to Federal Rule of Civil Procedure 50(a). The jury found for petitioners. After trial, Tyson renewed its motion under Rule 50(b). The District Court granted that motion and, in the alternative, ordered a new trial under Rule 50(c). The Eleventh Circuit affirmed the grant of the Rule 50(b) motion as to Ash, deeming the trial evidence insufficient to show pretext, but reversed as to Hithon, finding enough evidence to go to the jury. It also affirmed the District Court's Rule 50(c) remedy.

Held: While the Eleventh Circuit's judgment may be correct in the final analysis, the court (1) erred insofar as it held that modifiers or qualifications are necessary to render the term "boy," which the plant manager used to refer to petitioners, probative of bias, and (2) erred with regard to its standard for determining whether Tyson's asserted nondiscriminatory reasons for its hiring decisions were pretextual after petitioners showed that their qualifications were superior to those of the successful applicants. Although the term "boy" will not always be evidence of racial discrimination, it does not follow that "boy," standing alone, is always benign. The speaker's meaning may depend on various factors including, *e. g.*, context and inflection. In addition, the Eleventh Circuit's statement that "[p]retext can be established through comparing qualifications only when 'the disparity in qualifications is so apparent as virtually to jump off the page and slap you in the face' " is unhelpful and imprecise as an elaboration of the standard for inferring pretext from superior qualifications. This is not an occasion to define more precisely what standard should govern. It suffices to say here that some formulation other than the Circuit's test would better ensure that trial courts reach consistent results. That court should determine in the first instance whether the two erroneous aspects of its decision were essential to its holding.

Certiorari granted; 129 Fed. Appx. 529, vacated and remanded.

PER CURIAM.

Petitioners Anthony Ash and John Hithon were superintendents at a poultry plant owned and operated by respondent Tyson Foods, Inc. Petitioners, who are African-American, sought promotions to fill two open shift manager positions, but two white males were selected instead. Alleging that Tyson had discriminated on account of race, petitioners sued under Rev. Stat. § 1977, 42 U. S. C. § 1981, and Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U. S. C. § 2000e *et seq.*

A trial proceeded in the United States District Court for the Northern District of Alabama. At the close of the plaintiffs' evidence, Tyson moved for judgment as a matter of law, see Fed. Rule Civ. Proc. 50(a). The District Court denied the motion, and the jury found for petitioners, awarding compensatory and punitive damages. The employer renewed its motion for judgment under Rule 50(b). The District Court granted the motion and, in the alternative, ordered a new trial as to both plaintiffs under Rule 50(c). App. to Pet. for Cert. 35a; see generally *Unitherm Food Systems, Inc.* v. *Swift-Eckrich, Inc.*, *ante*, at 399–406 (discussing Rule 50).

The United States Court of Appeals for the Eleventh Circuit affirmed in part and reversed in part. 129 Fed. Appx. 529, 536 (2005) *(per curiam)*. As to Ash, the court affirmed the grant of the Rule 50(b) motion, deeming the trial evidence insufficient to show pretext (and thus insufficient to show unlawful discrimination) under the burden-shifting framework set forth in *McDonnell Douglas Corp.* v. *Green*, 411 U. S. 792 (1973). 129 Fed. Appx., at 533–534. As to Hithon, the court reversed the Rule 50(b) ruling, finding there was enough evidence to go to the jury. The court, however, affirmed the District Court's alternative remedy of a new trial under Rule 50(c), holding that the evidence supported neither the decision to grant punitive damages nor the amount of the compensatory award, and thus that the

District Court did not abuse its discretion in ordering a new trial. *Id.*, at 536.

The judgment of the Court of Appeals, and the trial court rulings it affirmed, may be correct in the final analysis. In the course of its opinion, however, the Court of Appeals erred in two respects, requiring that its judgment now be vacated and the case remanded for further consideration.

First, there was evidence that Tyson's plant manager, who made the disputed hiring decisions, had referred on some occasions to each of the petitioners as "boy." Petitioners argued this was evidence of discriminatory animus. The Court of Appeals disagreed, holding that "[w]hile the use of 'boy' when modified by a racial classification like 'black' or 'white' is evidence of discriminatory intent, the use of 'boy' alone is not evidence of discrimination." *Id.*, at 533 (citation omitted). Although it is true the disputed word will not always be evidence of racial animus, it does not follow that the term, standing alone, is always benign. The speaker's meaning may depend on various factors including context, inflection, tone of voice, local custom, and historical usage. Insofar as the Court of Appeals held that modifiers or qualifications are necessary in all instances to render the disputed term probative of bias, the court's decision is erroneous.

Second, the Court of Appeals erred in articulating the standard for determining whether the asserted nondiscriminatory reasons for Tyson's hiring decisions were pretextual. Petitioners had introduced evidence that their qualifications were superior to those of the two successful applicants. (Part of the employer's defense was that the plant with the openings had performance problems and petitioners already worked there in a supervisory capacity.) The Court of Appeals, in finding petitioners' evidence insufficient, cited one of its earlier precedents and stated: "Pretext can be established through comparing qualifications only when 'the disparity in qualifications is so apparent as virtually to jump off the page

and slap you in the face.'" *Ibid.* (quoting *Cooper* v. *Southern Co.*, 390 F. 3d 695, 732 (CA11 2004)).

Under this Court's decisions, qualifications evidence may suffice, at least in some circumstances, to show pretext. See *Patterson* v. *McLean Credit Union*, 491 U. S. 164, 187–188 (1989) (indicating a plaintiff "might seek to demonstrate that respondent's claim to have promoted a better qualified applicant was pretextual by showing that she was in fact better qualified than the person chosen for the position"), superseded on other grounds by 42 U. S. C. § 1981(b); *Texas Dept. of Community Affairs* v. *Burdine*, 450 U. S. 248, 259 (1981) ("The fact that a court may think that the employer misjudged the qualifications of the applicants does not in itself expose him to Title VII liability, although this may be probative of whether the employer's reasons are pretexts for discrimination"); cf. *Reeves* v. *Sanderson Plumbing Products, Inc.*, 530 U. S. 133, 148 (2000) ("[A] plaintiff's prima facie case, combined with sufficient evidence to find that the employer's asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated").

The visual image of words jumping off the page to slap you (presumably a court) in the face is unhelpful and imprecise as an elaboration of the standard for inferring pretext from superior qualifications. Federal courts, including the Court of Appeals for the Eleventh Circuit in a decision it cited here, have articulated various other standards, see, *e. g.*, *Cooper*, *supra*, at 732 (noting that "disparities in qualifications must be of such weight and significance that no reasonable person, in the exercise of impartial judgment, could have chosen the candidate selected over the plaintiff for the job in question" (internal quotation marks omitted)); *Raad* v. *Fairbanks North Star Borough School Dist.*, 323 F. 3d 1185, 1194 (CA9 2003) (holding that qualifications evidence standing alone may establish pretext where the plaintiff's qualifications are "'clearly superior'" to those of the selected

job applicant); *Aka* v. *Washington Hospital Center*, 156 F. 3d 1284, 1294 (CADC 1998) (en banc) (concluding the factfinder may infer pretext if "a reasonable employer would have found the plaintiff to be significantly better qualified for the job"), and in this case the Court of Appeals qualified its statement by suggesting that superior qualifications may be probative of pretext when combined with other evidence, see 129 Fed. Appx., at 533. This is not the occasion to define more precisely what standard should govern pretext claims based on superior qualifications. Today's decision, furthermore, should not be read to hold that petitioners' evidence necessarily showed pretext. The District Court concluded otherwise. It suffices to say here that some formulation other than the test the Court of Appeals articulated in this case would better ensure that trial courts reach consistent results.

The Court of Appeals should determine in the first instance whether the two aspects of its decision here determined to have been mistaken were essential to its holding. On these premises, certiorari is granted, the judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

LANCE ET AL. *v.* DENNIS, COLORADO SECRETARY OF STATE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

No. 05–555. Decided February 21, 2006

Several rounds of state-court litigation following the 2000 census culminated in a Colorado Supreme Court holding that the state legislature's congressional redistricting plan violated the State Constitution. Subsequently, plaintiffs, Colorado voters, filed a federal-court suit, seeking to require the secretary of state to use the legislature's plan because the State Constitution, as interpreted by the State Supreme Court, violated, *inter alia*, the Elections Clause of the U. S. Constitution. A three-judge District Court ruled that it had no jurisdiction to hear the claim because the *Rooker-Feldman* doctrine—which prevents lower federal courts from exercising jurisdiction over cases brought by "state-court losers" challenging "state-court judgments rendered before the district court proceedings commenced," *Exxon Mobil Corp.* v. *Saudi Basic Industries Corp.*, 544 U. S. 280, 284—applied to plaintiffs, who were in privity with the Colorado General Assembly, a losing party in the state case. In finding privity, the court reasoned that the preclusion principle that a State's citizens are deemed to be in privity with a state government that litigates a matter of public concern, see, *e. g.*, *Washington* v. *Washington State Commercial Passenger Fishing Vessel Assn.*, 443 U. S. 658, applied equally in the *Rooker-Feldman* context.

Held: The *Rooker-Feldman* doctrine does not bar plaintiffs from proceeding. The District Court erroneously conflated preclusion law with *Rooker-Feldman.* Whatever the impact of privity principles on preclusion rules, *Rooker-Feldman* is not simply preclusion by another name. It applies only in limited circumstances where a party in effect seeks to take an appeal of an unfavorable state-court decision to a lower federal court. Incorporation of preclusion principles into *Rooker-Feldman* risks turning that limited doctrine into a uniform *federal* rule governing the preclusive effect of state-court judgments, contrary to the Full Faith and Credit Act.

Jurisdiction noted; 379 F. Supp. 2d 1117, vacated and remanded.

PER CURIAM.

The *Rooker-Feldman* doctrine prevents the lower federal courts from exercising jurisdiction over cases brought by "state-court losers" challenging "state-court judgments rendered before the district court proceedings commenced." *Exxon Mobil Corp.* v. *Saudi Basic Industries Corp.*, 544 U. S. 280, 284 (2005). In this case, the District Court dismissed the plaintiffs' suit on the ground that they were in privity with a state-court loser. We hold that the *Rooker-Feldman* doctrine does not bar the plaintiffs from proceeding, and vacate the District Court's judgment.

I

This is the latest of several rounds of litigation involving the State of Colorado's congressional redistricting after the 2000 census, under which the State gained a seat in the House of Representatives. *Lance* v. *Davidson*, 379 F. Supp. 2d 1117, 1121 (2005). The first round began in May 2001. When the Colorado General Assembly failed to pass a redistricting plan for the 2002 congressional elections by the close of its regular session, a group of Colorado voters asked the state courts to create a plan. The courts agreed, drawing a new map reflecting the additional district. See *Beauprez* v. *Avalos*, 42 P. 3d 642 (Colo. 2002) (en banc). The 2002 elections were held using this court-ordered plan.

The General Assembly passed its own redistricting plan in the spring of 2003, prompting further litigation—this time about which electoral map was to govern, the legislature's or the courts'. Two suits were filed seeking to enjoin the legislature's plan: an original action in the Colorado Supreme Court by the state attorney general seeking to require the secretary of state to use the court-ordered plan, and a similar action brought in a lower state court by several proponents of the court-ordered plan. 379 F. Supp. 2d, at 1121. After the Colorado General Assembly intervened to defend its plan in the first case, the Colorado Supreme Court held that the

plan violated Article V, § 44, of the State Constitution, which the court construed to limit congressional redistricting to "once per decade." *People ex rel. Salazar* v. *Davidson*, 79 P. 3d 1221, 1231 (2003) (en banc). It therefore ordered the secretary of state to use the court-created plan. We denied certiorari. 541 U. S. 1093 (2004).

The second suit was removed to federal court by the defendants on the basis of the plaintiffs' federal-law claims. See *Keller* v. *Davidson*, 299 F. Supp. 2d 1171, 1175 (Colo. 2004). Once *Salazar* was decided by the Colorado Supreme Court, the viability of the defendants' counterclaims was the only remaining issue. A three-judge District Court held that the defendants were barred by the *Rooker-Feldman* doctrine from amending their counterclaims to assert additional challenges to the decision in *Salazar*. It also held that the defendants' original counterclaims, while not barred by the *Rooker-Feldman* doctrine, were precluded under Colorado law by the judgment in *Salazar*. Accordingly, the court dismissed the case.

Finally, this suit: Before the dismissal in *Keller*, several Colorado citizens unhappy with *Salazar* filed an action in the District Court seeking to require the secretary of state to use the legislature's plan.[1] The plaintiffs argued that Article V, § 44, of the Colorado Constitution, as interpreted by the Colorado Supreme Court, violated the Elections Clause of Article I, § 4, of the U. S. Constitution ("The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof"), and the First Amendment's Petition Clause ("Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances"). The defendants filed a motion to dismiss, ar-

[1] Although the secretary of state defended the legislature's plan in *Salazar*, following that decision she agreed to defend the court-ordered plan in this litigation and to allow the state attorney general to represent her. 379 F. Supp. 2d 1117, 1122, n. 3 (Colo. 2005).

guing that the *Rooker-Feldman* doctrine and Colorado preclusion law barred any attack on the Colorado Supreme Court's judgment in *Salazar* and that the plaintiffs had failed to state a valid Petition Clause claim.

The three-judge District Court ruled that under the *Rooker-Feldman* doctrine, it had no jurisdiction to hear the Elections Clause claim. 379 F. Supp. 2d, at 1127. The *Rooker-Feldman* doctrine, the court explained, includes three requirements: (1) "[T]he party against whom the doctrine is invoked must have actually been a party to the prior state-court judgment or have been in privity with such a party"; (2) "the claim raised in the federal suit must have been actually raised or inextricably intertwined with the state-court judgment"; and (3) "the federal claim must not be parallel to the state-court claim." 379 F. Supp. 2d, at 1124. The District Court found the first requirement satisfied on the ground that the citizen-plaintiffs were in privity with the Colorado General Assembly—a losing party in *Salazar*. Relying on our decisions in *Washington* v. *Washington State Commercial Passenger Fishing Vessel Assn.*, 443 U. S. 658 (1979), and *Tacoma* v. *Taxpayers of Tacoma*, 357 U. S. 320 (1958), the court stated that "when a state government litigates a matter of public concern, that state's citizens will be deemed to be in privity with the government for preclusion purposes." 379 F. Supp. 2d, at 1125. This principle, the court reasoned, applies "with equal force in the *Rooker-Feldman* context." *Ibid.* The court went on to conclude that the Elections Clause claim was actually raised in *Salazar*, or inextricably intertwined with that decision, and was not parallel to the claims presented in *Salazar*. As to the Petition Clause claim, the court ruled that neither *Rooker-Feldman* nor Colorado preclusion law prevented the court from proceeding to the merits, but that the plaintiffs failed to state a claim. 379 F. Supp. 2d, at 1132; see Fed. Rule Civ. Proc. 12(b)(6).

The plaintiffs appealed. See 28 U. S. C. § 1253. We now note jurisdiction, and address whether the *Rooker-Feldman*

doctrine bars the plaintiffs from proceeding because they were in privity with a party in *Salazar*. We conclude it does not, and vacate the judgment of the District Court.

II

This Court is vested, under 28 U. S. C. § 1257, with jurisdiction over appeals from final state-court judgments. We have held that this grant of jurisdiction is exclusive: "Review of such judgments may be had *only* in this Court." *District of Columbia Court of Appeals* v. *Feldman*, 460 U. S. 462, 482 (1983) (emphasis added); see also *Atlantic Coast Line R. Co.* v. *Locomotive Engineers*, 398 U. S. 281, 286 (1970); *Rooker* v. *Fidelity Trust Co.*, 263 U. S. 413, 416 (1923). Accordingly, under what has come to be known as the *Rooker-Feldman* doctrine, lower federal courts are precluded from exercising appellate jurisdiction over final state-court judgments.

The *Rooker-Feldman* doctrine takes its name from the only two cases in which we have applied this rule to find that a Federal District Court lacked jurisdiction. In *Rooker*, a party who had lost in the Indiana Supreme Court, and failed to obtain review in this Court, filed an action in Federal District Court challenging the constitutionality of the state-court judgment. We viewed the action as tantamount to an appeal of the Indiana Supreme Court decision, over which only this Court had jurisdiction, and said that the "aggrieved litigant cannot be permitted to do indirectly what he no longer can do directly." 263 U. S., at 416. *Feldman*, decided 60 years later, concerned slightly different circumstances, with similar results. The plaintiffs there had been refused admission to the District of Columbia bar by the District of Columbia Court of Appeals, and sought review of these decisions in Federal District Court. Our decision held that to the extent plaintiffs challenged the Court of Appeals decisions themselves—as opposed to the bar admission rules promulgated nonjudicially by the Court of Appeals—their sole avenue of review was with this Court. 460 U. S., at 476.

Neither *Rooker* nor *Feldman* elaborated a rationale for a wide-reaching bar on the jurisdiction of lower federal courts, and our cases since *Feldman* have tended to emphasize the narrowness of the *Rooker-Feldman* rule. See *Exxon Mobil*, 544 U. S., at 292 (*Rooker-Feldman* does not apply to parallel state and federal litigation); *Verizon Md. Inc.* v. *Public Serv. Comm'n of Md.*, 535 U. S. 635, 644, n. 3 (2002) (*Rooker-Feldman* "has no application to judicial review of executive action, including determinations made by a state administrative agency"); *Johnson* v. *De Grandy*, 512 U. S. 997, 1005–1006 (1994) (*Rooker-Feldman* does not bar actions by a nonparty to the earlier state suit). Indeed, during that period, "this Court has never applied *Rooker-Feldman* to dismiss an action for want of jurisdiction." *Exxon Mobil*, *supra*, at 287.

In *Exxon Mobil*, decided last Term, we warned that the lower courts have at times extended *Rooker-Feldman* "far beyond the contours of the *Rooker* and *Feldman* cases, overriding Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts, and superseding the ordinary application of preclusion law pursuant to 28 U. S. C. § 1738." 544 U. S., at 283. *Rooker-Feldman*, we explained, is a narrow doctrine, confined to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." 544 U. S., at 284.

Although we have never addressed the precise question before us, we have held *Rooker-Feldman* inapplicable where the party against whom the doctrine is invoked was not a party to the underlying state-court proceeding. See *De Grandy*, *supra*, at 1006. In *De Grandy*, the State of Florida sought, using *Rooker-Feldman*, to prevent the United States from bringing a challenge under § 2 of the Voting Rights Act of 1965 to the reapportionment of state electoral districts. The Florida Supreme Court, in an action initiated by the

state attorney general, had already declared the law valid under state and federal law. We held that *Rooker-Feldman* did not bar the United States from bringing its own action in federal court because the United States "was not a party in the state court," and "was in no position to ask this Court to review the state court's judgment and has not directly attacked it in this proceeding." 512 U. S., at 1006.

In the case before us, the plaintiffs were plainly not parties to the underlying state-court proceeding in *Salazar*. *Salazar* was an action brought by the state attorney general against the secretary of state, in which the Colorado General Assembly intervened. 79 P. 3d, at 1227. The four citizen-plaintiffs here did not participate in *Salazar*, and were not in a "position to ask this Court to review the state court's judgment." *De Grandy*, *supra*, at 1006; see *Karcher* v. *May*, 484 U. S. 72, 77 (1987) ("[T]he general rule [is] that one who is not a party or has not been treated as a party to a judgment has no right to appeal therefrom").

Although the District Court recognized the "general rule" that "*Rooker-Feldman* may not be invoked against a federal-court plaintiff who was not actually a party to the prior state-court judgment," 379 F. Supp. 2d, at 1123, it nevertheless followed Tenth Circuit precedent in allowing application of *Rooker-Feldman* against parties who were in privity with a party to the earlier state-court action, 379 F. Supp. 2d, at 1123 (citing *Kenmen Eng.* v. *Union*, 314 F. 3d 468, 481 (2002)). In determining whether privity existed, the court looked to cases concerning the preclusive effect that state courts are required to give federal-court judgments. 379 F. Supp. 2d, at 1125 (citing *Washington*, 443 U. S., at 693, n. 32; *Taxpayers of Tacoma*, 357 U. S., at 340–341). It concluded that—for *Rooker-Feldman* as well as preclusion purposes—"the outcome of the government's litigation over a matter of public concern binds its citizens." 379 F. Supp. 2d, at 1125.

The District Court erroneously conflated preclusion law with *Rooker-Feldman*. Whatever the impact of privity principles on preclusion rules, *Rooker-Feldman* is not simply preclusion by another name. The doctrine applies only in "limited circumstances," *Exxon Mobil*, *supra*, at 291, where a party in effect seeks to take an appeal of an unfavorable state-court decision to a lower federal court. The *Rooker-Feldman* doctrine does not bar actions by nonparties to the earlier state-court judgment simply because, for purposes of preclusion law, they could be considered in privity with a party to the judgment.[2]

A more expansive *Rooker-Feldman* rule would tend to supplant Congress' mandate, under the Full Faith and Credit Act, 28 U. S. C. § 1738, that federal courts "'give the same preclusive effect to state court judgments that those judgments would be given in the courts of the State from which the judgments emerged.'" *Baker* v. *General Motors Corp.*, 522 U. S. 222, 246 (1998) (quoting *Kremer* v. *Chemical Constr. Corp.*, 456 U. S. 461, 466 (1982)); see *Exxon Mobil*, *supra*, at 293. Congress has directed federal courts to look principally to *state* law in deciding what effect to give state-court judgments. Incorporation of preclusion principles into *Rooker-Feldman* risks turning that limited doctrine into a uniform *federal* rule governing the preclusive effect of state-court judgments, contrary to the Full Faith and Credit Act.[3]

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[2] In holding that *Rooker-Feldman* does not bar the plaintiffs here from proceeding, we need not address whether there are *any* circumstances, however limited, in which *Rooker-Feldman* may be applied against a party not named in an earlier state proceeding—*e. g.*, where an estate takes a *de facto* appeal in a district court of an earlier state decision involving the decedent.

[3] Our holding also disposes of the claim, which the District Court did not reach, that plaintiffs were barred by *Rooker-Feldman* because they were in privity with the secretary of state, the other losing party in *People ex rel. Salazar* v. *Davidson*, 79 P. 3d 1221 (Colo. 2003) (en banc). We do not pass on the District Court's resolution of the merits of the plaintiffs' Petition Clause claim.

* * *

The judgment of the District Court is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE GINSBURG, with whom JUSTICE SOUTER joins, concurring.

I agree in full with the Court's correction of the District Court's *Rooker-Feldman* error, and therefore join the Court's opinion. Although JUSTICE STEVENS has persuasively urged that issue preclusion warrants affirmance, see *post,* at 468–469 (dissenting opinion), that question of Colorado law seems to me best left for full airing and decision on remand.

JUSTICE STEVENS, dissenting.

Rooker and *Feldman* are strange bedfellows. *Rooker*, a unanimous, three-page opinion written by Justice Van Devanter in 1923, correctly applied the simple legal proposition that only this Court may exercise appellate jurisdiction over state-court judgments. See *Rooker* v. *Fidelity Trust Co.*, 263 U. S. 413, 416. *Feldman*, a nonunanimous, 25-page opinion written by Justice Brennan in 1983, was incorrectly decided and generated a plethora of confusion and debate among scholars and judges.* See *District of Columbia*

*See, *e. g.*, Comment, Collateral Estoppel and the *Rooker-Feldman* Doctrine: The Problematic Effect These Preclusion and Jurisdictional Principles Have on Bankruptcy Law, 21 Emory Bankr. Dev. J. 579 (2005); Comment, The *Rooker-Feldman* Doctrine: Toward a Workable Role, 149 U. Pa. L. Rev. 1555 (2001); Proctor, Wirth, & Spencer, *Rooker-Feldman* and the Jurisdictional Quandary, 2 Fla. Coastal L. J. 113 (2000); Rowley, Tenth Circuit Survey, The *Rooker-Feldman* Doctrine: A Mere Superfluous Nuance or a Vital Civil Procedure Doctrine? An Analysis of the Tenth Circuit's Decision in *Johnson v. Rodrigues*, 78 Denver U. L. Rev. 321 (2000); Symposium, The *Rooker-Feldman* Doctrine, 74 Notre Dame L. Rev. 1081 (1999); Pfander, An Intermediate Solution to State Sovereign Immunity: Federal Appellate Court Review of State-Court Judgments After *Semi-*

Court of Appeals v. *Feldman*, 460 U. S. 462; *id.*, at 488 (STEVENS, J., dissenting). Last Term, in JUSTICE GINSBURG's lucid opinion in *Exxon Mobil Corp.* v. *Saudi Basic Industries Corp.*, 544 U. S. 280 (2005), the Court finally interred the so-called "*Rooker-Feldman* doctrine." And today, the Court quite properly disapproves of the District Court's resuscitation of a doctrine that has produced nothing but mischief for 23 years.

My disagreement with the majority arises not from what it actually decides, but from what it fails to address. Even though the District Court mistakenly believed it had no jurisdiction to hear this matter, its judgment dismissing the cause with prejudice was correct and should be affirmed. See *Lance* v. *Davidson*, 379 F. Supp. 2d 1117, 1132 (Colo. 2005). The Elections Clause claim advanced by citizen-appellants in this case is the same as that advanced by their official representatives and decided by the Colorado Supreme Court in *People ex rel. Salazar* v. *Davidson*, 79 P. 3d 1221, 1231–1232 (2003). See 379 F. Supp. 2d, at 1126. As appellee points out, appellants' second question presented "is literally the same question presented by the General Assembly on *certiorari* review (and denied) in *Salazar*." Motion to Affirm 12. And, as a matter of Colorado law, appellants are clearly in privity with both then-Colorado Attorney General Salazar, who brought the suit on behalf of the people of Colorado, and the Colorado General Assem-

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nole Tribe, 46 UCLA L. Rev. 161 (1998); Recent Case, Ninth Circuit Ignores Principles of Federalism and the *Rooker-Feldman* Doctrine: *Bates v. Jones*, 131 F. 3d 843 (9th Cir. 1997) (en banc), 21 Harv. J. L. & Pub. Pol'y 881 (1998); Schmucker, Possible Application of the *Rooker-Feldman* Doctrine to State Agency Decisions: The Seventh Circuit's Opinion in *Van Harken v. City of Chicago*, 17 J. Nat. Assn. Admin. L. Judges 333 (1997); Casenote, *Texaco, Inc. v. Pennzoil Co.:* Beyond a Crude Analysis of the *Rooker-Feldman* Doctrine's Preclusion of Federal Jurisdiction, 41 U. Miami L. Rev. 627 (1987); Comment, *Texaco, Inc. v. Pennzoil Co.:* Some Thoughts on the Limits of Federal Court Power Over State Court Proceedings, 54 Ford. L. Rev. 767 (1986).

bly, which was also a party to the *Salazar* litigation. See *McNichols* v. *City & County of Denver*, 101 Colo. 316, 322, 74 P. 2d 99, 102 (1937) (en banc) (finding privity between taxpayers seeking to challenge the validity of a bond issue and a public official "charged with ministerial and executive duties in connection" with the issuance of the bonds who already brought such a suit); *Atchison, T. & S. F. R. Co.* v. *Board of County Comm'rs of County of Fremont*, 95 Colo. 435, 441, 37 P. 2d 761, 764 (1934) (en banc) (explaining that taxpayers are in privity with a political division of the State or its official representative if the case involves "a matter of general interest to all the people"). Thus, all of the requirements under Colorado law for issue preclusion have been met, and appellants' Elections Clause claim should therefore be dismissed. See generally 28 U. S. C. § 1738; *Michaelson* v. *Michaelson*, 884 P. 2d 695, 700–701 (Colo. 1994) (en banc) (setting forth requirements for issue preclusion under Colorado law).

Appellants' spurious Petition Clause claim was also properly dismissed by the District Court. See 379 F. Supp. 2d, at 1130–1132. Nothing in the Colorado Constitution prevents appellants from petitioning the Colorado General Assembly with their grievances, *id.*, at 1131; nothing in the United States Constitution guarantees that such a petition will be effective, *Smith* v. *Highway Employees*, 441 U. S. 463, 465 (1979) *(per curiam);* see also *Minnesota State Bd. for Community Colleges* v. *Knight*, 465 U. S. 271, 285 (1984). Moreover, as the District Court recognized, appellants' interpretation of the Petition Clause would lead to absurd results. See 379 F. Supp. 2d, at 1131–1132. As such, appellants' Petition Clause claim was correctly dismissed because it fails to state a claim upon which relief may be granted. See generally Fed. Rule Civ. Proc. 12(b)(6).

For the foregoing reasons I respectfully dissent.

Syllabus

DOMINO'S PIZZA, INC., ET AL. *v.* McDONALD

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 04–593. Argued December 6, 2005—Decided February 22, 2006

Respondent McDonald, a black man, is sole shareholder and president of JWM Investments, Inc. (JWM). He sued petitioners (collectively Domino's) under 42 U. S. C. § 1981, alleging, *inter alia*, that JWM and Domino's had entered into several contracts, that Domino's had broken those contracts because of racial animus toward McDonald, and that the breach had harmed McDonald personally by causing him to suffer monetary damages and damages for emotional injuries. The District Court granted Domino's motion to dismiss on the ground that McDonald could bring no § 1981 claim against Domino's because McDonald was party to no contract with Domino's. Reversing, the Ninth Circuit acknowledged that an injury suffered only by the corporation would not permit a shareholder to bring a § 1981 action, but concluded that when there are injuries distinct from those of the corporation, a nonparty like McDonald may nonetheless sue under § 1981.

Held: Consistent with this Court's case law, and as required by the statute's plain text, a plaintiff cannot state a § 1981 claim unless he has (or would have) rights under the existing (or proposed) contract that he wishes "to make and enforce." The statute, originally enacted as § 1 of the Civil Rights Act of 1866, now protects the equal right of "[a]ll persons" to "make and enforce contracts" without respect to race, § 1981(a), and defines "make and enforce contracts" to "includ[e] the making, performance, modification, and termination of contracts, and the enjoyment of all benefits . . . of the contractual relationship," § 1981(b). This cannot be read to give McDonald a cause of action because he "made and enforced contracts" for JWM as its agent. The right to "make contracts" protected by the 1866 legislation was not the insignificant right to act as an agent for someone else's contracting, but was rather the right, denied in some States to blacks, to give and receive *contractual rights* on one's own behalf. The statute's text makes this common meaning doubly clear by speaking of the right to "make *and enforce*" contracts. When the 1866 Act was drafted, a mere agent, who had no beneficial interest in a contract he made for his principal, could not generally sue on that contract. Any § 1981 claim, therefore, must initially identify an impaired "contractual relationship," § 1981(b), under which the plaintiff has rights. McDonald's complaint identifies a contractual

Syllabus

relationship between Domino's and JWM, but it is fundamental corporation and agency law that a corporation's shareholder and contracting officer has no rights and is exposed to no liability under the corporation's contracts. McDonald's proposed new test for § 1981 standing—whereby any person may sue if he is an "actual target" of discrimination and loses some benefit that would otherwise have inured to him had a contract not been impaired—ignores the explicit statutory requirement that the plaintiff be the "perso[n]" whose "right . . . to make and enforce contracts," § 1981(a), was "impair[ed]," § 1981(c), on account of race. *Shaare Tefila Congregation* v. *Cobb*, 481 U. S. 615, 618; *Runyon* v. *McCrary*, 427 U. S. 160, 168; and *Goodman* v. *Lukens Steel Co.*, 482 U. S. 656, 669, distinguished. McDonald's policy argument that many discriminatory acts will go unpunished unless his reading of § 1981 prevails goes beyond any expression of congressional intent and would produce satellite litigation of immense scope. Pp. 474–480.

107 Fed. Appx. 18, reversed.

SCALIA, J., delivered the opinion of the Court, in which all other Members joined, except ALITO, J., who took no part in the consideration or decision of the case.

Maureen E. Mahoney argued the cause for petitioners. With her on the briefs was *J. Scott Ballenger*.

Allen Lichtenstein argued the cause for respondent. With him on the brief were *David T. Goldberg*, *Eric Schnapper*, and *Pamela S. Karlan*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Alabama et al. by *Troy King*, Attorney General of Alabama, and *Kevin C. Newsom*, Solicitor General, by *Roberto J. Sánchez Ramos*, Secretary of Justice of Puerto Rico, and by the Attorneys General for their respective States as follows: *John W. Suthers* of Colorado, *Phill Kline* of Kansas, *Michael A. Cox* of Michigan, *Brian Sandoval* of Nevada, *Jim Petro* of Ohio, *Hardy Myers* of Oregon, *Paul G. Summers* of Tennessee, *Mark L. Shurtleff* of Utah, and *Rob McKenna* of Washington; for the Equal Employment Advisory Council et al. by *Ann Elizabeth Reesman*, *Stephen A. Bokat*, *Robin S. Conrad*, and *Robert J. Costagliola;* and for the Pacific Legal Foundation by *John H. Findley* and *Paul J. Beard II*.

Briefs of *amici curiae* urging affirmance were filed for the State of New York et al. by *Eliot Spitzer*, Attorney General of New York, *Caitlin J. Halligan*, Solicitor General, *Michelle Aronowitz*, Deputy Solicitor General, and *Shaifali Puri* and *Benjamin N. Gutman*, Assistant Solicitors

JUSTICE SCALIA delivered the opinion of the Court.

We decide whether a plaintiff who lacks any rights under an existing contractual relationship with the defendant, and who has not been prevented from entering into such a contractual relationship, may bring suit under Rev. Stat. § 1977, 42 U. S. C. § 1981.

I

Respondent John McDonald, a black man, is the sole shareholder and president of JWM Investments, Inc. (JWM), a corporation organized under Nevada law. He sued petitioners (collectively Domino's) in the District Court for the District of Nevada, claiming violations of § 1981. The allegations of the complaint, which for present purposes we assume to be true, were as follows.

JWM and Domino's entered into several contracts under which JWM was to construct four restaurants in the Las Vegas area, which would be leased to Domino's. After the first restaurant was completed, Domino's agent Debbie Pear refused to execute the estoppel certificates for JWM required by the contracts to facilitate JWM's bank financing. The relationship between the parties further deteriorated when Pear persuaded the Las Vegas Valley Water District to change its records to show Domino's, rather than JWM, as the owner of the land JWM had acquired for restaurant construction. McDonald had to go to the Water District to prove JWM's ownership of the land. In the course of what were apparently many and fruitless discussions between

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General, by *Kerry E. Drue*, Acting Attorney General of the Virgin Islands, and by the Attorneys General for their respective States as follows: *Lisa Madigan* of Illinois, *Thomas J. Miller* of Iowa, *Thomas F. Reilly* of Massachusetts, *Mike McGrath* of Montana, *William H. Sorrell* of Vermont, and *Peggy A. Lautenschlager* of Wisconsin; and for the Lawyers' Committee for Civil Rights Under Law et al. by *Thomas S. Martin*, *Barbara R. Arnwine*, *Sarah C. Crawford*, *Tricia G. Jefferson*, *Jennifer K. Brown*, *Theodore M. Shaw*, *Jacqueline A. Berrien*, *Norman J. Chachkin*, and *Robert Stroup*.

McDonald and Pear, McDonald "explained that he intended to see [the contracts] through to completion," even though Pear made clear that unless he agreed to back out of the contractual relationship, he would suffer serious consequences. App. to Pet. for Cert. 12–13. At one point Pear said to McDonald, "'I don't like dealing with you people anyway,'" refusing to specify what she meant by "'you people.'" *Id.*, at 13. Pear threatened to use Domino's attorneys to "bury" McDonald if he should sue. *Ibid.* The contracts between Domino's and JWM ultimately remained uncompleted.

At least in part because of the failed contracts, JWM filed for Chapter 11 bankruptcy. The trustee for JWM's bankruptcy estate initiated an adversary proceeding against Domino's for breach of contract. For whatever reason, the trustee chose not to assert a § 1981 claim alleging Domino's interference with JWM's right to make and enforce contracts. The breach-of-contract claim was settled for $45,000, and JWM gave Domino's a complete release. Consequently, no further claims arising out of the same episode could be pursued on JWM's behalf.[1] While the bankruptcy proceedings were still ongoing, McDonald filed the present § 1981 claim against Domino's in his personal capacity.

The gravamen of McDonald's complaint was that Domino's had broken its contracts with JWM because of racial animus toward McDonald, and that the breach had harmed McDonald personally by causing him "to suffer monetary damages and damages for pain and suffering, emotional distress, and humiliation." *Id.*, at 16. The complaint demanded that Domino's discharge its "obligations under the contracts which McDonald would have received, but for the discrimi-

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[1] Since JWM settled its claims and is not involved in this case, we have no occasion to determine whether, as a corporation, it *could* have brought suit under § 1981. We note, however, that the Courts of Appeals to have considered the issue have concluded that corporations may raise § 1981 claims. See, *e. g.*, *Hudson Valley Freedom Theater, Inc.* v. *Heimbach*, 671 F. 2d 702, 706 (CA2 1982).

natory practices, including, but not limited to front pay, back pay and other lost benefits," as well as "compensatory damages for pecuniary losses, including pain and suffering, emotional distress, mental anguish, and humiliation," and punitive damages. *Id.*, at 17.

Domino's filed a motion to dismiss the complaint for failure to state a claim. It asserted that McDonald could bring no § 1981 claim against Domino's because McDonald was party to no contract with Domino's. The District Court granted the motion. It noted that Domino's had "rel[ied] on the basic proposition that a corporation is a separate legal entity from its stockholders and officers," *id.*, at 6, and concluded that a corporation may have "standing to assert a § 1981 claim" but that "a president or sole shareholder may not step into the shoes of the corporation and assert that claim personally," *id.*, at 7 (citing *Guides, Ltd.* v. *Yarmouth Group Property Management, Inc.*, 295 F. 3d 1065, 1072–1073 (CA10 2002)).

The Court of Appeals for the Ninth Circuit reversed. It agreed that an "injury suffered only by the corporation" would not permit a shareholder to bring a § 1981 action. 107 Fed. Appx. 18 (2004). But relying on its earlier decision in *Gomez* v. *Alexian Bros. Hospital of San Jose*, 698 F. 2d 1019, 1021–1022 (1983), the Ninth Circuit concluded that when there are "injuries distinct from that of the corporation," a nonparty like McDonald may nonetheless bring suit under § 1981. 107 Fed. Appx., at 18–19. The Court of Appeals acknowledged that this approach set it apart from other Circuits. *Ibid.* We granted certiorari. 544 U. S. 998 (2005).

II

Among the many statutes that combat racial discrimination, § 1981, originally § 1 of the Civil Rights Act of 1866, 14 Stat. 27, has a specific function: It protects the equal right of "[a]ll persons within the jurisdiction of the United States" to "make and enforce contracts" without respect to race. 42

U. S. C. § 1981(a). The statute currently defines "make and enforce contracts" to "includ[e] the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." § 1981(b).

McDonald argues that the statute must be read to give him a cause of action because he "made and enforced contracts" for JWM. On his reading of the text, "[i]f Domino's refused to deal with the salesman for a pepperoni manufacturer because the salesman was black, that would violate the section 1981 right of the salesman to make a contract on behalf of his principal." Brief for Respondent 12. We think not. The right to "make contracts" guaranteed by the statute was not the insignificant right to act as an agent for someone else's contracting—any more than it was the insignificant right to act as amanuensis in writing out the agreement, and thus to "make" the contract in that sense. Rather, it was the right—denied in some States to blacks, as it was denied at common law to children—to give and receive *contractual rights* on one's own behalf. Common usage alone is enough to establish this, but the text of the statute makes this common meaning doubly clear by speaking of the right to "make *and enforce*" contracts. When the Civil Rights Act of 1866 was drafted, it was well known that "[i]n general a mere agent, who has no beneficial interest in a contract which he has made on behalf of his principal, cannot support an action thereon." 1 S. Livermore, A Treatise on the Law of Principal and Agent 215 (1818).[2]

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[2] McDonald's "pepperoni salesman" analogy is imprecise. It would better parallel the facts here if the analogy had been to a salesman unable to collect on accounts receivable because he was black, rather than to one who was unable to make the contract in the first place. The fundamental point, however, is the same: An individual seeking to make *or* enforce a contract under which he has rights will have a claim under 42 U. S. C. § 1981, while one seeking to make *or* enforce a contract under which someone else has rights will not.

Any claim brought under § 1981, therefore, must initially identify an impaired "contractual relationship," § 1981(b), under which the plaintiff has rights.[3] Such a contractual relationship need not already exist, because § 1981 protects the would-be contractor along with those who already have made contracts. We made this clear in *Runyon* v. *McCrary*, 427 U. S. 160 (1976), which subjected defendants to liability under § 1981 when, for racially motivated reasons, they prevented individuals who "*sought to enter* into contractual relationships" from doing so, *id.*, at 172 (emphasis added). We have never retreated from what should be obvious from reading the text of the statute: Section 1981 offers relief when racial discrimination blocks the creation of a contractual relationship, as well as when racial discrimination impairs an existing contractual relationship, so long as the plaintiff has or would have rights under the existing or proposed contractual relationship.

Absent the requirement that the plaintiff himself must have rights under the contractual relationship, § 1981 would become a strange remedial provision designed to fight racial animus in all of its noxious forms, but only if the animus and the hurt it produced were somehow connected to *somebody's* contract. We have never read the statute in this unbounded—or rather, *peculiarly* bounded—way. See, *e. g.*, *Patterson* v. *McLean Credit Union*, 491 U. S. 164, 176 (1989); *Burnett* v. *Grattan*, 468 U. S. 42, 44, n. 2 (1984); *General*

[3] We say "under which the plaintiff has rights" rather than "to which the plaintiff is a party" because we do not mean to exclude the possibility that a third-party intended beneficiary of a contract may have rights under § 1981. See, *e. g.*, 2 Restatement (Second) of Contracts § 304, p. 448 (1979) ("A promise in a contract creates a duty in the promisor to any intended beneficiary to perform the promise, and the intended beneficiary may enforce the duty"). Neither do we mean to affirm that possibility. See, *e. g.*, *Blessing* v. *Freestone*, 520 U. S. 329, 349 (1997) (SCALIA, J., concurring) ("Until relatively recent times, the third-party beneficiary was generally regarded as a stranger to the contract, and could not sue upon it"). The issue is not before us here, McDonald having made no such claim.

Building Contractors Assn., Inc. v. *Pennsylvania*, 458 U. S. 375, 396 (1982).

Nor has Congress indicated that we should. We held in *Patterson* that the prior version of § 1981 did "not apply to conduct which occurs after the formation of a contract and which does not interfere with the right to enforce established contract obligations." 491 U. S., at 171. In 1991, Congress amended the statute, see 105 Stat. 1071, adding § 1981(b), which defines "make and enforce" to bring postformation conduct, including discriminatory termination, within the scope of § 1981. See *Jones* v. *R. R. Donnelley & Sons Co.*, 541 U. S. 369, 383 (2004). But while Congress revised *Patterson*'s exclusion of postformation conduct, it let stand *Patterson*'s focus upon contract obligations. In fact, it positively reinforced that element by including in the new § 1981(b) reference to a "*contractual relationship.*"

McDonald's complaint does identify a contractual relationship, the one between Domino's and JWM. But it is fundamental corporation and agency law—indeed, it can be said to be the whole purpose of corporation and agency law—that the shareholder and contracting officer of a corporation has no rights and is exposed to no liability under the corporation's contracts. McDonald now makes light of the law of corporations and of agency—arguing, for instance, that because he "negotiated, signed, performed, and sought to enforce the contract," Domino's was wrong to "insist that [the contract] somehow was not his 'own.'" Brief for Respondent 4. This novel approach to the law contradicts McDonald's own experience. Domino's filed a proof of claim against JWM during its corporate bankruptcy; it did *not* proceed against McDonald personally. The corporate form and the rules of agency protected his personal assets, even though he "negotiated, signed, performed, and sought to enforce" contracts for JWM. The corporate form and the rules of agency similarly deny him rights under those contracts.

As an alternative to ignoring corporation and agency law, McDonald proposes a new test for § 1981 standing: Any person who is an "actual target" of discrimination, and who loses some benefit that would otherwise have inured to him had a contract not been impaired, may bring a suit. Under this theory, an individual is the "actual target" if he was the *reason* a defendant chose to impair its contractual relationship with a third party. McDonald's formulation simply ignores the explicit statutory requirement that the plaintiff be the "perso[n]" whose "right . . . to make and enforce contracts," § 1981(a), was "impair[ed]," § 1981(c), on account of race. It is just the statutory construction we have always rejected.

McDonald points to several of our prior cases involving plaintiffs whose status as contracting parties was unclear. Because they nonetheless prevailed, McDonald reasons, contractual privity cannot be a *sine qua non* of a § 1981 claim. In those cases, however, we did not discuss, much less decide, the privity question. In *Shaare Tefila Congregation* v. *Cobb*, 481 U. S. 615 (1987), we decided the narrow question whether Jews are a separate and protected race under § 1982. *Id.*, at 618. Similarly, in *Runyon*, *supra*, the arguments and the opinion addressed "only two basic questions: whether § 1981 prohibits private, commercially operated, nonsectarian schools from denying admission to prospective students because they are Negroes, and, if so, whether that federal law is constitutional as so applied." *Id.*, at 168 (footnote omitted). And in *Goodman* v. *Lukens Steel Co.*, 482 U. S. 656 (1987), we decided only the two contested issues: that § 1981 was subject to the state personal injury limitations period, *id.*, at 660–664, and that it violates Title VII of the Civil Rights Act of 1964 and § 1981 for a union to decline to press black employees' grievances under the governing collective-bargaining agreement, *id.*, at 669. "The Court often grants certiorari to decide particular legal issues while assuming without deciding the validity of antecedent propositions, and such assumptions—even on jurisdictional is-

sues—are not binding in future cases that directly raise the questions." *United States* v. *Verdugo-Urquidez*, 494 U. S. 259, 272 (1990) (citations omitted).

McDonald resorts finally to policy arguments. Unless his reading of the statute prevails, he warns, many discriminatory acts will go unpunished. Corporations, for instance, may choose not to bring suit for the racially motivated contract breach. It is not likely to be a common occurrence that the victim of a contract breach will forgo a potent available remedy. Injured parties "usually will be the best proponents of their own rights," *Singleton* v. *Wulff*, 428 U. S. 106, 114 (1976) (plurality opinion). And if and when "the holders of those rights . . . do not wish to assert them," *id.*, at 113–114, third parties are not normally entitled to step into their shoes. Moreover, § 1981 is only one of a multitude of civil rights statutes. Many of McDonald's hypothetical examples of unpunished discrimination would in fact be reachable under Title VII—or even under general criminal law. See, *e. g.*, Brief for Respondent 27 (concerning a scenario in which "Domino's officials had beaten up McDonald in an attempt to intimidate him"). The most important response, however, is that nothing in the text of § 1981 suggests that it was meant to provide an omnibus remedy for *all* racial injustice. If so, it would not have been limited to situations involving contracts. Trying to make it a cure-all not only goes beyond any expression of congressional intent but would produce satellite § 1981 litigation of immense scope. McDonald's theory would permit class actions by all the minority employees of the nonbreaching party to a broken contract (or, for that matter, minority employees of any company failing to receive a contract award), alleging that the reason for the breach (or for the refusal to contract) was racial animus against them.

Consistent with our prior case law, and as required by the plain text of the statute, we hold that a plaintiff cannot state a claim under § 1981 unless he has (or would have) rights under the existing (or proposed) contract that he wishes "to

make and enforce." Section 1981 plaintiffs must identify injuries flowing from a racially motivated breach of their own contractual relationship, not of someone else's. Because the District Court correctly recognized and applied these principles, the Ninth Circuit erred in reversing its judgment.[4]

* * *

The judgment of the Ninth Circuit is accordingly

Reversed.

JUSTICE ALITO took no part in the consideration or decision of this case.

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[4] McDonald also argues in his merits brief (for the first time) that we should affirm the Ninth Circuit's judgment because Domino's interfered with McDonald's own contracts with JWM. Counsel for McDonald asserted at oral argument that this contention is not a new argument (see this Court's Rule 15.2), but is a "sort of formulatio[n] of the same argument" that he had properly raised. Tr. of Oral Arg. 28. As such, it fails for the same reasons that the argument fails in its original incarnation. McDonald acknowledges that JWM did not breach any contractual obligation to him, see Brief for Respondent 44, and so any injury he may have received still derived from impairment of the contractual relationship between JWM and Domino's, under which McDonald has no rights.

Syllabus

DOLAN *v.* UNITED STATES POSTAL SERVICE ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 04–848. Argued November 7, 2005—Decided February 22, 2006

Under the Postal Reorganization Act, the Federal Tort Claims Act (FTCA) applies to "tort claims arising out of [Postal Service] activities." 39 U. S. C. § 409(c). The FTCA, in turn, waives sovereign immunity in certain cases involving negligence committed by federal employees in the course of their employment, 28 U. S. C. § 1346(b)(1), making the United States liable "in the same manner and to the same extent as a private individual under like circumstances," § 2674. However, the sovereign immunity bar remains as to, *inter alia*, "[a]ny claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter." § 2680(b). Consequently, the United States may be liable if postal workers commit torts under local law, but not for claims defined by the exception. Petitioner Dolan filed an FTCA suit against the Postal Service for injuries she suffered when she tripped and fell over mail left on her porch by postal employees. The District Court dismissed the suit, and the Third Circuit affirmed, both concluding that, although the FTCA generally waives sovereign immunity as to federal employees' torts, Dolan's claims were barred by § 2680(b)'s exception.

Held: Because the postal exception is inapplicable in this case, Dolan's claim may go forward. This Court assumes that under the applicable state law a person injured by tripping over a package or bundle negligently left by a private party would have a cause of action for damages. The question is whether § 2680(b)'s exception preserves sovereign immunity in such a case. Considered in isolation, "negligent transmission" could embrace a wide range of acts. However, interpretation of a word or phrase depends upon reading the whole statutory text, considering the statute's purpose and context. Here, both context and precedent require reading the phrase so that it does not go beyond negligence causing mail to be lost or to arrive late, in damaged condition, or at the wrong address. Starting with context, "negligent transmission" follows the terms "loss" and "miscarriage," which limit the reach of transmission. Mail is "lost" if it is destroyed or misplaced and "miscarried" if it goes to the wrong address. Since both terms refer to failings in the postal obligation to deliver mail in a timely manner to the right address, it would be odd if "negligent transmission" swept far more broadly to include injuries caused by postal employees but involving

Syllabus

neither failure to transmit mail nor damage to its contents. This interpretation is supported by *Kosak* v. *United States*, 465 U. S. 848, where this Court noted that one of the FTCA's purposes was to waive the Government's immunity from liability for injuries resulting from auto accidents involving postal trucks delivering—and thus "transmitting"—the mail. Nothing in the statutory text supports a distinction between negligent driving, which the Government claims relates only circumstantially to the mail, and Dolan's accident, which was caused by the mail itself. In both cases the postal employee acts negligently while transmitting mail. In addition, focusing on whether the mail itself caused the injury would yield anomalies, perhaps making liability turn on, *e. g.*, whether a mail sack was empty or full. It is more likely that Congress intended to retain immunity only for injuries arising because mail either fails to arrive or arrives late, in damaged condition, or at the wrong address, since such harms are primarily identified with the Postal Service's function of transporting mail. The Government claims that, given the Postal Service's vast operations, Congress must have intended to insulate delivery-related torts from liability, but § 2680(b)'s specificity indicates otherwise. Had Congress intended to preserve immunity for all delivery-related torts, it could have used sweeping language similar to that used in other FTCA exceptions, *e. g.*, § 2680(i). Furthermore, losses of the type for which immunity is retained under § 2680(b) are at least to some degree avoidable or compensable through postal registration and insurance. The Government raises the specter of frivolous slip-and-fall claims inundating the Postal Service, but that is a risk shared by any business making home deliveries. Finally, the general rule that a sovereign immunity waiver "will be strictly construed . . . in favor of the sovereign," *Lane* v. *Peña*, 518 U. S. 187, 192, is "unhelpful" in the FTCA context, where "unduly generous interpretations of the exceptions run the risk of defeating" the central purpose of the statute, *Kosak*, *supra*, at 853, n. 9, which "waives the Government's immunity from suit in sweeping language," *United States* v. *Yellow Cab Co.*, 340 U. S. 543, 547. Pp. 485–492.

377 F. 3d 285, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, SCALIA, SOUTER, GINSBURG, and BREYER, JJ., joined. THOMAS, J., filed a dissenting opinion, *post*, p. 492. ALITO, J., took no part in the consideration or decision of the case.

James R. Radmore argued the cause for petitioner. With him on the briefs was *Michael T. Kirkpatrick*.

Patricia A. Millett argued the cause for respondents. With her on the brief were *Solicitor General Clement*, *Deputy Solicitor General Kneedler*, *Robert D. Kamenshine*, *Mary Anne Gibbons*, *Lori J. Dym*, and *Stephan J. Boardman.**

JUSTICE KENNEDY delivered the opinion of the Court.

Each day, according to the Government's submissions here, the United States Postal Service delivers some 660 million pieces of mail to as many as 142 million delivery points. This case involves one such delivery point—petitioner Barbara Dolan's porch—where mail left by postal employees allegedly caused her to trip and fall. Claiming injuries as a result, Dolan filed a claim for administrative relief from the Postal Service. When her claim was denied, she and her husband (whose claim for loss of consortium the Dolans later conceded was barred for failure to exhaust administrative remedies) filed suit in the United States District Court for the Eastern District of Pennsylvania, asserting that the Postal Service's negligent placement of mail at their home subjected the Government to liability under the Federal Tort Claims Act (FTCA), 28 U. S. C. §§ 1346(b)(1), 2674. The District Court dismissed Dolan's suit, and the Court of Appeals for the Third Circuit affirmed, 377 F. 3d 285 (2004). Both courts concluded that, although the FTCA generally waives sovereign immunity as to federal employees' torts, Dolan's claims were barred by an exception to that waiver, 28 U. S. C. § 2680(b). We disagree and hold that Dolan's suit may proceed.

I

Under the Postal Reorganization Act, 39 U. S. C. § 101 *et seq.*, the Postal Service is "an independent establishment of the executive branch of the Government of the United

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**Harold Krent*, *Daniel J. Popeo*, and *Paul D. Kamenar* filed a brief for the Washington Legal Foundation et al. as *amici curiae* urging reversal.

States," § 201. Holding a monopoly over carriage of letters, the Postal Service has "significant governmental powers," including the power of eminent domain, the authority to make searches and seizures in the enforcement of laws protecting the mails, the authority to promulgate postal regulations, and, subject to the Secretary of State's supervision, the power to enter international postal agreements. See *Postal Service* v. *Flamingo Industries (USA) Ltd.*, 540 U. S. 736, 741 (2004) (discussing 39 U. S. C. §§ 101, 401, 407, 601–606). Consistent with this status, the Postal Service enjoys federal sovereign immunity absent a waiver. See *ibid.*; cf. *FDIC* v. *Meyer*, 510 U. S. 471, 475 (1994) ("Absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit").

Although the Postal Reorganization Act generally "waives the immunity of the Postal Service from suit by giving it the power 'to sue and be sued in its official name,'" *Flamingo Industries*, *supra*, at 741 (quoting 39 U. S. C. § 401(1)), the statute also provides that the FTCA "shall apply to tort claims arising out of activities of the Postal Service," § 409(c).

The FTCA, in turn, waives sovereign immunity in two different sections of the United States Code. The first confers federal-court jurisdiction in a defined category of cases involving negligence committed by federal employees in the course of their employment. This jurisdictional grant covers:

> "claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U. S. C. § 1346(b)(1).

As to claims falling within this jurisdictional grant, the FTCA, in a second provision, makes the United States liable "in the same manner and to the same extent as a private individual under like circumstances," though not "for interest prior to judgment or for punitive damages." § 2674; see generally *United States* v. *Olson*, *ante*, at 44.

The FTCA qualifies its waiver of sovereign immunity for certain categories of claims (13 in all). If one of the exceptions applies, the bar of sovereign immunity remains. The 13 categories of exempted claims are set forth in 28 U. S. C. § 2680, and the relevant subsection for our purposes, pertaining to postal operations, is § 2680(b). It states:

> "The provisions of this chapter and section 1346(b) of this title shall not apply to . . . [a]ny claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter."

As a consequence, the United States may be liable if postal employees commit torts under local law, but not for claims defined by this exception.

This was the provision relied upon by the District Court and Court of Appeals to dismiss Dolan's suit. The Court of Appeals' decision created a conflict with a decision of the Court of Appeals for the Second Circuit. See *Raila* v. *United States*, 355 F. 3d 118, 121 (2004). We granted certiorari. 544 U. S. 998 (2005).

II

We assume that under the applicable state law a person injured by tripping over a package or bundle of papers negligently left on the porch of a residence by a private party would have a cause of action for damages. See 28 U. S. C. §§ 1346(b)(1), 2674. The question is whether, when mail left by the Postal Service causes the slip and fall, the § 2680(b) exception for "loss, miscarriage, or negligent transmission of letters or postal matter" preserves sovereign immunity despite the FTCA's more general statements of waiver.

If considered in isolation, the phrase "negligent transmission" could embrace a wide range of negligent acts committed by the Postal Service in the course of delivering mail, including creation of slip-and-fall hazards from leaving packets and parcels on the porch of a residence. After all, in ordinary meaning and usage, transmission of the mail is not complete until it arrives at the destination. See, *e. g.*, Webster's Third New International Dictionary 2429 (1971) (defining "transmission" as "an act, process, or instance of transmitting" and "transmit" as "to cause to go or be conveyed to another person or place"). In large part this inference—transmission includes delivery—led the District Court and Court of Appeals to rule for the Government. See 377 F. 3d, at 288; App. to Pet. for Cert. 5a–6a. The definition of words in isolation, however, is not necessarily controlling in statutory construction. A word in a statute may or may not extend to the outer limits of its definitional possibilities. Interpretation of a word or phrase depends upon reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis. Here, we conclude both context and precedent require a narrower reading, so that "negligent transmission" does not go beyond negligence causing mail to be lost or to arrive late, in damaged condition, or at the wrong address. See *Raila*, *supra*, at 121 (holding the postal exception covers "damages and delay of the postal material itself and consequential damages therefrom"). The phrase does not comprehend all negligence occurring in the course of mail delivery.

Starting with context, the words "negligent transmission" in § 2680(b) follow two other terms, "loss" and "miscarriage." Those terms, we think, limit the reach of "transmission." "[A] word is known by the company it keeps"—a rule that "is often wisely applied where a word is capable of many meanings in order to avoid the giving of unintended breadth to the Acts of Congress." *Jarecki* v. *G. D. Searle & Co.*, 367

U. S. 303, 307 (1961); see also *Dole* v. *Steelworkers*, 494 U. S. 26, 36 (1990) ("[W]ords grouped in a list should be given related meaning" (internal quotation marks omitted)). Here, as both parties acknowledge, mail is "lost" if it is destroyed or misplaced and "miscarried" if it goes to the wrong address. Since both those terms refer to failings in the postal obligation to deliver mail in a timely manner to the right address, it would be odd if "negligent transmission" swept far more broadly to include injuries like those alleged here—injuries that happen to be caused by postal employees but involve neither failure to transmit mail nor damage to its contents.

Our interpretation would be less secure were it not for a precedent we deem to have decisive weight here. We refer to *Kosak* v. *United States*, 465 U. S. 848 (1984). In *Kosak*, an art collector alleged in an FTCA suit that artworks he owned were damaged when the United States Customs Service seized and detained them. *Id.*, at 849–850. The question was whether the Government retained immunity based on § 2680(c), a provision that has since been amended but at the time covered:

> "[a]ny claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise or any other law-enforcement officer." *Id.*, at 852, n. 6 (internal quotation marks omitted).

In its opinion concluding the exception did apply and thus that the United States retained sovereign immunity, the Court gave specific consideration to the postal exception. In a part of the opinion central to its holding, the Court contrasted what it called the "generality of § 2680(c)" with the "specificity of § 2680(b)," *id.*, at 855. The Court observed:

> "One of the principal purposes of the Federal Tort Claims Act was to waive the Government's immunity from liability for injuries resulting from auto accidents

> in which employees of the Postal System were at fault. In order to ensure that § 2680(b), which governs torts committed by mailmen, did not have the effect of barring precisely the sort of suit that Congress was most concerned to authorize, the draftsmen of the provision carefully delineated the types of misconduct for which the Government was not assuming financial responsibility—namely, 'the loss, miscarriage, or negligent transmission of letters or postal matter'—thereby excluding, by implication, negligent handling of motor vehicles." *Ibid.* (footnote omitted).

In the present case neither party suggests *Kosak*'s conclusion regarding negligent operation of postal motor vehicles should be ignored as dictum. In light of *Kosak*'s discussion, we cannot interpret the phrase "negligent transmission" in § 2680(b) to cover all negligence in the course of mail delivery. Although postal trucks may well be delivering—and thus transmitting—mail when they collide with other vehicles, *Kosak* indicates the United States, nonetheless, retains no immunity.

Seeking to distinguish postal auto accidents from Dolan's fall, the Government argues that negligent driving relates only circumstantially to the mail, whereas Dolan's accident was caused by the mail itself. Nothing in the statutory text supports this distinction. Quite the contrary, if placing mail so as to create a slip-and-fall risk constitutes "negligent transmission," the same should be true of driving postal trucks in a manner that endangers others on the road. In both cases the postal employee acts negligently while transmitting mail. In addition, as the Second Circuit recognized and as the Government acknowledged at oral argument, focusing on whether the mail itself caused the injury would yield anomalies, perhaps making liability turn on whether a mail sack causing a slip-and-fall was empty or full, or whether a pedestrian sideswiped by a passing truck was hit

by the side-view mirror or a dangling parcel. See *Raila*, 355 F. 3d, at 122–123.

We think it more likely that Congress intended to retain immunity, as a general rule, only for injuries arising, directly or consequentially, because mail either fails to arrive at all or arrives late, in damaged condition, or at the wrong address. Illustrative instances of the exception's operation, then, would be personal or financial harms arising from nondelivery or late delivery of sensitive materials or information (*e. g.*, medicines or a mortgage foreclosure notice) or from negligent handling of a mailed parcel (*e. g.*, shattering of shipped china). Such harms, after all, are the sort primarily identified with the Postal Service's function of transporting mail throughout the United States.

Resisting this conclusion, the Government emphasizes the Postal Service's vast operations—the 660 million daily mailings and 142 million delivery points mentioned at the outset. See Brief for Respondents 36. As delivery to mailboxes and doorsteps is essential to this nationwide undertaking, Congress must have intended, the Government asserts, to insulate delivery-related torts from liability. If, however, doorstep delivery is essential to the postal enterprise, then driving postal trucks is no less so. And in any event, while it is true "[t]he § 2680 exceptions are designed to protect certain important governmental functions and prerogatives from disruption," *Molzof* v. *United States*, 502 U. S. 301, 311 (1992), the specificity of § 2680(b), see *Kosak*, *supra*, at 855, indicates that Congress did not intend to immunize all postal activities.

Other FTCA exceptions paint with a far broader brush. They cover, for example: "[a]ny claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system," 28 U. S. C. § 2680(i); "[a]ny claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war," § 2680(j); "[a]ny claim arising in a foreign country," § 2680(k); "[a]ny

claim arising from the activities of the Tennessee Valley Authority," § 2680(*l*), or "the Panama Canal Company," § 2680(m); and "[a]ny claim arising from the activities of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives," § 2680(n). Had Congress intended to preserve immunity for all torts related to postal delivery—torts including hazardous mail placement at customer homes—it could have used similarly sweeping language in § 2680(b). By instead "carefully delineat[ing]" just three types of harm (loss, miscarriage, and negligent transmission), see *Kosak*, 465 U. S., at 855, Congress expressed the intent to immunize only a subset of postal wrongdoing, not all torts committed in the course of mail delivery.

Further supporting our interpretation, losses of the type for which immunity is retained under § 2680(b) are at least to some degree avoidable or compensable through postal registration and insurance. See United States Postal Service, Mailing Standards, Domestic Mail Manual 609.1.1 (Nov. 10, 2005), available at http://pe.usps.gov/text/dmm300/609.htm (as visited Jan. 9, 2006, and available in Clerk of Court's case file) (allowing indemnity claims for loss or damage of "insured, collect on delivery (COD), registered with postal insurance, or Express Mail"); 39 CFR § 111.1 (2005) (incorporating by reference the Domestic Mail Manual). The same was true when Congress enacted the FTCA in 1946. See 39 U. S. C. § 245 (1940 ed. and Supp. V) (setting rates and conditions for mail insurance); § 381 (1946 ed.) ("For the greater security of valuable mail matter the Postmaster General may establish a uniform system of registration, and as a part of such system he may provide rules under which the senders or owners of any registered matter shall be indemnified for loss, rifling, or damage thereof in the mails . . ."). As *Kosak* explains, one purpose of the FTCA exceptions was to avoid "extending the coverage of the Act to suits for which adequate remedies were already available," 465 U. S., at 858—an objective consistent with retain-

ing immunity as to claims of mail damage or delay covered by postal registration and insurance. While the Government suggests other injuries falling outside the FTCA are also subject to administrative relief, even assuming that is true, the provision the Government cites permits only discretionary relief, not an automatic remedy like postal insurance. See 39 U. S. C. § 2603 (indicating the Postal Service "may adjust and settle" personal-injury and property-damage claims "not cognizable" under the FTCA's administrative relief provision); see also 31 U. S. C. § 224c (1940 ed.) (indicating that "[w]hen any damage is done to person or property by or through the operation of the Post Office Department . . . the Postmaster General is invested with power to adjust and settle any claim for such damage when his award for such damage in any case does not exceed $500"); Legislative Reorganization Act of 1946, § 424(a), 60 Stat. 846–847 (repealing § 224c as to negligence claims cognizable under the FTCA).

The Government raises the specter of frivolous slip-and-fall claims inundating the Postal Service. It is true that, in addition to other considerations we have identified, *Kosak* describes "avoiding exposure of the United States to liability for excessive or fraudulent claims" as a principal aim of the FTCA exceptions, 465 U. S., at 858. Slip-and-fall liability, however, to the extent state tort law imposes it, is a risk shared by any business that makes home deliveries. Given that "negligent transmission," viewed in context and in light of *Kosak*, cannot sweep as broadly as the Government claims, ordinary protections against frivolous litigation must suffice here, just as they do in the case of motor vehicle collisions.

Finally, it should be noted that this case does not implicate the general rule that "a waiver of the Government's sovereign immunity will be strictly construed, in terms of its scope, in favor of the sovereign," *Lane* v. *Peña*, 518 U. S. 187, 192 (1996). As *Kosak* explains, this principle is "unhelpful"

in the FTCA context, where "unduly generous interpretations of the exceptions run the risk of defeating the central purpose of the statute," 465 U. S., at 853, n. 9, which "waives the Government's immunity from suit in sweeping language," *United States* v. *Yellow Cab Co.*, 340 U. S. 543, 547 (1951); see also *United States* v. *Nordic Village, Inc.*, 503 U. S. 30, 34 (1992) (observing "[w]e have on occasion narrowly construed exceptions to waivers of sovereign immunity where that was consistent with Congress' clear intent, as in the context of the 'sweeping language' of the [FTCA]" (quoting *Yellow Cab Co.*, *supra*, at 547)). Hence, "the proper objective of a court attempting to construe one of the subsections of 28 U. S. C. § 2680 is to identify 'those circumstances which are within the words and reason of the exception'—no less and no more." *Kosak*, *supra*, at 853, n. 9 (quoting *Dalehite* v. *United States*, 346 U. S. 15, 31 (1953)). Having made that inquiry here, we conclude Dolan's claims fall outside § 2680(b).

* * *

The postal exception is inapplicable, and Dolan's claim falls within the FTCA's general waiver of federal sovereign immunity. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE ALITO took no part in the consideration or decision of this case.

JUSTICE THOMAS, dissenting.

The Federal Tort Claims Act (FTCA) waives the Government's sovereign immunity for civil suits seeking money damages

> "for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting

> within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred," 28 U. S. C. § 1346(b)(1),

save several exceptions found in § 2680. As relevant here, Congress reserved to the Government its sovereign immunity respecting "[a]ny claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter." § 2680(b) (postal exception).

Petitioner Barbara Dolan claims to have suffered personal injuries when she tripped over letters, packages, and periodicals that an employee of the United States Postal Service (Postal Service) negligently left on her porch. Today, the Court concludes that Dolan's lawsuit may proceed because her claim does not fall within the exception. I disagree. Dolan's claim arises out of the Postal Service's "negligent transmission" of mail and is thus covered by the terms of the postal exception. Even if the exception is ambiguous, this Court's cases require that ambiguities as to the scope of the Government's waiver of immunity be resolved in its favor. Accordingly, I respectfully dissent.

I

The text of the postal exception, and every term therein, should be ascribed its ordinary meaning. See *FDIC* v. *Meyer*, 510 U. S. 471, 477 (1994) (noting that we interpret a statutory term in accordance with its ordinary meaning when that term is not defined in the statute). The term in controversy here is "negligent transmission." The crux of my disagreement with the majority is its failure to assign the term "transmission" its plain meaning. That term is defined as the "[a]ct, operation, or process, of transmitting." Webster's New International Dictionary 2692 (2d ed. 1934, as republished 1945). "Transmit" is defined as, *inter alia*, "[t]o send or transfer from one person or place to another; to

forward by rail, post, wire, etc., . . . [t]o cause . . . to pass or be conveyed." *Id.*, at 2692–2693. There is no cause to conclude that Congress was unaware of the ordinary definition of the terms "transmission" and "transmit" when it enacted the FTCA and the postal exception in 1946. Nor is there textual indication that Congress intended to deviate from the ordinary meaning of these terms.[1] Accordingly, I would interpret the term "transmission" consistent with its ordinary meaning, see *ante*, at 486, and conclude that the postal exception exempts the Government from liability for *any* claim arising out of the negligent delivery of the mail to a Postal Service patron, including Dolan's slip-and-fall claim.

Rejecting the "ordinary meaning and usage" of "negligent transmission," the majority concludes that the term covers only injury arising "directly or consequentially" from "negligence causing mail to be lost or to arrive late, in damaged condition, or at the wrong address." *Ante*, at 486, 489. Thus, in the majority's view, "negligent transmission" covers direct injury to the mail as well as personal injury arising from injury to the mail, but does not cover personal injury that does not arise from damage to the mail. For example, in the majority's view, if a mail carrier negligently drops a box containing glassware on a patron's doorstep, causing the contents to shatter, and the patron later injures himself while attempting to handle the shards of glass, the postal exception would bar a claim for damages for the destroyed item as well as a related claim for personal injury. That

[1] In fact, this reading is supported by Congress' routine definitional use of the terms "transmission" and "transmit" in both criminal and civil postal statutes to refer to the handling, processing, and delivery of mail to a final destination. See, *e. g.*, Act of Mar. 3, 1845, ch. 43, § 6, 5 Stat. 734 (respecting deputy postmasters authorized "to transmit to any person or place" official letters or packages free of charge); 18 U. S. C. §§ 1696(b) and (c) (referring to unlawful "transmission" of letters); §§ 1716(b), (c), (d), and (e) (regulating and proscribing "transmission in the mails" of dangerous items (*e. g.*, medicines) except when the "transmission" is "to," "from," or "between" specified individuals or entities).

view is correct, as far as it goes. However, under the majority's view, if the mail carrier negligently places a heap of mail on a patron's front porch and the patron trips and falls over the mail as he walks out of his front door, his personal injury claim may go forward. There is no basis in the text for the line drawn by the majority. Indeed, the majority's view is at odds with the broad language of the postal exception, which expressly applies to "*[a]ny claim* arising out of . . . negligent transmission of letters or postal matter." § 2680(b) (emphasis added).

The majority rationalizes its view by concluding that the terms "loss" and "miscarriage" necessarily limit the term "transmission." *Ante,* at 486. Applying the rule of *noscitur a sociis*—that a word is known by the company it keeps—the majority reasons that because both "loss" and "miscarriage" refer to "failings in the postal obligation to deliver mail in a timely manner to the right address, it would be odd if 'negligent transmission' swept far more broadly." *Ante,* at 487. But there is nothing "odd" about interpreting the term "negligent transmission" to encompass more ground than the decidedly narrower terms "loss" and "miscarriage."

The rule of *noscitur a sociis* is intended to prevent ascribing to one word a meaning so expansive that it conflicts with other terms of the provision in a manner that gives "'unintended breadth to the Acts of Congress.'" *Gustafson* v. *Alloyd Co.,* 513 U. S. 561, 575 (1995) (quoting *Jarecki* v. *G. D. Searle & Co.,* 367 U. S. 303, 307 (1961)). That rule, however, "does not require [the Court] to construe every term in a series narrowly because of the meaning given to just one of the terms," where, as here, nothing in the text demands a more limited construction. *Gustafson, supra,* at 586 (THOMAS, J., dissenting) (emphasis deleted). Indeed, to read Congress' use of narrow terms in a list as limiting the meaning of broad terms in the same list "would defy common sense; doing so would prevent Congress from giving effect to expansive words in a list whenever they are combined

with one word with a more restricted meaning." 513 U. S., at 587.

Nor does this Court's opinion in *Kosak* v. *United States*, 465 U. S. 848 (1984), support the majority's narrow construction of the postal exception. In *Kosak*, this Court suggested that the postal exception does not apply to suits arising from the negligent handling of motor vehicles by Postal Service employees. Specifically, the Court stated:

> "One of the principal purposes of the [FTCA] was to waive the Government's immunity from liability for injuries resulting from *auto accidents* . . . . In order to ensure that § 2680(b) . . . did not have the effect of barring precisely the sort of suit that Congress was most concerned to authorize, the draftsmen of the provision carefully delineated the types of misconduct for which the Government was not assuming financial responsibility—namely, 'the loss, miscarriage, *or* negligent transmission of letters or postal matter' . . . ." *Id.*, at 855 (emphasis added).

That observation has no import beyond the recognition that the postal exception—whatever its scope may be—was carefully crafted so as not to undermine an undisputed principal purpose of the FTCA—to waive the Government's immunity for injuries arising from *auto accidents.* It says nothing further about the acts Congress intended to capture when enacting the postal exception, and, thus, is unremarkable for purposes of construing the exception.[2]

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[2] In an attempt to reconcile *Kosak* with this case, the majority argues that "one purpose of the FTCA exceptions was to avoid 'extending the coverage of the Act to suits for which adequate remedies were already available,' . . . an objective consistent with retaining immunity as to [some] claims of mail damage or delay covered by postal registration and insurance." *Ante*, at 490–491 (quoting *Kosak*, 465 U. S., at 858). The majority, however, ignores the fact that, in most cases, such insurance covers only the sender, not the recipient, in which case recipients have no means of obtaining compensation for loss or damage to money, gifts, heirlooms,

Even if *Kosak* does inform the outcome in this case, it does not support the majority's interpretation of "negligent transmission." As discussed above, the majority does not purport to limit the type of negligent *act* that may fall under the postal exception; rather it limits the scope of the exception based on the type of *consequence* that the negligent act causes (damage to the mail, late delivery, etc.). But *Kosak*'s exclusion of the *act* of negligent driving—regardless of whether the *consequence* of that act is damage to the mail or injury to a person—from the scope of the postal exception implies, if anything, that the *Kosak* Court envisioned discrete *acts* as being covered, independently of the nature of their consequences. See *ibid.* (excluding "negligent handling of motor vehicles" from the "types of misconduct" for which liability is barred by the postal exception). As such, *Kosak* does not support an interpretation of "negligent transmission" based upon the type of injury that is caused by the Postal Service's negligent handling of the mail.

II

Assuming that the postal exception is ambiguous, as the majority suggests, see *ante*, at 486–487, settled principles

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valuable papers, delayed medicine, or time-sensitive documents. See United States Postal Service, Mailing Standards, Domestic Mail Manual 609.4.3(f) and (ae), pp. 1129, 1130 (rev. Jan. 6, 2005). The majority's justification also fails to take into account the fact that postal patrons cannot insure against the loss of items of sentimental value. See 609.4.3, generally. With a more accurate depiction of registration and insurance coverage in hand, the Government's claim that, like injuries arising from negligent transmission of mail, other injuries outside the reach of the FTCA are also amenable to administrative relief is not so easily dismissed. *Ante*, at 491. Specifically, 39 U. S. C. § 2603, as the Government argues, provides for the settlement of claims, within the discretion of the United States, for injuries caused by the Postal Service that are not otherwise cognizable, which would include claims like Dolan's. The discretionary nature of such settlements does not alter the fact that § 2603 undermines the Court's position that the purported unavailability of administrative recovery for claims such as Dolan's supports its proposed interpretation.

governing the interpretation of waivers of sovereign immunity require us to rule in favor of the Government.

A court may only exercise jurisdiction over the Government pursuant to "a clear statement from the United States waiving sovereign immunity . . . together with a claim falling within the terms of the waiver." *United States* v. *White Mountain Apache Tribe*, 537 U. S. 465, 472 (2003). "[A] waiver of the Government's sovereign immunity will be strictly construed, in terms of its scope, in favor of the sovereign." *Lane* v. *Peña*, 518 U. S. 187, 192 (1996). These settled legal principles apply not only to the interpretation of the scope of the Government's waiver of immunity, but also to the interpretation of the scope of any exceptions to that waiver. See *ibid.* (explaining that, consistent with rules of construction respecting waivers of sovereign immunity, ambiguities created by conditions on and qualifications of the waiver must be strictly construed in favor of sovereign immunity).

Thus, the majority is incorrect to conclude that "this case does not implicate the general rule that 'a waiver of the Government's sovereign immunity will be strictly construed, in terms of its scope, in favor of the sovereign.'" *Ante*, at 491. As this case clearly illustrates, the Government's amenability to suit can only be ascertained after construing both the waiver of immunity and its exceptions. The well-established rationale for construing a waiver in favor of the sovereign's immunity, thus, applies with equal force to the construction of an exception to that waiver. Accordingly, even if I were to conclude that the majority's interpretation of "negligent transmission" were as plausible as my own, I would still resolve this case in favor of the Government's sovereign immunity as mandated by our canons of construction.[3]

[3] There is no canon of construction that counsels in favor of construing the ambiguity against the Government. Although we have "on occasion narrowly construed exceptions to waivers of sovereign immunity," we

* * *

For these reasons, I would hold that a tort claim for personal injury arising out of negligent delivery of mail to a postal patron is barred by 28 U. S. C. § 2680(b), the postal exception. Accordingly, I would affirm the judgment of the Court of Appeals.

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have done so in cases where Congress plainly waived the Government's immunity for the particular claim at issue, and the only question before the Court was the permissibility of the form of the suit. *United States* v. *Nordic Village, Inc.*, 503 U. S. 30, 34 (1992) (citing *United States* v. *Yellow Cab Co.*, 340 U. S. 543 (1951), and *United States* v. *Aetna Casualty & Surety Co.*, 338 U. S. 366 (1949)). In cases where, as here, the question whether a particular claim is subject to an exception is disputed, we have construed FTCA exceptions broadly to preclude claims for actions Congress intended to except from the FTCA's general waiver of immunity. See *Dalehite* v. *United States*, 346 U. S. 15, 31 (1953); *United States* v. *Orleans*, 425 U. S. 807 (1976); *Kosak* v. *United States*, 465 U. S. 848 (1984).

Syllabus

ARBAUGH *v.* Y & H CORP., DBA THE MOONLIGHT CAFE

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 04–944. Argued January 11, 2006—Decided February 22, 2006

Title VII of the Civil Rights Act of 1964 makes it unlawful for "an employer . . . to discriminate against any [employee] with respect to . . . sex," 42 U. S. C. § 2000e–2(a)(1), and defines "employer" as "a person . . . who has fifteen or more employees," § 2000e(b). The Act's jurisdictional provision empowers federal courts to adjudicate civil actions "brought under" Title VII. § 2000e–5(f)(3). Title VII actions also fit within the Judicial Code's grant of subject-matter jurisdiction to federal courts over actions "arising under" federal law. 28 U. S. C. § 1331. At the time Title VII was enacted, § 1331 contained a $10,000 amount-in-controversy threshold, which left Title VII claims below that amount uncovered. Section 2000e–5(f)(3) assured that the amount-in-controversy limitation would not impede a Title VII complainant's access to a federal forum. Since 1980, when Congress amended § 1331 to eliminate the amount-in-controversy threshold, § 2000e–5(f)(3) has served simply to underscore Congress' intention to provide a federal forum for Title VII claims. Because Congress has also authorized federal courts to exercise "supplemental" jurisdiction over state-law claims linked to a federal claim, 28 U. S. C. § 1367, Title VII plaintiffs may pursue complete relief in federal court.

The objection that a federal court lacks subject-matter jurisdiction, see Fed. Rule Civ. Proc. 12(b)(1), may be raised at any stage in the litigation, even after trial and the entry of judgment, Rule 12(h)(3). See *Kontrick* v. *Ryan*, 540 U. S. 443, 455. By contrast, the objection that a complaint "fail[s] to state a claim upon which relief can be granted," Rule 12(b)(6), endures only up to, not beyond, trial on the merits, Rule 12(h)(2).

Petitioner Arbaugh sued her former employer, respondent Y & H Corporation (Y&H), in Federal District Court, charging sexual harassment in violation of Title VII and asserting related state-law claims. The case was tried to a jury, which returned a verdict for Arbaugh. After the court entered judgment on that verdict, Y&H moved to dismiss the entire action for want of federal subject-matter jurisdiction, asserting, for the first time, that it had fewer than 15 employees on its payroll and therefore was not amenable to suit under Title VII. Al-

though recognizing the unfairness and waste of judicial resources that granting the motion would entail, the District Court, citing Federal Rule 12(h)(3), considered itself obliged to do so because it believed the 15-or-more-employees requirement to be jurisdictional. It therefore vacated its prior judgment and dismissed Arbaugh's Title VII claim with prejudice and her state-law claims without prejudice. The Fifth Circuit affirmed based on its precedent holding that unless the employee-numerosity requirement is met, federal-court subject-matter jurisdiction does not exist.

Held: Title VII's numerical threshold does not circumscribe federal-court subject-matter jurisdiction. Instead, the employee-numerosity requirement relates to the substantive adequacy of Arbaugh's Title VII claim, and therefore could not be raised defensively late in the lawsuit, *i. e.*, after Y&H had failed to assert the objection prior to the close of trial on the merits. The basic statutory grants of federal-court subject-matter jurisdiction are contained in 28 U. S. C. § 1331, which provides for "[f]ederal-question" jurisdiction, and § 1332, which provides for "[d]iversity of citizenship" jurisdiction. A plaintiff properly invokes § 1331 jurisdiction when she pleads a colorable claim "arising under" the Federal Constitution or laws. See *Bell* v. *Hood*, 327 U. S. 678, 681–685. She invokes § 1332 jurisdiction when she presents a claim between parties of diverse citizenship that exceeds the required jurisdictional amount, currently $75,000. See § 1332(a). Arbaugh invoked federal-question jurisdiction under § 1331, but her case "aris[es]" under a federal law, Title VII, that specifies, as a prerequisite to its application, the existence of a particular fact, *i. e.*, 15 or more employees. The Court resolves the question whether that fact is "jurisdictional" or relates to the "merits" of a Title VII claim mindful of the consequences of typing the 15-employee threshold a determinant of subject-matter jurisdiction, rather than an element of Arbaugh's claim for relief. First, "subject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived." *United States* v. *Cotton*, 535 U. S. 625, 630. Moreover, courts, including this Court, have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party. *Ruhrgas AG* v. *Marathon Oil Co.*, 526 U. S. 574, 583. Nothing in Title VII's text indicates that Congress intended courts, on their own motion, to assure that the employee-numerosity requirement is met. Second, in some instances, if subject-matter jurisdiction turns on contested facts, the trial judge may be authorized to review the evidence and resolve the dispute on her own. If satisfaction of an essential element of a claim is at issue, however, the jury is the proper trier of contested facts. *Reeves* v. *Sanderson Plumb-*

Syllabus

ing Products, Inc., 530 U. S. 133, 150–151. Third, when a federal court concludes that it lacks subject-matter jurisdiction, the complaint must be dismissed in its entirety. Thus, the trial court below dismissed, along with the Title VII claim, pendent state-law claims fully tried by a jury and determined on the merits. In contrast, when a court grants a motion to dismiss for failure to state a federal claim, the court generally retains discretion to exercise supplemental jurisdiction, pursuant to § 1367, over pendent state-law claims.

While Congress could make the employee-numerosity requirement "jurisdictional" if it so chose, neither § 1331 nor Title VII's jurisdictional provision, 42 U. S. C. § 2000e–5(f)(3), specifies any threshold ingredient akin to 28 U. S. C. § 1332's monetary floor. Instead, the 15-employee threshold appears in a separate provision that "does not speak in jurisdictional terms or refer in any way to the jurisdiction of the district courts." *Zipes* v. *Trans World Airlines, Inc.*, 455 U. S. 385, 394. Given the unfairness and waste of judicial resources entailed in tying the employee-numerosity requirement to subject-matter jurisdiction, the sounder course is to refrain from constricting § 1331 or § 2000e–5(f)(3), and to leave the ball in Congress' court. If the Legislature clearly states that a threshold limitation on a statute's scope shall count as jurisdictional, then courts and litigants will be duly instructed and will not be left to wrestle with the issue. But when Congress does not rank a statutory limitation on coverage as jurisdictional, courts should treat the restriction as nonjurisdictional in character. Applying that readily administrable bright line here yields the holding that Title VII's 15-employee threshold is an element of a plaintiff's claim for relief, not a jurisdictional issue. Pp. 510–516.

380 F. 3d 219, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which all other Members joined, except ALITO, J., who took no part in the consideration or decision of the case.

Jeffrey A. Schwartz argued the cause for petitioner. With him on the briefs was *Eric Schnapper.*

Daryl Joseffer argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Clement, Acting Assistant Attorney General Schlozman, Dennis J. Dimsey, Linda F. Thome, Eric S. Dreiband, Carolyn L. Wheeler,* and *Jennifer S. Goldstein.*

Brett J. Prendergast argued the cause and filed a brief for respondent.*

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns the distinction between two sometimes confused or conflated concepts: federal-court "subject-matter" jurisdiction over a controversy; and the essential ingredients of a federal claim for relief. Title VII of the Civil Rights Act of 1964 makes it unlawful "for an employer . . . to discriminate," *inter alia*, on the basis of sex. 42 U. S. C. § 2000e–2(a)(1). The Act's jurisdictional provision empowers federal courts to adjudicate civil actions "brought under" Title VII. § 2000e–5(f)(3). Covering a broader field, the Judicial Code gives federal courts subject-matter jurisdiction over all civil actions "arising under" the laws of the United States. 28 U. S. C. § 1331. Title VII actions fit that description. In a provision defining 13 terms used in Title VII, 42 U. S. C. § 2000e, Congress limited the definition of "employer" to include only those having "fifteen or more employees," § 2000e(b). The question here presented is whether the numerical qualification contained in Title VII's definition of "employer" affects federal-court subject-matter jurisdiction or, instead, delineates a substantive ingredient of a Title VII claim for relief.

The question arises in this context. Jenifer Arbaugh, plaintiff below, petitioner here, brought a Title VII action

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*Briefs of *amici curiae* urging affirmance were filed for the State of Alabama et al. by *Troy King*, Attorney General of Alabama, and *Kevin C. Newsom*, Solicitor General, and by the Attorneys General for their respective States as follows: *John W. Suthers* of Colorado, *M. Jane Brady* of Delaware, *Charles J. Crist, Jr.*, of Florida, *Mark J. Bennett* of Hawaii, *Phill Kline* of Kansas, *Jim Petro* of Ohio, *Hardy Myers* of Oregon, *Mark L. Shurtleff* of Utah, and *Patrick J. Crank* of Wyoming; for the Chamber of Commerce of the United States of America et al. by *Catherine E. Stetson*, *Robin S. Conrad*, and *Robert Costagliola;* and for the International Municipal Lawyers Association by *Gene C. Schaerr*, *Henry W. Underhill, Jr.*, *Steffen N. Johnson*, and *Linda T. Coberly*.

in federal court against her former employer, defendant-respondent Y & H Corporation (hereinafter Y&H), charging sexual harassment. The case was tried to a jury, which returned a verdict for Arbaugh in the total amount of $40,000. Two weeks after the trial court entered judgment on the jury verdict, Y&H moved to dismiss the entire action for want of federal subject-matter jurisdiction. For the first time in the litigation, Y&H asserted that it had fewer than 15 employees on its payroll and therefore was not amenable to suit under Title VII.

Although recognizing that it was "unfair and a waste of judicial resources" to grant the motion to dismiss, App. to Pet. for Cert. 47, the trial court considered itself obliged to do so because it believed that the 15-or-more-employees requirement was jurisdictional. We reject that categorization and hold that the numerical threshold does not circumscribe federal-court subject-matter jurisdiction. Instead, the employee-numerosity requirement relates to the substantive adequacy of Arbaugh's Title VII claim, and therefore could not be raised defensively late in the lawsuit, *i. e.*, after Y&H had failed to assert the objection prior to the close of trial on the merits.

I

We set out below statutory provisions and rules that bear on this case. Title VII makes it "an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U. S. C. § 2000e–2(a)(1). To spare very small businesses from Title VII liability, Congress provided that:

> "[t]he term 'employer' means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or

> more calendar weeks in the current or preceding calendar year, and any agent of such a person . . . ." § 2000e(b).[1]

This employee-numerosity requirement[2] appears in a section headed "Definitions," § 2000e, which also prescribes the meaning, for Title VII purposes, of 12 other terms used in the Act.[3]

Congress has broadly authorized the federal courts to exercise subject-matter jurisdiction over "all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U. S. C. § 1331. Title VII surely is a "la[w] of the United States." *Ibid.* In 1964, however, when Title VII was enacted, § 1331's umbrella provision for federal-question jurisdiction contained an amount-in-controversy limitation: Claims could not be brought under § 1331 unless the amount in controversy exceeded $10,000. See § 1331(a) (1964 ed.). Title VII, framed in that light, assured that the amount-in-controversy limitation would not impede an employment-discrimination complainant's access to a federal forum. The Act thus contains its own jurisdiction-conferring provision, which reads:

> "Each United States district court and each United States court of a place subject to the jurisdiction of the

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[1] The same provision further states that the term "employer" does not include the United States, corporations wholly owned by the United States, Indian tribes, certain departments and agencies of the District of Columbia, or tax-exempt "bona fide private membership club[s]" (other than labor organizations). § 2000e(b).

[2] Congress originally prescribed a 25-or-more-employee threshold, Civil Rights Act of 1964, § 701, 78 Stat. 253, but lowered the minimum number of employees to 15 in the Equal Employment Opportunity Act of 1972, § 2, 86 Stat. 103.

[3] The other terms defined in § 2000e are: "person," "employment agency," "labor organization," "employee," "commerce," "industry affecting commerce," "State," "religion," "because of sex," "complaining party," "demonstrates," and "respondent."

> United States shall have jurisdiction of actions brought under this subchapter." 42 U. S. C. § 2000e–5(f)(3).[4]

Congress amended 28 U. S. C. § 1331 in 1980 to eliminate the amount-in-controversy threshold. See Federal Question Jurisdictional Amendments Act of 1980, § 2, 94 Stat. 2369. Since that time, Title VII's own jurisdictional provision, 42 U. S. C. § 2000e–5(f)(3), has served simply to underscore Congress' intention to provide a federal forum for the adjudication of Title VII claims. See Brief for United States as *Amicus Curiae* 13; Tr. of Oral Arg. 4.

We note, too, that, under 28 U. S. C. § 1367, federal courts may exercise "supplemental" jurisdiction over state-law claims linked to a claim based on federal law.[5] Plaintiffs suing under Title VII may avail themselves of the opportunity § 1367 provides to pursue complete relief in a federal-court lawsuit. Arbaugh did so in the instant case by adding to her federal complaint pendent claims arising under state law that would not independently qualify for federal-court adjudication.

The objection that a federal court lacks subject-matter jurisdiction, see Fed. Rule Civ. Proc. 12(b)(1), may be raised by a party, or by a court on its own initiative, at any stage in the litigation, even after trial and the entry of judgment. Rule 12(h)(3) instructs: "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."

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[4] Title VII contains a separate jurisdictional provision, 42 U. S. C. § 2000e–6(b), authorizing suits by the Government to enjoin "pattern or practice" discrimination.

[5] Section 1367(a) states: "Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties."

See *Kontrick* v. *Ryan*, 540 U. S. 443, 455 (2004). By contrast, the objection that a complaint "fail[s] to state a claim upon which relief can be granted," Rule 12(b)(6), may not be asserted post-trial. Under Rule 12(h)(2), that objection endures up to, but not beyond, trial on the merits: "A defense of failure to state a claim upon which relief can be granted . . . may be made in any pleading . . . or by motion for judgment on the pleadings, or at the trial on the merits." Cf. *Kontrick*, 540 U. S., at 459.

II

From May 2000 through February 2001, Jenifer Arbaugh worked as a bartender and waitress at the Moonlight Cafe, a New Orleans restaurant owned and operated by Y&H. Arbaugh alleged that Yalcin Hatipoglu, one of the company's owners, sexually harassed her and precipitated her constructive discharge.[6] In November 2001, Arbaugh filed suit against Y&H in the United States District Court for the Eastern District of Louisiana. Her complaint asserted claims under Title VII and Louisiana law. App. to Pet. for Cert. 1–2.

Arbaugh's pleadings alleged that her federal claim "ar[o]se under Title VII" and that the Federal District Court had jurisdiction over this claim under § 1331 plus supplemental jurisdiction over her state-law claims under § 1367. Record, Doc. 3, p. 1 (Amended Complaint). Y&H's responsive pleadings admitted Arbaugh's "jurisdictional" allegations but denied her contentions on the merits. *Id.*, Doc. 4, p. 1 (Answer to Complaint). The pretrial order submitted and signed by the parties, and later subscribed by the presiding judge, reiterated that the court was "vested with jurisdiction over [Arbaugh's Title VII claim] pursuant to 28 U. S. C. § 1331," and

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[6] See *Pennsylvania State Police* v. *Suders*, 542 U. S. 129, 147 (2004) (constructive discharge compensable under Title VII includes an employee's departure due to sexual harassment that renders "working conditions so intolerable that a reasonable person would have felt compelled to resign").

"ha[d] supplemental jurisdiction over [her] state law claims pursuant to 28 U. S. C. § 1367." *Id.*, Doc. 19, p. 2. The order listed "Uncontested Material Facts," including: "Plaintiff was employed as a waitress/bartender at the Moonlight for Defendants from May, 2000 through February 10, 2001 when she terminated her employment with the company." *Id.*, p. 3. It did not list among "Contested Issues of Fact" or "Contested Legal Issues" the question whether Y&H had the requisite number of employees under 42 U. S. C. § 2000e(b). Record, Doc. 19, pp. 4–5. Nor was the issue raised at any other point pretrial or at trial.

The parties consented to trial before a Magistrate Judge. See 28 U. S. C. § 636(c). After a two-day trial, the jury found that Arbaugh had been sexually harassed and constructively discharged in violation of Title VII and Louisiana anti-discrimination law. The verdict awarded Arbaugh $5,000 in backpay, $5,000 in compensatory damages, and $30,000 in punitive damages. The trial court entered judgment for Arbaugh on November 5, 2002.

Two weeks later, Y&H filed a motion under Federal Rule 12(h)(3) to dismiss Arbaugh's complaint for lack of subject-matter jurisdiction. Record, Doc. 44. As sole ground for the motion, Y&H alleged, for the first time in the proceedings, that it "did not employ fifteen or more employees [during the relevant period] and thus is not an employer for Title VII purposes." *Id.*, p. 2 (Memorandum in Support of Rule 12(h)(3) Motion to Dismiss for Lack of Subject Matter Jurisdiction). The trial court commented that "[i]t is unfair and a waste of judicial resources to permit [Y&H] to admit Arbaugh's allegations of jurisdiction, try the case for two days and then assert a lack of subject matter jurisdiction in response to an adverse jury verdict." App. to Pet. for Cert. 47. Nevertheless, reciting the text of Rule 12(h)(3), see *supra*, at 506, the trial court allowed Y&H to plead that it did not qualify as an "employer" under Title VII's definition of that term. App. to Pet. for Cert. 47–48; see *supra*, at 504–505.

Discovery ensued. The dispute over the employee count turned on the employment status of Y&H's eight drivers, engaged to make deliveries for the restaurant, and the company's four owners (the Moonlight Cafe's two managers and their shareholder spouses). As the trial court noted, "[i]f either the delivery drivers or the four owners are counted with the persons shown on the payroll journals, then Y&H employed fifteen or more persons for the requisite time." App. to Pet. for Cert. 27. After reviewing the parties' submissions, however, the trial court concluded that neither the delivery drivers nor the owner-managers nor their shareholder spouses qualified as "employees" for Title VII purposes. *Id.*, at 32–43. Based on that determination, the trial court vacated its prior judgment in favor of Arbaugh, dismissed her Title VII claim with prejudice, and her state-law claims without prejudice. *Id.*, at 23.

The Court of Appeals for the Fifth Circuit affirmed. 380 F. 3d 219 (2004). Bound by its prior decisions, the Court of Appeals held that a defendant's "failure to qualify as an 'employer' under Title VII deprives a district court of subject matter jurisdiction." *Id.*, at 224 (citing, *e. g.*, *Dumas* v. *Mt. Vernon*, 612 F. 2d 974, 980 (1980)). Dismissal for want of subject-matter jurisdiction was proper, the Court of Appeals ruled, for the record warranted the conclusion that Y&H's delivery drivers, its owner-managers, and their shareholder wives were not "employees" for Title VII purposes, 380 F. 3d, at 225–230, and it was undisputed that Y&H "did not employ the requisite 15 employees without the inclusion of" those persons, *id.*, at 231.

We granted certiorari, 544 U. S. 1031 (2005), to resolve conflicting opinions in Courts of Appeals on the question whether Title VII's employee-numerosity requirement, 42 U. S. C. § 2000e(b), is jurisdictional or simply an element of a plaintiff's claim for relief. Compare, *e. g.*, 380 F. 3d, at 223–225 (Title VII's employee-numerosity requirement is jurisdictional), and *Armbruster* v. *Quinn*, 711 F. 2d 1332, 1335

(CA6 1983) (same), with, *e. g., Da Silva* v. *Kinsho International Corp.*, 229 F. 3d 358, 361–366 (CA2 2000) (Title VII's employee-numerosity requirement is not jurisdictional); *Nesbit* v. *Gears Unlimited, Inc.*, 347 F. 3d 72, 76–83 (CA3 2003) (same); *EEOC* v. *St. Francis Xavier Parochial School*, 117 F. 3d 621, 623–624 (CADC 1997) (Americans with Disabilities Act of 1990's employee-numerosity requirement, 42 U. S. C. § 12111(5)(A), resembling Title VII's requirement, is not jurisdictional).

III

"Jurisdiction," this Court has observed, "is a word of many, too many, meanings." *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83, 90 (1998) (internal quotation marks omitted). This Court, no less than other courts, has sometimes been profligate in its use of the term. For example, this Court and others have occasionally described a nonextendable time limit as "mandatory and jurisdictional." See, *e. g., United States* v. *Robinson*, 361 U. S. 220, 229 (1960). But in recent decisions, we have clarified that time prescriptions, however emphatic, "are not properly typed 'jurisdictional.'" *Scarborough* v. *Principi*, 541 U. S. 401, 414 (2004); accord *Eberhart* v. *United States*, *ante*, at 16–19 *(per curiam); Kontrick*, 540 U. S., at 454–455. See also *Carlisle* v. *United States*, 517 U. S. 416, 434–435 (1996) (GINSBURG, J., concurring).

The dispute now before us concerns the proper classification of Title VII's statutory limitation of covered employers to those with 15 or more employees. If the limitation conditions subject-matter jurisdiction, as the lower courts held it did, then a conclusion that Y&H had fewer than 15 employees would require erasure of the judgment for Arbaugh entered on the jury verdict. But if the lower courts' subject-matter jurisdiction characterization is incorrect, and the issue, instead, concerns the merits of Arbaugh's case, then Y&H raised the employee-numerosity requirement too late. Its pretrial stipulations, see *supra*, at 508, and its failure to

speak to the issue prior to the conclusion of the trial on the merits, see Fed. Rule Civ. Proc. 12(h)(2), *supra*, at 507, would preclude vacation of the $40,000 judgment in Arbaugh's favor.

On the subject-matter jurisdiction/ingredient-of-claim-for-relief dichotomy, this Court and others have been less than meticulous. "Subject matter jurisdiction in federal-question cases is sometimes erroneously conflated with a plaintiff's need and ability to prove the defendant bound by the federal law asserted as the predicate for relief—a merits-related determination." 2 J. Moore et al., Moore's Federal Practice § 12.30[1], p. 12–36.1 (3d ed. 2005) (hereinafter Moore). Judicial opinions, the Second Circuit incisively observed, "often obscure the issue by stating that the court is dismissing 'for lack of jurisdiction' when some threshold fact has not been established, without explicitly considering whether the dismissal should be for lack of subject matter jurisdiction or for failure to state a claim." *Da Silva*, 229 F. 3d, at 361. We have described such unrefined dispositions as "drive-by jurisdictional rulings" that should be accorded "no precedential effect" on the question whether the federal court had authority to adjudicate the claim in suit. *Steel Co.*, 523 U. S., at 91.

Cases of this genre include *Hishon* v. *King & Spalding*, 467 U. S. 69 (1984), and *EEOC* v. *Arabian American Oil Co.*, 499 U. S. 244 (1991). *Hishon* involved a Title VII claim brought by a lawyer denied partnership in a law firm. The District Court ruled that Title VII did not apply to the selection of partners and dismissed the case for lack of subject-matter jurisdiction. The Court of Appeals affirmed that judgment. We noted that the District Court's reasoning "ma[de] clear that it dismissed petitioner's complaint on the ground that her allegations did not state a claim cognizable under Title VII." 467 U. S., at 73, n. 2. Disagreeing with the lower courts, we held that Title VII applies to partnership decisions. *Id.*, at 73–78. That holding, we said,

"ma[de] it unnecessary to consider the wisdom of the District Court's invocation of Rule 12(b)(1), as opposed to Rule 12(b)(6)." *Id.*, at 73, n. 2. The former Rule concerns subject-matter jurisdiction, the latter, "failure to state a claim upon which relief can be granted." See *supra*, at 507. Our opinion in *Hishon* thus raised, but did not decide, the question whether subject-matter jurisdiction was the proper rubric for the District Court's decisions.[7]

In *Arabian American Oil Co.*, we affirmed the judgment of the courts below that Title VII, as then composed, did not apply to a suit by a United States employee working abroad for a United States employer.[8] That judgment had been placed under a lack of subject-matter jurisdiction label. We agreed with the lower courts' view of the limited geographical reach of the statute. 499 U. S., at 246–247. *En passant*, we copied the petitioners' characterizations of terms included in Title VII's "Definitions" section, 42 U. S. C. § 2000e, as "jurisdictional." See 499 U. S., at 249, 251, 253. But our decision did not turn on that characterization, and the parties did not cross swords over it. See *Steel Co.*, 523 U. S., at 91 (declining to follow a decision treating an issue as jurisdictional because nothing "*turned upon* whether [the issue] was technically jurisdictional" in that case). In short, we were

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[7] Y&H features *Walters* v. *Metropolitan Ed. Enterprises, Inc.*, 519 U. S. 202 (1997), as supportive of the jurisdictional character of the employee-numerosity requirement. Brief for Respondent 8–10. Y&H urges that the Court must have considered the requirement jurisdictional, for *Walters* held definitively that, under the correct legal standard, the defendant had more than 15 employees. If the requirement had been seen as a merits issue, Y&H contends, the Court would have remanded the employee count for determination by the trier of fact. But the parties in *Walters* apparently stipulated to all relevant facts, leaving nothing for a fact trier to resolve on remand. Cf. 519 U. S., at 211–212.

[8] Congress subsequently amended Title VII to extend protection to United States citizens working overseas. See Civil Rights Act of 1991, § 109(a), 105 Stat. 1077, codified at 42 U. S. C. § 2000e(f) ("With respect to employment in a foreign country," the term "employee" "includes an individual who is a citizen of the United States.").

not prompted in *Arabian American Oil Co.* to home in on whether the dismissal had been properly based on the absence of subject-matter jurisdiction rather than on the plaintiff's failure to state a claim. 499 U. S., at 247.[9]

The basic statutory grants of federal-court subject-matter jurisdiction are contained in 28 U. S. C. §§ 1331 and 1332. Section 1331 provides for "[f]ederal-question" jurisdiction, § 1332 for "[d]iversity of citizenship" jurisdiction. A plaintiff properly invokes § 1331 jurisdiction when she pleads a colorable claim "arising under" the Constitution or laws of the United States. See *Bell* v. *Hood*, 327 U. S. 678, 681–685 (1946).[10] She invokes § 1332 jurisdiction when she presents a claim between parties of diverse citizenship that exceeds the required jurisdictional amount, currently $75,000. See § 1332(a).

Arbaugh invoked federal-question jurisdiction under § 1331, but her case "aris[es]" under a federal law, Title VII, that specifies, as a prerequisite to its application, the existence of a particular fact, *i. e.*, 15 or more employees. We resolve the question whether that fact is "jurisdictional" or relates to the "merits" of a Title VII claim mindful of the consequences of typing the 15-employee threshold a determi-

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[9] In *EEOC* v. *Commercial Office Products Co.*, 486 U. S. 107 (1988), also featured by Y&H, see Brief for Respondent 12, a plurality of this Court noted that "[r]eactivation of state proceedings after the conclusion of federal proceedings serves [a] useful function," in part because "Title VII does not give the EEOC jurisdiction to enforce the Act against employers of fewer than 15 employees." 486 U. S., at 119, n. 5. That fleeting footnote addressed the relative administrative provinces of the Equal Employment Opportunity Commission and state agencies. It did not speak of federal-court subject-matter jurisdiction, which was not at issue in the case.

[10] A claim invoking federal-question jurisdiction under 28 U. S. C. § 1331, *Bell* held, may be dismissed for want of subject-matter jurisdiction if it is not colorable, *i. e.*, if it is "immaterial and made solely for the purpose of obtaining jurisdiction" or is "wholly insubstantial and frivolous." 327 U. S., at 682–683; see *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83, 89 (1998). Arbaugh's case surely does not belong in that category.

nant of subject-matter jurisdiction, rather than an element of Arbaugh's claim for relief.

First, "subject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived." *United States* v. *Cotton*, 535 U. S. 625, 630 (2002). Moreover, courts, including this Court, have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party. *Ruhrgas AG* v. *Marathon Oil Co.*, 526 U. S. 574, 583 (1999). Nothing in the text of Title VII indicates that Congress intended courts, on their own motion, to assure that the employee-numerosity requirement is met.

Second, in some instances, if subject-matter jurisdiction turns on contested facts, the trial judge may be authorized to review the evidence and resolve the dispute on her own. See 5B C. Wright & A. Miller, Federal Practice and Procedure § 1350, pp. 243–249 (3d ed. 2004); 2 Moore § 12.30[3], pp. 12–37 to 12–38. If satisfaction of an essential element of a claim for relief is at issue, however, the jury is the proper trier of contested facts. *Reeves* v. *Sanderson Plumbing Products, Inc.*, 530 U. S. 133, 150–151 (2000).

Third, when a federal court concludes that it lacks subject-matter jurisdiction, the court must dismiss the complaint in its entirety. See 16 Moore § 106.66[1], pp. 106–88 to 106–89. Thus in the instant case, the trial court dismissed, along with the Title VII claim, pendent state-law claims, see *supra*, at 506, fully tried by a jury and determined on the merits, see App. to Pet. for Cert. 23, 47. In contrast, when a court grants a motion to dismiss for failure to state a federal claim, the court generally retains discretion to exercise supplemental jurisdiction, pursuant to 28 U. S. C. § 1367, over pendent state-law claims. See 16 Moore § 106.66[1], pp. 106–86 to 106–89.

Of course, Congress could make the employee-numerosity requirement "jurisdictional," just as it has made an amount-in-controversy threshold an ingredient of subject-matter ju-

risdiction in delineating diversity-of-citizenship jurisdiction under 28 U. S. C. § 1332. But neither § 1331, nor Title VII's jurisdictional provision, 42 U. S. C. § 2000e–5(f)(3) (authorizing jurisdiction over actions "brought under" Title VII), specifies any threshold ingredient akin to 28 U. S. C. § 1332's monetary floor. Instead, the 15-employee threshold appears in a separate provision that "does not speak in jurisdictional terms or refer in any way to the jurisdiction of the district courts." *Zipes* v. *Trans World Airlines, Inc.*, 455 U. S. 385, 394 (1982). Given the "unfair[ness]" and "waste of judicial resources," App. to Pet. for Cert. 47, entailed in tying the employee-numerosity requirement to subject-matter jurisdiction, we think it the sounder course to refrain from constricting § 1331 or Title VII's jurisdictional provision, 42 U. S. C. § 2000e–5(f)(3), and to leave the ball in Congress' court. If the Legislature clearly states that a threshold limitation on a statute's scope shall count as jurisdictional,[11] then courts and litigants will be duly instructed and will not

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[11] Congress has exercised its prerogative to restrict the subject-matter jurisdiction of federal district courts based on a wide variety of factors, some of them also relevant to the merits of a case. Certain statutes confer subject-matter jurisdiction only for actions brought by specific plaintiffs, *e. g.*, 28 U. S. C. § 1345 (United States and its agencies and officers); 49 U. S. C. § 24301(*l*)(2) (Amtrak), or for claims against particular defendants, *e. g.*, 7 U. S. C. § 2707(e)(3) (persons subject to orders of the Egg Board); 28 U. S. C. § 1348 (national banking associations), or for actions in which the amount in controversy exceeds, *e. g.*, 16 U. S. C. § 814, or falls below, *e. g.*, 22 U. S. C. § 6713(a)(1)(B); 28 U. S. C. § 1346(a)(2), a stated amount. Other jurisdiction-conferring provisions describe particular types of claims. See, *e. g.*, § 1339 ("any civil action arising under any Act of Congress relating to the postal service"); § 1347 ("any civil action commenced by any tenant in common or joint tenant for the partition of lands where the United States is one of the tenants in common or joint tenants"). In a few instances, Congress has enacted a separate provision that expressly restricts application of a jurisdiction-conferring statute. See, *e. g.*, *Weinberger* v. *Salfi*, 422 U. S. 749, 756–761 (1975) (42 U. S. C. § 405(h) bars 28 U. S. C. § 1331 jurisdiction over suits to recover Social Security benefits).

be left to wrestle with the issue. See *Da Silva*, 229 F. 3d, at 361 ("Whether a disputed matter concerns jurisdiction or the merits (or occasionally both) is sometimes a close question."). But when Congress does not rank a statutory limitation on coverage as jurisdictional, courts should treat the restriction as nonjurisdictional in character. Applying that readily administrable bright line to this case, we hold that the threshold number of employees for application of Title VII is an element of a plaintiff's claim for relief, not a jurisdictional issue.

* * *

For the reasons stated, the judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE ALITO took no part in the consideration or decision of this case.

Syllabus

OREGON *v.* GUZEK

CERTIORARI TO THE SUPREME COURT OF OREGON

No. 04–928. Argued December 7, 2005—Decided February 22, 2006

At the guilt phase of respondent Guzek's capital murder trial, his mother was one of two witnesses who testified that he had been with her on the night the crime was committed. He was convicted and sentenced to death. Twice, the Oregon Supreme Court vacated the sentence and ordered new sentencing proceedings, but each time Guzek was again sentenced to death. Upon vacating his sentence for a third time, the State Supreme Court held that the Eighth and Fourteenth Amendments provide Guzek a federal constitutional right to introduce live alibi testimony from his mother at the upcoming resentencing proceeding. After this Court granted certiorari, Guzek filed a motion to dismiss the writ as improvidently granted.

Held:

1. Guzek's motion to dismiss certiorari is denied. This Court does not lack jurisdiction on the ground that, irrespective of federal law, state law gives Guzek the right to introduce his mother's live testimony. The Court possesses jurisdiction to review state-court determinations that rest upon federal law, 28 U. S. C. § 1257(a), and the Oregon Supreme Court based its legal conclusion in relevant part on such law. It pointed out that relevant mitigating evidence under state law refers only to evidence that the Federal Constitution grants a defendant the right to present. And it interpreted the federal admissibility requirement in *Lockett* v. *Ohio*, 438 U. S. 586, 604 (plurality opinion), and *Green* v. *Georgia*, 442 U. S. 95 *(per curiam)*, to include evidence like the proffered alibi testimony. Nor is this Court willing to dismiss the writ on the ground that irrespective of federal law and of the State Supreme Court's federal holding, Oregon's capital-case resentencing statute gives Guzek the right to introduce witnesses who testified at the guilt phase. At most, state law *might* give him such a right, but "a *possible* adequate and independent state ground" for a decision does not "bar . . . reaching the federal questions" where, as here, the State Supreme Court's decision "quite clearly rested . . . solely on the Federal Constitution." *California* v. *Ramos*, 463 U. S. 992, 997, n. 7. Pp. 520–523.

2. The Constitution does not prohibit a State from limiting the innocence-related evidence a capital defendant can introduce at a sentencing proceeding to the evidence introduced at the original trial. This Court's cases have *not* interpreted the Eighth Amendment as pro-

Syllabus

viding such a defendant the right to introduce at sentencing evidence designed to cast "residual doubt" on his guilt of the basic crime of conviction. *Franklin* v. *Lynaugh*, 487 U. S. 164, 173, n. 6 (plurality opinion). *Lockett* v. *Ohio*, *supra*, and *Green* v. *Georgia*, *supra*, distinguished. Even if such a right existed, it could not extend so far as to provide Guzek with a right to introduce the evidence at issue. The Eighth Amendment insists upon "'reliability in the determination that death is the appropriate punishment in a specific case,'" *Penry* v. *Lynaugh*, 492 U. S. 302, 328, and that a sentencing jury be able "to consider and give effect to mitigating evidence" about the defendant's "character or record or the circumstances of the offense," *id.*, at 327–328, but it does not deprive the State of its authority to set reasonable limits on the evidence a defendant can submit, and to control the manner in which it is submitted. Three circumstances, taken together, show that the State has the authority to regulate Guzek's evidence through exclusion. First, sentencing traditionally concerns *how*, not *whether*, a defendant committed the crime, but alibi evidence concerns only *whether*, not *how*, he did so. Second, the parties previously litigated the issue to which the evidence is relevant. Thus, the evidence attacks a previously determined matter in a proceeding at which, in principle, that matter is not at issue. The law typically discourages such collateral attacks. Cf. *Allen* v. *McCurry*, 449 U. S. 90, 94. Third, the negative impact of a rule restricting Guzek's ability to introduce *new* alibi evidence is minimized by the fact that Oregon law gives the defendant the right to present to the sentencing jury *all* the innocence evidence from the original trial (albeit through transcripts). The Oregon courts are free to consider on remand whether Guzek is entitled to introduce his mother's testimony to impeach other witnesses whose earlier testimony the government intends to introduce at resentencing. Pp. 523–527.

336 Ore. 424, 86 P. 3d 1106, vacated and remanded.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, KENNEDY, SOUTER, and GINSBURG, JJ., joined. SCALIA, J., filed an opinion concurring in the judgment, in which THOMAS, J., joined, *post*, p. 528. ALITO, J., took no part in the consideration or decision of the case.

Mary H. Williams, Solicitor General of Oregon, argued the cause for petitioner. With her on the briefs were *Hardy Myers*, Attorney General, and *Peter Shepherd*, Deputy Attorney General.

Kannon K. Shanmugam argued the cause for the United States as *amicus curiae* in support of petitioner. With him on the brief were *Solicitor General Clement*, *Acting Assistant Attorney General Richter*, *Deputy Solicitor General Dreeben*, and *Robert J. Erickson.*

Richard L. Wolf, by appointment of the Court, 546 U. S. 974, argued the cause for respondent. With him on the brief was *J. Kevin Hunt.**

JUSTICE BREYER delivered the opinion of the Court.

Respondent Randy Lee Guzek was found guilty of capital murder and sentenced to death. On appeal, the Oregon Supreme Court affirmed the conviction but vacated the sentence and ordered a new sentencing proceeding. The question before the Court is whether the State may limit the innocence-related evidence he can introduce at that proceeding to the evidence he introduced at his original trial. We hold that the limitation does not violate the Constitution.

I

Oregon tried Guzek for the offense of capital murder. The evidence showed that Guzek and two associates decided to burglarize the Houser family home, that they entered the house, that an associate killed Rod Houser, and that Guzek then robbed and killed Lois Houser. After the police

*A brief of *amici curiae* urging reversal was filed for the State of Alabama et al. by *Troy King*, Attorney General of Alabama, and *Kevin C. Newsom*, Solicitor General, by *Christopher L. Morano*, Chief State's Attorney of Connecticut, and by the Attorneys General for their respective States as follows: *Terry Goddard* of Arizona, *John W. Suthers* of Colorado, *M. Jane Brady* of Delaware, *Charles J. Crist, Jr.*, of Florida, *Lawrence G. Wasden* of Idaho, *Phill Kline* of Kansas, *Jim Hood* of Mississippi, *Jeremiah W. (Jay) Nixon* of Missouri, *Mike McGrath* of Montana, *Brian Sandoval* of Nevada, *Jim Petro* of Ohio, *Thomas W. Corbett, Jr.*, of Pennsylvania, *Lawrence E. Long* of South Dakota, *Greg Abbott* of Texas, *Mark L. Shurtleff* of Utah, *Judith Williams Jagdmann* of Virginia, and *Rob McKenna* of Washington.

learned that Guzek held a special grudge against the Housers, they traced him and his associates. The associates confessed. And they testified at trial, painting Guzek as the ringleader.

Guzek's defense rested in part upon an alibi. He presented two alibi witnesses, his grandfather and his mother, who testified that Guzek had been with the one or the other at the time of the crime. The jury disbelieved the alibi, it convicted Guzek, and it sentenced him to death.

Guzek appealed; the Oregon Supreme Court affirmed the conviction; but the court ordered a new sentencing proceeding. Guzek was again sentenced to death; he again appealed; and the Oregon Supreme Court again ordered resentencing. Guzek was sentenced to death for the third time; he again appealed; and yet again the Oregon Supreme Court found the sentencing procedures faulty. 336 Ore. 424, 86 P. 3d 1106 (2004). Seeking to avoid further errors at the next (the fourth) sentencing proceeding, the Oregon Supreme Court also addressed the admissibility of certain evidence Guzek seeks to introduce at that proceeding, including live testimony from his mother about his alibi.

The Oregon Supreme Court held that the Eighth and Fourteenth Amendments provide Guzek a federal constitutional right to introduce this evidence at his upcoming sentencing proceeding. At Oregon's request, we agreed to review that determination.

II

Before turning to the merits of Oregon's claim, we consider a motion that Guzek made, asking us to dismiss the writ of certiorari as improvidently granted. The motion rests upon Guzek's claim that, irrespective of federal law, *state* law gives him the right to introduce his mother's live testimony—the additional alibi evidence here at issue. See Ore. Rev. Stat. § 138.012(2)(b) (2003). For this reason, he says, the Court lacks jurisdiction to hear this appeal, or, at the least, there is no good practical reason for us to decide the federal issue.

We cannot agree, however, that we lack jurisdiction to hear the case. We possess jurisdiction to review state-court determinations that rest upon federal law. 28 U. S. C. § 1257(a). And the Oregon Supreme Court here based its legal conclusion in relevant part on federal law. The court pointed out that *state* law permits the introduction (at a new sentencing hearing) of "'evidence . . . *relevant* to [the] sentence including . . . mitigating evidence *relevant* to . . . [w]hether the defendant should receive a death sentence.'" App. to Pet. for Cert. 45 (quoting Ore. Rev. Stat. §§ 163.150(1)(a), (b) (2003); emphasis added and deleted). But it immediately added that the state law's words "relevant . . . mitigating evidence" refer (in the present context) only to evidence that the *Federal Constitution* grants a defendant the right to present. App. to Pet. for Cert. 45–52.

The Oregon court went on to discuss this Court's statements to the effect that the Eighth and Fourteenth Amendments "'require that the sentencer . . . not be precluded from considering, as a mitigating factor . . . any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death.'" *Id.*, at 54 (quoting *Lockett* v. *Ohio*, 438 U. S. 586, 604 (1978) (plurality opinion); emphasis deleted); cf. App. to Pet. for Cert. 56 (recognizing that this aspect of *Lockett* was adopted by a majority of the Court in *Eddings* v. *Oklahoma*, 455 U. S. 104, 110 (1982)). And the Oregon court then interpreted this Court's holding in *Green* v. *Georgia*, 442 U. S. 95 (1979) *(per curiam)*, as including, within that federal admissibility requirement, evidence which, like the proffered alibi testimony, tends to show that the defendant did not commit the crime for which he has been convicted. Thus, it held that state law demanded "admissibility" solely for a federal reason. And we possess jurisdiction. See, *e. g.*, *South Dakota* v. *Neville*, 459 U. S. 553, 556, n. 5 (1983); *Delaware* v. *Prouse*, 440 U. S. 648, 651–653 (1979).

Neither are we persuaded by Guzek's argument that we should dismiss the case because irrespective of federal law and irrespective of the Oregon Supreme Court's federal holding, Oregon law gives him the right to introduce witnesses who testified at the guilt phase; and his mother was such a witness (a fact, he says, that the Oregon Supreme Court overlooked). Guzek points in support to an Oregon capital-case resentencing statute that says,

> "[a] transcript of all testimony and all exhibits and other evidence properly admitted in the prior trial . . . are admissible in the new sentencing proceeding." Ore. Rev. Stat. § 138.012(2)(b) (2003).

The provision adds that,

> "[e]ither party may recall any witness who testified at the prior trial . . . and may present additional relevant evidence." *Ibid.*

We do not doubt that these provisions give Guzek the state-law right to introduce a *transcript* of guilt-phase testimony. App. to Pet. for Cert. 43 (authorizing introduction of transcript of Guzek's grandfather's alibi testimony). But Guzek wishes to do more than introduce a *transcript* of his mother's alibi evidence; he wishes to call his mother to the stand as a live witness and elicit *additional* alibi testimony. Tr. of Oral Arg. 37–39, 41, 55–56. The Oregon statute quoted above does not expressly say whether he may do so. It does give him the right to "recall any witness" who testified at the first trial and to "present additional *relevant* evidence." (Emphasis added.) But is this additional evidence "relevant"? The Oregon Supreme Court thought so, but only because *federal* law insists upon its relevance. And its opinion suggests that, in the absence of federal compulsion, it would not fall within the scope of the state statutory word "relevant." See *supra*, at 521.

At most, Guzek has shown that state law *might*, not that it *does*, independently give him the right to introduce this

evidence. We have made clear that "a *possible* adequate and independent state ground" for a decision does not "bar [our] reaching the federal questions" where, as here, a "State Supreme Court quite clearly rested its [decision] solely on the Federal Constitution." *California* v. *Ramos*, 463 U. S. 992, 997, n. 7 (1983); see also *City of Revere* v. *Massachusetts Gen. Hospital*, 463 U. S. 239, 242 (1983); *United Air Lines, Inc.* v. *Mahin*, 410 U. S. 623, 630–631 (1973). And we consequently deny the motion to dismiss the writ.

III

As our discussion in Part II, *supra*, makes clear, the federal question before us is a narrow one. Do the Eighth and Fourteenth Amendments grant Guzek a constitutional right to present evidence of the kind he seeks to introduce, namely, *new* evidence that shows he was not present at the scene of the crime. That evidence is *inconsistent* with Guzek's prior conviction. It sheds no light on *the manner* in which he committed the crime for which he has been convicted. Nor is it evidence that Guzek contends was unavailable to him at the time of the original trial. And, to the extent it is evidence he introduced at that time, he is free to introduce it now, albeit in transcript form. Ore. Rev. Stat. § 138.012(2)(b) (2003). We can find nothing in the Eighth or Fourteenth Amendments that provides a capital defendant a right to introduce new evidence of this kind at sentencing.

We cannot agree with the Oregon Supreme Court that our previous cases have found in the Eighth Amendment a constitutional right broad enough to encompass the evidence here at issue. In *Lockett* v. *Ohio*, *supra*, a plurality of this Court decided that a defendant convicted of acting in concert with others to rob and to kill could introduce at the sentencing stage evidence that she had played a minor role in the crime, indeed, that she had remained outside the shop (where the killing took place) at the time of the crime. A plurality of the Court wrote that,

> "the Eighth and Fourteenth Amendments require that the sentencer . . . not be precluded from considering, as a mitigating factor, any aspect of a defendant's character or record and *any of the circumstances of the offense that the defendant proffers* as a basis for a sentence less than death." *Id.*, at 604 (emphasis added and deleted).

And in *Eddings* v. *Oklahoma*, 455 U. S. 104, the Court majority adopted this statement. See also *McCleskey* v. *Kemp*, 481 U. S. 279, 306 (1987); *Bell* v. *Ohio*, 438 U. S. 637, 642 (1978) (plurality opinion).

But the evidence at issue in these cases was traditional sentence-related evidence, evidence that tended to show *how*, not *whether*, the defendant committed the crime. Nor was the evidence directly inconsistent with the jury's finding of guilt.

The Oregon Supreme Court thought that this latter distinction—the fact that the "alibi evidence was inconsistent with," rather than "consistent with[,] the underlying convictions"—did not matter. App. to Pet. for Cert. 58. It said that this "factual distinction . . . is of no consequence in light of the Supreme Court's decision in *Green v. Georgia*." *Ibid.* In *Green*, however, the Court focused upon a defendant convicted of murder, who sought to introduce at sentencing a statement his confederate made to a third party that he (the confederate) had alone committed the murder (*i. e.*, without the defendant). The State opposed its use at the defendant's sentencing hearing *on the ground that, as to the defendant, it was hearsay.* The Court, in a brief *per curiam* opinion, noted that the State had used the confession in the confederate's trial, referred to an earlier case holding that the Constitution prohibits States from "'mechanistically'" applying the hearsay rule "'to defeat the ends of justice,'" and held that the Constitution prohibited the State from barring use of the confession. 442 U. S., at 97 (quoting *Chambers* v. *Mississippi*, 410 U. S. 284, 302 (1973)). The opinion focused only upon the hearsay problem, and it implicitly assumed that, in

the absence of the hearsay problem, *state* law would not have blocked admission of the evidence.

In any event, subsequent to *Green*, this Court decided *Franklin* v. *Lynaugh*, 487 U. S. 164 (1988), and that case makes clear, contrary to the Oregon Supreme Court's understanding, that this Court's previous cases had *not* interpreted the Eighth Amendment as providing a capital defendant the right to introduce at sentencing evidence designed to cast "residual doubt" on his guilt of the basic crime of conviction. The *Franklin* plurality said it was "quite doubtful" that any such right existed. *Id.*, at 173, n. 6. And two other Members of the Court added that "[o]ur cases" do not support any such "right to reconsideration by the sentencing body of lingering doubts about . . . guilt." *Id.*, at 187 (O'Connor, J., concurring in judgment). See also *Penry* v. *Lynaugh*, 492 U. S. 302, 320 (1989) (characterizing *Franklin* as a case in which a majority "agreed that 'residual doubt' as to Franklin's guilt was not a constitutionally mandated mitigating factor" (brackets omitted)).

Franklin did not resolve whether the Eighth Amendment affords capital defendants such a right, for the plurality held that the sentencing scheme at issue was constitutional "even if such a right existed." 487 U. S., at 174. But the Court's statements on the matter make clear that the Oregon Supreme Court erred in interpreting *Green* as providing a capital defendant with a constitutional right to introduce residual doubt evidence at sentencing.

In this case, we once again face a situation where we need not resolve whether such a right exists, for, even if it does, it could not extend so far as to provide this defendant with a right to introduce the evidence at issue. See, *e. g.*, *Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450, 461–462 (1945). The Eighth Amendment insists upon "'reliability in the determination that death is the appropriate punishment in a specific case.'" *Penry*, *supra*, at 328 (quoting *Woodson* v. *North Carolina*, 428 U. S. 280, 305 (1976) (plural-

ity opinion)). The Eighth Amendment also insists that a sentencing jury be able "to consider and give effect to mitigating evidence" about the defendant's "character or record or the circumstances of the offense." *Penry*, *supra*, at 327–328. But the Eighth Amendment does not deprive the State of its authority to set reasonable limits upon the evidence a defendant can submit, and to control the manner in which it is submitted. Rather, "States are free to structure and shape consideration of mitigating evidence 'in an effort to achieve a more rational and equitable administration of the death penalty.'" *Boyde* v. *California*, 494 U. S. 370, 377 (1990) (quoting *Franklin*, *supra*, at 181 (plurality opinion)); see, *e. g.*, *Johnson* v. *Texas*, 509 U. S. 350, 362 (1993); *California* v. *Brown*, 479 U. S. 538, 543 (1987).

Three circumstances, taken together, convince us that the State possesses the authority to regulate, through exclusion, the evidence that Guzek seeks to present. First, sentencing traditionally concerns *how*, not *whether*, a defendant committed the crime. See United States Sentencing Commission, Guidelines Manual §1A1.1, editorial note, §4(a), p. 4 (Nov. 2004). But the evidence at issue here—alibi evidence—concerns only *whether*, not *how*, he did so.

Second, the parties previously litigated the issue to which the evidence is relevant—whether the defendant committed the basic crime. The evidence thereby attacks a previously determined matter in a proceeding at which, in principle, that matter is not at issue. The law typically discourages collateral attacks of this kind. Cf. *Allen* v. *McCurry*, 449 U. S. 90, 94 (1980) ("As this Court and other courts have often recognized, res judicata and collateral estoppel relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication").

Third, the negative impact of a rule restricting defendant's ability to introduce *new* alibi evidence is minimized by the fact that Oregon law gives the defendant the right to present

to the sentencing jury *all* the evidence of innocence from the original trial regardless. That law permits the defendant to introduce at resentencing transcripts and exhibits from his prior trial. Ore. Rev. Stat. § 138.012(2)(b) (2003). The defendant here has not claimed that the evidence at issue was unavailable at the time of his original trial. Thus, he need only have introduced it at that time to guarantee its presentation (albeit through transcripts) to a resentencing jury as well.

The legitimacy of these trial management and evidentiary considerations, along with the typically minimal adverse impact that a restriction would have on a defendant's ability to present his alibi claim at resentencing convinces us that the Eighth Amendment does not protect defendant's right to present the evidence at issue here. We conclude that the Oregon court was wrong in holding to the contrary.

IV

Guzek also contends that, even if the Eighth and Fourteenth Amendments do not mandate the admission of his mother's testimony, he is entitled to introduce that evidence to impeach his associates, whose earlier testimony the government intends to introduce at resentencing. The Oregon Supreme Court did not address this issue; nor do we believe it fairly encompassed within the question presented. The Oregon courts are free to consider it on remand should they believe it appropriate to do so.

V

For these reasons, we vacate the judgment of the Oregon Supreme Court, and we remand the case for proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE ALITO took no part in the consideration or decision of this case.

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, concurring in the judgment.

In this case, we have the opportunity to put to rest, once and for all, the mistaken notion that the Eighth Amendment requires that a convicted capital defendant be given the opportunity, at his sentencing hearing, to present evidence and argument concerning residual doubts about his guilt. Although the Court correctly holds that there is no Eighth Amendment violation in this case, I would follow the Court's logic to its natural conclusion and reject all Eighth Amendment residual-doubt claims.

I agree with the Court that we have jurisdiction and should exercise it in this case. What requires me to withhold agreement to the Court's opinion is the last of the "[t]hree circumstances" on which it relies, *ante*, at 526—namely, "the fact that Oregon law gives the defendant the right to present to the sentencing jury *all* the evidence of innocence from the original trial." *Ante*, at 526–527 (emphasis in original). The first two of the circumstances are alone sufficient to dispose of the claim that the Eighth Amendment guarantees a capital defendant a *second* opportunity, at sentencing, to litigate his innocence. In fact, the Court's third "circumstance" is an analytical misfit in the company of the other two. The first two—that "sentencing traditionally concerns *how*, not *whether*, a defendant committed the crime," *ante*, at 526, and that "the parties previously litigated the issue to which the evidence is relevant," *ibid.*—show that compelling the admission of innocence-related evidence would be *improper* and *unnecessary* at a sentencing hearing. The third, by contrast, suggests that there is no constitutional violation in this case because *enough* of such evidence may be admitted on remand. The latter factor would be relevant only if the former two were not.

If we needed any third factor to justify our holding, a better candidate would be that the claim we consider here finds

no support in our Nation's legal history and traditions. In 1986, Justice Marshall correctly observed that there had been "few times in which any legitimacy has been given to the power of a convicted capital defendant facing the possibility of a death sentence to argue as a mitigating factor the chance that he might be innocent." *Lockhart* v. *McCree*, 476 U. S. 162, 205 (dissenting opinion). Nothing has changed on that score in the last 20 years. On the contrary, in *Franklin* v. *Lynaugh*, 487 U. S. 164 (1988), four Members of this Court noted that our "prior decisions . . . fail to recognize a constitutional right to have such doubts considered as a mitigating factor," *id.*, at 174 (plurality opinion). They were, moreover, "quite doubtful" that the purported right existed, because it is "arguably inconsistent with the common practice of allowing penalty-only trials on remand of cases where a death sentence—but not the underlying conviction—is struck down on appeal." *Id.*, at 173, n. 6. Two other Members of the Court would have rejected the claim outright. *Id.*, at 187 (O'Connor, J., concurring in judgment).

After *Franklin*, the lower courts have unanimously denied constitutional claims like the one we consider today. See, *e. g.*, *Zeigler* v. *Crosby*, 345 F. 3d 1300, 1310 (CA11 2003); *Evans* v. *Thompson*, 881 F. 2d 117, 121 (CA4 1989); *Duest* v. *State*, 855 So. 2d 33, 40–41 (Fla. 2003); *Commonwealth* v. *Fisher*, 572 Pa. 105, 115–116, 813 A. 2d 761, 767 (2002); *People* v. *Emerson*, 189 Ill. 2d 436, 501–504, 727 N. E. 2d 302, 338–339 (2000); *State* v. *Fletcher*, 354 N. C. 455, 470–472, 555 S. E. 2d 534, 544 (2001); *Melson* v. *State*, 775 So. 2d 857, 898–899 (Ala. Crim. App. 1999). The last apparent scrap of authority for the contrary view came from our cryptic opinion in *Green* v. *Georgia*, 442 U. S. 95 (1979) *(per curiam)*, on which the Oregon Supreme Court principally relied. See App. to Pet. for Cert. 58–62. The chief virtue of today's opinion lies in its discarding the notion that *Green* provides any support for an Eighth Amendment right to argue residual doubt at sentencing. See *ante*, at 524–525.

In mentioning, however, the superfluous circumstance that Oregon law happens to provide for the admission at sentencing of *some* evidence that relates to innocence, the Court risks creating doubt where none should exist. Capital defendants might now be tempted to argue that the *amount* of residual-doubt evidence carried over from the guilt phase in their sentencing hearings is insufficient to satisfy the Court's third factor. Every one of these "residual-doubt" claims will be meritless in light of the Court's first two factors. We should make this perfectly clear today.

Reporter's Note

The next page is purposely numbered 801. The numbers between 530 and 801 were intentionally omitted, in order to make it possible to publish the orders with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

ORDERS FOR OCTOBER 3, 2005, THROUGH FEBRUARY 27, 2006

OCTOBER 3, 2005*

Certiorari Granted—Vacated and Remanded

No. 04–1066. ILLINOIS *v.* BARTELS. App. Ct. Ill., 3d Dist. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Illinois* v. *Caballes*, 543 U. S. 405 (2005). Reported below: 347 Ill. App. 3d 1121, 867 N. E. 2d 124.

No. 04–1113. SOPHOCLEUS ET UX. *v.* ALABAMA DEPARTMENT OF TRANSPORTATION ET AL. C. A. 11th Cir. Reported below: 116 Fed. Appx. 246; and

No. 04–1667. GUTTMAN *v.* KHALSA ET AL. C. A. 10th Cir. Reported below: 401 F. 3d 1170. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Exxon Mobil Corp.* v. *Saudi Basic Industries Corp.*, 544 U. S. 280 (2005).

No. 04–1224. HOGAN *v.* UNITED STATES;

No. 04–9239. LEWIS *v.* UNITED STATES;

No. 04–9307. TIRADO *v.* UNITED STATES; and

No. 04–9331. BALSAM *v.* UNITED STATES. C. A. 11th Cir. Motions of petitioners in Nos. 04–9239, 04–9307, and 04–9331 for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *United States* v. *Booker*, 543 U. S. 220 (2005). Reported below: 112 Fed. Appx. 4.

No. 04–1382. UNITED STATES *v.* MAXWELL. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Gonzales* v. *Raich*, 545 U. S. 1 (2005). Reported below: 386 F. 3d 1042.

No. 04–1610. SAENZ *v.* UNITED STATES. C. A. 11th Cir. Reported below: 127 Fed. Appx. 472;

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*THE CHIEF JUSTICE took no part in the consideration or decision of the orders announced on this date.

No. 04–1620. MILLS *v.* UNITED STATES. C. A. 4th Cir. Reported below: 120 Fed. Appx. 436; and

No. 04–1698. HUSBAND *v.* UNITED STATES. C. A. 4th Cir. Reported below: 119 Fed. Appx. 475. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *United States* v. *Booker*, 543 U. S. 220 (2005).

No. 04–9022. BARTON *v.* UNITED STATES. C. A. 4th Cir. Reported below: 116 Fed. Appx. 460;

No. 04–9369. GARNER *v.* UNITED STATES. C. A. 11th Cir. Reported below: 126 Fed. Appx. 463;

No. 04–9417. JAMES *v.* UNITED STATES. C. A. 11th Cir. Reported below: 126 Fed. Appx. 462;

No. 04–9707. MATA-RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Reported below: 116 Fed. Appx. 521;

No. 04–9941. JOSE *v.* UNITED STATES. C. A. 1st Cir.;

No. 04–10221. HIGDON *v.* UNITED STATES. C. A. 11th Cir. Reported below: 122 Fed. Appx. 985;

No. 04–10379. HERRERA *v.* UNITED STATES. C. A. 10th Cir.;

No. 04–10394. MARSHALL *v.* UNITED STATES. C. A. 9th Cir. Reported below: 120 Fed. Appx. 680;

No. 04–10487. DAHLMAN *v.* UNITED STATES. C. A. 9th Cir. Reported below: 103 Fed. Appx. 102;

No. 04–10538. DECARLO *v.* UNITED STATES. C. A. 11th Cir. Reported below: 116 Fed. Appx. 252;

No. 04–10596. SINGER *v.* UNITED STATES. C. A. 11th Cir. Reported below: 127 Fed. Appx. 471;

No. 04–10608. EDMONDS *v.* UNITED STATES. C. A. 11th Cir. Reported below: 129 Fed. Appx. 599;

No. 04–10718. AVILA-RAMOS *v.* UNITED STATES. C. A. 1st Cir.;

No. 04–10725. FERGUSON *v.* UNITED STATES. C. A. 11th Cir. Reported below: 129 Fed. Appx. 597;

No. 05–5106. HINTZ *v.* UNITED STATES. C. A. 11th Cir. Reported below: 129 Fed. Appx. 598;

No. 05–5374. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Reported below: 125 Fed. Appx. 981;

No. 05–5398. PACHINGER *v.* UNITED STATES. C. A. 11th Cir. Reported below: 127 Fed. Appx. 471;

No. 05–5614. SANDON *v.* UNITED STATES. C. A. 9th Cir. Reported below: 116 Fed. Appx. 832;

No. 05–5653. GILLESPIE *v.* UNITED STATES. C. A. 11th Cir. Reported below: 127 Fed. Appx. 472;

No. 05–5694. NEWTON *v.* UNITED STATES. C. A. 6th Cir. Reported below: 389 F. 3d 631;

No. 05–5704. MOODY *v.* UNITED STATES. C. A. 4th Cir. Reported below: 98 Fed. Appx. 259; and

No. 05–5917. NAHIA *v.* UNITED STATES. C. A. 8th Cir. Reported below: 383 F. 3d 769. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *United States* v. *Booker*, 543 U. S. 220 (2005).

No. 04–9218. MACKEY *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Gonzalez* v. *Crosby*, 545 U. S. 524 (2005).

No. 04–10064. CARTER *v.* ARKANSAS. Sup. Ct. Ark. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Smith* v. *Massachusetts*, 543 U. S. 462 (2005).

No. 04–10295. BARNETTE *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Miller-El* v. *Dretke*, 545 U. S. 231 (2005). Reported below: 390 F. 3d 775.

Certiorari Dismissed

No. 04–9971. TAYLOR *v.* WILSON, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 04–10063. PEREA *v.* BUSH, PRESIDENT OF THE UNITED STATES. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 04–10478. DI NARDO *v.* QUALSURE INSURANCE CORP. Sup. Ct. Fla. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 902 So. 2d 789.

No. 04–10601. TRICE *v.* UNITED STATES. C. A. Fed. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 120 Fed. Appx. 353.

No. 04–10683. WELLS *v.* CITY OF BEVERLY HILLS, CALIFORNIA, ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 05–5251. TAYLOR *v.* MILTON ET AL. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 124 Fed. Appx. 248.

No. 05–5615. PEREA *v.* BUSH, PRESIDENT OF THE UNITED STATES. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 05–5617. MURRAY, AKA HINES *v.* YATES, WARDEN, ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma*

pauperis denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 401 F. 3d 1288.

No. 05–5734. WHITEHEAD *v.* WICKHAM. Ct. App. D. C. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 05–5743. WOODBERRY *v.* MCKUNE, WARDEN. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 130 Fed. Appx. 246.

No. 05–5838. OWENS-EL *v.* DAVIS, WARDEN. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 05–5964. SEDGWICK *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 05–6046. COLIDA *v.* SONY ERICSSON MOBILE COMMUNICATION (USA) INC. C. A. Fed. Cir. Motion of petitioner for leave

to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 140 Fed. Appx. 953.

Miscellaneous Orders

No. 04M78. ROBINSON *v.* CAMPBELL, ACTING WARDEN;

No. 04M80. PENBARA *v.* DOVER TOWNSHIP, NEW JERSEY, ET AL.;

No. 05M2. GIBSON *v.* UNITED STATES;

No. 05M3. VALKOUN *v.* JONES, WARDEN;

No. 05M4. JOHNSON *v.* DISTRICT OF COLUMBIA ET AL.;

No. 05M5. WILLIAMS *v.* FARCAS, WARDEN, ET AL.;

No. 05M6. BRITTON *v.* UNITED STATES ET AL.;

No. 05M7. CALDWELL *v.* EL CORTEZ HOTEL & CASINO ET AL.;

No. 05M9. JACKSON *v.* LEHRER MCGOVERN BOVIS, INC.;

No. 05M10. WEBBER *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS;

No. 05M11. DIAZ *v.* JUDGE ADVOCATE GENERAL OF THE NAVY;

No. 05M12. NEW YORK CITY DEPARTMENT OF EDUCATION *v.* M. S., ON BEHALF OF HER MINOR CHILD I. O., ET AL.; and

No. 05M15. TURNER-EL *v.* MAYO ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 04M79. TERESA T. ET AL. *v.* RAGAGLIA ET AL. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioners granted.

No. 05M1. GREEN *v.* TEXAS;

No. 05M13. REID *v.* TENNESSEE; and

No. 05M14. MUNDO *v.* COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS. Motions for leave to proceed *in forma pauperis* without affidavits of indigency executed by petitioners denied.

No. 05M8. IN RE GRAND JURY PROCEEDINGS. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 65, Orig. TEXAS *v.* NEW MEXICO. Motion of the River Master for fees and reimbursement of expenses granted, and the River Master is awarded a total of $4,750.22 for the period April 1 through June 30, 2005, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 544 U. S. 1059.]

No. 03–9046. RHINES *v.* WEBER, WARDEN, 544 U. S. 269. Motion of Roberto Lange for excess compensation denied.

No. 04–52. RICE, WARDEN, ET AL. *v.* COLLINS. C. A. 9th Cir. [Certiorari granted, 545 U. S. 1151.] Motion of respondent for appointment of counsel granted. Mark R. Drozdowski, Esq., of Los Angeles, Cal., is appointed to serve as counsel for respondent in this case.

No. 04–108. KELO ET AL. *v.* CITY OF NEW LONDON, CONNECTICUT, ET AL., 545 U. S. 469. Motion of respondents to retax costs denied.

No. 04–373. MARYLAND *v.* BLAKE. Ct. App. Md. [Certiorari granted, 544 U. S. 973.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of National Association of Criminal Defense Lawyers for leave to participate in oral argument as *amicus curiae* and for divided argument denied. Motion of respondent for leave to proceed further herein *in forma pauperis* granted.

No. 04–623. GONZALES, ATTORNEY GENERAL, ET AL. *v.* OREGON ET AL. C. A. 9th Cir. [Certiorari granted, 543 U. S. 1145.] Motion of Charlene Andrews et al. for leave to intervene granted.

No. 04–944. ARBAUGH *v.* Y & H CORP., DBA THE MOONLIGHT CAFE. C. A. 5th Cir. [Certiorari granted, 544 U. S. 1031.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 04–1067. GEORGIA *v.* RANDOLPH. Sup. Ct. Ga. [Certiorari granted, 544 U. S. 973.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 04–1144. AYOTTE, ATTORNEY GENERAL OF NEW HAMPSHIRE *v.* PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND ET AL. C. A. 1st Cir. [Certiorari granted, 544 U. S. 1048.] Motion of Tim Pawlenty, Governor of Minnesota, et al. for leave to file a brief as *amici curiae* out of time granted.

No. 04–1152. RUMSFELD, SECRETARY OF DEFENSE, ET AL. *v.* FORUM FOR ACADEMIC & INSTITUTIONAL RIGHTS, INC., ET AL. C. A. 3d Cir. [Certiorari granted, 544 U. S. 1017.] Motion of

American Civil Rights Union for leave to file a brief as *amicus curiae* granted.

No. 04–1350. KSR INTERNATIONAL CO. *v.* TELEFLEX, INC., ET AL. C. A. Fed. Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 04–7693. DIXON *v.* CITY OF MINNEAPOLIS WATER DEPARTMENT ET AL. C. A. 8th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [543 U. S. 1138] denied.

No. 04–9185. COOMBS *v.* PENNSYLVANIA. Super. Ct. Pa. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [544 U. S. 1047] denied.

No. 04–9351. MCBROOM *v.* TECHNEGLAS, INC., ET AL. Ct. App. Ohio, Franklin County. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [544 U. S. 1059] denied.

No. 04–9612. JONES *v.* BIRKETT, WARDEN (two judgments). C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [545 U. S. 1112] denied.

No. 04–10387. OKPALA *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [545 U. S. 1137] denied.

No. 04–10525. MARCONE *v.* OFFICE OF DISCIPLINARY COUNSEL OF THE SUPREME COURT OF PENNSYLVANIA. Sup. Ct. Pa.;

No. 04–10724. KISSI *v.* PRAMCO II, LLC. C. A. 4th Cir.;

No. 05–5135. STUDER *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 2d Cir.; and

No. 05–5410. GUTNAYER *v.* CENDANT CORP. ET AL. C. A. 7th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until October 24, 2005, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 04–1664. IN RE HEIMERMANN;

No. 04–10508. IN RE WILLIAMS;

No. 04–10549. IN RE RIVERS;

No. 04–10630. IN RE GLAGOLA;
No. 04–10631. IN RE GARCIA ET AL.;
No. 04–10648. IN RE DEASON;
No. 04–10685. IN RE ROGERS;
No. 05–5005. IN RE HOMRICH;
No. 05–5016. IN RE DENNIS;
No. 05–5081. IN RE OLSEN;
No. 05–5195. IN RE AULL;
No. 05–5239. IN RE CARTER;
No. 05–5259. IN RE ALBERT;
No. 05–5262. IN RE RAMOS ET AL.;
No. 05–5341. IN RE REUELL;
No. 05–5400. IN RE HOLMAN;
No. 05–5608. IN RE BROWN;
No. 05–5643. IN RE MCCARTNEY;
No. 05–5760. IN RE FARLEY;
No. 05–5827. IN RE PETERSON;
No. 05–5903. IN RE WILLIAMS;
No. 05–5933. IN RE MATTATALL;
No. 05–5952. IN RE PHILLIPS;
No. 05–6053. IN RE BROWN;
No. 05–6067. IN RE LANGON;
No. 05–6097. IN RE EPPERSON; and
No. 05–6168. IN RE BAILEY. Petitions for writs of habeas corpus denied.

No. 04–1548. IN RE CALIFORRNIAA;
No. 04–1597. IN RE REIDT;
No. 04–1623. IN RE LEWIS;
No. 04–1638. IN RE VIDEO-CINEMA FILMS, INC.;
No. 04–1717. IN RE VON KAHL;
No. 04–9895. IN RE BEYAH;
No. 04–10085. IN RE MASTERS;
No. 04–10203. IN RE WHITE;
No. 04–10429. IN RE BELLON;
No. 04–10517. IN RE WATTLETON;
No. 04–10521. IN RE DUNBAR;
No. 04–10533. IN RE ALVARADO-RIVERA;
No. 04–10663. IN RE BAILEY;
No. 04–10670. IN RE VAUGHAN;
No. 05–119. IN RE GOULD;

No. 05–154. IN RE RODRIGUEZ;
No. 05–5033. IN RE BOYCE;
No. 05–5110. IN RE BODDIE;
No. 05–5134. IN RE SYLVESTER;
No. 05–5194. IN RE WILLIAMS;
No. 05–5215. IN RE PATTEN;
No. 05–5261. IN RE ADAMS;
No. 05–5407. IN RE DORSEY;
No. 05–5551. IN RE RIVAS;
No. 05–5585. IN RE SHERRILL;
No. 05–5673. IN RE GARZA; and
No. 05–5993. IN RE NYHUIS. Petitions for writs of mandamus denied.

No. 04–1710. IN RE VEY;
No. 04–10728. IN RE GOTTLICH;
No. 05–5292. IN RE HENSON; and
No. 05–5486. IN RE BRINKLEY. Petitions for writs of mandamus and/or prohibition denied.

No. 04–10529. IN RE WOODBERRY. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8.

No. 05–5456. IN RE ARANDA. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus and/or prohibition dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

Certiorari Denied

No. 04–1128. PLEETER *v.* BOOKBINDER. C. A. 11th Cir. Certiorari denied. Reported below: 123 Fed. Appx. 386.

No. 04–1136. ROANE *v.* UNITED STATES;
No. 04–8850. JOHNSON *v.* UNITED STATES; and
No. 04–8856. TIPTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 378 F. 3d 382.

No. 04–1175. WYOMING SAWMILLS, INC. *v.* UNITED STATES FOREST SERVICE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 383 F. 3d 1241.

No. 04–1207. BANNON, AS PARENT AND NATURAL GUARDIAN OF HARRIS, ET AL. *v.* SCHOOL DISTRICT OF PALM BEACH COUNTY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 387 F. 3d 1208.

No. 04–1225. ADAMS ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 391 F. 3d 1212.

No. 04–1226. ADAMS ET AL. *v.* WALKER, COMPTROLLER GENERAL OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 154 F. 3d 420.

No. 04–1239. CARDENAS-GARCIA ET AL. *v.* TEXAS TECH UNIVERSITY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 118 Fed. Appx. 793.

No. 04–1249. INTERNATIONAL BROTHERHOOD OF TEAMSTERS *v.* CONTINENTAL AIRLINES, INC. C. A. 5th Cir. Certiorari denied. Reported below: 391 F. 3d 613.

No. 04–1270. RIOS ET AL. *v.* JOHNSON, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 100 Fed. Appx. 270.

No. 04–1286. GOSWAMI *v.* AMERICAN COLLECTIONS ENTERPRISE, INC.; and

No. 04–1440. AMERICAN COLLECTIONS ENTERPRISE, INC. *v.* GOSWAMI. C. A. 5th Cir. Certiorari denied. Reported below: 377 F. 3d 488.

No. 04–1292. PEMCO AEROPLEX, INC. *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 11th Cir. Certiorari denied. Reported below: 383 F. 3d 1280.

No. 04–1300. MACIAS-PLACENCIA *v.* GONZALES, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 04–1303. BOARD OF EDUCATION FOR WARREN COMMUNITY UNIT SCHOOL DISTRICT NO. 205 ET AL. *v.* BAIRD. C. A. 7th Cir. Certiorari denied. Reported below: 389 F. 3d 685.

No. 04–1304. ALLEN OIL & GAS, LLC *v.* KLISH ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 113 Fed. Appx. 869.

No. 04–1328. FERGUSON *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 216 W. Va. 420, 607 S. E. 2d 526.

No. 04–1333. NATIONAL SOLID WASTE MANAGEMENT ASSN. ET AL. *v.* PINE BELT REGIONAL SOLID WASTE MANAGEMENT AUTHORITY AND ITS BOARD OF COMMISSIONERS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 389 F. 3d 491.

No. 04–1335. GEIG *v.* CITY OF MACEDONIA, OHIO. C. A. 6th Cir. Certiorari denied. Reported below: 112 Fed. Appx. 506.

No. 04–1346. BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS *v.* FUJITSU LTD. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 374 F. 3d 1098.

No. 04–1361. FULLENKAMP ET AL. *v.* JOHANNS, SECRETARY OF AGRICULTURE. C. A. 6th Cir. Certiorari denied. Reported below: 383 F. 3d 478.

No. 04–1365. CAPITAL SUISSE, INC., ET AL. *v.* HENTSCH HENCHOZ & CIE ET AL. Sup. Ct. Utah. Certiorari denied. Reported below: 106 P. 3d 718.

No. 04–1366. CALLERY *v.* UNITED STATES LIFE INSURANCE COMPANY IN THE CITY OF NEW YORK ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 392 F. 3d 401.

No. 04–1368. DELAWARE TRIBE OF INDIANS *v.* CHEROKEE NATION OF OKLAHOMA ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 389 F. 3d 1074.

No. 04–1380. JARNIS UNITED PROPERTIES CO. *v.* LEFKOVITZ ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 395 F. 3d 773.

No. 04–1383. SCHIFF *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 379 F. 3d 621.

No. 04–1396. SORRENTINO ET UX. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 383 F. 3d 1187.

No. 04–1404. WORLDWIDE BASKETBALL & SPORT TOURS, INC., ET AL. *v.* NATIONAL COLLEGIATE ATHLETIC ASSN. C. A. 6th Cir. Certiorari denied. Reported below: 388 F. 3d 955.

No. 04–1408. SMITH ET AL. *v.* UNIVERSITY OF WASHINGTON LAW SCHOOL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 392 F. 3d 367.

No. 04–1409. STEUBENVILLE CITY SCHOOLS ET AL. *v.* BARRETT. C. A. 6th Cir. Certiorari denied. Reported below: 388 F. 3d 967.

No. 04–1411. SIBLEY *v.* SIBLEY. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 885 So. 2d 980.

No. 04–1415. UNITED STATES EX REL. GARIBALDI ET AL. *v.* ORLEANS PARISH SCHOOL BOARD. C. A. 5th Cir. Certiorari denied. Reported below: 397 F. 3d 334.

No. 04–1421. LEGRAND *v.* AREA RESOURCES FOR COMMUNITY AND HUMAN SERVICES. C. A. 8th Cir. Certiorari denied. Reported below: 394 F. 3d 1098.

No. 04–1423. ALTERNATE POWER SOURCE, INC. *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied.

No. 04–1427. ROSS ET AL. *v.* CITIFINANCIAL, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 344 F. 3d 458.

No. 04–1438. DRURY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 396 F. 3d 1303.

No. 04–1445. THOMPSON *v.* UNITED STATES; and
No. 04–9907. JENKINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 396 F. 3d 751.

No. 04–1452. LOCAL 464A UFCW WELFARE REIMBURSEMENT PLAN *v.* PASCACK VALLEY HOSPITAL, INC. C. A. 3d Cir. Certiorari denied. Reported below: 388 F. 3d 393.

No. 04–1455. U. S. BANCORP, N. A., ET AL. *v.* OREGON DEPARTMENT OF REVENUE. Sup. Ct. Ore. Certiorari denied. Reported below: 337 Ore. 625, 103 P. 3d 85.

No. 04–1459. SOUTHCO, INC. *v.* KANEBRIDGE CORP. C. A. 3d Cir. Certiorari denied. Reported below: 390 F. 3d 276.

No. 04–1462. FRANKLIN SAVINGS CORP. ET AL. *v.* UNITED STATES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 385 F. 3d 1279.

No. 04–1466. GRINE ET AL. *v.* COOMBS, EXECUTOR OF THE ESTATE OF COOMBS, DECEASED, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 112 Fed. Appx. 830.

No. 04–1468. BOULWARE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 384 F. 3d 794.

No. 04–1470. ESAB GROUP, INC. *v.* CENTRICUT LLC ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 390 F. 3d 1361.

No. 04–1473. RAHIM *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 530.

No. 04–1474. PACIFIC SHORES DEVELOPMENT, LLC *v.* AT HOME CORP., DBA EXCITE AT HOME. C. A. 9th Cir. Certiorari denied. Reported below: 392 F. 3d 1064.

No. 04–1478. THOMAS ET UX. *v.* CITY OF CHATTANOOGA, TENNESSEE. C. A. 6th Cir. Certiorari denied. Reported below: 398 F. 3d 426.

No. 04–1480. MOYLAN, ATTORNEY GENERAL OF GUAM *v.* A. B. WON PAT GUAM INTERNATIONAL AIRPORT AUTHORITY, BY AND THROUGH ITS BOARD OF DIRECTORS. Sup. Ct. Guam. Certiorari denied.

No. 04–1481. O'ROURKE *v.* SMITHSONIAN INSTITUTION PRESS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 399 F. 3d 113.

No. 04–1482. WELLS ET AL. *v.* TEXAS A&M UNIVERSITY SYSTEM, DBA TEXAS A&M UNIVERSITY-COMMERCE, ET AL. Ct. App. Tex., 6th Dist. Certiorari denied.

No. 04–1487. NEW JERSEY DEPARTMENT OF LABOR *v.* RECONSTITUTED COMMITTEE OF UNSECURED CREDITORS OF THE UNITED HEALTHCARE SYSTEM, INC. C. A. 3d Cir. Certiorari denied. Reported below: 396 F. 3d 247.

No. 04–1488. NOVAK ET UX. *v.* TEITELBAUM, BRAVERMAN & BORGES, P. C. C. A. 2d Cir. Certiorari denied. Reported below: 115 Fed. Appx. 467.

No. 04–1490. RODRIGUEZ-REALPE *v.* GONZALES, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 115 Fed. Appx. 593.

No. 04–1491. MAINE *v.* PATTERSON. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 868 A. 2d 188.

No. 04–1492. LAHEY CLINIC HOSPITAL, INC. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 399 F. 3d 1.

No. 04–1493. VEDDER *v.* WASHINGTON MUTUAL BANK, FA. C. A. 6th Cir. Certiorari denied.

No. 04–1496. GREIN ET AL. *v.* CITY OF MENTOR, OHIO, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 118 Fed. Appx. 27.

No. 04–1497. HA *v.* GONZALES, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 120 Fed. Appx. 727.

No. 04–1498. HOBBS *v.* WESTCHESTER COUNTY, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 397 F. 3d 133.

No. 04–1509. WINKE *v.* WINKE. Ct. App. Iowa. Certiorari denied. Reported below: 690 N. W. 2d 699.

No. 04–1510. RAMSEY ET AL. *v.* FORMICA CORP. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 398 F. 3d 421.

No. 04–1511. CITY OF NEW ROCHELLE, NEW YORK, ET AL. *v.* CROWN COMMUNICATION NEW YORK, INC., ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 4 N. Y. 3d 159, 824 N. E. 2d 934.

No. 04–1512. SIMONSEN ET AL. *v.* CHICAGO BOARD OF EDUCATION ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 115 Fed. Appx. 887.

No. 04–1513. MAYNARD *v.* STUMP, COMMISSIONER, WEST VIRGINIA DIVISION OF MOTOR VEHICLES. Cir. Ct. Kanawha County, W. Va. Certiorari denied.

No. 04–1517. RIDENOUR ET AL. *v.* UNITED STATES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 397 F. 3d 925.

No. 04–1519. JONES *v.* FULTON COUNTY, GEORGIA. C. A. 11th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 464.

No. 04–1521. STILLEY *v.* DICKEY, CHIEF JUSTICE, SUPREME COURT OF ARKANSAS, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 117 Fed. Appx. 492.

No. 04–1522. LAL *v.* PENNSYLVANIA. Commw. Ct. Pa. Certiorari denied. Reported below: 845 A. 2d 269.

No. 04–1523. LAL *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied.

No. 04–1524. RALPH *v.* MONSANTO CO. C. A. Fed. Cir. Certiorari denied. Reported below: 122 Fed. Appx. 510.

No. 04–1526. CALLANAN *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 04–1529. SMITH *v.* 403 C STREET, LLC, ET AL. Ct. App. D. C. Certiorari denied.

No. 04–1535. PEACOCK ET UX. *v.* CITY OF MURPHY, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 123 Fed. Appx. 609.

No. 04–1536. JAFFE *v.* KAISER FOUNDATION HOSPITAL ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 04–1539. KATZ *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 04–1540. HAPONIK, ACTING SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY *v.* FERNANDEZ. C. A. 2d Cir. Certiorari denied. Reported below: 402 F. 3d 111.

No. 04–1542. PCS NITROGEN FERTILIZER, L. P. *v.* SHAW CONSTRUCTORS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 395 F. 3d 533.

No. 04–1547. SOUTHERN CALIFORNIA WATER CO. *v.* CALIFORNIA PUBLIC UTILITIES COMMISSION. Sup. Ct. Cal. Certiorari denied.

No. 04–1549. GREEN *v.* OFFICE OF THE SHERIFF'S OFFICE, CONSOLIDATED CITY OF JACKSONVILLE, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 597.

No. 04–1550. GILLETTE *v.* STUCKI. Ct. App. Mich. Certiorari denied.

No. 04–1551. INTERMOUNTAIN SPORTS, INC. *v.* UTAH DEPARTMENT OF TRANSPORTATION. Ct. App. Utah. Certiorari denied. Reported below: 103 P. 3d 716.

No. 04–1553. FLAGG ET UX. *v.* YONKERS SAVINGS & LOAN ASSN., FA, AKA YONKERS FINANCIAL. C. A. 2d Cir. Certiorari denied. Reported below: 396 F. 3d 178.

No. 04–1554. GEORGE *v.* CITY OF MORRO BAY, CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 04–1555. HOFFINGER INDUSTRIES, INC., ET AL. *v.* BUNCH, A MINOR, ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 123 Cal. App. 4th 1278, 20 Cal. Rptr. 3d 780.

No. 04–1556. GREENE ET AL. *v.* BERGER SINGERMAN, P. A., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 269.

No. 04–1557. CALIFORNIA FEDERAL BANK *v.* UNITED STATES; and

No. 04–1709. UNITED STATES *v.* CALIFORNIA FEDERAL BANK. C. A. Fed. Cir. Certiorari denied. Reported below: 395 F. 3d 1263.

No. 04–1558. LOCKHART *v.* HOFSTRA UNIVERSITY. C. A. 2d Cir. Certiorari denied. Reported below: 123 Fed. Appx. 31.

No. 04–1561. OERTWIG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 471.

No. 04–1563. TAKAHASHI *v.* LAW OFFICE OF BRIAN K. ROSS. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 04–1565. ANDREJIC *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 04–1568. NATIONAL LOAN INVESTORS, L. P. *v.* DENOFA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 124 Fed. Appx. 729.

No. 04–1571. OKAMOTO, DBA SUPREME AUTO LEASING *v.* BANK WEST CORP. C. A. 9th Cir. Certiorari denied. Reported below: 115 Fed. Appx. 410.

No. 04–1572. MINIX *v.* FRAZIER ET AL. C. A. 6th Cir. Certiorari denied.

No. 04–1573. DASH *v.* PATENT AND TRADEMARK OFFICE. C. A. Fed. Cir. Certiorari denied. Reported below: 118 Fed. Appx. 488.

No. 04–1574. WENDE C. ET VIR *v.* UNITED METHODIST CHURCH, NEW YORK WEST AREA, ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 4 N. Y. 3d 293, 827 N. E. 2d 265.

No. 04–1575. CARTY *v.* GONZALES, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 395 F. 3d 1081.

No. 04–1576. WHITFIELD *v.* ALABAMA SECURITIES COMMISSION ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 975.

No. 04–1577. LARA *v.* STATE FARM FIRE & CASUALTY CO. C. A. 10th Cir. Certiorari denied. Reported below: 121 Fed. Appx. 796.

No. 04–1578. SALAZAR *v.* LEMASTER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 208.

No. 04–1580. SMART ET AL. *v.* WYETH. C. A. 3d Cir. Certiorari denied. Reported below: 123 Fed. Appx. 465.

No. 04–1582. MUSGRAVE *v.* HOYOS, ADMINISTRATIVE LAW JUDGE, HOUSING PART Q, CIVIL COURT OF THE CITY AND COUNTY OF NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 115 Fed. Appx. 519.

No. 04–1585. ABERNATHY *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 114 Fed. Appx. 742.

No. 04–1586. CASTILLO *v.* MCFADDEN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 399 F. 3d 993.

No. 04–1587. PALM BEACH ISLES ASSOCIATES ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 122 Fed. Appx. 517.

No. 04–1588. TURNER *v.* WYNDER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 04–1589. LOSIER *v.* KALATSCHINOW. Super. Ct. Pa. Certiorari denied. Reported below: 855 A. 2d 143.

No. 04–1590. MAXIM PHARMACEUTICALS, INC., ET AL. *v.* CROSSPOINT VENTURE PARTNERS 1997, L. P., ET AL. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 04–1591. PRIMEGUARD INSURANCE CO., INC., ET AL. *v.* GARAMENDI, INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 113 Fed. Appx. 750.

No. 04–1592. THABAULT *v.* GONZALES, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 85 Fed. Appx. 257.

No. 04–1593. MOORE *v.* CITY OF ASHEVILLE, NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 396 F. 3d 385.

No. 04–1594. DEWALT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 123 Fed. Appx. 804.

No. 04–1595. SELLENS *v.* AMERICAN STATES INSURANCE CO. ET AL. Ct. App. Kan. Certiorari denied. Reported below: 33 Kan. App. 2d xx, 97 P. 3d 1072.

No. 04–1596. SAXONIS *v.* CITY OF LYNN, MASSACHUSETTS, ET AL. App. Ct. Mass. Certiorari denied. Reported below: 62 Mass. App. 916, 817 N. E. 2d 793.

No. 04–1598. ABUNDANT LIFE CHURCH, INC. *v.* TUBIOLO ET UX. Ct. App. N. C. Certiorari denied. Reported below: 167 N. C. App. 324, 605 S. E. 2d 161.

No. 04–1599. APARICIO *v.* POTTER, POSTMASTER GENERAL, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 14.

No. 04–1600. JACO *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 156 S. W. 3d 775.

No. 04–1601. LAZORKO, ADMINISTRATOR OF THE ESTATE OF NORLIE, AKA NORLIE-LAZORKO *v.* PENNSYLVANIA HOSPITAL ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 855 A. 2d 144.

No. 04–1603. SHORE CLUB CONDOMINIUM ASSN., INC., AKA SC CONDOMINIUM ASSN., INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 11th Cir. Certiorari denied. Reported below: 400 F. 3d 1336.

No. 04–1604. WARE *v.* OKLAHOMA EX REL. OKLAHOMA MERIT PROTECTION COMMISSION ET AL. Ct. Civ. App. Okla. Certiorari denied.

No. 04–1606. BENSON *v.* LEAVITT, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 112 Fed. Appx. 283.

No. 04–1608. LEZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 115 Fed. Appx. 761.

No. 04–1609. COUNTY OF SACRAMENTO, CALIFORNIA, ET AL. *v.* JONES. C. A. 9th Cir. Certiorari denied. Reported below: 393 F. 3d 918.

No. 04–1612. NEW YORK COASTAL PARTNERSHIP, INC., ET AL. *v.* DEPARTMENT OF THE INTERIOR ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 341 F. 3d 112.

No. 04–1613. SMITH *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 04–1614. MURPHY ET AL. *v.* SCHWARTZ. App. Ct. Conn. Certiorari denied.

No. 04–1616. BOULINEAU ET AL. *v.* DONALD, COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 401 F. 3d 1273.

No. 04–1619. ELIAKIM *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 884 So. 2d 57.

No. 04–1621. MORTERS *v.* BARR ET AL. Ct. App. Wis. Certiorari denied. Reported below: 278 Wis. 2d 813, 691 N. W. 2d 927.

No. 04–1622. STROTHER *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 60 M. J. 476.

No. 04–1624. BURTON *v.* RENICO, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 391 F. 3d 764.

No. 04–1625. A&F TRADEMARK, INC., ET AL. *v.* TOLSON, SECRETARY, NORTH CAROLINA DEPARTMENT OF REVENUE. Ct. App. N. C. Certiorari denied. Reported below: 167 N. C. App. 150, 605 S. E. 2d 187.

No. 04–1626. NOBLE *v.* BRINKER INTERNATIONAL, INC. C. A. 6th Cir. Certiorari denied. Reported below: 391 F. 3d 715.

No. 04–1627. MUNSON *v.* GUTIERREZ, SECRETARY OF COMMERCE, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 646.

No. 04–1628. SOLER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 124 Fed. Appx. 62.

No. 04–1629. ST. ANNE COMMUNITY HIGH SCHOOL DISTRICT NO. 302 *v.* NORMAN K. ET UX., INDIVIDUALLY AND AS PARENTS AND NEXT FRIENDS OF CASEY K. C. A. 7th Cir. Certiorari denied. Reported below: 400 F. 3d 508.

No. 04–1630. POWELL *v.* FIDELITY NATIONAL FINANCIAL, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 121 Fed. Appx. 765.

No. 04–1633. GILBERT *v.* DAIMLERCHRYSLER CORP. Sup. Ct. Mich. Certiorari denied. Reported below: 470 Mich. 749, 685 N. W. 2d 391.

No. 04–1635. LORDI *v.* ISHEE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 384 F. 3d 189.

No. 04–1636. MADDEN ET AL. *v.* DELOITTE & TOUCHE, LLP, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 118 Fed. Appx. 150.

No. 04–1637. KLAPPER *v.* CONNELLY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 824.

No. 04–1639. CHEHEBAR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 111 Fed. Appx. 637.

No. 04–1640. WILLS, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF WILLS, DECEASED *v.* AMERADA HESS CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 379 F. 3d 32.

No. 04–1641. STAINLESS SYSTEMS INC. *v.* NEXTEL WEST CORP. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 396 F. 3d 922.

No. 04–1642. DOE ET AL. *v.* LEAVITT, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 600.

No. 04–1643. LAPIDES *v.* BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA. C. A. 11th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 472.

No. 04–1644. SAVIN ENGINEERS, P. C., ET AL. *v.* SAVIN CORP. C. A. 2d Cir. Certiorari denied. Reported below: 391 F. 3d 439.

No. 04–1645. SIMMONS *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 86 Conn. App. 381, 861 A. 2d 537.

No. 04–1646. PMI PHOTOMAGIC, LTD. *v.* FOTO FANTASY, INC., DBA FANTASY ENTERTAINMENT, ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 123 Fed. Appx. 404.

No. 04–1647. HARBERT *v.* HEALTHCARE SERVICES GROUP, INC. C. A. 10th Cir. Certiorari denied. Reported below: 391 F. 3d 1140.

No. 04–1648. SHEN MANUFACTURING CO., INC. *v.* RITZ HOTEL LTD. C. A. Fed. Cir. Certiorari denied. Reported below: 393 F. 3d 1238.

No. 04–1649. SORO *v.* CITICORP. C. A. 11th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 270.

No. 04–1650. SOUTH CAROLINA ET AL. *v.* HOLLIDAY AMUSEMENT COMPANY OF CHARLESTON, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 401 F. 3d 534.

No. 04–1651. OSAHAR *v.* UNITED STATES POSTAL SERVICE. C. A. 11th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 471 and 472.

No. 04–1652. FRYER *v.* WORKERS' COMPENSATION APPEALS BOARD OF CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 04–1653. FINNEY *v.* NUGENT, JUDGE, SUPERIOR COURT OF CALIFORNIA, SAN DIEGO COUNTY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 123 Fed. Appx. 763.

No. 04–1654. MAYERCHECK *v.* HATHAWAY, JUDGE, COURT OF COMMON PLEAS OF PENNSYLVANIA, WESTMORELAND COUNTY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 122 Fed. Appx. 597.

No. 04–1656. SUTTON *v.* RHI HOTELS INC. C. A. 9th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 793.

No. 04–1658. UNITED STATES EX REL. KING *v.* JACKSON COUNTY HOSPITAL CORP. C. A. 11th Cir. Certiorari denied.

No. 04–1659. KNOX *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 400 F. 3d 519.

No. 04–1661. SHEUE-JAN TSAY *v.* DEPARTMENT OF THE NAVY. C. A. Fed. Cir. Certiorari denied. Reported below: 120 Fed. Appx. 823.

No. 04–1662. URITSKY *v.* GONZALES, ATTORNEY GENERAL. C. A. 6th Cir. Certiorari denied. Reported below: 399 F. 3d 728.

No. 04–1665. GWIN *v.* MARYLAND MOTOR VEHICLE ADMINISTRATION. Ct. App. Md. Certiorari denied. Reported below: 385 Md. 440, 869 A. 2d 822.

No. 04–1666. GIBSON *v.* FARCAS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 739.

No. 04–1669. SHESHTAWY ET AL. *v.* SHESHTAWY. Ct. App. Tex., 4th Dist. Certiorari denied. Reported below: 150 S. W. 3d 772.

No. 04–1670. SPRITZER *v.* HERSHKOP ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 105 Fed. Appx. 314.

No. 04–1674. YPSILANTI BOARD OF EDUCATION ET AL. *v.* MULBAH. C. A. 6th Cir. Certiorari denied.

No. 04–1675. MERRITT *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 123 Fed. Appx. 129.

No. 04–1676. MERCER *v.* THOMAS ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 158 Md. App. 726, 729.

No. 04–1677. MOULTRIE *v.* HUTCHINSON ET AL. C. A. 6th Cir. Certiorari denied.

No. 04–1680. BANKS *v.* CHASE MANHATTAN BANK. Ct. App. Wis. Certiorari denied. Reported below: 277 Wis. 2d 875, 690 N. W. 2d 885.

No. 04–1681. PRYEAR *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 923 So. 2d 347.

No. 04–1682. MIRAMAX FILM CORP. ET AL. *v.* GROSSO. C. A. 9th Cir. Certiorari denied. Reported below: 400 F. 3d 658.

No. 04–1683. VEAZEY ET UX. *v.* ASCENSION PARISH SCHOOL BOARD. C. A. 5th Cir. Certiorari denied. Reported below: 121 Fed. Appx. 552.

No. 04–1684. CRANMER *v.* TUMBLEBUS INC. C. A. 6th Cir. Certiorari denied. Reported below: 399 F. 3d 754.

No. 04–1685. DUVALL *v.* SACRAMENTO SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 04–1686. REILLY *v.* WEISS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 94 Fed. Appx. 969.

No. 04–1687. DAVIDSON ET AL. *v.* VIVRA INC. ET AL.; and DAVIDSON *v.* MEEHAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 923 (first judgment) and 312 (second judgment).

No. 04–1688. BAILEY *v.* CLAY COUNTY, ALABAMA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 116 Fed. Appx. 248.

No. 04–1689. BRANT ET AL. *v.* WHITAKER BANK, INC. C. A. 6th Cir. Certiorari denied. Reported below: 398 F. 3d 555.

No. 04–1691. MOORE *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 04–1692. CONTINENTAL PET TECHNOLOGIES, INC. *v.* SANDOVAL PALACIAS. Ct. App. Ga. Certiorari denied. Reported below: 269 Ga. App. 561, 604 S. E. 2d 627.

No. 04–1694. ASARNOW *v.* NEW JERSEY ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 04–1696. LUMUMBA *v.* MISSISSIPPI BAR. Sup. Ct. Miss. Certiorari denied. Reported below: 912 So. 2d 871.

No. 04–1700. GUIDI, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF GUIDI, ET AL. *v.* INTER-CONTINENTAL HOTELS CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 119 Fed. Appx. 332.

No. 04–1701. ISEN *v.* FEDERAL EXPRESS CORP. C. A. 6th Cir. Certiorari denied.

No. 04–1703. FORRESTER, CONSERVATOR OF THE ESTATE OF BASS *v.* ROSA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 397 F. 3d 1047.

No. 04–1705. EVERSON ET AL. *v.* MICHIGAN DEPARTMENT OF CORRECTIONS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 391 F. 3d 737.

No. 04–1707. OTTO ET AL. *v.* WESTERN PENNSYLVANIA TEAMSTERS & EMPLOYERS PENSION FUND ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 127 Fed. Appx. 17.

No. 04–1708. MISEK-FALKOFF *v.* DOUGLAS. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 04–1711. BROKAW *v.* QUALCOMM, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 305.

No. 04–1713. EAGLES, LTD., ET AL. *v.* FELDER. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 04–1714. GONZALES RIOS *v.* CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 04–1715. TAMAYO ET AL. *v.* GONZALES, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 120 Fed. Appx. 177.

No. 04–1716. MADRIAGA LIM, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, ET AL. *v.* OFFSHORE SPECIALTY FABRICATORS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 404 F. 3d 898.

No. 04–1718. ANAYA ET UX., AS PARENTS OF ANAYA, A MINOR *v.* DOUGLAS COUNTY, NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 269 Neb. 552, 694 N. W. 2d 601.

No. 04–1720. MEDLIN *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 11th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 298.

No. 04–1721. BARNHARDT *v.* WOODFORD, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 04–1722. WILLMAN ET AL. *v.* ST. PAUL FIRE & MARINE INSURANCE CO. C. A. 6th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 426.

No. 04–1725. FITZPATRICK *v.* DEPARTMENT OF JUSTICE. C. A. Fed. Cir. Certiorari denied. Reported below: 116 Fed. Appx. 285.

No. 04–1726. HERBERT *v.* CAIN. C. A. 2d Cir. Certiorari denied. Reported below: 129 Fed. Appx. 644.

No. 04–1728. CALDWELL ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 391 F. 3d 1226.

No. 04–1730. SCHWIEGERATH *v.* SCHWIEGERATH. Sup. Ct. Colo. Certiorari denied.

No. 04–1731. BENNETT *v.* SOCIETY OF LLOYD'S. C. A. 10th Cir. Certiorari denied. Reported below: 402 F. 3d 982.

No. 04–1732. ANDERSON *v.* WADE ET AL. Sup. Ct. N. C. Certiorari denied.

No. 04–1733. FRENCH *v.* JACKSON ET AL. C. A. 6th Cir. Certiorari denied.

No. 04–1735. SOUTHERN OREGON BARTER FAIR *v.* OREGON. C. A. 9th Cir. Certiorari denied. Reported below: 372 F. 3d 1128.

No. 04–1736. ENRIGHT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 04–1737. COAST AUTOMOTIVE GROUP, LTD. *v.* VOLKSWAGEN CREDIT, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 119 Fed. Appx. 419.

No. 04–1738. SILVERS *v.* SONY PICTURES ENTERTAINMENT, INC. C. A. 9th Cir. Certiorari denied. Reported below: 402 F. 3d 881.

No. 04–1741. WILSON, BY AND THROUGH HER NEXT FRIEND AND MOTHER, WILSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 403 F. 3d 524.

No. 04–8253. LOPEZ, AKA CHAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 372 F. 3d 86 and 100 Fed. Appx. 32.

No. 04–8277. WHITE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 891 So. 2d 502.

No. 04–8624. GRIFFITH *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 334 Ill. App. 3d 98, 777 N. E. 2d 459.

No. 04–8660. RIOS *v.* RYAN, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 390 F. 3d 1082.

No. 04–8765. DOWDY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 04–8938. MEJIA *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 348 Ill. App. 3d 1089, 868 N. E. 2d 1100.

No. 04–8959. DAFFIN *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 04–8980. CAMPER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 384 F. 3d 1073.

No. 04–8996. SARGENT *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 04–9054. HALE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 891 So. 2d 517.

No. 04–9072. FIELDS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 04–9116. THOM *v.* GONZALES, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 369 F. 3d 158.

No. 04–9139. STODDARD *v.* IDAHO. Ct. App. Idaho. Certiorari denied. Reported below: —— Idaho ——, 123 P. 3d 211.

No. 04–9356. CLEMONS *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 381 F. 3d 744.

No. 04–9437. GLOVER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 382 F. 3d 1110.

No. 04–9444. RITCHIE *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 809 N. E. 2d 258.

No. 04–9454. BROOKS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 11 App. Div. 3d 705, 783 N. Y. S. 2d 287.

No. 04–9488. MADRID-MANRIQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 117 Fed. Appx. 367.

No. 04–9510. HILLHOUSE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 04–9517. MARES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 402 F. 3d 511.

No. 04–9535. VILLEGAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 120 Fed. Appx. 785.

No. 04–9538. BAZILIO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 111 Fed. Appx. 699.

No. 04–9556. BONILLA *v.* RAMIREZ-PALMER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 116 Fed. Appx. 903.

No. 04–9561. GATES *v.* DISCOVERY COMMUNICATIONS INC. ET AL. Sup. Ct. Cal. Certiorari denied. Reported below: 34 Cal. 4th 679, 101 P. 3d 552.

No. 04–9627. BALLINGER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 395 F. 3d 1218.

No. 04–9631. DAVILA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 04–9642. THOMAS *v.* ROMANOWSKI, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 04–9657. HORNING *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 34 Cal. 4th 871, 102 P. 3d 228.

No. 04–9671. RIVERA *v.* HAWAII. Sup. Ct. Haw. Certiorari denied. Reported below: 106 Haw. 146, 102 P. 3d 1044.

No. 04–9690. WILLIAMS *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 578 Pa. 504, 854 A. 2d 440.

No. 04–9692. SOUTHWOOD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 04–9702. MOONEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 04–9710. WINKLES *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 894 So. 2d 842.

No. 04–9731. ARCHER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 04–9740. LOGAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 120 Fed. Appx. 978.

No. 04–9783. NICHOLAS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 34 Cal. 4th 614, 101 P. 3d 509.

No. 04–9795. HAMZAH *v.* FEDERAL EXPRESS GROUND PACKAGE SYSTEM, INC. C. A. 7th Cir. Certiorari denied.

No. 04–9878. LITTLE *v.* EVANS, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 04–9880. CRAIN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 894 So. 2d 59.

No. 04–9881. COLE *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 155 S. W. 3d 885.

No. 04–9885. MORGAN *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 359 N. C. 131, 604 S. E. 2d 886.

No. 04–9889. COOKS *v.* NEWLAND, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 395 F. 3d 1077.

No. 04–9890. MILLSAP *v.* RYAN, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 04–9891. THOMPSON *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 359 N. C. 77, 604 S. E. 2d 850.

No. 04–9892. WHITE *v.* WELLCARE MEDICARE. C. A. 11th Cir. Certiorari denied.

No. 04–9893. TURNER *v.* KELLY, SUPERINTENDENT, CENTRAL MISSISSIPPI CORRECTIONAL FACILITY. C. A. 5th Cir. Certiorari denied.

No. 04–9896. BOYLE *v.* PHILLIPS, WARDEN. C. A. 2d Cir. Certiorari denied.

No. 04–9898. OCEAN *v.* CUNNINGHAM, SUPERINTENDENT, WOODBOURNE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 120 Fed. Appx. 392.

No. 04–9899. MOORE *v.* FAHEY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 118 Fed. Appx. 775.

No. 04–9900. PENIGAR *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 04–9903. TODD *v.* LEIBACH, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 04–9909. OSTRANDER *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 849 A. 2d 608.

No. 04–9910. PAZ *v.* GONZALES, ATTORNEY GENERAL. C. A. 8th Cir. Certiorari denied. Reported below: 113 Fed. Appx. 76.

No. 04–9912. COX *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 337 Ore. 477, 98 P. 3d 1103.

No. 04–9913. WILLIAMS *v.* UPTON, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 462.

No. 04–9915. MORANT *v.* ARTUS, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 04–9918. RAMIREZ *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 398 F. 3d 691.

No. 04–9919. STROUD *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 895 So. 2d 1083.

No. 04–9921. PROVENZANO *v.* PROVENZANO. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 351 Ill. App. 3d 1180, 876 N. E. 2d 327.

No. 04–9922. LUKER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 395 F. 3d 830.

No. 04–9924. JONES *v.* MITCHELL, CORRECTIONAL ADMINISTRATOR IV, MOUNTAIN VIEW CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 106 Fed. Appx. 846.

No. 04–9927. DAVIS *v.* DEVORE, AKA JOYAVE. C. A. 4th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 200.

No. 04–9928. SMITH *v.* RUDICEL ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 123 Fed. Appx. 906.

No. 04–9931. BLAKENEY *v.* DAUPHIN COUNTY PRISON ET AL. C. A. 3d Cir. Certiorari denied.

No. 04–9933. THORSON *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 895 So. 2d 85.

No. 04–9935. MCMANUS *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 814 N. E. 2d 253.

No. 04–9942. JACOBS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 518.

No. 04–9943. LINK *v.* PITCHER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 04–9944. KIRK *v.* HINES, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 118 Fed. Appx. 431.

No. 04–9946. KING *v.* REID ET AL. C. A. 2d Cir. Certiorari denied.

No. 04–9947. PINEDA *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 04–9954. STAMPONE *v.* SCOTTRADE FINANCIAL SERVICES ET AL. C. A. 3d Cir. Certiorari denied.

No. 04–9955. STAMPONE *v.* FAZIO ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 130 Fed. Appx. 626.

No. 04–9959. ORTIZ *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 869 A. 2d 285.

No. 04–9962. TONEY *v.* BRILEY, WARDEN, ET AL. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 351 Ill. App. 3d 295, 813 N. E. 2d 758.

No. 04–9963. JUAREZ *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 04–9965. LINDSEY *v.* STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP ET AL. C. A. 3d Cir. Certiorari denied.

No. 04–9969. BRIONES *v.* CASTRO, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 115 Fed. Appx. 403.

No. 04–9972. ALLEN *v.* UTAH. Sup. Ct. Utah. Certiorari denied. Reported below: 108 P. 3d 730.

No. 04–9973. BARBER *v.* PERDUE, GOVERNOR OF GEORGIA. C. A. 11th Cir. Certiorari denied.

No. 04–9974. WHEELER *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 04–9976. BENITEZ *v.* BURGE, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 04–9980. JOHNSON *v.* HARVEY, ATTORNEY GENERAL OF NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 04–9983. LOVE *v.* VELTRI, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 04–9986. WATSON *v.* HOWARD, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 123 Fed. Appx. 910.

No. 04–9988. PINERO *v.* VERDINI, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT SHIRLEY. C. A. 1st Cir. Certiorari denied. Reported below: 123 Fed. Appx. 410.

No. 04–9993. DOUGHTY *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 04–9995. STREETER *v.* MCCABE, SUPERINTENDENT, HARNETT CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 120 Fed. Appx. 485.

No. 04–9997. MILKS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 894 So. 2d 924.

No. 04–9998. YOUNG *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 34 Cal. 4th 1149, 105 P. 3d 487.

No. 04–9999. ATWELL *v.* HART COUNTY, KENTUCKY, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 215.

No. 04–10001. FRAILEY *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 855 A. 2d 131.

No. 04–10002. HOBBS *v.* BOY SCOUTS OF AMERICA, INC., ET AL. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 152 S. W. 3d 367.

No. 04–10004. FRANCIS *v.* DUNCAN, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 04–10005. FLORES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 04–10008. HANNO *v.* STANDARD FEDERAL BANK FOR SAVING, NKA TCF BANK. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 346 Ill. App. 3d 1170, 866 N. E. 2d 709.

No. 04–10009. FOY *v.* FISCHER, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 04–10012. HOLLOWAY *v.* MCI TELEPHONE CO. ET AL. C. A. 9th Cir. Certiorari denied.

No. 04–10014. WOOLRIDGE *v.* VONGHN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 04–10015. KENDRICK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 04–10017. TAYLOR *v.* DIVISION OF DELAWARE POLICE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 122 Fed. Appx. 598.

No. 04–10021. COPPER *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 351 Ill. App. 3d 1178, 876 N. E. 2d 326.

No. 04–10023. BARAWSKAS *v.* MICHIGAN. Cir. Ct. Wayne County, Mich. Certiorari denied.

No. 04–10024. THOMAS *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 896 So. 2d 57.

No. 04–10025. VORA *v.* CITY OF JOHNSTOWN, PENNSYLVANIA. C. A. 3d Cir. Certiorari denied.

No. 04–10026. VORA *v.* PENNSYLVANIA. C. A. 3d Cir. Certiorari denied.

No. 04–10027. VORA *v.* PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE. C. A. 3d Cir. Certiorari denied.

No. 04–10028. VORA *v.* JANCIGA. C. A. 3d Cir. Certiorari denied.

No. 04–10029. MONTERROSO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 34 Cal. 4th 743, 101 P. 3d 956.

No. 04–10030. MEHTA *v.* DES PLAINES DEVELOPMENT LTD., TA HARRAH'S JOLIET CASINO & HOTEL, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 276.

No. 04–10031. JACKSON *v.* RAY, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 390 F. 3d 1254.

No. 04–10032. LEE *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 11th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 981.

No. 04–10040. DOUGHERTY *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 580 Pa. 183, 860 A. 2d 31.

No. 04–10042. DODD *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 100 P. 3d 1017.

No. 04–10043. SCARBERRY *v.* SIDDIQ. C. A. 11th Cir. Certiorari denied.

No. 04–10045. ROBINSON *v.* CONWAY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 04–10046. HARLOW, AKA SIGWOLF *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 105 P. 3d 1049.

No. 04–10047. HARRIS *v.* TEXAS. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 04–10052. WATSON *v.* HOME DEPOT U. S. A., INC. C. A. 7th Cir. Certiorari denied. Reported below: 101 Fed. Appx. 178.

No. 04–10053. WIPF *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 397 F. 3d 677.

No. 04–10054. ALGOE *v.* KNISS. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 04–10056. BELLON *v.* IDAHO. Ct. App. Idaho. Certiorari denied.

No. 04–10057. BENNETT *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 04–10058. BARLEY *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 04–10066. LOUD *v.* KANE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 04–10069. SWANK *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 04–10070. SMITH *v.* SIMS. C. A. 4th Cir. Certiorari denied. Reported below: 121 Fed. Appx. 502.

No. 04–10072. LYNEX *v.* RYAN, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 04–10074. MILLS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 04–10075. VEGA *v.* PORTUONDO, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 120 Fed. Appx. 380.

No. 04–10077. PAPAY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 119 Fed. Appx. 800.

No. 04–10080. WILSON *v.* MCKEE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 04–10081. TOLBERT *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 354 Ill. App. 3d 94, 820 N. E. 2d 6.

No. 04–10082. TORY *v.* BASSETT, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 119 Fed. Appx. 512.

No. 04–10083. WHITEHORN *v.* TEXAS. Ct. App. Tex., 10th Dist. Certiorari denied.

No. 04–10084. WILLIAMS *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 118 Fed. Appx. 346.

No. 04–10087. DAVIS *v.* MONTANA ET AL. Sup. Ct. Mont. Certiorari denied. Reported below: 325 Mont. 406, 106 P. 3d 133.

No. 04–10088. COLEMAN *v.* VASQUEZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 04–10094. WILLIAMS *v.* EAU CLAIRE PUBLIC SCHOOLS. C. A. 6th Cir. Certiorari denied. Reported below: 397 F. 3d 441.

No. 04–10096. PAGE *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 04–10098. SMITH *v.* HARTMAN ET AL. Ct. App. Ohio, Wayne County. Certiorari denied.

No. 04–10099. SMITH *v.* CHAMPAGNE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 04–10100. PONDER *v.* CHATMAN, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 271.

No. 04–10101. HICKS *v.* EVANS, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 341.

No. 04–10107. COTTON *v.* FULGENZIE ET AL. C. A. 11th Cir. Certiorari denied.

No. 04–10110. ROBINSON *v.* CURRIE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 117 Fed. Appx. 276.

No. 04–10111. BERRY *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 04–10114. MONTANEZ *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 900 So. 2d 566.

No. 04–10115. COLEMAN *v.* COURT OF COMMON PLEAS OF PENNSYLVANIA, ALLEGHENY COUNTY. Sup. Ct. Pa. Certiorari denied.

No. 04–10116. CONIC *v.* MICHIGAN. Cir. Ct. Saginaw County, Mich. Certiorari denied.

No. 04–10117. LANE *v.* ARKANSAS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 114 Fed. Appx. 771.

No. 04–10118. HAYES, AS GUARDIAN AND PARENT OF PEREZ ET AL., MINOR CHILDREN, ET AL. *v.* GARCIA ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 123 Fed. Appx. 858.

No. 04–10119. FITTS *v.* MARTIN ET AL. C. A. 6th Cir. Certiorari denied.

No. 04–10120. HOKE *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 04–10121. HORVAT *v.* PJAX, INC. C. A. 3d Cir. Certiorari denied.

No. 04–10122. HUTCHISON *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 150 S. W. 3d 292.

No. 04–10124. HAYES *v.* BALTIMORE CITY BOARD OF ELECTIONS. Ct. Sp. App. Md. Certiorari denied.

No. 04–10125. HUNT *v.* ROBERTS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 915.

No. 04–10126. GORDON *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 871 So. 2d 959.

No. 04–10128. HAWKINS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 04–10129. GIBSON *v.* LOUISIANA ET AL. Sup. Ct. La. Certiorari denied. Reported below: 899 So. 2d 8.

No. 04–10131. HALL *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 04–10132. HAJRUSI *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 04–10134. ANTHONY *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN. C. A. 6th Cir. Certiorari denied.

No. 04–10136. BOYCE *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 04–10138. STEARNS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 04–10139. BAILEY-EL *v.* CORCORAN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 111 Fed. Appx. 705.

No. 04–10140. ROY *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 04–10142. GOSSETT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 120 Fed. Appx. 757.

No. 04–10144. HANN *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 04–10146. ISOM *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 901 So. 2d 132.

No. 04–10147. HERNANDEZ *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 268 Neb. 934, 689 N. W. 2d 579.

No. 04–10148. HUTCHINS *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 04–10149. HEADRICK *v.* LEHMAN, SECRETARY, WASHINGTON DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 116 Fed. Appx. 920.

No. 04–10151. GUINN, AKA QUINN *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 04–10153. THOMAS *v.* PAN AMERICAN TIRE CO. C. A. 9th Cir. Certiorari denied.

No. 04–10154. HUDSON *v.* KAPTURE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 107 Fed. Appx. 466.

No. 04–10155. HAIMS *v.* ARTUS, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 114 Fed. Appx. 16.

No. 04–10156. MEDINA GANDARINA *v.* HUERTA. C. A. 9th Cir. Certiorari denied.

No. 04–10157. HARVEY *v.* STALDER, SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 654.

No. 04–10158. FORD *v.* ARMSTRONG. C. A. 5th Cir. Certiorari denied.

No. 04–10160. HEMBREE *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 869 A. 2d 327.

No. 04–10162. HARRIS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 04–10163. HALLMAN *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 876 So. 2d 662.

No. 04–10164. IRVIN *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 04–10167. SHARPLEY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 399 F. 3d 123.

No. 04–10168. ROBERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 53.

No. 04–10169. ROBINSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 116 Fed. Appx. 646.

No. 04–10170. LAMKIN *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 04–10172. DEVER *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 04–10177. MORROW *v.* AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS. C. A. 3d Cir. Certiorari denied. Reported below: 122 Fed. Appx. 598.

No. 04–10183. VARGAS-DELEON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 854.

No. 04–10184. THACKER *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 396 F. 3d 607.

No. 04–10186. MORGANS *v.* WOODFORD, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 366.

No. 04–10187. MCAFEE *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 04–10189. STEWART *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 269.

No. 04–10191. CALVIN *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 04–10192. SNYDER *v.* PLILER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 04–10194. KEY *v.* BETT, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 04–10195. BRYANT *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 04–10196. BELL *v.* YARBOROUGH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 04–10197. JONES *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 04–10198. LAMBERT *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 04–10202. WILLIAMS *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 277 Wis. 2d 154, 691 N. W. 2d 355.

No. 04–10206. YEKIMOFF *v.* SEASTRAND ET AL. C. A. 1st Cir. Certiorari denied.

No. 04–10207. PARTIN *v.* ARKANSAS. C. A. 8th Cir. Certiorari denied.

No. 04–10209. NELSON *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 04–10214. BOGLE *v.* OREGON EX REL. DEPARTMENT OF HUMAN SERVICES ET AL. Ct. App. Ore. Certiorari denied. Reported below: 196 Ore. App. 241, 102 P. 3d 150.

No. 04–10215. BLACKWELL *v.* WILLIAMSON. C. A. 9th Cir. Certiorari denied.

No. 04–10216. ROUSE *v.* KENNEDY. Sup. Ct. Mich. Certiorari denied.

No. 04–10217. MENJIVAR *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 04–10223. FRANGIE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 04–10224. JACKSON *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied.

No. 04–10225. MARSHALL *v.* MAZE ET AL. C. A. 6th Cir. Certiorari denied.

No. 04–10226. LAWRENCE *v.* O'NEIL BUICK, INC. C. A. 3d Cir. Certiorari denied. Reported below: 125 Fed. Appx. 457.

No. 04–10231. C. D. *v.* MCKEAN COUNTY CHILDREN AND YOUTH SERVICES. Super. Ct. Pa. Certiorari denied. Reported below: 858 A. 2d 1288.

No. 04–10232. GLOVER *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 119 Fed. Appx. 503.

No. 04–10234. MAXWELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 386 F. 3d 1042.

No. 04–10236. JACKSON *v.* CONCEALED AND REFUSED TO BE CONCEDED FACTS ET AL. C. A. 2d Cir. Certiorari denied.

No. 04–10239. REXELLE *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 04–10240. SNOW *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 04–10241. PARSON *v.* WILMER HUTCHINS INDEPENDENT SCHOOL DISTRICT. C. A. 5th Cir. Certiorari denied. Reported below: 112 Fed. Appx. 995.

No. 04–10244. TURNER *v.* ULIBARRI, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 123 Fed. Appx. 889.

No. 04–10246. HARRISON *v.* GREEN, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 952.

No. 04–10247. HULTZ *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 04–10250. HALE *v.* MATHIS ET AL. C. A. 8th Cir. Certiorari denied.

No. 04–10254. WHITE *v.* ORTIZ, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Colo. Certiorari denied.

No. 04–10256. HOLMES *v.* LUEBBERS, SUPERINTENDENT, FARMINGTON CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 04–10258. GREEN *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 04–10260. FLOYD *v.* LORD & TAYLOR. C. A. 2d Cir. Certiorari denied. Reported below: 96 Fed. Appx. 792.

No. 04–10261. EDMOND *v.* ROBINSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 117 Fed. Appx. 297.

No. 04–10263. DIDDLEMEYER *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 04–10264. COLVIN *v.* CURTIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 04–10265. CRAWFORD *v.* IOWA. Dist. Ct. Scott County, Iowa. Certiorari denied.

No. 04–10266. WOOD *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 895 So. 2d 413.

No. 04–10267. KOHSER *v.* MESHBESHER & ASSOCIATES, P. A. Sup. Ct. Minn. Certiorari denied.

No. 04–10268. KAHN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 298.

No. 04–10269. TURCUS *v.* OAKLAND COUNTY SHERIFF'S DEPARTMENT ET AL. C. A. 6th Cir. Certiorari denied.

No. 04–10271. AKERS *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 04–10272. BOYD *v.* WINTERS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 112 Fed. Appx. 366.

No. 04–10273. ANDERSON *v.* MARYLAND ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 154.

No. 04–10275. BILLINGER *v.* BELL ATLANTIC ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 124 Fed. Appx. 669.

No. 04–10278. SELF *v.* WOODFORD, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 04–10279. SYRIANI *v.* POLK, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 118 Fed. Appx. 706.

No. 04–10280. REED *v.* HOME DEPOT U. S. A., INC. C. A. 8th Cir. Certiorari denied. Reported below: 119 Fed. Appx. 16.

No. 04–10281. PAALAN *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 120 Fed. Appx. 817.

No. 04–10282. JANNEH *v.* ENDVEST, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 64 Fed. Appx. 814.

No. 04–10285. DOWNING *v.* HELLING, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 778.

No. 04–10286. RAMOS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 34 Cal. 4th 494, 101 P. 3d 478.

No. 04–10289. MCCREARY *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 04–10290. JONES *v.* GREER, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 04–10291. MOATS *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA; MOATS *v.* WHETSTONE ET AL.; MOATS *v.* WHETSTONE ET AL.; and MOATS *v.* WHETSTONE ET AL. C. A. 11th Cir. Certiorari denied.

No. 04–10297. DORSETT *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 04–10298. BOETTNER *v.* RAIMER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 711.

No. 04–10299. DANNENBERG *v.* BROWN, WARDEN, ET AL. Sup. Ct. Cal. Certiorari denied. Reported below: 34 Cal. 4th 1061, 104 P. 3d 783.

No. 04–10300. COX *v.* BURGER, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 398 F. 3d 1025.

No. 04–10301. WARFIELD *v.* DOLLISON. C. A. 8th Cir. Certiorari denied. Reported below: 113 Fed. Appx. 192.

No. 04–10302. COSTA *v.* YOUNG ET AL. C. A. 1st Cir. Certiorari denied.

No. 04–10303. LANN *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 111 Fed. Appx. 236.

No. 04–10304. DIAMONDSTONE *v.* WASHINGTON STATE BAR ASSN. ET AL. Sup. Ct. Wash. Certiorari denied. Reported below: 153 Wash. 2d 430, 105 P. 3d 1.

No. 04–10306. BOWMAN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 898 So. 2d 79.

No. 04–10307. KERUSENKO *v.* NEW JERSEY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 115 Fed. Appx. 583.

No. 04–10308. KALASHO *v.* REPUBLIC OF IRAQ ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 102 Fed. Appx. 27.

No. 04–10309. PEELER *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 271 Conn. 338, 857 A. 2d 808.

No. 04–10310. VAN MCHONE *v.* POLK, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 392 F. 3d 691.

No. 04–10311. NEUFELD *v.* CALIFORNIA STATE BOARD OF EQUALIZATION. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 124 Cal. App. 4th 1471, 22 Cal. Rptr. 3d 423.

No. 04–10312. MERIT *v.* SOUTHEASTERN PENNSYLVANIA TRANSIT AUTHORITY. C. A. 3d Cir. Certiorari denied. Reported below: 122 Fed. Appx. 598.

No. 04–10313. DYER *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 278 Ga. 656, 604 S. E. 2d 756.

No. 04–10315. LOPEZ *v.* ORTIZ, ADMINISTRATOR, EAST JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 04–10316. MCCURDY *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 04–10317. PAGE *v.* YARBOROUGH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 04–10318. MILLER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 04–10319. SUTTON *v.* SOLIS, CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 04–10320. RODRIGUEZ *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 04–10321. SMITH *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 45.

No. 04–10323. BORTOLON *v.* RYAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 04–10325. DANIEL *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 906 So. 2d 991.

No. 04–10326. HINTON *v.* UCHTMAN, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 395 F. 3d 810.

No. 04–10329. GRANT *v.* FOLINO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 122 Fed. Appx. 590.

No. 04–10331. GAPEN *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 104 Ohio St. 3d 358, 819 N. E. 2d 1047.

No. 04–10336. PALOMPELLI *v.* SMITH, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 04–10337. PARKER *v.* DENSON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 04–10340. ANDERSON *v.* WOODFORD, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 397 F. 3d 1175.

No. 04–10341. CHILDS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 04–10342. BENTON *v.* OZMINT, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 120 Fed. Appx. 987.

No. 04–10344. AL-HAKIM *v.* CAUSSEAUX, CHIEF DEPUTY CLERK, SUPREME COURT OF FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 902 So. 2d 789.

No. 04–10345. SAMUEL *v.* CARROLL, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 04–10346. RICHARDSON *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 895 So. 2d 1170.

No. 04–10347. RENEE *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied.

No. 04–10348. CURTIS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 354 Ill. App. 3d 312, 820 N. E. 2d 1116.

No. 04–10349. ZAKARIA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 121 Fed. Appx. 514.

No. 04–10353. GOODMAN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 347 Ill. App. 3d 278, 806 N. E. 2d 1124.

No. 04–10354. FERRI *v.* RODDEY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 122 Fed. Appx. 597.

No. 04–10355. HARRIS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 864 A. 2d 578.

No. 04–10356. HEMINGWAY *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 889 So. 2d 921.

No. 04–10357. GORDON *v.* SMITH. C. A. 9th Cir. Certiorari denied.

No. 04–10358. HUDLER *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 04–10359. MEDINA GANDARINA *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 04–10360. HAWKINS *v.* JARVIS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 114 Fed. Appx. 114.

No. 04–10361. HINKLE *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 04–10362. GARCIA-LOPEZ *v.* FARWELL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 117.

No. 04–10363. HARRIS *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 892 So. 2d 1238.

No. 04–10364. MILLER-BATES *v.* WACHOVIA BANK, N. A. Super. Ct. N. J., App. Div. Certiorari denied.

No. 04–10366. BUCKLEY *v.* SOCIAL SECURITY ADMINISTRATION. C. A. Fed. Cir. Certiorari denied. Reported below: 120 Fed. Appx. 360.

No. 04–10367. TAEK SANG YOON *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 04–10370. COLON *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 272 Conn. 106, 864 A. 2d 666.

No. 04–10372. HOWARD *v.* CRAWFORD, DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 04–10376. FRISBEE *v.* YARBOROUGH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 04–10380. HOLLOWAY *v.* MONEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 04–10381. ROWELL *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 398 F. 3d 370.

No. 04–10383. PREVENSLIK *v.* UNIVERSITY OF CHICAGO ET AL. C. A. 3d Cir. Certiorari denied.

No. 04–10384. PRATT *v.* WILEY, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 04–10386. METZENBAUM *v.* DEPARTMENT OF HOMELAND SECURITY. C. A. Fed. Cir. Certiorari denied. Reported below: 122 Fed. Appx. 476.

No. 04–10389. WESTBURY *v.* DORCHESTER COUNTY, SOUTH CAROLINA, ET AL. Ct. App. S. C. Certiorari denied.

No. 04–10390. JONES *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 33 Kan. App. 2d xxv, 100 P. 3d 628.

No. 04–10391. DICKERSON *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 33 Kan. App. 2d xiv, 100 P. 3d 628.

No. 04–10392. CORTEZ-ROCHA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 394 F. 3d 1115.

No. 04–10396. JOHNSON *v.* ORTIZ, ADMINISTRATOR, EAST JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 392 F. 3d 551.

No. 04–10397. LEE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 04–10400. LEVI *v.* YARBOROUGH, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 120 Fed. Appx. 195.

No. 04–10401. NORFLEET *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 04–10402. PEYTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 401 F. 3d 471.

No. 04–10403. SAITTA *v.* YARBOROUGH, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 121 Fed. Appx. 223.

No. 04–10404. LUNA-SANTANA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 128 Fed. Appx. 42.

No. 04–10405. SERRANO-BEAUVAIX *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 400 F. 3d 50.

No. 04–10406. STEPHAN *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 04–10407. MARSH, AKA MARRS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 04–10408. PARRISH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 04–10409. MARQUEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 127 Fed. Appx. 570.

No. 04–10410. CREASON *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 33 Kan. App. 2d 114, 98 P. 3d 985.

No. 04–10411. WINSTON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 268 Va. 564, 604 S. E. 2d 21.

No. 04–10412. VELAZQUEZ *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 61 Mass. App. 667, 814 N. E. 2d 356.

No. 04–10413. MARTINEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 04–10414. LEE *v.* FOLINA, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 04–10415. LONELYSS *v.* MENDOZA-POWERS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 04–10416. LOGGINS *v.* PURKETT, SUPERINTENDENT, EASTERN RECEPTION, DIAGNOSTIC AND CORRECTIONAL CENTER. Sup. Ct. Mo. Certiorari denied.

No. 04–10417. MARTINEZ *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 120 Fed. Appx. 157.

No. 04–10418. JONES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 04–10419. JACKSON *v.* FERRELL, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 04–10420. SMITH *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 359 N. C. 199, 607 S. E. 2d 607.

No. 04–10422. WHITE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 54.

No. 04–10423. DORROUGH, AKA WAYNE *v.* WAYNE. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 881 So. 2d 1173.

No. 04–10424. WILLIAMS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 04–10425. WILSON *v.* EARLY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 04–10426. VILLASENOR *v.* CALIFORNIA VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD ET AL. C. A. 9th Cir. Certiorari denied.

No. 04–10427. WASHINGTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 04–10428. CUNNINGHAM *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 105 Ohio St. 3d 197, 824 N. E. 2d 504.

No. 04–10430. BADRU *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 04–10431. VIRGO *v.* UNITED STATES CUSTOMS SERVICE. C. A. 2d Cir. Certiorari denied. Reported below: 123 Fed. Appx. 418.

No. 04–10432. BLOUNT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 04–10434. WILSON *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 121 Fed. Appx. 502.

No. 04–10435. BECKER *v.* BRADSHAW, WARDEN. Ct. App. Ohio, Richland County. Certiorari denied.

No. 04–10436. WALKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 92.

No. 04–10438. WINDOLFF *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 04–10439. ULLRICH *v.* SONNEN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 989.

No. 04–10440. WILLIAMS *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 119 Fed. Appx. 557.

No. 04–10441. THOMAS *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 04–10442. WILLIAMS *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 168 N. C. App. 409, 607 S. E. 2d 706.

No. 04–10443. BAILEY-EL *v.* COMPTON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 123 Fed. Appx. 580.

No. 04–10444. MCCLAINE-BEY *v.* BOUCHARD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 04–10445. SMALL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 118 Fed. Appx. 415.

No. 04–10446. RIVERA-ROSA, AKA RUIZ-FERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 04–10447. JEAN-BAPTISTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 395 F. 3d 1190.

No. 04–10448. MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 121 Fed. Appx. 177.

No. 04–10449. KEETER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 175 S. W. 3d 756.

No. 04–10450. EDWARDS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 04–10451. SHELTON *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 04–10452. WEST *v.* LITSCHER ET AL. C. A. 7th Cir. Certiorari denied.

No. 04–10453. ALFONSO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 04–10454. PLUMMER *v.* HORNUNG, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 04–10455. BINNEY *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 362 S. C. 353, 608 S. E. 2d 418.

No. 04–10458. MORGAN *v.* MICHIGAN DEPARTMENT OF CORRECTIONS. Ct. App. Mich. Certiorari denied.

No. 04–10459. NEILL *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 04–10460. MCELHANEY *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari denied.

No. 04–10461. CANNADY *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 896 So. 2d 749.

No. 04–10462. ROMAN *v.* WIGGER, SUPERINTENDENT, ALBANY COUNTY CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 04–10463. MARTINEZ RENTERIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 04–10464. ROBBINS *v.* COLORADO. Sup. Ct. Colo. Certiorari denied. Reported below: 107 P. 3d 384.

No. 04–10466. STEEN *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 690 N. W. 2d 239.

No. 04–10467. ESCAMILLA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 821.

No. 04–10468. RONQUILLO PALMA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 04–10469. CARNOHAN *v.* NEWCOMB. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 04–10470. MORA *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 898 So. 2d 80.

No. 04–10471. FAULKNER *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 154 S. W. 3d 48.

No. 04–10473. WOLF ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 127 Fed. Appx. 499.

No. 04–10474. BANSAL *v.* ACOSTA. C. A. 5th Cir. Certiorari denied. Reported below: 117 Fed. Appx. 372.

No. 04–10475. CHUMPIA *v.* MICHIGAN STATE UNIVERSITY ET AL. C. A. 6th Cir. Certiorari denied.

No. 04–10476. DELEVAUX *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 471.

No. 04–10477. SHERKAT *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 33 Kan. App. 2d xxx, 103 P. 3d 502.

No. 04–10479. HUNTER *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 395 F. 3d 1196.

No. 04–10480. HARBANS *v.* EVANS, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 04–10481. EVANS *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 872 A. 2d 539.

No. 04–10482. HAMPTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 128 Fed. Appx. 734.

No. 04–10483. HAMBERLIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 450.

No. 04–10484. FLEMING *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 04–10485. HARSHMAN *v.* ARIZONA; and HARSHMAN *v.* ARIZONA STATE BOARD OF REGENTS ET AL. Ct. App. Ariz. Certiorari denied.

No. 04–10486. GARCIA *v.* ILLINOIS DEPARTMENT OF CHILDREN AND FAMILY SERVICES ET AL. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 04–10488. NAJMEHCHI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 118 Fed. Appx. 569.

No. 04–10489. JUMA-PINEDA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 400 F. 3d 50.

No. 04–10490. MARTINEZ CARREON *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 210 Ariz. 54, 107 P. 3d 900.

No. 04–10491. KITTLE *v.* KITTLE. Super. Ct. Pa. Certiorari denied. Reported below: 849 A. 2d 616.

No. 04–10492. LEE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 04–10494. MCAFFEE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 04–10495. MILLER *v.* BEELER, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 114 Fed. Appx. 583.

No. 04–10496. GARCIA RODRIGUEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 440.

No. 04–10497. CRANDLE *v.* SUTTON, SUPERINTENDENT, PASQUOTANK CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 480.

No. 04–10498. SANCHEZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 04–10499. SCHULER *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 10th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 452.

No. 04–10501. CUNNINGHAM *v.* OREGON. C. A. 9th Cir. Certiorari denied.

No. 04–10502. ZOCHLINSKI *v.* REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 109 Fed. Appx. 893.

No. 04–10503. RONE *v.* BOOKER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 04–10504. RUTAN *v.* HOUK, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 04–10505. SEAGROVES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 04–10506. THEO-HARDING *v.* GONZALES, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 117 Fed. Appx. 300.

No. 04–10507. THOMAS *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 158 S. W. 3d 361.

No. 04–10509. BROOKS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 04–10512. ANTONIO *v.* PEARSON, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 04–10513. WILLIAMS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 655.

No. 04–10514. BUTLER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 04–10515. WARD *v.* MICHIGAN DEPARTMENT OF CORRECTIONS ET AL. C. A. 6th Cir. Certiorari denied.

No. 04–10516. WILLIAMS-BEY *v.* ROBERT. C. A. 7th Cir. Certiorari denied.

No. 04–10518. WARDELL *v.* NEAL, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 113 Fed. Appx. 877.

No. 04–10519. BLAKE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 04–10520. BRAWLEY *v.* ROMINE, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 115 Fed. Appx. 600.

No. 04–10522. PAUL *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 2d Cir. Certiorari denied. Reported below: 102 Fed. Appx. 195.

No. 04–10523. MENZIES *v.* HINKLE, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 04–10524. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 400 F. 3d 187.

No. 04–10526. BARLEY *v.* COOK. C. A. 4th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 966.

No. 04–10527. HUMPHRIES *v.* OZMINT, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 397 F. 3d 206.

No. 04–10528. WOODS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 04–10530. TYNES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 739.

No. 04–10531. AVERY *v.* REED, SUPERINTENDENT, MANNING CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 804.

No. 04–10532. THOMAS *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 04–10534. PALOMARES-PARRA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 116 Fed. Appx. 71.

No. 04–10535. SLAYDON *v.* KING, SUPERINTENDENT, SOUTH MISSISSIPPI CORRECTIONAL FACILITY. C. A. 5th Cir. Certiorari denied.

No. 04–10536. DAVIS ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 838.

No. 04–10537. ELIAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 04–10539. HUGHES *v.* HARRISON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 340.

No. 04–10540. EDGAR *v.* MISSOURI. Ct. App. Mo. Certiorari denied.

No. 04–10542. ESCOBEDO *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 04–10543. DAMMERAU *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 119 Fed. Appx. 564.

No. 04–10544. SMITH *v.* GREENE, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 04–10545. FERNANDEZ *v.* HILL, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 04–10546. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 739.

No. 04–10547. BARRAGAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 436.

No. 04–10548. SPEARS *v.* MATHER ET AL. C. A. 6th Cir. Certiorari denied.

No. 04–10550. CARTER *v.* HOWARD ET AL. C. A. 7th Cir. Certiorari denied.

No. 04–10551. GINGERICH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 119 Fed. Appx. 728.

No. 04–10552. FLOWERS *v.* LEE, SUPERINTENDENT, CALEDONIA CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 114 Fed. Appx. 94.

No. 04–10553. MOORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 04–10554. NANCE *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 392 F. 3d 284.

No. 04–10555. MEZA-MELENDEZ, AKA MEZA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 740.

No. 04–10556. ALLEN *v.* BROWN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 395 F. 3d 979.

No. 04–10557. VILLAGRANA *v.* GOMEZ. C. A. 9th Cir. Certiorari denied. Reported below: 120 Fed. Appx. 51.

No. 04–10558. BARBOUR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 395 F. 3d 826.

No. 04–10560. TAYLOR *v.* BROWN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 123 Fed. Appx. 297.

No. 04–10561. ORTEGA-AMARO, AKA AMARO-ORTEGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 369.

No. 04–10562. CALCARI *v.* ORTIZ, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied.

No. 04–10563. VESTER *v.* VIRGINIA (two judgments). Sup. Ct. Va. Certiorari denied.

No. 04–10564. JAMERSON *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Moore County, N. C. Certiorari denied.

No. 04–10565. SHELBY *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 04–10567. SALINAS *v.* UNITED STATES MARSHALS SERVICE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 111 Fed. Appx. 782.

No. 04–10568. PADGETT *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 858 A. 2d 1279.

No. 04–10569. BENNER *v.* COYLE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 04–10570. OGNIBENE *v.* NIAGARA COUNTY SHERIFF'S DEPARTMENT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 117 Fed. Appx. 798.

No. 04–10572. MARINO *v.* GAMMEL ET AL. C. A. 1st Cir. Certiorari denied.

No. 04–10573. LANDERS *v.* WALKER, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 04–10574. MATHESON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 04–10575. DEJESUS *v.* MILLER, SUPERINTENDENT, EASTERN NEW YORK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 04–10576. MOORER *v.* PALMER, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 83 Fed. Appx. 770.

No. 04–10578. SYMONDS *v.* PRICE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 04–10579. RAMOS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 401 F. 3d 111.

No. 04–10580. RICHARDSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 04–10581. POLK *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 04–10582. REVELS *v.* WIMP ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 382 F. 3d 870.

No. 04–10583. BOYD *v.* POLK, WARDEN. C. A. 4th Cir. Certiorari denied.

No. 04–10584. BROWN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 400 F. 3d 1242.

No. 04–10585. AMISON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 04–10586. ACKER *v.* CATTELL ET AL. Ct. App. Ariz. Certiorari denied.

No. 04–10587. KANALLY *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 361.

No. 04–10588. MARSHALL *v.* TAYLOR, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 395 F. 3d 1058.

No. 04–10589. LEE *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 04–10590. RONEY *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 581 Pa. 587, 866 A. 2d 351.

No. 04–10591. STEWART *v.* CATHEL, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 04–10592. DORSETT *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 04–10593. WILLIAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 116 Fed. Appx. 890.

No. 04–10594. THOMAS *v.* EVANS, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 121 Fed. Appx. 220.

No. 04–10595. MILLS *v.* BRICE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 194.

No. 04–10597. ROMER ET AL. *v.* SCHWARZENEGGER, GOVERNOR OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 04–10598. ALLER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 112 Fed. Appx. 771.

No. 04–10599. ALEXANDER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 123 Fed. Appx. 444.

No. 04–10600. ABNEY *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 04–10602. PRICE *v.* FILION, SUPERINTENDENT, COXSACKIE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 04–10603. MORSLEY *v.* SMITH, WARDEN. C. A. 3d Cir. Certiorari denied.

No. 04–10605. POWELL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 04–10606. WHITE *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 113 Fed. Appx. 571.

No. 04–10607. PINEDA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 04–10609. BRAVO *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 04–10610. BREESE *v.* MALONEY. C. A. 1st Cir. Certiorari denied.

No. 04–10611. AUSLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 395 F. 3d 918.

No. 04–10613. TATE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 398.

No. 04–10614. WOODARD *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 04–10615. GONZALEZ *v.* MORGAN, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 243.

No. 04–10616. GUZMAN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 35 Cal. 4th 577, 107 P. 3d 860.

No. 04–10617. POWELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 128 Fed. Appx. 590.

No. 04–10618. ROTH *v.* NORTH AMERICAN COAL CORPORATION RETIREMENT SAVINGS PLAN ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 395 F. 3d 916.

No. 04–10619. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 111 Fed. Appx. 181.

No. 04–10620. BRADLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 400 F. 3d 459.

No. 04–10621. CLAY *v.* TEXAS. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 04–10622. CARTER *v.* RUDDUCK, JUDGE, COURT OF COMMON PLEAS OF OHIO, CLINTON COUNTY, ET AL. Sup. Ct. Ohio. Certiorari denied.

No. 04–10623. HAMMER *v.* AMAZON.COM. C. A. 2d Cir. Certiorari denied.

No. 04–10624. GANT *v.* GAROFANO. C. A. 5th Cir. Certiorari denied. Reported below: 119 Fed. Appx. 602.

No. 04–10625. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 04–10626. LEVERINGSTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 397 F. 3d 1112.

No. 04–10627. JOHNSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 396 F. 3d 902.

No. 04–10628. JONES *v.* BAYER ET AL. C. A. 9th Cir. Certiorari denied.

No. 04–10629. MACK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 121 Fed. Appx. 51.

No. 04–10632. HOGROBROOKS *v.* SUPREME COURT OF ARKANSAS' COMMITTEE ON PROFESSIONAL CONDUCT ET AL.; and HOGROBROOKS *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS. C. A. 8th Cir. Certiorari denied.

No. 04–10633. HOWARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 692.

No. 04–10634. LOVE *v.* EARLY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 04–10635. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 399 F. 3d 640.

No. 04–10636. KOSOVAN *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 04–10637. MORRISON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 34 Cal. 4th 698, 101 P. 3d 568.

No. 04–10638. OLSEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 120 Fed. Appx. 18.

No. 04–10641. CRAWLEY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 903 So. 2d 936.

No. 04–10642. RODRIGUEZ WHITEHEAD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 04–10644. ROHDE *v.* CITY OF AUSTIN, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 246.

No. 04–10645. DULANEY *v.* CASON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 04–10646. COLE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 04–10647. CAMPBELL *v.* INDIANA. Sup. Ct. Ind. Certiorari denied.

No. 04–10650. WARHURST *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 795.

No. 04–10651. MIDDLETON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 04–10652. MEANS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 471.

No. 04–10654. ROGERS *v.* RUSHTON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 812.

No. 04–10655. DINGLE *v.* DOBSON. Sup. Ct. S. C. Certiorari denied.

No. 04–10656. CLINE *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 04–10658. ALLEN *v.* RESOURCE CONSULTANTS INC. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 119 Fed. Appx. 541.

No. 04–10659. BIRD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 401 F. 3d 633.

No. 04–10660. ACREMANT *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 338 Ore. 302, 108 P. 3d 1139.

No. 04–10661. BROWNELL *v.* SAAR, SECRETARY, MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 118 Fed. Appx. 761.

No. 04–10662. ALVES *v.* GONZALES, ATTORNEY GENERAL. C. A. 1st Cir. Certiorari denied.

No. 04–10664. BONAPARTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 04–10665. MOLINA *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 04–10666. THOMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 128 Fed. Appx. 986.

No. 04–10667. TURNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 779.

No. 04–10668. TURNER *v.* HOWERTON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 04–10669. WILSON *v.* PORTIER. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 04–10671. VEGA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 398 F. 3d 149.

No. 04–10672. BATES *v.* BELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 402 F. 3d 635.

No. 04–10674. ARNOLD *v.* LUEBBERS, SUPERINTENDENT, FARMINGTON CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 04–10675. LOVETT *v.* HINSLEY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 04–10676. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 113 Fed. Appx. 558.

No. 04–10677. MARTIN *v.* MORGAN, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 04–10678. STALEY *v.* HUMPHREY, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 601.

No. 04–10679. STITELY *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 35 Cal. 4th 514, 108 P. 3d 182.

No. 04–10680. RODRIGUEZ *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 04–10681. WALTERS *v.* CORRECTIONS CORPORATION OF AMERICA ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 119 Fed. Appx. 190.

No. 04–10682. DIEN HUU NGUYEN *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 04–10684. SNYDER *v.* SIMS, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 04–10686. SEXTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 117 Fed. Appx. 282.

No. 04–10687. DURAN-SALAZAR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 123 Fed. Appx. 946.

No. 04–10688. KELLEY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 402 F. 3d 39.

No. 04–10689. BROWN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 04–10690. THOMAS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 04–10691. BARROW *v.* UCHTMAN, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 398 F. 3d 597.

No. 04–10692. WHEELER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 901 So. 2d 121.

No. 04–10693. PRUITT *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 279 Ga. 140, 611 S. E. 2d 47.

No. 04–10695. SANDERS *v.* UNION PACIFIC RAILROAD CO. ET AL. C. A. 7th Cir. Certiorari denied.

No. 04–10696. DEUTSCH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 403 F. 3d 915.

No. 04–10697. HAILEY *v.* COLUMBIA NAVARRO REGIONAL HOSPITAL ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 114 Fed. Appx. 641.

No. 04–10698. IRONS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 04–10699. GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 738.

No. 04–10700. HICKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 73.

No. 04–10701. HUDNALL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 04–10702. GARDNER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 396 F. 3d 987.

No. 04–10703. GIBSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 127 Fed. Appx. 517.

No. 04–10704. FIORANI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 112 Fed. Appx. 942.

No. 04–10705. GIVENS *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 888 So. 2d 329.

No. 04–10707. HATCHER *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 04–10708. HUDSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 04–10709. HOUSTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 04–10710. SIMMONS *v.* COLORADO STATE BOARD OF PSYCHOLOGIST EXAMINERS ET AL. Ct. App. Colo. Certiorari denied.

No. 04–10711. SCHREIBER *v.* ROWE. C. A. 7th Cir. Certiorari denied.

No. 04–10712. NORMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 298.

No. 04–10713. MORENO *v.* EVANS, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 04–10714. MURO-MENDOZA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 329.

No. 04–10715. LUCIO *v.* HARRISON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 120 Fed. Appx. 738.

No. 04–10716. JENNINGS *v.* SMITH ET AL. C. A. 6th Cir. Certiorari denied.

No. 04–10717. MALAN *v.* FIFTH THIRD BANK, INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 810 N. E. 2d 783.

No. 04–10719. ABBAS *v.* WEST, SUPERINTENDENT, ELMIRA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 04–10720. ARRINGTON *v.* COCKLIN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 116 Fed. Appx. 468.

No. 04–10721. BONILLA *v.* SMITH, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 04–10722. WOOTEN *v.* CASTRO, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 106.

No. 04–10723. MILES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 04–10726. HERNANDEZ *v.* WEST, SUPERINTENDENT, ELMIRA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 129 Fed. Appx. 642.

No. 04–10727. GRATZER *v.* MAHONEY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 397 F. 3d 686.

No. 04–10729. GOMEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 112 Fed. Appx. 779.

No. 04–10730. FLOYD *v.* LAUNDY ET AL. C. A. 6th Cir. Certiorari denied.

No. 04–10731. HOLLAND *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 04–10732. HAWKINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 04–10733. HARMON *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 894 So. 2d 1068.

No. 04–10734. HENRY *v.* COLLERAN, SUPERINTENDENT, WAYMART STATE CORRECTIONAL INSTITUTION. C. A. 3d Cir. Certiorari denied.

No. 04–10735. CHAMBERS *v.* MILLION, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 04–10736. HASTINGS *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 04–10737. HOWARD *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 349 Ill. App. 3d 1036, —— N. E. 2d ——.

No. 04–10738. GERMAN *v.* BAKER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 257.

No. 04–10739. FOUNTAIN *v.* THOMAS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 04–10740. GONZALEZ GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 104 Fed. Appx. 396.

No. 04–10741. HOUGH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 110 Fed. Appx. 367.

No. 04–10742. FLUELLEN *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 119 Fed. Appx. 553.

No. 04–10743. GRANT *v.* DISTRICT ATTORNEY OF THE COUNTY OF BUCKS ET AL. C. A. 3d Cir. Certiorari denied.

No. 04–10744. COLLINS *v.* WEST, SUPERINTENDENT, ELMIRA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 04–10745. JOHNSON ET AL. *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 892 So. 2d 1039.

No. 04–10746. MARIAN *v.* CITY OF OXNARD, CALIFORNIA, ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 04–10748. PRITCHETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 699.

No. 04–10749. JEAN, AKA GEORGE *v.* CHARLOTTE CORRECTIONAL INSTITUTION ET AL. C. A. 11th Cir. Certiorari denied.

No. 04–10750. SKURDAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 77.

No. 04–10751. SIZEMORE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 04–10752. DUNCAN *v.* SULLIVAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 04–10753. LEBAR *v.* MONROE COUNTY CHILDREN AND YOUTH SERVICES ET AL. C. A. 3d Cir. Certiorari denied.

No. 04–10754. JONES *v.* STERNES ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 448.

No. 04–10755. DELGADO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 124 Fed. Appx. 694.

No. 05–4. SMITH *v.* CONSOLIDATED FREIGHTWAYS. Commw. Ct. Pa. Certiorari denied.

No. 05–5. LUNG FONG CHEN *v.* UNITED STATES; and
No. 05–5120. TU *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 393 F. 3d 139.

No. 05–7. RUNDELL ET AL. *v.* HASTINGS MUTUAL INSURANCE CO. ET AL. Ct. App. Mich. Certiorari denied.

No. 05–9. COMMEREE *v.* OFFICE OF COMPLIANCE ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 115 Fed. Appx. 441.

No. 05–10. AIRTRANS, INC. *v.* MEAD, INSPECTOR GENERAL, DEPARTMENT OF TRANSPORTATION, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 389 F. 3d 594.

No. 05–12. LITOFF *v.* PINTER. Sup. Ct. N. D. Certiorari denied. Reported below: 704 N. W. 2d 286.

No. 05–13. LEE *v.* KING, CHIEF JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, ET AL. Ct. App. D. C. Certiorari denied.

No. 05–14. CHRISTENSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 269.

No. 05–15. HANNA *v.* CITY OF CHICAGO, ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 05–17. HERNANDEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–20. WATSON *v.* UNUM LIFE INSURANCE COMPANY OF AMERICA. C. A. 4th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 604.

No. 05–26. CHARROS *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 443 Mass. 752, 824 N. E. 2d 809.

No. 05–28. STEVENS *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 05–29. ROACH *v.* ARIZONA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 153.

No. 05–30. GAMMOH ET AL. *v.* CITY OF LA HABRA, CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 402 F. 3d 875.

No. 05–31. TURNER *v.* ROGER MILLER MUSIC, INC. C. A. 6th Cir. Certiorari denied. Reported below: 396 F. 3d 762.

No. 05–32. RAHMANI *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 898 So. 2d 132.

No. 05–33. ROQUET ET AL. *v.* ARTHUR ANDERSEN LLP. C. A. 7th Cir. Certiorari denied. Reported below: 398 F. 3d 585.

No. 05–34. DUGAS *v.* PARKER, CHIEF BANKRUPTCY JUDGE, UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 824.

No. 05–35. TAYLOR *v.* POTTER, POSTMASTER GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 293.

No. 05–38. HOLMES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 406 F. 3d 337.

No. 05–44. SHAPIRO *v.* PENNSYLVANIA STATE BOARD OF ACCOUNTANCY. Commw. Ct. Pa. Certiorari denied. Reported below: 856 A. 2d 864.

No. 05–46. KAY ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 396 F. 3d 1184.

No. 05–49. CONLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–50. CAMPBELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–53. TAAL ET UX. *v.* ZWIRNER ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 117 Fed. Appx. 775.

No. 05–56. O'BRIEN *v.* LUCAS ASSOCIATES PERSONNEL, INC., DBA LUCAS GROUP, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 702.

No. 05–57. MCCOY *v.* CITY OF MOBILE, ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 925 So. 2d 1010.

No. 05–60. HICKEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 367 F. 3d 888.

No. 05–62. BOCHESE *v.* TOWN OF PONCE INLET, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 405 F. 3d 964.

No. 05–63. ACTON *v.* CITY OF EATON, OHIO, ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–65. LOMMEN, NATURAL FATHER OF LOMMEN, A MINOR, ET AL. *v.* MCINTYRE. C. A. 6th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 655.

No. 05–66. BROUSSARD *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 896 So. 2d 26.

No. 05–67. TUNNY *v.* METROPOLITAN LIFE INSURANCE CO. C. A. 2d Cir. Certiorari denied. Reported below: 109 Fed. Appx. 473.

No. 05–69. RITTENHOUSE *v.* EISEN, UNITED STATES TRUSTEE. C. A. 6th Cir. Certiorari denied. Reported below: 404 F. 3d 395.

No. 05–70. ROLDOS-MATOS ET AL. *v.* SUPREME COURT OF PUERTO RICO. Sup. Ct. P. R. Certiorari denied.

No. 05–72. GOODWILL *v.* TEXAS A&M UNIVERSITY MEDICAL SCHOOL ET AL. C. A. 5th Cir. Certiorari denied.

No. 05–73. TERRY ET UX. *v.* LEVENS ET UX. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 05–75. WHITE *v.* UNIVISION OF VIRGINIA, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 401 F. 3d 236.

No. 05–76. WHALEN *v.* MASSACHUSETTS TRIAL COURT ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 397 F. 3d 19.

No. 05–77. GOMEZ ET VIR, INDIVIDUALLY AND ON BEHALF OF GOMEZ ET AL., MINOR CHILDREN *v.* HOUSING AUTHORITY OF THE CITY OF EL PASO, TEXAS. Ct. App. Tex., 8th Dist. Certiorari denied. Reported below: 148 S. W. 3d 471.

No. 05–78. CLARK *v.* GRAHAM ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 112.

No. 05–79. HOWARD ET AL. *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 05–80. CHEEVER ET AL. *v.* JOHN HANCOCK MUTUAL LIFE INSURANCE CO. C. A. 1st Cir. Certiorari denied. Reported below: 400 F. 3d 83.

No. 05–81. LAFONTAINE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 124 Fed. Appx. 684.

No. 05–82. NAULT ET UX., CO-GUARDIANS OF THE PERSON AND ESTATE OF NAULT, AN ADULT WARD *v.* MAINOR ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 120 Nev. 750, 101 P. 3d 308.

No. 05–84. BUTCHER ET AL. *v.* BLACHY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 173.

No. 05–90. TELLO *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 410 F. 3d 743.

No. 05–91. ALLEGHENY COUNTY PRISON EMPLOYEES INDEPENDENT UNION ET AL. *v.* ALLEGHENY COUNTY, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 124 Fed. Appx. 140.

No. 05–93. KHANNA *v.* JEMM CO. ET AL. Ct. App. Colo. Certiorari denied.

No. 05–94. MCENTEE *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 404 F. 3d 1320.

No. 05–95. SUTTER *v.* LASAR. C. A. 9th Cir. Certiorari denied. Reported below: 399 F. 3d 1101.

No. 05–97. SCHNEIDERHAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 404 F. 3d 73.

No. 05–99. DUCOTE *v.* TITELMAN ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 269.

No. 05–100. PIECZENIK *v.* DOMANTIS ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 120 Fed. Appx. 317.

No. 05–102. BIEN-AIME *v.* GONZALES, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 121 Fed. Appx. 524.

No. 05–103. ZOLLINO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–104. TREMBLE *v.* BULLOCH COUNTY SCHOOL DISTRICT ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 976.

No. 05–105. UBEROI *v.* CITY OF BOULDER, COLORADO, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 112 Fed. Appx. 701.

No. 05–108. INDUSTRIAL TECHNOLOGIES, INC. *v.* CAPITAL ALLIANCE INSURANCE CO., INC., ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 923 So. 2d 1154.

No. 05–109. IVEY, TRUSTEE FOR THE BANKRUPTCY ESTATE OF J. G. FURNITURE GROUP, INC. *v.* GREAT-WEST LIFE & ANNUITY INSURANCE CO. C. A. 4th Cir. Certiorari denied. Reported below: 405 F. 3d 191.

No. 05–110. TUSANEZA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 116 Fed. Appx. 305.

No. 05–112. FINNEGAN *v.* DE FRANCISCO ET AL. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 05–113. FINNEGAN *v.* DE FRANCISCO ET AL. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 05–114. HOLLIS-ARRINGTON *v.* FANNIE MAE ET AL. C. A. D. C. Cir. Certiorari denied.

No. 05–115. RYAN *v.* PALMATEER, SUPERINTENDENT, OREGON STATE PENITENTIARY. Sup. Ct. Ore. Certiorari denied. Reported below: 338 Ore. 278, 108 P. 3d 1127.

No. 05–116. JOHNSTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–120. GOODHEART *v.* DUMONT. C. A. 9th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 427.

No. 05–123. SUPERIOR PROTECTION, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 5th Cir. Certiorari denied. Reported below: 401 F. 3d 282.

No. 05–124. BDT PRODUCTS, INC., ET AL. *v.* LEXMARK INTERNATIONAL, INC. (two judgments). C. A. 6th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 329 (first judgment); 405 F. 3d 415 (second judgment).

No. 05–125. ASTER *v.* ASTER. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 05–127. GULDMAN ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 123 Fed. Appx. 393.

No. 05–129. COHEN *v.* KREMEN. C. A. 9th Cir. Certiorari denied.

No. 05–131. STEARNS CO., LTD. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 396 F. 3d 1354.

No. 05–132. ROUSH *v.* CHALKEY. Super. Ct. Pa. Certiorari denied. Reported below: 858 A. 2d 1269.

No. 05–133. MCWILLIAMS *v.* AMSTAFF ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 898 So. 2d 938.

No. 05–135. ACREE ET AL. *v.* TYSON BEARING CO., INC. C. A. 6th Cir. Certiorari denied. Reported below: 128 Fed. Appx. 419.

No. 05–137. SCHNEIDER ET AL. *v.* WILL COUNTY, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 123 Fed. Appx. 715.

No. 05–138. LICK FORK MARINA, INC. *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 820 N. E. 2d 152.

No. 05–140. KEYTER *v.* BUSH, PRESIDENT OF THE UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 05–142. HODGES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–143. GILROY *v.* LETTERMAN ET AL. C. A. 1st Cir. Certiorari denied.

No. 05–144. BANK OF LOUISIANA *v.* CRAIG'S STORES OF TEXAS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 402 F. 3d 522.

No. 05–145. TOLBIRD ET UX. *v.* WYBLE ET AL. Ct. App. La., 2d Cir. Certiorari denied. Reported below: 892 So. 2d 103.

No. 05–146. WILLIAMS ET AL. *v.* POTTER, POSTMASTER GENERAL, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 806.

No. 05–150. HECKEL *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 122 Wash. App. 60, 93 P. 3d 189.

No. 05–151. MATHIS ET AL. *v.* OHIO. Ct. App. Ohio, Summit County. Certiorari denied.

No. 05–152. RAMOS ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 415.

No. 05–158. RUBENSTEIN ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 403 F. 3d 93.

No. 05–160. LUZ *v.* GONZALES, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 975.

No. 05–161. DALY *v.* GONZALES, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 837.

No. 05–164. PINFIELD *v.* PARKER, SHERIFF, BREVARD COUNTY, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 270.

No. 05–176. MANZO ET AL. *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 05–178. HOLLOWAY *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 143 Fed. Appx. 313.

No. 05–188. JOBE *v.* CITY OF CATLETTSBURG, KENTUCKY. C. A. 6th Cir. Certiorari denied. Reported below: 409 F. 3d 261.

No. 05–191. CRAWFORD *v.* BASSETT, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 128 Fed. Appx. 329.

No. 05–208. CALLISON *v.* CITY OF PHILADELPHIA, PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 128 Fed. Appx. 897.

No. 05–222. JACKSON *v.* POTTER, POSTMASTER GENERAL, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 115 Fed. Appx. 351.

No. 05–238. GLOBAL AEROSPACE, INC. *v.* WOOD, AS PERSONAL REPRESENTATIVE OF BROWN, ET AL. Ct. App. Ariz. Certiorari denied. Reported below: 209 Ariz. 137, 98 P. 3d 572.

No. 05–243. ALLEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–248. STANFORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 130.

No. 05–255. NIAZ RANA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 890.

No. 05–257. BURKICH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–264. SUTHERLIN ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 118 Fed. Appx. 911.

No. 05–5001. HURLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 359.

No. 05–5002. HILL *v.* YEARWOOD, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 114 Fed. Appx. 904.

No. 05–5003. GANT *v.* GEORGIA ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–5004. HARRIS *v.* NEW YORK. Sup. Ct. N. Y., New York County. Certiorari denied.

No. 05–5006. GALLO *v.* HOLT, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 128 Fed. Appx. 904.

No. 05–5007. HUGHES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–5008. HENRY *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 117 Fed. Appx. 290.

No. 05–5010. GRIEVESON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–5011. GARCIA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 05–5012. RUIZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 601.

No. 05–5013. LEWIS *v.* KELLY, SUPERINTENDENT, CENTRAL MISSISSIPPI CORRECTIONAL FACILITY. C. A. 5th Cir. Certiorari denied.

No. 05–5014. LESLEY *v.* LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 885 So. 2d 52.

No. 05–5015. KILLEN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 05–5017. MCCALLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 180.

No. 05–5018. MCMURREY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5020. CASTILLO *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 120 Fed. Appx. 59.

No. 05–5021. SIK TO CHEUNG *v.* UNION CENTRAL LIFE INSURANCE CO. C. A. 2d Cir. Certiorari denied. Reported below: 117 Fed. Appx. 167.

No. 05–5022. MCMAHON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 05–5023. MEEKS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 105 Fed. Appx. 834.

No. 05–5024. POSEY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 05–5025. WAINWRIGHT *v.* FLORIDA ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 896 So. 2d 695.

No. 05–5026. MCQUEEN *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 899 So. 2d 476.

No. 05–5028. RAMOS *v.* GRACE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–5029. STEWART *v.* MILLER, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 05–5030. BETHEA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 128 Fed. Appx. 303.

No. 05–5031. BENSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–5032. BLACKSHEAR *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 05–5035. ARMSTRONG *v.* BRAXTON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 134.

No. 05–5038. THOMAS *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied. Reported below: 150 S. W. 3d 887.

No. 05–5039. SMITH *v.* GAYLE ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–5040. WHITLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5042. ESCOBAR *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 05–5043. DAMMONS *v.* CARROLL, SUPERINTENDENT, JOHNSTON CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 123 Fed. Appx. 582.

No. 05–5045. SCHRADER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 353 Ill. App. 3d 684, 820 N. E. 2d 489.

No. 05–5046. MAGALLAN-ALFARO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 396 F. 3d 935.

No. 05–5048. YEOMANS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 898 So. 2d 878.

No. 05–5049. PHILLIPS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 641.

No. 05–5051. PAQUETTE *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–5052. CRUMB *v.* APC TECHNOLOGY, INC. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–5053. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 35.

No. 05–5054. WALDRON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 05–5055. WALKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 269.

No. 05–5056. BRISCOE-BEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 126 Fed. Appx. 551.

No. 05–5057. BLUFF *v.* UTAH. Ct. App. Utah. Certiorari denied.

No. 05–5058. BROOKS *v.* MISSISSIPPI. C. A. 5th Cir. Certiorari denied.

No. 05–5059. ZAYAS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 860 A. 2d 1137.

No. 05–5060. OWENS *v.* JEFFERSON COUNTY, TEXAS, DRUG IMPACT COURT. C. A. 5th Cir. Certiorari denied.

No. 05–5061. WASHINGTON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 05–5062. GANT *v.* UNIVERSITY OF TEXAS AT AUSTIN ET AL. C. A. 5th Cir. Certiorari denied.

No. 05–5063. GODFREY *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 396 F. 3d 681.

No. 05–5064. GUZMAN *v.* MCGRATH, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 211.

No. 05–5065. GROTEMEYER *v.* HICKMAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 393 F. 3d 871.

No. 05–5066. HARRIS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 353 Ill. App. 3d 1090, 881 N. E. 2d 973.

No. 05–5067. HERNANDEZ-BALVANA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 612.

No. 05–5068. FRAZIER *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–5069. HEWITT *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–5070. HEARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–5071. GIBBS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 05–5072. HARRIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 118 Fed. Appx. 344.

No. 05–5073. GARNEAU *v.* WARD, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 111 Fed. Appx. 1001.

No. 05–5074. LUBOWA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 118 Fed. Appx. 888.

No. 05–5075. LUCIO *v.* HARRISON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 120 Fed. Appx. 738.

No. 05–5076. DUQUE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 123 Fed. Appx. 447.

No. 05–5077. MARTIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 399 F. 3d 879.

No. 05–5079. MCASKILL *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 62 Mass. App. 1120, 821 N. E. 2d 517.

No. 05–5080. PETWAY *v.* SMITH. Ct. App. D. C. Certiorari denied. Reported below: 869 A. 2d 368.

No. 05–5082. HEATH *v.* MINNESOTA. Ct. App. Minn. Certiorari denied. Reported below: 685 N. W. 2d 48.

No. 05–5083. FLOYD *v.* PROSPER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–5084. HELMS *v.* CONROY, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 114 Fed. Appx. 574.

No. 05–5085. GLEAN *v.* BATTLE, WARDEN. Super. Ct. Baldwin County, Ga. Certiorari denied.

No. 05–5086. WILKINS *v.* DENVER DEPARTMENT OF SAFETY ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 453.

No. 05–5087. BURTIS *v.* ANNAN, UNITED NATIONS SECRETARY-GENERAL, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 120 Fed. Appx. 390.

No. 05–5088. YAKOVLEV *v.* GONZALES, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 109 Fed. Appx. 920.

No. 05–5089. ANDERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 393 F. 3d 749.

No. 05–5090. WILLIAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–5091. BAILEY *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–5092. WOOLFOLK *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 117 Fed. Appx. 306.

No. 05–5093. WILLIAMS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–5094. FLOWERS *v.* UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT. C. A. 6th Cir. Certiorari denied.

No. 05–5095. HALES *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 05–5096. GOLDWATER *v.* ARIZONA. Super. Ct. Ariz., Maricopa County. Certiorari denied.

No. 05–5097. SOSA *v.* JONES, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 389 F. 3d 644.

No. 05–5098. VEGERANO-RODRIGUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 128 Fed. Appx. 778.

No. 05–5099. ROBERTSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5101. LAWTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 297.

No. 05–5102. RENTERIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5103. ROBINSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 713.

No. 05–5104. HIGGINS *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 898 So. 2d 1219.

No. 05–5105. MOYA FELICIANO *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 894 So. 2d 260.

No. 05–5108. EASLEY *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 124.

No. 05–5109. ASBERRY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 394 F. 3d 712.

No. 05–5111. ALCORN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–5112. ESPINOSA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 299.

No. 05–5113. JERONIMO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 398 F. 3d 1149.

No. 05–5115. SANTOS REYES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5116. SAEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 136 Fed. Appx. 385.

No. 05–5117. SEGURA-CABEZAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5118. RODRIGUEZ *v.* CASTRO, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 121 Fed. Appx. 706.

No. 05–5119. HICKS *v.* BRAXTON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 111 Fed. Appx. 702.

No. 05–5121. REYNOSO *v.* MCGINNIS, SUPERINTENDENT, SOUTHPORT CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 05–5122. CARLYLE *v.* SOCIAL SECURITY ADMINISTRATION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 34.

No. 05–5123. ROSS *v.* BRYANT, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 05–5124. CRUZ-APONTE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–5125. DOBBS *v.* MISSISSIPPI ET AL. C. A. 5th Cir. Certiorari denied.

No. 05–5126. HENDERSON *v.* HILL, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 396 F. 3d 1049.

No. 05–5127. CAVANAUGH *v.* NEVADA. Sup. Ct. Nev. Certiorari denied.

No. 05–5128. DEBERRY *v.* SMITH, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 403 F. 3d 57.

No. 05–5129. MALONE ET AL. *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied.

No. 05–5130. HUMPHRESS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 398 F. 3d 855.

No. 05–5131. COTTON *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 386 Md. 249, 872 A. 2d 87.

No. 05–5132. LONGIE *v.* SPIRIT LAKE TRIBE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 400 F. 3d 586.

No. 05–5133. JIMENEZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–5136. STAFFORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 299.

No. 05–5137. SAENZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 577.

No. 05–5138. ROBERTS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 128 Fed. Appx. 26.

No. 05–5139. MITCHELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 299.

No. 05–5140. OLESON *v.* DENNEHY, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTION, ET AL. C. A. 1st Cir. Certiorari denied.

No. 05–5141. ORDUNO-MIRELES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 405 F. 3d 960.

No. 05–5142. MILLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 795.

No. 05–5143. RANKIN *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 353 Ill. App. 3d 1120, 881 N. E. 2d 986.

No. 05–5144. SERRANO *v.* WASHINGTON COUNTY, OREGON, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 120 Fed. Appx. 704.

No. 05–5145. MERRILL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 128 Fed. Appx. 393.

No. 05–5146. NOLAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 397 F. 3d 665.

No. 05–5147. KING *v.* ROWLEY, SUPERINTENDENT, MISSOURI EASTERN CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 05–5148. DEVEAUX *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 117 Fed. Appx. 298.

No. 05–5149. DIEHL *v.* MITCHELL, CORRECTIONAL ADMINISTRATOR IV, MOUNTAIN VIEW CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 217.

No. 05–5150. ESTRELLA *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 05–5151. MCCLINTON *v.* SUPERIOR COURT OF THE DISTRICT OF COLUMBIA. C. A. D. C. Cir. Certiorari denied.

No. 05–5152. MORRIS *v.* FENEIS, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 05–5153. PRICE *v.* LEWIS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 119 Fed. Appx. 725.

No. 05–5154. HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–5155. GIBSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 895 So. 2d 1066.

No. 05–5156. FOSTER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 127 Fed. Appx. 537.

No. 05–5157. FIELDS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 408 F. 3d 1356.

No. 05–5158. HALE *v.* GRACE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON. C. A. 3d Cir. Certiorari denied.

No. 05–5159. HASTINGS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 902 So. 2d 790.

No. 05–5160. ARNETT *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 393 F. 3d 681.

No. 05–5161. ANDREWS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 299.

No. 05–5162. BELGIORNO *v.* WAKEFIELD, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENSBURG, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–5163. BELL *v.* KOLONGO ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 120 Fed. Appx. 985.

No. 05–5164. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5165. GIBBS *v.* CUNNINGHAM, SUPERINTENDENT, WOODBOURNE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 05–5166. GABRIEL *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 05–5167. IVEY *v.* MINNESOTA. Ct. App. Minn. Certiorari denied. Reported below: 687 N. W. 2d 666.

No. 05–5168. FIELDS *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 05–5169. THOMAS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 127 Fed. Appx. 582.

No. 05–5170. OREYE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–5171. DILLARD *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–5172. PITT *v.* STANSBERRY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 457.

No. 05–5173. SHABAZZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 05–5174. MATHIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5176. WALKER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 341 Ill. App. 3d 1113, 853 N. E. 2d 452.

No. 05–5179. HICKS *v.* WILSON. C. A. 5th Cir. Certiorari denied.

No. 05–5180. BRANCH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–5181. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–5182. SALES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 05–5184. ROELLE *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 05–5185. MARTINEZ GARCIA *v.* WOODFORD, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 05–5186. GUTIERREZ-RAMIREZ, AKA VACA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 405 F. 3d 352.

No. 05–5188. GUIDRY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 406 F. 3d 314.

No. 05–5189. JONES *v.* LEAVITT ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 125 Fed. Appx. 457.

No. 05–5191. WALSH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5192. TURNER *v.* WYNDER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–5193. WILBORN *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–5196. TAYLOR *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 05–5198. PENWELL *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 822 N. E. 2d 664.

No. 05–5201. GOODRICH *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 05–5202. HENDERSON *v.* LAY, WARDEN. Sup. Ct. Ark. Certiorari denied.

No. 05–5203. GILLIAM *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 820.

No. 05–5204. FISHER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 05–5205. GAMEZ-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–5206. MAXWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 118 Fed. Appx. 771.

No. 05–5207. JACKMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 112 Fed. Appx. 869.

No. 05–5208. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 512.

No. 05–5209. MASSINGILL *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–5210. BINTZ *v.* BERTRAND, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 403 F. 3d 859.

No. 05–5211. GREEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 97 Fed. Appx. 745.

No. 05–5212. MURPHY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 822.

No. 05–5213. OSWALD *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 05–5214. CAIN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 05–5216. ROSA *v.* MURRAY, SUPERINTENDENT, GOWANDA CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 396 F. 3d 210.

No. 05–5217. ELGAR *v.* WILLIAMS. C. A. 9th Cir. Certiorari denied.

No. 05–5219. HORNBACK *v.* MAHONEY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 378.

No. 05–5220. HERNANDEZ-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 119 Fed. Appx. 668.

No. 05–5222. REINERT *v.* WYNDER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 379 F. 3d 76.

No. 05–5223. T. C. *v.* LOUISIANA. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 895 So. 2d 607.

No. 05–5226. HOWARD *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 165 N. C. App. 707, 601 S. E. 2d 331.

No. 05–5227. FAIR *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 353 Ill. App. 3d 1089, 881 N. E. 2d 972.

No. 05–5228. JEFFREY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 128 Fed. Appx. 680.

No. 05–5229. KEMP *v.* FAMILY INDEPENDENCE AGENCY ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–5230. HUNTER *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 937 So. 2d 1114.

No. 05–5231. JOHNSON *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 119 Fed. Appx. 558.

No. 05–5232. HARRISON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 35 Cal. 4th 208, 106 P. 3d 895.

No. 05–5233. MITCHELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 104 Fed. Appx. 544.

No. 05–5234. NEIDIG *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 122 Fed. Appx. 599.

No. 05–5236. HUBBARD *v.* GOSK. C. A. 9th Cir. Certiorari denied.

No. 05–5237. GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5238. DIXON *v.* CATHEL, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–5240. CURRY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–5241. HOLLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–5243. FANIEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–5244. KAMPEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–5245. GALINDO *v.* TEXAS. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 05–5246. KEEPER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–5247. MALLOY *v.* MCCABE, SUPERINTENDENT, HARNETT CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 101.

No. 05–5248. LOPEZ-ARMENTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 400 F. 3d 1173.

No. 05–5249. BARBOUR *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 393 F. 3d 82.

No. 05–5250. BIERI *v.* GOWER ET UX. Ct. App. Mo., Southern Dist. Certiorari denied. Reported below: 157 S. W. 3d 264.

No. 05–5252. BRYANT *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 869 A. 2d 368.

No. 05–5253. TURNER *v.* WYNDER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–5254. WILLIAMS *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied.

No. 05–5256. THOMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 123 Fed. Appx. 134.

No. 05–5257. BLEWETT *v.* JETER, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 05–5258. ALMAHDI *v.* UNITED STATES PAROLE COMMISSION ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–5260. ADDO *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS. C. A. 1st Cir. Certiorari denied.

No. 05–5263. SCHULTZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 411 F. 3d 878.

No. 05–5264. SAYRE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 400 F. 3d 599.

No. 05–5265. ROTHROCK *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied.

No. 05–5267. HARRIS *v.* SMITH ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 400 F. 3d 1001.

No. 05–5268. GRIFFIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5269. HOLLOWAY *v.* MITCHEM, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–5271. TATE *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 05–5272. CAENEN *v.* ROHLING, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 406.

No. 05–5273. DAVIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–5274. JOHNSON *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 892 So. 2d 28.

No. 05–5275. MANIGAULT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 77.

No. 05–5276. LEWIS *v.* MORGAN, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 148.

No. 05–5277. JAHED *v.* GONZALES, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied.

No. 05–5278. LOFTON *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 346 Ill. App. 3d 1194, 866 N. E. 2d 719.

No. 05–5280. GUTIERREZ *v.* WOODFORD, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 120 Fed. Appx. 81.

No. 05–5281. RAAD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 406 F. 3d 1322.

No. 05–5282. SEPULVEDA *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–5283. HART *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 112 Fed. Appx. 855.

No. 05–5284. SMALL *v.* TERRY. C. A. 4th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 643.

No. 05–5285. JAUREZ-PINEDA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 298.

No. 05–5286. MIDDLETON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5287. JACKSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–5288. SCOTT *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 888 So. 2d 1170.

No. 05–5289. SKINNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 650.

No. 05–5290. OCHOA VELEZ *v.* TEXAS ET AL. C. A. 5th Cir. Certiorari denied.

No. 05–5291. DUBOIS *v.* NEW JERSEY. C. A. 3d Cir. Certiorari denied.

No. 05–5293. SANDERS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–5294. HINTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 120 Fed. Appx. 462.

No. 05–5295. HARRIS *v.* BAZZLE, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 46.

No. 05–5296. CANE *v.* HONDA OF AMERICA MANUFACTURING, INC. C. A. 6th Cir. Certiorari denied.

No. 05–5297. MALVEAUX *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 411 F. 3d 558.

No. 05–5298. LONG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 115 Fed. Appx. 374.

No. 05–5299. JOHNSON *v.* EVANS, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 05–5300. MARIAN *v.* SUPERIOR COURT OF CALIFORNIA, VENTURA COUNTY. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–5302. DOSS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–5303. ENNIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 768.

No. 05–5305. MEDLEY, AKA WALLACE, AKA GIBBS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 248.

No. 05–5306. KEELING *v.* SHANNON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FRACKVILLE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–5307. JOHNSON *v.* JACQUES FERBER, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 122 Fed. Appx. 597.

No. 05–5308. STEELE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–5309. GUTIERREZ ROMERO *v.* GARCIA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 864.

No. 05–5310. MCGEE *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 05–5312. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 652.

No. 05–5314. LAPOINTE *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 355 Ill. App. 3d 1195, 885 N. E. 2d 583.

No. 05–5315. MILLS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 663.

No. 05–5316. ANDERSON *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 210 Ariz. 327, 111 P. 3d 369, and 211 Ariz. 59, 116 P. 3d 1219.

No. 05–5317. BOWMAN *v.* LEVITON MANUFACTURING CO., INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 270.

No. 05–5318. MARTINEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 107.

No. 05–5319. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 190.

No. 05–5320. PACHECO-DIAZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 407 F. 3d 492.

No. 05–5322. CULGAN *v.* COLLIER, JUDGE, COURT OF COMMON PLEAS OF OHIO, MEDINA COUNTY. Sup. Ct. Ohio. Certiorari denied. Reported below: 105 Ohio St. 3d 1494, 825 N. E. 2d 619.

No. 05–5323. PURYEAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 389.

No. 05–5324. SOUTHERLAND *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 888 So. 2d 623.

No. 05–5325. JOHNSON *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–5326. LUCAS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 542.

No. 05–5327. WILLIAMS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 403 F. 3d 1188.

No. 05–5328. ALVARADO-MANCILLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 590.

No. 05–5329. D'AMARIO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 412 F. 3d 253.

No. 05–5330. QUEZADA-OCON, AKA SAENZ QUEZADA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 591.

No. 05–5331. CASTILLO *v.* LOUISIANA. C. A. 5th Cir. Certiorari denied. Reported below: 108 Fed. Appx. 156.

No. 05–5332. STEWART *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 758.

No. 05–5333. CASTILLO-ABREGO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 590.

No. 05–5334. DUARTE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 137 Fed. Appx. 423.

No. 05–5335. ELIZONDO-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 846.

No. 05–5336. KIRSTEN C. *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 05–5337. PERKINSON *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 279 Ga. 232, 610 S. E. 2d 533.

No. 05–5338. KRUTILEK *v.* KENNEY, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 93.

No. 05–5340. JOHNSON *v.* JACQUES FERBER, INC., ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–5342. MCELROY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 325.

No. 05–5343. JOHNSON *v.* BULLARD, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–5344. LOPEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–5345. MOORE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–5346. PATTERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5347. ZELADA-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 117 Fed. Appx. 376.

No. 05–5348. TOLBERT *v.* EVANS, ACTING WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 428.

No. 05–5349. WILLIAMS *v.* PRISON HEALTH SYSTEMS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 945.

No. 05–5350. SANDERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 116 Fed. Appx. 251.

No. 05–5351. RISBY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–5353. ROWE *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 902 So. 2d 155.

No. 05–5354. CRUTCHER ET AL. *v.* UNITED STATES; and CRUTCHER ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE. C. A. 6th Cir. Certiorari denied.

No. 05–5355. ACUNA-CARBAJAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 196.

No. 05–5357. BACA-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 589.

No. 05–5358. AGUILERA-OLIVAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 591.

No. 05–5359. BROWN *v.* PICARELLI ET AL. C. A. 2d Cir. Certiorari denied.

No. 05–5360. ADAMS *v.* EVANS, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 05–5361. BANDA *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 05–5362. ANDERSON *v.* SACCHETT. C. A. 4th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 921.

No. 05–5363. BEAL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–5364. BUNN *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 05–5365. COLEMAN *v.* SHANNON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FRACKVILLE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–5366. JOHNSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 121 Fed. Appx. 724.

No. 05–5367. STUARD *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 401 F. 3d 1064.

No. 05–5368. MOORER *v.* MICHIGAN. Ct. App. Mich. Certiorari denied. Reported below: 262 Mich. App. 64, 683 N. W. 2d 736.

No. 05–5369. KEMP *v.* JONES, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–5371. ALCALA-CHAVEZ *v.* UNITED STATES; AMADOR-RAMIREZ *v.* UNITED STATES; GARCIA-PEREZ *v.* UNITED STATES; JIMENEZ-CRUZ *v.* UNITED STATES; LONGORIA-AYALA *v.* UNITED STATES; MUNOZ-DE LA CRUZ *v.* UNITED STATES; OSORIO-ALBA *v.* UNITED STATES; SANCHEZ-SANCHEZ *v.* UNITED STATES; and

VILLANUEVA-VASQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 595 (first judgment), 606 (second and eighth judgments), 607 (sixth judgment), 611 (seventh judgment), 613 (fourth judgment), 618 (fifth judgment), and 622 (third judgment); 126 Fed. Appx. 196 (ninth judgment).

No. 05–5372. TUCKER *v.* FREY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 05–5373. TOMONEY *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–5375. AGUIRRE CORTES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5376. DEVANE *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 898 F. 3d 949.

No. 05–5377. CARSWELL, ADMINISTRATRIX OF THE ESTATE OF CARSWELL, DECEASED *v.* BOROUGH OF HOMESTEAD, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 381 F. 3d 235.

No. 05–5378. CROCKETT *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 05–5379. GOMEZ-PINEDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 884.

No. 05–5380. HOANG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 116 Fed. Appx. 551.

No. 05–5381. HUDSON *v.* SNOW, SECRETARY OF THE TREASURY. C. A. 11th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 201.

No. 05–5382. HENDRICKS *v.* DOVENMUEHLE MORTGAGE INC. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 96 Fed. Appx. 32.

No. 05–5383. HIRALAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 679.

No. 05–5384. FULLER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 398 F. 3d 644.

No. 05–5385. FINBARB *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 472.

No. 05–5386. FERNANDEZ-PENA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 128 Fed. Appx. 380.

No. 05–5387. ODUTAYO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 406 F. 3d 386.

No. 05–5388. GARCIA-CARDENAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 96.

No. 05–5389. JEFFUS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 26.

No. 05–5390. BIGBY *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 402 F. 3d 551.

No. 05–5391. GRAY *v.* MULLIN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 119 Fed. Appx. 202.

No. 05–5392. HORTON *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 122 Fed. Appx. 507.

No. 05–5393. GORDON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 05–5394. HILL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–5395. JEFFUS *v.* DREW, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–5396. FIAMENGO *v.* WADSWORTH ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 127 Fed. Appx. 564.

No. 05–5397. HUNTER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 866 A. 2d 827.

No. 05–5399. HESS *v.* TENNIS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–5401. FORD *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 784.

No. 05–5402. SALERNO *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. Ct. App. Ariz. Certiorari denied.

No. 05–5404. MARTINEZ-GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 397 F. 3d 1205.

No. 05–5405. CAMPOS MADRIGAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 98.

No. 05–5406. COLLINS *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 903 So. 2d 968.

No. 05–5408. FISHER *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 275.

No. 05–5409. HIGGS *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 05–5411. VIGIL *v.* EVANS, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 872.

No. 05–5413. BYRD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 403 F. 3d 1278.

No. 05–5414. BACH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 400 F. 3d 622.

No. 05–5415. A. L. *v.* IOWA. Ct. App. Iowa. Certiorari denied. Reported below: 697 N. W. 2d 128.

No. 05–5416. ZHANG *v.* AUSTIN. Cir. Ct. Jefferson County, W. Va. Certiorari denied.

No. 05–5418. RETA-MENDOZA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 145.

No. 05–5419. GAMBLE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 941.

No. 05–5420. GARRIGA *v.* UNITED STATES; MORAN-CORTEZ *v.* UNITED STATES; and VASQUEZ-SANCHEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 125 Fed.

Appx. 608 (third judgment) and 611 (first judgment); 126 Fed. Appx. 199 (second judgment).

No. 05–5421. STONE *v.* PAMOJA HOUSE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 111 Fed. Appx. 624.

No. 05–5422. LEATCH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 622.

No. 05–5423. GARDNER *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 05–5424. TROTTER *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 05–5425. DAVIS *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 898 So. 2d 949.

No. 05–5426. CONTRERAS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 372 F. 3d 974.

No. 05–5427. HASTINGS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 907 So. 2d 518.

No. 05–5428. SMITH *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 353 Ill. App. 3d 1095, 881 N. E. 2d 975.

No. 05–5431. WITHRON-ALVAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 584.

No. 05–5432. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 396 F. 3d 1340.

No. 05–5433. BRANSON *v.* GAY, WARDEN. Ct. App. Ariz. Certiorari denied.

No. 05–5434. BUMPUS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–5436. AYALA-PIZARRO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 407 F. 3d 25.

No. 05–5437. RAHEMAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 130 Fed. Appx. 485.

No. 05–5438. FRANCIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 270.

No. 05–5439. MINNIECHESKE *v.* VILLAGE OF TIGERTON, WISCONSIN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 225.

No. 05–5440. PHIFER *v.* INDIANA. Sup. Ct. Ind. Certiorari denied.

No. 05–5441. GERMAN *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–5443. RISO-CASTILLO, AKA CASTILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 588.

No. 05–5444. MARTIN *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–5445. LUCAS ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 129 Fed. Appx. 650.

No. 05–5446. JENSEN *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 05–5448. MONTOYA-CRUZ, AKA WHITE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 601.

No. 05–5449. PUENTOS-CAMPOS, AKA MARTINEZ-VILLANUEVA, AKA RODRIGUEZ-CAMPOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 587.

No. 05–5450. NOSOV, AKA DLINNI, ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 119 Fed. Appx. 311.

No. 05–5451. HASSAN *v.* DEPARTMENT OF VETERANS AFFAIRS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 137 Fed. Appx. 418.

No. 05–5452. NOLAN *v.* ESSEX, EXAMINER, UNITED STATES PAROLE COMMISSION. C. A. 11th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 602.

No. 05–5453. PULIDO *v.* TENNIS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–5454. BAUTISTA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 194.

No. 05–5455. BURNS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–5457. BARRAZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 107.

No. 05–5458. BEDOLLA-ALMANZA *v.* UNITED STATES; GARZA-LOPEZ *v.* UNITED STATES; and HAMILTON-REYES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 601 (second judgment) and 603 (first judgment); 126 Fed. Appx. 188 (third judgment).

No. 05–5459. BELTRAN-VISCARRA *v.* UNITED STATES (Reported below: 125 Fed. Appx. 619); CHAVEZ-GALINDO *v.* UNITED STATES (125 Fed. Appx. 620); CONTRERAS-SOLORZANO *v.* UNITED STATES (126 Fed. Appx. 198); CUEVAS-GOMEZ *v.* UNITED STATES (126 Fed. Appx. 200); DE LA CRUZ FERNANDEZ *v.* UNITED STATES (126 Fed. Appx. 189); DELGADO-GALLEGOS *v.* UNITED STATES (125 Fed. Appx. 615); ESTRADA-ALCALA *v.* UNITED STATES (125 Fed. Appx. 616); HERNANDEZ-GARCIA *v.* UNITED STATES (125 Fed. Appx. 607); HERNANDEZ-SALDIBA *v.* UNITED STATES (125 Fed. Appx. 595); MADRIGAL-PINEDA *v.* UNITED STATES (125 Fed. Appx. 623); MARTINEZ-RAMIREZ *v.* UNITED STATES (125 Fed. Appx. 619); MIRANDA-ESPINOZA *v.* UNITED STATES (125 Fed. Appx. 608); MORALES-LUNA *v.* UNITED STATES (125 Fed. Appx. 615); MOYEDA-CRUZ *v.* UNITED STATES (125 Fed. Appx. 598); NORIEGA-CISNERO *v.* UNITED STATES (125 Fed. Appx. 617); OROZCO-NINFERT *v.* UNITED STATES (125 Fed. Appx. 596); ORTIZ-HOLGUIN *v.* UNITED STATES (125 Fed. Appx. 614); PEREZ-DE HOYOS *v.* UNITED STATES (125 Fed. Appx. 609); REDE-TORRES *v.* UNITED STATES (125 Fed. Appx. 622); REYES-CORTEZ *v.* UNITED STATES (125 Fed. Appx. 621); REYES-VALDEZ *v.* UNITED STATES (125 Fed. Appx. 610); RIVERA-CASTRO *v.* UNITED STATES (125 Fed. Appx. 618); ROCHELLE-HERNANDEZ *v.* UNITED STATES (125 Fed. Appx. 597); RODRIGUEZ-ZAPATA *v.* UNITED STATES (125 Fed. Appx. 617); ROMERO-CORRALES *v.* UNITED STATES (125 Fed. Appx. 621); SANCHEZ-FUENTES *v.* UNITED STATES (125 Fed. Appx. 596); SOTO-BELTRAN *v.* UNITED STATES (125 Fed. Appx. 614); ULTERA-GUEVARA *v.* UNITED STATES (125

Fed. Appx. 612); and VILLA-DEL VALLE *v.* UNITED STATES (126 Fed. Appx. 198). C. A. 5th Cir. Certiorari denied.

No. 05–5460. SEVILLE *v.* MARTINEZ ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 130 Fed. Appx. 549.

No. 05–5461. SPINA *v.* OUR LADY OF MERCY MEDICAL CENTER ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 120 Fed. Appx. 408.

No. 05–5462. SMITH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 390 F. 3d 661 and 405 F. 3d 726.

No. 05–5463. PUCKETT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 405 F. 3d 589.

No. 05–5464. WATKINS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–5465. MOZEE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 405 F. 3d 1082.

No. 05–5468. CRUZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 128 Fed. Appx. 627.

No. 05–5469. IZAGUIRRE-FLORES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 405 F. 3d 270.

No. 05–5471. MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–5472. LEBLANC *v.* LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 897 So. 2d 736.

No. 05–5473. LONG *v.* JORDAN, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 431.

No. 05–5474. GOULD *v.* HATCHER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 802.

No. 05–5476. WATERS *v.* O'CONNOR, JUDGE, SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY. Ct. App. Ariz. Certiorari denied. Reported below: 209 Ariz. 380, 103 P. 3d 292.

No. 05–5477. SADDLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–5478. RUCKER *v.* POTTER, POSTMASTER GENERAL, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 120 Fed. Appx. 90.

No. 05–5479. SPENCE *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied. Reported below: 125 Cal. App. 4th 710, 23 Cal. Rptr. 3d 92.

No. 05–5480. HUGHES *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–5482. BROWN *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 05–5483. TOTARO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–5484. BLUE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 05–5485. DAVISON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 536.

No. 05–5487. SCOTT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5488. GRAHAM *v.* BLAISDELL, WARDEN. C. A. 1st Cir. Certiorari denied.

No. 05–5489. COE *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 269.

No. 05–5490. JONES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–5492. COVINGTON *v.* NEW HAMPSHIRE. Super. Ct. N. H., Strafford County. Certiorari denied.

No. 05–5493. CULP *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–5494. CLENTSCALE *v.* FOLINO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–5495. FOLKES *v.* LEONE, ADMINISTRATOR, BAYSIDE STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–5496. COLLINS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–5497. CANNON ET AL. *v.* CALIFORNIA LEGISLATIVE COUNCIL ET AL. C. A. 9th Cir. Certiorari denied.

No. 05–5498. FEASTER *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 157 Md. App. 709.

No. 05–5499. MURRAY *v.* MANN. C. A. 1st Cir. Certiorari denied.

No. 05–5500. MENA-VALERINO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 117 Fed. Appx. 335.

No. 05–5501. FISHER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 05–5503. LANDRITH *v.* U. S. BANCORP, N. A., ET AL. C. A. 10th Cir. Certiorari denied.

No. 05–5504. PABELLON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 60.

No. 05–5505. GIBBS *v.* HUMPHREY, WARDEN. Super. Ct. Mitchell County, Ga. Certiorari denied.

No. 05–5506. ALLEN *v.* DISTRICT COURT OF NEVADA, CLARK COUNTY, ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 121 Nev. 1100, 152 P. 3d 745.

No. 05–5507. WILLIAMS *v.* FARRIOR ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 65.

No. 05–5508. WARREN *v.* MILLER, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 05–5509. NASTASIO *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 05–5510. OSBORNE *v.* TEXAS. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 05–5511. FRYER *v.* EVERSTINE. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 05–5514. STEWART *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 131 Fed. Appx. 350.

No. 05–5515. GREENFIELD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 120 Fed. Appx. 494.

No. 05–5516. SMITH *v.* PITCHER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–5517. KENNEDY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 33 F. 3d 56.

No. 05–5518. JOHNSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 123 Fed. Appx. 240.

No. 05–5519. MACPHERSON *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–5520. HARDEN *v.* KINGSTON, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 05–5521. MUSTAFAA, AKA MATTHEWS *v.* CAREY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–5523. BABIAR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 410 F. 3d 432.

No. 05–5524. BRADLEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 05–5525. BLANCO *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–5526. BARRIOS-RICARTE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–5528. CONTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 551.

No. 05–5529. PHILLIPS *v.* HENRY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 160.

No. 05–5531. HENRY *v.* SULLIVAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 872.

No. 05–5532. PAGAN *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 864 A. 2d 1231.

No. 05–5533. HOLLER *v.* FLUOR FERNALD, INC. C. A. 6th Cir. Certiorari denied.

No. 05–5534. GYORY *v.* REEBOK INTERNATIONAL, LTD. C. A. Fed. Cir. Certiorari denied. Reported below: 121 Fed. Appx. 397.

No. 05–5535. BRINGIER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 405 F. 3d 310.

No. 05–5536. THOMPSON *v.* ENGLETON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 68.

No. 05–5537. WATTS *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, ET AL. C. A. 8th Cir. Certiorari denied.

No. 05–5538. PAGAN *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 873 A. 2d 771.

No. 05–5539. GORDON *v.* PAVOT ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 117 Fed. Appx. 131.

No. 05–5543. FLOWERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–5545. LANG *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–5546. ELSESSER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–5547. PIRANI *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 406 F. 3d 543.

No. 05–5548. NUNLEY *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 394 F. 3d 1079.

No. 05–5549. RAYMER *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA. C. A. 7th Cir. Certiorari denied.

No. 05–5550. SEARLES *v.* RELIC ET AL. C. A. 2d Cir. Certiorari denied.

No. 05–5552. FLORES-GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 120 Fed. Appx. 749.

No. 05–5553. BANGURA *v.* TOWNSHIP OF MONTCLAIR, NEW JERSEY. Sup. Ct. N. J. Certiorari denied.

No. 05–5556. VALENZUELA-QUEVADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 407 F. 3d 728.

No. 05–5557. RODGERS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 873 A. 2d 1120.

No. 05–5559. HOOD *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 269 Va. 176, 608 S. E. 2d 913.

No. 05–5561. BRUNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 152.

No. 05–5562. TATE *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 05–5564. GRUMMITT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 390 F. 3d 569.

No. 05–5569. NELLOMS *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 933.

No. 05–5579. PIERRE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5580. VILLANUEVA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 408 F. 3d 193.

No. 05–5581. SHELTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 119 Fed. Appx. 638.

No. 05–5582. RODRIGUEZ-DE-HOYAS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–5590. MENDOZA-VERDUZCO, AKA MENDOZA BARAJAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 180.

No. 05–5592. MCKOY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 815.

No. 05–5595. DICKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5598. LYTTLE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 327.

No. 05–5599. JACKSON *v.* MCMASTER, ATTORNEY GENERAL OF SOUTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 794.

No. 05–5600. BIERI *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 121 Fed. Appx. 681.

No. 05–5603. BUONSIGNORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 252.

No. 05–5604. ALFRARO *v.* UNITED STATES; FLORES-HERNANDEZ *v.* UNITED STATES; FERNANDEZ *v.* UNITED STATES; SANCHEZ-ORTIZ *v.* UNITED STATES; GALLEGOS-GARCIA *v.* UNITED STATES; and CANALES-CASTILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 408 F. 3d 204 (first judgment); 127 Fed. Appx. 153 (second judgment); 134 Fed. Appx. 775 (sixth judgment) and 777 (fifth judgment); 135 Fed. Appx. 700 (third judgment) and 715 (fourth judgment).

No. 05–5605. BOYD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5606. BARBER *v.* GONZALES, ATTORNEY GENERAL. C. A. D. C. Cir. Certiorari denied.

No. 05–5611. BROWN *v.* GEORGIA. Ct. App. Ga. Certiorari denied.

No. 05–5612. ADAMS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 61 M. J. 16.

No. 05–5618. WOODFORD *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 824 N. E. 2d 449.

No. 05–5623. RINGGOLD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 116.

No. 05–5624. WEST *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 753.

No. 05–5626. WHITE *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Stokes County, N. C. Certiorari denied.

No. 05–5627. TAYLOR *v.* CARROLL, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–5628. CSEKINEK *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 6th Cir. Certiorari denied. Reported below: 391 F. 3d 819.

No. 05–5630. DEES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 362.

No. 05–5631. KAELIN *v.* GONZALES, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied.

No. 05–5634. GETTINGS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 114 Fed. Appx. 859.

No. 05–5635. HIBBERD *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 353 Ill. App. 3d 1108, 881 N. E. 2d 981.

No. 05–5636. HARRINGTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 112.

No. 05–5637. GRAY, AKA STRIBBLING, AKA MILLS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 405 F. 3d 227.

No. 05–5641. GARBA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 128 Fed. Appx. 855.

No. 05–5642. HARPER *v.* GRACE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–5645. KAMARA *v.* GONZALES, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied.

No. 05–5646. JOHNAKIN *v.* WILSON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FAYETTE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–5647. DIOMEDES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 136 Fed. Appx. 400.

No. 05–5652. HAACK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 403 F. 3d 997.

No. 05–5654. GONZALEZ-LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–5655. GRIFFITH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 385 F. 3d 124 and 102 Fed. Appx. 203.

No. 05–5657. MYERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 112 Fed. Appx. 304.

No. 05–5659. SANCHEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–5660. STEPHENS *v.* HALL, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 407 F. 3d 1195.

No. 05–5661. SERRANO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 406 F. 3d 1208.

No. 05–5663. WORRELLS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 94 Fed. Appx. 927.

No. 05–5665. JOSEPH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 357.

No. 05–5666. VOGEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 119.

No. 05–5670. COLON *v.* UNITED STATES ET AL. C. A. 1st Cir. Certiorari denied.

No. 05–5677. COOK ET AL. *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 161 Fed. Appx. 7.

No. 05–5679. SWINDLE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 407 F. 3d 562.

No. 05–5683. CRUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–5685. POOLE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 407 F. 3d 767.

No. 05–5686. VAZQUEZ-RIVERA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 407 F. 3d 476.

No. 05–5687. WILLIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 116 Fed. Appx. 252.

No. 05–5691. VUKANOVICH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–5697. BARTLETT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 515.

No. 05–5703. LAGUERRE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 595.

No. 05–5706. HUYGHUE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 920.

No. 05–5707. HILTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5708. ZERDUCHE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 599.

No. 05–5709. VEAL *v.* TENNIS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–5710. FINCK, AKA DUBOIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 407 F. 3d 908.

No. 05–5711. KILIC *v.* MATTSEN FISHERIES, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 194.

No. 05–5712. GAYNOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5713. HOUSTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 406 F. 3d 1121.

No. 05–5720. LUGO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 125 Fed. Appx. 358.

No. 05–5721. PEREZ-HERNANDEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 475.

No. 05–5723. MCDONALD, AKA BROWN, AKA TAYLOR, AKA PALMER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5724. SHABAZZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 662.

No. 05–5725. SERA *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 400 F. 3d 538.

No. 05–5727. ASCENCIO *v.* MCGRATH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–5731. LESLIE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 686.

No. 05–5735. WOODARD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 05–5736. RAMOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–5738. DODSON *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied.

No. 05–5739. SPIVEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 856.

No. 05–5740. PARRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 111 Fed. Appx. 158.

No. 05–5744. WARREN *v.* SMITH, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 122 Fed. Appx. 599.

No. 05–5748. ALEXANDER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 117 Fed. Appx. 274.

No. 05–5750. POWELL *v.* OZMINT, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 57.

No. 05–5751. TRASVINA ALVAREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 128 Fed. Appx. 103.

No. 05–5752. MILBOURNE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 861.

No. 05–5753. VAZQUEZ-RIOS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–5754. WILSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 740.

No. 05–5762. HAMPTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 275.

No. 05–5764. CONROD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 645.

No. 05–5765. CIENFUEGOS-PAZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 682.

No. 05–5766. EVANS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–5768. CLANCY ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–5769. LLOYD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 407 F. 3d 608.

No. 05–5770. HARRIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 394 F. 3d 543.

No. 05–5771. JAMES *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 902 So. 2d 803.

No. 05–5772. ROBINSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 404 F. 3d 850.

No. 05–5774. PULLIAM *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–5779. VASQUEZ-TORRES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 648.

No. 05–5781. BUSH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 404 F. 3d 263.

No. 05–5783. ABNEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 445.

No. 05–5784. ANDERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 212.

No. 05–5786. ATLAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 518.

No. 05–5787. DELVA, AKA DELUA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 490.

No. 05–5790. ROSA *v.* BRESLIN, SUPERINTENDENT, ARTHUR KILL CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 05–5796. KONYA *v.* TENNIS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–5801. CABRERA-RUIZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 288.

No. 05–5802. DUNIGAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 05–5804. CHIMNEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 439.

No. 05–5807. ANDERSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 05–5808. ALANIZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 413 F. 3d 877.

No. 05–5811. RUHBAYAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 406 F. 3d 292.

No. 05–5815. TALIAFERRO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 500.

No. 05–5819. LOPEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5833. WILSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 406 F. 3d 1074.

No. 05–5834. WOODARD *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 64 Fed. Appx. 290.

No. 05–5836. WILLIAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–5843. JONES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 131 Fed. Appx. 819.

No. 05–5844. LIPANI *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 835 A. 2d 833.

No. 05–5846. DIAZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5847. DAVIS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 925 So. 2d 1016.

No. 05–5848. CURTIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–5850. LOPEZ CHIGANO *v.* LEWIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–5851. RUIZ-CAMARENA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 580.

No. 05–5852. STERLING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 350.

No. 05–5856. AGRAMONTE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 05–5861. MUSA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 401 F. 3d 1208.

No. 05–5862. PRIVETTE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 897.

No. 05–5863. ROBERTS *v.* UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT. C. A. 5th Cir. Certiorari denied.

No. 05–5864. ROBINSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5868. PATTERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 740.

No. 05–5869. MENDOZA-MARTINEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–5870. DANIELS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 440.

No. 05–5874. RICHARD, AKA CHEVIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 514.

No. 05–5877. ZUNIGA-BRUNO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 407 F. 3d 511.

No. 05–5878. BYRD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–5879. BURGESS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 232.

No. 05–5880. BINION *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 89.

No. 05–5885. HARRIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 408 F. 3d 186.

No. 05–5887. HARP *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 406 F. 3d 242.

No. 05–5888. JIAYANG HUA *v.* UNIVERSITY OF UTAH ET AL. Ct. App. Utah. Certiorari denied.

No. 05–5889. HENDERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–5891. GONZALEZ-BORJAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 556.

No. 05–5892. GARZA-LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 410 F. 3d 268.

No. 05–5895. SHORTER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 875 A. 2d 117.

No. 05–5896. WINESTOCK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–5897. REYES-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–5899. LLERENA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5900. MCELVEEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 42.

No. 05–5901. RICCARDI *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 405 F. 3d 852.

No. 05–5906. CARTER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 321.

No. 05–5910. BONNER ET UX. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–5911. AUDAIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5912. ADDISON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 05–5918. MUHAMMAD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 8.

No. 05–5920. BERNAL-CERON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 605.

No. 05–5921. BOWERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5922. ARQUIMEDES-PORTILLO *v.* UNITED STATES; MARTINEZ-SALDANA *v.* UNITED STATES; MEDINA-HUITRON *v.* UNITED STATES; MELENDEZ-MONTOYA *v.* UNITED STATES; ROSALES *v.* UNITED STATES; and CRUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 36 (first judgment); 135 Fed. Appx. 704 (second judgment), 761 (fourth judgment), and 764 (third judgment); 144 Fed. Appx. 409 (fifth judgment) and 411 (sixth judgment).

No. 05–5923. PALACIOS-FRAUSTO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 531.

No. 05–5925. MARTIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 954.

No. 05–5927. JENKINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–5928. LORK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 34.

No. 05–5930. MONTALVO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 05–5932. JORGE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5936. TURNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 631.

No. 05–5937. VAUGHAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 119 Fed. Appx. 227.

No. 05–5938. VIZCARRA-PARDINI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 726.

No. 05–5939. WATKINS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 145.

No. 05–5943. BOONE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 120 Fed. Appx. 868.

No. 05–5944. YAZZIE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 407 F. 3d 1139.

No. 05–5945. WASHINGTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 976.

No. 05–5947. ARCHULETA-VALERIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 555.

No. 05–5948. LOPEZ-GUZMAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 627.

No. 05–5949. BERMUDEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 407 F. 3d 536.

No. 05–5950. BAILEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5951. BURTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–5953. MCCULLY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 407 F. 3d 931.

No. 05–5954. RIVERA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 587.

No. 05–5956. JUAREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 90 Fed. Appx. 387.

No. 05–5958. MCDERMOTT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 952.

No. 05–5959. PRITCHETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 216.

No. 05–5960. TAN MINH LY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 95 Fed. Appx. 230.

No. 05–5963. SANCHEZ-SANCHEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 321.

No. 05–5967. CURTIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 05–5968. DOBBS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 408 F. 3d 1101.

No. 05–5969. ECHEVARRIA ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 297.

No. 05–5970. AUSTIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 271.

No. 05–5971. BLECKLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–5973. ARKADIE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–5974. GARCIA-GILL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 102.

No. 05–5976. HOLDEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 97.

No. 05–5977. GOMEZ-MORALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 531.

No. 05–5982. GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5984. GLENN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 115 Fed. Appx. 172.

No. 05–5986. MURIEL-MORALES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–5988. VAN VELZER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 554.

No. 05–5994. PARKER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 05–5996. CENSKE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–5998. COUNCE *v.* NORWOOD, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 103 Fed. Appx. 313.

No. 05–5999. GARCIA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 135 Fed. Appx. 436.

No. 05–6001. AREVALO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 408 F. 3d 1233.

No. 05–6011. HOPKINS, AKA JACKSON *v.* UNITED STATES (two judgments). C. A. 4th Cir. Certiorari denied. Reported below: 117 Fed. Appx. 875 (second judgment).

No. 05–6015. FOSTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 853.

No. 05–6016. GARCIA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 142.

No. 05–6017. FRIEDMAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 139 Fed. Appx. 330.

No. 05–6022. DURAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–6023. EDWARDS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 963.

No. 05–6026. NARANJO-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 96.

No. 05–6027. JACOBSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 223.

No. 05–6029. SUBA *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA. C. A. 11th Cir. Certiorari denied.

No. 05–6033. BATES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–6036. BAIRD *v.* INDIANA (two judgments). Sup. Ct. Ind. Certiorari denied. Reported below: 831 N. E. 2d 109 (first judgment); 833 N. E. 2d 28 (second judgment).

No. 05–6041. VARELA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 400 F. 3d 864.

No. 05–6042. WATSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–6044. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–6051. MOORE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 655.

No. 05–6052. NEWELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 994.

No. 05–6054. SANTIAGO-VAZQUEZ, AKA CORAZON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 127 Fed. Appx. 508.

No. 05–6055. FANTOZZI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 698.

No. 05–6057. HELTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–6058. HUBBARD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–6059. PARRA-PEREZ, AKA PEREZ-PEREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 241.

No. 05–6060. HENLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–6061. DESOTO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 498.

No. 05–6063. ELLIS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 161 Fed. Appx. 17.

No. 05–6066. MAZYCK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 05–6076. WALKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–6078. CARBAJAL-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 949.

No. 05–6079. DEASON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 693.

No. 05–6087. PEREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–6088. PADGETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–6090. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 632.

No. 05–6092. KELLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 412 F. 3d 1240.

No. 05–6095. SANTOS PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 701.

No. 05–6103. FARKAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 672.

No. 05–6106. HICKS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 411 F. 3d 996.

No. 05–6108. BENJAMIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 887.

No. 05–6110. BARREIRO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 821.

No. 05–6115. PERDUE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 330.

No. 05–6122. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 471.

No. 05–6127. VAUGHAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 05–6131. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 115 Fed. Appx. 207.

No. 05–6132. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 534.

No. 05–6138. NOE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–6141. BOWNES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 405 F. 3d 634.

No. 04–1153. INDIANA *v.* WARD. Sup. Ct. Ind. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 810 N. E. 2d 1042.

No. 04–1434. BURT ET AL. *v.* RUMSFELD, SECRETARY OF DEFENSE. C. A. 2d Cir. Certiorari before judgment denied.

No. 04–1465. GEORGE LUSSIER ENTERPRISES, INC., DBA LUSSIER SUBARU, ET AL. *v.* SUBARU OF NEW ENGLAND, INC., ET AL. C. A. 1st Cir. Motion of National Automobile Dealers Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 393 F. 3d 36.

No. 04–1485. WHITE-RODGERS *v.* BITLER ET AL. C. A. 10th Cir. Motion of American Tort Reform Association et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 400 F. 3d 1227.

No. 04–1486. OFFICE OF SENATOR BEN NIGHTHORSE CAMPBELL *v.* BASTIEN. C. A. 10th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 390 F. 3d 1301.

No. 04–1534. BOLANDER *v.* BP OIL CO. ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.* Reported below: 128 Fed. Appx. 412.

No. 04–1564. GARCIA ET AL. *v.* UNITED STATES. C. A. 9th Cir. Motion of the Solicitor General for leave to file a brief in opposition under seal with redacted copies for the public record

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*See also note, *supra,* p. 801.

granted. Certiorari denied. Reported below: 114 Fed. Appx. 292.

No. 04–1569. CITY OF CINCINNATI, OHIO *v.* CASH ET AL. C. A. 6th Cir. Motion of Philip Garcia for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 388 F. 3d 529.

No. 04–1583. FLORIDA *v.* DUNCAN. Sup. Ct. Fla. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 894 So. 2d 817.

No. 04–1605. WASHINGTON MUTUAL BANK, FA, SUCCESSOR TO GREAT WESTERN BANK *v.* DAWSON ET UX. C. A. 9th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition.* Reported below: 390 F. 3d 1139.

No. 04–1607. SHERWOOD PARTNERS, INC. *v.* LYCOS, INC., AKA DELAWARE LYCOS, INC. C. A. 9th Cir. Motion of Receivers, Inc., et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 394 F. 3d 1198.

No. 04–1634. GLOBE NEWSPAPER CO., INC., ET AL. *v.* AYASH. Sup. Jud. Ct. Mass. Motion of ABC, Inc., et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 443 Mass. 367, 822 N. E. 2d 667.

No. 04–1673. CHAPLIN ET AL. *v.* DU PONT ADVANCE FIBER SYSTEMS ET AL. C. A. 4th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition.* Reported below: 124 Fed. Appx. 771.

No. 04–1678. KRAMER *v.* GWINNETT COUNTY, GEORGIA, ET AL. C. A. 11th Cir. Motion of petitioner to consolidate case with No. 04–1236, *Goodman* v. *Georgia et al.*, denied. Certiorari denied. Reported below: 116 Fed. Appx. 253.

No. 04–1706. MILLER CITIZENS CORP. ET AL. *v.* CARTER, ATTORNEY GENERAL OF INDIANA, ET AL. Sup. Ct. Ind. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.* Reported below: 820 N. E. 2d 1240.

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*See also note, *supra,* p. 801.

No. 04–1712. SARKES TARZIAN, INC. *v.* U. S. TRUST COMPANY OF FLORIDA SAVINGS BANK, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF TARZIAN. C. A. 7th Cir. Motion of Loren Robel et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 397 F. 3d 577.

No. 04–1719. BROOKS ET AL. *v.* UNITED STATES ET AL. C. A. 5th Cir. Motion of Multiple Amcor and Elecktra Partners for leave to file a brief as *amicus curiae* out of time denied. Certiorari denied. Reported below: 126 Fed. Appx. 173.

No. 04–10248. HAYNES *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.*

No. 04–10249. HARDISON *v.* CAREY, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.*

No. 04–10437. ROSENDO VALDES *v.* UNITED STATES. C. A. 11th Cir. Certiorari before judgment denied.

No. 04–10643. SMITH *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. JUSTICE BREYER would grant petition for writ of certiorari. Reported below: 908 So. 2d 273.

No. 05–16. HERRING *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Motion of Former Federal Prosecutors for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 397 F. 3d 1338.

No. 05–87. COLORADO *v.* HARLAN. Sup. Ct. Colo. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 109 P. 3d 616.

No. 05–106. GRAND TRUNK WESTERN RAILROAD INC. ET AL. *v.* RODDY. C. A. 6th Cir. Motion of Airline Industrial Relations Conference et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 395 F. 3d 318.

No. 05–118. BERETTA U. S. A. CORP. ET AL. *v.* DISTRICT OF COLUMBIA ET AL. Ct. App. D. C. Motion of petitioners to defer

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*See also note, *supra,* p. 801.

consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 872 A. 2d 633.

No. 05–153. CITY OF FAIRFIELD, OHIO, ET AL. *v.* TUCKER ET AL. C. A. 6th Cir. Motions of City of Athens, Ohio, et al. and International Municipal Lawyers Association for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 398 F. 3d 457.

No. 05–5044. LOVITT *v.* TRUE, WARDEN. C. A. 4th Cir. Motions of The Innocence Project, Inc., et al. and National Association of Criminal Defense Lawyers for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 403 F. 3d 171.

No. 05–5313. MILLER *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 406 F. 3d 323.

No. 05–5726. BAILEY *v.* O'BRIEN, WARDEN. C. A. 6th Cir. Motion of petitioner to expedite consideration of petition for writ of certiorari denied. Certiorari denied.

No. 05–6085. MORALES-ZAVALA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.* Reported below: 125 Fed. Appx. 822.

No. 05–6107. CALLUM ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.* Reported below: 410 F. 3d 571.

Rehearing Denied

No. 03–10700. REYNOSO *v.* CALIFORNIA, 545 U. S. 1127;

No. 04–7519. JURCONI *v.* GLENHAVEN LAKES CLUB ET AL., 543 U. S. 1157;

No. 04–8117. FORDE *v.* CLARK, WARDEN, ET AL., 545 U. S. 1130;

No. 04–8841. O'GARA *v.* NEW YORK, 544 U. S. 1019;

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*See also note, *supra,* p. 801.

No. 04–9093. RICHARDSON *v.* RICHARDSON ET AL., 544 U. S. 1038;

No. 04–9812. LOVE *v.* RYAN, ACTING WARDEN, 545 U. S. 1143;

No. 04–9858. CURTO *v.* EDMONDSON ET AL., 545 U. S. 1133; and

No. 04–10398. KUCERA *v.* UNITED STATES, 545 U. S. 1149. Petitions for rehearing denied.

OCTOBER 6, 2005

Miscellaneous Order

No. 05A311. HOWARD *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied.

OCTOBER 7, 2005

Dismissal Under Rule 46

No. 04–10559. BLAZEVICH *v.* UNITED STATES. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46.

OCTOBER 11, 2005

Dismissal Under Rule 46

No. 05–309. NEW YORK DEPARTMENT OF TRANSPORTATION *v.* NEWSDAY, INC. Ct. App. N. Y. Certiorari dismissed under this Court's Rule 46. Reported below: 5 N. Y. 3d 84, 833 N. E. 2d 210.

Certiorari Granted—Reversed and Remanded. (See No. 04–8384, *ante*, p. 1.)

Certiorari Granted—Vacated and Remanded

No. 04–1387. TUGMAN *v.* UNITED STATES. C. A. 11th Cir. Reported below: 129 Fed. Appx. 597; and

No. 04–1467. ROMAN-ROMAN *v.* UNITED STATES. C. A. 10th Cir. Reported below: 116 Fed. Appx. 994. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *United States* v. *Booker*, 543 U. S. 220 (2005).

No. 04–9748. BRITT *v.* UNITED STATES. C. A. 11th Cir. Reported below: 388 F. 3d 1369;

No. 04–10673. TROTTER *v.* UNITED STATES. C. A. 11th Cir. Reported below: 129 Fed. Appx. 597; and

No. 05–5218. MONCRIEF, AKA RILEY *v.* UNITED STATES. C. A. 11th Cir. Reported below: 127 Fed. Appx. 470. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *United States* v. *Booker*, 543 U. S. 220 (2005).

No. 05–134. NORTH CAROLINA *v.* BRANCH. Ct. App. N. C. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Illinois* v. *Caballes*, 543 U. S. 405 (2005). Reported below: 162 N. C. App. 707, 591 S. E. 2d 923.

No. 05–199. STACEY, INDIVIDUALLY AND AS CO-EXECUTOR OF THE LAST WILL OF STACEY *v.* CITY OF HERMITAGE, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Exxon Mobil Corp.* v. *Saudi Basic Industries Corp.*, 544 U. S. 280 (2005). Reported below: 178 Fed. Appx. 94.

Miscellaneous Orders. (For Court's order making allotment of Justices, see *ante*, p. v.)

No. 05M16. FOOSE *v.* BOOKER ET AL.;

No. 05M17. ATWELL *v.* DURAN ET AL.;

No. 05M18. DAVIES *v.* GREENOUGH ET AL.;

No. 05M19. COSTA *v.* STATE BAR OF CALIFORNIA ET AL.; and

No. 05M20. DAISY *v.* UNITED STATES POSTAL SERVICE. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 04–723. STEVEDORING SERVICES OF AMERICA ET AL. *v.* PRICE ET AL., 544 U. S. 960. Motion of respondent Arel Price for attorney's fees denied without prejudice to filing in the United States Court of Appeals for the Ninth Circuit.

No. 04–805. TEXACO INC. *v.* DAGHER ET AL. C. A. 9th Cir. [Certiorari granted, 545 U. S. 1138.] Motions for leave to file briefs as *amici curiae* filed by the following were granted: Chamber of Commerce of the United States of America et al., American Bankers Association et al., Northwest Ohio Physician Specialist

Cooperative, LLC, Parker Hannifin Corporation, Visa U. S. A. Inc. et al., American Petroleum Institute, Washington Legal Foundation, and Verizon Communications Inc.

No. 04–1067. GEORGIA *v.* RANDOLPH. Sup. Ct. Ga. [Certiorari granted, 544 U. S. 973.] Motion of National Association of Criminal Defense Lawyers for leave to participate in oral argument as *amicus curiae* and for divided argument denied.

No. 04–1203. UNITED STATES *v.* GEORGIA ET AL.; and

No. 04–1236. GOODMAN *v.* GEORGIA ET AL. C. A. 11th Cir. [Certiorari granted, 544 U. S. 1031.] Motion of the Solicitor General for divided argument granted.

No. 04–1615. VINES ET AL. *v.* UNIVERSITY OF LOUISIANA AT MONROE ET AL. C. A. 5th Cir.;

No. 04–1657. CRUZ, AS REPRESENTATIVE OF CRUZ *v.* BLUE CROSS AND BLUE SHIELD OF ILLINOIS ET AL. C. A. 7th Cir.;

No. 05–18. ARLINGTON CENTRAL SCHOOL DISTRICT BOARD OF EDUCATION *v.* MURPHY ET VIR. C. A. 2d Cir.; and

No. 05–200. EMPIRE HEALTHCHOICE ASSURANCE, INC., DBA EMPIRE BLUE CROSS BLUE SHIELD *v.* MCVEIGH, ADMINISTRATRIX OF THE ESTATE OF MCVEIGH. C. A. 2d Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 04–8384. DYE *v.* HOFBAUER, WARDEN, *ante,* p. 1. Motion of Prison Legal Services of Michigan, Inc., et al. for leave to file a brief as *amici curiae* granted.

No. 05–6256. IN RE QUEEN; and

No. 05–6370. IN RE MOORE. Petitions for writs of habeas corpus denied.

No. 05–165. IN RE KANON'SES:NEH. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 04–1034. RAPANOS ET AL. *v.* UNITED STATES; and

No. 04–1384. CARABELL ET AL. *v.* UNITED STATES ARMY CORPS OF ENGINEERS ET AL. C. A. 6th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral ar-

gument. Reported below: No. 04–1034, 376 F. 3d 629; No. 04–1384, 391 F. 3d 704.

No. 04–1527. S. D. WARREN CO. *v.* MAINE BOARD OF ENVIRONMENTAL PROTECTION ET AL. Sup. Jud. Ct. Me. Certiorari granted limited to Question 1 presented by the petition. Reported below: 868 A. 2d 210.

No. 04–1618. NORTHERN INSURANCE COMPANY OF NEW YORK *v.* CHATHAM COUNTY, GEORGIA. C. A. 11th Cir. Certiorari granted.* Reported below: 129 Fed. Appx. 602.

Certiorari Denied

No. 04–1552. FELLERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 397 F. 3d 1090.

No. 04–1602. HAROLD LEVINSON ASSOCIATES, INC., ET AL. *v.* CHAO, SECRETARY OF LABOR. C. A. 2d Cir. Certiorari denied. Reported below: 121 Fed. Appx. 918.

No. 04–1617. MICHIGAN *v.* BOLDUC. Ct. App. Mich. Certiorari denied. Reported below: 263 Mich. App. 430, 688 N. W. 2d 316.

No. 04–1655. LOUISIANA STATE BOARD OF ELEMENTARY AND SECONDARY EDUCATION ET AL. *v.* PACE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 403 F. 3d 272.

No. 04–1660. PERRY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 158 S. W. 3d 438.

No. 04–1663. RUBBO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 396 F. 3d 1330.

No. 04–1671. LOTT *v.* EASTERN SHORE CHRISTIAN CENTER ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 908 So. 2d 922.

No. 04–1723. YUEN ET AL. *v.* SECURITIES AND EXCHANGE COMMISSION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 401 F. 3d 1031.

No. 04–1727. COHEN *v.* WORLD OMNI FINANCIAL CORP. Cir. Ct. Palm Beach County, Fla. Certiorari denied.

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*[REPORTER'S NOTE: For amendment of this order, see *post*, p. 959.]

No. 04–9100. OSIFE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 398 F. 3d 1143.

No. 04–9334. ABRAHAM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 386 F. 3d 1033.

No. 04–9409. TYTLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 462.

No. 04–9926. CLARITT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 602.

No. 04–10095. SNOWDEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 123 Fed. Appx. 385.

No. 04–10210. MANDERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 112 Fed. Appx. 5.

No. 04–10288. MOBIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 269.

No. 04–10339. DAIBO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 821.

No. 04–10351. SPIELVOGEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 738.

No. 04–10421. STURGILL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 821.

No. 04–10433. BUTLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 04–10465. CURTIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 400 F. 3d 1334.

No. 04–10500. WILLIAMS *v.* BROWN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 384 F. 3d 567.

No. 04–10541. CHISHOLM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 04–10657. SOLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 297.

No. 04–10747. MENELIO-VIVAS *v.* UNITED STATES; and

No. 05–5107. ESTUPINAN ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 597.

No. 05–1. MCFARLAND ET AL. *v.* CHEMINOVA, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 400 F. 3d 1286.

No. 05–2. LATHAM *v.* OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF OHIO ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 395 F. 3d 261.

No. 05–11. GENCORP, INC. *v.* OLIN CORP. C. A. 6th Cir. Certiorari denied. Reported below: 390 F. 3d 433.

No. 05–19. BERNBACK *v.* GRECO. C. A. 3d Cir. Certiorari denied. Reported below: 127 Fed. Appx. 45.

No. 05–21. USX CORP. ET AL. *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 3d Cir. Certiorari denied. Reported below: 395 F. 3d 161.

No. 05–22. KNISLEY ET AL. *v.* MEDTRONIC, INC. C. A. 6th Cir. Certiorari denied. Reported below: 405 F. 3d 421.

No. 05–23. MORALES *v.* BROWN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 388 F. 3d 1159.

No. 05–24. LENTELL *v.* MERRILL LYNCH & CO., INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 396 F. 3d 161.

No. 05–27. WEBSTER *v.* UNITED AUTO WORKERS, LOCAL 51, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 394 F. 3d 436.

No. 05–39. GENERAL MOTORS CORP. *v.* FORD ET AL., INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED. Ct. Civ. App. Okla. Certiorari denied.

No. 05–42. PEOPLES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 403 F. 3d 844.

No. 05–43. CIANCI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–52. BFM LEASING CO., LLC, ET AL. *v.* PHILADELPHIA INDEMNITY INSURANCE CO. C. A. 6th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 243.

No. 05–54. HAYS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 397 F. 3d 564.

No. 05–55. HAMILTON COUNTY DEPARTMENT OF EDUCATION *v.* DEAL ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 392 F. 3d 840.

No. 05–96. SMIT, COMMISSIONER, VIRGINIA DEPARTMENT OF MOTOR VEHICLES *v.* YAMAHA MOTOR CORP., U. S. A.; and

No. 05–186. JIM'S MOTORCYCLE, INC., DBA ATLAS HONDA/YAMAHA *v.* SMIT, COMMISSIONER, VIRGINIA DEPARTMENT OF MOTOR VEHICLES. C. A. 4th Cir. Certiorari denied. Reported below: 401 F. 3d 560.

No. 05–141. MARTIN *v.* UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT. C. A. 8th Cir. Certiorari denied.

No. 05–155. SAUDI BASIC INDUSTRIES CORP. *v.* MOBIL YANBU PETROCHEMICAL CO., INC., ET AL. Sup. Ct. Del. Certiorari denied. Reported below: 866 A. 2d 1.

No. 05–156. O. S. C. CO. *v.* ZYMBLOSKY ET AL. Super. Ct. Pa. Certiorari denied.

No. 05–157. O. S. C. CO. *v.* ZYMBLOSKY ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 858 A. 2d 1295.

No. 05–159. NOVAK *v.* ESTATE OF NOVAK, INCAPACITATED PERSON, BY AND THROUGH VEST, GUARDIAN AND CONSERVATOR. Sup. Ct. Ala. Certiorari denied. Reported below: 926 So. 2d 380.

No. 05–163. MEMORIAL-HERMANN HEALTHCARE SYSTEMS ET AL. *v.* ETHRIDGE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 405 F. 3d 344.

No. 05–168. BRIDGESTONE/FIRESTONE NORTH AMERICAN TIRE, L. L. C. *v.* CITY OF MONROE EMPLOYEES RETIREMENT SYSTEM; and

No. 05–170. BRIDGESTONE CORP. *v.* CITY OF MONROE EMPLOYEES RETIREMENT SYSTEM. C. A. 6th Cir. Certiorari denied. Reported below: 399 F. 3d 651.

No. 05–169. ROBINSON *v.* FORD-ROBINSON. Sup. Ct. Ark. Certiorari denied. Reported below: 362 Ark. 232, 208 S. W. 3d 140.

No. 05–171. AEGIS SECURITY INSURANCE CO. *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–172. BOUTON *v.* FARRELLY, GOVERNOR OF THE VIRGIN ISLANDS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 122 Fed. Appx. 562.

No. 05–173. FIRST FINANCIAL VENTURES, LLC, ET AL. *v.* BANK ONE, COLUMBUS, OHIO, N. A. C. A. 6th Cir. Certiorari denied.

No. 05–174. BONG SUN KYE ET AL. *v.* CHANG LEE. Super. Ct. N. J., App. Div. Certiorari denied.

No. 05–175. PALMIERI *v.* LYNCH ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 392 F. 3d 73.

No. 05–177. DORN ET AL. *v.* GENERAL MOTORS CORP. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 462.

No. 05–179. MOMPONGO *v.* GONZALES, ATTORNEY GENERAL. C. A. 8th Cir. Certiorari denied. Reported below: 406 F. 3d 512.

No. 05–180. CASTRO-RIVERA ET AL. *v.* FAGUNDO ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 129 Fed. Appx. 632.

No. 05–189. ORNDORF *v.* PAUL REVERE LIFE INSURANCE CO. C. A. 1st Cir. Certiorari denied. Reported below: 404 F. 3d 510.

No. 05–192. JOHNSON *v.* BOARD OF BAR OVERSEERS OF MASSACHUSETTS ET AL. C. A. 1st Cir. Certiorari denied.

No. 05–193. JENSEN *v.* PRUDENTIAL FINANCIAL, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 914.

No. 05–194. OVERLAND ET AL. *v.* LOS ANGELES COUNTY, CALIFORNIA, ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 126 Cal. App. 4th 131, 23 Cal. Rptr. 3d 676.

No. 05–195. SIMPSON *v.* CHESTERFIELD COUNTY BOARD OF SUPERVISORS. C. A. 4th Cir. Certiorari denied. Reported below: 404 F. 3d 276.

No. 05–201. BURKLOW ET AL. *v.* BASKIN-ROBBINS USA, CO., ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–202. KEANE *v.* FOX TELEVISION STATIONS, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 874.

No. 05–211. STETLER ET VIR *v.* SRN ENTERPRISES, INC. Ct. App. Ky. Certiorari denied.

No. 05–213. HATCHER *v.* PEED, JUDGE, SUPERIOR COURT OF GEORGIA, EFFINGHAM COUNTY. C. A. 11th Cir. Certiorari denied. Reported below: 128 Fed. Appx. 105.

No. 05–217. DJM, LTD. *v.* ISLAND YACHTING MANAGEMENT, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 246.

No. 05–218. DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION *v.* COLEMAN. C. A. 5th Cir. Certiorari denied. Reported below: 395 F. 3d 216.

No. 05–220. BRUCE ET AL. *v.* HEFFELFINGER, UNITED STATES ATTORNEY, DISTRICT OF MINNESOTA, ET AL. C. A. 8th Cir. Certiorari denied.

No. 05–221. JUPITER *v.* GONZALES, ATTORNEY GENERAL. C. A. 1st Cir. Certiorari denied. Reported below: 396 F. 3d 487.

No. 05–228. UDARBE *v.* GONZALES, ATTORNEY GENERAL. C. A. 7th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 57.

No. 05–231. KULESA *v.* SMALL ET UX. Ct. App. Ark. Certiorari denied. Reported below: 90 Ark. App. 108, 204 S. W. 3d 99.

No. 05–233. CAMPBELL *v.* REGENTS OF THE UNIVERSITY OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 35 Cal. 4th 311, 106 P. 3d 976.

No. 05–239. HEALTHPATH OF MERCER COUNTY, INC. *v.* AETNA, INC., ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–240. FISHER *v.* TEXAS. Sup. Ct. Tex. Certiorari denied. Reported below: 164 S. W. 3d 637.

No. 05–241. BANKOLE *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 2d Cir. Certiorari denied. Reported below: 126 Fed. Appx. 503.

No. 05–242. BURLINGTON NORTHERN & SANTA FE RAILWAY CO. *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA. C. A. 9th Cir. Certiorari denied. Reported below: 408 F. 3d 1142.

No. 05–283. HOPKINS *v.* DIBELLA. C. A. 2d Cir. Certiorari denied. Reported below: 403 F. 3d 102.

No. 05–285. LALANI *v.* UNITED STATES;
No. 05–317. DHANANI *v.* UNITED STATES; and
No. 05–330. LALANI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 298.

No. 05–303. JONES *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 867 A. 2d 647.

No. 05–307. PENNY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–320. HAMRIC *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–329. MILLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 10.

No. 05–334. PRATCHARD *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 61 M. J. 279.

No. 05–5100. KEMP *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5114. WAIDLA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 35 Cal. 4th 140, 106 P. 3d 931.

No. 05–5183. SMITH ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 297.

No. 05–5199. BIEGHLER *v.* MCBRIDE, SUPERINTENDENT, MAXIMUM CONTROL FACILITY. C. A. 7th Cir. Certiorari denied. Reported below: 389 F. 3d 701.

No. 05–5200. DIVERS *v.* LOUISIANA. Ct. App. La., 2d Cir. Certiorari denied. Reported below: 889 So. 2d 335.

No. 05–5221. ROSS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 297.

No. 05–5225. DENNIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 597.

No. 05–5255. THOMPSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 116 Fed. Appx. 249.

No. 05–5266. WHITE *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 173.

No. 05–5270. TOLAMA-SANTIZO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 298.

No. 05–5279. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 822.

No. 05–5311. VENEGAS-CASTREJON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 297.

No. 05–5321. DAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 405 F. 3d 1293.

No. 05–5370. TOROGUET-CERVANTES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 521.

No. 05–5467. DUNCAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 400 F. 3d 1297.

No. 05–5554. THACKER *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 164 S. W. 3d 208.

No. 05–5555. JAMES *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–5558. SENN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 128 Fed. Appx. 96.

No. 05–5560. ASHWORTH *v.* ADDISON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 752.

No. 05–5563. TAFARI *v.* GILMORE ET AL. C. A. 2d Cir. Certiorari denied.

No. 05–5566. CRUTCHER *v.* RYAN, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 116.

No. 05–5567. DICKSON *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 313.

No. 05–5570. PEGRAM *v.* AULT, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 05–5573. MAHDI *v.* MCI-WORLDCOM ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 120 Fed. Appx. 101.

No. 05–5574. CORNEJO MACIAS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–5575. LEWIS *v.* SMITH ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–5576. KOKO *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 901 So. 2d 133.

No. 05–5577. PORTER *v.* CASON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–5578. MCGHEE *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 352 Ill. App. 3d 1223, 879 N. E. 2d 1067.

No. 05–5583. ROWE *v.* DEKALB CRISIS CENTER ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–5584. SABREE *v.* MASSACHUSETTS PAROLE BOARD ET AL. C. A. 1st Cir. Certiorari denied.

No. 05–5589. ROBINSON *v.* FOLINO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE. C. A. 3d Cir. Certiorari denied.

No. 05–5593. DAVIS *v.* WERHOLTZ, SECRETARY, KANSAS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 121 Fed. Appx. 377.

No. 05–5594. CLARK *v.* RYAN, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 445.

No. 05–5596. DOVE *v.* BOYETTE, CORRECTIONAL ADMINISTRATOR I, NASH CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 77.

No. 05–5597. DOWNES *v.* CARROLL, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–5602. ADAWAY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 902 So. 2d 746.

No. 05–5607. BURKETT *v.* TEXAS. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 05–5610. BRADFORD *v.* AYERS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 121 Fed. Appx. 707.

No. 05–5613. MELENDEZ *v.* MCGRATH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–5616. SUMBRY *v.* DAVIS, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 3d Cir. Certiorari denied.

No. 05–5620. VALCHAR *v.* TEXAS BOARD OF PARDONS AND PAROLES. C. A. 5th Cir. Certiorari denied.

No. 05–5621. TOUSSAINT *v.* KLEM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 131 Fed. Appx. 383.

No. 05–5629. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 324.

No. 05–5632. BURDETTE *v.* RUSHTON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 684.

No. 05–5633. BILBREY *v.* DOUGLAS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 971.

No. 05–5639. HARRISON *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 05–5640. FIGUEROA, AKA RODRIGUEZ *v.* ZON, SUPERINTENDENT, WENDE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 05–5644. LAY *v.* MAZER-HART. C. A. 9th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 573.

No. 05–5649. DAUGHERTY *v.* MISSOURI. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 159 S. W. 3d 405.

No. 05–5651. ALLEN *v.* DISTRICT COURT OF NEVADA, CLARK COUNTY, ET AL. Sup. Ct. Nev. Certiorari denied.

No. 05–5656. GUZMAN *v.* DUKE, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 05–5658. SERVIN *v.* HARRISON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–5662. SYLVESTER *v.* MCKEE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–5664. MANDILE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 351.

No. 05–5667. TODD *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–5668. POWELL *v.* KELLER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 120 Fed. Appx. 512.

No. 05–5671. QUINTON *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–5672. GOLDMAN *v.* FAIRBANKS CAPITAL CORP. ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–5674. INGRAHAM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 395.

No. 05–5675. SANDIFER *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 120 Fed. Appx. 202.

No. 05–5676. NEWMAN *v.* UCHTMAN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 05–5678. RUTHERFORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5682. DUARTE-BENITEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 246.

No. 05–5688. WELKER *v.* RUSSO, JUDGE, COURT OF COMMON PLEAS OF OHIO, CUYAHOGA COUNTY. Sup. Ct. Ohio. Certiorari denied.

No. 05–5690. RILEY *v.* SANDOVAL, ATTORNEY GENERAL OF NEVADA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 814.

No. 05–5692. MEADOR *v.* SWEATT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–5693. MOHAMMED-BLAIZE, AKA BLAIZE *v.* IMMIGRATION AND NATURALIZATION SERVICE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 133 Fed. Appx. 774.

No. 05–5695. OLIVER *v.* OKLAHOMA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 869.

No. 05–5696. BURGESS *v.* SCOFIELD, WARDEN. Super. Ct. Butts County, Ga. Certiorari denied.

No. 05–5698. BENNETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 657.

No. 05–5699. BUSH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 210.

No. 05–5700. BIROTTE *v.* GONZALES, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied.

No. 05–5701. SVEUM *v.* SMITH, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 403 F. 3d 447.

No. 05–5714. DOCKERY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 401 F. 3d 1261.

No. 05–5715. COOPER-SMITH *v.* BELLEQUE, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 397 F. 3d 1236.

No. 05–5716. CARCHIDI *v.* KENMORE DEVELOPMENT. C. A. 2d Cir. Certiorari denied. Reported below: 123 Fed. Appx. 435.

No. 05–5717. CORDOVA *v.* MUELLER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 174.

No. 05–5718. CENSKE *v.* MARQUETTE COUNTY JAIL. C. A. 6th Cir. Certiorari denied.

No. 05–5719. B. L. *v.* FRANKLIN COUNTY CHILDREN SERVICES. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 05–5728. MCDONALD *v.* BELLSOUTH TELECOMMUNICATIONS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 685.

No. 05–5729. POLITE ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 822.

No. 05–5730. LYLES *v.* MILLER, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 05–5732. MATTHEWS *v.* CLARK COUNTY, NEVADA, ET AL. Sup. Ct. Nev. Certiorari denied.

No. 05–5733. RATSAVONGSY *v.* CADEN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 10.

No. 05–5737. ROSEBERRY *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 210 Ariz. 360, 111 P. 3d 402.

No. 05–5741. SCRUGGS *v.* PALMER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 112 Fed. Appx. 337.

No. 05–5742. WALKER *v.* CARROLL, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–5745. DAVIS *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 05–5746. BLOUNT *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–5747. ABEYTA *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 05–5749. BOATSWAIN *v.* GONZALES, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 414 F. 3d 413.

No. 05–5755. SMITH *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 05–5756. SKIPWORTH *v.* COYNE, JUDGE, COURT OF COMMON PLEAS OF OHIO, CUYAHOGA COUNTY. Sup. Ct. Ohio. Certiorari denied.

No. 05–5757. SHIPMAN *v.* SMITH, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 05–5761. HUDSON *v.* WARD, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 599.

No. 05–5763. HARPER *v.* GAMBLE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 468.

No. 05–5775. PADILLA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 222.

No. 05–5776. CHARLES-SANCHEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 128 Fed. Appx. 760.

No. 05–5777. LYTLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 136.

No. 05–5778. MASTERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 297.

No. 05–5785. BONGA *v.* RENICO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–5788. LOPERA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 128 Fed. Appx. 761.

No. 05–5789. SMITH *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 05–5792. ELKO *v.* SUSTER, JUDGE, COURT OF COMMON PLEAS OF OHIO, CUYAHOGA COUNTY. Sup. Ct. Ohio. Certiorari denied.

No. 05–5797. LAWHON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 908 So. 2d 1052.

No. 05–5805. PITTS *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 682.

No. 05–5817. MAHADEVAN *v.* GONZALES, ATTORNEY GENERAL. C. A. 8th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 764.

No. 05–5818. DUYET HUNG LE *v.* BELLEQUE, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 292.

No. 05–5821. PROSHA *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 05–5826. PARNELL *v.* WALL ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–5828. JOHNSON *v.* WARREN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–5835. WOOD *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 906 So. 2d 1065.

No. 05–5858. GALES *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 269 Neb. 443, 694 N. W. 2d 124.

No. 05–5860. CORONEL *v.* HAWAII. C. A. 9th Cir. Certiorari denied.

No. 05–5866. AL-HAKIM *v.* DOSS ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–5873. MORALES *v.* MCKESSON HEALTH SOLUTIONS, LLC. C. A. 10th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 115.

No. 05–5875. ZULUAGA *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 63 Mass. App. 1114, 826 N. E. 2d 794.

No. 05–5876. BRANCH *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 162 N. C. App. 707, 591 S. E. 2d 923.

No. 05–5883. JONES *v.* STEWART ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 108.

No. 05–5890. HOUSER *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 200.

No. 05–5898. LOGAN *v.* COLUMBIA ALASKA REGIONAL HOSPITAL. C. A. 9th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 382.

No. 05–5904. WELCH *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 46.

No. 05–5907. ABDELHAQ *v.* WEST VIRGINIA. Cir. Ct. Ohio County, W. Va. Certiorari denied.

No. 05–5914. BOLDT *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. Reported below: 116 Fed. Appx. 160.

No. 05–5926. JONES *v.* ORTIZ, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 235.

No. 05–5931. MARTIN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 05–5983. PREVO *v.* FEDERAL DEPOSIT INSURANCE CORPORATION ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 981.

No. 05–6002. BROWN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 354 Ill. App. 3d 1158, 883 N. E. 2d 1148.

No. 05–6003. WAGNER *v.* WAINSTEIN. C. A. D. C. Cir. Certiorari denied. Reported below: 167 Fed. Appx. 812.

No. 05–6007. GREENE *v.* MCDANIEL, WARDEN, ET AL. Sup. Ct. Nev. Certiorari denied.

No. 05–6028. MARTIN *v.* MACFARLAND, ADMINISTRATOR, SOUTH WOODS STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–6031. HIGINIA *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 05–6037. KRONCKE *v.* CITY OF PHOENIX, ARIZONA, ET AL. Ct. App. Ariz. Certiorari denied.

No. 05–6040. MCGEE *v.* TERRY, WARDEN. Super. Ct. Tattnall County, Ga. Certiorari denied.

No. 05–6047. CAPERS *v.* H & R BLOCK FINANCIAL ADVISORS, INC. C. A. 3d Cir. Certiorari denied. Reported below: 115 Fed. Appx. 600.

No. 05–6049. FECK *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 05–6062. METZENBAUM *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 8th Cir. Certiorari denied.

No. 05–6064. COPLEY *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 918.

No. 05–6070. GOSSETT *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 10th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 24.

No. 05–6074. HOLBROOK *v.* YAMAMOTO FB ENGINEERING, LLC. C. A. 6th Cir. Certiorari denied.

No. 05–6086. MOSLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 41.

No. 05–6111. ADAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 642.

No. 05–6120. MADERA-SANCHEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–6121. JACOBS *v.* MICHIGAN ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–6124. WYATT ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 408 F. 3d 1257 and 135 Fed. Appx. 16.

No. 05–6133. PEREZ-SERANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 956.

No. 05–6145. SMILEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 05–6146. SANTIAGO-LUGO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–6148. JOSEPH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 107.

No. 05–6150. MILTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–6151. NELSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 05–6152. JOLLY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–6155. CRISPIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 05–6158. GILFORD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 656.

No. 05–6160. GARCIA-COVARRUBIAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 141.

No. 05–6162. CRAVEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 146.

No. 05–6163. SEQUIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–6169. SALINAS-CAPISTRAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 112.

No. 05–6170. RAMIREZ-PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 558.

No. 05–6171. SANCHEZ-ANDRADE, AKA GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 156.

No. 05–6172. SAWYERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 409 F. 3d 732.

No. 05–6173. MARCUSSEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 403 F. 3d 982.

No. 05–6176. COLON-COLON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–6177. DREWRY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 543.

No. 05–6178. CAMACHO-IBARQUEN, AKA CARBONELL, AKA VEGA, AKA CANALES, AKA CONTRARA, AKA SANCHEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 410 F. 3d 1307.

No. 05–6179. DILKS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 653.

No. 05–6183. PETRO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 132 Fed. Appx. 981.

No. 05–6191. JOHNSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 408 F. 3d 1313.

No. 05–6193. ZION *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 299.

No. 05–6195. TYLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–6196. VANEGAS-MALDONADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 659.

No. 05–6197. SAUNDERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 298.

No. 05–6198. CABEZAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 223.

No. 05–6199. OTHON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 166.

No. 05–6201. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 238.

No. 05–6203. SCHAFFNER *v.* LEBLANC, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 05–6204. RODRIGUEZ-NICHOLS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 410 F. 3d 74.

No. 05–6205. ROSENDARY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 05–6206. CASTILLO-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 153.

No. 05–6207. CHAPPELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 684.

No. 05–6208. ESSICK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 584.

No. 05–6209. ESPINOZA-GAMEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 658.

No. 05–6210. CARDENAS-TAPIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 564.

No. 05–6211. CASTILLO-RESENDEZ *v.* UNITED STATES; ARNULFO AYESTA *v.* UNITED STATES; LEDESMA-SANCHEZ *v.* UNITED STATES; VALDEZ-JAIMES *v.* UNITED STATES; MACHADO-BERNAL *v.* UNITED STATES; and ORTA-GOMEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 982 (second judgment); 135 Fed. Appx. 750 (fourth judgment); 137 Fed. Appx. 681 (third judgment); 138 Fed. Appx. 651 (fifth judgment); 142 Fed. Appx. 810 (sixth judgment).

No. 05–6212. DELONG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 872.

No. 05–6213. CURTIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 232.

No. 05–6214. COYNE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 142 Fed. Appx. 485.

No. 05–6215. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 410 F. 3d 137.

No. 05–6217. SILER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–6221. BRAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 80.

No. 05–6222. NIEVES-BOGADO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 247.

No. 05–6223. BOCHAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 968.

No. 05–6224. BIFULCO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 127 Fed. Appx. 548.

No. 05–6225. HARRIS, AKA BATES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 99.

No. 05–6233. COSME *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 391.

No. 05–6234. DOWLING, AKA JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 403 F. 3d 1242.

No. 05–6235. LEMUSU *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 52.

No. 05–6237. OVERTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 354.

No. 05–6238. ZABAWA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 60.

No. 05–6239. TUBBS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 957.

No. 05–6240. NEWSOME *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 409 F. 3d 996.

No. 05–6241. WALKER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 393 F. 3d 842.

No. 05–6242. MARTINEZ-LUGO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 411 F. 3d 597.

No. 05–6243. BRYANT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 95.

No. 05–6245. ALCANTARA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 721.

No. 05–6246. ALLEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–6249. BARRETT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 05–6253. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 990.

No. 05–6259. SKORNIAK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–6260. SANTIAGO-LUGO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–6261. ROMEU *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–6262. REYNA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–6267. LOSSIAH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 434.

No. 05–6276. CARRANZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–6278. CHILDS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 403 F. 3d 970.

No. 05–6279. DANIELS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 305.

No. 05–6280. MATEO, AKA CARLOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–6281. BRUCE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 396 F. 3d 697.

No. 05–6286. NAVARRO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 409 F. 3d 492.

No. 05–6290. WOOTEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–6293. TANNER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 05–6294. TAYLOR *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 876 A. 2d 640.

No. 05–6295. VILLAFANE-JIMENEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 410 F. 3d 74.

No. 05–6300. REMOI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 404 F. 3d 789.

No. 05–6303. POPE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 565.

No. 05–6304. OLIVO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 05–6305. NUNN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 101.

No. 05–6306. LAWRENCE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 405 F. 3d 888.

No. 05–6307. CRAYTON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 77.

No. 05–6308. CROSS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 929.

No. 05–6309. DENNISON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 410 F. 3d 1203.

No. 05–6314. MONREAL-MONREAL *v.* UNITED STATES; ESPARZA-CANO *v.* UNITED STATES; HERNANDEZ-NEGRETE *v.* UNITED STATES; ALANIS-ZUNIGA *v.* UNITED STATES; MALDONADO *v.* UNITED STATES; MORALES-GARCIA *v.* UNITED STATES; and PADILLA-CALVO, AKA MARTINEZ-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 726 (first judgment) and 775 (second judgment); 135 Fed. Appx. 737 (fifth judgment) and 759 (fourth judgment); 136 Fed. Appx. 657 (third judgment); 140 Fed. Appx. 546 (sixth judgment).

No. 05–6316. MAGALLANEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 408 F. 3d 672.

No. 05–6317. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 120 Fed. Appx. 594.

No. 05–6318. ROBINSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 404 F. 3d 850.

No. 05–6319. RAY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 411 F. 3d 900.

No. 05–6320. RUBIO *v.* UNITED STATES; ALANIZ *v.* UNITED STATES; DE LA CRUZ *v.* UNITED STATES; GARCIA-RAMIREZ *v.* UNITED STATES; MUNIZ-TAPIA *v.* UNITED STATES; GONZALEZ *v.* UNITED STATES; and MUNOZ-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 702 (second judgment); 135 Fed. Appx. 662 (first judgment); 139 Fed. Appx. 609 (third judgment); 145 Fed. Appx. 477 (fifth judgment) and 959 (sixth judgment); 148 Fed. Appx. 201 (fourth judgment) and 221 (seventh judgment).

No. 05–6321. OSTRANDER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 411 F. 3d 684.

No. 05–6322. REEVES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 410 F. 3d 1031.

No. 05–6325. BROCK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–6326. BRONSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 141 Fed. Appx. 78.

No. 05–6327. ORTIZ ALCANTAR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 401.

No. 05–6328. ALBRITTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 239.

No. 05–6332. KEMP *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–6340. COBB *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–6341. CACHO-BONILLA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 404 F. 3d 84.

No. 05–6343. WALLS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–6347. WEBB *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–6353. SNAGGS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 05–6354. BELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 411 F. 3d 960.

No. 05–6355. AUSTIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 722.

No. 05–6361. CHARLOT, AKA DUMALS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 365.

No. 04–1520. NEW YORK *v.* ZAPPULLA. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Motion of respondent to strike petitioner's reply brief treated as motion to seal the brief, and motion granted. Petitioner is directed to file a redacted reply brief for the public record within 10 days. Certiorari denied. Reported below: 391 F. 3d 462.

No. 04–1632. GORDON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 393 F. 3d 1044.

No. 04–1693. CONTESSA PREMIUM FOODS, INC., FKA CONTESSA FOOD PRODUCTS, INC. *v.* BERDEX SEAFOOD, INC., ET AL. C. A. 9th Cir. Motion of International Trademark Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 123 Fed. Appx. 747.

No. 04–1695. LEE *v.* CRAIGHEAD ET AL., AS CO-TRUSTEES FOR THE HEIRS AND NEXT-OF-KIN OF CRAIGHEAD, DECEASED. C. A. 8th Cir. Motion of Minnesota Police and Peace Officers Association Legal Defense Fund et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 399 F. 3d 954.

No. 04–9737. ROGERS *v.* HUNTLEY PROJECT SCHOOL DISTRICT #24. Sup. Ct. Mont. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [545 U. S. 1113] granted. Certiorari denied.

No. 05–25. DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. *v.* BRINSON. C. A. 3d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 398 F. 3d 225.

No. 05–48. TEVA PHARMACEUTICALS USA, INC. *v.* PFIZER, INC. C. A. Fed. Cir. Certiorari denied. THE CHIEF JUSTICE, JUSTICE O'CONNOR, and JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 395 F. 3d 1324.

No. 05–139. MARICOPA COUNTY, ARIZONA, ET AL. *v.* AGSTER, PERSONAL REPRESENTATIVE OF THE ESTATE OF AGSTER, ET AL. C. A. 9th Cir. Motions of American Medical Association et al. and County of Los Angeles et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 406 F. 3d 1091.

No. 05–205. SMITH ET AL. *v.* WEST VIRGINIA EX REL. SAYLOR. Sup. Ct. App. W. Va. Motion of Employment Dispute Services, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 216 W. Va. 766, 613 S. E. 2d 914.

No. 05–5591. MURRAY *v.* FLEET MORTGAGE GROUP ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 120 Fed. Appx. 402.

No. 05–5702. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari before judgment denied.

No. 05–6334. MITCHELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari before judgment denied.

Rehearing Denied

No. 04–9046. IN RE MORRIS, 544 U. S. 973;

No. 04–9269. HOLLIHAN *v.* SOBINA, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET, ET AL., 544 U. S. 1024;

No. 04–9490. LUCAS *v.* LEWIS, WARDEN, 545 U. S. 1106;

No. 04–9564. FERRO *v.* UNITED STATES, 544 U. S. 1041;

No. 04–9755. KING *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, 545 U. S. 1132; and

No. 04–9835. BARBOSA *v.* UNITED STATES, 544 U. S. 1056. Petitions for rehearing denied.

No. 02–611. DERMAN *v.* UNITED STATES, 537 U. S. 1048. Motion for leave to file petition for rehearing denied.

OCTOBER 17, 2005

Certiorari Granted—Vacated and Remanded. (See No. 04–1475, *ante,* p. 6.)

Miscellaneous Orders

No. 05A333. CRAWFORD ET AL. *v.* ROE. C. A. 8th Cir. Application for stay, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Temporary stay entered October 14, 2005, is vacated.

No. 05M21. WILLIAMS *v.* UNITED STATES. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 04–1203. UNITED STATES *v.* GEORGIA ET AL.; and

No. 04–1236. GOODMAN *v.* GEORGIA ET AL. C. A. 11th Cir. [Certiorari granted, 544 U. S. 1031.] Motion of Tennessee et al. for leave to participate in oral argument as *amici curiae* and for divided argument granted.

No. 04–1329. ILLINOIS TOOL WORKS INC. ET AL. *v.* INDEPENDENT INK, INC. C. A. Fed. Cir. [Certiorari granted, 545 U. S. 1127.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 04–1618. NORTHERN INSURANCE COMPANY OF NEW YORK *v.* CHATHAM COUNTY, GEORGIA. C. A. 11th Cir. [Certiorari granted, *ante,* p. 933.] Order granting petition for writ of certiorari amended to read: Certiorari granted limited to the following question: "Whether an entity that does not qualify as an 'arm of the State' for Eleventh Amendment purposes can nonetheless assert sovereign immunity as a defense to an admiralty suit."

No. 05–6528. IN RE GAISIE; and

No. 05–6530. IN RE WANSLEY. Petitions for writs of habeas corpus denied.

No. 04–10395. IN RE MARSHALL;

No. 05–5798. IN RE JOHNSON; and

No. 05–6190. IN RE KORNAFEL. Petitions for writs of mandamus denied.

Certiorari Granted

No. 05–83. WASHINGTON *v.* RECUENCO. Sup. Ct. Wash. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 154 Wash. 2d 156, 110 P. 3d 188.

Certiorari Denied

No. 04–9842. JACKSON *v.* ARKANSAS. Ct. App. Ark. Certiorari denied.

No. 04–10511. WILLIAMS *v.* MAYBERG, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 04–10639. MORIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–61. EDWARDS *v.* VIRGINIA INTERNATIONAL TERMINALS, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 398 F. 3d 313.

No. 05–88. COOPER ET AL. *v.* SOUTHERN CO. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 390 F. 3d 695.

No. 05–92. UNITED STATES *v.* PHILIP MORRIS USA INC. ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 396 F. 3d 1190.

No. 05–117. VERTRUE INC., FKA MEMBERWORKS INC. *v.* MEDVALUSA HEALTH PROGRAMS, INC. Sup. Ct. Conn. Certiorari denied. Reported below: 273 Conn. 634, 872 A. 2d 423.

No. 05–149. PRATER *v.* ORMISTON. C. A. 9th Cir. Certiorari denied. Reported below: 121 Fed. Appx. 779.

No. 05–206. RODRIGUEZ-JURATOVAC ET AL. *v.* COMMONWEALTH OF PUERTO RICO ELECTORAL COMMISSION ET AL. Sup. Ct. P. R. Certiorari denied.

No. 05–209. N. E., AS BIOLOGICAL FATHER OF E. D. L., A MINOR *v.* HEDGES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 391 F. 3d 832.

No. 05–210. TESTON *v.* ARKANSAS STATE BOARD OF CHIROPRACTIC EXAMINERS. Sup. Ct. Ark. Certiorari denied. Reported below: 361 Ark. 300, 206 S. W. 3d 796.

No. 05–214. HADFIELD *v.* MCDONOUGH, SHERIFF, PLYMOUTH COUNTY, MASSACHUSETTS, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 407 F. 3d 11.

No. 05–215. DAWOOD *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 05–223. CARROLL *v.* FAUCHEUX. Sup. Ct. Tex. Certiorari denied. Reported below: 160 S. W. 3d 923.

No. 05–224. CITY OF PINEVILLE, LOUISIANA *v.* LIBERTY MUTUAL INSURANCE CO. ET AL. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 897 So. 2d 834.

No. 05–226. FEARING ET AL. *v.* PARR ET AL. Ct. App. Minn. Certiorari denied.

No. 05–245. KERIAN *v.* HARVEY, SECRETARY OF THE ARMY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 114 Fed. Appx. 442.

No. 05–246. KARLS *v.* TEXACO INC. C. A. 10th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 29.

No. 05–269. DOE *v.* MENEFEE, WARDEN, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 391 F. 3d 147.

No. 05–301. PHAM *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 175 S. W. 3d 767.

No. 05–302. LAPLANTE *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 723.

No. 05–335. PHINNEY *v.* COOPER, JUDGE, UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 05–339. BALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 580.

No. 05–345. FRIEDRICH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 402 F. 3d 842.

No. 05–349. MORALES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 346.

No. 05–351. TROUTMAN *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 70.

No. 05–360. GREEN ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 407 F. 3d 434.

No. 05–369. DOMINGO CORTEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 413 F. 3d 502.

No. 05–5190. SCHUTTE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–5301. DOSS *v.* MCALPIN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 115 Fed. Appx. 221.

No. 05–5356. BENITEZ-MACEDO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 506.

No. 05–5403. JACOBS *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 395 F. 3d 92.

No. 05–5502. LAWRENCE *v.* F. C. KERBECK & SONS. C. A. 3d Cir. Certiorari denied. Reported below: 134 Fed. Appx. 570.

No. 05–5625. RODRIGUEZ *v.* MCELROY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 124 Fed. Appx. 702.

No. 05–5758. MURRAY *v.* HARDIMAN. C. A. 1st Cir. Certiorari denied.

No. 05–5767. COLLINS *v.* WOODFORD, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 191.

No. 05–5773. PRIBLE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 175 S. W. 3d 724.

No. 05–5780. WILLIAMS *v.* YATES, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 179.

No. 05–5782. ANAYA *v.* KNOWLES, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 05–5791. RESENDEZ *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–5793. COTA *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 642.

No. 05–5795. KING ET AL. *v.* CHILDS ET AL. Ct. App. D. C. Certiorari denied.

No. 05–5799. JACKSON *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–5800. DOUGLAS *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 161 Md. App. 698.

No. 05–5803. DOUGLAS *v.* CRAWFORD, DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 687.

No. 05–5806. MONTGOMERY *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 863 A. 2d 1228.

No. 05–5812. SPECK *v.* RENICO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–5813. STILLMAN *v.* OHIO. Ct. App. Ohio, Delaware County. Certiorari denied.

No. 05–5814. RANSOM *v.* HARRISON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–5816. LAMBERT *v.* BLODGETT. C. A. 9th Cir. Certiorari denied. Reported below: 393 F. 3d 943.

No. 05–5820. MONTGOMERY *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 05–5822. MORGAN *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 114.

No. 05–5823. JACKSON *v.* DINGLE, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 05–5824. KESSEL *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 161 S. W. 3d 40.

No. 05–5829. CURLAND *v.* LADNER. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–5830. BRAMBLES *v.* DUNCAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 412 F. 3d 1066.

No. 05–5831. BROWN *v.* TEXAS. Ct. App. Tex., 6th Dist. Certiorari denied. Reported below: 159 S. W. 3d 703.

No. 05–5832. CUESTA *v.* BERTRAND ET AL. C. A. 7th Cir. Certiorari denied.

No. 05–5837. WIDEMAN *v.* GARCIA. Ct. App. Colo. Certiorari denied.

No. 05–5839. JAMES *v.* CP&L PROGRESS ENERGY. C. A. 4th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 401.

No. 05–5842. SEABERRY *v.* STALDER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 541.

No. 05–5845. LOCKHART *v.* HARRIS. C. A. 9th Cir. Certiorari denied.

No. 05–5849. EFFINGER *v.* CURTIS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 13.

No. 05–5853. WELLS *v.* BRUZZESE, JUDGE, COURT OF COMMON PLEAS OF OHIO, JEFFERSON COUNTY. Sup. Ct. Ohio. Certiorari denied.

No. 05–5854. BOND *v.* BOND. C. A. 2d Cir. Certiorari denied. Reported below: 94 Fed. Appx. 23.

No. 05–5855. BUTLER *v.* HOWERTON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–5865. BRIGGS *v.* HAMILTON COUNTY PROSECUTOR. C. A. 6th Cir. Certiorari denied.

No. 05–5867. POWELL *v.* RENICO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–5871. DESMOND *v.* WAGGONER. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 902 So. 2d 815.

No. 05–5872. CAPUTI *v.* SIRKIS. Super. Ct. Pa. Certiorari denied. Reported below: 864 A. 2d 592.

No. 05–5881. ALKIRE *v.* WACHOVIA BANK, N. A., FKA FIRST UNION NATIONAL BANK. Ct. Sp. App. Md. Certiorari denied. Reported below: 160 Md. App. 711, 719.

No. 05–5882. BRAY *v.* MITCHELL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–5884. KLEINWACHTER *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 05–5924. LAURENTIU *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 05–5929. MURPHY *v.* OHIO. Ct. App. Ohio, Marion County. Certiorari denied.

No. 05–5942. SEPULVEDA *v.* MORGAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–6072. GREER *v.* FAULKNER, JUDGE, COURT OF COMMON PLEAS OF OHIO, HARDIN COUNTY. Sup. Ct. Ohio. Certiorari denied. Reported below: 105 Ohio St. 3d 1557, 828 N. E. 2d 114.

No. 05–6073. HENDRICKS *v.* SOUTH CAROLINA. Ct. Common Pleas of Richland County, S. C. Certiorari denied.

No. 05–6104. FEAGINS *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied. Reported below: 142 S. W. 3d 532.

No. 05–6123. JOHNSON *v.* MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 128 Fed. Appx. 333.

No. 05–6136. GARNER *v.* LAPPIN, DIRECTOR, FEDERAL BUREAU OF PRISONS, ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–6154. CORNISH *v.* PENNSYLVANIA. Commw. Ct. Pa. Certiorari denied. Reported below: 860 A. 2d 228.

No. 05–6157. SOLIS *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 05–6174. SCOTT *v.* PRICE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 677.

No. 05–6192. ZIED-CAMPBELL *v.* PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE. Sup. Ct. Pa. Certiorari denied.

No. 05–6194. WOODS *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 139 Fed. Appx. 267.

No. 05–6200. CLEMENTE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 153.

No. 05–6232. STOVER *v.* ECKENRODE ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–6329. BASHIR *v.* HARVEY, ATTORNEY GENERAL OF NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–6352. MILLS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 561.

No. 05–6362. CAMPBELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 410 F. 3d 456.

No. 05–6369. PARKER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 401 F. 3d 886.

No. 05–6372. RIVERA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 411 F. 3d 864 and 136 Fed. Appx. 925.

No. 05–6375. BERAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 05–6381. EDWARDS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 352.

No. 05–6383. NICHOLSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 145.

No. 05–6385. VALLEJO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 90.

No. 05–6387. OLVERA CONTRERAS *v.* JETER, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 05–6394. JONES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 126 Fed. Appx. 560.

No. 05–6395. MASON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–6397. BELTRAN-HERNANDEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 631.

No. 05–6398. ALBA-GUERRERO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 05–6400. CASTRO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–6402. GUZMAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 142 Fed. Appx. 474.

No. 05–6403. GARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 687.

No. 05–6404. GAINES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 255.

No. 05–6407. GONZALEZ-HUERTA, AKA COVARRUBLIAS, AKA GONZALEZ-COVARRUBLIAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 403 F. 3d 727.

No. 05–6408. IRURETAGOYENA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 383.

No. 05–6409. GRAHAM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 276.

No. 05–6412. GOMEZ-SORIANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–6415. GALVAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 154.

No. 05–6416. GALVAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 407 F. 3d 954.

No. 05–6418. RAMIREZ-GARCIA *v.* UNITED STATES (Reported below: 141 Fed. Appx. 360); DIAZ-RENDON *v.* UNITED STATES (135 Fed. Appx. 738); MEJILLA-HERNANDEZ, AKA REYES *v.* UNITED STATES (141 Fed. Appx. 250); CASTILLO-RAMIREZ *v.* UNITED STATES (141 Fed. Appx. 379); RODRIGUEZ-TORREZ *v.* UNITED STATES (145 Fed. Appx. 53); GUTIERREZ-NIETO *v.* UNITED STATES (141 Fed. Appx. 324); RAMOS-LUCIO *v.* UNITED STATES (140 Fed. Appx. 580); RIVERA-ORTIZ *v.* UNITED STATES (136 Fed. Appx.

664); MATA-DELEON *v.* UNITED STATES (144 Fed. Appx. 435); MEZA BALLEZA, AKA ACOSTA-AVALOS *v.* UNITED STATES (144 Fed. Appx. 436); GERVACIO-ANGEL *v.* UNITED STATES (145 Fed. Appx. 78); TORRES-LUCIO *v.* UNITED STATES (145 Fed. Appx. 57); SANCHEZ-VIVAR *v.* UNITED STATES (140 Fed. Appx. 588); MORALES-NAVARRO *v.* UNITED STATES (145 Fed. Appx. 49); LOZANO-HERRERA *v.* UNITED STATES (138 Fed. Appx. 631); GARCIA-AGUILAR *v.* UNITED STATES (135 Fed. Appx. 754); FRIAS *v.* UNITED STATES (135 Fed. Appx. 763); GOMEZ-GRACIANO *v.* UNITED STATES (136 Fed. Appx. 665); MENDOZA *v.* UNITED STATES (145 Fed. Appx. 912); HIPOLITO-ALCANTAR *v.* UNITED STATES (145 Fed. Appx. 910); LINAN-GONZALEZ *v.* UNITED STATES (143 Fed. Appx. 603); MORALES-OLVERA *v.* UNITED STATES (146 Fed. Appx. 730); CONDE-BRAVO *v.* UNITED STATES (145 Fed. Appx. 460); NAVARRO-GALLARDO *v.* UNITED STATES (145 Fed. Appx. 936); REYNA-SAUCEDA *v.* UNITED STATES (145 Fed. Appx. 81); and GOICOCHEA-SUAZO *v.* UNITED STATES (141 Fed. Appx. 377). C. A. 5th Cir. Certiorari denied.

No. 05–6419. RODRIGUEZ-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 586.

No. 05–6420. ROLLINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 296.

No. 05–6421. SANTILLANA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 716.

No. 05–6423. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 672.

No. 05–6428. ELIZARRARAZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 985.

No. 05–6431. HIGGINBOTHAM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 665.

No. 05–6434. CARRATALA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–6437. GOVEA-SOLORIO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 33.

No. 05–6440. HOFF *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–6442. PHILLIPS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 390 F. 3d 574.

No. 05–6444. THELEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 61.

No. 05–6451. HINES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 624.

No. 05–6452. INGRAM *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–6454. GILCHRIST *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 520.

No. 05–6457. MURCIA-PERLAZA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 289.

No. 05–6458. BRAVO-MUZQUIZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 412 F. 3d 1052.

No. 05–6459. OSTOS-DEL ANGEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 659.

No. 05–6462. LOCKETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–6463. MANNING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 212.

No. 05–6467. MARTINEZ *v.* UNITED STATES; GAMBOA *v.* UNITED STATES; ECHAVARRIA *v.* UNITED STATES; COWAN *v.* UNITED STATES; GONZALEZ *v.* UNITED STATES; NAVARRO-LERMA *v.* UNITED STATES; VILLASENOR *v.* UNITED STATES; and VASQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 748 (seventh judgment); 136 Fed. Appx. 660 (first judgment) and 713 (second judgment); 138 Fed. Appx. 678 (third judgment); 140 Fed. Appx. (fourth judgment); 145 Fed. Appx. 74 (sixth judgment), 935 (eighth judgment), and 938 (fifth judgment).

No. 05–6469. CARSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–6471. BRACKS *v.* UNITED STATES; and CONRADINO-NAVARRETE *v.* UNITED STATES. C. A. 5th Cir. Certiorari de-

nied. Reported below: 135 Fed. Appx. 753 (second judgment); 140 Fed. Appx. 544 (first judgment).

No. 05–6472. BOLEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 325.

No. 05–6473. CRUZ-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 666.

No. 05–6474. COWARD *v.* STANSBERRY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 425.

No. 05–6478. PEREZ-OCHOA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 746.

No. 05–6481. SANCHEZ-CARRASCO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 617.

No. 05–6483. SCOTT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 273.

No. 05–6484. SOWEMIMO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–6485. RODRIGUEZ-SAUCEDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 982.

No. 05–6486. MELENDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 708.

No. 05–6487. DICKERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 633.

No. 05–6489. ANTWI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 05–6490. MCCALL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–6492. ARNOLD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 416 F. 3d 349.

No. 05–6494. SMITH *v.* STANSBERRY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 137.

No. 05–6496. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–6502. VELAZQUEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 410 F. 3d 1011.

No. 05–6504. PORTER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 409 F. 3d 910.

No. 05–6505. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 162.

No. 05–6506. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 411 F. 3d 928.

No. 05–6507. VASQUEZ-MONCADA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–6509. LUNA-CANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 668.

No. 05–6512. RUSSELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 670.

No. 05–6513. WEISSER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 417 F. 3d 336.

No. 05–6514. REYES-CARMONA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 959.

No. 05–6515. BLACK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 05–6520. MCGONAGLE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 137 Fed. Appx. 373.

No. 05–6523. BANKS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 622.

No. 05–6524. GOLLHOFER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 412 F. 3d 953.

No. 05–6525. GARCIA-RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 521.

No. 05–6547. CARTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 294.

No. 05–6550. COLUNGA-CORREA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 763.

No. 05–6552. CHAMPAGNE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–6553. DANIELS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–6554. SHIELDS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 60.

No. 05–6556. SAYADI-TAKHTEHKAR *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–6557. INOCENCIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–6. CATTELL, WARDEN *v.* WHITE. C. A. 1st Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 399 F. 3d 18.

No. 05–236. MERCK & CO., INC. *v.* TEVA PHARMACEUTICALS USA, INC. C. A. Fed. Cir. Certiorari denied. THE CHIEF JUSTICE, JUSTICE O'CONNOR, and JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 395 F. 3d 1364.

No. 05–280. AMERICAN FAMILY MUTUAL INSURANCE CO. *v.* MESSINA, JUDGE, 16TH JUDICIAL CIRCUIT COURT, JACKSON COUNTY, MISSOURI. Sup. Ct. Mo. Motion of Property Casualty Insurers Association of America for leave to file a brief as *amicus curiae* granted. Certiorari denied.

No. 05–284. SMALL *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 161 Fed. Appx. 11.

No. 05–6186. ALBERT *v.* DEPARTMENT OF JUSTICE ET AL. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 05–6558. BECKLEY, AKA LYNCH *v.* UNITED STATES. C. A. 4th Cir. Certiorari before judgment denied.

OCTOBER 18, 2005

Dismissal Under Rule 46

No. 05–183. OFFICIAL COMMITTEE OF UNSECURED CREDITORS *v.* U. S. BANK N. A. ET AL. C. A. 7th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 406 F. 3d 918.

OCTOBER 20, 2005

Certiorari Denied

No. 05–7068 (05A343). RAMIREZ *v.* TEXAS. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied.

OCTOBER 25, 2005

Miscellaneous Order

No. 05–7163 (05A359). IN RE GRAY. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

Certiorari Denied

No. 05–6606 (05A332). GRAY *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. Sup. Ct. Mo. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied.

OCTOBER 26, 2005

Dismissal Under Rule 46

No. 05–249. MORGAN *v.* CLARK COUNTY, NEVADA. Sup. Ct. Nev. Certiorari dismissed under this Court's Rule 46.1.

OCTOBER 31, 2005

Certiorari Granted—Reversed and Remanded. (See No. 04–1538, *ante,* p. 9; and No. 04–9949, *ante,* p. 12.)

Certiorari Granted—Vacated and Remanded

No. 05–6655. AL-DABBI *v.* UNITED STATES. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis*

granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States* v. *Booker*, 543 U. S. 220 (2005). Reported below: 388 F. 3d 1145.

Miscellaneous Orders

No. 05M22. Z. G. *v.* S. J. H. ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 05M23. BEN-SCHOTER *v.* UNITED STATES. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner denied.

No. 04–597. UNITHERM FOOD SYSTEMS, INC. *v.* SWIFT-ECKRICH, INC., DBA CONAGRA REFRIGERATED FOODS. C. A. Fed. Cir. [Certiorari granted, 543 U. S. 1186.] Motion of petitioner to strike respondent's supplemental brief denied.

No. 04–928. OREGON *v.* GUZEK. Sup. Ct. Ore. [Certiorari granted, 544 U. S. 998.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of respondent for appointment of counsel granted. Richard L. Wolf, Esq., of Portland, Ore., is appointed to serve as counsel for respondent in this case.

No. 04–1131. WHITMAN *v.* DEPARTMENT OF TRANSPORTATION ET AL. C. A. 9th Cir. [Certiorari granted, 545 U. S. 1138.] Motion of National Treasury Employees Union for leave to participate in oral argument as *amicus curiae* and for divided argument denied.

No. 04–1264. BUCKEYE CHECK CASHING, INC. *v.* CARDEGNA ET AL. Sup. Ct. Fla. [Certiorari granted, 545 U. S. 1127.] Motion of Florida et al. for leave to participate in oral argument as *amici curiae* and for divided argument denied.

No. 04–5308. KEENAN *v.* LECUREUX, WARDEN. C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [543 U. S. 804] denied.

No. 05–273. FEDERAL TRADE COMMISSION *v.* SCHERING-PLOUGH CORP. ET AL. C. A. 11th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the

United States. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 05–6005. GULLY *v.* NEW YORK COMMISSIONER OF LABOR. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until November 21, 2005, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 05–6560. IN RE CARTER;
No. 05–6646. IN RE TAMAKLOE;
No. 05–6688. IN RE WEDLOW;
No. 05–6821. IN RE MCCRAY; and
No. 05–6868. IN RE HERNANDEZ. Petitions for writs of habeas corpus denied.

No. 05–299. IN RE OLIVER;
No. 05–6101. IN RE OLIVER ET AL.;
No. 05–6114. IN RE BRAVO; and
No. 05–6710. IN RE RAVELO. Petitions for writs of mandamus denied.

No. 05–6035. IN RE SHUMATE. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 04–607. LABORATORY CORPORATION OF AMERICA HOLDINGS, DBA LABCORP *v.* METABOLITE LABORATORIES, INC., ET AL. C. A. Fed. Cir. Certiorari granted limited to Question 3 presented by the petition.* Reported below: 370 F. 3d 1354.

No. 04–1376. FERNANDEZ-VARGAS *v.* GONZALES, ATTORNEY GENERAL. C. A. 10th Cir. Certiorari granted. Reported below: 394 F. 3d 881.

No. 05–5224. DAVIS *v.* WASHINGTON. Sup. Ct. Wash. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, and case to be argued in tandem with

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*[REPORTER'S NOTE: This order was vacated on November 2, 2005. *Post*, p. 999.]

No. 05–5705, *Hammon* v. *Indiana*, immediately *infra*. Reported below: 154 Wash. 2d 291, 111 P. 3d 844.

No. 05–5705. HAMMON *v.* INDIANA. Sup. Ct. Ind. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, and case to be argued in tandem with No. 05–5224, *Davis* v. *Washington*, immediately *supra*. Reported below: 829 N. E. 2d 444.

Certiorari Denied

No. 04–1541. THORPE ET AL. *v.* COLORADO ET AL. Ct. App. Colo. Certiorari denied. Reported below: 107 P. 3d 1064.

No. 04–1543. PEREZ *v.* TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 395 F. 3d 206.

No. 04–1699. HENDRICKS ET VIR *v.* MUTUAL INDEMNITY (BERMUDA), LTD. C. A. 6th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 820.

No. 04–1734. HUCKABY *v.* NEW YORK STATE DIVISION OF TAX APPEALS ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 4 N. Y. 3d 427, 829 N. E. 2d 276.

No. 04–10472. SMYLIE *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 823 N. E. 2d 679.

No. 04–10640. PIZZUTO *v.* FISHER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 280 F. 3d 949.

No. 04–10706. GAVIRIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 982.

No. 05–86. PIPER JAFFRAY & CO. ET AL. *v.* SHEA ET UX.; PIPER JAFFRAY & CO. ET AL. *v.* DALY ET UX.; PIPER JAFFRAY & CO. ET AL. *v.* EMETT ET AL.; PIPER JAFFRAY & CO. ET AL. *v.* BERRYMAN; and PIPER JAFFRAY & CO. ET AL. *v.* LEARY. Sup. Ct. Mont. Certiorari denied. Reported below: 326 Mont. 543, 110 P. 3d 1057 (first judgment); 326 Mont. 543, 110 P. 3d 1057 (second judgment); 327 Mont. 535, 115 P. 3d 219 (third judgment); 327 Mont. 586, 115 P. 3d 220 (fourth judgment); 327 Mont. 538, 115 P. 3d 221 (fifth judgment).

No. 05–89. VERMONT ET AL. *v.* GREEN MOUNTAIN RAILROAD CORP. C. A. 2d Cir. Certiorari denied. Reported below: 404 F. 3d 638.

No. 05–122. STIDHAM *v.* MINNESOTA MINING & MANUFACTURING, INC., DBA 3M CO. C. A. 8th Cir. Certiorari denied. Reported below: 399 F. 3d 935.

No. 05–126. MIN YOON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 398 F. 3d 802.

No. 05–136. DEMPERE *v.* CITY OF TUKWILA, WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 123 Wash. App. 1046.

No. 05–162. DAVIS ET AL., CO-EXECUTORS OF THE ESTATE OF DAVIS *v.* DAVIS. Ct. App. Tenn. Certiorari denied. Reported below: 184 S. W. 3d 231.

No. 05–230. CISSE *v.* LOUISIANA. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 895 So. 2d 82.

No. 05–234. WAGNER *v.* CITY OF HOLYOKE, MASSACHUSETTS, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 404 F. 3d 504.

No. 05–235. SCHLAFLIN *v.* BOROWSKY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 128 Fed. Appx. 258.

No. 05–237. TAISACAN *v.* COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS. Sup. Ct. N. Mar. I. Certiorari denied.

No. 05–247. PILLI *v.* VIRGINIA STATE BAR. Sup. Ct. Va. Certiorari denied. Reported below: 269 Va. 391, 611 S. E. 2d 389.

No. 05–250. ROWDEN *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied.

No. 05–251. SAWANGKAO *v.* BANKERS TRUST COMPANY OF CALIFORNIA, N. A., C/O DELTA FUNDING CORP., SERVICING AGENT. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 05–252. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 494 *v.* NATIONAL LABOR RELATIONS BOARD.

C. A. D. C. Cir. Certiorari denied. Reported below: 161 Fed. Appx. 16.

No. 05–253. RUSCITO ET AL. *v.* SWAINE, INC., ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 17 App. Div. 3d 560, 793 N. Y. S. 2d 475.

No. 05–256. RONWIN *v.* ALLSTATE INSURANCE CO. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 166.

No. 05–258. AREIZAGA *v.* SPICER. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 905 So. 2d 129.

No. 05–265. RAINER ET AL. *v.* UNION CARBIDE CORP. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 402 F. 3d 608.

No. 05–267. CAIN *v.* CAIN. Ct. App. La., 2d Cir. Certiorari denied. Reported below: 903 So. 2d 590.

No. 05–268. BELAIRE ET AL. *v.* BURLINGTON RESOURCES, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 836.

No. 05–270. GRIFFIN *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 05–271. DEBRA F. *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 281 Wis. 2d 274, 695 N. W. 2d 905.

No. 05–272. GARAMENDI, INSURANCE COMMISSIONER, STATE OF CALIFORNIA *v.* GERLING GLOBAL REINSURANCE CORPORATION OF AMERICA, US BRANCH, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 400 F. 3d 803 and 410 F. 3d 531.

No. 05–281. BUDGET RENT-A-CAR SYSTEM, INC. *v.* CHAPPELL. C. A. 3d Cir. Certiorari denied. Reported below: 407 F. 3d 166.

No. 05–305. RESOURCE BANKSHARES CORP. ET AL. *v.* ST. PAUL MERCURY INSURANCE CO. C. A. 4th Cir. Certiorari denied. Reported below: 407 F. 3d 631.

No. 05–306. SUNNEN *v.* NEW YORK STATE DEPARTMENT OF HEALTH, BOARD OF PROFESSIONAL MEDICAL CONDUCT. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 15 App. Div. 3d 289, 789 N. Y. S. 2d 427.

No. 05–318. CATLETT *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied.

No. 05–343. HARRIS *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 160 Md. App. 78, 862 A. 2d 516.

No. 05–363. SAINTAUDE *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 61 M. J. 175.

No. 05–370. BALDWIN *v.* ENGLAND, SECRETARY OF THE NAVY. C. A. 4th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 561.

No. 05–373. MARINE FORESTS SOCIETY ET AL. *v.* CALIFORNIA COASTAL COMMISSION. Sup. Ct. Cal. Certiorari denied. Reported below: 36 Cal. 4th 1, 113 P. 3d 1062.

No. 05–392. RIGGLE ET UX. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 131 Fed. Appx. 273.

No. 05–424. MITRA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 405 F. 3d 492 and 134 Fed. Appx. 963.

No. 05–425. GOUDIE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 823.

No. 05–435. THOMPSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 652.

No. 05–5009. IGHEKPE *v.* GONZALES, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 123 Fed. Appx. 616.

No. 05–5019. DUNLAP *v.* IDAHO. Sup. Ct. Idaho. Certiorari denied. Reported below: 141 Idaho 50, 106 P. 3d 376.

No. 05–5050. MCNEIL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 980.

No. 05–5078. MARTINEZ-BENITEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 298.

No. 05–5417. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5429. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5430. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5442. RODRIGUEZ, AKA DUENAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 82.

No. 05–5466. MORGAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 406 F. 3d 135.

No. 05–5475. STERRITT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 119 Fed. Appx. 627.

No. 05–5481. BUEHLER-MAY *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 279 Kan. 371, 110 P. 3d 425.

No. 05–5513. CREASY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 739.

No. 05–5530. POWERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 942.

No. 05–5540. SMITH *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 35 Cal. 4th 334, 107 P. 3d 229.

No. 05–5541. STEWART *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 411 F. 3d 825.

No. 05–5542. MARTINEZ *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 404 F. 3d 878.

No. 05–5568. CHEATHAM *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 05–5571. PORTER, AKA BORTER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 405 F. 3d 1136.

No. 05–5586. TORRES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5587. TAYLOR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 128 Fed. Appx. 556.

No. 05–5601. BURGE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 407 F. 3d 1183.

No. 05–5609. WEESE *v.* EDMONDS ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–5886. GENWRIGHT ET UX. *v.* HARNETT COUNTY DEPARTMENT OF SOCIAL SERVICES. Ct. App. N. C. Certiorari denied. Reported below: 167 N. C. App. 654, 605 S. E. 2d 742.

No. 05–5893. MENDEZ *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 05–5894. COSTA *v.* MUSSELL ET AL. C. A. 9th Cir. Certiorari denied.

No. 05–5905. COOKSON *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 215 Ill. 2d 194, 830 N. E. 2d 484.

No. 05–5908. BIANCHI *v.* HICKMAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 05–5915. ALTHOUSE *v.* TEXAS (two judgments). Ct. Crim. App. Tex. Certiorari denied.

No. 05–5916. CASTILLO ARZATE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 05–5919. BAILEY *v.* LOUISIANA. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 875 So. 2d 949.

No. 05–5934. NEAL *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–5935. MILLS *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 907 So. 2d 542.

No. 05–5941. REEVES *v.* CANNIZZARO. Sup. Ct. La. Certiorari denied. Reported below: 899 So. 2d 574.

No. 05–5946. MCGOWAN *v.* HARRISON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 128 Fed. Appx. 35.

No. 05–5955. RIVERA *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 05–5957. KANDEKORE *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 848.

No. 05–5961. JAMES *v.* HAVENS ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–5962. HAMRICK *v.* FARMERS ALLIANCE MUTUAL INSURANCE CO. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 430.

No. 05–5965. MINNIFIELD *v.* GOMEZ, WARDEN. C. A. 2d Cir. Certiorari denied. Reported below: 132 Fed. Appx. 931.

No. 05–5972. BRAKEALL *v.* WEBER, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 05–5975. GOODSON *v.* DUNCAN. C. A. 6th Cir. Certiorari denied.

No. 05–5980. HESS *v.* KUNKLE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 142 Fed. Appx. 578.

No. 05–5985. HARPER *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 897 So. 2d 547.

No. 05–5987. VINCENT *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 15 App. Div. 3d 891, 789 N. Y. S. 2d 883.

No. 05–5989. WILLIAMS *v.* TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, ET AL. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 05–5990. WILSON *v.* CALIFORNIA (two judgments). Sup. Ct. Cal. Certiorari denied.

No. 05–5991. TURCUS *v.* AUTO CLUB GROUP INSURANCE CO. ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–5995. CARLSON *v.* AMERICAN EXPRESS FINANCIAL ADVISORS, INC., ET AL. C. A. 8th Cir. Certiorari denied.

No. 05–5997. DRUMMOND *v.* EHRLICH, GOVERNOR OF MARYLAND. C. A. 4th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 117.

No. 05–6000. ROBINSON *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 581 Pa. 154, 864 A. 2d 460.

No. 05–6004. PITTS *v.* GEORGIA ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–6006. GLEASON *v.* HICKMAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 05–6008. GRAYSON *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–6010. GONZALEZ *v.* MCGINNIS, SUPERINTENDENT, SOUTHPORT CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 05–6012. HILLIARD *v.* KING, SUPERINTENDENT, SOUTH MISSISSIPPI CORRECTIONAL FACILITY. C. A. 5th Cir. Certiorari denied.

No. 05–6013. GOLDEN *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 05–6014. KOKAL *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 901 So. 2d 766.

No. 05–6018. FETZER *v.* REEVES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 738.

No. 05–6019. HARRISON *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 905 So. 2d 897.

No. 05–6021. DUBOIS *v.* ABODE, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 142 Fed. Appx. 62.

No. 05–6024. EVANS *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 154 Wash. 2d 438, 114 P. 3d 627.

No. 05–6030. ROBEY *v.* BULLARD, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–6032. BERRY *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–6034. SHELTON *v.* BROWN. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 353 Ill. App. 3d 1098, 881 N. E. 2d 976.

No. 05–6038. KRONCKE *v.* ARIZONA. Super. Ct. Ariz., County of Maricopa. Certiorari denied.

No. 05–6039. JAMES *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 05–6043. VOITS *v.* OREGON. Ct. App. Ore. Certiorari denied.

No. 05–6045. EVERETT *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 05–6048. HAWKINS *v.* MCKEE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–6056. GOODMAN *v.* SMITH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 120 Fed. Appx. 452.

No. 05–6065. LEE *v.* GRANHOLM, GOVERNOR OF MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–6069. HAMMOND *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 05–6071. FORD *v.* TEXAS. Ct. App. Tex., 10th Dist. Certiorari denied.

No. 05–6075. VIEIRA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 35 Cal. 4th 264, 106 P. 3d 990.

No. 05–6077. WELLS *v.* TRAYNOR ET AL. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 892 So. 2d 21.

No. 05–6081. RIVERA *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 5 N. Y. 3d 61, 833 N. E. 2d 194.

No. 05–6083. DAVIS *v.* CURTIN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–6084. DANCE *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 05–6089. SPOTZ *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 582 Pa. 207, 870 A. 2d 822.

No. 05–6094. MILLER *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–6096. CLARK *v.* WALSH, SUPERINTENDENT, SULLIVAN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 123 Fed. Appx. 24.

No. 05–6098. D'AMARIO *v.* MOTLEY, WARDEN. C. A. 1st Cir. Certiorari denied.

No. 05–6099. CLEVELAND *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 888 So. 2d 17.

No. 05–6105. GENTES *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 878 So. 2d 469.

No. 05–6109. ARIAS *v.* OHIO. Ct. App. Ohio, Lorain County. Certiorari denied.

No. 05–6112. ADI *v.* PRUDENTIAL PROPERTY & CASUALTY INSURANCE CO. ET AL. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 05–6113. AHMED *v.* OHIO. Sup. Ct. Ohio. Certiorari denied.

No. 05–6116. MIDDLETON *v.* RUSSELL ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 952.

No. 05–6117. TARVIN *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 05–6118. JETTER *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 130 Fed. Appx. 523.

No. 05–6125. WILLIAMS *v.* NORMAN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 249.

No. 05–6126. WEST *v.* BELGADO ET AL. Ct. App. Wis. Certiorari denied. Reported below: 281 Wis. 2d 271, 695 N. W. 2d 903.

No. 05–6128. THOMPSON *v.* BULLARD, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–6129. NOLEN *v.* RIBITSCHUN ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–6130. PARKS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–6137. MINIX *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–6140. REED *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 05–6142. MINNFEE *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–6143. NALI *v.* MICHIGAN ATTORNEY GRIEVANCE COMMISSION. Sup. Ct. Mich. Certiorari denied.

No. 05–6144. NEWMAN *v.* PATRICK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HOUTZDALE. C. A. 3d Cir. Certiorari denied.

No. 05–6147. VELARDE *v.* DRUNTY, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–6153. LANGSTON *v.* BRAXTON, WARDEN, ET AL. Sup. Ct. Va. Certiorari denied.

No. 05–6156. JAMES *v.* 279 4TH AVENUE LLC ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 125 Fed. Appx. 457.

No. 05–6159. BRAHAM *v.* RODRIGUEZ. C. A. 2d Cir. Certiorari denied.

No. 05–6161. WIGGINS *v.* FISCHER, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 132 Fed. Appx. 861.

No. 05–6165. ROLDAN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 35 Cal. 4th 646, 110 P. 3d 289.

No. 05–6167. BANKS *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 05–6175. RAY *v.* GAMMON, SUPERINTENDENT, MOBERLY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 05–6188. SAUNDERS *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–6216. RODGERS *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 875 So. 2d 737.

No. 05–6218. BAKER *v.* DEPARTMENT OF AGRICULTURE. C. A. Fed. Cir. Certiorari denied. Reported below: 131 Fed. Appx. 719.

No. 05–6227. BROOKS-BEY *v.* JAMES ET AL. Commw. Ct. Pa. Certiorari denied. Reported below: 853 A. 2d 1189.

No. 05–6228. BROWN *v.* WILLIAMS, WARDEN. Super. Ct. Baldwin County, Ga. Certiorari denied.

No. 05–6251. BRADLEY *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–6254. LEWIS *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 279 Ga. 69, 608 S. E. 2d 602.

No. 05–6257. RICCA *v.* MCCAUGHTRY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 05–6258. RODGERS *v.* PLILER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 967.

No. 05–6263. SANTIAGO *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 847 So. 2d 1060.

No. 05–6265. FLYNN *v.* FRIEDMAN ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–6269. LOCKLEAR *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 05–6270. WEST *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 5 N. Y. 3d 740, 833 N. E. 2d 704.

No. 05–6284. BROWN *v.* TAFOYA, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 463.

No. 05–6292. MOHAMMAD *v.* PRUETT, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 609.

No. 05–6310. DANIELS *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 5 N. Y. 3d 738, 833 N. E. 2d 704.

No. 05–6313. MCVAY *v.* HARRISON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 158.

No. 05–6323. LINDELL *v.* BERGE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 05–6324. DANIELS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 864 A. 2d 576.

No. 05–6335. PEREZ *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied.

No. 05–6358. AIKEN *v.* RUSHTON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 65.

No. 05–6373. MERRILL *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 05–6384. WALSHAW *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 05–6389. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 387.

No. 05–6392. MUTH *v.* FRANK, SECRETARY, WISCONSIN DEPARTMENT OF CORRECTIONS. C. A. 7th Cir. Certiorari denied. Reported below: 412 F. 3d 808.

No. 05–6393. PERRONE *v.* HARRISON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 152.

No. 05–6396. BANDA *v.* NEW JERSEY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 134 Fed. Appx. 529.

No. 05–6425. LEYVA-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 556.

No. 05–6426. JIMENEZ-GANDARA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 984.

No. 05–6443. ANAZCO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 412.

No. 05–6445. WOODEN *v.* BOND, JUDGE, COURT OF COMMON PLEAS OF OHIO, SUMMIT COUNTY. Sup. Ct. Ohio. Certiorari denied.

No. 05–6450. FORD *v.* GONZALES, ATTORNEY GENERAL, ET AL. C. A. 10th Cir. Certiorari denied.

No. 05–6453. GRIFFIN *v.* ORTIZ, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 553.

No. 05–6461. MARQUEZ-GOMEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 728.

No. 05–6464. MALDONADO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 410 F. 3d 1231.

No. 05–6495. CAIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 143.

No. 05–6500. TAI-OURANE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 218.

No. 05–6516. BERARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 653.

No. 05–6519. JAKOUBEK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 411 F. 3d 951.

No. 05–6526. HERNANDEZ-OLEA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 73.

No. 05–6527. HALEIVI *v.* UNITED STATES CONGRESS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 115 Fed. Appx. 132.

No. 05–6529. GONZALEZ-CORREA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–6533. BANKS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 123 Fed. Appx. 246.

No. 05–6536. GEORGACARAKOS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 138 Fed. Appx. 407.

No. 05–6537. FOSTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 461.

No. 05–6539. McCauley *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 996.

No. 05–6541. Ziesman *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 409 F. 3d 941.

No. 05–6542. Madrazo-Constante *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 731.

No. 05–6543. Lewis *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 573.

No. 05–6544. Marino *v.* United States District Court for the District of Massachusetts. C. A. 1st Cir. Certiorari denied.

No. 05–6546. Bickett *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 05–6562. Prather *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 738.

No. 05–6564. Sanchez-Gardea *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 780.

No. 05–6565. Ramirez-Sanchez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 738.

No. 05–6566. Silva-Ontiveros *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 692.

No. 05–6567. Gonzalez Santana *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 05–6568. Scroggins *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 729.

No. 05–6569. Lyons *v.* Red Roof Inns, Inc. C. A. 10th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 953.

No. 05–6570. Jones *v.* United States. C. A. 4th Cir. Certiorari denied.

No. 05–6574. Feiden *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 686.

No. 05–6576. Dietz *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 939.

No. 05–6577. EDWARDS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 763.

No. 05–6578. EDMONDSON *v.* UNITED STATES; GUIDO-CRUZ *v.* UNITED STATES; MARTINEZ-FABELLA *v.* UNITED STATES; and PONCE-VELARDE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 772 (first judgment); 135 Fed. Appx. 714 (fourth judgment), 766 (second judgment), and 781 (third judgment).

No. 05–6580. COOK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 99 Fed. Appx. 787.

No. 05–6581. SALVADOR CHAVEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 167.

No. 05–6582. PHILLIPS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 248.

No. 05–6586. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 840.

No. 05–6588. ARRIYAGA-PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 649.

No. 05–6589. FOBBS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 652.

No. 05–6590. HACKWORTH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 643.

No. 05–6591. CASTILLO-CUEVAS, AKA CASTILLO, AKA LOPEZ, AKA CUEVAS, AKA CUEVA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–6595. MONTANA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–6596. CASTRO-VARGAS *v.* UNITED STATES (Reported below: 135 Fed. Appx. 762); CHAVEZ-TORRES *v.* UNITED STATES (134 Fed. Appx. 769); CONTRERAS-CERVANTES *v.* UNITED STATES (134 Fed. Appx. 766); CORTES-MELENDEZ, AKA MACIAS-SALDANA *v.* UNITED STATES (135 Fed. Appx. 781); GOMEZ-GARCIA *v.* UNITED STATES (135 Fed. Appx. 762); GONZALEZ, AKA GARCIA-PEREZ *v.* UNITED STATES (135 Fed. Appx. 777); HERNANDEZ-

RIVERA *v.* UNITED STATES (134 Fed. Appx. 770); HIPOLITO-TREVINO *v.* UNITED STATES (135 Fed. Appx. 782); IBARRA-RODRIGUEZ *v.* UNITED STATES (135 Fed. Appx. 780); JIMENEZ-SANTOS *v.* UNITED STATES (136 Fed. Appx. 667); LOPEZ-MACEDO *v.* UNITED STATES (134 Fed. Appx. 767); MEZA-CARO, AKA MEZA-CANO *v.* UNITED STATES (135 Fed. Appx. 766); RIVERA-GODINEZ *v.* UNITED STATES (134 Fed. Appx. 769); ROCHA-HERNANDEZ *v.* UNITED STATES (135 Fed. Appx. 758); and QUINTANA-ROMERO *v.* UNITED STATES (134 Fed. Appx. 768). C. A. 5th Cir. Certiorari denied.

No. 05–6598. SALAZAR-ARCHULETA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 770.

No. 05–6599. STINE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–6600. MEJIA-SOLANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 778.

No. 05–6601. WIMBERLY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 05–6605. LATTIMORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–6609. HERRERA-SANCHEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 757.

No. 05–6610. BRADSHAW *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 760.

No. 05–6612. BRAYE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–6613. BARNAL-NAVA *v.* UNITED STATES; GONZALEZ-VILLANUEVA *v.* UNITED STATES; JUAREZ-MORENO *v.* UNITED STATES; MONTER-CARRILLO *v.* UNITED STATES; ORTEGA-HERNANDEZ *v.* UNITED STATES; and RAMOS-MORUA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 773 (second judgment); 135 Fed. Appx. 767 (fourth judgment), 768 (first judgment), 776 (third judgment), 779 (fifth judgment), and 782 (sixth judgment).

No. 05–6614. NORRIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 677.

No. 05–6615. NEWSOME *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 65.

No. 05–6619. STEVENS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–6620. ROCKENBACK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 950.

No. 05–6621. LOZANO-MORALES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 490.

No. 05–6628. AYON-CONTRERAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 970.

No. 05–6629. BIVENS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 159.

No. 05–6631. AFANASJEV ET UX. *v.* HURLBURT, UNITED STATES MARSHAL, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 418 F. 3d 1159.

No. 05–6635. TURNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–6636. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–6637. CORTEZ-ESPINOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–6638. DOUGLAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 516.

No. 05–6641. MCCARTHAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–6642. MARTINEZ-RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–6643. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 193.

No. 05–6644. MARINES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–6649. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–6651. VILLALOBOS-LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–6653. BUTLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–6654. ADKINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 456.

No. 05–6658. AQUINO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 05–6660. SCATES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–6661. SOBODE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–6662. SEGURA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 79.

No. 05–6663. RIVERA-BENITO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 690.

No. 05–6664. STRINGHAM *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 529.

No. 05–6665. MARTINEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 412 F. 3d 871.

No. 05–6666. PIPKINS ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 412 F. 3d 1251.

No. 05–6668. PATTERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 412 F. 3d 1011.

No. 05–6669. TAVERAS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 118 Fed. Appx. 516.

No. 05–6672. BELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 147 Fed. Appx. 665.

No. 05–6675. STINNETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 730.

No. 05–6678. SMITH *v.* NASH, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 145 Fed. Appx. 727.

No. 05–6679. SKINNER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 554.

No. 05–6681. PETERSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 414 F. 3d 825.

No. 05–6682. PAYNE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–6687. WILEY *v.* UNITED STATES; and
No. 05–6742. FLETCHER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 635.

No. 05–6689. CARRIE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 275.

No. 05–6690. CRAFT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 139 Fed. Appx. 372.

No. 05–6699. BROWN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–6701. WALKER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 05–6704. MCDONALD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–6711. RIVERO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 800.

No. 05–6713. NAKAI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 413 F. 3d 1019.

No. 05–6715. PARIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 73.

No. 05–6718. JACKSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 891.

No. 05–6719. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–6721. CERVANTES-SOSA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 297.

No. 05–6728. WOODARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 627.

No. 05–6730. PEREZ-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–6731. NUNEZ-RETAMA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–6736. BLOUNT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–6737. ZIEBART *v.* KINGSTON, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 05–6738. MARIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 945.

No. 05–6739. LOPEZ NUNEZ, AKA NUNEZ LOPEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 926.

No. 05–6745. SANCHEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 150 Fed. Appx. 186.

No. 05–6746. RUBIO-RUBIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 733.

No. 05–6751. GONZALEZ-AMARO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–6752. IRELAND *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–6753. FLASCHBERGER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 408 F. 3d 941.

No. 05–6754. GOMEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 419 F. 3d 835.

No. 05–6755. FAKIH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 413 F. 3d 304 and 138 Fed. Appx. 339.

No. 05–6756. HOLLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 411 F. 3d 1061.

No. 05–6757. HOWELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 29.

No. 05–6758. HOOP *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 83.

No. 05–6759. GUARDADO, AKA RUIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 727.

No. 05–6760. GUTIERREZ-CASILLAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 26.

No. 05–6766. ARIAS-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–6768. MELQUIADES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 172.

No. 05–6769. DIAZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–6772. ESTEP *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 113.

No. 05–6778. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 694.

No. 05–6780. STONEROOK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 982.

No. 05–6781. SERRANO-PINERO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 652.

No. 05–6782. RESTREPO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 204.

No. 05–6784. MEDINA-MORILLO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–6787. SANCHEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 409.

No. 05–6791. BYRD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 876.

No. 05–6792. BATISTA *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 129 Fed. Appx. 724.

No. 05–6802. SPRAGUE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 539.

No. 05–6804. VILLARINO-PACHECO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–6807. VALENCIA-QUINTANA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 707.

No. 05–6808. WASIELAK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 187.

No. 04–1631. HAMILTON COUNTY DEPARTMENT OF ADULT PROBATION ET AL. *v.* CASH ET AL. C. A. 6th Cir. Motion of respondent Philip Garcia for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 388 F. 3d 539.

No. 04–1668. FLORIDA *v.* MATHESON. Dist. Ct. App. Fla., 2d Dist. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 870 So. 2d 8.

No. 05–121. CELEBRITY CRUISES, INC., ET AL. *v.* DOE. C. A. 11th Cir. Motion of International Council of Cruise Lines for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 394 F. 3d 891.

No. 05–182. WISCONSIN *v.* MOECK. Sup. Ct. Wis. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 280 Wis. 2d 277, 695 N. W. 2d 783.

No. 05–198. NOKIA, INC., ET AL. *v.* NAQUIN ET AL.; and

No. 05–207. CELLCO PARTNERSHIP ET AL. *v.* PINNEY ET AL. C. A. 4th Cir. Certiorari denied. THE CHIEF JUSTICE, JUSTICE O'CONNOR, and JUSTICE BREYER took no part in the consideration or decision of these petitions. Reported below: 402 F. 3d 430.

No. 05–274. MARSH & MCLENNAN COS., INC. *v.* PALMER & CAY, INC., ET AL. C. A. 11th Cir. Motion of Chamber of Commerce of the United States of America for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 404 F. 3d 1297.

No. 05–288. MICROSOFT CORP. *v.* EOLAS TECHNOLOGIES INC. ET AL. C. A. Fed. Cir. Certiorari denied. THE CHIEF JUSTICE

took no part in the consideration or decision of this petition. Reported below: 399 F. 3d 1325.

No. 05–290. ROCKEFELLER *v.* LEAVITT, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 05–5979. HILLBERRY *v.* WAL-MART STORES EAST, L. P.; and HILLBERRY *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY. C. A. 6th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 05–6091. LOREN *v.* LEVY ET AL. C. A. 2d Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 120 Fed. Appx. 393.

No. 05–6166. BREEST *v.* CATTELL, WARDEN. Sup. Ct. N. H. Certiorari denied. JUSTICE SOUTER took no part in the consideration or decision of this petition.

Rehearing Denied

No. 04–9068. WOODARD *v.* SUNDSTRAND CORP., 544 U. S. 1045. Petition for rehearing denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

NOVEMBER 2, 2005

Certiorari Granted

No. 04–607. LABORATORY CORPORATION OF AMERICA HOLDINGS, DBA LABCORP *v.* METABOLITE LABORATORIES, INC., ET AL. C. A. Fed. Cir. Having been advised by THE CHIEF JUSTICE that he now realizes that he should have recused himself from participation in this case, and does now recuse himself, the Court vacates its order of Monday, October 31, 2005 [*ante,* p. 975]. The Court has reconsidered the petition for writ of certiorari, which is granted limited to Question 3 as presented by the petition. THE CHIEF JUSTICE has not participated in the vote to withdraw the order of October 31, 2005, or in the instant reconsideration of the petition for writ of certiorari. Reported below: 370 F. 3d 1354.

NOVEMBER 3, 2005

Miscellaneous Order

No. 05A390. WHITE *v.* LIVINGSTON, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied.

Certiorari Denied

No. 05–7236 (05A377). STECKEL *v.* DELAWARE. Sup. Ct. Del. Application for stay of execution of sentence of death, presented to JUSTICE SOUTER, and by him referred to the Court, denied. Certiorari denied. Reported below: 882 A. 2d 168.

NOVEMBER 7, 2005

Certiorari Granted—Vacated and Remanded

No. 05–6832. MITCHELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States* v. *Booker*, 543 U. S. 220 (2005). Reported below: 109 Fed. Appx. 833.

Miscellaneous Orders

No. 05M24. IN RE GRAND JURY PROCEEDINGS. Motion for leave to file petition for writ of certiorari under seal granted.

No. 05M25. DIXON *v.* FAIRBANKS CAPITAL CORP.; and

No. 05M26. DEYERBERG *v.* WOODWARD ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 04–1034. RAPANOS ET AL. *v.* UNITED STATES; and

No. 04–1384. CARABELL ET AL. *v.* UNITED STATES ARMY CORPS OF ENGINEERS ET AL. C. A. 6th Cir. [Certiorari granted, *ante*, p. 932.] Motion of petitioners to deconsolidate cases denied. Motion of petitioners for divided argument granted to be divided as follows: 20 minutes for petitioners in No. 04–1034; 20 minutes for petitioners in No. 04–1384; 40 minutes for respondents.

No. 04–1131. WHITMAN *v.* DEPARTMENT OF TRANSPORTATION ET AL. C. A. 9th Cir. [Certiorari granted, 545 U. S. 1138.] Motion of American Federation of Government Employees et al. for

leave to participate in oral argument as *amici curiae* and for divided argument denied.

No. 04–1144. AYOTTE, ATTORNEY GENERAL OF NEW HAMPSHIRE *v.* PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND ET AL. C. A. 1st Cir. [Certiorari granted, 544 U. S. 1048.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 04–1186. WACHOVIA BANK, NATIONAL ASSN. *v.* SCHMIDT ET AL. C. A. 4th Cir. [Certiorari granted, 545 U. S. 1113.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. JUSTICE THOMAS took no part in the consideration or decision of this motion.

No. 04–1244. SCHEIDLER ET AL. *v.* NATIONAL ORGANIZATION FOR WOMEN, INC.; and

No. 04–1352. OPERATION RESCUE *v.* NATIONAL ORGANIZATION FOR WOMEN, INC., ET AL. C. A. 7th Cir. [Certiorari granted, 545 U. S. 1151.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 04–1360. HUDSON *v.* MICHIGAN. Ct. App. Mich. [Certiorari granted, 545 U. S. 1138.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 05–5734. WHITEHEAD *v.* WICKHAM. Ct. App. D. C. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 805] denied.

No. 05–6876. OWEN *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until November 28, 2005, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 05–6919. IN RE CHAPMAN. Petition for writ of mandamus denied.

Certiorari Granted

No. 04–10566. SANCHEZ-LLAMAS *v.* OREGON. Sup. Ct. Ore.; and

No. 05–51. BUSTILLO *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Motion of petitioner in No. 04–10566 for leave to proceed *in forma pauperis* granted. Certiorari in No. 04–10566 granted limited to Questions 1 and 2 presented by the petition. Certiorari in No. 05–51 granted limited to Question 1 presented by the petition. Cases consolidated, and a total of one hour allotted for oral argument. Reported below: No. 04–10566, 338 Ore. 267, 108 P. 3d 573.

No. 05–128. HOWARD DELIVERY SERVICE, INC., ET AL. *v.* ZURICH AMERICAN INSURANCE CO. C. A. 4th Cir. Certiorari granted. Reported below: 403 F. 3d 228.

No. 05–184. HAMDAN *v.* RUMSFELD, SECRETARY OF DEFENSE, ET AL. C. A. D. C. Cir. Certiorari granted. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 415 F. 3d 33.

Certiorari Denied

No. 04–10456. DELEON *v.* TEXAS. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 04–10510. WAGES *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 353 Ill. App. 3d 1096, 881 N. E. 2d 975.

No. 04–10577. MEDLEY *v.* TEXAS. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 05–40. MCSALLY *v.* RUMSFELD, SECRETARY OF DEFENSE. C. A. D. C. Cir. Certiorari denied.

No. 05–166. KRAUSE, DBA SPECIAL-T SOFTWARE *v.* TITLESERV, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 402 F. 3d 119.

No. 05–167. BP CARE, INC. *v.* LEAVITT, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 398 F. 3d 503.

No. 05–181. CONEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 407 F. 3d 871.

No. 05–196. TRIPLETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 128 Fed. Appx. 105.

No. 05–229. HOWSAM ET AL. *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–275. LOPEZ *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–277. NESE *v.* JULIAN NORDIC CONSTRUCTION CO. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 405 F. 3d 638.

No. 05–278. MITCHELL *v.* METROPOLITAN LIFE INSURANCE CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 679.

No. 05–279. BROCKWAY *v.* YALE UNIVERSITY ET AL. C. A. 2d Cir. Certiorari denied.

No. 05–287. SALAZAR, SHERIFF, HUERFANO COUNTY, COLORADO *v.* GONZALES. C. A. 10th Cir. Certiorari denied. Reported below: 403 F. 3d 1179.

No. 05–289. MILES *v.* H-QUOTIENT, INC. C. A. 4th Cir. Certiorari denied.

No. 05–292. CITY OF CINCINNATI, OHIO *v.* BARNES. C. A. 6th Cir. Certiorari denied. Reported below: 401 F. 3d 729.

No. 05–293. DOE ET AL. *v.* MOORE, COMMISSIONER, FLORIDA DEPARTMENT OF LAW ENFORCEMENT, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 410 F. 3d 1337.

No. 05–297. SNYDER ET UX. *v.* COSBY. C. A. 4th Cir. Certiorari denied. Reported below: 123 Fed. Appx. 112.

No. 05–304. LORUSSO-SMITH *v.* GEORGIA DEPARTMENT OF CORRECTIONS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 823.

No. 05–308. OFFICE PLANNING GROUP, INC. *v.* BARAGA-HOUSHTON-KEWEENAW CHILD DEVELOPMENT BOARD. Sup. Ct. Mich. Certiorari denied. Reported below: 472 Mich. 479, 697 N. W. 2d 871.

No. 05–311. PARDUE *v.* CENTER CITY CONSORTIUM SCHOOLS OF THE ARCHDIOCESE OF WASHINGTON, INC., ET AL. Ct. App. D. C. Certiorari denied. Reported below: 875 A. 2d 669.

No. 05–322. HANNA *v.* MASSACHUSETTS TURNPIKE AUTHORITY. App. Ct. Mass. Certiorari denied. Reported below: 62 Mass. App. 1116, 820 N. E. 2d 274.

No. 05–340. FRANKLIN ET AL. *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 152.

No. 05–412. WILLIAMS *v.* DEPARTMENT OF THE TREASURY. C. A. Fed. Cir. Certiorari denied. Reported below: 121 Fed. Appx. 845.

No. 05–418. MCWILLIAMS *v.* LANGHAM. Sup. Ct. Fla. Certiorari denied. Reported below: 903 So. 2d 190.

No. 05–427. ROBERTS *v.* TITUS COUNTY MEMORIAL HOSPITAL ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 82.

No. 05–436. BUSH *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 288 Wis. 2d 90, 699 N. W. 2d 80.

No. 05–440. REIGLER *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 412 F. 3d 366.

No. 05–446. CLIFTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–472. DAVIS *v.* CALLAHAN, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 05–5175. WILLIAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 400 F. 3d 1023.

No. 05–5544. THONG LE *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 913 So. 2d 913.

No. 05–5638. HARDRIDGE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 47.

No. 05–6080. SOLIS SOSA *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 114.

No. 05–6180. SCOTT *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–6181. BAILEY *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 05–6182. BUI ET UX. *v.* VICTORINO ET UX. Ct. App. Wash. Certiorari denied.

No. 05–6187. SHIVAEE *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 270 Va. 112, 613 S. E. 2d 570.

No. 05–6189. SAUNDERS *v.* TENNIS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW. C. A. 3d Cir. Certiorari denied.

No. 05–6244. ATWELL *v.* WYNDER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–6268. KINDRED *v.* VANDERGRIFT ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–6289. WILLIAMS *v.* WADE ET AL. Sup. Ct. Ark. Certiorari denied.

No. 05–6296. MILLER *v.* ROMANOWSKI, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–6331. MISIAK *v.* MORGAN, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 05–6333. LEKAS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 354 Ill. App. 3d 1161, 883 N. E. 2d 1149.

No. 05–6338. O'GARRA *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 16 App. Div. 3d 251, 791 N. Y. S. 2d 538.

No. 05–6357. ARI *v.* MITCHELL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–6364. PURVIS *v.* CHATMAN, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 05–6382. JOHNSON *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 4th Cir. Certiorari denied. Reported below: 123 Fed. Appx. 107.

No. 05–6386. TRUEMAN *v.* RUMSFELD, SECRETARY OF DEFENSE, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 125 Fed. Appx. 458.

No. 05–6388. KING *v.* BOYKO, JUDGE, COURT OF COMMON PLEAS OF OHIO, CUYAHOGA COUNTY. Sup. Ct. Ohio. Certiorari denied. Reported below: 105 Ohio St. 3d 1557, 828 N. E. 2d 114.

No. 05–6422. WHITELEY *v.* IDAHO. C. A. 9th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 187.

No. 05–6438. HAMM *v.* MICHIGAN. Cir. Ct. St. Joseph County, Mich. Certiorari denied.

No. 05–6439. HARRINGTON *v.* CURTIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–6449. FRITTS *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 05–6466. KIDD *v.* GREYHOUND LINES, INC. C. A. 4th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 615.

No. 05–6479. NOVOTNY *v.* PORZYCKI ET AL. C. A. 7th Cir. Certiorari denied.

No. 05–6508. LAWS *v.* EVANS, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–6510. BENAVIDES *v.* MCGRATH, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 595.

No. 05–6531. TATE *v.* GARNETT, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 05–6573. JAFFAL *v.* CALABRESE, JUDGE, COURT OF APPEALS OF OHIO, CUYAHOGA COUNTY. Sup. Ct. Ohio. Certiorari denied. Reported below: 105 Ohio St. 3d 440, 828 N. E. 2d 107.

No. 05–6583. MCCUTCHEON *v.* DICARLO, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 995.

No. 05–6702. WILLIAMS *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 907 So. 2d 535.

No. 05–6770. COOPER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 209.

No. 05–6771. CALLE-OCHOA, AKA VLEZ, AKA JAIRO CALLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–6775. JEFFRIES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 405 F. 3d 682.

No. 05–6779. STACEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 15.

No. 05–6794. MESINA *v.* JOHNS, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 150 Fed. Appx. 129.

No. 05–6799. CARDOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 700.

No. 05–6803. VILLANUEVA-MARTINEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 230.

No. 05–6805. TEJADA-CRUZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 572.

No. 05–6809. VANORDEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 414 F. 3d 1321.

No. 05–6810. TERRELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 208.

No. 05–6812. WALKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 410 F. 3d 754.

No. 05–6813. ZEPEDA-ARIAS, AKA CEPEDA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–6815. MARTINEZ-GALVAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 712.

No. 05–6817. KILLINGSWORTH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 413 F. 3d 760.

No. 05–6818. MARGAREJO *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–6819. SMITH, AKA LOVE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 217.

No. 05–6826. TAVERAS, AKA FONTANEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–6828. VALLES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–6834. IACULLO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 94.

No. 05–6836. HERRERA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 58.

No. 05–6837. HOLLYWOOD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 661.

No. 05–6839. GRAHAM *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 413 F. 3d 1211.

No. 05–6841. HOWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–6842. FRAZIER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 05–6843. PACHECO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 138 Fed. Appx. 331.

No. 05–6844. PARRA-SOTELO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 648.

No. 05–6845. LEONARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–6846. SILVA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 521.

No. 05–6850. GEORGE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 403 F. 3d 470.

No. 05–6853. MORENO-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 419 F. 3d 906.

No. 05–6857. VILLARREAL-GONSALEZ *v.* UNITED STATES (Reported below: 134 Fed. Appx. 758); ROSAS-DIAZ *v.* UNITED STATES (135 Fed. Appx. 751); GARCIA-CERVANTES *v.* UNITED STATES (136 Fed. Appx. 661); MARTINEZ-CANTU *v.* UNITED STATES (135 Fed. Appx. 740); REYES-RODRIGUEZ *v.* UNITED STATES (140 Fed. Appx. 558); MARTINEZ-MENDEZ *v.* UNITED STATES (145 Fed. Appx. 941); RAMIREZ-OROZCO, AKA RAMIREZ *v.* UNITED STATES (141 Fed. Appx. 344); ROMAN-MARTINEZ, AKA VIDAS *v.* UNITED STATES (142 Fed. Appx. 213); GONZALEZ-HERNANDEZ *v.* UNITED STATES; RANGEL-ESPINOZA *v.* UNITED STATES (145 Fed. Appx. 67); LARA-HERNANDEZ, AKA URIBE-CONCHOLA *v.* UNITED STATES (141 Fed. Appx. 331); VILLAFRANCA-CASTRO *v.* UNITED STATES (145 Fed. Appx. 50); DAVINSON-CANALES *v.* UNITED STATES (145 Fed. Appx. 58); HERNANDEZ-MESA *v.* UNITED STATES (146 Fed. Appx. 727); RODRIGUEZ-PUENTE *v.* UNITED STATES (145 Fed. Appx. 64); and SAYAS-MONTOYA *v.* UNITED STATES (142 Fed. Appx. 217). C. A. 5th Cir. Certiorari denied.

No. 05–6858. THORN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 413 F. 3d 820.

No. 05–6864. GARRETT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–6865. HARRELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 269.

No. 05–6869. HARPER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 352.

No. 05–6870. GORMLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 594.

No. 05–6874. DRAYTON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 05–6878. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 521.

No. 05–6880. SWASEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 104.

No. 05–6881. CRUZADO-LAUREANO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 404 F. 3d 470.

No. 05–6882. COLLIER, AKA HOWARD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 413 F. 3d 858.

No. 05–6883. CANADY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 499.

No. 05–6884. MCCRAVEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 401 F. 3d 693.

No. 05–6885. GARCIA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 05–6887. POPE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 146 Fed. Appx. 536.

No. 05–6890. WIGGINS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 842.

No. 05–6891. VIGNEAU *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–6894. WILLIAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–6903. SANCHEZ-SANCHEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 939.

No. 05–6904. CHEEK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 415 F. 3d 349.

No. 05–6906. PINARGOTE-RAMIREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 197.

No. 05–6907. MITRE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 495.

No. 05–6909. JENKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 120 Fed. Appx. 497.

No. 05–6910. GARCIA-SAUZA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–6912. GARCIA-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 415 F. 3d 452.

No. 05–6913. MUHAMMAD, AKA WILSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 870.

No. 05–6920. TAYLOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 384.

No. 05–6921. WATLINGTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 517.

No. 05–6923. PADMORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–6924. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–6926. RUBIO-ZARATE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 670.

No. 05–6928. NATION *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 655.

No. 05–6929. SANCHEZ MATEO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–6930. LEVY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 416 F. 3d 1273.

No. 05–6932. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 561.

No. 05–6933. JACKSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 83.

No. 05–6934. MARTINS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 413 F. 3d 139.

No. 05–6935. LEVINE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 681.

No. 05–6936. LEISURE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 412 F. 3d 857.

No. 05–6937. JEFFERSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 244.

No. 05–6941. VARGAS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 393 F. 3d 172.

No. 05–6943. WEEKS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 603.

No. 05–6947. OCAMPO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 810.

No. 05–6949. MEDRANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 05–6953. MONTERO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–6955. MACIAS-LUNA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 284.

No. 05–6956. BARNES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 490.

No. 05–36. GOLDEN PACIFIC BANCORP *v.* FEDERAL DEPOSIT INSURANCE CORPORATION. C. A. 2d Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 375 F. 3d 196.

No. 05–286. TRAWINSKI ET UX. *v.* UNITED TECHNOLOGIES CARRIER CORP. ET AL. C. A. 11th Cir. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 133 Fed. Appx. 740.

Rehearing Denied

No. 04–1599. APARICIO *v.* POTTER, POSTMASTER GENERAL, ET AL., *ante*, p. 819;

No. 04–7579. STILLS *v.* CAREY, WARDEN, 543 U. S. 1159;

No. 04–10437. ROSENDO VALDES *v.* UNITED STATES, *ante*, p. 928;

No. 04–10623. HAMMER *v.* AMAZON.COM, *ante*, p. 862;

No. 05–5416. ZHANG *v.* AUSTIN, *ante*, p. 901; and

No. 05–5988. VAN VELZER *v.* UNITED STATES, *ante*, p. 923. Petitions for rehearing denied.

NOVEMBER 9, 2005

Miscellaneous Order

No. 05A419. THACKER *v.* LIVINGSTON, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE. Application for

stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied.

Certiorari Denied

No. 05–7434 (05A416). THACKER *v.* TEXAS. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied.

No. 05–7463 (05A418). THACKER *v.* TEXAS. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. Reported below: 117 S. W. 3d 926.

NOVEMBER 10, 2005

Certiorari Denied

No. 05–7484 (05A432). MCHONE *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Surry County, N. C. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this application and this petition.

NOVEMBER 14, 2005

Certiorari Granted—Vacated and Remanded

No. 05–7023. MUGAN *v.* UNITED STATES. C. A. 8th Cir. Reported below: 394 F. 3d 1016; and

No. 05–7025. DIAS-RAMOS *v.* UNITED STATES. C. A. 10th Cir. Reported below: 384 F. 3d 1240. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *United States* v. *Booker*, 543 U. S. 220 (2005).

Certiorari Dismissed. (See also No. 04–373, *ante*, p. 72.)

No. 05–6229. BROWN *v.* METRO-NORTH FIRE PROTECTION DISTRICT. Ct. App. Mo., Eastern Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from peti-

tioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 05–6377. BROWN *v.* CASTLEPOINT LAW ENFORCEMENT, DISTRICT OF ST. LOUIS COUNTY. Ct. App. Mo., Eastern Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

Miscellaneous Orders

No. 04–944. ARBAUGH *v.* Y & H CORP., DBA THE MOONLIGHT CAFE. C. A. 5th Cir. [Certiorari granted, 544 U. S. 1031.] Motion of Alabama for leave to participate in oral argument as *amicus curiae* and for divided argument denied.

No. 04–1581. WISCONSIN RIGHT TO LIFE, INC. *v.* FEDERAL ELECTION COMMISSION. Appeal from D. C. D. C. [Probable jurisdiction noted, 545 U. S. 1164.] Motion of appellant to dispense with printing the joint appendix granted.

No. 05–331. AIR CONDITIONING AND REFRIGERATION INSTITUTE ET AL. *v.* ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION ET AL. C. A. 9th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 05–6676. IN RE SPROUSE;
No. 05–7067. IN RE EGGER; and
No. 05–7148. IN RE KAEMMERLING. Petitions for writs of habeas corpus denied.

No. 05–6337. IN RE JONES; and
No. 05–6359. IN RE ALCAREZ. Petitions for writs of mandamus denied.

Certiorari Granted

No. 04–1739. BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS *v.* BANKS, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED. C. A. 3d Cir. Certiorari granted. Reported below: 399 F. 3d 134.

No. 05–416. WOODFORD ET AL. *v.* NGO. C. A. 9th Cir. Certiorari granted. Reported below: 403 F. 3d 620.

Certiorari Denied

No. 04–9814. CAMPBELL *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 117 Fed. Appx. 946.

No. 05–74. HINOJOSA *v.* JOSTENS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 128 Fed. Appx. 364.

No. 05–187. KOCAK *v.* COMMUNITY HEALTH PARTNERS OF OHIO, INC. C. A. 6th Cir. Certiorari denied. Reported below: 400 F. 3d 466.

No. 05–203. LAMBETH ET AL. *v.* BOARD OF COMMISSIONERS OF DAVIDSON COUNTY, NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 407 F. 3d 266.

No. 05–212. JOHNSON ET AL. *v.* BUSH, GOVERNOR OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 405 F. 3d 1214.

No. 05–216. DANTZ *v.* AMERICAN APPLE GROUP, LLC. C. A. 6th Cir. Certiorari denied. Reported below: 123 Fed. Appx. 702.

No. 05–313. BURR *v.* HASBROUCK HEIGHTS POLICE DEPARTMENT ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 131 Fed. Appx. 799.

No. 05–323. GOODRICH CORP., FKA BF GOODRICH CO. *v.* INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS LOCAL LODGE 2121 AFL–CIO. C. A. 5th Cir. Certiorari denied. Reported below: 410 F. 3d 204.

No. 05–324. HARRAH'S LAS VEGAS, INC., ET AL. *v.* SNOWNEY. Sup. Ct. Cal. Certiorari denied. Reported below: 35 Cal. 4th 1054, 112 P. 3d 28.

No. 05–327. SEYMOUR ET AL. *v.* REGION ONE BOARD OF EDUCATION ET AL. Sup. Ct. Conn. Certiorari denied. Reported below: 274 Conn. 92, 874 A. 2d 742.

No. 05–328. LEON C. BAKER P. C. ET AL. *v.* MERRILL LYNCH, PIERCE, FENNER & SMITH INC. Sup. Ct. Ala. Certiorari denied. Reported below: 923 So. 2d 1153.

No. 05–332. SIX WEST RETAIL ACQUISITION, INC. *v.* SONY PICTURES ENTERTAINMENT CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 124 Fed. Appx. 73.

No. 05–338. BLAU *v.* YMI JEANSWEAR, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 385.

No. 05–408. SMART *v.* TEXAS. Ct. App. Tex., 9th Dist. Certiorari denied. Reported below: 153 S. W. 3d 118.

No. 05–447. ABRISHAMIAN *v.* GUTIERREZ, SECRETARY OF COMMERCE, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 112 Fed. Appx. 923.

No. 05–448. HORNBACK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 964.

No. 05–459. SIBLEY *v.* SUPREME COURT OF THE UNITED STATES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 252.

No. 05–474. BONTKOWSKI *v.* CASTILLO ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 463.

No. 05–481. SHERLOCK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–486. TELLO *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 568.

No. 05–5512. OVERCAST *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 677.

No. 05–5681. NIXON *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied. Reported below: 405 F. 3d 318.

No. 05–5794. COLLINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 213.

No. 05–5841. SHISINDAY, AKA THOMAS *v.* TEXAS (two judgments). Ct. Crim. App. Tex. Certiorari denied.

No. 05–5859. HAMM *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 913 So. 2d 460.

No. 05–5978. HOHMANN *v.* TEGAN ET AL. Ct. App. Ariz. Certiorari denied.

No. 05–6202. SAUNDERS *v.* HALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–6219. BOWLING *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 161 S. W. 3d 361.

No. 05–6220. PEARSON *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 888 So. 2d 110.

No. 05–6226. BELCHER *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 127.

No. 05–6230. BURROUGHS *v.* MAKOWSKI, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 411 F. 3d 665.

No. 05–6231. AARON *v.* MITCHEM, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–6236. PORTEE *v.* MORTON. Cir. Ct. Raleigh County, W. Va. Certiorari denied.

No. 05–6247. BRANCH *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–6248. BREWER *v.* FRAWLEY ET AL. C. A. 1st Cir. Certiorari denied.

No. 05–6250. ANDERSON *v.* SOLOMON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 05–6252. LOPEZ *v.* COLORADO. Sup. Ct. Colo. Certiorari denied. Reported below: 113 P. 3d 713.

No. 05–6255. LUNDY *v.* BOOKER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–6264. HYPOLITE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–6266. HUDSON *v.* M. S. CARRIERS, INC. C. A. 6th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 297.

No. 05–6271. TORRES *v.* RUNNELS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 96.

No. 05–6272. SMITH *v.* BRANCH BANKING & TRUST CO. ET AL. C. A. 4th Cir. Certiorari denied.

No. 05–6273. CIAPPINA *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 05–6274. CAMPBELL *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 05–6277. CONSIGLIO *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied. Reported below: 128 Cal. App. 4th 511, 27 Cal. Rptr. 3d 167.

No. 05–6285. BAGBY *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 05–6287. WILLIAMS *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 05–6288. WILLIAMS *v.* ARKANSAS DEPARTMENT OF CORRECTION. Sup. Ct. Ark. Certiorari denied. Reported below: 362 Ark. 134, 207 S. W. 3d 519.

No. 05–6297. WOMACK *v.* TEXAS. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 05–6298. NURNBERG *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–6299. EDISON *v.* WEST VIRGINIA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 88.

No. 05–6312. SALSEDO PEDROZA *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 773 So. 2d 639.

No. 05–6315. JOHNSON *v.* HAMLET, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 189.

No. 05–6330. BROWN *v.* HARRISON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 980.

No. 05–6342. CONSIGLIO *v.* RIMMER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–6345. ZEIGLER *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 270 Ga. App. 787, 608 S. E. 2d 230.

No. 05–6346. VALENZUELA *v.* FELKER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–6348. MORA VALDEZ *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–6349. VARNEY *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 05–6350. ZADEH *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–6351. NELSON *v.* PATRICK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HOUTZDALE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–6356. BENESHUNAS *v.* KLEM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 137 Fed. Appx. 510.

No. 05–6363. O'BRYANT *v.* SAPP, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–6365. TERRY *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–6366. WAGNER *v.* MOORE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–6367. MCELWEE *v.* KIRKLAND, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–6368. OTTINGER *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 05–6371. SIMPSON *v.* POLK, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 782.

No. 05–6374. BEN-YISRAYL, FKA DAVIS *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 809 N. E. 2d 309.

No. 05–6376. BLAKE *v.* WYNDER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS. C. A. 3d Cir. Certiorari denied.

No. 05–6378. TWILLEY *v.* GAY ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–6380. YOUNG *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 75.

No. 05–6390. DAVIDO *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 582 Pa. 52, 868 A. 2d 431.

No. 05–6391. MCCARTY *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 114 P. 3d 1089.

No. 05–6399. BRITT *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 05–6401. FLETCHER *v.* LOCKYER, ATTORNEY GENERAL OF CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 140.

No. 05–6414. GIBSON *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 8th Cir. Certiorari denied. Reported below: 123 Fed. Appx. 252.

No. 05–6427. QUOC XUONG LUU *v.* CAREY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–6433. LOPEZ-CARRANZA *v.* GONZALES, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied.

No. 05–6468. LEAPHART *v.* PALAKOVICH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–6493. SOCHA *v.* KUCINICH, UNITED STATES CONGRESSMAN. C. A. 6th Cir. Certiorari denied.

No. 05–6497. CRUZADO *v.* WHORTON, DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 135.

No. 05–6534. ALLEN *v.* NICHOLSON, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 129 Fed. Appx. 611.

No. 05–6555. RINICK *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 873 A. 2d 771.

No. 05–6587. WALKER *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 443 Mass. 867, 825 N. E. 2d 491.

No. 05–6597. STUCKY *v.* BLACKETTER, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 784.

No. 05–6616. MORRIS *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 794.

No. 05–6618. SINGLEY *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 582 Pa. 5, 868 A. 2d 403.

No. 05–6630. BROWER *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 260.

No. 05–6667. MILLER *v.* COLORADO. Sup. Ct. Colo. Certiorari denied. Reported below: 113 P. 3d 743.

No. 05–6670. VIALPANDO *v.* SOARES, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 5.

No. 05–6671. VIALPANDO *v.* SOARES, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 107.

No. 05–6677. SPROUSE *v.* POWELL, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 923.

No. 05–6686. STAMBOLIA *v.* OHIO. Ct. App. Ohio, Trumbull County. Certiorari denied.

No. 05–6692. JAMES *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 88 Conn. App. 903, 871 A. 2d 421.

No. 05–6694. MCNEIL *v.* HENRY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 402 F. 3d 920.

No. 05–6700. JACKSON *v.* HARRISON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–6707. MCDONALD *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied.

No. 05–6716. NALL *v.* FARWELL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 819.

No. 05–6763. BAKER *v.* DEPARTMENT OF THE INTERIOR ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 151.

No. 05–6898. TAYLOR *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 05–6914. BARKER *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 809 N. E. 2d 312 and 826 N. E. 2d 648.

No. 05–6918. REEVE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 189.

No. 05–6925. REDFERN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 673.

No. 05–6957. BARBER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 233.

No. 05–6958. BURCH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 406 F. 3d 1027.

No. 05–6969. TRACY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–6972. DIAZ CRUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 685.

No. 05–6976. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–6977. BERRY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 132 Fed. Appx. 957.

No. 05–6981. WHITE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 405 F. 3d 208.

No. 05–6982. CLARK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 29.

No. 05–6985. LANE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–6986. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 128 Fed. Appx. 89.

No. 05–6993. EDWARDS *v.* ENGLAND, SECRETARY OF THE NAVY. C. A. 9th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 617.

No. 05–6994. MILLAN-TORRES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 105.

No. 05–7000. FALODUN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–7001. GLEASON *v.* ISBELL, MAYOR OF THE CITY OF PASADENA, TEXAS, ET AL. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 05–7006. FIELDS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 622.

No. 05–7007. CESAL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7010. ROCHA-AGUILAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 705.

No. 05–7012. RIVERA ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 412 F. 3d 562.

No. 05–7015. WATKINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 539.

No. 05–7016. BASSETT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 406 F. 3d 526.

No. 05–7020. MOHR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 407 F. 3d 898.

No. 05–7021. ORR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 632.

No. 05–7027. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 323.

No. 05–7028. MARTINEZ-HERNANDEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–7029. LESTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 364.

No. 05–7031. ROCHE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 415 F. 3d 614.

No. 05–7033. RAWLS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 05–7036. BADILLO-RANGEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 434 F. 3d 750.

No. 05–7037. MAY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 413 F. 3d 841.

No. 05–7038. WINT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 142 Fed. Appx. 11.

No. 05–7039. VILLALONA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 139 Fed. Appx. 407.

No. 05–7040. VERASTEGUI-GARCIA, AKA GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 844.

No. 05–7045. ABDULLAH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7046. ANDRADE, AKA GUERRARO-PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 451.

No. 05–7047. DEERING *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–7049. DENTON *v.* O'BRIEN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–7051. PRICE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–7054. HENRY ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 417 F. 3d 493.

No. 05–7055. PORTEE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 129 Fed. Appx. 652.

No. 05–7057. JUAREZ-CORONA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 228.

No. 05–7061. RAMIREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 325.

No. 05–7062. RIVAS-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–7063. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 417 F. 3d 483.

No. 05–7073. WHITE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 408 F. 3d 399.

No. 05–219. NATIONAL ALTERNATIVE FUELS ASSN. *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 05–405. NORFOLK SOUTHERN RAILWAY CO. *v.* SCHUMPERT. Ct. App. Ga. Motion of Association of American Railroads for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 270 Ga. App. 782, 608 S. E. 2d 236.

Rehearing Denied

No. 04–1571. OKAMOTO, DBA SUPREME AUTO LEASING *v.* BANK WEST CORP., *ante*, p. 818;

No. 04–1621. MORTERS *v.* BARR ET AL., *ante*, p. 820;

No. 04–9928. SMITH *v.* RUDICEL ET AL., *ante*, p. 831;

No. 04–10116. CONIC *v.* MICHIGAN, *ante*, p. 837;

No. 04–10389. WESTBURY *v.* DORCHESTER COUNTY, SOUTH CAROLINA, ET AL., *ante,* p. 849;

No. 04–10504. RUTAN *v.* HOUK, WARDEN, *ante,* p. 855;

No. 05–4. SMITH *v.* CONSOLIDATED FREIGHTWAYS, *ante,* p. 869;

No. 05–28. STEVENS *v.* STATE BAR OF CALIFORNIA, *ante,* p. 870;

No. 05–35. TAYLOR *v.* POTTER, POSTMASTER GENERAL, *ante,* p. 871;

No. 05–132. ROUSH *v.* CHALKEY, *ante,* p. 875; and

No. 05–154. IN RE RODRIGUEZ, *ante,* p. 810. Petitions for rehearing denied.

NOVEMBER 15, 2005

Dismissal Under Rule 46

No. 03–1559. BANK OF CHINA, NEW YORK BRANCH *v.* NBM L. L. C. ET AL. C. A. 2d Cir. [Certiorari granted, 545 U. S. 1138.] Writ of certiorari dismissed under this Court's Rule 46.1.

NOVEMBER 16, 2005

Certiorari Denied

No. 05–7561 (05A444). THOMAS *v.* TEXAS. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied.

NOVEMBER 17, 2005

Miscellaneous Order

No. 05A430. ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER *v.* WHITE. C. A. 8th Cir. Application to stay the mandate, addressed to JUSTICE O'CONNOR and referred to the Court, denied.

NOVEMBER 23, 2005

Miscellaneous Order

No. 04–928. OREGON *v.* GUZEK. Sup. Ct. Ore. [Certiorari granted, 544 U. S. 998.] Further consideration of respondent's motion to dismiss petition for writ of certiorari as improvidently granted deferred to the hearing of the case on the merits.

Certiorari Denied

No. 05–6594. NANCE *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied.

NOVEMBER 28, 2005

Certiorari Granted—Vacated and Remanded. (See also No. 05–101, *ante,* p. 74.)

No. 04–10378. GROSS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Wilkinson* v. *Dotson*, 544 U. S. 74 (2005).

No. 05–71. SYNCLAIR *v.* FRESNO COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Exxon Mobil Corp.* v. *Saudi Basic Industries Corp.*, 544 U. S. 280 (2005). Reported below: 115 Fed. Appx. 395.

Certiorari Dismissed

No. 05–6617. MCREYNOLDS *v.* OFFICE OF CHILDREN AND FAMILY SERVICES. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 18 App. Div. 3d 316, 795 N. Y. S. 2d 36.

No. 05–6946. MCREYNOLDS *v.* COMMISSIONER, OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES OF NEW YORK, ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal mat-

ters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 19 App. Div. 3d 438, 795 N. Y. S. 2d 900.

Miscellaneous Orders

No. 05M27. HARVESTON *v.* KELLY, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY;

No. 05M28. NOAKES *v.* NEW JERSEY; and

No. 05M29. MCNAMARA *v.* HARRISON, WARDEN. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 11, Orig. NEW JERSEY *v.* DELAWARE. Motion to reopen and for supplemental decree denied. Alternative motion for leave to file bill of complaint granted. Defendant is allowed 30 days within which to file an answer. This proceeding shall be docketed as case No. 134, Original. [For earlier order herein, see, *e. g.*, 305 U. S. 576.]

No. 04–10063. PEREA *v.* BUSH, PRESIDENT OF THE UNITED STATES. C. A. D. C. Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 804] denied. THE CHIEF JUSTICE took no part in the consideration or decision of this motion.

No. 04–10683. WELLS *v.* CITY OF BEVERLY HILLS, CALIFORNIA, ET AL. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 804] denied.

No. 05–381. WEYERHAEUSER CO. *v.* ROSS-SIMMONS HARDWOOD LUMBER CO., INC. C. A. 9th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 05–5456. IN RE ARANDA. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 810] denied.

No. 05–5615. PEREA *v.* BUSH, PRESIDENT OF THE UNITED STATES. C. A. 9th Cir. Motion of petitioner for reconsideration

of order denying leave to proceed *in forma pauperis* [*ante*, p. 804] denied.

No. 05–565. IN RE SMITH; and

No. 05–7426. IN RE LAWRENCE. Petitions for writs of habeas corpus denied.

No. 05–7749 (05A481). IN RE NANCE. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Petition for writ of habeas corpus denied. JUSTICE STEVENS, JUSTICE SOUTER, and JUSTICE GINSBURG would grant the application for stay of execution.

No. 05–386. IN RE DUNN ET AL.;

No. 05–522. IN RE DUNN;

No. 05–6538. IN RE HICKMON;

No. 05–6608. IN RE GREEN; and

No. 05–6659. IN RE ALEX. Petitions for writs of mandamus denied.

No. 05–7750 (05A482). IN RE NANCE. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Petition for writ of mandamus denied.

No. 05–366. IN RE SMITH;

No. 05–6647. IN RE SILVA; and

No. 05–6814. IN RE SILVA. Petitions for writs of mandamus and/or prohibition denied.

No. 05–6656. IN RE BEAVER. Petition for writ of prohibition denied.

Certiorari Granted

No. 04–433. ANZA ET AL. *v.* IDEAL STEEL SUPPLY CORP. C. A. 2d Cir. Certiorari granted. Reported below: 373 F. 3d 251.

No. 05–130. EBAY INC. ET AL. *v.* MERCEXCHANGE, L. L. C. C. A. Fed. Cir. Certiorari granted. In addition to the question presented by the petition, the parties are directed to brief and argue the following question: "Whether this Court should reconsider its precedents, including *Continental Paper Bag Co.* v. *Eastern Paper Bag Co.*, 210 U. S. 405 (1908), on when it is appropriate

to grant an injunction against a patent infringer." Reported below: 401 F. 3d 1323.

No. 05–260. SEREBOFF ET UX. *v.* MID ATLANTIC MEDICAL SERVICES, INC. C. A. 4th Cir. Certiorari granted. Reported below: 407 F. 3d 212.

Certiorari Denied

No. 04–1049. CARPENTERS HEALTH AND WELFARE TRUST FOR SOUTHERN CALIFORNIA *v.* VONDERHARR ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 384 F. 3d 667.

No. 04–1672. RYAN'S FAMILY STEAK HOUSES, INC. *v.* WALKER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 400 F. 3d 370.

No. 04–9270. GIPSON *v.* JORDAN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 376 F. 3d 1193.

No. 04–10457. CRUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 04–10493. KENT, AKA WILLIAMS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 93 Fed. Appx. 460.

No. 04–10525. MARCONE *v.* OFFICE OF DISCIPLINARY COUNSEL OF THE SUPREME COURT OF PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 579 Pa. 650, 858 A. 2d 588.

No. 04–10571. JARAMILLO *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 823 N. E. 2d 1187.

No. 04–10604. PRICE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 04–10694. PRICE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 118 Fed. Appx. 465.

No. 05–47. MCFADDEN *v.* TEXAS DEPARTMENT OF CRIMINAL JUSTICE, DOMINGUEZ STATE JAIL. C. A. 5th Cir. Certiorari denied. Reported below: 128 Fed. Appx. 347.

No. 05–111. LEONE *v.* UNITED STATES; and
No. 05–5412. URBAN ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 404 F. 3d 754.

No. 05–147. CROWLEY *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 398 F. 3d 1329.

No. 05–148. MORTERA-CRUZ *v.* GONZALES, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 409 F. 3d 246.

No. 05–185. SANTANA PRODUCTS, INC. *v.* BOBRICK WASHROOM EQUIPMENT, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 401 F. 3d 123.

No. 05–190. EDMONDS *v.* DEPARTMENT OF JUSTICE ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 161 Fed. Appx. 6.

No. 05–197. WILLIAMS *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 472 Mich. 308, 696 N. W. 2d 636.

No. 05–225. GENERAL DATACOMM INDUSTRIES, INC. *v.* ARCARA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 407 F. 3d 616.

No. 05–227. GEMENTERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 379 F. 3d 596.

No. 05–232. DRASKOVICH ET AL. *v.* ROBB EVANS & ASSOCIATES, L. L. C., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 410 F. 3d 256.

No. 05–261. JACADA (EUROPE), LTD., FKA CLIENT/SERVER TECHNOLOGY (EUROPE), LTD. *v.* INTERNATIONAL MARKETING STRATEGIES, INC. C. A. 6th Cir. Certiorari denied. Reported below: 401 F. 3d 701.

No. 05–262. DUTTON *v.* UNITED HEALTH CARE SYSTEM, L. L. C., DBA TULANE UNIVERSITY HOSPITAL AND CLINIC. C. A. 5th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 596.

No. 05–291. KING *v.* PENSION TRUST FUND OF THE PENSION HOSPITALIZATION AND BENEFIT PLAN OF THE ELECTRICAL INDUSTRY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 131 Fed. Appx. 740.

No. 05–300. THOMPSON ET AL. *v.* GENZLER;
No. 05–319. LONGANBACH *v.* GENZLER.; and

No. 05–400. O'BRIEN *v.* GENZLER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 410 F. 3d 630.

No. 05–316. DORAN *v.* ECKOLD, PRESIDENT OF THE BOARD OF POLICE COMMISSIONERS OF KANSAS CITY, MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 409 F. 3d 958.

No. 05–342. HAYES ET AL. *v.* CROWN CENTRAL LLC ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 533.

No. 05–350. BAILEY ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS. C. A. 5th Cir. Certiorari denied.

No. 05–354. CITY OF COLUMBUS, OHIO, ET AL. *v.* GOLDEN. C. A. 6th Cir. Certiorari denied. Reported below: 404 F. 3d 950.

No. 05–355. SSW, INC. *v.* REGENTS OF THE UNIVERSITY OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 05–358. BURNETTE, CO-ADMINISTRATOR OF THE ESTATE OF WILSON, ET AL. *v.* GEE, SHERIFF, MONROE COUNTY, KENTUCKY, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 806.

No. 05–361. KARR *v.* PATAKI, GOVERNOR OF NEW YORK, ET AL.; and

No. 05–368. DALTON ET AL. *v.* PATAKI, GOVERNOR OF NEW YORK, ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 5 N. Y. 3d 243, 835 N. E. 2d 1180.

No. 05–362. KERSH *v.* ESTATE OF SCHWARTZ ET AL. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 892 So. 2d 1047.

No. 05–367. ANDERER *v.* JONES ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 385 F. 3d 1043 and 412 F. 3d 794.

No. 05–375. REGIONS BANK, GUARDIAN OF THE ESTATE OF SMITH *v.* BMW NORTH AMERICA, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 406 F. 3d 978.

No. 05–382. RESOURCE TECHNOLOGY CORP. *v.* ILLINOIS COMMERCE COMMISSION. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 354 Ill. App. 3d 895, 822 N. E. 2d 50.

No. 05–383. SKINNER *v.* MICRODECISIONS, INC. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 889 So. 2d 871.

No. 05–384. HAMMEL *v.* EAU GALLE CHEESE FACTORY. C. A. 7th Cir. Certiorari denied. Reported below: 407 F. 3d 852.

No. 05–385. COHEN *v.* ALLSTATE INSURANCE CO. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 11 App. Div. 3d 502, 782 N. Y. S. 2d 850.

No. 05–388. KOLEV *v.* DEPARTMENT OF HOMELAND SECURITY, BCIS CALIFORNIA SERVICE CENTER, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 3.

No. 05–389. PATTI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–390. MCCLAIN *v.* RETAIL FOOD EMPLOYERS JOINT PENSION PLAN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 413 F. 3d 582.

No. 05–391. PERKINS *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 279 Ga. 506, 614 S. E. 2d 92.

No. 05–393. BOWLEY *v.* CITY OF UNIONTOWN POLICE DEPARTMENT ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 404 F. 3d 783.

No. 05–394. KOBS *v.* UNITED WISCONSIN INSURANCE CO. C. A. 7th Cir. Certiorari denied. Reported below: 400 F. 3d 1036.

No. 05–396. MURRAY ET AL. *v.* EARLE, INDIVIDUALLY AND AS DISTRICT ATTORNEY OF TRAVIS COUNTY, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 405 F. 3d 278.

No. 05–397. 1–800 CONTACTS, INC. *v.* WHENU.COM, INC. C. A. 2d Cir. Certiorari denied. Reported below: 414 F. 3d 400.

No. 05–401. CROWLEY *v.* MCKINNEY ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 400 F. 3d 965.

No. 05–402. TELLO *v.* TEXAS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 200.

No. 05–403. YEE *v.* SHIAWASSEE COUNTY, MICHIGAN, ET AL. Ct. App. Mich. Certiorari denied.

No. 05–407. ZHININ *v.* GONZALES, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied.

No. 05–411. LONDON ET AL. *v.* FIELDALE FARMS CORP. C. A. 11th Cir. Certiorari denied. Reported below: 410 F. 3d 1295.

No. 05–420. VALDIVA ACOSTA *v.* GONZALES, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied.

No. 05–422. KLEINPASTE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 124 Fed. Appx. 134.

No. 05–428. DOE ET AL., ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED *v.* MILLER, ATTORNEY GENERAL OF IOWA. C. A. 8th Cir. Certiorari denied. Reported below: 405 F. 3d 700.

No. 05–432. KLEINSMITH *v.* RICH, JUDGE, DISTRICT COURT OF NEW MEXICO, MCKINLEY COUNTY. Sup. Ct. N. M. Certiorari denied. Reported below: 138 N. M. 146, 117 P. 3d 952.

No. 05–441. HINOJOSA ET AL. *v.* MICHIGAN DEPARTMENT OF NATURAL RESOURCES. Ct. App. Mich. Certiorari denied. Reported below: 263 Mich. App. 537, 688 N. W. 2d 550.

No. 05–449. CHAMBERS *v.* CAMPBELL. Ct. App. Miss. Certiorari denied. Reported below: 968 So. 2d 949.

No. 05–458. MONTGOMERY *v.* MACAJOUX, OFFICE OF THE CHIEF MEDICAL EXAMINER, NEW YORK CITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 125 Fed. Appx. 370.

No. 05–483. COLLINS HOLDING CORP. ET AL. *v.* SOUTHTRUST BANK. C. A. 11th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 133.

No. 05–505. QUIGLEY *v.* COMMITTEE ON ADMISSIONS, DISTRICT OF COLUMBIA COURT OF APPEALS. Ct. App. D. C. Certiorari denied.

No. 05–510. PALESTINE LIBERATION ORGANIZATION ET AL. *v.* UNGAR, BY AND THROUGH THE ADMINISTRATOR OF HER ESTATE,

STRACHMAN, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 402 F. 3d 274.

No. 05–511. MCCORMACK *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 371 F. 3d 22.

No. 05–512. KNOX *v.* POTTER, POSTMASTER GENERAL, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 567.

No. 05–513. FREITAS *v.* ADMINISTRATIVE DIRECTOR OF THE COURTS OF HAWAII. Sup. Ct. Haw. Certiorari denied. Reported below: 108 Haw. 31, 116 P. 3d 673.

No. 05–517. PEDROZA *v.* CINTAS CORPORATION NO. 2, DBA CINTAS CORP., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 397 F. 3d 1063.

No. 05–521. ARNOLD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 76.

No. 05–525. MAGGIORE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 125 Fed. Appx. 343.

No. 05–532. THOMASIAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 416 F. 3d 977.

No. 05–5036. PAINTER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 400 F. 3d 1111.

No. 05–5037. ROOKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 117 Fed. Appx. 237.

No. 05–5047. LYONS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 403 F. 3d 1248.

No. 05–5177. ZARAGOZA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 298.

No. 05–5187. GUZMAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 404 F. 3d 139.

No. 05–5435. BRADD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–5447. FARLEY *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 443 Mass. 740, 824 N. E. 2d 797.

No. 05–5470. JOHNSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 119 Fed. Appx. 415.

No. 05–5491. CLARK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5759. FREEZE *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 861 So. 2d 1234.

No. 05–5809. ABIMBOLA *v.* GONZALES, ATTORNEY GENERAL, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 378 F. 3d 173.

No. 05–5825. LEMA-ZAPATA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–5857. CAMPBELL *v.* RICE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 408 F. 3d 1166.

No. 05–6050. NAVARRO-VARGAS ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 408 F. 3d 1184.

No. 05–6100. PEARSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–6134. STAMPONE *v.* CARPENTERS LOCAL UNION 15 ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–6135. TAYLOR *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied.

No. 05–6139. BRIDESON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 117 Fed. Appx. 142.

No. 05–6339. CONBOY *v.* EDWARD D. JONES & CO., L. P. C. A. 5th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 510.

No. 05–6405. FAHLFEDER *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 863 A. 2d 1222.

No. 05–6410. FRAZIER *v.* FRAZIER. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 05–6411. HUTZENLAUB *v.* PORTUONDO, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 05–6413. FIELDS *v.* WADDINGTON, SUPERINTENDENT, STAFFORD CREEK CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 401 F. 3d 1018.

No. 05–6429. CRAWFORD *v.* KRAMER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 124.

No. 05–6430. DENNISON *v.* GRACE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–6432. HODGES *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 912 So. 2d 730.

No. 05–6435. FARRIS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 05–6436. MENDOZA GARCIA *v.* MICHIGAN. Cir. Ct. Muskegon County, Mich. Certiorari denied.

No. 05–6441. GONZALES *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–6446. GALLOW *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 885.

No. 05–6447. GODFREY *v.* WOLFE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–6448. GREEN *v.* BROOKS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–6455. LESEC *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–6456. MORRISSEY *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 63 Mass. App. 1102, 822 N. E. 2d 1213.

No. 05–6460. MINERD *v.* WILSON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FAYETTE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–6465. KING *v.* HICKMAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 566.

No. 05–6470. DALE *v.* COPLAN, WARDEN, ET AL. Sup. Ct. N. H. Certiorari denied.

No. 05–6475. CHAVEZ-ZARATE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 05–6477. MASTERMAN *v.* PATRICK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HOUTZDALE, ET AL. Sup. Ct. Pa. Certiorari denied.

No. 05–6480. ORONA *v.* HARRISON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–6482. SHAVER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 05–6488. CORONEL *v.* HAWAII. Sup. Ct. Haw. Certiorari denied. Reported below: 108 Haw. 161, 118 P. 3d 71.

No. 05–6491. MINNIECHESKE *v.* VILLAGE OF TIGERTON, WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 05–6498. WALKER *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 913 So. 2d 198.

No. 05–6499. WARREN *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–6501. VICKERS *v.* SPALDING, SUPERINTENDENT, MONROE CORRECTIONAL COMPLEX. C. A. 9th Cir. Certiorari denied.

No. 05–6503. POSEY *v.* TEXAS. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 05–6511. SHARMA *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 05–6518. SIMS *v.* MILLER-STOUT, SUPERINTENDENT, AIRWAY HEIGHTS CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 78.

No. 05–6521. MILLER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 05–6522. CRUM *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 05–6532. WORD *v.* PEREZ, SUPERINTENDENT, BEDFORD HILLS CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 05–6535. HILL *v.* MITCHELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 400 F. 3d 308.

No. 05–6540. MCNEIL *v.* DISTRICT OF COLUMBIA DEPARTMENT OF EMPLOYMENT SERVICES. Ct. App. D. C. Certiorari denied.

No. 05–6545. TAYLOR *v.* CARROLL, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–6548. CLEMENTS *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 125 Wash. App. 634, 106 P. 3d 244.

No. 05–6559. DEYOUNG *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 05–6561. MCGEE *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 05–6572. LEAKE *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 699 N. W. 2d 312.

No. 05–6579. CUNNINGHAM *v.* BELLEQUE, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 05–6584. THOMAS *v.* HARRISON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–6585. HEIN QUOC THAI *v.* MAPES, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 412 F. 3d 970.

No. 05–6592. DUTKIEWICZ ET UX. *v.* RAINBOW IN A TEAR WORKSHOPS, LLC, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 135 Fed. Appx. 482.

No. 05–6602. TROXLER *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 162 N. C. App. 182, 590 S. E. 2d 333.

No. 05–6603. PORTER *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–6604. HODGE ET VIR *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. D. C. Cir. Certiorari denied.

No. 05–6607. NORTONSEN *v.* REID, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 509.

No. 05–6611. BERNSTEIN *v.* FLORIDA BAR. Sup. Ct. Fla. Certiorari denied. Reported below: 902 So. 2d 789.

No. 05–6622. ASKEW *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 33 Kan. App. 2d xxi, 100 P. 3d 105.

No. 05–6623. KUCERNAK *v.* SINFIELD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 59.

No. 05–6625. GORDON *v.* HENDRICKS. Ct. App. D. C. Certiorari denied. Reported below: 876 A. 2d 640.

No. 05–6627. ALMONTE *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 444 Mass. 511, 829 N. E. 2d 1094.

No. 05–6632. MAYOLO *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 901 So. 2d 178.

No. 05–6633. ACEVES JIMENEZ *v.* MCGRATH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–6634. WILSON, AKA KRUIDENIER *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 121 Nev. 345, 114 P. 3d 285.

No. 05–6639. DRISCOLL *v.* DELAROSA. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 16 App. Div. 3d 130, 789 N. Y. S. 2d 889.

No. 05–6640. MOHSEN *v.* QUICKTURN DESIGN SYSTEMS, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 148 Fed. Appx. 924.

No. 05–6645. ROBINSON *v.* WALKER, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 555.

No. 05–6648. WYATT *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–6650. VILLANUEVA *v.* HAWAII. Sup. Ct. Haw. Certiorari denied.

No. 05–6652. WILLOUGHBY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 05–6657. ACKERIDGE, AKA LEE *v.* PALAKOVICH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–6673. BANKS *v.* FAMILY INDEPENDENCE AGENCY. Sup. Ct. Mich. Certiorari denied. Reported below: 472 Mich. 873, 693 N. W. 2d 814.

No. 05–6674. ARTHUR *v.* FARWELL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–6680. JOHNSON *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 909 So. 2d 865.

No. 05–6683. CLARK *v.* STUARD, JUDGE, COURT OF COMMON PLEAS OF OHIO, TRUMBULL COUNTY. Sup. Ct. Ohio. Certiorari denied. Reported below: 105 Ohio St. 3d 1557, 828 N. E. 2d 113.

No. 05–6684. NICKELLS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 908 So. 2d 1058.

No. 05–6685. PRIDE *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–6691. KIRK *v.* TENNIS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–6693. JENSEN *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied.

No. 05–6695. MASIARCZYK *v.* JOHNSON ET AL. Cir. Ct. Monongalia County, W. Va. Certiorari denied.

No. 05–6696. AYERS-FOUNTAIN *v.* EASTERN SAVINGS BANKS. C. A. 3d Cir. Certiorari denied.

No. 05–6697. BROWN ET VIR *v.* CHEVY CHASE BANK, FSB. C. A. 11th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 278.

No. 05–6703. WILEY *v.* LEIBACH, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 05–6705. DICKS *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 05–6706. DUNKINS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–6708. DIXON *v.* ALEXANDER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 78.

No. 05–6709. DENHAM *v.* KNOWLES, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 05–6712. PALMER *v.* HOUSTON, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 8th Cir. Certiorari denied. Reported below: 408 F. 3d 423.

No. 05–6714. PARKER *v.* UNIVERSITY OF PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 128 Fed. Appx. 944.

No. 05–6717. MITCHELL *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 05–6722. CARDONA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 154 Fed. Appx. 737.

No. 05–6724. CAGE-BARILE *v.* CHURCH OF CHRIST IN HOLLYWOOD. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–6727. RANDOLPH *v.* TATAROW FAMILY PARTNERS, LTD. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 899 So. 2d 326.

No. 05–6729. DAVIDSON *v.* ZUSSMAN ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–6732. ALLEN *v.* GILPIN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–6733. ANGIANO *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–6740. GANT *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 417 F. 3d 1328.

No. 05–6747. RANGEL RESENDIZ *v.* HODGSON, INTERIM FIELD OFFICE DIRECTOR, LOS ANGELES, IMMIGRATION AND CUSTOMS ENFORCEMENT. C. A. 9th Cir. Certiorari denied. Reported below: 416 F. 3d 952.

No. 05–6762. BLOUNT *v.* LEAVITT, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 64.

No. 05–6765. BROWN *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 169 N. C. App. 843, 612 S. E. 2d 693.

No. 05–6767. NELSON *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 16 App. Div. 3d 1172, 791 N. Y. S. 2d 236.

No. 05–6774. MARCUS *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 168 N. C. App. 730, 609 S. E. 2d 498.

No. 05–6788. RICE *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 473 Mich. 324, 701 N. W. 2d 715.

No. 05–6797. CALLEJA *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 05–6811. TILLERY *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS. C. A. 3d Cir. Certiorari denied. Reported below: 142 Fed. Appx. 66.

No. 05–6816. JENNETTE *v.* CUNNINGHAM, SUPERINTENDENT, WOODBOURNE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 05–6820. ROBERTS *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 840.

No. 05–6824. BOULDEN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 126 Cal. App. 4th 1305, 24 Cal. Rptr. 3d 811.

No. 05–6827. TINSLEY *v.* MILLION, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 399 F. 3d 796.

No. 05–6830. DANIELS *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 05–6835. GIBSON *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 338 Ore. 560, 113 P. 3d 423.

No. 05–6838. GEORGE *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 183.

No. 05–6840. LAKE *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 05–6855. MCMURRAY *v.* BOOKER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 815.

No. 05–6856. PINELA PIZARRO *v.* COMMONWEALTH OF PUERTO RICO. C. A. 1st Cir. Certiorari denied.

No. 05–6896. THAMES *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied.

No. 05–6931. ARCINIEGA MARTINEZ *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 210 Ariz. 578, 115 P. 3d 618.

No. 05–6963. STAR *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 05–6974. ERICKSON *v.* WATKINS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 956.

No. 05–6992. COHEN *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 185 Ore. App. 252, 60 P. 3d 41.

No. 05–7022. RHODES *v.* TRUE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 501.

No. 05–7030. KEKAHUNA *v.* HAWAII. Int. Ct. App. Haw. Certiorari denied. Reported below: 107 Haw. 466, 114 P. 3d 972.

No. 05–7060. SOAPES *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 05–7077. INMAN *v.* SOARES, MANAGER, BRUSH CORRECTIONAL FACILITY, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 925.

No. 05–7078. GONZALEZ-BARAJAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 199.

No. 05–7080. FRANCIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 184.

No. 05–7081. GIANAKOS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 415 F. 3d 912.

No. 05–7082. HARRIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 05–7083. GARDNER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 762.

No. 05–7084. HARRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 295.

No. 05–7086. DA VANG *v.* HOOVER, JUDGE, COURT OF APPEALS OF WISCONSIN, DISTRICT III. Sup. Ct. Wis. Certiorari denied.

No. 05–7087. WALKER *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 05–7088. TERRY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7090. VALENCIA-AMAYA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 560.

No. 05–7094. MARION *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 768.

No. 05–7095. HICKMAN *v.* OHIO. Ct. App. Ohio, Stark County. Certiorari denied.

No. 05–7097. ASHWORTH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 525.

No. 05–7099. BONADONNA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 297.

No. 05–7101. DUGAN *v.* BRILEY, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied.

No. 05–7104. HARPER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–7105. GUZMAN-ESPINAL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–7109. JACOBS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–7110. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 286.

No. 05–7113. ALVARADO-JIMENEZ, AKA SOTERO-JIMENEZ *v.* UNITED STATES (Reported below: 145 Fed. Appx. 79); GALLEGOS-LUERA, AKA TORRES-MONSISVAIS *v.* UNITED STATES; HERRERA-FLORES *v.* UNITED STATES; ORTIZ JACOBO *v.* UNITED STATES; JAIMES-ESTRADA, AKA ESTRADA JAIMES *v.* UNITED STATES (141 Fed. Appx. 368); JUAREZ-CAMPOS *v.* UNITED STATES (144 Fed. Appx. 413); MEDRANO-AGUILAR *v.* UNITED STATES (141 Fed. Appx. 379); MUNOZ-MUNOZ *v.* UNITED STATES (141 Fed. Appx. 370); NAVA-CHAVEZ *v.* UNITED STATES (141 Fed. Appx. 340); RAMIREZ-GARCIA *v.* UNITED STATES; RAMOS-ESPINO, AKA RAMOS *v.* UNITED STATES (141 Fed. Appx. 337); RAMOS-ZUNIGA, AKA RAVAGO-VAZQUEZ *v.* UNITED STATES; REYES-GURROLA *v.* UNITED STATES; ROLDAN-GIL *v.* UNITED STATES; and SANCHEZ-MENDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–7114. LEVY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–7116. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 672.

No. 05–7117. CALABAZA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 05–7118. CAMPBELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 410 F. 3d 456.

No. 05–7120. ARANDA-CRUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–7121. ONTIVEROS, AKA SAUCEDO-ONTIVEROS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–7122. MOYE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–7123. TAYLOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 417 F. 3d 1176.

No. 05–7125. MOSES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 574.

No. 05–7127. CONEJO-CANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–7128. SHED *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 622.

No. 05–7130. REYES-JASSO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 846.

No. 05–7131. SANDERS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 489.

No. 05–7132. SEALS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 419 F. 3d 600.

No. 05–7133. DOBBIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 518.

No. 05–7135. CRUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 418 F. 3d 481.

No. 05–7136. ARMENDARIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 686.

No. 05–7138. BEST *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 142 Fed. Appx. 500.

No. 05–7139. BUSH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 946.

No. 05–7140. LEE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 522.

No. 05–7141. PAREDES URENA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 879.

No. 05–7143. TAYLOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 487.

No. 05–7144. JUMA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7149. SILVESTRI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 409 F. 3d 1311.

No. 05–7150. ORTIZ ROMAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–7151. CAMACHO RODRIGUEZ *v.* POTTER, POSTMASTER GENERAL, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 136 Fed. Appx. 378.

No. 05–7154. NOVOSEL, AKA NOVOSELL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 985.

No. 05–7155. MULLEN, AKA STEWART, AKA MULEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7156. MEDELLIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 196.

No. 05–7159. MANN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 121 Fed. Appx. 788.

No. 05–7160. COLON-QUINONES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–7161. FEURTADO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–7162. CABRAL *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 275 Conn. 514, 881 A. 2d 247.

No. 05–7165. PETERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–7167. VAZQUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 117 Fed. Appx. 571.

No. 05–7169. ORNELAS, AKA TORRES-ORNELAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 303.

No. 05–7170. WELLINGTON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 417 F. 3d 284.

No. 05–7174. BENNETT *v.* BLEDSOE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 488.

No. 05–7175. AUSTIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7176. PRICE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 341.

No. 05–7179. LEPSEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–7181. STIGER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 413 F. 3d 1185.

No. 05–7182. PRIMES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–7184. WEST *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 274 Conn. 605, 877 A. 2d 787.

No. 05–7187. PENDERGRAFT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7188. BARRON-TORRES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–7190. ARMAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7191. MOORE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 123 Fed. Appx. 108.

No. 05–7192. VALLES-DE ROMERO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 05–7194. WILTSE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7195. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 215.

No. 05–7196. MESSIER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 980.

No. 05–7199. TASHBROOK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 610.

No. 05–7201. CREECH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 408 F. 3d 264.

No. 05–7202. CAMPBELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–7203. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–7204. GONZALEZ-SANDOVAL, AKA HERLINDO ZUNIGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 207.

No. 05–7205. HUTCHINSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 214.

No. 05–7206. GONZALEZ-LABORICO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–7208. HAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 503.

No. 05–7209. HOARE *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 564.

No. 05–7212. HOFFMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 148 Fed. Appx. 122.

No. 05–7213. HERRERA-BARCENAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 299.

No. 05–7214. GOMES FONTES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 415 F. 3d 174.

No. 05–7215. HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 612.

No. 05–7216. GIRON-DELGADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 701.

No. 05–7221. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–7223. SCOTT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 424 F. 3d 431.

No. 05–7224. SOSA-SAUCEDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 578.

No. 05–7226. REYNOLDS *v.* GRAYER, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 192.

No. 05–7230. WHITES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 101.

No. 05–7232. HAIRE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–7233. GONZALEZ-TORRES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 987.

No. 05–7235. BAKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 103.

No. 05–7237. EVANS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 875 A. 2d 116.

No. 05–7238. DIXON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 402.

No. 05–7244. RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7246. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 819.

No. 05–7247. SLUSARCZYK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 108.

No. 05–7253. MELENDEZ-SANTOS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–7254. CALHOUN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 28.

No. 05–7255. COLEMAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 419 F. 3d 614.

No. 05–7256. CARROLL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 3.

No. 05–7257. DELEON-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 588.

No. 05–7259. ANDUJAR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7261. BRYAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–7262. GARZA MENDEZ, AKA GARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 309.

No. 05–7263. MUNOZ-MARQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–7264. TREJO-LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–7272. SANCHEZ-SANCHEZ, AKA BATISTA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 148 Fed. Appx. 106.

No. 05–7275. MCDONALD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 691.

No. 05–7276. NEWTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 114.

No. 05–7278. LOUIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 329.

No. 05–7279. MARTIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–7281. REICHOW *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 416 F. 3d 802.

No. 05–7282. STEWART *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 126.

No. 05–7283. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 416 F. 3d 1350.

No. 05–7284. SAMORA-SANCHEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 90.

No. 05–7288. PRIDGEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 05–7289. MORTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 804.

No. 05–7290. MOSES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 448.

No. 05–7292. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 112.

No. 05–7293. VO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 413 F. 3d 1010.

No. 05–7294. BAEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–7299. BAUSSAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7300. BERAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 05–7301. BUTLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 591.

No. 05–7304. RODRIGUEZ-VERA, AKA RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–7307. LEVON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 865.

No. 05–7308. KELLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 413 F. 3d 706.

No. 05–7313. EMBREY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–7317. CAPPS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 911.

No. 05–7318. CAMACHO-MUNOZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–7322. RODRIGUEZ-GASPAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–7323. SANCHEZ-CRUZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 116.

No. 05–7324. JIMENEZ-CORDOVA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–7337. VALDEZ-PALACIOS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 147 Fed. Appx. 3.

No. 05–7342. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 254.

No. 05–7343. ZARCHY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7346. JENKINS *v.* UNITED STATES; and
No. 05–7349. MOORE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 728.

No. 05–7347. LONDON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 148 Fed. Appx. 19.

No. 05–7348. ORTIZ-CAMERON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–7350. CASON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 148 Fed. Appx. 148.

No. 05–7352. WAITE, AKA ROBERTS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 119.

No. 05–7354. VENTURA ROMANO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 688.

No. 05–387. LEVINE ET AL. *v.* UNITED HEALTHCARE CORP. ET AL. C. A. 3d Cir. Motion of American Trial Lawyers Association-New Jersey for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 402 F. 3d 156.

No. 05–7098. BAKER *v.* DEPARTMENT OF JUSTICE. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 05–7218. LAWSON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 410 F. 3d 735.

No. 05–7748 (05A480). NANCE *v.* NORRIS, SUPERINTENDENT, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS, JUSTICE SOUTER, and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 429 F. 3d 1194.

No. 05–7751 (05A483). NANCE *v.* HOWARD ET AL. C. A. 8th Cir. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied.

Rehearing Denied

No. 04–1438. DRURY *v.* UNITED STATES, *ante*, p. 813;

No. 04–1536. JAFFE *v.* KAISER FOUNDATION HOSPITAL ET AL., *ante*, p. 816;

No. 04–1573. DASH *v.* PATENT AND TRADEMARK OFFICE, *ante*, p. 818;

No. 04–1576. WHITFIELD *v.* ALABAMA SECURITIES COMMISSION ET AL., *ante*, p. 818;

No. 04–1630. POWELL *v.* FIDELITY NATIONAL FINANCIAL, INC., ET AL., *ante*, p. 821;

No. 04–1636. MADDEN ET AL. *v.* DELOITTE & TOUCHE, LLP, ET AL., *ante*, p. 821;

No. 04–1664. IN RE HEIMERMANN, *ante*, p. 808;

No. 04–1669. SHESHTAWY ET AL. *v.* SHESHTAWY, *ante*, p. 823;

No. 04–1675. MERRITT *v.* UNITED STATES ET AL., *ante*, p. 824;

No. 04–1676. MERCER *v.* THOMAS ET AL., *ante*, p. 824;

No. 04–1685. DUVALL *v.* SACRAMENTO SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS ET AL., *ante*, p. 824;

No. 04–1686. REILLY *v.* WEISS ET AL., *ante*, p. 824;

No. 04–1687. DAVIDSON ET AL. *v.* VIVRA INC. ET AL.; and DAVIDSON *v.* MEEHAN ET AL., *ante*, p. 824;

No. 04–1730. SCHWIEGERATH *v.* SCHWIEGERATH, *ante*, p. 826;

No. 04–9356. CLEMONS *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, *ante*, p. 828;

No. 04–9517. MARES *v.* UNITED STATES, *ante*, p. 828;

No. 04–9627. BALLINGER *v.* UNITED STATES, *ante*, p. 829;

No. 04–10012. HOLLOWAY *v.* MCI TELEPHONE CO. ET AL., *ante*, p. 834;

No. 04–10017. TAYLOR *v.* DIVISION OF DELAWARE POLICE ET AL., *ante*, p. 834;

No. 04–10151. GUINN, AKA QUINN *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 839;

No. 04–10162. HARRIS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 839;

No. 04–10168. ROBERSON *v.* UNITED STATES, *ante*, p. 840;

No. 04–10194. KEY *v.* BETT, WARDEN, *ante*, p. 841;

No. 04–10206. YEKIMOFF *v.* SEASTRAND ET AL., *ante*, p. 841;

No. 04–10239. REXELLE *v.* CALIFORNIA, *ante*, p. 842;

No. 04–10241. PARSON *v.* WILMER HUTCHINS INDEPENDENT SCHOOL DISTRICT, *ante*, p. 842;

No. 04–10247. HULTZ *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER, *ante*, p. 842;

No. 04–10302. COSTA *v.* YOUNG ET AL., *ante*, p. 845;

No. 04–10347. RENEE *v.* PENNSYLVANIA, *ante*, p. 847;

No. 04–10411. WINSTON *v.* VIRGINIA, *ante*, p. 850;

No. 04–10429. IN RE BELLON, *ante*, p. 809;

No. 04–10470. MORA *v.* FLORIDA, *ante*, p. 853;

No. 04–10473. WOLF ET AL. *v.* UNITED STATES, *ante*, p. 853;

No. 04–10475. CHUMPIA *v.* MICHIGAN STATE UNIVERSITY ET AL., *ante*, p. 853;

No. 04–10486. GARCIA *v.* ILLINOIS DEPARTMENT OF CHILDREN AND FAMILY SERVICES ET AL., *ante*, p. 854;

No. 04–10503. RONE *v.* BOOKER, WARDEN, *ante*, p. 855;

No. 04–10512. ANTONIO *v.* PEARSON, WARDEN, *ante*, p. 856;

No. 04–10569. BENNER *v.* COYLE, WARDEN, *ante*, p. 859;

No. 04–10580. RICHARDSON *v.* UNITED STATES, *ante*, p. 859;

No. 04–10582. REVELS *v.* WIMP ET AL., *ante*, p. 860;

No. 04–10668. TURNER *v.* HOWERTON, WARDEN, *ante*, p. 864;

No. 04–10670. IN RE VAUGHAN, *ante*, p. 809;

No. 04–10672. BATES *v.* BELL, WARDEN, *ante*, p. 865;

No. 04–10692. WHEELER *v.* FLORIDA, *ante*, p. 866;

No. 04–10696. DEUTSCH *v.* UNITED STATES, *ante*, p. 866;

No. 04–10698. IRONS *v.* UNITED STATES, *ante*, p. 866;

No. 05–81. LAFONTAINE *v.* UNITED STATES, *ante*, p. 873;

No. 05–125. ASTER *v.* ASTER, *ante*, p. 875;

No. 05–133. MCWILLIAMS *v.* AMSTAFF ET AL., *ante*, p. 875;

No. 05–303. JONES *v.* PENNSYLVANIA, *ante*, p. 939;

No. 05–5016. IN RE DENNIS, *ante*, p. 809;

No. 05–5077. MARTIN *v.* UNITED STATES, *ante*, p. 881;

No. 05–5088. YAKOVLEV *v.* GONZALES, ATTORNEY GENERAL, *ante*, p. 882;

No. 05–5111. ALCORN *v.* UNITED STATES, *ante*, p. 883;

No. 05–5144. SERRANO *v.* WASHINGTON COUNTY, OREGON, ET AL., *ante*, p. 885;

No. 05–5168. FIELDS *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, *ante*, p. 887;

No. 05–5174. MATHIS *v.* UNITED STATES, *ante*, p. 887;

No. 05–5201. GOODRICH *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 889;

No. 05–5231. JOHNSON *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 890;

No. 05–5234. NEIDIG *v.* UNITED STATES, *ante*, p. 890;

No. 05–5287. JACKSON *v.* UNITED STATES, *ante*, p. 893;

No. 05–5353. ROWE *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 897;

No. 05–5377. CARSWELL, ADMINISTRATRIX OF THE ESTATE OF CARSWELL, DECEASED *v.* BOROUGH OF HOMESTEAD, PENNSYLVANIA, ET AL., *ante*, p. 899;

No. 05–5386. FERNANDEZ-PENA *v.* UNITED STATES, *ante*, p. 900;

No. 05–5398. PACHINGER *v.* UNITED STATES, *ante*, p. 802;

No. 05–5437. RAHEMAN *v.* UNITED STATES, *ante*, p. 902;

No. 05–5483. TOTARO *v.* UNITED STATES, *ante*, p. 906;

No. 05–5499. MURRAY *v.* MANN, *ante*, p. 907;

No. 05–5548. NUNLEY *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, *ante*, p. 909;

No. 05–5550. SEARLES *v.* RELIC ET AL., *ante*, p. 910;

No. 05–5589. ROBINSON *v.* FOLINO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, *ante*, p. 941;

No. 05–5636. HARRINGTON *v.* UNITED STATES, *ante*, p. 912;

No. 05–5672. GOLDMAN *v.* FAIRBANKS CAPITAL CORP. ET AL., *ante*, p. 943;

No. 05–5673. In re Garza, *ante*, p. 810;

No. 05–5700. Birotte *v.* Gonzales, Attorney General, *ante*, p. 944;

No. 05–5719. B. L. *v.* Franklin County Children Services, *ante*, p. 945;

No. 05–5783. Abney *v.* United States, *ante*, p. 916;

No. 05–5804. Chimney *v.* United States, *ante*, p. 917;

No. 05–5888. Jiayang Hua *v.* University of Utah et al., *ante*, p. 919;

No. 05–5930. Montalvo *v.* United States, *ante*, p. 920;

No. 05–5937. Vaughan *v.* United States, *ante*, p. 921;

No. 05–5998. Counce *v.* Norwood, Warden, *ante*, p. 923;

No. 05–6158. Gilford *v.* United States, *ante*, p. 950;

No. 05–6190. In re Kornafel, *ante*, p. 959;

No. 05–6192. Zied-Campbell *v.* Pennsylvania Department of Public Welfare, *ante*, p. 965;

No. 05–6293. Tanner *v.* United States, *ante*, p. 954;

No. 05–6320. Rubio *v.* United States; Alaniz *v.* United States; De La Cruz *v.* United States; Garcia-Ramirez *v.* United States; Munoz-Tapia *v.* United States; Gonzalez *v.* United States; and Muniz-Hernandez *v.* United States, *ante*, p. 956;

No. 05–6421. Santillana *v.* United States, *ante*, p. 968; and

No. 05–6428. Elizarraraz *v.* United States, *ante*, p. 968. Petitions for rehearing denied.

No. 04–1649. Soro *v.* Citicorp, *ante*, p. 822. Petition for rehearing denied. The Chief Justice took no part in the consideration or decision of this petition.

No. 04–10249. Hardison *v.* Carey, Warden, *ante*, p. 928. Petition for rehearing denied. Justice Breyer took no part in the consideration or decision of this petition.

November 29, 2005

Miscellaneous Order

No. 05A487. Hicks *v.* Taft, Governor of Ohio, et al. Application for stay of execution of sentence of death, presented to Justice Stevens, and by him referred to the Court, denied.

DECEMBER 1, 2005

Miscellaneous Order

No. 05A467. HUMPHRIES *v.* SOUTH CAROLINA. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied.

Certiorari Denied

No. 05–7829 (05A500). BOYD *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Rockingham County, N. C. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied.

DECEMBER 5, 2005

Certiorari Granted—Vacated and Remanded

No. 05–5034. ARTEAGA-RUIS *v.* GONZALES, ATTORNEY GENERAL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of 8 U. S. C. § 1252(a)(2)(D).

Certiorari Dismissed

No. 05–6833. DI NARDO ET AL. *v.* BIELUCH, SHERIFF, PALM BEACH COUNTY, FLORIDA. Dist. Ct. App. Fla., 4th Dist. Motions of petitioners for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioners have repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioners unless the docketing fees required by Rule 38(a) are paid and the petitions are submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 908 So. 2d 1078.

Miscellaneous Orders

No. 05M31. FREDERICKSEN ET AL. *v.* CITY OF LOCKPORT, ILLINOIS, ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. 04–10724. KISSI *v.* PRAMCO II, LLC. C. A. 4th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 808] denied.

No. 05–107. DAVIS *v.* INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) ET AL. C. A. 6th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 05–431. BURKE, BANKING COMMISSIONER, CONNECTICUT DEPARTMENT OF BANKING *v.* WACHOVIA BANK, N. A., ET AL. C. A. 2d Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States. JUSTICE THOMAS took no part in the consideration or decision of this petition.

No. 05–7464. IN RE ARMSTRONG; and
No. 05–7467. IN RE OLUWA. Petitions for writs of habeas corpus denied.

No. 05–6831. IN RE JONES. Petition for writ of mandamus denied.

Certiorari Granted

No. 05–259. BURLINGTON NORTHERN & SANTA FE RAILWAY CO. *v.* WHITE. C. A. 6th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 364 F. 3d 789.

No. 05–5966. CLARK *v.* ARIZONA. Ct. App. Ariz. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted.

Certiorari Denied

No. 04–575. NIELSON, EXECUTIVE DIRECTOR, UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY, ET AL. *v.* PRIVATE FUEL STORAGE, L. L. C., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 376 F. 3d 1223.

No. 04–7915. THOMPSON *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–37. DECENA ET AL. *v.* SAN JOSE CHARTER OF THE HELLS ANGELS MOTORCYCLE CLUB ET AL.; and

No. 05–45. LINDERMAN *v.* SAN JOSE CHARTER OF THE HELLS ANGELS MOTORCYCLE CLUB ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 402 F. 3d 962.

No. 05–348. COMFORT, ON BEHALF OF HER MINOR CHILD NEUMYER, ET AL. *v.* LYNN SCHOOL COMMITTEE ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 418 F. 3d 1.

No. 05–404. ROCH ET AL. *v.* HUMANE SOCIETY OF BEDFORD COUNTY, TENNESSEE, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 68.

No. 05–406. WHEELER ET AL. *v.* BL DEVELOPMENT CORP., DBA GRAND CASINO TUNICA. C. A. 5th Cir. Certiorari denied. Reported below: 415 F. 3d 399.

No. 05–410. CITY OF KNOXVILLE, TENNESSEE *v.* ENTERTAINMENT RESOURCES, LLC, DBA FANTASY VIDEO. Sup. Ct. Tenn. Certiorari denied. Reported below: 166 S. W. 3d 650.

No. 05–413. SMITH *v.* OLSSON ET UX. Ct. App. Tex., 5th Dist. Certiorari denied. Reported below: 152 S. W. 3d 200.

No. 05–414. MOSIMANN *v.* MSAS CARGO INTERNATIONAL ET AL. Ct. App. Mich. Certiorari denied.

No. 05–419. CHAJKOWSKI *v.* BOSICK ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 132 Fed. Appx. 978.

No. 05–421. ANDREWS ET AL. *v.* PINCAY ET AL. C. A. 9th Cir. Certiorari denied.

No. 05–423. LEE *v.* STATE COMPENSATION INSURANCE FUND. Ct. App. D. C. Certiorari denied. Reported below: 876 A. 2d 641.

No. 05–426. GLASS ET AL. *v.* CAGLE'S INC. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 300.

No. 05–429. BROWN *v.* AAMES CAPITAL CORP. ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 14 App. Div. 3d 418, 789 N. Y. S. 2d 475.

No. 05–430. BUTLER *v.* CHRYSLER CORP. ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–437. BURKYBILE *v.* BOARD OF EDUCATION OF THE HASTINGS-ON-HUDSON UNION FREE SCHOOL DISTRICT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 411 F. 3d 306.

No. 05–438. BIDGOOD *v.* TOWN OF CAVENDISH, VERMONT, ET AL. Sup. Ct. Vt. Certiorari denied. Reported below: 179 Vt. 530, 878 A. 2d 290.

No. 05–442. GHOSH *v.* CITY OF BERKELEY, CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 05–452. KIRKWOOD GLASS CO., INC. *v.* MISSOURI DIRECTOR OF REVENUE. Sup. Ct. Mo. Certiorari denied. Reported below: 166 S. W. 3d 583.

No. 05–463. MURESAN *v.* TRANSWORLD SYSTEMS INC. Ct. App. Wash. Certiorari denied.

No. 05–470. SALDIVAR-GUERRERO *v.* GONZALES, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 854.

No. 05–480. REVERIA TAVERN, INC. *v.* SUMMIT COUNTY BOARD OF ELECTIONS ET AL. Ct. App. Ohio, Summit County. Certiorari denied.

No. 05–487. DE LA O ET AL. *v.* HOUSING AUTHORITY OF THE CITY OF EL PASO, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 417 F. 3d 495.

No. 05–538. HUMPHREYS *v.* OREGON STATE BAR. Sup. Ct. Ore. Certiorari denied.

No. 05–540. FOX *v.* POTTER, POSTMASTER GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 248.

No. 05–556. MASSEY *v.* STOSBERG, CHIEF BANKRUPTCY JUDGE, UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF KENTUCKY, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 719.

No. 05–559. CHAMBERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 253.

No. 05–5135. STUDER *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 2d Cir. Certiorari denied. Reported below: 114 Fed. Appx. 426.

No. 05–5339. LERMA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 128 Fed. Appx. 381.

No. 05–5622. WINTERS *v.* UNITED STATES EX REL. A+ HOMECARE, INC. C. A. 6th Cir. Certiorari denied. Reported below: 400 F. 3d 428.

No. 05–5689. KNOX *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 901 So. 2d 1257.

No. 05–5840. LUNDIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 677.

No. 05–6164. WILKINSON *v.* VERMONT. Sup. Ct. Vt. Certiorari denied. Reported below: 178 Vt. 174, 879 A. 2d 445.

No. 05–6720. TERESA T. ET AL. *v.* RAGAGLIA ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 125 Fed. Appx. 338.

No. 05–6734. BRINKLEY *v.* OHIO. Ct. App. Ohio, Lucas County. Certiorari denied.

No. 05–6735. SUAREZ *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 907 So. 2d 519.

No. 05–6741. JONES *v.* CATHEL, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–6743. THREATT *v.* TREMBLE ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–6744. MCCLOUD *v.* DEPPISCH, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 409 F. 3d 869.

No. 05–6748. ALONZO *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 05–6749. ALONZO *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 05–6750. BUTLER *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 05–6761. HAGAN *v.* PURKETT, SUPERINTENDENT, EASTERN RECEPTION, DIAGNOSTIC AND CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 05–6776. JOHNSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 903 So. 2d 888.

No. 05–6777. LOVACCO *v.* GREENE, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 05–6783. PALMER *v.* ROZUM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–6785. WASHINGTON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 907 So. 2d 512.

No. 05–6786. MOSES *v.* WALKER, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 05–6790. ASHLEY *v.* RAINS ET AL. C. A. 7th Cir. Certiorari denied.

No. 05–6795. MILLER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 05–6796. CRISP *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 05–6798. ESTRADA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 05–6800. NIEVES DIAZ *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 402 F. 3d 1136.

No. 05–6801. RAWLES *v.* TEXAS. Ct. App. Tex., 6th Dist. Certiorari denied.

No. 05–6806. VARGAS *v.* HICKMAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 556.

No. 05–6822. ANDRYSZAK *v.* PAC FEDERAL CREDIT UNION. C. A. 6th Cir. Certiorari denied.

No. 05–6823. CONNER *v.* ILLINOIS DEPARTMENT OF NATURAL RESOURCES. C. A. 7th Cir. Certiorari denied. Reported below: 413 F. 3d 675.

No. 05–6825. SAWYER *v.* DAVIS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 05–6829. MOORE *v.* GRAY. C. A. 4th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 913.

No. 05–6847. FOX *v.* STOVALL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–6851. HOLLINGSWORTH *v.* NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 195.

No. 05–6854. MURDOCK *v.* AMERICAN AXLE & MANUFACTURING, INC. C. A. 6th Cir. Certiorari denied.

No. 05–6859. SMITH *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 674.

No. 05–6860. RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 734.

No. 05–6861. CANTLOW *v.* SHERRY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–6863. DANIEL *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–6866. HARDY *v.* RAMSEY COUNTY SHERIFF. Ct. App. Minn. Certiorari denied.

No. 05–6867. FAULKS *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 05–6871. FREDERICK *v.* FRANK, SECRETARY, WISCONSIN DEPARTMENT OF CORRECTIONS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 933.

No. 05–6872. FONTANES *v.* TRUE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 41.

No. 05–6873. COVINGTON *v.* WOODS, WARDEN. C. A. 2d Cir. Certiorari denied.

No. 05–6875. CHAMBERS *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 417 F. 3d 1218.

No. 05–6877. MENDEZ-NEGRON *v.* R & G MORTGAGE CORP. ET AL. C. A. 1st Cir. Certiorari denied.

No. 05–6879. DORCH *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 903 So. 2d 936.

No. 05–6886. HOTCHKISS *v.* HOTCHKISS ET AL. Ct. App. Wis. Certiorari denied.

No. 05–6908. SHANKLIN *v.* PATTONVILLE R–111 SCHOOL DISTRICT BOARD OF EDUCATION. C. A. 8th Cir. Certiorari denied. Reported below: 397 F. 3d 596.

No. 05–6915. ABODE *v.* GONZALES, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 567.

No. 05–6950. MCDADE *v.* EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS ET AL. C. A. D. C. Cir. Certiorari denied.

No. 05–6951. O'CONNOR *v.* CITY OF CLEVELAND, OHIO, ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–6975. MOHAMED *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 895 So. 2d 1070.

No. 05–6999. GREEN *v.* TRUE, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 05–7017. SIMS *v.* HICKMAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 414 F. 3d 1148.

No. 05–7119. BLOOM *v.* MCKUNE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 229.

No. 05–7158. LYONS *v.* RED ROOF INNS, INC. C. A. 10th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 957.

No. 05–7193. YONG WANG *v.* SETON HALL UNIVERSITY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 05–7211. FULLER *v.* CENSUS BUREAU ET AL. C. A. 8th Cir. Certiorari denied.

No. 05–7225. SALDANA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 427 F. 3d 298.

No. 05–7340. WRIGHT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 753.

No. 05–7355. HUNYADY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 409 F. 3d 297.

No. 05–7360. MILLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 161.

No. 05–7363. CLARK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 409 F. 3d 1039.

No. 05–7365. RUBIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 29.

No. 05–7366. RIZVI *v.* JETER, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 05–7367. CAPELLAN-FIGUEREO *v.* UNITED STATES; VENEGAS-QUEZADA *v.* UNITED STATES; and VIZCAINO-AMARO, AKA VIZCAINO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–7371. PALACIOS-PINERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 663.

No. 05–7372. MACIAS-ORTIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–7375. WATSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 881 A. 2d 1129.

No. 05–7377. RAMIREZ-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 365.

No. 05–7378. VMON, AKA SLACK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 922.

No. 05–7380. JORDI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 418 F. 3d 1212.

No. 05–7383. BEASLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 822.

No. 05–7384. ATIYEH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 402 F. 3d 354.

No. 05–7385. BECKMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 676.

No. 05–7386. ADAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 593.

No. 05–7390. HENSLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–7391. HOOD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 94.

No. 05–7392. GONZALEZ-CALDERON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–7393. GONZALEZ-BARRAZA *v.* UNITED STATES; GRANADOS-VASQUEZ *v.* UNITED STATES; and DEL RIO, AKA DEL RIO-DE MENDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 73 (third judgment).

No. 05–7394. GARCIA-CHAPA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 646.

No. 05–7395. HOOF *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–7396. GALAVIZ-LUNA, AKA SALINAS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 416 F. 3d 796.

No. 05–7397. HERNANDEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 309.

No. 05–7398. FERNANDEZ-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 148 Fed. Appx. 203.

No. 05–7399. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–7400. GAONA-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 405.

No. 05–7401. FLORES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–7402. FLINT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 435.

No. 05–7403. HASLIP *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 416 F. 3d 733.

No. 05–7404. HILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–7405. HEWITT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 876.

No. 05–7407. GRAVES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 118 Fed. Appx. 772.

No. 05–7409. WASHINGTON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 868 A. 2d 885.

No. 05–7411. PEREZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–7412. PETROFF *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 723.

No. 05–7415. THURMON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 413 F. 3d 752.

No. 05–7416. WALLACE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 408 F. 3d 1046.

No. 05–7419. DOWD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 417 F. 3d 1080.

No. 05–7420. COLEMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 859.

No. 05–7424. JONES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 418 F. 3d 726.

No. 05–7427. PERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–7428. OVIEDO-SANCHEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–7430. MENDEZ CHAVEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–7438. RODRIGUEZ-ZAMOT *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 419 F. 3d 61.

No. 05–7439. RAYMER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 148 Fed. Appx. 555.

No. 05–7440. QUIRION *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–7441. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 110.

No. 05–7442. WATKINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7443. BROOKS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 417 F. 3d 982.

No. 05–7444. AVILA-CHAVEZ *v.* UNITED STATES; and GUERRERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 564 (second judgment); 142 Fed. Appx. 817 (first judgment).

No. 05–7447. BEQUETTE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–7448. ADESINA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 05–7451. CISNEROS-PULIDO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–7452. COOK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–7457. MAGALLON-MOLINA *v.* UNITED STATES; NAVAREZ *v.* UNITED STATES; MORENO-MORENO *v.* UNITED STATES; BONILLA-MUNGIA *v.* UNITED STATES; DE LA ROSA-MASCORRO *v.* UNITED STATES; and URQUILLA-AVALOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 422 F. 3d 316 (fourth judgment); 140 Fed. Appx. 583 (first judgment); 141 Fed. Appx. 329 (second judgment); 143 Fed. Appx. 621 (fifth judgment); 144 Fed. Appx. 447 (sixth judgment); 145 Fed. Appx. 70 (third judgment).

No. 05–7460. KANATZAR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 760.

No. 05–7462. SMITH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 127 Fed. Appx. 608.

No. 05–7778 (05A490). BAKER *v.* MARYLAND. Cir. Ct. Harford County, Md. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied.

No. 05–7779 (05A491). BAKER *v.* MARYLAND. Ct. App. Md. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied.

No. 05–7926 (05A511). BAKER *v.* MARYLAND. Cir. Ct. Harford County, Md. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied.

Rehearing Denied

No. 04–9900. PENIGAR *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante,* p. 830;

No. 04–9973. BARBER *v.* PERDUE, GOVERNOR OF GEORGIA, *ante,* p. 832;

No. 04–10154. HUDSON *v.* KAPTURE, WARDEN, *ante,* p. 839;

No. 04–10170. LAMKIN *v.* TEXAS, *ante,* p. 840;

No. 04–10177. MORROW *v.* AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, *ante,* p. 840;

No. 04–10291. MOATS *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA; MOATS *v.* WHETSTONE ET AL.; MOATS *v.* WHETSTONE ET AL.; and MOATS *v.* WHETSTONE ET AL., *ante,* p. 844;

No. 04–10339. DAIBO *v.* UNITED STATES, *ante,* p. 934;

No. 04–10351. SPIELVOGEL *v.* UNITED STATES, *ante,* p. 934;

No. 04–10468. RONQUILLO PALMA *v.* UNITED STATES, *ante,* p. 853;

No. 04–10499. SCHULER *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY, *ante,* p. 855;

No. 04–10526. BARLEY *v.* COOK, *ante,* p. 856;

No. 04–10597. ROMER ET AL. *v.* SCHWARZENEGGER, GOVERNOR OF CALIFORNIA, ET AL., *ante,* p. 860;

No. 04–10704. FIORANI *v.* UNITED STATES, *ante,* p. 866;

No. 05–233. CAMPBELL *v.* REGENTS OF THE UNIVERSITY OF CALIFORNIA, *ante*, p. 938;

No. 05–5008. HENRY *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, *ante*, p. 877;

No. 05–5125. DOBBS *v.* MISSISSIPPI ET AL., *ante*, p. 884;

No. 05–5268. GRIFFIN *v.* UNITED STATES, *ante*, p. 892;

No. 05–5480. HUGHES *v.* MARSHALL, WARDEN, *ante*, p. 906;

No. 05–5489. COE *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 906;

No. 05–5613. MELENDEZ *v.* MCGRATH, WARDEN, *ante*, p. 942;

No. 05–5649. DAUGHERTY *v.* MISSOURI, *ante*, p. 943;

No. 05–5896. WINESTOCK *v.* UNITED STATES, *ante*, p. 919;

No. 05–6203. SCHAFFNER *v.* LEBLANC, WARDEN, *ante*, p. 951;

No. 05–6334. MITCHELL *v.* UNITED STATES, *ante*, p. 958;

No. 05–6370. IN RE MOORE, *ante*, p. 932; and

No. 05–6407. GONZALEZ-HUERTA, AKA COVARRUBLIAS, AKA GONZALEZ-COVARRUBLIAS *v.* UNITED STATES, *ante*, p. 967. Petitions for rehearing denied.

No. 05–284. SMALL *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL., *ante*, p. 972; and

No. 05–5606. BARBER *v.* GONZALES, ATTORNEY GENERAL, *ante*, p. 911. Petitions for rehearing denied. THE CHIEF JUSTICE took no part in the consideration or decision of these petitions.

No. 04–8955. REDDEN *v.* RAFFERTY, WARDEN, ET AL., 544 U. S. 1022. Motion for leave to file petition for rehearing denied.

DECEMBER 12, 2005

Certiorari Granted—Vacated and Remanded

No. 04–1139. SPELLINGS, SECRETARY OF EDUCATION *v.* LEE. C. A. 8th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Lockhart* v. *United States*, *ante*, p. 142. Reported below: 376 F. 3d 1179.

No. 04–1740. WAGNON, SECRETARY, KANSAS DEPARTMENT OF REVENUE, ET AL. *v.* PRAIRIE BAND POTAWATOMI NATION. C. A. 10th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Wagnon* v. *Prairie*

Band Potawatomi Nation, ante, p. 95. Reported below: 402 F. 3d 1015.

No. 05–59. UNITED STATES *v.* MATTHEWS. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Gonzales* v. *Raich,* 545 U. S. 1 (2005). Reported below: 143 Fed. Appx. 298.

Certiorari Dismissed

No. 05–6899. STRABLE *v.* SOUTH CAROLINA. Sup. Ct. S. C. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals,* 506 U. S. 1 (1992) *(per curiam).* JUSTICE STEVENS dissents. See *id.,* at 4, and cases cited therein.

Miscellaneous Orders

No. 05A439. LEPRICH *v.* WRONA. Application for bail, addressed to JUSTICE SOUTER and referred to the Court, denied.

No. 05M32. THOMAS *v.* CHANDLER, WARDEN; and

No. 05M35. FINK *v.* MEIER. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 05M33. REDDY *v.* STOTLER, JUDGE, UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. 05M34. UNDER SEAL *v.* UNITED STATES. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 04–805. TEXACO INC. *v.* DAGHER ET AL.; and

No. 04–814. SHELL OIL CO. *v.* DAGHER ET AL. C. A. 9th Cir. [Certiorari granted, 545 U. S. 1138.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae*

and for divided argument granted. Motion of respondents for divided argument denied.

No. 04–1371. MERRILL LYNCH, PIERCE, FENNER & SMITH INC. *v.* DABIT. C. A. 2d Cir. [Certiorari granted, 545 U. S. 1164.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 04–1376. FERNANDEZ-VARGAS *v.* GONZALES, ATTORNEY GENERAL. C. A. 10th Cir. [Certiorari granted, *ante,* p. 975.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 04–10566. SANCHEZ-LLAMAS *v.* OREGON. Sup. Ct. Ore.; and

No. 05–51. BUSTILLO *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. [Certiorari granted, *ante,* p. 1001.] Motion of the Solicitor General for enlargement of time for oral argument, for divided argument, and for leave to participate in oral argument as *amicus curiae* granted. Time is to be divided as follows: 45 minutes for petitioners, 15 minutes for respondent in No. 04–10566, 15 minutes for respondent in No. 05–51, and 15 minutes for the Solicitor General as *amicus curiae* in support of respondents.

No. 05–5224. DAVIS *v.* WASHINGTON. Sup. Ct. Wash. [Certiorari granted, *ante,* p. 975.] Motion of petitioner for appointment of counsel granted. Jeffrey L. Fisher, Esq., of Seattle, Wash., is appointed to serve as counsel for petitioner in this case.

No. 05–8034 (05A536). IN RE WILLIAMS. Application for stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. Petition for writ of habeas corpus denied.

Probable Jurisdiction Noted

No. 05–204. LEAGUE OF UNITED LATIN AMERICAN CITIZENS ET AL. *v.* PERRY, GOVERNOR OF TEXAS, ET AL.;

No. 05–254. TRAVIS COUNTY, TEXAS, ET AL. *v.* PERRY, GOVERNOR OF TEXAS, ET AL.;

No. 05–276. JACKSON ET AL. *v.* PERRY, GOVERNOR OF TEXAS, ET AL.; and

No. 05–439. GI FORUM OF TEXAS ET AL. *v.* PERRY, GOVERNOR OF TEXAS, ET AL. Appeals from D. C. E. D. Tex. Probable jurisdiction noted, cases consolidated, and a total of two hours allotted for oral argument. Reported below: 399 F. Supp. 2d 756.

Certiorari Granted

No. 05–465. MOHAWK INDUSTRIES, INC. *v.* WILLIAMS ET AL. C. A. 11th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 411 F. 3d 1252.

Certiorari Denied

No. 05–41. PASEK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 699.

No. 05–310. DECORATIONS FOR GENERATIONS, INC. *v.* HOME DEPOT U. S. A., INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 128 Fed. Appx. 133.

No. 05–312. TEDDER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 403 F. 3d 836.

No. 05–314. MUNARI *v.* CITY OF EL PASO DE ROBLES, CALIFORNIA, ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–315. DEEP SEA FISHERIES, INC., ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 410 F. 3d 1131.

No. 05–325. HARDEN, SHERIFF, MORROW COUNTY, OHIO, ET AL. *v.* FISHER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 398 F. 3d 837.

No. 05–433. DREAMSCAPE DESIGN, INC. *v.* AFFINITY NETWORK, INC. C. A. 7th Cir. Certiorari denied. Reported below: 414 F. 3d 665.

No. 05–444. WITMAN *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 872 A. 2d 1277.

No. 05–453. NORTHLAKE CHRISTIAN SCHOOL *v.* PRESCOTT. C. A. 5th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 263.

No. 05–455. SFW ARECIBO, LTD., ET AL. *v.* RODRIGUEZ ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 415 F. 3d 135.

No. 05–456. MEMOREX PRODUCTS, INC., ET AL. *v.* SANDISK CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 415 F. 3d 1278.

No. 05–462. HUERTAS *v.* CITY OF PHILADELPHIA, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 139 Fed. Appx. 444.

No. 05–476. KORN *v.* SOUTHFIELD CITY CLERK. Ct. App. Mich. Certiorari denied.

No. 05–485. YEAGER *v.* GENERAL MOTORS CORP. C. A. 6th Cir. Certiorari denied.

No. 05–490. PSIHOYOS ET AL. *v.* NATIONAL GEOGRAPHIC ENTERPRISES, INC., ET AL.;

No. 05–504. WARD *v.* NATIONAL GEOGRAPHIC ENTERPRISES, INC., ET AL.; and

No. 05–506. FAULKNER ET AL. *v.* NATIONAL GEOGRAPHIC SOCIETY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 409 F. 3d 26.

No. 05–499. JMYK, P. C., ET AL. *v.* WASHINGTON STATE BAR ASSN. C. A. 9th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 410.

No. 05–503. SYLVER *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 9th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 701.

No. 05–537. FROTHINGHAM *v.* RUMSFELD, SECRETARY OF DEFENSE. C. A. 4th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 935.

No. 05–564. SHANNON *v.* ARIZONA DEPARTMENT OF ECONOMIC SECURITY VOCATIONAL REHABILITATION SERVICES ADMINISTRATION. C. A. 9th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 23.

No. 05–599. BRAUN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 411 F. 3d 377 and 137 Fed. Appx. 390.

No. 05–5027. MCDONALD *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 353 Ill. App. 3d 1093, 881 N. E. 2d 974.

No. 05–6119. MARCH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–6184. BERKLEY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 05–6291. VALLIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–6892. WILLIAMS *v.* HARRISON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–6893. WASHINGTON *v.* CHRONES, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 05–6897. THOMPSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 902 So. 2d 793.

No. 05–6900. SHERRATT *v.* FRIEL, WARDEN, ET AL. Ct. App. Utah. Certiorari denied.

No. 05–6902. SANDERS *v.* CATHEL, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–6905. COHEN *v.* SYME ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 120 Fed. Appx. 746.

No. 05–6911. HAINES *v.* RISLEY ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 412 F. 3d 285.

No. 05–6916. BLACKMAN *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 05–6917. BARRON *v.* UNIVERSITY OF TENNESSEE. C. A. 6th Cir. Certiorari denied.

No. 05–6965. WOODWARD *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 902 So. 2d 799.

No. 05–6966. THOMAS *v.* DWYER, SUPERINTENDENT, SOUTHEAST CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 05–6987. SIRECI *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 908 So. 2d 321.

No. 05–6998. MENDEZ *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 05–7002. GREEN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 907 So. 2d 489.

No. 05–7059. JOHNSTON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–7066. BUSH *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 05–7076. GIBSON *v.* GIBSON. Sup. Ct. N. H. Certiorari denied.

No. 05–7091. TALOUZI *v.* LAPPIN, DIRECTOR, FEDERAL BUREAU OF PRISONS, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 05–7092. WILLIAMS *v.* MISSOURI. Ct. App. Mo., Southern Dist. Certiorari denied. Reported below: 159 S. W. 3d 480.

No. 05–7115. LAKE *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 300.

No. 05–7126. QUINTERO *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–7153. STEVENSON *v.* SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 506.

No. 05–7172. BOGLE *v.* BELLEQUE, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 549.

No. 05–7173. BARTLEY *v.* SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 144 Fed. Appx. 151.

No. 05–7178. JONES *v.* SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 161.

No. 05–7189. ANDERSON *v.* SOLOMON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 244.

No. 05–7210. MCCORD *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 578.

No. 05–7219. McCULLOUGH *v.* WEST, SUPERINTENDENT, ELMIRA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 143 Fed. Appx. 379.

No. 05–7228. LAURO *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 63 Mass. App. 1112, 825 N. E. 2d 1080.

No. 05–7286. McDANIEL *v.* WATKINS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 18.

No. 05–7303. PINK *v.* McKUNE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 264.

No. 05–7327. BRADFORD *v.* MAXWELL TREE EXPERT CO., INC. C. A. 7th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 314.

No. 05–7351. TAUS *v.* ARTUS, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 134 Fed. Appx. 468.

No. 05–7454. OGLE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 415 F. 3d 382.

No. 05–7465. McCANN, AKA COMBS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–7472. ROBERTS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–7475. KRANGLE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 142 Fed. Appx. 504.

No. 05–7476. LANCASTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 316.

No. 05–7478. BLACKWELL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 416 F. 3d 631.

No. 05–7480. MOORE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 655.

No. 05–7482. THURMAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–7485. HERRERA-TORRES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 909.

No. 05–7486. HALL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 419 F. 3d 980.

No. 05–7487. GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 400 F. 3d 816.

No. 05–7490. GANN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 826.

No. 05–7497. MEDINA-TENIENTE *v.* UNITED STATES (Reported below: 150 Fed. Appx. 345); VACA-HERNANDEZ *v.* UNITED STATES (144 Fed. Appx. 438); TORRES-AVILA *v.* UNITED STATES (145 Fed. Appx. 480); LOPEZ-CRUZ *v.* UNITED STATES (143 Fed. Appx. 632); HERNANDEZ-GONZALEZ, AKA INFANTE *v.* UNITED STATES; CASTILLO-BUSTAMANTE, AKA GARCIA *v.* UNITED STATES (144 Fed. Appx. 421); GUTIERREZ-SUAREZ *v.* UNITED STATES (144 Fed. Appx. 442); GARCIA *v.* UNITED STATES (157 Fed. Appx. 685); GONZALEZ-MATA, AKA GONZALEZ *v.* UNITED STATES (144 Fed. Appx. 439); ESPINOZA-CORTEZ *v.* UNITED STATES (150 Fed. Appx. 320); GONZALEZ-LOPEZ *v.* UNITED STATES (140 Fed. Appx. 578); ENRIQUEZ-CASTILLO *v.* UNITED STATES (141 Fed. Appx. 350); GAMES-FORBES, AKA JAMES-FORBS *v.* UNITED STATES (145 Fed. Appx. 901); MEDINA-RODRIGUEZ *v.* UNITED STATES (145 Fed. Appx. 907); CASTRO-SANTOYO *v.* UNITED STATES (145 Fed. Appx. 63); HERNANDEZ-CARTAGENA *v.* UNITED STATES (145 Fed. Appx. 899); CAVAZOS-MEDRANO, AKA RODRIGUEZ-SANCHEZ *v.* UNITED STATES (141 Fed. Appx. 335); HERNANDEZ-HERNANDEZ *v.* UNITED STATES; ESQUIVEL-JUAREZ *v.* UNITED STATES (145 Fed. Appx. 463); BERNAL-FLORES, AKA GUTIERREZ PENALOSA *v.* UNITED STATES (141 Fed. Appx. 386); MESA-FRANCO *v.* UNITED STATES (141 Fed. Appx. 385); RODRIGUEZ-CASTILLO *v.* UNITED STATES (147 Fed. Appx. 406); GAMBOA-FIERRO *v.* UNITED STATES (141 Fed. Appx. 343); MARQUEZ-FLORES *v.* UNITED STATES (145 Fed. Appx. 942); GONZALEZ-ACOSTA *v.* UNITED STATES (145 Fed. Appx. 495); MENDEZ, AKA ROSALES JIMINEZ *v.* UNITED STATES (153 Fed. Appx. 917); and RIOS-DOMINGUEZ *v.* UNITED STATES (149 Fed. Appx. 271). C. A. 5th Cir. Certiorari denied.

No. 05–7504. CRAWFORD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–7505. WILLIAMS, AKA ABDULLAH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 419 F. 3d 1029.

No. 05–7506. LINCOLN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 413 F. 3d 716.

No. 05–7507. MASCAK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 72.

No. 05–7509. MATHIEU *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7514. RICKETTS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 93.

No. 05–7517. MIER-BLANCO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 461.

No. 05–7518. MCCROREY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 140 Fed. Appx. 325.

No. 05–7520. JACKSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 419 F. 3d 839.

No. 05–7524. MARTINEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 418 F. 3d 1130.

No. 05–7527. COCKERHAM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 321.

No. 05–7528. CRAWFORD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–7529. COTEAT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 177.

No. 05–7530. CASTILLO-VILLA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 05–7534. BUSTAMANTE-ROCHA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 570.

No. 05–7535. ARAUJO-CANTU *v.* UNITED STATES; ROCHA-GARCIA *v.* UNITED STATES; RUIZ-MONTOYA *v.* UNITED STATES; TINAJERO-RIVERA *v.* UNITED STATES; and PEREZ-LIZARDI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported

below: 141 Fed. Appx. 350 (third judgment), 371 (second judgment), 375 (fifth judgment), 382 (first judgment), and 388 (fourth judgment).

No. 05–7536. AGUILAR-CORTEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 596.

No. 05–7537. ALBARENGA-VILLALOBO *v.* UNITED STATES; and ALANIS-GONZALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 39 (second judgment); 149 Fed. Appx. 305 (first judgment).

No. 05–7540. PLAISIR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 405.

No. 05–7554. LOZANO *v.* FRANK, SECRETARY, WISCONSIN DEPARTMENT OF CORRECTIONS. C. A. 7th Cir. Certiorari denied. Reported below: 424 F. 3d 554.

No. 05–7570. ROMERO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–7571. SOSEBEE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 419 F. 3d 451.

Rehearing Denied

No. 04–1519. JONES *v.* FULTON COUNTY, GEORGIA, *ante*, p. 816;

No. 04–9972. ALLEN *v.* UTAH, *ante*, p. 832;

No. 04–10207. PARTIN *v.* ARKANSAS, *ante*, p. 841;

No. 04–10224. JACKSON *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, *ante*, p. 841;

No. 04–10265. CRAWFORD *v.* IOWA, *ante*, p. 843;

No. 04–10269. TURCUS *v.* OAKLAND COUNTY SHERIFF'S DEPARTMENT ET AL., *ante*, p. 843;

No. 04–10531. AVERY *v.* REED, SUPERINTENDENT, MANNING CORRECTIONAL INSTITUTION, *ante*, p. 857;

No. 04–10537. ELIAS *v.* UNITED STATES, *ante*, p. 857;

No. 04–10632. HOGROBROOKS *v.* SUPREME COURT OF ARKANSAS' COMMITTEE ON PROFESSIONAL CONDUCT ET AL.; and HOGROBROOKS *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS, *ante*, p. 862;

No. 05–5511. FRYER *v.* EVERSTINE, *ante*, p. 907;

No. 05–5627. TAYLOR *v.* CARROLL, WARDEN, ET AL., *ante*, p. 912;

No. 05–5901. RICCARDI *v.* UNITED STATES, *ante*, p. 919;

No. 05–5931. MARTIN *v.* VIRGINIA, *ante*, p. 948;

No. 05–5991. TURCUS *v.* AUTO CLUB GROUP INSURANCE CO. ET AL., *ante*, p. 982; and

No. 05–6028. MARTIN *v.* MACFARLAND, ADMINISTRATOR, SOUTH WOODS STATE PRISON, ET AL., *ante*, p. 948. Petitions for rehearing denied.

No. 05–5591. MURRAY *v.* FLEET MORTGAGE GROUP ET AL., *ante*, p. 958. Petition for rehearing denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 05–5337. PERKINSON *v.* GEORGIA, *ante*, p. 896. Motion for leave to file petition for rehearing denied.

DECEMBER 14, 2005

Certiorari Denied

No. 05–7952 (05A516). NIXON *v.* MISSISSIPPI. Sup. Ct. Miss. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied.

Rehearing Denied

No. 05–5681 (05A498). NIXON *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, *ante*, p. 1016. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Petition for rehearing denied.

DECEMBER 15, 2005

Miscellaneous Order

No. 05–204. LEAGUE OF UNITED LATIN AMERICAN CITIZENS ET AL. *v.* PERRY, GOVERNOR OF TEXAS, ET AL.;

No. 05–254. TRAVIS COUNTY, TEXAS, ET AL. *v.* PERRY, GOVERNOR OF TEXAS, ET AL.;

No. 05–276. JACKSON ET AL. *v.* PERRY, GOVERNOR OF TEXAS, ET AL.; and

No. 05–439. GI FORUM OF TEXAS ET AL. *v.* PERRY, GOVERNOR OF TEXAS, ET AL. Appeals from D. C. E. D. Tex. [Probable

jurisdiction noted, *ante*, p. 1074.] Appellants' opening briefs to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, January 10, 2006. Appellees' brief to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, February 1, 2006. Reply briefs, if any, to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, February 22, 2006. Cases are set for oral argument at 1 p.m., Wednesday, March 1, 2006.

JANUARY 4, 2006

Miscellaneous Order

No. 05A578. HANFT, UNITED STATES NAVY COMMANDER, CONSOLIDATED NAVAL BRIG *v.* PADILLA. Jose Padilla has filed a petition for writ of certiorari, seeking review of the Fourth Circuit's judgment upholding his detention by military authorities. See *Padilla* v. *Hanft, United States Navy Commander, Consolidated Naval Brig*, No. 05–533, now pending before the Court (filed Oct. 25, 2005). On November 22, 2005, the Government filed a motion before the Fourth Circuit, seeking approval to transfer Padilla from military custody to the custody of the warden of a federal detention center in Florida, to face criminal charges contained in an indictment filed November 17, 2005. See this Court's Rule 36.1 ("Pending review in this Court of a decision in a habeas corpus proceeding . . . the person having custody of the prisoner may not transfer custody to another person unless the transfer is authorized under this Rule"). Padilla agreed that the transfer should be approved. The Fourth Circuit denied the request, citing concern that transfer might affect this Court's consideration of the pending petition for writ of certiorari and concluding that the "decision should be made not by this court but, rather, by the Supreme Court of the United States." No. 05–6396 (CA4, Dec. 21, 2005), p. 3.

The Solicitor General has now filed with this Court an Application Respecting the Custody and Transfer of Jose Padilla, seeking the same authorization previously sought from the Court of Appeals for the Fourth Circuit. Padilla has filed a response, arguing instead that the Court should delay his release from military custody and consider his release along with his petition for writ of certiorari. The Government's application, presented to THE

CHIEF JUSTICE, and by him referred to the Court, granted. The Court will consider the pending petition for writ of certiorari in due course.

JANUARY 6, 2006

Miscellaneous Order

No. 04–1477. JONES *v.* FLOWERS ET AL. Sup. Ct. Ark. [Certiorari granted, 545 U. S. 1165.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

Certiorari Granted

No. 05–200. EMPIRE HEALTHCHOICE ASSURANCE, INC., DBA EMPIRE BLUE CROSS BLUE SHIELD *v.* MCVEIGH, AS ADMINSTRATRIX OF THE ESTATE OF MCVEIGH. C. A. 2d Cir. Certiorari granted. Reported below: 396 F. 3d 136.

No. 05–352. UNITED STATES *v.* GONZALEZ-LOPEZ. C. A. 8th Cir. Certiorari granted. Reported below: 399 F. 3d 924.

No. 05–502. BRIGHAM CITY, UTAH *v.* STUART ET AL. Sup. Ct. Utah. Certiorari granted. Reported below: 122 P. 3d 506.

No. 05–18. ARLINGTON CENTRAL SCHOOL DISTRICT BOARD OF EDUCATION *v.* MURPHY ET VIR. C. A. 2d Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 402 F. 3d 332.

No. 05–409. KIRCHER ET AL. *v.* PUTNAM FUNDS TRUST ET AL. C. A. 7th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 403 F. 3d 478.

No. 05–5992. ZEDNER *v.* UNITED STATES. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 401 F. 3d 36.

JANUARY 9, 2006

Appeal Dismissed

No. 05–464. NELSON, SECRETARY OF STATE OF SOUTH DAKOTA *v.* QUICK BEAR QUIVER ET AL. Appeal from D. C. S. D. dismissed as moot. Reported below: 387 F. Supp. 2d 1027.

Certiorari Granted—Vacated and Remanded

No. 05–5352. DIAWARA *v.* GONZALES, ATTORNEY GENERAL, ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of 8 U. S. C. § 1252(a)(2)(D). Reported below: 126 Fed. Appx. 132.

No. 05–6942. WALKER *v.* TRUE, WARDEN. C. A. 4th Cir. Motion of Virginia Association of Criminal Defense Lawyers for leave to file a brief as *amicus curiae* granted. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Banks* v. *Dretke*, 540 U. S. 668 (2004). Reported below: 401 F. 3d 574.

No. 05–7628. TRALA *v.* UNITED STATES. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States* v. *Booker*, 543 U. S. 220 (2005). Reported below: 386 F. 3d 536.

Certiorari Dismissed

No. 05–7032. ROLLER *v.* WILLIAMS, WARDEN. Super. Ct. Baldwin County, Ga. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 05–7069. CURIALE *v.* SUITTER, AXLAND & HANSON ET AL. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 142 Fed. Appx. 352.

No. 05–7146. VORA *v.* PENNSYLVANIA. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 130 Fed. Appx. 626.

No. 05–7330. CURIALE *v.* PETERSON ET AL. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 147 Fed. Appx. 30.

No. 05–7433. NIMMONS *v.* STAFFORD, SENIOR JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA, ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 05A223. MINIX *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. Application for certificate of appealability, addressed to JUSTICE SOUTER and referred to the Court, denied.

No. 05A458. GRAVES *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL. C. A. 9th Cir. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. 05M36. NELSON *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, ET AL.;

No. 05M37. ABBEY *v.* MERCEDES BENZ OF NORTH AMERICA, INC., ET AL.;

No. 05M38. SALAZAR *v.* YATES, WARDEN;

No. 05M39. WALLER *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS;

No. 05M41. CHERRY *v.* RUMBAUGH;

No. 05M42. IN SOO KIM *v.* GONZALES, ATTORNEY GENERAL; and

No. 05M43. KRAMER *v.* UNITED STATES. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 05M40. PEDEN *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. 05–83. WASHINGTON *v.* RECUENCO. Sup. Ct. Wash. [Certiorari granted, *ante*, p. 960.] Motion of respondent for appointment of counsel granted. Gregory C. Link, Esq., of Seattle, Wash., is appointed to serve as counsel for respondent in this case.

No. 05–417. EMPRESA CUBANO DEL TABACO, AKA CUBATABACO *v.* GENERAL CIGAR CO., INC., ET AL. C. A. 2d Cir.; and

No. 05–489. SMITHKLINE BEECHAM CORP. ET AL. *v.* APOTEX CORP. ET AL. C. A. Fed. Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 05–5705. HAMMON *v.* INDIANA. Sup. Ct. Ind. [Certiorari granted, *ante,* p. 976.] Motion of petitioner for appointment of counsel granted. Richard D. Friedman, Esq., of Ann Arbor, Mich., is appointed to serve as counsel for petitioner in this case.

No. 05–415. IN RE GRAND JURY PROCEEDINGS. C. A. 1st Cir. Motion of the Solicitor General for leave to file a brief in opposition under seal with redacted copies for the public record granted. Petition for writ of common-law certiorari denied. Reported below: 417 F. 3d 18.

No. 05–716. IN RE FUSELIER;
No. 05–7731. IN RE WILHOIT;
No. 05–7825. IN RE JOOS;
No. 05–7911. IN RE BRAVO;
No. 05–7976. IN RE WEBBER;
No. 05–8067. IN RE WILLIAMS; and
No. 05–8132. IN RE FAUST. Petitions for writs of habeas corpus denied.

No. 05–6983. IN RE CLARK;
No. 05–7164. IN RE OLDHAM;
No. 05–7459. IN RE THIBEAUX;
No. 05–7466. IN RE PERRY; and
No. 05–8069. IN RE TAYLOR. Petitions for writs of mandamus denied.

No. 05–509. IN RE JOHNSON;
No. 05–7429. IN RE EVANS; and
No. 05–7553. IN RE ARMSTRONG. Petitions for writs of mandamus and/or prohibition denied.

No. 05–545. IN RE RODRIGUEZ. Petition for writ of mandamus denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

Certiorari Denied. (See also No. 05–415, *supra.*)

No. 04–1615. VINES ET AL. *v.* UNIVERSITY OF LOUISIANA AT MONROE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 398 F. 3d 700.

No. 04–10612. TOMLIN *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 909 So. 2d 290.

No. 05–263. TELECARE CORP. *v.* LEAVITT, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 409 F. 3d 1345.

No. 05–295. METROMEDIA ENERGY, INC. *v.* ENSERCH ENERGY SERVICES, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 409 F. 3d 574.

No. 05–321. HICKS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 389 F. 3d 514.

No. 05–336. TURCOTTE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 405 F. 3d 515.

No. 05–337. DENTSPLY INTERNATIONAL, INC. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 399 F. 3d 181.

No. 05–356. SCOTT, PERSONAL REPRESENTATIVE OF THE ESTATE OF CONNOR *v.* JOHANNS, SECRETARY OF AGRICULTURE. C. A. D. C. Cir. Certiorari denied. Reported below: 409 F. 3d 466.

No. 05–359. SMITH, DBA EXPRESS BONDS INC., ET AL. *v.* CITY OF HAMMOND, INDIANA, ET AL. C. A. 7th Cir. Certiorari denied.

No. 05–364. CORUS STAAL BV ET AL. *v.* DEPARTMENT OF COMMERCE ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 395 F. 3d 1343.

No. 05–372. KETZNER *v.* JOHN HANCOCK MUTUAL LIFE INSURANCE CO. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 118 Fed. Appx. 594.

No. 05–374. DEJA VU OF CINCINNATI, LLC *v.* UNION TOWNSHIP BOARD OF TRUSTEES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 411 F. 3d 777.

No. 05–376. INVENTION SUBMISSION CORP. *v.* DUDAS, UNDERSECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND AS DIRECTOR, PATENT AND TRADEMARK OFFICE. C. A. 4th Cir. Certiorari denied. Reported below: 413 F. 3d 411.

No. 05–378. HARRIS ET AL. *v.* DUDAS, DIRECTOR, PATENT AND TRADEMARK OFFICE. C. A. Fed. Cir. Certiorari denied. Reported below: 409 F. 3d 1339.

No. 05–395. CROPLIFE AMERICA ET AL. *v.* WASHINGTON TOXICS COALITION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 413 F. 3d 1024.

No. 05–434. SKOKOMISH INDIAN TRIBE ET AL. *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 410 F. 3d 506.

No. 05–443. GIORANGO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 277.

No. 05–445. LUMMI NATION ET AL. *v.* SAMISH INDIAN TRIBE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 394 F. 3d 1152.

No. 05–450. COON *v.* COON. Sup. Ct. S. C. Certiorari denied. Reported below: 364 S. C. 563, 614 S. E. 2d 616.

No. 05–451. CITY OF MANSFIELD, OHIO, ET AL. *v.* MCKINLEY. C. A. 6th Cir. Certiorari denied. Reported below: 404 F. 3d 418.

No. 05–466. SCHEELER, INDIVIDUALLY AND ON BEHALF OF SCHEELER, ET AL. *v.* CITY OF ST. CLOUD, MINNESOTA, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 402 F. 3d 826.

No. 05–468. ROE *v.* MORGAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–473. BHADELIA *v.* MARINA CLUB OF TAMPA, HOMEOWNERS ASSN., INC. C. A. 11th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 399.

No. 05–478. BRYANT *v.* COMPASS GROUP USA, INC., DBA CHARTWELLS. C. A. 5th Cir. Certiorari denied. Reported below: 413 F. 3d 471.

No. 05–482. DELTA WESTERN GROUP, LLC *v.* RUTH U. FERTEL, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 699.

No. 05–491. TEXAS COMMERCIAL ENERGY *v.* TXU ENERGY, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 413 F. 3d 503.

No. 05–494. CHESHEWALLA ET AL. *v.* RAND & SON CONSTRUCTION CO. C. A. 8th Cir. Certiorari denied. Reported below: 415 F. 3d 847.

No. 05–495. DIAMOND *v.* COLONIAL LIFE & ACCIDENT INSURANCE CO. C. A. 4th Cir. Certiorari denied. Reported below: 416 F. 3d 310.

No. 05–496. RICHARD *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 820 N. E. 2d 749.

No. 05–498. LEE *v.* 2050 S. HAVANA (DTSE) LLC, DBA KOMART MALL ON HAVANA HEIGHTS, ET AL. Ct. App. Colo. Certiorari denied.

No. 05–501. BREEDLOVE *v.* MCCALLA, RAYMER, PADRICK, COBB, NICHOLS & CLARK, LLC, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 607.

No. 05–515. WILLIAMS ET AL. *v.* MISSOURI DEPARTMENT OF MENTAL HEALTH ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 407 F. 3d 972.

No. 05–516. MICHIGAN *v.* WEEMS. Ct. App. Mich. Certiorari denied.

No. 05–518. RING *v.* RAMEKER. C. A. 7th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 834.

No. 05–520. WHITE BUFFALO VENTURES, LLC *v.* UNIVERSITY OF TEXAS AT AUSTIN. C. A. 5th Cir. Certiorari denied. Reported below: 420 F. 3d 366.

No. 05–523. MILES *v.* SIERRA CLUB ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 05–524. BEAZER EAST, INC. *v.* MEAD CORP. C. A. 3d Cir. Certiorari denied. Reported below: 412 F. 3d 429.

No. 05–530. WATSON, AS PARENT OF WATSON, A DISABLED STUDENT *v.* KINGSTON CITY SCHOOL DISTRICT. C. A. 2d Cir. Certiorari denied. Reported below: 142 Fed. Appx. 9.

No. 05–531. CARTER *v.* RAISH (two judgments). Ct. App. Colo. Certiorari denied.

No. 05–534. EUTENEUER ET AL. *v.* LAPOLLA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 917.

No. 05–536. GONZALEZ ET UX. *v.* KOMATSU FORKLIFT, U. S. A., INC. Sup. Ct. N. J. Certiorari denied. Reported below: 184 N. J. 415, 877 A. 2d 1247.

No. 05–541. EMPAGRAN S. A. ET AL. *v.* F. HOFFMANN-LA ROCHE LTD ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 417 F. 3d 1267.

No. 05–542. COURTNEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 412 F. 3d 855.

No. 05–544. HYSI ET UX. *v.* GONZALES, ATTORNEY GENERAL. C. A. 7th Cir. Certiorari denied. Reported below: 411 F. 3d 847.

No. 05–546. SCHIFF *v.* DUSEK ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 586.

No. 05–548. DRAUGHON *v.* UTAH DEPARTMENT OF FINANCIAL INSTITUTIONS ET AL. Ct. App. Utah. Certiorari denied.

No. 05–549. EUROPEAN COMMUNITY ET AL. *v.* RJR NABISCO, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 424 F. 3d 175.

No. 05–550. PATTERSON *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 5 N. Y. 3d 91, 833 N. E. 2d 223.

No. 05–551. WAUBANASCUM *v.* SHAWANO COUNTY, WISCONSIN. C. A. 7th Cir. Certiorari denied. Reported below: 416 F. 3d 658.

No. 05–553. SPECTOR GADON & ROSEN, P. C., ET AL. *v.* KANTER. Super. Ct. Pa. Certiorari denied. Reported below: 866 A. 2d 394.

No. 05–557. AFJEH *v.* VILLAGE OF OTTAWA HILLS. Ct. App. Ohio, Lucas County. Certiorari denied.

No. 05–558. BOEING CO. *v.* ZUNIGA. C. A. 10th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 570.

No. 05–560. DeBiasse *v.* Chevy Chase Bank Corp. et al. C. A. 3d Cir. Certiorari denied. Reported below: 144 Fed. Appx. 245.

No. 05–561. Tocci *v.* Fort Wayne-Allen County Airport Authority et al. Sup. Ct. Ind. Certiorari denied. Reported below: 831 N. E. 2d 725.

No. 05–562. Ko *v.* New York. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 15 App. Div. 3d 173, 789 N. Y. S. 2d 43.

No. 05–563. Stewart Title Guaranty Co. et al. *v.* Logan, Chapter 7 Trustee. C. A. 4th Cir. Certiorari denied. Reported below: 414 F. 3d 507.

No. 05–567. Medley *v.* Meers, as Guardian for Meers, et al. Ct. App. Ky. Certiorari denied. Reported below: 168 S. W. 3d 406.

No. 05–568. Abrahamyan *v.* Gonzales, Attorney General. C. A. 9th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 557.

No. 05–569. Rothhaupt *v.* Maiden et al. C. A. 6th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 465.

No. 05–570. Pernett *v.* American Airlines, Inc., et al. C. A. 11th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 299.

No. 05–571. Sterling *v.* Goss, Director of Central Intelligence, et al. C. A. 4th Cir. Certiorari denied. Reported below: 416 F. 3d 338.

No. 05–573. Virachack et vir *v.* University Ford, dba Bob Baker Ford. C. A. 9th Cir. Certiorari denied. Reported below: 413 F. 3d 579.

No. 05–574. Breezevale Ltd. *v.* Dickinson et al. Ct. App. D. C. Certiorari denied. Reported below: 879 A. 2d 957.

No. 05–575. Jin Rie *v.* Rosen et al. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–576. Jin Rie *v.* Galperin. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–578. GILLIGAN ET AL. *v.* MEDTRONIC, INC. C. A. 6th Cir. Certiorari denied. Reported below: 403 F. 3d 386.

No. 05–580. GARRISH ET AL. *v.* UAW INTERNATIONAL UNION ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 417 F. 3d 590.

No. 05–581. GERMENJI ET AL. *v.* GONZALES, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 132 Fed. Appx. 990.

No. 05–590. ASTER *v.* ASTER. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 05–592. STEBNER *v.* STEWART & STEVENSON SERVICES, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 389.

No. 05–597. RAMSEUR *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 162 Md. App. 774.

No. 05–598. RUSS ET AL. *v.* WATTS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 414 F. 3d 783.

No. 05–601. BUTLER COUNTY FAMILY YMCA *v.* HUGH. C. A. 3d Cir. Certiorari denied. Reported below: 418 F. 3d 265.

No. 05–609. VERSHISH *v.* UNITED STATES PAROLE COMMISSION ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 405 F. 3d 385.

No. 05–619. GEORGE ET UX. *v.* CITY OF MORRO BAY, CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 636.

No. 05–620. FAJARDO-HERNANDEZ *v.* GONZALES, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 713.

No. 05–622. HALL *v.* NIX ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 147 Fed. Appx. 954.

No. 05–624. HANA *v.* GONZALES, ATTORNEY GENERAL. C. A. 6th Cir. Certiorari denied. Reported below: 128 Fed. Appx. 478.

No. 05–632. LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT ET AL. *v.* DOE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 407 F. 3d 755.

No. 05–634. SIKKA *v.* RUMSFELD, SECRETARY OF DEFENSE, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 868.

No. 05–636. ROBERTS *v.* TITUS COUNTY MEMORIAL HOSPITAL. Ct. App. Tex., 6th Dist. Certiorari denied. Reported below: 159 S. W. 3d 764.

No. 05–637. STEPHENS *v.* GEORGIA DEPARTMENT OF TRANSPORTATION. C. A. 11th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 320.

No. 05–642. FLYNN ET AL. *v.* MEERS, AS GUARDIAN FOR MEERS, ET AL. Ct. App. Ky. Certiorari denied. Reported below: 168 S. W. 3d 406.

No. 05–643. GATES *v.* AKINS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 420 F. 3d 1293.

No. 05–654. DANIELS, AKA TRIPLETT *v.* UCHTMAN, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 421 F. 3d 490.

No. 05–655. TAYLOR *v.* GEORGIA DEPARTMENT OF PUBLIC SAFETY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 373.

No. 05–661. LOREN-MALTESE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 421 F. 3d 599.

No. 05–663. YOUNG ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 413 F. 3d 727.

No. 05–667. SUNBEAM PRODUCTS, INC. *v.* WING SHING PRODUCTS (BVI) LTD. C. A. Fed. Cir. Certiorari denied. Reported below: 153 Fed. Appx. 703.

No. 05–679. LERMAN *v.* LEGREIDE, DIRECTOR, NEW JERSEY DIVISION OF MOTOR VEHICLES. Super. Ct. N. J., App. Div. Certiorari denied.

No. 05–681. STERN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–688. BROMLEY *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 862 A. 2d 598.

No. 05–691. SMART *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 337.

No. 05–698. VERBITSKAYA ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 406 F. 3d 1324.

No. 05–703. ANGULO *v.* SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 15 App. Div. 3d 226, 788 N. Y. S. 2d 846.

No. 05–706. BRECKENRIDGE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–709. SORENSON *v.* GEORGIA. C. A. 11th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 300.

No. 05–715. HAWKINS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 744.

No. 05–719. CROUSSER *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 61 M. J. 465.

No. 05–722. LAMBERTSEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–724. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 419 F. 3d 521.

No. 05–759. KING *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI. C. A. 8th Cir. Certiorari denied.

No. 05–5235. SMITH *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 05–5410. GUTNAYER *v.* CENDANT CORP. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 116 Fed. Appx. 758.

No. 05–5588. VALENTIN-MORALES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 159.

No. 05–5648. STONE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–5680. ROGERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 400 F. 3d 640.

No. 05–5909. ALVAREZ-BATRES *v.* UNITED STATES;
No. 05–6185. ALVAREZ-BATRES *v.* UNITED STATES; and
No. 05–6275. DE JESUS-BATRES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 410 F. 3d 154.

No. 05–5940. SHARBUTT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 120 Fed. Appx. 244.

No. 05–6005. GULLY *v.* NEW YORK COMMISSIONER OF LABOR. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 8 App. Div. 3d 792, 778 N. Y. S. 2d 212.

No. 05–6009. FULTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 441.

No. 05–6020. CAMARENA *v.* SLADE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 107 Fed. Appx. 821.

No. 05–6068. JOHNSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 05–6082. CIESLOWSKI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 410 F. 3d 353.

No. 05–6283. BANKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 342.

No. 05–6311. MURPHY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 406 F. 3d 857.

No. 05–6379. TITSWORTH *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 401 F. 3d 301.

No. 05–6571. KORAS *v.* ROBINSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 123 Fed. Appx. 207.

No. 05–6593. MILLER *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 913 So. 2d 1148.

No. 05–6626. ARRIOLA-PEREZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 119.

No. 05–6726. SILVESTRI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 117 Fed. Appx. 142.

No. 05–6876. OWEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 407 F. 3d 222.

No. 05–6901. FORD *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 769.

No. 05–6927. SMITH *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 05–6938. FERGUSON *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 400 F. 3d 635.

No. 05–6939. PRASERTPHONG *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 210 Ariz. 496, 114 P. 3d 828.

No. 05–6940. MURPHY *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 416 F. 3d 427.

No. 05–6944. VENEGAS *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 72.

No. 05–6948. MORROW *v.* MICHIGAN. Cir. Ct. Jackson County, Mich. Certiorari denied.

No. 05–6952. KERAK *v.* KERAK. Super. Ct. Pa. Certiorari denied. Reported below: 869 A. 2d 21.

No. 05–6954. JAMES *v.* JONES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–6959. ASGARI *v.* SULLIVAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–6960. BRANCH *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 749.

No. 05–6961. BURGIN *v.* CULLIVER, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–6962. SALDANE *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 05–6964. SUNDAY *v.* CIRCUIT COURT OF ALABAMA, BARBOUR COUNTY, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–6967. WASHINGTON *v.* CULLIVER, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–6968. VELEZ *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 05–6970. WATKINS *v.* BASSETT, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 568.

No. 05–6973. COTA *v.* CAMBRA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–6978. ALLEN *v.* DONNELLY, SUPERINTENDENT, WENDE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 05–6980. LANCASTER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 912 So. 2d 318.

No. 05–6984. ESTABROOK *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 05–6988. SPAN *v.* FLAHERTY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 135 Fed. Appx. 525.

No. 05–6989. OTTE *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 05–6990. BISHOP *v.* CANDELARIA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–6991. BROWN *v.* HOWARD ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–6995. WILHOIT *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 05–6996. ZAPPLEY *v.* VETERANS MEDICAL CENTER ET AL. C. A. 7th Cir. Certiorari denied.

No. 05–7003. HARVEY *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 902 So. 2d 1040.

No. 05–7004. HOWARD *v.* BOUCHARD, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 405 F. 3d 459.

No. 05–7005. GAMMALO *v.* BERLIN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 731.

No. 05–7008. CHIOINO *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 05–7014. WRIGHT *v.* GEORGIA. C. A. 11th Cir. Certiorari denied.

No. 05–7018. QURESHI *v.* CITY OF DEARBORN, MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–7019. RICHARDSON *v.* ROSLYN CHILDREN CENTER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 99.

No. 05–7024. MCNEELY *v.* MOTLEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–7034. ROSSEL *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 05–7041. SHIELDS *v.* WALKER, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 355 Ill. App. 3d 1207, 885 N. E. 2d 588.

No. 05–7042. JOUBERT *v.* BROWN & WILLIAMSON TOBACCO CO. Ct. App. Wash. Certiorari denied.

No. 05–7043. JENSEN *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–7044. COOPER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 05–7050. PERRYMAN *v.* MILLER, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 05–7052. PAYNE *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–7056. MORAN *v.* CLARK, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–7064. GRACIELA A. *v.* JAMES H. Sup. Ct. Wis. Certiorari denied. Reported below: 281 Wis. 2d 117, 697 N. W. 2d 474.

No. 05–7065. BONE *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–7070. MARSHALL *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 891 So. 2d 1094.

No. 05–7072. THOMAS *v.* MINNEAPOLIS PUBLIC SCHOOLS ET AL. Ct. App. Minn. Certiorari denied.

No. 05–7074. CUESTA *v.* BERTRAND ET AL. C. A. 7th Cir. Certiorari denied.

No. 05–7079. FASANO *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 88 Conn. App. 17, 868 A. 2d 79.

No. 05–7085. MIRANDA *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 905 So. 2d 141.

No. 05–7089. TRUITTE *v.* RENICO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–7093. TEIXEIRA *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–7096. HILL *v.* NEILL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 634.

No. 05–7108. MALDONADO *v.* WILSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 416 F. 3d 470.

No. 05–7112. MURRAY *v.* SCOTT. C. A. 1st Cir. Certiorari denied.

No. 05–7124. TUCKER *v.* BALLENBACH ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–7129. RUVALCABA *v.* CHANDLER, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 416 F. 3d 555.

No. 05–7137. GARCIA BUSTAMANTE *v.* EVANS, ACTING WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 655.

No. 05–7145. COOPER *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–7147. VORA *v.* PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 130 Fed. Appx. 626.

No. 05–7152. SLACK *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 572.

No. 05–7166. LASURE *v.* SOUTH CAROLINA DEPARTMENT OF CORRECTIONS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 585.

No. 05–7171. DEMONBREUN *v.* BELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–7177. MONTGOMERY *v.* COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT. Sup. Ct. Cal. Certiorari denied.

No. 05–7180. NANCE *v.* PLEASANT VALLEY STATE PRISON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 505.

No. 05–7183. RIVERA *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–7185. JACKSON *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 904 So. 2d 729.

No. 05–7186. LOPEZ-SANCHEZ *v.* MARYLAND ET AL. Ct. App. Md. Certiorari denied. Reported below: 388 Md. 214, 879 A. 2d 695.

No. 05–7197. KALASHO *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN. C. A. 6th Cir. Certiorari denied.

No. 05–7198. WELLS *v.* SOUTH CAROLINA ET AL. Sup. Ct. S. C. Certiorari denied.

No. 05–7200. CRUZ ALVAREZ *v.* HARRISON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–7217. POTTS *v.* WHORTON, DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 818.

No. 05–7220. STIFF *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 05–7222. VARGAS LOPEZ *v.* EVANS, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–7227. RUPERT ET AL. *v.* PARKS, JUDGE, COURT OF COMMON PLEAS OF OHIO, LAKE COUNTY, ET AL. Sup. Ct. Ohio. Certiorari denied.

No. 05–7229. WILKINS *v.* WILKINS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 438.

No. 05–7231. JOHNSON *v.* LONG ISLAND UNIVERSITY ET AL. C. A. 2d Cir. Certiorari denied.

No. 05–7234. MORTIS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–7239. DILDAY *v.* SALAZAR ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 165.

No. 05–7240. COX ET UX. *v.* PRINCE GEORGE'S COUNTY, MARYLAND, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 598.

No. 05–7241. ESPINOZA *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 05–7242. COMEAUX *v.* MACKWANI ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 909.

No. 05–7243. EDWARDS *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 05–7245. JAMES *v.* LEWIS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 358.

No. 05–7248. QUILES *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 05–7249. SNELLING *v.* MISSOURI ET AL. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 162 S. W. 3d 126.

No. 05–7250. LEACH *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 864 A. 2d 580.

No. 05–7251. KRETCHMAR *v.* CLARK, SENIOR JUDGE, COURT OF COMMON PLEAS OF PENNSYLVANIA, BUCKS COUNTY. Sup. Ct. Pa. Certiorari denied.

No. 05–7258. MCDONALD *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 354 Ill. App. 3d 1161, 883 N. E. 2d 1149.

No. 05–7260. ANDERSON ET AL. *v.* LASALLE STEEL CO. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 311.

No. 05–7265. WASHINGTON *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 21 App. Div. 3d 253, 799 N. Y. S. 2d 217.

No. 05–7267. WRIGHT *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 867 A. 2d 1265.

No. 05–7269. WELLS *v.* CARLTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–7271. YBARRA DOMINGUEZ *v.* TEXAS. Ct. App. Tex., 8th Dist. Certiorari denied.

No. 05–7273. SHABAZZ, AKA SNYDOR *v.* BRAXTON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 505.

No. 05–7274. SHABAZZ, AKA SNYDOR *v.* TRUE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 617.

No. 05–7277. JOHNSON *v.* BAKER, ATTORNEY GENERAL OF GEORGIA, ET AL. Super. Ct. Fulton County, Ga. Certiorari denied.

No. 05–7280. JONES *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 63 Mass. App. 1113, 826 N. E. 2d 265.

No. 05–7285. MUHAMMAD *v.* CURRY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 21.

No. 05–7287. DAY-PETRANO *v.* CIRCUIT COURT OF FLORIDA, PINELLAS COUNTY, ET AL. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 908 So. 2d 1066.

No. 05–7291. WEISSLEADER *v.* AMERICAN KENNEL CLUB ET AL.; WEISSLEADER *v.* RIVERSIDE COUNTY, CALIFORNIA; and WEISSLEADER *v.* LERNER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 351 (second judgment); 128 Fed. Appx. 600 (third judgment) and 606 (first judgment).

No. 05–7295. BENSON *v.* LUTTRELL ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–7296. BOYCE *v.* BUSS, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied.

No. 05–7298. BRIGGS *v.* CINCINNATI COURT INDEX NEWSPAPER. C. A. 6th Cir. Certiorari denied.

No. 05–7302. NAM NGUYEN *v.* GOLDER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 521.

No. 05–7305. MICHAU *v.* CANNON, SHERIFF, CHARLESTON COUNTY, SOUTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 111.

No. 05–7306. KESSLER *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 710.

No. 05–7310. RUSSELL *v.* CITY OF CHICAGO, ILLINOIS. C. A. 7th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 666.

No. 05–7311. MUNGRO *v.* BENNING ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–7312. MENDES *v.* MICHIGAN DEPARTMENT OF CORRECTIONS ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–7315. BRYANT *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 05–7316. BUFFER *v.* CAREY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 192.

No. 05–7319. CURIALE *v.* POTTER, POSTMASTER GENERAL, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 147 Fed. Appx. 743.

No. 05–7326. KNIGHT *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–7328. ADAMS *v.* KARLAN, JUDGE, CIRCUIT COURT OF FLORIDA, DADE COUNTY, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 299.

No. 05–7329. NORFLEET *v.* DRINGOLI. C. A. 7th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 911.

No. 05–7331. OWSLEY *v.* GILL. C. A. 8th Cir. Certiorari denied.

No. 05–7332. MCCLINTON *v.* MAPLES, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 05–7333. KEELING *v.* WYNDER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 142 Fed. Appx. 506.

No. 05–7334. RICHARDSON *v.* MORENO VALLEY POLICE DEPARTMENT ET AL. C. A. 9th Cir. Certiorari denied.

No. 05–7335. ROSALES *v.* BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT. C. A. 5th Cir. Certiorari denied. Reported below: 426 F. 3d 733.

No. 05–7338. THOMAS *v.* ROBINSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 588.

No. 05–7339. THOMPSON-BEY *v.* LUOMA, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–7341. WASHINGTON *v.* SUPERIOR COURT OF CALIFORNIA, KINGS COUNTY, CLERK'S OFFICE. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 05–7344. WILLIAMS *v.* BOOKER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–7345. WILKERSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 05–7353. REYES *v.* ERCOLE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 150 Fed. Appx. 77.

No. 05–7356. PARKER *v.* WARNER, GOVERNOR OF VIRGINIA, ET AL. Sup. Ct. Va. Certiorari denied.

No. 05–7357. CODY *v.* SEVERSON, PRESIDING JUDGE, CIRCUIT COURT OF SOUTH DAKOTA, SECOND CIRCUIT. Sup. Ct. S. D. Certiorari denied.

No. 05–7358. ESTWICK *v.* BURGE, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 05–7359. EARL *v.* CHANOS, ATTORNEY GENERAL OF NEVADA. C. A. 9th Cir. Certiorari denied.

No. 05–7361. ZABRISKIE *v.* ACEVEDO ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 907 So. 2d 519.

No. 05–7362. COTTRELL *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 05–7368. DELITALA *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–7369. BROWN *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 907 So. 2d 540.

No. 05–7370. CAMPBELL *v.* PLILER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 569.

No. 05–7373. JASSAN *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 05–7374. WILSON *v.* OHIO. Ct. App. Ohio, Montgomery County. Certiorari denied.

No. 05–7381. LOZANO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 05–7387. MEYERS *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 05–7388. COLLINS *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 826 N. E. 2d 671.

No. 05–7406. HOWELL *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 413 F. 3d 1250.

No. 05–7408. GENEVIER *v.* LOS ANGELES COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 586.

No. 05–7413. MORGAN *v.* BUDGE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 306.

No. 05–7414. MOODY *v.* POLK, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 408 F. 3d 141.

No. 05–7418. WILLIAMSON *v.* MILLER-STOUT, SUPERINTENDENT, AIRWAY HEIGHTS CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 958.

No. 05–7422. JAMES *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 285 Wis. 2d 783, 703 N. W. 2d 727.

No. 05–7425. JENSEN *v.* HOLM. Ct. App. Wis. Certiorari denied.

No. 05–7431. SANDERS *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied.

No. 05–7432. SANDERS *v.* ROSS ET AL. C. A. 8th Cir. Certiorari denied.

No. 05–7435. SMITH *v.* MCLEMORE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–7436. LEECH *v.* HINES, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 151 Fed. Appx. 710.

No. 05–7437. MARTINEZ *v.* LOCKYER, ATTORNEY GENERAL OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 209.

No. 05–7446. ACREMANT *v.* OREGON. Sup. Ct. Ore. Certiorari denied.

No. 05–7449. BILLS *v.* BIRKETT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–7450. CHATMAN *v.* ALLEGHENY COUNTY, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 144 Fed. Appx. 216.

No. 05–7453. DUREN *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 05–7455. REYES *v.* MCGRATH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–7456. WOLFE *v.* GRACE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 142 Fed. Appx. 607.

No. 05–7458. JAMES *v.* UPTON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 05–7461. LEWIS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied.

No. 05–7468. MCKINLEY *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 05–7469. PAYTON *v.* MCKUNE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 804.

No. 05–7470. ROBINSON, INDIVIDUALLY AND ON BEHALF OF AND AS NEXT FRIEND OF WALTERS ET AL., MINOR CHILDREN OF DECEDENT WALTERS *v.* ARRUGUETA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 415 F. 3d 1252.

No. 05–7473. MCDONALD *v.* BURT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–7477. LEHMKUHL *v.* COLORADO. Ct. App. Colo. Certiorari denied. Reported below: 117 P. 3d 98.

No. 05–7481. MCKANIC *v.* BAZZLE, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 589.

No. 05–7483. MORRIS *v.* HUNTER, JUDGE, COURT OF COMMON PLEAS OF OHIO, SUMMIT COUNTY. Sup. Ct. Ohio. Certiorari denied. Reported below: 106 Ohio St. 3d 1407, 830 N. E. 2d 341.

No. 05–7491. FEARING ET UX. *v.* SEROR, CHAPTER 7 TRUSTEE. C. A. 9th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 744.

No. 05–7494. HOUSER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 109 Fed. Appx. 562.

No. 05–7500. MCCARTER *v.* VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 569.

No. 05–7503. CHARLTON *v.* OHIO. Ct. App. Ohio, Lorain County. Certiorari denied.

No. 05–7512. ALLEN *v.* POTTER, POSTMASTER GENERAL, ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–7522. LAWLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 821.

No. 05–7525. JOHNSON *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 61 M. J. 195.

No. 05–7526. SCHMANKE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–7533. BUMPUS *v.* WILEY, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 05–7541. CHAN *v.* PLILER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 413 F. 3d 1101.

No. 05–7543. LOGAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 419 F. 3d 172.

No. 05–7544. MALIK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–7546. MCKEITHAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 05–7548. WHITE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 152 Fed. Appx. 325.

No. 05–7549. WHITLOCK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–7550. WORRELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 22.

No. 05–7555. KESSELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–7557. BATTLE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 911 So. 2d 85.

No. 05–7560. CRAWFORD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–7564. DRAGON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 757.

No. 05–7565. DEBARROS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7567. RED ELK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 426 F. 3d 948.

No. 05–7568. ROSALES-RIVERA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 258.

No. 05–7569. SANCHEZ-PENA *v.* UNITED STATES (Reported below: 145 Fed. Appx. 46); BERNAL-ISLER *v.* UNITED STATES; ARELLANO-RIOS *v.* UNITED STATES; CISNEROS-CAVAZOS *v.* UNITED STATES; MARTINEZ-ESPARZA *v.* UNITED STATES (143 Fed. Appx. 633); LOPEZ-TOVAR *v.* UNITED STATES (149 Fed. Appx. 304); ZELAYA-VASQUEZ *v.* UNITED STATES (149 Fed. Appx. 288); DURAN-GOMEZ *v.* UNITED STATES (157 Fed. Appx. 666); RAMOS-LUCAS *v.* UNITED STATES (150 Fed. Appx. 304); ROMERO RODRIGUEZ *v.* UNITED STATES (143 Fed. Appx. 634); and LOPEZ-CRUZ *v.* UNITED STATES (145 Fed. Appx. 479). C. A. 5th Cir. Certiorari denied.

No. 05–7572. SANTOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 693.

No. 05–7574. RAMIREZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 05–7575. REEDY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 465.

No. 05–7577. VITELA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 37.

No. 05–7578. WARE *v.* BUREAU OF LAND MANAGEMENT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 924.

No. 05–7579. THOMAS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 65.

No. 05–7580. THOMAS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 65.

No. 05–7581. WEBSTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7582. TORRIES *v.* BAZZLE, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 580.

No. 05–7583. WILLIAMS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 881 A. 2d 557.

No. 05–7586. VALDEZ *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 126 Cal. App. 4th 575, 23 Cal. Rptr. 3d 909.

No. 05–7589. MARSHEK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 217.

No. 05–7590. OSEQUERA-MORALES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 298.

No. 05–7592. ROLES *v.* BEAUCLAIR, DIRECTOR, IDAHO DEPARTMENT OF CORRECTION. C. A. 9th Cir. Certiorari denied. Reported below: 121 Fed. Appx. 754.

No. 05–7593. STINSON *v.* GRACE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON. C. A. 3d Cir. Certiorari denied.

No. 05–7595. JENNINGS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 152.

No. 05–7596. SHITIAN WU *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 419 F. 3d 142.

No. 05–7597. TAYLOR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 134 Fed. Appx. 492.

No. 05–7598. VITUG *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 420 F. 3d 134.

No. 05–7600. PENA *v.* UNITED STATES; REYNA-LOPEZ *v.* UNITED STATES; and QUIROZ-ESCOBEDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 340 (first judgment); 150 Fed. Appx. 321 (third judgment).

No. 05–7603. EUBANKS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 497.

No. 05–7604. DUNLAP *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 05–7605. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7608. CASTRO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 328.

No. 05–7609. CABALLERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 153.

No. 05–7610. MILLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–7611. SMITH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–7612. SALGADO-AVILA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 65.

No. 05–7613. REESE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 269.

No. 05–7614. RICE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 155.

No. 05–7615. RAMOS-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 355.

No. 05–7616. QUINTANA-VILLAFUERTE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 356.

No. 05–7617. QUEZADA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 932.

No. 05–7618. RODRIGUEZ-MENDEZ, AKA HERNANDEZ-MARTINEZ *v.* UNITED STATES (Reported below: 145 Fed. Appx. 61); CUEVAS-MENDOZA *v.* UNITED STATES (144 Fed. Appx. 432); RAFAEL-QUERIAPA *v.* UNITED STATES (141 Fed. Appx. 325); HERNANDEZ-GRIMALDO *v.* UNITED STATES (145 Fed. Appx. 52); RIVAS-LOPEZ *v.* UNITED STATES (141 Fed. Appx. 352); CRUZ-AGUILAR, AKA AVITIO-HENES *v.* UNITED STATES (141 Fed. Appx. 322); ZAVALA-FLORES, AKA ZAVALA FLORES *v.* UNITED STATES (144 Fed. Appx. 434); GUEVARA-VIVANCO, AKA GUEVARA BETANCUR *v.* UNITED STATES (144 Fed. Appx. 431); PERDOMO-CASTRO *v.* UNITED STATES (141 Fed. Appx. 332); BANEGAS-VALDEZ *v.* UNITED STATES; LOZANO-REYES *v.* UNITED STATES (141 Fed. Appx. 336); ROMERO-DERAS *v.* UNITED STATES (141 Fed. Appx. 339); CRUZ-CASTAN *v.* UNITED STATES (141 Fed. Appx. 368); RIVERA-MENDEZ *v.* UNITED STATES (141 Fed. Appx. 382); TREVINO-SAENZ, AKA MARTINEZ *v.* UNITED STATES (142 Fed. Appx. 212); ORTIZ-DE BADILLO *v.* UNITED STATES (145 Fed. Appx. 45); URBINO-MONCADA *v.* UNITED STATES (141 Fed. Appx. 326); and CASTRO-AGUILAR *v.* UNITED STATES (150 Fed. Appx. 335). C. A. 5th Cir. Certiorari denied.

No. 05–7621. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 349.

No. 05–7623. BRANON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 168.

No. 05–7624. HERON *v.* GOORD, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 146 Fed. Appx. 516.

No. 05–7625. WINSTON *v.* BRYANT, WARDEN. App. Ct. Ill., 2d Dist. Certiorari denied.

No. 05–7626. YIRKOVSKY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–7627. VELETA-ENRIQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 378.

No. 05–7631. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 37.

No. 05–7632. GONZALES-LARA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 384 F. 3d 937.

No. 05–7633. HUNT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–7634. HOUSE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 416.

No. 05–7635. GARCIA-OCHOA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 568.

No. 05–7636. WALKER *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 528.

No. 05–7637. GRIFFIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 413 F. 3d 806.

No. 05–7638. HAGAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 412 F. 3d 887.

No. 05–7641. GARCIA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 152 Fed. Appx. 32.

No. 05–7642. GUIZAR-NAJERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 374.

No. 05–7643. GUEVARA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 408 F. 3d 252.

No. 05–7644. HARRINGTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 410 F. 3d 598.

No. 05–7646. MADORI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 419 F. 3d 159.

No. 05–7649. MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–7650. GARDUNO-HERMOSA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 359.

No. 05–7651. SEGURA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 768.

No. 05–7652. ROBINSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7653. ROCHELL *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 913 So. 2d 993.

No. 05–7655. MINCE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 376.

No. 05–7656. CHAVEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 381.

No. 05–7657. DEMERITT *v.* CATTELL, WARDEN. C. A. 1st Cir. Certiorari denied.

No. 05–7658. ANTHONY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 261.

No. 05–7659. DANNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 974.

No. 05–7660. SZLEKOVICS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 19 App. Div. 3d 1036, 796 N. Y. S. 2d 794.

No. 05–7661. SKINNER *v.* ABBOTT, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 727.

No. 05–7662. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 553.

No. 05–7663. TARANGO-GAMBOA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 374.

No. 05–7665. CHAVEZ-HERRERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 581.

No. 05–7666. STUTSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7668. HUGHES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 487.

No. 05–7671. MONNIER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 412 F. 3d 859.

No. 05–7672. OLD PERSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 987.

No. 05–7673. DAVIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 406 F. 3d 505.

No. 05–7677. RAMIREZ-NOYOLA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 807.

No. 05–7678. RICHARDSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 156.

No. 05–7682. BIGELOW *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–7684. WOODS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–7685. ROSS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7687. PARKS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 415 F. 3d 878.

No. 05–7688. MITCHELL *v.* LISSI ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 120 Fed. Appx. 520.

No. 05–7690. PEA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 592.

No. 05–7691. MCCULLAH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 189.

No. 05–7692. LEE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–7693. MARTIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 838.

No. 05–7694. MARTINEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 413 F. 3d 239.

No. 05–7696. KITZELMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 931.

No. 05–7697. LEWIS *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–7698. NORMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 415 F. 3d 466.

No. 05–7699. MENDOZA-VERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 76.

No. 05–7703. THIBODAUX *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 147 Fed. Appx. 405.

No. 05–7704. BARCUS *v.* NEW YORK CITY ADMINISTRATION FOR CHILDREN'S SERVICES. C. A. 2d Cir. Certiorari denied. Reported below: 136 Fed. Appx. 412.

No. 05–7705. BROWN ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–7707. ACUNA-ESPINAL *v.* UNITED STATES (Reported below: 141 Fed. Appx. 353); ALCANTAR-SALDANA *v.* UNITED STATES (141 Fed. Appx. 372); ALONZO-MELENDEZ *v.* UNITED STATES (141 Fed. Appx. 381); ALVAREZ-JIMENEZ *v.* UNITED STATES (145 Fed. Appx. 462); ALVAREZ-LICEA *v.* UNITED STATES (141 Fed. Appx. 364); CASTRO-LOPEZ *v.* UNITED STATES (141 Fed. Appx. 384); CHAVEZ-MONAREZ *v.* UNITED STATES (141 Fed. Appx. 345); CORONA-MANSANO *v.* UNITED STATES (141 Fed. Appx. 357); CORDOVA-MORALES *v.* UNITED STATES (141 Fed. Appx. 383); CRUZ *v.* UNITED STATES (141 Fed. Appx. 371); DIAZ-DE LEON *v.* UNITED STATES (141 Fed. Appx. 333); DIAZ-GALICIA *v.* UNITED STATES (141 Fed. Appx. 356); GARCIA *v.* UNITED STATES (145 Fed. Appx. 68); FACUNDO-MALDONADO *v.* UNITED STATES (141 Fed. Appx. 376); JAIMEZ-HERNANDEZ *v.* UNITED STATES (141 Fed. Appx. 370); MARTINEZ-GARZA *v.* UNITED STATES (141 Fed. Appx. 341); PINA-LABRADA *v.* UNITED STATES (141 Fed. Appx. 354); QUIROZ-SANCHEZ *v.* UNITED STATES (146 Fed. Appx. 729); RIVERA-ZURITA *v.* UNITED STATES (141 Fed. Appx. 365); RODRIGUEZ-GOMEZ *v.* UNITED STATES (141 Fed. Appx. 336); SEPULVEDA-ROBLES *v.* UNITED STATES (141 Fed. Appx. 387); URRABAZO-RODRIGUEZ *v.* UNITED STATES (141 Fed. Appx. 363); and VALENZUELA-PARRA *v.* UNITED STATES (141 Fed. Appx. 346). C. A. 5th Cir. Certiorari denied.

No. 05–7709. BATEMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 119 Fed. Appx. 17.

No. 05–7710. AMBERS *v.* HARRISON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–7712. TRETO-MARTINEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 421 F. 3d 1156.

No. 05–7715. OWENS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 426 F. 3d 800.

No. 05–7716. PASEUR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 148 Fed. Appx. 404.

No. 05–7718. ROBLES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7719. RINES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 419 F. 3d 1104.

No. 05–7722. NAZARIO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 287.

No. 05–7723. MOORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 104 Fed. Appx. 150.

No. 05–7726. SOTO-VALENCIA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 552.

No. 05–7732. WAYNE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–7736. COAXUM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7737. DRAPEAU *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 414 F. 3d 869.

No. 05–7738. CHISHOLM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 378.

No. 05–7739. DEL CID-PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 393.

No. 05–7740. DAVIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 691.

No. 05–7741. SWINTON *v.* SMITH, WARDEN. C. A. 3d Cir. Certiorari denied.

No. 05–7742. SCOTT *v.* JOHNS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 05–7744. SCOTT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 413 F. 3d 839.

No. 05–7745. RAYMOND *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 728.

No. 05–7746. RHOINEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 148 Fed. Appx. 677.

No. 05–7747. PEREZ RUIZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 421 F. 3d 11.

No. 05–7753. LEE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–7754. JENKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 129.

No. 05–7756. KING *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 422 F. 3d 1055.

No. 05–7759. PAIGE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–7761. MIDDLEBROOK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 834.

No. 05–7763. RAMIREZ-GARCIA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 125.

No. 05–7766. STOBAUGH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 420 F. 3d 796.

No. 05–7767. MCCLENDON *v.* KANE COUNTY JAIL. C. A. 7th Cir. Certiorari denied.

No. 05–7769. OREA-RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 690.

No. 05–7772. SMITH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 413 F. 3d 1253.

No. 05–7773. RIVERA-SILLAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 471 F. 3d 1014.

No. 05–7774. RAY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 147 Fed. Appx. 32.

No. 05–7776. DELAHOZ, AKA MONTERO, AKA NUNEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 421 F. 3d 118 and 146 Fed. Appx. 522.

No. 05–7777. DAUGHTIE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 198.

No. 05–7780. QUINTANA-PEREZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–7782. CANADY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 133.

No. 05–7783. TAYLOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–7784. WALKER *v.* FRANK, SECRETARY, WISCONSIN DEPARTMENT OF CORRECTIONS. C. A. 7th Cir. Certiorari denied. Reported below: 421 F. 3d 549.

No. 05–7785. THOMAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 417 F. 3d 1053.

No. 05–7786. VALLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 627.

No. 05–7790. ALVARADO-RIVERA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 412 F. 3d 942.

No. 05–7791. BAZEMORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7792. FELTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–7793. HANSEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7795. FISHER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 379.

No. 05–7796. GONZALEZ-RENTERIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 945.

No. 05–7797. GALLEGOS-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 385.

No. 05–7798. HEATH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7799. GUERRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 746.

No. 05–7803. SALDANA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 427 F. 3d 298.

No. 05–7805. RESENDIZ-PATINO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 420 F. 3d 1177.

No. 05–7806. SPANO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 421 F. 3d 599.

No. 05–7807. STEADMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 891.

No. 05–7808. HOUSTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–7810. HALL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 147 Fed. Appx. 403.

No. 05–7811. HEAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 115 Fed. Appx. 374.

No. 05–7812. GALLEGOS-ALVAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 366.

No. 05–7814. EHRMANN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 421 F. 3d 774.

No. 05–7816. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–7819. COOPER *v.* BEELER, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 195.

No. 05–7821. MURDOCK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–7822. PEREZ-MARQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 219.

No. 05–7824. OXENDINE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 150 Fed. Appx. 240.

No. 05–7827. LUCKETT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–7835. RUSSELL *v.* WILLIAMSON, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 143 Fed. Appx. 408.

No. 05–7837. CLINTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7838. SERRANO *v.* DEPARTMENT OF THE NAVY, NAVAL MEDICAL RESEARCH CENTER. C. A. 4th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 82.

No. 05–7839. VISINAIZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 428 F. 3d 1300.

No. 05–7840. WRIGHT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 147 Fed. Appx. 53.

No. 05–7841. VARGAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 81.

No. 05–7843. WHITE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 815.

No. 05–7846. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7847. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7848. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 151 Fed. Appx. 787.

No. 05–7851. BENNETT *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 876 A. 2d 623.

No. 05–7853. BLY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 339.

No. 05–7855. BADEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 147 Fed. Appx. 338.

No. 05–7857. HANSOME *v.* VELTRI, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 05–7858. HALL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–7861. HUTTO *v.* OZMINT, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 179.

No. 05–7865. HOOK *v.* JETER, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 05–7867. HOUGHTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 05–7868. ISOM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 574.

No. 05–7869. VAUGHN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 410 F. 3d 1002.

No. 05–7870. WILKERSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 564.

No. 05–7871. VASQUEZ *v.* SCIBAUNA, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 77.

No. 05–7872. GREENUP *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 401 F. 3d 758.

No. 05–7874. FORRESTER *v.* SNYDER, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 505.

No. 05–7875. COSTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7885. ARONJA-INDA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 422 F. 3d 734.

No. 05–7886. MEMMINGER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 813.

No. 05–7888. WHITT *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA. C. A. 7th Cir. Certiorari denied.

No. 05–7889. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7890. HERNANDEZ-FLORES, AKA HERNANDEZ-GARCIA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 818.

No. 05–7891. FARRIOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–7899. HORNE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 05–7900. RAVELO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7904. CRUZ-PAGAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 424 F. 3d 65.

No. 05–7905. EGENBERGER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 424 F. 3d 803.

No. 05–7912. BASS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 411 F. 3d 1198.

No. 05–7913. ARJON-SANDOVAL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 459.

No. 05–7915. MONROIG *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–7917. WINGFIELD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–7918. WIGGINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 437.

No. 05–7921. RODRIGUEZ-BENAVIDES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 148 Fed. Appx. 813.

No. 05–7922. SEARCY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 418 F. 3d 1193.

No. 05–7928. SMITH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 142 Fed. Appx. 100.

No. 05–7929. CHINH TRONG NGUYEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 413 F. 3d 1170.

No. 05–7932. MURGUIA-OLIVEROS, AKA OLIVEROS MURGUIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 421 F. 3d 951.

No. 05–7935. JETER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 148 Fed. Appx. 177.

No. 05–7937. JACKSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 149 Fed. Appx. 69.

No. 05–7939. BLAYLOCK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 421 F. 3d 758.

No. 05–7945. DEVITA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 60.

No. 05–7946. DILLARD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–7947. DIAZ-DIAZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 105 Fed. Appx. 887.

No. 05–7948. CAMPBELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 176.

No. 05–7949. DANIELS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 147 Fed. Appx. 869.

No. 05–7950. CLAYTON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 416 F. 3d 1236.

No. 05–7951. ECKLES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–7953. WEBB *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 403 F. 3d 373.

No. 05–7956. MICHAUD *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–7957. NGUYEN *v.* WILEY, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 151 Fed. Appx. 757.

No. 05–7960. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 724.

No. 05–7961. LEYLAND *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 05–7963. VALLADARES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 233.

No. 05–7965. WARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 154 Fed. Appx. 190.

No. 05–7968. MILLER-DOUGLAS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 146 Fed. Appx. 576.

No. 05–7973. NADEL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 05–7977. RIOS RIOS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–7981. ARNAIZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 27.

No. 05–7982. BILBREY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7986. JARVIS *v.* ADAMS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 151.

No. 05–7987. LEAKE-BEY *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 05–7988. JORDAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 422 F. 3d 715.

No. 05–7990. MCLEAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7992. SWARZENTRUBER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 115 Fed. Appx. 319.

No. 05–7995. NODAL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7996. WHITE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–8003. DANIELS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 05–8005. CARRILLO, AKA CHANON RAMIREZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–8006. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 624.

No. 05–8007. CURRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–8008. CUSTIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 150 Fed. Appx. 265.

No. 05–8010. CARTER *v.* UNITED STATES; and CARTER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–8014. BENNETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 200.

No. 05–8017. LONG *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–8021. JAMES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–8023. JONES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–8024. CARPENTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 313.

No. 05–8025. CARPENTER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 422 F. 3d 738.

No. 05–8027. VASQUEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 924.

No. 05–8030. WILSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 414 F. 3d 829.

No. 05–8033. BASKIN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 424 F. 3d 1.

No. 05–8035. RAMOS-MARTINEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–8036. CARTWRIGHT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 413 F. 3d 1295.

No. 05–8037. CHAVEZ-QUIROZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 806.

No. 05–8041. MOTTO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 05–8042. COHEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 05–8046. MANNING *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–8048. LEMAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 167 Fed. Appx. 942.

No. 05–8049. MOYE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 286.

No. 05–8050. MCKEEVER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 921.

No. 05–8051. MCKREITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 112.

No. 05–8052. SWIFT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 895.

No. 05–8055. YOUNG *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 149 Fed. Appx. 107.

No. 05–8058. LEWIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–8059. WATKINS *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 102 Fed. Appx. 769.

No. 05–8060. UMEZURIKE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–8064. ANDREANO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 417 F. 3d 967.

No. 05–8066. WALDEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 761.

No. 05–8072. CASTRO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 147 Fed. Appx. 896.

No. 05–8073. CUNNINGHAM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 147 Fed. Appx. 952.

No. 05–8074. CRAWFORD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 05–8075. COTNEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 290.

No. 05–8077. POLANCO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–8080. MELDEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–8085. LUSSIER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 423 F. 3d 838.

No. 05–8087. SANTANA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–8093. BLACKWELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 05–8094. GONZALES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–8098. STRONG *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 415 F. 3d 902.

No. 05–8101. RODRIGO-ABAD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 153 Fed. Appx. 400.

No. 05–8104. PERRY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 144 Fed. Appx. 942.

No. 05–282. AMERICAN JEWISH CONGRESS *v.* CORPORATION FOR NATIONAL AND COMMUNITY SERVICE ET AL. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 399 F. 3d 351.

No. 05–371. GENERAL CONSTRUCTION CO. ET AL. *v.* CASTRO ET AL. C. A. 9th Cir. Motion of Property Casualty Insurers Association of America for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 401 F. 3d 963.

No. 05–479. MICHAU *v.* JONES. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 05–577. JIN RIE *v.* BANK OF AMERICA, N. A., ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 05–585. PEREZ-PERDOMO, SECRETARY, PUERTO RICO DEPARTMENT OF HEALTH *v.* WALGREEN CO. ET AL. C. A. 1st Cir. Motions of Asociacion de Famacias de la Comunidad de Puerto Rico and American Health Planning Association for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 405 F. 3d 50.

No. 05–627. PARKS, CHIEF, LOS ANGELES POLICE DEPARTMENT *v.* DIAZ. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 420 F. 3d 897.

No. 05–639. JONES *v.* LUCENT TECHNOLOGIES, INC. C. A. 7th Cir. Certiorari denied. THE CHIEF JUSTICE and JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 138 Fed. Appx. 825.

No. 05–749. UNDER SEAL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 415 F. 3d 333.

No. 05–7075. HOFFER *v.* MICROSOFT CORP. ET AL. C. A. Fed. Cir. Certiorari denied. THE CHIEF JUSTICE and JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 405 F. 3d 1326.

No. 05–7106. HOUSTON *v.* LEWIS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 124 Fed. Appx. 582.

No. 05–7389. PARKER *v.* MINETA, SECRETARY OF TRANSPORTATION, ET AL. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 05–7523. JEFFREYS *v.* UNITED TECHNOLOGIES CORPORATION, SIKORSKY AIRCRAFT DIVISION. C. A. 2d Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 126 Fed. Appx. 519.

No. 05–7800. HAIRE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

Rehearing Denied

No. 04–9814. CAMPBELL *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1015;

No. 04–9889. COOKS *v.* NEWLAND, WARDEN, *ante*, p. 830;

No. 04–10008. HANNO *v.* STANDARD FEDERAL BANK FOR SAVING, NKA TCF BANK, *ante*, p. 833;

No. 04–10009. FOY *v.* FISCHER, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY, *ante*, p. 834;

No. 04–10024. THOMAS *v.* LOUISIANA, *ante*, p. 834;

No. 04–10025. VORA *v.* CITY OF JOHNSTOWN, PENNSYLVANIA, *ante*, p. 834;

No. 04–10026. VORA *v.* PENNSYLVANIA, *ante*, p. 834;

No. 04–10027. VORA *v.* PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE, *ante*, p. 834;

No. 04–10028. VORA *v.* JANCIGA, *ante*, p. 834;

No. 04–10052. WATSON *v.* HOME DEPOT U. S. A., INC., *ante*, p. 835;

No. 04–10083. WHITEHORN *v.* TEXAS, *ante*, p. 836;

No. 04–10117. LANE *v.* ARKANSAS ET AL., *ante*, p. 837;

No. 04–10126. GORDON *v.* FLORIDA, *ante*, p. 838;

No. 04–10128. HAWKINS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 838;

No. 04–10136. BOYCE *v.* ARIZONA, *ante*, p. 838;

No. 04–10169. ROBINSON *v.* UNITED STATES, *ante*, p. 840;

No. 04–10225. MARSHALL *v.* MAZE ET AL., *ante*, p. 842;

No. 04–10298. BOETTNER *v.* RAIMER ET AL., *ante*, p. 844;

No. 04–10306. BOWMAN *v.* FLORIDA, *ante*, p. 845;

No. 04–10577. MEDLEY *v.* TEXAS, *ante*, p. 1002;

No. 04–10600. ABNEY *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL., *ante*, p. 861;

No. 04–10626. LEVERINGSTON *v.* UNITED STATES, *ante*, p. 862;

No. 04–10651. MIDDLETON *v.* UNITED STATES, *ante*, p. 863;

No. 04–10720. ARRINGTON *v.* COCKLIN ET AL., *ante*, p. 867;

No. 04–10740. GONZALEZ GARCIA *v.* UNITED STATES, *ante*, p. 869;

No. 05–63. ACTON *v.* CITY OF EATON, OHIO, ET AL., *ante*, p. 872;

No. 05–152. RAMOS ET AL. *v.* UNITED STATES, *ante*, p. 876;

No. 05–206. RODRIGUEZ-JURATOVAC ET AL. *v.* COMMONWEALTH OF PUERTO RICO ELECTORAL COMMISSION ET AL., *ante*, p. 960;

No. 05–245. KERIAN *v.* HARVEY, SECRETARY OF THE ARMY, ET AL., *ante*, p. 961;

No. 05–251. SAWANGKAO *v.* BANKERS TRUST COMPANY OF CALIFORNIA, N. A., C/O DELTA FUNDING CORP., SERVICING AGENT, *ante*, p. 977;

No. 05–318. CATLETT *v.* MARYLAND, *ante*, p. 979;

No. 05–385. COHEN *v.* ALLSTATE INSURANCE CO., *ante*, p. 1033;

No. 05–418. MCWILLIAMS *v.* LANGHAM, *ante*, p. 1004;

No. 05–427. ROBERTS *v.* TITUS COUNTY MEMORIAL HOSPITAL ET AL., *ante*, p. 1004;

No. 05–447. ABRISHAMIAN *v.* GUTIERREZ, SECRETARY OF COMMERCE, ET AL., *ante*, p. 1016;

No. 05–5003. GANT *v.* GEORGIA ET AL., *ante*, p. 877;

No. 05–5007. HUGHES *v.* UNITED STATES, *ante*, p. 877;

No. 05–5028. RAMOS *v.* GRACE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL., *ante*, p. 878;

No. 05–5033. IN RE BOYCE, *ante*, p. 810;

No. 05–5121. REYNOSO *v.* MCGINNIS, SUPERINTENDENT, SOUTHPORT CORRECTIONAL FACILITY, *ante*, p. 884;

No. 05–5183. SMITH ET AL. *v.* UNITED STATES, *ante*, p. 939;

No. 05–5259. IN RE ALBERT, *ante*, p. 809;

No. 05–5265. ROTHROCK *v.* PENNSYLVANIA, *ante*, p. 892;

No. 05–5299. JOHNSON *v.* EVANS, WARDEN, *ante*, p. 894;

No. 05–5311. VENEGAS-CASTREJON *v.* UNITED STATES, *ante*, p. 940;

No. 05–5321. DAY *v.* UNITED STATES, *ante*, p. 940;

No. 05–5343. JOHNSON *v.* BULLARD, WARDEN, ET AL., *ante*, p. 897;

No. 05–5378. CROCKETT *v.* OKLAHOMA, *ante*, p. 899;

No. 05–5396. FIAMENGO *v.* WADSWORTH ET AL., *ante*, p. 900;

No. 05–5432. WILLIAMS *v.* UNITED STATES, *ante*, p. 902;

No. 05–5559. HOOD *v.* VIRGINIA, *ante*, p. 910;

No. 05–5625. RODRIGUEZ *v.* MCELROY ET AL., *ante*, p. 962;

No. 05–5671. QUINTON *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 943;

No. 05–5707. HILTON *v.* UNITED STATES, *ante*, p. 914;

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No. 05–5718. CENSKE *v.* MARQUETTE COUNTY JAIL, *ante*, p. 945;

No. 05–5730. LYLES *v.* MILLER, WARDEN, *ante*, p. 945;

No. 05–5758. MURRAY *v.* HARDIMAN, *ante*, p. 962;

No. 05–5800. DOUGLAS *v.* MARYLAND, *ante*, p. 963;

No. 05–5832. CUESTA *v.* BERTRAND ET AL., *ante*, p. 964;

No. 05–5839. JAMES *v.* CP&L PROGRESS ENERGY, *ante*, p. 964;

No. 05–5841. SHISINDAY, AKA THOMAS *v.* TEXAS (two judgments), *ante*, p. 1017;

No. 05–5850. LOPEZ CHIGANO *v.* LEWIS, WARDEN, *ante*, p. 918;

No. 05–5865. BRIGGS *v.* HAMILTON COUNTY PROSECUTOR, *ante*, p. 964;

No. 05–5935. MILLS *v.* FLORIDA, *ante*, p. 981;

No. 05–5941. REEVES *v.* CANNIZZARO, *ante*, p. 981;

No. 05–5978. HOHMANN *v.* TEGAN ET AL., *ante*, p. 1017;

No. 05–5983. PREVO *v.* FEDERAL DEPOSIT INSURANCE CORPORATION ET AL., *ante*, p. 948;

No. 05–5996. CENSKE *v.* UNITED STATES, *ante*, p. 923;

No. 05–5997. DRUMMOND *v.* EHRLICH, GOVERNOR OF MARYLAND, *ante*, p. 982;

No. 05–6004. PITTS *v.* GEORGIA ET AL., *ante*, p. 983;

No. 05–6043. VOITS *v.* OREGON, *ante*, p. 984;

No. 05–6048. HAWKINS *v.* MCKEE, WARDEN, *ante*, p. 984;

No. 05–6074. HOLBROOK *v.* YAMAMOTO FB ENGINEERING, LLC, *ante*, p. 949;

No. 05–6117. TARVIN *v.* TEXAS, *ante*, p. 985;

No. 05–6142. MINNFEE *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 986;

No. 05–6174. SCOTT *v.* PRICE ET AL., *ante*, p. 965;

No. 05–6175. RAY *v.* GAMMON, SUPERINTENDENT, MOBERLY CORRECTIONAL CENTER, *ante*, p. 986;

No. 05–6187. SHIVAEE *v.* VIRGINIA, *ante*, p. 1005;

No. 05–6232. STOVER *v.* ECKENRODE ET AL., *ante*, p. 966;

No. 05–6244. ATWELL *v.* WYNDER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL., *ante*, p. 1005;

No. 05–6248. BREWER *v.* FRAWLEY ET AL., *ante*, p. 1017;

No. 05–6306. LAWRENCE *v.* UNITED STATES, *ante*, p. 955;
No. 05–6325. BROCK *v.* UNITED STATES, *ante*, p. 956;
No. 05–6337. IN RE JONES, *ante*, p. 1014;
No. 05–6352. MILLS *v.* UNITED STATES, *ante*, p. 966;
No. 05–6357. ARI *v.* MITCHELL, WARDEN, *ante*, p. 1005;
No. 05–6382. JOHNSON *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY, *ante*, p. 1006;
No. 05–6386. TRUEMAN *v.* RUMSFELD, SECRETARY OF DEFENSE, ET AL., *ante*, p. 1006;
No. 05–6479. NOVOTNY *v.* PORZYCKI ET AL., *ante*, p. 1006;
No. 05–6532. WORD *v.* PEREZ, SUPERINTENDENT, BEDFORD HILLS CORRECTIONAL FACILITY, *ante*, p. 1039;
No. 05–6533. BANKS *v.* UNITED STATES, *ante*, p. 989;
No. 05–6663. RIVERA-BENITO *v.* UNITED STATES, *ante*, p. 994;
No. 05–6675. STINNETT *v.* UNITED STATES, *ante*, p. 994;
No. 05–6719. JONES *v.* UNITED STATES, *ante*, p. 995;
No. 05–6754. GOMEZ *v.* UNITED STATES, *ante*, p. 996;
No. 05–6834. IACULLO *v.* UNITED STATES, *ante*, p. 1008;
No. 05–7021. ORR *v.* UNITED STATES, *ante*, p. 1024; and
No. 05–7073. WHITE *v.* UNITED STATES, *ante*, p. 1025. Petitions for rehearing denied.

No. 04–9139. STODDARD *v.* IDAHO, *ante*, p. 828; and
No. 04–10134. ANTHONY *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, *ante*, p. 838. Motions for leave to file petitions for rehearing denied.

JANUARY 11, 2006

Dismissal Under Rule 46

No. 05–757. FLORIDA *v.* SARASOTA HERALD-TRIBUNE ET AL. Dist. Ct. App. Fla., 2d Dist. Certiorari dismissed under this Court's Rule 46. Reported below: 924 So. 2d 8.

JANUARY 13, 2006

Certiorari Granted

No. 05–7053. DIXON *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 413 F. 3d 520.

JANUARY 16, 2006

Miscellaneous Order

No. 05–8659 (05A647). IN RE ALLEN. Application for stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. Petition for writ of habeas corpus denied.

Certiorari Denied

No. 05–8639 (05A639). ALLEN *v.* ORNOSKI, ACTING WARDEN. Sup. Ct. Cal. Application for stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. Certiorari denied.

JUSTICE BREYER, dissenting.

Petitioner is 76 years old, is blind, suffers from diabetes, is confined to a wheelchair, and has been on death row for 23 years. I believe that in the circumstances he raises a significant question as to whether his execution would constitute "cruel and unusual punishmen[t]." U. S. Const., Amdt. 8. See *Knight* v. *Florida*, 528 U. S. 990, 993 (1999) (BREYER, J., dissenting from denial of certiorari); *Elledge* v. *Florida*, 525 U. S. 944 (1998) (same); *Lackey* v. *Texas*, 514 U. S. 1045 (1995) (STEVENS, J., respecting denial of certiorari). I would grant the application for stay of execution.

No. 05–8658 (05A646). ALLEN *v.* ORNOSKI, ACTING WARDEN, ET AL. C. A. 9th Cir. Application for stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. Certiorari denied. Reported below: 435 F. 3d 946.

JANUARY 17, 2006

Certiorari Granted—Vacated and Remanded

No. 05–5041. ENGLAND *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the State's acknowledgment that the Texas Court of Criminal Appeals denied petitioner's motion for rehearing on April 27, 2001.

Miscellaneous Orders

No. 05M44. VENKATRAMAN *v.* REI SYSTEMS, INC.; and
No. 05M45. WOODROOF *v.* UNITED STATES. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 05–7916. THOMPSON *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until February 7, 2006, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 05–7071. IN RE EGGERS. Petition for writ of habeas corpus denied.

No. 05–658. IN RE SINGH;
No. 05–7513. IN RE BROWN ET VIR; and
No. 05–8102. IN RE BECKLEY. Petitions for writs of mandamus denied.

Certiorari Denied

No. 04–947. COLUMBIA RIVER CORRECTIONAL INSTITUTE ET AL. *v.* PHIFFER. C. A. 9th Cir. Certiorari denied. Reported below: 384 F. 3d 791.

No. 05–244. PELULLO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 399 F. 3d 197.

No. 05–326. ORDER OF FRIARS MINOR *v.* ALPERIN ET AL.; and
No. 05–539. INSTITUTO PER LE OPERE DI RELIGIONE *v.* ALPERIN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 410 F. 3d 532.

No. 05–475. ALLEN, SUPERINTENDENT, PRESTON YOUTH CORRECTIONAL FACILITY *v.* JUAN H.; and
No. 05–7510. JUAN H. *v.* ALLEN, SUPERINTENDENT, PRESTON YOUTH CORRECTIONAL FACILITY. C. A. 9th Cir. Certiorari denied. Reported below: 408 F. 3d 1262.

No. 05–484. SANCHEZ-VILLALOBOS, AKA SANCHEZ-SAENZ, AKA VILLALOBOS-SANCHEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 412 F. 3d 572.

No. 05–508. HEAVRIN *v.* SCHILLING, TRUSTEE. C. A. 6th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 766.

No. 05–527. DYSART, TAYLOR, LAY, COTTER & MCMONIGLE, P. C. *v.* CHICAGO TRUCK DRIVERS, HELPERS & WAREHOUSE WORKERS UNION PENSION FUND ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 406 F. 3d 955.

No. 05–554. SCHMITT *v.* CITY OF DETROIT, MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 395 F. 3d 327.

No. 05–604. NORTH PACIFICA LLC *v.* CITY OF PACIFICA, CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 05–606. KEGLEY ET AL. *v.* CITY OF FAYETTEVILLE, NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 170 N. C. App. 656, 613 S. E. 2d 696.

No. 05–607. RHOADES ET AL. *v.* QUEEN-JOHNSON ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–612. MATTMILLER *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 05–613. DOUGLAS *v.* DOBBS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 419 F. 3d 1097.

No. 05–614. DECOULOS, TRUSTEE OF WILLOWDALE REALTY TRUST *v.* MARITIMES & NORTHEAST PIPELINE, L. L. C. C. A. 1st Cir. Certiorari denied. Reported below: 146 Fed. Appx. 495.

No. 05–615. ABF CAPITAL CORP. *v.* OSLEY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 414 F. 3d 1061.

No. 05–618. PASHA *v.* WILLIAM M. MERCER INVESTMENT CONSULTING, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 135 Fed. Appx. 489.

No. 05–621. HOLMES *v.* SLACK ET AL., CO-PERSONAL REPRESENTATIVES OF THE ESTATE OF HOLMES. Ct. App. Ore. Certiorari denied. Reported below: 199 Ore. App. 270, 111 P. 3d 248.

No. 05–625. FREEMAN *v.* GRUBBS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 233.

No. 05–626. MATTISON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 05–629. MUEGLER *v.* BENING ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 413 F. 3d 980.

No. 05–640. BELLUM *v.* PCE CONSTRUCTORS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 407 F. 3d 734.

No. 05–641. ALLEN ET AL. *v.* BUNKER HILL TOWNSHIP, MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 05–649. HUMPHREY *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 120 P. 3d 1027.

No. 05–659. WHITE-BATTLE *v.* DEMOCRATIC PARTY OF VIRGINIA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 641.

No. 05–701. LEMP, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF LEMP, DECEASED, AND AS NEXT FRIEND OF LEMP ET AL., MINOR CHILDREN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–765. LEONARD *v.* GOSS, DIRECTOR OF CENTRAL INTELLIGENCE, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 115 Fed. Appx. 169.

No. 05–767. BURSEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 416 F. 3d 301.

No. 05–5178. WATSON *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 214 Ill. 2d 271, 825 N. E. 2d 257.

No. 05–6417. GUTIERREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 157.

No. 05–6563. MINTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–6575. CHAPA *v.* UNITED STATES; and
No. 05–7364. GARCIA QUIROZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 667.

No. 05–6624. CADET *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 272.

No. 05–6945. EBERSOLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 411 F. 3d 517.

No. 05–7011. RODRIGUEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 416 F. 3d 123.

No. 05–7026. EGGERS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 914 So. 2d 883.

No. 05–7382. GILL *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 167 S. W. 3d 184.

No. 05–7471. BOWER *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 879.

No. 05–7489. GORMAN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–7492. GOODEN *v.* MATHES, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 05–7493. FOUNTAIN *v.* GRACE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 420 F. 3d 267.

No. 05–7495. OWENS *v.* INGRAM. C. A. 8th Cir. Certiorari denied.

No. 05–7498. ODUM *v.* BUONASSISSI. Ct. Sp. App. Md. Certiorari denied.

No. 05–7501. SANDRES *v.* LOUISIANA OFFICE OF GENERAL COUNSEL ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 676.

No. 05–7508. JACKSON *v.* CALIFORNIA COMMISSION ON JUDICIAL PERFORMANCE ET AL. C. A. 9th Cir. Certiorari denied.

No. 05–7511. ARORA *v.* INDERNELL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 445.

No. 05–7515. MOON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 37 Cal. 4th 1, 117 P. 3d 591.

No. 05–7519. LARSON *v.* COOPER ET AL. Sup. Ct. Alaska. Certiorari denied. Reported below: 113 P. 3d 1196.

No. 05–7531. COLLINS *v.* ROWLEY, SUPERINTENDENT, MISSOURI EASTERN CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 05–7532. RIVERA *v.* ERCOLE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 05–7538. ATAMIAN *v.* BAHAR ET AL. Sup. Ct. Del. Certiorari denied. Reported below: 886 A. 2d 1277.

No. 05–7542. MARROW *v.* TEXAS. Ct. App. Tex., 10th Dist. Certiorari denied. Reported below: 169 S. W. 3d 328.

No. 05–7545. NICKLEBERRY *v.* PHELPS-SANDERS. C. A. 5th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 705.

No. 05–7547. TAYLOR *v.* QUARANTELLO ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 906 So. 2d 1059.

No. 05–7556. CLAY-EL *v.* SCHREIER, ASSOCIATE JUDGE, CIRCUIT COURT OF ILLINOIS, COOK COUNTY, ET AL. Sup. Ct. Ill. Certiorari denied.

No. 05–7558. PETERSON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 05–7559. CARLEY *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 05–7562. DIXON *v.* ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY ET AL. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 348 Ill. App. 3d 1109, 868 N. E. 2d 1109.

No. 05–7563. CUMMINGS *v.* NEW YORK ET AL. C. A. 2d Cir. Certiorari denied.

No. 05–7566. DOWLER *v.* SAAR, SECRETARY, MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 507.

No. 05–7576. WINKLER *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 140.

No. 05–7585. MISIAK *v.* WASHINGTON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 993.

No. 05–7587. JUDY H. *v.* RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 05–7591. RODRIGUEZ *v.* SPENCER, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT NORFOLK. C. A. 1st Cir. Certiorari denied. Reported below: 412 F. 3d 29.

No. 05–7594. JACKSON *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 173.

No. 05–7599. MONNAR *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 912 So. 2d 1220.

No. 05–7601. EMRICK *v.* OHIO. Ct. App. Ohio, Muskingum County. Certiorari denied.

No. 05–7602. CUNNINGHAM *v.* RILEY, DEPUTY SHERIFF, MECKLENBURG COUNTY, NORTH CAROLINA, ET AL. Ct. App. N. C. Certiorari denied. Reported below: 169 N. C. App. 600, 611 S. E. 2d 423.

No. 05–7619. PANKOW *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 895 So. 2d 1149.

No. 05–7622. BROXTON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 05–7639. FINLEY *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 125.

No. 05–7702. THOMAS *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–7713. WASHINGTON *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 922 So. 2d 145.

No. 05–7717. MIZE *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Chatham County, N. C. Certiorari denied.

No. 05–7804. SIMPSON, AKA JENKINS *v.* MINNESOTA. C. A. 8th Cir. Certiorari denied.

No. 05–7828. MATHISON ET UX. *v.* SWENSON ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 730.

No. 05–7831. PRAWIRA *v.* GONZALES, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 391.

No. 05–7893. GURLEY *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 906 So. 2d 1264.

No. 05–7933. OCHOA *v.* GONZALES, ATTORNEY GENERAL. C. A. 8th Cir. Certiorari denied.

No. 05–7938. JEFFREY *v.* COMMISSIONER OF SOCIAL SECURITY. C. A. 6th Cir. Certiorari denied.

No. 05–7941. WHITAKER *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 05–7970. SHMELEV *v.* DINGLE, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 05–8011. ROMAN *v.* CAMPBELL, SUPERINTENDENT, ALBANY COUNTY CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 05–8076. CARSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–8082. SACCOCCIA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–8097. JACOB *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 05–8099. HINNANT *v.* MERRITT ET AL. C. A. D. C. Cir. Certiorari denied.

No. 05–8106. PAGE *v.* KLEM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY. C. A. 3d Cir. Certiorari denied.

No. 05–8107. LOVE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–8109. WASHINGTON *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 05–8114. GIORDANO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 151 Fed. Appx. 732.

No. 05–8115. FULLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 414 F. 3d 887.

No. 05–8119. GREEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–8120. HOUSTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–8124. FORTNER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–8126. FLORES-SEDA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 423 F. 3d 17.

No. 05–8127. BALSEWICZ *v.* KINGSTON, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 425 F. 3d 1029.

No. 05–8128. DOCK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 426 F. 3d 269.

No. 05–8129. DAVIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 417 F. 3d 909.

No. 05–8130. ORTIZ-MERCED *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–8131. RICH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 486.

No. 05–8133. HERNANDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 161.

No. 05–8135. HATTEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 154 Fed. Appx. 398.

No. 05–8139. HARKUM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 148 Fed. Appx. 153.

No. 05–8140. GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 848.

No. 05–8141. GRAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 147 Fed. Appx. 964.

No. 05–8142. HOWARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 151 Fed. Appx. 221.

No. 05–8145. JONES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–8148. BACALLAO *v.* CRABB, JUDGE, UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN. C. A. 7th Cir. Certiorari denied.

No. 05–8150. HICKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 396.

No. 05–8153. GOVAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 05–8156. HIGHTOWER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–8157. HUGHES *v.* SLADE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–8167. GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 101 Fed. Appx. 741.

No. 05–8168. HUDSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–8170. GLADDEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–8171. GOMES RIVAS ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 818.

No. 05–8172. SCHOLES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 148 Fed. Appx. 173.

No. 05–8173. HARRIS *v.* BLEDSOE, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 425 F. 3d 386.

No. 05–8176. EBECK *v.* MCFADDEN, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 05–8180. FERREIRA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–488. VIRGILIO, PERSONAL REPRESENTATIVE OF VIRGILIO, ET AL. *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Motion of Henry J. Hyde et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 407 F. 3d 105.

No. 05–514. BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. *v.* LAIRD. C. A. 3d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 414 F. 3d 419.

Rehearing Denied

No. 04–10264. COLVIN *v.* CURTIS, WARDEN, *ante*, p. 843;

No. 05–101. BRADSHAW, WARDEN *v.* RICHEY, *ante*, p. 74;

No. 05–5063. GODFREY *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 880;

No. 05–5105. MOYA FELICIANO *v.* FLORIDA, *ante*, p. 883;

No. 05–5267. HARRIS *v.* SMITH ET AL., *ante*, p. 892;

No. 05–5283. HART *v.* UNITED STATES, *ante*, p. 893;

No. 05–5409. HIGGS *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY, *ante*, p. 901;

No. 05–5423. GARDNER *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 902;

No. 05–5763. HARPER *v.* GAMBLE ET AL., *ante*, p. 946; and

No. 05–7176. PRICE *v.* UNITED STATES, *ante*, p. 1049. Petitions for rehearing denied.

JANUARY 19, 2006

Certiorari Denied

No. 05–8710 (05A659). SIMPSON *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Rockingham County, N. C. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied.

JANUARY 20, 2006

Dismissal Under Rule 46

No. 05–398. ORTIZ *v.* ESPINOSA-ORGANISTA. C. A. 10th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 405 F. 3d 923.

JANUARY 23, 2006

Certiorari Granted—Vacated and Remanded

No. 04–1315. LONG ISLAND CARE AT HOME, LTD., ET AL. *v.* COKE. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the Department of Labor's Wage and Hour Advisory Memorandum No. 2005–1 (Dec. 1, 2005). Reported below: 376 F. 3d 118.

Miscellaneous Orders. (See also No. 128, Orig., *ante*, p. 413.)

No. 05M46. BUGENIG *v.* HOOPA VALLEY TRIBE ET AL. Motion for leave to file petition for writ of certiorari to the Hoopa Valley Tribal Court of Appeals denied.

No. 05M47. BLAIR *v.* CALIFORNIA; and

No. 05M48. ALLEN *v.* DISTRICT COURT OF OKLAHOMA, PITTSBURG COUNTY. Motions for leave to proceed *in forma pauperis* without affidavits of indigency executed by petitioners granted.

No. 05M49. CO QUY DUONG *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION; and

No. 05M54. NEVILLE *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 134, Orig. NEW JERSEY *v.* DELAWARE. Motion of respondent for appointment of a Special Master granted, and it is ordered that Ralph I. Lancaster, Esq., of Portland, Me., be appointed Special Master in this case with authority to fix the time and conditions for the filing of additional pleadings, to direct subsequent proceedings, to summon witnesses, to issue subpoenas, and to take such evidence as may be introduced and such as he may deem it necessary to call for. The Special Master is directed to submit Reports as he may deem appropriate.

The compensation of the Special Master, the allowances to him, the compensation paid to his legal, technical, stenographic, and clerical assistants, the cost of printing his Reports, and all other proper expenses, including travel expenses, shall be charged against and be borne by the parties in such proportion as the Court may hereafter direct. [For earlier order herein, see, *e. g.*, *ante*, p. 1028.]

No. 04–1324. DAY *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. [Certiorari granted, 545 U. S. 1164.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 04–1506. ARKANSAS DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. *v.* AHLBORN. C. A. 8th Cir. [Certiorari granted, 545 U. S. 1165.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 04–1527. S. D. WARREN CO. *v.* MAINE BOARD OF ENVIRONMENTAL PROTECTION ET AL. Sup. Jud. Ct. Me. [Certiorari granted, *ante,* p. 933.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 04–1528. RANDALL ET AL. *v.* SORRELL ET AL.;
No. 04–1530. VERMONT REPUBLICAN STATE COMMITTEE ET AL. *v.* SORRELL ET AL.; and
No. 04–1697. SORRELL ET AL. *v.* RANDALL ET AL. C. A. 2d Cir. [Certiorari granted, 545 U. S. 1165.] Motions of petitioners Neil Randall et al. and Vermont Republican State Committee et al. for divided argument denied. Motion of respondents William H. Sorrell et al. for divided argument granted and for additional time for oral argument denied.

No. 04–1544. MARSHALL *v.* MARSHALL. C. A. 9th Cir. [Certiorari granted, 545 U. S. 1165.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 04–1618. NORTHERN INSURANCE COMPANY OF NEW YORK *v.* CHATHAM COUNTY, GEORGIA. C. A. 11th Cir. [Certiorari granted, *ante,* pp. 933 and 959.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 04–9728. SAMSON *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. [Certiorari granted, 545 U. S. 1165.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 04–10566. SANCHEZ-LLAMAS *v.* OREGON. Sup. Ct. Ore.; and

No. 05–51. BUSTILLO *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. [Certiorari granted, *ante,* p. 1001.] Motion of petitioner Moises Sanchez-Llamas for appointment of counsel granted. Peter Gartlan, Esq., of Salem, Ore., is appointed to serve as counsel for petitioner Sanchez-Llamas in this case. Motion of petitioners to dispense with printing the joint appendix granted.

No. 05–204. LEAGUE OF UNITED LATIN AMERICAN CITIZENS ET AL. *v.* PERRY, GOVERNOR OF TEXAS, ET AL.;

No. 05–254. TRAVIS COUNTY, TEXAS, ET AL. *v.* PERRY, GOVERNOR OF TEXAS, ET AL.;

No. 05–276. JACKSON ET AL. *v.* PERRY, GOVERNOR OF TEXAS, ET AL.; and

No. 05–439. GI FORUM OF TEXAS ET AL. *v.* PERRY, GOVERNOR OF TEXAS, ET AL. D. C. E. D. Tex. [Probable jurisdiction noted, *ante,* p. 1074.] Motion of appellants in Nos. 05–254, 05–276, and 05–439 for divided argument granted. Time is to be divided as follows: 40 minutes for appellants in No. 05–276 and 20 minutes for appellants in No. 05–439. Motion of appellants in No. 05–204 for divided argument denied.

No. 05–184. HAMDAN *v.* RUMSFELD, SECRETARY OF DEFENSE, ET AL. C. A. D. C. Cir. [Certiorari granted, *ante,* p. 1002.] Motion of petitioner for order directing the parties to submit supplemental briefing denied. THE CHIEF JUSTICE took no part in the consideration or decision of this motion.

No. 05–8286. IN RE AYSISAYH; and

No. 05–8292. IN RE D'AMARIO. Petitions for writs of habeas corpus denied.

No. 05–7645. IN RE MONTFORD. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied

No. 04–989. HORTON ET AL. *v.* BANK ONE, N. A., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 387 F. 3d 426.

No. 04–1729. LPP MORTGAGE, LTD. *v.* BRINLEY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 403 F. 3d 415.

No. 05–58. FINK ET AL. *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Certiorari denied. Reported below: 123 Fed. Appx. 146.

No. 05–353. PEABODY WESTERN COAL CO. ET AL. *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 9th Cir. Certiorari denied. Reported below: 400 F. 3d 774.

No. 05–497. LUKOWSKI ET AL. *v.* CSX TRANSPORTATION, INC. C. A. 6th Cir. Certiorari denied. Reported below: 416 F. 3d 478.

No. 05–519. WIRZBURGER ET AL. *v.* GALVIN ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 412 F. 3d 271.

No. 05–635. SMITH *v.* AMERICAN AIRLINES, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 414 F. 3d 949.

No. 05–645. SCHEIBLER ET VIR *v.* HIGHMARK BLUE SHIELD. C. A. 3d Cir. Certiorari denied.

No. 05–647. GARCIA RAMOS *v.* 1199 HEALTH CARE EMPLOYEES PENSION FUND ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 413 F. 3d 234.

No. 05–648. FREEDMAN SEATING CO. *v.* AMERICAN SEATING CO. C. A. Fed. Cir. Certiorari denied. Reported below: 420 F. 3d 1350.

No. 05–651. FOX *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 194.

No. 05–652. IRWIN *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 872 A. 2d 1271.

No. 05–653. BRONCO WINE CO. ET AL. *v.* JOLLY, DIRECTOR, CALIFORNIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL, ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 129 Cal. App. 4th 988, 29 Cal. Rptr. 3d 462.

No. 05–707. SHOBAR ET AL. *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 184.

No. 05–717. SAPORITO *v.* DEPARTMENT OF LABOR ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–728. BROTHER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 166 S. W. 3d 255.

No. 05–760. KEVIN SHARP ENTERPRISES, INC. *v.* ALABAMA EX REL. TYSON, DISTRICT ATTORNEY. Ct. Civ. App. Ala. Certiorari denied. Reported below: 923 So. 2d 1117.

No. 05–781. PLANESI *v.* PETERS, REGISTER OF COPYRIGHTS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 05–803. JILES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 148 Fed. Appx. 746.

No. 05–811. BULLARD *v.* INKSTER HOUSING AND REDEVELOPMENT COMMISSION ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 718.

No. 05–6282. AZEEZ *v.* RUBENSTEIN, COMMISSIONER, WEST VIRGINIA DIVISION OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 412.

No. 05–6773. CORTEZ *v.* RYAN, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 131.

No. 05–7103. GARCIA-FLORES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 685.

No. 05–7207. FRAZIER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 408 F. 3d 1102.

No. 05–7606. HOLLY *v.* PATRIANAKOS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 883.

No. 05–7607. HOLLY *v.* WOOLFOLK ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 415 F. 3d 678.

No. 05–7629. HERNANDEZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 05–7648. KOGER *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 327.

No. 05–7654. ROBERTS *v.* ROBERTS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 05–7676. SILLICK *v.* AULT, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 05–7679. AKMAL *v.* RAWERS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–7680. AKMAL *v.* RAWERS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–7681. AKMAL *v.* RAWERS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–7683. BRADBERRY *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 374.

No. 05–7686. SETZKE *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 05–7695. KEGEL *v.* CHANOS, ATTORNEY GENERAL OF NEVADA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 587.

No. 05–7701. THOMAS *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–7711. WEIZENECKER *v.* HELLING, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 814.

No. 05–7764. PATKINS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 05–7775. LACY *v.* BERGE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 05–7794. GONZALEZ *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 126.

No. 05–7801. PFEFFER *v.* MCBRIDE, WARDEN. Cir. Ct. Jackson County, W. Va. Certiorari denied.

No. 05–7823. MOGUL ET AL. *v.* GERDS ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–7842. THACKER *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 05–7845. BRUNK *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–7854. BOWLING *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 168 S. W. 3d 2.

No. 05–7859. GREEN *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–7876. DURDEN *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 911 So. 2d 102.

No. 05–7880. DRAYTON *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–7882. SCOTT *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–7897. HEATH *v.* ROBERTS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 05–7910. BECKLEY *v.* MINER, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 125 Fed. Appx. 385.

No. 05–7924. NIXON *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 907 So. 2d 1177.

No. 05–7958. PETSCHOW *v.* COLORADO. Ct. App. Colo. Certiorari denied. Reported below: 119 P. 3d 495.

No. 05–7972. SINGLETON *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–7997. TOLLIVER *v.* OHIO. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 05–8029. WANGUL *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 05–8081. SVEUM *v.* SMITH, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 05–8089. STACEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 15.

No. 05–8177. GIBBS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 502.

No. 05–8181. WALKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 189.

No. 05–8182. CANNON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 937.

No. 05–8185. TORRES GONZALES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–8189. HORTON *v.* MARTIN ET AL.; HORTON *v.* SHULL ET AL.; and HORTON *v.* BROWNLEE. C. A. 4th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 185 (first and second judgments) and 190 (third judgment).

No. 05–8191. GATES, AKA HAYES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–8192. HICKMON *v.* ALPERT. C. A. 11th Cir. Certiorari denied.

No. 05–8196. JOHNSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–8198. GRAY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 410 F. 3d 338.

No. 05–8199. MEDINA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 149 Fed. Appx. 32.

No. 05–8200. LINCOLN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 634.

No. 05–8202. LUEBBERT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 411 F. 3d 602.

No. 05–8203. HACKNEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 542.

No. 05–8204. GOFF *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 155 Fed. Appx. 773.

No. 05–8205. NICHOLS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 149.

No. 05–8206. PEREZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 152 Fed. Appx. 98.

No. 05–8207. HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 156 Fed. Appx. 624.

No. 05–8208. FLENOID *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 415 F. 3d 974.

No. 05–8210. BELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 151 Fed. Appx. 216.

No. 05–8213. ANDERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–8214. AVENDANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 934.

No. 05–8215. LASKO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 146 Fed. Appx. 530.

No. 05–8216. RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 993.

No. 05–8217. RODRIGUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–8218. SMITH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 423 F. 3d 1164.

No. 05–8219. DIALLO SEBASTIAO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 05–8223. VAZQUEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–8224. WILLIAMS *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 343.

No. 05–8225. TIMOTHY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 151 Fed. Appx. 741.

No. 05–8226. TERRAZAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 689.

No. 05–8229. CRUZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 423 F. 3d 1119.

No. 05–8230. CORREA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 504.

No. 05–8231. ERHART *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 415 F. 3d 965.

No. 05–8232. CORTEZ-VILLANUEVA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 87.

No. 05–8233. YOUNG *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–8234. MARTIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 422 F. 3d 597.

No. 05–8237. DOBSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 05–8239. VILLAGOMEZ-CORONA *v.* UNITED STATES; GARCIA-TORRES *v.* UNITED STATES; VALENCIA-ESPINDOLA *v.* UNITED STATES; and VELASQUEZ-REYES, AKA ALVARADO-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 427 F. 3d 1227 (fourth judgment); 168 Fed. Appx. 144 (third judgment).

No. 05–8240. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 86.

No. 05–8241. WILLIAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 425 F. 3d 478.

No. 05–8242. VELA-SALINAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 150 Fed. Appx. 309.

No. 05–8243. VARACALLI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 05–8244. YOUNG *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–8246. ZAWADZKI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–8247. WALTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 199.

No. 05–8249. LEVY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 154 Fed. Appx. 124.

No. 05–8251. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 150 Fed. Appx. 208.

No. 05–8261. ALVAREZ-BRAVO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–8262. BLOCK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 148 Fed. Appx. 904.

No. 05–365. SEEGARS ET AL. *v.* GONZALES, ATTORNEY GENERAL, ET AL. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 396 F. 3d 1248.

No. 05–566. DIMICK, CHAIRPERSON, MINNESOTA BOARD ON JUDICIAL STANDARDS, ET AL. *v.* REPUBLICAN PARTY OF MINNESOTA ET AL. C. A. 8th Cir. Motion of Missouri Bar for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 416 F. 3d 738.

No. 05–638. MILEIKOWSKY *v.* TENET HEALTHSYSTEM ET AL. Ct. App. Cal., 2d App. Dist. Motion of Association of American Physicians & Surgeons, Inc., et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 128 Cal. App. 4th 531, 27 Cal. Rptr. 3d 171.

No. 05–686. ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER *v.* WHITE. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 416 F. 3d 728.

No. 05–763. RESEARCH IN MOTION, LTD. *v.* NTP, INC. C. A. Fed. Cir. Motions of Intel Corporation, Canadian Chamber of Commerce et al., and Government of Canada for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 418 F. 3d 1282.

No. 05–8002. ELLEDGE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. JUSTICE BREYER would grant the petition for writ of certiorari. Reported below: 911 So. 2d 57.

Rehearing Denied

No. 04–631. WAGNON, SECRETARY, KANSAS DEPARTMENT OF REVENUE *v.* PRAIRIE BAND POTAWATOMI NATION, *ante*, p. 95;

No. 04–10630. IN RE GLAGOLA, *ante*, p. 809;

No. 04–10753. LEBAR *v.* MONROE COUNTY CHILDREN AND YOUTH SERVICES ET AL., *ante*, p. 869;

No. 05–403. YEE *v.* SHIAWASSEE COUNTY, MICHIGAN, ET AL., *ante*, p. 1034;

No. 05–429. BROWN *v.* AAMES CAPITAL CORP. ET AL., *ante*, p. 1061;

No. 05–5207. JACKMAN *v.* UNITED STATES, *ante*, p. 889;

No. 05–5490. JONES *v.* UNITED STATES, *ante*, p. 906;

No. 05–6510. BENAVIDES *v.* MCGRATH, WARDEN, *ante*, p. 1006;

No. 05–6695. MASIARCZYK *v.* JOHNSON ET AL., *ante*, p. 1041;

No. 05–6740. GANT *v.* UNITED STATES, *ante*, p. 1043;

No. 05–7178. JONES *v.* SOUTH CAROLINA ET AL., *ante*, p. 1078; and

No. 05–7307. LEVON *v.* UNITED STATES, *ante*, p. 1053. Petitions for rehearing denied.

JANUARY 24, 2006

Miscellaneous Orders

No. 05A660. HILL *v.* FLORIDA. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied.

No. 05–8780 (05A673). IN RE HILL. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

JANUARY 25, 2006

Certiorari Granted

No. 05–8794 (05A676). HILL *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, granted. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Petitioner's brief to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, March 6, 2006. Respondents' brief to be filed with the Clerk and

served upon opposing counsel on or before 3 p.m., Monday, April 3, 2006. Reply brief, if any, to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, April 17, 2006. The stay shall terminate upon the sending down of the judgment of this Court. Reported below: 437 F. 3d 1084.

Certiorari Denied

No. 05–8752 (05A664). DUDLEY *v.* TEXAS. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied.

JANUARY 26, 2006

Certiorari Denied

No. 05–8824 (05A679). BIEGHLER *v.* INDIANA. Sup. Ct. Ind. Application for stay of execution of sentence of death, presented to JUSTICE STEVENS, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 839 N. E. 2d 691.

JANUARY 27, 2006

Miscellaneous Order

No. 05A684. DONAHUE, COMMISSIONER, INDIANA DEPARTMENT OF CORRECTIONS, ET AL. *v.* BIEGHLER. Application to vacate the stay of execution of sentence of death entered by the United States Court of Appeals for the Seventh Circuit on January 26, 2006, presented to JUSTICE STEVENS, and by him referred to the Court, granted. JUSTICE STEVENS, JUSTICE GINSBURG, and JUSTICE BREYER would deny the application to vacate the stay of execution.

JANUARY 31, 2006

Miscellaneous Orders

No. 05A692 (05–8895). RUTHERFORD *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, granted

pending the disposition of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for writ of certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court. JUSTICE ALITO took no part in the consideration or decision of this application.

No. 05A695. CRAWFORD, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS, ET AL. *v.* TAYLOR. Application to vacate the stay of execution of sentence of death entered by the United States Court of Appeals for the Eighth Circuit on January 29, 2006, presented to JUSTICE THOMAS, and by him referred to the Court, denied. JUSTICE ALITO took no part in the consideration or decision of this application.

No. 05A696. ELIZALDE *v.* LIVINGSTON, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. JUSTICE ALITO took no part in the consideration or decision of this application.

No. 05–8896 (05A693). IN RE RUTHERFORD. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Petition for writ of habeas corpus denied. JUSTICE ALITO took no part in the consideration or decision of this application and this petition.

Certiorari Denied

No. 05–8795 (05A677). RUTHERFORD *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied. Reported below: 921 So. 2d 629.

No. 05–8887 (05A691). RUTHERFORD *v.* FLORIDA. Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this application and this petition. Reported below: 926 So. 2d 1100.

FEBRUARY 1, 2006

Miscellaneous Orders. (For Court's order making allotment of Justices, see *ante*, p. VI.)

No. 05A699. CRAWFORD, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS, ET AL. *v.* TAYLOR. Application to vacate the stay of execution of sentence of death entered by the United States Court of Appeals for the Eighth Circuit on January 31, 2006, presented to JUSTICE THOMAS, and by him referred to the Court, denied.

No. 05A705. CRAWFORD, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS, ET AL. *v.* TAYLOR. Application to vacate the stay of execution of sentence of death entered by the United States Court of Appeals for the Eighth Circuit on February 1, 2006, presented to JUSTICE ALITO, and by him referred to the Court, denied. THE CHIEF JUSTICE, JUSTICE SCALIA, and JUSTICE THOMAS would grant the application to vacate the stay of execution.

Certiorari Denied

No. 05–8919 (05A694). TAYLOR *v.* CRAWFORD, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Mo. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this application and this petition.

FEBRUARY 8, 2006

Miscellaneous Order

No. 05–9143 (05A730). IN RE NEVILLE. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

Certiorari Denied

No. 05–9136 (05A728). NEVILLE *v.* LIVINGSTON, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. Reported below: 440 F. 3d 221.

February 15, 2006

Dismissal Under Rule 46

No. 05–924. Mallinckrodt, Inc., et al. *v.* Masimo Corp. C. A. Fed. Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 147 Fed. Appx. 158.

Miscellaneous Order

No. 05A747. Smith *v.* Livingston, Executive Director, Texas Department of Criminal Justice, et al. Application for stay of execution of sentence of death, presented to Justice Scalia, and by him referred to the Court, denied.

February 16, 2006

Dismissal Under Rule 46

No. 05–603. Boyd *v.* Wisdom et al.; and

No. 05–780. Wisdom et al. *v.* Lee, Burns, Cossell & Kuehn, LLP, et al. C. A. 7th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 414 F. 3d 715.

February 17, 2006

Miscellaneous Orders

No. 04–473. Garcetti et al. *v.* Ceballos. C. A. 9th Cir. [Certiorari granted, 543 U. S. 1186.] Case restored to the calendar for reargument.

No. 04–1034. Rapanos et al. *v.* United States; and

No. 04–1384. Carabell et al. *v.* United States Army Corps of Engineers et al. C. A. 6th Cir. [Certiorari granted, *ante*, p. 932.] Motion of Jerome B. Carr, Ph.D., for leave to file a brief as *amicus curiae* out of time denied. Motion of Donald Harkins for leave to file a brief as *amicus curiae* granted.

No. 04–1327. Holmes *v.* South Carolina. Sup. Ct. S. C. [Certiorari granted, 545 U. S. 1164.] Motion of Kansas et al. for leave to participate in oral argument as *amici curiae* and for divided argument granted.

No. 04–1704. DaimlerChrysler Corp. et al. *v.* Cuno et al.; and

No. 04–1724. Wilkins, Tax Commissioner for the State of Ohio, et al. *v.* Cuno et al. C. A. 6th Cir. [Certiorari granted, 545 U. S. 1165.] Motion of petitioners for divided argument granted. Time is to be divided as follows: 15 minutes for petitioners in No. 04–1704, and 15 minutes for petitioners in No. 04–1724.

No. 05–204. League of United Latin American Citizens et al. *v.* Perry, Governor of Texas, et al.;

No. 05–254. Travis County, Texas, et al. *v.* Perry, Governor of Texas, et al.;

No. 05–276. Jackson et al. *v.* Perry, Governor of Texas, et al.; and

No. 05–439. GI Forum of Texas et al. *v.* Perry, Governor of Texas, et al. D. C. E. D. Tex. [Probable jurisdiction noted, *ante,* p. 1074.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

February 20, 2006

Miscellaneous Order

No. 05–9283 (05A762). In re Morales. Application for stay of execution of sentence of death, presented to Justice Kennedy, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

Certiorari Denied

No. 05–9291 (05A763). Morales *v.* Hickman, Secretary, California Department of Corrections, et al. C. A. 9th Cir. Application for stay of execution of sentence of death, presented to Justice Kennedy, and by him referred to the Court, denied. Certiorari denied. Reported below: 438 F. 3d 926.

February 21, 2006

Certiorari Granted—Vacated and Remanded. (See also No. 04–1095, *ante,* p. 450; and No. 05–379, *ante,* p. 454.)

No. 04–1322. Vazquez-Valentin *v.* Santiago-Diaz, Individually and as Mayor of Toa Baja, Puerto Rico, et al. C. A.

1st Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Unitherm Food Systems, Inc.* v. *Swift-Eckrich, Inc.*, *ante*, p. 394. Reported below: 385 F. 3d 23.

No. 05–6476. ANDRADE *v.* GONZALES, ATTORNEY GENERAL, ET AL. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of 8 U. S. C. § 1252(a)(2)(D). Reported below: 134 Fed. Appx. 729.

Certiorari Dismissed

No. 05–8103. MAGEE *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

Miscellaneous Orders

No. 05A524. CHILINGIRIAN *v.* UNITED STATES; and

No. 05A594. LEJA *v.* UNITED STATES. Applications for bail, addressed to JUSTICE SCALIA and referred to the Court, denied.

No. 05A651. LOPEZ *v.* TEXAS. Ct. App. Tex., 4th Dist. Application for stay, addressed to JUSTICE SOUTER and referred to the Court, denied.

No. D–2420. IN RE DISCIPLINE OF SIMURO. Valerie Theresa Simuro, of Brooklyn, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring her to show cause why she should not be disbarred from the practice of law in this Court.

No. D–2421. IN RE DISCIPLINE OF ROSTOKER. Michael David Rostoker, of Boulder Creek, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40

days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2422. IN RE DISCIPLINE OF TENENBAUM. Joel David Tenenbaum, of Greenville, Del., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2423. IN RE DISCIPLINE OF ISRAEL. Kenneth Tremayne Israel, of Marietta, Ga., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2424. IN RE DISCIPLINE OF ROBERTS. Barry Gordon Roberts, of Atlanta, Ga., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2425. IN RE DISCIPLINE OF AYELE. Mikre-Michael Ayele, of Arlington, Va., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2426. IN RE DISCIPLINE OF ZAMECK. Harvey Jason Zameck, of Southfield, Mich., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 05M50. SCHAFLER *v.* NEWSOME, CHIEF BANKRUPTCY JUDGE, UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied. JUSTICE BREYER took no part in the consideration or decision of this motion.

No. 05M51. TAYLOR *v.* INGLES MARKETS, INC.;
No. 05M52. CARROW *v.* NEVADA;
No. 05M53. PRICE *v.* PHOENIX HOME LIFE MUTUAL ET AL.;
No. 05M55. WESLEY *v.* UNITED STATES;

No. 05M56. MEEHAN *v.* PENNSYLVANIA BOARD OF PROBATION AND PAROLE ET AL.;

No. 05M57. COTTON *v.* UNITED STATES;

No. 05M60. BARKER *v.* BELLAMY; and

No. 05M61. BELLOMO *v.* UNITED STATES. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 05M58. DUNKLE *v.* CALIFORNIA. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. 05M59. LENTZ *v.* UNITED STATES. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 105, Orig. KANSAS *v.* COLORADO. Motion of the Special Master for interim fees and expenses granted, and the Special Master is awarded a total of $57,761.43 for the period December 1, 2004, through December 31, 2005, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 543 U. S. 1046.]

No. 133, Orig. ARKANSAS *v.* OKLAHOMA. Motion for leave to file bill of complaint denied.

No. 04–607. LABORATORY CORPORATION OF AMERICA HOLDINGS, DBA LABCORP *v.* METABOLITE LABORATORIES, INC., ET AL. C. A. Fed. Cir. [Certiorari granted, *ante*, p. 999.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. THE CHIEF JUSTICE took no part in the consideration or decision of this motion.

No. 05–83. WASHINGTON *v.* RECUENCO. Sup. Ct. Wash. [Certiorari granted, *ante*, p. 960.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 05–184. HAMDAN *v.* RUMSFELD, SECRETARY OF DEFENSE, ET AL. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 1002.] Motion of former Federal Judges Shirley M. Hufstedler and William A. Norris for leave to file a brief as *amici curiae* granted. Motion of petitioner for leave to file surreply regarding respondents' motion to dismiss granted. Further consideration of respondents' motion to dismiss for lack of jurisdiction deferred to the hearing of the case on the merits. A total of 90 minutes is allotted for

oral argument. THE CHIEF JUSTICE took no part in the consideration or decision of these motions.

No. 05–416. WOODFORD ET AL. *v.* NGO. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1015.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 05–5992. ZEDNER *v.* UNITED STATES. C. A. 2d Cir. [Certiorari granted, *ante*, p. 1085.] Motion of petitioner for appointment of counsel granted. Edward S. Zas, Esq., of New York, N. Y., is appointed to serve as counsel for petitioner in this case.

No. 05–7032. ROLLER *v.* WILLIAMS, WARDEN. Super. Ct. Baldwin County, Ga. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1086] denied.

No. 05–7916. THOMPSON *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1137] denied.

No. 05–8580. BOWEN *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until March 14, 2006, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 05–572. IN RE GRAND JURY PROCEEDINGS. C. A. 3d Cir. Motion of the Solicitor General for leave to file a brief in opposition under seal with redacted copies for the public record granted. Petition for writ of common-law certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 05–8458. IN RE WILLIAMS;
No. 05–8463. IN RE WILLIAMS;
No. 05–8465. IN RE TIDWELL;
No. 05–8473. IN RE BROWN;
No. 05–8486. IN RE TORRES;
No. 05–8487. IN RE MORENO VALENCIA;

No. 05–8488. IN RE REVELO MORENO;
No. 05–8489. IN RE SEGURA MONTANO;
No. 05–8490. IN RE RIASCOS;
No. 05–8491. IN RE ORTIZ;
No. 05–8492. IN RE SALAS ESTUPINAN;
No. 05–8493. IN RE DOMINGO LOPEZ;
No. 05–8494. IN RE GONZALEZ MURILLO;
No. 05–8495. IN RE CAMPAZ;
No. 05–8524. IN RE VARGAS;
No. 05–8525. IN RE CUERO HURTADO;
No. 05–8526. IN RE SINISTERRA ASTUDILLO;
No. 05–8527. IN RE ALOMA;
No. 05–8528. IN RE CAMPAZ HURTADO;
No. 05–8529. IN RE CAICEDO;
No. 05–8530. IN RE ARROYO;
No. 05–8531. IN RE ESTUPINAN;
No. 05–8532. IN RE GARCIA ESTUPINAN;
No. 05–8533. IN RE ENRIQUEZ;
No. 05–8603. IN RE DEPINEDA;
No. 05–8645. IN RE ABED;
No. 05–8646. IN RE ABED;
No. 05–8708. IN RE MATHIS;
No. 05–8716. IN RE SANDERS;
No. 05–8783. IN RE SANCHEZ;
No. 05–8821. IN RE WILLIAMS;
No. 05–8842. IN RE UPSHAW;
No. 05–8861. IN RE KIM;
No. 05–8877. IN RE DEVEAUX;
No. 05–8879. IN RE CARTER;
No. 05–8883. IN RE MAHLE; and
No. 05–8888. IN RE NEWMAN. Petitions for writs of habeas corpus denied.

No. 05–689. IN RE CLEMENTS;
No. 05–725. IN RE LIVERMAN;
No. 05–732. IN RE SINA;
No. 05–747. IN RE GIBBONS;
No. 05–8088. IN RE RIVERA;
No. 05–8178. IN RE HOWARD; and
No. 05–8554. IN RE SALDANA. Petitions for writs of mandamus denied.

No. 05–8472. IN RE ANDREWS. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 05–380. GONZALES, ATTORNEY GENERAL *v.* CARHART ET AL. C. A. 8th Cir. Certiorari granted. Reported below: 413 F. 3d 791.

No. 05–608. MEDIMMUNE, INC. *v.* GENENTECH, INC., ET AL. C. A. Fed. Cir. Certiorari granted. Reported below: 427 F. 3d 958.

No. 05–705. GLOBAL CROSSING TELECOMMUNICATIONS, INC. *v.* METROPHONES TELECOMMUNICATIONS, INC. C. A. 9th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 423 F. 3d 1056.

No. 05–6551. CUNNINGHAM *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted.

Certiorari Denied. (See also No. 05–572, *supra.*)

No. 04–9952. SEPULVEDA *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 579 Pa. 217, 855 A. 2d 783.

No. 04–10283. MASTERSON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 155 S. W. 3d 167.

No. 05–266. PERAFAN SALDARRIAGA ET AL. *v.* GONZALES, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 402 F. 3d 461.

No. 05–341. GREGORY *v.* GRACE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON. C. A. 3d Cir. Certiorari denied.

No. 05–377. HOSTY ET AL. *v.* CARTER. C. A. 7th Cir. Certiorari denied. Reported below: 412 F. 3d 731.

No. 05–399. EDELSON *v.* CDC CORP. C. A. 7th Cir. Certiorari denied. Reported below: 405 F. 3d 620.

No. 05–461. HENDERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 409 F. 3d 1293.

No. 05–467. RAMOS *v.* GONZALES, ATTORNEY GENERAL. C. A. 7th Cir. Certiorari denied. Reported below: 414 F. 3d 800.

No. 05–477. DOUBLE EAGLE HOTEL & CASINO *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 10th Cir. Certiorari denied. Reported below: 414 F. 3d 1249.

No. 05–492. NATIONAL ADVERTISING CO. *v.* CITY OF MIAMI, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 402 F. 3d 1329.

No. 05–500. NATIONAL ADVERTISING CO. *v.* CITY OF MIAMI, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 402 F. 3d 1335.

No. 05–579. HITHON *v.* TYSON FOODS, INC. C. A. 11th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 795.

No. 05–582. FLYING J INC. ET AL. *v.* COMDATA NETWORK, INC. C. A. 10th Cir. Certiorari denied. Reported below: 405 F. 3d 821.

No. 05–586. PLACER COUNTY, CALIFORNIA, ET AL. *v.* BALDWIN ET AL.; and

No. 05–587. REED *v.* BALDWIN. C. A. 9th Cir. Certiorari denied. Reported below: 418 F. 3d 966.

No. 05–588. SEVEN UP PETE VENTURE, DBA SEVEN UP PETE JOINT VENTURE, ET AL. *v.* MONTANA ET AL. Sup. Ct. Mont. Certiorari denied. Reported below: 327 Mont. 306, 114 P. 3d 1009.

No. 05–591. CITY OF VANCOUVER, WASHINGTON, ET AL. *v.* WESTERN STATES PAVING CO., INC. C. A. 9th Cir. Certiorari denied. Reported below: 407 F. 3d 983.

No. 05–602. AWH CORP. ET AL. *v.* PHILLIPS. C. A. Fed. Cir. Certiorari denied. Reported below: 415 F. 3d 1303.

No. 05–610. WILSON *v.* DELTA STATE UNIVERSITY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 611.

No. 05–617. LOUISIANA DEPARTMENT OF EDUCATION ET AL. *v.* JOHNSON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 421 F. 3d 342.

No. 05–630. WEST ET UX. *v.* DYNCORP ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–664. SHANNON *v.* NEWLAND, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 410 F. 3d 1083.

No. 05–665. MATELJAN ET AL. *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied. Reported below: 129 Cal. App. 4th 367, 28 Cal. Rptr. 3d 506.

No. 05–670. CRAFT *v.* MORTON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–673. KOZUB ET AL. *v.* CITY OF POMONA, CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–675. MIEZIN ET UX. *v.* MIDWEST EXPRESS AIRLINES, INC., ET AL. Ct. App. Wis. Certiorari denied. Reported below: 284 Wis. 2d 701, 701 N. W. 2d 626.

No. 05–678. KANE ET AL. *v.* SULZER SETTLEMENT TRUST. C. A. 6th Cir. Certiorari denied. Reported below: 398 F. 3d 782.

No. 05–684. MAYO COLLABORATIVE SERVICES, INC. *v.* COMMISSIONER OF REVENUE OF MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 698 N. W. 2d 408.

No. 05–685. PURCELL, PERSONAL REPRESENTATIVE OF THE ESTATE OF PURCELL, DECEASED *v.* UNITED STATES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 158.

No. 05–687. BRAATEN *v.* THOMPSON ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–692. RENOBATO *v.* MERRILL LYNCH, PIERCE, FENNER & SMITH INC. ET AL. C. A. 5th Cir. Certiorari denied.

No. 05–693. CRAIG ET UX. *v.* BASHEER & EDGEMOORE ET AL. Sup. Ct. Va. Certiorari denied.

No. 05–694. PRASOPRAT *v.* BENOV, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 421 F. 3d 1009.

No. 05–695. POWER STANDARDS LAB, INC. *v.* FEDERAL EXPRESS CORP. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 127 Cal. App. 4th 1039, 26 Cal. Rptr. 3d 202.

No. 05–696. CREED *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 05–699. MUSGRAVE *v.* WOLF. C. A. 2d Cir. Certiorari denied. Reported below: 136 Fed. Appx. 422.

No. 05–700. DAOU SYSTEMS, INC., ET AL. *v.* SPARLING ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 411 F. 3d 1006.

No. 05–702. LENSCRAFTERS, INC., ET AL. *v.* ROBINSON, COMMISSIONER, TENNESSEE DEPARTMENT OF HEALTH, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 403 F. 3d 798.

No. 05–704. RUSH, AS NATURAL MOTHER OF RUSH, A MINOR *v.* ILLINOIS CENTRAL RAILROAD CO., AKA CANADIAN NATIONAL-ILLINOIS CENTRAL RAILROAD, CN–IC. C. A. 6th Cir. Certiorari denied. Reported below: 399 F. 3d 705.

No. 05–708. SATALICH *v.* CITY OF LOS ANGELES, CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 696.

No. 05–713. HARTCO ENGINEERING, INC. *v.* WANG'S INTERNATIONAL, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 142 Fed. Appx. 455.

No. 05–718. NORMAN *v.* BELLSOUTH INTELLECTUAL PROPERTY CORP. C. A. 11th Cir. Certiorari denied. Reported below: 120 Fed. Appx. 786.

No. 05–721. TURABO MEDICAL CENTER, INC., DBA HOSPITAL INTERAMERICANO DE MEDICINA AVANZADA *v.* MARCANO RIVERA ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 415 F. 3d 162.

No. 05–723. SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS *v.* CASSETT. C. A. 9th Cir. Certiorari denied. Reported below: 406 F. 3d 614.

No. 05–726. JAGODKA *v.* LAFLER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 148 Fed. Appx. 345.

No. 05–727. EVERYTHING FOR LOVE, INC., ET AL. *v.* TENDER LOVING THINGS, INC. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 05–729. BARCUS *v.* SCHNEIDER. C. A. 9th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 181.

No. 05–733. NORWEGIAN CRUISE LINE, INC. *v.* CASAVANT ET UX. App. Ct. Mass. Certiorari denied. Reported below: 63 Mass. App. 785, 829 N. E. 2d 1171.

No. 05–734. SCHINZING *v.* MID-STATE STAINLESS, INC. C. A. 8th Cir. Certiorari denied. Reported below: 415 F. 3d 807.

No. 05–737. KEY *v.* DIRECTV, INC. C. A. 4th Cir. Certiorari denied. Reported below: 133 Fed. Appx. 877.

No. 05–738. SHEKOYAN *v.* SIBLEY INTERNATIONAL, INC. C. A. D. C. Cir. Certiorari denied. Reported below: 409 F. 3d 414.

No. 05–739. COOKE *v.* UNITED DAIRY FARMERS, INC., ET AL. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 05–740. WILBUR ET AL. *v.* LOCKE, GOVERNOR OF WASHINGTON, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 423 F. 3d 1101.

No. 05–742. SIMS, SHERIFF, ROLETTE COUNTY, NORTH DAKOTA *v.* WRIGHT. C. A. 8th Cir. Certiorari denied. Reported below: 417 F. 3d 879.

No. 05–744. SCHUMPERT *v.* MANCOR CAROLINA, INC. C. A. 4th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 786.

No. 05–745. PIPER JAFFRAY & CO. ET AL. *v.* KAUFMAN, INDIVIDUALLY AND AS TRUSTEE OF THE MONTANA FACIAL SURGERY PENSION AND PROFIT PLAN, ET AL. Sup. Ct. Mont. Certiorari denied. Reported below: 328 Mont. 519, 120 P. 3d 809.

No. 05–748. POINTER *v.* DART, INC. C. A. 8th Cir. Certiorari denied. Reported below: 417 F. 3d 819.

No. 05–750. CUMMINGS *v.* TEXAS. Ct. App. Tex., 6th Dist. Certiorari denied. Reported below: 163 S. W. 3d 772.

No. 05–752. TOUVELL *v.* OHIO DEPARTMENT OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES. C. A. 6th Cir. Certiorari denied. Reported below: 422 F. 3d 392.

No. 05–753. SATALICH *v.* CITY OF LOS ANGELES, CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 696.

No. 05–756. GARCIA *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 05–758. GREENE *v.* CITY OF WALLA WALLA, WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 154 Wash. 2d 722, 116 P. 3d 1008.

No. 05–761. DEYO *v.* CONNECTICUT COMMISSIONER OF REVENUE SERVICES. App. Ct. Conn. Certiorari denied. Reported below: 89 Conn. App. 903, 875 A. 2d 599.

No. 05–764. GOECKEL ET UX. *v.* GLASS. Sup. Ct. Mich. Certiorari denied. Reported below: 473 Mich. 667, 703 N. W. 2d 58.

No. 05–768. WEINSTEIN, EISEN & WEISS, LLP *v.* GILL, CHAPTER 11 TRUSTEE, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 430 F. 3d 1215.

No. 05–771. COSIO *v.* KEITHLY ET AL. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 889 So. 2d 1017.

No. 05–772. SCHUTZ *v.* WYOMING ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 415 F. 3d 1128.

No. 05–773. WILMOTH ET UX. *v.* PORTAGE COUNTY, OHIO, ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–774. NATIONAL ENTERPRISES, INC., ET AL. *v.* KESSLER ET AL. Sup. Ct. Ark. Certiorari denied. Reported below: 363 Ark. 167, 213 S. W. 3d 597.

No. 05–778. LEAK ET AL. *v.* NEW JERSEY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 143 Fed. Appx. 443.

No. 05–783. RED *v.* ROOS ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 130 Cal. App. 4th 870, 30 Cal. Rptr. 3d 446.

No. 05–784. STRASSWEG ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 665.

No. 05–786. BACH *v.* PATAKI, GOVERNOR OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 408 F. 3d 75.

No. 05–788. ABUBAKAR *v.* ENAHORO ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 408 F. 3d 877.

No. 05–792. FOOTLAND *v.* GUTIERREZ, SECRETARY OF COMMERCE, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 104 Fed. Appx. 312.

No. 05–794. GMA ACCESSORIES, INC. *v.* OLIVIA MILLER, INC. C. A. 2d Cir. Certiorari denied. Reported below: 139 Fed. Appx. 301.

No. 05–798. JOHNSON-KUREK *v.* ABU-ABSI ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 423 F. 3d 590.

No. 05–799. VISIN ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 122 Fed. Appx. 363.

No. 05–800. SOUTHERN UNION CO. *v.* IRVIN. C. A. 9th Cir. Certiorari denied. Reported below: 415 F. 3d 1001 and 423 F. 3d 1117.

No. 05–801. SABO *v.* ARTHUR, SHERIFF, ARLINGTON COUNTY, VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 229.

No. 05–810. BRYANT *v.* METRIC PROPERTY MANAGEMENT, INC. C. A. 5th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 809.

No. 05–814. DISNEY *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 62 M. J. 46.

No. 05–819. FAIR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 858.

No. 05–820. HENDERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 416 F. 3d 686.

No. 05–822. PALADINO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 401 F. 3d 471 and 143 Fed. Appx. 716.

No. 05–829. MICKENS ET UX. *v.* ALLEN DAMRON CONSTRUCTION CO. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 890 So. 2d 1139.

No. 05–832. ROBINSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 416 F. 3d 645.

No. 05–833. WILLIAMS *v.* GEORGIA DEPARTMENT OF DEFENSE NATIONAL GUARD HEADQUARTERS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 147 Fed. Appx. 134.

No. 05–835. POPOVICH *v.* CUYAHOGA COUNTY COURT OF COMMON PLEAS, DOMESTIC RELATIONS DIVISION. C. A. 6th Cir. Certiorari denied. Reported below: 150 Fed. Appx. 424.

No. 05–840. RODRIGUEZ *v.* PENNSYLVANIA DEPARTMENT OF TRANSPORTATION, BUREAU OF DRIVER LICENSING. Commw. Ct. Pa. Certiorari denied. Reported below: 862 A. 2d 757.

No. 05–843. BADILLA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 419 F. 3d 1128.

No. 05–851. CITY OF LOS ANGELES, CALIFORNIA *v.* CLEVELAND ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 420 F. 3d 981.

No. 05–862. BROWN *v.* KALINA, KING COUNTY DEPUTY PROSECUTING ATTORNEY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 742.

No. 05–867. R. J. REYNOLDS TOBACCO CO. ET AL. *v.* SHEWRY, DIRECTOR, CALIFORNIA DEPARTMENT OF HEALTH SERVICES, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 423 F. 3d 906.

No. 05–876. SAVOCA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 151 Fed. Appx. 28.

No. 05–881. FISCHER *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 61 M. J. 415.

No. 05–928. WELP *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 151 Fed. Appx. 492.

No. 05–6149. MINCKS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 409 F. 3d 898.

No. 05–6406. HUFF *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 697.

No. 05–6424. MALTAIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 403 F. 3d 550.

No. 05–6723. CHIOFAR *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 124 Wash. App. 1018.

No. 05–6725. RICHARDSON *v.* BRILEY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 401 F. 3d 794.

No. 05–6888. BECHT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 403 F. 3d 541.

No. 05–6889. WALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 506.

No. 05–6895. WRICE *v.* PIERCE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 05–6971. DUKES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 126 Fed. Appx. 185.

No. 05–7048. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–7100. WHITTEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 839.

No. 05–7107. HUGHES *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 412 F. 3d 582.

No. 05–7168. RAISER *v.* CITY OF FRESNO, CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 05–7421. DICKEY *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 35 Cal. 4th 884, 111 P. 3d 921.

No. 05–7670. FLOWERS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 922 So. 2d 938.

No. 05–7674. PLUMMER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 409 F. 3d 906.

No. 05–7706. BERMEA *v.* BENSKO, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 05–7720. JAMES *v.* HUSKINS. C. A. 4th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 238.

No. 05–7724. OWSLEY *v.* MCGUIRE, SUPERINTENDENT, TIPTON CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 05–7725. YOUNG *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 876 A. 2d 472.

No. 05–7727. THOMAS *v.* EVANS, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 709.

No. 05–7728. VOSS *v.* WHORTON, DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 05–7729. WALKER *v.* GREENE, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 05–7730. WARNER *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–7733. WATSON *v.* KNOWLES, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 05–7735. DOWNING *v.* IGNACIO. C. A. 9th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 578.

No. 05–7743. STEPHENS *v.* COTTEY ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 179.

No. 05–7755. MATTHEWS *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 168 S. W. 3d 14.

No. 05–7757. JOHNSON *v.* ROZUM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET, ET AL. C. A. 3d Cir. Certiorari denied.

No. 05–7758. JAMES *v.* RAY. C. A. 4th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 345.

No. 05–7762. OZENNE *v.* CHASE MANHATTAN BANK ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 62.

No. 05–7765. MURPHY *v.* HILL, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. Ct. App. Ore. Certiorari denied.

No. 05–7768. JENKINS *v.* DRESNICK, JUDGE, CIRCUIT COURT OF FLORIDA, DADE COUNTY, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 147 Fed. Appx. 67.

No. 05–7771. DAY-PETRANO *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–7787. BOYD *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 910 So. 2d 167.

No. 05–7788. ALBERT *v.* JONES-ALBERT. Ct. App. Minn. Certiorari denied.

No. 05–7789. ARMSTRONG *v.* IOWA. C. A. 8th Cir. Certiorari denied. Reported below: 418 F. 3d 924.

No. 05–7802. NAZARINIA *v.* WASHINGTON MUTUAL BANK, INC. C. A. 10th Cir. Certiorari denied. Reported below: 152 Fed. Appx. 711.

No. 05–7813. HINSON *v.* THOMPSON ET AL. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 05–7815. COLLIER *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 05–7817. CURTO *v.* EDMONDSON ET AL. C. A. 2d Cir. Certiorari denied.

No. 05–7818. CERNIGLIA *v.* HUNTER. C. A. 9th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 48.

No. 05–7820. GARZA DAIL *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–7826. MASTERMAN *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 852 A. 2d 1250.

No. 05–7830. FRANKLIN *v.* OHIO. Ct. App. Ohio, Montgomery County. Certiorari denied.

No. 05–7832. MELTON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 05–7833. MENDOZA *v.* MCCARGER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 131 Fed. Appx. 543.

No. 05–7836. SCRUGGS *v.* BUSS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 823.

No. 05–7844. ARLINE *v.* TRUE, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 05–7849. AVERY *v.* CAMPBELL, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–7852. BEARD *v.* KRAMER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–7856. BOWLING *v.* SIMPSON, WARDEN; and
No. 05–8266. BOWLING *v.* SIMPSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 422 F. 3d 434.

No. 05–7860. FRANCO *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–7862. GEORGE *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 905 So. 2d 140.

No. 05–7863. HAMILTON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 05–7866. FORD *v.* APPELLATE DIVISION, SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–7873. HARRIS *v.* UCHTMAN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 05–7877. CARTER, AKA TONEY *v.* FRITO-LAY, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 815.

No. 05–7879. COOKE *v.* SUMMERS, ATTORNEY GENERAL OF TENNESSEE. C. A. 6th Cir. Certiorari denied.

No. 05–7881. ESQUIVEL CASTANEDA, AKA CASTANEDA *v.* TEXAS. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 05–7883. JOHNSON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 169 S. W. 3d 223.

No. 05–7884. BARRIENTES *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 05–7887. WHITE *v.* WAYNE COUNTY CIRCUIT COURT CLERKS. C. A. 6th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 792.

No. 05–7894. GONZALEZ *v.* JUSTICES OF THE MUNICIPAL COURT OF BOSTON ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 420 F. 3d 5.

No. 05–7895. FAISON *v.* FLORIDA PAROLE AND PROBATION COMMISSION ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–7896. HERBERT *v.* JONES. C. A. 6th Cir. Certiorari denied.

No. 05–7902. REDFORD *v.* LEWIS. C. A. 11th Cir. Certiorari denied.

No. 05–7903. REDFORD *v.* HAMIL ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–7907. CHRISPEN *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 912 So. 2d 1239.

No. 05–7908. DIAMOND *v.* MONEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–7909. RUBIO *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–7914. POBLAH *v.* ERCOLE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 05–7919. JAAKKOLA *v.* GOTHAM ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–7920. RODRIGUEZ *v.* SPITZER, ATTORNEY GENERAL OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 05–7923. RANDLE *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 977.

No. 05–7925. BACA SANCHEZ *v.* KERN COUNTY FIRE DEPARTMENT ET AL. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 05–7927. SANDERS *v.* PARRISH ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 412.

No. 05–7930. SERRANO *v.* FISCHER, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 412 F. 3d 292.

No. 05–7931. MUNDO *v.* COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS. Sup. Ct. N. Mar. I. Certiorari denied.

No. 05–7934. OVERTON *v.* BURGER, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 425 F. 3d 518.

No. 05–7936. LOPEZ, FKA GONZALEZ *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied. Reported below: 147 S. W. 3d 474.

No. 05–7940. WILLIAMS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–7943. EPPERSON *v.* IRVINE. C. A. 8th Cir. Certiorari denied.

No. 05–7944. DECAY *v.* DAVIS, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 05–7959. LIGGINS *v.* BURGER, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 422 F. 3d 642.

No. 05–7964. TOLLIVER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 05–7967. NEELY *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 05–7969. RUNNELS *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 05–7971. SHELBY *v.* NEBRASKA. Ct. App. Neb. Certiorari denied.

No. 05–7974. MATA *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–7975. WASHINGTON *v.* COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT. Sup. Ct. Cal. Certiorari denied.

No. 05–7978. MCCARTY *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 05–7979. BESTER *v.* BROCKTON HOUSING AUTHORITY. App. Ct. Mass. Certiorari denied. Reported below: 63 Mass. App. 1116, 828 N. E. 2d 66.

No. 05–7983. BALDAUF *v.* GAROUTTE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 137.

No. 05–7984. ADAMS *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 05–7985. CUMBIE *v.* KRAUSE. Ct. App. N. M. Certiorari denied.

No. 05–7989. JOHNSON *v.* HINSLEY ET AL. App. Ct. Ill., 4th Dist. Certiorari denied.

No. 05–7993. RUTH *v.* GAMMON, SUPERINTENDENT, MOBERLY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 65.

No. 05–7994. ROWE *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 05–7999. BRUGGEMAN *v.* OHIO. Ct. App. Ohio, Auglaize County. Certiorari denied.

No. 05–8000. BAILEY *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–8001. BENIQUEZ *v.* WEST, SUPERINTENDENT, ELMIRA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 05–8004. DEONARINE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 05–8009. CARREON *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 05–8012. RING *v.* KNECHT ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 51.

No. 05–8013. ATWELL *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 863 A. 2d 1218.

No. 05–8015. BONHOMETRE *v.* GONZALES, ATTORNEY GENERAL, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 414 F. 3d 442.

No. 05–8016. BOWMAN *v.* BOWMAN. Cir. Ct. Jackson County, W. Va. Certiorari denied.

No. 05–8019. PURNELL *v.* MICHIGAN. Cir. Ct. Berrien County, Mich. Certiorari denied.

No. 05–8020. LOTHARP *v.* HUNT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 535.

No. 05–8022. LAWSON *v.* HICKMAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied.

No. 05–8028. WELLS *v.* ERCOLE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 417 F. 3d 305.

No. 05–8032. THURMAN *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 05–8039. DOL *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied.

No. 05–8040. BOGER *v.* CIRCUIT COURT OF VIRGINIA, AUGUSTA COUNTY. Sup. Ct. Va. Certiorari denied.

No. 05–8043. JACKSON *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 280 Kan. 16, 118 P. 3d 1238.

No. 05–8044. JACOBS *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 05–8047. MARTI *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 89 Conn. App. 241, 872 A. 2d 928.

No. 05–8054. ROY *v.* COPLAN, WARDEN. C. A. 1st Cir. Certiorari denied.

No. 05–8056. TRACEY *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 05–8057. WILSON *v.* KANSAS CITY INSURANCE CO. C. A. 8th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 723.

No. 05–8061. VIVONE *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 05–8062. BERRY *v.* MORGAN, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 952.

No. 05–8063. CUMMINGS *v.* CITY OF PHILADELPHIA, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 137 Fed. Appx. 504.

No. 05–8068. WILKERSON *v.* GRINNELL CORP. C. A. 11th Cir. Certiorari denied.

No. 05–8070. THOMPSON *v.* OVERTON ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–8071. KAI UWE THIER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 912 So. 2d 318.

No. 05–8078. ROBINSON *v.* MILLER, SUPERINTENDENT, EASTERN NEW YORK CORERCTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 05–8079. MCMAHON *v.* LANTZ, COMMISSIONER, CONNECTICUT DEPARTMENT OF CORRECTION. App. Ct. Conn. Certiorari denied. Reported below: 89 Conn. App. 366, 873 A. 2d 265.

No. 05–8083. STEELE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied.

No. 05–8084. MARTIN *v.* ROBERTS ET AL. C. A. 10th Cir. Certiorari denied.

No. 05–8086. MOBLEY *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 911 So. 2d 111.

No. 05–8091. BELL *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 05–8095. SPOTTSVILLE *v.* RAY ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–8096. KIMBROUGH *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 05–8100. BISHOP *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 354 Ill. App. 3d 1158, 883 N. E. 2d 1148.

No. 05–8105. MCLAUGHLIN *v.* MCBRIDE, WARDEN. Cir. Ct. Greenbriar County, W. Va. Certiorari denied.

No. 05–8108. GIBBONS *v.* TWIGG ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 291.

No. 05–8110. FROST *v.* ILLES. C. A. 4th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 362.

No. 05–8111. SEXTON *v.* MYERS ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–8112. ARCEO *v.* CAREY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 376.

No. 05–8113. DE MELO *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 143 Fed. Appx. 344.

No. 05–8116. HAMPTON *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 05–8117. HENDERSON *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 138 Fed. Appx. 463.

No. 05–8118. GRIGGS *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 05–8121. HURLEY *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–8122. HUMPHREY *v.* BRADLEY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 05–8123. HIGGINBOTHAM *v.* HICKMAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 32.

No. 05–8125. LEDBETTER *v.* LANTZ, COMMISSIONER, CONNECTICUT DEPARTMENT OF CORRECTION. Sup. Ct. Conn. Certiorari denied. Reported below: 275 Conn. 451, 880 A. 2d 160.

No. 05–8136. IRELAND *v.* PROJECT MANAGEMENT INSTITUTE, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 144 Fed. Appx. 935.

No. 05–8137. FEYENORD *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 445 Mass. 72, 833 N. E. 2d 590.

No. 05–8143. MCCARLEY *v.* MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. Sup. Ct. Ala. Certiorari denied.

No. 05–8146. WHITE *v.* BURDICK, TRUSTEE. C. A. 1st Cir. Certiorari denied.

No. 05–8151. GORDON *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 908 So. 2d 681.

No. 05–8152. GLASSCOCK *v.* UTAH. Ct. App. Utah. Certiorari denied.

No. 05–8154. HICKS *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 912 So. 2d 1227.

No. 05–8155. GASTON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 05–8158. HENRY *v.* PLILER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 205.

No. 05–8159. GRISSOM *v.* HARRISON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–8160. FEHLING *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 05–8161. GREER *v.* VOEPEL ET AL. Ct. App. Ariz. Certiorari denied.

No. 05–8162. ISOM *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 05–8163. HOLLOMAN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 812 So. 2d 317.

No. 05–8164. HOLCOMB *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 907 So. 2d 537.

No. 05–8166. GUTOWSKI *v.* WARREN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–8169. GERKIN *v.* BUTLER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 772.

No. 05–8174. COATES *v.* CITY OF PHILADELPHIA, PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied.

No. 05–8175. DESHIELDS *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 879 A. 2d 591.

No. 05–8183. CANNEDY *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 911 So. 2d 108.

No. 05–8184. COLEMAN *v.* MICHIGAN. Cir. Ct. Ingham County, Mich. Certiorari denied.

No. 05–8186. HUMMEL *v.* KNOWLES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 05–8188. GANT *v.* TEXAS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 123 Fed. Appx. 622.

No. 05–8190. GONZALES *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 05–8193. HARDESTY *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 05–8197. HART *v.* HOOKS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–8201. JONES *v.* UNITED STATES; and
No. 05–8308. LOFTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 954.

No. 05–8209. LOPEZ *v.* YOUNG, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 842.

No. 05–8211. ANTONIO A. *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 90 Conn. App. 286, 878 A. 2d 358.

No. 05–8228. DETERMANN *v.* HILL, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 150 Fed. Appx. 623.

No. 05–8248. JIMENEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 419 F. 3d 34.

No. 05–8252. KINGSOLVER *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 05–8254. LOWE *v.* SHAH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 608.

No. 05–8256. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 702.

No. 05–8257. LUNDQUIST *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–8259. BROWN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 426 F. 3d 32.

No. 05–8260. BENAVIDES-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 151 Fed. Appx. 337.

No. 05–8263. BARTRAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 407 F. 3d 307.

No. 05–8264. BROWN *v.* ARTUS, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 152 Fed. Appx. 15.

No. 05–8265. BELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 407.

No. 05–8267. ACOSTA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 421 F. 3d 1195.

No. 05–8270. VAZQUEZ-MOLINA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 149 Fed. Appx. 1.

No. 05–8274. WINSTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–8280. O'KEEFE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 426 F. 3d 274.

No. 05–8281. ORTIZ *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 05–8282. MENDOZA-SIFUENTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 309.

No. 05–8284. BROWN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–8287. BRADLEY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 881 A. 2d 640.

No. 05–8288. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 425.

No. 05–8289. PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 220.

No. 05–8290. CHAFF *v.* VEACH, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 899.

No. 05–8291. COOPER *v.* PEREZ, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 41.

No. 05–8293. CARTER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–8294. CARINI *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 357 Ill. App. 3d 103, 827 N. E. 2d 1015.

No. 05–8299. SMALL *v.* UNITED STATES; and
No. 05–8591. GREEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 423 F. 3d 1164.

No. 05–8300. STRIET, AKA BAKKE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 884.

No. 05–8301. SNYDER, AKA BALL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 148 Fed. Appx. 888.

No. 05–8303. JONES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 846.

No. 05–8304. WHITE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 129 Fed. Appx. 197.

No. 05–8305. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 416 F. 3d 464.

No. 05–8307. JACOBO-MENDOZA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 150 Fed. Appx. 200.

No. 05–8309. LEFORCE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 147 Fed. Appx. 781.

No. 05–8310. JIMENEZ-JIMENEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 150 Fed. Appx. 826.

No. 05–8311. PITT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 100 Fed. Appx. 890.

No. 05–8312. LEMUZ-GARCIA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 05–8313. PETSCHE *v.* ULIBARRI, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 306.

No. 05–8314. MILLER, AKA JOHNSON, AKA DEBRUIN, AKA KERNS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 419 F. 3d 791.

No. 05–8315. REYES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 152 Fed. Appx. 266.

No. 05–8316. SOLORZANO *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 05–8317. SKOCZEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 718.

No. 05–8318. SHIELDS *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 129 Cal. App. 4th 863, 29 Cal. Rptr. 3d 71.

No. 05–8320. CANTU-RIOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 152 Fed. Appx. 333.

No. 05–8322. ESTEVEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 419 F. 3d 77.

No. 05–8323. CRITTEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 05–8324. CARTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–8325. CISNEROS-GARCIA, AKA GARCIA, AKA CRUZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 159 Fed. Appx. 464.

No. 05–8326. ESTEFANIA-MANUEL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–8328. CARPENTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 197.

No. 05–8332. MENDOZA-ALBERTO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 220.

No. 05–8336. MERAZ-AMADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–8339. SANCHEZ-ROSALES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 155 Fed. Appx. 421.

No. 05–8340. SCHALE *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 34 Kan. App. 2d ——, 113 P. 3d 834.

No. 05–8341. STREET *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–8343. BUTLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 137 Fed. Appx. 813.

No. 05–8347. BOLTON *v.* REED, WARDEN, ET AL. (two judgments). C. A. 10th Cir. Certiorari denied. Reported below: 130 Fed. Appx. 225 (second judgment).

No. 05–8348. BEAIRD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 853.

No. 05–8351. BAILEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 05–8352. ALCIDE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 865.

No. 05–8353. SHEFFIELD *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 908 So. 2d 1072.

No. 05–8355. RODRIGUEZ-GUTIERREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 428 F. 3d 201.

No. 05–8356. SALAS *v.* UNITED STATES; TORRES-VASQUEZ *v.* UNITED STATES; SANCHEZ-FLORES *v.* UNITED STATES; GONZALEZ-SANDOVAL *v.* UNITED STATES; and COVARRUBIAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 636 (second judgment); 145 Fed. Appx. 491 (first judgment).

No. 05–8357. SANDERS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 356 Ill. App. 3d 998, 827 N. E. 2d 17.

No. 05–8358. CARILLO-BELTRAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 424 F. 3d 845.

No. 05–8359. CARILLO-BANUELOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 250.

No. 05–8360. DAVIS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 05–8361. SMITH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–8362. MCNEILL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 136 Fed. Appx. 153.

No. 05–8363. ZAMMIT *v.* CITY OF NEW BALTIMORE POLICE DEPARTMENT. Ct. App. Mich. Certiorari denied.

No. 05–8364. WEST *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 151 Fed. Appx. 820.

No. 05–8365. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–8366. WALKER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 428 F. 3d 1165.

No. 05–8368. VALENZUELA-LUNA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 152 Fed. Appx. 335.

No. 05–8369. NAVARRETE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 152 Fed. Appx. 329.

No. 05–8372. AUSTIN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 426 F. 3d 1266.

No. 05–8373. BROWN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 05–8375. MURRAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–8377. ONE MALE JUVENILE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 213.

No. 05–8378. MEDINA-TORRES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 151 Fed. Appx. 345.

No. 05–8379. MONTENEGRO-RECINOS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 424 F. 3d 715.

No. 05–8381. O'HALLORAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 137 Fed. Appx. 373.

No. 05–8382. WINTERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 411 F. 3d 967.

No. 05–8383. WILSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 150 Fed. Appx. 767.

No. 05–8385. CIRIACO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 121 Fed. Appx. 907.

No. 05–8386. JENKINS ET AL. *v.* CLERK, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA. C. A.

11th Cir. Certiorari denied. Reported below: 150 Fed. Appx. 988.

No. 05–8389. VILLARREAL-MEDINA *v.* UNITED STATES; and DE LOS SANTOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 151 Fed. Appx. 324 (first judgment); 152 Fed. Appx. 375 (second judgment).

No. 05–8390. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 88.

No. 05–8391. VASQUEZ-ALEJOS, AKA MAYA-GALVAN *v.* UNITED STATES; RAMIREZ-SANTANA *v.* UNITED STATES; and NIEVES-ALVAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 440 (second judgment) and 441 (first judgment); 150 Fed. Appx. 338 (third judgment).

No. 05–8393. THIBODEAUX *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 150 Fed. Appx. 308.

No. 05–8397. DELGADO *v.* MORGAN, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 150 Fed. Appx. 647.

No. 05–8399. RANSOM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–8402. BELMONTE-MARTIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 311.

No. 05–8403. BATES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 147 Fed. Appx. 693.

No. 05–8404. BOLTE *v.* KOSCOVE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 156 Fed. Appx. 834.

No. 05–8405. BRANCH *v.* BOARD OF EDUCATION OF THE CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 110 Fed. Appx. 200.

No. 05–8406. BOOS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–8407. BARNETT *v.* BLEDSOE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 158 Fed. Appx. 441.

No. 05–8408. LIRA-LOPEZ, AKA USCANGA-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 318.

No. 05–8409. MATUTE *v.* UNITED STATES; PINEDA-RODRIGUEZ *v.* UNITED STATES; ESCOBAR-REYES *v.* UNITED STATES; and RODRIGUEZ RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 153 Fed. Appx. 284 (second judgment), 291 (first judgment), and 299 (third judgment); 162 Fed. Appx. 273 (fourth judgment).

No. 05–8410. LOZADO-AQUINO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–8411. JACOBO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–8413. MANESS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 139 F. 3d 780.

No. 05–8414. MARTIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 649.

No. 05–8415. LOWE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–8416. LEWIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–8418. PETERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 123 Fed. Appx. 385.

No. 05–8419. MASSE *v.* KNOWLES, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 05–8420. MATLOCK *v.* KNOWLES, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 05–8424. PRYOR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 05–8425. MCCARTY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 05–8427. LUCAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 169.

No. 05–8428. THOMAS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 883 A. 2d 156.

No. 05–8430. EBRON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–8431. DIAZ-PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 151 Fed. Appx. 310.

No. 05–8434. MONTGOMERY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 152 Fed. Appx. 822.

No. 05–8437. PEREZ-AGUIRRE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 148 Fed. Appx. 744.

No. 05–8441. SENGER *v.* NEW JERSEY STATE PAROLE BOARD. Super. Ct. N. J., App. Div. Certiorari denied.

No. 05–8443. SHEA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 137 Fed. Appx. 373.

No. 05–8447. MARTIN *v.* CENTRAL STATES EMBLEMS, INC. C. A. 10th Cir. Certiorari denied. Reported below: 150 Fed. Appx. 852.

No. 05–8448. JOSHUA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 305 F. 3d 352.

No. 05–8451. JUDA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 147 Fed. Appx. 775.

No. 05–8455. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 362.

No. 05–8456. TAPP *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 05–8459. TAYLOR *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–8460. TINSLEY *v.* COURT OF COMMON PLEAS OF PENNSYLVANIA, PHILADELPHIA COUNTY. Sup. Ct. Pa. Certiorari denied.

No. 05–8461. WHITE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 416 F. 3d 634.

No. 05–8466. MORENO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 339.

No. 05–8468. PEGUERO-SOSA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–8469. MCCALLUM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 150 Fed. Appx. 938.

No. 05–8474. BELL *v.* ADAMS, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 362.

No. 05–8476. LERMA-VELA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 152 Fed. Appx. 345.

No. 05–8478. CHAMBERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–8481. DETERMANN *v.* OREGON. Ct. App. Ore. Certiorari denied.

No. 05–8482. LAFOND *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–8483. LEWIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 570.

No. 05–8484. MILTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 106.

No. 05–8497. OWENS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–8499. MORGAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–8501. LOCKETT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 393 F. 3d 834.

No. 05–8503. MCCOMBER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 05–8505. MCGHEE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 863.

No. 05–8506. BARAJAS-BANDT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 150 Fed. Appx. 658.

No. 05–8509. CURTIS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 886 A. 2d 92.

No. 05–8510. DECLERCK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 167.

No. 05–8511. COUNTERMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–8515. BAXTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 152 Fed. Appx. 878.

No. 05–8518. NICOLAI-CABASSA *v.* UNITED STATES;
No. 05–8569. CORREY ET AL. *v.* UNITED STATES; and
No. 05–8618. PIZARRO-MORALES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 425 F. 3d 23.

No. 05–8521. SYLVESTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 529.

No. 05–8522. SANDERS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 527.

No. 05–8535. ISLAS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 73.

No. 05–8537. GUERRA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 557.

No. 05–8541. HILL *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 05–8542. GARCIA-MENDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 420 F. 3d 454.

No. 05–8543. FOLLEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 05–8544. HOLDER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 150 Fed. Appx. 347.

No. 05–8545. GOODING MUNOZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 154 Fed. Appx. 120.

No. 05–8552. SETTLE *v.* MCCALISTER ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–8553. SUN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–8557. SALTER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 418 F. 3d 860.

No. 05–8565. LARSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 760.

No. 05–8572. SUTTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 151 Fed. Appx. 232.

No. 05–8573. RAMOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–8576. HERRERA *v.* LEMASTER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 791.

No. 05–8578. BOLTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–8579. ANDERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 211.

No. 05–8582. SCHOENROGGE *v.* DEPARTMENT OF JUSTICE. C. A. Fed. Cir. Certiorari denied. Reported below: 148 Fed. Appx. 941.

No. 05–8583. GUZMAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 419 F. 3d 27.

No. 05–8584. HINES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 681.

No. 05–8585. FLORES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 262.

No. 05–8586. GIGLIO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 151 Fed. Appx. 843.

No. 05–8587. HUMPHRIES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 147 Fed. Appx. 361.

No. 05–8588. GARCIA-VARGAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 150 Fed. Appx. 301.

No. 05–8590. GUEVARA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 150 Fed. Appx. 84.

No. 05–8592. HAFERKAMP *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–8594. HARRIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 05–8595. HUNTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 147 Fed. Appx. 401.

No. 05–8599. VISSAGGI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–8600. HERNDON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 238.

No. 05–8604. CORDOVA *v.* SOARES, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 127.

No. 05–8607. PAXTON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 422 F. 3d 1203.

No. 05–8608. HERNANDEZ-MUNGUIA ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 786.

No. 05–8609. NOE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 411 F. 3d 878.

No. 05–8610. LIZARRAGA-ORDUNO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 150 Fed. Appx. 792.

No. 05–8611. MARISCAL-LUGO *v.* UNITED STATES; PEREZ-RAMALES *v.* UNITED STATES; TROCHEZ *v.* UNITED STATES; and AGUILAR-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 150 Fed. Appx. 337 (first judgment); 151 Fed. Appx. 341 (second judgment); 153 Fed. Appx. 296 (third judgment); 158 Fed. Appx. 552 (fourth judgment).

No. 05–8612. BRADLEY *v.* NATIONAL ASSOCIATION OF SECURITIES DEALERS DISPUTE RESOLUTION, INC., ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 433 F. 3d 846.

No. 05–8614. CARTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 150 Fed. Appx. 230.

No. 05–8616. RIVERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 147 Fed. Appx. 408.

No. 05–8619. RAMSEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 05–8620. SANDOVAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 05–8625. TUCKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 153 Fed. Appx. 173.

No. 05–8627. CARRION *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–8631. DIGNO MEZA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–8632. JARSO ET AL. *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–8635. JOHNSON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 417 F. 3d 208.

No. 05–8636. MARCELENO *v.* EVANS, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 672.

No. 05–8637. RAGSDALE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 426 F. 3d 765.

No. 05–8642. WILLIAMS, AKA CLARKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 425.

No. 05–8643. WOODS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–8647. MATA-HERNANDEZ *v.* UNITED STATES (Reported below: 152 Fed. Appx. 347); VENTURA ROSALES *v.* UNITED STATES (150 Fed. Appx. 362); HERNANDEZ-ESTRADA *v.* UNITED STATES (153 Fed. Appx. 288); PINEDA-GARDUNO *v.* UNITED STATES (153 Fed. Appx. 300); VILLALOBOS-CANALES *v.* UNITED STATES (147 Fed. Appx. 414); REA-HERRERA *v.* UNITED STATES (153 Fed. Appx. 287); CADENA-SOLIS *v.* UNITED STATES (153 Fed. Appx.

277); CORTES-GARCIA *v.* UNITED STATES (154 Fed. Appx. 413); ARIAS-GONZALEZ *v.* UNITED STATES (157 Fed. Appx. 777); LEON-ARGUELLO *v.* UNITED STATES (157 Fed. Appx. 778); MORENO-CABRERA *v.* UNITED STATES (157 Fed. Appx. 779); SANCHEZ-FLORES *v.* UNITED STATES (157 Fed. Appx. 780); and GARCIA-MESA *v.* UNITED STATES (157 Fed. Appx. 776). C. A. 5th Cir. Certiorari denied.

No. 05–8649. VOILS *v.* HALL, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 151 Fed. Appx. 793.

No. 05–8652. PEREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 210.

No. 05–8653. MORENO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 977.

No. 05–8655. MORRIS *v.* CASON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–8660. RIVAS-RUIZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 151 Fed. Appx. 831.

No. 05–8661. QUIJADA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 958.

No. 05–8663. SAVOCA, AKA RODDY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 156 Fed. Appx. 545.

No. 05–8666. MOJARRO-MAGALLANES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 05–8667. OCHOA BALDOVINOS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 434 F. 3d 233.

No. 05–8668. SALAZAR-MONTES, AKA NOE SALAZAR, AKA SALAZAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 152 Fed. Appx. 343.

No. 05–8670. SAN MARTIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 152 Fed. Appx. 397.

No. 05–8671. MENDEZ-MEDEROS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 05–8675. EDEKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 147 Fed. Appx. 154.

No. 05–8681. HERNANDEZ JIMENEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 106 Fed. Appx. 558.

No. 05–8682. JONES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 425 F. 3d 1274.

No. 05–8683. MONROE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 156 Fed. Appx. 543.

No. 05–8684. PIZANO, AKA PIZANO-CRUZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 421 F. 3d 707.

No. 05–8685. SYKES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–8686. ROLLOW *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 290.

No. 05–8687. RODRIGUEZ-LOPEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–8688. SAITTA *v.* MARYLAND DEPARTMENT OF HEALTH AND MENTAL HYGIENE. C. A. 4th Cir. Certiorari denied. Reported below: 158 Fed. Appx. 409.

No. 05–8689. DE LUNA-VIGIL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 155 Fed. Appx. 114.

No. 05–8690. LARSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 641.

No. 05–8694. WALKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–8696. YEPEZ-TELLO *v.* UNITED STATES; CARDENAS-HERNANDEZ *v.* UNITED STATES; and AVILES-DELGADO, AKA SANTA MARIA-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 615 (first judgment); 154 Fed. Appx. 580 (second judgment); 158 Fed. Appx. 57 (third judgment).

No. 05–8698. JOLLY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 151 Fed. Appx. 700.

No. 05–8700. SMITH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 426 F. 3d 567.

No. 05–8706. HURT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 164.

No. 05–8711. MONTALVO-NUNEZ *v.* UNITED STATES; LOPEZ-GUZMAN *v.* UNITED STATES; SALINAS *v.* UNITED STATES; and TAPIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 153 Fed. Appx. 252 (first judgment); 155 Fed. Appx. 797 (third judgment); 157 Fed. Appx. 736 (fourth judgment).

No. 05–8712. PEREZ-TAPIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 997.

No. 05–8714. SANTIBANEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 664.

No. 05–8720. ANDREWS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 290.

No. 05–8721. ARELLANO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 42.

No. 05–8723. BALKAM *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–8725. BECK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–8726. BURMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 151 Fed. Appx. 260.

No. 05–8727. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 148 Fed. Appx. 163.

No. 05–8730. MEACHUM *v.* STINE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–8734. BAILEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 147 Fed. Appx. 154.

No. 05–8735. BELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–8737. CALDERILLA-REGALADO *v.* UNITED STATES (Reported below: 145 Fed. Appx. 77); CASTORENA-RAMIREZ *v.* UNITED STATES; CHAVEZ-GONZALEZ *v.* UNITED STATES (145 Fed. Appx. 913); FLORES, AKA CERVANTES-MARTINEZ *v.* UNITED

STATES (141 Fed. Appx. 361); FLORES-MARTINEZ *v.* UNITED STATES (141 Fed. Appx. 363); HERNANDEZ-GARCIA *v.* UNITED STATES; IBARRA-ARELLANO *v.* UNITED STATES; MARTINEZ-MORALES, aka MALDONADO, aka MARTINEZ *v.* UNITED STATES; POMPA-ESTRADA *v.* UNITED STATES; RUIZ-LEVARIO, aka RUIZ *v.* UNITED STATES; SANCHEZ-CHAPARRO *v.* UNITED STATES (145 Fed. Appx. 42); and GALICIA-PENA *v.* UNITED STATES (141 Fed. Appx. 353). C. A. 5th Cir. Certiorari denied.

No. 05–8740. DAVENPORT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 536.

No. 05–8741. CORCINO-RAMIREZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–8742. CRENSHAW *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–8745. BAUTISTA-SANCHEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 151 Fed. Appx. 326.

No. 05–8748. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 151 Fed. Appx. 795.

No. 05–8754. MATEO-ESPEJO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 426 F. 3d 508.

No. 05–8755. MOHAMMED *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 150 Fed. Appx. 887.

No. 05–8759. TODD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 157 Fed. Appx. 108.

No. 05–8760. FOREMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 140 Fed. Appx. 924.

No. 05–8762. MONTGOMERY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 976.

No. 05–8763. AMERI *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 412 F. 3d 893.

No. 05–8764. AHERN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 05–8765. BARNETTE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 427 F. 3d 259.

No. 05–8769. WOODARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–8770. AIKENS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 153 Fed. Appx. 219.

No. 05–8773. RODRIGUEZ-TORRES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 155 Fed. Appx. 152.

No. 05–8776. MAYS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 430 F. 3d 963.

No. 05–8777. TAPIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 151 Fed. Appx. 557.

No. 05–8782. SANCHEZ-GARCIA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 150 Fed. Appx. 909.

No. 05–8786. BAILEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 422 F. 3d 670.

No. 05–8787. ALLEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–8788. ACOSTA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 743.

No. 05–8789. LOVE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 685.

No. 05–8790. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 158 Fed. Appx. 397.

No. 05–8792. BOULE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 208.

No. 05–8797. RAGSDALE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 426 F. 3d 765.

No. 05–8806. CONTRERAS-AREVALO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 150 Fed. Appx. 350.

No. 05–8816. WEBB *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 153 Fed. Appx. 908.

No. 05–8818. BRIKA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 416 F. 3d 514.

No. 05–8825. MASWAI *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 419 F. 3d 822.

No. 05–8830. WARREN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 151 Fed. Appx. 494.

No. 05–8832. AVALOZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 31.

No. 05–346. BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. *v.* BRONSHTEIN. C. A. 3d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this motion and this petition. Reported below: 404 F. 3d 700.

No. 05–543. HWANG GEUM JOO ET AL. *v.* JAPAN. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 413 F. 3d 45.

No. 05–583. GAMMICK ET AL. *v.* BOTELLO. C. A. 9th Cir. Motion of Nevada District Attorneys Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 413 F. 3d 971.

No. 05–662. LATOJA *v.* CARNIVAL CORP., DBA CARNIVAL CRUISE LINES, INC. C. A. 11th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 144 Fed. Appx. 101.

No. 05–697. FU-CHIANG TSUI *v.* TSAI-YI YANG. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 416 F. 3d 199.

No. 05–714. HANCOCK ET VIR *v.* WALT DISNEY WORLD INC., DBA DISNEYLAND HOTEL, ET AL. C. A. 9th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 136 Fed. Appx. 18.

No. 05–741. WRIGHT ET AL. *v.* POTOMAC ELECTRIC POWER CO. ET AL. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 163 Fed. Appx. 1.

No. 05–789. OZ OPTICS, LTD. *v.* DIMENSIONAL COMMUNICATIONS, INC. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 148 Fed. Appx. 82.

No. 05–7539. BRONSHTEIN *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 404 F. 3d 700.

No. 05–7752. VIGGIANO *v.* NEW JERSEY ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 136 Fed. Appx. 515.

No. 05–7906. CONCEPCION *v.* RESNICK ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 143 Fed. Appx. 422.

No. 05–8092. BELL *v.* PENNSYLVANIA BOARD OF PROBATION AND PAROLE. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 05–8165. GADDY *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari before judgment denied.

No. 05–8194. HARRIS *v.* SHERRER, ADMINISTRATOR, NORTHERN STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 05–8220. STOKES *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 132 Fed. Appx. 971.

No. 05–8273. VARGO *v.* WYNDER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 05–8277. VILLAVICENCIO *v.* WYNDER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS. C. A. 3d Cir.

Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 05–8302. WARREN *v.* GRACE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 422 F. 3d 132.

No. 05–8338. MORRIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 143 Fed. Appx. 505.

No. 05–8401. RHINES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 143 Fed. Appx. 478.

No. 05–8452. JOHNSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 05–8624. WALKER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 136 Fed. Appx. 524.

No. 05–8715. RODRIGUEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 05–8761. MCINTOSH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 05–8801. DOWDY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 149 Fed. Appx. 73.

Rehearing Denied

No. 04–1271. RUTTI *v.* WYOMING, 544 U. S. 1019;

No. 04–6002. IN RE ABSALON, 543 U. S. 807;

No. 04–9072. FIELDS *v.* UNITED STATES, *ante,* p. 828;

No. 05–105. UBEROI *v.* CITY OF BOULDER, COLORADO, ET AL., *ante,* p. 874;

No. 05–480. REVERIA TAVERN, INC. *v.* SUMMIT COUNTY BOARD OF ELECTIONS ET AL., *ante,* p. 1062;

No. 05–537. FROTHINGHAM *v.* RUMSFELD, SECRETARY OF DEFENSE, *ante*, p. 1076;

No. 05–540. FOX *v.* POTTER, POSTMASTER GENERAL, *ante*, p. 1062;

No. 05–5181. JONES *v.* UNITED STATES, *ante*, p. 888;

No. 05–5479. SPENCE *v.* CALIFORNIA, *ante*, p. 906;

No. 05–6006. GLEASON *v.* HICKMAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, *ante*, p. 983;

No. 05–6067. IN RE LANGON, *ante*, p. 809;

No. 05–6100. PEARSON *v.* UNITED STATES, *ante*, p. 1036;

No. 05–6205. ROSENDARY *v.* UNITED STATES, *ante*, p. 952;

No. 05–6230. BURROUGHS *v.* MAKOWSKI, WARDEN, *ante*, p. 1017;

No. 05–6331. MISIAK *v.* MORGAN, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY, *ante*, p. 1005;

No. 05–6447. GODFREY *v.* WOLFE, WARDEN, *ante*, p. 1037;

No. 05–6607. NORTONSEN *v.* REID, WARDEN, ET AL., *ante*, p. 1040;

No. 05–6660. SCATES *v.* UNITED STATES, *ante*, p. 994;

No. 05–6673. BANKS *v.* FAMILY INDEPENDENCE AGENCY, *ante*, p. 1041;

No. 05–6677. SPROUSE *v.* POWELL, WARDEN, *ante*, p. 1021;

No. 05–6724. CAGE-BARILE *v.* CHURCH OF CHRIST IN HOLLYWOOD, *ante*, p. 1042;

No. 05–6786. MOSES *v.* WALKER, WARDEN, *ante*, p. 1064;

No. 05–6822. ANDRYSZAK *v.* PAC FEDERAL CREDIT UNION, *ante*, p. 1064;

No. 05–6847. FOX *v.* STOVALL, WARDEN, *ante*, p. 1065;

No. 05–6854. MURDOCK *v.* AMERICAN AXLE & MANUFACTURING, INC., *ante*, p. 1065;

No. 05–6881. CRUZADO-LAUREANO *v.* UNITED STATES, *ante*, p. 1009;

No. 05–6917. BARRON *v.* UNIVERSITY OF TENNESSEE, *ante*, p. 1077;

No. 05–6918. REEVE *v.* UNITED STATES, *ante*, p. 1022;

No. 05–6963. STAR *v.* VIRGINIA, *ante*, p. 1044;

No. 05–6975. MOHAMED *v.* FLORIDA, *ante*, p. 1066;

No. 05–7196. MESSIER *v.* UNITED STATES, *ante*, p. 1050;

No. 05–7219. MCCULLOUGH *v.* WEST, SUPERINTENDENT, ELMIRA CORRECTIONAL FACILITY, *ante*, p. 1079;

No. 05–7300. BERAS *v.* UNITED STATES, *ante,* p. 1053;
No. 05–7327. BRADFORD *v.* MAXWELL TREE EXPERT CO., INC., *ante,* p. 1079;
No. 05–7370. CAMPBELL *v.* PLILER, WARDEN, *ante,* p. 1107;
No. 05–7441. WILLIAMS *v.* UNITED STATES, *ante,* p. 1070;
No. 05–7447. BEQUETTE *v.* UNITED STATES, *ante,* p. 1070;
No. 05–7538. ATAMIAN *v.* BAHAR ET AL., *ante,* p. 1141;
No. 05–7723. MOORE *v.* UNITED STATES, *ante,* p. 1119; and
No. 05–7824. OXENDINE *v.* UNITED STATES, *ante,* p. 1122. Petitions for rehearing denied.

No. 05–419. CHAJKOWSKI *v.* BOSICK ET AL., *ante,* p. 1061;
No. 05–5980. HESS *v.* KUNKLE ET AL., *ante,* p. 982; and
No. 05–6156. JAMES *v.* 279 4TH AVENUE LLC ET AL., *ante,* p. 986. Petitions for rehearing denied. JUSTICE ALITO took no part in the consideration or decision of these petitions.

No. 05–7098. BAKER *v.* DEPARTMENT OF JUSTICE, *ante,* p. 1054. Petition for rehearing denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 04–8602. MORGAN *v.* UNITED STATES, 544 U. S. 934. Motion of petitioner for leave to file petition for rehearing denied. JUSTICE ALITO took no part in the consideration or decision of this motion.

No. 05–5873. MORALES *v.* MCKESSON HEALTH SOLUTIONS, LLC, *ante,* p. 947. Motion of petitioner for leave to file petition for rehearing denied.

FEBRUARY 27, 2006

Certiorari Granted—Vacated and Remanded

No. 05–535. HIGGINS *v.* TYSON FOODS, INC. C. A. 11th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Ash* v. *Tyson Foods, Inc.*, *ante,* p. 454 *(per curiam).* Reported below: 143 Fed. Appx. 300.

Miscellaneous Orders

No. 05A525. ANDREWS *v.* GONZALES, ATTORNEY GENERAL, ET AL. C. A. D. C. Cir. Application to recall and stay the mandate, addressed to JUSTICE SCALIA and referred to the Court, denied.

No. 05M62. TELFORD *v.* LUNDAHL; and

No. 05M63. JEFFERSON *v.* HALL HOUSING INVESTMENTS, INC. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 04–723. STEVEDORING SERVICES OF AMERICA ET AL. *v.* PRICE ET AL., 544 U. S. 960. Renewed motion of respondent Arel Price for attorney's fees and costs referred to the United States Court of Appeals for the Ninth Circuit for adjudication.

No. 04–1414. UNITED STATES *v.* GRUBBS. C. A. 9th Cir. [Certiorari granted, 545 U. S. 1164.] Motion of respondent for appointment of counsel granted. Mark J. Reichel, Esq., of Sacramento, Cal., is appointed to serve as counsel for respondent in this case.

No. 04–1528. RANDALL ET AL. *v.* SORRELL ET AL.;

No. 04–1530. VERMONT REPUBLICAN STATE COMMITTEE ET AL. *v.* SORRELL ET AL.; and

No. 04–1697. SORRELL ET AL. *v.* RANDALL ET AL. C. A. 2d Cir. [Certiorari granted, 545 U. S. 1165.] Motion of Norman Dorsen et al. for leave to file a brief as *amici curiae* granted.

No. 04–10566. SANCHEZ-LLAMAS *v.* OREGON. Sup. Ct. Ore.; and

No. 05–51. BUSTILLO *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. [Certiorari granted, *ante*, p. 1001.] Motion of petitioners for divided argument granted.

No. 05–371. GENERAL CONSTRUCTION CO. ET AL. *v.* CASTRO ET AL., *ante*, p. 1130. Motion of respondent Robert Castro for attorney's fees and costs referred to the United States Court of Appeals for the Ninth Circuit for adjudication.

No. 05–5224. DAVIS *v.* WASHINGTON. Sup. Ct. Wash. [Certiorari granted, *ante*, p. 975.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 05–5705. HAMMON *v.* INDIANA. Sup. Ct. Ind. [Certiorari granted, *ante*, p. 976.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 05–911. IN RE SHEMONSKY; and

No. 05–8992. IN RE BROWN. Petitions for writs of mandamus denied.

Certiorari Denied

No. 04–1221. CIM INSURANCE CORP. *v.* PEACH ET AL. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 352 Ill. App. 3d 691, 816 N. E. 2d 668.

No. 04–1375. GLAZER *v.* LEHMAN BROTHERS, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 394 F. 3d 444.

No. 04–1566. THEIS RESEARCH, INC. *v.* BROWN & BAIN. C. A. 9th Cir. Certiorari denied. Reported below: 400 F. 3d 659.

No. 04–8496. ROBINSON *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 146 S. W. 3d 469.

No. 04–10093. HOWARD *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 153 S. W. 3d 382.

No. 05–344. GREGORY *v.* LEE. C. A. 9th Cir. Certiorari denied. Reported below: 363 F. 3d 931.

No. 05–347. JENKINS *v.* FIRST AMERICAN CASH ADVANCE OF GEORGIA, LLC, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 400 F. 3d 868.

No. 05–529. WELCH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 409 F. 3d 646.

No. 05–616. ANDERSON *v.* WESTINGHOUSE SAVANNAH RIVER CO., LLP, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 406 F. 3d 248.

No. 05–657. MITRIONE ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 925.

No. 05–676. CASHMAN ET AL. *v.* CITY OF COTATI, CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 415 F. 3d 1027.

No. 05–735. IOFFE *v.* SKOKIE MOTOR SALES, INC., DBA SHERMAN DODGE. C. A. 7th Cir. Certiorari denied. Reported below: 414 F. 3d 708.

No. 05–796. GUAM *v.* FIRST NATIONAL BANK OF OMAHA. C. A. 9th Cir. Certiorari denied.

No. 05–806. WEBBER *v.* INTERNATIONAL PAPER CO. C. A. 1st Cir. Certiorari denied. Reported below: 417 F. 3d 229.

No. 05–808. SISSON *v.* PREISTER. Ct. App. D. C. Certiorari denied. Reported below: 883 A. 2d 156.

No. 05–812. LONG CLOVE, LLC *v.* TOWN OF WOODBURY, NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 18 App. Div. 3d 826, 795 N. Y. S. 2d 458.

No. 05–813. DI SIBIO ET UX. *v.* MISSION NATIONAL BANK. C. A. 9th Cir. Certiorari denied. Reported below: 127 Fed. Appx. 950.

No. 05–823. MONTANA SPORTS SHOOTING ASSN., INC., ET AL. *v.* NORTON, SECRETARY OF THE INTERIOR, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 05–824. NAPIER *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 827 N. E. 2d 565.

No. 05–854. WIDTFELDT *v.* UNITED STATES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 77.

No. 05–860. MUTNICK *v.* SUPERIOR COURT OF CALIFORNIA, ALAMEDA COUNTY, ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 05–870. ROSS *v.* OKLAHOMA DEPARTMENT OF PUBLIC SAFETY. Ct. Civ. App. Okla. Certiorari denied.

No. 05–894. MULLINS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied.

No. 05–900. BEAMS *v.* NORTON, SECRETARY OF THE INTERIOR. C. A. 10th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 769.

No. 05–6344. WILLIS *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 215 Ill. 2d 517, 831 N. E. 2d 531.

No. 05–6849. GRIFFIN *v.* WILEY, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 141 Fed. Appx. 843.

No. 05–6852. GILES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–6862. CLARK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–7102. GOYNES *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 139 Fed. Appx. 616.

No. 05–7270. CONNER *v.* POLK, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 407 F. 3d 198.

No. 05–7734. CORNWELL *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 37 Cal. 4th 50, 117 P. 3d 622.

No. 05–7760. PANAH *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 35 Cal. 4th 395, 107 P. 3d 790.

No. 05–8018. SCOTT *v.* FEDERAL RESERVE BANK OF KANSAS CITY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 406 F. 3d 532.

No. 05–8053. STARLING *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 882 A. 2d 747.

No. 05–8147. BROWN *v.* POLK, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 618.

No. 05–8227. MORRISETTE *v.* WASHINGTON, ACTING WARDEN. Sup. Ct. Va. Certiorari denied. Reported below: 270 Va. 188, 613 S. E. 2d 551.

No. 05–8238. TURNER *v.* ANADARKO PETROLEUM CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 155 Fed. Appx. 755.

No. 05–8245. WEBER *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 121 Nev. 554, 119 P. 3d 107.

No. 05–8250. KING *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 445 Mass. 217, 834 N. E. 2d 1175.

No. 05–8253. LEE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 910 So. 2d 262.

No. 05–8255. LANE *v.* FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 05–8258. BROWN *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 419 F. 3d 365.

No. 05–8269. WOOD *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 279 Ga. 667, 620 S. E. 2d 348.

No. 05–8272. WILLIAMS *v.* SNYDER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 150 Fed. Appx. 549.

No. 05–8275. WILCOX *v.* TERRY, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 05–8276. WASHINGTON *v.* FISCHER, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 150 Fed. Appx. 8.

No. 05–8278. DAIGNEAULT *v.* CONSOLIDATED CONTROLS CORP./EATON CORP. ET AL. App. Ct. Conn. Certiorari denied. Reported below: 89 Conn. App. 712, 875 A. 2d 46.

No. 05–8279. CHILDS *v.* LAVIGNE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–8283. DOYLE *v.* SCUTT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–8285. BODDIE *v.* KERNAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 51.

No. 05–8295. CRUZ *v.* MCDONOUGH, INTERIM SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–8296. CORINTHIAN *v.* MCDONOUGH, INTERIM SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 05–8297. CLEMONS *v.* WEST ET AL. C. A. 6th Cir. Certiorari denied.

No. 05–8298. RAMIREZ *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 279 Ga. 569, 619 S. E. 2d 668.

No. 05–8333. OLIC *v.* GONZALES, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 125 Fed. Appx. 190.

No. 05–8380. MEDAWAR *v.* WOLFENBARGER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–8422. MACH *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 107 Fed. Appx. 720.

No. 05–8432. JOHNSON *v.* NORTH DAKOTA ET AL. C. A. 8th Cir. Certiorari denied.

No. 05–8446. REMSEN *v.* KNOWLES, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 05–8449. AHLUWALIA *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 05–8477. LAVALLE C. *v.* MAINE DEPARTMENT OF HUMAN SERVICES. Sup. Jud. Ct. Me. Certiorari denied.

No. 05–8523. STECHER *v.* COLORADO BOARD OF MEDICAL EXAMINERS. Ct. App. Colo. Certiorari denied.

No. 05–8547. STERLING *v.* SMITH, WARDEN. Super. Ct. Tattnall County, Ga. Certiorari denied.

No. 05–8563. JACKSON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 05–8613. EWING *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 63 Mass. App. 1111, 825 N. E. 2d 583.

No. 05–8621. BAKER *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 05–8622. BATES *v.* MORELES ET AL. C. A. 7th Cir. Certiorari denied.

No. 05–8669. LOMELI *v.* GORDON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 640.

No. 05–8677. WARREN *v.* LEE, ADMINISTRATOR I, CALEDONIA CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 142 Fed. Appx. 784.

No. 05–8704. POINTER *v.* BEACON MANAGEMENT. C. A. 8th Cir. Certiorari denied.

No. 05–8707. LECROY *v.* MCDONOUGH, INTERIM SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 421 F. 3d 1237.

No. 05–8713. REGO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–8722. BRISBON *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 880 A. 2d 3.

No. 05–8731. HILL *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 921 So. 2d 579.

No. 05–8758. WILLIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 138 Fed. Appx. 743.

No. 05–8768. EVANS *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 389 Md. 456, 886 A. 2d 562.

No. 05–8781. SCULL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 147 Fed. Appx. 479.

No. 05–8784. SHIELDS *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 05–8800. CRILL, AKA CUNNINGHAM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 897.

No. 05–8803. EASTTEAM *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 426 F. 3d 1301.

No. 05–8808. ANYANWUTAKU *v.* DISTRICT OF COLUMBIA. Ct. App. D. C. Certiorari denied. Reported below: 876 A. 2d 640.

No. 05–8809. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–8810. LAMBERT *v.* BEZY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 05–8811. BUTLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 150 Fed. Appx. 237.

No. 05–8813. STEIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 124 Fed. Appx. 571.

No. 05–8826. SILO *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied.

No. 05–8827. ROSALES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 132 Fed. Appx. 71.

No. 05–8829. MADDOCK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 05–8835. BERAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 152 Fed. Appx. 50.

No. 05–8839. CHISUM *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 156 Fed. Appx. 75.

No. 05–8843. GARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 429 F. 3d 165.

No. 05–8846. HIGGINS *v.* LISTON. App. Ct. Conn. Certiorari denied. Reported below: 88 Conn. App. 599, 870 A. 2d 1137.

No. 05–8848. JULIAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 427 F. 3d 471.

No. 05–8850. PACE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 154 Fed. Appx. 734.

No. 05–8852. MARXEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 410 F. 3d 326.

No. 05–8854. SORIA-GOBEA *v.* UNITED STATES; GARCIA ALMANZAN *v.* UNITED STATES (Reported below: 153 Fed. Appx. 281); AVILA-SALDANA *v.* UNITED STATES (153 Fed. Appx. 286); GOMEZ-MORENO *v.* UNITED STATES (153 Fed. Appx. 283); NINO-RODRIGUEZ *v.* UNITED STATES (155 Fed. Appx. 746); VARGAS-ESPINOZA *v.* UNITED STATES (157 Fed. Appx. 754); SANCHEZ-POLANCO *v.* UNITED STATES (158 Fed. Appx. 548); CONSTANTINO-GARRIDO *v.* UNITED STATES (158 Fed. Appx. 550); CASTILLO-SEGURA *v.* UNITED STATES (159 Fed. Appx. 589); CANIZALEZ-RIVERA *v.* UNITED STATES (161 Fed. Appx. 433); and CORTEZ-MELENDEZ *v.* UNITED STATES (161 Fed. Appx. 434). C. A. 5th Cir. Certiorari denied.

No. 05–8863. FOSTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 166 Fed. Appx. 13.

No. 05–8864. GILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 150 Fed. Appx. 205.

No. 05–8868. CORLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 629.

No. 05–8869. CURRIE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 703.

No. 05–8870. HUONG MUESSIG *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 427 F. 3d 856.

No. 05–8871. BARNBAUM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 146 Fed. Appx. 930.

No. 05–8872. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 153 Fed. Appx. 187.

No. 05–8876. DIAZ *v.* MCGUIRE. C. A. 10th Cir. Certiorari denied. Reported below: 154 Fed. Appx. 81.

No. 05–8881. BANWO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 05–8885. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 153 Fed. Appx. 154.

No. 05–8890. TAVARES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 427 F. 3d 122.

No. 05–8892. WYMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 427 F. 3d 881.

No. 05–8899. DOMINGUEZ-BENAVIDES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 153 Fed. Appx. 151.

No. 05–8901. CARR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 424 F. 3d 213.

No. 05–8905. HOLMES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 421 F. 3d 683.

No. 05–8907. GIDDENS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 170 Fed. Appx. 47.

No. 05–8908. IVERY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 427 F. 3d 69.

No. 05–8910. HOURSTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 134 Fed. Appx. 108.

No. 05–8912. GONZALEZ-CAPETILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 150 Fed. Appx. 383.

No. 05–8916. HERNANDEZ-MELCHOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 05–8920. LOPEZ-MORENO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 420 F. 3d 420.

No. 05–8922. JEFFERS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 163 Fed. Appx. 250.

No. 05–8923. MARTINEZ-FLORES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 428 F. 3d 22.

No. 05–8924. JACKSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 152 Fed. Appx. 739.

No. 05–8926. SUTTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 149 Fed. Appx. 670.

No. 05–8931. BROOKS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 427 F. 3d 1246.

No. 05–8932. MITCHELL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 122 Fed. Appx. 539.

No. 05–8933. MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 152 Fed. Appx. 391.

No. 05–8934. COLLINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 144 Fed. Appx. 407.

No. 05–8936. DELANCY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 05–8937. LUCKY *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 11th Cir. Certiorari denied.

No. 05–8938. ZIELKE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 154 Fed. Appx. 645.

No. 05–8942. ALSOP *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–8943. ARBELAEZ-AGUDELO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–8944. HERREDIA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 428 F. 3d 387.

No. 05–8945. HEMBREE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 147 Fed. Appx. 838.

No. 05–8946. GARRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 145 Fed. Appx. 447.

No. 05–8947. GOODLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 156 Fed. Appx. 647.

No. 05–8948. HUMPHREY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 143 Fed. Appx. 951.

No. 05–8949. FUNCHESS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 422 F. 3d 698.

No. 05–8954. MURRAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–8955. VALENTINE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 05–8961. ENGLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 147 Fed. Appx. 142.

No. 05–8966. OLUBUYIMO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 152 Fed. Appx. 303.

No. 05–8967. PAIGE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 887 A. 2d 1027.

No. 05–8968. LONG TONG KIAM *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 432 F. 3d 524.

No. 05–8969. SMITH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 152 Fed. Appx. 753.

No. 05–8970. SHALIT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 159 Fed. Appx. 92.

No. 05–8971. SHELTON *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 62 M. J. 1.

No. 05–8972. RODRIGUEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–8974. ROWLAND *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 05–8976. GARCIA-VARGAS *v.* UNITED STATES (Reported below: 153 Fed. Appx. 290); DELGADILLO-BERNAL *v.* UNITED STATES (152 Fed. Appx. 427); MARTINEZ-TREVINO *v.* UNITED STATES (147 Fed. Appx. 433); RODRIGUEZ-TERMINAL *v.* UNITED STATES (159 Fed. Appx. 557); RAYA-ROMERO *v.* UNITED STATES (157 Fed. Appx. 703); PACHECO-SALINAS *v.* UNITED STATES (158 Fed. Appx. 552); ESCOBAR-MENDOZA *v.* UNITED STATES (158 Fed. Appx. 557); ESPINOSA-IBARRA *v.* UNITED STATES (157 Fed. Appx. 779); MARTIN-GOMEZ *v.* UNITED STATES (157 Fed. Appx. 760); HERNANDEZ-MARTINEZ *v.* UNITED STATES (157 Fed. Appx. 758); GONZALEZ-OSORIO *v.* UNITED STATES (157 Fed. Appx. 755); BONILLA-CHAVEZ *v.* UNITED STATES (157 Fed. Appx. 761); GONZALEZ-GUTIERREZ *v.* UNITED STATES (158 Fed. Appx. 551); MEDINA-LOPEZ *v.* UNITED STATES (158 Fed. Appx. 549); VILLAFUERTE-NAVARRO *v.* UNITED STATES (168 Fed. Appx. 2); LOPEZ-ZELADON *v.* UNITED STATES (162 Fed. Appx. 324); ARIZAGA-ACOSTA *v.* UNITED STATES (436 F. 3d 506); RODRIGUEZ-YANEZ *v.* UNITED STATES (158 Fed. Appx. 564); ESCOBAR-REYES *v.* UNITED STATES (153 Fed. Appx. 299); and MUNOZ-ALARCON *v.* UNITED STATES (156 Fed. Appx. 680). C. A. 5th Cir. Certiorari denied.

No. 05–8980. TAYLOR *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 05–8982. MENDOZA-MARTINEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 153 Fed. Appx. 551.

No. 05–8983. JACOBS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 428 F. 3d 387.

No. 05–8986. NEWSOM *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 402 F. 3d 780.

No. 05–8994. DURANCEAU *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 05–8995. MONTALVO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 135 Fed. Appx. 90.

No. 05–8996. DONAHUE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 05–528. MILLER-STOUT, SUPERINTENDENT, AIRWAY HEIGHTS CORRECTIONS CENTER *v.* BAILEY. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 134 Fed. Appx. 212.

No. 05–797. GUAM *v.* CITIBANK (SOUTH DAKOTA), N. A. C. A. 9th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 05–805. WASHINGTON, ACTING WARDEN *v.* MORRISETTE. Sup. Ct. Va. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 270 Va. 188, 613 S. E. 2d 551.

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No. 05–7379. LAMBERT *v.* FOLINO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 139 Fed. Appx. 380.

No. 05–7700. MUSSARE ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 405 F. 3d 145 and 161.

No. 05–8433. SHYMATTA *v.* MICROSOFT CORP. C. A. 9th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 150 Fed. Appx. 637.

No. 05–8957. WILKERSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

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No. 05–7288. PRIDGEN *v.* UNITED STATES, *ante*, p. 1053;

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No. 05–7872. GREENUP *v.* UNITED STATES, *ante*, p. 1124. Petitions for rehearing denied.

No. 05–639. JONES *v.* LUCENT TECHNOLOGIES, INC., *ante*, p. 1131;

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No. 05–7800. HAIRE *v.* UNITED STATES, *ante*, p. 1131. Petitions for rehearing denied. THE CHIEF JUSTICE took no part in the consideration or decision of these petitions.

Reporter's Note

The next page is purposely numbered 1301. The numbers between 1136 and 1301 were intentionally omitted, in order to make it possible to publish in-chambers opinions with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

OPINION OF INDIVIDUAL JUSTICE IN CHAMBERS

DOE ET AL. *v.* GONZALES, ATTORNEY GENERAL, ET AL.

ON APPLICATION TO VACATE STAY

No. 05A295. Decided October 7, 2005

This Court denies an emergency application to vacate a Second Circuit order staying a preliminary injunction entered by the District Court in the applicants' First Amendment challenge to the nondisclosure provision of 18 U. S. C. § 2709(c). As amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Patriot Act), § 2709 authorizes the Federal Bureau of Investigation (FBI) to request from "electronic communication service providers," § 2709(a), "the name, address, length of service, and local and long distance toll billing records of a person or entity" if the FBI asserts in writing that the information is "relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities . . . ," § 2709(b). The FBI request in this case was conveyed to John Doe in a "National Security Letter" (NSL). An NSL recipient is prohibited from disclosing that fact. § 2709(c).

After John Doe received the NSL requesting information associated with a "specified Internet Protocol address," the applicants brought suit in the District Court. Their complaint alleged that the gag imposed by § 2709(c) is an unlawful prior restraint on speech and that the restraint occasioned irreparable harm by preventing Doe's effective participation in the current debate over proposed Patriot Act revisions. Applying strict-scrutiny analysis, the District Court acknowledged that the Government had a general interest in protecting national security and a particular interest in conducting effective counterterrorism investigations, but found nothing in the record suggesting a compelling interest in preventing disclosure in this case. The court found insufficient, absent supporting facts, the Government's conclusory assertion that Doe's identity, though innocuous by itself, could be significant to a terrorist organization when combined with other information available to the or-

ganization. The court further determined that the gag provision, because it did not call for judicial review of an NSL or of the need for nondisclosure of the recipient's identity, was not narrowly drawn to serve the Government's interest in keeping investigations secret. Concluding that § 2709(c) fails strict scrutiny, the court granted the applicants' motion for preliminary injunction, but stayed its ruling to give the Government an opportunity to file an expedited appeal and an application for a stay pending appeal. The Government availed itself of that opportunity, and the Second Circuit entered the stay. Shortly thereafter, having learned that Doe's identity was publicly available, the applicants moved in this Court to vacate the stay. They stressed that Doe sought only to confirm its identity as an NSL recipient, not to disclose the NSL's contents or the date Doe received the NSL. They also pointed out that, in another case bearing the same name and involving a facial challenge to § 2709, the Government argued that courts should consider the constitutionality of the gag provision on an as-applied, case-by-case basis, which is just what the District Court did here.

Although the applicants' arguments are cogent, countervailing considerations weigh in favor of keeping the stay in place pending the Second Circuit's disposition of the appeal. First, "interference with an interim order of a court of appeals cannot be justified solely because [a Circuit Justice] disagrees about the harm a party may suffer," *Certain Named and Unnamed Non-citizen Children* v. *Texas*, 448 U. S. 1327, 1330–1331 (Powell, J., in chambers), especially when that court is, as here, proceeding to adjudication on the merits with due expedition. Second, the District Court held a provision of an Act of Congress unconstitutional as applied. A decision of that moment warrants cautious review. Further, the Government points out that the redacted version of the complaint, prepared in consultation with the Government, publicly identifies Doe as a member of the American Library Association. The Association lobbies Congress on behalf of its members and is free to note that one of those members has been served with an NSL.

JUSTICE GINSBURG, Circuit Justice.

This is an emergency application to vacate an order entered by the United States Court of Appeals for the Second Circuit staying a preliminary injunction entered by the United States District Court for the District of Connecticut. The applicants—a member of the American Library Association referred to herein as "John Doe," the American Civil Liberties Union, and the American Civil Liberties Union

Foundation—brought suit in district court, alleging that the nondisclosure provision set forth in 18 U. S. C. § 2709(c) violates their First Amendment right to freedom of speech. The District Court granted the applicants' motion for a preliminary injunction against enforcement of § 2709(c). A panel of the Second Circuit granted the Government's motion to stay the District Court's judgment pending an expedited appeal. The same panel denied the applicants' subsequent motion to vacate the stay in light of changed circumstances. In view of the character of the constitutional issue presented and the expedited schedule ordered by the Court of Appeals, I deny the application and grant the parties' accompanying motions for leave to file under seal.

Section 2709, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (hereinafter Patriot Act), authorizes the Federal Bureau of Investigation (FBI) to "request the name, address, length of service, and local and long distance toll billing records of a person or entity" if the FBI asserts in writing that the information sought is "relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities . . . ." 18 U. S. C. § 2709(b) (2000 ed., Supp. II). The provision authorizes the FBI to issue such requests to "electronic communication service provider[s]." § 2709(a) (2000 ed.). In this case, the FBI requested information under this section in the form of a "National Security Letter" (NSL). At issue in this case is § 2709(c), which prohibits the recipient of an NSL from disclosing that fact. *Ibid.* (prohibiting "disclos[ure] to any person that the [FBI] has sought or obtained access to information or records under this section"). The current debate over renewal of the Patriot Act has spawned eight bills, currently pending before the Senate and the House of Representatives, proposing various amendments and revisions to § 2709.

John Doe received an NSL demanding that it disclose "any and all subscriber information, billing information[,] and access logs of any person or entity" associated with a specified Internet Protocol (IP) address during a specified period. Respondents' Memorandum in Opposition to Application to Vacate Stay Pending Appeal 6 (internal quotation marks omitted) (hereinafter Memorandum in Opposition). The NSL tracked the language of § 2709 and included the admonition that Doe was not to disclose that the FBI had sought or obtained information from it. Doe brought suit in district court, alleging that the gag imposed by § 2709(c) is an unlawful prior restraint on speech that is causing irreparable harm by preventing Doe's effective participation in the current debate—both in Congress and among the public—regarding proposed revisions to the Patriot Act.

The District Court granted Doe's motion for a preliminary injunction, holding that Doe demonstrated a substantial likelihood of success on the merits and irreparable harm in the absence of the relief sought. Emergency Application to Vacate Stay, App. B, p. 9 (hereinafter Application). The court determined that, as a "categorical prohibition on the use of any fora for speech, on all topics covered by § 2709(c)," the gag provision is a prior restraint and a content-based restriction on free speech. *Id.*, at 12–13. The District Court therefore concluded that the prohibition on disclosure is permissible only if it satisfies strict scrutiny. *Id.*, at 13. In its strict-scrutiny analysis, the court considered two Government interests the gag provision might serve: the Government's general interest in national security and its particular interest in conducting effective counterterrorism investigations. *Id.*, at 15. While the District Court acknowledged the Government's general interest in protecting national security and its expertise in the area of counterterrorism, *ibid.*, that court found "nothing in the record" (which included classified and other sealed *ex parte* submissions) suggesting that

the Government has a compelling interest in preventing disclosure of Doe's identity, *id.*, at 17, 18, and nn. 7–8.

The Government's argument invoked a "mosaic theory": Although Doe's identity "may appear innocuous by itself, it could still be significant to a terrorist organization when combined with other information available to it." *Id.*, at 18. The District Court acknowledged that federal courts have credited the mosaic concept in the Freedom of Information Act (FOIA) context, but it noted that the instant case is distinguishable in this respect: "Th[e] difference between seeking to obtain information and seeking to disclose information already obtained raises [the plaintiffs'] constitutional interests in this case above the constitutional interests held by a FOIA claimant." *Id.*, at 19 (quoting *McGehee* v. *Casey*, 718 F. 2d 1137, 1147 (CADC 1983)). In any event, the court held, "the defendants' conclusory statements that the mosaic argument is applicable here, absent supporting facts, would not suffice to support a judicial finding to that effect." Application, App. B, at 19–20. The District Court noted in this regard that it had asked counsel for the Government at oral argument if he could confirm that there was, in fact, a "mosaic" in this case—*i. e.*, whether there are in fact other pieces of information that, when combined with Doe's identity, would hinder the investigation. Counsel could not so confirm. *Id.*, at 20.

The District Court did not "question that national security can be a compelling state interest, or that non-disclosure of [an] NSL recipient's identity could, in some circumstances, serve that interest." *Ibid.* It found, however, that the Government failed to show a compelling interest in preventing disclosure in this case:

> "Based on the foregoing, including the sealed portion about Doe, and what Doe is, the nature and extent of information about the NSL that has already been disclosed by the defendants, and the nature and extent of

> the information that will not be disclosed, this court concludes that . . . the government has not demonstrated a compelling interest in preventing disclosure of the recipient's identity." *Ibid.* (footnote omitted).

The District Court concluded that, "[e]specially in a situation like the instant one, where the statute provides no judicial review of the NSL or the need for its non-disclosure provision, . . . the permanent gag provision . . . is not narrowly drawn to serve the government's broadly claimed compelling interest of keeping investigations secret." *Id.*, at 22–23. The court also appraised § 2709(c) as "overbroad as applied with regard to the types of information that it encompasses." *Id.*, at 23. It found § 2709(c)'s ban "particularly noteworthy" in light of the fact that proponents of the Patriot Act have "consistently relied on the public's faith [that the Government will] apply the statute narrowly . . . ." *Id.*, at 26 (citing Remarks of Attorney General John Ashcroft, Protecting Life and Liberty (Memphis, Tenn., Sept. 18, 2003), available at http://www.usdoj.gov/archive/ag/speeches/2003/091803memphisremarks.htm (as visited Oct. 7, 2005), and in Clerk of Court's case file (characterizing as "hysteria" fears of the Executive's abuse of the increased access to library records under the Patriot Act and stating that "the Department of Justice has neither the staffing, the time[,] nor the inclination to monitor the reading habits of Americans. No offense to the American Library Association, but we just don't care.").

Having thus concluded that § 2709(c) fails strict scrutiny, the court granted the applicants' motion for preliminary injunctive relief, but stayed its ruling until September 20, 2005, to give the Government the opportunity to "file an expedited appeal and submit an application for a stay pending appeal." Application, App. B, at 29. The Government did just that, and on September 20 the Court of Appeals granted the Government's motion:

> "Although there is a question as to the likelihood of [the Government's] success on the merits and some injury to [the applicants] if a stay is granted, the [Government has] demonstrated that [it] will suffer irreparable harm and the public interest [will be] significantly injured if a stay is not granted. The balance of harms tilts in favor of [the Government]. *Mohammed* v. *Reno*, 309 F. 3d 95, 100 (CA2 2002). This appeal is hereby expedited and the following briefing schedule is in effect: [The Government's] brief shall be filed no later than September 27, 2005; [the applicants'] brief shall be filed no later than October 4, 2005; [the Government's] reply brief shall be filed no later than October 10, 2005." *Id.*, App. D.

Shortly after the Court of Appeals entered the stay, the parties learned that, through inadvertence, Doe's identity had been publicly available for several days on the District Court's Web site and on PACER, the electronic docket system run by the Administrative Office of the United States Courts. *Id.*, App. F., at 3–5 (decl. of Melissa Goodman). The parties also learned that the media had correctly reported Doe's identity on at least one occasion. See, *e. g.*, Cowan, Librarians Must Stay Silent in Patriot Act Suit, Court Says, N. Y. Times, Sept. 21, 2005, at B2. The applicants immediately moved to vacate the stay in light of this information. The Court of Appeals denied the motion, "on the ground that the additional circumstances relied upon by [the movants] do not materially alter the balance of harms . . . ." *Id.*, App. E. The applicants then filed the instant emergency application, urging me, in my capacity as Circuit Justice, to vacate the stay and thereby allow Doe to contribute its firsthand account to the ongoing debate regarding proposed revisions to the Patriot Act.

In support of their plea for an immediate order lifting the stay, the applicants stress that Doe seeks only to confirm its identity as the recipient of an NSL. It does not seek to

disclose the content of the NSL, nor does it seek to disclose the date on which it was received. They point out that, in another case bearing the same name involving a *facial* challenge to §2709, the Government argued that courts should consider the constitutionality of the gag provision on a case-by-case basis, "granting relief where, but only where, it can be shown that the compelling governmental interest[s] underlying the non-disclosure requirement are not in jeopardy." *Id.*, App. B, at 18, quoting Defendants-Appellants' Reply Brief in *Gonzales* v. *Doe*, No. 05–0570 (CA2, filed Feb. 3, 2005), p. 25 (on appeal from *Doe* v. *Ashcroft*, 334 F. Supp. 2d 471 (SDNY 2004)). That is precisely what the District Court did here. The applicants underscore this anomaly: Doe—the only entity in a position to impart a first-hand account of its experience—remains barred from revealing its identity, while others who obtained knowledge of Doe's identity—when that cat was inadvertently let out of the bag—may speak freely on that subject.

Although the applicants' arguments are cogent, I have taken into account several countervailing considerations in declining to vacate the stay kept in place by the Second Circuit pending its disposition of the appeal. I am mindful, first, that "interference with an interim order of a court of appeals cannot be justified solely because [a Circuit Justice] disagrees about the harm a party may suffer." *Certain Named and Unnamed Non-citizen Children* v. *Texas*, 448 U. S. 1327, 1330–1331 (1980) (Powell, J., in chambers). Respect for the assessment of the Court of Appeals is especially warranted when that court is proceeding to adjudication on the merits with due expedition. The principal briefs have been filed, and I anticipate that the Court of Appeals will hear argument promptly and render its decision with appropriate care and dispatch.

Also weighing in favor of keeping the stay in effect pending the full airing the Second Circuit has ordered, the District Court held unconstitutional—as applied to the facts of

this case—a provision of an Act of Congress. A decision of that moment warrants cautious review. Further, the Government points out that the redacted version of the complaint, prepared in consultation with the Government, identifies Doe as a member of the American Library Association. "The American Library Association," the Government footnotes, "lobbies Congress on behalf of its members and is free to note that one of those members has been served with an NSL." Memorandum in Opposition 26, n. 2.

In sum, the applicants have not shown cause so extraordinary as to justify this Court's intervention in advance of the expeditious determination of the merits toward which the Second Circuit is swiftly proceeding.

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As-applied challenge—"Electioneering communications" regulation.—District Court's judgment is vacated and case is remanded for that court to consider in first instance merits of appellant's as-applied challenge to application of BCRA § 203, which prohibits corporations from using their general treasury funds to pay for any "electioneering communications." Wisconsin Right to Life, Inc. v. Federal Election Comm'n, p. 410.

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CALIFORNIA. See **Habeas Corpus,** 2.

CAMPAIGN FINANCING. See **Bipartisan Campaign Reform Act of 2002.**

CAPITAL MURDER. See **Constitutional Law,** I.

CAR SALES. See **Antitrust Acts.**

CIVIL RIGHTS ACT OF 1866. See also **Discrimination Based on Race.**

Section 1981—Statement of claim.—Consistent with this Court's case law, and as required by 42 U. S. C. § 1981's plain text, a plaintiff cannot state a § 1981 claim unless he has (or would have) rights under an existing (or proposed) contract that he wishes "to make and enforce." Domino's Pizza, Inc. v. McDonald, p. 470.

CIVIL RIGHTS ACT OF 1964. See also **Discrimination Based on Race.**

Title VII—Employee-numerosity requirement—Subject-matter jurisdiction.—Fifteen-employee requirement contained in Title VII's "employer" definition does not affect federal-court subject-matter jurisdiction but, instead, delineates a substantive ingredient of a Title VII claim for relief. Arbaugh v. Y & H Corp., p. 500.

COLLATERAL ORDER DOCTRINE. See **Appeals,** 1.

COLLATERAL REVIEW. See **Habeas Corpus,** 2.

COLLECTION OF STUDENT LOAN DEBT. See **Social Security.**

COMPENSATION FOR TIME SPENT DONNING AND DOFFING PROTECTIVE GEAR. See **Labor.**

COMPLETE DIVERSITY. See **Jurisdiction,** 3.

CONSTITUTIONAL LAW.

I. Cruel and Unusual Punishment.

1. *Capital murder—Invalidated sentencing factor.*—An invalidated sentencing factor (whether an eligibility factor or not) will render a first-degree murder sentence unconstitutional by reason of its adding an improper element to aggravation scale in weighing process unless another sentencing factor enables sentencer to give aggravating weight to same facts and circumstances; jury's consideration of invalid special circumstances in Sanders' case gave rise to no constitutional violation. Brown v. Sanders, p. 212.

2. *Capital murder—Sentencing—Innocence-related evidence.*—Constitution does not prohibit a State from limiting innocence-related evidence a capital defendant can introduce at a sentencing proceeding to evidence introduced at original trial. Oregon v. Guzek, p. 517.

II. Right to Abortion.

Remedy for violation—Invalidating statute.—If enforcing a statute that regulates access to abortion would be unconstitutional in medical emergencies, invalidating statute entirely is not always necessary or justified, for lower courts may be able to render narrower declaratory and

CONSTITUTIONAL LAW—Continued.
injunctive relief. Ayotte v. Planned Parenthood of Northern New Eng., p. 320.

CONTRACTS. See **Arbitration.**

CONTROLLED SUBSTANCES ACT. See also **Religious Freedom Restoration Act of 1993.**

Physician regulation—Assisted suicide.—Act does not allow Attorney General to prohibit doctors from prescribing regulated drugs under a state law permitting physician-assisted suicide. Gonzales v. Oregon, p. 243.

CORPORATE FUNDS AND ELECTIONEERING. See **Bipartisan Campaign Reform Act of 2002.**

CREDITORS AND DEBTORS. See **Bankruptcy.**

CRIMINAL LAW. See **Constitutional Law,** I, 1.

CRIMINAL PROCEDURE. See **Federal Rules of Criminal Procedure.**

CRUEL AND UNUSUAL PUNISHMENT. See **Constitutional Law,** I.

DEATH PENALTY. See **Constitutional Law,** I**; Habeas Corpus,** 4.

DEBTORS AND CREDITORS. See **Bankruptcy.**

DELIVERY OF MAIL. See **Immunity from Suit,** 1.

DISABLED STUDENTS. See **Individuals with Disabilities Education Act.**

DISCRIMINATION BASED ON RACE. See also **Civil Rights Act of 1866.**

Civil Rights Act of 1866—Civil Rights Act of 1964—Employment discrimination—Discriminatory animus—Asserted reasons for hiring decisions.—Eleventh Circuit erred in holding that modifiers or qualifications are necessary in all instances to render term "boy" probative of bias in an employment discrimination case based on race, and erred in articulating standard for determining whether asserted nondiscriminatory reasons for Tyson's hiring decisions in this case were pretextual. Ash v. Tyson Foods, Inc., p. 454.

DISCRIMINATION IN EMPLOYMENT. See **Civil Rights Act of 1964; Discrimination Based on Race.**

DISCRIMINATION IN PRICING. See **Antitrust Acts.**

DIVERSITY JURISDICTION. See **Jurisdiction,** 1, 3.

DOCTOR-ASSISTED SUICIDE. See **Controlled Substances Act.**

DONNING AND DOFFING PROTECTIVE GEAR. See **Labor.**

DRUG REGULATION. See **Controlled Substances Act.**

EDUCATION PROGRAMS FOR DISABLED STUDENTS. See **Individuals with Disabilities Education Act.**

EFFECTIVE ASSISTANCE OF COUNSEL. See **Habeas Corpus,** 1.

EIGHTH AMENDMENT. See **Constitutional Law,** I.

ELECTIONEERING COMMUNICATIONS. See **Bipartisan Campaign Reform Act of 2002.**

EMPLOYEE-NUMEROSITY REQUIREMENT. See **Civil Rights Act of 1964.**

EMPLOYER AND EMPLOYEES. See **Civil Rights Act of 1964; Discrimination Based on Race; Labor.**

EMPLOYMENT DISCRIMINATION. See **Civil Rights Act of 1964; Discrimination Based on Race.**

FAIR LABOR STANDARDS ACT OF 1938. See **Labor.**

FEDERAL RULES OF CIVIL PROCEDURE. See **Appeals,** 2.

FEDERAL RULES OF CRIMINAL PROCEDURE.

New trial motion.—Because time prescriptions in Rules 33 and 45 are nonjurisdictional, claim-processing rules, Government forfeited its defense that petitioner's untimely memorandum could not support his new trial motion when it did not raise that defense until after District Court had reached merits of petitioner's claim. Eberhart v. United States, p. 12.

FEDERAL-STATE RELATIONS. See **Attorney's Fees; Controlled Substances Act; Habeas Corpus,** 4; **Jurisdiction,** 2, 3.

FEDERAL TORT CLAIMS ACT. See also **Appeals,** 1; **Immunity from Suit,** 1.

Construction of Act—Waiver of sovereign immunity.—United States waives sovereign immunity under FTCA only where local law would make a "private person" liable in tort, 28 U. S. C. § 1346(b)(1), not where local law would make "a state or municipal entity" liable. United States v. Olson, p. 43.

FELONY MURDER. See **Habeas Corpus,** 1.

FOREIGN SOVEREIGN IMMUNITIES ACT OF 1976.

Status of Iran's Ministry of Defense.—Judgment is vacated and case remanded for Ninth Circuit to consider whether Iran's Ministry of Defense is an "agency or instrumentality" of a foreign state whose property is

FOREIGN SOVEREIGN IMMUNITIES ACT OF 1976—Continued.
"not . . . immune from attachment" under FSIA or if it is an inseparable part of foreign state itself. Ministry of Defense and Support for Armed Forces of Islamic Republic of Iran v. Elahi, p. 450.

FOURTEENTH AMENDMENT. See **Immunity from Suit,** 2.

FREEDOM OF RELIGION. See **Religious Freedom Restoration Act of 1993.**

FUEL TAXES. See **Taxes.**

GASOLINE TAXES. See **Taxes.**

HABEAS CORPUS.

1. *Aggravated felony murder—Assistance of counsel.*—Sixth Circuit erred in finding respondent entitled to habeas relief on grounds (1) that transferred intent was not a permissible theory for aggravated felony murder under Ohio law and (2) that respondent's trial counsel's performance had been constitutionally deficient under *Strickland* v. *Washington*, 466 U. S. 668. Bradshaw v. Richey, p. 74.

2. *Antiterrorism and Effective Death Penalty Act of 1996—Limitations period—Application to state collateral review system.*—Ninth Circuit departed from this Court's interpretation of AEDPA's 1-year limitations period as applied to California's collateral review system when it found respondent's petition timely despite a 3-year, 1-month, delay in appealing denial of his state collateral review petition. Evans v. Chavis, p. 189.

3. *Antiterrorism and Effective Death Penalty Act of 1996.*—Ninth Circuit's use of debatable inferences to set aside a reasonable state-court conclusion does not satisfy requirements for granting habeas relief under AEDPA. Rice v. Collins, p. 333.

4. *Death penalty eligibility—Mental retardation claim—Federal habeas authority.*—In commanding Arizona courts to conduct a jury trial to resolve respondent's claim that his mental retardation made him ineligible for death penalty, Ninth Circuit exceeded its habeas authority because State had no chance to apply its chosen procedures for adjudicating such claims. Schriro v. Smith, p. 6.

5. *Right to self-representation—Access to law library.*—Because *Faretta* v. *California*, 422 U. S. 806—which establishes a Sixth Amendment right to self-representation—does not imply a *pro se* defendant's right to access a law library, Ninth Circuit erred in holding that violation of such an access right is a basis for federal habeas relief. Kane v. Garcia Espitia, p. 9.

6. *State prisoner—Prosecutorial misconduct—Presentation of federal claim.*—Petitioner's federal prosecutorial misconduct claim was properly

HABEAS CORPUS—Continued.
raised in state court for purposes of federal habeas, and his federal petition presented that claim with more than sufficient particularity. Dye v. Hofbauer, p. 1.

HALLUCINOGENIC TEA. See **Religious Freedom Restoration Act of 1993.**

HIRING DECISIONS. See **Discrimination Based on Race.**

IMMUNITY FROM SUIT. See also **Federal Tort Claims Act.**

1. *Federal Tort Claims Act—Postal employee's actions.*—Because Dolan's claim against Postal Service for injuries she suffered when she tripped and fell over mail left on her porch is not barred by an exception for "negligent transmission of . . . postal matter" to FTCA's general waiver of federal sovereign immunity, her suit may proceed. Dolan v. Postal Service, p. 481.

2. *Private cause of action—Fourteenth Amendment violation—Abrogation of state sovereign immunity.*—Insofar as Title II of Americans with Disabilities Act of 1990 creates a private cause of action for damages against States for conduct that *actually* violates Fourteenth Amendment, Title II validly abrogates state sovereign immunity. United States v. Georgia, p. 151.

INDIAN SOVEREIGN IMMUNITY. See **Taxes.**

INDIVIDUALS WITH DISABILITIES EDUCATION ACT.

Individual education program—Administrative hearing—Burden of persuasion.—In an administrative hearing challenging a school district's "individualized education program" for a disabled child, burden of persuasion is properly placed upon party seeking relief, regardless of whether that is child or school district. Schaffer v. Weast, p. 49.

INEFFECTIVE ASSISTANCE OF COUNSEL. See **Habeas Corpus,** 1.

IRAN. See **Foreign Sovereign Immunities Act of 1976.**

JUDGMENT BAR. See **Appeals,** 1.

JURISDICTION.

1. *Diversity jurisdiction—Banks.*—Under 28 U. S. C. § 1348, which provides that "national banking associations" are "deemed citizens of the States in which they are respectively located" for diversity purposes, a national bank is a citizen of State where its main office, as set forth in its articles of association, is located. Wachovia Bank, N. A. v. Schmidt, p. 303.

2. *Federal District Courts—Rooker-Feldman doctrine.*—Doctrine—which prevents lower federal courts from exercising jurisdiction over cases brought by "state-court losers" challenging "state-court judgments

JURISDICTION—Continued.

rendered before district court proceedings commenced," *Exxon Mobil Corp.* v. *Saudi Basic Industries Corp.*, 544 U. S. 280, 284—does not bar actions by nonparties to earlier state-court judgment simply because, for preclusion law purposes, they could be considered in privity with a party to that judgment. Lance v. Dennis, p. 459.

3. *Removal—Diversity of citizenship.*—Defendants may remove an action from state to federal court based on diversity of citizenship if there is complete diversity between all named plaintiffs and all named defendants and no defendant is a citizen of forum State; it is not incumbent on named defendants to negate existence of a potential defendant whose presence in action would destroy diversity. Lincoln Property Co. v. Roche, p. 81.

KANSAS. See **Taxes.**

LABOR.

Fair Labor Standards Act of 1938—Compensation—Donning and doffing protective gear.—Periods employees spend walking between changing and production areas and waiting to doff their protective gear are compensable under FLSA, but § 4(a)(2) of Portal-to-Portal Act of 1947 excludes from FLSA's scope time they spend waiting to don their first piece of gear. IBP, Inc. v. Alvarez, p. 21.

LAW LIBRARY ACCESS. See **Habeas Corpus,** 5.

LIMITATIONS PERIODS. See **Habeas Corpus,** 2.

MAIL DELIVERY. See **Immunity from Suit,** 1.

MENTAL RETARDATION. See **Habeas Corpus,** 4.

MOTOR FUEL TAXES. See **Taxes.**

MURDER. See **Constitutional Law,** I; **Habeas Corpus,** 1.

NEW TRIAL MOTIONS. See **Federal Rules of Criminal Procedure.**

OFFSET OF SOCIAL SECURITY BENEFITS. See **Social Security.**

OHIO. See **Habeas Corpus,** 1.

OREGON. See **Controlled Substances Act.**

PHYSICIAN-ASSISTED SUICIDE. See **Controlled Substances Act.**

PORTAL-TO-PORTAL ACT OF 1947. See **Labor.**

POSTAL EMPLOYEES' ACTIONS. See **Immunity from Suit,** 1.

PRECLUSION LAW. See **Jurisdiction,** 2.

PREFERENTIAL TRANSFERS. See **Bankruptcy.**

PRELIMINARY INJUNCTIONS. See **Religious Freedom Restoration Act of 1993.**

PRESCRIPTION REGULATION. See **Controlled Substances Act.**

PRETEXTUAL REASON FOR HIRING DECISIONS. See **Discrimination Based on Race.**

PRICE DISCRIMINATION. See **Antitrust Acts.**

PRISON LAW LIBRARY ACCESS. See **Habeas Corpus,** 5.

PROSECUTORIAL MISCONDUCT. See **Habeas Corpus,** 6.

PROTECTIVE GEAR DONNING AND DOFFING. See **Labor.**

RELIGIOUS FREEDOM RESTORATION ACT OF 1993.

Preliminary injunction—Compelling interest—Sacramental tea use.—Courts below did not err in determining that Federal Government failed to demonstrate, at preliminary injunction stage, compelling interest required by RFRA in order to bar respondent church's use of a sacramental tea containing a hallucinogen listed on Schedule I of Controlled Substances Act. Gonzales v. O Centro Espírita Beneficente União do Vegetal, p. 418.

REMOVAL. See **Attorney's Fees; Jurisdiction,** 3.

RIGHT TO ABORTION. See **Constitutional Law,** II.

RIGHT TO SELF-REPRESENTATION. See **Habeas Corpus,** 5.

ROBINSON-PATMAN ACT. See **Antitrust Acts.**

***ROOKER-FELDMAN* DOCTRINE.** See **Jurisdiction,** 2.

SACRAMENTAL TEA. See **Religious Freedom Restoration Act of 1993.**

SECONDARY-LINE PRICE DISCRIMINATION. See **Antitrust Acts.**

SECTION 1981. See **Civil Rights Act of 1866; Discrimination Based on Race.**

SELF-REPRESENTATION. See **Habeas Corpus,** 5.

SIXTH AMENDMENT. See **Habeas Corpus,** 1, 5.

SOCIAL SECURITY.

Student loan collection—Offset of benefits.—United States may offset Social Security benefits to collect a student loan debt that has been outstanding for over 10 years. Lockhart v. United States, p. 142.

SOVEREIGN IMMUNITY. See **Bankruptcy; Federal Tort Claims Act; Foreign Sovereign Immunities Act of 1976; Immunity from Suit; Taxes.**

STATE TAXES. See **Taxes.**

STATUTES OF LIMITATIONS. See **Habeas Corpus,** 2.

STUDENT LOAN DEBT. See **Social Security.**

SUBJECT-MATTER JURISDICTION. See **Civil Rights Act of 1964.**

SUFFICIENCY OF EVIDENCE. See **Appeals,** 2.

SUPREME COURT.

1. Retirement of JUSTICE O'CONNOR, p. III.
2. Appointment of JUSTICE ALITO, p. VII.

TAXES.

State motor fuel tax—Imposition on distributors to Indian Nation.— Because Kansas' motor fuel tax is a nondiscriminatory tax imposed on off-reservation receipt of fuel by non-Indian distributors, tax is valid and poses no affront to respondent Nation's sovereignty, even though those distributors subsequently deliver fuel to reservation's gas station; interest-balancing test of *White Mountain Apache Tribe* v. *Bracker*, 448 U. S. 136, does not apply to a tax that results from an off-reservation transaction between non-Indians. Wagnon v. Prairie Band Potawatomi Nation, p. 95.

TITLE VII. See **Discrimination Based on Race.**

VEHICLE SALES. See **Antitrust Acts.**

WAIVER OF SOVEREIGN IMMUNITY. See **Federal Tort Claims Act.**

WALKING TIME. See **Labor.**

WORDS AND PHRASES.

1. *"Agency or instrumentality of foreign state [whose property is] not . . . immune from attachment."* Foreign Sovereign Immunities Act of 1976, 28 U. S. C. § 1610(b). Ministry of Defense and Support for Armed Forces of Islamic Republic of Iran v. Elahi, p. 450.

2. *"National banking associations" "deemed citizens of the States in which they are respectively located."* 28 U. S. C. § 1348. Wachovia Bank, N. A. v. Schmidt, p. 303.

3. *"Negligent transmission of . . . postal matter."* Federal Tort Claims Act, 28 U. S. C. § 2680(b). Dolan v. Postal Service, p. 481.

WORDS AND PHRASES—Continued.

4. *"To make and enforce contracts."* Rev. Stat. § 1977, 42 U. S. C. § 1981. Domino's Pizza, Inc. v. McDonald, p. 470.

WORK TIME. See **Labor.**