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CASES ADJUDGED

IN

THE SUPREME COURT

AT

OCTOBER TERM, 2009

BEGINNING OF TERM

OCTOBER 5, 2009, THROUGH JANUARY 21, 2010

FRANK D. WAGNER

REPORTER OF DECISIONS

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JUSTICES

OF THE

SUPREME COURT

DURING THE TIME OF THESE REPORTS

JOHN G. ROBERTS, JR., CHIEF JUSTICE.
JOHN PAUL STEVENS, ASSOCIATE JUSTICE.
ANTONIN SCALIA, ASSOCIATE JUSTICE.
ANTHONY M. KENNEDY, ASSOCIATE JUSTICE.
CLARENCE THOMAS, ASSOCIATE JUSTICE.
RUTH BADER GINSBURG, ASSOCIATE JUSTICE.
STEPHEN BREYER, ASSOCIATE JUSTICE.
SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE.
SONIA SOTOMAYOR, ASSOCIATE JUSTICE.

RETIRED

SANDRA DAY O'CONNOR, ASSOCIATE JUSTICE.
DAVID H. SOUTER, ASSOCIATE JUSTICE.

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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 August 17, 2009, viz.:

For the District of Columbia Circuit, John G. Roberts, Jr., Chief Justice.

For the First Circuit, Stephen Breyer, Associate Justice.

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

For the Third Circuit, Samuel A. Alito, Jr., 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, Sonia Sotomayor, Associate Justice.

For the Eleventh Circuit, Clarence Thomas, Associate Justice.

For the Federal Circuit, John G. Roberts, Jr., Chief Justice.

August 17, 2009.

(For next previous allotment, see 557 U. S., Pt. 2, p. iv.)

DEATH OF MR. O'CONNOR

SUPREME COURT OF THE UNITED STATES

MONDAY, NOVEMBER 16, 2009

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

THE CHIEF JUSTICE said:

It is my sad duty to announce the death on November 11th of John Jay O'Connor III. John Jay O'Connor was the husband of Justice Sandra Day O'Connor. He was a member of the Bar of this Court.

On behalf of the Court and Retired Justice Souter, I extend profound sympathy to Justice O'Connor and her family.

It will be recorded on the Court's minutes that the recess this Court takes today will be in honor of John Jay O'Connor III.

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CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 2009

CORCORAN *v.* LEVENHAGEN, SUPERINTENDENT, INDIANA STATE PRISON

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

No. 08–10495. Decided October 20, 2009

Petitioner was convicted of murder and sentenced to death in an Indiana state court. Petitioner sought habeas relief in the Federal District Court. Petitioner advanced five arguments that his death sentence was unlawful, including a claim that his sentence violated the Sixth Amendment. Without addressing petitioner's other arguments, the District Court granted relief on petitioner's Sixth Amendment claim. The Seventh Circuit reversed the Sixth Amendment ruling, remanded with instructions to deny habeas relief, and stated that Indiana could reinstate the death penalty. The Court of Appeals did not address petitioner's other sentencing claims. In denying a petition for rehearing, the Seventh Circuit rejected petitioner's argument that the District Court should be permitted to consider his other claims.

Held: The Court of Appeals erred in disposing of petitioner's other claims without any explanation. It should have permitted the District Court to consider petitioner's unresolved challenges to his death sentence on remand, or should have itself explained why such consideration was unnecessary.

Certiorari granted; 551 F. 3d 703, vacated and remanded.

PER CURIAM.

An Indiana jury convicted Joseph Corcoran of four counts of murder. Corcoran was sentenced to death. After Corcoran's challenges to his sentence in the Indiana courts failed, he sought federal habeas relief. Corcoran argued in his federal habeas petition that: (1) the Indiana trial court committed various errors at the sentencing phase; (2) his sentence violated the Sixth Amendment; (3) Indiana's capital sentencing statute was unconstitutional; (4) the prosecution committed misconduct at sentencing; and (5) he should not be executed because he suffers from a mental illness. See *Corcoran* v. *Buss*, 483 F. Supp. 2d 709, 719, 726 (ND Ind. 2007). The District Court granted habeas relief on Corcoran's claim of a Sixth Amendment violation, and ordered the state courts to resentence Corcoran to a penalty other than death. *Id.*, at 725–726. The District Court did not address Corcoran's other arguments relating to his sentence, noting that they were "rendered moot" by the order that Corcoran be resentenced because of the Sixth Amendment violation. *Id.*, at 734.

The Seventh Circuit reversed the District Court's Sixth Amendment ruling. *Corcoran* v. *Buss*, 551 F. 3d 703, 712, 714 (2008). Then, without mentioning Corcoran's other sentencing claims, the Seventh Circuit remanded "with instructions to deny the writ," stating that "Indiana is at liberty to reinstate the death penalty." *Id.*, at 714. Corcoran sought rehearing, arguing that the Court of Appeals should have allowed the District Court to consider his additional attacks on his sentence. But the Court of Appeals denied rehearing, again without referring to Corcoran's undecided claims.

We now grant certiorari and hold that the Seventh Circuit erred in disposing of Corcoran's other claims without explanation of any sort. The Seventh Circuit should have permitted the District Court to consider Corcoran's unresolved challenges to his death sentence on remand, or should have itself explained why such consideration was unnecessary.

In its brief in opposition, the State argues that Corcoran's claims were waived, and that they were in any event frivolous, so that a remand would be wasteful. Brief in Opposition 9–10. Nothing in the Seventh Circuit's opinion, however, suggests that this was the basis for that court's order that the writ be denied.

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

It is so ordered.

Per Curiam

BOBBY, WARDEN *v.* VAN HOOK

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

No. 09–144. Decided November 9, 2009

An Ohio state court sentenced respondent Van Hook to death for murder in 1985. In 2003, a Federal District Court denied Van Hook's request for habeas relief. The Sixth Circuit reversed. Ultimately, it relied on American Bar Association (ABA) guidelines published in 2003, concluding that Van Hook's lawyers were deficient in investigating and presenting mitigating evidence at the penalty phase.

Held: Because Van Hook's attorneys met the constitutional minimum of competence, he was not denied effective assistance of counsel. The Sixth Amendment entitles a defendant to receive representation that does not fall "below an objective standard of reasonableness" in light of "prevailing professional norms." *Strickland* v. *Washington*, 466 U. S. 668, 686. Restatements of professional standards can be useful as "guides" to what reasonableness entails, but only to the extent they describe the professional norms prevailing when the representation took place. *Id.*, at 688. The Sixth Circuit ignored this limiting principle in relying on ABA guidelines announced 18 years after Van Hook's trial. Judging counsel's conduct in the 1980's under 2003 standards—without even pausing to consider whether they reflected the prevailing professional practice at the time of the trial—was error. Van Hook's counsel were not ineffective under the professional standards prevailing at the time of trial. They did not start their mitigation investigation too late, their investigation's scope was not unreasonable, and their decision not to seek more mitigating evidence than they had in hand fell within the range of professionally reasonable judgments.

Certiorari granted; 560 F. 3d 523, reversed and remanded.

PER CURIAM.

The Court of Appeals for the Sixth Circuit granted habeas relief to Robert Van Hook on the ground that he did not receive effective assistance of counsel during the sentencing phase of his capital trial. Because we think it clear that Van Hook's attorneys met the constitutional minimum of compe-

tence under the correct standard, we grant the petition and reverse.

I

On February 18, 1985, Van Hook went to a Cincinnati bar that catered to homosexual men, hoping to find someone to rob. He approached David Self, and after the two spent several hours drinking together they left for Self's apartment. There Van Hook "lured Self into a vulnerable position" and attacked him, first strangling him until he was unconscious, then killing him with a kitchen knife and mutilating his body. *State* v. *Van Hook*, 39 Ohio St. 3d 256, 256–257, 530 N. E. 2d 883, 884 (1988) (statement of the case). Before fleeing with Self's valuables, Van Hook attempted to cover his tracks, stuffing the knife and other items into the body and smearing fingerprints he had left behind. Six weeks later, police found him in Florida, where he confessed.

Van Hook was indicted in Ohio for aggravated murder, with one capital specification, and aggravated robbery. He waived his right to a jury trial, and a three-judge panel found him guilty of both charges and the capital specification. At the sentencing hearing, the defense called eight mitigation witnesses, and Van Hook himself gave an unsworn statement. After weighing the aggravating and mitigating circumstances, the trial court imposed the death penalty. The Ohio courts affirmed on direct appeal, *id.*, at 265, 530 N. E. 2d, at 892; *State* v. *Van Hook*, No. C–85–0565, 1987 WL 11202 (Ohio App., May 13, 1987) *(per curiam)*, and we denied certiorari, *Van Hook* v. *Ohio*, 489 U. S. 1100 (1989). Van Hook also sought state postconviction relief, which the Ohio courts denied. *State* v. *Van Hook*, No. C–910505, 1992 WL 308350 (Ohio App., Oct. 21, 1992) *(per curiam)*, appeal denied, 66 Ohio St. 3d 1440, 608 N. E. 2d 1085, rehearing denied, 66 Ohio St. 3d 1470, 611 N. E. 2d 328 (1993); *State* v. *Van Hook*, 70 Ohio St. 3d 1216, 639 N. E. 2d 1199 (1994).

Van Hook filed this federal habeas petition in 1995. The District Court denied relief on all 17 of his claims. *Van*

Hook v. *Anderson*, No. C–1–94–269 (SD Ohio, Aug. 7, 2003), App. to Pet. for Cert. 123a, 163a. A panel of the Sixth Circuit reversed, concluding that Van Hook's confession was unconstitutionally obtained under *Edwards* v. *Arizona*, 451 U. S. 477 (1981). See *Van Hook* v. *Anderson*, 444 F. 3d 830, 832 (2006). The en banc Sixth Circuit vacated that ruling, holding the confession was proper, and it remanded the case to the panel to consider Van Hook's other claims. See *Van Hook* v. *Anderson*, 488 F. 3d 411, 428 (2007). Van Hook petitioned for a writ of certiorari, which we denied. *Van Hook* v. *Hudson*, 552 U. S. 1023 (2007).

On remand, the panel granted Van Hook habeas relief again, but on different grounds, holding that his attorneys were ineffective during the penalty phase because they did not adequately investigate and present mitigating evidence, neglected to secure an independent mental-health expert, and requested and relied on a presentence investigation report without objecting to damaging evidence it contained. See *Van Hook* v. *Anderson*, 535 F. 3d 458, 461 (2008). The en banc Sixth Circuit again vacated the panel's opinion, but rather than hearing the case a second time it remanded for the panel to revise its opinion. See *Van Hook* v. *Anderson*, 560 F. 3d 523, 524 (2009). In its third opinion, the panel—relying on guidelines published by the American Bar Association (ABA) in 2003—granted relief to Van Hook on the sole ground that his lawyers performed deficiently in investigating and presenting mitigating evidence. See *id.*, at 525. The State petitioned for a writ of certiorari. We grant the petition and reverse.

II

Because Van Hook filed his federal habeas petition before April 24, 1996, the provisions of the Antiterrorism and Effective Death Penalty Act of 1996 do not apply. See *Lindh* v. *Murphy*, 521 U. S. 320, 327 (1997). Even without the Act's added layer of deference to state-court judgments, we cannot

agree with the Court of Appeals that Van Hook is entitled to relief.

A

The Sixth Amendment entitles criminal defendants to the "'effective assistance of counsel'"—that is, representation that does not fall "below an objective standard of reasonableness" in light of "prevailing professional norms." *Strickland* v. *Washington*, 466 U. S. 668, 686, 688 (1984) (quoting *McMann* v. *Richardson*, 397 U. S. 759, 771, n. 14 (1970)). That standard is necessarily a general one. "No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant." 466 U. S., at 688–689. Restatements of professional standards, we have recognized, can be useful as "guides" to what reasonableness entails, but only to the extent they describe the professional norms prevailing when the representation took place. *Id.*, at 688.

The Sixth Circuit ignored this limiting principle, relying on ABA guidelines announced 18 years after Van Hook went to trial. See 560 F. 3d, at 526–528 (quoting ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases 10.7, comment., pp. 81–83 (rev. ed. 2003)). The ABA standards in effect in 1985 described defense counsel's duty to investigate both the merits and mitigating circumstances in general terms: "It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction." 1 ABA Standards for Criminal Justice 4–4.1, p. 4–53 (2d ed. 1980). The accompanying two-page commentary noted that defense counsel have "a substantial and important role to perform in raising mitigating factors," and that "[i]nformation concerning the defendant's background, education, employment record, mental and emotional

stability, family relationships, and the like, will be relevant, as will mitigating circumstances surrounding the commission of the offense itself." *Id.*, at 4–55.

Quite different are the ABA's 131-page "Guidelines" for capital defense counsel, published in 2003, on which the Sixth Circuit relied. Those directives expanded what had been (in the 1980 Standards) a broad outline of defense counsel's duties in all criminal cases into detailed prescriptions for legal representation of capital defendants. They discuss the duty to investigate mitigating evidence in exhaustive detail, specifying what attorneys should look for, where to look, and when to begin. See ABA Guidelines 10.7, comment., at 80–85. They include, for example, the requirement that counsel's investigation cover every period of the defendant's life from "the moment of conception," *id.*, at 81, and that counsel contact "virtually everyone . . . who knew [the defendant] and his family" and obtain records "concerning not only the client, but also his parents, grandparents, siblings, and children," *id.*, at 83. Judging counsel's conduct in the 1980's on the basis of these 2003 Guidelines—without even pausing to consider whether they reflected the prevailing professional practice at the time of the trial—was error.

To make matters worse, the Court of Appeals (following Circuit precedent) treated the ABA's 2003 Guidelines not merely as evidence of what reasonably diligent attorneys would do, but as inexorable commands with which all capital defense counsel "'must fully comply.'" 560 F. 3d, at 526 (quoting *Dickerson* v. *Bagley*, 453 F. 3d 690, 693 (CA6 2006)). *Strickland* stressed, however, that "American Bar Association standards and the like" are "only guides" to what reasonableness means, not its definition. 466 U. S., at 688. We have since regarded them as such.[1] See *Wiggins* v. *Smith*,

[1] The narrow grounds for our opinion should not be regarded as accepting the legitimacy of a less categorical use of the Guidelines to evaluate post-2003 representation. For that to be proper, the Guidelines must reflect "[p]revailing norms of practice," *Strickland*, 466 U. S., at 688, and

539 U. S. 510, 524 (2003). What we have said of state requirements is *a fortiori* true of standards set by private organizations: "[W]hile States are free to impose whatever specific rules they see fit to ensure that criminal defendants are well represented, we have held that the Federal Constitution imposes one general requirement: that counsel make objectively reasonable choices." *Roe* v. *Flores-Ortega*, 528 U. S. 470, 479 (2000).

B

Van Hook insists that the Sixth Circuit's missteps made no difference because his counsel were ineffective even under professional standards prevailing at the time. He is wrong.

Like the Court of Appeals, Van Hook first contends that his attorneys began their mitigation investigation too late, waiting until he was found guilty—only days before the sentencing hearing—to dig into his background. See 560 F. 3d, at 528. But the record shows they started much sooner. Between Van Hook's indictment and his trial less than three months later, they contacted their lay witnesses early and often: They spoke nine times with his mother (beginning within a week after the indictment), once with both parents together, twice with an aunt who lived with the family and often cared for Van Hook as a child, and three times with a family friend whom Van Hook visited immediately after the crime. App. to Pet. for Cert. 380a–383a, 384a–387a. As for their expert witnesses, they were in touch with one more than a month before trial, and they met with the other for two hours a week before the trial court reached its verdict. *Id.*, at 382a, 386a. Moreover, after reviewing his military history, they met with a representative of the Veterans Administration seven weeks before trial and attempted to ob-

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"standard practice," *Wiggins* v. *Smith*, 539 U. S. 510, 524 (2003), and must not be so detailed that they would "interfere with the constitutionally protected independence of counsel and restrict the wide latitude counsel must have in making tactical decisions," *Strickland*, *supra*, at 689. We express no views on whether the 2003 Guidelines meet these criteria.

tain his medical records. *Id.*, at 381a, 386a. And they looked into enlisting a mitigation specialist when the trial was still five weeks away. *Id.*, at 386a. The Sixth Circuit, in short, was simply incorrect in saying Van Hook's lawyers waited until the "last minute." 560 F. 3d, at 528. Cf. *Williams* v. *Taylor*, 529 U. S. 362, 395 (2000) (counsel waited "until a week before the trial" to prepare for the sentencing phase).

Nor was the scope of counsel's investigation unreasonable.[2] The Sixth Circuit said Van Hook's attorneys found only "a little information about his traumatic childhood experience," 560 F. 3d, at 528, but that is a gross distortion. The trial court learned, for instance, that Van Hook (whose parents were both "heavy drinkers") started drinking as a toddler, began "barhopping" with his father at age 9, drank and used drugs regularly with his father from age 11 forward, and continued abusing drugs and alcohol into adulthood. App. to Pet. for Cert. 310a–312a, 323a–326a, 328a–330a, 373a. The court also heard that Van Hook grew up in a "'combat zone'": He watched his father beat his mother weekly, saw him hold her at gunpoint and knifepoint, "observed" episodes of "sexual violence" while sleeping in his parents' bedroom, and was beaten himself at least once. *Id.*, at 321a, 338a–339a, 371a. It learned that Van Hook, who had "fantasies about killing and war" from an early age, was deeply upset when his drug and alcohol abuse forced him out of the military, and attempted suicide five times (including a month before the murder), *id.*, at 351a–353a, 372a. And although the

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[2] In his brief in this Court, Van Hook also alludes to his counsel's failure to obtain an independent mental-health expert and their reliance on (and failure to object to harmful evidence in) a presentence investigation report—grounds on which the Sixth Circuit panel previously relied but which it abandoned in its final opinion. See *supra*, at 6. Van Hook now concedes, however, that neither ground is a "basis for issuing the writ," Brief in Opposition 5; see also *id.*, at 7, and accordingly we do not address them.

experts agreed that Van Hook did not suffer from a "mental disease or defect," the trial court learned that Van Hook's borderline personality disorder and his consumption of drugs and alcohol the day of the crime impaired "his ability to refrain from the [crime]," *id.*, at 303a, and that his "explo[sion]" of "senseless and bizarre brutality" may have resulted from what one expert termed a "homosexual panic," *id.*, at 376a.

Despite all the mitigating evidence the defense did present, Van Hook and the Court of Appeals fault his counsel for failing to find more. What his counsel did discover, the argument goes, gave them "reason to suspect that much worse details existed," and that suspicion should have prompted them to interview other family members—his stepsister, two uncles, and two aunts—as well as a psychiatrist who once treated his mother, all of whom "could have helped his counsel narrate the true story of Van Hook's childhood experiences." 560 F. 3d, at 528. But there comes a point at which evidence from more distant relatives can reasonably be expected to be only cumulative, and the search for it distractive from more important duties. The ABA Standards prevailing at the time called for Van Hook's counsel to cover several broad categories of mitigating evidence, see 1 ABA Standards 4–4.1, comment., at 4–55, which they did. And given all the evidence they unearthed from those closest to Van Hook's upbringing and the experts who reviewed his history, it was not unreasonable for his counsel not to identify and interview every other living family member or every therapist who once treated his parents. This is not a case in which the defendant's attorneys failed to act while potentially powerful mitigating evidence stared them in the face, cf. *Wiggins*, 539 U. S., at 525, or would have been apparent from documents any reasonable attorney would have obtained, cf. *Rompilla* v. *Beard*, 545 U. S. 374, 389–393 (2005). It is instead a case, like *Strickland* itself, in which defense counsel's "decision not to seek more" mitigating evidence from the defendant's background "than was already in

hand" fell "well within the range of professionally reasonable judgments." 466 U. S., at 699.[3]

What is more, even if Van Hook's counsel performed deficiently by failing to dig deeper, he suffered no prejudice as a result. See *id.*, at 694. As the Ohio court that rejected Van Hook's state habeas petition found, the affidavits submitted by the witnesses not interviewed show their testimony would have added nothing of value. See *State* v. *Van Hook*, No. C–910505, 1992 WL 308350, *2. Only two witnesses even arguably would have added new, relevant information: One of Van Hook's uncles noted that Van Hook's mother was temporarily committed to a psychiatric hospital, and Van Hook's stepsister mentioned that his father hit Van Hook frequently and tried to kill Van Hook's mother. App. to Pet. for Cert. 227a, 232a. But the trial court had already heard—from Van Hook's mother herself—that she had been "under psychiatric care" more than once. *Id.*, at 340a. And it was already aware that his father had a violent nature, had attacked Van Hook's mother, and had beaten Van Hook at least once. See also *id.*, at 305a (noting that Van Hook "suffered from a significant degree of neglect and abuse" throughout his "chaotic" childhood). Neither the Court of Appeals nor Van Hook has shown why the minor additional details the trial court did not hear would have made any difference.

On the other side of the scales, moreover, was the evidence of the aggravating circumstance the trial court found:

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[3] In addition to the evidence the Sixth Circuit said his attorneys overlooked, Van Hook alleges that his lawyers failed to provide the expert witnesses with a "complete set of relevant records or [his] complete psycho-social history." Brief in Opposition 4. But he offers no support for that assertion. He further claims that his counsel failed to obtain or present records of his military service and prior hospitalizations, but the record shows that they did review the former, see App. to Pet. for Cert. 380a, and that the trial court learned (from one of the written expert reports) all the relevant information Van Hook says it would have gleaned from the latter, see *id.*, at 373a–377a.

that Van Hook committed the murder alone in the course of an aggravated robbery. See Ohio Rev. Code Ann. §2929.04(A)(7) (Lexis 2006). Van Hook's confession made clear, and he never subsequently denied, both that he was the sole perpetrator of the crime and that "[h]is intention from beginning to end was to rob [Self] at some point in their evening's activities." App. to Pet. for Cert. 295a; see *id.*, at 276a–278a, 294a. Nor did he arrive at that intention on a whim: Van Hook had previously pursued the same strategy—of luring homosexual men into secluded settings to rob them—many times since his teenage years, and he employed it again even after Self's murder in the weeks before his arrest. See *id.*, at 279a, 295a, 374a. Although Van Hook apparently deviated from his original plan once the offense was underway—going beyond stealing Self's goods to killing him and disfiguring the dead body—that hardly helped his cause. The Sixth Circuit, which focused on the *number* of aggravating factors instead of their *weight*, see 560 F. 3d, at 530; cf. Ohio Rev. Code Ann. §2929.04(B), gave all this evidence short shrift, leading it to overstate further the effect additional mitigating evidence might have had.

* * *

The petition for certiorari and the motion for leave to proceed *in forma pauperis* 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.

JUSTICE ALITO, concurring.

I join the Court's *per curiam* opinion but emphasize my understanding that the opinion in no way suggests that the American Bar Association's Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (rev. ed. 2003) (2003 Guidelines or ABA Guidelines) have spe-

cial relevance in determining whether an attorney's performance meets the standard required by the Sixth Amendment. The ABA is a venerable organization with a history of service to the bar, but it is, after all, a private group with limited membership. The views of the association's members, not to mention the views of the members of the advisory committee that formulated the 2003 Guidelines, do not necessarily reflect the views of the American bar as a whole. It is the responsibility of the courts to determine the nature of the work that a defense attorney must do in a capital case in order to meet the obligations imposed by the Constitution, and I see no reason why the ABA Guidelines should be given a privileged position in making that determination.

WONG, WARDEN *v.* BELMONTES

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

No. 08–1263. Decided November 16, 2009

Respondent Belmontes was convicted of murder and sentenced to death in a California court. Unsuccessful on direct appeal and state collateral review, he sought federal habeas relief, claiming that his counsel was constitutionally ineffective for failing to investigate and present sufficient mitigating evidence at the trial's sentencing phase. The District Court denied relief, concluding that Belmontes' counsel had been ineffective but that Belmontes could not establish prejudice under *Strickland* v. *Washington*, 466 U. S. 668. The Ninth Circuit reversed, agreeing that counsel's performance was defective but disagreeing with the District Court's prejudice ruling.

Held: The Ninth Circuit erred in concluding that Belmontes was prejudiced by his counsel's alleged deficient performance during sentencing. To establish prejudice, Belmontes must show a reasonable probability that (1) a competent attorney, aware of the available mitigating evidence, would have introduced it at sentencing, and (2) had the jury been confronted with this mitigating evidence, there is a reasonable probability that it would have returned with a different sentence. In evaluating this second question, it is necessary to consider all the relevant evidence that the jury would have had before it—not just the mitigation evidence that could have been presented but also the rebuttal evidence that almost certainly would have come with it. Here, the additional evidence that the Ninth Circuit concluded should have been introduced was either cumulative of the substantial mitigation evidence already introduced or would have opened the door to powerful rebuttal evidence that Belmontes was responsible for not one but two murders. Belmontes cannot demonstrate a reasonable probability that, had it been presented all of this evidence, the jury would have returned with a different sentence.

Certiorari granted; 529 F. 3d 834, reversed and remanded.

PER CURIAM.

In 1981, in the course of a burglary, Fernando Belmontes bludgeoned Steacy McConnell to death, striking her in the head 15 to 20 times with a steel dumbbell bar. See *People* v. *Belmontes*, 45 Cal. 3d 744, 759–761, 755 P. 2d 310, 315–316

(1988). After the murder, Belmontes and his accomplices stole McConnell's stereo, sold it for $100, and used the money to buy beer and drugs for the night. *Id.*, at 764–765, 755 P. 2d, at 318–319.

Belmontes was convicted of murder and sentenced to death in state court. Unsuccessful on direct appeal and state collateral review, Belmontes sought federal habeas relief, which the District Court denied. The Court of Appeals reversed, finding instructional error, but we overturned that decision. *Ayers* v. *Belmontes*, 549 U. S. 7 (2006); see also *Brown* v. *Belmontes*, 544 U. S. 945 (2005).

On remand, the Court of Appeals again ruled for Belmontes, this time finding that Belmontes suffered ineffective assistance of counsel during the sentencing phase of his trial. The District Court had previously denied relief on that ground, finding that counsel for Belmontes had performed deficiently under Ninth Circuit precedent, but that Belmontes could not establish prejudice under *Strickland* v. *Washington*, 466 U. S. 668 (1984). *Belmontes* v. *Calderon*, Civ. S–89–0736 DFL JFM (ED Cal., Aug. 15, 2000), App. to Pet. for Cert. 140a, 179a, 183a. The Court of Appeals agreed that counsel's performance was deficient, but disagreed with the District Court with respect to prejudice, determining that counsel's errors undermined confidence in the penalty phase verdict. *Belmontes* v. *Ayers*, 529 F. 3d 834, 859–863, 874 (CA9 2008). We disagree with the Court of Appeals as to prejudice, grant the State's petition for certiorari, and reverse.

I

Belmontes argues that his counsel was constitutionally ineffective for failing to investigate and present sufficient mitigating evidence during the penalty phase of his trial. To prevail on this claim, Belmontes must meet both the deficient performance and prejudice prongs of *Strickland*, 466 U. S., at 687. To show deficient performance, Belmontes must establish that "counsel's representation fell below an objective

standard of reasonableness." *Id.*, at 688. In light of "the variety of circumstances faced by defense counsel [and] the range of legitimate decisions regarding how best to represent a criminal defendant," the performance inquiry necessarily turns on "whether counsel's assistance was reasonable considering all the circumstances." *Id.*, at 688–689. At all points, "[j]udicial scrutiny of counsel's performance must be highly deferential." *Id.*, at 689.

The challenge confronting Belmontes' lawyer, John Schick, was very specific. Substantial evidence indicated that Belmontes had committed a prior murder, and the prosecution was eager to introduce that evidence during the penalty phase of the McConnell trial. The evidence of the prior murder was extensive, including eyewitness testimony, Belmontes' own admissions, and Belmontes' possession of the murder weapon and the same type of ammunition used to kill the victim. Record 2239–2250, 2261; Deposition of John Schick, Exhs. 62, 63, 64 (Sept. 26, 1995).

The evidence, furthermore, was potentially devastating. It would have shown that two years before Steacy McConnell's death, police found Jerry Howard's body in a secluded area. Howard had been killed execution style, with a bullet to the back of the head. The authorities suspected Belmontes, but on the eve of trial the State's witnesses refused to cooperate (Belmontes' mother had begged one not to testify). The prosecution therefore believed it could not prove Belmontes guilty of murder beyond a reasonable doubt. What the prosecution could prove, even without the recalcitrant witnesses, was that Belmontes possessed the gun used to murder Howard. So the State offered, and Belmontes accepted, a no-contest plea to accessory after the fact to voluntary manslaughter. Record 2239–2243; Deposition of John Schick, Exhs. 62, 63, 64.

But Belmontes had not been shy about discussing the murder, boasting to several people that he had killed Howard. Steven Cartwright informed the district attorney that Bel-

montes had confessed to the murder. A police informant told detectives that Belmontes "bragged" about the murder, stating that he was "mad" at Howard because "the night before, he had quite a [lot] of dope and wouldn't share it with him." After double jeopardy protection set in and he had been released on parole, Belmontes admitted his responsibility for the murder to his counselor at the California Youth Authority, Charles Sapien. During his time in confinement, Belmontes had "always denied that he was the [one] who shot Jerry Howard." But because Sapien "had been square with [Belmontes]," Belmontes decided to level with Sapien upon his release, telling Sapien that he had "'wasted' that guy." Record 2240; Deposition of John Schick, Exhs. 62, 63, 64.

Schick understood the gravity of this aggravating evidence, and he built his mitigation strategy around the overriding need to exclude it. California evidentiary rules, Schick knew, offered him an argument to exclude the evidence, but those same rules made clear that the evidence would come in for rebuttal if Schick opened the door. Record 2256; see also *People* v. *Rodriguez*, 42 Cal. 3d 730, 791–792, 726 P. 2d 113, 153 (1986); *People* v. *Harris*, 28 Cal. 3d 935, 960–962, 623 P. 2d 240, 254 (1981). Schick thus had "grave concerns" that, even if he succeeded initially in excluding the prior murder evidence, it would still be admitted if his mitigation case swept too broadly. Accordingly, Schick decided to proceed cautiously, structuring his mitigation arguments and witnesses to limit that possibility. Deposition of John Schick 301, 309–310; see *Strickland*, *supra*, at 699 ("Restricting testimony on respondent's character to what had come in at the plea colloquy ensured that contrary character and psychological evidence and respondent's criminal history, which counsel had successfully moved to exclude, would not come in").

As Schick expected, the prosecution was ready to admit this evidence during the sentencing phase. Schick moved to

exclude the evidence, arguing that the State should be allowed to tell the jury only that Belmontes had been convicted of being an accessory after the fact to voluntary manslaughter—nothing more. Record 2240–2254. Schick succeeded in keeping the prosecution from presenting the damaging evidence in its sentencing case in chief, but his client remained at risk: The trial court indicated the evidence would come in for rebuttal or impeachment *if* Schick opened the door. *Id.*, at 2256.

This was not an empty threat. In one instance, Schick elicited testimony that Belmontes was not a violent person. The State objected and, out of earshot of the jury, argued that it should be able to rebut the testimony with the Howard murder evidence. *Id.*, at 2332–2334. The court warned Schick that it was "going to have to allow [the prosecution] to go into the whole background" if Schick continued his line of questioning. *Id.*, at 2334. Schick acquiesced, and the court struck the testimony. *Ibid.*

The court's warning reinforced Schick's understanding that he would have to tailor his mitigation case carefully to preserve his success in excluding the Howard murder evidence. With that cautionary note in mind, Schick put on nine witnesses he thought could advance a case for mitigation, without opening the door to the prior murder evidence. See *id.*, at 2312–2417.

The Court of Appeals determined that in spite of these efforts, Schick's performance was constitutionally deficient under Circuit precedent. 529 F. 3d, at 862–863. The State challenges that conclusion, but we need not resolve the point, because we agree with the District Court that Belmontes cannot establish prejudice.

II

To establish prejudice, Belmontes must show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U. S., at 694. That showing requires Bel-

montes to establish "a reasonable probability that a competent attorney, aware of [the available mitigating evidence], would have introduced it at sentencing," and "that had the jury been confronted with this . . . mitigating evidence, there is a reasonable probability that it would have returned with a different sentence." *Wiggins* v. *Smith*, 539 U. S. 510, 535, 536 (2003).

The Ninth Circuit determined that a reasonably competent lawyer would have introduced more mitigation evidence, on top of what Schick had already presented. For purposes of our prejudice analysis, we accept that conclusion and proceed to consider whether there is a reasonable probability that a jury presented with this additional mitigation evidence would have returned a different verdict.

In evaluating that question, it is necessary to consider *all* the relevant evidence that the jury would have had before it if Schick had pursued the different path—not just the mitigation evidence Schick could have presented, but also the Howard murder evidence that almost certainly would have come in with it. See *Strickland*, *supra*, at 695–696, 700. Thus, to establish prejudice, Belmontes must show a reasonable probability that the jury would have rejected a capital sentence after it weighed the entire body of mitigating evidence (including the additional testimony Schick could have presented) against the entire body of aggravating evidence (including the Howard murder evidence). Belmontes cannot meet this burden.

We begin with the mitigating evidence Schick did present during the sentencing phase. That evidence was substantial. The same Ninth Circuit panel addressing the same record in Belmontes' first habeas appeal agreed, recognizing "the substantial nature of the mitigating evidence" Schick presented. *Belmontes* v. *Woodford*, 350 F. 3d 861, 907 (2003). It reiterated the point several times. See *id.*, at 874, 901, 908.

All told, Schick put nine witnesses on the stand over a span of two days, and elicited a range of testimony on Belmontes' behalf. A number of those witnesses highlighted Belmontes' "terrible" childhood. They testified that his father was an alcoholic and extremely abusive. Belmontes' grandfather described the one-bedroom house where Belmontes spent much of his childhood as a "chicken coop." Belmontes did not do well in school; he dropped out in the ninth grade. His younger sister died when she was only 10 months old. And his grandmother died tragically when she drowned in her swimming pool. See Record 2314–2319, 2324–2325, 2344.

Family members also testified that, despite these difficulties, Belmontes maintained strong relationships with his grandfather, grandmother, mother, and sister. *Id.*, at 2317–2318, 2325–2326. And Belmontes' best friend offered the insights of a close friend and confidant. *Id.*, at 2329–2332.

Schick also called witnesses who detailed Belmontes' religious conversion while in state custody on the accessory charge. These witnesses told stories about Belmontes' efforts advising other inmates in his detention center's religious program, to illustrate that he could live a productive and meaningful life in prison. They described his success working as part of a firefighting crew, detailing his rise from lowest man on the team to second in command. Belmontes' assistant chaplain even said that he would use Belmontes as a regular part of his prison counseling program if the jury handed down a life sentence. *Id.*, at 2379–2384, 2396–2398, 2400–2407.

Belmontes himself bolstered these accounts by testifying about his childhood and religious conversion, both at sentencing and during allocution. Belmontes described his childhood as "pretty hard," but took responsibility for his actions, telling the jury that he did not want to use his background "as a crutch[,] to say I am in a situation right now . . . because of that." *Id.*, at 2343.

On remand from this Court, the Court of Appeals—addressing Belmontes' ineffective assistance claim for the first time—changed its view of this evidence. Instead of finding Schick's mitigation case "substantial," as it previously had, *Belmontes*, 350 F. 3d, at 907, the Ninth Circuit this time around labeled it "cursory," 529 F. 3d, at 841, 861, n. 14, 866. Compare also *Belmontes*, 350 F. 3d, at 874, 901, 907 (labeling the mitigation evidence Schick presented "substantial"), with 529 F. 3d, at 847, n. 3, 874 (labeling the same evidence "insubstantial"). More evidence, the Court of Appeals now concluded, would have made a difference; in particular, more evidence to "humanize" Belmontes, as that court put it no fewer than 11 times in its opinion. *Id.*, at 850, 859, 860, 862, 863, 864, 865, and n. 18, 869, 872, 874. The court determined that the failure to put on this evidence prejudiced Belmontes.

There are two problems with this conclusion: Some of the evidence was merely cumulative of the humanizing evidence Schick actually presented; adding it to what was already there would have made little difference. Other evidence proposed by the Ninth Circuit would have put into play aspects of Belmontes' character that would have triggered admission of the powerful Howard evidence in rebuttal. This evidence would have made a difference, but in the wrong direction for Belmontes. In either event, Belmontes cannot establish *Strickland* prejudice.

First, the cumulative evidence. In the Court of Appeals' view, Belmontes should have presented more humanizing evidence about Belmontes' "difficult childhood" and highlighted his "positive attributes." 529 F. 3d, at 864. As for his difficult childhood, Schick should have called witnesses to testify that "when Belmontes was five years old, his 10-month-old sister died of a brain tumor," that he "exhibited symptoms of depression" after her death, that his grandmother suffered from "alcoholism and prescription drug addiction," and that both his immediate and extended family lived in a state of "constant strife." *Ibid.* As for his posi-

tive attributes, Schick should have produced testimony about Belmontes' "strong character as a child in the face of adversity." *Ibid.* Schick should have illustrated that Belmontes was "kind, responsible, and likeable"; that he "got along well with his siblings" and was "respectful towards his grandparents despite their disapproval of his mixed racial background"; and that he "participated in community activities, kept up in school and got along with his teachers before [an] illness, and made friends easily." *Ibid.*

But as recounted above and recognized by the state courts and, originally, this very panel, Schick *did* put on substantial mitigation evidence, much of it targeting the same "humanizing" theme the Ninth Circuit highlighted. Compare, *e. g.*, *ibid.* with Record 2317 (death of 10-month-old sister); *id.*, at 2319, 2325 (difficult childhood); *id.*, at 2314–2315 (family member's addictions); *id.*, at 2314–2315, 2324–2325 (family strife and abuse); *id.*, at 2317, 2319, 2347–2348, 2397 (strong character as a child); *id.*, at 2326–2327 (close relationship with siblings); *id.*, at 2317–2319 (close relationship with grandparents); *id.*, at 2348–2351 (participation in community religious events); see also, *e. g.*, Belmontes' Traverse to Respondent's Return to Pet. for Writ of Habeas Corpus in No. S–89–0736–EJG–JFM (ED Cal.), p. 64 ("[C]ounsel's presentation was arguably adequate only with respect to [evidence] of 'humanizing' petitioner"). The sentencing jury was thus "well acquainted" with Belmontes' background and potential humanizing features. *Schriro* v. *Landrigan*, 550 U. S. 465, 481 (2007). Additional evidence on these points would have offered an insignificant benefit, if any at all.

The Ninth Circuit also determined that both the evidence Schick presented and the additional evidence it proposed would have carried greater weight if Schick had submitted expert testimony. Such testimony could "make connections between the various themes in the mitigation case and explain to the jury how they could have contributed to Belmontes's involvement in criminal activity." 529 F. 3d, at 853.

See also *ibid.* (discussing expert's federal habeas testimony on importance of expert testimony). But the body of mitigating evidence the Ninth Circuit would have required Schick to present was neither complex nor technical. It required only that the jury make logical connections of the kind a layperson is well equipped to make. The jury simply did not need expert testimony to understand the "humanizing" evidence; it could use its common sense or own sense of mercy.

What is more, expert testimony discussing Belmontes' mental state, seeking to explain his behavior, or putting it in some favorable context would have exposed Belmontes to the Howard evidence. See *Darden* v. *Wainwright*, 477 U. S. 168, 186 (1986) ("Any attempt to portray petitioner as a nonviolent man would have opened the door for the State to rebut with evidence of petitioner's prior convictions. . . . Similarly, if defense counsel had attempted to put on evidence that petitioner was a family man, they would have been faced with his admission at trial that, although still married, he was spending the weekend furlough with a girlfriend").

If, for example, an expert had testified that Belmontes had a " 'high likelihood of a . . . nonviolent adjustment to a prison setting,' " as Belmontes suggested an expert might, see Brief for Appellant in No. 01–99018 (CA9), p. 34, the question would have immediately arisen: "What was his propensity toward violence to begin with? Does evidence of another murder alter your view?" Expert testimony explaining *why* the jury should feel sympathy, as opposed simply to facts that might elicit that response, would have led to a similar rejoinder: "Is such sympathy equally appropriate for someone who committed a second murder?" Any of this testimony from an expert's perspective would have made the Howard evidence fair game.

Many of Belmontes' other arguments fail for the same reason. He argues that the jury should have been told that he suffered an "extended bout with rheumatic fever," which led

to "emotional instability, impulsivity, and impairment of the neurophysiological mechanisms for planning and reasoning." Amended Pet. for Writ of Habeas Corpus in No. CIVS–89–0736–EJG–JFM (ED Cal.), p. 120. But the cold, calculated nature of the Howard murder and Belmontes' subsequent bragging about it would have served as a powerful counterpoint.

The type of "more-evidence-is-better" approach advocated by Belmontes and the Court of Appeals might seem appealing—after all, what is there to lose? But here there was a lot to lose. A heavyhanded case to portray Belmontes in a positive light, with or without experts, would have invited the strongest possible evidence in rebuttal—the evidence that Belmontes was responsible for not one but two murders.

Belmontes counters that some of the potential mitigating evidence might not have opened the door to the prior murder evidence. The Court of Appeals went so far as to state, without citation, that "[t]here would be no basis for suggesting that [expert testimony] would be any different if the expert were informed that Belmontes committed two murders rather than one." 529 F. 3d, at 869, n. 20. But it is surely pertinent in assessing expert testimony "explain[ing] . . . involvement in criminal activity," *id.*, at 853, to know what criminal activity was at issue. And even if the number of murders were as irrelevant as the Ninth Circuit asserted, the fact that *these* two murders were so different in character made each of them highly pertinent in evaluating expert testimony of the sort envisioned by the Court of Appeals.

The Ninth Circuit noted that the trial court retained discretion to exclude the Howard evidence even if Schick opened the door. *Id.*, at 869–870, n. 20. If Schick had doubts, the Court of Appeals contended, he could have secured an answer in advance through a motion *in limine*. *Ibid.* The trial judge, however, left little doubt where he stood. While ruling that the prosecution could not present the evidence in its case in chief, Record 2254, the judge made

clear that it would come in for certain rebuttal purposes, *id.*, at 2256, 2332–2334. When Schick elicited testimony that Belmontes was not violent, for example, the judge ordered it stricken and warned Schick that he would admit the Howard murder evidence—to let the prosecution "go into the whole background"—if Schick pressed forward. *Id.*, at 2334.

In balancing the mitigating factors against the aggravators, the Court of Appeals repeatedly referred to the aggravating evidence the State presented as "scant." 529 F. 3d, at 870, 873, 874, 875, 878. That characterization misses *Strickland*'s point that the reviewing court must consider all the evidence—the good and the bad—when evaluating prejudice. See *Strickland*, 466 U. S., at 695–696, 700. Here, the worst kind of bad evidence would have come in with the good. The only reason it did not was because Schick was careful in his mitigation case. The State's aggravation evidence could only be characterized as "scant" if one ignores the "elephant in the courtroom"—Belmontes' role in the Howard murder—that would have been presented had Schick submitted the additional mitigation evidence. *Belmontes* v. *Ayers*, 551 F. 3d 864, 867 (CA9 2008) (Callahan, J., dissenting from denial of rehearing en banc).

Even on the record before it—which did not include the Howard murder—the state court determined that Belmontes "was convicted on extremely strong evidence that he committed an intentional murder of extraordinary brutality." *Belmontes*, 45 Cal. 3d, at 819, 755 P. 2d, at 354. That court also noted that "[t]he properly admitted aggravating evidence in this case—in particular, the circumstances of the crime—was simply overwhelming." *Id.*, at 809, 755 P. 2d, at 348 (citation omitted). The Ninth Circuit saw the murder differently. It viewed the circumstances of the crime as only "conceivably significant" as an aggravating factor. 529 F. 3d, at 871. In particular, the Court of Appeals concluded that "[t]he crime here did not involve . . . needless suffering on the part of the victim." *Ibid.*

We agree with the state court's characterization of the murder, and simply cannot comprehend the assertion by the Court of Appeals that this case did not involve "needless suffering." The jury saw autopsy photographs showing Steacy McConnell's mangled head, her skull crushed by 15 to 20 blows from a steel dumbbell bar the jury found to have been wielded by Belmontes. McConnell's corpse showed numerous "defensive bruises and contusions on [her] hands, arms, and feet," *id.*, at 839, which "plainly evidenced a desperate struggle for life at [Belmontes'] hands," *Belmontes*, *supra*, at 819, 755 P. 2d, at 354. Belmontes left McConnell to die, but officers found her still fighting for her life before ultimately succumbing to the injuries caused by the blows from Belmontes. Record 3. The jury also heard that this savage murder was committed solely to prevent interference with a burglary that netted Belmontes $100 he used to buy beer and drugs for the night. McConnell suffered, and it was clearly needless.

Some of the error below may be traced to confusion about the appropriate standard and burden of proof. While the Court of Appeals quoted the pertinent language from *Strickland*, that court elsewhere suggested it might have applied something different. In explaining its prejudice determination, the Ninth Circuit concluded that "[t]he aggravating evidence, even with the addition of evidence that Belmontes murdered Howard, is not strong enough, in light of the mitigating evidence that could have been adduced, to rule out a sentence of life in prison." 529 F. 3d, at 875. But *Strickland* does not require the State to "rule out" a sentence of life in prison to prevail. Rather, *Strickland* places the burden on the defendant, not the State, to show a "reasonable probability" that the result would have been different. 466 U. S., at 694. Under a proper application of the *Strickland* standard, Belmontes cannot carry this burden.

It is hard to imagine expert testimony and *additional* facts about Belmontes' difficult childhood outweighing the

facts of McConnell's murder. It becomes even harder to envision such a result when the evidence that Belmontes had committed another murder—"the most powerful imaginable aggravating evidence," as Judge Levi put it, *Belmontes*, S–89–0736, App. to Pet. for Cert. 183a—is added to the mix. Schick's mitigation strategy failed, but the notion that the result could have been different if only Schick had put on more than the nine witnesses he did, or called expert witnesses to bolster his case, is fanciful.

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

It is so ordered.

JUSTICE STEVENS, concurring.

When Fernando Belmontes was sentenced to death in 1982, California Penal Code § 190.3(k)* conveyed the unmistakable message that juries could not give any mitigating weight to evidence that did not extenuate the severity of the crime. See *Ayers* v. *Belmontes*, 549 U. S. 7, 27 (2006) (STEVENS, J., dissenting). The trial judge who presided at Belmontes' sentencing hearing so understood the law, and his instructions to the jury reflected that understanding. See *id.*, at 33–34. It was only later that both the California Supreme Court and this Court squarely held that a jury must be allowed to give weight to any aspect of a defendant's character or history that may provide a basis for a sentence other than death, even if such evidence does not "'tend to reduce the defendant's culpability for his crime.'" *Id.*, at 28 (quoting *Skipper* v. *South Carolina*, 476 U. S. 1, 11 (1986) (Powell, J., concurring in judgment)).

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*Cal. Penal Code Ann. § 190.3(k) (West 1988).

The testimony adduced at Belmontes' sentencing hearing described his religious conversion and his positive contributions to a youth rehabilitation program. Neither his own testimony, nor that of the two ministers and the other witnesses who testified on his behalf, made any attempt to extenuate the severity of his crime. Their testimony did, however, afford the jury a principled basis for imposing a sentence other than death. See *Ayers*, 549 U. S., at 29–31 (STEVENS, J., dissenting). A review of the entire record, especially the colloquy between six jurors and the trial judge, makes it clear to me that "the jury believed that the law forbade it from giving that evidence any weight at all." *Id.*, at 36–39. I therefore remain convinced that in its initial review of this case, the Court of Appeals correctly set aside Belmontes' death sentence.

The narrow question that is now before us is whether the additional mitigating evidence that trial counsel failed to uncover would have persuaded the jury to return a different verdict. The evidence trial counsel might have presented hardly matters, however, because in my view the conscientious jurors' mistaken understanding of the law would have prevented them from giving that additional evidence "any weight at all," *id.*, at 39, let alone controlling weight. Despite my strong disagreement with the Court's decision to review this case once again, I nevertheless agree with the Court's conclusion that trial counsel's failure to present additional mitigating evidence probably did not affect the outcome of the trial.

Per Curiam

PORTER *v.* McCOLLUM, ATTORNEY GENERAL OF FLORIDA, ET AL.

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

No. 08–10537. Decided November 30, 2009

Petitioner Porter was sentenced to death for murder. In postconviction proceedings, both the trial court and the Florida Supreme Court reserved judgment on counsel's deficiency at the penalty phase, but ruled that Porter had not been prejudiced by counsel's failure to investigate and present mitigating evidence of Porter's abusive childhood, his heroic military service and associated trauma, his long-term substance abuse, and his impaired mental health and mental capacity. The Federal District Court subsequently granted habeas relief, concluding that counsel's failure to adduce that evidence violated Porter's Sixth Amendment right to effective assistance of counsel, but the Eleventh Circuit reversed on the ground that the State Supreme Court's ruling was a reasonable application of *Strickland* v. *Washington*, 466 U. S. 668.

Held: The performance of Porter's counsel was deficient, and the Florida Supreme Court unreasonably applied *Strickland* in holding that Porter was not prejudiced by that deficiency. That counsel failed to conduct even a cursory investigation into Porter's background shows that his performance fell below an objective standard of reasonableness. See 466 U. S., at 688. And it was objectively unreasonable for the state court to conclude there was no reasonable probability the sentence would not have been different had the sentencing judge and jury heard the significant mitigation evidence Porter's counsel neither uncovered nor presented. See *id.*, at 694.

Certiorari granted in part; 552 F. 3d 1260, reversed and remanded.

PER CURIAM.

Petitioner George Porter is a veteran who was both wounded and decorated for his active participation in two major engagements during the Korean War; his combat service unfortunately left him a traumatized, changed man. His commanding officer's moving description of those two battles was only a fraction of the mitigating evidence that his coun-

sel failed to discover or present during the penalty phase of his trial in 1988.

In this federal postconviction proceeding, the District Court held that Porter's lawyer's failure to adduce that evidence violated his Sixth Amendment right to counsel and granted his application for a writ of habeas corpus. The Court of Appeals for the Eleventh Circuit reversed, on the ground that the Florida Supreme Court's determination that Porter was not prejudiced by any deficient performance by his counsel was a reasonable application of *Strickland* v. *Washington*, 466 U. S. 668 (1984). Like the District Court, we are persuaded that it was objectively unreasonable to conclude there was no reasonable probability the sentence would have been different if the sentencing judge and jury had heard the significant mitigation evidence that Porter's counsel neither uncovered nor presented. We therefore grant the petition for certiorari in part and reverse the judgment of the Court of Appeals.[1]

I

Porter was convicted of two counts of first-degree murder for the shooting of his former girlfriend, Evelyn Williams, and her boyfriend, Walter Burrows. He was sentenced to death on the first count but not the second.

In July 1986, as his relationship with Williams was ending, Porter threatened to kill her and then left town. When he returned to Florida three months later, he attempted to see Williams, but her mother told him that Williams did not want to see him. He drove past Williams' house each of the two days prior to the shooting, and the night before the murder he visited Williams, who called the police. Porter then went to two cocktail lounges and spent the night with a friend, who testified Porter was quite drunk by 11 p.m. Early the next morning, Porter shot Williams in her house. Burrows

[1] We deny the petition insofar as it challenges his conviction.

struggled with Porter and forced him outside where Porter shot him.

Porter represented himself, with standby counsel, for most of the pretrial proceedings and during the beginning of his trial. Near the completion of the State's case in chief, Porter pleaded guilty. He thereafter changed his mind about representing himself, and his standby counsel was appointed as his counsel for the penalty phase. During the penalty phase, the State attempted to prove four aggravating factors: Porter had been "previously convicted" of another violent felony (*i. e.*, in Williams' case, killing Burrows, and in his case, killing Williams);[2] the murder was committed during a burglary; the murder was committed in a cold, calculated, and premeditated manner; and the murder was especially heinous, atrocious, or cruel. The defense put on only one witness, Porter's ex-wife, and read an excerpt from a deposition. The sum total of the mitigating evidence was inconsistent testimony about Porter's behavior when intoxicated and testimony that Porter had a good relationship with his son. Although his lawyer told the jury that Porter "has other handicaps that weren't apparent during the trial" and Porter was not "mentally healthy," he did not put on any evidence related to Porter's mental health. 3 Tr. 477–478 (Jan. 22, 1988).

The jury recommended the death sentence for both murders. The trial court found that the State had proved all four aggravating circumstances for the murder of Williams but that only the first two were established with respect to Burrows' murder. The trial court found no mitigating circumstances and imposed a death sentence for Williams' mur-

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[2] It is an aggravating factor under Florida law that "[t]he defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person." Fla. Stat. § 921.141(5)(b) (1987). In Porter's case, the State established that factor by reference to Porter's contemporaneous convictions stemming from the same episode: two counts of murder and one count of aggravated assault. Tr. 5 (Mar. 4, 1988).

der only. On direct appeal, the Florida Supreme Court affirmed the sentence over the dissent of two justices, but struck the heinous, atrocious, or cruel aggravating factor. *Porter* v. *State*, 564 So. 2d 1060 (1990) *(per curiam)*. The court found the State had not carried its burden on that factor because the "record is consistent with the hypothesis that Porter's was a crime of passion, not a crime that was meant to be deliberately and extraordinarily painful." *Id.*, at 1063 (emphasis deleted). The two dissenting justices would have reversed the penalty because the evidence of drunkenness, "combined with evidence of Porter's emotionally charged, desperate, frustrated desire to meet with his former lover, is sufficient to render the death penalty disproportional punishment in this instance." *Id.*, at 1065–1066 (Barkett, J., concurring in part and dissenting in part).

In 1995, Porter filed a petition for postconviction relief in state court, claiming his penalty-phase counsel failed to investigate and present mitigating evidence. The court conducted a 2-day evidentiary hearing, during which Porter presented extensive mitigating evidence, all of which was apparently unknown to his penalty-phase counsel. Unlike the evidence presented during Porter's penalty hearing, which left the jury knowing hardly anything about him other than the facts of his crimes, the new evidence described his abusive childhood, his heroic military service and the trauma he suffered because of it, his long-term substance abuse, and his impaired mental health and mental capacity.

The depositions of his brother and sister described the abuse Porter suffered as a child. Porter routinely witnessed his father beat his mother, one time so severely that she had to go to the hospital and lost a child. Porter's father was violent every weekend, and by his siblings' account, Porter was his father's favorite target, particularly when Porter tried to protect his mother. On one occasion, Porter's father shot at him for coming home late, but missed and just beat Porter instead. According to his brother, Porter attended

classes for slow learners and left school when he was 12 or 13.

To escape his horrible family life, Porter enlisted in the Army at age 17 and fought in the Korean War. His company commander, Lieutenant Colonel Sherman Pratt, testified at Porter's postconviction hearing. Porter was with the 2d Division, which had advanced above the 38th parallel to Kunu-ri when it was attacked by Chinese forces. Porter suffered a gunshot wound to the leg during the advance but was with the unit for the battle at Kunu-ri. While the 8th Army was withdrawing, the 2d Division was ordered to hold off the Chinese advance, enabling the bulk of the 8th Army to live to fight another day. As Colonel Pratt described it, the unit "went into position there in bitter cold night, terribly worn out, terribly weary, almost like zombies because we had been in constant—for five days we had been in constant contact with the enemy fighting our way to the rear, little or no sleep, little or no food, literally as I say zombies." 1 Tr. 138 (Jan. 4, 1996). The next morning, the unit engaged in a "fierce hand-to-hand fight with the Chinese" and later that day received permission to withdraw, making Porter's regiment the last unit of the 8th Army to withdraw. *Id.*, at 139–140.

Less than three months later, Porter fought in a second battle, at Chip'yong-ni. His regiment was cut off from the rest of the 8th Army and defended itself for two days and two nights under constant fire. After the enemy broke through the perimeter and overtook defensive positions on high ground, Porter's company was charged with retaking those positions. In the charge up the hill, the soldiers "were under direct open fire of the enemy forces on top of the hill. They immediately came under mortar, artillery, machine gun, and every other kind of fire you can imagine and they were just dropping like flies as they went along." *Id.*, at 150. Porter's company lost all three of its platoon ser-

geants, and almost all of the officers were wounded. Porter was again wounded, and his company sustained the heaviest losses of any troops in the battle, with more than 50% casualties. Colonel Pratt testified that these battles were "very trying, horrifying experiences," particularly for Porter's company at Chip'yong-ni. *Id.*, at 152. Porter's unit was awarded the Presidential Unit Citation for the engagement at Chip'yong-ni, and Porter individually received two Purple Hearts and the Combat Infantryman Badge, along with other decorations.

Colonel Pratt testified that Porter went absent without leave (AWOL) for two periods while in Korea. He explained that this was not uncommon, as soldiers sometimes became disoriented and separated from the unit, and that the commander had decided not to impose any punishment for the absences. In Colonel Pratt's experience, an "awful lot of [veterans] come back nervous wrecks. Our [veterans'] hospitals today are filled with people mentally trying to survive the perils and hardships [of] . . . the Korean War," particularly those who fought in the battles he described. *Id.*, at 153.

When Porter returned to the United States, he went AWOL for an extended period of time.[3] He was sentenced to six months' imprisonment for that infraction, but he received an honorable discharge. After his discharge, he suffered dreadful nightmares and would attempt to climb his bedroom walls with knives at night.[4] Porter's family even-

[3] Porter explained to one of the doctors who examined him for competency to stand trial that he went AWOL in order to spend time with his son. Record 904.

[4] Porter's expert testified that these symptoms would "easily" warrant a diagnosis of posttraumatic stress disorder (PTSD). 2 Tr. 233 (Jan. 5, 1996). PTSD is not uncommon among veterans returning from combat. See Hearing on Fiscal Year 2010 Budget for Veterans' Programs before the Senate Committee on Veterans' Affairs, 111th Cong., 1st Sess., 63 (2009) (uncorrected copy) (testimony of Eric K. Shinseki, Secretary of Vet-

tually removed all of the knives from the house. According to Porter's brother, Porter developed a serious drinking problem and began drinking so heavily that he would get into fights and not remember them at all.

In addition to this testimony regarding his life history, Porter presented an expert in neuropsychology, Dr. Dee, who had examined Porter and administered a number of psychological assessments. Dr. Dee concluded that Porter suffered from brain damage that could manifest in impulsive, violent behavior. At the time of the crime, Dr. Dee testified, Porter was substantially impaired in his ability to conform his conduct to the law and suffered from an extreme mental or emotional disturbance, two statutory mitigating circumstances, Fla. Stat. § 921.141(6). Dr. Dee also testified that Porter had substantial difficulties with reading, writing, and memory, and that these cognitive defects were present when he was evaluated for competency to stand trial. 2 Tr. 227–228 (Jan. 5, 1996); see also Record 904–906. Although the State's experts reached different conclusions regarding the statutory mitigators,[5] each expert testified that he could not diagnose Porter or rule out a brain abnormality. 2 Tr. 345, 382 (Jan. 5, 1996); 3 *id.*, at 405.

The trial judge who conducted the state postconviction hearing, without determining counsel's deficiency, held that Porter had not been prejudiced by the failure to introduce any of that evidence. Record 1203, 1206. He found that Porter had failed to establish any statutory mitigating circumstances, *id.*, at 1207, and that the nonstatutory mitigating evidence would not have made a difference in the out-

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erans Affairs (VA), reporting that approximately 23% of the Iraq and Afghanistan war veterans seeking treatment at a VA medical facility had been preliminarily diagnosed with PTSD).

[5] The State presented two experts, Dr. Riebsame and Dr. Kirkland. Neither of the State's experts had examined Porter, but each testified that based upon their review of the record, Porter met neither statutory mitigating circumstance.

come of the case, *id.*, at 1210. He discounted the evidence of Porter's alcohol abuse because it was inconsistent and discounted the evidence of Porter's abusive childhood because he was 54 years old at the time of the trial. He also concluded that Porter's periods of being AWOL would have reduced the impact of Porter's military service to "inconsequential proportions." *Id.*, at 1212. Finally, he held that even considering all three categories of evidence together, the "trial judge and jury still would have imposed death." *Id.*, at 1214.

The Florida Supreme Court affirmed. It first accepted the trial court's finding that Porter could not have established any statutory mitigating circumstances, based on the trial court's acceptance of the State's experts' conclusions in that regard. *Porter* v. *State*, 788 So. 2d 917, 923 (2001) *(per curiam)*. It then held the trial court was correct to find "the additional nonstatutory mitigation to be lacking in weight because of the specific facts presented." *Id.*, at 925. Like the postconviction court, the Florida Supreme Court reserved judgment regarding counsel's deficiency. *Ibid.*[6] Two justices dissented, reasoning that counsel's failure to investigate and present mitigating evidence was "especially harmful" because of the divided vote affirming the sentence on direct appeal—"even without the substantial mitigation that we now know existed"—and because of the reversal of

[6] The postconviction court stated defense counsel "was not ineffective for failing to pursue mental health evaluations and . . . [Porter] has thus failed to show sufficient evidence that any statutory mitigators could have been presented." Record 1210. It is not at all clear whether this stray comment addressed counsel's deficiency. If it did, then it was at most dictum, because the court expressly "decline[d] to make a determination regarding whether or not Defense Counsel was in fact deficient here." *Id.*, at 1206. The Florida Supreme Court simply paraphrased the postconviction court when it stated "trial counsel's decision not to pursue mental evaluations did not exceed the bounds for competent counsel." *Porter* v. *State*, 788 So. 2d 917, 923–924 (2001) *(per curiam)*. But that court also expressly declined to answer the question of deficiency. *Id.*, at 925.

the heinous, atrocious, and cruel aggravating factor. *Id.*, at 937 (Anstead, J., concurring in part and dissenting in part).

Porter thereafter filed his federal habeas petition. The District Court held Porter's penalty-phase counsel had been ineffective. It first determined that counsel's performance had been deficient because "penalty-phase counsel did little, if any investigation . . . and failed to effectively advocate on behalf of his client before the jury." *Porter* v. *Crosby*, No. 6:03–cv–1465–Orl–31KRS, 2007 WL 1747316, *23 (MD Fla., June 18, 2007). It then determined that counsel's deficient performance was prejudicial, finding that the state court's decision was contrary to clearly established law in part because the state court failed to consider the entirety of the evidence when reweighing the evidence in mitigation, including the trial evidence suggesting that "this was a crime of passion, that [Porter] was drinking heavily just hours before the murders, or that [Porter] had a good relationship with his son." *Id.*, at *30.

The Eleventh Circuit reversed. It held the District Court had failed to appropriately defer to the state court's factual findings with respect to Porter's alcohol abuse and his mental health. 552 F. 3d 1260, 1274, 1275 (2008) *(per curiam)*. The Court of Appeals then separately considered each category of mitigating evidence and held it was not unreasonable for the state court to discount each category as it did. *Id.*, at 1274. Porter petitioned for a writ of certiorari. We grant the petition and reverse with respect to the Court of Appeals' disposition of Porter's ineffective-assistance claim.

II

To prevail under *Strickland*, Porter must show that his counsel's deficient performance prejudiced him. To establish deficiency, Porter must show his "counsel's representation fell below an objective standard of reasonableness." 466 U. S., at 688. To establish prejudice, he "must show that there is a reasonable probability that, but for counsel's un-

professional errors, the result of the proceeding would have been different." *Id.*, at 694. Finally, Porter is entitled to relief only if the state court's rejection of his claim of ineffective assistance of counsel was "contrary to, or involved an unreasonable application of," *Strickland*, or it rested "on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U. S. C. § 2254(d).

Because the state court did not decide whether Porter's counsel was deficient, we review this element of Porter's *Strickland* claim *de novo*. *Rompilla* v. *Beard*, 545 U. S. 374, 390 (2005). It is unquestioned that under the prevailing professional norms at the time of Porter's trial, counsel had an "obligation to conduct a thorough investigation of the defendant's background." *Williams* v. *Taylor*, 529 U. S. 362, 396 (2000). The investigation conducted by Porter's counsel clearly did not satisfy those norms.

Although Porter had initially elected to represent himself, his standby counsel became his counsel for the penalty phase a little over a month prior to the sentencing proceeding before the jury. It was the first time this lawyer had represented a defendant during a penalty-phase proceeding. At the postconviction hearing, he testified that he had only one short meeting with Porter regarding the penalty phase. He did not obtain any of Porter's school, medical, or military service records or interview any members of Porter's family. In *Wiggins* v. *Smith*, 539 U. S. 510, 524, 525 (2003), we held counsel "fell short of . . . professional standards" for not expanding their investigation beyond the presentence investigation report and one set of records they obtained, particularly "in light of what counsel actually discovered" in the records. Here, counsel did not even take the first step of interviewing witnesses or requesting records. Cf. *Bobby* v. *Van Hook*, *ante*, at 9–12 (holding performance not deficient when counsel gathered a substantial amount of information and then made a reasonable decision not to pursue additional

sources); *Strickland*, 466 U. S., at 699 ("[Counsel's] decision not to seek more character or psychological evidence than was already in hand was . . . reasonable"). Beyond that, like the counsel in *Wiggins*, he ignored pertinent avenues for investigation of which he should have been aware. The court-ordered competency evaluations, for example, collectively reported Porter's very few years of regular school, his military service and wounds sustained in combat, and his father's "over-disciplin[e]." Record 904, 902–906. As an explanation, counsel described Porter as fatalistic and uncooperative. But he acknowledged that although Porter instructed him not to speak with Porter's ex-wife or son, Porter did not give him any other instructions limiting the witnesses he could interview.

Counsel thus failed to uncover and present any evidence of Porter's mental health or mental impairment, his family background, or his military service. The decision not to investigate did not reflect reasonable professional judgment. *Wiggins*, *supra*, at 534. Porter may have been fatalistic or uncooperative, but that does not obviate the need for defense counsel to conduct *some* sort of mitigation investigation. See *Rompilla*, *supra*, at 381–382.

III

Because we find Porter's counsel deficient, we must determine whether the Florida Supreme Court unreasonably applied *Strickland* in holding Porter was not prejudiced by that deficiency. Under *Strickland*, a defendant is prejudiced by his counsel's deficient performance if "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." 466 U. S., at 694. In Florida, the sentencing judge makes the determination as to the existence and weight of aggravating and mitigating circumstances and the punishment, Fla. Stat. § 921.141(3), but he must give the jury verdict of life or death "great weight," *Tedder* v. *State*, 322

So. 2d 908, 910 (Fla. 1975) *(per curiam)*. Porter must show that but for his counsel's deficiency, there is a reasonable probability he would have received a different sentence. To assess that probability, we consider "the totality of the available mitigation evidence—both that adduced at trial, and the evidence adduced in the habeas proceeding"—and "reweig[h] it against the evidence in aggravation." *Williams*, *supra*, at 397–398.

This is not a case in which the new evidence "would barely have altered the sentencing profile presented to the sentencing judge." *Strickland*, *supra*, at 700. The judge and jury at Porter's original sentencing heard almost nothing that would humanize Porter or allow them to accurately gauge his moral culpability. They learned about Porter's turbulent relationship with Williams, his crimes, and almost nothing else. Had Porter's counsel been effective, the judge and jury would have learned of the "kind of troubled history we have declared relevant to assessing a defendant's moral culpability." *Wiggins*, *supra*, at 535. They would have heard about (1) Porter's heroic military service in two of the most critical—and horrific—battles of the Korean War, (2) his struggles to regain normality upon his return from war, (3) his childhood history of physical abuse, and (4) his brain abnormality, difficulty reading and writing, and limited schooling. See *Penry* v. *Lynaugh*, 492 U. S. 302, 319 (1989) ("'[E]vidence about the defendant's background and character is relevant because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background . . . may be less culpable'"). Instead, they heard absolutely none of that evidence, evidence which "might well have influenced the jury's appraisal of [Porter's] moral culpability." *Williams*, *supra*, at 398.

On the other side of the ledger, the weight of evidence in aggravation is not as substantial as the sentencing judge thought. As noted, the sentencing judge accepted the jury's

recommendation of a death sentence for the murder of Williams but rejected the jury's death-sentence recommendation for the murder of Burrows. The sentencing judge believed that there were four aggravating circumstances related to the Williams murder but only two for the Burrows murder. Accordingly, the judge must have reasoned that the two aggravating circumstances that were present in both cases were insufficient to warrant a death sentence but that the two additional aggravating circumstances present with respect to the Williams murder were sufficient to tip the balance in favor of a death sentence. But the Florida Supreme Court rejected one of these additional aggravating circumstances, *i. e.*, that Williams' murder was especially heinous, atrocious, or cruel, finding the murder "consistent with . . . a crime of passion" even though premeditated to a heightened degree. 564 So. 2d, at 1063–1064. Had the judge and jury been able to place Porter's life history "on the mitigating side of the scale," and appropriately reduced the ballast on the aggravating side of the scale, there is clearly a reasonable probability that the advisory jury—and the sentencing judge—"would have struck a different balance," *Wiggins, supra*, at 537, and it is unreasonable to conclude otherwise.

The Florida Supreme Court's decision that Porter was not prejudiced by his counsel's failure to conduct a thorough—or even cursory—investigation is unreasonable. The Florida Supreme Court either did not consider or unreasonably discounted the mitigation evidence adduced in the postconviction hearing. Under Florida law, mental health evidence that does not rise to the level of establishing a statutory mitigating circumstance may nonetheless be considered by the sentencing judge and jury as mitigating. See, *e. g.*, *Hoskins* v. *State*, 965 So. 2d 1, 17–18 (Fla. 2007) *(per curiam)*. Indeed, the Constitution requires that "the sentencer in capital cases must be permitted to consider any relevant mitigating factor." *Eddings* v. *Oklahoma*, 455 U. S. 104, 112 (1982). Yet neither the postconviction trial court nor the Florida Su-

preme Court gave any consideration for the purpose of nonstatutory mitigation to Dr. Dee's testimony regarding the existence of a brain abnormality and cognitive defects.[7] While the State's experts identified perceived problems with the tests that Dr. Dee used and the conclusions that he drew from them, it was not reasonable to discount entirely the effect that his testimony might have had on the jury or the sentencing judge.

Furthermore, the Florida Supreme Court, following the state postconviction court, unreasonably discounted the evidence of Porter's childhood abuse and military service. It is unreasonable to discount to irrelevance the evidence of Porter's abusive childhood, especially when that kind of history may have particular salience for a jury evaluating Porter's behavior in his relationship with Williams. It is also unreasonable to conclude that Porter's military service would be reduced to "inconsequential proportions," 788 So. 2d, at 925, simply because the jury would also have learned that Porter went AWOL on more than one occasion. Our Nation has a long tradition of according leniency to veterans in recognition of their service, especially for those who fought on the front lines as Porter did.[8] Moreover, the relevance of Porter's extensive combat experience is not only that he served honorably under extreme hardship and gruesome conditions, but also that the jury might find mitigating

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[7] The Florida Supreme Court acknowledged that Porter had presented evidence of "statutory and nonstatutory mental mitigation," 788 So. 2d, at 921, but it did not consider Porter's mental health evidence in its discussion of nonstatutory mitigating evidence, *id.*, at 924.

[8] See Abbott, The Civil War and the Crime Wave of 1865–70, 1 Soc. Serv. Rev. 212, 232–234 (1927) (discussing the movement to pardon or parole prisoners who were veterans of the Civil War); Rosenbaum, The Relationship Between War and Crime in the United States, 30 J. Crim. L. & C. 722, 733–734 (1940) (describing a 1922 study by the Wisconsin Board of Control that discussed the number of veterans imprisoned in the State and considered "the greater leniency that may be shown to ex-service men in court").

the intense stress and mental and emotional toll that combat took on Porter.[9] The evidence that he was AWOL is consistent with this theory of mitigation and does not impeach or diminish the evidence of his service. To conclude otherwise reflects a failure to engage with what Porter actually went through in Korea.

As the two dissenting justices in the Florida Supreme Court reasoned, "there exists too much mitigating evidence that was not presented to now be ignored." *Id.*, at 937 (Anstead, J., concurring in part and dissenting in part). Although the burden is on petitioner to show he was prejudiced by his counsel's deficiency, the Florida Supreme Court's conclusion that Porter failed to meet this burden was an unreasonable application of our clearly established law. We do not require a defendant to show "that counsel's deficient conduct more likely than not altered the outcome" of his penalty proceeding, but rather that he establish "a probability sufficient to undermine confidence in [that] outcome." *Strickland*, 466 U. S., at 693–694. This Porter has done.

The petition for certiorari is granted in part, and the motion for leave to proceed *in forma pauperis* is 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.

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[9] Cf. Cal. Penal Code Ann. § 1170.9(a) (West Supp. 2009) (providing a special hearing for a person convicted of a crime "who alleges that he or she committed the offense as a result of post-traumatic stress disorder, substance abuse, or psychological problems stemming from service in a combat theater in the United States military"); Minn. Stat. § 609.115, Subd. 10 (2008) (providing for a special process at sentencing if the defendant is a veteran and has been diagnosed as having a mental illness by a qualified psychiatrist).

Per Curiam

MICHIGAN *v.* FISHER

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MICHIGAN

No. 09–91. Decided December 7, 2009

Fisher was charged with assault with a dangerous weapon and possession of a firearm during the commission of a felony. Police responding to a domestic disturbance at respondent Fisher's house found damaged property and blood at the scene, observed Fisher screaming and throwing things inside the house, and saw that his hand was cut. When Fisher refused to open the door or tell officers whether he needed medical attention, Officer Goolsby entered the house, where he found Fisher pointing a rifle at him. But the trial court suppressed Goolsby's statement, ruling that the officer had violated the Fourth Amendment by entering the house without a warrant. The Michigan Court of Appeals affirmed.

Held: Goolsby's entry into the house was lawful under the emergency aid exception to the warrant requirement, which applies where officers have "an objectively reasonable basis for believing" that medical assistance is needed or persons are in danger. *Brigham City* v. *Stuart*, 547 U. S. 398, 406. Here, it was reasonable to believe that Fisher had hurt himself and needed treatment or that he was about to hurt, or had already hurt, someone else.

Certiorari granted; reversed and remanded.

PER CURIAM.

Police officers responded to a complaint of a disturbance near Allen Road in Brownstown, Michigan.* Officer Christopher Goolsby later testified that, as he and his partner approached the area, a couple directed them to a residence where a man was "going crazy." Docket No. 276439, 2008 WL 786515, *1 (Mich. App., Mar. 25, 2008) *(per curiam)* (alteration and internal quotation marks omitted). Upon their arrival, the officers found a household in considerable chaos: a pickup truck in the driveway with its front smashed, damaged fenceposts along the side of the property, and three

*We have taken the facts from the opinion of the Michigan Court of Appeals. Except where indicated, the parties do not dispute the facts.

broken house windows, the glass still on the ground outside. The officers also noticed blood on the hood of the pickup and on clothes inside of it, as well as on one of the doors to the house. (It is disputed whether they noticed this immediately upon reaching the house, but undisputed that they noticed it before the allegedly unconstitutional entry.) Through a window, the officers could see respondent, Jeremy Fisher, inside the house, screaming and throwing things. The back door was locked, and a couch had been placed to block the front door.

The officers knocked, but Fisher refused to answer. They saw that Fisher had a cut on his hand, and they asked him whether he needed medical attention. Fisher ignored these questions and demanded, with accompanying profanity, that the officers go to get a search warrant. Officer Goolsby then pushed the front door partway open and ventured into the house. Through the window of the open door he saw Fisher pointing a long gun at him. Officer Goolsby withdrew.

Fisher was charged under Michigan law with assault with a dangerous weapon and possession of a firearm during the commission of a felony. The trial court concluded that Officer Goolsby violated the Fourth Amendment when he entered Fisher's house, and granted Fisher's motion to suppress the evidence obtained as a result—that is, Officer Goolsby's statement that Fisher pointed a rifle at him. The Michigan Court of Appeals initially remanded for an evidentiary hearing, see Docket No. 256027, 2005 WL 3481454 (Dec. 20, 2005) *(per curiam)*, after which the trial court reinstated its order. The Court of Appeals then affirmed over a dissent by Judge Talbot. See 2008 WL 786515, at *2; *id.*, at *2–*5. The Michigan Supreme Court granted leave to appeal, but, after hearing oral argument, it vacated its prior order and denied leave instead; three justices, however, would have taken the case and reversed on the ground that the Court of Appeals misapplied the Fourth Amendment.

See 483 Mich. 1007, 765 N. W. 2d 19 (2009). Because the decision of the Michigan Court of Appeals is indeed contrary to our Fourth Amendment case law, particularly *Brigham City* v. *Stuart*, 547 U. S. 398 (2006), we grant the State's petition for certiorari and reverse.

"[T]he ultimate touchstone of the Fourth Amendment," we have often said, "is 'reasonableness.' " *Id.*, at 403. Therefore, although "searches and seizures inside a home without a warrant are presumptively unreasonable," *Groh* v. *Ramirez*, 540 U. S. 551, 559 (2004) (internal quotation marks omitted), that presumption can be overcome. For example, "the exigencies of the situation [may] make the needs of law enforcement so compelling that the warrantless search is objectively reasonable." *Mincey* v. *Arizona*, 437 U. S. 385, 393–394 (1978) (internal quotation marks omitted).

Brigham City identified one such exigency: "the need to assist persons who are seriously injured or threatened with such injury." 547 U. S., at 403. Thus, law enforcement officers "may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." *Ibid.* This "emergency aid exception" does not depend on the officers' subjective intent or the seriousness of any crime they are investigating when the emergency arises. *Id.*, at 404–405. It requires only "an objectively reasonable basis for believing," *id.*, at 406, that "a person within [the house] is in need of immediate aid," *Mincey*, *supra*, at 392.

Brigham City illustrates the application of this standard. There, police officers responded to a noise complaint in the early hours of the morning. "As they approached the house, they could hear from within an altercation occurring, some kind of fight." 547 U. S., at 406 (internal quotation marks omitted). Following the tumult to the back of the house whence it came, the officers saw juveniles drinking beer in the backyard and a fight unfolding in the kitchen. They

watched through the window as a juvenile broke free from the adults restraining him and punched another adult in the face, who recoiled to the sink, spitting blood. *Ibid.* Under these circumstances, we found it "plainly reasonable" for the officers to enter the house and quell the violence, for they had "an objectively reasonable basis for believing both that the injured adult might need help and that the violence in the kitchen was just beginning." *Ibid.*

A straightforward application of the emergency aid exception, as in *Brigham City*, dictates that the officer's entry was reasonable. Just as in *Brigham City*, the police officers here were responding to a report of a disturbance. Just as in *Brigham City*, when they arrived on the scene they encountered a tumultuous situation in the house—and here they also found signs of a recent injury, perhaps from a car accident, outside. And just as in *Brigham City*, the officers could see violent behavior inside. Although Officer Goolsby and his partner did not see punches thrown, as did the officers in *Brigham City*, they did see Fisher screaming and throwing things. It would be objectively reasonable to believe that Fisher's projectiles might have a human target (perhaps a spouse or a child), or that Fisher would hurt himself in the course of his rage. In short, we find it as plain here as we did in *Brigham City* that the officer's entry was reasonable under the Fourth Amendment.

The Michigan Court of Appeals, however, thought the situation "did not rise to a level of emergency justifying the warrantless intrusion into a residence." 2008 WL 786515, at *2. Although the Court of Appeals conceded that "there was evidence an injured person was on the premises," it found it significant that "the mere drops of blood did not signal a likely serious, life-threatening injury." *Ibid.* The court added that the cut Officer Goolsby observed on Fisher's hand "likely explained the trail of blood" and that Fisher "was very much on his feet and apparently able to see to his own needs." *Ibid.*

Even a casual review of *Brigham City* reveals the flaw in this reasoning. Officers do not need ironclad proof of "a likely serious, life-threatening" injury to invoke the emergency aid exception. The only injury police could confirm in *Brigham City* was the bloody lip they saw the juvenile inflict upon the adult. Fisher argues that the officers here could not have been motivated by a perceived need to provide medical assistance, since they never summoned emergency medical personnel. This would have no bearing, of course, upon their need to ensure that Fisher was not endangering someone else in the house. Moreover, even if the failure to summon medical personnel conclusively established that Goolsby did not subjectively believe, when he entered the house, that Fisher or someone else was seriously injured (which is doubtful), the test, as we have said, is not what Goolsby believed, but whether there was "an objectively reasonable basis for believing" that medical assistance was needed, or persons were in danger, *Brigham City*, *supra*, at 406; *Mincey*, *supra*, at 392.

It was error for the Michigan Court of Appeals to replace that objective inquiry into appearances with its hindsight determination that there was in fact no emergency. It does not meet the needs of law enforcement or the demands of public safety to require officers to walk away from a situation like the one they encountered here. Only when an apparent threat has become an actual harm can officers rule out innocuous explanations for ominous circumstances. But "[t]he role of a peace officer includes preventing violence and restoring order, not simply rendering first aid to casualties." *Brigham City*, *supra*, at 406. It sufficed to invoke the emergency aid exception that it was reasonable to believe that Fisher had hurt himself (albeit nonfatally) and needed treatment that in his rage he was unable to provide, or that Fisher was about to hurt, or had already hurt, someone else. The Michigan Court of Appeals required more than what the Fourth Amendment demands.

* * *

The petition for certiorari is granted. The judgment of the Michigan Court of Appeals is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE STEVENS, with whom JUSTICE SOTOMAYOR joins, dissenting.

On October 31, 2003, Jeremy Fisher pointed a rifle at Officer Christopher Goolsby when Goolsby attempted to force his way into Fisher's home without a warrant. Fisher was charged with assault with a dangerous weapon and possession of a dangerous weapon during the commission of a felony. The charges were dismissed after the trial judge granted a motion to suppress evidence of the assault because it was the product of Goolsby's unlawful entry. In 2005 the Michigan Court of Appeals held that the trial court had erred because it had decided the suppression motion without conducting a full evidentiary hearing. On remand, the trial court conducted such a hearing and again granted the motion to suppress.

As a matter of Michigan law it is well settled that police officers may enter a home without a warrant "when they reasonably believe that a person within is in need of immediate aid." *People* v. *Davis*, 442 Mich. 1, 25, 497 N. W. 2d 910, 921 (1993). We have stated the rule in the same way under federal law, *Mincey* v. *Arizona*, 437 U. S. 385, 392 (1978), and have explained that a warrantless entry is justified by the "'need to protect or preserve life or avoid serious injury,'" *ibid.* The State bears the burden of proof on that factual issue and relied entirely on the testimony of Officer Goolsby in its attempt to carry that burden. Since three years had passed, Goolsby was not sure about certain facts—such as whether Fisher had a cut on his hand—but he did remember that Fisher repeatedly swore at the officers and told them to

get a warrant, and that Fisher was screaming and throwing things. Goolsby also testified that he saw "mere drops" of blood outside Fisher's home, No. 276439, 2008 WL 786515, *2 (Mich. App., Mar. 25, 2008) *(per curiam)* (summarizing Goolsby's testimony), and that he did not ask whether anyone else was inside. Goolsby did not testify that he had any reason to believe that anyone else was in the house. Thus, the factual question was whether Goolsby had "an objectively reasonable basis for believing that [Fisher was] seriously injured or imminently threatened with such injury." *Brigham City* v. *Stuart*, 547 U. S. 398, 400 (2006).

After hearing the testimony, the trial judge was "even more convinced" that the entry was unlawful. Tr. 29 (Dec. 19, 2006). He noted the issue was "whether or not there was a reasonable basis to [enter the house] or whether [Goolsby] was just acting on some possibilities," *id.*, at 22, and evidently found the record supported the latter rather than the former. He found the police decision to leave the scene and not return for several hours—without resolving any potentially dangerous situation and without calling for medical assistance—inconsistent with a reasonable belief that Fisher was in need of immediate aid. In sum, the one judge who heard Officer Goolsby's testimony was not persuaded that Goolsby had an objectively reasonable basis for believing that entering Fisher's home was necessary to avoid *serious* injury.

The Michigan Court of Appeals affirmed, concluding that the State had not met its burden. Perhaps because one judge dissented, the Michigan Supreme Court initially granted an application for leave to appeal. After considering briefs and oral argument, however, the majority of that Court vacated its earlier order because it was "no longer persuaded that the questions presented should be reviewed by this Court." 483 Mich. 1007, 765 N. W. 2d 19 (2009).

Today, without having heard Officer Goolsby's testimony, this Court decides that the trial judge got it wrong. I am

not persuaded that he did, but even if we make that assumption, it is hard to see how the Court is justified in micromanaging the day-to-day business of state tribunals making fact-intensive decisions of this kind. We ought not usurp the role of the factfinder when faced with a close question of the reasonableness of an officer's actions, particularly in a case tried in a state court. I therefore respectfully dissent.

Syllabus

BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. *v.* KINDLER

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

No. 08–992. Argued November 2, 2009—Decided December 8, 2009

Respondent Kindler was convicted of capital murder in Pennsylvania state court, and the jury recommended a death sentence. Kindler filed postverdict motions challenging his conviction and sentence, but before the trial court could consider the motions or the jury's death recommendation, Kindler escaped and fled to Canada. The state trial court subsequently dismissed Kindler's postverdict motions because of his escape. Canadian authorities ultimately captured Kindler and held him in jail pending extradition. But before Kindler could be transferred from Canadian custody, he escaped again, this time remaining at large for more than two years. He was eventually recaptured and transferred to the United States. Once back in this country, Kindler sought to reinstate his postverdict motions, but the trial court denied relief, holding that the judge who had dismissed the motions had not abused his discretion under Pennsylvania's fugitive forfeiture law. Kindler argued on direct appeal that the trial court erred in declining to address the merits of his postverdict motions, but the Pennsylvania Supreme Court affirmed. Kindler's claims were rejected on state habeas, and he sought federal habeas relief. Under the adequate state ground doctrine, a federal habeas court will not review a claim rejected by a state court "if the decision of [the state] court rests on a state law ground that is independent of the federal question and adequate to support the judgment." *Coleman* v. *Thompson*, 501 U. S. 722, 729. The District Court nonetheless granted Kindler's habeas petition, determining that the state fugitive forfeiture rule did not provide an adequate basis to bar federal review of Kindler's habeas claims. The Third Circuit affirmed, and the Commonwealth petitioned for certiorari. It argued that the Third Circuit had held the state fugitive forfeiture rule automatically inadequate because the state courts had discretion in applying it, and the Commonwealth sought review of that holding. The Court granted that petition.

Held: A state procedural rule is not automatically "inadequate" under the adequate state ground doctrine—and therefore unenforceable on federal habeas review—because the state rule is discretionary rather than mandatory. The question whether a state procedural ruling is adequate is itself a question of federal law. *Lee* v. *Kemna*, 534 U. S. 362, 375. This

Syllabus

Court has framed the adequacy inquiry by asking whether the state rule was "firmly established and regularly followed." *Id.*, at 376. A discretionary state procedural rule can serve as an adequate ground to bar federal habeas review even if the appropriate exercise of discretion may permit consideration of a federal claim in some cases but not others. A contrary holding would pose an unnecessary dilemma for the States: They could preserve flexibility by granting courts discretion to excuse procedural errors, but only at the cost of undermining the finality of state court judgments. Or States could preserve the finality of their judgments by withholding such discretion, but only at the cost of precluding any flexibility in applying the rules. If forced to choose, many States would opt for mandatory rules to avoid the high costs of plenary federal review. That would be unfortunate in many cases, as discretionary rules are often desirable. The federal system, for example, often grants the trial judge broad discretion when his ringside perspective at the main event offers him a comparative advantage in decisionmaking. The States have followed suit. Given the federalism and comity concerns motivating the adequate state ground doctrine in the habeas context, see *Coleman*, *supra*, at 730, this Court should not disregard discretionary state procedural rules that are in place in nearly every State and are substantially similar to those given full force in federal courts. Cf. *Francis* v. *Henderson*, 425 U. S. 536, 541–542. Pp. 60–63.

542 F. 3d 70, vacated 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. KENNEDY, J., filed a concurring opinion, in which THOMAS, J., joined, *post*, p. 63.

Ronald Eisenberg argued the cause for petitioners. With him on the briefs were *Thomas W. Dolgenos* and *Lynne Abraham*.

Matthew C. Lawry argued the cause for respondent. With him on the brief were *Leigh Skipper*, *Jennifer L. Givens*, and *Billy H. Nolas*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of California et al. by *Edmund G. Brown, Jr.*, Attorney General of California, *Dane R. Gillette*, Chief Assistant Attorney General, and *Donald E. de Nicola*, Deputy State Solicitor General, by *Kevin T. Kane*, Chief State's Attorney of Connecticut, by *Richard S. Gebelein*, Chief Deputy Attorney

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

A federal habeas court will not review a claim rejected by a state court "if the decision of [the state] court rests on a state law ground that is independent of the federal question and adequate to support the judgment." *Coleman* v. *Thompson*, 501 U. S. 722, 729 (1991). We granted certiorari to decide the following question: "Is a state procedural rule automatically 'inadequate' under the adequate-state-grounds doctrine—and therefore unenforceable on federal habeas corpus review—because the state rule is discretionary rather than mandatory?" Pet. for Cert. i. Petitioners argue the correct answer is "no." At oral argument, respondent—consistent with his position below—expressly agreed. We do too, and accordingly vacate the judgment of the Court of Appeals.

I

In 1982, Joseph Kindler, along with Scott Shaw and David Bernstein, burglarized a music store in Bucks County, Pennsylvania. Police stopped the getaway car and arrested Shaw and Bernstein. In a harbinger of things to come, Kindler escaped. *Commonwealth* v. *Kindler*, 536 Pa. 228, 236, 639 A. 2d 1, 5, cert. denied, 513 U. S. 933 (1994).

General of Delaware, by *Orville B. Fitch II*, Deputy Attorney General of New Hampshire, and by the Attorneys General for their respective States as follows: *Terry Goddard* of Arizona, *John W. Suthers* of Colorado, *Bill McCollum* of Florida, *Lawrence G. Wasden* of Idaho, *Gregory F. Zoeller* of Indiana, *James D. "Buddy" Caldwell* of Louisiana, *Lori Swanson* of Minnesota, *Jim Hood* of Mississippi, *Chris Koster* of Missouri, *Jon Bruning* of Nebraska, *Gary K. King* of New Mexico, *Richard Cordray* of Ohio, *W. A. Drew Edmondson* of Oklahoma, *John R. Kroger* of Oregon, *Thomas W. Corbett, Jr.*, of Pennsylvania, *Henry D. McMaster* of South Carolina, *Robert E. Cooper, Jr.*, of Tennessee, *Mark L. Shurtleff* of Utah, *William C. Mims* of Virginia, *Robert M. McKenna* of Washington, *Darrell V. McGraw, Jr.*, of West Virginia, and *J. B. Van Hollen* of Wisconsin; and for the Criminal Justice Legal Foundation by *Kent S. Scheidegger*.

Police later arrested Kindler and charged him with burglary. He was released on bail. Bernstein agreed to testify against Kindler, but Kindler had other plans. At about 2:30 a.m. on July 25, 1982, Kindler and Shaw attacked Bernstein outside his apartment. Kindler beat Bernstein with a baseball bat approximately 20 times, and Shaw shocked Bernstein 5 times with an electric prod. Bernstein at that point was still alive but unable to move, and Kindler and Shaw dragged their victim to their nearby car, loaded him in the trunk, and drove to the Delaware River. At the river, Kindler tied a cinder block around Bernstein's neck and dumped him in the water. A forensic examiner later determined that Bernstein died of drowning and massive head injuries. 536 Pa., at 236–239, 639 A. 2d, at 5–6.

Kindler was brought to trial and convicted of capital murder. The jury recommended a death sentence, and Kindler filed postverdict motions. *Id.*, at 230–231, 639 A. 2d, at 2.

But on September 19, 1984, before the trial court could consider the motions or the jury's death recommendation, Kindler escaped. *Ibid.* In an organized effort to saw through the external prison bars with smuggled tools, Kindler broke out of the maximum-security wing of the prison and headed for Canada. See *Commonwealth* v. *Kindler*, 554 Pa. 513, 517–518, and n. 4, 722 A. 2d 143, 145, and n. 4 (1998).

Kindler remained a fugitive in Canada until April 26, 1985, when he was arrested in Quebec for separate burglary offenses. The United States sought Kindler's return, but an extradition treaty allowed Canada to refuse to hand over anyone likely to face execution. See *Kindler* v. *Canada* (*Minister of Justice*), [1991] 2 S. C. R. 779, 84 D. L. R. (4th) 438.

Kindler turned into something of a local celebrity. He even appeared on Canadian television, explaining, among other things, how he had escaped and why he chose Canada: "I knew there was no death penalty here." CTV National News: Joseph Kindler's Fate Unresolved (Canadian televi-

sion broadcast Sept. 22, 1985) (videos available in Clerk of Court's case file). Canadian authorities ultimately acquiesced to overtures from the United States and agreed to extradite Kindler. *Kindler*, 536 Pa., at 231, 639 A. 2d, at 2.

But before Kindler could be transferred from Canadian custody, he escaped again. On the night of October 23, 1986, Kindler broke through a skylight on the 13th floor of the jail (his fellow inmates had hoisted him up to the skylight 15 feet above the floor) and escaped to the roof, where he stood 175 feet above ground. Armed with 13 stories' worth of bedsheets tied together, Kindler safely rappelled down the side of the jail. (A fellow escapee was not as lucky—the sheets ripped on his way down, causing him to fall 50 feet to his death.) *Kindler*, 554 Pa., at 517–519, 722 A. 2d, at 145.

This time, Kindler remained on the lam for nearly two years, until he was featured on the popular television show, "America's Most Wanted." Characterizing Kindler as "an above average criminal" and "a chess player who understands when to make his move," the show asked viewers for information to help capture him. America's Most Wanted, Sept. 4, 1988, Season 1, Episode 30, at 10:01. Several viewers recognized Kindler and notified Canadian authorities, who arrested him in September 1988. 554 Pa., at 519, 722 A. 2d, at 145.

Kindler again fought extradition. On September 16, 1991, after three years of litigation, the Supreme Court of Canada rejected Kindler's efforts. See *Kindler*, [1991] 2 S. C. R. 779, 84 D. L. R. (4th) 438. That same day, Canadian officials extradited Kindler to the United States. *Kindler* v. *Horn*, 291 F. Supp. 2d 323, 334 (ED Pa. 2003).

In the meantime, in 1984, the Pennsylvania trial court had dismissed Kindler's postverdict motions because of his original escape. Once back in the United States, Kindler filed a motion to reinstate those challenges to his conviction and sentence. The trial court denied the reinstatement motion, holding that the trial court judge who had dismissed the

postverdict motions in 1984 had not abused his discretion. In October 1991—more than seven years after the jury's death recommendation—the court formally imposed the death sentence. *Commonwealth* v. *Kindler*, No. 2747 etc. (Ct. Common Pleas, Feb. 28, 1992), App. 66–70.

Kindler appealed, arguing that the trial court erred in declining to address the merits of his postverdict motions. The Pennsylvania Supreme Court affirmed. *Kindler*, 536 Pa., at 232–234, 639 A. 2d, at 3. That court recognized that "trial courts, when faced with a defendant in fugitive status, . . . have every right to fashion an appropriate response[,] which can include the dismissal of pending post-verdict motions." *Id.*, at 233, 639 A. 2d, at 3. The court then determined that the trial court's decision to dismiss Kindler's claims fell within its authority: The "dismiss[al] [of] the post-verdict motions was a reasonable response to Appellant's 'flouting' of the authority of the court." *Id.*, at 233–234, 639 A. 2d, at 3. Under Pennsylvania's fugitive forfeiture law, the court concluded, Kindler's case therefore came to it "without any allegations of error (direct or collateral) preserved." *Id.*, at 234, 639 A. 2d, at 4.

The Pennsylvania Supreme Court nonetheless conducted the "limited review" mandated for death sentences under Pennsylvania law. Under that review, the court was required to confirm that the evidence was sufficient to support the conviction of first-degree murder and at least one aggravating factor, and that the sentence was not excessive, disproportionate, or the product of passion or prejudice. *Id.*, at 234–235, 639 A. 2d, at 4. Satisfied that Kindler's conviction met these standards, the court affirmed his conviction and sentence. We denied certiorari. *Kindler* v. *Pennsylvania*, 513 U. S. 933 (1994).

On state habeas, the Court of Common Pleas rejected Kindler's claims. That court held that the Pennsylvania Supreme Court had already ruled that Kindler's escape forfeited all claims challenging his conviction and sentence that

Kindler may once have been entitled to bring. *Commonwealth* v. *Kindler*, No. 2747 etc. (July 23, 1997), App. 183, 187–188. The Pennsylvania Supreme Court affirmed. *Kindler*, 554 Pa., at 514, 722 A. 2d, at 143.

Kindler then sought federal habeas relief. The District Court determined that the fugitive forfeiture rule did not provide an adequate basis to bar federal review of Kindler's habeas claims. 291 F. Supp. 2d, at 340–343. The District Court then proceeded to address the merits, granting Kindler's petition on the grounds that he was sentenced based on jury instructions that were unconstitutional under *Mills* v. *Maryland*, 486 U. S. 367 (1988), and that the prosecutor improperly introduced an aggravating factor at sentencing. 291 F. Supp. 2d, at 346–351, 357–358. The court rejected Kindler's ineffective assistance of counsel claim. *Id.*, at 356.

The Third Circuit affirmed. That court began by recognizing that "[a] procedural rule that is consistently applied in the vast majority of cases is adequate to bar federal habeas review even if state courts are willing to occasionally overlook it and review the merits of a claim for relief where the rule would otherwise apply." *Kindler* v. *Horn*, 542 F. 3d 70, 79 (2008). The Court of Appeals then considered the Pennsylvania fugitive forfeiture rule in place at the time of Kindler's first escape: "Pennsylvania courts had discretion to hear an appeal filed by a fugitive who had been returned to custody before an appeal was initiated or dismissed. . . . Accordingly, the fugitive forfeiture rule was not 'firmly established' and therefore was not an independent and adequate procedural rule sufficient to bar review of the merits of a habeas petitio[n] in federal court." *Ibid.* (citing *Doctor* v. *Walters*, 96 F. 3d 675, 684–686 (CA3 1996)). The court thus determined that "the state trial court still had discretion to reinstate his post-verdict motions. Accordingly, we conclude that, under *Doctor*, Pennsylvania's fugitive waiver law did not preclude the district court from reviewing the merits of the claims raised in Kindler's habeas petition."

542 F. 3d, at 80. Turning to the merits, the Court of Appeals disagreed with the District Court on the improper aggravating factor claim, but held that Kindler was entitled to relief based on his *Mills* and ineffective assistance of counsel claims. 542 F. 3d, at 80–87.

The Commonwealth petitioned for certiorari, arguing that the Court of Appeals' determination that state discretionary rules are automatically inadequate conflicted with the holdings of other Courts of Appeals and warranted this Court's review. Pet. for Cert. 6–11. Kindler countered that the Commonwealth had mischaracterized the Third Circuit's holding. Relying on the court's citation of the *Doctor* opinion, Kindler argued that the Third Circuit did not hold that discretionary state rules are automatically inadequate; rather the court determined that the state courts applied "a *new* and *different* rule from that in existence at the time of the alleged default." Brief in Opposition 3. It was that new rule, Kindler maintained, that the Third Circuit found inadequate. *Ibid.*

We granted the Commonwealth's petition for certiorari. 556 U. S. 1234 (2009). That petition asks us to decide whether discretionary procedural rulings are automatically inadequate to bar federal court review on habeas.

II

The question whether a state procedural ruling is adequate is itself a question of federal law. *Lee* v. *Kemna*, 534 U. S. 362, 375 (2002). We have framed the adequacy inquiry by asking whether the state rule in question was "'firmly established and regularly followed.'" *Id.*, at 376 (quoting *James* v. *Kentucky*, 466 U. S. 341, 348 (1984)).

We hold that a discretionary state procedural rule can serve as an adequate ground to bar federal habeas review. Nothing inherent in such a rule renders it inadequate for purposes of the adequate state ground doctrine. To the contrary, a discretionary rule can be "firmly established"

and "regularly followed"—even if the appropriate exercise of discretion may permit consideration of a federal claim in some cases but not others. See Meltzer, State Court Forfeitures of Federal Rights, 99 Harv. L. Rev. 1128, 1140 (1986) ("[R]efusals to exercise discretion do not form an important independent category under the inadequate state ground doctrine").

A contrary holding would pose an unnecessary dilemma for the States: States could preserve flexibility by granting courts discretion to excuse procedural errors, but only at the cost of undermining the finality of state court judgments. Or States could preserve the finality of their judgments by withholding such discretion, but only at the cost of precluding any flexibility in applying the rules.

We are told that, if forced to choose, many States would opt for mandatory rules to avoid the high costs that come with plenary federal review. See, *e. g.*, Brief for State of California et al. as *Amici Curiae* 19; Brief for Criminal Justice Legal Foundation as *Amicus Curiae* 14. That would be unfortunate in many cases, as discretionary rules are often desirable. In some circumstances, for example, the factors facing trial courts "are so numerous, variable and subtle that the fashioning of rigid rules would be more likely to impair [the trial judge's] ability to deal fairly with a particular problem than to lead to a just result." *United States* v. *McCoy*, 517 F. 2d 41, 44 (CA7) (Stevens, J.), cert. denied, 423 U. S. 895 (1975); see also Friendly, Indiscretion About Discretion, 31 Emory L. J. 747, 760–761 (1982). The result would be particularly unfortunate for criminal defendants, who would lose the opportunity to argue that a procedural default should be excused through the exercise of judicial discretion. See *Henry* v. *Mississippi*, 379 U. S. 443, 463, n. 3 (1965) (Harlan, J., dissenting) ("If, in order to insulate its decisions from reversal by this Court, a state court must strip itself of the discretionary power to differentiate between different sets

of circumstances, the [adequate state ground] rule operates in a most perverse way").

It is perhaps unsurprising, then, that the federal system often grants broad discretion to the trial judge when his ringside perspective at the "'main event'" offers him a comparative advantage in decisionmaking. *Wainwright* v. *Sykes*, 433 U. S. 72, 90 (1977); cf. *United States* v. *Poynter*, 495 F. 3d 349, 351–352 (CA6 2007). The States seem to value discretionary rules as much as the Federal Government does. See Brief for State of California et al. as *Amici Curiae* 16–17 (citing various state discretionary procedural rules). In light of the federalism and comity concerns that motivate the adequate state ground doctrine in the habeas context, see *Coleman*, 501 U. S., at 730, it would seem particularly strange to disregard state procedural rules that are substantially similar to those to which we give full force in our own courts. Cf. *Francis* v. *Henderson*, 425 U. S. 536, 541–542 (1976). Even stranger to do so with respect to rules in place in nearly every State, and all at one fell swoop.

We take our holding in this case to be uncontroversial—so uncontroversial, in fact, that both parties agreed to the point before this Court. See Tr. of Oral Arg. 29–31. Rather than defending the question on which we granted certiorari—whether discretionary rules are automatically inadequate—Kindler argues that the Pennsylvania courts did not apply a discretionary rule at all, but instead applied a new rule mandating dismissal. Such a mandatory dismissal, Kindler contends, constituted a break from past discretionary practice, and thus does not provide an adequate state ground to bar his federal claims. We leave it to the Court of Appeals to address that argument, and any others Kindler may have preserved, on remand.

For its part, the Commonwealth urges us not only to reject a *per se* rule about discretionary rulings, but also to undertake "[a] new effort to state a standard for inadequacy." Brief for Petitioners 25. *Amici* supporting the Common-

wealth join in that request. See Brief for Criminal Justice Legal Foundation as *Amicus Curiae* 6–10. We decline that invitation as well. The procedural default at issue here—escape from prison—is hardly a typical procedural default, making this case an unsuitable vehicle for providing broad guidance on the adequate state ground doctrine.

If our holding in this case is narrow, it is because the question we granted certiorari to decide is narrow. Answering that question is sufficient unto the day.

The judgment of the Court of Appeals for the Third Circuit is vacated, 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 KENNEDY, with whom JUSTICE THOMAS joins, concurring.

Due consideration of the phrasing in the question presented and of the arguments and concessions by counsel leads to the conclusion that this case should be vacated and remanded, and I join the Court's opinion. The apparent difficulty the Court of Appeals for the Third Circuit found in accepting the Supreme Court of Pennsylvania's procedural bar conclusion, however, invites this further comment.

The adequate state ground doctrine cannot be applied without consideration of the purposes it is designed to serve. By refraining from deciding cases that rest on an adequate and independent state ground, federal courts show proper respect for state courts and avoid rendering advisory opinions. *Michigan* v. *Long*, 463 U. S. 1032, 1040 (1983). The claimed adequate and independent state ground at issue in this case is a state procedural rule. We have not allowed state courts to bar review of federal claims by invoking new procedural rules without adequate notice to litigants who, in

asserting their federal rights, have in good faith complied with existing state procedural law. "Novelty in procedural requirements cannot be permitted to thwart review in this Court applied for by those who, in justified reliance upon prior decisions, seek vindication in state courts of their federal constitutional rights." *NAACP* v. *Alabama ex rel. Patterson*, 357 U. S. 449, 457–458 (1958). We have also been mindful of the danger that novel state procedural requirements will be imposed for the purpose of evading compliance with a federal standard. See, *e. g., NAACP* v. *Alabama ex rel. Flowers*, 377 U. S. 288, 293–302 (1964).

Neither of these concerns applies here. First, no one could seriously entertain the notion that Kindler acted in "justified reliance" when he fled beyond the jurisdiction of the Pennsylvania courts. Even if a hypothetical escapee studiously examined the case law before making an informed decision that flight was worth it, that is not the reliance the law should be required to consider. There is no justification for an unlawful escape, which "operates as an affront to the dignity of [a] court's proceedings." *Ortega-Rodriguez* v. *United States*, 507 U. S. 234, 246 (1993). And if some prior court rulings allowed a former escapee to reinstate forfeited claims, there is no convincing reason to say a future escapee is entitled to similar treatment. Nor is there any indication that the Supreme Court of Pennsylvania adopted its forfeiture rule out of any hostility toward legitimate constitutional claims.

It is most doubtful that, in light of its underlying purposes, the adequate state ground doctrine ought to prevent a State from adopting, and enforcing, a sensible rule that the escaped felon forfeits any pending postverdict motions. The law is entitled to protect the regularity and predictability of its own processes, and its own interest in the prompt adjudication of disputed issues, by imposing a rule of waiver quite without regard to some notion of express or constructive reliance by the one who escapes. And if that principle had

not been fully explicated in prior decisions, it seems to me that the State can establish a new baseline without later having its procedural bar ignored by the federal courts. This should be true even if the principles barring the postverdict motions are first elaborated in the instant case.

The process of elaborating, defining, and then shaping a State's decisional law after considering the competing arguments in a specific case rests on this premise: Novel facts and circumstances may disclose principles that, while consistent with the logic and rationality the law seeks and in that sense predictable, still have not yet been defined with precision in earlier cases. This is the dynamic of the case system we rely upon to explain the law.

The adequate state ground doctrine ought not to foreclose the case process in the separate States. A too-rigorous or demanding insistence that procedural requirements be established in all of their detail before they can be given effect in federal court would deprive the States of the case law decisional dynamic that the Judiciary of the United States finds necessary and appropriate for the elaboration of its own procedural rules. See, *e. g.*, *Smith* v. *United States*, 94 U. S. 97 (1876). Save where there is exclusive jurisdiction or federal supremacy, a proper constitutional balance ought not give federal courts latitude in the interpretation and elaboration of its law that it then withholds from the States. There is no sense in applying the adequate state ground rule without its being informed by these principles.

Whether the structure of this case either permits or requires consideration of these matters is not clear at this stage. In a proper case, however, these concerns should be addressed. It seems most doubtful that this Court can or should require federal courts to disregard a state procedural ground that was not in all respects explicit before the case when it was first announced, absent a showing of a purpose or pattern to evade constitutional guarantees. And this is particularly so when the state procedural requirement arose

from the necessity, in new circumstances, to prevent a travesty of the State's own respected system. In this context, the objecting party ought not to have the power to block federal courts from honoring state-law determinations that were otherwise valid, enforceable, and consistent with constitutional guarantees.

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UNION PACIFIC RAILROAD CO. *v.* BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN GENERAL COMMITTEE OF ADJUSTMENT, CENTRAL REGION

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

No. 08–604. Argued October 7, 2009—Decided December 8, 2009

The Railway Labor Act (RLA or Act) was enacted to promote peaceful and efficient resolution of labor disputes. As amended, the Act mandates arbitration of "minor disputes" before panels composed of two representatives of labor and two of industry, with a neutral referee as tiebreaker. *Union Pacific R. Co.* v. *Price*, 360 U. S. 601, 610–613. To supply arbitrators, Congress established the National Railroad Adjustment Board (NRAB or Board), a board of 34 private persons representing labor and industry in equal numbers. 45 U. S. C. § 153 First (a). Before resorting to arbitration, employees and carriers must exhaust the grievance procedures in their collective-bargaining agreement (hereinafter CBA), see § 153 First (i), a stage known as "on-property" proceedings. As a final prearbitration step, the parties must attempt settlement "in conference" between representatives of the carrier and the grievant-employee. § 152 Second, Sixth. The RLA contains instructions concerning the place and time of conferences, but does not "supersede the provisions of any agreement (as to conferences) . . . between the parties," § 152 Sixth; in common practice the conference may be as informal as a telephone conversation. If the parties fail to achieve resolution, either may refer the matter to the NRAB. § 153 First (i). Submissions to the Board must include "a full statement of the facts and all supporting data bearing upon the disputes." *Ibid.* Parties may seek court review of an NRAB panel order on one or more stated grounds: "failure . . . to comply with the requirements of [the RLA], . . . failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or . . . fraud or corruption by a member of the division making the order." § 153 First (q). Courts of Appeals have divided on whether, in addition to the statutory grounds for judicial review stated in § 153 First (q), courts may review NRAB proceedings for due process violations.

After petitioner Union Pacific Railroad Co. (hereinafter Carrier) charged five of its employees with disciplinary violations, their union (hereinafter Union) initiated grievance proceedings pursuant to the

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CBA. The Union asserts that the parties conferenced all five disputes and the Carrier concedes that they conferenced at least two. Dissatisfied with the outcome of the on-property proceedings, the Union sought arbitration before the NRAB's First Division. Both parties filed submissions in the five cases, but neither mentioned conferencing as a disputed matter. Yet, in each case, both parties necessarily knew whether the Union and the Carrier had conferred; and the Board's governing rule, published in Circular One, which prescribes Board procedures, instructs carriers and employees to "set forth all relevant, argumentative facts," 29 CFR § 301.5(d), (e). Just prior to the hearing, one of the arbitration panel's industry representatives objected, *sua sponte*, that the on-property record included no proof of conferencing. The Carrier thereafter embraced that objection. The referee allowed the Union to submit evidence of conferencing. The Union did so, but it maintained that the proof-of-conferencing issue was untimely raised, indeed forfeited, as the Carrier had not objected before the date set for argument. The panel, in five identical decisions, dismissed the petitions for want of jurisdiction. The record could not be supplemented to meet the no-proof-of-conferencing objection, the panel reasoned, for as an appellate tribunal, the panel was not empowered to consider *de novo* evidence and arguments. The Union sought review in the Federal District Court, which affirmed the Board's decision. On appeal, the Seventh Circuit observed that the "single question" at issue was whether written documentation of the conference in the on-property record was a necessary prerequisite to NRAB arbitration, and determined that there was no such prerequisite in the statute or rules. But instead of resting its decision on the Union's primary, statute-based argument—that the panel erred in ruling that it lacked jurisdiction over the cases—it reversed on the ground that the NRAB's proceedings were incompatible with due process.

Held:

1. The Seventh Circuit erred in resolving the Union's appeal under a constitutional, rather than a statutory, headline. This Court granted certiorari to address whether NRAB orders may be set aside for failure to comply with due process notwithstanding § 153 First (q)'s limited grounds for review. But so long as a respondent does not "seek to modify the judgment below," true here, the respondent may "rely upon any matter appearing in the record in support of the judgment." *Blum* v. *Bacon*, 457 U. S. 132, 137, n. 5. The Seventh Circuit understood that the Union had pressed "statutory and constitutional" arguments, but observed that both arguments homed in on a "single question": Is written documentation of the conference in the on-property record a neces-

sary prerequisite to NRAB arbitration? Answering this "single question" in the negative, the Seventh Circuit effectively resolved the Union's core complaint. Because nothing in the Act elevates to jurisdictional status the obligation to conference minor disputes or to prove conferencing, a negative answer to the "single question" leaves no doubt about the Union's entitlement, in accord with § 153 First (q), to vacation of the Board's orders. Given this statutory ground for relief, there is no due process issue alive in this case, and no warrant to answer a question that may be consequential in another case. Nevertheless, the grant of certiorari here enables this Court to reduce confusion, clouding court as well as Board decisions, over matters properly typed "jurisdictional." Pp. 79–81.

2. Congress authorized the Board to prescribe rules for presenting and processing claims, § 153 First (v), but Congress alone controls the Board's jurisdiction. By refusing to adjudicate the instant cases on the false premise that it lacked "jurisdiction" to hear them, the NRAB panel failed "to conform, or confine itself, to matters [Congress placed] within the scope of [NRAB] jurisdiction," § 153 First (q). Pp. 81–86.

(a) Not all mandatory "prescriptions, however emphatic, 'are . . . properly typed "jurisdictional."'" *Arbaugh* v. *Y & H Corp.*, 546 U. S. 500, 510. Subject-matter jurisdiction properly comprehended refers to a tribunal's "'power to hear a case,'" and "'can never be forfeited or waived.'" *Id.*, at 514. In contrast, a "claim-processing rule" does not reduce a tribunal's adjudicatory domain and is ordinarily "forfeited if the party asserting the rule waits too long to raise the point." *Kontrick* v. *Ryan*, 540 U. S. 443, 456. For example, this Court has held nonjurisdictional and forfeitable the provision in Title VII of the Civil Rights Act of 1964 requiring complainants to file a timely discrimination charge with the Equal Employment Opportunity Commission (EEOC) before proceeding to court, *Zipes* v. *Trans World Airlines, Inc.*, 455 U. S. 385, 393. In contrast, the Court has reaffirmed the jurisdictional character of 28 U. S. C. § 2107(a)'s time limitation for filing a notice of appeal. *Bowles* v. *Russell*, 551 U. S. 205, 209–211. Here, the requirement that parties to minor disputes, as a last chance prearbitration, attempt settlement "in conference" is imposed on carriers and grievants alike, but satisfaction of that obligation does not condition the Board's adjudicatory authority, which extends to "all disputes between carriers and their employees 'growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions . . . ,'" *Slocum* v. *Delaware, L. & W. R. Co.*, 339 U. S. 239, 240 (quoting § 153 First (i)). When a CBA's grievance procedure has not been followed, resort to the Board would ordinarily be objectionable as premature, but the conference requirement is independent of the CBA

process. Rooted in § 152, the RLA's "[g]eneral duties" section, and not moored to the NRAB's "[e]stablishment[,] . . . powers[,] and duties" set out in § 153 First, conferencing is often informal in practice, and is no more "jurisdictional" than is the presuit resort to the EEOC held nonjurisdictional and forfeitable in *Zipes*. And if the conference requirement is not "jurisdictional," then failure initially to submit proof of conferencing cannot be of that genre. And although the Carrier alleges that NRAB decisions support characterizing conferencing as jurisdictional, if the NRAB lacks authority to define its panels' jurisdiction, surely the panels themselves lack that authority. Furthermore, NRAB panels have variously addressed the matter. Pp. 81–85.

(b) Neither the RLA nor Circular One could plausibly be read to require, as a prerequisite to the NRAB's exercise of jurisdiction, submission of proof of conferencing. Instructions on party submissions are claim-processing, not jurisdictional, rules. The Board itself has recognized that conferencing may not be a "question in dispute," and when that is so, proof thereof need not accompany party submissions. It makes sense to exclude at the arbitration stage newly presented "data" supporting the employee's grievance, 29 CFR § 301.5(d)—evidence the carrier had no opportunity to consider prearbitration. But conferencing is not a fact bearing on the merits of a grievance. Moreover, the RLA respects the parties' right to order for themselves the conference procedures they will follow. See 45 U. S. C. § 152 Sixth. Pp. 85–86.

522 F. 3d 746, affirmed.

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

J. Scott Ballenger argued the cause for petitioner. With him on the briefs were *Maureen E. Mahoney*, *Melissa B. Arbus*, *James C. Knapp, Jr.*, *J. Michael Hemmer*, *Patricia O. Kiscoan*, and *Donald J. Munro*.

Thomas H. Geoghegan argued the cause and filed a brief for respondent.*

**Peter Buscemi*, *Harry A. Rissetto*, *Jonathan C. Fritts*, and *Joanna L. Moorhead* filed a brief for the National Railway Labor Conference et al. as *amici curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the American Federation of Labor and Congress of Industrial Organizations by *Jonathan P. Hiatt*, *James B. Coppess*, and *Laurence Gold;* and for the Brotherhood of Locomotive Engineers and Trainmen, National Division, by *Harold A. Ross*.

JUSTICE GINSBURG delivered the opinion of the Court.

"It is most true that this Court will not take jurisdiction if it should not," Chief Justice Marshall famously wrote, "but it is equally true, that it must take jurisdiction if it should. . . . We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." *Cohens* v. *Virginia*, 6 Wheat. 264, 404 (1821); see *Marshall* v. *Marshall*, 547 U. S. 293, 298–299 (2006). While Chief Justice Marshall's statement bears "fine tuning," there is surely a starting presumption that when jurisdiction is conferred, a court may not decline to exercise it. See R. Fallon, J. Manning, D. Meltzer, & D. Shapiro, Hart & Wechsler's The Federal Courts and the Federal System 1061–1062 (6th ed. 2009). The general rule applicable to courts also holds for administrative agencies directed by Congress to adjudicate particular controversies.

Congress vested in the National Railroad Adjustment Board (hereinafter NRAB or Board) jurisdiction to adjudicate grievances of railroad employees that remain unsettled after pursuit of internal procedures. 45 U. S. C. § 153 First (h), (i). We consider in this case five nearly identical decisions of a panel of the NRAB dismissing employee claims "for lack of jurisdiction." NRAB First Div. Award No. 26089 etc. (Mar. 15, 2005), App. to Pet. for Cert. 65a–107a, 69a (hereinafter Panel Decision). In each case, the panel declared that a procedural rule raised by a panel member, unprompted by the parties, was "jurisdictional" in character and therefore commanded threshold dismissal.

The panel's characterization, we hold, was misconceived. Congress authorized the Board to prescribe rules for the presentation and processing of claims, § 153 First (v), but Congress alone controls the Board's jurisdiction. By presuming authority to declare procedural rules "jurisdictional," the panel failed "to conform, or confine itself, to matters [Congress placed] within the scope of [NRAB] jurisdiction," § 153 First (q). Because the panel was not

"without authority to assume jurisdiction over the [employees'] claim[s]," Panel Decision 72a, its dismissals lacked tenable grounding. We therefore affirm the judgment of the Seventh Circuit setting aside the panel's orders.

I

A

Concerned that labor disputes would lead to strikes bringing railroads to a halt, Congress enacted the Railway Labor Act (RLA or Act), 44 Stat. 577, as amended, 45 U. S. C. § 151 *et seq.*, in 1926 to promote peaceful and efficient resolution of those disputes. See *Union Pacific R. Co.* v. *Price*, 360 U. S. 601, 609 (1959); § 151a. The Act instructs labor and industry "to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier . . . ." § 152 First; see *Trainmen* v. *Jacksonville Terminal Co.*, 394 U. S. 369, 377–378 (1969) (describing obligation to pursue agreement as the "heart of the [RLA]"). As part of its endeavor, Congress provided a framework for the settlement and voluntary arbitration of "minor disputes." See *Price*, 360 U. S., at 609–610. (In the railroad industry, the term "minor disputes" means, primarily, "grievances arising from the application of collective bargaining agreements to particular situations." *Id.*, at 609.)[1]

Many railroads, however, resisted voluntary arbitration. See *id.*, at 610. Congress therefore amended the Act in 1934 (1934 Amendment) to mandate arbitration of minor disputes; under the altered scheme, arbitration occurs before panels

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[1] In contrast to minor disputes, which assume "the existence of a collective agreement," major disputes are those "over the formation of collective agreements or efforts to secure them. . . . They look to the acquisition of rights for the future, not to assertion of rights claimed to have vested in the past." *Elgin, J. & E. R. Co.* v. *Burley*, 325 U. S. 711, 723 (1945).

composed of two representatives of labor and two of industry, with a neutral referee serving as tiebreaker. See *id.*, at 610–613. To supply the representative arbitrators, Congress established the NRAB, a board of 34 private persons representing labor and industry in equal numbers. § 153 First (a); see *Trainmen* v. *Chicago R. & I. R. Co.*, 353 U. S. 30, 36–37 (1957).[2] Neutral referees, the RLA provides, shall be appointed by the representative arbitrators or, failing their agreement, by the National Mediation Board. § 153 First (*l*). The 1934 Amendment authorized the NRAB to adopt, at a one-time session in 1934, "such rules as it deems necessary to control proceedings," § 153 First (v); the product of that rulemaking, codified at 29 CFR pt. 301 (2009), is known as Circular One.

In keeping with Congress' aim to promote peaceful settlement of minor disputes, the RLA requires employees and carriers, before resorting to arbitration, to exhaust the grievance procedures specified in the collective-bargaining agreement (hereinafter CBA). See 45 U. S. C. § 153 First (i). This stage of the dispute-resolution process is known as "on-property" proceedings. As a final prearbitration step, the Act directs parties to attempt settlement "in conference" between designated representatives of the carrier and the grievant-employee. § 152 Second, Sixth.[3] The

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[2] The RLA divides the NRAB into four divisions, each covering specified classes of railroad employees. § 153 First (h).

[3] Central to the instant controversy, § 152 Second, Sixth read, in full:

"Second. Consideration of disputes by representatives.

"All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

"Sixth. Conference of representatives; time; place; private agreements.

"In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of

RLA contains instructions concerning the place and time of conferences, but specifies that the statute does not "supersede the provisions of any agreement (as to conferences) . . . in effect between the parties," § 152 Sixth; it is undisputed that in common practice the conference may be as informal as a telephone conversation.

If the parties fail to achieve resolution "in the usual manner up to and including the chief operating officer of the carrier designated to handle [minor] disputes," either party may refer the matter to the NRAB. § 153 First (i). Submissions to the Board must include "a full statement of the facts and all supporting data bearing upon the disputes." *Ibid.*; see 29 CFR § 301.5(d), (e) (submissions "must clearly and briefly set forth all relevant, argumentative facts, including all documentary evidence"). Arbitration is launched when the party referring the dispute files a notice of intent with the NRAB; after Board acknowledgment of the notice, the parties have 75 days to file simultaneous submissions. NRAB, Uniform Rules of Procedure (rev. June 23, 2003).

In creating the scheme of mandatory arbitration superintended by the NRAB, the 1934 Amendment largely "foreclose[d] litigation" over minor disputes. *Price*, 360 U. S., at 616; see *Railway Conductors* v. *Pitney*, 326 U. S. 561, 566 (1946) ("Not only has Congress . . . designated an agency peculiarly competent to handle [minor disputes], but . . . it also intended to leave a minimum responsibility to the courts."). Congress did provide that an employee who ob-

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such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided*, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further*, That nothing in this chapter shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties."

tained a monetary award against a carrier could sue to enforce it, and the court could either enforce the award or set it aside. *Price*, 360 U. S., at 616; 45 U. S. C. § 153 First (p) (1934 ed.). In addition to that limited role, some Courts of Appeals, we noted in *Price*, reviewed awards "claimed to result from a denial of due process of law." 360 U. S., at 616 (citing *Ellerd* v. *Southern Pacific R. Co.*, 241 F. 2d 541 (CA7 1957); *Barnett* v. *Pennsylvania-Reading Seashore Lines*, 245 F. 2d 579, 582 (CA3 1957)).

In 1966, Congress again amended the scheme, this time to state grounds on which both employees and railroads could seek judicial review of NRAB orders. The governing provision, still in force, allows parties aggrieved by an NRAB panel order to petition for court review. 45 U. S. C. § 153 First (q) (2006 ed.). The provision instructs that

> "[o]n such review, the findings and order of the division shall be conclusive on the parties, except that the order . . . may be set aside, in whole or in part, or remanded . . . , for failure of the division to comply with the requirements of [the RLA], for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order."

Courts of Appeals have divided on whether this provision precludes judicial review of NRAB proceedings for due process violations. Compare, *e. g.*, *Shafii* v. *PLC British Airways*, 22 F. 3d 59, 64 (CA2 1994) (review available), and *Edelman* v. *Western Airlines, Inc.*, 892 F. 2d 839, 847 (CA9 1989) (same), with *Kinross* v. *Utah R. Co.*, 362 F. 3d 658, 662 (CA10 2004) (review precluded).[4]

[4] The disagreement stems from this Court's *per curiam* opinion in *Union Pacific R. Co.* v. *Sheehan*, 439 U. S. 89 (1978). That case involved an NRAB decision turning on a time limitation contained in the governing CBA. Based on that limitation, the Board dismissed an employee's claim. The Tenth Circuit remanded the case to the NRAB on the ground that the Board had failed to consider the employee's equitable tolling argument

B

The instant matter arose when petitioner Union Pacific Railroad Co. (hereinafter Carrier) charged five of its employees with disciplinary violations. Their union, the Brotherhood of Locomotive Engineers and Trainmen (hereinafter Union), initiated grievance proceedings pursuant to the CBA. The Union asserts that, following exhaustion of grievance proceedings, the parties conferenced all the disputes; counsel for the Carrier conceded at argument that at least two of the disputes were conferenced, Tr. of Oral Arg. 7. Dissatisfied with the outcome of the on-property proceedings, the Union sought arbitration before the First Division of the NRAB. The Union and the Carrier, from early 2002 through 2003, filed simultaneous submissions in the five cases. In each submission, the Union included the notice of discipline (or discharge), the hearing transcript, and all exhibits and evidence relating to the underlying adverse actions used in the grievance proceeding. Neither party mentioned conferencing as a disputed matter. Yet, in each case, both parties necessarily knew whether the Union and the Carrier had conferred, and the Board's governing rule instructs carriers and employees to "set forth all relevant, argumentative facts," 29 CFR § 301.5(d), (e).

On March 18, 2004, just prior to the hearing on the employees' claims, one of the industry representatives on the arbitration panel raised an objection. Petition to Review and Vacate Awards and Orders of First Div. NRAB in No. 05–civ–2401 (ND Ill.), ¶ 20 (hereinafter Pet. to Review).

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and thereby violated due process. We summarily reversed, observing that the Board had in fact considered the plea for equitable tolling and explicitly rejected it. *Id.*, at 92. We added that if the Court of Appeals "intended to reverse the [NRAB's] rejection of [the employee's] equitable tolling argument," then the court had exceeded the bounds § 153 First (q) placed on its review authority. *Id.*, at 93. In determining whether the CBA's time limitation was tolled, we said, the Board "certainly was acting within its jurisdiction and in conformity with . . . the Act." *Ibid.*

On his own initiative, unprompted by the Carrier, and in executive session, the industry representative asserted that the on-property record included no proof of conferencing. See *ibid.* The Carrier thereafter embraced the panel member's objection. The neutral referee informed the Union of the issue and adjourned the hearing, allowing the Union "to submit evidence that conferencing had in fact occurred." See *id.*, ¶¶ 21–23. The Union did so, offering phone logs, handwritten notes, and correspondence between the parties as evidence of conferencing in each of the five cases. *E. g.*, Panel Decision 67a–68a. From its first notice of the objection, however, the Union maintained that the proof-of-conferencing issue was untimely raised, indeed forfeited, as the Carrier itself had not objected prior to the date set for argument of the cases. *E. g.*, *id.*, at 67a; Pet. to Review ¶¶ 22, 29, 30, 54.

On March 15, 2005, nearly one year after the question of conferencing first arose, the panel, in five identical decisions, dismissed the petitions for want of "authority to assume jurisdiction over the claim[s]." Panel Decision 72a. Citing Circular One, see *supra*, at 73, and "the weight of arbitral precedent," the panel stated that "the evidentiary record" must be deemed "closed once a Notice of Intent has been filed with the NRAB . . . ." Panel Decision 71a.[5] In explaining why the record could not be supplemented to meet the no-proof-of-conferencing objection, the panel emphasized that it was "an appellate tribunal, as opposed to one which is empowered to consider and rule on *de novo* evidence and arguments." *Id.*, at 69a.

The two labor representatives dissented. The Carrier's submissions, they reasoned, took no exception based on failure to confer or to prove conferencing; therefore, they concluded, under a "well settled principle governing the

[5] The panel observed, however, that the records and notes offered by the Union, "on their face, may be regarded as supportive of its position that the conference[s] occurred." Panel Decision 69a.

Board's deliberations," the Carrier had forfeited the issue. *Id.*, at 105a–106a. The dissenters urged that the Union had furnished evidence showing "the cases had all been conferenced, even though the relevant Collective Bargaining Agreement [did] not require [conferencing]." *Id.*, at 105a. Dismissal of the claims, the dissenters charged, demonstrated "the kind of gamesmanship that breeds contempt for the minor dispute process." *Id.*, at 107a.

The Union filed a petition for review in the United States District Court for the Northern District of Illinois, asking the court to set aside the Board's orders on the ground that the panel had "unlawfully held [it lacked] authority to assume jurisdiction over [the] cases [absent] evidence of a 'conference' between the parties in the . . . 'on-property' record." Pet. to Review ¶ 1. Nothing in the Act or the NRAB's procedural rules, the Union maintained, mandated dismissal for failure to allege and prove conferencing in the Union's original submission. *Id.*, ¶¶ 3, 4. By imposing, without warrant, "a technical pleading or evidentiary requirement" and elevating it to jurisdictional status, the Union charged, the panel had "egregiously violate[d] the Act," *id.*, ¶ 3, or "fail[ed] to conform its jurisdiction to that required by . . . law," *id.*, ¶ 4. Alternatively, the Union asserted that the panel violated procedural due process by entertaining the Carrier's untimely objection, even though "the Carrier had failed to raise any objection as to lack of conferencing" in its submissions. *Id.*, ¶ 5.

The District Court affirmed the Board's orders. Addressing the Union's argument that the no-proof-of-conferencing issue was untimely raised, the court accepted the panel's description of the issue as "jurisdictional," and noted the familiar proposition that jurisdictional challenges may be raised at any stage of the proceedings. 432 F. Supp. 2d 768, 777, and n. 7 (2006).

On appeal, the Seventh Circuit recognized that the Union had presented its case "through both a statutory and consti-

tutional framework." 522 F. 3d 746, 750 (2008). The court observed, however, that "the essence of the conflict boils down to a single question: [I]s written documentation of the conference in the on-property record a necessary prerequisite to arbitration before the NRAB?" *Ibid.* It then determined that there was no such prerequisite: "[N]o statute, regulation, or CBA," the court concluded, "required the evidence [of conferencing] to be presented in the on-property record." *Id.*, at 757–758. But instead of resting its decision on the Union's primary, statute-based argument—that the panel erred in ruling that it lacked jurisdiction over the cases—the Court of Appeals reversed on the ground that the NRAB's proceedings were incompatible with due process. See *id.*, at 750.

II

We granted the Carrier's petition for certiorari, 555 U. S. 1169 (2009), which asked us to determine whether a reviewing court may set aside NRAB orders for failure to comply with due process notwithstanding the limited grounds for review specified in § 153 First (q).[6] As earlier recounted, Courts of Appeals have divided on this issue. See *supra*, at 75, and n. 4. Appearing as respondent in this Court, however, the Union urged affirmance of the Seventh Circuit's judgment on an alternative ground. Reasserting the lead argument it had advanced in its petition for court review, see *supra*, at 78, the Union maintained that the Board did not "conform, or confine itself, to matters within the scope of [its] jurisdiction," § 153 First (q). Brief for Respondent 52–53. In response, the Carrier stated that the Union's alternative ground "presents a pure question of law that th[e] Court can and should resolve without need for remand." Reply Brief 24, n. 9. We agree.

[6] Quoted *supra*, at 75, those grounds are "failure of the division to comply with [RLA] requirements," "failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction," and "fraud or corruption by a member of the division making the order."

So long as a respondent does not "seek to modify the judgment below," true here, "[i]t is well accepted" that the respondent may, "without filing a cross-appeal or cross-petition, . . . rely upon any matter appearing in the record in support of the judgment." *Blum* v. *Bacon*, 457 U. S. 132, 137, n. 5 (1982). The Seventh Circuit, as just observed, see *supra*, at 78–79, understood that the Union had pressed "statutory and constitutional" arguments, but also comprehended that both arguments homed in on "a single question: is written documentation of the conference in the on-property record a necessary prerequisite to arbitration before the NRAB?" 522 F. 3d, at 750. Answering this "single question" in the negative, the Court of Appeals effectively resolved the Union's core complaint. But, for reasons far from apparent, the court declared that "once we answer the key question . . . , adjudication of the due process claim is unavoidable." *Ibid.*

The Seventh Circuit, we agree, asked the right question, but inappropriately placed its answer under a constitutional, rather than a statutory, headline. As the Court of Appeals determined, and as we discuss *infra*, at 81–86, nothing in the Act elevates to jurisdictional status the obligation to confer-ence minor disputes or to prove conferencing. That being so, the "unavoidable" conclusion, following from the Seventh Circuit's "answer [to] the key question," 522 F. 3d, at 750, is that the panel, in § 153 First (q)'s words, failed "to conform, or confine itself, to matters within the scope of [its] jurisdiction." The Carrier, although it sought a different outcome, was quite right to "urg[e] [the Court of Appeals] to consider the statutory claim before the constitutional one." 522 F. 3d, at 750.

In short, a negative answer to the "single question" identified by the Court of Appeals leaves no doubt about the Union's entitlement, in accord with § 153 First (q), to vacation of the Board's orders. Given this statutory ground for relief, there is no due process issue alive in this case, and

no warrant to answer a question that may be consequential in another case: Absent grounds specified in § 153 First (q) for vacating a Board order, may a reviewing court set aside an NRAB adjudication for incompatibility with due process? An answer to that question must await a case in which the issue is genuinely in controversy.[7] In this case, however, our grant of certiorari enables us to address a matter of some importance: We can reduce confusion, clouding court as well as Board decisions, over matters properly typed "jurisdictional."

III

A

Recognizing that the word "jurisdiction" has been used by courts, including this Court, to convey "many, too many, meanings," *Steel Co.* v. *Citizens for Better Environment,* 523 U. S. 83, 90 (1998) (internal quotation marks omitted), we have cautioned, in recent decisions, against profligate use of the term. Not all mandatory "prescriptions, however emphatic, are . . . properly typed jurisdictional," we explained in *Arbaugh* v. *Y & H Corp.,* 546 U. S. 500, 510 (2006) (internal quotation marks omitted). Subject-matter jurisdiction properly comprehended, we emphasized, refers to a tribunal's "power to hear a case," a matter that "can never be forfeited or waived." *Id.,* at 514 (quoting *United States* v. *Cotton,* 535 U. S. 625, 630 (2002)). In contrast, a "claim-processing rule, . . . even if unalterable on a party's application," does not reduce the adjudicatory domain of a tribunal and is ordinarily "forfeited if the party asserting the rule

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[7] A case of that order would be uncommon. As the Carrier acknowledges, "many of the cases reviewing ostensibly extra-statutory due process objections could have been accommodated within the statutory framework." Brief for Petitioner 36. See also *id.,* at 37 ("The statutory review provisions are plainly generous enough to permit litigants to raise all of the simple, common, easily adjudicated, and likely to be meritorious claims that sail under the flag of due process of law . . . .").

waits too long to raise the point." *Kontrick* v. *Ryan*, 540 U. S. 443, 456 (2004).

For example, we have held nonjurisdictional and forfeitable the provision in Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e *et seq.*, requiring complainants to file a timely charge of discrimination with the Equal Employment Opportunity Commission (EEOC) before proceeding to court. *Zipes* v. *Trans World Airlines, Inc.*, 455 U. S. 385, 393 (1982). We have also held nonjurisdictional and forfeitable the Title VII provision exempting employers who engage fewer than 15 employees. *Arbaugh*, 546 U. S., at 503, 515–516. And we have determined that a Chapter 7 trustee's (or creditor's) limited time to object to the debtor's discharge, see Fed. Rule Bkrtcy. Proc. 4004, is a claim-processing, not a jurisdictional, matter. *Kontrick*, 540 U. S., at 446–447, 460. In contrast, relying on a long line of this Court's decisions left undisturbed by Congress, we have reaffirmed the jurisdictional character of the time limitation for filing a notice of appeal stated in 28 U. S. C. § 2107(a). *Bowles* v. *Russell*, 551 U. S. 205, 209–211 (2007). See also *John R. Sand & Gravel Co.* v. *United States*, 552 U. S. 130, 132 (2008) (court must consider *sua sponte* timeliness of lawsuit filed against the United States in the Court of Federal Claims).

With these decisions in mind, we turn back to the requirement that parties to minor disputes, as a last chance prearbitration, attempt settlement "in conference," 45 U. S. C. § 152 Second, Sixth. See *supra*, at 73–74, and n. 3. This obligation is imposed on carriers and grievants alike but, we hold, its satisfaction does not condition the adjudicatory authority of the Board.

The Board's jurisdiction extends to "all disputes between carriers and their employees 'growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions . . . .'"

Slocum v. *Delaware, L. & W. R. Co.*, 339 U. S. 239, 240 (1950) (quoting § 153 First (i)). True, the RLA instructs that, before any reference to arbitration, the dispute "shall be handled in the usual manner up to and including the [designated] chief operating officer." § 153 First (i). And when the CBA's grievance procedure has not been followed, resort to the Board would ordinarily be objectionable as premature.

The additional requirement of a conference, we note, is independent of the CBA process. Rather, the conference requirement is stated in the "[g]eneral duties" section of the RLA, § 152, a section that is not moored to the "[e]stablishment[,] . . . powers[,] and duties" of the NRAB set out next in § 153 First. Rooted in § 152 and often informal in practice, see *supra*, at 73–74, conferencing is surely no more "jurisdictional" than is the presuit resort to the EEOC held forfeitable in *Zipes*, 455 U. S., at 393.[8] And if the requirement to conference is not "jurisdictional," then failure initially to submit proof of conferencing cannot be of that genre. See Part III–B, *infra*.

In defense of the Board's characterization of conferencing and proof thereof as jurisdictional, the Carrier points to the NRAB's Circular One procedural regulations, see *supra*, at 73, which provide: "No petition shall be considered by any division of the Board unless the subject matter has been handled in accordance with the provisions of the [RLA]." 29 CFR § 301.2(b). But that provision, as other prescriptions in Circular One, is a claim-processing rule. Congress gave

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[8] The RLA states, in § 152 First, a general duty "to settle all disputes," and, in § 152 Second, a more specific duty to "conference." These provisions apply to all disputes in the railroad industry, major as well as minor. They also apply to disputes in the airline industry, over which the NRAB has no jurisdiction. § 181. Neither provision "speak[s] in jurisdictional terms or refer[s] in any way to the jurisdiction of the" NRAB. *Zipes* v. *Trans World Airlines, Inc.*, 455 U. S. 385, 394 (1982).

the Board no authority to adopt rules of jurisdictional dimension. See 45 U. S. C. § 153 First (v) (authorizing the NRAB to "adopt such rules as it deems necessary to control proceedings before the respective divisions and not in conflict with the provisions of this section"). And when the fact of conferencing is genuinely contested, we see no reason why the panel could not adjourn the proceeding pending cure of any lapse. Circular One does not exclude such a sensible solution.

The Carrier cites NRAB decisions that allegedly support characterization of conferencing as jurisdictional. If the NRAB lacks authority to define the jurisdiction of its panels, however, surely the panels themselves lack that authority. Furthermore, NRAB panels have variously addressed the matter. For example, in NRAB Third Div. Award No. 15880 (Oct. 26, 1967), the panel, although characterizing the conferencing requirement as "jurisdictional," said that "[i]f one of the parties refuses or fails to avail itself of a conference where there is an opportunity to do so, it cannot then assert the defense of a lack of jurisdiction." *Id.*, at 2. See also NRAB Fourth Div. Award No. 5074 (June 21, 2001) (same); NRAB Third Div. Award No. 28147 (Oct. 16, 1989) (same). Cf. *Arbaugh*, 546 U. S., at 511 ("unrefined" uses of the word "jurisdiction" are entitled to "no precedential effect" (internal quotation marks omitted)). And in NRAB First Div. Award No. 23867, p. 5 (Apr. 7, 1988), the panel observed that the ordinary remedy for lack of conferencing is to "dismiss th[e] claim without prejudice to allow Claimant to cure the jurisdictional defect." That panel reached the merits nevertheless. *Ibid.* Cf. *Steel Co.*, 523 U. S., at 94 ("Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the [tribunal] is that of announcing the fact and dismissing the cause." (quoting *Ex parte McCardle*, 7 Wall. 506, 514 (1869))). We note, in addition, the acknowledgment of the Carrier's counsel that, if confer-

encing has not occurred, NRAB panels have stayed arbitration to allow the parties to confer. Tr. of Oral Arg. 10, 22.[9]

B

The RLA provides that, when on-property proceedings do not yield settlement, both parties or either party may refer the case to the Board "with a full statement of the facts and all supporting data bearing upon the disputes." § 153 First (i). Circular One correspondingly instructs employees seeking Board adjudication "[to] set forth all relevant, argumentative facts" and "affirmatively show the same to have been presented to the carrier and made a part of the particular question in dispute." 29 CFR § 301.5(d); see § 301.5(e) (similar instruction addressed to carriers). Conferencing, the Carrier urged, is a "relevant, argumentative fac[t]," so proof thereof must accompany party submissions.

As earlier explained, see *supra*, at 83–84, instructions on party submissions—essentially pleading instructions—are claim-processing, not jurisdictional, rules. Moreover, the Board itself has recognized that conferencing may not be a "question in dispute." It has counseled parties submitting joint exhibits "to omit documents that are unimportant and/or irrelevant to the disposition of the [case]; for example . . . letters requesting a conference (assuming that is *not* an issue in the dispute)." NRAB Instructions Sheet, Joint Exh. Program, p. 5 (July 1, 2003), online at http://www.nmb.gov/arbitration/nrab-instruc.pdf (as visited Dec. 3, 2009,

[9] While holding that the panel did not lack jurisdiction over the employees' claims, we recognize the Board's authority to adopt claim-processing rules backed by effective sanctions. See *supra*, at 73; cf. Fed. Rule Civ. Proc. 37(b)(2) (specifying sanctions, including dismissal, for failure to comply with discovery orders); Rule 41(b) (authorizing involuntary dismissal for failure to prosecute or to comply with rules of procedure or court orders). We also recognize that NRAB panels, in managing individual arbitrations, may prescribe and enforce reasonable procedural requirements.

and in Clerk of Court's case file). It bears repetition here that neither the Union nor the Carrier, in its submissions to the Board, identified conferencing as a "question in dispute." See *supra*, at 76.

It makes sense to exclude at the arbitration stage newly presented "data . . . in support of [the] employee['s] [grievance]," 29 CFR § 301.5(d)—evidence the carrier had no opportunity to consider prearbitration. A contrary rule would sandbag the carrier. But conferencing is not a fact bearing on the merits of a grievance. Indeed, there may be no disagreement at all about the occurrence of conferencing, as the Union believed to be the case here. Moreover, the RLA respects the right of the parties to order for themselves the conference procedures they will follow. See 45 U. S. C. § 152 Sixth ("[N]othing in this chapter shall be construed to supersede the provisions of any agreement (as to conferences) . . . in effect between the parties."). In sum, neither the RLA nor Circular One could plausibly be read to require, as a prerequisite to the NRAB's exercise of jurisdiction, submission of proof of conferencing.

* * *

By refusing to adjudicate cases on the false premise that it lacked power to hear them, the NRAB panel failed "to conform, or confine itself," to the jurisdiction Congress gave it. We therefore affirm the judgment of the Court of Appeals for the Seventh Circuit.

It is so ordered.

Syllabus

ALVAREZ, COOK COUNTY STATE'S ATTORNEY *v.* SMITH ET AL.

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

No. 08–351. Argued October 14, 2009—Decided December 8, 2009

Illinois law provides for forfeiture of movable personal property used to facilitate a drug crime, permits police to seize the property without a warrant, and allows the State to keep the property nearly five months before beginning judicial forfeiture proceedings. Respondents, six individuals who had cars and cash seized under that law, brought this federal civil rights action, claiming that the failure of the State to provide a speedy postseizure hearing violated the Federal Due Process Clause. The District Court dismissed the case based on Circuit precedent, but, on appeal, the Seventh Circuit departed from that precedent and ruled for respondents. This Court granted certiorari to review the Seventh Circuit's due process determination, but at oral argument the Court learned that all of the actual property disputes between the parties had been resolved.

Held:

1. The case is moot. The Constitution permits this Court to decide legal questions only in the context of actual "Cases" or "Controversies," Art. III, § 2, and an actual controversy must exist at all stages of review, not just when the complaint is filed, *Preiser* v. *Newkirk*, 422 U. S. 395, 401. Here there is no longer any actual controversy regarding ownership or possession of the underlying property. There is no claim for damages before this Court; there is no properly certified class or dispute over class certification; and this case does not fit within the category of cases that are "capable of repetition" while "evading review." Only an abstract dispute about the law remains. Pp. 92–94.

2. The judgment below is vacated. In moot cases, this Court normally vacates the lower court judgment, which clears the path for relitigation of the issues and preserves the rights of the parties, while prejudicing none by a preliminary decision. *United States* v. *Munsingwear, Inc.*, 340 U. S. 36, 40. Where mootness is the result of settlement rather than happenstance, however, the losing party forfeits the equitable remedy of vacatur. *U. S. Bancorp Mortgage Co.* v. *Bonner Mall Partnership*, 513 U. S. 18, 25. This case more closely resembles mootness through happenstance than through settlement. In *Bancorp*, the party seeking review caused the mootness by voluntarily settling the

issue contested throughout the litigation. Here, the Court believes that the presence of the federal case played no significant role in the termination of plaintiffs' state-court forfeiture proceedings. Plaintiffs' forfeiture cases took place with no procedural link to the case before this Court; apparently terminated on substantive grounds in their ordinary course; and, to the Court's knowledge, no one raised the procedural question at issue here in those cases. This Court therefore concludes that it should follow its ordinary practice and order vacatur. Pp. 94–97.

524 F. 3d 834, vacated and remanded.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, THOMAS, GINSBURG, ALITO, and SOTOMAYOR, JJ., joined, and in which STEVENS, J., joined as to Parts I and II. STEVENS, J., filed an opinion concurring in part and dissenting in part, *post*, p. 97.

Paul A. Castiglione argued the cause for petitioner. With him on the briefs were *Anita Alvarez*, *pro se*, *Patrick T. Driscoll, Jr.*, and *Alan J. Spellberg.*

William M. Jay argued the cause for the United States as *amicus curiae* in support of petitioner. With him on the brief were *Solicitor General Kagan*, *Assistant Attorneys General Breuer* and *West*, *Deputy Solicitor General Katyal*, *Harry Harbin*, *Michael S. Raab*, *David A. Martin*, and *Alfonso Robles.*

Thomas Peters argued the cause for respondents. With him on the brief were *Craig B. Futterman* and *Richard Epstein.**

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*Briefs of *amici curiae* urging reversal were filed for the State of Illinois et al. by *Lisa Madigan,* Attorney General of Illinois, *Michael A. Scodro,* Solicitor General, *Jane Elinor Notz,* Deputy Solicitor General, *Eldad Malamuth,* Assistant Attorney General, and by the Attorneys General for their respective States as follows: *Troy King* of Alabama, *Terry Goddard* of Arizona, *John W. Suthers* of Colorado, *Thurbert E. Baker* of Georgia, *Mark J. Bennett* of Hawaii, *Lawrence G. Wasden* of Idaho, *Gregory F. Zoeller* of Indiana, *Thomas J. Miller* of Iowa, *Martha Coakley* of Massachusetts, *Michael A. Cox* of Michigan, *Catherine Cortez Masto* of Nevada, *Richard Cordray* of Ohio, *Thomas W. Corbett, Jr.,* of Pennsylvania, *Henry McMaster* of South Carolina, *Greg Abbott* of Texas, *Mark L. Shurtleff* of Utah, *Robert M. McKenna* of Washington, *J. B. Van Hollen* of Wisconsin,

JUSTICE BREYER delivered the opinion of the Court.

We granted certiorari in this case to determine whether Illinois law provides a sufficiently speedy opportunity for an individual, whose car or cash police have seized without a warrant, to contest the lawfulness of the seizure. See U. S. Const., Amdt. 14, § 1; *United States* v. *Von Neumann*, 474 U. S. 242 (1986); *United States* v. *$8,850*, 461 U. S. 555 (1983). At the time of oral argument, however, we learned that the underlying property disputes have all ended. The State has returned all the cars that it seized, and the individual property owners have either forfeited any relevant cash or have accepted as final the State's return of some of it. We consequently find the case moot, and we therefore vacate the judgment of the Court of Appeals and remand the case to that court with instructions to dismiss. *United States* v. *Munsingwear, Inc.*, 340 U. S. 36, 39 (1950); see also E. Gressman, K. Geller, S. Shapiro, T. Bishop, & E. Hartnett, Supreme Court Practice 941–942 (9th ed. 2007).

I

Illinois law provides for forfeiture of movable personal property (including cars and cash) used "to facilitate" a drug crime. Ill. Comp. Stat., ch. 720, § 570/505(a)(6) (West 2008). It permits a police officer to seize that property without a warrant where (1) the officer has "probable cause to believe" the property was so used and (2) a "warrantless seizure . . .

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and *Bruce A. Salzburg* of Wyoming; and for the National Association of Counties et al. by *Richard Ruda.*

Briefs of *amici curiae* urging affirmance were filed for the American Civil Liberties Union et al. by *Graham Boyd, Scott Michelman, Steven R. Shapiro,* and *Harvey Grossman;* for the Cato Institute et al. by *David B. Smith, Clint Bolick, Nicholas C. Dranias, Ilya Shapiro,* and *Manuel S. Klausner;* for the Institute for Justice by *William H. Mellor, Scott G. Bullock,* and *Robert P. Frommer;* for the Legal Aid Society by *Thomas M. O'Brien;* for the National Police Accountability Project by *Andrew B. Reid;* and for the Women's Criminal Defense Bar Association by *Harold J. Krent.*

would be reasonable" in the circumstances. § 570/505(b). When an officer has seized property without a warrant, the relevant law enforcement agency must notify the State's attorney within 52 days of the seizure; the State's attorney must notify the property owner of any impending forfeiture within a further 45 days; and, if the owner wishes to contest forfeiture, the State's attorney must begin judicial forfeiture proceedings within yet a further 45 days. See ch. 725, §§ 150/5–150/6. Thus, the statute gives the State up to 142 days, nearly five months, to begin judicial forfeiture proceedings—during which time the statute permits the State to keep the car or cash within its possession.

On November 22, 2006, six individuals (respondents or plaintiffs) brought this federal civil rights action against defendants the city of Chicago, the superintendent of the Chicago Police Department, and the Cook County State's Attorney (the petitioner here, whom we shall call the "State's Attorney"). See Rev. Stat. § 1979, 42 U. S. C. § 1983. Three of the individuals, Chermane Smith, Edmanuel Perez, and Tyhesha Brunston, said that earlier in 2006 the police had, upon their arrests, seized their cars without a warrant. See Complaint ¶ 25, App. 34a (Smith, seizure on Jan. 19, 2006); *id.*, ¶ 26, at 34a (Perez, seizure on Mar. 8, 2006); *id.*, ¶ 27, at 34a (Brunston, seizure on Apr. 8, 2006); Plaintiffs' Motion for Class Certification ¶ 8, App. 39a. The other three plaintiffs, Michelle Waldo, Kirk Yunker, and Tony Williams, said that earlier in 2006 police had, upon their arrests, seized their cash without a warrant. See Complaint ¶ 28, App. 34a–35a (Waldo, seizure on Jan. 20, 2006); *id.*, ¶ 29, at 35a (Yunker, seizure on Sept. 26, 2006); *id.*, ¶ 30, at 35a (Williams, seizure in July 2006); Plaintiffs' Motion for Class Certification ¶ 8, App. 39a. The plaintiffs added that the police department still had custody of their property. See Complaint ¶¶ 24–30, App. 34a–35a. They claimed that the failure of the State to provide a speedy postseizure hearing violated the Federal Due Process Clause. See U. S. Const., Amdt. 14, § 1. And

they asked the court (1) to certify the case as a class action, (2) to declare that they had a due process right to a prompt postseizure probable-cause hearing, (3) to declare that the hearing must take place within 10 days of any seizure, and (4) to enjoin the defendants' current practice of keeping the property in custody for a longer time without a judicial determination of probable cause. See Complaint ¶ 36, App. 36a.

The defendants moved to dismiss the complaint on the ground that Seventh Circuit precedent made clear that "the Constitution does not require any procedure prior to the actual forfeiture proceeding." *Jones* v. *Takaki*, 38 F. 3d 321, 324 (1994) (citing *Von Neumann*, *supra*, at 249). On February 22, 2007, the District Court granted the motion to dismiss. It also denied the plaintiffs' motion for class certification. The plaintiffs appealed.

On May 2, 2008, the Seventh Circuit decided the appeal in the plaintiffs' favor. *Smith* v. *Chicago*, 524 F. 3d 834. It reconsidered and departed from its earlier precedent. *Id.*, at 836–839. It held that "the procedures set out in" the Illinois statute "show insufficient concern for the due process right of the plaintiffs." *Id.*, at 838. And it added that, "given the length of time which can result between the seizure of property and the opportunity for an owner to contest the seizure under" Illinois law, "some sort of mechanism to test the validity of the retention of the property is required." *Ibid.* The Court of Appeals reversed the judgment of the District Court and remanded the case for further proceedings. *Id.*, at 839. Its mandate issued about seven weeks thereafter.

On February 23, 2009, we granted certiorari to review the Seventh Circuit's "due process" determination. The Court of Appeals had already recalled its mandate. The parties filed briefs in this Court. We then recognized that the case might be moot, and we asked the parties to address the question of mootness at the forthcoming oral argument.

At oral argument counsel for both sides confirmed that there was no longer any dispute about ownership or possession of the relevant property. See Tr. of Oral Arg. 5 (State's Attorney); *id.*, at 56–57 (plaintiffs). The State had returned the cars to plaintiffs Smith, Perez, and Brunston. See *id.*, at 5. Two of the plaintiffs had "defaulted," apparently conceding that the State could keep the cash. *Ibid.* And the final plaintiff and the State's Attorney agreed that the plaintiff could keep some, but not all, of the cash at issue. *Id.*, at 5, 56–57. As counsel for the State's Attorney told us, "[T]hose cases are over." *Id.*, at 5.

II

The Constitution permits this Court to decide legal questions only in the context of actual "Cases" or "Controversies." Art. III, § 2. An "'actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.'" *Preiser* v. *Newkirk*, 422 U. S. 395, 401 (1975) (quoting *Steffel* v. *Thompson*, 415 U. S. 452, 459, n. 10 (1974)). In this case there is no longer any actual controversy between the parties about ownership or possession of the underlying property.

The State's Attorney argues that there is a continuing controversy over damages. We concede that the plaintiffs filed a motion in the District Court seeking damages. But the plaintiffs filed their motion after the Seventh Circuit issued its opinion. And, before this Court granted certiorari, the Court of Appeals recalled its mandate, taking the case away from the District Court before the District Court could respond to the motion. Thus, we have before us a complaint that seeks only declaratory and injunctive relief, not damages.

The plaintiffs point out that they sought certification of a class. And a class might well contain members who continue to dispute ownership of seized property. But that fact is beside the point. The District Court denied the plaintiffs'

class certification motion. The plaintiffs did not appeal that denial. Hence the only disputes relevant here are those between these six plaintiffs and the State's Attorney; those disputes concerned cars and cash; and those disputes are now over. *United States Parole Comm'n* v. *Geraghty*, 445 U. S. 388, 404 (1980) ("A named plaintiff whose claim expires may not continue to press the appeal on the merits until a class has been properly certified").

The parties, of course, continue to dispute the lawfulness of the State's hearing procedures. But that dispute is no longer embedded in any actual controversy about the plaintiffs' particular legal rights. Rather, it is an abstract dispute about the law, unlikely to affect these plaintiffs any more than it affects other Illinois citizens. And a dispute solely about the meaning of a law, abstracted from any concrete actual or threatened harm, falls outside the scope of the constitutional words "Cases" and "Controversies." See, *e. g.*, *Lewis* v. *Continental Bank Corp.*, 494 U. S. 472, 477 (1990); *North Carolina* v. *Rice*, 404 U. S. 244, 246 (1971) *(per curiam); Aetna Life Ins. Co.* v. *Haworth*, 300 U. S. 227, 241 (1937); *Mills* v. *Green*, 159 U. S. 651, 653 (1895).

We can find no special circumstance here that might warrant our continuing to hear the case. We have sometimes heard attacks on practices that no longer directly affect the attacking party, but are "capable of repetition" while "evading review." See, *e. g.*, *Federal Election Comm'n* v. *Wisconsin Right to Life, Inc.*, 551 U. S. 449, 462 (2007); *Southern Pacific Terminal Co.* v. *ICC*, 219 U. S. 498, 515 (1911). Yet here, unlike those cases, nothing suggests that the individual plaintiffs will likely again prove subject to the State's seizure procedures. See *Los Angeles* v. *Lyons*, 461 U. S. 95, 109 (1983) ("[T]he capable-of-repetition doctrine applies only in exceptional situations, and generally only where the named plaintiff can make a reasonable showing that he will again be subjected to the alleged illegality"); *DeFunis* v. *Odegaard*, 416 U. S. 312, 318–319 (1974) *(per curiam)*. And in any

event, since those who are directly affected by the forfeiture practices might bring damages actions, the practices do not "evade review." See *Memphis Light, Gas & Water Div.* v. *Craft*, 436 U. S. 1, 8–9 (1978) (damages claim saves case from mootness). Consequently, the case is moot. See, *e. g.*, *Preiser*, *supra*, at 403–404; *Mills*, *supra*, at 658.

III

It is less easy to say whether we should order the judgment below vacated. The statute that enables us to vacate a lower court judgment when a case becomes moot is flexible, allowing a court to "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; see also *U. S. Bancorp Mortgage Co.* v. *Bonner Mall Partnership*, 513 U. S. 18, 21 (1994). Applying this statute, we normally do vacate the lower court judgment in a moot case because doing so "clears the path for future relitigation of the issues between the parties," preserving "the rights of all parties," while prejudicing none "by a decision which . . . was only preliminary." *Munsingwear*, 340 U. S., at 40.

In *Bancorp*, however, we described circumstances where we would not do so. We said that, "[w]here mootness results from settlement" rather than "'happenstance,'" the "losing party has voluntarily forfeited his legal remedy . . . [and] thereby surrender[ed] his claim to the equitable remedy of vacatur." 513 U. S., at 25. The plaintiffs, pointing out that the State's Attorney agreed to return all three cars and some of the cash, claim that, with respect to at least four of the plaintiffs, this case falls within *Bancorp*'s "settlement" exception.

In our view, however, this case more closely resembles mootness through "happenstance" than through "settlement"—at least the kind of settlement that the Court considered in *Bancorp*. *Bancorp* focused upon a bankruptcy-

related dispute that involved a legal question whether a bankruptcy court could lawfully confirm a debtor's Chapter 11 reorganization plan if the plan relied upon what the debtor said was a special exception (called the "new value exception") to ordinary creditor priority rules. *Id.*, at 19–20. The parties contested that legal issue in the Bankruptcy Court; they contested it in an appeal of the Bankruptcy Court's order to the Federal District Court; they contested it in a further appeal to the Court of Appeals; and eventually they contested it in this Court. *Id.*, at 20. While the case was pending here, the parties settled their differences in the Bankruptcy Court (the court where the case originated)—including their differences on this particular contested legal point. *Ibid.* They agreed upon a reorganization plan, which they said would constitute a settlement that mooted the federal case. *Ibid.*

Recognizing that the reorganization plan that the Bankruptcy Judge confirmed in the case amounted to a settlement that mooted the case, this Court did *not* vacate the lower court's judgment. The Court's reason for leaving the lower court's judgment in place was that mootness was *not* a result of "the vagaries of circumstance." *Id.*, at 25. Rather the party seeking review had "*caused* the mootness by voluntary action." *Id.*, at 24 (emphasis added). By virtue of the settlement, that party had "voluntarily forfeited his legal remedy by the ordinary processes of appeal or certiorari." *Id.*, at 25. Hence, compared to mootness caused by "happenstance," considerations of "equity" and "fairness" tilted against vacatur. *Id.*, at 25–26.

Applying these principles to the case before us, we conclude that the terminations here fall on the "happenstance" side of the line. The six individual cases proceeded through a different court system without any procedural link to the federal case before us. To our knowledge (and we have examined the state-court docket sheets), no one in those cases raised the procedural question at issue here. Rather, the

issues in those six cases were issues solely of state substantive law: Were the cars and the cash forfeitable or not? And court docket sheets suggest that the six state cases terminated on substantive grounds in the ordinary course of such state proceedings. In the three automobile cases, the State voluntarily dismissed the proceedings and returned the cars between 11 and 40 months after the seizures, a long enough time for the State to have investigated the matters and to have determined (after the termination of any related criminal proceedings) for evidentiary reasons that it did not wish to claim the cars. See Dockets in *People* v. *2004 Chevrolet Impala*, No. 2006–COFO–000296 (Cir. Ct. Cook Cty., Ill.) (Brunston's car returned on July 27, 2009); *People* v. *Smith*, No. 2006–COFO–000036 (Cir. Ct. Cook Cty., Ill.) (Smith's car returned on May 5, 2008); and *People* v. *1999 Chevrolet Malibu*, No. 2006–COFO–000288 (Cir. Ct. Cook Cty., Ill.) (Perez's car returned on Jan. 29, 2007). In the remaining contested case, involving cash, the State voluntarily dismissed the proceedings after 14 months, again a long enough time for the State to have weighed the evidence and found a compromise settlement appropriate on the merits. See Docket in *People* v. *$1,500 in U. S. Currency*, No. 2006–COFO–000201 (Cir. Ct. Cook Cty., Ill.) (Waldo's cash returned on Mar. 19, 2007). The disparate dates at which the plaintiffs' forfeiture proceedings terminated—11, 14, 27, and 40 months after the seizures—indicate that the State's Attorney did not coordinate the resolution of the plaintiffs' state-court cases, either with each other or with the plaintiffs' federal civil rights case. Cf. *Munsingwear*, *supra*, at 39–40 (stating that a lower court judgment would have been vacated even though an action of the party seeking review had brought about the mootness *because* that action—a commodity being decontrolled by Executive Order—was basically unrelated); see also *Fleming* v. *Munsingwear, Inc.*, 162 F. 2d 125, 127 (CA8 1947).

For these reasons, we believe that the presence of this federal case played no significant role in the termination of

the separate state-court proceedings. This conclusion is reinforced by the fact that neither party, although aware of *Bancorp*, suggested the contrary at oral argument. Indeed, both parties argued against mootness at oral argument, a fact that further suggests that a desire to avoid review in this case played no role at all in producing the state case terminations. Tr. of Oral Arg. 5–11, 33–38. And if the presence of this federal case played no role in causing the termination of those state cases, there is not present here the kind of "voluntary forfeit[ure]" of a legal remedy that led the Court in *Bancorp* to find that considerations of "fairness" and "equity" tilted against vacatur.

We consequently conclude that we should follow our ordinary practice, thereby "clear[ing] the path for future relitigation of the issues." *Munsingwear*, 340 U. S., at 40. Thus, nothing in this opinion prevents the plaintiffs from bringing a claim for damages based on the conduct alleged in their complaint. *Id.*, at 37–40.

We therefore vacate the judgment of the Court of Appeals and remand the case to that court with instructions to dismiss.

It is so ordered.

JUSTICE STEVENS, concurring in part and dissenting in part.

While I agree that this case is moot and join Parts I and II of the Court's opinion, I would not vacate the judgment of the Court of Appeals. Following the teaching of our decision in *U. S. Bancorp Mortgage Co.* v. *Bonner Mall Partnership*, 513 U. S. 18 (1994), I would apply the general rule against vacating appellate judgments that have become moot because the parties settled.

Bancorp set forth the basic principles for determining whether to vacate a case that has become moot. The overriding concern is equitable: "From the beginning we have disposed of moot cases in the manner ' "most conso-

nant to justice" . . . in view of the nature and character of the conditions which have caused the case to become moot.'" *Id.*, at 24 (quoting *United States* v. *Hamburg-Amerikanische Packetfahrt-Actien Gesellschaft*, 239 U. S. 466, 477–478 (1916), in turn quoting *South Spring Hill Gold Mining Co.* v. *Amador Medean Gold Mining Co.*, 145 U. S. 300, 302 (1892); alteration in original). The "public interest" must be considered as part of this equitable inquiry, *Bancorp*, 513 U. S., at 26, 27, and that interest is generally better served by leaving appellate judgments intact. "'Judicial precedents are presumptively correct and valuable to the legal community as a whole. They are not merely the property of private litigants . . . .'" *Id.*, at 26 (quoting *Izumi Seimitsu Kogyo Kabushiki Kaisha* v. *U. S. Philips Corp.*, 510 U. S. 27, 40 (1993) (STEVENS, J., dissenting)). Hence, we will typically vacate a judgment when the party seeking review has been "frustrated by the vagaries of circumstance" or "when mootness results from unilateral action of the party who prevailed below." *Bancorp*, 513 U. S., at 25. But we will typically decline to vacate when "the party seeking relief from the judgment below caused the mootness by voluntary action," *id.*, at 24, including action taken in good faith and in conjunction with the opposing party. Even when "respondent agreed to [a] settlement that caused the mootness," it remains "petitioner's burden, as the party seeking relief from the status quo of the appellate judgment, to demonstrate not merely equivalent responsibility for the mootness, but equitable entitlement to the extraordinary remedy of vacatur." *Id.*, at 26. "[M]ootness by reason of settlement does not justify vacatur of a judgment under review." *Id.*, at 29.

In my view, the Court has misapplied these principles. To be sure, the "settlement" between the parties in this case might be distinguished from the more conventional settlement reached by the parties in *Bancorp*. And we have no evidence to suggest that the State returned respondents' property prior to the conclusion of our review with the pur-

pose or expectation of manufacturing mootness. Nevertheless, the State's decision to return the automobiles when it did appears to have been legally discretionary, as was the "compromise settlement" that it reached with respondent Waldo regarding her cash, *ante,* at 96. In light of the State's purposive and voluntary action that caused the mootness—along with its failure to alert us to the relevant facts or to explain why vacatur would serve the public interest—I believe it has failed to carry its burden to "demonstrate . . . equitable entitlement to the extraordinary remedy of vacatur." *Bancorp,* 513 U. S., at 26.

There was a third option for disposing of this case: We could have dismissed the writ of certiorari as improvidently granted. Like denying the petition in the first place, that disposition would have preserved the judgment below. At the time we granted certiorari on February 23, 2009, petitioner had already resolved the underlying property disputes for five of the six named respondents. See *ante,* at 91–92, 95–96. It was entirely predictable that the final settlement would soon follow. Moreover, the briefing in this case has revealed a disagreement over basic descriptive questions of Illinois law, questions that were not passed upon below. Compare Brief for Petitioner 60–66 with Brief for Respondents 41–44. And, of course, we have no way of knowing how the District Court would have applied the Court of Appeals' remand order, which left it great discretion to "fashion appropriate procedural relief" "with the help of the parties." *Smith* v. *Chicago,* 524 F. 3d 834, 838 (CA7 2008). It has become clear that the Court was overhasty in deciding to review this case; the improvidence of our grant provides an additional reason why we should not vacate the work product of our colleagues on the Court of Appeals.

I respectfully dissent from Part III of the Court's opinion and from its judgment.

Syllabus

MOHAWK INDUSTRIES, INC. *v.* CARPENTER

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

No. 08–678. Argued October 5, 2009—Decided December 8, 2009

When respondent Norman Carpenter informed the human resources department of his employer, petitioner Mohawk Industries, Inc., that the company employed undocumented immigrants, he was unaware that Mohawk stood accused in a pending class action—the *Williams* case—of conspiring to drive down its legal employees' wages by knowingly hiring undocumented workers. Mohawk directed Carpenter to meet with the company's retained counsel in *Williams*, who allegedly pressured Carpenter to recant his statements. When he refused, Carpenter maintains in this unlawful termination suit, Mohawk fired him under false pretenses. In granting Carpenter's motion to compel Mohawk to produce information concerning his meeting with retained counsel and the company's termination decision, the District Court agreed with Mohawk that the requested information was protected by the attorney-client privilege, but concluded that Mohawk had implicitly waived the privilege through its disclosures in the *Williams* case. The court declined to certify its order for interlocutory appeal, and the Eleventh Circuit dismissed Mohawk's appeal for lack of jurisdiction, holding, *inter alia*, that the District Court's ruling did not qualify as an immediately appealable collateral order under *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U. S. 541, because a discovery order implicating the attorney-client privilege can be adequately reviewed on appeal from final judgment.

Held: Disclosure orders adverse to the attorney-client privilege do not qualify for immediate appeal under the collateral order doctrine. Pp. 106–114.

(a) Courts of Appeals "have jurisdiction of appeals from all final decisions of the district courts." 28 U. S. C. § 1291. "[F]inal decisions" encompass not only judgments that "terminate an action," but also a "small class" of prejudgment orders that are "collateral to" an action's merits and "too important" to be denied immediate review, *Cohen*, 337 U. S., at 545–546. "That small category includes only decisions that are . . . effectively unreviewable on appeal from the final judgment in the underlying action." *Swint* v. *Chambers County Comm'n*, 514 U. S. 35, 42. The decisive consideration in determining whether a right is effectively unreviewable is whether delaying review until the entry of final judgment "would imperil a substantial public interest" or "some

particular value of a high order." *Will* v. *Hallock*, 546 U. S. 345, 352–353. In making this determination, the Court does not engage in an "individualized jurisdictional inquiry," *Coopers & Lybrand* v. *Livesay*, 437 U. S. 463, 473, but focuses on "the entire category to which a claim belongs," *Digital Equipment Corp.* v. *Desktop Direct, Inc.*, 511 U. S. 863, 868. If the class of claims, taken as a whole, can be adequately vindicated by other means, "the chance that the litigation at hand might be speeded, or a 'particular injustic[e]' averted," does not provide a basis for § 1291 jurisdiction. *Ibid.* Pp. 106–107.

(b) Effective appellate review of disclosure orders adverse to the attorney-client privilege can be had by means other than collateral order appeal, including postjudgment review. Appellate courts can remedy the improper disclosure of privileged material in the same way they remedy a host of other erroneous evidentiary rulings: by vacating an adverse judgment and remanding for a new trial in which the protected material and its fruits are excluded from evidence. Moreover, litigants confronted with a particularly injurious or novel privilege ruling have several potential avenues of immediate review apart from collateral order appeal. First, a party may ask the district court to certify, and the court of appeals to accept, an interlocutory appeal involving "a controlling question of law," the prompt resolution of which "may materially advance the ultimate termination of the litigation." § 1292(b). Second, in extraordinary circumstances where a disclosure order works a manifest injustice, a party may petition the court of appeals for a writ of mandamus. *Cheney* v. *United States Dist. Court for D. C.*, 542 U. S. 367, 380. Another option is for a party to defy a disclosure order and incur court-imposed sanctions that, *e. g.*, "direc[t] that the matters embraced in the order or other designated facts be taken as established," "prohibi[t] the disobedient party from supporting or opposing designated claims or defenses," or "strik[e] pleadings in whole or in part." Fed. Rule Civ. Proc. 37(b)(2). Alternatively, when the circumstances warrant, a district court may issue a contempt order against a noncomplying party, who can then appeal directly from that ruling, at least when the contempt citation can be characterized as a criminal punishment. See, *e. g.*, *Church of Scientology of Cal.* v. *United States*, 506 U. S. 9, 18, n. 11. These established appellate review mechanisms not only provide assurances to clients and counsel about the security of their confidential communications; they also go a long way toward addressing Mohawk's concern that, absent collateral order appeals of adverse attorney-client privilege rulings, some litigants may experience severe hardship. The limited benefits of applying "the blunt, categorical instrument of § 1291 collateral order appeal" to privilege-related disclosure orders simply cannot justify the likely institutional costs, *Digital Equipment*, 511 U. S., at 883, including unduly delaying the res-

Syllabus

olution of district court litigation and needlessly burdening the courts of appeals, cf. *Cunningham* v. *Hamilton County*, 527 U. S. 198, 209. Pp. 107–113.

(c) The admonition that the class of collaterally appealable orders must remain "narrow and selective in its membership," *Will*, 546 U. S., at 350, has acquired special force in recent years with the enactment of legislation designating rulemaking, "not expansion by court decision," as the preferred means for determining whether and when prejudgment orders should be immediately appealable, *Swint*, 514 U. S., at 48. Any further avenue for immediate appeal of adverse attorney-client privilege rulings should be furnished, if at all, through rulemaking, with the opportunity for full airing it provides. Pp. 113–114.

541 F. 3d 1048, affirmed.

SOTOMAYOR, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, SCALIA, KENNEDY, GINSBURG, BREYER, and ALITO, JJ., joined, and in which THOMAS, J., joined, as to Part II–C. THOMAS, J., filed an opinion concurring in part and concurring in the judgment, *post*, p. 114.

Randall L. Allen argued the cause for petitioner. With him on the briefs was *Daniel F. Diffley.*

Judith Resnik argued the cause for respondent. With her on the brief were *J. Craig Smith*, *Dennis E. Curtis*, *Thomas J. Munger*, *Alan B. Morrison*, *Deepak Gupta*, *Brian Wolfman*, and *Sean K. McElligott.*

Deputy Solicitor General Kneedler argued the cause for the United States as *amicus curiae* in support of respondent. With him on the brief were *Solicitor General Kagan*, *Assistant Attorney General West*, *Pratik A. Shah*, and *Michael S. Raab.**

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*Briefs of *amici curiae* urging reversal were filed for the American Bar Association by *H. Thomas Wells, Jr.*, and *Paul Mogin;* for the Chamber of Commerce of the United States of America by *Paul D. Clement*, *Jeffrey S. Bucholtz*, *Robin S. Conrad*, and *Amar D. Sarwal;* and for DRI–The Voice of the Defense Bar by *Constantine L. Trela, Jr.*, and *Quin M. Sorenson.*

Stephen I. Vladeck, *Charles S. Sims*, *Mark D. Harris*, and *Anna G. Kaminska* filed a brief for Former Article III Judges et al. as *amici curiae* urging affirmance.

JUSTICE SOTOMAYOR delivered the opinion of the Court.

Section 1291 of the Judicial Code confers on federal courts of appeals jurisdiction to review "final decisions of the district courts." 28 U. S. C. § 1291. Although "final decisions" typically are ones that trigger the entry of judgment, they also include a small set of prejudgment orders that are "collateral to" the merits of an action and "too important" to be denied immediate review. *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U. S. 541, 546 (1949). In this case, petitioner Mohawk Industries, Inc., attempted to bring a collateral order appeal after the District Court ordered it to disclose certain confidential materials on the ground that Mohawk had waived the attorney-client privilege. The Court of Appeals dismissed the appeal for want of jurisdiction.

The question before us is whether disclosure orders adverse to the attorney-client privilege qualify for immediate appeal under the collateral order doctrine. Agreeing with the Court of Appeals, we hold that they do not. Postjudgment appeals, together with other review mechanisms, suffice to protect the rights of litigants and preserve the vitality of the attorney-client privilege.

I

In 2007, respondent Norman Carpenter, a former shift supervisor at a Mohawk manufacturing facility, filed suit in the United States District Court for the Northern District of Georgia, alleging that Mohawk had terminated him in violation of 42 U. S. C. § 1985(2) and various Georgia laws. According to Carpenter's complaint, his termination came after he informed a member of Mohawk's human resources department in an e-mail that the company was employing undocumented immigrants. At the time, unbeknownst to Carpenter, Mohawk stood accused in a pending class-action lawsuit of conspiring to drive down the wages of its legal employees by knowingly hiring undocumented workers in violation of federal and state racketeering laws. See *Wil-*

liams v. *Mohawk Indus., Inc.*, No. 4:04–cv–00003–HLM (ND Ga., Jan. 6, 2004). Company officials directed Carpenter to meet with the company's retained counsel in the *Williams* case, and counsel allegedly pressured Carpenter to recant his statements. When he refused, Carpenter alleges, Mohawk fired him under false pretenses. App. 57a–64a.

After learning of Carpenter's complaint, the plaintiffs in the *Williams* case sought an evidentiary hearing to explore Carpenter's allegations. In its response to their motion, Mohawk described Carpenter's accusations as "pure fantasy" and recounted the "true facts" of Carpenter's dismissal. App. 208a. According to Mohawk, Carpenter himself had "engaged in blatant and illegal misconduct" by attempting to have Mohawk hire an undocumented worker. *Id.*, at 209a. The company "commenced an immediate investigation," during which retained counsel interviewed Carpenter. *Id.*, at 210a. Because Carpenter's "efforts to cause Mohawk to circumvent federal immigration law" "blatantly violated Mohawk policy," the company terminated him. *Ibid.*

As these events were unfolding in the *Williams* case, discovery was underway in Carpenter's case. Carpenter filed a motion to compel Mohawk to produce information concerning his meeting with retained counsel and the company's termination decision. Mohawk maintained that the requested information was protected by the attorney-client privilege.

The District Court agreed that the privilege applied to the requested information, but it granted Carpenter's motion to compel disclosure after concluding that Mohawk had implicitly waived the privilege through its representations in the *Williams* case. See App. to Pet. for Cert. 51a. The court declined to certify its order for interlocutory appeal under 28 U. S. C. § 1292(b). But, recognizing "the seriousness of its [waiver] finding," it stayed its ruling to allow Mohawk to explore other potential "avenues to appeal . . . , such as a

petition for mandamus or appealing this Order under the collateral order doctrine." App. to Pet. for Cert. 52a.

Mohawk filed a notice of appeal and a petition for a writ of mandamus to the Eleventh Circuit. The Court of Appeals dismissed the appeal for lack of jurisdiction under 28 U. S. C. § 1291, holding that the District Court's ruling did not qualify as an immediately appealable collateral order within the meaning of *Cohen*, 337 U. S. 541. "Under *Cohen*," the Court of Appeals explained, "an order is appealable if it (1) conclusively determines the disputed question; (2) resolves an important issue completely separate from the merits of the action; and (3) is effectively unreviewable on appeal from a final judgment." 541 F. 3d 1048, 1052 (2008) *(per curiam)*. According to the court, the District Court's waiver ruling satisfied the first two of these requirements but not the third, because "a discovery order that implicates the attorney-client privilege" can be adequately reviewed "on appeal from a final judgment." *Ibid.* The Court of Appeals also rejected Mohawk's mandamus petition, finding no "clear usurpation of power or abuse of discretion" by the District Court. *Id.*, at 1055. We granted certiorari, 555 U. S. 1152 (2009), to resolve a conflict among the Circuits concerning the availability of collateral appeals in the attorney-client privilege context.[1]

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[1] Three Circuits have permitted collateral order appeals of attorney-client privilege rulings. See *In re Napster, Inc. Copyright Litigation*, 479 F. 3d 1078, 1087–1088 (CA9 2007); *United States* v. *Philip Morris Inc.*, 314 F. 3d 612, 617–621 (CADC 2003); *In re Ford Motor Co.*, 110 F. 3d 954, 957–964 (CA3 1997). The remaining Circuits to consider the question have found such orders nonappealable. See, *e. g.*, *Boughton* v. *Cotter Corp.*, 10 F. 3d 746, 749–750 (CA10 1993); *Texaco Inc.* v. *Louisiana Land & Exploration Co.*, 995 F. 2d 43, 44 (CA5 1993); *Reise* v. *Board of Regents of Univ. of Wisconsin System*, 957 F. 2d 293, 295 (CA7 1992); *Chase Manhattan Bank, N. A.* v. *Turner & Newall, PLC*, 964 F. 2d 159, 162–163 (CA2 1992); *Quantum Corp.* v. *Tandon Corp.*, 940 F. 2d 642, 643–644 (CA Fed. 1991).

II

A

By statute, courts of appeals "have jurisdiction of appeals from all final decisions of the district courts of the United States, . . . except where a direct review may be had in the Supreme Court." 28 U. S. C. § 1291. A "final decisio[n]" is typically one "by which a district court disassociates itself from a case." *Swint* v. *Chambers County Comm'n*, 514 U. S. 35, 42 (1995). This Court, however, "has long given" § 1291 a "practical rather than a technical construction." *Cohen*, 337 U. S., at 546. As we held in *Cohen*, the statute encompasses not only judgments that "terminate an action," but also a "small class" of collateral rulings that, although they do not end the litigation, are appropriately deemed "final." *Id.*, at 545–546. "That small category includes only decisions that are conclusive, that resolve important questions separate from the merits, and that are effectively unreviewable on appeal from the final judgment in the underlying action." *Swint*, 514 U. S., at 42.

In applying *Cohen*'s collateral order doctrine, we have stressed that it must "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." *Digital Equipment Corp.* v. *Desktop Direct, Inc.*, 511 U. S. 863, 868 (1994) (citation omitted); see also *Will* v. *Hallock*, 546 U. S. 345, 350 (2006) ("emphasizing [the doctrine's] modest scope"). Our admonition reflects a healthy respect for the virtues of the final-judgment rule. Permitting piecemeal, prejudgment appeals, we have recognized, undermines "efficient judicial administration" and encroaches upon the prerogatives of district court judges, who play a "special role" in managing ongoing litigation. *Firestone Tire & Rubber Co.* v. *Risjord*, 449 U. S. 368, 374 (1981); see also *Richardson-Merrell Inc.* v. *Koller*, 472 U. S. 424, 436 (1985) ("[T]he district judge can better exercise [his or her] responsibility [to

police the prejudgment tactics of litigants] if the appellate courts do not repeatedly intervene to second-guess prejudgment rulings").

The justification for immediate appeal must therefore be sufficiently strong to overcome the usual benefits of deferring appeal until litigation concludes. This requirement finds expression in two of the three traditional *Cohen* conditions. The second condition insists upon "*important* questions separate from the merits." *Swint*, 514 U. S., at 42 (emphasis added). More significantly, "the third *Cohen* question, whether a right is 'adequately vindicable' or 'effectively reviewable,' simply cannot be answered without a judgment about the value of the interests that would be lost through rigorous application of a final judgment requirement." *Digital Equipment*, 511 U. S., at 878–879. That a ruling "may burden litigants in ways that are only imperfectly reparable by appellate reversal of a final district court judgment . . . has never sufficed." *Id.*, at 872. Instead, the decisive consideration is whether delaying review until the entry of final judgment "would imperil a substantial public interest" or "some particular value of a high order." *Will*, 546 U. S., at 352–353.

In making this determination, we do not engage in an "individualized jurisdictional inquiry." *Coopers & Lybrand* v. *Livesay*, 437 U. S. 463, 473 (1978). Rather, our focus is on "the entire category to which a claim belongs." *Digital Equipment*, 511 U. S., at 868. As long as the class of claims, taken as a whole, can be adequately vindicated by other means, "the chance that the litigation at hand might be speeded, or a 'particular injustic[e]' averted," does not provide a basis for jurisdiction under § 1291. *Ibid.* (quoting *Van Cauwenberghe* v. *Biard*, 486 U. S. 517, 529 (1988); alteration in original).

B

In the present case, the Court of Appeals concluded that the District Court's privilege-waiver order satisfied the first

two conditions of the collateral order doctrine—conclusiveness and separateness—but not the third—effective unreviewability. Because we agree with the Court of Appeals that collateral order appeals are not necessary to ensure effective review of orders adverse to the attorney-client privilege, we do not decide whether the other *Cohen* requirements are met.

Mohawk does not dispute that "we have generally denied review of pretrial discovery orders." *Firestone*, 449 U. S., at 377; see also 15B C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 3914.23, p. 123 (2d ed. 1992) (hereinafter Wright & Miller) ("[T]he rule remains settled that most discovery rulings are not final"). Mohawk contends, however, that rulings implicating the attorney-client privilege differ in kind from run-of-the-mill discovery orders because of the important institutional interests at stake. According to Mohawk, the right to maintain attorney-client confidences—the *sine qua non* of a meaningful attorney-client relationship—is "irreparably destroyed absent immediate appeal" of adverse privilege rulings. Brief for Petitioner 23.

We readily acknowledge the importance of the attorney-client privilege, which "is one of the oldest recognized privileges for confidential communications." *Swidler & Berlin* v. *United States*, 524 U. S. 399, 403 (1998). By assuring confidentiality, the privilege encourages clients to make "full and frank" disclosures to their attorneys, who are then better able to provide candid advice and effective representation. *Upjohn Co.* v. *United States*, 449 U. S. 383, 389 (1981). This, in turn, serves "broader public interests in the observance of law and administration of justice." *Ibid.*

The crucial question, however, is not whether an interest is important in the abstract; it is whether deferring review until final judgment so imperils the interest as to justify the cost of allowing immediate appeal of the entire class of relevant orders. We routinely require litigants to wait until

after final judgment to vindicate valuable rights, including rights central to our adversarial system. See, *e. g.*, *Richardson-Merrell*, 472 U. S., at 426 (holding an order disqualifying counsel in a civil case did not qualify for immediate appeal under the collateral order doctrine); *Flanagan* v. *United States*, 465 U. S. 259, 260 (1984) (reaching the same result in a criminal case, notwithstanding the Sixth Amendment rights at stake). In *Digital Equipment*, we rejected an assertion that collateral order review was necessary to promote "the public policy favoring voluntary resolution of disputes." 511 U. S., at 881. "It defies common sense," we explained, "to maintain that parties' readiness to settle will be significantly dampened (or the corresponding public interest impaired) by a rule that a district court's decision to let allegedly barred litigation go forward may be challenged as a matter of right only on appeal from a judgment for the plaintiff's favor." *Ibid.*

We reach a similar conclusion here. In our estimation, postjudgment appeals generally suffice to protect the rights of litigants and ensure the vitality of the attorney-client privilege. Appellate courts can remedy the improper disclosure of privileged material in the same way they remedy a host of other erroneous evidentiary rulings: by vacating an adverse judgment and remanding for a new trial in which the protected material and its fruits are excluded from evidence.

Dismissing such relief as inadequate, Mohawk emphasizes that the attorney-client privilege does not merely "prohibi[t] use of protected information at trial"; it provides a "right not to disclose the privileged information in the first place." Brief for Petitioner 25. Mohawk is undoubtedly correct that an order to disclose privileged information intrudes on the confidentiality of attorney-client communications. But deferring review until final judgment does not meaningfully reduce the *ex ante* incentives for full and frank consultations between clients and counsel.

One reason for the lack of a discernible chill is that, in deciding how freely to speak, clients and counsel are unlikely to focus on the remote prospect of an erroneous disclosure order, let alone on the timing of a possible appeal. Whether or not immediate collateral order appeals are available, clients and counsel must account for the possibility that they will later be required by law to disclose their communications for a variety of reasons—for example, because they misjudged the scope of the privilege, because they waived the privilege, or because their communications fell within the privilege's crime-fraud exception. Most district court rulings on these matters involve the routine application of settled legal principles. They are unlikely to be reversed on appeal, particularly when they rest on factual determinations for which appellate deference is the norm. See, *e. g.*, *Richardson-Merrell*, 472 U. S., at 434 ("Most pretrial orders of district judges are ultimately affirmed by appellate courts"); *Reise* v. *Board of Regents*, 957 F. 2d 293, 295 (CA7 1992) (noting that "almost all interlocutory appeals from discovery orders would end in affirmance" because "the district court possesses discretion, and review is deferential"). The breadth of the privilege and the narrowness of its exceptions will thus tend to exert a much greater influence on the conduct of clients and counsel than the small risk that the law will be misapplied.[2]

Moreover, were attorneys and clients to reflect upon their appellate options, they would find that litigants confronted with a particularly injurious or novel privilege ruling have several potential avenues of review apart from collateral order appeal. First, a party may ask the district court to certify, and the court of appeals to accept, an interlocutory appeal pursuant to 28 U. S. C. § 1292(b). The preconditions for § 1292(b) review—"a controlling question of law," the

[2] Perhaps the situation would be different if district courts were systematically underenforcing the privilege, but we have no indication that this is the case.

prompt resolution of which "may materially advance the ultimate termination of the litigation"—are most likely to be satisfied when a privilege ruling involves a new legal question or is of special consequence, and district courts should not hesitate to certify an interlocutory appeal in such cases. Second, in extraordinary circumstances—*i. e.*, when a disclosure order "amount[s] to a judicial usurpation of power or a clear abuse of discretion," or otherwise works a manifest injustice—a party may petition the court of appeals for a writ of mandamus. *Cheney* v. *United States Dist. Court for D. C.*, 542 U. S. 367, 390 (2004) (citation and internal quotation marks omitted); see also *Firestone*, 449 U. S., at 378–379, n. 13.[3] While these discretionary review mechanisms do not provide relief in every case, they serve as useful "safety valve[s]" for promptly correcting serious errors. *Digital Equipment*, 511 U. S., at 883.

Another long-recognized option is for a party to defy a disclosure order and incur court-imposed sanctions. District courts have a range of sanctions from which to choose, including "directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action," "prohibiting the disobedient party from supporting or opposing designated claims or defenses," or "striking pleadings in whole or in part." Fed. Rules Civ. Proc. 37(b)(2)(A)(i)–(iii). Such sanctions allow a party to obtain postjudgment review without having to reveal its privileged information. Alternatively, when the circumstances warrant it, a district court may hold a noncomplying party in contempt. The party can then appeal directly from that ruling, at least when the contempt citation can be characterized as a criminal punishment. See, *e. g.*, *Church of Scientology of Cal.* v. *United States*, 506 U. S. 9, 18, n. 11 (1992); *Firestone*, 449 U. S., at 377; *Cobbledick* v. *United States*, 309

[3] Mohawk itself petitioned the Eleventh Circuit for a writ of mandamus. See *supra*, at 105. It has not asked us to review the Court of Appeals' denial of that relief.

U. S. 323, 328 (1940); see also Wright & Miller § 3914.23, at 140–155.

These established mechanisms for appellate review not only provide assurances to clients and counsel about the security of their confidential communications; they also go a long way toward addressing Mohawk's concern that, absent collateral order appeals of adverse attorney-client privilege rulings, some litigants may experience severe hardship. Mohawk is no doubt right that an order to disclose privileged material may, in some situations, have implications beyond the case at hand. But the same can be said about many categories of pretrial discovery orders for which collateral order appeals are unavailable. As with these other orders, rulings adverse to the privilege vary in their significance; some may be momentous, but others are more mundane. Section 1292(b) appeals, mandamus, and appeals from contempt citations facilitate immediate review of some of the more consequential attorney-client privilege rulings. Moreover, protective orders are available to limit the spillover effects of disclosing sensitive information. That a fraction of orders adverse to the attorney-client privilege may nevertheless harm individual litigants in ways that are "only imperfectly reparable" does not justify making all such orders immediately appealable as of right under § 1291. *Digital Equipment*, 511 U. S., at 872.

In short, the limited benefits of applying "the blunt, categorical instrument of § 1291 collateral order appeal" to privilege-related disclosure orders simply cannot justify the likely institutional costs. *Id.*, at 883. Permitting parties to undertake successive, piecemeal appeals of all adverse attorney-client rulings would unduly delay the resolution of district court litigation and needlessly burden the courts of appeals. See Wright & Miller § 3914.23, at 123 ("Routine appeal from disputed discovery orders would disrupt the orderly progress of the litigation, swamp the courts of appeals, and substantially reduce the district court's ability to con-

trol the discovery process"); cf. *Cunningham* v. *Hamilton County*, 527 U. S. 198, 209 (1999) (expressing concern that allowing immediate appeal as of right from orders fining attorneys for discovery violations would result in "the very sorts of piecemeal appeals and concomitant delays that the final judgment rule was designed to prevent"). Attempting to downplay such concerns, Mohawk asserts that the three Circuits in which the collateral order doctrine currently applies to adverse privilege rulings have seen only a trickle of appeals. But this may be due to the fact that the practice in all three Circuits is relatively new and not yet widely known. Were this Court to approve collateral order appeals in the attorney-client privilege context, many more litigants would likely choose that route. They would also likely seek to extend such a ruling to disclosure orders implicating many other categories of sensitive information, raising an array of line-drawing difficulties.[4]

C

In concluding that sufficiently effective review of adverse attorney-client privilege rulings can be had without resort to the *Cohen* doctrine, we reiterate that the class of collaterally appealable orders must remain "narrow and selective in its membership." *Will*, 546 U. S., at 350. This admonition has acquired special force in recent years with the enactment of legislation designating rulemaking, "not expansion by court decision," as the preferred means for determining whether and when prejudgment orders should be immediately appealable. *Swint*, 514 U. S., at 48. Specifically, Congress in 1990 amended the Rules Enabling Act, 28 U. S. C. § 2071 *et seq.*, to authorize this Court to adopt rules "defin[ing]

[4] Participating as *amicus curiae* in support of respondent Carpenter, the United States contends that collateral order appeals should be available for rulings involving certain governmental privileges "in light of their structural constitutional grounding under the separation of powers, relatively rare invocation, and unique importance to governmental functions." Brief for United States 28. We express no view on that issue.

when a ruling of a district court is final for the purposes of appeal under section 1291." § 2072(c). Shortly thereafter, and along similar lines, Congress empowered this Court to "prescribe rules, in accordance with [§ 2072], to provide for an appeal of an interlocutory decision to the courts of appeals that is not otherwise provided for under [§ 1292]." § 1292(e). These provisions, we have recognized, "warran[t] the Judiciary's full respect." *Swint*, 514 U. S., at 48; see also *Cunningham*, 527 U. S., at 210.

Indeed, the rulemaking process has important virtues. It draws on the collective experience of bench and bar, see 28 U. S. C. § 2073, and it facilitates the adoption of measured, practical solutions. We expect that the combination of standard postjudgment appeals, § 1292(b) appeals, mandamus, and contempt appeals will continue to provide adequate protection to litigants ordered to disclose materials purportedly subject to the attorney-client privilege. Any further avenue for immediate appeal of such rulings should be furnished, if at all, through rulemaking, with the opportunity for full airing it provides.

* * *

In sum, we conclude that the collateral order doctrine does not extend to disclosure orders adverse to the attorney-client privilege. Effective appellate review can be had by other means. Accordingly, we affirm the judgment of the Court of Appeals for the Eleventh Circuit.

It is so ordered.

JUSTICE THOMAS, concurring in part and concurring in the judgment.

I concur in the judgment and in Part II–C of the Court's opinion because I wholeheartedly agree that "Congress's designation of the rulemaking process as the way to define or refine when a district court ruling is 'final' and when an interlocutory order is appealable warrants the Judiciary's

full respect." *Swint* v. *Chambers County Comm'n*, 514 U. S. 35, 48 (1995); *ante*, at 114 (quoting *Swint*, *supra;* citing *Cunningham* v. *Hamilton County*, 527 U. S. 198, 210 (1999)). It is for that reason that I do not join the remainder of the Court's analysis.

The scope of federal appellate jurisdiction is a matter the Constitution expressly commits to Congress, see Art. I, § 8, cl. 9, and that Congress has addressed not only in 28 U. S. C. §§ 1291 and 1292, but also in the Rules Enabling Act amendments to which the Court refers. See *ante*, at 113–114 (citing §§ 2072–2073). The Court recognizes that these amendments "designat[e] rulemaking, 'not expansion by court decision,' as the preferred means for determining whether and when prejudgment orders should be immediately appealable." *Ante*, at 113 (quoting *Swint*, *supra*, at 48). Because that designation is entitled to our full respect, and because the privilege order here is not on all fours with orders we previously have held to be appealable under the collateral order doctrine, see *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U. S. 541 (1949), I would affirm the Eleventh Circuit's judgment on the ground that any "avenue for immediate appeal" beyond the three avenues addressed in the Court's opinion must be left to the "rulemaking process." *Ante*, at 114; see *ante*, at 110–113 (discussing certification under 28 U. S. C. § 1292(b), petitions for mandamus, and appeals from contempt orders).

We need not, and in my view should not, further justify our holding by applying the *Cohen* doctrine, which prompted the rulemaking amendments in the first place. In taking this path, the Court needlessly perpetuates a judicial policy that we for many years have criticized and struggled to limit. See, *e. g.*, *Ashcroft* v. *Iqbal*, 556 U. S. 662, 671–675 (2009); *Will* v. *Hallock*, 546 U. S. 345, 349 (2006); *Sell* v. *United States*, 539 U. S. 166, 177 (2003); *Cunningham*, *supra*, at 210; *Digital Equipment Corp.* v. *Desktop Direct, Inc.*, 511 U. S. 863, 884 (1994); *Swint*, *supra*, at 48; *Lauro Lines s.r.l.* v.

Chasser, 490 U. S. 495, 498–501 (1989); *Van Cauwenberghe* v. *Biard*, 486 U. S. 517, 527 (1988). The Court's choice of analysis is the more ironic because applying *Cohen* to the facts of this case requires the Court to reach conclusions on, and thus potentially prejudice, the very matters it says would benefit from "the collective experience of bench and bar" and the "opportunity for full airing" that rulemaking provides. *Ante*, at 114.

"Finality as a condition of review is an historic characteristic of federal appellate procedure" that was incorporated in the first Judiciary Act and that Congress itself has "departed from only when observance of it would practically defeat the right to any review at all." *Cobbledick* v. *United States*, 309 U. S. 323, 324–325 (1940). Until 1949, this Court's view of the appellate jurisdiction statute reflected this principle and the statute's text. See, *e. g.*, *Catlin* v. *United States*, 324 U. S. 229, 233 (1945) (holding that § 128 of the Judicial Code (now 28 U. S. C. § 1291) limits review to decisions that "en[d] the litigation on the merits and leav[e] nothing for the court to do but execute the judgment"). *Cohen* changed all that when it announced that a "small class" of collateral orders that do not meet the statutory definition of finality nonetheless may be immediately appealable if they satisfy certain criteria that show they are "too important to be denied review." 337 U. S., at 546.

Cohen and the early decisions applying it allowed § 1291 appeals of interlocutory orders concerning the posting of a bond, see *id.*, at 545–547, the attachment of a vessel in admiralty, see *Swift & Co. Packers* v. *Compania Colombiana Del Caribe, S. A.*, 339 U. S. 684, 688–689 (1950), and the imposition of notice costs in a class action, see *Eisen* v. *Carlisle & Jacquelin*, 417 U. S. 156, 170–172 (1974). As the Court's opinion notes, later decisions sought to narrow *Cohen* lest its exception to § 1291 "'swallow'" the final judgment rule. *Ante*, at 106 (quoting *Digital Equipment*, *supra*, at 868); see generally *Coopers & Lybrand* v. *Livesay*, 437 U. S. 463, 467–

468 (1978). The Court has adhered to that narrowing approach, principally by raising the bar on what types of interests are "important enough" to justify collateral order appeals. See, *e. g.*, *Will*, *supra*, at 352–353 (explaining that an interlocutory order typically will be "important" enough to justify *Cohen* review only where "some particular value of a high order," such as "honoring the separation of powers, preserving the efficiency of government . . . , [or] respecting a State's dignitary interests," is "marshaled in support of the interest in avoiding trial" and the Court determines that denying review would "imperil" that interest); *Digital Equipment*, *supra*, at 878–879 (noting that appealability under *Cohen* turns on a "judgment about the value of the interests that would be lost through rigorous application of a final judgment requirement," and that an interest "qualifies as 'important' in *Cohen*'s sense" if it is "weightier than the societal interests advanced by the ordinary operation of final judgment principles"). As we recognized last Term, however, our attempts to contain the *Cohen* doctrine have not all been successful or persuasive. See *Ashcroft*, *supra*, at 672 ("As a general matter, the collateral-order doctrine may have expanded beyond the limits dictated by its internal logic and the strict application of the criteria set out in *Cohen*"). In my view, this case presents an opportunity to improve our approach.

The privilege interest at issue here is undoubtedly important, both in its own right and when compared to some of the interests (*e. g.*, in bond and notice-cost rulings) we have held to be appealable under *Cohen*. Accordingly, the Court's *Cohen* analysis does not rest on the privilege order's relative unimportance, but instead on its effective reviewability after final judgment. *Ante*, at 108–113. Although I agree with the Court's ultimate conclusion, I see two difficulties with this approach. First, the Court emphasizes that the alternative avenues of review it discusses (which did not prove adequate in this case) would be adequate where the privilege

ruling at issue is "particularly injurious or novel." *Ante*, at 110. If that is right, and it seems to me that it is, then the opinion raises the question why such avenues were not also adequate to address the orders whose unusual importance or particularly injurious nature we have held *justified* immediate appeal under *Cohen*. See, *e. g.*, *Sell*, 539 U. S., at 177. Second, the facts of this particular case seem in several respects to undercut the Court's conclusion that the benefits of collateral order review "cannot justify the likely institutional costs." *Ante*, at 112.* The Court responds that these case-specific arguments miss the point because the focus of the *Cohen* analysis is whether the "entire category" or "class of claims" at issue merits appellate review under the collateral order doctrine. *Ante*, at 107 (internal quotation marks omitted). That is exactly right, and illustrates what increasingly has bothered me about making this kind of appealability determination via case-by-case adjudication. The exercise forces the reviewing court to subordinate the realities of each case before it to generalized conclusions about the "likely" costs and benefits of allowing an exception to the final judgment rule in an entire "class of cases." The Court concedes that Congress, which holds the constitutional reins in this area, has determined that such value judgments

*The Court concludes, for example, that in most cases final judgment review of an erroneous privilege ruling will suffice to vindicate the injured party's rights because the appellate court can vacate the adverse judgment and remand for a new trial in which the protected material is excluded. *Ante*, at 109. But this case appears to involve one of the (perhaps rare) situations in which final judgment review might not be sufficient because it is a case in which the challenged order already has had "implications beyond the case at hand," namely, in the separate class action in *Williams* v. *Mohawk Indus., Inc.*, No. 4:04–CV–00003–HLM (ND Ga.). *Ante*, at 112. The Court also concludes that the "likely institutional costs" of allowing collateral order review would outweigh its benefits because, *inter alia*, such review would "needlessly burden the courts of appeals." *Ibid.* But as the Court concedes, it must speculate on this point because the three Circuits that allow *Cohen* appeals of privilege rulings have not been overwhelmed. See *ante*, at 113.

are better left to the "collective experience of bench and bar" and the "opportunity for full airing" that rulemaking provides. *Ante*, at 114. This determination is entitled to our full respect, in deed as well as in word. Accordingly, I would leave the value judgments the Court makes in its opinion to the rulemaking process, and in so doing take this opportunity to limit—effectively, predictably, and in a way we should have done long ago—the doctrine that, with a sweep of the Court's pen, subordinated what the appellate jurisdiction statute says to what the Court thinks is a good idea.

Syllabus

McDANIEL, WARDEN, ET AL. *v.* BROWN

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

No. 08–559. Decided January 11, 2010

Jackson v. *Virginia*, 443 U. S. 307, 324, entitles a state prisoner to habeas relief if a federal judge finds that "upon the record evidence adduced at the trial no rational trier of fact could have found proof of guilt beyond a reasonable doubt." A Nevada jury convicted respondent of rape based on DNA evidence matching his DNA and ample physical and other evidence of his guilt. After the state courts denied relief on direct appeal and in postconviction proceedings, respondent filed this federal habeas petition, claiming that the evidence was insufficient to convict him and that the Nevada Supreme Court's rejection of this claim was both contrary to, and an unreasonable application of, *Jackson*. Relying on the "Mueller Report" prepared by respondent's DNA expert over 11 years after the trial—which suggested that the State's DNA expert, Renee Romero, had committed the so-called "prosecutor's fallacy" by mischaracterizing the probability that someone from the general population would share respondent's DNA, and that she had underestimated the likelihood that one of respondent's brothers would also match the DNA at the crime scene—the District Court granted relief on the *Jackson* claim. The Ninth Circuit affirmed.

Held:

1. Because the trial record includes both the DNA evidence and other convincing evidence of guilt, the lower federal courts clearly misapplied *Jackson*. Pp. 127–134.

(a) The two inaccuracies on which this case turns are Romero's commission of the prosecutor's fallacy and her underestimate of the likelihood of a DNA match with one of respondent's brothers. Pp. 127–130.

(b) The Ninth Circuit's analysis failed to preserve "the factfinder's role as weigher of the evidence" by reviewing "*all of the evidence* . . . in the light most favorable to the prosecution," *Jackson*, *supra*, at 319, and it further erred in finding that the Nevada Supreme Court's resolution of the *Jackson* claim was objectively unreasonable. A reviewing court must consider all of the evidence admitted at trial when considering a *Jackson* claim, and ample DNA and non-DNA evidence in the trial record supported the jury's guilty verdict under *Jackson*. Even assuming that the Court of Appeals could have considered the Mueller Report in the context of a *Jackson* claim, the report provided

no warrant for entirely excluding the DNA evidence or Romero's testimony from that court's consideration. The report did not contest that the DNA evidence matched respondent, and a rational jury could consider that evidence to be powerful evidence of guilt. Furthermore, the Ninth Circuit's discussion of the non-DNA evidence departed from the deferential review demanded by *Jackson* and 28 U. S. C. § 2254(d)(1), which permits a federal habeas court to set aside a state-court decision only if it is "an unreasonable application of . . . clearly established Federal law." While the Ninth Circuit acknowledged that it must review the evidence in the light most favorable to the prosecution, its recitation of inconsistencies in the testimony shows it failed to do that. Although the court's *Jackson* analysis relied substantially upon the State's post-conviction concession that there was insufficient evidence to convict respondent absent the DNA findings, the concession posited a situation in which there was no DNA evidence at all, not one in which some testimony regarding such evidence was called into question. Pp. 130–134.

2. Respondent's claim that the admission of Romero's inaccurate DNA testimony denied him a fair trial under *Manson* v. *Brathwaite*, 432 U. S. 98, 114, is forfeited because he makes it for the first time in his brief on the merits in this Court. Pp. 134–136.

525 F. 3d 787, reversed and remanded.

PER CURIAM.

In *Jackson* v. *Virginia*, 443 U. S. 307 (1979), we held that a state prisoner is entitled to habeas corpus relief if a federal judge finds that "upon the record evidence adduced at the trial no rational trier of fact could have found proof of guilt beyond a reasonable doubt." *Id.*, at 324. A Nevada jury convicted respondent of rape; the evidence presented included DNA evidence matching respondent's DNA profile. Nevertheless, relying upon a report prepared by a DNA expert over 11 years after the trial, the Federal District Court applied the *Jackson* standard and granted the writ. A divided Court of Appeals affirmed. *Brown* v. *Farwell*, 525 F. 3d 787 (CA9 2008). We granted certiorari to consider whether those courts misapplied *Jackson*. Because the trial record includes both the DNA evidence and other convincing evidence of guilt, we conclude that they clearly did.

Per Curiam

I

Around 1 a.m. on January 29, 1994, 9-year-old Jane Doe was brutally raped in the bedroom of her trailer. Respondent Troy Brown was convicted of the crime. During and since his trial, respondent has steadfastly maintained his innocence.[1] He was, however, admittedly intoxicated when the crime occurred, and after he awoke on the following morning he told a friend "'he wished that he could remember what did go on or what went on.'" App. 309.

Troy and his brother Travis resided near Jane Doe in the same trailer park. Their brother Trent and his wife Raquel lived in the park as well, in a trailer across the street from Jane Doe's. Both Troy and Trent were acquainted with Jane Doe's family; Troy had visited Jane Doe's trailer several times. Jane did not know Travis. The evening of the attack, Jane's mother, Pam, took Jane to Raquel and Trent's trailer to babysit while the three adults went out for about an hour. Raquel and Trent returned at about 7:30 p.m. and took Jane home at about 9:30 p.m. Pam stayed out and ended up drinking and playing pool with Troy at a nearby bar called the Peacock Lounge. Troy knew that Jane and her 4-year-old sister were home alone because he answered the phone at the bar when Jane called for her mother earlier that evening.

Troy consumed at least 10 shots of vodka followed by beer chasers, and was so drunk that he vomited on himself while he was walking home after leaving the Peacock at about 12:15 a.m. Jane called her mother to report the rape at approximately 1 a.m. Although it would have taken a sober man less than 15 minutes to walk home, Troy did not arrive at his trailer until about 1:30 a.m. He was wearing dark jeans, a cowboy hat, a black satin jacket, and boots. Two

[1] He denied involvement when a police officer claimed (wrongly) that the police had found his fingerprints in Jane's bedroom, and he even denied involvement when the sentencing judge told him that acceptance of responsibility would garner him leniency.

witnesses saw a man dressed in dark jeans, a cowboy hat, and a black satin jacket stumbling in the road between the two trailers shortly after 1 a.m.

The bedroom where the rape occurred was dark, and Jane was unable to conclusively identify her assailant. When asked whom he reminded her of, she mentioned both Troy and his brother Trent. Several days after the rape, she identified a man she saw on television (Troy) as her assailant but then stated that the man who had sent flowers attacked her. It was Trent and Raquel who had sent her flowers, not Troy. She was unable to identify Troy as her assailant out of a photo lineup, and she could not identify her assailant at trial. The night of the rape, however, she said her attacker was wearing dark jeans, a black jacket with a zipper, boots, and a watch. She also vividly remembered that the man "stunk real, real bad" of "cologne, or some beer or puke or something." *Id.*, at 172–173.

Some evidence besides Jane's inconsistent identification did not inculpate Troy. Jane testified that she thought she had bitten her assailant, but Troy did not have any bite marks on his hands when examined by a police officer approximately four hours after the attack. Jane stated that her assailant's jacket had a zipper (Troy's did not) and that he wore a watch (Troy claimed he did not). Additionally, there was conflicting testimony as to when Troy left the Peacock and when Pam received Jane's call reporting the rape. The witnesses who saw a man stumbling between the two trailers reported a bright green logo on the back of the jacket, but Troy's jacket had a yellow and orange logo. Finally, because Jane thought she had left a night light on when she went to bed, the police suspected the assailant had turned off the light. The only usable fingerprint taken from the light did not match Troy's, and the police did not find Troy's fingerprints in the trailer.

Other physical evidence, however, pointed to Troy. The police recovered semen from Jane's underwear and from the

rape kit. The State's expert, Renee Romero, tested the former and determined that the DNA matched Troy's and that the probability another person from the general population would share the same DNA (the "random match probability") was only 1 in 3 million. Troy's counsel did not call his own DNA expert at trial, although he consulted with an expert in advance who found no problems with Romero's test procedures. At some time before sentencing, Troy's family had additional DNA testing done. That testing showed semen taken from the rape kit matched Troy's DNA, with a random match probability of 1 in 10,000.

The jury found Troy guilty of sexual assault and sentenced him to life with the possibility of parole after 10 years.[2] On direct appeal, the Nevada Supreme Court considered Troy's claim that his conviction was not supported by sufficient evidence, analyzing "whether the jury, acting reasonably, could have been convinced of [Troy's] guilt beyond a reasonable doubt." *Brown* v. *Nevada*, 113 Nev. 275, 285, 934 P. 2d 235, 241 (1997) *(per curiam)*. The court rejected the claim, summarizing the evidence of guilt as follows:

> "Testimony indicated that Troy left the bar around 12:15 a.m., that Troy lived relatively close to the bar, and that Troy lived very close to Jane Doe. Troy had enough

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[2] Under Nevada law at the time of the trial, the jury, rather than the judge, imposed the sentence for a sexual assault crime if it found the assault resulted in substantial bodily harm. Nev. Rev. Stat. Ann. § 200.366(3) (Michie 1992). For an assault resulting in substantial bodily harm, the jury had the option of sentencing Troy to life without the possibility of parole or to life with eligibility for parole after 10 years. § 200.366(2)(a). The jury elected the more lenient sentence. The judge sentenced Troy to life with the possibility of parole after 10 years on a second count of sexual assault, to run consecutively. The Nevada Supreme Court reversed Troy's conviction for one count of child abuse on double jeopardy grounds, and ordered resentencing on the second sexual assault count. *Brown* v. *Nevada*, 113 Nev. 275, 934 P. 2d 235 (1997) *(per curiam)*. On resentencing, the judge imposed the same sentence as before.

> time to get from the bar to Jane Doe's house and to assault Jane Doe before she made the telephone call to her mother at approximately 1:00 a.m. While Jane Doe could not identify her assailant, her description of his clothing was similar to what Troy was wearing; she also said that her assailant smelled like beer or vomit and testimony indicated that Troy had been drinking beer and had vomited several times that night. Furthermore, testimony indicated that Troy got home at approximately 1:30 a.m., which gave him enough time to assault Jane Doe. Additionally, [witnesses] testified that they saw someone resembling Troy in a black jacket and black hat stumbling in the road near Jane Doe's house at 1:05 a.m. Troy also washed his pants and shirt when he got home, arguably to remove the blood evidence from his clothes. Finally, the DNA evidence indicated that semen collected from Jane Doe's underwear matched Troy's and that only 1 in 3,000,000 other people had matching DNA (the second DNA test indicated that 1 in 10,000 people had matching DNA)." *Ibid.*, 934 P. 2d, at 241–242.

Respondent also argued on appeal that the trial court erred in failing to conduct a pretrial hearing to determine whether the DNA evidence was reliable. The court found respondent had not raised this issue in the trial court and concluded there was no plain error in the trial court's failure to conduct a hearing. *Id.*, at 284, 934 P. 2d, at 241.

In 2001, respondent sought state postconviction relief, claiming, *inter alia*, that his trial counsel was constitutionally ineffective for failing to object to the admission of the DNA evidence. He argued that there were a number of foundational problems with the DNA evidence, and that if trial counsel had objected, the evidence would have been excluded or at least its importance diminished. He noted that because trial counsel "totally failed to challenge the DNA evidence in the case," counsel "failed to preserve valid issues

for appeal." App. 1101. The state postconviction court denied relief, *id.*, at 1489–1499, and the Nevada Supreme Court affirmed, judgt. order reported at 119 Nev. 797, 130 P. 3d 673 (2003).

Respondent thereafter filed this federal habeas petition, claiming there was insufficient evidence to convict him on the sexual assault charges and that the Nevada Supreme Court's rejection of his claim was both contrary to, and an unreasonable application of, *Jackson*. He did not bring a typical *Jackson* claim, however. Rather than argue that the totality of the evidence admitted against him at trial was constitutionally insufficient, he argued that some of the evidence should be excluded from the *Jackson* analysis. In particular, he argued that Romero's testimony related to the DNA evidence was inaccurate and unreliable in two primary respects: Romero mischaracterized the random match probability and misstated the probability of a DNA match among his brothers. Absent that testimony, he contended, there was insufficient evidence to convict him.

In support of his claim regarding the accuracy of Romero's testimony, respondent submitted a report prepared by Laurence Mueller, a professor in ecology and evolutionary biology (Mueller Report). The District Court supplemented the record with the Mueller Report, even though it was not presented to any state court, because "the thesis of the report was argued during post-conviction." *Brown* v. *Farwell*, No. 3:03–cv–00712–PMP–VPC, 2006 WL 6181129, *5, n. 2 (D Nev., Dec. 14, 2006).

Relying upon the Mueller Report, the District Court set aside the "unreliable DNA testimony" and held that without the DNA evidence "a reasonable doubt would exist in the mind of any rational trier of fact." *Id.*, at *7. The court granted respondent habeas relief on his *Jackson* claim.[3]

[3] The District Court also granted habeas relief on respondent's claim that he was denied effective assistance of counsel with respect to his attorney's handling of the DNA evidence and failure to adequately investigate

The Ninth Circuit affirmed. 525 F. 3d 787. The court held the Nevada Supreme Court had unreasonably applied *Jackson*. 525 F. 3d, at 798; see 28 U. S. C. § 2254(d)(1). The Court of Appeals first reasoned "the admission of Romero's unreliable and misleading testimony violated Troy's due process rights," so the District Court was correct to exclude it. 525 F. 3d, at 797. It then "weighed the sufficiency of the remaining evidence," including the District Court's "catalogu[e] [of] the numerous inconsistencies that would raise a reasonable doubt as to Troy's guilt in the mind of any rational juror." *Ibid.* In light of the "stark" conflicts in the evidence and the State's concession that there was insufficient evidence absent the DNA evidence, the court held it was objectively unreasonable for the Nevada Supreme Court to reject respondent's insufficiency-of-the-evidence claim. *Id.*, at 798.

We granted certiorari, 555 U. S. 1152 (2009), to consider two questions: the proper standard of review for a *Jackson* claim on federal habeas, and whether such a claim may rely upon evidence outside the trial record that goes to the reliability of trial evidence.

II

Respondent's claim has now crystallized into a claim about the import of two specific inaccuracies in the testimony related to the DNA evidence, as indicated by the Mueller Report. The Mueller Report does not challenge Romero's qualifications as an expert or the validity of any of the tests that she performed. Mueller instead contends that Romero committed the so-called "prosecutor's fallacy" and that she underestimated the probability of a DNA match between respondent and one of his brothers.

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the victim's stepfather as an alternative suspect. *Brown* v. *Farwell*, No. 3:03–cv–00712–PMP–VPC, 2006 WL 6181129, *9–*10 (D Nev., Dec. 14, 2006). The Court of Appeals did not consider those claims on appeal, and they are not now before us.

The prosecutor's fallacy is the assumption that the random match probability is the same as the probability that the defendant was not the source of the DNA sample. See Nat. Research Council, Comm. on DNA Forensic Science, The Evaluation of Forensic DNA Evidence 133 (1996) ("Let P equal the probability of a match, given the evidence genotype. The fallacy is to say that P is also the probability that the DNA at the crime scene came from someone other than the defendant"). In other words, if a juror is told the probability a member of the general population would share the same DNA is 1 in 10,000 (random match probability), and he takes that to mean there is only a 1 in 10,000 chance that someone other than the defendant is the source of the DNA found at the crime scene (source probability), then he has succumbed to the prosecutor's fallacy. It is further error to equate source probability with probability of guilt, unless there is no explanation other than guilt for a person to be the source of crime-scene DNA. This faulty reasoning may result in an erroneous statement that, based on a random match probability of 1 in 10,000, there is a 0.01% chance the defendant is innocent or a 99.99% chance the defendant is guilty.

The Mueller Report does not dispute Romero's opinion that only 1 in 3 million people would have the same DNA profile as the rapist. Mueller correctly points out, however, that some of Romero's testimony—as well as the prosecutor's argument—suggested that the evidence also established that there was only a 0.000033% chance that respondent was innocent. The State concedes as much. Brief for Petitioners 54. For example, the prosecutor argued at closing the jury could be "99.999967 percent sure" in this case. App. 730. And when the prosecutor asked Romero, in a classic example of erroneously equating source probability with random match probability, whether "it [would] be fair to say . . . that the chances that the DNA found in the panties—the semen

in the panties—and the blood sample, the likelihood that it is not Troy Brown would be .000033," *id.*, at 460, Romero ultimately agreed that it was "not inaccurate" to state it that way, *id.*, at 461–462.

Looking at Romero's testimony as a whole, though, she also indicated that she was merely accepting the mathematical equivalence between 1 in 3 million and the percentage figure. At the end of the colloquy about percentages, she answered affirmatively the court's question whether the percentage was "the same math just expressed differently." *Id.*, at 462. She pointed out that the probability a brother would match was greater than the random match probability, which also indicated to the jury that the random match probability is not the same as the likelihood that someone other than Troy was the source of the DNA.

The Mueller Report identifies a second error in Romero's testimony: her estimate of the probability that one or more of Troy's brothers' DNA would match. Romero testified there was a 1 in 6,500 (or 0.02%) probability that one brother would share the same DNA with another. *Id.*, at 469, 472. When asked whether "that change[s] at all with two brothers," she answered no. *Id.*, at 472. According to Mueller, Romero's analysis was misleading in two respects. First, she used an assumption regarding the parents under which siblings have the lowest chance of matching that is biologically possible, but even under this stingy assumption she reported the chance of two brothers matching (1 in 6,500) as much lower than it is (1 in 1,024 under her assumption). Second, using the assumptions Mueller finds more appropriate, the probability of a single sibling matching respondent is 1 in 263, the probability that among two brothers one or more would match is 1 in 132, and among four brothers it is 1 in 66. *Id.*, at 1583.

In sum, the two inaccuracies upon which this case turns are testimony equating random match probability with source probability, and an underestimate of the likelihood

that one of Troy's brothers would also match the DNA left at the scene.

III

Although we granted certiorari to review respondent's *Jackson* claim, the parties now agree that the Court of Appeals' resolution of his claim under *Jackson* was in error. See Brief for Respondent 2–3; Reply Brief for Petitioners 1. Indeed, respondent argues the Court of Appeals did not decide his case under *Jackson* at all, but instead resolved the question whether admission of Romero's inaccurate testimony rendered his trial fundamentally unfair and then applied *Jackson* to determine whether that error was harmless.

Although both petitioners and respondent are now aligned on the same side of the questions presented for our review, the case is not moot because "the parties continue to seek different relief" from this Court. *Pacific Bell Telephone Co.* v. *linkLine Communications, Inc.*, 555 U. S. 438, 446 (2009). Respondent primarily argues that we affirm on his proposed alternative ground or remand to the Ninth Circuit for analysis of his due process claim under the standard for harmless error of *Brecht* v. *Abrahamson*, 507 U. S. 619 (1993). The State, on the other hand, asks us to reverse. Respondent and one *amicus* have also suggested that we dismiss the case as improvidently granted, Brief for National Association of Criminal Defense Lawyers as *Amicus Curiae* 27–28, but we think prudential concerns favor our review of the Court of Appeals' application of *Jackson*. Cf. *Pacific Bell*, *supra*, at 447.

Respondent no longer argues it was proper for the District Court to admit the Mueller Report for the purpose of evaluating his *Jackson* claim, Brief for Respondent 35, and concedes the "purpose of a *Jackson* analysis is to determine whether the jury acted in a rational manner in returning a guilty verdict based on the evidence before it, not whether improper evidence violated due process," *id.*, at 2. There has been no suggestion that the evidence adduced at trial

was insufficient to convict unless some of it was excluded. Respondent's concession thus disposes of his *Jackson* claim. The concession is also clearly correct. An "appellate court's reversal for insufficiency of the evidence is in effect a determination that the government's case against the defendant was so lacking that the trial court should have entered a judgment of acquittal." *Lockhart* v. *Nelson,* 488 U. S. 33, 39 (1988). Because reversal for insufficiency of the evidence is equivalent to a judgment of acquittal, such a reversal bars a retrial. See *Burks* v. *United States,* 437 U. S. 1, 18 (1978). To "make the analogy complete" between a reversal for insufficiency of the evidence and the trial court's granting a judgment of acquittal, *Lockhart,* 488 U. S., at 42, "a reviewing court must consider all of the evidence admitted by the trial court," regardless of whether that evidence was admitted erroneously, *id.,* at 41.

Respondent therefore correctly concedes that a reviewing court must consider all of the evidence admitted at trial when considering a *Jackson* claim. Even if we set that concession aside, however, and assume that the Court of Appeals could have considered the Mueller Report in the context of a *Jackson* claim, the court made an egregious error in concluding the Nevada Supreme Court's rejection of respondent's insufficiency-of-the-evidence claim "involved an unreasonable application of . . . clearly established Federal law," 28 U. S. C. § 2254(d)(1).[4]

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[4] The Court of Appeals also clearly erred in concluding the Nevada Supreme Court's decision was "contrary to" *Jackson.* The Court of Appeals held the Nevada Supreme Court's decision was "contrary to" *Jackson* because the Nevada court stated a standard that turns on a "reasonable" jury, not a "rational" one, and that assesses whether the jury could have been convinced of a defendant's guilt, rather than whether it could have been convinced of each element of the crime. *Brown* v. *Farwell,* 525 F. 3d 787, 794–795 (CA9 2008). It is of little moment that the Nevada Supreme Court analyzed whether a "reasonable" jury could be convinced of guilt beyond a reasonable doubt, rather than asking whether a "rational" one could be convinced of each element of guilt; a *reasonable* jury could hardly

Even if the Court of Appeals could have considered it, the Mueller Report provided no warrant for entirely excluding the DNA evidence or Romero's testimony from that court's consideration. The Report did not contest that the DNA evidence matched Troy. That DNA evidence remains powerful inculpatory evidence even though the State concedes Romero overstated its probative value by failing to dispel the prosecutor's fallacy. And Mueller's claim that Romero used faulty assumptions and underestimated the probability of a DNA match between brothers indicates that two experts do not agree with one another, not that Romero's estimates were unreliable.[5]

Mueller's opinion that "the chance that among four brothers one or more would match is 1 in 66," App. 1583, is substantially different from Romero's estimate of a 1 in 6,500 chance that one brother would match. But even if Romero's estimate is wrong, our confidence in the jury verdict is not undermined. First, the estimate that is more pertinent to this case is 1 in 132—the probability of a match among two brothers—because two of Troy's four brothers lived in Utah. Second, although Jane Doe mentioned Trent as her assailant, and Travis lived in a nearby trailer, the evidence indicates that both (unlike Troy) were sober and went to bed early on the night of the crime. Even under Mueller's odds, a rational jury could consider the DNA evidence to be powerful evidence of guilt.

Furthermore, the Court of Appeals' discussion of the non-DNA evidence departed from the deferential review that *Jackson* and § 2254(d)(1) demand. A federal habeas court

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be convinced of guilt unless it found each element satisfied beyond a reasonable doubt.

[5] The State has called our attention to cases in which courts have criticized opinions rendered by Professor Mueller in the past. See Brief for Petitioners 53–54. We need not pass on the relative credibility of the two experts because even assuming that Mueller's estimate is correct, respondent's claim fails.

can only set aside a state-court decision as "an unreasonable application of . . . clearly established Federal law," § 2254(d)(1), if the state court's application of that law is "objectively unreasonable," *Williams* v. *Taylor*, 529 U. S. 362, 409 (2000). And *Jackson* requires a reviewing court to review the evidence "in the light most favorable to the prosecution." 443 U. S., at 319. Expressed more fully, this means a reviewing court "faced with a record of historical facts that supports conflicting inferences must presume—even if it does not affirmatively appear in the record—that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution." *Id.*, at 326; see also *Schlup* v. *Delo*, 513 U. S. 298, 330 (1995) ("The *Jackson* standard . . . looks to whether there is sufficient evidence which, if credited, could support the conviction"). The Court of Appeals acknowledged that it must review the evidence in the light most favorable to the prosecution, but the court's recitation of inconsistencies in the testimony shows it failed to do that.

For example, the court highlights conflicting testimony regarding when Troy left the Peacock. 525 F. 3d, at 797. It is true that if a juror were to accept the testimony of one bartender that Troy left the bar at 1:30 a.m., then Troy would have left the bar after the attack occurred. Yet the jury could have credited a different bartender's testimony that Troy left the Peacock at around 12:15 a.m. Resolving the conflict in favor of the prosecution, the jury must have found that Troy left the bar in time to be the assailant. It is undisputed that Troy washed his clothes immediately upon returning home. The court notes this is "plausibly consistent with him being the assailant" but also that he provided an alternative reason for washing his clothes. *Ibid.* Viewed in the light most favorable to the prosecution, the evidence supports an inference that Troy washed the clothes immediately to clean blood from them.

To be sure, the court's *Jackson* analysis relied substantially upon a concession made by the State in state postconviction proceedings that "absent the DNA findings, there was insufficient evidence to convict [Troy] of the crime." App. 1180. But that concession posited a situation in which there was no DNA evidence at all,[6] not a situation in which some pieces of testimony regarding the DNA evidence were called into question. In sum, the Court of Appeals' analysis failed to preserve "the factfinder's role as weigher of the evidence" by reviewing "*all of the evidence* . . . in the light most favorable to the prosecution," *Jackson*, *supra*, at 319, and it further erred in finding that the Nevada Supreme Court's resolution of the *Jackson* claim was objectively unreasonable.

IV

Resolution of the *Jackson* claim does not end our consideration of this case because respondent asks us to affirm on an alternative ground. He contends the two errors "in describing the statistical meaning" of the DNA evidence rendered his trial fundamentally unfair and denied him due process of law. Brief for Respondent 4. Because the Ninth Circuit held that "the admission of Romero's unreliable and misleading testimony violated [respondent's] due process rights," 525 F. 3d, at 797, and in respondent's view merely applied *Jackson* (erroneously) to determine whether that error was harmless, he asks us to affirm the judgment below on the basis of what he calls his "DNA due process" claim, Brief for Respondent 35.

As respondent acknowledges, in order to prevail on this claim, he would have to show that the state court's adjudica-

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[6] The concession was made in the context of proceedings in which respondent argued that competent counsel would have objected to the admissibility of the DNA evidence on a number of grounds—including Romero's qualifications, chain-of-custody problems, and failure to follow the proper testing protocol—and might have successfully excluded the DNA evidence altogether. See App. 1099–1100.

tion of the claim was "contrary to, or involved an unreasonable application of, clearly established Federal law." 28 U. S. C. § 2254(d)(1). The clearly established law he points us to is *Manson* v. *Brathwaite*, 432 U. S. 98, 114 (1977), in which we held that when the police have used a suggestive eyewitness identification procedure, "reliability is the linchpin in determining" whether an eyewitness identification may be admissible, with reliability determined according to factors set out in *Neil* v. *Biggers*, 409 U. S. 188 (1972). Respondent argues that the admission of the inaccurate DNA testimony violated *Brathwaite* because the testimony was "identification testimony," 432 U. S., at 114, was "unnecessarily suggestive," *id.*, at 113, and was unreliable.

Respondent has forfeited this claim, which he makes for the very first time in his brief on the merits in this Court. Respondent did not present his new "DNA due process" claim in his federal habeas petition, but instead consistently argued that Romero's testimony should be excluded from the *Jackson* analysis simply because it was "unreliable" and that the due process violation occurred because the remaining evidence was insufficient to convict. See App. to Pet. for Cert. 157a ("[Respondent] asserts . . . that the DNA evidence was unreliable and should not have been admitted at his trial. If so, then, . . . the state presented insufficient evidence at trial to prove [respondent] guilty"). In the Ninth Circuit, too, respondent presented only his *Jackson* claim,[7] and it is, at the least, unclear whether respondent presented his newly

[7] The Court of Appeals did reason that Romero's testimony must be excluded from the *Jackson* analysis on due process grounds. 525 F. 3d, at 797. But that decision was inextricably intertwined with the claim respondent did make in his federal habeas petition under *Jackson*. It is clear the Ninth Circuit was never asked to consider—and did not pass upon—the question whether the Nevada Supreme Court entered a decision on direct appeal that was contrary to or an unreasonable application of *Manson* v. *Brathwaite*, 432 U. S. 98 (1977), or any other clearly established law regarding due process other than *Jackson*.

minted due process claim in the state courts.[8] Recognizing that his *Jackson* claim cannot prevail, respondent tries to rewrite his federal habeas petition. His attempt comes too late, however, and he cannot now start over.

* * *

We have stated before that "DNA testing can provide powerful new evidence unlike anything known before." *District Attorney's Office for Third Judicial Dist.* v. *Osborne*, 557 U. S. 52, 62 (2009). Given the persuasiveness of such evidence in the eyes of the jury, it is important that it be presented in a fair and reliable manner. The State acknowledges that Romero committed the prosecutor's fallacy, Brief for Petitioners 54, and the Mueller Report suggests that Romero's testimony may have been inaccurate regarding the likelihood of a match with one of respondent's brothers. Regardless, ample DNA and non-DNA evidence in the record adduced at trial supported the jury's guilty verdict under *Jackson*, and we reject respondent's last minute attempt to recast his claim under *Brathwaite*. The Court of Appeals did not consider, however, the ineffective-assistance claims on which the District Court also granted respondent habeas relief. Accordingly, 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.

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[8] The State contends the claim is either not exhausted or procedurally defaulted. The State has objected from the beginning that respondent did not raise a due process claim regarding the reliability of the DNA evidence in state court. See App. to Pet. for Cert. 182a–183a. Respondent consistently answered the State's exhaustion objection by arguing he presented his *Jackson* claim in the Nevada Supreme Court. See App. 1521–1526. The Ninth Circuit held respondent exhausted his *insufficiency* claim. 525 F. 3d, at 793. The court had no occasion to consider whether respondent exhausted any due process claim other than his *Jackson* claim.

JUSTICE THOMAS, with whom JUSTICE SCALIA joins, concurring.

I join the *per curiam* because it correctly holds that the Ninth Circuit erred in departing from *Jackson*'s mandate that a federal habeas court confine its sufficiency-of-the-evidence analysis to "the evidence adduced at trial" and, specifically, to "'all of the evidence admitted by the trial court.'" *Ante*, at 130, 131 (quoting *Lockhart* v. *Nelson*, 488 U. S. 33, 41 (1988)); see *Jackson* v. *Virginia*, 443 U. S. 307 (1979). I write separately because I disagree with the Court's decision to complicate its analysis with an extensive discussion of the Mueller Report. See *ante*, at 127–132. Defense counsel commissioned that report 11 years after respondent's trial. See *ante*, at 121. Accordingly, the report's attacks on the State's DNA testimony were not part of the trial evidence and have no place in the *Jackson* inquiry. See *Jackson*, *supra*, at 318; *Lockhart*, *supra*, at 40–42. That is all we need or should say about the report in deciding this case.

The Court's opinion demonstrates as much. The Court's lengthy discussion of the Mueller Report, see *ante*, at 127–130, is merely a predicate to asserting that "even if" the Court of Appeals could have considered the report in its *Jackson* analysis, the report "provided no warrant for entirely excluding the DNA evidence or Romero's testimony from that court's consideration" because the report "did not contest that the DNA evidence matched Troy" or otherwise show that the State's DNA estimates were "unreliable," *ante*, at 132. Based on these observations, the Court concludes that the Mueller Report did not undermine the State's DNA tests as "powerful inculpatory evidence." *Ibid.* That is true, but even if the report had completely undermined the DNA evidence—which the Ninth Circuit may have mistakenly believed it did, see *Brown* v. *Farwell*, 525 F. 3d 787, 795–796 (2008)—the panel still would have erred in considering the report to resolve respondent's *Jackson* claim. The reason, as the Court reaffirms, is that *Jackson* claims must

be decided solely on the evidence adduced at trial. See *ante*, at 131. Accordingly, the Court need not correct any erroneous impressions the Ninth Circuit may have had concerning the report's impact on the State's DNA evidence to resolve respondent's *Jackson* claim.* Because that is the only claim properly before us, I do not join the Court's dicta about how the Mueller Report's findings could affect a constitutional analysis to which we have long held such post-trial evidence does not apply. See *Jackson*, *supra*, at 318.

*Correcting the Ninth Circuit's apparent misconception of the effects of the Mueller Report is the only plausible reason for the Court's decision to explain that the report would not have undermined the State's DNA results "even if" the Court of Appeals could have considered it in resolving respondent's *Jackson* claim. *Ante*, at 131–132. That discussion cannot properly be read to suggest either that there are circumstances in which post-trial evidence would "warrant" excluding DNA trial evidence from a *Jackson* analysis, *ante*, at 132, or that courts applying *Jackson* may consider post-trial evidence for any other purpose. Both points are squarely foreclosed by the precedents on which the Court relies in reversing the Ninth Circuit's judgment. See *ante*, at 121 (citing *Jackson* v. *Virginia*, 443 U. S. 307, 324 (1979)); *ante*, at 131 (citing *Lockhart* v. *Nelson*, 488 U. S. 33, 39 (1988)), respectively.

Syllabus

SMITH, WARDEN *v.* SPISAK

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

No. 08–724. Argued October 13, 2009—Decided January 12, 2010

After the Ohio courts sentenced respondent Spisak to death and denied his claims on direct appeal and collateral review, he filed a federal habeas petition claiming that, at his trial's penalty phase, (1) the instructions and verdict forms unconstitutionally required the jury to consider in mitigation *only* those factors that it *unanimously* found to be mitigating, see *Mills* v. *Maryland*, 486 U. S. 367, and (2) his counsel's inadequate closing argument deprived him of effective assistance of counsel, see *Strickland* v. *Washington*, 466 U. S. 668. The District Court denied the petition, but the Sixth Circuit accepted both arguments and ordered relief.

Held:

1. Because the state court's upholding of the mitigation jury instructions and forms was not "contrary to, or . . . an unreasonable application of, clearly established Federal law, as determined by [this] Court," 28 U. S. C. § 2254(d)(1), the Sixth Circuit was barred from reaching a contrary decision. The Court of Appeals erred in holding that the instructions and forms contravened *Mills*, in which this Court held that the jury instructions and verdict forms at issue violated the Constitution because, read naturally, they told the jury that it could not find a particular circumstance to be mitigating unless all 12 jurors agreed that the mitigating circumstance had been proved to exist, 486 U. S., at 380–381, 384. Even assuming that *Mills* sets forth the pertinent "clearly established Federal law" for reviewing the state-court decision in this case, the instructions and forms used here differ significantly from those in *Mills:* They made clear that, to recommend a death sentence, the jury had to find unanimously that each of the aggravating factors outweighed any mitigating circumstances, but they did not say that the jury had to determine the existence of each individual mitigating factor unanimously. Nor did they say anything about how—or even whether—the jury should make individual determinations that each particular mitigating circumstance existed. They focused only on the overall question of balancing the aggravating and mitigating factors, and they repeatedly told the jury to consider all relevant evidence. Thus, the instructions and verdict forms did not clearly bring about, either through what they said or what they implied, the constitutional error in the *Mills* instructions. Pp. 143–149.

Syllabus

2. Similarly, the state-court decision rejecting Spisak's ineffective-assistance-of-counsel claim was not "contrary to, or . . . an unreasonable application" of, the law "clearly established" in *Strickland.* § 2254(d)(1). To prevail on this claim, Spisak must show, *inter alia*, that there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, *supra*, at 694. Even assuming that the closing argument was inadequate in the respects claimed by Spisak, this Court finds no "reasonable probability" that a better closing argument without these defects would have made a significant difference. Any different, more adequate closing argument would have taken place in the following context: Spisak's defense at the trial's guilt phase consisted of an effort by counsel to show that Spisak was not guilty by reason of insanity. Counsel, apparently hoping to demonstrate Spisak's mentally defective condition, called him to the stand, where he freely admitted committing three murders and two other shootings and repeatedly expressed an intention to commit further murders if given the opportunity. In light of this background and for the following reasons, the assumed closing argument deficiencies do not raise the requisite reasonable probability of a different result but for the deficient closing. First, since the sentencing phase took place immediately after the guilt phase, the jurors had fresh in their minds the government's extensive and graphic evidence regarding the killings, Spisak's boastful and unrepentant confessions, and his threats to commit further violent acts. Second, although counsel did not summarize the mitigating evidence in great detail, he did refer to it, and the defense experts' more detailed testimony regarding Spisak's mental illness was also fresh in the jurors' minds. Third, Spisak does not describe what other mitigating factors counsel might have mentioned; all those he proposes essentially consist of aspects of the "mental defect" factor that the defense experts described. Finally, in light of counsel's several appeals to the jurors' sense of humanity, it is unlikely that a more explicit or elaborate appeal for mercy could have changed the result, either alone or together with the foregoing circumstances. The Court need not reach Spisak's claim that § 2254(d)(1) does not apply to his claim, because it would reach the same conclusion even on *de novo* review. Pp. 149–156.

512 F. 3d 852, reversed.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, THOMAS, GINSBURG, ALITO, and SOTOMAYOR, JJ., joined, and in which STEVENS, J., joined as to Part III. STEVENS, J., filed an opinion concurring in part and concurring in the judgment, *post*, p. 156.

Richard Cordray, Attorney General of Ohio, argued the cause for petitioner. With him on the briefs were *Benjamin C. Mizer*, Solicitor General, *Alexandra T. Schimmer*, Chief Deputy Solicitor General, and *Kimberly A. Olson* and *David M. Lieberman*, Deputy Solicitors.

Michael J. Benza, by appointment of the Court, 557 U. S. 965, argued the cause for respondent. With him on the brief was *Alan Rossman.**

JUSTICE BREYER delivered the opinion of the Court.

Frank G. Spisak, Jr., the respondent, was convicted in an Ohio trial court of three murders and two attempted murders. He was sentenced to death. He filed a habeas corpus petition in federal court, claiming that constitutional errors occurred at his trial. First, Spisak claimed that the jury instructions at the penalty phase unconstitutionally required the jury to consider in mitigation *only* those factors that the jury *unanimously* found to be mitigating. See *Mills* v. *Maryland*, 486 U. S. 367 (1988). Second, Spisak claimed that he suffered significant harm as a result of his counsel's inadequate closing argument at the penalty phase of the proceeding. See *Strickland* v. *Washington*, 466 U. S. 668 (1984). The Federal Court of Appeals accepted these argu-

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*A brief of *amici curiae* urging reversal was filed for the Commonwealth of Pennsylvania et al. by *Thomas W. Corbett, Jr.*, Attorney General of Pennsylvania, and *Amy Zapp*, Chief Deputy Attorney General, by *Richard S. Gebelein*, Chief Deputy Attorney General of Delaware, and by the Attorneys General for their respective States as follows: *Troy King* of Alabama, *Terry Goddard* of Arizona, *Edmund G. Brown, Jr.*, of California, *John Suthers* of Colorado, *Lawrence G. Wasden* of Idaho, *Lisa Madigan* of Illinois, *Steve Six* of Kansas, *Jack Conway* of Kentucky, *Steve Bullock* of Montana, *Catherine Cortez Masto* of Nevada, *W. A. Drew Edmondson* of Oklahoma, *Henry D. McMaster* of South Carolina, *Lawrence E. Long* of South Dakota, *Greg Abbott* of Texas, *Mark L. Shurtleff* of Utah, *William C. Mims* of Virginia, and *Bruce A. Salzburg* of Wyoming.

Roy T. Englert, Jr., filed a brief for Steven Lubet et al. as *amici curiae.*

ments and ordered habeas relief. We now reverse the Court of Appeals.

I

In 1983, an Ohio jury convicted Spisak of three murders and two attempted murders at Cleveland State University in 1982. The jury recommended, and the judge imposed, a death sentence. The Ohio courts denied Spisak's claims, both on direct appeal and on collateral review. *State* v. *Spisak*, 36 Ohio St. 3d 80, 521 N. E. 2d 800 (1988) *(per curiam); State* v. *Spisak*, No. 67229, 1995 WL 229108 (Ohio App., 8th Dist., Cuyahoga Cty., Apr. 13, 1995); *State* v. *Spisak*, 73 Ohio St. 3d 151, 652 N. E. 2d 719 (1995) *(per curiam).*

Spisak then sought a federal writ of habeas corpus. Among other claims, he argued that the sentencing phase of his trial violated the U. S. Constitution for the two reasons we consider here. The District Court denied his petition. *Spisak* v. *Coyle*, Case No. 1:95CV2675 (ND Ohio, Apr. 18, 2003), App. to Pet. for Cert. 95a. But the Court of Appeals accepted Spisak's two claims, namely, his mitigation instruction claim and his ineffective-assistance-of-counsel claim. *Spisak* v. *Mitchell*, 465 F. 3d 684, 703–706, 708–711 (CA6 2006). The Court of Appeals consequently ordered the District Court to issue a conditional writ of habeas corpus forbidding Spisak's execution. *Id.*, at 715–716.

The State of Ohio then sought certiorari in this Court. We granted the petition and vacated the Court of Appeals' judgment. *Hudson* v. *Spisak*, 552 U. S. 945 (2007). We remanded the case for further consideration in light of two recent cases in which this Court had held that lower federal courts had not properly taken account of the deference federal law grants state-court determinations on federal habeas review. *Ibid.;* see 28 U. S. C. § 2254(d); *Carey* v. *Musladin*, 549 U. S. 70 (2006); *Schriro* v. *Landrigan*, 550 U. S. 465 (2007). On remand, the Sixth Circuit reinstated its earlier

opinion. *Spisak* v. *Hudson*, 512 F. 3d 852, 853–854 (2008). The State again sought certiorari. We again granted the petition. And we now reverse.

II

Spisak's first claim concerns the instructions and verdict forms that the jury received at the sentencing phase of his trial. The Court of Appeals held the sentencing instructions unconstitutional because, in its view, the instructions, taken together with the forms, "require[d]" juror "unanimity as to the presence of a mitigating factor"—contrary to this Court's holding in *Mills* v. *Maryland*, *supra*. 465 F. 3d, at 708. Since the parties do not dispute that the Ohio courts "adjudicated" this claim, *i. e.*, they considered and rejected it "on the merits," the law permits a federal court to reach a contrary decision only if the state-court decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U. S. C. § 2254(d)(1). Unlike the Court of Appeals, we conclude that Spisak's claim does not satisfy this standard.

The parties, like the Court of Appeals, assume that *Mills* sets forth the pertinent "clearly established Federal law." While recognizing some uncertainty as to whether *Mills* was "clearly *established* Federal law" for the purpose of reviewing the Ohio Supreme Court's opinion, we shall assume the same. Compare *Williams* v. *Taylor*, 529 U. S. 362, 390 (2000) (STEVENS, J., for the Court) (applicable date for purposes of determining whether "Federal law" is "established" is when the "state-court conviction became final"), with *id.*, at 412 (O'Connor, J., for the Court) (applicable date is "the time of the relevant state-court decision"); see *State* v. *Spisak*, 36 Ohio St. 3d 80, 521 N. E. 2d 800 (decided Apr. 13, 1988), cert. denied, 489 U. S. 1071 (decided Mar. 6, 1989); *Mills* v. *Maryland*, *supra* (decided June 6, 1988).

A

The rule the Court set forth in *Mills* is based on two well-established principles. First, the Constitution forbids imposition of the death penalty if the sentencing judge or jury is "'"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."'" 486 U. S., at 374 (quoting *Eddings* v. *Oklahoma*, 455 U. S. 104, 110 (1982), in turn quoting *Lockett* v. *Ohio*, 438 U. S. 586, 604 (1978) (plurality opinion)). Second, the sentencing judge or jury "'may not refuse to consider *or be precluded from considering* "any relevant mitigating evidence."'" *Mills*, 486 U. S., at 374–375 (quoting *Skipper* v. *South Carolina*, 476 U. S. 1, 4 (1986), in turn quoting *Eddings*, *supra*, at 114).

Applying these principles, the Court held that the jury instructions and verdict forms at issue in the case violated the Constitution because, read naturally, they told the jury that it could not find a particular circumstance to be mitigating unless all 12 jurors agreed that the mitigating circumstance had been proved to exist. *Mills*, 486 U. S., at 380–381, 384. If, for example, the defense presents evidence of three potentially mitigating considerations, some jurors may believe that only the first is mitigating, some only the second, and some only the third. But if even *one* of the jurors believes that one of the three mitigating considerations exists, but that he is barred from considering it because the other jurors disagree, the Court held, the Constitution forbids imposition of the death penalty. See *id.*, at 380, 384; see also *McKoy* v. *North Carolina*, 494 U. S. 433, 442–443 (1990) ("*Mills* requires that each juror be permitted to consider and give effect to . . . all mitigating evidence in deciding . . . whether aggravating circumstances outweigh mitigating circumstances . . . "). Because the instructions in *Mills* would have led a reasonable juror to believe the contrary,

the Court held that the sentencing proceeding violated the Constitution. 486 U. S., at 374–375.

B

In evaluating the Court of Appeals' determination here, we have examined the jury instructions and verdict forms at issue in *Mills* and compared them with those used in the present case. In the *Mills* sentencing phase, the trial judge instructed the jury to fill out a verdict form that had three distinct parts. Section I set forth a list of 10 specific aggravating circumstances next to which were spaces where the jury was to mark "yes" or "no." Just above the list, the form said:

> "Based upon the evidence we *unanimously* find that each of the following aggravating circumstances which is marked 'yes' has been proven . . . and each aggravating circumstance which is marked 'no' has not been proven . . . ." *Id.*, at 384–385 (emphasis added; internal quotation marks omitted).

Section II set forth a list of eight potentially mitigating circumstances (seven specific circumstances and the eighth designated as "other") next to which were spaces where the jury was to mark "yes" or "no." Just above the list the form said:

> "Based upon the evidence we *unanimously* find that each of the following mitigating circumstances which is marked 'yes' has been proven to exist . . . and each mitigating circumstance marked 'no' has not been proven . . . ." *Id.*, at 387 (emphasis added; internal quotation marks omitted).

Section III set forth the overall balancing question, along with spaces for the jury to mark "yes" or "no." It said:

> "Based on the evidence we *unanimously* find that it has been proven . . . that the mitigating circumstances

> marked 'yes' in Section II outweigh the aggravating circumstances marked 'yes' in Section I." *Id.*, at 388–389 (emphasis added; internal quotation marks omitted).

Explaining the forms, the judge instructed the jury with an example. He told the jury that it should mark "'yes'" on the jury form if it "'unanimously'" concluded that an aggravating circumstance had been proved. *Id.*, at 378. Otherwise, he said, "'of course you must answer no.'" *Ibid.* (emphasis deleted). These instructions, together with the forms, told the jury to mark "yes" on Section II's list of mitigating factors only if the jury unanimously concluded that the particular mitigating factor had been proved, and to consider in its weighing analysis in Section III only those mitigating factors marked "yes" in Section II. Thus, as this Court found, the jury was instructed that it could consider in the ultimate weighing of the aggravating and mitigating evidence only the mitigating factors that the jury had *unanimously* found to exist. See *id.*, at 380–381.

The instructions and jury forms in this case differ significantly from those in *Mills.* The trial judge instructed the jury that the aggravating factors it would consider were the specifications that the jury had found proved beyond a reasonable doubt at the guilt phase of the trial—essentially, that each murder was committed in a course of conduct including the other crimes, and, for two of the murders, that the murder was committed with the intent to evade apprehension or punishment for another offense. 8 Tr. 2967–2972 (July 19, 1983).

He then explained the concept of a "mitigating factor." After doing so, he listed examples, including that "the defendant because of a mental disease or defect . . . lacked substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law." *Id.*, at 2972–2973. The court also told the jury that it could take account of "any other" mitigating consideration it found "relevant to the issue of whether the defendant

should be sentenced to death." *Id.*, at 2973. And he instructed the jury that the State bore the burden of proving beyond a reasonable doubt that the aggravating circumstances outweighed the mitigating factors. *Id.*, at 2965.

With respect to "the procedure" by which the jury should reach its verdict, the judge told the jury only the following:

> "[Y]ou, the trial jury, must consider all of the relevant evidence raised at trial, the evidence and testimony received in this hearing and the arguments of counsel. From this you must determine whether, beyond a reasonable doubt, the aggravating circumstances, which [Spisak] has been found guilty of committing in the separate counts are sufficient to outweigh the mitigating factors present in this case.
>
> "If all twelve members of the jury find by proof beyond a reasonable doubt that the aggravating circumstance in each separate count outweighs the mitigating factors, then you must return that finding to the Court.
>
> . . . . .
>
> "On the other hand, if after considering all of the relevant evidence raised at trial, the evidence and the testimony received at this hearing and the arguments of counsel, you find that the State failed to prove beyond a reasonable doubt that the aggravating circumstances which [Spisak] has been found guilty of committing in the separate counts outweigh the mitigating factors, you will then proceed to determine which of two possible life imprisonment sentences to recommend to the Court." *Id.*, at 2973–2975.

The judge gave the jury two verdict forms for each aggravating factor. The first of the two forms said:

> " 'We the jury in this case . . . do find beyond a reasonable doubt that the aggravating circumstance . . . was sufficient to outweigh the mitigating factors present in this case.

> "'We the jury recommend that the sentence of death be imposed . . . .'" *Id.*, at 2975–2976.

The other verdict form read:

> "'We the jury . . . do find that the aggravating circumstances . . . are not sufficient to outweigh the mitigation factors present in this case.
>
> "'We the jury recommend that the defendant . . . be sentenced to life imprisonment . . . .'" *Id.*, at 2976.

The instructions and forms made clear that, to recommend a death sentence, the jury had to find, unanimously and beyond a reasonable doubt, that each of the aggravating factors outweighed any mitigating circumstances. But the instructions did not say that the jury must determine the existence of each individual mitigating factor unanimously. Neither the instructions nor the forms said anything about how—or even whether—the jury should make individual determinations that each particular mitigating circumstance existed. They focused only on the overall balancing question. And the instructions repeatedly told the jury to "conside[r] all of the relevant evidence." *Id.*, at 2974. In our view the instructions and verdict forms did not clearly bring about, either through what they said or what they implied, the circumstance that *Mills* found critical, namely,

> "a substantial possibility that reasonable jurors, upon receiving the judge's instructions in this case, and in attempting to complete the verdict form as instructed, well may have thought they were precluded from considering any mitigating evidence unless all 12 jurors agreed on the existence of a particular such circumstance." 486 U. S., at 384.

We consequently conclude that the state court's decision upholding these forms and instructions was not "contrary to, or . . . an unreasonable application of, clearly established Fed-

eral law, as determined by the Supreme Court of the United States" in *Mills*. 28 U. S. C. § 2254(d)(1).

We add that the Court of Appeals found the jury instructions unconstitutional for an additional reason, that the instructions "require[d] the jury to unanimously reject a death sentence before considering other sentencing alternatives." 465 F. 3d, at 709 (citing *Mapes* v. *Coyle*, 171 F. 3d 408, 416–417 (CA6 1999)). We have not, however, previously held jury instructions unconstitutional for this reason. *Mills* says nothing about the matter. Neither the parties nor the courts below referred to *Beck* v. *Alabama*, 447 U. S. 625 (1980), or identified any other precedent from this Court setting forth this rule. Cf. *Jones* v. *United States*, 527 U. S. 373, 379–384 (1999) (rejecting an arguably analogous claim). But see *post*, at 158–160 (STEVENS, J., concurring in part and concurring in judgment). Whatever the legal merits of the rule or the underlying verdict forms in this case were we to consider them on direct appeal, the jury instructions at Spisak's trial were not contrary to "clearly established Federal law." 28 U. S. C. § 2254(d)(1).

III

Spisak's second claim is that his counsel's closing argument at the sentencing phase of his trial was so inadequate as to violate the Sixth Amendment. To prevail, Spisak must show both that "counsel's representation fell below an objective standard of reasonableness," *Strickland*, 466 U. S., at 688, and that there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different," *id.*, at 694.

The Ohio Supreme Court held that Spisak's claim was "not well-taken on the basis of our review of the record." *State* v. *Spisak*, 36 Ohio St. 3d, at 82, 521 N. E. 2d, at 802 (citing, *inter alia*, *Strickland*, *supra*). The District Court concluded that counsel did a constitutionally adequate job and that "[t]here simply is not a reasonable probability that, ab-

sent counsel's alleged errors, the jury would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." *Spisak* v. *Coyle*, Case No. 1:95CV2675 (ND Ohio, Apr. 18, 2003), App. to Pet. for Cert. 204a. The Court of Appeals, however, reached a contrary conclusion. It held that counsel's closing argument, measured by "'an objective standard of reasonableness,'" was inadequate, and it asserted that "a reasonable probability exists" that adequate representation would have led to a different result. *Spisak* v. *Mitchell*, 465 F. 3d, at 703, 706 (quoting *Strickland*, *supra*, at 688). Responding to the State's petition for certiorari, we agreed to review the Court of Appeals' terse finding of a "reasonable probability" that a more adequate argument would have changed a juror's vote.

In his closing argument at the penalty phase, Spisak's counsel described Spisak's killings in some detail. He acknowledged that Spisak's admiration for Hitler inspired his crimes. He portrayed Spisak as "sick," "twisted," and "demented." 8 Tr. 2896 (July 19, 1983). And he said that Spisak was "never going to be any different." *Ibid.* He then pointed out that all the experts had testified that Spisak suffered from some degree of mental illness. And, after a fairly lengthy and rambling disquisition about his own decisions about calling expert witnesses and preparing them, counsel argued that, even if Spisak was not legally insane so as to warrant a verdict of not guilty by reason of insanity, he nonetheless was sufficiently mentally ill to lessen his culpability to the point where he should not be executed. Counsel also told the jury that, when weighing Spisak's mental illness against the "substantial" aggravating factors present in the case, *id.*, at 2924, the jurors should draw on their own sense of "pride" for living in "a humane society" made up of "a humane people," *id.*, at 2897–2900, 2926–2928. That humanity, he said, required the jury to weigh the evidence "fairly" and to be "loyal to that oath" the jurors had taken to uphold the law. *Id.*, at 2926.

Spisak and his supporting *amici* say that this argument was constitutionally inadequate because: (1) It overly emphasized the gruesome nature of the killings; (2) it overly emphasized Spisak's threats to continue his crimes; (3) it understated the facts upon which the experts based their mental illness conclusions; (4) it said little or nothing about any other possible mitigating circumstance; and (5) it made no explicit request that the jury return a verdict against death.

We assume for present purposes that Spisak is correct that the closing argument was inadequate. We nevertheless find no "reasonable probability" that a better closing argument without these defects would have made a significant difference.

Any different, more adequate closing argument would have taken place in the following context: Spisak admitted that he had committed three murders and two other shootings. Spisak's defense at the guilt phase of the trial consisted of an effort by counsel to show that Spisak was not guilty by reason of insanity. And counsel, apparently hoping to demonstrate Spisak's mentally defective condition, called him to the stand.

Spisak testified that he had shot and killed Horace Rickerson, Timothy Sheehan, and Brian Warford. He also admitted that he had shot and tried to kill John Hardaway, and shot at Coletta Dartt. He committed these crimes, he said, because he was a follower of Adolf Hitler, who was Spisak's "spiritual leader" in a "war" for "survival" of "the Aryan people." 4 *id.*, at 1343–1344, 1396 (July 5, 1983). He said that he had purchased guns and stockpiled ammunition to further this war. *Id.*, at 1406–1408. And he had hoped to "create terror" at Cleveland State University, because it was "one of the prime targets" where the "Jews and the system . . . are brainwashing the youth." *Id.*, at 1426–1428.

Spisak then said that in February 1982 he had shot Rickerson, who was black, because Rickerson had made a sexual advance on Spisak in a university bathroom. He expressed

satisfaction at having "eliminated that particular threat . . . to me and to the white race." 5 *id.*, at 1511 (July 7, 1983). In June he saw a stranger, John Hardaway, on a train platform and shot him seven times because he had been looking for a black person to kill as "blood atonement" for a recent crime against two white women. 4 *id.*, at 1416 (July 5, 1983). He added that he felt "good" after shooting Hardaway because he had "accomplished something," but later felt "[k]ind of bad" when he learned that Hardaway had survived. *Id.*, at 1424–1425. In August 1982, Spisak shot at Coletta Dartt because, he said, he heard her "making some derisive remarks about us," meaning the Nazi Party. *Id.*, at 1432–1435. Later that August, he shot and killed Timothy Sheehan because he "thought he was one of those Jewish professors . . . that liked to hang around in the men's room and seduce and pervert and subvert the young people that go there." 5 *id.*, at 1465–1466 (July 7, 1983). Spisak added that he was "sorry about that" murder because he later learned Sheehan "wasn't Jewish like I thought he was." *Ibid.* And three days later, while on a "search and destroy mission," he shot and killed Brian Warford, a young black man who "looked like he was almost asleep" in a bus shelter, to fulfill his "duty" to "inflict the maximum amount of casualties on the enemies." *Id.*, at 1454–1455, 1478.

Spisak also testified that he would continue to commit similar crimes if he had the chance. He said about Warford's murder that he "didn't want to get caught that time because I wanted to be able to do it again and again and again and again." *Id.*, at 1699 (July 8, 1983). In a letter written to a friend, he called the murders of Rickerson and Warford "the finest thing I ever did in my whole life" and expressed a wish that he "had a human submachine gun right now so I could exterminate" black men "and watch them scream and twitch in agony." *Id.*, at 1724–1725. And he testified that, if he still had his guns, he would escape from jail, "go out and continue the war I started," and "continue to inflict the maxi-

mum amount of damage on the enemies as I am able to do." *Id.*, at 1780–1781.

The State replied by attempting to show that Spisak was lying in his testimony about the Nazi-related motives for these crimes. The State contended instead that the shootings were motivated by less unusual purposes, such as robbery. See *id.*, at 1680, 1816–1818.

The defense effort to show that Spisak was not guilty by reason of insanity foundered when the trial judge refused to instruct the jury to consider that question and excluded expert testimony regarding Spisak's mental state. The defense's expert witness, Dr. Oscar Markey, had written a report diagnosing Spisak as suffering from a "schizotypal personality disorder" and an "atypical psychotic disorder," and as, at times, "unable to control his impulses to assault." 6 *id.*, at 1882–1883, 1992 (July 11, 1983). His testimony was somewhat more ambiguous during a *voir dire*, however. On cross-examination, he conceded that he could not say Spisak failed Ohio's sanity standard at the time of the murders. After Markey made the same concession before the jury, the court granted the prosecution's renewed motion to exclude Markey's testimony and instructed the jury to disregard the testimony that it heard. And the court excluded the defense's proffered reports from other psychologists and psychiatrists who examined Spisak, because none of the reports said that Spisak met the Ohio insanity standard at the time of the crimes. *Id.*, at 1898–1899, 1911–1912, 1995; *id.*, at 2017, 2022 (July 12, 1983).

During the sentencing phase of the proceedings, defense counsel called three expert witnesses, all of whom testified that Spisak suffered from some degree of mental illness. Dr. Sandra McPherson, a clinical psychologist, said that Spisak suffered from schizotypal and borderline personality disorders characterized by bizarre and paranoid thinking, gender identification conflict, and emotional instability. She added that these defects "substantially impair his ability to

conform himself" to the law's requirements. 8 *id.*, at 2428–2429, 2430–2441 (July 16, 1983). Dr. Kurt Bertschinger, a psychiatrist, testified that Spisak suffered from a schizotypal personality disorder and that "mental illness does impair his reason to the extent that he has substantial inability to know wrongfulness, or substantial inability to refrain." *Id.*, at 2552–2556. Dr. Markey, whose testimony had been stricken at the guilt phase, again testified and agreed with the other experts' diagnoses. *Id.*, at 2692–2693, 2712–2713 (July 18, 1983).

In light of this background and for the following reasons, we do not find that the assumed deficiencies in defense counsel's closing argument raise "a reasonable probability that," but for the deficient closing, "the result of the proceeding would have been different." *Strickland*, 466 U. S., at 694. We therefore cannot find the Ohio Supreme Court's decision rejecting Spisak's ineffective-assistance-of-counsel claim to be an "unreasonable application" of the law "clearly established" in *Strickland.* § 2254(d)(1).

First, since the sentencing phase took place immediately following the conclusion of the guilt phase, the jurors had fresh in their minds the government's evidence regarding the killings—which included photographs of the dead bodies, images that formed the basis of defense counsel's vivid descriptions of the crimes—as well as Spisak's boastful and unrepentant confessions and his threats to commit further acts of violence. We therefore do not see how a less descriptive closing argument with fewer disparaging comments about Spisak could have made a significant difference.

Similarly fresh in the jurors' minds was the three defense experts' testimony that Spisak suffered from mental illness. The jury had heard the experts explain the specific facts upon which they had based their conclusions, as well as what they had learned of his family background and his struggles with gender identity. And the jury had heard the experts draw connections between his mental illness and the crimes.

We do not see how it could have made a significant difference had counsel gone beyond his actual argument—which emphasized mental illness as a mitigating factor and referred the jury to the experts' testimony—by repeating the facts or connections that the experts had just described.

Nor does Spisak tell us what other mitigating factors counsel might have mentioned. All those he proposes essentially consist of aspects of the "mental defect" factor that the defense experts described.

Finally, in light of counsel's several appeals to the jurors' sense of humanity—he used the words "humane people" and "humane society" 10 times at various points in the argument—we cannot find that a more explicit or more elaborate appeal for mercy could have changed the result, either alone or together with the other circumstances just discussed. Thus, we conclude that there is not a reasonable probability that a more adequate closing argument would have changed the result, and that the Ohio Supreme Court's rejection of Spisak's claim was not "contrary to, or . . . an unreasonable application of," *Strickland.* 28 U. S. C. § 2254(d)(1).

Spisak contends that the deferential standard of review under § 2254(d)(1) should not apply to this claim because the Ohio Supreme Court may not have reached the question whether counsel's closing argument caused Spisak prejudice. That is, the Ohio Supreme Court's summary rejection of this claim did not indicate whether that court rested its conclusion upon a finding (1) that counsel was not ineffective, or (2) that a better argument would not have made a difference, or (3) both. See *State* v. *Spisak*, 36 Ohio St. 3d, at 82, 521 N. E. 2d, at 802. Spisak argues that, under these circumstances, a federal court should not defer to a state court that may not have decided a question, but instead should decide the matter afresh. Lower federal courts have rejected arguments similar to Spisak's. See, *e. g.*, *Hennon* v. *Cooper*, 109 F. 3d 330, 334–335 (CA7 1997); see also *Weeks* v. *Angelone,* 528 U. S. 225, 231, 237 (2000) (applying the § 2254(d)

standard in case involving a state court's summary denial of a claim, though not a *Strickland* claim, and without full briefing regarding whether or how § 2254(d) applied to a summary decision); *Chadwick* v. *Janecka*, 312 F. 3d 597, 605–606 (CA3 2002) (Alito, J.) (relying on *Weeks* in holding that § 2254(d) applies where a state court denies a claim on the merits without giving any indication how it reached its decision); see generally 2 R. Hertz & J. Liebman, Federal Habeas Corpus Practice and Procedure § 32.2, pp. 1574–1579 (5th ed. 2005 and 2008 Supp.). However, we need not decide whether deference under § 2254(d)(1) is required here. With or without such deference, our conclusion is the same.

For these reasons, the judgment of the Court of Appeals for the Sixth Circuit is reversed.

It is so ordered.

JUSTICE STEVENS, concurring in part and concurring in the judgment.

In my judgment the Court of Appeals correctly concluded that two errors that occurred during Spisak's trial violated clearly established federal law. First, the jury instructions impermissibly required that the jury unanimously reject a death sentence before considering other sentencing options. Second, the closing argument of Spisak's counsel was so egregious that it was constitutionally deficient under any standard. Nevertheless, for the reasons set forth in Part III of the Court's opinion, *ante*, at 151–155, I agree that these errors did not prejudice Spisak and thus he is not entitled to relief.

I

The jury instructions given during Spisak's penalty phase, described in the Court's opinion, *ante*, at 146–148, are fairly read to require the jury first to consider whether the death penalty is warranted—*i. e.*, whether the aggravating factors outweigh the mitigating factors—before moving on to consider whether instead a lesser penalty—*i. e.*, one of two avail-

able life sentences—is appropriate. Consistent with Ohio law at the time of Spisak's trial,[1] the jury was told that it must reach its decision unanimously. The jury was not instructed on the consequence of its failure to agree unanimously that Spisak should be sentenced to death. Spisak and the Court of Appeals both described these instructions as "acquittal first" because they would have led a reasonable jury to believe that it first had to "acquit" the defendant of death—unanimously—before it could give effect to a lesser penalty.

Following its prior decision in *Davis* v. *Mitchell*, 318 F. 3d 682 (CA6 2003), in which it struck down "virtually identical" jury instructions, *Spisak* v. *Mitchell*, 465 F. 3d 684, 710 (CA6 2006), the Court of Appeals concluded that the instructions given during Spisak's penalty phase were impermissible because they "require[d] the jury to unanimously reject a death sentence before considering other sentencing alternatives," *id.*, at 709. In *Davis*, the court had explained that an instruction that requires a capital jury to "first unanimously reject the death penalty before it can consider a life sentence . . . precludes the individual jury from giving effect to mitigating evidence . . . ." 318 F. 3d, at 689. The source

[1] Ohio no longer uses the type of jury instructions at issue in this case. In 1996 the Ohio Supreme Court instructed that "[i]n Ohio, a solitary juror may prevent a death penalty recommendation by finding that the aggravating circumstances in the case do not outweigh the mitigating factors. Jurors from this point forward should be so instructed." *State* v. *Brooks*, 75 Ohio St. 3d 148, 162, 661 N. E. 2d 1030, 1042. Although the *Brooks* decision signaled a change in Ohio's capital jury instructions, it was not a change in state law: One juror had the power to prevent a death penalty recommendation before *Brooks*. See *State* v. *Springer*, 63 Ohio St. 3d 167, 172, 586 N. E. 2d 96, 100 (1992) (holding that an offender must be sentenced to life if the penalty-phase jury deadlocks). Thus, consistent with our view that "accurate sentencing information is an indispensable prerequisite to a [jury's] determination of whether a defendant shall live or die," *Gregg* v. *Georgia*, 428 U. S. 153, 190 (1976) (joint opinion of Stewart, Powell, and STEVENS, JJ.), the Ohio high court laudably improved upon the accuracy of Ohio capital jury instructions in *Brooks*.

of this constitutional infirmity, the court decided, was our decision in *Mills* v. *Maryland*, 486 U. S. 367 (1988). For the reasons cogently examined in the Court's opinion, *ante*, at 145–149, I agree that *Mills* does not clearly establish that the instructions at issue were unconstitutional. But, in my view, our decision in *Beck* v. *Alabama*, 447 U. S. 625 (1980), does.[2]

In *Beck*, we held that the death penalty may not be imposed "when the jury was not permitted to consider a verdict of guilt of a lesser included non-capital offense, and when the evidence would have supported such a verdict." *Id.*, at 627 (internal quotation marks omitted). At that time, the Alabama death penalty statute had been "consistently construed to preclude any lesser included offense instructions in capital cases." *Id.*, at 629, n. 3. Thus, the Alabama jury was "given the choice of either convicting the defendant of the capital crime, in which case it [was] required to impose the death penalty, or acquitting him, thus allowing him to escape all penalties for his alleged participation in the crime." *Id.*, at 628–629. Because of the unique features of Alabama's capital punishment system,[3] Beck's jury believed that either it had to convict Beck, thus sending him to his death, or acquit him, thus setting him free. The jury was not presented with the "third option" of convicting him of a noncapital offense, thus ensuring that he would receive a substantial

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[2] Notably, *Beck* substantially predates Spisak's trial and thus my application of *Beck* obviates any discussion on when federal law is established for Antiterrorism and Effective Death Penalty Act of 1996 purposes, see *ante*, at 143. Regardless, in accordance with the view I expressed in *Williams* v. *Taylor*, 529 U. S. 362, 379–380 (2000) (opinion of STEVENS, J.), I would conclude that our decision in *Mills*, decided before Spisak's conviction became final, is also available to him.

[3] Under Alabama law, the judge conducts a separate penalty-phase proceeding after the jury has returned a conviction on a capital offense. *Beck*, 447 U. S., at 629. Thus, the jury reasonably believed that its verdict would set the defendant's punishment at death.

punishment but not receive the death penalty. *Id.*, at 642. We concluded that the false choice before the jury—death or acquit—"introduce[d] a level of uncertainty and unreliability into the factfinding process that cannot be tolerated in a capital case." *Id.*, at 643. In other words,

> "the difficulty with the Alabama statute is that it interjects irrelevant considerations into the factfinding process, diverting the jury's attention from the central issue of whether the State has satisfied its burden of proving beyond a reasonable doubt that the defendant is guilty of a capital crime. Thus, on the one hand, the unavailability of the third option of convicting on a lesser included offense may encourage the jury to convict for an impermissible reason—its belief that the defendant is guilty of some serious crime and should be punished. On the other hand, the apparently mandatory nature of the death penalty may encourage it to acquit for an equally impermissible reason—that, whatever his crime, the defendant does not deserve death." *Id.*, at 642–643.

Although *Beck* dealt with guilt-phase instructions, the reach of its holding is not so limited. The "third option" we discussed in *Beck* was, plainly, a life sentence. Moreover, the unusual features of the Alabama capital sentencing scheme collapsed the guilt and penalty phases before the jury (but not before the judge). Our concern in *Beck* was that presenting the jury with only two options—death or no punishment—introduced a risk of arbitrariness and error into the deliberative process that the Constitution could not abide in the capital context. See *Spaziano* v. *Florida*, 468 U. S. 447, 455 (1984) ("The goal of the *Beck* rule, in other words, is to eliminate the distortion of the factfinding process that is created when the jury is forced into an all-or-nothing choice between capital murder and innocence"). We held, therefore, that the jury must be given a meaningful opportu-

nity to consider and embrace the equivalent of a life sentence when the evidence supports such an option.

The acquittal-first jury instructions used during Spisak's penalty phase interposed before the jury the same false choice that our holding in *Beck* prohibits. By requiring Spisak's jury to decide first whether the State had met its burden with respect to the death sentence, and to reach that decision unanimously, the instructions deprived the jury of a meaningful opportunity to consider the third option that was before it, namely, a life sentence. Indeed, these instructions are every bit as pernicious as those at issue in *Beck* because they would have led individual jurors (falsely) to believe that their failure to agree might have resulted in a new trial and that, in any event, they could not give effect to their determination that a life sentence was appropriate unless and until they had first convinced each of their peers on the jury to reject the death sentence.

Admittedly, Spisak has never identified *Beck* as the source of the constitutional infirmity at issue in this case, nor did the courts below cite or rely upon it. But Spisak has consistently pressed his argument in terms that are wholly consistent with *Beck*. On direct appeal he contended, for example, that he

> "was severely prejudiced by the erroneous jury forms because the jurors were never informed of what would happen if they were unable to reach a unanimous decision. That may have led to irreparable speculation that if they failed to agree, Frank Spisak would be freed or have a new trial or sentencing hearing. Such improper speculation may have led those not in agreement with death to go along with a majority. The jury should have been instructed that if they were unable to unanimously agree to death they must return a verdict of one of the life sentences or in the alternative, the court would impose a life sentence." Exh. 28D, 16 Record 391 (Merit Brief of Appellant).

The untenable choice Spisak describes is perfectly analogous to the quandary, discussed above, that we described in *Beck*. See also 447 U. S., at 644 ("It is extremely doubtful that juries will understand the full implications of a mistrial or will have any confidence that their choice of the mistrial option will ultimately lead to the right result. Thus, they could have no assurance that a second trial would end in the conviction of the defendant on a lesser included offense" (footnote omitted)). Spisak and the Court of Appeals both correctly assailed the jury instructions at issue in this case, but in my view *Beck* provides the proper basis in clearly established federal law to conclude the instructions were unconstitutional.

II

Petitioner defends Spisak's counsel's closing argument as a reasonable strategic decision "to draw the sting out of the prosecution's argument and gain credibility with the jury by conceding the weaknesses of his own case." Brief for Petitioner 37. I agree that such a strategy is generally a reasonable one and, indeed, was a reasonable strategy under the difficult circumstances of this case. Even Spisak concedes that his counsel "faced an admittedly difficult case in closing argument in the penalty phase." Brief for Respondent 43. But, surely, a strategy can be executed so poorly as to render even the most reasonable of trial tactics constitutionally deficient under *Strickland* v. *Washington*, 466 U. S. 668 (1984). And this is such a case.

It is difficult to convey how thoroughly egregious counsel's closing argument was without reproducing it in its entirety. The Court's assessment of the closing as "lengthy and rambling" and its brief description of its content, see *ante*, at 150, does not accurately capture the catastrophe of counsel's failed strategy. Suffice it to say that the argument shares far more in common with a prosecutor's closing than with a criminal defense attorney's. Indeed, the argument was so outrageous that it would have rightly subjected a prosecutor

to charges of misconduct. See Brief for Steven Lubet et al. as *Amici Curiae* 15–16 (observing that counsel's closing argument "would have been improper even coming from the *prosecutor*"). A few examples are in order.

Presumably to take the "sting" out of the prosecution's case, Brief for Petitioner 37, counsel described his client's acts in vivid detail to the jury:

> "[Y]ou can smell almost the blood. You can smell, if you will, the urine. You are in a bathroom, and it is death, and you can smell the death . . . and you can feel, the loneliness of that railroad platform . . . and we can all know the terror that [the victim] felt when he turned and looked into those thick glasses and looked into the muzzle of a gun that kept spitting out bullets . . . And we can see a relatively young man cut down with so many years to live, and we could remember his widow, and we certainly can remember looking at his children . . . There are too many family albums. There are too many family portraits dated 1982 that have too many empty spaces. And there is too much terror left in the hearts of those that we call lucky."[4] *Spisak* v. *Mitchell*, 465 F. 3d, at 704–705 (internal quotation marks omitted).

Presumably to "gain credibility" with the jury, Brief for Petitioner 37, counsel argued that his client deserved no sympathy for his actions:

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[4] To make matters worse, these graphic and emotionally charged descriptions of Spisak's crimes were irrelevant under state law even for purposes of the State's case for aggravating circumstances. See *State* v. *Wogenstahl*, 75 Ohio St. 3d 344, 356, 662 N. E. 2d 311, 322 (1996) ("[T]he nature and circumstances of the offense may only enter into the statutory weighing process on the side of *mitigation*"); see also *State* v. *Johnson*, 24 Ohio St. 3d 87, 93, 494 N. E. 2d 1061, 1066 (1986) (explaining that statutory aggravating circumstances should be narrowly construed); Ohio Rev. Code Ann. §2929.04(A) (Lexis 2006) (identifying 10 aggravating circumstances but not including heinous circumstances of offense).

> "Sympathy, of course, is not part of your consideration. And even if it was, certainly, don't look to him for sympathy, because he demands none. And, ladies and gentlemen, when you turn and look at Frank Spisak, don't look for good deeds, because he has done none. Don't look for good thoughts, because he has none. He is sick, he is twisted. He is demented, and he is never going to be any different." 465 F. 3d, at 705 (internal quotation marks omitted).

And then the strategy really broke down: At no point did counsel endeavor to direct his negative statements about his client toward an express appeal for leniency.[5] On the contrary, counsel concluded by telling the jury that "whatever you do, we are going to be proud of you," *ibid.* (internal quotation marks omitted), which I take to mean that, in counsel's view, "either outcome, death or life, would be a valid conclusion," *ibid.*

Spisak's crimes, and the seemingly unmitigated hatred motivating their commission, were truly awful. But that does not excuse a lawyer's duty to represent his client within the bounds of prevailing professional norms. The mere fact that counsel, laudably, may have had a "strategy" to build rapport with the jury and lessen the impact of the prosecution's case does not excuse counsel's utter failure to achieve either of these objectives through his closing argument. In short, counsel's argument grossly transgressed the bounds of what constitutionally competent counsel would have done in a similar situation.

III

Notwithstanding these two serious constitutional errors, I agree with the Court that these errors do not entitle Spisak

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[5] Counsel did attempt to appeal to the jury's sense of humanity, perhaps implicitly suggesting that humane people do not condemn others, especially those with mental illness, to death. App. to Pet. for Cert. 339a–341a. But counsel never requested a life sentence on behalf of his client.

to relief. As the Court's discussion in Part III makes vividly clear, see *ante*, at 151–153, Spisak's own conduct alienated and ostracized the jury, and his crimes were monstrous. In my judgment even the most skillful of closing arguments—even one befitting Clarence Darrow—would not have created a reasonable probability of a different outcome in this case. Similarly, in light of Spisak's conduct before the jury and the gravity of the aggravating circumstances of the offense, the instructional error was also harmless because it did not have a substantial and injurious effect on this record, *Brecht* v. *Abrahamson*, 507 U. S. 619, 623 (1993).

Accordingly, I concur in the judgment and concur in the Court's discussion of prejudice in Part III of its opinion.

Syllabus

NRG POWER MARKETING, LLC, ET AL. *v.* MAINE PUBLIC UTILITIES COMMISSION ET AL.

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

No. 08–674. Argued November 3, 2009—Decided January 13, 2010

The *Mobile-Sierra* doctrine—see *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U. S. 332, and *FPC* v. *Sierra Pacific Power Co.*, 350 U. S. 348—requires the Federal Energy Regulatory Commission (FERC) to presume that an electricity rate set by a freely negotiated wholesale-energy contract meets the Federal Power Act's "just and reasonable" prescription, 16 U. S. C. § 824d(a); the presumption may be overcome only if FERC concludes that the contract seriously harms the public interest. *Morgan Stanley Capital Group Inc.* v. *Public Util. Dist. No. 1 of Snohomish Cty.*, 554 U. S. 527, 530.

For many years, New England's supply of electricity capacity was barely sufficient to meet the region's demand. FERC and New England's generators, electricity providers, and power customers made several attempts to address the problem. This case arises from the latest effort to design a solution. Concerned parties reached a comprehensive settlement agreement (Agreement) that, *inter alia*, established rate-setting mechanisms for sales of energy capacity and provided that the *Mobile-Sierra* public interest standard would govern rate challenges. FERC approved the Agreement, finding that it presents a just and reasonable outcome that is consistent with the public interest. Objectors to the settlement sought review in the D. C. Circuit, which largely rejected their efforts to overturn FERC's approval order, but agreed with them that when a challenge to a contract rate is brought by noncontracting third parties, *Mobile-Sierra*'s public interest standard does not apply.

Held: The *Mobile-Sierra* presumption does not depend on the identity of the complainant who seeks FERC investigation. The presumption is not limited to challenges to contract rates brought by contracting parties. It applies, as well, to challenges initiated by noncontracting parties. Pp. 171–177.

(a) *Morgan Stanley* did not reach the question presented here, but its reasoning strongly suggests that the D. C. Circuit's holding misperceives the aim, and diminishes the force, of the *Mobile-Sierra* doctrine. Announced three months after the Court of Appeals' disposition in this case, *Morgan Stanley* reaffirmed *Mobile-Sierra*'s instruction to FERC

to "presume that the rate set out in a freely negotiated . . . contract meets the 'just and reasonable' requirement" unless "FERC concludes that the contract seriously harms the public interest." 554 U. S., at 530. The *Morgan Stanley* opinion makes it unmistakably clear that the public interest standard is not, as the D. C. Circuit suggested, independent of, and sometimes at odds with, the "just and reasonable" standard. Rather, the public interest standard defines "what it means for a rate to satisfy the just-and-reasonable standard in the contract context." *Id.*, at 546. And if FERC itself must presume just and reasonable a contract rate resulting from fair, arm's-length negotiations, noncontracting parties may not escape that presumption. Moreover, the *Mobile-Sierra* doctrine does not neglect third-party interests; it directs FERC to reject a contract rate that "seriously harms the consuming public." 554 U. S., at 545–546. Finally, the D. C. Circuit's confinement of *Mobile-Sierra* to rate challenges by contracting parties diminishes the doctrine's animating purpose: promotion of "the stability of supply arrangements which all agree is essential to the health of the [energy] industry." *Mobile*, 350 U. S., at 344. A presumption applicable to contracting parties only, and inoperative as to everyone else—consumers, advocacy groups, state utility commissions, elected officials acting *parens patriae*—could scarcely provide the stability *Mobile-Sierra* aimed to secure. Pp. 171–176.

(b) Whether the rates at issue qualify as "contract rates" for *Mobile-Sierra* purposes, and, if not, whether FERC had discretion to treat them analogously are questions raised before, but not ruled upon by, the D. C. Circuit. They remain open for that court's consideration on remand. P. 176.

520 F. 3d 464, reversed in part and remanded.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, THOMAS, BREYER, ALITO, and SOTOMAYOR, JJ., joined. STEVENS, J., filed a dissenting opinion, *post*, p. 177.

Jeffrey A. Lamken argued the cause for petitioners. With him on the briefs were *John N. Estes III*, *Robert K. Kry*, *Michael R. Bramnick*, and *Christopher C. O'Hara*.

Eric D. Miller argued the cause for the Federal Energy Regulatory Commission urging reversal. With him on the briefs were *Solicitor General Kagan*, *Deputy Solicitor General Kneedler*, *Cynthia A. Marlette*, *Robert H. Solomon*, and *Lona T. Perry*.

Richard Blumenthal, Attorney General of Connecticut, argued the cause for respondents. With him on the brief were *John S. Wright* and *Michael C. Wertheimer*, Assistant Attorneys General, *Jesse S. Reyes*, Assistant Attorney General of Massachusetts, *Mary E. Grover*, *Lisa Fink*, and *Stephen L. Teichler*.*

JUSTICE GINSBURG delivered the opinion of the Court.

The Federal Power Act (FPA or Act), 41 Stat. 1063, as amended, 16 U. S. C. § 791a *et seq.*, authorizes the Federal Energy Regulatory Commission (FERC or Commission) to superintend the sale of electricity in interstate commerce and provides that all wholesale-electricity rates must be "just and reasonable," § 824d(a). Under this Court's *Mobile-Sierra* doctrine, FERC must presume that a rate set by "a freely negotiated wholesale-energy contract" meets the statutory "just and reasonable" requirement. *Morgan Stanley Capital Group Inc.* v. *Public Util. Dist. No. 1 of Snohomish Cty.*, 554 U. S. 527, 530 (2008). "The presumption may be overcome only if FERC concludes that the contract seriously harms the public interest." *Ibid.*

This case stems from New England's difficulties in maintaining the reliability of its energy grid. In 2006, after several attempts by the Commission and concerned parties to

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*Briefs of *amici curiae* urging reversal were filed for the Electric Power Supply Association et al. by *Paul D. Clement*, *Ashley C. Parrish*, *David G. Tewksbury*, *David B. Johnson*, *Barry Russell*, *Timm Abendroth*, *Peter W. Brown*, and *Daniel W. Douglass;* for Morgan Stanley Capital Group, Inc., et al. by *Walter Dellinger*, *Sri Srinivasan*, and *Kathryn E. Tarbert;* and for Colin C. Blaydon et al. by *Richard P. Bress*, *Michael J. Gergen*, and *Stephanie S. Lim*.

Briefs of *amici curiae* urging affirmance were filed for the American Public Power Association et al. by *Scott H. Strauss*, *Susan N. Kelly*, *Wallace F. Tillman*, and *Richard Meyer;* for Public Citizen, Inc., et al. by *Scott L. Nelson*, *Lynn Hargis*, and *Barbara Jones;* and for the California Public Utilities Commission by *Kevin K. Russell*, *Frank R. Lindh*, *Elizabeth M. McQuillan*, and *Karen P. Paull*.

address the problems, FERC approved a comprehensive settlement agreement (hereinafter Settlement Agreement or Agreement). Most relevant here, the Agreement established rate-setting mechanisms for sales of energy capacity, and provided that the *Mobile-Sierra* public interest standard would govern rate challenges. Parties who opposed the settlement petitioned for review in the United States Court of Appeals for the D. C. Circuit. Among multiple objections to FERC's order approving the Agreement, the settlement opponents urged that the rate challenges of nonsettling parties should not be controlled by the restrictive *Mobile-Sierra* public interest standard. The Court of Appeals agreed, holding that "when a rate challenge is brought by a noncontracting third party, the *Mobile-Sierra* doctrine simply does not apply." *Maine Pub. Util. Comm'n* v. *FERC*, 520 F. 3d 464, 478 (2008) *(per curiam)*.

We reverse the D. C. Circuit's judgment to the extent that it rejects the application of *Mobile-Sierra* to noncontracting parties. Our decision in *Morgan Stanley*, announced three months after the D. C. Circuit's disposition, made clear that the *Mobile-Sierra* public interest standard is not an exception to the statutory just-and-reasonable standard; it is an application of that standard in the context of rates set by contract. The "venerable *Mobile-Sierra* doctrine" rests on "the stabilizing force of contracts." *Morgan Stanley*, 554 U. S., at 548; see *id.*, at 551 (describing contract rates as "a key source of stability"). To retain vitality, the doctrine must control FERC itself, and, we hold, challenges to contract rates brought by noncontracting as well as contracting parties.

I

In a capacity market, in contrast to a wholesale-energy market, an electricity provider purchases from a generator an option to buy a quantity of energy, rather than purchasing the energy itself. To maintain the reliability of the grid,

electricity providers generally purchase more capacity, *i. e.*, rights to acquire energy, than necessary to meet their customers' anticipated demand. For many years in New England, the supply of capacity was barely sufficient to meet the region's demand. FERC and New England's generators, electricity providers, and power customers made several attempts to address this problem. This case stems from the latest effort to design a solution.

In 2003, a group of generators sought to enter into "reliability must-run" agreements with the New England Independent System Operator (ISO), which operates the region's transmission system.[1] In its orders addressing those agreements, FERC directed the ISO to develop a new market mechanism that would set prices separately for various geographical subregions. *Devon Power LLC*, 103 FERC ¶ 61,082, pp. 61,266, 61,271 (2003).

In March 2004, the ISO proposed a market structure responsive to FERC's directions. See *Devon Power LLC*, 107 FERC ¶ 61,240, p. 62,020 (2004). FERC set the matter for hearing before an Administrative Law Judge (ALJ), who issued a 177-page order largely accepting the ISO's proposal. *Devon Power LLC*, 111 FERC ¶ 63,063, p. 65,205 (2005). Several parties filed exceptions to the ALJ's order; on September 20, 2005, the full Commission heard arguments on the proposed market structure, and thereafter established settlement procedures. *Devon Power LLC*, 113 FERC ¶ 61,075, p. 61,271 (2005).

After four months of negotiations, on March 6, 2006, a settlement was reached. Of the 115 negotiating parties, only 8 opposed the settlement.

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[1] An ISO is an independent company that has operational control, but not ownership, of the transmission facilities owned by member utilities. ISOs "provide open access to the regional transmission system to all electricity generators at rates established in a single, unbundled, grid-wide tariff . . . ." *Midwest ISO Transmission Owners* v. *FERC*, 373 F. 3d 1361, 1364 (CADC 2004) (internal quotation marks omitted).

The Settlement Agreement installed a "forward capacity market" under which annual auctions would set capacity prices; auctions would be conducted three years in advance of the time when the capacity would be needed. *Devon Power LLC*, 115 FERC ¶ 61,340, pp. 62,304, 62,306–62,308 (2006). Each energy provider would be required to purchase enough capacity to meet its share of the "installed capacity requirement," *i. e.*, the minimum level of capacity needed to maintain reliability on the grid, as determined by the ISO. *Id.*, at 62,307. For the three-year gap between the first auction and the time when the capacity procured in that auction would be provided,[2] the Agreement prescribed a series of fixed, transition-period payments to capacity-supplying generators. *Id.*, at 62,308–62,309.

The issue before us centers on § 4.C of the Agreement (hereinafter *Mobile-Sierra* provision). Under that provision, challenges to both transition-period payments and auction-clearing prices would be adjudicated under "the 'public interest' standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U. S. 332 (1956)[,] and *[FPC] v. Sierra Pacific Power Co.*, 350 U. S. 348 (1956) (the 'Mobile-Sierra' doctrine)." App. 95. *Mobile-Sierra* applies, § 4.C instructs, "whether the [price is challenged] by a Settling Party, a non-Settling Party, or [by] the FERC acting *sua sponte*." *Ibid.*

FERC approved the Settlement Agreement, "finding that as a package, it presents a just and reasonable outcome for this proceeding consistent with the public interest." 115 FERC, at 62,304. The *Mobile-Sierra* provision, FERC explicitly determined, "appropriately balances the need for rate stability and the interests of the diverse entities who will be subject to the [forward capacity market's auction system]." *Id.*, at 62,335.

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[2] The transition period runs from December 1, 2006, to June 1, 2010.

Six of the eight objectors to the settlement sought review in the D. C. Circuit. For the most part, the Court of Appeals rejected the objectors' efforts to overturn FERC's order approving the settlement. 520 F. 3d, at 467. But the objectors prevailed on the *Mobile-Sierra* issue: The D. C. Circuit held that *Mobile-Sierra* applies only to contracting parties. *Id.*, at 478. In this Court, the parties have switched places. Defenders of the settlement, including the *Mobile-Sierra* provision, are petitioners; objectors to the settlement, victorious in the Court of Appeals only on the *Mobile-Sierra* issue, are respondents.

Because of the importance of the issue, and in light of our recent decision in *Morgan Stanley*, we granted certiorari, 556 U. S. 1207 (2009), to resolve this question: "[Does] *Mobile-Sierra*'s public-interest standard appl[y] when a contract rate is challenged by an entity that was not a party to the contract[?]" Brief for Petitioners i. Satisfied that the answer to that question is yes, we reverse the D. C. Circuit's judgment insofar as it rejected application of *Mobile-Sierra* to noncontracting parties.

II

The FPA gives FERC authority to regulate the "sale of electric energy at wholesale in interstate commerce." See 16 U. S. C. § 824(b)(1). The Act allows regulated utilities to set rates unilaterally by tariff; alternatively, sellers and buyers may agree on rates by contract. See § 824d(c), (d). Whether set by tariff or contract, however, all rates must be "just and reasonable." § 824d(a). Rates may be examined by the Commission, upon complaint or on its own initiative, when a new or altered tariff or contract is filed or after a rate goes into effect. §§ 824d(e), 824e(a). Following a hearing, the Commission may set aside any rate found "unjust, unreasonable, unduly discriminatory or preferential," and replace it with a just and reasonable rate. § 824e(a).

The *Mobile-Sierra* doctrine originated in twin decisions announced on the same day in 1956: *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U. S. 332, and *FPC* v. *Sierra Pacific Power Co.*, 350 U. S. 348. Both concerned rates set by contract rather than by tariff. *Mobile* involved the Natural Gas Act, which, like the FPA, requires utilities to file all new rates with the regulatory commission. 15 U. S. C. § 717c(c). In *Mobile*, we rejected a gas utility's argument that the file-all-new-rates requirement authorized the utility to abrogate a lawful contract with a purchaser simply by filing a new tariff. 350 U. S., at 336–337. Filing, we explained, was a *precondition* to changing a rate, not an *authorization* to do so in violation of a lawful contract. *Id.*, at 339–344; see *Morgan Stanley*, 554 U. S., at 533.

The *Sierra* case involved a further issue. Not only had the Commission erroneously concluded that a newly filed tariff superseded a contract rate. In addition, the Commission had suggested that, in any event, the contract rate, which the utility sought to escape, was itself unjust and unreasonable. The Commission thought that was so "solely because [the contract rate] yield[ed] less than a fair return on the [utility's] net invested capital." 350 U. S., at 355.

The Commission's suggestion prompted this Court to home in on "the question of how the Commission may evaluate whether a contract rate is just and reasonable." *Morgan Stanley*, 554 U. S., at 533. The *Sierra* Court answered the question this way:

> "[T]he Commission's conclusion appears on its face to be based on an erroneous standard. . . . [W]hile it may be that the Commission may not normally *impose* upon a public utility a rate which would produce less than a fair return, it does not follow that the public utility may not itself agree by contract to a rate affording less than a fair return or that, if it does so, it is entitled to be relieved of its improvident bargain. . . . In such circumstances *the sole concern of the Commission would seem*

> *to be whether the rate is so low as to adversely affect the public interest*—as where it might impair the financial ability of the public utility to continue its service, cast upon other consumers an excessive burden, or be unduly discriminatory." 350 U. S., at 354–355 (some emphasis added).

In a later case, we similarly explained: "The regulatory system created by the [FPA] is premised on contractual agreements voluntarily devised by the regulated companies; it contemplates abrogation of these agreements only in circumstances of unequivocal public necessity." *Permian Basin Area Rate Cases*, 390 U. S. 747, 822 (1968).[3]

Two Terms ago, in *Morgan Stanley*, 554 U. S. 527, the Court reaffirmed and clarified the *Mobile-Sierra* doctrine. That case presented two questions: First, does the *Mobile-Sierra* presumption (that contract rates freely negotiated between sophisticated parties meet the just-and-reasonable standard imposed by 16 U. S. C. § 824d(a)) "apply only when FERC has had an initial opportunity to review a contract rate without the presumption?" 554 U. S., at 531. "Second, does the presumption [generally] impose as high a bar to challenges by purchasers of wholesale electricity as it does to challenges by sellers?" *Id.*, at 531; see *id.*, at 548. An-

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[3] Consistent with the lead role of contracts recognized in *Mobile-Sierra*, we held in *United Gas Pipe Line Co.* v. *Memphis Light, Gas and Water Div.*, 358 U. S. 103, 110–113 (1958), that parties may contract out of the *Mobile-Sierra* presumption. They could do so, we ruled, by specifying in their contracts that a new rate filed with the Commission would supersede the contract rate. Courts of Appeals have approved an option midway between *Mobile-Sierra* and *Memphis Light*: A contract that does not allow the seller to supersede the contract rate by filing a new rate may nonetheless permit the Commission to set aside the contract rate if it results in an unfair rate of return, without a further showing that it adversely affects the public interest. See, *e. g., Papago Tribal Util. Auth.* v. *FERC*, 723 F. 2d 950, 953 (CADC 1983); *Louisiana Power & Light Co.* v. *FERC*, 587 F. 2d 671, 675–676 (CA5 1979).

swering no to the first question and yes to the second, the Court emphasized the essential role of contracts as a key factor fostering stability in the electricity market, to the long-run benefit of consumers. *Id.*, at 547–548, 551; see, *e. g.*, Market-Based Rates ¶ 6, 72 Fed. Reg. 39906 (2007) (noting chilling effect on investments caused by "uncertainties regarding rate stability and contract sanctity"); *Nevada Power Co.* v. *Duke Energy Trading & Marketing, L. L. C.*, 99 FERC ¶ 61,047, pp. 61,184, 61,190 (2002) ("Competitive power markets simply cannot attract the capital needed to build adequate generating infrastructure without regulatory certainty, including certainty that the Commission will not modify market-based contracts unless there are *extraordinary* circumstances.").

Morgan Stanley did not reach the question presented here: Does *Mobile-Sierra*'s public interest standard apply to challenges to contract rates brought by noncontracting parties? But *Morgan Stanley*'s reasoning strongly suggests that the D. C. Circuit's negative answer misperceives the aim, and diminishes the force, of the *Mobile-Sierra* doctrine.

In unmistakably plain language, *Morgan Stanley* restated *Mobile-Sierra*'s instruction to the Commission: FERC "must presume that the rate set out in a freely negotiated wholesale-energy contract meets the 'just and reasonable' requirement imposed by law. The presumption may be overcome only if FERC concludes that the contract seriously harms the public interest." 554 U. S., at 530. As our instruction to FERC in *Morgan Stanley* conveys, the public interest standard is not, as the D. C. Circuit presented it, a standard independent of, and sometimes at odds with, the "just and reasonable" standard, see 520 F. 3d, at 478; rather, the public interest standard defines "what it means for a rate to satisfy the just-and-reasonable standard in the contract context," *Morgan Stanley*, 554 U. S., at 546. And if FERC itself must presume just and reasonable a contract rate re-

sulting from fair, arm's-length negotiations, how can it be maintained that noncontracting parties nevertheless may escape that presumption? [4]

Moreover, the *Mobile-Sierra* doctrine does not overlook third-party interests; it is framed with a view to their protection. The doctrine directs the Commission to reject a contract rate that "seriously harms the consuming public." *Morgan Stanley*, 554 U. S., at 545–546; see *Verizon Communications Inc.* v. *FCC*, 535 U. S. 467, 479 (2002) (When a buyer and a seller agree upon a rate, "the principal regulatory responsibility [i]s not to relieve a contracting party of an unreasonable rate, . . . but to protect against potential discrimination by favorable contract rates between allied businesses to the detriment of *other* wholesale customers." (emphasis added)).

Finally, as earlier indicated, see *supra*, at 173–174, the D. C. Circuit's confinement of *Mobile-Sierra* to rate challenges by contracting parties diminishes the animating purpose of the doctrine: promotion of "the stability of supply arrangements which all agree is essential to the health of the [energy] industry." *Mobile*, 350 U. S., at 344. That dominant concern was expressed by FERC in the order on review: "Stability is particularly important in this case, which was initiated in part because of the unstable nature of [installed capacity] revenues and the effect that has on generating units, particu-

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[4] The D. C. Circuit emphasized a point no doubt true, but hardly dispositive: Contracts bind parties, not nonparties. *Maine Pub. Util. Comm'n* v. *FERC*, 520 F. 3d 464, 478 (2008) *(per curiam)*. *Mobile-Sierra* holds sway, however, because well-informed wholesale-market participants of approximately equal bargaining power generally can be expected to negotiate just-and-reasonable rates, see *Morgan Stanley Capital Group Inc.* v. *Public Util. Dist. No. 1 of Snohomish Cty.*, 554 U. S. 527, 545 (2008), and because "contract stability ultimately benefits consumers," *id.*, at 551. These reasons for the presumption explain why FERC, surely not legally bound by a contract rate, must apply the presumption and, correspondingly, why third parties are similarly controlled by it.

larly those . . . critical to maintaining reliability." 115 FERC, at 62,335. A presumption applicable to contracting parties only, and inoperative as to everyone else—consumers, advocacy groups, state utility commissions, elected officials acting *parens patriae*—could scarcely provide the stability *Mobile-Sierra* aimed to secure.[5]

We therefore hold that the *Mobile-Sierra* presumption does not depend on the identity of the complainant who seeks FERC investigation. The presumption is not limited to challenges to contract rates brought by contracting parties. It applies, as well, to challenges initiated by third parties.

III

The objectors to the settlement appearing before us maintain that the rates at issue in this case—the auction rates and the transition payments—are prescriptions of general applicability rather than "contractually negotiated rates," hence *Mobile-Sierra* is inapplicable. See Brief for Respondents 15–17, and n. 1 (internal quotation marks omitted). FERC agrees that the rates covered by the settlement "are not themselves contract rates to which the Commission was *required* to apply *Mobile-Sierra*." Brief for FERC 15. But, FERC urges, "the Commission had discretion to do so," *id.*, at 28; furthermore, "[t]he court of appeals' error in creating a third-party exception to the *Mobile-Sierra* presumption is a sufficient basis for reversing its judgment," *id.*, at 22. Whether the rates at issue qualify as "contract rates," and, if not, whether FERC had discretion to treat them analogously are questions raised before, but not ruled upon by, the Court of Appeals. They remain open for that court's consideration on remand. See Tr. of Oral Arg. 16.

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[5] The FPA authorizes "*[a]ny person*, electric utility, State, municipality, or State commission" to complain. 16 U. S. C. § 825e (emphasis added). FERC regulations similarly permit "*[a]ny* person [to] file a complaint seeking Commission action." 18 CFR § 385.206(a) (2009) (emphasis added).

* * *

For the reasons stated, the judgment of the Court of Appeals for the D. C. Circuit is reversed to the extent that it rejects the application of *Mobile-Sierra* to noncontracting parties, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE STEVENS, dissenting.

The opinion that the Court announces today is the third chapter in a story about how a reasonable principle, extended beyond its foundation, becomes bad law.

In the first chapter the Court wisely and correctly held that a seller who is a party to a long-term contract to provide energy to a wholesaler could not unilaterally repudiate its contract obligations in response to changes in market conditions by simply filing a new rate schedule with the regulatory commission. Only if the rate was so low that the seller might be unable to stay in business, thereby impairing the public interest, could the seller be excused from performing its contract. That is what the Court held in *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U. S. 332 (1956), and *FPC* v. *Sierra Pacific Power Co.*, 350 U. S. 348 (1956).

In the second chapter the Court unwisely and incorrectly held that the same rule should apply to a buyer who had been forced by unprecedented market conditions to enter into a long-term contract to buy energy at abnormally high prices. The Court held the Federal Energy Regulatory Commission (FERC) could not set aside such a contract as unjust and unreasonable, even though it saddled consumers with a duty to pay prices that would be considered unjust and unreasonable under normal market conditions, unless the purchaser could also prove that "the contract seriously harms the public interest." *Morgan Stanley Capital Group Inc.* v. *Public Util. Dist. No. 1 of Snohomish Cty.*, 554 U. S. 527, 530 (2008).

The Court held in *Morgan Stanley* that *Mobile-Sierra* established a presumption: FERC "must presume that the rate set out in a freely negotiated wholesale-energy contract meets the 'just and reasonable' requirement imposed by law." 554 U. S., at 530. And that presumption, according to the Court, is a simple application of the just-and-reasonable standard to contract rates, not a different standard of review. *Id.*, at 535 (rejecting the "obviously indefensible proposition that a standard different from the statutory just-and-reasonable standard applies to contract rates"). But applying the presumption nonetheless sets a higher bar for a rate challenge.[1] FERC may abrogate the rate only if the public interest is *seriously* harmed. *Id.*, at 550–551 ("[U]nder the *Mobile-Sierra* presumption, setting aside a contract rate requires a finding of 'unequivocal public necessity,'" *Permian Basin Area Rate Cases*, 390 U. S. 747, 822 (1968), "or 'extraordinary circumstances,' *Arkansas Louisiana Gas Co.* v. *Hall*, 453 U. S. 571, 582 (1981)").

As I explained in my dissent in *Morgan Stanley*, the imposition of this additional burden on purchasers challenging rates was not authorized by the governing statute. Under the Federal Power Act (FPA), all wholesale electricity rates must be "just and reasonable." 16 U. S. C. § 824d(a). "[N]othing in the statute mandates differing application of the statutory standard to rates set by contract." *Morgan Stanley*, 554 U. S., at 557 (STEVENS, J., dissenting) (internal quotation marks omitted; emphasis deleted). And the *Mobile-Sierra* line of cases did not "mandate a 'serious harm' standard of review," much less "require any assumption that high rates and low rates impose symmetric burdens on the public interest." *Morgan Stanley*, 554 U. S., at 561–562

[1] Whether the Court explains the *Mobile-Sierra* doctrine as a presumption or as a different standard of review, "[t]here is no significant difference between requiring a heightened showing to overcome an otherwise conclusive presumption and imposing a heightened standard of review." *Morgan Stanley*, 554 U. S., at 557 (STEVENS, J., dissenting).

(STEVENS, J., dissenting). Instead, "the statement in *Permian Basin* about 'unequivocal public necessity,' 390 U. S., at 822, speaks to the difficulty of establishing injury to the public interest in the context of a low-rate challenge," *i. e.*, one brought by sellers of electricity. *Id.*, at 562. It does not establish a new standard that applies as well to a "high-rate challenge" brought by purchasers. *Ibid.*

But even accepting *Morgan Stanley* as the law, the Court unwisely goes further today. In this third chapter of the *Mobile-Sierra* story, the Court applies a rule—one designed initially to protect the enforceability of freely negotiated contracts against parties who seek a release from their obligations—to impose a special burden on third parties exercising their statutory right to object to unjust and unreasonable rates. This application of the rule represents a quantum leap from the modest origin set forth in the first chapter of this tale. As the Court of Appeals correctly concluded in the opinion that the Court sets aside today: "This case is clearly outside the scope of the *Mobile-Sierra* doctrine." *Maine Pub. Util. Comm'n* v. *FERC*, 520 F. 3d 464, 477 (CADC 2008) *(per curiam)*.

As the D. C. Circuit noted,[2] "[c]ourts have rarely mentioned the *Mobile-Sierra* doctrine without reiterating that it is premised on the existence of a voluntary contract between the parties." *Ibid.* But, the Court asks, "if FERC itself must presume just and reasonable a contract rate resulting from fair, arm's-length negotiations, how can it be maintained that noncontracting parties nevertheless may escape that presumption?" *Ante*, at 174–175. This Court's under-

[2] Because the D. C. Circuit's opinion was written before this Court's decision in *Morgan Stanley*, that court's purported error in describing the *Mobile-Sierra* doctrine as an "exception" to the just-and-reasonable standard, 520 F. 3d, at 477, is understandable. As that court recognized, and the majority does not change today, the *Mobile-Sierra* standard in fact "makes it harder for [respondents] to successfully challenge rates." 520 F. 3d, at 478.

standing of *Sierra* provides an answer. "*Sierra* was grounded in the commonsense notion that '[i]n wholesale markets, the party charging the rate and the party charged [are] often sophisticated businesses enjoying presumptively equal bargaining power, who could be expected to negotiate a "just and reasonable" rate *as between the two of them.*'" *Morgan Stanley*, 554 U. S., at 545 (quoting *Verizon Communications Inc.* v. *FCC*, 535 U. S. 467, 479 (2002); emphasis added). This "commonsense notion" supports the rule requiring FERC to apply a presumption against letting a party out of its own contract, as the D. C. Circuit recognized. 520 F. 3d, at 478 ("The *Mobile-Sierra* doctrine applies a more deferential standard of review to preserve the terms of the bargain as between the contracting parties"). It does not, however, support a rule requiring FERC to apply a presumption against abrogating any rate set by contract, even when, as in this case, a noncontracting party may be required in practice to pay a rate it did not agree to.

The Court further reasons that "confinement of *Mobile-Sierra* to rate challenges by contracting parties diminishes the animating purpose of the doctrine," which is ensuring the stability of contract-based supply arrangements. *Ante*, at 175. Maybe so, but applying *Mobile-Sierra* to rate challenges by noncontracting parties loses sight of the animating purpose of the FPA, which is "the protection of the public interest." *Sierra*, 350 U. S., at 355. That interest is "the interest of consumers in paying 'the "lowest possible reasonable rate consistent with the maintenance of adequate service in the public interest."'" *Morgan Stanley*, 554 U. S., at 561 (STEVENS, J., dissenting) (quoting *Permian Basin*, 390 U. S., at 793). I do not doubt that stable energy markets are important to the public interest, but "under the FPA, Congress has charged FERC, not the courts, with balancing the short-term and long-term interests of consumers" under the just-and-reasonable standard of review. *Morgan Stanley*, 554 U. S., at 563 (STEVENS, J., dissenting). The Court

today imposes additional limits upon FERC's ability to protect that interest. If a third-party wholesale buyer can show a rate harms the public interest (perhaps because it is too high to be just and reasonable under normal review), but cannot show it *seriously* harms the public, FERC may do nothing about it.[3]

The Court assures respondents that the "public interest standard" does not "overlook third-party interests" and is "framed with a view to their protection." *Ante*, at 174, 175. Perhaps in practice the *Mobile-Sierra* doctrine will protect third parties' interests, and the public interest, just as well as the so-called "ordinary" just-and-reasonable standard. But respondents are rightly skeptical. The *Mobile-Sierra* doctrine, as interpreted by the Court in *Morgan Stanley*, must pose a higher bar to respondents' rate challenge—that is, it requires them to show greater harm to the public.[4]

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[3] FERC agrees with petitioners that the public interest standard "govern[s] all challenges to the rates set by contract, regardless of the identity of the challenger." Reply Brief for FERC 4. But "not even FERC has the authority to endorse [this] rule." *Morgan Stanley*, 554 U. S., at 563 (STEVENS, J., dissenting). "The FPA does not indulge, much less require, a 'practically insurmountable' presumption, see *Papago Tribal Util. Auth.* v. *FERC*, 723 F. 2d 950, 954 (CADC 1983) (opinion for the court by Scalia, J.), that all rates set by contract comport with the public interest and are therefore just and reasonable." *Id.*, at 563–564.

[4] In my view, "whether a rate is 'just and reasonable' is measured against the public interest, not the private interests of regulated [parties]." *Id.*, at 561. But I note the Court's assertion that the *Mobile-Sierra* doctrine protects "third-party interests," *ante*, at 175, is a new twist on the "public interest standard" as traditionally understood. As the Court recognized in *Morgan Stanley*, one consequence of applying *Mobile-Sierra* is that "'the sole concern of the Commission'" is the public interest, and FERC cannot consider, for example, whether a rate guarantees a sufficient rate of return to a regulated entity. 554 U. S., at 533 (quoting *FPC* v. *Sierra Pacific Power Co.*, 350 U. S. 348, 355 (1956)); see also *Morgan Stanley*, 554 U. S., at 566, n. 3. In addition to requiring that FERC find some greater degree of harm to the public than would be required under the ordinary just-and-reasonable standard, therefore, the *Mobile-Sierra* doctrine leaves little room for respondents—at least one of

Otherwise, it would hardly serve to protect contract stability better than the plain vanilla just-and-reasonable standard and the Court's decision in *Morgan Stanley* would have little effect. Furthermore, the Court today reiterates that the doctrine poses a high bar. See *ante*, at 173–174.

It was sensible to require a contracting party to show something more than its own desire to get out of what proved to be a bad bargain before FERC could abrogate the parties' bargain. It is not sensible, nor authorized by the statute, for the Court to change the *de facto* standard of review whenever a rate is set by private contract, based solely on the Court's view that contract stability should be preserved unless there is extraordinary harm to the public interest.

For these reasons, I respectfully dissent.

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which did not negotiate the rate but must nonetheless purchase electricity at that price in the forward capacity market unless it self-supplies its capacity—to assert their private interest in making a rate challenge. The Court suggests that FERC could set aside a rate under the public interest standard if the contract established favorable rates between allied businesses to the detriment of other wholesale customers, *ante*, at 175, but has not spelled out whether a challenger would still have to show that circumstance harmed the public interest. It remains unclear whether a noncontracting party that must purchase or sell electricity at a rate it did not negotiate could argue that a rate fails the "public interest standard" because the rate is detrimental to that entity's private interest.

Syllabus

HOLLINGSWORTH ET AL. *v.* PERRY ET AL.

ON APPLICATION FOR STAY

No. 09A648. Decided January 13, 2010

While a lawsuit challenging the constitutionality of Proposition 8—which provides that "[o]nly marriage between a man and a woman is valid or recognized in California"—was pending, the Federal District Court ordered real-time streaming of the trial pursuant to a purported amendment to a local Rule that had banned such broadcasts. Applicants, defendant-intervenors in the suit, seek to stay the District Court's order pending the resolution of forthcoming petitions for writs of certiorari and mandamus.

Held: The trial's broadcast is stayed. Applicants have made a sufficient showing of entitlement. There is a fair prospect that a majority of this Court will either grant certiorari and reverse the order below or grant mandamus, because the District Court likely violated 28 U. S. C. § 2071(b), which requires appropriate public notice and an opportunity for comment before a district court can amend a local rule. Even where a rule is amended based on immediate need, a court must promptly thereafter afford notice and opportunity for comment. The purported need here—to allow the trial to be broadcast pursuant to a Ninth Circuit pilot program permitting limited camera use in district courts within the Circuit—does not qualify as an immediate need that justifies dispensing with the notice-and-comment procedures, since no party alleged that it would be imminently harmed if the trial were not broadcast, and since the Ninth Circuit program did not require immediate revision of local rules or broadcast of proceedings. Applicants also have shown that irreparable harm will likely result from the denial of the stay. Without a stay, the District Court will broadcast the trial. And it would be difficult—if not impossible—to reverse the harm from those broadcasts, which may chill some witness testimony and deter others from testifying. Thus, the balance of equities favors applicants. In addition, this Court's significant interest in ensuring compliance with proper rules of judicial administration is particularly acute when those rules relate to the integrity of the judicial process. Here, the District Court attempted to revise its Rule in haste, contrary to a federal statute, in order to allow broadcast of a high-profile trial without any considered standards or guidelines in place.

Application for stay granted.

PER CURIAM.

We are asked to stay the broadcast of a federal trial. We resolve that question without expressing any view on whether such trials should be broadcast. We instead determine that the broadcast in this case should be stayed because it appears the courts below did not follow the appropriate procedures set forth in federal law before changing their rules to allow such broadcasting. Courts enforce the requirement of procedural regularity on others, and must follow those requirements themselves.

* * *

This lawsuit, still in a preliminary stage, involves an action challenging what the parties refer to as Proposition 8, a California ballot proposition adopted by the electorate. Proposition 8 amended the State Constitution by adding a new section providing that "[o]nly marriage between a man and a woman is valid or recognized in California." Cal. Const. Art. I, § 7.5. The plaintiffs contend that Proposition 8 violates the United States Constitution. A bench trial in the case began on Monday, January 11, 2010, in the United States District Court for the Northern District of California.

The District Court has issued an order permitting the trial to be broadcast live via streaming audio and video to a number of federal courthouses around the country. The order was issued pursuant to a purported amendment to a local Rule of the District Court. That Rule had previously forbidden the broadcasting of trials outside the courthouse in which a trial takes place. The District Court effected its amendment via several postings on the District Court's Web site in the days immediately before the trial in this case was to begin.

Applicants here are defendant-intervenors in the lawsuit. They object to the District Court's order, arguing that the District Court violated a federal statute by promulgating the amendment to its local Rule without sufficient opportunity

for notice and comment and that the public broadcast would violate their due process rights to a fair and impartial trial. Applicants seek a stay of the order pending the filing of petitions for writs of certiorari and mandamus. We granted a temporary stay to consider the issue further. *Post*, p. 1107. Concluding that applicants have made a sufficient showing of entitlement to relief, we now grant a stay.

I

Proposition 8 was passed by California voters in November 2008. It was a ballot proposition designed to overturn a ruling by the California Supreme Court that had given same-sex couples a right to marry. Proposition 8 was and is the subject of public debate throughout the State and, indeed, nationwide. Its advocates claim that they have been subject to harassment as a result of public disclosure of their support. See, *e. g.*, Reply Brief for Appellant in *Citizens United* v. *Federal Election Comm'n*, No. 08–205, pp. 28–29, now pending before this Court. [REPORTER'S NOTE: see *post*, p. 310.] For example, donors to groups supporting Proposition 8 "have received death threats and envelopes containing a powdery white substance." Stone, Prop 8 Donor Web Site Shows Disclosure Is 2-Edged Sword, N. Y. Times, Feb. 8, 2009. Some advocates claim that they have received confrontational phone calls and e-mail messages from opponents of Proposition 8, *ibid.*, and others have been forced to resign their jobs after it became public that they had donated to groups supporting the amendment, see Brief for Center for Competitive Politics as *Amicus Curiae* in *Citizens United*, *supra*, pp. 13–14. Opponents of Proposition 8 also are alleged to have compiled "Internet blacklists" of pro-Proposition 8 businesses and urged others to boycott those businesses in retaliation for supporting the ballot measure. Carlton, Gay Activists Boycott Backers of Prop 8, Wall Street Journal, Dec. 27, 2008, p. A3. And numerous instances of vandalism and physical violence have been reported against those who

have been identified as Proposition 8 supporters. See Exhs. B, I, and L to Defendant-Intervenors' Motion for Protective Order in *Perry* v. *Schwarzenegger*, No. 3:09–cv–02292 (ND Cal.) (hereinafter Defendant-Intervenors' Motion).

Respondents filed suit in the United States District Court for the Northern District of California, seeking to invalidate Proposition 8. They contend that the amendment to the State's Constitution violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment of the United States Constitution. The State of California declined to defend Proposition 8, and the defendant-intervenors (who are the applicants here) entered the suit to defend its constitutionality. A bench trial began on Monday, January 11, 2010, before the Chief Judge of the District Court, the Honorable Vaughn R. Walker.

On September 25, 2009, the District Court informed the parties at a hearing that there was interest in the possibility that the trial would be broadcast. Respondents indicated their support for the idea, while applicants opposed it. The court noted that "[t]here are, of course, Judicial Conference positions on this," but also that "[t]his is all in flux." Exh. 9, p. 72, App. to Pet. for Mandamus in No. 10–70063 (CA9) (hereinafter App. to Pet.).

One month later, Chief Judge Kozinski of the United States Court of Appeals for the Ninth Circuit appointed a three-judge committee to evaluate the possibility of adopting a Ninth Circuit Rule regarding the recording and transmission of district court proceedings. The committee (of which Chief Judge Walker was a member) recommended to the Ninth Circuit Judicial Council that district courts be permitted to experiment with broadcasting court proceedings on a trial basis. Chief Judge Walker later acknowledged that while the committee was considering the pilot program, "this case was very much in mind at that time because it had come to prominence then and was thought to be an ideal candidate for consideration." *Id.*, Exh. 2, at 43. The committee did

not publicly disclose its consideration of the proposal, nor did it solicit or receive public comments on the proposal.

On December 17, the Ninth Circuit Judicial Council issued a news release indicating that it had approved a pilot program for "the limited use of cameras in federal district courts within the circuit." *Id.*, Exh. 13, at 1. The release explained that the Council's decision "amend[ed] a 1996 Ninth Circuit policy" that had banned the photographing, as well as radio and television coverage, of court proceedings. *Ibid.* The release further indicated that cases would be selected for participation in the program "by the chief judge of the district court in consultation with the chief circuit judge." *Ibid.* No further guidelines for participation in the pilot program have since been issued.

On December 21, a coalition of media companies requested permission from the District Court to televise the trial challenging Proposition 8. Two days later, the court indicated on its Web site that it had amended Civil Local Rule 77–3, which had previously banned the recording or broadcast of court proceedings. The revised version of Rule 77–3 created an exception to this general prohibition to allow "for participation in a pilot or other project authorized by the Judicial Council of the Ninth Circuit." *Id.*, Exh. 14. Applicants objected to the revision, arguing that any change to Ninth Circuit or local rules would require a sufficient notice-and-comment period.

On December 31, the District Court revised its Web site to remove the previous announcement about the change to Rule 77–3. A new announcement was posted indicating a "proposed revision of Civil Local Rule 77–3," which had been "approved for public comment." *Id.*, Exh. 17. The proposed revision was the same as the previously announced amendment. Comments on the proposed revision were to be submitted by Friday, January 8, 2010.

On January 4, 2010, the District Court again revised its Web site. The announcement regarding the proposed

revision of Rule 77–3 was removed and replaced with a third version of the announcement. This third version stated that the revised Rule was "effective December 22, 2009," and that "[t]he revised rule was adopted pursuant to the 'immediate need' provision of Title 28 Sec. 2071(e)." *Id.*, Exh. 19, at 3.

On January 6, 2010, the District Court held a hearing regarding the recording and broadcasting of the upcoming trial. The court announced that an audio and video feed of trial proceedings would be streamed live to certain courthouses in other cities. It also announced that, pending approval of the Chief Judge of the Ninth Circuit, the trial would be recorded and then broadcast on the Internet. A court technician explained that the proceedings would be recorded by three cameras, and then the resulting broadcast would be uploaded for posting on the Internet, with a delay due to processing requirements.

On January 7, 2010, the District Court filed an order formally requesting that Chief Judge Kozinski approve "inclusion of the trial in the pilot project on the terms and conditions discussed at the January 6, 2010 hearing and subject to resolution of certain technical issues." *Id.*, Exh. 1, at 2. Applicants filed a petition for a writ of mandamus in the Court of Appeals, seeking to prohibit or stay the District Court from enforcing its order. The following day, a three-judge panel of the Court of Appeals denied the petition.

On January 8, 2010, Chief Judge Kozinski issued an order approving the District Court's decision to allow real-time streaming of the trial to certain federal courthouses listed in a simultaneously issued press release. Five locations had been selected: federal courthouses in San Francisco, Pasadena, Seattle, Portland, and Brooklyn. The press release also indicated that "[a]dditional sites may be announced." Federal Courthouses To Offer Remote Viewing of Proposition 8 Trial, online at http://www.ca9.uscourts.gov/datastore/general/2010/01/08/Prop8_Remote_Viewing_Locations.pdf

(as visited Jan. 13, 2010, and available in Clerk of Court's case file).

Chief Judge Kozinski's January 8 order noted that the request to broadcast the trial on the Internet was "still pending" before him. In a later letter to Chief Judge Walker, he explained that the request was not yet "ripe for approval" because "the technical staff encountered some unexpected difficulties preparing a satisfactory video suitable for on-line posting." Letter of Jan. 9, 2010 (available in Clerk of Court's case file). A final decision whether to permit online publication would be made when technical difficulties were resolved.

On January 9, 2010, applicants filed in this Court an application for a stay of the District Court's order. Their petition seeks a stay pending resolution of forthcoming petitions for the writs of certiorari and mandamus.

II

The question whether courtroom proceedings should be broadcast has prompted considerable national debate. Reasonable minds differ on the proper resolution of that debate and on the restrictions, circumstances, and procedures under which such broadcasts should occur. We do not here express any views on the propriety of broadcasting court proceedings generally.

Instead, our review is confined to a narrow legal issue: whether the District Court's amendment of its local rules to broadcast this trial complied with federal law. We conclude that it likely did not and that applicants have demonstrated that irreparable harm would likely result from the District Court's actions. We therefore stay the court's January 7, 2010, order to the extent that it permits the live streaming of court proceedings to other federal courthouses. We do not address other aspects of that order, such as those related to the broadcast of court proceedings on the Internet, as this may be premature.

A

To obtain a stay pending the filing and disposition of a petition for a writ of certiorari, an applicant must show (1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay. In close cases the Circuit Justice or the Court will balance the equities and weigh the relative harms to the applicant and to the respondent. *Lucas* v. *Townsend*, 486 U. S. 1301, 1304 (1988) (KENNEDY, J., in chambers); *Rostker* v. *Goldberg*, 448 U. S. 1306, 1308 (1980) (Brennan, J., in chambers). To obtain a stay pending the filing and disposition of a petition for a writ of mandamus, an applicant must show a fair prospect that a majority of the Court will vote to grant mandamus and a likelihood that irreparable harm will result from the denial of a stay. Before a writ of mandamus may issue, a party must establish that (1) "no other adequate means [exist] to attain the relief he desires," (2) the party's "right to issuance of the writ is 'clear and indisputable,'" and (3) "the writ is appropriate under the circumstances." *Cheney* v. *United States Dist. Court for D. C.*, 542 U. S. 367, 380–381 (2004) (some internal quotation marks omitted). This Court will issue the writ of mandamus directly to a federal district court "only where a question of public importance is involved, or where the question is of such a nature that it is peculiarly appropriate that such action by this court should be taken." *Ex parte United States*, 287 U. S. 241, 248–249 (1932). These familiar standards are followed here, where applicants claim that the District Court's order was based on a local Rule adopted in violation of federal law.

B

Given the importance of the issues at stake, and our conclusion that the District Court likely violated a federal stat-

ute in revising its local rules, applicants have shown a fair prospect that a majority of this Court will either grant a petition for a writ of certiorari and reverse the order below or will grant a petition for a writ of mandamus.

A district court has discretion to adopt local rules. *Frazier* v. *Heebe*, 482 U. S. 641, 645 (1987) (citing 28 U. S. C. § 2071; Fed. Rule Civ. Proc. 83). Those rules have "the force of law." *Weil* v. *Neary*, 278 U. S. 160, 169 (1929). Federal law, however, requires a district court to follow certain procedures to adopt or amend a local rule. Local rules typically may not be amended unless the district court "giv[es] appropriate public notice and an opportunity for comment." 28 U. S. C. § 2071(b); see also Fed. Rule Civ. Proc. 83(a). A limited exception permits dispensing with this notice-and-comment requirement only where "there is an immediate need for a rule." § 2071(e). Even where a rule is amended based on immediate need, however, the issuing court must "promptly thereafter afford . . . notice and opportunity for comment." *Ibid.*

Before late December, the court's Local Rule 77–3 explicitly banned the broadcast of court proceedings:

> "Unless allowed by a Judge or a Magistrate Judge with respect to his or her own chambers or assigned courtroom for ceremonial purposes, the taking of photographs, public broadcasting or televising, or recording for those purposes in the courtroom or its environs, in connection with any judicial proceeding, is prohibited. Electronic transmittal of courtroom proceedings and presentation of evidence within the confines of the courthouse is permitted, if authorized by the Judge or Magistrate Judge. The term 'environs,' as used in this rule, means all floors on which chambers, courtrooms or on which Offices of the Clerk are located, with the exception of any space specifically designated as a Press Room. Nothing in this rule is intended to restrict the

> use of electronic means to receive or present evidence during Court proceedings."

Notably, the Rule excepted from its general ban the transmittal of certain proceedings—but it limited that exception to transmissions "within the confines of the courthouse." The negative inference of this exception, of course, is that the Rule would have prohibited the streaming of transmissions, or other broadcasting or televising, beyond "the confines of the courthouse."

Respondents do not dispute that this version of Rule 77–3 would have prohibited streaming video of the trial around the country. But they assert that this is not the operative version of Rule 77–3. In a series of postings on its Web site, the District Court purported to revise or propose revisions to Local Rule 77–3. This amendment would have created an additional exception to Rule 77–3's general ban on the broadcasting of court proceedings "for participation in a pilot or other project authorized by the Judicial Council of the Ninth Circuit." Exh. 14, App. to Pet. Respondents rely on this amended version of the Rule.

The amended version of Rule 77–3 appears to be invalid. In amending this rule, it appears that the District Court failed to "giv[e] appropriate public notice and an opportunity for comment," as required by federal law. 28 U. S. C. § 2071(b). The first time the District Court asked for public comments was on the afternoon of New Year's Eve. The court stated that it would leave the comment period open until January 8. At most, the District Court therefore allowed a comment period spanning five business days. There is substantial merit to the argument that this was not "appropriate" notice and an opportunity for comment. Administrative agencies, for instance, "usually" provide a comment period of "thirty days or more." *Riverbend Farms, Inc.* v. *Madigan*, 958 F. 2d 1479, 1484 (CA9 1992); see *Petry* v. *Block*, 737 F. 2d 1193, 1201 (CADC 1984) ("[T]he shortest period in

which parties can meaningfully review a proposed rule and file informed responses is thirty days").

To be sure, the possibility that some aspects of the trial might be broadcast was first raised to the parties by the District Court at an in-court hearing on September 25, some three months before the Rule was changed. The broadcasting, however, was prohibited under both Circuit and local rules at that time. The first public indication that the District Court intended to adopt a rule of general applicability came in its Web site posting on December 23. And even if Chief Judge Walker's in-court allusion to the possibility that the Proposition 8 trial might be broadcast could be considered as providing notice to the parties in this case—his statement that "[t]his is all in flux" notwithstanding—the disclosure falls far short of the "appropriate public notice and an opportunity for comment" required by § 2071(b). Indeed, there was no proposed policy on which to comment.

The need for a meaningful comment period was particularly acute in this case. Both courts and legislatures have proceeded with appropriate caution in addressing this question. In 1996, the Judicial Conference of the United States adopted a policy opposing the public broadcast of court proceedings. This policy was adopted after a multiyear study of the issue by the Federal Judicial Center which drew on data from six district and two appellate courts, as well as state-court data. In light of the study's findings, the Judicial Conference concluded that "the intimidating effect of cameras on some witnesses and jurors [is] cause for concern." Administrative Office of United States Courts, Report of Proceedings of Judicial Conference of the United States 47 (Sept. 20, 1994).

In more than a decade since its adoption the Judicial Conference has continued to adhere to its position on the broadcast of court proceedings. While the policy conclusions of the Judicial Conference may not be binding on the lower courts, they are "at the very least entitled to respectful con-

sideration." *In re Sony BMG Music Entertainment*, 564 F. 3d 1, 6 (CA1 2009). Before abandoning its own policy—one consistent with the Judicial Conference's longstanding views—it was incumbent on the District Court to adopt a proposed rule only after notice and an adequate period for public comment.

In dispensing with public notice and comment the District Court invoked the "immediate need" exception. 28 U. S. C. § 2071(e). It did so through a Web site posting on January 4—prior to the expiration of the comment period—indicating that Rule 77–3 had been revised to permit participation in the Ninth Circuit's pilot program. These postings gave no explanation for invoking the exception. At trial the District Court explained that the immediate need here was to allow this case to be broadcast pursuant to the Ninth Circuit's new pilot program. See Exh. 1, p. 11, Supp. App. to Response for Perry et al.

This does not qualify as an immediate need that justifies dispensing with the notice-and-comment procedures required by federal law. While respondents (the plaintiffs in the District Court) had indicated their approval of the plan, no party alleged that it would be imminently harmed if the trial were not broadcast. Had an administrative agency acted as the District Court did here, the immediate need exception would likely not have been available. See 5 U. S. C. § 553(b)(B) (administrative agencies cannot invoke an exception to affording notice and comment before rulemaking unless the notice-and-comment procedures would be "impracticable, unnecessary, or contrary to the public interest"). In issuing its order the District Court relied on the Ninth Circuit Judicial Council's pilot program. Yet nothing in that program—which was not adopted after notice-and-comment procedures, cf. 28 U. S. C. § 332(d)(1)—required any "immediate" revision in local rules. The Ninth Circuit Judicial Council did not purport to modify or abrogate the District Court's

local Rule. Nor could it, as the Judicial Council only has the power to modify or abrogate local rules that conflict with federal law. See § 332(d)(4) (permitting a circuit court council to modify a local rule that is "found inconsistent" with rules promulgated by the Supreme Court). No federal law requires that the District Court broadcast some of its cases. The District Court's local Rule, in addition, was not a conforming amendment to Ninth Circuit policy, because that policy does not require district courts to broadcast proceedings.

Applicants also have shown that irreparable harm will likely result from the denial of the stay. Without a stay, the District Court will broadcast the trial. It would be difficult—if not impossible—to reverse the harm from those broadcasts. The trial will involve various witnesses, including members of same-sex couples; academics, who apparently will discuss gender issues and gender equality, as well as family structures; and those who participated in the campaign leading to the adoption of Proposition 8. This Court has recognized that witness testimony may be chilled if broadcast. See *Estes* v. *Texas*, 381 U. S. 532, 547 (1965); *id.*, at 591 (Harlan, J., concurring). Some of applicants' witnesses have already said that they will not testify if the trial is broadcast, and they have substantiated their concerns by citing incidents of past harassment. See, *e. g.*, Exh. K to Defendant-Intervenors' Motion (71 news articles detailing incidents of harassment related to people who supported Proposition 8). These concerns are not diminished by the fact that some of applicants' witnesses are compensated expert witnesses. There are qualitative differences between making public appearances regarding an issue and having one's testimony broadcast throughout the country. Applicants may not be able to obtain adequate relief through an appeal. The trial will have already been broadcast. It is difficult to demonstrate or analyze whether a witness would have testified differently if his or her testimony had not been broad-

cast. And witnesses subject to harassment as a result of broadcast of their testimony might be less likely to cooperate in any future proceedings.

The balance of equities favors applicants. While applicants have demonstrated the threat of harm they face if the trial is broadcast, respondents have not alleged any harm if the trial is not broadcast. The issue, moreover, must be resolved at this stage, for the injury likely cannot be undone once the broadcast takes place.

This Court also has a significant interest in supervising the administration of the judicial system. See this Court's Rule 10(a) (the Court will consider whether the courts below have "so far departed from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this Court's supervisory power"). The Court may use its supervisory authority to invalidate local rules that were promulgated in violation of an Act of Congress. See *Frazier*, 482 U. S., at 645–646; *id.*, at 652, 654 (Rehnquist, C. J., dissenting). The Court's interest in ensuring compliance with proper rules of judicial administration is particularly acute when those rules relate to the integrity of judicial processes. The District Court here attempted to revise its rules in haste, contrary to federal statutes and the policy of the Judicial Conference of the United States. It did so to allow broadcasting of this high-profile trial without any considered standards or guidelines in place. The arguments in favor of developing procedures and rules to allow broadcast of certain cases have considerable merit, and reasonable minds can surely differ over the general and specific terms of rules and standards adopted for that purpose. Here, however, the order in question complied neither with existing rules or policies nor the required procedures for amending them.

By insisting that courts comply with the law, parties vindicate not only the rights they assert but also the law's own insistence on neutrality and fidelity to principle. Those systematic interests are all the more evident here, where the

lack of a regular rule with proper standards to determine the guidelines for broadcasting could compromise the orderly, decorous, rational traditions that courts rely upon to ensure the integrity of their own judgments. These considerations, too, are part of the reasons leading to the decision to grant extraordinary relief.

In addressing a discrete instance authorizing a closed-circuit broadcast of a trial, Congress has illustrated the need for careful guidelines and standards. The trial of the two defendants in the Oklahoma City bombing case had been transferred to the United States District Court for the District of Colorado, so it was set to take place in Denver. That meant the families of deceased and surviving victims in and around Oklahoma City would not have the opportunity to observe the trial. Congress passed a statute that allowed victims' families to watch the trial on closed-circuit television. 42 U. S. C. § 10608. The statute was drawn with care to provide precise and detailed guidance with respect to the wide range of issues implicated by the broadcast. See § 10608(a) (the statute only applies "in cases where the venue of the trial is changed" to a city that is "out of the State" and "more than 350 miles from the location in which those proceedings originally would have taken place"); §§ 10608(a)–(b) (standards for who can view such trials); § 10608(c) (restrictions on transmission). And the statute gave the Judicial Conference of the United States rulemaking authority "to effectuate the policy addressed by this section." § 10608(g). In the present case, by contrast, over a span of three weeks the District Court and Ninth Circuit Judicial Council issued, retracted, and reissued a series of Web site postings and news releases. These purport to amend rules and policies at the heart of an ongoing consideration of broadcasting federal trials. And they have done so to make sure that one particular trial may be broadcast. Congress' requirement of a notice-and-comment procedure prevents just such arbitrary changes of court rules. Instead, courts

must use the procedures prescribed by statute to amend their rules, 28 U. S. C. § 2071.

If Local Rule 77–3 had been validly revised, questions would still remain about the District Court's decision to allow broadcasting of this particular trial, in which several of the witnesses have stated concerns for their own security. Even districts that allow trials to be broadcast, see Civ. Rule 1.8 (SDNY 2009); Civ. Rule 1.8 (EDNY 2009), recognize that a district judge's discretion to broadcast a trial is limited, see, *e. g.*, *Hamilton* v. *Accu-Tek*, 942 F. Supp. 136, 138 (EDNY 1996) (broadcast forbidden unless "there is no interference with the due process, the dignity of litigants, jurors and witnesses, or with other appropriate aspects of the administration of justice"). Consequently, courts in those districts have allowed the broadcast of their proceedings on the basis that those cases were not high profile, *E*Trade Financial Corp.* v. *Deutsche Bank AG*, 582 F. Supp. 2d 528, 535 (SDNY 2008), or did not involve witnesses, *Marisol A.* v. *Giuliani*, 929 F. Supp. 660, 661 (SDNY 1996); *Katzman* v. *Victoria's Secret Catalogue*, 923 F. Supp. 580, 586–587 (SDNY 1996). Indeed, one District Court did not allow the broadcasting of its proceedings because the case "involv[ed] very sensitive issues." *Schoeps* v. *Museum of Modern Art*, 599 F. Supp. 2d 532, 534 (SDNY 2009). This case, too, involves issues subject to intense debate in our society. The District Court intends not only to broadcast the attorneys' arguments but also witness testimony. See *Sony BMG*, 564 F. 3d, at 11 (Lipez, J., concurring) (distinguishing broadcast of attorneys' arguments from other parts of the trial). This case is therefore not a good one for a pilot program. Even the studies that have been conducted thus far have not analyzed the effect of broadcasting in high-profile, divisive cases. See Application for Stay 17 (warning by Judge Edward R. Becker that in "'truly high-profile cases,'" one can "'[j]ust imagine what the findings would be'" (quoting Exh. 21, at 2, App. to Pet.)).

III

The District Court attempted to change its rules at the eleventh hour to treat this case differently from other trials in the district. Not only did it ignore the federal statute that establishes the procedures by which its rules may be amended, its express purpose was to broadcast a high-profile trial that would include witness testimony about a contentious issue. If courts are to require that others follow regular procedures, courts must do so as well. The Court grants the application for a stay of the District Court's order of January 7, 2010, pending the timely filing and disposition of a petition for a writ of certiorari or the filing and disposition of a petition for a writ of mandamus.

It is so ordered.

JUSTICE BREYER, with whom JUSTICE STEVENS, JUSTICE GINSBURG, and JUSTICE SOTOMAYOR join, dissenting.

The Court today issues an order that will prevent the transmission of proceedings in a nonjury civil case of great public interest to five other federal courthouses located in Seattle, Pasadena, Portland, San Francisco, and Brooklyn. The Court agrees that it can issue this extraordinary legal relief only if (1) there is a fair chance the District Court was wrong about the underlying legal question, (2) that legal question meets this Court's certiorari standards, (3) refusal of the relief would work "irreparable harm," (4) the balance of the equities (including, the Court should say, possible harm to the public interest) favors issuance, (5) the party's right to the relief is "clear and undisputable," and (6) the "question is of public importance" (or otherwise "peculiarly appropriate" for such action). See *ante*, at 190; *Rostker* v. *Goldberg*, 448 U. S. 1306, 1308 (1980) (Brennan, J., in chambers) (stay standard); *Cheney* v. *United States Dist. Court for D. C.*, 542 U. S. 367, 380 (2004) (noting that mandamus is a "drastic and extraordinary remedy reserved for really extraordinary causes" (internal quotation marks omitted)).

This case, in my view, does not satisfy a single one of these standards, let alone all of them. Consequently, I must dissent.

First, consider the merits of the legal issue: The United States Code, in a chapter entitled "Rules of Courts," states that "[a]ny rule . . . shall be prescribed only after giving appropriate public notice and an opportunity for comment." 28 U. S. C. § 2071(b). The question here is whether the District Court accompanied the modification of its antivideo rule with "appropriate public notice and an opportunity for comment."

Certainly the parties themselves had more than adequate notice and opportunity to comment before the Rule was changed. On September 25, 2009, the trial judge, Chief Judge Vaughn Walker, discussed the possibility of broadcasting trial proceedings both within the courthouse and beyond, and asked for the parties' views. No party objected to the presence of cameras in the courtroom for transmissions within the courthouse, Exh. 9, p. 70, App. to Pet. for Mandamus in No. 10–70063 (CA9) (hereinafter App. to Pet.) ("No objection. None at all"), and both sides made written submissions to the court regarding their views on other transmissions. The court again raised the issue at a hearing on December 16.

Nor, in practice, did other members of the Judiciary lack information about the issue. In May 1996 the Circuit Council adopted a policy permitting video in connection with appellate proceedings, but prohibiting its use in the district court. Subsequently, appellate court panels have frequently permitted electronic coverage. Judges, the press, lawyers, and others have discussed the matter. In 2007 the lawyers and judges present at the Ninth Circuit Judicial Conference considered a resolution that favored the use of cameras in district court civil nonjury proceedings. And, voting separately, both lawyers and judges "approved the resolution by resounding margins." Letter from Chief Judge Kozinski to

Judge Anthony Scirica (Jan. 10, 2010), Exh. 8, p. 4, Supp. App. to Response for Perry et al. (hereinafter Supp. App. to Response). Subsequently, a committee of judges was created to study the matter. And on December 17, 2009, the Circuit Council voted to authorize a pilot program permitting the use of video in nonjury civil cases as part of an "experiment with the dissemination of video recordings in civil non-jury matters" (specifically those selected by the Chief Judge of the Circuit and the Chief Judge of the District Court). And it issued a press release. News Release, Ninth Circuit Judicial Council Approves Experimental Use of Cameras in District Courts (Dec. 17, 2009), Exh. 13, App. to Pet.

In this context the United States District Court for the Northern District of California amended its local rules on December 22, 2009, to bring them into conformity with Ninth Circuit policy. In particular, the court amended the local Rule forbidding the public broadcasting or televising of court proceedings by creating an exception "for participation in a pilot or other project authorized by the Judicial Council of the Ninth Circuit." Public Notice Concerning Revisions of Civil Local Rule 77–3, *id.*, Exh. 14. The court initially relied on a provision in the United States Code that permits district courts to prescribe rules "without public notice and opportunity for comment" "[i]f the prescribing court determines that there is an immediate need for a rule," and if the court "promptly thereafter afford[s] such notice and opportunity for comment," 28 U. S. C. §2071(e). See Exh. 1, at 11, Supp. App. to Response. Then, on December 31, the court revised its public notice to ask for comments directly. By January 8, 2010, the court had received 138,542 comments, all but 32 of which favored transmitting the proceedings. *Id.*, at 12.

Viewed in light of this history, the court satisfied the statute's insistence that "notice" be "appropriate." Cf. 28 U. S. C. §§2071(b), (e). The parties, the judges, and the in-

terested public were aware of the proposals to change Ninth Circuit policy that culminated in the "pilot program" well before the change in the local rules that enabled participation in the project. The Ninth Circuit issued a press release in mid-December explaining its new "pilot program." Then, once the District Court amended its local rule, it issued its own notice nearly three weeks before the transmissions that the rule change authorized were to begin. And the rule change itself is simply a change that conforms local rule to Circuit policy—a conformity that the law may well require. (The Judicial Council had long before voted to make its video policy "binding on all courts within the Ninth Circuit," Letter from Chief Judge Hug to All Ninth Circuit Judges (June 21, 1996) (available in Clerk of Court's case file); it announced its new "pilot program" policy in December 2009, App. to Application, Exh. 13, App. to Pet.; and federal statutes render district court rules void insofar as they have been "modified or abrogated" by the Council, see § 2071(c)(1).) Compare *ante*, at 195 ("Council only has the power to modify or abrogate local rules that conflict with federal law"), with 28 U. S. C. § 332(d)(1) ("[C]ouncil shall make all necessary and appropriate orders for the effective and expeditious administration of justice within its circuit"). The applicants point to no interested person unaware of the change. How can the majority reasonably demand yet more notice in respect to a local rule modification that a statute likely requires regardless?

There was also sufficient "opportunity for comment." The parties, the intervenors, other judges, the public—all had an opportunity to comment. The parties were specifically invited by Chief Judge Walker to comment on the possibility of broadcast as early as September. And the entire public was invited by the District Court to submit comments after the rule change was announced, right up to the eve of trial. As I said, the court received 138,542 comments during that time. How much more "opportunity for comment" does

the Court believe necessary, particularly when the statutes themselves authorize the local court to put a new rule into effect "without" receiving *any* "comments" before doing so when that *local* "court determines that there is an immediate need" to do so (and to receive comments later)? And more importantly, what is the legal source of the Court's demand for additional comment time in respect to a rule change to conform to Judicial Council policy?

Second, this legal question is not the kind of legal question that this Court would normally grant certiorari to consider. There is no conflict among the state or federal courts regarding the procedures by which a district court changes its local rules. Cf. this Court's Rules 10(a)–(b). The technical validity of the procedures followed below does not implicate an open "important question of federal law." Cf. Rule 10(c). Nor do the procedures below clearly conflict with any precedent from this Court. Cf. *ibid.*

It is particularly inadvisable for this Court to consider this kind of question because it involves local rules and local judicial administration. Here, for example, the Court decides just how a district court should modify its own local rules; in a word, this Court micromanages district court administrative procedures in the most detailed way. And, without briefing, the Court imposes limitations on the judicial councils' ability to implement policy decisions, *ante*, at 194–195 (suggesting council policy does not abrogate local rules), with consequences we cannot predict. The district councils, the circuit councils, the Judicial Conference of the United States, and THE CHIEF JUSTICE bear responsibility for judicial administration, not this Court. See 28 U. S. C. §§ 331–332. And those bodies have adequate authority to resolve disagreements about how to promulgate and apply local rules, and, particularly, about the use of cameras in the courtroom.

For the past 80 years, local judicial administration has been left to the exclusive province of the circuit judicial councils, and this Court lacks their institutional experience. See

generally P. Fish, The Politics of Federal Judicial Administration 152–153 (1973) (From their creation, "[t]he councils constituted . . . a mechanism through which there could be a concentration of responsibility in the various Circuits—immediate responsibility for the work of the courts in the Circuits, with power and authority . . . to insure competence in th[eir] work . . . " (internal quotation marks omitted)). For that reason it is inappropriate as well as unnecessary for this Court to intervene in the procedural aspects of local judicial administration. Perhaps that is why I have not been able to find any other case in which this Court has previously done so, through emergency relief or otherwise. Cf. *Bank of Nova Scotia* v. *United States*, 487 U. S. 250, 264 (1988) (SCALIA, J., concurring) ("I do not see the basis for any direct authority to supervise lower courts" (citing *Frazier* v. *Heebe*, 482 U. S. 641, 651–652 (1987) (Rehnquist, C. J., dissenting))). Nor am I aware of any instance in which this Court has preemptively sought to micromanage district court proceedings as it does today.

I recognize that the Court may see this matter not as one of promulgating and applying a local rule but, rather, as presenting the larger question of the place of cameras in the courtroom. But the wisdom of a camera policy is primarily a matter for the proper administrative bodies to determine. See 28 U. S. C. § 332. This Court has no legal authority to address that larger policy question *except insofar as it implicates a question of law.* The relevant question of law here concerns the procedure for amending local rules. And the only relevant legal principles that allow us here to take account of the immediate subject matter of that local rule, namely, cameras, are those legal principles that permit us—indeed require us—to look to the nature of the harm at issue and to balance equities, including the public interest. I consequently turn to those two matters.

Third, consider the harm: I can find no basis for the Court's conclusion that, were the transmissions to other

courtrooms to take place, the applicants would suffer irreparable harm. Certainly there is no evidence that such harm could arise in this nonjury civil case from the simple fact of transmission itself. By my count, 42 States and two Federal District Courts currently give judges the discretion to broadcast civil nonjury trials. See Media Privacy and Related Law 2009–10 (2009) (collecting state statutes and rules); Civ. Rule 1.8 (SDNY 2009); Civ. Rule 1.8 (EDNY 2009). Neither the applicants nor anyone else "has been able to present empirical data sufficient to establish that the mere presence of the broadcast media inherently has an adverse effect on [the judicial] process," *Chandler* v. *Florida*, 449 U. S. 560, 578–579 (1981). Cf. M. Cohn & D. Dow, Cameras in the Courtroom: Television and the Pursuit of Justice 62–64 (1998) (canvassing studies, none of which found harm, and one of which found that witnesses "who faced an obvious camera, provided answers that were more correct, lengthier and more detailed"). And, in any event, any harm to the parties, including the applicants, is reparable through appeal. Cf. *Chandler*, *supra*, at 581.

The applicants also claim that the transmission will irreparably harm the witnesses themselves, presumably by increasing the public's awareness of who those witnesses are. And they claim that some members of the public might harass those witnesses. But the witnesses, although capable of doing so, have not asked this Court to set aside the District Court's order. Cf. *Miller* v. *Albright*, 523 U. S. 420, 445 (1998) (O'Connor, J., joined by KENNEDY, J., concurring in judgment); *Powers* v. *Ohio*, 499 U. S. 400, 411 (1991). And that is not surprising. All of the witnesses supporting the applicants are already publicly identified with their cause. They are all experts or advocates who have either already appeared on television or Internet broadcasts, already toured the State advocating a "yes" vote on Proposition 8, or already engaged in extensive public commentary far more

likely to make them well known than a closed-circuit broadcast to another federal courthouse.

The likelihood of any "irreparable" harm is further diminished by the fact that the court order before us would simply increase the trial's viewing audience from the occupants of one courtroom in one courthouse to the occupants of five other courtrooms in five other courthouses (in all of which taking pictures or retransmissions have been forbidden). By way of comparison literally hundreds of national and international newspapers are already covering this trial and reporting in detail the names and testimony of all of the witnesses. See, *e. g.*, Leff, Woman Recalls Emotional Ordeal of Gay Marriage Ban, Associated Press, Jan. 11, 2010. I see no reason why the incremental increase in exposure caused by transmitting these proceedings to five additional courtrooms would create any further risk of harm, as the Court apparently believes. See *ante*, at 195–196. Moreover, if in respect to any particular witness this transmission threatens harm, the District Court can prevent that harm. Chief Judge Walker has already said that he would keep the broadcast "completely under the Court's control, to permit the Court to stop it if [it] proves to be a problem, if it proves to be a distraction, [or] if it proves to create problems with witnesses." See Exh. 2, at 45, App. to Pet. The Circuit Council confirmed in a press release that the District Court "willfully control the process" and that "Judge Walker has reserved the right to terminate any part of the audio, or video, or both, for any duration" or to terminate participation in the pilot program "at any time." News Release, Federal Courthouses To Offer Remote Viewing of Proposition 8 Trial (Jan. 8, 2010), http://www.ca9.uscourts.gov/datastore/general/2010/01/08/Prop8_Remote_Viewing_Locations.pdf (as visited Jan. 13, 2010, and available in Clerk of Court's case file). Surely such firm control, exercised by an able District Court Judge with 20 years of trial-management ex-

perience, will be sufficient to address any possible harm, either to the witnesses or to the integrity of the trial.

Fourth, no fair balancing of the equities (including harm to the public interest) could support issuance of the stay. See *Times-Picayune Publishing Corp.* v. *Schulingkamp*, 419 U. S. 1301, 1305 (1974) (Powell, J., in chambers) (recognizing "significant public and private interests balanced on both sides" when "present[ed with] a fundamental confrontation between the competing values of free press and fair trial"). As I have just explained, the applicants' equities consist of potential harm to witnesses—harm that is either nonexistent or that can be cured through protective measures by the District Court as the circumstances warrant. The competing equities consist of not only the respondents' interest in obtaining the courthouse-to-courthouse transmission that they desire, but also the public's interest in observing trial proceedings to learn about this case and about how courts work. See *Nebraska Press Assn.* v. *Stuart*, 427 U. S. 539, 587 (1976) (Brennan, J., concurring in judgment); see also Exh. 2, at 42, App. to Pet. (statement of Chief Judge Walker) ("[I]f the public could see how the judicial process works, they would take a somewhat different view of it." "I think the only time that you're going to draw sufficient interest in the legal process is when you have an issue such as the issues here, that people think about, talk about, debate about and consider"). With these considerations in the balance, the scales tip heavily against, not in favor of, issuing the stay.

The majority's action today is unusual. It grants a stay in order to consider a mandamus petition, with a view to intervening in a matter of local court administration that it would not (and should not) consider. It cites no precedent for doing so. It identifies no real harm, let alone "irreparable harm," to justify its issuance of this stay. And the public interest weighs in favor of providing access to the courts. To justify this extraordinary intervention, the majority in-

sists that courts must "enforce the requirement of procedural regularity on others, and must follow those requirements themselves." *Ante*, at 184. And so too should this Court adhere to its institutional competence, its historical practice, and its governing precedent—all of which counsel strongly against the issuance of this stay.

I respectfully dissent.

Per Curiam

PRESLEY *v.* GEORGIA

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

No. 09–5270. Decided January 19, 2010

Petitioner Presley was convicted in a Georgia state court of cocaine trafficking. In denying his motion for a new trial, the court rejected his claim that his Sixth Amendment right to a public trial was violated when the court excluded the public from the *voir dire* of prospective jurors. Both the Georgia Court of Appeals and Georgia Supreme Court affirmed. The latter court concluded that a trial court need not consider alternatives to closing a courtroom absent the opposing party's proffer of some alternatives.

Held: The trial court erred in closing *voir dire* without considering all reasonable alternatives to closure. Because the Sixth Amendment right to a public trial extends to jury *voir dire*, *Waller* v. *Georgia*, 467 U. S. 39, 46, "the party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced, the closure must be no broader than necessary to protect that interest, the trial court must consider reasonable alternatives to closing the proceeding, and it must make findings adequate to support the closure," *id.*, at 48. Even where, as here, the parties offer no alternatives to closure, the trial court must consider alternatives and take every reasonable measure to accommodate the public's right to be present. Nothing in the record shows that the trial court could not have accommodated the public at Presley's trial.

Certiorari granted; 285 Ga. 270, 674 S. E. 2d 909, reversed and remanded.

PER CURIAM.

After a jury trial in the Superior Court of DeKalb County, Georgia, petitioner Eric Presley was convicted of a cocaine trafficking offense. The conviction was affirmed by the Supreme Court of Georgia. 285 Ga. 270, 674 S. E. 2d 909 (2009). Presley seeks certiorari, claiming his Sixth and Fourteenth Amendment right to a public trial was violated when the trial court excluded the public from the *voir dire* of prospective jurors. The Supreme Court of Georgia's affirmance contravened this Court's clear precedents. Certiorari and petitioner's motion for leave to proceed *in forma pauperis* are now granted, and the judgment is reversed.

Before selecting a jury in Presley's trial, the trial court noticed a lone courtroom observer. *Id.*, at 270–271, 674 S. E. 2d, at 910. The court explained that prospective jurors were about to enter and instructed the man that he was not allowed in the courtroom and had to leave that floor of the courthouse entirely. *Id.*, at 271, 674 S. E. 2d, at 910. The court then questioned the man and learned he was Presley's uncle. *Ibid.* The court reiterated its instruction:

> "'Well, you still can't sit out in the audience with the jurors. You know, most of the afternoon actually we're going to be picking a jury. And we may have a couple of pre-trial matters, so you're welcome to come in after we . . . complete selecting the jury this afternoon. But, otherwise, you would have to leave the sixth floor, because jurors will be all out in the hallway in a few moments. That applies to everybody who's got a case.'" *Ibid.*

Presley's counsel objected to "'the exclusion of the public from the courtroom,'" but the court explained, "'[t]here just isn't space for them to sit in the audience.'" *Ibid.* When Presley's counsel requested "'some accommodation,'" the court explained its ruling further:

> "'Well, the uncle can certainly come back in once the trial starts. There's no, really no need for the uncle to be present during jury selection. . . . [W]e have 42 jurors coming up. Each of those rows will be occupied by jurors. And his uncle cannot sit and intermingle with members of the jury panel. But, when the trial starts, the opening statements and other matters, he can certainly come back into the courtroom.'" *Ibid.*

After Presley was convicted, he moved for a new trial based on the exclusion of the public from the juror *voir dire*. At a hearing on the motion, Presley presented evidence showing that 14 prospective jurors could have fit in the jury

box and the remaining 28 could have fit entirely on one side of the courtroom, leaving adequate room for the public. App. to Pet. for Cert. E–37, E–41. The trial court denied the motion, commenting that it preferred to seat jurors throughout the entirety of the courtroom, and "it's up to the individual judge to decide . . . what's comfortable." *Id.*, at E–38. The court continued: "It's totally up to my discretion whether or not I want family members in the courtroom to intermingle with the jurors and sit directly behind the jurors where they might overhear some inadvertent comment or conversation." *Id.*, at E–42 to E–43. On appeal, the Court of Appeals of Georgia agreed, finding "[t]here was no abuse of discretion here, when the trial court explained the need to exclude spectators at the voir dire stage of the proceedings and when members of the public were invited to return afterward." 290 Ga. App. 99, 100–101, 658 S. E. 2d 773, 775 (2008).

The Supreme Court of Georgia granted certiorari and affirmed, with two justices dissenting. After finding "the trial court certainly had an overriding interest in ensuring that potential jurors heard no inherently prejudicial remarks from observers during voir dire," the Supreme Court of Georgia rejected Presley's argument that the trial court was required to consider alternatives to closing the courtroom. 285 Ga., at 272, 273, 674 S. E. 2d, at 911. It noted that "the United States Supreme Court [has] not provide[d] clear guidance regarding whether a court must, sua sponte, advance its own alternatives to [closure]," and the court ruled that "Presley was obliged to present the court with any alternatives that he wished the court to consider." *Id.*, at 273, 674 S. E. 2d, at 911, 912. When no alternatives are offered, it concluded, "there is no abuse of discretion in the court's failure to sua sponte advance its own alternatives." *Id.*, at 274, 674 S. E. 2d, at 912.

This Court's rulings with respect to the public trial right rest upon two different provisions of the Bill of Rights, both

applicable to the States via the Due Process Clause of the Fourteenth Amendment. The Sixth Amendment directs, in relevant part, that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . ." The Court in *In re Oliver*, 333 U. S. 257, 273 (1948), made it clear that this right extends to the States. The Sixth Amendment right, as the quoted language makes explicit, is the right of the accused.

The Court has further held that the public trial right extends beyond the accused and can be invoked under the First Amendment. *Press-Enterprise Co.* v. *Superior Court of Cal., Riverside Cty.*, 464 U. S. 501 (1984) *(Press-Enterprise I)*. This requirement, too, is binding on the States. *Ibid.*

The case now before the Court is brought under the Sixth Amendment, for it is the accused who invoked his right to a public trial. An initial question is whether the right to a public trial in criminal cases extends to the jury selection phase of trial, and in particular the *voir dire* of prospective jurors. In the First Amendment context that question was answered in *Press-Enterprise I*. *Id.*, at 510. The Court there held that the *voir dire* of prospective jurors must be open to the public under the First Amendment. Later in the same Term as *Press-Enterprise I*, the Court considered a Sixth Amendment case concerning whether the public trial right extends to a pretrial hearing on a motion to suppress certain evidence. *Waller* v. *Georgia*, 467 U. S. 39 (1984). The *Waller* Court relied heavily upon *Press-Enterprise I* in finding that the Sixth Amendment right to a public trial extends beyond the actual proof at trial. It ruled that the pretrial suppression hearing must be open to the public because "there can be little doubt that the explicit Sixth Amendment right of the accused is no less protective of a public trial than the implicit First Amendment right of the press and public." 467 U. S., at 46.

While *Press-Enterprise I* was heavily relied upon in *Waller*, the jury selection issue in the former case was re-

solved under the First, not the Sixth, Amendment. 464 U. S., at 516 (STEVENS, J., concurring) ("The constitutional protection for the right of access that the Court upholds today is found in the First Amendment, rather than the public trial provision of the Sixth" (footnote omitted)). In the instant case, the question then arises whether it is so well settled that the Sixth Amendment right extends to jury *voir dire* that this Court may proceed by summary disposition.

The point is well settled under *Press-Enterprise I* and *Waller*. The extent to which the First and Sixth Amendment public trial rights are coextensive is an open question, and it is not necessary here to speculate whether or in what circumstances the reach or protections of one might be greater than the other. Still, there is no legitimate reason, at least in the context of juror selection proceedings, to give one who asserts a First Amendment privilege greater rights to insist on public proceedings than the accused has. "Our cases have uniformly recognized the public-trial guarantee as one created for the benefit of the defendant." *Gannett Co.* v. *DePasquale*, 443 U. S. 368, 380 (1979). There could be no explanation for barring the accused from raising a constitutional right that is unmistakably for his or her benefit. That rationale suffices to resolve the instant matter. The Supreme Court of Georgia was correct in assuming that the Sixth Amendment right to a public trial extends to the *voir dire* of prospective jurors.

While the accused does have a right to insist that the *voir dire* of the jurors be public, there are exceptions to this general rule. "[T]he right to an open trial may give way in certain cases to other rights or interests, such as the defendant's right to a fair trial or the government's interest in inhibiting disclosure of sensitive information." *Waller*, 467 U. S., at 45. "Such circumstances will be rare, however, and the balance of interests must be struck with special care." *Ibid.* *Waller* provided standards for courts to apply before excluding the public from any stage of a criminal trial:

> "[T]he party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced, the closure must be no broader than necessary to protect that interest, the trial court must consider reasonable alternatives to closing the proceeding, and it must make findings adequate to support the closure." *Id.*, at 48.

In upholding exclusion of the public at juror *voir dire* in the instant case, the Supreme Court of Georgia concluded, despite our explicit statements to the contrary, that trial courts need not consider alternatives to closure absent an opposing party's proffer of some alternatives. While the Supreme Court of Georgia concluded this was an open question under this Court's precedents, the statement in *Waller* that "the trial court must consider reasonable alternatives to closing the proceeding" settles the point. *Ibid.* If that statement leaves any room for doubt, the Court was more explicit in *Press-Enterprise I:*

> "Even with findings adequate to support closure, the trial court's orders denying access to *voir dire* testimony failed to consider whether alternatives were available to protect the interests of the prospective jurors that the trial court's orders sought to guard. Absent consideration of alternatives to closure, the trial court could not constitutionally close the *voir dire.*" 464 U. S., at 511.

The conclusion that trial courts are required to consider alternatives to closure even when they are not offered by the parties is clear not only from this Court's precedents but also from the premise that "[t]he process of juror selection is itself a matter of importance, not simply to the adversaries but to the criminal justice system." *Id.*, at 505. The public has a right to be present whether or not any party has asserted the right. In *Press-Enterprise I*, for instance, neither the defendant nor the prosecution requested an open courtroom during juror *voir dire* proceedings; in fact, both specifically argued in favor of keeping the transcript of the proceed-

ings confidential. *Id.*, at 503–504. The Court, nonetheless, found it was error to close the courtroom. *Id.*, at 513.

Trial courts are obligated to take every reasonable measure to accommodate public attendance at criminal trials. Nothing in the record shows that the trial court could not have accommodated the public at Presley's trial. Without knowing the precise circumstances, some possibilities include reserving one or more rows for the public; dividing the jury venire panel to reduce courtroom congestion; or instructing prospective jurors not to engage or interact with audience members.

Petitioner also argues that, apart from failing to consider alternatives to closure, the trial court erred because it did not even identify any overriding interest likely to be prejudiced absent the closure of *voir dire*. There is some merit to this complaint. The generic risk of jurors overhearing prejudicial remarks, unsubstantiated by any specific threat or incident, is inherent whenever members of the public are present during the selection of jurors. If broad concerns of this sort were sufficient to override a defendant's constitutional right to a public trial, a court could exclude the public from jury selection almost as a matter of course. As noted in the dissent below, "the majority's reasoning permits the closure of voir dire in *every criminal case* conducted in this courtroom whenever the trial judge decides, for whatever reason, that he or she would prefer to fill the courtroom with potential jurors rather than spectators." 285 Ga., at 276, 674 S. E. 2d, at 913 (opinion of Sears, C. J.).

There are no doubt circumstances where a judge could conclude that threats of improper communications with jurors or safety concerns are concrete enough to warrant closing *voir dire*. But in those cases, the particular interest, and threat to that interest, must "be articulated along with findings specific enough that a reviewing court can determine whether the closure order was properly entered." *Press-Enterprise I*, *supra*, at 510; see also *Press-Enterprise*

Co. v. *Superior Court of Cal., County of Riverside,* 478 U. S. 1, 15 (1986) ("The First Amendment right of access cannot be overcome by the conclusory assertion that publicity might deprive the defendant of [the right to a fair trial]").

We need not rule on this second claim of error, because even assuming, *arguendo,* that the trial court had an overriding interest in closing *voir dire,* it was still incumbent upon it to consider all reasonable alternatives to closure. It did not, and that is all this Court needs to decide.

The Supreme Court of Georgia's judgment is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE THOMAS, with whom JUSTICE SCALIA joins, dissenting.

Today the Court summarily disposes of two important questions it left unanswered 25 years ago in *Waller* v. *Georgia,* 467 U. S. 39 (1984), and *Press-Enterprise Co.* v. *Superior Court of Cal., Riverside Cty.,* 464 U. S. 501 (1984) *(Press-Enterprise I).* I respectfully dissent from the Court's summary disposition of these important questions.

First, the Court addresses "whether it is so well settled that [a defendant's] Sixth Amendment right" to a public trial "extends to jury *voir dire* that this Court may proceed by summary disposition." *Ante,* at 213. The Court's affirmative answer to this question relies exclusively on *Waller* and *Press-Enterprise I;* but those cases cannot bear the weight of this answer.

The Court correctly notes that *Waller* answers whether a "defendant's Sixth Amendment right to a public trial applies to a suppression hearing" (not to jury *voir dire*), 467 U. S., at 43, and that *Press-Enterprise I* interprets the *public's* First Amendment right to attend jury *voir dire,* 464 U. S., at 509, n. 8, so neither *Waller* nor *Press-Enterprise I* expressly answers the question here, see *ante,* at 212–213. That ac-

knowledgment should have eliminated any basis for disposing of this case summarily; the Court should reserve that procedural option for cases that our precedents govern squarely and directly. See, *e. g.*, *United States* v. *Haley*, 358 U. S. 644 (1959) *(per curiam)* (summarily reversing a federal court's judgment that refused to follow, or even mention, one of our precedents upholding the statute in issue under identical circumstances).

The Court nevertheless concludes that *Waller* and *Press-Enterprise I*—in combination—"well settl[e]" the "point." *Ante*, at 213. It admits that "[t]he extent to which the First and Sixth Amendment public trial rights are coextensive is an open question," but, apparently extrapolating from *Press-Enterprise I*, asserts that "there is no legitimate reason, at least in the context of juror selection proceedings, to give one who asserts a First Amendment privilege greater rights to insist on public proceedings than the accused has." *Ante*, at 213. But this conclusion decides by implication an unstated premise: that jury *voir dire* is part of the "public trial" that the Sixth Amendment guarantees. As JUSTICE STEVENS recognized in *Press-Enterprise I*, that case did not decide this issue. See 464 U. S., at 516 (concurring opinion) ("If the defendant had advanced a claim that his Sixth Amendment right to a public trial was violated by the closure of the *voir dire*, it would be important to determine whether the selection of the jury was a part of the 'trial' within the meaning of that Amendment"). Until today, that question remained open; the majority certainly cites no other case from this Court answering it. Yet the Court does so here—even though the Supreme Court of Georgia did not meaningfully consider that question, and petitioner does not ask us to do so.* I am unwilling to decide this important

*In full, petitioner's two questions presented state:

"I. This Court has established that the public cannot be expelled from a courtroom unless the presence of the public creates a 'substantial probability' of prejudice to an 'overriding interest.' But is some case-specific evi-

question summarily without the benefit of full briefing and argument.

Second, I am also unwilling to join the Court in reading the "'alternatives to closure'" language it quotes from *Waller* and *Press Enterprise I* as squarely foreclosing the decision of the Supreme Court of Georgia. See *ante*, at 214. The Court chides the Supreme Court of Georgia for "conclud[ing], despite *our explicit statements* to the contrary, that trial courts need not consider alternatives to closure *absent an opposing party's proffer of some alternatives.*" *Ibid.* (emphasis added). But neither *Waller* nor *Press-Enterprise I* expressly holds that jury *voir dire* is covered by the Sixth Amendment's "[P]ublic [T]rial" Clause. Accordingly, it is not obvious that the "alternatives to closure" language in those opinions governs this case.

Even assuming the Court correctly extends *Waller* and *Press-Enterprise I* to this (Sixth Amendment *voir dire*) context, neither opinion "explicit[ly]" places on trial courts the burden of *sua sponte* suggesting alternatives to closure "absent an opposing party's proffer of some alternatives." *Ante*, at 214. The statement that a "'trial court must consider reasonable alternatives to closing the proceeding,'" *ibid.* (quoting *Waller*, *supra*, at 48), does not definitively establish who must *suggest* alternatives to closure that the trial court must then *consider*, nor does it expressly address whether the trial court must suggest such alternatives in the absence of a proffer. I concede that the language can easily

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dence required to meet this 'substantial probability' test, or can generalized fears that would apply equally to nearly every trial suffice?

"II. This Court has repeatedly held that a trial court must consider reasonable alternatives to closing a proceeding before it can exclude the public. But who bears the burden of suggesting such alternatives? Must the proponent of closure establish that closure is necessary, in that there are no reasonable alternatives available? Or to overcome a closure motion must an opponent of closure establish that reasonable alternatives do exist?" Pet. for Cert. i.

be read to imply the latter, and the Court may well be right that a trial court violates the Sixth Amendment if it closes the courtroom without *sua sponte* considering reasonable alternatives to closure. But I would not decide the issue summarily, and certainly would not declare, as the Court does, that *Waller* and *Press-Enterprise I* "settl[e] the point" without "leav[ing] any room for doubt." *Ante*, at 214.

Besides departing from the standards that should govern summary dispositions, today's decision belittles the efforts of our judicial colleagues who have struggled with these issues in attempting to interpret and apply the same opinions upon which the Court so confidently relies today. See, *e. g.*, *Ayala* v. *Speckard*, 131 F. 3d 62, 70–72 (CA2 1997) (en banc), cert. denied, 524 U. S. 958 (1998); 131 F. 3d, at 74–75 (Walker, J., concurring); *id.*, at 77–80 (Parker, J., dissenting). The Court's decision will also surely surprise petitioner, who did not seek summary reversal based on the allegedly incorrect application of this Court's well-established precedents by the Supreme Court of Georgia, but instead asked us to "resolve this split of authority" over whether "the opponent of closure must suggest alternatives to closure" or whether "those seeking to exclude the public must show that there is no available less-intrusive alternative." Pet. for Cert. 18.

Per Curiam

WELLONS *v.* HALL, WARDEN

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

No. 09–5731. Decided January 19, 2010

In affirming petitioner Wellons' murder conviction and death sentence, the Georgia Supreme Court rejected claims of misconduct by the trial judge, some jurors, and a bailiff. Wellons sought state habeas relief and moved to develop evidence supporting the claims, but the court held that the matter had been decided on appeal and thus was res judicata. The Federal District Court denied Wellons' requests for habeas relief, discovery, and an evidentiary hearing, ruling that his claims of misconduct were procedurally barred. The Eleventh Circuit affirmed.

Held: The Eleventh Circuit's holding was in error under *Cone* v. *Bell*, 556 U. S. 449. "When a state court declines to review the merits of a petitioner's claim on the ground that it has done so already, it creates no bar to federal habeas review." *Id.*, at 466. On remand, the court must address Wellons' entitlement to discovery and an evidentiary hearing.

Certiorari granted; 554 F. 3d 923, vacated and remanded.

PER CURIAM.

From beginning to end, judicial proceedings conducted for the purpose of deciding whether a defendant shall be put to death must be conducted with dignity and respect. The disturbing facts of this case raise serious questions concerning the conduct of the trial, and this petition raises a serious question about whether the Court of Appeals carefully reviewed those facts before addressing petitioner's constitutional claims. We know that the Court of Appeals committed the same procedural error that we corrected in *Cone* v. *Bell*, 556 U. S. 449, 466–467 (2009). We do not know how the court would have ruled if it had the benefit of our decision in that case.

Petitioner Marcus Wellons was convicted in Georgia state court of rape and murder and sentenced to death. Although the trial looked typical, there were unusual events going on behind the scenes. Only after the trial did defense counsel

learn that there had been unreported *ex parte* contacts between the jury and the judge, that jurors and a bailiff had planned a reunion, and that "either during or immediately following the penalty phase, some jury members gave the trial judge chocolate shaped as male genitalia and the bailiff chocolate shaped as female breasts," 554 F. 3d 923, 930 (CA11 2009). The judge had not reported any of this to the defense.

Neither Wellons nor any court has ascertained exactly what went on at this capital trial or what prompted such "gifts." Wellons has repeatedly tried, in both state and federal court, to find out what occurred, but he has found himself caught in a procedural morass: He raised the issue on direct appeal but was constrained by the nonexistent record, and the State Supreme Court affirmed his conviction and sentence. *Wellons* v. *State*, 266 Ga. 77, 88, 463 S. E. 2d 868, 880 (1995). He sought state habeas relief and moved to develop evidence. But the court held that the matter had been decided on appeal and thus was res judicata. See 554 F. 3d, at 932. He raised the issue again in his federal habeas petition, seeking discovery and an evidentiary hearing. But the District Court "concluded that Wellons's claims . . . were procedurally barred, and accordingly denied his motion for an evidentiary hearing on these claims." *Id.*, at 933.[1] Before

[1] Although the District Court found most of petitioner's claims to be procedurally barred, it alternatively declined to permit an evidentiary hearing because Wellons did not have enough evidence of bias or misconduct. JUSTICE ALITO wrongly suggests that the District Court reached that conclusion by reviewing a proffer that Wellons' attorneys assembled by "contacting all but 1 of the jurors," many of whom "spoke freely." *Post*, at 230 (dissenting opinion). Even apart from the fact that these interviews were informal and unsworn, they shed almost no light on what had occurred. The juror who allegedly "gave the penis to the judge," App. C to Pet. for Cert. 36, was "hostile and refused to talk," *id.*, at 37; one "refused to talk about the trial," *id.*, at 36; another "did not want to talk about the case," *id.*, at 37; and one "conferr[ed]" with his wife who then "slammed and bolted the door," *ibid.* Of those jurors who were willing

the Eleventh Circuit, Wellons "argue[d] that the district court erred in denying his motions for discovery and an evidentiary hearing to develop his judge, juror, and bailiff misconduct claims because they are not procedurally barred." *Id.*, at 935. The court disagreed, holding that Wellons' claims were procedurally barred. *Ibid.*

As our dissenting colleagues acknowledge, *post*, at 226–227 (opinion of SCALIA, J.); *post*, at 229 (opinion of ALITO, J.), the Eleventh Circuit's holding was an error under *Cone*, 556 U. S., at 466–467. "When a state court declines to review the merits of a petitioner's claim on the ground that it has done so already, it creates no bar to federal habeas review." *Id.*, at 466. Both dissenting opinions assume that "the issue on which *Cone* throws light does not affect the outcome" because "the Eleventh Circuit . . . also decided that petitioner was not entitled to habeas relief *on the merits*." *Post*, at 227 (opinion of SCALIA, J.). Having found a procedural bar, however, the Eleventh Circuit had no need to address whether petitioner was otherwise entitled to an evidentiary hearing and gave this question, at most, perfunctory consideration that may well have turned on the District Court's finding of a procedural bar.

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to talk at all, one admitted to being "concerned that she might say something that would be used for a mistrial," *id.*, at 35, and none admitted to knowing how or why the jury selected its "gifts," see *id.*, at 35–37. (Implausibly, JUSTICE ALITO suggests that Wellons' lawyers may not have asked how or why the jury selected its "gifts," *post*, at 230–231, though he bases that speculation only on the fact that no *questions* appeared in the proffer of *facts*.) Rather, the jurors discussed other matters and did so in the briefest of terms. All told, "everything that Petitioner . . . learned," App. C to Pet. for Cert. 38, filled only a few sheets of paper, see *id.*, at 35–37.

Moreover, the subjects that the jurors did discuss may very well support Wellons' view that his trial was tainted by bias or misconduct. For example, one interviewee "was surprised" that a fellow juror had been allowed to serve on a capital trial, given that her sister had been murdered by a man after he completed serving a life sentence. *Id.*, at 36.

Although Wellons appealed the denial of "his motions for discovery and an evidentiary hearing," 554 F. 3d, at 935, the Eleventh Circuit did not purport to address the merits of *that* issue at all.[2] The court stated only that "[e]ven if we assume that Wellons's misconduct claims are not procedurally barred, they do not entitle Wellons to habeas *relief*." *Id.*, at 936 (emphasis added). This opaque statement appears to address only whether petitioner was entitled to ultimate relief in the form of a new trial, not whether petitioner's allegations, combined with the facts he had learned, entitled him to the discovery and evidentiary hearing that he sought.

The Eleventh Circuit's reasoning does not suggest otherwise. The court observed that Wellons' claims of misconduct were "grounded in his speculation as to the meaning underlying the jurors' chocolate 'gifts'" and "the surmise attached to their passive receipt of these gifts." *Ibid.* This statement likewise indicates only that on the existing record, habeas relief was inappropriate, not that an evidentiary hearing should be denied. After all, had there been discovery or an evidentiary hearing, Wellons may have been able to present more than "speculation" and "surmise." The Eleventh Circuit also pointed to the state court's decision on direct appeal, see *id.*, at 937, and reviewed that decision "[i]n light of the evidence presented before the Georgia Supreme Court," *ibid.* This, too, is typical of a court reviewing the denial of habeas relief, not the denial of discovery or an evidentiary hearing.[3]

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[2] As JUSTICE ALITO explains at some length, see *post*, at 229–232, the *District Court* did discuss the merits of that issue, but the District Court's analysis has little relevance on whether the Court of Appeals made an alternative holding or rather affirmed the District Court's decision on the ground that petitioner's claim was procedurally barred.

[3] JUSTICE ALITO asserts that the Eleventh Circuit "stated in unequivocal terms that its holding on the merits of petitioner's claim was independent of its holding on the question of procedural default." *Post*, at

Moreover, even assuming that the Eleventh Circuit intended to address Wellons' motions for discovery and an evidentiary hearing, we cannot be sure that its reasoning really was independent of the *Cone* error. The fact that his claims rested on "speculation" and "surmise" was due to the absence of a record, which was in part based on the *Cone* error. And as the Eleventh Circuit's reasoning turned on "the evidence presented before the Georgia Supreme Court," 554 F. 3d, at 937, there is serious doubt about whether it necessarily relied on the very holes in the record that Wellons was trying to fill.

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229. But that does not address the question: The merits of what? The question whether to grant habeas relief or whether to permit discovery and an evidentiary hearing?

Contrary to our dissenting colleagues, *post*, at 231–232 (opinion of ALITO, J.), we do not find it dispositive that the section of the Eleventh Circuit's opinion about judge, juror, and bailiff misconduct began with a full page statement of the standard of review, which in turn included a sentence about the circumstances under which an evidentiary hearing is warranted. See 554 F. 3d, at 934–935. Immediately following the standard of review that JUSTICE ALITO quotes, the panel explained that " 'if the record . . . precludes habeas relief, a district court is not required to hold an evidentiary hearing,' " and that "the record reveals that [Wellons'] claims . . . are procedurally barred." *Id.*, at 935.

Moreover, the allegedly "unequivocal" holding that JUSTICE ALITO quotes was preceded by a discussion of the deference owed under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) to the "Georgia Supreme Court's judgment as to the substance and effect of the ex parte communication." *Id.*, at 937. This is the classic formulation of a decision whether to grant habeas relief. Indeed, it would be bizarre if a federal court had to defer to state-court factual findings, made without any evidentiary record, in order to decide whether it could create an evidentiary record to decide whether the factual findings were erroneous. If that were the case, then almost no habeas petitioner could ever get an evidentiary hearing: So long as the state court found a fact that the petitioner was trying to disprove through the presentation of evidence, then there could be no hearing. AEDPA does not require such a crabbed and illogical approach to habeas procedures, and there is no reason to believe that the Eleventh Circuit thought otherwise.

Our dissenting colleagues allege that the Court is "degrad-[ing] . . . our traditional requirements for a GVR." *Post*, at 228 (opinion of SCALIA, J.); see *post*, at 232 (opinion of ALITO, J.). But the standard for an order granting certiorari, vacating the judgment below, and remanding the case (GVR) remains as it always has been: A GVR is appropriate when "intervening developments . . . reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration, and where it appears that such a redetermination may determine the ultimate outcome" of the matter. *Lawrence* v. *Chater*, 516 U. S. 163, 167 (1996) *(per curiam)*. As already discussed, there is, at least, a "reasonable probability," *ibid.*, that the denial of discovery and an evidentiary hearing rested in part on the *Cone* error. And in light of the unusual facts of the case, a "redetermination may determine the ultimate outcome," 516 U. S., at 167; cf. *Williams* v. *Taylor*, 529 U. S. 420, 442 (2000) (holding that several "omissions as a whole disclose the need for an evidentiary hearing"); *Smith* v. *Phillips*, 455 U. S. 209, 215 (1982) ("This Court has long held that the remedy for allegations of juror partiality is a hearing in which the defendant has the opportunity to prove actual bias"). The Eleventh Circuit's opinion is ambiguous in significant respects. It would be highly inappropriate to assume away that ambiguity in respondent's favor. That is especially so in a case in which petitioner's allegations and the unusual facts raise a serious question about the fairness of a capital trial.

Both dissenting opinions suggest that if there is a strong case for discovery and an evidentiary hearing, then the Court "should summarily reverse or set the case for argument." *Post*, at 227 (opinion of SCALIA, J.); see also *post*, at 232 (opinion of ALITO, J.). But as we have explained, "a GVR order conserves the scarce resources of this Court," "assists the court below by flagging a particular issue that it does not appear to have fully considered," and "assists this Court by

procuring the benefit of the lower court's insight before we rule on the merits." *Lawrence*, *supra*, at 167.

Unlike JUSTICE SCALIA, *post*, at 228, we do not believe that a "self-respecting" court of appeals would or should respond to our remand order with a "summary reissuance" of essentially the same opinion, absent the procedural default discussion. To the contrary, in light of our decision in *Cone*, we assume the court will consider, on the merits, whether petitioner's allegations, together with the undisputed facts, warrant discovery and an evidentiary hearing.

The petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit and the motion of petitioner for leave to proceed *in forma pauperis* are granted. The judgment is vacated, and the case is remanded to the Eleventh Circuit for further consideration in light of *Cone*, 556 U. S., at 466–467.

It is so ordered.

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, dissenting.

Petitioner Marcus Wellons was convicted in Georgia state court of capital murder and sentenced to death. After exhausting direct appeal and state postconviction review, he filed a petition for habeas corpus in federal court under 28 U. S. C. §2254. Wellons claims, among other things, that misconduct on the part of the trial judge, jurors, and court bailiff deprived him of a fair trial. The District Court denied relief, and the Eleventh Circuit affirmed.

Today the Court grants Wellons' petition for certiorari, vacates the judgment of the Eleventh Circuit, and remands (GVRs) in light of *Cone* v. *Bell*, 556 U. S. 449 (2009). The Eleventh Circuit concluded that Wellons' claims were procedurally barred because the state postconviction court, noting that the State Supreme Court had rejected them on direct appeal, held the claims were res judicata. See 554 F. 3d 923, 936, and n. 6 (2009). This was error under *Cone*, see 556

U. S., at 466–467, as respondent recognizes; indeed, the Eleventh Circuit has already recognized the abrogation of the opinion below on this point, see *Owen* v. *Secretary for Dept. of Corrections*, 568 F. 3d 894, 915, n. 23 (2009). But, as JUSTICE ALITO's dissent demonstrates, *post*, p. 228, the Eleventh Circuit (like the District Court) also decided that petitioner was not entitled to habeas relief *on the merits*. 554 F. 3d, at 936–938. Thus the Court GVRs in light of *Cone* even though the issue on which *Cone* throws light does not affect the outcome.

The Court has previously asserted a power to GVR whenever there is "a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration, and where it appears that such a redetermination may determine the ultimate outcome of the litigation." *Lawrence* v. *Chater*, 516 U. S. 163, 167 (1996) *(per curiam)*. I have protested even that flabby standard, see *id.*, at 190–191 (SCALIA, J., dissenting), but today the Court outdoes itself. It GVRs where the decision below does *not* "rest upon" the objectionable faulty premise, but is independently supported by other grounds—so that redetermination of the faulty ground will assuredly *not* "determine the ultimate outcome of the litigation." The power to "revise and correct for error," which the Court has already turned into "a power to void for suspicion," *id.*, at 190 (same) (internal quotation marks and alteration omitted), has now become the power to send back for a redo. We have no authority to decree that. If the Court thinks that the Eleventh Circuit's merits holding is wrong, then it should summarily reverse or set the case for argument; otherwise, the judgment below must stand. The same is true if (as the Court evidently believes) the Court of Appeals should have required an evidentiary hearing before resolving the merits question. If they erred in that regard their judgment should be reversed rather than remanded "in light of *Cone* v. *Bell*"—a disposition providing no hint that what we really

want them to do (as the Court believes) is to consider an evidentiary hearing.

The systematic degradation of our traditional requirements for a GVR has spawned a series of unusual dispositions, including the GVR so the Government can try a less extravagant argument on remand, see *Department of Interior* v. *South Dakota*, 519 U. S. 919, 921 (1996) (SCALIA, J., dissenting), the GVR in light of nothing, see *Youngblood* v. *West Virginia*, 547 U. S. 867, 872 (2006) (same), and the newly minted Summary Remand for More Extensive Opinion than Petitioner Requested (SRMEOPR), see *Webster* v. *Cooper*, *post*, at 1042 (SCALIA, J., dissenting). Today the Court adds another beast to our growing menagerie: the SRIE, Summary Remand for Inconsequential Error—or, as the Court would have it, the SRTAEH, Summary Remand to Think About an Evidentiary Hearing.

It disrespects the judges of the courts of appeals, who are appointed and confirmed as we are, to vacate and send back their authorized judgments for inconsequential imperfection of opinion—as though we were schoolmasters grading their homework. An appropriately self-respecting response to today's summary vacatur would be summary reissuance of the same opinion, minus the discussion of *Cone*. That would also serve the purpose of minimizing the delay of justice that today's GVR achieves (Wellons has already outlived his victim by 20 years; he committed his murder in 1989).

JUSTICE ALITO, with whom THE CHIEF JUSTICE joins, dissenting.

The Court's disposition of this case represents a misuse of our authority to grant, vacate, and remand (GVR). The decision of the Court of Appeals plainly rests on two independent grounds: first, that petitioner procedurally defaulted his claim that the judge, bailiff, and jurors had an inappropriate relationship that impaired his right to a fair trial and, second, that petitioner's claim failed on the merits. See 554

F. 3d 923, 936 (CA11 2009). While it is true that the first of these grounds is inconsistent with *Cone* v. *Bell*, 556 U. S. 449, 466–467 (2009), there is no basis for vacating the decision below unless some recent authority or development provides a basis for reconsideration of the second ground as well. But the *per curiam* identifies no such authority. Instead, the *per curiam* uses *Cone* as a vehicle for suggesting that the Court of Appeals should reconsider its decision on the merits of petitioner's claim.

In order to defend this disposition, the *per curiam* refuses to credit the Court of Appeals' explanation of the basis of its decision. The Court of Appeals twice stated in unequivocal terms that its holding on the merits of petitioner's claim was independent of its holding on the question of procedural default. See 554 F. 3d, at 937–938 ("[E]ven if these claims were properly before us on habeas review, we would not disturb the Georgia Supreme Court's conclusion on the merits of these claims"); *id.*, at 936 ("Even if we assume that Wellons's misconduct claims are not procedurally barred, they do not entitle Wellons to habeas relief"). But the *per curiam* states that the Court of Appeals' consideration of the merits "may well have turned on the District Court's finding of a procedural bar" and that "we cannot be sure that [the panel's] reasoning really was independent of the *Cone* error." *Ante*, at 222, 224.

Even worse, the *per curiam* unjustifiably suggests that the Court of Appeals gave at most only "perfunctory consideration" to petitioner's claim that he was entitled to an evidentiary hearing and may not have "carefully reviewed" the relevant facts. *Ante*, at 220, 222. The majority may not be satisfied with the Court of Appeals' discussion, but the majority has no good reason for suggesting that the lower court did not give the issue careful consideration.

The District Court refused petitioner's discovery request on the ground that petitioner did not make a sufficient showing to warrant interrogation of the jurors. As the detailed

opinion of the District Court reveals, the state habeas judge allowed petitioner's attorneys to contact all of the jurors and relevant court personnel; the attorneys succeeded in contacting all but 1 of the jurors; 6 of the 11 jurors who were contacted, as well as the bailiffs and court reporter, were interviewed; and the attorneys made a proffer of the information provided by these interviewees.[1] There is no suggestion that the attorneys were restricted in the questions that they were permitted to ask the interviewees, and it appears that the jurors who were interviewed spoke freely, even discussing their understanding of the judge's instructions on the law and the jury's deliberations.[2] Cf. Fed. Rule Evid. 606(b). Interestingly, the proffer does not reflect that the attorneys asked any of the jurors what would appear to be the most critical question, namely, why the strange gifts were given to the judge or the bailiff.[3] See App. C to Pet. for Cert.

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[1] As the District Court observed, "[p]etitioner's state habeas corpus counsel contacted all but one of the jurors seeking their comments." App. C to Pet. for Cert. 34. The proffer shows that six jurors were interviewed: DeArmond, *id.*, at 35, Henry, *ibid.*, Givhan, *id.*, at 36, Humphrey, *id.*, at 37, Moore, *ibid.*, and Smith, *ibid.* The Court's description of some of the matters that the jurors mentioned during the interview confirms that these jurors " 'spoke freely.' " See *ante*, at 221–222, n. 1.

[2] The *per curiam* assumes that the jurors who were interviewed must have spoken only "in the briefest of terms" because " 'everything that Petitioner . . . learned' " "filled only a few sheets of paper." *Ante*, at 222, n. 1. The mere fact that the unsworn proffer submitted by petitioner's state habeas counsel consisted of four pages, see App. C to Pet. for Cert. 35–38, does not seem to me to provide a sufficient basis for concluding that the jurors interviewed spoke only "in the briefest of terms." The length of the proffer is equally consistent with the possibility that the jurors interviewed spoke at length but did not supply information that petitioner's counsel deemed helpful to his case.

[3] The main reason for the interviews was to inquire about the gifts, and the proffer shows that the jurors who were interviewed discussed this matter. See, *e. g.*, *id.*, at 35 (a juror "stated that 'we,' the jurors gave a pair of chocolate breasts to the bailiff and the chocolate penis just followed"); *ibid.* (a juror "stated that some of the jurors decided to send a pair of edible chocolate breasts to one of the female bailiffs and an edible

34–38. If any such questions had been asked and answers favorable to petitioner's position had been provided, one would expect that information to appear in the proffer.

After examining the proffer made by petitioner's attorneys, the District Court concluded that this submission did not justify formal discovery. With respect to what the *per curiam* describes as the "unreported *ex parte* contacts between the jury and the judge," *ante,* at 221—which apparently consisted of a brief exchange of words that occurred when the judge entered the room in a restaurant where the jurors were dining—the District Court concluded that "nothing that Petitioner has presented provides even the slightest indication that anything more than a simple greeting occurred," App. C to Pet. for Cert. 43.

With respect to the gifts that were given to the judge and a bailiff after the trial ended, the District Court stressed that they were "inappropriate" and represented "an unusual display of poor taste in the context of a proceeding so grave as a capital trial," *ibid.*, but the court noted that petitioner had not proffered any evidence that any of the jurors or court personnel who were interviewed had said anything that substantiated the assertion that "an inappropriate relationship existed between the judge, the bailiff, and the jury," *id.*, at 44.

A fair reading of the Court of Appeals' opinion is that that court likewise held that petitioner was not entitled to the discovery he sought because that discovery was unlikely to yield evidence substantiating his claim. See 554 F. 3d, at

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chocolate penis to the trial judge"); *id.*, at 37 (a juror "remembered discussion about giving a chocolate penis to the judge"). Nevertheless, petitioner's proffer includes no information as to *why* the gifts were given—not even a statement to the effect that the jurors interviewed were asked this question and said that they did not know. Cf. *id.*, at 35 (noting that a particular juror "did not know *whose idea it was* to send the chocolate penis to the judge," but not including any representation as to her understanding of *why* the gifts may have been given (emphasis added)).

935 ("When deciding whether to grant a federal habeas petitioner's request for an evidentiary hearing, 'a federal court must consider whether such a hearing could enable an applicant to prove the petition's factual allegations, which, if true, would entitle the applicant to federal habeas relief' " (quoting *Schriro* v. *Landrigan*, 550 U. S. 465, 474 (2007))).

I agree with the Court that the strange and tasteless gifts that were given to the trial judge and bailiff are facially troubling, and I am certainly not prepared at this point to say that the decision below on the discovery issue was correct. But unlike the Court, I do not think it is proper for us to use a GVR to address this matter. The lower courts have decided the discovery issue, and now this Court has two options. First, if we wish to review the question whether petitioner made a sufficient showing to justify interrogation of the jurors, we should grant the petition for a writ of certiorari and decide that question. Second, if we do not wish to tackle that fact-bound question, we should deny review or GVR in light of a recent authority or development that casts doubt on the judgment of the court below. What the Court has done—using a GVR as a vehicle for urging the Court of Appeals to reconsider its holding on a question that is entirely independent of the ground for the GVR—is extraordinary and, in my view, improper.

Syllabus

KUCANA *v.* HOLDER, ATTORNEY GENERAL

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

No. 08–911. Argued November 10, 2009—Decided January 20, 2010

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) amended the Immigration and Nationality Act (INA), codifying certain rules, earlier prescribed by the Attorney General, that govern the process of reopening removal proceedings. IIRIRA also added a provision stating that no court has jurisdiction to review any action of the Attorney General "the authority for which is specified under this subchapter to be in the discretion of the Attorney General." 8 U. S. C. § 1252(a)(2)(B)(ii). A regulation, amended just months before IIRIRA's enactment, provides that "[t]he decision to grant or deny a motion to reopen . . . is within the discretion of the [Board of Immigration Appeals (BIA)]," 8 CFR § 1003.2(a). As adjudicator in immigration cases, the BIA exercises authority delegated by the Attorney General.

Petitioner Kucana moved to reopen his removal proceedings, asserting new evidence in support of his plea for asylum. An Immigration Judge denied the motion, and the BIA sustained that ruling. The Seventh Circuit concluded that it lacked jurisdiction to review the administrative determination, holding that § 1252(a)(2)(B)(ii) bars judicial review not only of administrative decisions made discretionary by statute, but also of those made discretionary by regulation.

Held: Section 1252(a)(2)(B)'s proscription of judicial review applies only to Attorney General determinations made discretionary by statute, not to determinations declared discretionary by the Attorney General himself through regulation. Pp. 242–253.

(a) The motion to reopen is an "important safeguard" intended "to ensure a proper and lawful disposition" of immigration proceedings. *Dada* v. *Mukasey*, 554 U. S. 1, 18. Federal-court review of administrative decisions denying motions to reopen removal proceedings dates back to at least 1916, with the courts employing a deferential abuse-of-discretion standard of review. While the Attorney General's regulation in point, 8 CFR § 1003.2(a), places the reopening decision within the BIA's discretion, the statute does not codify that prescription or otherwise "specif[y]" that such decisions are in the Attorney General's discretion. Pp. 242–243.

(b) Section 1252(a)(2)(B) does not proscribe judicial review of denials of motions to reopen. Pp. 243–251.

Syllabus

(1) The *amicus* defending the Seventh Circuit's judgment urges that regulations suffice to trigger § 1252(a)(2)(B)(ii)'s proscription. She comprehends "under" in "authority . . . specified under this subchapter" to mean, *e. g.*, "pursuant to," "subordinate to." Administrative regulations count for § 1252(a)(2)(B) purposes, she submits, because they are issued "pursuant to," and are measures "subordinate to," the legislation they serve to implement. On that reading, § 1252(a)(2)(B)(ii) would bar judicial review of any decision that an executive regulation places within the BIA's discretion, including the decision to deny a motion to reopen. The parties, on the other hand, read the statutory language to mean "specified in," or "specified by," the subchapter. On their reading, § 1252(a)(2)(B)(ii) precludes judicial review only when the statute itself specifies the discretionary character of the Attorney General's authority. Pp. 243–244.

(2) The word "under" "has many dictionary definitions and must draw its meaning from its context." *Ardestani* v. *INS*, 502 U. S. 129, 135. Examining the provision at issue in statutory context, the parties' position stands on firmer ground. Section 1252(a)(2)(B)(ii) is far from IIRIRA's only jurisdictional limitation. It is sandwiched between two subsections, § 1252(a)(2)(A) and § 1252(a)(2)(C), both dependent on statutory provisions, not on any regulation, to define their scope. Given § 1252(a)(2)(B)'s statutory placement, one would expect that it, too, would cover statutory provisions alone. Pp. 245–246.

(3) Section 1252(a)(2)(B)(i) places within the no-judicial-review category "any judgment regarding the granting of relief under section 1182(h), 1182(i), 1229b, 1229c, or 1255." Each of the referenced statutory provisions addresses a different form of discretionary relief from removal and contains language indicating that the decision is entrusted to the Attorney General's discretion. Clause (i) does not refer to any regulatory provision. The proximity of clause (i) and the clause (ii) catchall, and the words linking them—"any other decision"—suggests that Congress had in mind decisions of the same genre, *i. e.*, those made discretionary by legislation. Read harmoniously, both clauses convey that Congress barred court review of discretionary decisions only when Congress itself set out the Attorney General's discretionary authority in the statute. Pp. 246–247.

(4) Also significant is the character of the decisions insulated from judicial review in § 1252(a)(2)(B)(i). The listed determinations are substantive decisions the Executive makes involving whether or not aliens can stay in the country. Other decisions specified by statute "to be in the discretion of the Attorney General," and therefore shielded from court oversight by § 1252(a)(2)(B)(ii), are of a like kind. See, *e. g.*, § 1157(c)(1). Decisions on reopening motions made discretionary by

regulation, in contrast, are adjunct rulings. A court decision reversing the denial of a motion to reopen does not direct the Executive to afford the alien substantive relief; ordinarily, it touches and concerns only the question whether the alien's claims have been accorded a reasonable hearing. Had Congress wanted the jurisdictional bar to encompass decisions specified as discretionary by regulation as well as by statute, moreover, Congress could easily have said so, as it did in provisions enacted simultaneously with § 1252(a)(2)(B)(ii). See, *e. g.*, IIRIRA, § 213, 110 Stat. 3009–572. Pp. 247–249.

(5) The history of the relevant statutory provisions corroborates this determination. Attorney General regulations have long addressed reopening requests. In enacting IIRIRA, Congress simultaneously codified the process for filing motions to reopen and acted to bar judicial review of a number of executive decisions regarding removal. But Congress did not codify the regulation delegating to the BIA discretion to grant or deny reopening motions. This legislative silence indicates that Congress left the matter where it was pre-IIRIRA: The BIA has broad discretion, conferred by the Attorney General, "to grant or deny a motion to reopen," 8 CFR § 1003.2(a), but courts retain jurisdiction to review the BIA's decision. It is unsurprising that Congress would leave in place judicial oversight of this "important [procedural] safeguard," *Dada*, 554 U. S., at 18, where, as here, the alien's underlying asylum claim would itself be reviewable. The REAL ID Act of 2005, which further amended the INA by adding or reformulating provisions on asylum, protection from removal, and even judicial review, did not disturb the unbroken line of decisions upholding court review of administrative denials of motions to reopen. Pp. 249–251.

(c) Any lingering doubt about § 1252(a)(2)(B)(ii)'s proper interpretation would be dispelled by a familiar statutory construction principle: the presumption favoring judicial review of administrative action. When a statute is "reasonably susceptible to divergent interpretation," this Court adopts the reading "that executive determinations generally are subject to judicial review." *Gutierrez de Martinez* v. *Lamagno*, 515 U. S. 417, 434. The Court has consistently applied this interpretive guide to legislation regarding immigration, and particularly to questions concerning the preservation of federal-court jurisdiction. See, *e. g.*, *Reno* v. *Catholic Social Services, Inc.*, 509 U. S. 43, 63–64. Because this presumption is "'well-settled,'" *ibid.*, the Court assumes that "Congress legislates with knowledge of" it, *McNary* v. *Haitian Refugee Center, Inc.*, 498 U. S. 479, 496. It therefore takes "'"clear and convincing evidence"'" to dislodge the presumption. *Catholic Social Services, Inc.*, 509 U. S., at 64. There is no such evidence here. Finally, reading § 1252(a)(2)(B)(ii) to apply to matters where discretion is conferred

on the BIA by regulation would ignore Congress' design to retain for itself control over federal-court jurisdiction. The Seventh Circuit's construction would free the Executive to shelter its own decisions from abuse-of-discretion appellate court review simply by issuing a regulation declaring those decisions "discretionary." Such an extraordinary delegation of authority cannot be extracted from the statute Congress enacted. Pp. 251–252.

533 F. 3d 534, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, SCALIA, KENNEDY, THOMAS, BREYER, and SOTOMAYOR, JJ., joined. ALITO, J., filed an opinion concurring in the judgment, *post*, p. 253.

Rick M. Schoenfield argued the cause for petitioner. With him on the briefs were *Michael R. Lang*, *Elaine J. Goldenberg*, and *Lindsay C. Harrison.*

Nicole A. Saharsky argued the cause for respondent in support of petitioner. With her on the briefs were *Solicitor General Kagan*, *Assistant Attorney General West*, *Deputy Solicitor General Kneedler*, *Deputy Assistant Attorney General Osuna*, *Donald E. Keener*, *Jennifer P. Levings*, and *Melissa Neiman-Kelting.*

Amanda C. Leiter, by invitation of the Court, 557 U. S. 951, argued the cause and filed a brief as *amicus curiae* in support of the judgment below. With her on the brief was *RonNell Andersen Jones.**

JUSTICE GINSBURG delivered the opinion of the Court.

Petitioner Agron Kucana moved to reopen his removal proceedings, asserting new evidence in support of his plea

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*Briefs of *amici curiae* urging reversal were filed for the American Civil Liberties Union by *Lee Gelernt*, *Steven R. Shapiro*, and *Lucas Guttentag;* for Law Professors by *Anne Harkavy*, *Catherine M. A. Carroll*, and *Stephen I. Vladeck*, *pro se;* and for the National Immigrant Justice Center et al. by *Jeffrey T. Green*, *Quin M. Sorenson*, and *Charles Roth.*

Daniel J. Popeo and *Richard A. Samp* filed a brief for the Washington Legal Foundation et al. as *amici curiae* urging affirmance.

for asylum. An Immigration Judge (IJ) denied the motion, the Board of Immigration Appeals (BIA or Board) sustained the IJ's ruling, and the U. S. Court of Appeals for the Seventh Circuit concluded that it lacked jurisdiction to review the administrative determination. For that conclusion, the court relied on a provision added to the Immigration and Nationality Act (INA or Act), 66 Stat. 166, 8 U. S. C. § 1101 *et seq.*, by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), 110 Stat. 3009–546. The provision found dispositive by the Seventh Circuit, 8 U. S. C. § 1252(a)(2)(B), states that no court shall have jurisdiction to review any action of the Attorney General "the authority for which is *specified under this subchapter* to be in the discretion of the Attorney General," § 1252(a)(2)(B)(ii) (emphasis added).

We granted certiorari to decide whether the proscription of judicial review stated in § 1252(a)(2)(B) applies not only to Attorney General determinations made discretionary by statute, but also to determinations declared discretionary by the Attorney General himself through regulation. We hold that the key words "specified under this subchapter" refer to statutory, but not to regulatory, specifications. We so rule based on the longstanding exercise of judicial review of administrative rulings on reopening motions, the text and context of § 1252(a)(2)(B), and the history of the relevant statutory provisions. We take account, as well, of the "presumption favoring interpretations of statutes [to] allow judicial review of administrative action." *Reno* v. *Catholic Social Services, Inc.*, 509 U. S. 43, 63–64 (1993) (quoting *McNary* v. *Haitian Refugee Center, Inc.*, 498 U. S. 479, 496 (1991)). Separation-of-powers concerns, moreover, caution us against reading legislation, absent clear statement, to place in executive hands authority to remove cases from the Judiciary's domain.

I

A

In IIRIRA, Congress for the first time codified certain rules, earlier prescribed by the Attorney General, governing the reopening process. The amended Act instructs that reopening motions "shall state the new facts that will be proven at a hearing to be held if the motion is granted, and shall be supported by affidavits or other evidentiary material." § 1229a(c)(7)(B). Congress also prescribed that "the motion to reopen shall be filed within 90 days of the date of entry of a final administrative order of removal." § 1229a(c)(7)(C)(i). Among matters excepted from the 90-day limitation are motions to reopen asylum applications because of changed conditions in the country of nationality or removal. § 1229a(c)(7)(C)(ii).

Section 1252(a)(2), captioned "Matters not subject to judicial review," contains the provision on which this case turns. Subparagraph (B) of that paragraph, headed "Denials of discretionary relief," states:

> "Notwithstanding any other provision of law (statutory or nonstatutory), . . . except as provided in subparagraph (D),[1] and regardless of whether the judgment,

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[1] Subparagraph (D) of § 1252(a)(2), enacted in 2005, REAL ID Act of 2005 (REAL ID Act), § 106(a), 119 Stat. 310, adds:

"Nothing in subparagraph (B) . . . or in any other provision of this Act (other than this section) which limits or eliminates judicial review, shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section."

The addition of 8 U. S. C. § 1252(a)(2)(D) in 2005 did not change the operative language of § 1252(a)(2)(B)(ii) as enacted in 1996.

The REAL ID Act amendments also inserted into this introductory clause, *inter alia*, the words "(statutory or nonstatutory)." § 106(a)(1)(A)(ii), 119 Stat. 310. The introductory clause, however, does not define the scope of 8 U. S. C. § 1252(a)(2)(B)(ii)'s jurisdictional bar. It simply informs that once the scope of the bar is determined, jurisdiction

> decision, or action is made in removal proceedings, no court shall have jurisdiction to review—
>
> "(i) any judgment regarding the granting of relief under section 1182(h), 1182(i), 1229b, 1229c, or 1255 of this title,[2] or
>
> "(ii) any other decision or action of the Attorney General . . . the authority for which is specified under this subchapter[3] to be in the discretion of the Attorney General . . . , other than the granting of relief under section 1158(a) of this title."[4]

A regulation, amended in 1996, just months before Congress enacted IIRIRA, 61 Fed. Reg. 18904, Pt. 3, § 3.2(a), states that "[t]he decision to grant or deny a motion to reopen . . . is within the discretion of the Board." 8 CFR § 1003.2(a) (2009). As adjudicator in immigration cases, the Board exercises authority delegated by the Attorney General. See 8 U. S. C. § 1103(g)(2); 8 CFR § 1003.1. See also 8 CFR § 1003.23(b)(3) (governing motions to reopen filed with an IJ).

B

Kucana, a citizen of Albania, entered the United States on a business visa in 1995 and remained after the visa expired. Alleging that he would be persecuted based on his political beliefs if returned to Albania, Kucana applied for asylum and

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is precluded regardless of what any *other* provision or source of law might say.

[2] Sections 1182(h) and 1182(i) address waivers of inadmissibility based on certain criminal offenses, and fraud or misrepresentation, respectively; § 1229b addresses cancellation of removal; § 1229c, voluntary departure; and § 1255, adjustment of status.

[3] "[T]his subchapter" refers to Title 8, Chapter 12, Subchapter II, of the United States Code, codified at 8 U. S. C. §§ 1151–1381 and titled "Immigration."

[4] The exception for relief under § 1158(a) refers to administrative decisions whether to grant asylum. Kucana's petition for judicial review is limited to the denial of his motion to reopen; he does not challenge in this proceeding the decision denying his application for asylum.

withholding of removal in 1996. An IJ determined that Kucana was removable and scheduled a hearing to evaluate his eligibility for asylum. When Kucana failed to appear for the hearing, the IJ immediately ordered his removal *in absentia.* Kucana filed a motion to reopen, explaining that he had missed his hearing because he had overslept. The IJ denied the motion, and the BIA affirmed in 2002. Kucana did not seek judicial review, nor did he leave the United States.

Kucana filed a second motion to reopen his removal proceedings in 2006, contending that conditions in Albania had worsened.[5] The BIA denied relief; it concluded that conditions in Albania had actually improved since 1997. Arguing that the BIA had abused its discretion in denying his motion, Kucana filed a petition for review in the Seventh Circuit.

In a fractured decision, the Seventh Circuit dismissed the petition for lack of jurisdiction. *Kucana* v. *Mukasey*, 533 F. 3d 534, 539 (2008). The court held that 8 U. S. C. § 1252(a)(2)(B)(ii) bars judicial review not only of administrative decisions made discretionary by statute, but also "when the agency's discretion is specified by a regulation rather than a statute." 533 F. 3d, at 536.[6] In so ruling, the Sev-

[5] The statute "guarantees to each alien the right to file 'one motion to reopen proceedings.'" *Dada* v. *Mukasey*, 554 U. S. 1, 15 (2008) (quoting § 1229a(c)(7)(A)). Attorney General regulations permit further motions to reopen to seek asylum or withholding of removal based on changed conditions in the country of nationality or removal. See 8 CFR § 1003.2(c)(3)(ii) (2009).

[6] While recognizing that a regulation, rather than the INA itself, confers on the Board discretion to grant or deny a motion to reopen, the Court of Appeals said that the regulation, § 1003.2(a), "draw[s] . . . force from provisions in the Act allowing immigration officials to govern their own proceedings." 533 F. 3d, at 536. The "force," according to the Seventh Circuit, comes from 8 U. S. C. § 1229a(c)(7), which it described as providing "authority for reopening by [the] Board." 533 F. 3d, at 536. Section 1229a(c)(7), however, is not directed to the agency's discretion to grant or deny motions to reopen. In the main, "it simply lays out the require-

enth Circuit created a split between itself and other Courts of Appeals, all of them holding that denials of reopening motions are reviewable in court.[7]

Judge Ripple concurred *dubitante*. He acknowledged that the court was following an earlier decision, *Ali* v. *Gonzales*, 502 F. 3d 659 (CA7 2007),[8] but "suggest[ed] that, had Congress intended to deprive th[e] court of jurisdiction . . . , it would have done so explicitly, as it did in 8 U. S. C. § 1252(a)(2)(B)(i)." 533 F. 3d, at 540. The court, he concluded, should revisit both *Ali* and *Kucana* and "chart a course . . . more closely adher[ing] to the statutory language chosen and enacted by Congress." 533 F. 3d, at 540.

Judge Cudahy dissented. Given the absence of "specific [statutory] language entrusting the decision on a motion to reopen to the discretion of the Attorney General," *ibid.* (internal quotation marks omitted), he saw no impediment to the exercise of jurisdiction over Kucana's petition. In support of his position, Judge Cudahy invoked the "strong presumption that Congress intends judicial review of administrative action." *Id.*, at 541 (quoting *Traynor* v. *Turnage*, 485 U. S. 535, 542 (1988)). With four judges dissenting, the Seventh Circuit denied Kucana's petition for rehearing en banc. See 533 F. 3d, at 541–542 (dissenting statement of Ripple, J., joined by Rovner, Wood, and Williams, JJ.).

We granted certiorari, 556 U. S. 1207 (2009), to resolve the Circuit conflict. As it did before the Seventh Circuit, the

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ments *an alien* must fulfill when filing a motion to reopen." *Id.*, at 541 (Cudahy, J., dissenting) (emphasis added). See also *infra*, at 243, n. 9.

[7] See *Singh* v. *Mukasey*, 536 F. 3d 149, 153–154 (CA2 2008); *Jahjaga* v. *Attorney Gen. of United States*, 512 F. 3d 80, 82 (CA3 2008); *Zhao* v. *Gonzales*, 404 F. 3d 295, 303 (CA5 2005); *Miah* v. *Mukasey*, 519 F. 3d 784, 789, n. 1 (CA8 2008); *Medina-Morales* v. *Ashcroft*, 371 F. 3d 520, 528–529 (CA9 2004); *Infanzon* v. *Ashcroft*, 386 F. 3d 1359, 1361–1362 (CA10 2004).

[8] *Ali* involved a decision, made discretionary by regulation, denying an alien's request for a continuance.

Government agrees with Kucana that § 1252(a)(2)(B)(ii) does not remove federal-court jurisdiction to review the denial of a reopening motion. We appointed Amanda C. Leiter to brief and argue the case, as *amicus curiae*, in support of the Seventh Circuit's judgment. 557 U. S. 951 (2009). Ms. Leiter has ably discharged her assigned responsibilities.

II

The motion to reopen is an "important safeguard" intended "to ensure a proper and lawful disposition" of immigration proceedings. *Dada* v. *Mukasey*, 554 U. S. 1, 18 (2008); cf. *Stone* v. *INS*, 514 U. S. 386, 401 (1995) (analogizing motions to reconsider immigration decisions to motions for relief from a judgment under Federal Rule of Civil Procedure 60(b)). Federal-court review of administrative decisions denying motions to reopen removal proceedings dates back to at least 1916. See *Dada*, 554 U. S., at 12–13 (citing cases). This Court has ultimately reviewed reopening decisions on numerous occasions. See, *e. g.*, *INS* v. *Doherty*, 502 U. S. 314, 322–324 (1992); *INS* v. *Abudu*, 485 U. S. 94, 104–111 (1988); *INS* v. *Rios-Pineda*, 471 U. S. 444, 449–452 (1985); *INS* v. *Jong Ha Wang*, 450 U. S. 139, 141–146 (1981) *(per curiam)*. Mindful of the Board's "broad discretion" in such matters, however, courts have employed a deferential, abuse-of-discretion standard of review. See *Doherty*, 502 U. S., at 323 (internal quotation marks omitted).

The Seventh Circuit held that Congress removed the authority long exercised by federal courts to review denials of an alien's reopening request. Congress did so, the Court of Appeals said, in § 1252(a)(2)(B)(ii), which removes jurisdiction to review a decision of the Attorney General "the authority for which is specified under this subchapter to be in the discretion of the Attorney General." All agree that the Attorney General's regulation, 8 CFR § 1003.2(a), places "[t]he decision to grant or deny a motion to reopen . . . within the discretion of the Board." But the statute does not cod-

ify that prescription,[9] and does not otherwise "specif[y]" that reopening decisions are "in the discretion of the Attorney General."[10]

III

A

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The Board's discretionary authority to act on a motion to reopen, we have thus far explained, is "specified" not in a statute, but only in the Attorney General's regulation, which

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[9] As earlier noted, see *supra*, at 240–241, n. 6, the Seventh Circuit stated that the regulation specifying the Board's discretion over motions to reopen, 8 CFR § 1003.2(a), "draw[s] [its] force from provisions in the Act." 533 F. 3d, at 536 (citing 8 U. S. C. § 1229a(c)(7)). It is hard to see how the regulation could draw force from § 1229a(c)(7), for the regulation was already in force when that statutory provision was enacted. The regulation, 8 CFR § 1003.2(a), was published April 29, 1996, 61 Fed. Reg. 18900, 18904; 8 U. S. C. § 1229a(c)(7) was enacted September 30, 1996, § 304, 110 Stat. 3009–593.

[10] The only statutory reference to discretion respecting motions to reopen appears in § 1229a(c)(7)(C)(iv)(III), which gives the Attorney General "discretion" to waive one of the statute's time limitations in extraordinary circumstances.

Amicus urges that "the statutory language governing motions to reopen anticipates an exercise of Attorney General discretion when it states, '[t]he motion to reopen shall state the new facts that will be proven at a hearing to be held *if the motion is granted.*' " Brief for Court-Appointed *Amicus Curiae* in Support of Judgment Below 19, n. 8 (quoting § 1229a(c)(7)(B)). One can demur to the argument that Congress anticipated that decisions on reopening motions would be discretionary. Even so, the statutory proscription Congress enacted, § 1252(a)(2)(B)(ii), speaks of authority "specified"—not merely assumed or contemplated—to be in the Attorney General's discretion. "Specified" is not synonymous with "implied" or "anticipated." See Webster's New Collegiate Dictionary 1116 (1974) ("specify" means "to name or state explicitly or in detail"). See also *Soltane* v. *U. S. Dept. of Justice*, 381 F. 3d 143, 147 (CA3 2004) (Alito, J.) ("[W]e do not think . . . that the use of marginally ambiguous statutory language, without more, is adequate to 'specif[y]' that a particular action is within the Attorney General's discretion for the purposes of § 1252(a)(2)(B)(ii).").

instructs: "The decision to grant or deny a motion to reopen . . . is within the discretion of the Board, subject to the restrictions of this section. The Board has discretion to deny a motion to reopen even if the party moving has made out a *prima facie* case for relief." 8 CFR § 1003.2(a). Nevertheless, in defense of the Seventh Circuit's judgment, *amicus* urges that regulations suffice to trigger 8 U. S. C. § 1252(a)(2)(B)(ii)'s proscription of judicial review.

The jurisdiction-stripping provision, *amicus* reminds, refers to "authority . . . specified under this subchapter." As she reads that formulation, the word "under" is key. She comprehends "under" to mean "pursuant to," "subordinate to," "below or lower than," "inferior . . . in rank or importance," "by reason of the authority of." Brief for Court-Appointed *Amicus Curiae* in Support of Judgment Below 15, 17 (citing, *inter alia*, *Florida Dept. of Revenue* v. *Piccadilly Cafeterias, Inc.*, 554 U. S. 33, 39 (2008); *Ardestani* v. *INS*, 502 U. S. 129, 135 (1991)). Administrative regulations count for § 1252(a)(2)(B) purposes, she urges, because they are issued "pursuant to," and are measures "subordinate to," the legislation they serve to implement. The parties, on the other hand, read "specified under this subchapter" to mean "specified in," or "specified by," the subchapter.[11]

On the reading *amicus* advances, § 1252(a)(2)(B)(ii) would bar judicial review of any decision that an executive regulation places within the BIA's discretion, including the decision to deny a motion to reopen. On the parties' reading, however, § 1252(a)(2)(B)(ii) precludes judicial review only when the statute itself specifies the discretionary character of the Attorney General's authority.

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[11] Defining "under," as used in § 1252(a)(2)(B)(ii), to mean "pursuant to," or "subordinate to," and not "in" or "by," the Attorney General observes, would give rise to "a fatal anomaly": "Section 1252(a)(2)(B)(ii) would apply only to regulations promulgated 'under the authority of' the relevant subchapter, and not to specifications of discretion in the subchapter itself." Reply Brief for Respondent 6.

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As the parties and *amicus* recognize, their diverse renderings of "under," standing alone, do not equip us to resolve this case. The word "under" is chameleon; it "has many dictionary definitions and must draw its meaning from its context." *Ardestani*, 502 U. S., at 135.[12] Examining, in statutory context, the provision in which the word "under" is embedded, we conclude that the parties' position stands on firmer ground.

Section 1252(a)(2)(B)(ii), the provision at issue here, is far from the only jurisdictional limitation in IIRIRA. See *Dada*, 554 U. S., at 16 ("In reading a statute we must not look merely to a particular clause, but consider in connection with it the whole statute." (internal quotation marks omitted)); *Davis* v. *Michigan Dept. of Treasury*, 489 U. S. 803, 809 (1989) ("[T]he words of a statute must be read in their context and with a view to their place in the overall statutory scheme."). Section 1252(a)(2), titled "Matters not subject to judicial review," lists a variety of agency determinations the federal courts lack jurisdiction to review. Those determinations divide into three categories. The first, § 1252(a)(2)(A), concerns immigration officers' determinations whether aliens applying for admission are admissible. Next in statutory order is the provision before us, § 1252(a)(2)(B), which involves denials of discretionary relief.

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[12] In an appendix to her brief, *amicus* lists hundreds of statutory provisions in which regulations are described as being issued "under" a statute. See App. A to Brief for Court-Appointed *Amicus Curiae* in Support of Judgment Below. In every one of those examples, Congress expressly used the word "regulations."

At oral argument, *amicus* called our attention to three instances in which Congress used the words "specified under" in Title 8, without any reference to "regulations," to encompass agency matters. Tr. of Oral Arg. 47–48, 54–55 (citing §§ 1227(a)(1)(H), 1375a(a)(6), and 1537(b)(1)). These three provisions point to other parts of the Act, which in turn rely on administrative determinations. *Amicus*' research underscores the point that context defines "under."

The last category, § 1252(a)(2)(C), concerns final orders of removal entered against criminal aliens.

Both § 1252(a)(2)(A) and § 1252(a)(2)(C) depend on statutory provisions, not on any regulation, to define their scope. The latter provision, the criminal alien bar, precludes judicial review of "any final order of removal against an alien who is removable by reason of having committed a criminal offense covered in" § 1182(a)(2), § 1227(a)(2)(A)(iii), (B), (C), or (D), or certain offenses covered in § 1227(a)(2)(A)(ii). All the defining references are statutory; none invokes a regulation. The same holds for the admissibility bar in § 1252(a)(2)(A). Given § 1252(a)(2)(B)'s statutory placement, sandwiched between subsections (a)(2)(A) and (a)(2)(C), one would expect that it, too, would cover statutory provisions alone.

3

Focusing on § 1252(a)(2)(B), we note the lead line serving to introduce both of the subparagraph's two clauses: "[N]o court shall have jurisdiction to review . . . ." Clause (i) then places within the no-judicial-review category "any judgment regarding the granting of relief under section 1182(h), 1182(i), 1229b, 1229c, or 1255." Each of the statutory provisions referenced in clause (i) addresses a different form of discretionary relief from removal, see *supra*, at 239, n. 2, and each contains language indicating that the decision is entrusted to the Attorney General's discretion. See, *e. g.*, § 1182(h) ("The Attorney General may, in his discretion, waive [inadmissibility based on certain criminal offenses]."). Clause (i) does not refer to any regulatory provision.

To the clause (i) enumeration of administrative judgments that are insulated from judicial review, Congress added in clause (ii) a catchall provision covering "any other decision . . . the authority for which is specified under this subchapter." The proximity of clauses (i) and (ii), and the words linking them—"any other decision"—suggests that Congress had in mind decisions of the same genre, *i. e.*, those made

discretionary by legislation.[13] The clause (i) enumeration, we find, is instructive in determining the meaning of the clause (ii) catchall. Read harmoniously, both clauses convey that Congress barred court review of discretionary decisions only when Congress itself set out the Attorney General's discretionary authority in the statute. See *Hall Street Associates, L. L. C.* v. *Mattel, Inc.*, 552 U. S. 576, 586 (2008) ("[W]hen a statute sets out a series of specific items ending with a general term, that general term is confined to covering subjects comparable to the specifics it follows.").[14]

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We also find significant the character of the decisions Congress enumerated in § 1252(a)(2)(B)(i), thereby insulating them from judicial review. As the Government explained at oral argument, the determinations there listed are "substantive decisions . . . made by the Executive in the immigration context as a matter of grace, things that involve whether aliens can stay in the country or not." Tr. of Oral Arg. 14.[15]

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[13] Congress excepted from § 1252(a)(2)(B)(ii) "the granting of relief under [§] 1158(a)." Section 1158 concerns applications for asylum. Absent the exception, asylum applicants might fall within § 1252(a)(2)(B)(ii)'s jurisdictional bar because a statutory provision, § 1158(b)(1)(A), specifies that "the Attorney General *may* grant asylum." (Emphasis added.) See *Zadvydas* v. *Davis*, 533 U. S. 678, 697 (2001) (" 'may' suggests discretion").

[14] *Amicus* suggests that the word "any" in § 1252(a)(2)(B)(ii) should be read expansively to draw in decisions made discretionary by regulation. Brief for Court-Appointed *Amicus Curiae* in Support of Judgment Below 21–23. But § 1252(a)(2)(B)(ii) does not say "any decision"; it says "any *other* decision." And as we have just explained, *other* decisions falling within § 1252(a)(2)(B)(ii)'s compass are most sensibly understood to include only decisions made discretionary by Congress. See Brief for Respondent 19–20, and n. 11 (noting that "over thirty provisions in the relevant subchapter of the INA . . . explicitly grant the Attorney General . . . 'discretion' to make a certain decision").

[15] Counsel offered this explanation in response to the question: "Why would Congress want to exclude review for discretionary judgments by the Attorney General that are recited explicitly to be discretionary in the

They include waivers of inadmissibility based on certain criminal offenses, § 1182(h), or based on fraud or misrepresentation, § 1182(i); cancellation of removal, § 1229b; permission for voluntary departure, § 1229c; and adjustment of status, § 1255.

Other decisions specified by statute "to be in the discretion of the Attorney General," and therefore shielded from court oversight by § 1252(a)(2)(B)(ii), are of a like kind. See, *e. g.*, § 1157(c)(1) (discretion to admit refugees "determined to be of special humanitarian concern to the United States"); § 1181(b) (discretion to waive requirement of documentation for readmission); § 1182(a)(3)(D)(iii) (discretion to waive, in certain cases, inadmissibility of aliens who have affiliated with a totalitarian party). Decisions on reopening motions made discretionary by regulation, in contrast, are adjunct rulings: The motion to reopen is a procedural device serving to ensure "that aliens [a]re getting a fair chance to have their claims heard." Tr. of Oral Arg. 17. A court decision reversing the denial of a motion to reopen does not direct the Executive to afford the alien substantive relief; ordinarily, it touches and concerns only the question whether the alien's claims have been accorded a reasonable hearing.

If Congress wanted the jurisdictional bar to encompass decisions specified as discretionary by regulation along with those made discretionary by statute, moreover, Congress could easily have said so. In other provisions enacted simultaneously with § 1252(a)(2)(B)(ii), Congress expressed precisely that meaning. See IIRIRA § 213, 110 Stat. 3009–572 ("immigration benefits pursuant to this Act, or the regulations promulgated thereunder"), codified at 8 U. S. C. § 1324c(e)(2); IIRIRA § 372, 110 Stat. 3009–646 ("any of the powers, privileges, or duties conferred or imposed by this Act or regulations issued thereunder"), codified at 8 U. S. C.

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statute, but provide judicial review for judgments that are just as lawfully discretionary because the Attorney General is given the authority to make them discretionary and has done so?" Tr. of Oral Arg. 9; see *id.*, at 13–14.

§ 1103(a)(10). "[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Nken* v. *Holder*, 556 U. S. 418, 430 (2009) (internal quotation marks omitted).

B

The history of the relevant statutory provisions corroborates our determination that § 1252(a)(2)(B)(ii) does not proscribe judicial review of denials of motions to reopen. Attorney General regulations have long addressed reopening requests. See 6 Fed. Reg. 71–72 (1941). The current regulations, adopted in 1996, 61 Fed. Reg. 18904–18906, derive from rules published in 1958, see 23 Fed. Reg. 9118–9119; *Dada*, 554 U. S., at 13.

Enacting IIRIRA in 1996, Congress "transform[ed] the motion to reopen from a regulatory procedure to a statutory form of relief available to the alien." *Id.*, at 14. IIRIRA largely codified the Attorney General's directions on filing reopening motions. See § 1229a(c)(7) (guaranteeing right to file one motion, prescribing contents, and setting deadlines).

In the same legislation, Congress amended the INA aggressively to expedite removal of aliens lacking a legal basis to remain in the United States. See *Reno* v. *American-Arab Anti-Discrimination Comm.*, 525 U. S. 471, 475 (1999). Among IIRIRA's several proscriptions of judicial review is the one here at issue, § 1252(a)(2)(B)(ii), barring review of administrative decisions Congress placed within the Attorney General's discretion.

Congress thus simultaneously codified the process for filing motions to reopen and acted to bar judicial review of a number of executive decisions regarding removal. But Congress did not codify the regulation delegating to the BIA discretion to grant or deny motions to reopen. See 8 CFR § 1003.2(a) (reopening may be entertained not only on appli-

cation; Board "may at any time reopen . . . on its own motion any case in which it has rendered a decision"). Had Congress elected to insulate denials of motions to reopen from judicial review, it could have so specified together with its codification of directions on filing reopening motions.

From the Legislature's silence on the discretion of the Attorney General (or his delegate, the Board) over reopening motions, see *supra*, at 243, n. 10, we take it that Congress left the matter where it was pre-IIRIRA: The BIA has broad discretion, conferred by the Attorney General, "to grant or deny a motion to reopen," 8 CFR § 1003.2(a), but courts retain jurisdiction to review, with due respect, the Board's decision.[16] It is unsurprising that Congress would leave in place judicial oversight of this "important [procedural] safeguard" designed "to ensure a proper and lawful disposition" of immigration proceedings, *Dada*, 554 U. S., at 18, where, as here, the alien's underlying claim (for asylum) would itself be reviewable.[17]

In the REAL ID Act, Congress further amended the INA. By 2005, two Courts of Appeals had already ruled that 8

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[16] A statement in the House Conference Report on IIRIRA, *amicus* suggests, supports her argument that Congress intended broadly to foreclose judicial review of reopening denials. Brief for Court-Appointed *Amicus Curiae* in Support of Judgment Below 32–34. The Report states that § 1252(a)(2)(B) "bars judicial review . . . of any decision or action of the Attorney General which is specified to be in the discretion of the Attorney General." H. R. Conf. Rep. No. 104–828, p. 219 (1996). That statement, as we read it, simply summarizes the statutory text at a general level. It does not home in on the question whether decisions made discretionary only by regulation are judicially reviewable.

[17] We do not reach the question whether review of a reopening denial would be precluded if the court would lack jurisdiction over the alien's underlying claim for relief. Some courts confronting that question have refused to consider petitions for review of a reopening denial that seeks to revisit the denial of the underlying claim; they have reasoned that hearing the petition would end-run the bar to review of the petitioner's core claim. See, *e. g.*, *Assaad* v. *Ashcroft*, 378 F. 3d 471, 473–475 (CA5 2004) *(per curiam)*.

U. S. C. § 1252(a)(2)(B)(ii) did not preclude them from reviewing denials of motions to reopen, see *Infanzon* v. *Ashcroft*, 386 F. 3d 1359, 1361–1362 (CA10 2004); *Medina-Morales* v. *Ashcroft*, 371 F. 3d 520, 528–529 (CA9 2004), and no court had reached a contrary result. Although adding or reformulating provisions on asylum, § 101(a), (b), 119 Stat. 302–303, protection from removal, § 101(c), (d), *id.*, at 303–305, even judicial review, § 106, *id.*, at 310–311, the REAL ID Act did not disturb the unbroken line of decisions upholding court review of administrative denials of motions to reopen. See *supra*, at 242; *supra*, at 238–239, n. 1.[18]

IV

Any lingering doubt about the proper interpretation of 8 U. S. C. § 1252(a)(2)(B)(ii) would be dispelled by a familiar principle of statutory construction: the presumption favoring judicial review of administrative action. When a statute is "reasonably susceptible to divergent interpretation, we adopt the reading that accords with traditional understandings and basic principles: that executive determinations generally are subject to judicial review." *Gutierrez de Martinez* v. *Lamagno*, 515 U. S. 417, 434 (1995). We have consistently applied that interpretive guide to legislation regarding immigration, and particularly to questions concerning the preservation of federal-court jurisdiction. See, *e. g.*, *INS* v. *St. Cyr*, 533 U. S. 289, 298 (2001); *Catholic Social Services, Inc.*, 509 U. S., at 63–64; *McNary*, 498 U. S., at 496. Because the "presumption favoring interpretations of statutes [to] allow judicial review of administrative action" is

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[18] We express no opinion on whether federal courts may review the Board's decision not to reopen removal proceedings *sua sponte*. Courts of Appeals have held that such decisions are unreviewable because *sua sponte* reopening is committed to agency discretion by law, see 5 U. S. C. § 701(a)(2). See, *e. g.*, *Tamenut* v. *Mukasey*, 521 F. 3d 1000, 1003–1004 (CA8 2008) (en banc) *(per curiam)* (agreeing with ten other Courts of Appeals).

"well-settled," *Catholic Social Services, Inc.*, 509 U. S., at 63–64 (quoting *McNary*, 498 U. S., at 496), the Court assumes that "Congress legislates with knowledge of" the presumption, *id.*, at 496. It therefore takes "clear and convincing evidence" to dislodge the presumption. *Catholic Social Services, Inc.*, 509 U. S., at 64 (internal quotation marks omitted). There is no such evidence here.

Finally, we stress a paramount factor in the decision we render today. By defining the various jurisdictional bars by reference to other provisions in the INA itself, Congress ensured that it, and only it, would limit the federal courts' jurisdiction. To read § 1252(a)(2)(B)(ii) to apply to matters where discretion is conferred on the Board by regulation, rather than on the Attorney General by statute, would ignore that congressional design. If the Seventh Circuit's construction of § 1252(a)(2)(B)(ii) were to prevail, the Executive would have a free hand to shelter its own decisions from abuse-of-discretion appellate court review simply by issuing a regulation declaring those decisions "discretionary." Such an extraordinary delegation of authority cannot be extracted from the statute Congress enacted.

V

A statute affecting federal jurisdiction "must be construed both with precision and with fidelity to the terms by which Congress has expressed its wishes." *Cheng Fan Kwok* v. *INS*, 392 U. S. 206, 212 (1968). As we have noted, see *supra*, at 249, and as *amicus* emphasizes, "many provisions of IIRIRA [we]re aimed at protecting [from court review exercises of] the Executive's discretion." *American-Arab Anti-Discrimination Comm.*, 525 U. S., at 486 (emphasis deleted). But "no law pursues its purpose at all costs, and . . . the textual limitations upon a law's scope are no less a part of its 'purpose' than its substantive authorizations." *Rapanos* v. *United States*, 547 U. S. 715, 752 (2006) (plurality opinion). While Congress pared back judicial review in

IIRIRA, it did not delegate to the Executive authority to do so. Action on motions to reopen, made discretionary by the Attorney General only, therefore remain subject to judicial review.

* * *

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

It is so ordered.

JUSTICE ALITO, concurring in the judgment.

I agree that the Court of Appeals had jurisdiction to review the denial of petitioner's motion to reopen his removal proceeding, but I would decide this case on narrower grounds. The controlling statutory provision, 8 U. S. C. § 1252(a)(2)(B)(ii), states that "no court shall have jurisdiction to review . . . any . . . decision . . . of the Attorney General . . . the authority for which is specified *under this subchapter* to be in the discretion of the Attorney General." (Emphasis added.) The phrase "under this subchapter" refers to Subchapter II of Chapter 12 of Title 8, 8 U. S. C. §§ 1151–1381, see *ante*, at 239, n. 3, and, as the Court notes, no provision of Subchapter II confers discretionary authority on the Attorney General to decide motions to reopen, see *ante*, at 242–243, 249–250. The Court of Appeals, however, held that the Attorney General's decision in this case was unreviewable because a regulation, 8 CFR § 1003.2(a) (2009), made that decision discretionary.

If this regulation had been promulgated pursuant to authority conferred by a provision of Subchapter II, we would have to confront the question that the opinion of the Court addresses. But it seems clear that § 1003.2, at least insofar as it gave the Attorney General the discretionary authority that he exercised in this case, is grounded on authority conferred under *Subchapter I* of Chapter 12 of Title 8, 8 U. S. C.

§§ 1101–1107. See 8 U. S. C. § 1103(a) (1994 ed.) (giving the Attorney General the authority to "establish such regulations . . . as he deems necessary for carrying out his authority under [Chapter 12 of Title 8 of the U. S. Code]").

The *amicus curiae* whom we appointed to defend the decision of the Court of Appeals has attempted to link 8 CFR § 1003.2 to Subchapter II. She notes that the Attorney General, in promulgating that regulation, cited not only 8 U. S. C. § 1103(a), but also a provision of Subchapter II, 8 U. S. C. § 1252b (1994 ed.). See 61 Fed. Reg. 18900, 18904 (1996).[1] This latter statutory provision[2] conferred the authority to reopen a narrow set of deportation orders, *i. e.*, those issued after the alien failed to appear at the deportation hearing. Although this statutory provision does not apply to petitioner's motion to reopen, *amicus* argues that "the section's

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[1] Two other provisions in Subchapter II refer to motions to reopen, but both were enacted after the implementation of 8 CFR § 1003.2 (2009), and therefore that regulation cannot be said to implement these provisions. See *ante*, at 243, n. 9. Title 8 U. S. C. § 1229a(c)(7), which addresses the procedural requirements for filing such a motion, and § 1252(b)(6), which requires consolidation of a motion to reopen with the underlying removal order, were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) in September 1996 and made effective in April 1997. See 110 Stat. 3009–593, 3009–609. Prior to that time, the consolidation provision was found in Subchapter I. See 8 U. S. C. § 1105a(a)(6) (1994 ed.).

[2] This provision conferred the authority to rescind a deportation order "upon a motion to reopen filed within 180 days after the date of the order of deportation if the alien demonstrates that the failure to appear was because of exceptional circumstances . . . or . . . upon a motion to reopen filed at any time if the alien demonstrates that the alien did not receive notice . . . or the alien demonstrates that the alien was in Federal or State custody and did not appear through no fault of the alien." § 1252b(c)(3) (1994 ed.).

A similar provision, enacted as part of IIRIRA, is now contained in § 1229a(b)(5)(C) (2006 ed.). As the Government notes, this provision does not apply in this case because petitioner challenges the denial of his second motion to reopen, which the parties agree is governed by § 1229a(c)(7). Brief for Respondent 21, n. 13; *id.*, at 6, n. 4.

brief allusion to motions to reopen clearly presupposed that the Attorney General had in place a more general procedure for reviewing all motions to reopen removal proceedings." Brief for Court-Appointed *Amicus Curiae* in Support of Judgment Below 41–42.

Amicus' argument is ingenious but ultimately unpersuasive. At most, 8 U. S. C. § 1252b (1994 ed.) may be read as implicitly authorizing the promulgation of a regulation giving the Attorney General the discretion to reopen certain deportation orders that were issued in absentia. Petitioner's second motion to reopen, however, seeks reopening on grounds outside of § 1252b, and therefore 8 CFR § 1003.2, insofar as it applies to petitioner's case, was not issued pursuant to Subchapter II and does not implement any provision of that Subchapter.

For these reasons, this case can and should be decided on the narrow ground that, even if some regulations can render a decision of the Attorney General unreviewable, the regulation at issue in this case does not have that effect.

Syllabus

SOUTH CAROLINA *v.* NORTH CAROLINA

ON EXCEPTIONS TO REPORT OF SPECIAL MASTER

No. 138, Orig. Argued October 13, 2009—Decided January 20, 2010

South Carolina brought this original action seeking an equitable apportionment with North Carolina of the Catawba River's waters. The Court referred the matter to a Special Master, together with the motions of three nonstate entities—the Catawba River Water Supply Project (CRWSP), Duke Energy Carolinas, LLC (Duke Energy), and the city of Charlotte, N. C.—seeking leave to intervene as parties. South Carolina opposed the motions. After a hearing, the Special Master granted all three motions and, on South Carolina's request, memorialized her reasoning in a First Interim Report. Among other things, she recognized that *New Jersey* v. *New York*, 345 U. S. 369, 373, sets forth the "appropriate" standard for a nonstate entity's intervention in an original action; looked beyond intervention to original actions in which the Court allowed complaining States to name nonstate entities as defendants in order to give that standard context; "distilled" from the cases a broad rule governing intervention; and applied that rule to each of the proposed intervenors. South Carolina presented exceptions.

Held: The CRWSP and Duke Energy have satisfied the appropriate intervention standard, but Charlotte has not. Pp. 264–276.

(a) Under *New Jersey* v. *New York*, "[a]n intervenor whose state is already a party should have the burden of showing some compelling interest in his own right, apart from his interest in a class with all other citizens and creatures of the state, which interest is not properly represented by the state." 345 U. S., at 373. That standard applies equally well in this case. Although high, the standard is not insurmountable. See, *e. g.*, *Oklahoma* v. *Texas*, 258 U. S. 574, 581. The Court declines to adopt the Special Master's proposed intervention rule, under which nonstate entities may become parties to original disputes in appropriate and compelling circumstances, such as where, *e. g.*, the nonstate entity is the instrumentality authorized to carry out the wrongful conduct or injury for which the complaining State seeks relief. A compelling reason for allowing citizens to participate in one original action is not necessarily a compelling reason for allowing them to intervene in all original actions. Pp. 264–268.

(b) This Court applies the *New Jersey* v. *New York* standard to the proposed intervenors. Pp. 268–276.

Syllabus

(1) The CRWSP should be allowed to intervene. It is an unusual bistate entity that is jointly owned and regulated by, and supplies water from the river to, North Carolina's Union County and South Carolina's Lancaster County. It has shown a compelling interest in protecting the viability of its operations, which are premised on a fine balance between the joint venture's two participating counties. The stresses this litigation would place on the CRWSP threaten to upset that balance. Moreover, neither State has sufficient interest in maintaining that balance to represent the full scope of the CRWSP's interests. The complaint attributes a portion of the total water transfers alleged to have harmed South Carolina to the CRWSP, but North Carolina cannot represent the joint venture's interests, since it will likely respond to the complaint's demand for a greater share of the river's water by taking the position that downstream users—such as Lancaster County—should receive less water. See, *e. g.*, *Colorado* v. *New Mexico*, 459 U. S. 176, 186–187. Any disruption to the CRWSP's operations would increase—not lessen—the difficulty of achieving a "just and equitable" allocation in this dispute. See *Nebraska* v. *Wyoming*, 325 U. S. 589, 618. Pp. 268–271.

(2) Duke Energy should also be permitted to intervene. It has carried its burden of showing unique and compelling interests: It operates 11 dams and reservoirs in both States that generate electricity for the region and control the river's flow; holds a 50-year federal license governing its hydroelectric power operations; and is the entity that orchestrated a multistakeholder negotiation process culminating in a Comprehensive Relicensing Agreement (CRA), signed by 70 entities from both States, which sets the terms under which Duke Energy has applied to renew its license. These interests will be relevant to the Court's ultimate decision, since it is likely that any equitable apportionment of the river will need to take into account the amount of water that Duke Energy needs to sustain its operations. And, there is no other similarly situated entity on the river, setting Duke Energy's interests apart from the class of all other citizens of the States. Just as important, Duke Energy has a unique and compelling interest in protecting the terms of its license and as the entity that orchestrated the CRA, which represents a consensus regarding the appropriate minimum continuous flow of river water into South Carolina under a variety of natural conditions and the conservation measures to be taken during droughts. Moreover, neither State is situated to properly represent Duke Energy's compelling interests. Neither has signed the CRA or expressed an intention to defend its terms, and, in fact, North Carolina intends to seek its modification. Pp. 271–273.

(3) However, because Charlotte's interest is not sufficiently unique and will be properly represented by North Carolina, the city's interven-

Syllabus

tion is not required. Charlotte is a North Carolina municipality, and for purposes of this litigation, its water transfers from the river basin constitute part of that State's equitable share. While the complaint names Charlotte as an entity authorized by North Carolina to carry out a large water transfer from the river basin, the complaint does not seek relief against Charlotte directly, but, rather, seeks relief against all North Carolina-authorized water transfers in excess of that State's equitable share. Charlotte, therefore, occupies a class of affected North Carolina water users, and the magnitude of its authorized transfer does not distinguish it in kind from other class members. Nor does Charlotte represent interstate interests that fall on both sides of this dispute, as does the CRWSP. Pp. 274–276.

Exceptions to Special Master's First Interim Report overruled in part and sustained in part.

ALITO, J., delivered the opinion of the Court, in which STEVENS, SCALIA, KENNEDY, and BREYER, JJ., joined. ROBERTS, C. J., filed an opinion concurring in the judgment in part and dissenting in part, in which THOMAS, GINSBURG, and SOTOMAYOR, JJ., joined, *post*, p. 276.

David C. Frederick argued the cause for plaintiff. With him on the briefs were *Henry Dargan McMaster*, Attorney General of South Carolina, *John W. McIntosh*, Chief Deputy Attorney General, *Robert D. Cook*, Assistant Deputy Attorney General, *T. Parkin Hunter* and *Leigh Childs Cantey*, Assistant Attorneys General, *Scott H. Angstreich*, *Scott K. Attaway*, and *Michael K. Gottlieb*.

Eric D. Miller argued the cause for the United States as *amicus curiae*. On the brief were then-*Acting Solicitor General Kneedler*, *Acting Assistant Attorney General Cruden*, *William M. Jay*, and *K. Jack Haugrud*.

H. Christopher Bartolomucci argued the cause for the intervention movants. With him on the brief for the City of Charlotte were *James T. Banks*, *Adam J. Siegel*, *Parker D. Thomson*, *DeWitt F. McCarley*, and *H. Michael Boyd*. *Thomas C. Goldstein*, *Troy D. Cahill*, *James W. Sheedy*, and *Susan E. Driscoll* filed a brief for the Catawba River Water Supply Project. *Carter G. Phillips*, *Virginia A. Seitz*, and *Garry S. Rice* filed a brief for Duke Energy Carolinas, LLC.

Christopher G. Browning, Jr., argued the cause for defendant. With him on the brief were *Roy Cooper*, Attorney General of North Carolina, *James C. Gulick*, *J. Allen Jernigan*, *Marc D. Bernstein*, and *Jennie W. Hauser*.

JUSTICE ALITO delivered the opinion of the Court.

The State of South Carolina brought this original action against the State of North Carolina, seeking an equitable apportionment of the Catawba River. We appointed a Special Master and referred the matter to her, together with the motions of three nonstate entities seeking to intervene in the dispute as parties. South Carolina opposed the motions. After holding a hearing, the Special Master granted the motions and, upon South Carolina's request, memorialized the reasons for her decision in a First Interim Report. South Carolina then presented exceptions, and we set the matter for argument.

Two of the three proposed intervenors have satisfied the standard for intervention in original actions that we articulated nearly 60 years ago in *New Jersey* v. *New York*, 345 U. S. 369 (1953) *(per curiam)*. Accordingly, we overrule South Carolina's exceptions with respect to the Catawba River Water Supply Project (hereinafter CRWSP) and Duke Energy Carolinas, LLC (hereinafter Duke Energy), but we sustain South Carolina's exception with respect to the city of Charlotte, North Carolina (hereinafter Charlotte).

I

A

We granted leave for South Carolina to file its complaint in this matter two years ago. *South Carolina* v. *North Carolina*, 552 U. S. 804 (2007). The gravamen of the complaint is that North Carolina has authorized upstream transfers of water from the Catawba River basin that exceed North Carolina's equitable share of the river. It has done so, according to the complaint, pursuant to a North Carolina statute that

requires any person seeking to transfer more than 2 million gallons of water per day (mgd) from the Catawba River basin to obtain a permit from the North Carolina Environmental Management Commission. See N. C. Gen. Stat. Ann. § 143–215.22L(a)(1) (Lexis 2007); § 143–215.22G(1)(h). Through that agency, the complaint alleges, North Carolina has issued at least two such permits, one to Charlotte for the transfer of up to 33 mgd, and one to the North Carolina cities of Concord and Kannapolis for the transfer of 10 mgd. In addition, the complaint alleges, North Carolina's permitting statute "grandfathers" a 5 mgd transfer by the CRWSP, and "implicitly authorize[s]" an unknown number of transfers of less than 2 mgd. Complaint ¶¶ 18, 21, 22. South Carolina claims that the net effect of these upstream transfers is to deprive South Carolina of its equitable share of the Catawba River's water, particularly during periods of drought or low river flow.

South Carolina seeks relief in the form of a decree that equitably apportions the Catawba River between the two States, enjoins North Carolina from authorizing transfers of water from the Catawba River exceeding that State's equitable share, and declares North Carolina's permitting statute invalid to the extent it is used to authorize transfers of water from the Catawba River that exceed North Carolina's equitable share. See generally Complaint, Prayer for Relief ¶¶ 1–3. The complaint does not specify a minimum flow of water that would satisfy South Carolina's equitable needs, but it does offer a point of reference. In a recent "multi-stakeholder negotiation process" involving the Federal Energy Regulatory Commission (hereinafter FERC), Duke Energy, and various groups from both States, it was agreed, according to the complaint, that South Carolina should receive from the Catawba River a continuous flow of water of no less than 1,100 cubic feet per second, or about 711 mgd. Complaint ¶ 14.

This negotiated figure may prove unattainable. According to the complaint, natural conditions and periodic fluctuations have caused the Catawba River's flow to fall below 1,100 cubic feet per second. Duke Energy, which generates hydroelectric power from a series of reservoirs on the Catawba River, developed a model to estimate the river's flow if the river were not impounded. *Id.*, ¶¶ 8, 16. The complaint notes that according to Duke Energy's model, the Catawba River—even in its natural state—often would not deliver into South Carolina a minimum average daily flow of 1,100 cubic feet per second. *Id.*, ¶ 16; App. to Motion of State of South Carolina for Leave To File Complaint, Complaint, and Brief in Support of its Motion for Leave To File Complaint 18. South Carolina contends that North Carolina's authorization of large transfers of water from the Catawba River basin has exacerbated these conditions.

Shortly after we granted leave to file the complaint, two of the entities named in the complaint—the CRWSP and Duke Energy—filed motions for leave to intervene as parties. The CRWSP sought leave to intervene as a party-defendant, asserting its interest as a "riparian user of the Catawba River" and claiming that this interest was not adequately represented because of the CRWSP's "interstate nature." Motion of CRWSP for Leave To Intervene and Brief in Support of Motion 8, 9. Specifically, the CRWSP noted that it is a bistate entity that is jointly owned and regulated by, and supplies water to, North Carolina's Union County and South Carolina's Lancaster County. *Id.*, at 9. Duke Energy sought leave to intervene and file an answer, asserting an interest as the operator of 11 dams and reservoirs on the Catawba River that control the river's flow, as the holder of a 50-year license[1] governing Duke Energy's hydroelectric

[1] The license was issued in 1958 to Duke Energy's predecessor by the Federal Power Commission, a predecessor of the FERC. For convenience, we will refer to Duke Energy's "FERC license" herein.

power operations, and as the entity that orchestrated the multistakeholder negotiation process culminating in a Comprehensive Relicensing Agreement (CRA) signed by 70 entities from both States in 2006. Duke Energy's Motion and Brief in Support of Motion To Intervene and File Answer, and Answer 2, 5. This CRA set forth the terms under which Duke Energy has applied to renew its FERC license, *id.*, at 5, and Duke Energy asserted that neither State would represent its "particular amalgam of federal, state and private interests," *id.*, at 14. South Carolina opposed both motions, and we referred them to the Special Master. 552 U. S. 1160 (2008).

One month later, a third entity named in the complaint, the city of Charlotte, also sought leave to intervene as a party-defendant. In its brief, Charlotte asserted an interest, both as the holder of a permit authorizing the transfer of 33 mgd from the Catawba River basin—the largest single transfer identified in the complaint—and as the potential source of the 10 mgd transfer approved for the cities of Concord and Kannapolis. Motion for Leave To Intervene of City of Charlotte, North Carolina, and Brief in Support of Motion 5, 7.[2] Charlotte argued that North Carolina could not represent the city's interests effectively because the State was dutybound to represent the interests of all North Carolina users of the Catawba River's water, including users whose interests were not aligned with Charlotte's. *Id.*, at 17. South Carolina also opposed Charlotte's motion, and we referred it to the Special Master. 552 U. S. 1254 (2008).

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[2] Charlotte also asserted an interest in protecting the terms of the CRA, to which Charlotte was a signatory but to which North Carolina, which has conflicting duties under § 401 of the Clean Water Act, 86 Stat. 877, as added, 33 U. S. C. § 1341, was not. North Carolina opposed this argument, and the Special Master did not rely on it in recommending that Charlotte's motion to intervene should be granted. As Charlotte does not reassert this argument here, we do not consider it.

B

The Special Master held a hearing and issued an order granting all three motions for leave to intervene. At South Carolina's request, the Special Master set forth her findings and decision as a First Interim Report, and it is this Report to which South Carolina now presents exceptions.

The Special Master recognized that this Court has exercised jurisdiction over nonstate parties in original actions between two or more States. She also recognized that in *New Jersey* v. *New York*, 345 U. S. 369, the Court considered the "appropriate standard" for a nonstate entity's motion to intervene in an original action. First Interim Report of Special Master, O. T. 2008, No. 138, Orig., p. 12 (First Interim Rept.). But in attempting to give context to our standard, she looked beyond intervention and considered original actions in which the Court has allowed nonstate entities to be named as defendants by the complaining State. From those examples, the Special Master "distilled the following rule" governing motions to intervene in original actions by nonstate entities:

> "Although the Court's original jurisdiction presumptively is reserved for disputes between sovereign states over sovereign matters, non-state entities may become parties to such original disputes in appropriate and compelling circumstances, such as where the non-state entity is the instrumentality authorized to carry out the wrongful conduct or injury for which the complaining state seeks relief, where the non-state entity has an independent property interest that is directly implicated by the original dispute or is a substantial factor in the dispute, where the non-state entity otherwise has a 'direct stake' in the outcome of the action within the meaning of the Court's cases discussed above, or where, together with one or more of the above circumstances, the

presence of the non-state entity would advance the 'full exposition' of the issues." *Id.*, at 20–21.

Applying this broad rule, the Special Master found that each proposed intervenor had a sufficiently compelling interest to justify intervention. The Special Master rejected South Carolina's proposal to limit intervention to the remedy phase of this litigation and recommended that this Court grant the motions to intervene.

II

A

Participation by nonstate parties in actions arising under our original jurisdiction is not a new development. Article III, § 2, of the Constitution expressly contemplates suits "between a State and Citizens of another State" as falling within our original jurisdiction, see, *e. g.*, *Georgia* v. *Brailsford*, 2 Dall. 402 (1792), and for more than two centuries the Court has exercised that jurisdiction over nonstate parties in suits between two or more States, see *New York* v. *Connecticut*, 4 Dall. 1 (1799); *Missouri* v. *Illinois*, 180 U. S. 208, 224–225 (1901). Nonstate entities have even participated as parties in disputes between States, such as the one before us now, where the States were seeking equitable apportionment of water resources. See, *e. g.*, *Arizona* v. *California*, 460 U. S. 605, 608, n. 1 (1983); *Texas* v. *New Mexico*, 343 U. S. 932 (1952); *New Jersey* v. *City of New York*, 279 U. S. 823 (1929) *(per curiam)*. It is, thus, not a novel proposition to accord party status to a citizen in an original action between States.

This Court likewise has granted leave, under appropriate circumstances, for nonstate entities to intervene as parties in original actions between States for nearly 90 years. See *Maryland* v. *Louisiana*, 451 U. S. 725, 745, n. 21 (1981). In *Oklahoma* v. *Texas*, 258 U. S. 574, 581, 598 (1922), a boundary dispute that threatened to erupt in armed hostilities, the Court allowed individual and corporate citizens to intervene

to protect their rights in contested land. See, *e. g.*, *Oklahoma* v. *Texas*, 254 U. S. 609 (1920).[3] More recently, the Court has allowed a municipality to intervene in a sovereign boundary dispute, see *Texas* v. *Louisiana*, 426 U. S. 465, 466 (1976) *(per curiam)*, and has permitted private corporations to intervene in an original action challenging a State's imposition of a tax that burdened interstate commerce and contravened the Supremacy Clause, see *Maryland* v. *Louisiana*, *supra*, at 745, n. 21.

In this case, the Special Master crafted a rule of intervention that accounts for the full compass of our precedents. But a compelling reason for allowing citizens to participate in one original action is not necessarily a compelling reason for allowing citizens to intervene in all original actions. We therefore decline to adopt the Special Master's proposed rule. As the Special Master acknowledged, the Court in *New Jersey* v. *New York*, *supra*, set down the "appropriate standard" for intervention in original actions by nonstate entities. First Interim Rept. 12. We believe the standard that we applied in that case applies equally well here.[4]

In 1929, the State of New Jersey sued the State of New York and city of New York for their diversion of the Dela-

[3] The Chief Justice argues against drawing conclusions from the intervention that we allowed in *Oklahoma* v. *Texas*, 254 U. S. 609 (1920). See *post*, at 283 (opinion concurring in judgment in part and dissenting in part). But the circumstances surrounding that dispute fit the "'model case'" for invoking this Court's original jurisdiction, *post*, at 277, and counsel against inferring from our precedents, as The Chief Justice does with respect to equitable apportionment actions, a rule against nonstate intervention in such "weighty controversies," *ibid.*

[4] Accordingly, we need not decide South Carolina's first exception to the Special Master's conclusion that intervention is proper "whenever the movant is the 'instrumentality' authorized to engage in conduct alleged to harm the plaintiff State, has an 'independent property interest' at issue in the action, or otherwise has a 'direct stake' in the outcome of the action." Exceptions of State of South Carolina to First Interim Report of Special Master and Brief in Support of Exceptions i.

ware River's headwaters. 345 U. S., at 370. The Court granted the Commonwealth of Pennsylvania leave to intervene and, in 1931, entered a decree enjoining certain diversions of water by the State of New York and the city of New York. *Id.*, at 371. In 1952, the city of New York moved to modify the decree, and New Jersey and Pennsylvania filed oppositions. After the Court referred the matter to a Special Master, the city of Philadelphia sought leave to intervene on the basis of its use of the Delaware River's water. *Id.*, at 371–372.

This Court denied Philadelphia leave to intervene. Pennsylvania had intervened *pro interesse suo* "to protect the rights and interests of Philadelphia and Eastern Pennsylvania in the Delaware River." *Id.*, at 374; see also *New Jersey* v. *New York*, 283 U. S. 336, 342 (1931). In view of Pennsylvania's participation, the Court wrote that when a State is "a party to a suit involving a matter of sovereign interest," it is *parens patriae* and "'must be deemed to represent all [of] its citizens.'" 345 U. S., at 372–373 (quoting *Kentucky* v. *Indiana*, 281 U. S. 163, 173–174 (1930)). This principle serves the twin purposes of ensuring that due respect is given to "sovereign dignity" and providing "a working rule for good judicial administration." 345 U. S., at 373. The Court, thus, set forth the following standard governing intervention in an original action by a nonstate entity:

> "An intervenor whose state is already a party should have the burden of showing some compelling interest in his own right, apart from his interest in a class with all other citizens and creatures of the state, which interest is not properly represented by the state." *Ibid.*

On several subsequent occasions the Court has reaffirmed this "general rule." See *Nebraska* v. *Wyoming*, 515 U. S. 1, 21–22 (1995); *United States* v. *Nevada*, 412 U. S. 534, 538 (1973) *(per curiam); Illinois* v. *Milwaukee*, 406 U. S. 91, 97 (1972).

We acknowledge that the standard for intervention in original actions by nonstate entities is high—and appropriately so. Such actions tax the limited resources of this Court by requiring us "awkwardly to play the role of factfinder" and diverting our attention from our "primary responsibility as an appellate tribunal." *Ohio* v. *Wyandotte Chemicals Corp.*, 401 U. S. 493, 498 (1971); *Maryland* v. *Louisiana*, 451 U. S. 725, 762 (1981) (Rehnquist, J., dissenting). In order to ensure that original actions do not assume the "dimensions of ordinary class actions," *New Jersey* v. *New York*, 345 U. S., at 373, we exercise our original jurisdiction "sparingly" and retain "substantial discretion" to decide whether a particular claim requires "an original forum in this Court," *Mississippi* v. *Louisiana*, 506 U. S. 73, 76 (1992) (internal quotation marks omitted).

Respect for state sovereignty also calls for a high threshold to intervention by nonstate parties in a sovereign dispute committed to this Court's original jurisdiction. Under 28 U. S. C. § 1251, this Court exercises "original and exclusive" jurisdiction to resolve controversies between States that, if arising among independent nations, "would be settled by treaty or by force." *Kansas* v. *Colorado*, 206 U. S. 46, 98 (1907). This Court has described its original jurisdiction as "delicate and grave," *Louisiana* v. *Texas*, 176 U. S. 1, 15 (1900), and has guarded against its use as a forum in which "a state might be judicially impeached on matters of policy by its own subjects," *New Jersey* v. *New York*, *supra*, at 373. In its sovereign capacity, a State represents the interests of its citizens in an original action, the disposition of which binds the citizens. *Nebraska* v. *Wyoming*, *supra*, at 22; *New Jersey* v. *New York*, 345 U. S., at 372–373. A respect for sovereign dignity, therefore, counsels in favor of restraint in allowing nonstate entities to intervene in such disputes. See *ibid.;* accord, *United States* v. *Texas*, 143 U. S. 621, 643 (1892) ("[E]xclusive jurisdiction was given to this court, because it best comported with the dignity of a State, that a

case in which it was a party should be determined in the highest, rather than in a subordinate judicial tribunal of the nation").[5]

That the standard for intervention in original actions by nonstate entities is high, however, does not mean that it is insurmountable. Indeed, as the Special Master correctly recognized, our practice long has been to allow such intervention in compelling circumstances. See *Oklahoma* v. *Texas*, 258 U. S., at 581. Over the "strong objections" of three States, for example, the Court allowed Indian tribes to intervene in a sovereign dispute concerning the equitable apportionment of the Colorado River. *Arizona* v. *California*, 460 U. S., at 613. The Court did so notwithstanding the Tribes' simultaneous representation by the United States. *Id.*, at 608–609, 612. And in a boundary dispute among Texas, Louisiana, and the United States, the Court allowed the city of Port Arthur, Texas, to intervene for the purpose of protecting its interests in islands in which the United States claimed title. *Texas* v. *Louisiana*, 426 U. S., at 466; *Texas* v. *Louisiana*, 416 U. S. 965 (1974). In both of these examples, the Court found compelling interests that warranted allowing nonstate entities to intervene in original actions in which the intervenors were nominally represented by sovereign parties.

B

1

Applying the standard of *New Jersey* v. *New York*, *supra*, here, we conclude that the CRWSP has demonstrated a suf-

[5] South Carolina has not invoked the Eleventh Amendment as a basis for opposing intervention. It has noted, however, that the proposed intervenors' claims are, in effect, against South Carolina, and thus has reserved the right to argue that the Eleventh Amendment bars particular forms of relief sought by the proposed intervenors. As in *New Jersey* v. *New York*, 345 U. S. 369, 372 (1953) *(per curiam)*, we express no view whether the Eleventh Amendment is implicated where a nonstate entity seeks to intervene as a defendant in an original action over a State's objection.

ficiently compelling interest that is unlike the interests of other citizens of the States. The CRWSP is an unusual municipal entity, established as a joint venture with the encouragement of regulatory authorities in both States and designed to serve the increasing water needs of Union County, North Carolina, and Lancaster County, South Carolina. It has an advisory board consisting of representatives from both counties, draws its revenues from its bistate sales, and operates infrastructure and assets that are owned by both counties as tenants-in-common. We are told that approximately 100,000 individuals in each State receive their water from the CRWSP and that "roughly half" of the CRWSP's total withdrawals of water from the Catawba River go to South Carolina consumers. Reply of CRWSP to Exceptions of South Carolina to First Interim Report of Special Master 22 (hereinafter CRWSP Reply). It is difficult to conceive of a more purely bistate entity.

In addition, the CRWSP relies upon authority granted by both States to draw water from the Catawba River and transfer that water from the Catawba River basin. The CRWSP draws all of its water from an intake located below the Lake Wylie dam in South Carolina. South Carolina licensed the CRWSP to withdraw a total of 100 mgd from the Catawba River and issued a certificate to the CRWSP in 1989 authorizing up to 20 mgd to be transferred out of the Catawba River basin. *Id.*, at 6–7; Answer to Bill of Complaint ¶ 21. Lancaster County currently uses approximately 2 mgd of this amount, Union County uses approximately 5 mgd, and the remaining 13 mgd are not used at this time. CRWSP Reply 7. The CRWSP pumps Union County's allocation across the state border pursuant to a parallel certificate issued by North Carolina authorizing a 5 mgd transfer, *ibid.*, and the complaint specifically identifies this transfer as contributing to South Carolina's harm, Complaint ¶ 21. Thus, the CRWSP's activities depend upon authority conferred by both States.

On these facts, we think it is clear that the CRWSP has carried its burden of showing a compelling interest in the outcome of this litigation that distinguishes the CRWSP from all other citizens of the party States. See *New Jersey* v. *New York*, 345 U. S., at 373. Apart from its interest as a user of the Catawba River's water, the CRWSP has made a $30 million investment in its plant and infrastructure, with each participating county incurring approximately half of this cost as debt. Each county is responsible for one-half of the CRWSP's cost of operations, and the venture is designed to break even from year to year. Any disruption to the CRWSP's operations would increase—not lessen—the difficulty of our task in achieving a "just and equitable" allocation in this dispute. See *Nebraska* v. *Wyoming*, 325 U. S. 589, 618 (1945). We believe that the CRWSP has shown a compelling interest in protecting the viability of its operations, which are premised on a fine balance between the joint venture's two participating counties.

We are further persuaded that neither State can properly represent the interests of the CRWSP in this litigation. See *New Jersey* v. *New York*, *supra*, at 373. The complaint attributes a portion of the total water transfers that have harmed South Carolina to the CRWSP, yet North Carolina expressly states that it "cannot represent the interests of the joint venture." Tr. of Oral Arg. 54. A moment's reflection reveals why this is so. In this dispute, as in all disputes over limited resources, each State maximizes its equitable share of the Catawba River's water only by arguing that the other State's equitable share must be reduced. See, *e. g.*, *Colorado* v. *New Mexico*, 459 U. S. 176, 186–187 (1982). It is thus likely that North Carolina, in response to South Carolina's demand for a greater share of the Catawba River's water, will take the position that downstream users—such

as Lancaster County[6]—should receive less water. See Tr. of Oral Arg. 52 ("From North Carolina's perspective, South Carolina is receiving much more water under this negotiated agreement than they could ever hope to achieve in an equitable apportionment action"). The stresses that this litigation would place upon the CRWSP threaten to upset the fine balance on which the joint venture is premised, and neither State has sufficient interest in maintaining that balance to represent the full scope of the CRWSP's interests.

Accordingly, we believe that the CRWSP should be allowed to intervene to represent its own compelling interests in this litigation. We thus overrule South Carolina's exception.

2

We conclude, as well, that Duke Energy has demonstrated powerful interests that likely will shape the outcome of this litigation. To place these interests in context, it is instructive to consider the "flexible" process by which we arrive at a "'just and equitable' apportionment" of an interstate stream. *Colorado* v. *New Mexico*, *supra*, at 183. We do not approach the task in formulaic fashion, *New Jersey* v. *New York*, 283 U. S., at 343, but we consider "all relevant factors," including, but not limited to:

> "'physical and climatic conditions, the consumptive use of water in the several sections of the river, the character and rate of return flows, the extent of established

[6] As a further complication, we are told, Lancaster County has an obligation to provide water service to certain customers in Mecklenburg County, North Carolina. CRWSP Reply 6. Thus, South Carolina may not be interested in protecting all uses of Lancaster County's share of the CRWSP's water. This additional intermingling of state interests further supports our conclusion that neither State adequately represents the CRWSP's inherently bistate interests.

> uses, the availability of storage water, the practical effect of wasteful uses on downstream areas, [and] the damage to upstream areas as compared to the benefits to downstream areas if a limitation is imposed on the former.'" *Colorado* v. *New Mexico*, *supra*, at 183 (quoting *Nebraska* v. *Wyoming*, *supra*, at 618).

In performing this task, there is no substitute for "'the exercise of an informed judgment,'" *Colorado* v. *New Mexico*, *supra*, at 183, and we will not hesitate to seek out the most relevant information from the source best situated to provide it. See *Maryland* v. *Louisiana*, 451 U. S., at 745, n. 21 (allowing intervention of private pipeline companies "in the interest of a full exposition of the issues").

With these considerations in mind, we turn to Duke Energy's asserted interests. Duke Energy operates 11 dams and reservoirs in both States that generate electricity for the region and control the flow of the river. The complaint itself acknowledges the relationship between river flow and Duke Energy's operations, noting that a severe drought that ended in 2002 forced Duke Energy to "reduce dramatically" its hydroelectric power generation from the Catawba River. Complaint ¶ 17(c). It is likely that any equitable apportionment of the river will need to take into account the amount of water that Duke Energy needs to sustain its operations and provide electricity to the region, thus giving Duke Energy a strong interest in the outcome of this litigation. See *Colorado* v. *New Mexico*, *supra*, at 188 (noting the appropriateness of considering "the balance of harm and benefit that might result" from a State's proposed diversion of a river). There is, moreover, no other similarly situated entity on the Catawba River, setting Duke Energy's interests apart from the class of all other citizens of the States. See *New Jersey* v. *New York*, 345 U. S., at 373.

Just as important, Duke Energy has a unique and compelling interest in protecting the terms of its existing FERC

license and the CRA that forms the basis of Duke Energy's pending renewal application.[7] Through its dams, Duke Energy controls the flow of the Catawba River under the terms of its 50-year FERC license, which regulates the very subject matter in dispute: the river's minimum flow into South Carolina. See Order Issuing License (Major), *Duke Power Co., Project No. 2232*, 20 F. P. C. 360, 371–372 (1958) (Arts. 31 and 32). The CRA, likewise, represents the full consensus of 70 parties from both States regarding the appropriate minimum continuous flow of Catawba River water into South Carolina under a variety of natural conditions and, in times of drought, the conservation measures to be taken by entities that withdraw water from the Catawba River. These factors undeniably are relevant to any "just and equitable apportionment" of the Catawba River, see *Colorado* v. *New Mexico*, 459 U. S., at 183, and we are likely to consider them in reaching our ultimate disposition of this case. Thus, we find that Duke Energy has carried its burden of showing unique and compelling interests.

We also have little difficulty in concluding that neither State sufficiently represents these compelling interests. Neither State has signed the CRA or expressed an intention to defend its terms. To the contrary, North Carolina has expressed an intention to seek its modification. Tr. of Oral Arg. 51–52. Given the importance of Duke Energy's interests and their relevance to our ultimate decision, we believe these interests should be represented by a party in this action, and we find that neither State is situated to do so properly. We believe that Duke Energy should be permitted to represent its own interests.

For these reasons, we agree with the Special Master that Duke Energy should be permitted to intervene, and we overrule South Carolina's exception in that regard.

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[7] Duke Energy is operating under a temporary extension of its 50-year FERC license, which expired in 2008, and the CRA represents Duke Energy's investment in a new 50-year license.

3

We conclude, however, that Charlotte has not carried its burden of showing a sufficient interest for intervention in this action. Charlotte is a municipality of North Carolina, and for purposes of this litigation, its transfers of water from the Catawba River basin constitute part of North Carolina's equitable share. While it is true that the complaint names Charlotte as an entity authorized by North Carolina to carry out a large transfer of water from the Catawba River basin, the complaint does not seek relief against Charlotte directly. Rather, the complaint seeks relief against all North Carolina-authorized transfers of water from the Catawba River basin, "past or future," in excess of North Carolina's equitable share. Complaint, Prayer for Relief ¶ 2. Charlotte, therefore, occupies a class of affected North Carolina users of water, and the magnitude of Charlotte's authorized transfer does not distinguish it in kind from other members of the class. See *New Jersey* v. *New York*, *supra*, at 373, and n. (noting that Philadelphia represented half of Pennsylvania's citizens in the watershed). Nor does Charlotte represent interstate interests that fall on both sides of this dispute, as the CRWSP does, such that the viability of Charlotte's operations in the face of this litigation is called into question. Its interest is solely as a user of North Carolina's share of the Catawba River's water.

Charlotte's interest falls squarely within the category of interests with respect to which a State must be deemed to represent all of its citizens. As we recognized in *New Jersey* v. *New York*, a State's sovereign interest in ensuring an equitable share of an interstate river's water is precisely the type of interest that the State, as *parens patriae*, represents on behalf of its citizens. See also *United States* v. *Nevada*, 412 U. S., at 539; *Nebraska* v. *Wyoming*, 325 U. S., at 616. That is why, in *New Jersey* v. *New York*, *supra*, we required that a proposed intervenor show a compelling interest "in his own right," distinct from the collective interest of "all other citi-

zens and creatures of the state," whose interest the State presumptively represents in matters of sovereign policy. *Id.*, at 373. We conclude that Charlotte has not carried that burden. Thus, respect for "sovereign dignity" requires us to recognize that North Carolina properly represents Charlotte in this dispute over a matter of uniquely sovereign interest. See *ibid.*

North Carolina's own statements only reinforce this conclusion. North Carolina has said that it will defend Charlotte's authorized 33 mgd transfer. Tr. of Oral Arg. 52–53. The State expressly disagrees with Charlotte's assertion that the city's interest is not adequately represented by the State. Brief for State of North Carolina in Opposition to Plaintiff's Exceptions 22. Indeed, in response to Charlotte's motion to intervene, North Carolina wrote the following:

> "[T]he State must represent the interests of every person that uses water from the North Carolina portion of the Catawba River basin. In fact, the State has a particular concern for its political subdivisions, such as Charlotte, which actually operate the infrastructure to provide water to the State's citizens. . . . The State has every reason to defend the [transfers] that it has authorized for the benefit of its citizens. The State cannot agree with any implication that because it represents all of the users of water in North Carolina it cannot, or will not[,] represent the interests of Charlotte in this litigation initiated by South Carolina." Brief for State of North Carolina in Response to City of Charlotte's Motion for Leave To Intervene and File Answer 1–2, ¶ 1.

These statements are consistent with North Carolina's role as *parens patriae,* and we see no reason that North Carolina cannot represent Charlotte's interest in this sovereign dispute. See *New Jersey* v. *New York*, 345 U. S., at 374 (noting that Philadelphia's interest "is invariably served by the Commonwealth's position").

Because we are not persuaded that Charlotte's interest is sufficiently unique and not properly represented by North Carolina to require the city's intervention as a party in this litigation, we sustain South Carolina's exception.[8]

III

We thus overrule South Carolina's exceptions to the Special Master's First Interim Report with respect to the CRWSP and Duke Energy, but we sustain South Carolina's exception with respect to Charlotte.

It is so ordered.

CHIEF JUSTICE ROBERTS, with whom JUSTICE THOMAS, JUSTICE GINSBURG, and JUSTICE SOTOMAYOR join, concurring in the judgment in part and dissenting in part.

The Court correctly rejects the Special Master's formulation of a new test for intervention in original actions, and correctly denies the city of Charlotte leave to intervene. The majority goes on, however, to misapply our established test in granting intervention to Duke Energy Carolinas, LLC (Duke Energy), and the Catawba River Water Supply Project (CRWSP).

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[8] Federal Rule of Civil Procedure 24 does not require a contrary result. This Court's Rule 17.2 allows the Federal Rules of Civil Procedure to be taken as "guides" to procedure in original actions. See *Arizona* v. *California*, 460 U. S. 605, 614 (1983). Even if we were to look to the standard for intervention of right in civil matters, Charlotte would not be entitled to intervene in this dispute because an existing party—North Carolina—adequately represents Charlotte's interest. See Fed. Rule Civ. Proc. 24(a)(2). To the extent that the standard for permissive intervention may be an appropriate guide when a movant presents a sufficiently "important but ancillary concern," see *Arizona*, *supra*, at 614–616, we find no such concern here. North Carolina's adequate representation of Charlotte and the heightened standard for intervention in original actions, see *New Jersey* v. *New York*, 345 U. S., at 373, persuade us not to apply the standard for permissive intervention set forth in Federal Rule of Civil Procedure 24(b)(1)(B).

The result is literally unprecedented: Even though equitable apportionment actions are a significant part of our original docket, this Court has never before granted intervention in such a case to an entity other than a State, the United States, or an Indian tribe. Never. That is because the apportionment of an interstate waterway is a sovereign dispute, and the key to intervention in such an action is just that—sovereignty. The Court's decision to permit nonsovereigns to intervene in this case has the potential to alter in a fundamental way the nature of our original jurisdiction, transforming it from a means of resolving high disputes between sovereigns into a forum for airing private interests. Given the importance of maintaining the proper limits on that jurisdiction, I respectfully dissent.

I

Two basic principles have guided the exercise of our constitutionally conferred original jurisdiction. The first is an appreciation that our original jurisdiction, "delicate and grave," *Louisiana* v. *Texas*, 176 U. S. 1, 15 (1900), was granted to provide a forum for the peaceful resolution of weighty controversies involving the States. "The model case for invocation of this Court's original jurisdiction is a dispute between States of such seriousness that it would amount to *casus belli* if the States were fully sovereign." *Texas* v. *New Mexico*, 462 U. S. 554, 571, n. 18 (1983). In determining whether to exercise original jurisdiction, we accordingly focus on "the nature of the interest of the complaining State," and in particular the "seriousness and dignity" of the claim asserted. *Mississippi* v. *Louisiana*, 506 U. S. 73, 77 (1992) (internal quotation marks omitted).

Original jurisdiction is for the resolution of *state* claims, not private claims. To invoke that jurisdiction, a State "must, of course, represent an interest of her own and not merely that of her citizens or corporations." *Arkansas* v. *Texas*, 346 U. S. 368, 370 (1953); see *Kansas* v. *Colorado*, 533

U. S. 1, 8–9 (2001); *Pennsylvania* v. *New Jersey*, 426 U. S. 660, 665 (1976) (*per curiam*) (It is "settled doctrine that a State has standing to sue only when its sovereign or quasi-sovereign interests are implicated and it is not merely litigating as a volunteer the personal claims of its citizens"). And in deciding whether a State meets that requirement, this Court considers whether the State is "in full control of [the] litigation." *Kansas* v. *Colorado*, *supra*, at 8.

The second guiding principle is a practical one: We are not well suited to assume the role of a trial judge. See *Ohio* v. *Wyandotte Chemicals Corp.*, 401 U. S. 493, 498 (1971). We have attempted to address that reality by relying on the services of able special masters, who have become vitally important in allowing us to manage our original docket. But the responsibility for the exercise of this Court's original jurisdiction remains ours alone under the Constitution.

These two considerations—that our original jurisdiction is limited to high claims affecting state sovereignty, and that practical realities limit our ability to act as a trial court—converge in our standard for intervention in original actions. We articulated that standard in *New Jersey* v. *New York*, 345 U. S. 369, 373 (1953) (*per curiam*). There, we denied the city of Philadelphia's motion for leave to intervene in an action, to which the Commonwealth of Pennsylvania was already a party, involving the apportionment of the Delaware River. *Id.*, at 373–374. We set out the following test for intervention in an original action: "An intervenor whose state is already a party should have the burden of showing some compelling interest in his own right, apart from his interest in a class with all other citizens and creatures of the state, which interest is not properly represented by the state." *Id.*, at 373.

This exacting standard is grounded on a "necessary recognition of sovereign dignity," *ibid.*, under which "the state, when a party to a suit involving a matter of sovereign interest, 'must be deemed to represent all its citizens,'" *id.*, at

372–373 (quoting *Kentucky* v. *Indiana*, 281 U. S. 163, 173–174 (1930)). In applying that doctrine to motions to intervene, the *New Jersey* v. *New York* test precludes a State from being "judicially impeached on matters of policy by its own subjects," and prevents the use of the Court's original jurisdiction to air "intramural dispute[s]" that should be settled in a different forum—namely, within the States. 345 U. S., at 373.

The *New Jersey* v. *New York* test is also "a working rule for good judicial administration." *Ibid.* Without it, "there would be no practical limitation on the number of citizens, as such, who would be entitled to be made parties." *Ibid.* Indeed, the Court observed that allowing Philadelphia to intervene would have made it difficult to refuse attempts to intervene by other users of water from the Delaware River, including other cities, and even "[l]arge industrial plants." *Ibid.* The *New Jersey* v. *New York* test, properly applied, provides a much-needed limiting principle that prevents the expansion of our original proceedings "to the dimensions of ordinary class actions," *ibid.*, or "town-meeting lawsuits," *id.*, at 376 (Jackson, J., dissenting). See also *Ohio* v. *Wyandotte Chemicals Corp.*, *supra*, at 504; *Utah* v. *United States*, 394 U. S. 89, 95–96 (1969) (*per curiam*).

II

Applying these principles, this Court has never granted a nonsovereign entity's motion to intervene in an equitable apportionment action. The reason is straightforward: An interest in water is an interest shared with other citizens, and is properly pressed or defended by the State. And a private entity's interest in its particular share of the State's water, once the water is allocated between the States, is an "intramural dispute" to be decided by each State on its own. *New Jersey* v. *New York*, *supra*, at 373.

The interests of a State's citizens in the use of water derive entirely from the State's sovereign interest in the wa-

terway. If the State has no claim to the waters of an interstate river, then its citizens have none either. See *Hinderlider* v. *La Plata River & Cherry Creek Ditch Co.*, 304 U. S. 92, 102 (1938). We have long recognized, therefore, that the State must be deemed to represent its citizens' interests in an equitable apportionment action. See *United States* v. *Nevada*, 412 U. S. 534, 539 (1973) (*per curiam*) ("For the purposes of dividing the waters of an interstate stream with another State, [a State] has the right, *parens patriae*, to represent all the nonfederal users in its own State insofar as the share allocated to the other State is concerned"). Precisely because the State represents all its citizens in an equitable apportionment action, these citizens have no claim themselves against the other State. They are instead "bound by the result reached through representation by their respective States," regardless of whether those citizens are parties to the suit. *Nebraska* v. *Wyoming*, 515 U. S. 1, 22 (1995).

This basic principle applies without regard to whether the State agrees with and will advance the particular interest asserted by a specific private entity. The State "'must be deemed to represent *all* its citizens,'" *New Jersey* v. *New York*, *supra*, at 372–373 (quoting *Kentucky* v. *Indiana*, *supra*, at 173–174; emphasis added), not just those who subscribe to the State's position before this Court. The directive that a State cannot be "judicially impeached on matters of policy by its own subjects," *New Jersey* v. *New York*, *supra*, at 373, obviously applies to the case in which a subject disagrees with the position of the State.

A State's citizens also need not be made parties to an equitable apportionment action because the Court's judgment in such an action does not determine the water rights of any individual citizen. We made that clear long ago in two decisions arising from the same dispute, *Wyoming* v. *Colorado*, 298 U. S. 573 (1936), and *Wyoming* v. *Colorado*, 309 U. S. 572

(1940). In those cases, Wyoming sought to enforce this Court's earlier decree apportioning the Laramie River. See *Wyoming* v. *Colorado*, 260 U. S. 1 (1922). We held that the decree controlled the allocation of water between Wyoming and Colorado, not within them. As we recognized, our decision apportioning the river did not "withdraw water claims dealt with therein from the operation of local laws relating to their transfer or . . . restrict their utilization in ways not affecting the rights of one State and her claimants as against the other State and her claimants." 298 U. S., at 584. Thus, although the decree referred to particular uses of water in Colorado, we held that those individual uses could vary from the terms set out in the decree, so long as the total diversion of water in Colorado was no greater than the decree allowed. See *id.*, at 584–585; 309 U. S., at 579–581. We reiterated the point in *Nebraska* v. *Wyoming*, 325 U. S. 589, 627 (1945), observing that the apportionment of a waterway between the States has only an "indirect effect" on the rights of individuals within the States.

All this explains our long history of rejecting attempts by nonsovereign entities to intervene in equitable apportionment actions. *New Jersey* v. *New York* was itself an equitable apportionment suit, and we denied intervention in that case. We have also summarily denied motions to intervene in other water disputes between the States. See *Arizona* v. *California*, 514 U. S. 1081 (1995); *Arizona* v. *California*, 345 U. S. 914 (1953); *Nebraska* v. *Wyoming*, 296 U. S. 548 (1935); *Wisconsin* v. *Illinois*, 279 U. S. 821 (1929). And we have strongly intimated in other decisions (albeit in dictum) that private entities can rarely, if ever, intervene in original actions involving the apportionment of interstate waterways. See *United States* v. *Nevada*, *supra*, at 538 ("[I]ndividual users of water . . . ordinarily would have no right to intervene in an original action in this Court"); *Nebraska* v. *Wyoming*, 515 U. S., at 22 ("We have said on many occa-

sions that water disputes among States may be resolved by compact or decree without the participation of individual claimants").[1]

The majority contends that the result in this case is not a "new development," and that its holding is supported by "nearly 90 years" of precedent. *Ante*, at 264. But in support of those statements, the majority cites only four decisions in which the Court has granted a motion to intervene in an original suit—and of course none in which this Court granted the motion of a nonsovereign entity to intervene in an equitable apportionment action. The cases the majority cites demonstrate what constitutes a "compelling interest in [the intervenor's] own right, apart from his interest in a class with all other citizens and creatures of the state." *New Jersey* v. *New York*, 345 U. S., at 373. But the intervenor interests in those cases were quite different from the general shared interest in water at issue here.

Take *Arizona* v. *California*, 460 U. S. 605 (1983). There we allowed several Indian Tribes to intervene in a water dispute. *Id.*, at 615. As the Court in that case made clear, however, the Indian Tribes were allowed to intervene because they were sovereign entities. *Ibid.* The Court distinguished *New Jersey* v. *New York* on that very ground. See 460 U. S., at 615, n. 5.

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[1] The majority contends that this dissent reads our precedents to establish "a rule against nonstate intervention" in equitable apportionment actions. *Ante*, at 265, n. 3. The number of nonsovereigns that the Court should permit to intervene in water disputes is small—indeed, it was zero until today. But that does not mean that a private entity could not satisfy the *New Jersey* v. *New York* test by, for example, asserting water-use rights that are not dependent upon the rights of state parties. A private party (or perhaps a Compact Clause entity) with a federal statutory right to a certain quantity of water might have a compelling interest in an equitable apportionment action that is not fairly represented by the States. The putative intervenors in this case, however, do not hold rights of this sort.

The other cases relied upon by the majority are even farther afield. See *Maryland* v. *Louisiana*, 451 U. S. 725 (1981); *Texas* v. *Louisiana*, 426 U. S. 465 (1976) (*per curiam*); *Oklahoma* v. *Texas*, 258 U. S. 574 (1922). None was an equitable apportionment action. Two involved boundary disputes in which the Court allowed nonsovereign intervenors to claim title to certain parcels of property. See *Texas* v. *Louisiana*, *supra*, at 466 (permitting intervention by the city of Port Arthur, Texas); *Oklahoma* v. *Texas*, *supra*, at 580–581 (same for private parties). A claim to title in a particular piece of property is quite different from a general interest shared by all citizens in the State's waters. And it would be particularly inapt to draw general conclusions about intervention from *Oklahoma* v. *Texas*, in which the Court took the southern half of the Red River into receivership. See 258 U. S., at 580. In subsequently allowing persons to intervene to assert claims to the subject property, the Court relied explicitly on the fact that the receiver had possession and control of the claimed parcels, and "no other court lawfully [could] interfere with or disturb that possession or control." *Id.*, at 581.

The majority's reliance on *Maryland* v. *Louisiana* is equally unavailing. There, several States challenged the constitutionality of Louisiana's application of a tax on natural gas that was brought into that State. 451 U. S., at 728. In two sentences within a long footnote, the Court mentioned that it was permitting a group of pipeline companies to intervene and challenge the tax. *Id.*, at 745, n. 21. The Court made clear that the pipeline companies were able to intervene in light of the particular circumstances in that case—namely, Louisiana's tax was "directly imposed on the owner of imported gas," and "the pipelines most often own[ed] the gas." *Ibid.* Again, an interest in a tax imposed only on discrete parties is obviously different from a general interest shared by all citizens of the State.

III

Charlotte, Duke Energy, and CRWSP claim a variety of specific needs for water to justify their intervention. But all those particular needs derive from an interest in the water of the Catawba River. That interest is not exclusive, but is instead shared "with all other citizens and creatures of the state." *New Jersey* v. *New York*, 345 U. S., at 373. The State's "citizens and creatures" certainly put the Catawba's water and flow to different uses—many for drinking water, some for farming or recreation, others for generating power. That does not, however, make their interest in the water itself unique. And it is the respective interests of the States in the water itself that are being litigated in this original action—not the claims of particular citizens that they be allowed to put the water to specified uses. The latter subject is "an intramural dispute over the distribution of water within the [State]," *ibid.*, and is not the subject of this original proceeding.

The majority recognizes as much with respect to Charlotte, *ante*, at 274–276, but departs from these principles in granting intervention to Duke Energy and CRWSP. The majority's reasons for doing so do not withstand scrutiny.

The majority initially contends that Duke Energy should be allowed to intervene because it possesses "relevant information" that we are "likely to consider." *Ante*, at 272, 273. Nonparties often do, but that is not a "compelling interest" justifying intervention. I have little doubt that Philadelphia possessed pertinent information in *New Jersey* v. *New York*, but we did not permit Philadelphia to intervene on that ground. Parties to litigation have ready means of access to relevant information held by nonparties, and those nonparties can certainly furnish such information on their own if they consider it in their best interests (through, for example, participation as *amici curiae*).

The majority also states that Duke Energy has compelling interests in its hydroelectric operations along the river, and

in "the amount of water that Duke Energy needs to sustain its operations and provide electricity to the region." *Ante*, at 272. These are simply interests in a particular use of water or its flow. Even if Duke Energy uses water for particularly important purposes, its interests are no different in kind from the interests of any other entity that relies on water for its commercial operations.

Finally, the majority asserts that Duke Energy "has a unique and compelling interest in protecting the terms of its existing [Federal Energy Regulatory Commission (FERC)] license and the [Comprehensive Relicensing Agreement (CRA)] that forms the basis of Duke Energy's pending renewal application." *Ante*, at 272–273. And the majority contends that neither State represents these interests because "[n]either State has signed the CRA or expressed an intention to defend its terms," and because North Carolina has even expressed its intent to challenge the terms of the CRA in this action. *Ante*, at 273.

Again, all this amounts to is an articulation of the *reason* Duke Energy asserts a particular interest in the waters of the Catawba. Other citizens of North Carolina doubtless have reasons of their own, ones they find as important as Duke Energy believes its to be. Weighing those interests is an "intramural" matter for the State. *New Jersey* v. *New York*, *supra*, at 373. In addition, the Federal Government is doubtless familiar with the pending FERC proceedings, and it sees no corresponding need for us to grant Duke Energy's motion to intervene. See Brief for United States as *Amicus Curiae* 20, n. 3.

As for CRWSP, the Special Master concluded that it should be allowed to intervene, but only because its position was "similar analytically to Charlotte's." First Interim Report of Special Master, O. T. 2008, No. 138, Orig., p. 25. The Court rejects Charlotte's motion, but nonetheless allows CRWSP to intervene on a ground not relied upon by the Special Master. According to the majority, CRWSP should

be allowed to intervene because, as a bistate entity, its full range of interests cannot be represented entirely by either North or South Carolina. See *ante*, at 268–271.

CRWSP's motion arguably presents a different case from that of Duke Energy, one not definitively resolved by this Court in *New Jersey* v. *New York*. At the end of the day, however, I agree with the Special Master's premise—CRWSP's position is really no different from Charlotte's. I disagree with her conclusion, of course, because I agree with the Court that Charlotte should not be allowed to intervene.

A bistate entity cannot be allowed to intervene merely because it embodies an "intermingling of state interests." *Ante*, at 271, n. 6. The same would be true of any bistate entity, or indeed any corporation or individual conducting business in both States. An exception for such cases would certainly swallow the *New Jersey* v. *New York* rule. Entities with interests in both States must seek to vindicate those interests within each State. Bistate entities are not States entitled to invoke our original jurisdiction, and should not be effectively accorded an automatic right to intervene as parties in cases within that jurisdiction.

With respect to both Duke Energy and CRWSP, the majority further relies on its conclusion that the States will not "properly represent" the interests of those entities. *Ante*, at 270; see *ante*, at 273. If by that the Court means that the States may adopt positions adverse to Duke Energy and CRWSP, that surely cannot be enough. The guiding principle articulated in *New Jersey* v. *New York* is "that the state, when a party to a suit involving a matter of sovereign interest, 'must be deemed to represent all its citizens,' " and may not be "judicially impeached on matters of policy by its own subjects." 345 U. S., at 372–373 (quoting *Kentucky* v. *Indiana*, 281 U. S., at 173–174). This case involves a "matter of sovereign interest"—the equitable apportionment of water—and the States therefore "properly represen[t]" the shared

interests in water of "all" their citizens, including Duke Energy and CRWSP. 345 U. S., at 372–373. An interest is "not properly represented" by a State, *id.*, at 373, when it is not a sovereign interest but instead a parochial one, such as the interests held to justify intervention in the cases on which the majority relies. See *supra*, at 283.

The majority also pays little heed to the practical constraints on this Court's original jurisdiction. It is hard to see how the arguments the Court accepts today could not also be pressed by countless other water users in either North or South Carolina. Under the Court's analysis, I see "no practical limitation on the number of citizens, as such, who would be entitled to be made parties." *New Jersey* v. *New York*, *supra*, at 373. To the extent intervention is allowed for some private entities with interests in the water, others who also have an interest will feel compelled to intervene as well—and we will be hard put to refuse them. See *Utah* v. *United States*, 394 U. S., at 95–96 (denying intervention to a corporation that sought to quiet its title to land because, "[i]f [it were] admitted, fairness would require the admission of any of the other 120 private landowners who wish to quiet their title . . . , greatly increasing the complexity of this litigation"). An equitable apportionment action will take on the characteristics of an interpleader case, with all those asserting interests in the limited supply of water jostling for their share like animals at a waterhole. And we will find ourselves in a "quandary whereby we must opt either to pick and choose arbitrarily among similarly situated litigants or to devote truly enormous portions of our energies to [original] matters." *Ohio* v. *Wyandotte Chemicals Corp.*, 401 U. S., at 504.

Allowing nonsovereign entities to intervene as parties will inevitably prolong the resolution of this and other equitable apportionment actions, which already take considerable time. Intervenors do not come alone—they bring along more issues to decide, more discovery requests, more excep-

tions to the recommendations of the Special Master. In particular, intervention makes settling a case more difficult, as a private intervenor has the right to object to a settlement agreement between the States, if not the power to block a settlement altogether. Cf. *Firefighters* v. *Cleveland*, 478 U. S. 501, 529 (1986).

And all this for what? The Special Master, and through her the Court, can have the benefit of the views of those seeking to intervene by according them the status of *amici curiae*. "Where he presents no new questions, a third party can contribute usually most effectively and always most expeditiously by a brief amicus curiae and not by intervention." *Bush* v. *Viterna*, 740 F. 2d 350, 359 (CA5 1984) (*per curiam*) (internal quotation marks omitted). Courts often treat *amicus* participation as an alternative to intervention. See 7C C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 1913, p. 495, and n. 26 (2007) (citing examples). And this Court often denies motions to intervene while granting leave to participate as an *amicus* in original actions generally, see, *e. g.*, *Kentucky* v. *Indiana*, 445 U. S. 941 (1980); *United States* v. *California*, 377 U. S. 926 (1964); cf. *New Hampshire* v. *Maine*, 426 U. S. 363, 365, n. 2 (1976), and in equitable apportionment actions specifically, see, *e. g.*, *Arizona* v. *California*, 530 U. S. 392, 419, n. 6 (2000); *Nebraska* v. *Wyoming*, 507 U. S. 584, 589–590 (1993).

Nebraska v. *Wyoming* is particularly instructive on this point. The Court there adopted the recommendation of the Special Master to deny intervention to certain entities. See *id.*, at 589–590; Second Interim Report of Special Master, O. T. 1991, No. 108, Orig., pp. 108–109. The interests of those entities in the water dispute were quite similar to the interests of the entities seeking to intervene here: One operated a powerplant and a reservoir on the Laramie River, and another was a power district seeking to protect its FERC license. See First Interim Report of Special Master, O. T. 1988, No. 108, Orig., pp. 11–14, 9a. While it adopted the Spe-

cial Master's recommendation to deny intervention, the Court nonetheless permitted those entities to participate as *amici*. See 507 U. S., at 589–590; *Nebraska* v. *Wyoming*, 502 U. S. 1055 (1992).[2] The majority does not explain why that familiar and customary approach might be inadequate in this case.

* * *

Our original jurisdiction over actions between States is concerned with disputes so serious that they would be grounds for war if the States were truly sovereign. *Texas* v. *New Mexico*, 462 U. S., at 571, n. 18. A dispute between States over rights to water fits that bill; a squabble among private entities within a State over how to divvy up that State's share does not. A judgment in an equitable apportionment action binds the States; it is not binding with respect to particular uses asserted by private entities. Allowing intervention by such entities would vastly complicate and delay already complicated and lengthy actions. And the benefits private entities might bring can be readily secured, as has typically been done, by their participation as *amici curiae*.

In light of all this, it is difficult to understand why the Court grants nonsovereign entities leave to intervene in this equitable apportionment action, and easy to understand why the Court has never before done so in such a case.

I would grant South Carolina's exceptions, and deny the motions to intervene.

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[2] No party filed exceptions to the Special Master's recommendation to deny intervention in *Nebraska* v. *Wyoming*. The Special Master later allowed one of the entities, Basin Electric Power Cooperative, to intervene as a party based on changed circumstances. See Addendum to Reply Brief for Duke Energy 2–5. That decision was never reviewed by the Court.

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WOOD *v.* ALLEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL.

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

No. 08–9156. Argued November 4, 2009—Decided January 20, 2010

Under 28 U. S. C. § 2254(d)(2), a federal court may grant a state prisoner habeas relief if his claim was adjudicated on the merits in state court and "resulted in a decision . . . based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." Under § 2254(e)(1), "a determination of a factual issue made by a State court [is] presumed to be correct," and the petitioner has "the burden of rebutting the presumption of correctness by clear and convincing evidence."

Petitioner Wood was convicted of capital murder and sentenced to death in Alabama state court. Two of his court-appointed attorneys, Dozier and Ralph, had significant trial experience, but the third, Trotter, had only recently been admitted to the bar. After exhausting his appeals, Wood sought postconviction relief under Alabama Rule of Criminal Procedure 32, arguing, among other things, that he was mentally retarded and not eligible for the death penalty, and that his trial counsel were ineffective because they failed to investigate and present evidence of his mental deficiencies during the trial's penalty phase. The Rule 32 court conducted evidentiary hearings and denied the claims initially and on remand. As to the mental retardation claim, it found that Wood had not shown deficits in his adaptive functioning. As to the ineffective-assistance-of-counsel claim, it concluded that he had not established that his counsel's performance was deficient or that any deficiency prejudiced his defense. In so doing, it made a factual finding that counsel had made a strategic decision not to pursue evidence of Wood's alleged retardation. Observing that counsel had asked Dr. Kirkland to conduct a mental evaluation, had thoroughly reviewed his report, and had determined that no further investigation was warranted, the court additionally held that counsel appeared to have made a strategic decision not to present their limited mental-deficiency evidence to the jury because having Dr. Kirkland testify was not in Wood's best interest. It also found no reasonable probability of a different outcome had the evidence developed in the Rule 32 proceedings been presented at trial. Wood subsequently sought federal habeas relief under § 2254. The District Court rejected all but his ineffective-assistance-of-counsel claim. The

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District Court concluded that the state court's finding that counsel made a strategic decision was an unreasonable determination of the facts. The court further held that counsel's performance was deficient and had prejudiced Wood, and that the state court's contrary holdings were an unreasonable application of federal law under *Strickland* v. *Washington*, 466 U. S. 668. Reversing, the Eleventh Circuit held that the state court's rejection of Wood's ineffective-assistance claim was neither an unreasonable application of clearly established law nor based on an unreasonable determination of the facts. With respect to the facts, it concluded that the evidence in the Rule 32 hearings supported the state court's strategic-decision finding, and it agreed with the state court's legal conclusion that counsel's strategic decision was reasonable and that Wood had failed to show prejudice. Wood's certiorari petition raises the questions (1) whether, in order to obtain relief under § 2254(d)(2), a petitioner must establish only that the state-court factual determination on which the decision was based was "unreasonable," or whether § 2254(e)(1) additionally requires a petitioner to rebut a presumption that the determination was correct with clear and convincing evidence; and (2) whether the state court's strategic-decision determination was reasonable.

Held:

1. Even under Wood's reading of § 2254(d)(2), the state court's conclusion that his counsel made a strategic decision not to pursue or present evidence of his mental deficiencies was not an unreasonable determination of the facts in light of the evidence presented in the state-court proceedings. This Court need not reach the question whether § 2254(e)(1) applies in every case presenting a challenge under § 2254(d)(2), see *Rice* v. *Collins*, 546 U. S. 333, 339, because its view of the state court's factual determination here does not depend on an interpretative difference regarding the relationship between those provisions. While "[t]he term 'unreasonable' is . . . difficult to define," *Williams* v. *Taylor*, 529 U. S. 362, 410, it suffices to say that a state-court factual determination is not unreasonable merely because the federal habeas court would have reached a different conclusion in the first instance. See *Rice*, 546 U. S., at 341–342. Here, the state-court record shows that all of Wood's counsel read the Kirkland report. Trotter testified that Dozier told him that nothing in the report merited further investigation, a recollection supported by the attorneys' contemporaneous letters; and Trotter told the sentencing judge that counsel did not intend to introduce the report to the jury. This evidence can fairly be read to support the Rule 32 court's factual determination that counsel's failure to pursue or present evidence of Wood's mental deficiencies was

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not mere oversight or neglect but the result of a deliberate decision to focus on other defenses. Most of the contrary evidence Wood highlights—*e. g.*, that Dozier and Ralph put the inexperienced Trotter in charge of the penalty phase proceedings—speaks not to whether counsel made a strategic decision, but to whether counsel's judgment was reasonable, a question not before this Court. Any evidence plausibly inconsistent with the strategic-decision finding does not suffice to show that the finding was unreasonable. Pp. 300–303.

2. Because Wood's argument that the state court unreasonably applied *Strickland* in rejecting his ineffective-assistance claim on the merits is not "fairly included" in the questions presented under this Court's Rule 14.1(a), it will not be addressed here. Pp. 303–304.

542 F. 3d 1281, affirmed.

SOTOMAYOR, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, THOMAS, GINSBURG, BREYER, and ALITO, JJ., joined. STEVENS, J., filed a dissenting opinion, in which KENNEDY, J., joined, *post*, p. 305.

Kerry Alan Scanlon argued the cause for petitioner. With him on the briefs were *David O. Bickart*, *Robert M. Grass*, *Karen R. Robinson*, *Dionne A. Fraser*, and *Brady W. Mills*.

Corey L. Maze, Solicitor General of Alabama, argued the cause for respondents. With him on the brief were *Troy King*, Attorney General, and *Henry M. Johnson*, Assistant Attorney General.*

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*Briefs of *amici curiae* urging reversal were filed for the American Civil Liberties Union et al. by *Larry W. Yackle*, *Steven R. Shapiro*, *John Holdridge*, and *Brian W. Stull;* and for the National Association of Criminal Defense Lawyers by *Jonathan L. Marcus* and *Barbara E. Bergman*.

Briefs of *amici curiae* urging affirmance were filed for the State of Indiana et al. by *Gregory F. Zoeller*, Attorney General of Indiana, *Thomas M. Fisher*, Solicitor General, and *Stephen R. Creason*, Section Chief, by *Richard S. Gebelein*, Chief Deputy Attorney General of Delaware, and by the Attorneys General for their respective States as follows: *John W. Suthers* of Colorado, *Bill McCollum* of Florida, *Thurbert E. Baker* of Georgia, *Tom Miller* of Iowa, *Steve Six* of Kansas, *James D. "Buddy" Caldwell* of Louisiana, *Martha Coakley* of Massachusetts, *Jim Hood* of Mississippi, *Steve Bullock* of Montana, *Gary K. King* of New Mexico, *Richard Cordray* of Ohio, *Henry D. McMaster* of South Carolina, *Robert E. Cooper, Jr.*, of

JUSTICE SOTOMAYOR delivered the opinion of the Court.

The Antiterrorism and Effective Death Penalty Act of 1996 contains two provisions governing federal-court review of state-court factual findings. Under 28 U. S. C. § 2254(d)(2), a federal court may not grant a state prisoner's application for a writ of habeas corpus based on a claim already adjudicated on the merits in state court unless that adjudication "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." Under § 2254(e)(1), "a determination of a factual issue made by a State court shall be presumed to be correct," and the petitioner "shall have the burden of rebutting the presumption of correctness by clear and convincing evidence." In this case, petitioner, a capital defendant, challenges the key factual finding made by the Alabama state court that denied his application for postconviction relief: that his attorneys' failure to pursue and present mitigating evidence of his borderline mental retardation was a strategic decision rather than a negligent omission. Petitioner argues that the state court's finding was unreasonable under § 2254(d)(2) and that, in denying his federal habeas petition, the Court of Appeals for the Eleventh Circuit erroneously conflated this standard with that of § 2254(e)(1), which petitioner contends is not applicable in cases, such as this one, not involving a separate federal habeas evidentiary hearing.

We granted certiorari to address the relationship between §§ 2254(d)(2) and (e)(1). We conclude, however, that the state court's factual determination was reasonable even under petitioner's reading of § 2254(d)(2), and therefore we need not address that provision's relationship to § 2254(e)(1). Accordingly, we affirm the judgment of the Court of Appeals on that basis.

Tennessee, *Greg Abbott* of Texas, *Mark L. Shurtleff* of Utah, *William C. Mims* of Virginia, and *Bruce A. Salzburg* of Wyoming; and for the Criminal Justice Legal Foundation by *Kent S. Scheidegger*.

I

In 1993, petitioner Holly Wood broke into the home of his ex-girlfriend and shot her in the head and face as she lay in her bed. The victim was pronounced dead on arrival at the hospital. Charged with capital murder during a first-degree burglary, Wood was represented at trial in Alabama state court by three court-appointed attorneys: Cary Dozier and Frank Ralph, both of whom had significant trial experience, and Kenneth Trotter, who had been admitted to the bar for five months at the time he was appointed. The jury convicted Wood at the guilt phase of trial and recommended a death sentence at the penalty phase by a vote of 10 to 2. After a separate sentencing hearing, the trial judge imposed the death penalty. The Alabama Court of Criminal Appeals affirmed Wood's conviction and sentence, *Ex parte Wood*, 715 So. 2d 812 (1996), as did the Alabama Supreme Court, *Wood* v. *State*, 715 So. 2d 819 (1998). This Court denied certiorari. *Wood* v. *Alabama*, 525 U. S. 1042 (1998).

Wood petitioned for state postconviction relief under Alabama Rule of Criminal Procedure 32, arguing, among other things, that he was mentally retarded and not eligible for the death penalty, and that his trial counsel were ineffective under *Strickland* v. *Washington*, 466 U. S. 668 (1984), because they failed to investigate and present evidence of his mental deficiencies during the penalty phase of trial. App. to Pet. for Cert. 198a–202a, 207a–210a, 213a–216a, 220a–221a, 225a. The Rule 32 court held two evidentiary hearings and denied Wood's claims. On appeal, the Alabama Court of Criminal Appeals remanded for further consideration in light of *Atkins* v. *Virginia*, 536 U. S. 304 (2002), which held that the Eighth Amendment prohibits the execution of the mentally retarded. *Wood* v. *State*, 891 So. 2d 398 (2003).

On remand, the Rule 32 court conducted a third evidentiary hearing and once again denied relief. As to Wood's claim of mental retardation, the court found that, while the

evidence suggested that he "probably does exhibit significantly subaverage general intellectual functioning," he had failed to show "that he has significant or substantial deficits in his adaptive functioning." App. to Pet. for Cert. 236a–237a.

The court also rejected Wood's factually related claim of ineffective assistance of counsel, concluding that Wood had failed to establish that his counsel's performance was deficient or that any deficiency prejudiced his defense. *Id.*, at 257a–275a. The court first made a factual finding that Wood's counsel had made a strategic decision not to pursue evidence of his alleged mental retardation. The court observed that counsel had requested that a Dr. Karl Kirkland conduct a mental evaluation, had "thoroughly reviewed Dr. Kirkland's report," and had "determined that nothing in that report merited further investigation." *Id.*, at 264a, 271a. The court additionally found that counsel appeared to have made a strategic decision not to present to the jury the limited evidence of Wood's mental deficiencies in their possession, because "calling Dr. Kirkland to testify was not in Wood's best interest." *Id.*, at 271a–272a. The court concluded that these strategic decisions were reasonable and thus that counsel had not performed deficiently. *Ibid.* The court further concluded that there was "no reasonable probability" of a different outcome had the evidence developed in the Rule 32 hearings been presented to the jury or to the sentencing court. *Id.*, at 273a. The Alabama Court of Criminal Appeals affirmed, *Wood* v. *State*, 891 So. 2d 398, 411 (2004), and the Alabama Supreme Court denied certiorari, App. 4.

Wood then filed a petition for federal habeas relief under § 2254. The District Court rejected all of Wood's claims save one: that counsel's failure to investigate and present mitigation evidence of his mental deficiencies during the penalty phase constituted ineffective assistance of counsel. 465 F. Supp. 2d 1211, 1239–1245 (MD Ala. 2006). According

to the court, there was "nothing in the record to even remotely support a finding that counsel made a strategic decision not to let the jury at the penalty stage know about Wood's mental condition." *Id.*, at 1242. Ralph and Dozier, the court noted, had placed the inexperienced Trotter in charge of the penalty phase. At the Rule 32 hearing, Trotter testified that he had seen the references to Wood's intellectual functioning in the Kirkland report but did not recall considering whether to pursue that issue. Trotter further testified that he had unsuccessfully attempted to subpoena Wood's school records and that he did not recall speaking to any of Wood's teachers. Trotter had also written to an attorney at the Southern Poverty Law Center explaining that he was "'stressed out over this case and [didn't] have anyone with whom to discuss the case, including the other two attorneys.'" *Id.*, at 1241. Shortly before the penalty phase began, Trotter told the judge that he would request further psychological evaluation before the judge's sentencing hearing, even though the evaluation would come too late to be considered by the jury. *Id.*, at 1241–1242. Based on this evidence, the District Court concluded that the state court's finding "that a strategic decision was made not to investigate or introduce to the sentencing jury evidence of mental retardation [was] an unreasonable determination of the facts in light of the clear and convincing evidence presented in the record." *Ibid.*

Having rejected the state court's factual determinations, the District Court held that counsel's performance was deficient and that counsel's deficient performance prejudiced Wood, concluding that the state court's holdings to the contrary constituted "an unreasonable application of federal law under *Strickland*." *Id.*, at 1245. The court granted the petition on this claim and ordered the State either to resentence Wood to life without parole or to conduct a new sentencing hearing.

In a divided opinion, the Eleventh Circuit reversed the grant of habeas relief. 542 F. 3d 1281 (2008). The majority began by explaining the standard of review: "Section 2254(d) permits federal habeas relief only where the state courts' decisions were (1) 'contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States,' or (2) 'based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.'" *Id.*, at 1285 (quoting §§2254(d)(1)–(2)). A "'determination of a factual issue made by a State court shall be presumed to be correct,'" the majority explained, and the petitioner "'shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.'" *Ibid.* (quoting §2254(e)(1)). "Thus," the majority stated, the federal habeas court's "'review of findings of fact by the state court is even more deferential than under a clearly erroneous standard of review.'" *Ibid.*

The majority then held that the Alabama court's rejection of Wood's ineffective-assistance-of-counsel claim was neither an unreasonable application of clearly established law nor based on an unreasonable determination of the facts. With respect to the facts, the court concluded that the evidence presented in the Rule 32 hearings supported the state court's findings that counsel made a strategic decision not to present mental health evidence during the penalty phase. "At a minimum," the court noted, "Wood has not presented evidence, much less clear and convincing evidence, that counsel did not make such decisions." *Id.*, at 1304, n. 23. The court also agreed with the state court's legal conclusion that counsel's strategic decision was reasonable. According to the court, the silent record created a presumption that counsel exercised sound professional judgment, supported by ample reasons, not to present the information they had obtained. These reasons included unfavorable information in

Dr. Kirkland's report, such as details about Wood's 19 earlier arrests and his previous attempt to murder another ex-girlfriend, as well as Dr. Kirkland's conclusion that, notwithstanding Wood's mental deficiencies, Wood had a high level of adaptive functioning. *Id.*, at 1304–1306. The court added that the investigation preceding counsel's decision was sufficient to permit them to make a reasoned decision, crediting the Rule 32 court's findings that, *inter alia*, counsel not only employed an investigator who sought mitigation evidence from family members but also themselves met with family members and sought guidance from capital defense organizations. *Id.*, at 1307–1308. The court also accepted as not "objectively unreasonable" the state court's determination that Wood had failed to show prejudice from counsel's failure to present evidence of his mental deficiencies. *Id.*, at 1309, 1314.

The dissent, implicitly considering the factual question whether counsel made a strategic decision as part and parcel of the legal question whether any strategic decision was reasonable, concluded that "[n]o such strategic decisions could possibly have been made in this case because counsel had failed to adequately investigate the available mitigating evidence." *Id.*, at 1316 (opinion of Barkett, J.). According to the dissent, "the weight of the evidence in the record demonstrates that Trotter, an inexperienced and overwhelmed attorney," unassisted by senior counsel, "realized too late"—only in time to present it to the sentencing judge, not to the penalty jury—"what any reasonably prepared attorney would have known: that evidence of Wood's mental impairments could have served as mitigating evidence and deserved investigation so that it could properly be presented before sentencing." *Id.*, at 1320. The dissent also concluded that there was a reasonable probability of a different outcome at the penalty phase had the evidence been presented, because the jury could have concluded that Wood was less culpable as a result of his diminished abilities. *Id.*, at

1322–1325. The dissent therefore concluded that the state court's application of *Strickland* to the facts of this case was unreasonable. 542 F. 3d, at 1326.

We granted certiorari to resolve two related questions raised by Wood's petition. First, we granted review of a question that has divided the Courts of Appeals: whether, in order to satisfy § 2254(d)(2), a petitioner must establish only that the state-court factual determination on which the decision was based was "unreasonable," or whether § 2254(e)(1) additionally requires a petitioner to rebut a presumption that the determination was correct with clear and convincing evidence.[1] We also granted review of the question whether the state court reasonably determined that Wood's counsel made a "strategic decision" not to pursue or present evidence of his mental deficiencies. 556 U. S. 1234 (2009). Wood's pe-

[1] See, *e. g.*, 542 F. 3d 1281, 1285, 1304, n. 23 (CA11 2008) (case below); *Taylor* v. *Maddox*, 366 F. 3d 992, 999–1000 (CA9) (where a habeas petitioner challenges state-court factual findings "based entirely on the state record," the federal court reviews those findings for reasonableness only under § 2254(d)(2), but where a petitioner challenges such findings based in part on evidence that is extrinsic to the state-court record, § 2254(e)(1) applies), cert. denied, 543 U. S. 1038 (2004); *Lambert* v. *Blackwell*, 387 F. 3d 210, 235 (CA3 2004) ("[Section] 2254(d)(2)'s reasonableness determination turns on a consideration of the totality of the 'evidence presented in the state-court proceeding,' while § 2254(e)(1) contemplates a challenge to the state court's individual factual determinations, including a challenge based wholly or in part on evidence outside the state trial record"); *Trussell* v. *Bowersox*, 447 F. 3d 588, 591 (CA8) (federal habeas relief is available only "if the state court made 'an unreasonable determination of the facts in light of the evidence presented in the State court proceeding,' 28 U. S. C. § 2254(d)(2), which requires clear and convincing evidence that the state court's presumptively correct factual finding lacks evidentiary support"), cert. denied, 549 U. S. 1034 (2006); *Ben-Yisrayl* v. *Buss*, 540 F. 3d 542, 549 (CA7 2008) (§ 2254(d)(2) can be satisfied by showing, under § 2254(e)(1), that a state-court decision "rests upon a determination of fact that lies against the clear weight of the evidence" because such a decision "is, by definition, a decision so inadequately supported by the record as to be arbitrary and therefore objectively unreasonable" (internal quotation marks omitted)).

tition raised two additional questions on which we declined to grant certiorari. *Ibid.* Neither of these asked us to review whether the state court's resolution of Wood's ineffective-assistance-of-counsel claim was "contrary to, or involved an unreasonable application of, clearly established Federal law" under § 2254(d)(1) and *Strickland.*

II

A

Notwithstanding statements we have made about the relationship between §§ 2254(d)(2) and (e)(1) in cases that did not squarely present the issue, see Brief for Petitioner 37–38; Brief for Respondents 28–29, we have explicitly left open the question whether § 2254(e)(1) applies in every case presenting a challenge under § 2254(d)(2), see *Rice* v. *Collins*, 546 U. S. 333, 339 (2006). The parties and their *amici* have offered a variety of ways to read the relationship between these two provisions.[2] Although we granted certiorari to resolve the question of how §§ 2254(d)(2) and (e)(1) fit together, we find once more that we need not reach this question, because our view of the reasonableness of the state court's factual determination in this case does not turn on any interpretive difference regarding the relationship between these provisions. For present purposes, we assume

[2] In Wood's view, when a petitioner seeks relief based entirely on the state-court record, a federal court reviews the state court's findings for reasonableness under § 2254(d)(2). Section 2254(e)(1) comes into play, according to Wood, only when a petitioner challenges individual state-court factual findings based in part on evidence that is extrinsic to the state-court record. Brief for Petitioner 38–39. According to respondents, § 2254(e)(1) applies to any challenge to a state court's factual findings under § 2254(d)(2), including a challenge based solely on the state-court record. Brief for Respondents 35–37. Respondents' *amici* offer still further variations, although they all agree with respondents that § 2254(e)(1) applies in some fashion in every habeas case reviewing state-court factual findings. Brief for Criminal Justice Legal Foundation 5, 10–14; Brief for State of Indiana et al. 2, 12–18.

for the sake of argument that the factual determination at issue should be reviewed, as Wood urges, only under § 2254(d)(2) and not under § 2254(e)(1). We conclude that, under § 2254(d)(2), the state court's finding that Wood's counsel made a strategic decision not to pursue or present evidence of Wood's mental deficiencies was not an unreasonable determination of the facts in light of the evidence presented in the state-court proceedings. We therefore do not need to decide whether that determination should be reviewed under the arguably more deferential standard set out in § 2254(e)(1).

As we have observed in related contexts, "[t]he term 'unreasonable' is no doubt difficult to define." *Williams* v. *Taylor*, 529 U. S. 362, 410 (2000). It suffices to say, however, that a state-court factual determination is not unreasonable merely because the federal habeas court would have reached a different conclusion in the first instance. Cf. *id.*, at 411. In *Rice*, for example, in which we assumed, *arguendo*, that only § 2254(d)(2) and not § 2254(e)(1) applied, 546 U. S., at 339, we rejected the Ninth Circuit's conclusion that a state-court factual determination was unreasonable. We noted that even if "[r]easonable minds reviewing the record might disagree" about the finding in question, "on habeas review that does not suffice to supersede the trial court's . . . determination." *Id.*, at 341–342.

In this case, the evidence in the state-court record demonstrated that all of Wood's counsel read the Kirkland report. App. 12, 174, 210, 283. Trotter testified that Dozier told him that nothing in the report merited further investigation, a recollection that is supported by contemporaneous letters Trotter wrote to Dozier and Ralph noting that no independent psychological evaluations had been conducted because Dozier had said they would not be needed. *Id.*, at 283, 343, 345. Trotter also told the sentencing judge that counsel did not intend to introduce the Kirkland report to the jury. *Id.*, at 12. This evidence in the state-court record can fairly be

read to support the Rule 32 court's factual determination that counsel's failure to pursue or present evidence of Wood's mental deficiencies was not mere oversight or neglect but was instead the result of a deliberate decision to focus on other defenses.

Arguing that the state court's factual determination to this effect was unreasonable, Wood calls our attention to Dozier's testimony during the Rule 32 proceedings that evidence of Wood's mental health problems would have been presented during the penalty phase if counsel had been aware of it, *id.*, at 169; that Dozier did not recall whether he had decided not to present evidence based on the Kirkland report, *id.*, at 168, 171; and that Dozier and Ralph had designated the inexperienced Trotter to be in charge of the penalty phase proceedings, *id.*, at 270–271. Trotter, in turn, testified that he did not recall considering Wood's mental deficiencies. *Id.*, at 288. Wood also observes that the Kirkland report was prepared for the guilt phase, not the penalty phase, and a strategic decision not to use the Kirkland report in the former does not necessarily carry over into the latter. *Id.*, at 324. Wood notes that his counsel sought to obtain additional evidence about his mental health to use in mitigation after reviewing the Kirkland report, but they failed to pursue it, in part out of a belief that the sentencing judge would not grant a continuance to permit them to investigate. *Id.*, at 285, 343–346. Finally, Wood emphasizes that his counsel must have thought that evidence of his mental deficiencies was important because they presented it to the judge at the final sentencing hearing. *Id.*, at 88.

Most of the evidence Wood highlights, however, speaks not to whether counsel made a strategic decision, but rather to whether counsel's judgment was reasonable—a question we do not reach. See Part II–B, *infra.* As for any evidence that may plausibly be read as inconsistent with the finding that counsel made a strategic decision, we conclude

that it does not suffice to demonstrate that the finding was unreasonable.[3]

Reviewing all of the evidence, we agree with the State that even if it is debatable, it is not unreasonable to conclude that, after reviewing the Kirkland report, counsel made a strategic decision not to inquire further into the information contained in the report about Wood's mental deficiencies and not to present to the jury such information as counsel already possessed about these deficiencies. Cf. *Rice*, 546 U. S., at 341–342. For that reason, we agree with the Court of Appeals that the District Court erred in holding to the contrary.

B

Wood also argues that the state-court decision involved an unreasonable application of *Strickland* under § 2254(d)(1)

[3] The dissent suggests that counsel could not have made a strategic decision not to pursue evidence of Wood's mental deficiencies because there could be no reasonable justification for doing so. *Post*, at 307–309 (opinion of STEVENS, J., joined by KENNEDY, J.). This interpretation conflates the question whether a decision was strategic with the question whether a strategic decision was reasonable. Cf. *post*, at 306, n. 1. Without expressing a view on the ultimate reasonableness of the decision not to pursue this evidence further, we note that the Eleventh Circuit majority observed that the state court could reasonably have determined that counsel had strategic grounds for their decision. In particular, evidence about Wood's mental deficiencies may have led to rebuttal testimony about the capabilities he demonstrated through his extensive criminal history, an extraordinarily limited amount of which was actually admitted at the penalty phase of the trial. Counsel's decision successfully thwarted the prosecutor's efforts to admit evidence that Wood murdered his ex-girlfriend while on parole for an attempted murder of a different ex-girlfriend that was strikingly similar in execution to the subsequent successful murder. App. 23–24. Moreover, as the Eleventh Circuit majority noted, evidence of Wood's mental deficiencies also could have undercut the defense's argument that he left school to support his family, suggesting instead that he left school because of educational difficulties. 542 F. 3d, at 1305–1306. Counsel's decision about which avenues to investigate can therefore plausibly be described as strategic rather than necessarily being the product of "happenstance, inattention, or neglect," *post*, at 307.

because counsel failed to make a reasonable investigation of Wood's mental deficiencies before deciding not to pursue or present such evidence. Without a reasonable investigation, Wood contends, these decisions were an unreasonable exercise of professional judgment and constituted deficient performance under *Strickland*. We agree with the State, however, that this argument is not "fairly included" in the questions presented under this Court's Rule 14.1(a). Whether the state court reasonably determined that there was a strategic decision under § 2254(d)(2) is a different question from whether the strategic decision itself was a reasonable exercise of professional judgment under *Strickland* or whether the application of *Strickland* was reasonable under § 2254(d)(1). Cf. *Rice*, 546 U. S., at 342 ("The question whether a state court errs in determining the facts is a different question from whether it errs in applying the law"). These latter two questions may be "*related* to the one petitione[r] presented, and perhaps *complementary* to the one petitione[r] presented," but they are "not fairly included therein." *Yee* v. *Escondido*, 503 U. S. 519, 537 (1992) (internal quotation marks omitted).

It is true that Wood's petition discussed the Eleventh Circuit's misapplication of § 2254(d)(1) and *Strickland*. Pet. for Cert. 22–27. But "the fact that [petitioner] discussed this issue in the text of [his] petition for certiorari does not bring it before us. Rule 14.1(a) requires that a subsidiary question be fairly included in the *question presented* for our review." *Izumi Seimitsu Kogyo Kabushiki Kaisha* v. *U. S. Philips Corp.*, 510 U. S. 27, 31, n. 5 (1993) *(per curiam)*. We therefore do not address Wood's argument that the state court unreasonably applied *Strickland* in rejecting his ineffective-assistance-of-counsel claim on the merits.

* * *

Because the resolution of this case does not turn on them, we leave for another day the questions of how and when

§ 2254(e)(1) applies in challenges to a state court's factual determinations under § 2254(d)(2). We hold simply that, even under petitioner's reading of § 2254(d)(2), the state court's conclusion that Wood's counsel made a strategic decision not to pursue or present evidence of his mental deficiencies was not an unreasonable determination of the facts. Accordingly, we affirm the judgment of the Court of Appeals for the Eleventh Circuit.

It is so ordered.

JUSTICE STEVENS, with whom JUSTICE KENNEDY joins, dissenting.

There is a world of difference between a decision not to introduce evidence at the guilt phase of a trial and a failure to investigate mitigating evidence that might be admissible at the penalty phase. Wood's experienced counsel made a perfectly sensible decision not to introduce Dr. Kirkland's report into evidence or to call him as a witness. That was a strategic decision based on their judgment that the evidence would do more harm than good. But it does not follow from this single strategic decision that counsel also made a strategic decision to forgo investigating powerful mitigating evidence of Wood's mental deficits for the penalty phase. On the contrary, the only reasonable factual conclusion I can draw from this record is that counsel's decision to do so was the result of inattention and neglect. Because such a decision is the antithesis of a "strategic" choice, I would reverse the decision of the Court of Appeals.

Assuming that the Court is correct to decline to consider whether the state court's application of *Strickland* v. *Washington*, 466 U. S. 668 (1984), was reasonable, see *ante*, at 303–304, the question whether the decision itself was the product of a strategy is still before us. The Court may well be correct that the state court reasonably concluded that counsel made a decision not to pursue Dr. Kirkland's report for either guilt or penalty phase purposes, *ante*, at 301–303, but to reject

Wood's claim the state court also had to reasonably conclude that such a decision was borne of strategy. And whether counsel's decision was the product of strategy is a question of fact for purposes of 28 U. S. C. § 2254(d)(2).[1] Cf. *Wiggins* v. *Smith*, 539 U. S. 510, 526–527 (2003) (observing that "the 'strategic decision' the state courts and respondents all invoke to justify counsel's limited pursuit of mitigating evidence resembles more a *post hoc* rationalization of counsel's conduct than an accurate description of their deliberations prior to sentencing"); *Carr* v. *Schofield*, 364 F. 3d 1246, 1264 (CA11 2004) (identifying "whether counsel's decisions were tactical or strategic" as a question of fact (citing *Horton* v. *Zant*, 941 F. 2d 1449, 1462 (CA11 1991)));[2] *Berryman* v. *Morton*, 100 F. 3d 1089, 1095 (CA3 1996) (same). In other words, the Court correctly concludes that the record reasonably supports a finding that counsel decided not to investigate Wood's mental retardation further, but the Court fails to engage with the requisite second question: Does the record reasonably support finding that counsel's decision was a strategic one? The answer to this question is unequivocally no.

Before petitioner's trial, his counsel learned that Wood had an "IQ in the borderline range of intellectual functioning,"

[1] The Court explains: "Whether the state court reasonably determined that there was a strategic decision under § 2254(d)(2) is a different question from whether the strategic decision itself was a reasonable exercise of professional judgment under *Strickland* or whether the application of *Strickland* was reasonable under § 2254(d)(1)." *Ante*, at 304. I agree with the majority that whether a particular strategic decision is reasonable or not is the *Strickland* question we would address were we reviewing Wood's claim for habeas relief under § 2254(d)(1).

[2] Indeed, the law in the Eleventh Circuit on this point is well settled: "'The question of whether an attorney's actions were actually the product of a tactical or strategic decision is an issue of fact . . . .'" *Fotopoulos* v. *Secretary, Dept. of Corrections*, 516 F. 3d 1229, 1233 (CA11 2008) (quoting *Provenzano* v. *Singletary*, 148 F. 3d 1327, 1330 (CA11 1998)); see also *Lamarca* v. *Secretary, Dept. of Corrections*, 568 F. 3d 929, 938 (CA11 2009) (same). Thus, it is quite understandable that Wood framed the questions presented in his petition for certiorari as arising under § 2254(d)(2).

App. 327, and was "functioning, at most," in this borderline range, *id.*, at 328. Wood was "reading on less than a 3rd grade level." *Id.*, at 327. His former special education teacher testified during postconviction review that Wood was classified as "educable mentally retarded" by the local school system. *Id.*, at 403. In short, Wood has the type of significant mental deficits that we recognize as "inherently mitigating," *Tennard* v. *Dretke*, 542 U. S. 274, 287 (2004).[3]

Despite the powerful mitigating value of this evidence, "[n]o evidence of Wood's mental retardation was ever presented to the jury." 542 F. 3d 1281, 1314 (CA11 2008) (Barkett, J., concurring in part and dissenting in part). Counsel was clearly aware that this evidence existed, *id.*, at 1318, but chose not to investigate it beyond the conclusions outlined in Dr. Kirkland's report, App. 283. In the Court's view, the record reasonably supports the state court's conclusion that "counsel made a strategic decision not to inquire further into" Wood's mental deficiencies, *ante*, at 303. Although I agree with the majority that the failure was the result of a "decision," albeit a hasty one, the Court regrettably fails to consider whether the decision was also "strategic" as a matter of fact.

A decision cannot be fairly characterized as "strategic" unless it is a conscious choice between two legitimate and rational alternatives. It must be borne of deliberation and not happenstance, inattention, or neglect. See *Wiggins*, 539 U. S., at 526 (concluding that counsel's "failure to investigate thoroughly resulted from inattention, not reasoned strategic judgment"); *Strickland*, 466 U. S., at 690–691. Moreover, "a cursory investigation" does not "automatically justif[y] a

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[3] Although Wood does not fall within the class of individuals we identified in *Atkins* v. *Virginia*, 536 U. S. 304 (2002), against whom the death penalty may not be constitutionally imposed, "the reality that [the defendant] was 'borderline mentally retarded,' might well . . . influenc[e] the jury's appraisal of his moral culpability." *Williams* v. *Taylor*, 529 U. S. 362, 398 (2000).

tactical decision with respect to sentencing strategy." *Wiggins*, 539 U. S., at 527. Although we afford deference to counsel's strategic decisions, *Strickland*, 466 U. S., at 690–691, for this deference to apply there must be some evidence that the decision was just that: strategic.

The lawyers' duty to conduct a thorough investigation of possible mitigating evidence is well established by our cases, *Porter* v. *McCollum*, *ante*, at 39–40 *(per curiam); Rompilla* v. *Beard*, 545 U. S. 374, 387 (2005); *Wiggins*, 539 U. S., at 522–523; *Williams* v. *Taylor*, 529 U. S. 362, 396 (2000); *Strickland*, 466 U. S., at 688. These cases also make clear that counsel's unconsidered decision to fail to discharge that duty cannot be strategic. The only conceivable strategy that might support forgoing counsel's ethical obligations under these circumstances would be a reasoned conclusion that further investigation is futile and thus a waste of valuable time. Cf. *id.*, at 691 (recognizing that counsel's decision to abandon an investigation is entitled to deference "when a defendant has given counsel reason to believe that pursuing certain investigations would be fruitless or even harmful"). There is no evidence in the record to suggest that Wood's counsel reached such a conclusion.[4] See 542 F. 3d, at 1321–1322 (Barkett, J., concurring in part and dissenting in part). On the contrary, the Court recognizes that Wood has pointed to substantial evidence that Trotter, the attorney who had

[4] The Court conflates the strategic decision to present mitigating evidence to the jury with the strategic decision to investigate avenues of mitigating evidence fully, see *ante*, at 303, n. 3. My concern is that there is no evidence to support a conclusion that there was a strategic decision on the latter, which is a necessary prerequisite for counsel to make reasoned choices with respect to what evidence should go before the jury during the penalty phase of a capital trial. See, *e. g.*, *Wiggins*, 539 U. S., at 522 (explaining that "counsel's failure to uncover and present voluminous mitigating evidence at sentencing could not be justified as a tactical decision to focus on [defendant's] voluntary confessions, because counsel had not 'fulfill[ed] their obligation to conduct a thorough investigation of the defendant's background'" (quoting *Williams*, 529 U. S., at 396)).

primary responsibility for Wood's penalty phase, believed that further investigation had value, *ante*, at 302. Despite the fact that Trotter had a meager five months of experience as a lawyer when he was appointed to represent Wood, App. 261, even he knew that further investigation into any mental or psychological deficits was in order.[5]

In my view, any decision to abandon an investigation into the mitigating evidence signaled by Dr. Kirkland's report was so obviously unreasonable that the decision itself is highly persuasive evidence that counsel did not have any strategy in mind when they did so. I share the view of my dissenting colleague below that the District Court correctly concluded that the failure to investigate was the product of inattention and neglect by attorneys preoccupied with other concerns and not the product of a deliberate choice between two permissible alternatives. For the state court to conclude otherwise was thus "an unreasonable determination of the facts in light of the evidence presented in the State court proceeding" within the meaning of 28 U. S. C. § 2254(d)(2).[6]

I therefore respectfully dissent.

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[5] Shortly before the penalty phase commenced, Trotter sent letters to his two more experienced co-counsel imploring that "we should request an independent psychological evaluation—even if that means asking for a postponement of the sentencing hearing." App. 343 (letter from Trotter to Dozier); *id.*, at 345 (letter from Trotter to Ralph). Trotter attempted to procure Wood's school records and speak to his former special education teachers in order to obtain "anything that would be able to be used as a mitigating factor," *id.*, at 267 (testimony of Trotter), but he failed to follow up on a subpoena issued for the records and never spoke at length with any of Wood's teachers, *id.*, at 267–268. Notably, at least two of these former teachers were willing to testify on Wood's behalf at the state post-conviction hearing, see *id.*, at 401–421 (testimony of Maddox and Penn).

[6] I would also reach the same conclusion were I to agree with respondents and their *amici* that a habeas petitioner must pierce § 2254(e)(1)'s presumption of correctness with respect to state-court findings of fact before he can proceed to show he is entitled to relief under § 2254(d)(2). See *ante*, at 300, n. 2.

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CITIZENS UNITED *v.* FEDERAL ELECTION COMMISSION

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 08–205. Argued March 24, 2009—Reargued September 9, 2009—Decided January 21, 2010

As amended by § 203 of the Bipartisan Campaign Reform Act of 2002 (BCRA), federal law prohibits corporations and unions from using their general treasury funds to make independent expenditures for speech that is an "electioneering communication" or for speech that expressly advocates the election or defeat of a candidate. 2 U. S. C. § 441b. An electioneering communication is "any broadcast, cable, or satellite communication" that "refers to a clearly identified candidate for Federal office" and is made within 30 days of a primary election, § 434(f)(3)(A), and that is "publicly distributed," 11 CFR § 100.29(a)(2), which in "the case of a candidate for nomination for President . . . means" that the communication "[c]an be received by 50,000 or more persons in a State where a primary election . . . is being held within 30 days," § 100.29(b)(3)(ii). Corporations and unions may establish a political action committee (PAC) for express advocacy or electioneering communications purposes. 2 U. S. C. § 441b(b)(2). In *McConnell* v. *Federal Election Comm'n*, 540 U. S. 93, 203–209, this Court upheld limits on electioneering communications in a facial challenge, relying on the holding in *Austin* v. *Michigan Chamber of Commerce*, 494 U. S. 652, that political speech may be banned based on the speaker's corporate identity.

In January 2008, appellant Citizens United, a nonprofit corporation, released a documentary (hereinafter *Hillary*) critical of then-Senator Hillary Clinton, a candidate for her party's Presidential nomination. Anticipating that it would make *Hillary* available on cable television through video-on-demand within 30 days of primary elections, Citizens United produced television ads to run on broadcast and cable television. Concerned about possible civil and criminal penalties for violating § 441b, it sought declaratory and injunctive relief, arguing that (1) § 441b is unconstitutional as applied to *Hillary;* and (2) BCRA's disclaimer, disclosure, and reporting requirements, BCRA §§ 201 and 311, were unconstitutional as applied to *Hillary* and the ads. The District Court denied Citizens United a preliminary injunction and granted appellee Federal Election Commission (FEC) summary judgment.

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Held:

1. Because the question whether § 441b applies to *Hillary* cannot be resolved on other, narrower grounds without chilling political speech, this Court must consider the continuing effect of the speech suppression upheld in *Austin*. Pp. 322–336.

(a) Citizens United's narrower arguments—that *Hillary* is not an "electioneering communication" covered by § 441b because it is not "publicly distributed" under 11 CFR § 100.29(a)(2); that § 441b may not be applied to *Hillary* under *Federal Election Comm'n* v. *Wisconsin Right to Life, Inc.*, 551 U. S. 449 *(WRTL)*, which found § 441b unconstitutional as applied to speech that was not "express advocacy or its functional equivalent," *id.*, at 481 (opinion of ROBERTS, C. J.), determining that a communication "is the functional equivalent of express advocacy only if [it] is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate," *id.*, at 469–470; that § 441b should be invalidated as applied to movies shown through video-on-demand because this delivery system has a lower risk of distorting the political process than do television ads; and that there should be an exception to § 441b's ban for nonprofit corporate political speech funded overwhelmingly by individuals—are not sustainable under a fair reading of the statute. Pp. 322–329.

(b) Thus, this case cannot be resolved on a narrower ground without chilling political speech, speech that is central to the First Amendment's meaning and purpose. Citizens United did not waive this challenge to *Austin* when it stipulated to dismissing the facial challenge below, since (1) even if such a challenge could be waived, this Court may reconsider *Austin* and § 441b's facial validity here because the District Court "passed upon" the issue, *Lebron* v. *National Railroad Passenger Corporation*, 513 U. S. 374, 379; (2) throughout the litigation, Citizens United has asserted a claim that the FEC has violated its right to free speech; and (3) the parties cannot enter into a stipulation that prevents the Court from considering remedies necessary to resolve a claim that has been preserved. Because Citizens United's narrower arguments are not sustainable, this Court must, in an exercise of its judicial responsibility, consider § 441b's facial validity. Any other course would prolong the substantial, nationwide chilling effect caused by § 441b's corporate expenditure ban. This conclusion is further supported by the following: (1) the uncertainty caused by the Government's litigating position; (2) substantial time would be required to clarify § 441b's application on the points raised by the Government's position in order to avoid any chilling effect caused by an improper interpretation; and (3) because speech itself is of primary importance to the integrity of the election process, any speech arguably within the reach of rules created for regu-

lating political speech is chilled. The regulatory scheme at issue may not be a prior restraint in the strict sense. However, given its complexity and the deference courts show to administrative determinations, a speaker wishing to avoid criminal liability threats and the heavy costs of defending against FEC enforcement must ask a governmental agency for prior permission to speak. The restrictions thus function as the equivalent of a prior restraint, giving the FEC power analogous to the type of government practices that the First Amendment was drawn to prohibit. The ongoing chill on speech makes it necessary to invoke the earlier precedents that a statute that chills speech can and must be invalidated where its facial invalidity has been demonstrated. Pp. 329–336.

2. *Austin* is overruled, and thus provides no basis for allowing the Government to limit corporate independent expenditures. Hence, § 441b's restrictions on such expenditures are invalid and cannot be applied to *Hillary.* Given this conclusion, the part of *McConnell* that upheld BCRA § 203's extension of § 441b's restrictions on independent corporate expenditures is also overruled. Pp. 336–366.

(a) Although the First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech," § 441b's prohibition on corporate independent expenditures is an outright ban on speech, backed by criminal sanctions. It is a ban notwithstanding the fact that a PAC created by a corporation can still speak, for a PAC is a separate association from the corporation. Because speech is an essential mechanism of democracy—it is the means to hold officials accountable to the people—political speech must prevail against laws that would suppress it by design or inadvertence. Laws burdening such speech are subject to strict scrutiny, which requires the Government to prove that the restriction "furthers a compelling interest and is narrowly tailored to achieve that interest." *WRTL*, *supra*, at 464. This language provides a sufficient framework for protecting the interests in this case. Premised on mistrust of governmental power, the First Amendment stands against attempts to disfavor certain subjects or viewpoints or to distinguish among different speakers, which may be a means to control content. The Government may also commit a constitutional wrong when by law it identifies certain preferred speakers. There is no basis for the proposition that, in the political speech context, the Government may impose restrictions on certain disfavored speakers. Both history and logic lead to this conclusion. Pp. 336–341.

(b) The Court has recognized that the First Amendment applies to corporations, *e. g.*, *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765, 778, n. 14, and extended this protection to the context of political speech, see, *e. g.*, *NAACP* v. *Button*, 371 U. S. 415, 428–429. Addressing challenges to the Federal Election Campaign Act of 1971, the Court in *Buck-*

ley v. *Valeo*, 424 U. S. 1 *(per curiam)*, upheld limits on direct contributions to candidates, 18 U. S. C. § 608(b), recognizing a governmental interest in preventing *quid pro quo* corruption. 424 U. S., at 25–26. However, the Court invalidated § 608(e)'s expenditure ban, which applied to individuals, corporations, and unions, because it "fail[ed] to serve any substantial governmental interest in stemming the reality or appearance of corruption in the electoral process," *id.*, at 47–48. While *Buckley* did not consider a separate ban on corporate and union independent expenditures found in § 610, had that provision been challenged in *Buckley*'s wake, it could not have been squared with the precedent's reasoning and analysis. The *Buckley* Court did not invoke the overbreadth doctrine to suggest that § 608(e)'s expenditure ban would have been constitutional had it applied to corporations and unions but not individuals. Notwithstanding this precedent, Congress soon recodified § 610's corporate and union expenditure ban at 2 U. S. C. § 441b, the provision at issue. Less than two years after *Buckley*, *Bellotti* reaffirmed the First Amendment principle that the Government lacks the power to restrict political speech based on the speaker's corporate identity. 435 U. S., at 784–785. Thus the law stood until *Austin* upheld a corporate independent expenditure restriction, bypassing *Buckley* and *Bellotti* by recognizing a new governmental interest in preventing "the corrosive and distorting effects of immense aggregations of [corporate] wealth . . . that have little or no correlation to the public's support for the corporation's political ideas." 494 U. S., at 660. Pp. 342–348.

(c) This Court is confronted with conflicting lines of precedent: a pre-*Austin* line forbidding speech restrictions based on the speaker's corporate identity and a post-*Austin* line permitting them. Neither *Austin*'s antidistortion rationale nor the Government's other justifications support § 441b's restrictions. Pp. 348–362.

(1) The First Amendment prohibits Congress from fining or jailing citizens, or associations of citizens, for engaging in political speech, but *Austin*'s antidistortion rationale would permit the Government to ban political speech because the speaker is an association with a corporate form. Political speech is "indispensable to decisionmaking in a democracy, and this is no less true because the speech comes from a corporation." *Bellotti*, *supra*, at 777 (footnote omitted). This protection is inconsistent with *Austin*'s rationale, which is meant to prevent corporations from obtaining "'an unfair advantage in the political marketplace'" by using "'resources amassed in the economic marketplace.'" 494 U. S., at 659. First Amendment protections do not depend on the speaker's "financial ability to engage in public discussion." *Buckley*, *supra*, at 49. These conclusions were reaffirmed when the Court invalidated a BCRA provision that increased the cap on contributions to one candidate if the opponent made certain expenditures from personal funds. *Davis* v.

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Federal Election Comm'n, 554 U. S. 724, 742. Distinguishing wealthy individuals from corporations based on the latter's special advantages of, *e. g.*, limited liability, does not suffice to allow laws prohibiting speech. It is irrelevant for First Amendment purposes that corporate funds may "have little or no correlation to the public's support for the corporation's political ideas." *Austin*, *supra*, at 660. All speakers, including individuals and the media, use money amassed from the economic marketplace to fund their speech, and the First Amendment protects the resulting speech. Under the antidistortion rationale, Congress could also ban political speech of media corporations. Although currently exempt from § 441b, they accumulate wealth with the help of their corporate form, may have aggregations of wealth, and may express views "hav-[ing] little or no correlation to the public's support" for those views. Differential treatment of media corporations and other corporations cannot be squared with the First Amendment, and there is no support for the view that the Amendment's original meaning would permit suppressing media corporations' political speech. *Austin* interferes with the "open marketplace" of ideas protected by the First Amendment. *New York State Bd. of Elections* v. *Lopez Torres*, 552 U. S. 196, 208. Its censorship is vast in its reach, suppressing the speech of both for-profit and nonprofit, both small and large, corporations. Pp. 349–356.

(2) This reasoning also shows the invalidity of the Government's other arguments. It reasons that corporate political speech can be banned to prevent corruption or its appearance. The *Buckley* Court found this rationale "sufficiently important" to allow contribution limits but refused to extend that reasoning to expenditure limits, 424 U. S., at 25, and the Court does not do so here. While a single *Bellotti* footnote purported to leave the question open, 435 U. S., at 788, n. 26, this Court now concludes that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption. That speakers may have influence over or access to elected officials does not mean that those officials are corrupt. And the appearance of influence or access will not cause the electorate to lose faith in this democracy. *Caperton* v. *A. T. Massey Coal Co.*, 556 U. S. 868, distinguished. Pp. 356–361.

(3) The Government's asserted interest in protecting shareholders from being compelled to fund corporate speech, like the antidistortion rationale, would allow the Government to ban political speech even of media corporations. The statute is underinclusive; it only protects a dissenting shareholder's interests in certain media for 30 or 60 days before an election when such interests would be implicated in any media at any time. It is also overinclusive because it covers all corporations, including those with one shareholder. Pp. 361–362.

(4) Because §441b is not limited to corporations or associations created in foreign countries or funded predominantly by foreign shareholders, it would be overbroad even if the Court were to recognize a compelling governmental interest in limiting foreign influence over the Nation's political process. P. 362.

(d) The relevant factors in deciding whether to adhere to *stare decisis*, beyond workability—the precedent's antiquity, the reliance interests at stake, and whether the decision was well reasoned—counsel in favor of abandoning *Austin*, which itself contravened the precedents of *Buckley* and *Bellotti*. As already explained, *Austin* was not well reasoned. It is also undermined by experience since its announcement. Political speech is so ingrained in this country's culture that speakers find ways around campaign finance laws. Rapid changes in technology—and the creative dynamic inherent in the concept of free expression—counsel against upholding a law that restricts political speech in certain media or by certain speakers. In addition, no serious reliance issues are at stake. Thus, due consideration leads to the conclusion that *Austin* should be overruled. The Court returns to the principle established in *Buckley* and *Bellotti* that the Government may not suppress political speech based on the speaker's corporate identity. No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations. Pp. 362–366.

3. BCRA §§201 and 311 are valid as applied to the ads for *Hillary* and to the movie itself. Pp. 366–372.

(a) Disclaimer and disclosure requirements may burden the ability to speak, but they "impose no ceiling on campaign-related activities," *Buckley*, *supra*, at 64, or "'"prevent anyone from speaking,"'" *McConnell*, 540 U. S., at 201. The *Buckley* Court explained that disclosure can be justified by a governmental interest in providing "the electorate with information" about election-related spending sources. 424 U. S., at 66. The *McConnell* Court applied this interest in rejecting facial challenges to §§201 and 311. 540 U. S., at 196. However, the Court acknowledged that as-applied challenges would be available if a group could show a "'reasonable probability'" that disclosing its contributors' names would "'subject them to threats, harassment, or reprisals from either Government officials or private parties.'" *Id.*, at 198. Pp. 366–367.

(b) The disclaimer and disclosure requirements are valid as applied to Citizens United's ads. They fall within BCRA's "electioneering communication" definition: They referred to then-Senator Clinton by name shortly before a primary and contained pejorative references to her candidacy. Section 311 disclaimers provide information to the electorate, *McConnell*, *supra*, at 196, and "insure that the voters are fully informed" about who is speaking, *Buckley*, *supra*, at 76. At the very

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least, they avoid confusion by making clear that the ads are not funded by a candidate or political party. Citizens United's arguments that § 311 is underinclusive because it requires disclaimers for broadcast advertisements but not for print or Internet advertising and that § 311 decreases the quantity and effectiveness of the group's speech were rejected in *McConnell.* This Court also rejects their contention that § 201's disclosure requirements must be confined to speech that is the functional equivalent of express advocacy under *WRTL*'s test for restrictions on independent expenditures, 551 U. S., at 469–476 (opinion of ROBERTS, C. J.). Disclosure is the less restrictive alternative to more comprehensive speech regulations. Such requirements have been upheld in *Buckley* and *McConnell.* Citizens United's argument that no informational interest justifies applying § 201 to its ads is similar to the argument this Court rejected with regard to disclaimers. Citizens United finally claims that disclosure requirements can chill donations by exposing donors to retaliation, but offers no evidence that its members face the type of threats, harassment, or reprisals that might make § 201 unconstitutional as applied. Pp. 367–371.

(c) For these same reasons, this Court affirms the application of the §§ 201 and 311 disclaimer and disclosure requirements to *Hillary.* Pp. 371–372.

Reversed in part, affirmed in part, and remanded.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA and ALITO, JJ., joined, in which THOMAS, J., joined as to all but Part IV, and in which STEVENS, GINSBURG, BREYER, and SOTOMAYOR, JJ., joined as to Part IV. ROBERTS, C. J., filed a concurring opinion, in which ALITO, J., joined, *post,* p. 372. SCALIA, J., filed a concurring opinion, in which ALITO, J., joined, and in which THOMAS, J., joined in part, *post,* p. 385. STEVENS, J., filed an opinion concurring in part and dissenting in part, in which GINSBURG, BREYER, and SOTOMAYOR, JJ., joined, *post,* p. 393. THOMAS, J., filed an opinion concurring in part and dissenting in part, *post,* p. 480.

Theodore B. Olson argued and reargued the cause for appellant. With him on the briefs were *Matthew D. McGill*, *Amir C. Tayrani*, and *Michael Boos.*

Floyd Abrams argued the cause for Senator Mitch McConnell as *amicus curiae.* With him on the brief was *Susan Buckley.*

Solicitor General Kagan reargued the cause for appellee. *Deputy Solicitor General Stewart* argued the cause for ap-

pellee on the original argument. With them on the briefs were then-*Acting Solicitor General Kneedler*, *William M. Jay*, *Thomasenia P. Duncan*, *David Kolker*, *Kevin Deeley*, and *Adav Noti*.

Seth P. Waxman argued the cause for Senator John McCain et al. as *amici curiae* urging affirmance. With him on the briefs were *Randolph D. Moss*, *Roger M. Witten*, *Scott L. Nelson*, *Alan B. Morrison*, *Brian Wolfman*, *Trevor Potter*, *J. Gerald Hebert*, *Paul S. Ryan*, *Tara Malloy*, *Fred Wertheimer*, and *Donald J. Simon*.*

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*Briefs of *amici curiae* urging reversal were filed for the Alliance Defense Fund by *Benjamin W. Bull*, *Erik W. Stanley*, and *Robert J. McCully;* for the American Civil Rights Union by *Peter Ferrara;* for the American Federation of Labor and Congress of Industrial Organizations by *Jonathan P. Hiatt* and *Laurence E. Gold;* for the Cato Institute by *Benjamin D. Wood*, *Glenn M. Willard*, *William J. McGinley*, and *Ilya Shapiro;* for the Center for Competitive Politics by *Stephen M. Hoersting* and *Reid Alan Cox;* for the Chamber of Commerce of the United States of America by *Jan Witold Baran*, *Thomas W. Kirby*, *Caleb P. Burns*, *Robin S. Conrad*, *Amar D. Sarwal*, *Steven J. Law*, and *Judith K. Richmond;* for the Committee for Truth in Politics, Inc., by *James Bopp, Jr.*, and *Richard E. Coleson;* for the Foundation for Free Expression by *Deborah J. Dewart* and *James L. Hirsen;* for the National Rifle Association by *Charles J. Cooper*, *David H. Thompson*, and *David Lehn;* for the Reporters Committee for Freedom of the Press by *Lucy A. Dalglish* and *Gregg P. Leslie;* and for the Wyoming Liberty Group et al. by *Benjamin Barr*.

Briefs of *amici curiae* urging affirmance were filed for the American Independent Business Alliance by *Brenda Wright*, *Lisa J. Danetz*, and *Daniel J. H. Greenwood;* for the Campaign Legal Center et al. by *Messrs. Potter* and *Hebert*, *Ms. Malloy*, and *Messrs. Ryan*, *Simon*, and *Wertheimer;* for the Center for Political Accountability et al. by *Karl J. Sandstrom;* for the League of Women Voters of the United States et al. by *Douglas T. Kendall*, *Elizabeth B. Wydra*, *David H. Gans*, and *Lloyd J. Leonard;* for the Program on Corporations, Law and Democracy et al. by *Jeffrey D. Clements;* for the Sunlight Foundation et al. by *Gary S. Stein;* and for Norman Ornstein et al. by *H. Christopher Bartolomucci*.

Briefs of *amici curiae* were filed for the State of Montana et al. by *Steve Bullock*, Attorney General of Montana, and *Anthony Johnstone*, Solicitor, by *Terry Goddard*, Attorney General of Arizona, *Mary R. O'Grady*, Solicitor General, and *Orville B. Fitch II*, Acting Attorney General of New

JUSTICE KENNEDY delivered the opinion of the Court.

Federal law prohibits corporations and unions from using their general treasury funds to make independent expendi-

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Hampshire, and by the Attorneys General for their respective States as follows: *Richard Blumenthal* of Connecticut, *Bill McCollum* of Florida, *Mark J. Bennett* of Hawaii, *Lisa Madigan* of Illinois, *Tom Miller* of Iowa, *Steve Six* of Kansas, *Douglas F. Gansler* of Maryland, *Martha Coakley* of Massachusetts, *Michael A. Cox* of Michigan, *Lori Swanson* of Minnesota, *Jim Hood* of Mississippi, *Anne Milgram* of New Jersey, *Gary K. King* of New Mexico, *Roy Cooper* of North Carolina, *Wayne Stenehjem* of North Dakota, *Richard Cordray* of Ohio, *W. A. Drew Edmondson* of Oklahoma, *Thomas W. Corbett, Jr.*, of Pennsylvania, *Patrick C. Lynch* of Rhode Island, *Lawrence E. Long* of South Dakota, *Robert E. Cooper, Jr.*, of Tennessee, *William H. Sorrell* of Vermont, and *Darrell V. McGraw, Jr.*, of West Virginia; for the American Civil Liberties Union by *Steven R. Shapiro*, *Joel M. Gora*, and *Mark J. Lopez;* for the American Justice Partnership et al. by *Cleta Mitchell* and *Michael J. Lockerby;* for the California Broadcasters Association et al. by *Lawrence H. Norton*, *James A. Kahl*, and *Gregg P. Skall;* for the California First Amendment Coalition by *Gary L. Bostwick* and *Jean-Paul Jassy;* for Campaign Finance Scholars by *Allison R. Hayward, pro se;* for the Center for Constitutional Jurisprudence by *Anthony T. Caso*, *Edwin Meese III*, and *John C. Eastman;* for the Center for Independent Media et al. by *Monica Youn;* for the Center for Political Accountability et al. by *Mr. Sandstrom;* for the Committee for Economic Development by *Paul M. Smith;* for the Democratic National Committee by *Robert F. Bauer* and *David J. Burman;* for the Fidelis Center for Law and Policy et al. by *Patrick T. Gillen;* for Former Officials of the American Civil Liberties Union by *Norman Dorsen* and *Burt Neuborne*, both *pro se;* for the Free Speech Defense and Education Fund, Inc., et al. by *William J. Olson*, *Herbert W. Titus*, *John S. Miles*, and *Mark B. Weinberg;* for the Hachette Book Group, Inc., et al. by *Michael J. Chepiga;* for the Independent Sector by *M. Devereux Chatillon;* for the Institute for Justice by *William R. Maurer*, *William H. Mellor*, *Steven M. Simpson*, and *Robert W. Gall;* for Judicial Watch, Inc., by *Paul J. Orfanedes* and *Dale L. Wilcox;* for Justice at Stake et al. by *James E. Scarboro;* for the Michigan Chamber of Commerce by *Richard D. McLellan*, *Gary P. Gordon*, *John D. Pirich*, and *Andrea L. Hansen;* for the Pacific Legal Foundation by *Deborah J. La Fetra* and *Damien M. Schiff;* for Public Good by *Seth E. Mermin;* for Seven Former Chairmen of the Federal Election Commission et al. by *Messrs. Bopp* and *Coleson;* and for Representative Chris Van Hollen et al. by *Bradley S. Phillips* and *Aaron S. Lowenstein.*

tures for speech defined as an "electioneering communication" or for speech expressly advocating the election or defeat of a candidate. 2 U. S. C. § 441b. Limits on electioneering communications were upheld in *McConnell* v. *Federal Election Comm'n*, 540 U. S. 93, 203–209 (2003). The holding of *McConnell* rested to a large extent on an earlier case, *Austin* v. *Michigan Chamber of Commerce*, 494 U. S. 652 (1990). *Austin* had held that political speech may be banned based on the speaker's corporate identity.

In this case we are asked to reconsider *Austin* and, in effect, *McConnell*. It has been noted that "*Austin* was a significant departure from ancient First Amendment principles," *Federal Election Comm'n* v. *Wisconsin Right to Life, Inc.*, 551 U. S. 449, 490 (2007) *(WRTL)* (SCALIA, J., concurring in part and concurring in judgment). We agree with that conclusion and hold that *stare decisis* does not compel the continued acceptance of *Austin*. The Government may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether. We turn to the case now before us.

I

A

Citizens United is a nonprofit corporation. It brought this action in the United States District Court for the District of Columbia. A three-judge court later convened to hear the cause. The resulting judgment gives rise to this appeal.

Citizens United has an annual budget of about $12 million. Most of its funds are from donations by individuals; but, in addition, it accepts a small portion of its funds from for-profit corporations.

In January 2008, Citizens United released a film entitled *Hillary: The Movie*. We refer to the film as *Hillary*. It is a 90-minute documentary about then-Senator Hillary Clinton, who was a candidate in the Democratic Party's 2008 Presidential primary elections. *Hillary* mentions Senator

Clinton by name and depicts interviews with political commentators and other persons, most of them quite critical of Senator Clinton. *Hillary* was released in theaters and on DVD, but Citizens United wanted to increase distribution by making it available through video-on-demand.

Video-on-demand allows digital cable subscribers to select programming from various menus, including movies, television shows, sports, news, and music. The viewer can watch the program at any time and can elect to rewind or pause the program. In December 2007, a cable company offered, for a payment of $1.2 million, to make *Hillary* available on a video-on-demand channel called "Elections '08." App. 255a–257a. Some video-on-demand services require viewers to pay a small fee to view a selected program, but here the proposal was to make *Hillary* available to viewers free of charge.

To implement the proposal, Citizens United was prepared to pay for the video-on-demand; and to promote the film, it produced two 10-second ads and one 30-second ad for *Hillary*. Each ad includes a short (and, in our view, pejorative) statement about Senator Clinton, followed by the name of the movie and the movie's Web site address. *Id.*, at 26a–27a. Citizens United desired to promote the video-on-demand offering by running advertisements on broadcast and cable television.

B

Before the Bipartisan Campaign Reform Act of 2002 (BCRA), federal law prohibited—and still does prohibit—corporations and unions from using general treasury funds to make direct contributions to candidates or independent expenditures that expressly advocate the election or defeat of a candidate, through any form of media, in connection with certain qualified federal elections. 2 U. S. C. § 441b (2000 ed.); see *McConnell*, *supra*, at 204, and n. 87; *Federal Election Comm'n* v. *Massachusetts Citizens for Life, Inc.*, 479 U. S. 238, 249 (1986) *(MCFL)*. BCRA § 203 amended

§ 441b to prohibit any "electioneering communication" as well. 2 U. S. C. § 441b(b)(2) (2006 ed.). An electioneering communication is defined as "any broadcast, cable, or satellite communication" that "refers to a clearly identified candidate for Federal office" and is made within 30 days of a primary or 60 days of a general election. § 434(f)(3)(A). The Federal Election Commission's (FEC) regulations further define an electioneering communication as a communication that is "publicly distributed." 11 CFR § 100.29(a)(2) (2009). "In the case of a candidate for nomination for President . . . *publicly distributed* means" that the communication "[c]an be received by 50,000 or more persons in a State where a primary election . . . is being held within 30 days." § 100.29(b)(3)(ii)(A). Corporations and unions are barred from using their general treasury funds for express advocacy or electioneering communications. They may establish, however, a "separate segregated fund" (known as a political action committee, or PAC) for these purposes. 2 U. S. C. § 441b(b)(2). The moneys received by the segregated fund are limited to donations from stockholders and employees of the corporation or, in the case of unions, members of the union. *Ibid.*

C

Citizens United wanted to make *Hillary* available through video-on-demand within 30 days of the 2008 primary elections. It feared, however, that both the film and the ads would be covered by § 441b's ban on corporate-funded independent expenditures, thus subjecting the corporation to civil and criminal penalties under § 437g. In December 2007, Citizens United sought declaratory and injunctive relief against the FEC. It argued that (1) § 441b is unconstitutional as applied to *Hillary;* and (2) BCRA's disclaimer and disclosure requirements, BCRA §§ 201 and 311, 116 Stat. 88, 105, are unconstitutional as applied to *Hillary* and to the three ads for the movie.

The District Court denied Citizens United's motion for a preliminary injunction, 530 F. Supp. 2d 274 (DC 2008) *(per curiam)*, and then granted the FEC's motion for summary judgment, App. 261a–262a. See *id.*, at 261a ("Based on the reasoning of our prior opinion, we find that the [FEC] is entitled to judgment as a matter of law. *See Citizen[s] United v. FEC*, 530 F. Supp. 2d 274 (D. D. C. 2008) (denying Citizens United's request for a preliminary injunction)"). The court held that § 441b was facially constitutional under *McConnell*, and that § 441b was constitutional as applied to *Hillary* because it was "susceptible of no other interpretation than to inform the electorate that Senator Clinton is unfit for office, that the United States would be a dangerous place in a President Hillary Clinton world, and that viewers should vote against her." 530 F. Supp. 2d, at 279. The court also rejected Citizens United's challenge to BCRA's disclaimer and disclosure requirements. It noted that "the Supreme Court has written approvingly of disclosure provisions triggered by political speech even though the speech itself was constitutionally protected under the First Amendment." *Id.*, at 281.

We noted probable jurisdiction. 555 U. S. 1028 (2008). The case was reargued in this Court after the Court asked the parties to file supplemental briefs addressing whether we should overrule either or both *Austin* and the part of *McConnell* which addresses the facial validity of 2 U. S. C. § 441b. See 557 U. S. 932 (2009).

II

Before considering whether *Austin* should be overruled, we first address whether Citizens United's claim that § 441b cannot be applied to *Hillary* may be resolved on other, narrower grounds.

A

Citizens United contends that § 441b does not cover *Hillary*, as a matter of statutory interpretation, because the film

does not qualify as an "electioneering communication." § 441b(b)(2). Citizens United raises this issue for the first time before us, but we consider the issue because "it was addressed by the court below." *Lebron* v. *National Railroad Passenger Corporation*, 513 U. S. 374, 379 (1995); see 530 F. Supp. 2d, at 277, n. 6. Under the definition of electioneering communication, the video-on-demand showing of *Hillary* on cable television would have been a "cable . . . communication" that "refer[red] to a clearly identified candidate for Federal office" and that was made within 30 days of a primary election. 2 U. S. C. § 434(f)(3)(A)(i). Citizens United, however, argues that *Hillary* was not "publicly distributed," because a single video-on-demand transmission is sent only to a requesting cable converter box and each separate transmission, in most instances, will be seen by just one household—not 50,000 or more persons. 11 CFR § 100.29(a)(2); see § 100.29(b)(3)(ii).

This argument ignores the regulation's instruction on how to determine whether a cable transmission "[c]an be received by 50,000 or more persons." § 100.29(b)(3)(ii). The regulation provides that the number of people who can receive a cable transmission is determined by the number of cable subscribers in the relevant area. §§ 100.29(b)(7)(i)(G), (ii). Here, Citizens United wanted to use a cable video-on-demand system that had 34.5 million subscribers nationwide. App. 256a. Thus, *Hillary* could have been received by 50,000 persons or more.

One *amici* brief asks us, alternatively, to construe the condition that the communication "[c]an be received by 50,000 or more persons," § 100.29(b)(3)(ii)(A), to require "a plausible likelihood that the communication will be viewed by 50,000 or more potential voters"—as opposed to requiring only that the communication is "technologically capable" of being seen by that many people, Brief for Former Officials of the American Civil Liberties Union 5. Whether the population and demographic statistics in a proposed viewing area consisted

of 50,000 registered voters—but not "infants, pre-teens, or otherwise electorally ineligible recipients"—would be a required determination, subject to judicial challenge and review, in any case where the issue was in doubt. *Id.*, at 6.

In our view the statute cannot be saved by limiting the reach of 2 U. S. C. § 441b through this suggested interpretation. In addition to the costs and burdens of litigation, this result would require a calculation as to the number of people a particular communication is likely to reach, with an inaccurate estimate potentially subjecting the speaker to criminal sanctions. The First Amendment does not permit laws that force speakers to retain a campaign finance attorney, conduct demographic marketing research, or seek declaratory rulings before discussing the most salient political issues of our day. Prolix laws chill speech for the same reason that vague laws chill speech: People "of common intelligence must necessarily guess at [the law's] meaning and differ as to its application." *Connally* v. *General Constr. Co.*, 269 U. S. 385, 391 (1926). The Government may not render a ban on political speech constitutional by carving out a limited exemption through an amorphous regulatory interpretation. We must reject the approach suggested by the *amici.* Section 441b covers *Hillary.*

B

Citizens United next argues that § 441b may not be applied to *Hillary* under the approach taken in *WRTL.* *McConnell* decided that § 441b(b)(2)'s definition of an "electioneering communication" was facially constitutional insofar as it restricted speech that was "the functional equivalent of express advocacy" for or against a specific candidate. 540 U. S., at 206. *WRTL* then found an unconstitutional application of § 441b where the speech was not "express advocacy or its functional equivalent." 551 U. S., at 481 (opinion of ROBERTS, C. J.). As explained by THE CHIEF JUSTICE's controlling opinion in *WRTL*, the functional-equivalent test is objective: "[A] court should find that [a communication] is

the functional equivalent of express advocacy only if [it] is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." *Id.*, at 469–470.

Under this test, *Hillary* is equivalent to express advocacy. The movie, in essence, is a feature-length negative advertisement that urges viewers to vote against Senator Clinton for President. In light of historical footage, interviews with persons critical of her, and voiceover narration, the film would be understood by most viewers as an extended criticism of Senator Clinton's character and her fitness for the office of the Presidency. The narrative may contain more suggestions and arguments than facts, but there is little doubt that the thesis of the film is that she is unfit for the Presidency. The movie concentrates on alleged wrongdoing during the Clinton administration, Senator Clinton's qualifications and fitness for office, and policies the commentators predict she would pursue if elected President. It calls Senator Clinton "Machiavellian," App. 64a, and asks whether she is "the most qualified to hit the ground running if elected President," *id.*, at 88a. The narrator reminds viewers that "Americans have never been keen on dynasties" and that "a vote for Hillary is a vote to continue 20 years of a Bush or a Clinton in the White House," *id.*, at 143a–144a.

Citizens United argues that *Hillary* is just "a documentary film that examines certain historical events." Brief for Appellant 35. We disagree. The movie's consistent emphasis is on the relevance of these events to Senator Clinton's candidacy for President. The narrator begins by asking "could [Senator Clinton] become the first female President in the history of the United States?" App. 35a. And the narrator reiterates the movie's message in his closing line: "Finally, before America decides on our next president, voters should need no reminders of . . . what's at stake—the well being and prosperity of our nation." *Id.*, at 144a–145a.

As the District Court found, there is no reasonable interpretation of *Hillary* other than as an appeal to vote against Senator Clinton. Under the standard stated in *McConnell* and further elaborated in *WRTL*, the film qualifies as the functional equivalent of express advocacy.

C

Citizens United further contends that § 441b should be invalidated as applied to movies shown through video-on-demand, arguing that this delivery system has a lower risk of distorting the political process than do television ads. Cf. *McConnell*, *supra*, at 207. On what we might call conventional television, advertising spots reach viewers who have chosen a channel or a program for reasons unrelated to the advertising. With video-on-demand, by contrast, the viewer selects a program after taking "a series of affirmative steps": subscribing to cable; navigating through various menus; and selecting the program. See *Reno* v. *American Civil Liberties Union*, 521 U. S. 844, 867 (1997).

While some means of communication may be less effective than others at influencing the public in different contexts, any effort by the Judiciary to decide which means of communications are to be preferred for the particular type of message and speaker would raise questions as to the courts' own lawful authority. Substantial questions would arise if courts were to begin saying what means of speech should be preferred or disfavored. And in all events, those differentiations might soon prove to be irrelevant or outdated by technologies that are in rapid flux. See *Turner Broadcasting System, Inc.* v. *FCC*, 512 U. S. 622, 639 (1994).

Courts, too, are bound by the First Amendment. We must decline to draw, and then redraw, constitutional lines based on the particular media or technology used to disseminate political speech from a particular speaker. It must be noted, moreover, that this undertaking would require substantial litigation over an extended time, all to interpret a

law that beyond doubt discloses serious First Amendment flaws. The interpretive process itself would create an inevitable, pervasive, and serious risk of chilling protected speech pending the drawing of fine distinctions that, in the end, would themselves be questionable. First Amendment standards, however, "must give the benefit of any doubt to protecting rather than stifling speech." *WRTL*, 551 U. S., at 469 (opinion of ROBERTS, C. J.) (citing *New York Times Co.* v. *Sullivan*, 376 U. S. 254, 269–270 (1964)).

D

Citizens United also asks us to carve out an exception to § 441b's expenditure ban for nonprofit corporate political speech funded overwhelmingly by individuals. As an alternative to reconsidering *Austin*, the Government also seems to prefer this approach. This line of analysis, however, would be unavailing.

In *MCFL*, the Court found unconstitutional § 441b's restrictions on corporate expenditures as applied to nonprofit corporations that were formed for the sole purpose of promoting political ideas, did not engage in business activities, and did not accept contributions from for-profit corporations or labor unions. 479 U. S., at 263–264; see also 11 CFR § 114.10. BCRA's so-called Wellstone Amendment applied § 441b's expenditure ban to all nonprofit corporations. See 2 U. S. C. § 441b(c)(6); *McConnell*, 540 U. S., at 209. *McConnell* then interpreted the Wellstone Amendment to retain the *MCFL* exemption to § 441b's expenditure prohibition. 540 U. S., at 211. Citizens United does not qualify for the *MCFL* exemption, however, since some funds used to make the movie were donations from for-profit corporations.

The Government suggests we could find BCRA's Wellstone Amendment unconstitutional, sever it from the statute, and hold that Citizens United's speech is exempt from § 441b's ban under BCRA's Snowe-Jeffords Amendment, § 441b(c)(2). See Tr. of Oral Arg. 37–38 (Sept. 9, 2009). The Snowe-Jeffords Amendment operates as a backup provision that

only takes effect if the Wellstone Amendment is invalidated. See *McConnell*, *supra*, at 339 (KENNEDY, J., concurring in judgment in part and dissenting in part). The Snowe-Jeffords Amendment would exempt from § 441b's expenditure ban the political speech of certain nonprofit corporations if the speech were funded "exclusively" by individual donors and the funds were maintained in a segregated account. § 441b(c)(2). Citizens United would not qualify for the Snowe-Jeffords exemption, under its terms as written, because *Hillary* was funded in part with donations from for-profit corporations.

Consequently, to hold for Citizens United on this argument, the Court would be required to revise the text of *MCFL*, sever BCRA's Wellstone Amendment, § 441b(c)(6), and ignore the plain text of BCRA's Snowe-Jeffords Amendment, § 441b(c)(2). If the Court decided to create a *de minimis* exception to *MCFL* or the Snowe-Jeffords Amendment, the result would be to allow for-profit corporate general treasury funds to be spent for independent expenditures that support candidates. There is no principled basis for doing this without rewriting *Austin*'s holding that the Government can restrict corporate independent expenditures for political speech.

Though it is true that the Court should construe statutes as necessary to avoid constitutional questions, the series of steps suggested would be difficult to take in view of the language of the statute. In addition to those difficulties the Government's suggestion is troubling for still another reason. The Government does not say that it agrees with the interpretation it wants us to consider. See Supp. Brief for Appellee 3, n. 1 ("Some courts" have implied a *de minimis* exception, and "appellant would appear to be covered by these decisions"). Presumably it would find textual difficulties in this approach too. The Government, like any party, can make arguments in the alternative; but it ought to say if there is merit to an alternative proposal instead of

merely suggesting it. This is especially true in the context of the First Amendment. As the Government stated, this case "would require a remand" to apply a *de minimis* standard. Tr. of Oral Arg. 39 (Sept. 9, 2009). Applying this standard would thus require case-by-case determinations. But archetypical political speech would be chilled in the meantime. "'First Amendment freedoms need breathing space to survive.'" *WRTL*, *supra*, at 468–469 (opinion of ROBERTS, C. J.) (quoting *NAACP* v. *Button*, 371 U. S. 415, 433 (1963)). We decline to adopt an interpretation that requires intricate case-by-case determinations to verify whether political speech is banned, especially if we are convinced that, in the end, this corporation has a constitutional right to speak on this subject.

E

As the foregoing analysis confirms, the Court cannot resolve this case on a narrower ground without chilling political speech, speech that is central to the meaning and purpose of the First Amendment. See *Morse* v. *Frederick*, 551 U. S. 393, 403 (2007). It is not judicial restraint to accept an unsound, narrow argument just so the Court can avoid another argument with broader implications. Indeed, a court would be remiss in performing its duties were it to accept an unsound principle merely to avoid the necessity of making a broader ruling. Here, the lack of a valid basis for an alternative ruling requires full consideration of the continuing effect of the speech suppression upheld in *Austin*.

Citizens United stipulated to dismissing count 5 of its complaint, which raised a facial challenge to § 441b, even though count 3 raised an as-applied challenge. See App. 23a (count 3: "As applied to *Hillary*, [§ 441b] is unconstitutional under the First Amendment guarantees of free expression and association"). The Government argues that Citizens United waived its challenge to *Austin* by dismissing count 5. We disagree.

First, even if a party could somehow waive a facial challenge while preserving an as-applied challenge, that would not prevent the Court from reconsidering *Austin* or addressing the facial validity of § 441b in this case. "Our practice 'permit[s] review of an issue not pressed [below] so long as it has been passed upon . . . .'" *Lebron,* 513 U. S., at 379 (quoting *United States* v. *Williams,* 504 U. S. 36, 41 (1992); first alteration in original). And here, the District Court addressed Citizens United's facial challenge. See 530 F. Supp. 2d, at 278 ("Citizens wants us to enjoin the operation of BCRA § 203 as a facially unconstitutional burden on the First Amendment right to freedom of speech"). In rejecting the claim, it noted that it "would have to overrule *McConnell*" for Citizens United to prevail on its facial challenge and that "[o]nly the Supreme Court may overrule its decisions." *Ibid.* (citing *Rodriguez de Quijas* v. *Shearson/American Express, Inc.,* 490 U. S. 477, 484 (1989)). The District Court did not provide much analysis regarding the facial challenge because it could not ignore the controlling Supreme Court decisions in *Austin* and *McConnell.* Even so, the District Court did "'pas[s] upon'" the issue. *Lebron, supra,* at 379. Furthermore, the District Court's later opinion, which granted the FEC summary judgment, was "[b]ased on the reasoning of [its] prior opinion," which included the discussion of the facial challenge. App. 261a (citing 530 F. Supp. 2d 274). After the District Court addressed the facial validity of the statute, Citizens United raised its challenge to *Austin* in this Court. See Brief for Appellant 30 ("*Austin* was wrongly decided and should be overruled"); *id.,* at 30–32. In these circumstances, it is necessary to consider Citizens United's challenge to *Austin* and the facial validity of § 441b's expenditure ban.

Second, throughout the litigation, Citizens United has asserted a claim that the FEC has violated its First Amendment right to free speech. All concede that this claim is properly before us. And "'[o]nce a federal claim is properly

presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below.' " *Lebron*, *supra*, at 379 (quoting *Yee* v. *Escondido*, 503 U. S. 519, 534 (1992); alteration in original). Citizens United's argument that *Austin* should be overruled is "not a new claim." *Lebron*, 513 U. S., at 379. Rather, it is—at most—"a new argument to support what has been [a] consistent claim: that [the FEC] did not accord [Citizens United] the rights it was obliged to provide by the First Amendment." *Ibid.*

Third, the distinction between facial and as-applied challenges is not so well defined that it has some automatic effect or that it must always control the pleadings and disposition in every case involving a constitutional challenge. The distinction is both instructive and necessary, for it goes to the breadth of the remedy employed by the Court, not what must be pleaded in a complaint. See *United States* v. *Treasury Employees*, 513 U. S. 454, 477–478 (1995) (contrasting "a facial challenge" with "a narrower remedy"). The parties cannot enter into a stipulation that prevents the Court from considering certain remedies if those remedies are necessary to resolve a claim that has been preserved. Citizens United has preserved its First Amendment challenge to § 441b as applied to the facts of its case; and given all the circumstances, we cannot easily address that issue without assuming a premise—the permissibility of restricting corporate political speech—that is itself in doubt. See Fallon, As-Applied and Facial Challenges and Third-Party Standing, 113 Harv. L. Rev. 1321, 1339 (2000) ("[O]nce a case is brought, no general categorical line bars a court from making broader pronouncements of invalidity in properly 'as-applied' cases"); *id.*, at 1327–1328. As our request for supplemental briefing implied, Citizens United's claim implicates the validity of *Austin*, which in turn implicates the facial validity of § 441b.

When the statute now at issue came before the Court in *McConnell*, both the majority and the dissenting opinions

considered the question of its facial validity. The holding and validity of *Austin* were essential to the reasoning of the *McConnell* majority opinion, which upheld BCRA's extension of § 441b. See 540 U. S., at 205 (quoting *Austin*, 494 U. S., at 660). *McConnell* permitted federal felony punishment for speech by all corporations, including nonprofit ones, that speak on prohibited subjects shortly before federal elections. See 540 U. S., at 203–209. Four Members of the *McConnell* Court would have overruled *Austin*, including Chief Justice Rehnquist, who had joined the Court's opinion in *Austin* but reconsidered that conclusion. See 540 U. S., at 256–262 (SCALIA, J., concurring in part, concurring in judgment in part, and dissenting in part); *id.*, at 273–275 (THOMAS, J., concurring in part, concurring in result in part, concurring in judgment in part, and dissenting in part); *id.*, at 322–338 (opinion of KENNEDY, J., joined by Rehnquist, C. J., and SCALIA, J.). That inquiry into the facial validity of the statute was facilitated by the extensive record, which was "over 100,000 pages" long, made in the three-judge District Court. *McConnell* v. *Federal Election Comm'n*, 251 F. Supp. 2d 176, 209 (DC 2003) *(per curiam) (McConnell I)*. It is not the case, then, that the Court today is premature in interpreting § 441b "'on the basis of [a] factually barebones recor[d].'" *Washington State Grange* v. *Washington State Republican Party*, 552 U. S. 442, 450 (2008) (quoting *Sabri* v. *United States*, 541 U. S. 600, 609 (2004)).

The *McConnell* majority considered whether the statute was facially invalid. An as-applied challenge was brought in *Wisconsin Right to Life, Inc.* v. *Federal Election Comm'n*, 546 U. S. 410, 411–412 (2006) *(per curiam)*, and the Court confirmed that the challenge could be maintained. Then, in *WRTL*, the controlling opinion of the Court not only entertained an as-applied challenge but also sustained it. Three Justices noted that they would continue to maintain the position that the record in *McConnell* demonstrated the invalidity of the Act on its face. 551 U. S., at 485–504 (opinion of

SCALIA, J.). The controlling opinion in *WRTL*, which refrained from holding the statute invalid except as applied to the facts then before the Court, was a careful attempt to accept the essential elements of the Court's opinion in *McConnell*, while vindicating the First Amendment arguments made by the *WRTL* parties. 551 U. S., at 482 (opinion of ROBERTS, C. J.).

As noted above, Citizens United's narrower arguments are not sustainable under a fair reading of the statute. In the exercise of its judicial responsibility, it is necessary then for the Court to consider the facial validity of § 441b. Any other course of decision would prolong the substantial, nationwide chilling effect caused by § 441b's prohibitions on corporate expenditures. Consideration of the facial validity of § 441b is further supported by the following reasons.

First is the uncertainty caused by the litigating position of the Government. As discussed above, see Part II–D, *supra*, the Government suggests, as an alternative argument, that an as-applied challenge might have merit. This argument proceeds on the premise that the nonprofit corporation involved here may have received only *de minimis* donations from for-profit corporations and that some nonprofit corporations may be exempted from the operation of the statute. The Government also suggests that an as-applied challenge to § 441b's ban on books may be successful, although it would defend § 441b's ban as applied to almost every other form of media including pamphlets. See Tr. of Oral Arg. 65–66 (Sept. 9, 2009). The Government thus, by its own position, contributes to the uncertainty that § 441b causes. When the Government holds out the possibility of ruling for Citizens United on a narrow ground yet refrains from adopting that position, the added uncertainty demonstrates the necessity to address the question of statutory validity.

Second, substantial time would be required to bring clarity to the application of the statutory provision on these points

in order to avoid any chilling effect caused by some improper interpretation. See Part II–C, *supra*. It is well known that the public begins to concentrate on elections only in the weeks immediately before they are held. There are short timeframes in which speech can have influence. The need or relevance of the speech will often first be apparent at this stage in the campaign. The decision to speak is made in the heat of political campaigns, when speakers react to messages conveyed by others. A speaker's ability to engage in political speech that could have a chance of persuading voters is stifled if the speaker must first commence a protracted lawsuit. By the time the lawsuit concludes, the election will be over and the litigants in most cases will have neither the incentive nor, perhaps, the resources to carry on, even if they could establish that the case is not moot because the issue is "capable of repetition, yet evading review." *WRTL*, *supra*, at 462 (opinion of ROBERTS, C. J.) (citing *Los Angeles* v. *Lyons*, 461 U. S. 95, 109 (1983); *Southern Pacific Terminal Co.* v. *ICC*, 219 U. S. 498, 515 (1911)). Here, Citizens United decided to litigate its case to the end. Today, Citizens United finally learns, two years after the fact, whether it could have spoken during the 2008 Presidential primary—long after the opportunity to persuade primary voters has passed.

Third is the primary importance of speech itself to the integrity of the election process. As additional rules are created for regulating political speech, any speech arguably within their reach is chilled. See Part II–A, *supra*. Campaign finance regulations now impose "unique and complex rules" on "71 distinct entities." Brief for Seven Former Chairmen of FEC et al. as *Amici Curiae* 11–12. These entities are subject to separate rules for 33 different types of political speech. *Id.*, at 14–15, n. 10. The FEC has adopted 568 pages of regulations, 1,278 pages of explanations and justifications for those regulations, and 1,771 advisory opinions since 1975. See *id.*, at 6, n. 7. In fact, after this Court in

WRTL adopted an objective "appeal to vote" test for determining whether a communication was the functional equivalent of express advocacy, 551 U. S., at 470 (opinion of ROBERTS, C. J.), the FEC adopted a two-part, 11-factor balancing test to implement *WRTL*'s ruling. See 11 CFR § 114.15; Brief for Wyoming Liberty Group et al. as *Amici Curiae* 17–27 (filed Jan. 15, 2009).

This regulatory scheme may not be a prior restraint on speech in the strict sense of that term, for prospective speakers are not compelled by law to seek an advisory opinion from the FEC before the speech takes place. Cf. *Near* v. *Minnesota ex rel. Olson*, 283 U. S. 697, 712–713 (1931). As a practical matter, however, given the complexity of the regulations and the deference courts show to administrative determinations, a speaker who wants to avoid threats of criminal liability and the heavy costs of defending against FEC enforcement must ask a governmental agency for prior permission to speak. See 2 U. S. C. § 437f; 11 CFR § 112.1. These onerous restrictions thus function as the equivalent of prior restraint by giving the FEC power analogous to licensing laws implemented in 16th- and 17th-century England, laws and governmental practices of the sort that the First Amendment was drawn to prohibit. See *Thomas* v. *Chicago Park Dist.*, 534 U. S. 316, 320 (2002); *Lovell* v. *City of Griffin*, 303 U. S. 444, 451–452 (1938); *Near*, *supra*, at 713–714. Because the FEC's "business is to censor, there inheres the danger that [it] may well be less responsive than a court—part of an independent branch of government—to the constitutionally protected interests in free expression." *Freedman* v. *Maryland*, 380 U. S. 51, 57–58 (1965). When the FEC issues advisory opinions that prohibit speech, "[m]any persons, rather than undertake the considerable burden (and sometimes risk) of vindicating their rights through case-by-case litigation, will choose simply to abstain from protected speech—harming not only themselves but society as a whole, which is deprived of an uninhibited marketplace of ideas."

Virginia v. *Hicks*, 539 U. S. 113, 119 (2003) (citation omitted). Consequently, "the censor's determination may in practice be final." *Freedman*, *supra*, at 58.

This is precisely what *WRTL* sought to avoid. *WRTL* said that First Amendment standards "must eschew 'the open-ended rough-and-tumble of factors,' which 'invit[es] complex argument in a trial court and a virtually inevitable appeal.'" 551 U. S., at 469 (opinion of ROBERTS, C. J.) (quoting *Jerome B. Grubart, Inc.* v. *Great Lakes Dredge & Dock Co.*, 513 U. S. 527, 547 (1995); alteration in original). Yet, the FEC has created a regime that allows it to select what political speech is safe for public consumption by applying ambiguous tests. If parties want to avoid litigation and the possibility of civil and criminal penalties, they must either refrain from speaking or ask the FEC to issue an advisory opinion approving of the political speech in question. Government officials pore over each word of a text to see if, in their judgment, it accords with the 11-factor test they have promulgated. This is an unprecedented governmental intervention into the realm of speech.

The ongoing chill upon speech that is beyond all doubt protected makes it necessary in this case to invoke the earlier precedents that a statute which chills speech can and must be invalidated where its facial invalidity has been demonstrated. See *WRTL*, *supra*, at 482–483 (ALITO, J., concurring); *Thornhill* v. *Alabama*, 310 U. S. 88, 97–98 (1940). For these reasons we find it necessary to reconsider *Austin*.

III

The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech." Laws enacted to control or suppress speech may operate at different points in the speech process. The following are just a few examples of restrictions that have been attempted at different stages of the speech process—all laws found to be invalid: restrictions requiring a permit at the outset, *Watchtower*

Bible & Tract Soc. of N. Y., Inc. v. *Village of Stratton*, 536 U. S. 150, 153 (2002); imposing a burden by impounding proceeds on receipts or royalties, *Simon & Schuster, Inc.* v. *Members of N. Y. State Crime Victims Bd.*, 502 U. S. 105, 108, 123 (1991); seeking to exact a cost after the speech occurs, *New York Times Co.* v. *Sullivan*, 376 U. S., at 267; and subjecting the speaker to criminal penalties, *Brandenburg* v. *Ohio*, 395 U. S. 444, 445 (1969) *(per curiam)*.

The law before us is an outright ban, backed by criminal sanctions. Section 441b makes it a felony for all corporations—including nonprofit advocacy corporations—either to expressly advocate the election or defeat of candidates or to broadcast electioneering communications within 30 days of a primary election and 60 days of a general election. Thus, the following acts would all be felonies under § 441b: The Sierra Club runs an ad, within the crucial phase of 60 days before the general election, that exhorts the public to disapprove of a Congressman who favors logging in national forests; the National Rifle Association publishes a book urging the public to vote for the challenger because the incumbent U. S. Senator supports a handgun ban; and the American Civil Liberties Union creates a Web site telling the public to vote for a Presidential candidate in light of that candidate's defense of free speech. These prohibitions are classic examples of censorship.

Section 441b is a ban on corporate speech notwithstanding the fact that a PAC created by a corporation can still speak. See *McConnell*, 540 U. S., at 330–333 (opinion of KENNEDY, J.). A PAC is a separate association from the corporation. So the PAC exemption from § 441b's expenditure ban, § 441b(b)(2), does not allow corporations to speak. Even if a PAC could somehow allow a corporation to speak—and it does not—the option to form PACs does not alleviate the First Amendment problems with § 441b. PACs are burdensome alternatives; they are expensive to administer and subject to extensive regulations. For example, every PAC

must appoint a treasurer, forward donations to the treasurer promptly, keep detailed records of the identities of the persons making donations, preserve receipts for three years, and file an organization statement and report changes to this information within 10 days. See *id.*, at 330–332 (quoting *MCFL*, 479 U. S., at 253–254 (opinion of Brennan, J.)).

And that is just the beginning. PACs must file detailed monthly reports with the FEC, which are due at different times depending on the type of election that is about to occur:

> " 'These reports must contain information regarding the amount of cash on hand; the total amount of receipts, detailed by 10 different categories; the identification of each political committee and candidate's authorized or affiliated committee making contributions, and any persons making loans, providing rebates, refunds, dividends, or interest or any other offset to operating expenditures in an aggregate amount over $200; the total amount of all disbursements, detailed by 12 different categories; the names of all authorized or affiliated committees to whom expenditures aggregating over $200 have been made; persons to whom loan repayments or refunds have been made; the total sum of all contributions, operating expenses, outstanding debts and obligations, and the settlement terms of the retirement of any debt or obligation.' " 540 U. S., at 331–332 (quoting *MCFL, supra,* at 253–254).

PACs have to comply with these regulations just to speak. This might explain why fewer than 2,000 of the millions of corporations in this country have PACs. See Brief for Seven Former Chairmen of FEC et al. as *Amici Curiae* 11 (citing FEC, Summary of PAC Activity 1990–2006, online at http://www.fec.gov/press/press2007/20071009pac/sumhistory.pdf (as visited Jan. 18, 2010, and available in Clerk of Court's case file)); IRS, Statistics of Income: 2006, Corporation In-

come Tax Returns 2 (2009) (hereinafter Statistics of Income) (5.8 million for-profit corporations filed 2006 tax returns). PACs, furthermore, must exist before they can speak. Given the onerous restrictions, a corporation may not be able to establish a PAC in time to make its views known regarding candidates and issues in a current campaign.

Section 441b's prohibition on corporate independent expenditures is thus a ban on speech. As a "restriction on the amount of money a person or group can spend on political communication during a campaign," that statute "necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached." *Buckley* v. *Valeo*, 424 U. S. 1, 19 (1976) *(per curiam)*. Were the Court to uphold these restrictions, the Government could repress speech by silencing certain voices at any of the various points in the speech process. See *McConnell*, *supra*, at 251 (opinion of SCALIA, J.) (Government could repress speech by "attacking all levels of the production and dissemination of ideas," for "effective public communication requires the speaker to make use of the services of others"). If § 441b applied to individuals, no one would believe that it is merely a time, place, or manner restriction on speech. Its purpose and effect are to silence entities whose voices the Government deems to be suspect.

Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people. See *Buckley*, *supra*, at 14–15 ("In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential"). The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it. The First Amendment "'has its fullest and most urgent application' to speech uttered during a campaign for political office." *Eu* v. *San Francisco County Democratic Central Comm.*, 489

U. S. 214, 223 (1989) (quoting *Monitor Patriot Co.* v. *Roy,* 401 U. S. 265, 272 (1971)); see *Buckley, supra,* at 14 ("Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution").

For these reasons, political speech must prevail against laws that would suppress it, whether by design or inadvertence. Laws that burden political speech are "subject to strict scrutiny," which requires the Government to prove that the restriction "furthers a compelling interest and is narrowly tailored to achieve that interest." *WRTL,* 551 U. S., at 464 (opinion of ROBERTS, C. J.). While it might be maintained that political speech simply cannot be banned or restricted as a categorical matter, see *Simon & Schuster,* 502 U. S., at 124 (KENNEDY, J., concurring in judgment), the quoted language from *WRTL* provides a sufficient framework for protecting the relevant First Amendment interests in this case. We shall employ it here.

Premised on mistrust of governmental power, the First Amendment stands against attempts to disfavor certain subjects or viewpoints. See, *e. g., United States* v. *Playboy Entertainment Group, Inc.,* 529 U. S. 803, 813 (2000) (striking down content-based restriction). Prohibited, too, are restrictions distinguishing among different speakers, allowing speech by some but not others. See *First Nat. Bank of Boston* v. *Bellotti,* 435 U. S. 765, 784 (1978). As instruments to censor, these categories are interrelated: Speech restrictions based on the identity of the speaker are all too often simply a means to control content.

Quite apart from the purpose or effect of regulating content, moreover, the Government may commit a constitutional wrong when by law it identifies certain preferred speakers. By taking the right to speak from some and giving it to others, the Government deprives the disadvantaged person or class of the right to use speech to strive to establish worth,

standing, and respect for the speaker's voice. The Government may not by these means deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration. The First Amendment protects speech and speaker, and the ideas that flow from each.

The Court has upheld a narrow class of speech restrictions that operate to the disadvantage of certain persons, but these rulings were based on an interest in allowing governmental entities to perform their functions. See, *e. g.*, *Bethel School Dist. No. 403* v. *Fraser*, 478 U. S. 675, 683 (1986) (protecting the "function of public school education"); *Jones* v. *North Carolina Prisoners' Labor Union, Inc.*, 433 U. S. 119, 129 (1977) (furthering "the legitimate penological objectives of the corrections system" (internal quotation marks omitted)); *Parker* v. *Levy*, 417 U. S. 733, 759 (1974) (ensuring "the capacity of the Government to discharge its [military] responsibilities" (internal quotation marks omitted)); *Civil Service Comm'n* v. *Letter Carriers*, 413 U. S. 548, 557 (1973) ("[F]ederal service should depend upon meritorious performance rather than political service"). The corporate independent expenditures at issue in this case, however, would not interfere with governmental functions, so these cases are inapposite. These precedents stand only for the proposition that there are certain governmental functions that cannot operate without some restrictions on particular kinds of speech. By contrast, it is inherent in the nature of the political process that voters must be free to obtain information from diverse sources in order to determine how to cast their votes. At least before *Austin*, the Court had not allowed the exclusion of a class of speakers from the general public dialogue.

We find no basis for the proposition that, in the context of political speech, the Government may impose restrictions on certain disfavored speakers. Both history and logic lead us to this conclusion.

A

1

The Court has recognized that First Amendment protection extends to corporations. *Bellotti*, *supra*, at 778, n. 14 (citing *Linmark Associates, Inc.* v. *Willingboro*, 431 U. S. 85 (1977); *Time, Inc.* v. *Firestone*, 424 U. S. 448 (1976); *Doran* v. *Salem Inn, Inc.*, 422 U. S. 922 (1975); *Southeastern Promotions, Ltd.* v. *Conrad*, 420 U. S. 546 (1975); *Cox Broadcasting Corp.* v. *Cohn*, 420 U. S. 469 (1975); *Miami Herald Publishing Co.* v. *Tornillo*, 418 U. S. 241 (1974); *New York Times Co.* v. *United States*, 403 U. S. 713 (1971) *(per curiam); Time, Inc.* v. *Hill*, 385 U. S. 374 (1967); *New York Times Co.* v. *Sullivan*, 376 U. S. 254; *Kingsley Int'l Pictures Corp.* v. *Regents of Univ. of N. Y.*, 360 U. S. 684 (1959); *Joseph Burstyn, Inc.* v. *Wilson*, 343 U. S. 495 (1952)); see, *e. g., Turner Broadcasting System, Inc.* v. *FCC*, 520 U. S. 180 (1997); *Denver Area Ed. Telecommunications Consortium, Inc.* v. *FCC*, 518 U. S. 727 (1996); *Turner*, 512 U. S. 622; *Simon & Schuster*, 502 U. S. 105; *Sable Communications of Cal., Inc.* v. *FCC*, 492 U. S. 115 (1989); *Florida Star* v. *B. J. F.*, 491 U. S. 524 (1989); *Philadelphia Newspapers, Inc.* v. *Hepps*, 475 U. S. 767 (1986); *Landmark Communications, Inc.* v. *Virginia*, 435 U. S. 829 (1978); *Young* v. *American Mini Theatres, Inc.*, 427 U. S. 50 (1976); *Gertz* v. *Robert Welch, Inc.*, 418 U. S. 323 (1974); *Greenbelt Cooperative Publishing Assn., Inc.* v. *Bresler*, 398 U. S. 6 (1970).

This protection has been extended by explicit holdings to the context of political speech. See, *e. g., Button*, 371 U. S., at 428–429; *Grosjean* v. *American Press Co.*, 297 U. S. 233, 244 (1936). Under the rationale of these precedents, political speech does not lose First Amendment protection "simply because its source is a corporation." *Bellotti*, *supra*, at 784; see *Pacific Gas & Elec. Co.* v. *Public Util. Comm'n of Cal.*, 475 U. S. 1, 8 (1986) (plurality opinion) ("The identity of the speaker is not decisive in determining whether speech is pro-

tected. Corporations and other associations, like individuals, contribute to the 'discussion, debate, and the dissemination of information and ideas' that the First Amendment seeks to foster" (quoting *Bellotti*, 435 U. S., at 783)). The Court has thus rejected the argument that political speech of corporations or other associations should be treated differently under the First Amendment simply because such associations are not "natural persons." *Id.*, at 776; see *id.*, at 780, n. 16. Cf. *id.*, at 828 (Rehnquist, J., dissenting).

At least since the latter part of the 19th century, the laws of some States and of the United States imposed a ban on corporate direct contributions to candidates. See B. Smith, Unfree Speech: The Folly of Campaign Finance Reform 23 (2001). Yet not until 1947 did Congress first prohibit independent expenditures by corporations and labor unions in § 304 of the Labor Management Relations Act, 1947, 61 Stat. 159 (codified at 2 U. S. C. § 251 (1946 ed., Supp. I)). In passing this Act Congress overrode the veto of President Truman, who warned that the expenditure ban was a "dangerous intrusion on free speech." Message from the President of the United States, H. R. Doc. No. 334, 80th Cong., 1st Sess., 9 (1947).

For almost three decades thereafter, the Court did not reach the question whether restrictions on corporate and union expenditures are constitutional. See *WRTL*, 551 U. S., at 502 (opinion of Scalia, J.). The question was in the background of *United States* v. *CIO*, 335 U. S. 106 (1948). There, a labor union endorsed a congressional candidate in its weekly periodical. The Court stated that "the gravest doubt would arise in our minds as to [the federal expenditure prohibition's] constitutionality" if it were construed to suppress that writing. *Id.*, at 121. The Court engaged in statutory interpretation and found the statute did not cover the publication. *Id.*, at 121–122, and n. 20. Four Justices, however, said they would reach the constitutional question and invalidate the Labor-Management Relations Act's expendi-

ture ban. *Id.*, at 155 (Rutledge, J., joined by Black, Douglas, and Murphy, JJ., concurring in result). The concurrence explained that any "'undue influence'" generated by a speaker's "large expenditures" was outweighed "by the loss for democratic processes resulting from the restrictions upon free and full public discussion." *Id.*, at 143.

In *United States* v. *Automobile Workers*, 352 U. S. 567 (1957), the Court again encountered the independent expenditure ban, which had been recodified at 18 U. S. C. § 610 (1952 ed.). See 62 Stat. 723–724. After holding only that a union television broadcast that endorsed candidates was covered by the statute, the Court "[r]efus[ed] to anticipate constitutional questions" and remanded for the trial to proceed. 352 U. S., at 591. Three Justices dissented, arguing that the Court should have reached the constitutional question and that the ban on independent expenditures was unconstitutional:

> "Under our Constitution it is We The People who are sovereign. The people have the final say. The legislators are their spokesmen. The people determine through their votes the destiny of the nation. It is therefore important—vitally important—that all channels of communication be open to them during every election, that no point of view be restrained or barred, and that the people have access to the views of every group in the community." *Id.*, at 593 (opinion of Douglas, J., joined by Warren, C. J., and Black, J.).

The dissent concluded that deeming a particular group "too powerful" was not a "justificatio[n] for withholding First Amendment rights from any group—labor or corporate." *Id.*, at 597. The Court did not get another opportunity to consider the constitutional question in that case; for after a remand, a jury found the defendants not guilty. See Hayward, Revisiting the Fable of Reform, 45 Harv. J. Legis. 421, 463 (2008).

Later, in *Pipefitters* v. *United States*, 407 U. S. 385, 400–401 (1972), the Court reversed a conviction for expenditure of union funds for political speech—again without reaching the constitutional question. The Court would not resolve that question for another four years.

2

In *Buckley*, 424 U. S. 1, the Court addressed various challenges to the Federal Election Campaign Act of 1971 (FECA) as amended in 1974. These amendments created 18 U. S. C. § 608(e) (1970 ed., Supp. V), see 88 Stat. 1265, an independent expenditure ban separate from § 610 that applied to individuals as well as corporations and labor unions, *Buckley*, 424 U. S., at 23, 39, and n. 45.

Before addressing the constitutionality of § 608(e)'s independent expenditure ban, *Buckley* first upheld § 608(b), FECA's limits on direct contributions to candidates. The *Buckley* Court recognized a "sufficiently important" governmental interest in "the prevention of corruption and the appearance of corruption." *Id.*, at 25; see *id.*, at 26. This followed from the Court's concern that large contributions could be given "to secure a political *quid pro quo*." *Ibid.*

The *Buckley* Court explained that the potential for *quid pro quo* corruption distinguished direct contributions to candidates from independent expenditures. The Court emphasized that "the independent expenditure ceiling . . . fails to serve any substantial governmental interest in stemming the reality or appearance of corruption in the electoral process," *id.*, at 47–48, because "[t]he absence of prearrangement and coordination . . . alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate," *id.*, at 47. *Buckley* invalidated § 608(e)'s restrictions on independent expenditures, with only one Justice dissenting. See *Federal Election Comm'n* v. *National Conservative Political Action Comm.*, 470 U. S. 480, 491, n. 3 (1985) *(NCPAC)*.

Buckley did not consider § 610's separate ban on corporate and union independent expenditures, the prohibition that had also been in the background in *CIO*, *Automobile Workers*, and *Pipefitters*. Had § 610 been challenged in the wake of *Buckley*, however, it could not have been squared with the reasoning and analysis of that precedent. See *WRTL*, 551 U. S., at 487 (opinion of SCALIA, J.) ("*Buckley* might well have been the last word on limitations on independent expenditures"); *Austin*, 494 U. S., at 683 (SCALIA, J., dissenting). The expenditure ban invalidated in *Buckley*, § 608(e), applied to corporations and unions, 424 U. S., at 23, 39, n. 45; and some of the prevailing plaintiffs in *Buckley* were corporations, *id.*, at 8. The *Buckley* Court did not invoke the First Amendment's overbreadth doctrine, see *Broadrick* v. *Oklahoma*, 413 U. S. 601, 615 (1973), to suggest that § 608(e)'s expenditure ban would have been constitutional if it had applied only to corporations and not to individuals, 424 U. S., at 50. *Buckley* cited with approval the *Automobile Workers* dissent, which argued that § 610 was unconstitutional. 424 U. S., at 43 (citing 352 U. S., at 595–596 (opinion of Douglas, J.)).

Notwithstanding this precedent, Congress recodified § 610's corporate and union expenditure ban at 2 U. S. C. § 441b four months after *Buckley* was decided. See 90 Stat. 490. Section 441b is the independent expenditure restriction challenged here.

Less than two years after *Buckley*, *Bellotti*, 435 U. S. 765, reaffirmed the First Amendment principle that the Government cannot restrict political speech based on the speaker's corporate identity. *Bellotti* could not have been clearer when it struck down a state-law prohibition on corporate independent expenditures related to referenda issues:

> "We thus find no support in the First . . . Amendment, or in the decisions of this Court, for the proposition that speech that otherwise would be within the protection of the First Amendment loses that protection simply be-

> cause its source is a corporation that cannot prove, to the satisfaction of a court, a material effect on its business or property. . . . [That proposition] amounts to an impermissible legislative prohibition of speech based on the identity of the interests that spokesmen may represent in public debate over controversial issues and a requirement that the speaker have a sufficiently great interest in the subject to justify communication.
>
> . . . . . .
>
> "In the realm of protected speech, the legislature is constitutionally disqualified from dictating the subjects about which persons may speak and the speakers who may address a public issue." *Id.*, at 784–785.

It is important to note that the reasoning and holding of *Bellotti* did not rest on the existence of a viewpoint-discriminatory statute. It rested on the principle that the Government lacks the power to ban corporations from speaking.

Bellotti did not address the constitutionality of the State's ban on corporate independent expenditures to support candidates. In our view, however, that restriction would have been unconstitutional under *Bellotti*'s central principle: that the First Amendment does not allow political speech restrictions based on a speaker's corporate identity. See *ibid.*

3

Thus the law stood until *Austin*. *Austin* "uph[eld] a direct restriction on the independent expenditure of funds for political speech for the first time in [this Court's] history." 494 U. S., at 695 (KENNEDY, J., dissenting). There, the Michigan Chamber of Commerce sought to use general treasury funds to run a newspaper ad supporting a specific candidate. Michigan law, however, prohibited corporate independent expenditures that supported or opposed any candidate for state office. A violation of the law was punishable as a felony. The Court sustained the speech prohibition.

To bypass *Buckley* and *Bellotti*, the *Austin* Court identified a new governmental interest in limiting political speech: an antidistortion interest. *Austin* found a compelling governmental interest in preventing "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas." 494 U. S., at 660; see *id.*, at 659 (citing *MCFL*, 479 U. S., at 257; *NCPAC*, 470 U. S., at 500–501).

B

The Court is thus confronted with conflicting lines of precedent: a pre-*Austin* line that forbids restrictions on political speech based on the speaker's corporate identity and a post-*Austin* line that permits them. No case before *Austin* had held that Congress could prohibit independent expenditures for political speech based on the speaker's corporate identity. Before *Austin*, Congress had enacted legislation for this purpose, and the Government urged the same proposition before this Court. See *MCFL*, *supra*, at 257 (FEC posited that Congress intended to "curb the political influence of 'those who exercise control over large aggregations of capital'" (quoting *Automobile Workers*, 352 U. S., at 585)); *California Medical Assn.* v. *Federal Election Comm'n*, 453 U. S. 182, 201 (1981) (Congress believed that "differing structures and purposes" of corporations and unions "may require different forms of regulation in order to protect the integrity of the electoral process"). In neither of these cases did the Court adopt the proposition.

In its defense of the corporate-speech restrictions in § 441b, the Government notes the antidistortion rationale on which *Austin* and its progeny rest in part, yet it all but abandons reliance upon it. It argues instead that two other compelling interests support *Austin*'s holding that corporate expenditure restrictions are constitutional: an anticorruption interest, see 494 U. S., at 678 (STEVENS, J., concurring), and

a shareholder-protection interest, see *id.*, at 674–675 (Brennan, J., concurring). We consider the three points in turn.

1

As for *Austin*'s antidistortion rationale, the Government does little to defend it. See Tr. of Oral Arg. 45–48 (Sept. 9, 2009). And with good reason, for the rationale cannot support § 441b.

If the First Amendment has any force, it prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech. If the antidistortion rationale were to be accepted, however, it would permit Government to ban political speech simply because the speaker is an association that has taken on the corporate form. The Government contends that *Austin* permits it to ban corporate expenditures for almost all forms of communication stemming from a corporation. See Part II–E, *supra;* Tr. of Oral Arg. 66 (Sept. 9, 2009); see also *id.*, at 26–31 (Mar. 24, 2009). If *Austin* were correct, the Government could prohibit a corporation from expressing political views in media beyond those presented here, such as by printing books. The Government responds "that the FEC has never applied this statute to a book," and if it did, "there would be quite [a] good as-applied challenge." Tr. of Oral Arg. 65 (Sept. 9, 2009). This troubling assertion of brooding governmental power cannot be reconciled with the confidence and stability in civic discourse that the First Amendment must secure.

Political speech is "indispensable to decisionmaking in a democracy, and this is no less true because the speech comes from a corporation rather than an individual." *Bellotti*, 435 U. S., at 777 (footnote omitted); see *ibid.* (the worth of speech "does not depend upon the identity of its source, whether corporation, association, union, or individual"); *Buckley*, 424 U. S., at 48–49 ("[T]he concept that government may restrict the speech of some elements of our society in order to en-

hance the relative voice of others is wholly foreign to the First Amendment"); *Automobile Workers*, *supra*, at 597 (Douglas, J., dissenting); *CIO*, 335 U. S., at 154–155 (Rutledge, J., concurring in result). This protection for speech is inconsistent with *Austin*'s antidistortion rationale. *Austin* sought to defend the antidistortion rationale as a means to prevent corporations from obtaining "'an unfair advantage in the political marketplace'" by using "'resources amassed in the economic marketplace.'" 494 U. S., at 659 (quoting *MCFL*, *supra*, at 257). But *Buckley* rejected the premise that the Government has an interest "in equalizing the relative ability of individuals and groups to influence the outcome of elections." 424 U. S., at 48; see *Bellotti*, *supra*, at 791, n. 30. *Buckley* was specific in stating that "the skyrocketing cost of political campaigns" could not sustain the governmental prohibition. 424 U. S., at 26. The First Amendment's protections do not depend on the speaker's "financial ability to engage in public discussion." *Id.*, at 49.

The Court reaffirmed these conclusions when it invalidated the BCRA provision that increased the cap on contributions to one candidate if the opponent made certain expenditures from personal funds. See *Davis* v. *Federal Election Comm'n*, 554 U. S. 724, 742 (2008) ("Leveling electoral opportunities means making and implementing judgments about which strengths should be permitted to contribute to the outcome of an election. The Constitution, however, confers upon voters, not Congress, the power to choose the Members of the House of Representatives, Art. I, §2, and it is a dangerous business for Congress to use the election laws to influence the voters' choices"). The rule that political speech cannot be limited based on a speaker's wealth is a necessary consequence of the premise that the First Amendment generally prohibits the suppression of political speech based on the speaker's identity.

Either as support for its antidistortion rationale or as a further argument, the *Austin* majority undertook to distin-

guish wealthy individuals from corporations on the ground that "[s]tate law grants corporations special advantages—such as limited liability, perpetual life, and favorable treatment of the accumulation and distribution of assets." 494 U. S., at 658–659. This does not suffice, however, to allow laws prohibiting speech. "It is rudimentary that the State cannot exact as the price of those special advantages the forfeiture of First Amendment rights." *Id.*, at 680 (SCALIA, J., dissenting).

It is irrelevant for purposes of the First Amendment that corporate funds may "have little or no correlation to the public's support for the corporation's political ideas." *Id.*, at 660 (majority opinion). All speakers, including individuals and the media, use money amassed from the economic marketplace to fund their speech. The First Amendment protects the resulting speech, even if it was enabled by economic transactions with persons or entities who disagree with the speaker's ideas. See *id.*, at 707 (KENNEDY, J., dissenting) ("Many persons can trace their funds to corporations, if not in the form of donations, then in the form of dividends, interest, or salary").

Austin's antidistortion rationale would produce the dangerous, and unacceptable, consequence that Congress could ban political speech of media corporations. See *McConnell*, 540 U. S., at 283 (opinion of THOMAS, J.) ("The chilling endpoint of the Court's reasoning is not difficult to foresee: outright regulation of the press"). Cf. *Tornillo*, 418 U. S., at 250 (alleging the existence of "vast accumulations of unreviewable power in the modern media empires"). Media corporations are now exempt from §441b's ban on corporate expenditures. See 2 U. S. C. §§431(9)(B)(i), 434(f)(3)(B)(i). Yet media corporations accumulate wealth with the help of the corporate form, the largest media corporations have "immense aggregations of wealth," and the views expressed by media corporations often "have little or no correlation to the public's support" for those views. *Austin*, 494 U. S., at 660.

Thus, under the Government's reasoning, wealthy media corporations could have their voices diminished to put them on par with other media entities. There is no precedent for permitting this under the First Amendment.

The media exemption discloses further difficulties with the law now under consideration. There is no precedent supporting laws that attempt to distinguish between corporations which are deemed to be exempt as media corporations and those which are not. "We have consistently rejected the proposition that the institutional press has any constitutional privilege beyond that of other speakers." *Id.*, at 691 (SCALIA, J., dissenting) (citing *Bellotti*, 435 U. S., at 782); see *Dun & Bradstreet, Inc.* v. *Greenmoss Builders, Inc.*, 472 U. S. 749, 784 (1985) (Brennan, J., joined by Marshall, Blackmun, and STEVENS, JJ., dissenting); *id.*, at 773 (White, J., concurring in judgment). With the advent of the Internet and the decline of print and broadcast media, moreover, the line between the media and others who wish to comment on political and social issues becomes far more blurred.

The law's exception for media corporations is, on its own terms, all but an admission of the invalidity of the antidistortion rationale. And the exemption results in a further, separate reason for finding this law invalid: Again by its own terms, the law exempts some corporations but covers others, even though both have the need or the motive to communicate their views. The exemption applies to media corporations owned or controlled by corporations that have diverse and substantial investments and participate in endeavors other than news. So even assuming the most doubtful proposition that a news organization has a right to speak when others do not, the exemption would allow a conglomerate that owns both a media business and an unrelated business to influence or control the media in order to advance its overall business interest. At the same time, some other corporation, with an identical business interest but no media outlet in its ownership structure, would be forbidden to speak or

inform the public about the same issue. This differential treatment cannot be squared with the First Amendment.

There is simply no support for the view that the First Amendment, as originally understood, would permit the suppression of political speech by media corporations. The Framers may not have anticipated modern business and media corporations. See *McIntyre* v. *Ohio Elections Comm'n*, 514 U. S. 334, 360–361 (1995) (THOMAS, J., concurring in judgment). Yet television networks and major newspapers owned by media corporations have become the most important means of mass communication in modern times. The First Amendment was certainly not understood to condone the suppression of political speech in society's most salient media. It was understood as a response to the repression of speech and the press that had existed in England and the heavy taxes on the press that were imposed in the Colonies. See *McConnell*, *supra*, at 252–253 (opinion of SCALIA, J.); *Grosjean*, 297 U. S., at 245–248; *Near*, 283 U. S., at 713–714. The great debates between the Federalists and the Anti-Federalists over our founding document were published and expressed in the most important means of mass communication of that era—newspapers owned by individuals. See *McIntyre*, 514 U. S., at 341–343; *id.*, at 367 (THOMAS, J., concurring in judgment). At the founding, speech was open, comprehensive, and vital to society's definition of itself; there were no limits on the sources of speech and knowledge. See B. Bailyn, Ideological Origins of the American Revolution 5 (1967) ("Any number of people could join in such proliferating polemics, and rebuttals could come from all sides"); G. Wood, Creation of the American Republic 1776–1787, p. 6 (1969) ("[I]t is not surprising that the intellectual sources of [the Americans'] Revolutionary thought were profuse and various"). The Framers may have been unaware of certain types of speakers or forms of communication, but that does not mean that those speakers and media are entitled to less First Amendment protection than those types of speakers

and media that provided the means of communicating political ideas when the Bill of Rights was adopted.

Austin interferes with the "open marketplace" of ideas protected by the First Amendment. *New York State Bd. of Elections* v. *Lopez Torres*, 552 U. S. 196, 208 (2008); see *ibid.* (ideas "may compete" in this marketplace "without government interference"); *McConnell*, 540 U. S., at 274 (opinion of THOMAS, J.). It permits the Government to ban the political speech of millions of associations of citizens. See Statistics of Income 2 (5.8 million for-profit corporations filed 2006 tax returns). Most of these are small corporations without large amounts of wealth. See Supp. Brief for Chamber of Commerce of the United States of America as *Amicus Curiae* 1, 3 (96% of the 3 million businesses that belong to the U. S. Chamber of Commerce have fewer than 100 employees); M. Keightley, Congressional Research Service Report for Congress, Business Organizational Choices: Taxation and Responses to Legislative Changes 10 (2009) (more than 75% of corporations whose income is taxed under federal law, see 26 U. S. C. § 301, have less than $1 million in receipts per year). This fact belies the Government's argument that the statute is justified on the ground that it prevents the "distorting effects of immense aggregations of wealth." *Austin*, 494 U. S., at 660. It is not even aimed at amassed wealth.

The censorship we now confront is vast in its reach. The Government has "muffle[d] the voices that best represent the most significant segments of the economy." *McConnell*, *supra*, at 257–258 (opinion of SCALIA, J.). And "the electorate [has been] deprived of information, knowledge and opinion vital to its function." *CIO*, 335 U. S., at 144 (Rutledge, J., concurring in result). By suppressing the speech of manifold corporations, both for-profit and nonprofit, the Government prevents their voices and viewpoints from reaching the public and advising voters on which persons or entities are hostile to their interests. Factions will necessarily form in our Republic, but the remedy of "destroying the liberty" of

some factions is "worse than the disease." The Federalist No. 10, p. 130 (B. Wright ed. 1961) (J. Madison). Factions should be checked by permitting them all to speak, see *ibid.*, and by entrusting the people to judge what is true and what is false.

The purpose and effect of this law is to prevent corporations, including small and nonprofit corporations, from presenting both facts and opinions to the public. This makes *Austin*'s antidistortion rationale all the more an aberration. "[T]he First Amendment protects the right of corporations to petition legislative and administrative bodies." *Bellotti*, 435 U. S., at 792, n. 31 (citing *California Motor Transport Co.* v. *Trucking Unlimited*, 404 U. S. 508, 510–511 (1972); *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U. S. 127, 137–138 (1961)). Corporate executives and employees counsel Members of Congress and Presidential administrations on many issues, as a matter of routine and often in private. An *amici* brief filed on behalf of Montana and 25 other States notes that lobbying and corporate communications with elected officials occur on a regular basis. Brief for State of Montana et al. 19. When that phenomenon is coupled with § 441b, the result is that smaller or nonprofit corporations cannot raise a voice to object when other corporations, including those with vast wealth, are cooperating with the Government. That cooperation may sometimes be voluntary, or it may be at the demand of a Government official who uses his or her authority, influence, and power to threaten corporations to support the Government's policies. Those kinds of interactions are often unknown and unseen. The speech that § 441b forbids, though, is public, and all can judge its content and purpose. References to massive corporate treasuries should not mask the real operation of this law. Rhetoric ought not obscure reality.

Even if § 441b's expenditure ban were constitutional, wealthy corporations could still lobby elected officials, al-

though smaller corporations may not have the resources to do so. And wealthy individuals and unincorporated associations can spend unlimited amounts on independent expenditures. See, *e. g.*, *WRTL*, 551 U. S., at 503–504 (opinion of SCALIA, J.) ("In the 2004 election cycle, a mere 24 individuals contributed an astounding total of $142 million to [26 U. S. C. § 527 organizations]"). Yet certain disfavored associations of citizens—those that have taken on the corporate form—are penalized for engaging in the same political speech.

When Government seeks to use its full power, including the criminal law, to command where a person may get his or her information or what distrusted source he or she may not hear, it uses censorship to control thought. This is unlawful. The First Amendment confirms the freedom to think for ourselves.

2

What we have said also shows the invalidity of other arguments made by the Government. For the most part relinquishing the antidistortion rationale, the Government falls back on the argument that corporate political speech can be banned in order to prevent corruption or its appearance. In *Buckley*, the Court found this interest "sufficiently important" to allow limits on contributions but did not extend that reasoning to expenditure limits. 424 U. S., at 25. When *Buckley* examined an expenditure ban, it found "that the governmental interest in preventing corruption and the appearance of corruption [was] inadequate to justify [the ban] on independent expenditures." *Id.*, at 45.

With regard to large direct contributions, *Buckley* reasoned that they could be given "to secure a political *quid pro quo*," *id.*, at 26, and that "the scope of such pernicious practices can never be reliably ascertained," *id.*, at 27. The practices *Buckley* noted would be covered by bribery laws, see, *e. g.*, 18 U. S. C. § 201, if a *quid pro quo* arrangement were proved. See *Buckley*, *supra*, at 27, and n. 28 (citing *Buckley* v. *Valeo*, 519 F. 2d 821, 839–840, and nn. 36–38

(CADC 1975) (en banc) *(per curiam)*). The Court, in consequence, has noted that restrictions on direct contributions are preventative, because few if any contributions to candidates will involve *quid pro quo* arrangements. *MCFL*, 479 U. S., at 260; *NCPAC*, 470 U. S., at 500; *Federal Election Comm'n* v. *National Right to Work Comm.*, 459 U. S. 197, 210 (1982) *(NRWC)*. The *Buckley* Court, nevertheless, sustained limits on direct contributions in order to ensure against the reality or appearance of corruption. That case did not extend this rationale to independent expenditures, and the Court does not do so here.

"The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate." *Buckley*, 424 U. S., at 47; see *ibid.* (independent expenditures have a "substantially diminished potential for abuse"). Limits on independent expenditures, such as § 441b, have a chilling effect extending well beyond the Government's interest in preventing *quid pro quo* corruption. The anticorruption interest is not sufficient to displace the speech here in question. Indeed, 26 States do not restrict independent expenditures by for-profit corporations. The Government does not claim that these expenditures have corrupted the political process in those States. See Supp. Brief for Appellee 18, n. 3; Supp. Brief for Chamber of Commerce of the United States of America as *Amicus Curiae* 8–9, n. 5.

A single footnote in *Bellotti* purported to leave open the possibility that corporate independent expenditures could be shown to cause corruption. 435 U. S., at 788, n. 26. For the reasons explained above, we now conclude that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption. Dicta in *Bellotti*'s footnote suggested that "a corporation's right to speak on issues of general public interest implies no

comparable right in the quite different context of participation in a political campaign for election to public office." *Ibid.* Citing the portion of *Buckley* that invalidated the federal independent expenditure ban, 424 U. S., at 46, and a law review student comment, *Bellotti* surmised that "Congress might well be able to demonstrate the existence of a danger of real or apparent corruption in independent expenditures by corporations to influence candidate elections." 435 U. S., at 788, n. 26. *Buckley*, however, struck down a ban on independent expenditures to support candidates that covered corporations, 424 U. S., at 23, 39, n. 45, and explained that "the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application," *id.*, at 42. *Bellotti*'s dictum is thus supported only by a law review student comment, which misinterpreted *Buckley.* See Comment, The Regulation of Union Political Activity: Majority and Minority Rights and Remedies, 126 U. Pa. L. Rev. 386, 408 (1977) (suggesting that "corporations and labor unions should be held to different and more stringent standards than an individual or other associations under a regulatory scheme for campaign financing").

Seizing on this aside in *Bellotti*'s footnote, the Court in *NRWC* did say there is a "sufficient" governmental interest in "ensur[ing] that substantial aggregations of wealth amassed" by corporations would not "be used to incur political debts from legislators who are aided by the contributions." 459 U. S., at 207–208 (citing *Automobile Workers*, 352 U. S., at 579); see 459 U. S., at 210, and n. 7; *NCPAC*, *supra*, at 500–501 (*NRWC* suggested a governmental interest in restricting "the influence of political war chests funneled through the corporate form"). *NRWC*, however, has little relevance here. *NRWC* decided no more than that a restriction on a corporation's ability to solicit funds for its segregated PAC, which made direct contributions to candidates, did not violate the First Amendment. 459 U. S., at

206. *NRWC* thus involved contribution limits, see *NCPAC*, *supra*, at 495–496, which, unlike limits on independent expenditures, have been an accepted means to prevent *quid pro quo* corruption, see *McConnell*, 540 U. S., at 136–138, and n. 40; *MCFL*, *supra*, at 259–260. Citizens United has not made direct contributions to candidates, and it has not suggested that the Court should reconsider whether contribution limits should be subjected to rigorous First Amendment scrutiny.

When *Buckley* identified a sufficiently important governmental interest in preventing corruption or the appearance of corruption, that interest was limited to *quid pro quo* corruption. See *McConnell*, *supra*, at 296–298 (opinion of KENNEDY, J.) (citing *Buckley*, *supra*, at 26–28, 30, 46–48); *NCPAC*, 470 U. S., at 497 ("The hallmark of corruption is the financial *quid pro quo:* dollars for political favors"); *id.*, at 498. The fact that speakers may have influence over or access to elected officials does not mean that these officials are corrupt:

> "Favoritism and influence are not . . . avoidable in representative politics. It is in the nature of an elected representative to favor certain policies, and, by necessary corollary, to favor the voters and contributors who support those policies. It is well understood that a substantial and legitimate reason, if not the only reason, to cast a vote for, or to make a contribution to, one candidate over another is that the candidate will respond by producing those political outcomes the supporter favors. Democracy is premised on responsiveness." *McConnell*, 540 U. S., at 297 (opinion of KENNEDY, J.).

Reliance on a "generic favoritism or influence theory . . . is at odds with standard First Amendment analyses because it is unbounded and susceptible to no limiting principle." *Id.*, at 296.

The appearance of influence or access, furthermore, will not cause the electorate to lose faith in our democracy. By definition, an independent expenditure is political speech presented to the electorate that is not coordinated with a candidate. See *Buckley*, *supra*, at 46. The fact that a corporation, or any other speaker, is willing to spend money to try to persuade voters presupposes that the people have the ultimate influence over elected officials. This is inconsistent with any suggestion that the electorate will refuse "'to take part in democratic governance'" because of additional political speech made by a corporation or any other speaker. *McConnell*, *supra*, at 144 (quoting *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S. 377, 390 (2000)).

Caperton v. *A. T. Massey Coal Co.*, 556 U. S. 868 (2009), is not to the contrary. *Caperton* held that a judge was required to recuse himself "when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent." *Id.*, at 884. The remedy of recusal was based on a litigant's due process right to a fair trial before an unbiased judge. See *Withrow* v. *Larkin*, 421 U. S. 35, 46 (1975). *Caperton*'s holding was limited to the rule that the judge must be recused, not that the litigant's political speech could be banned.

The *McConnell* record was "over 100,000 pages" long, *McConnell I*, 251 F. Supp. 2d, at 209, yet it "does not have any direct examples of votes being exchanged for . . . expenditures," *id.*, at 560 (opinion of Kollar-Kotelly, J.). This confirms *Buckley*'s reasoning that independent expenditures do not lead to, or create the appearance of, *quid pro quo* corruption. In fact, there is only scant evidence that independent expenditures even ingratiate. See 251 F. Supp. 2d, at 555–557 (opinion of Kollar-Kotelly, J.). Ingratiation and access, in any event, are not corruption. The BCRA record establishes that certain donations to political parties, called "soft

money," were made to gain access to elected officials. *McConnell*, *supra*, at 125, 130–131, 146–152; see *McConnell I*, 251 F. Supp. 2d, at 471–481, 491–506 (opinion of Kollar-Kotelly, J.); *id.*, at 842–843, 858–859 (opinion of Leon, J.). This case, however, is about independent expenditures, not soft money. When Congress finds that a problem exists, we must give that finding due deference; but Congress may not choose an unconstitutional remedy. If elected officials succumb to improper influences from independent expenditures; if they surrender their best judgment; and if they put expediency before principle, then surely there is cause for concern. We must give weight to attempts by Congress to seek to dispel either the appearance or the reality of these influences. The remedies enacted by law, however, must comply with the First Amendment; and it is our law and our tradition that more speech, not less, is the governing rule. An outright ban on corporate political speech during the critical preelection period is not a permissible remedy. Here Congress has created categorical bans on speech that are asymmetrical to preventing *quid pro quo* corruption.

3

The Government contends further that corporate independent expenditures can be limited because of its interest in protecting dissenting shareholders from being compelled to fund corporate political speech. This asserted interest, like *Austin*'s antidistortion rationale, would allow the Government to ban the political speech even of media corporations. See *supra*, at 352–354. Assume, for example, that a shareholder of a corporation that owns a newspaper disagrees with the political views the newspaper expresses. See *Austin*, 494 U. S., at 687 (SCALIA, J., dissenting). Under the Government's view, that potential disagreement could give the Government the authority to restrict the media corporation's political speech. The First Amendment does not allow that power. There is, furthermore, little evidence of

abuse that cannot be corrected by shareholders "through the procedures of corporate democracy." *Bellotti*, 435 U. S., at 794; see *ibid.*, n. 34.

Those reasons are sufficient to reject this shareholder-protection interest; and, moreover, the statute is both underinclusive and overinclusive. As to the first, if Congress had been seeking to protect dissenting shareholders, it would not have banned corporate speech in only certain media within 30 or 60 days before an election. A dissenting shareholder's interests would be implicated by speech in any media at any time. As to the second, the statute is overinclusive because it covers all corporations, including nonprofit corporations and for-profit corporations with only single shareholders. As to other corporations, the remedy is not to restrict speech but to consider and explore other regulatory mechanisms. The regulatory mechanism here, based on speech, contravenes the First Amendment.

4

We need not reach the question whether the Government has a compelling interest in preventing foreign individuals or associations from influencing our Nation's political process. Cf. 2 U. S. C. § 441e (contribution and expenditure ban applied to "foreign national[s]"). Section 441b is not limited to corporations or associations that were created in foreign countries or funded predominantly by foreign shareholders. Section 441b therefore would be overbroad even if we assumed, *arguendo*, that the Government has a compelling interest in limiting foreign influence over our political process. See *Broadrick*, 413 U. S., at 615.

C

Our precedent is to be respected unless the most convincing of reasons demonstrates that adherence to it puts us on a course that is sure error. "Beyond workability, the relevant factors in deciding whether to adhere to the principle of *stare*

decisis include the antiquity of the precedent, the reliance interests at stake, and of course whether the decision was well reasoned." *Montejo* v. *Louisiana*, 556 U. S. 778, 792–793 (2009) (overruling *Michigan* v. *Jackson*, 475 U. S. 625 (1986)). We have also examined whether "experience has pointed up the precedent's shortcomings." *Pearson* v. *Callahan*, 555 U. S. 223, 233 (2009) (overruling *Saucier* v. *Katz*, 533 U. S. 194 (2001)).

These considerations counsel in favor of rejecting *Austin*, which itself contravened this Court's earlier precedents in *Buckley* and *Bellotti*. "This Court has not hesitated to overrule decisions offensive to the First Amendment." *WRTL*, 551 U. S., at 500 (opinion of SCALIA, J.). "*[S]tare decisis* is a principle of policy and not a mechanical formula of adherence to the latest decision." *Helvering* v. *Hallock*, 309 U. S. 106, 119 (1940).

For the reasons above, it must be concluded that *Austin* was not well reasoned. The Government defends *Austin*, relying almost entirely on "the quid pro quo interest, the corruption interest or the shareholder interest," and not *Austin*'s expressed antidistortion rationale. Tr. of Oral Arg. 48 (Sept. 9, 2009); see *id.*, at 45–46. When neither party defends the reasoning of a precedent, the principle of adhering to that precedent through *stare decisis* is diminished. *Austin* abandoned First Amendment principles, furthermore, by relying on language in some of our precedents that traces back to the *Automobile Workers* Court's flawed historical account of campaign finance laws, see Brief for Campaign Finance Scholars as *Amici Curiae;* Hayward, 45 Harv. J. Legis. 421; R. Mutch, Campaigns, Congress, and Courts 33–35, 153–157 (1988). See *Austin*, *supra*, at 659 (citing *MCFL*, 479 U. S., at 257–258; *NCPAC*, 470 U. S., at 500–501); *MCFL*, *supra*, at 257 (citing *Automobile Workers*, 352 U. S., at 585); *NCPAC*, *supra*, at 500 (citing *NRWC*, 459 U. S., at 210); *id.*, at 208 ("The history of the movement to regulate the political contributions and expenditures of corporations

and labor unions is set forth in great detail in *[Automobile Workers]*, *supra,* at 570–584, and we need only summarize the development here").

Austin is undermined by experience since its announcement. Political speech is so ingrained in our culture that speakers find ways to circumvent campaign finance laws. See, *e. g.*, *McConnell,* 540 U. S., at 176–177 ("Given BCRA's tighter restrictions on the raising and spending of soft money, the incentives . . . to exploit [26 U. S. C. § 527] organizations will only increase"). Our Nation's speech dynamic is changing, and informative voices should not have to circumvent onerous restrictions to exercise their First Amendment rights. Speakers have become adept at presenting citizens with sound bites, talking points, and scripted messages that dominate the 24-hour news cycle. Corporations, like individuals, do not have monolithic views. On certain topics corporations may possess valuable expertise, leaving them the best equipped to point out errors or fallacies in speech of all sorts, including the speech of candidates and elected officials.

Rapid changes in technology—and the creative dynamic inherent in the concept of free expression—counsel against upholding a law that restricts political speech in certain media or by certain speakers. See Part II–C, *supra.* Today, 30-second television ads may be the most effective way to convey a political message. See *McConnell*, *supra*, at 261 (opinion of SCALIA, J.). Soon, however, it may be that Internet sources, such as blogs and social networking Web sites, will provide citizens with significant information about political candidates and issues. Yet, § 441b would seem to ban a blog post expressly advocating the election or defeat of a candidate if that blog were created with corporate funds. See 2 U. S. C. § 441b(a); *MCFL*, *supra*, at 249. The First Amendment does not permit Congress to make these categorical distinctions based on the corporate identity of the speaker and the content of the political speech.

No serious reliance interests are at stake. As the Court stated in *Payne* v. *Tennessee*, 501 U. S. 808, 828 (1991), reliance interests are important considerations in property and contract cases, where parties may have acted in conformance with existing legal rules in order to conduct transactions. Here, though, parties have been prevented from acting—corporations have been banned from making independent expenditures. Legislatures may have enacted bans on corporate expenditures believing that those bans were constitutional. This is not a compelling interest for *stare decisis*. If it were, legislative acts could prevent us from overruling our own precedents, thereby interfering with our duty "to say what the law is." *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803).

Due consideration leads to this conclusion: *Austin*, 494 U. S. 652, should be and now is overruled. We return to the principle established in *Buckley* and *Bellotti* that the Government may not suppress political speech on the basis of the speaker's corporate identity. No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations.

D

Austin is overruled, so it provides no basis for allowing the Government to limit corporate independent expenditures. As the Government appears to concede, overruling *Austin* "effectively invalidate[s] not only BCRA Section 203, but also 2 U. S. C. 441b's prohibition on the use of corporate treasury funds for express advocacy." Brief for Appellee 33, n. 12. Section 441b's restrictions on corporate independent expenditures are therefore invalid and cannot be applied to *Hillary*.

Given our conclusion we are further required to overrule the part of *McConnell* that upheld BCRA § 203's extension of § 441b's restrictions on corporate independent expenditures. See 540 U. S., at 203–209. The *McConnell* Court relied on

the antidistortion interest recognized in *Austin* to uphold a greater restriction on speech than the restriction upheld in *Austin*, see 540 U. S., at 205, and we have found this interest unconvincing and insufficient. This part of *McConnell* is now overruled.

IV

A

Citizens United next challenges BCRA's disclaimer and disclosure provisions as applied to *Hillary* and the three advertisements for the movie. Under BCRA § 311, televised electioneering communications funded by anyone other than a candidate must include a disclaimer that "'———— is responsible for the content of this advertising.'" 2 U. S. C. § 441d(d)(2). The required statement must be made in a "clearly spoken manner," and displayed on the screen in a "clearly readable manner" for at least four seconds. *Ibid.* It must state that the communication "is not authorized by any candidate or candidate's committee"; it must also display the name and address (or Web site address) of the person or group that funded the advertisement. § 441d(a)(3). Under BCRA § 201, any person who spends more than $10,000 on electioneering communications within a calendar year must file a disclosure statement with the FEC. 2 U. S. C. § 434(f)(1). That statement must identify the person making the expenditure, the amount of the expenditure, the election to which the communication was directed, and the names of certain contributors. § 434(f)(2).

Disclaimer and disclosure requirements may burden the ability to speak, but they "impose no ceiling on campaign-related activities," *Buckley*, 424 U. S., at 64, and "do not prevent anyone from speaking," *McConnell*, *supra*, at 201 (internal quotation marks and brackets omitted). The Court has subjected these requirements to "exacting scrutiny," which requires a "substantial relation" between the disclosure requirement and a "sufficiently important" governmen-

tal interest. *Buckley*, *supra*, at 64, 66 (internal quotation marks omitted); see *McConnell*, *supra*, at 231–232.

In *Buckley*, the Court explained that disclosure could be justified based on a governmental interest in "provid[ing] the electorate with information" about the sources of election-related spending. 424 U. S., at 66. The *McConnell* Court applied this interest in rejecting facial challenges to BCRA §§ 201 and 311. 540 U. S., at 196. There was evidence in the record that independent groups were running election-related advertisements "'while hiding behind dubious and misleading names.'" *Id.*, at 197 (quoting *McConnell I*, 251 F. Supp. 2d, at 237). The Court therefore upheld BCRA §§ 201 and 311 on the ground that they would help citizens "'make informed choices in the political marketplace.'" 540 U. S., at 197 (quoting *McConnell I*, *supra*, at 237); see 540 U. S., at 231.

Although both provisions were facially upheld, the Court acknowledged that as-applied challenges would be available if a group could show a "'reasonable probability'" that disclosure of its contributors' names "'will subject them to threats, harassment, or reprisals from either Government officials or private parties.'" *Id.*, at 198 (quoting *Buckley*, *supra*, at 74).

For the reasons stated below, we find the statute valid as applied to the ads for the movie and to the movie itself.

B

Citizens United sought to broadcast one 30-second and two 10-second ads to promote *Hillary*. Under FEC regulations, a communication that "[p]roposes a commercial transaction" was not subject to 2 U. S. C. § 441b's restrictions on corporate or union funding of electioneering communications. 11 CFR § 114.15(b)(3)(ii). The regulations, however, do not exempt those communications from the disclaimer and disclosure requirements in BCRA §§ 201 and 311. See 72 Fed. Reg. 72901 (2007).

Citizens United argues that the disclaimer requirements in § 311 are unconstitutional as applied to its ads. It contends that the governmental interest in providing information to the electorate does not justify requiring disclaimers for any commercial advertisements, including the ones at issue here. We disagree. The ads fall within BCRA's definition of an "electioneering communication": They referred to then-Senator Clinton by name shortly before a primary and contained pejorative references to her candidacy. See 530 F. Supp. 2d, at 276, nn. 2–4. The disclaimers required by § 311 "provid[e] the electorate with information," *McConnell*, *supra*, at 196, and "insure that the voters are fully informed" about the person or group who is speaking, *Buckley*, *supra*, at 76; see also *Bellotti*, 435 U. S., at 792, n. 32 ("Identification of the source of advertising may be required as a means of disclosure, so that the people will be able to evaluate the arguments to which they are being subjected"). At the very least, the disclaimers avoid confusion by making clear that the ads are not funded by a candidate or political party.

Citizens United argues that § 311 is underinclusive because it requires disclaimers for broadcast advertisements but not for print or Internet advertising. It asserts that § 311 decreases both the quantity and effectiveness of the group's speech by forcing it to devote four seconds of each advertisement to the spoken disclaimer. We rejected these arguments in *McConnell*, *supra*, at 230–231. And we now adhere to that decision as it pertains to the disclosure provisions.

As a final point, Citizens United claims that, in any event, the disclosure requirements in § 201 must be confined to speech that is the functional equivalent of express advocacy. The principal opinion in *WRTL* limited 2 U. S. C. § 441b's restrictions on independent expenditures to express advocacy and its functional equivalent. 551 U. S., at 469–476 (opinion of ROBERTS, C. J.). Citizens United seeks to import a simi-

lar distinction into BCRA's disclosure requirements. We reject this contention.

The Court has explained that disclosure is a less restrictive alternative to more comprehensive regulations of speech. See, *e. g.*, *MCFL*, 479 U. S., at 262. In *Buckley*, the Court upheld a disclosure requirement for independent expenditures even though it invalidated a provision that imposed a ceiling on those expenditures. 424 U. S., at 75–76. In *McConnell*, three Justices who would have found § 441b to be unconstitutional nonetheless voted to uphold BCRA's disclosure and disclaimer requirements. 540 U. S., at 321 (opinion of KENNEDY, J., joined by Rehnquist, C. J., and SCALIA, J.). And the Court has upheld registration and disclosure requirements on lobbyists, even though Congress has no power to ban lobbying itself. *United States* v. *Harriss*, 347 U. S. 612, 625 (1954) (Congress "has merely provided for a modicum of information from those who for hire attempt to influence legislation or who collect or spend funds for that purpose"). For these reasons, we reject Citizens United's contention that the disclosure requirements must be limited to speech that is the functional equivalent of express advocacy.

Citizens United also disputes that an informational interest justifies the application of § 201 to its ads, which only attempt to persuade viewers to see the film. Even if it disclosed the funding sources for the ads, Citizens United says, the information would not help viewers make informed choices in the political marketplace. This is similar to the argument rejected above with respect to disclaimers. Even if the ads only pertain to a commercial transaction, the public has an interest in knowing who is speaking about a candidate shortly before an election. Because the informational interest alone is sufficient to justify application of § 201 to these ads, it is not necessary to consider the Government's other asserted interests.

Last, Citizens United argues that disclosure requirements can chill donations to an organization by exposing donors to retaliation. Some *amici* point to recent events in which donors to certain causes were blacklisted, threatened, or otherwise targeted for retaliation. See Brief for Institute for Justice as *Amicus Curiae* 13–16; Brief for Alliance Defense Fund as *Amicus Curiae* 16–22. In *McConnell*, the Court recognized that § 201 would be unconstitutional as applied to an organization if there were a reasonable probability that the group's members would face threats, harassment, or reprisals if their names were disclosed. 540 U. S., at 198. The examples cited by *amici* are cause for concern. Citizens United, however, has offered no evidence that its members may face similar threats or reprisals. To the contrary, Citizens United has been disclosing its donors for years and has identified no instance of harassment or retaliation.

Shareholder objections raised through the procedures of corporate democracy, see *Bellotti*, *supra*, at 794, and n. 34, can be more effective today because modern technology makes disclosures rapid and informative. A campaign finance system that pairs corporate independent expenditures with effective disclosure has not existed before today. It must be noted, furthermore, that many of Congress' findings in passing BCRA were premised on a system without adequate disclosure. See *McConnell*, 540 U. S., at 128 ("[T]he public may not have been fully informed about the sponsorship of so-called issue ads"); *id.*, at 196–197 (citing *McConnell I*, 251 F. Supp. 2d, at 237). With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters. Shareholders can determine whether their corporation's political speech advances the corporation's interest in making profits, and citizens can see whether elected officials are "'in the pocket' of so-called moneyed interests." 540 U. S., at 259 (opinion of SCALIA, J.); see *MCFL*, *supra*, at

261. The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.

C

For the same reasons we uphold the application of BCRA §§ 201 and 311 to the ads, we affirm their application to *Hillary*. We find no constitutional impediment to the application of BCRA's disclaimer and disclosure requirements to a movie broadcast via video-on-demand. And there has been no showing that, as applied in this case, these requirements would impose a chill on speech or expression.

V

When word concerning the plot of the movie *Mr. Smith Goes to Washington* reached the circles of Government, some officials sought, by persuasion, to discourage its distribution. See Smoodin, "Compulsory" Viewing for Every Citizen: *Mr. Smith* and the Rhetoric of Reception, 35 Cinema Journal 3, 19, and n. 52 (Winter 1996) (citing Mr. Smith Riles Washington, Time, Oct. 30, 1939, p. 49); Nugent, Capra's Capitol Offense, N. Y. Times, Oct. 29, 1939, p. X5. Under *Austin*, though, officials could have done more than discourage its distribution—they could have banned the film. After all, it, like *Hillary*, was speech funded by a corporation that was critical of Members of Congress. *Mr. Smith Goes to Washington* may be fiction and caricature; but fiction and caricature can be a powerful force.

Modern day movies, television comedies, or skits on YouTube.com might portray public officials or public policies in unflattering ways. Yet if a covered transmission during the blackout period creates the background for candidate endorsement or opposition, a felony occurs solely because a corporation, other than an exempt media corporation, has made

the "purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value" in order to engage in political speech. 2 U. S. C. § 431(9)(A)(i). Speech would be suppressed in the realm where its necessity is most evident: in the public dialogue preceding a real election. Governments are often hostile to speech, but under our law and our tradition it seems stranger than fiction for our Government to make this political speech a crime. Yet this is the statute's purpose and design.

Some members of the public might consider *Hillary* to be insightful and instructive; some might find it to be neither high art nor a fair discussion on how to set the Nation's course; still others simply might suspend judgment on these points but decide to think more about issues and candidates. Those choices and assessments, however, are not for the Government to make. "The First Amendment underwrites the freedom to experiment and to create in the realm of thought and speech. Citizens must be free to use new forms, and new forums, for the expression of ideas. The civic discourse belongs to the people, and the Government may not prescribe the means used to conduct it." *McConnell, supra,* at 341 (opinion of KENNEDY, J.).

The judgment of the District Court is reversed with respect to the constitutionality of 2 U. S. C. § 441b's restrictions on corporate independent expenditures. The judgment is affirmed with respect to BCRA's disclaimer and disclosure requirements. The case is remanded for further proceedings consistent with this opinion.

It is so ordered.

CHIEF JUSTICE ROBERTS, with whom JUSTICE ALITO joins, concurring.

The Government urges us in this case to uphold a direct prohibition on political speech. It asks us to embrace a theory of the First Amendment that would allow censorship not only of television and radio broadcasts, but of pamphlets,

posters, the Internet, and virtually any other medium that corporations and unions might find useful in expressing their views on matters of public concern. Its theory, if accepted, would empower the Government to prohibit newspapers from running editorials or opinion pieces supporting or opposing candidates for office, so long as the newspapers were owned by corporations—as the major ones are. First Amendment rights could be confined to individuals, subverting the vibrant public discourse that is at the foundation of our democracy.

The Court properly rejects that theory, and I join its opinion in full. The First Amendment protects more than just the individual on a soapbox and the lonely pamphleteer. I write separately to address the important principles of judicial restraint and *stare decisis* implicated in this case.

I

Judging the constitutionality of an Act of Congress is "the gravest and most delicate duty that this Court is called on to perform." *Blodgett* v. *Holden*, 275 U. S. 142, 147–148 (1927) (Holmes, J., concurring). Because the stakes are so high, our standard practice is to refrain from addressing constitutional questions except when necessary to rule on particular claims before us. See *Ashwander* v. *TVA*, 297 U. S. 288, 346–348 (1936) (Brandeis, J., concurring). This policy underlies both our willingness to construe ambiguous statutes to avoid constitutional problems and our practice " 'never to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.' " *United States* v. *Raines*, 362 U. S. 17, 21 (1960) (quoting *Liverpool, New York & Philadelphia S. S. Co.* v. *Commissioners of Emigration*, 113 U. S. 33, 39 (1885)).

The majority and dissent are united in expressing allegiance to these principles. *Ante*, at 329; *post*, at 405–406 (STEVENS, J., concurring in part and dissenting in part).

But I cannot agree with my dissenting colleagues on how these principles apply in this case.

The majority's step-by-step analysis accords with our standard practice of avoiding broad constitutional questions except when necessary to decide the case before us. The majority begins by addressing—and quite properly rejecting—Citizens United's statutory claim that 2 U. S. C. § 441b does not actually cover its production and distribution of *Hillary: The Movie* (hereinafter *Hillary*). If there were a valid basis for deciding this statutory claim in Citizens United's favor (and thereby avoiding constitutional adjudication), it would be proper to do so. Indeed, that is precisely the approach the Court took just last Term in *Northwest Austin Municipal Util. Dist. No. One* v. *Holder*, 557 U. S. 193 (2009), when eight Members of the Court agreed to decide the case on statutory grounds instead of reaching the appellant's broader argument that the Voting Rights Act is unconstitutional.

It is only because the majority rejects Citizens United's statutory claim that it proceeds to consider the group's various constitutional arguments, beginning with its narrowest claim (that *Hillary* is not the functional equivalent of express advocacy) and proceeding to its broadest claim (that *Austin* v. *Michigan Chamber of Commerce*, 494 U. S. 652 (1990), should be overruled). This is the same order of operations followed by the controlling opinion in *Federal Election Comm'n* v. *Wisconsin Right to Life, Inc.*, 551 U. S. 449 (2007) (*WRTL*). There the appellant was able to prevail on its narrowest constitutional argument because its broadcast ads did not qualify as the functional equivalent of express advocacy; there was thus no need to go on to address the broader claim that *McConnell* v. *Federal Election Comm'n*, 540 U. S. 93 (2003), should be overruled. *WRTL*, 551 U. S., at 482; *id.*, at 482–483 (ALITO, J., concurring). This case is different—not, as the dissent suggests, because the approach taken in *WRTL* has been deemed a "failure," *post*, at 402,

but because, in the absence of any valid narrower ground of decision, there is no way to avoid Citizens United's broader constitutional argument.

The dissent advocates an approach to addressing Citizens United's claims that I find quite perplexing. It presumably agrees with the majority that Citizens United's narrower statutory and constitutional arguments lack merit—otherwise its conclusion that the group should lose this case would make no sense. Despite agreeing that these narrower arguments fail, however, the dissent argues that the majority should nonetheless latch on to one of them in order to avoid reaching the broader constitutional question of whether *Austin* remains good law. It even suggests that the Court's failure to adopt one of these concededly meritless arguments is a sign that the majority is not "serious about judicial restraint." *Post*, at 408.

This approach is based on a false premise: that our practice of avoiding unnecessary (and unnecessarily broad) constitutional holdings somehow trumps our obligation faithfully to interpret the law. It should go without saying, however, that we cannot embrace a narrow ground of decision simply because it is narrow; it must also be right. Thus while it is true that "[i]f it is not necessary to decide more, it is necessary not to decide more," *post*, at 405 (internal quotation marks omitted), sometimes it *is* necessary to decide more. There is a difference between judicial restraint and judicial abdication. When constitutional questions are "indispensably necessary" to resolving the case at hand, "the court must meet and decide them." *Ex parte Randolph*, 20 F. Cas. 242, 254 (No. 11,558) (CC Va. 1833) (Marshall, C. J.).

Because it is necessary to reach Citizens United's broader argument that *Austin* should be overruled, the debate over whether to consider this claim on an as-applied or facial basis strikes me as largely beside the point. Citizens United has standing—it is being injured by the Government's enforcement of the Act. Citizens United has a constitutional

claim—the Act violates the First Amendment, because it prohibits political speech. The Government has a defense—the Act may be enforced, consistent with the First Amendment, against corporations. Whether the claim or the defense prevails is the question before us.

Given the nature of that claim and defense, it makes no difference of any substance whether this case is resolved by invalidating the statute on its face or only as applied to Citizens United. Even if considered in as-applied terms, a holding in this case that the Act may not be applied to Citizens United—because corporations as well as individuals enjoy the pertinent First Amendment rights—would mean that any other corporation raising the same challenge would also win. Likewise, a conclusion that the Act may be applied to Citizens United—because it is constitutional to prohibit corporate political speech—would similarly govern future cases. Regardless whether we label Citizens United's claim a "facial" or "as-applied" challenge, the consequences of the Court's decision are the same.[1]

II

The text and purpose of the First Amendment point in the same direction: Congress may not prohibit political speech, even if the speaker is a corporation or union. What makes this case difficult is the need to confront our prior decision in *Austin*.

This is the first case in which we have been asked to overrule *Austin*, and thus it is also the first in which we have had reason to consider how much weight to give *stare decisis* in assessing its continued validity. The dissent erroneously

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[1] The dissent suggests that I am "much too quick" to reach this conclusion because I "ignore" Citizens United's narrower arguments. *Post*, at 405, n. 12. But in fact I do not ignore those arguments; on the contrary, I (and my colleagues in the majority) appropriately consider and reject them on their merits, before addressing Citizens United's broader claims. *Supra*, at 373–375; *ante*, at 322–329.

declares that the Court "reaffirmed" *Austin*'s holding in subsequent cases—namely, *Federal Election Comm'n* v. *Beaumont*, 539 U. S. 146 (2003); *McConnell*; and *WRTL*. *Post*, at 439–441. Not so. Not a single party in any of those cases asked us to overrule *Austin*, and as the dissent points out, *post*, at 396–398, the Court generally does not consider constitutional arguments that have not properly been raised. *Austin*'s validity was therefore not directly at issue in the cases the dissent cites. The Court's unwillingness to overturn *Austin* in those cases cannot be understood as a *reaffirmation* of that decision.

A

Fidelity to precedent—the policy of *stare decisis*—is vital to the proper exercise of the judicial function. "*Stare decisis* is the preferred course because it promotes the even-handed, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne* v. *Tennessee*, 501 U. S. 808, 827 (1991). For these reasons, we have long recognized that departures from precedent are inappropriate in the absence of a "special justification." *Arizona* v. *Rumsey*, 467 U. S. 203, 212 (1984).

At the same time, *stare decisis* is neither an "inexorable command," *Lawrence* v. *Texas*, 539 U. S. 558, 577 (2003), nor "a mechanical formula of adherence to the latest decision," *Helvering* v. *Hallock*, 309 U. S. 106, 119 (1940), especially in constitutional cases, see *United States* v. *Scott*, 437 U. S. 82, 101 (1978). If it were, segregation would be legal, minimum wage laws would be unconstitutional, and the Government could wiretap ordinary criminal suspects without first obtaining warrants. See *Plessy* v. *Ferguson*, 163 U. S. 537 (1896), overruled by *Brown* v. *Board of Education*, 347 U. S. 483 (1954); *Adkins* v. *Children's Hospital of D. C.*, 261 U. S. 525 (1923), overruled by *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379 (1937); *Olmstead* v. *United States*, 277 U. S. 438 (1928), overruled by *Katz* v. *United States*,

389 U. S. 347 (1967). As the dissent properly notes, none of us has viewed *stare decisis* in such absolute terms. *Post*, at 408; see also, *e. g.*, *Randall* v. *Sorrell*, 548 U. S. 230, 274–281 (2006) (STEVENS, J., dissenting) (urging the Court to overrule its invalidation of limits on independent expenditures on political speech in *Buckley* v. *Valeo*, 424 U. S. 1 (1976) (*per curiam*)).

Stare decisis is instead a "principle of policy." *Helvering*, *supra*, at 119. When considering whether to reexamine a prior erroneous holding, we must balance the importance of having constitutional questions *decided* against the importance of having them *decided right*. As Justice Jackson explained, this requires a "sober appraisal of the disadvantages of the innovation as well as those of the questioned case, a weighing of practical effects of one against the other." Jackson, Decisional Law and *Stare Decisis*, 30 A. B. A. J. 334 (1944).

In conducting this balancing, we must keep in mind that *stare decisis* is not an end in itself. It is instead "the means by which we ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion." *Vasquez* v. *Hillery*, 474 U. S. 254, 265 (1986). Its greatest purpose is to serve a constitutional ideal—the rule of law. It follows that in the unusual circumstance when fidelity to any particular precedent does more to damage this constitutional ideal than to advance it, we must be more willing to depart from that precedent.

Thus, for example, if the precedent under consideration itself departed from the Court's jurisprudence, returning to the "'intrinsically sounder' doctrine established in prior cases" may "better serv[e] the values of *stare decisis* than would following [the] more recently decided case inconsistent with the decisions that came before it." *Adarand Constructors, Inc.* v. *Peña*, 515 U. S. 200, 231 (1995); see also *Helvering*, *supra*, at 119; *Randall*, *supra*, at 274 (STEVENS, J., dissenting). Abrogating the errant precedent, rather than

reaffirming or extending it, might better preserve the law's coherence and curtail the precedent's disruptive effects.

Likewise, if adherence to a precedent actually impedes the stable and orderly adjudication of future cases, its *stare decisis* effect is also diminished. This can happen in a number of circumstances, such as when the precedent's validity is so hotly contested that it cannot reliably function as a basis for decision in future cases, when its rationale threatens to upend our settled jurisprudence in related areas of law, and when the precedent's underlying reasoning has become so discredited that the Court cannot keep the precedent alive without jury-rigging new and different justifications to shore up the original mistake. See, *e. g.*, *Pearson* v. *Callahan*, 555 U. S. 223, 235 (2009); *Montejo* v. *Louisiana*, 556 U. S. 778, 792 (2009) (*stare decisis* does not control when adherence to the prior decision requires "fundamentally revising its theoretical basis").

B

These considerations weigh against retaining our decision in *Austin*. First, as the majority explains, that decision was an "aberration" insofar as it departed from the robust protections we had granted political speech in our earlier cases. *Ante*, at 355; see also *Buckley*, *supra*; *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765 (1978). *Austin* undermined the careful line that *Buckley* drew to distinguish limits on contributions to candidates from limits on independent expenditures on speech. *Buckley* rejected the asserted government interest in regulating independent expenditures, concluding that "restrict[ing] the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment." 424 U. S., at 48–49; see also *Bellotti*, *supra*, at 790–791; *Citizens Against Rent Control/Coalition for Fair Housing* v. *Berkeley*, 454 U. S. 290, 295 (1981). *Austin*, however, allowed the Government to prohibit these same expenditures out of concern for "the corrosive and distorting effects of immense aggrega-

tions of wealth" in the marketplace of ideas. 494 U. S., at 660. *Austin*'s reasoning was—and remains—inconsistent with *Buckley*'s explicit repudiation of any government interest in "equalizing the relative ability of individuals and groups to influence the outcome of elections." 424 U. S., at 48–49.

Austin was also inconsistent with *Bellotti*'s clear rejection of the idea that "speech that otherwise would be within the protection of the First Amendment loses that protection simply because its source is a corporation." 435 U. S., at 784. The dissent correctly points out that *Bellotti* involved a referendum rather than a candidate election, and that *Bellotti* itself noted this factual distinction, *id.*, at 788, n. 26; *post*, at 442–443. But this distinction does not explain why corporations may be subject to prohibitions on speech in candidate elections when individuals may not.

Second, the validity of *Austin*'s rationale—itself adopted over two "spirited dissents," *Payne*, 501 U. S., at 829—has proved to be the consistent subject of dispute among Members of this Court ever since. See, *e. g.*, *WRTL*, 551 U. S., at 483 (SCALIA, J., joined by KENNEDY and THOMAS, JJ., concurring in part and concurring in judgment); *McConnell*, 540 U. S., at 247, 264, 286 (opinions of SCALIA, THOMAS, and KENNEDY, JJ.); *Beaumont*, 539 U. S., at 163, 164 (opinions of KENNEDY and THOMAS, JJ.). The simple fact that one of our decisions remains controversial is, of course, insufficient to justify overruling it. But it does undermine the precedent's ability to contribute to the stable and orderly development of the law. In such circumstances, it is entirely appropriate for the Court—which in this case is squarely asked to reconsider *Austin*'s validity for the first time—to address the matter with a greater willingness to consider new approaches capable of restoring our doctrine to sounder footing.

Third, the *Austin* decision is uniquely destabilizing because it threatens to subvert our Court's decisions even outside the particular context of corporate express advocacy.

The First Amendment theory underlying *Austin*'s holding is extraordinarily broad. *Austin*'s logic would authorize government prohibition of political speech by a category of speakers in the name of equality—a point that most scholars acknowledge (and many celebrate), but that the dissent denies. Compare, *e. g.*, Garrett, New Voices in Politics: Justice Marshall's Jurisprudence on Law and Politics, 52 How. L. J. 655, 669 (2009) (*Austin* "has been understood by most commentators to be an opinion driven by equality considerations, albeit disguised in the language of 'political corruption' "), with *post*, at 464 (*Austin*'s rationale "is manifestly not just an 'equalizing' ideal in disguise").[2]

It should not be surprising, then, that Members of the Court have relied on *Austin*'s expansive logic to justify greater incursions on the First Amendment, even outside the original context of corporate advocacy on behalf of candidates running for office. See, *e. g.*, *Davis* v. *Federal Election Comm'n*, 554 U. S. 724, 756 (2008) (STEVENS, J., concurring in part and dissenting in part) (relying on *Austin* and other cases to justify restrictions on campaign spending by individual candidates, explaining that "there is no reason that their logic—specifically, their concerns about the corrosive and distorting effects of wealth on our political process—is not equally applicable in the context of individual wealth"); *McConnell*, *supra*, at 203–209 (extending *Austin* beyond its original context to cover not only the "functional equivalent" of express advocacy by corporations, but also

[2] See also, *e. g.*, R. Hasen, The Supreme Court and Election Law: Judging Equality from *Baker v. Carr* to *Bush v. Gore* 114 (2003) ("*Austin* represents the first and only case [before *McConnell*] in which a majority of the Court accepted, in deed if not in word, the equality rationale as a permissible state interest"); Strauss, Corruption, Equality, and Campaign Finance Reform, 94 Colum. L. Rev. 1369, and n. 1 (1994) (noting that *Austin*'s rationale was based on equalizing political speech); Ashdown, Controlling Campaign Spending and the "New Corruption": Waiting for the Court, 44 Vand. L. Rev. 767, 781 (1991); Eule, Promoting Speaker Diversity: Austin and Metro Broadcasting, 1990 S. Ct. Rev. 105, 108–111.

electioneering speech conducted by labor unions). The dissent in this case succumbs to the same temptation, suggesting that *Austin* justifies prohibiting corporate speech because such speech might unduly influence "the market for legislation." *Post*, at 471. The dissent reads *Austin* to permit restrictions on corporate speech based on nothing more than the fact that the corporate form may help individuals coordinate and present their views more effectively. *Post*, at 471–472. A speaker's ability to persuade, however, provides no basis for government regulation of free and open public debate on what the laws should be.

If taken seriously, *Austin*'s logic would apply most directly to newspapers and other media corporations. They have a more profound impact on public discourse than most other speakers. These corporate entities are, for the time being, not subject to § 441b's otherwise generally applicable prohibitions on corporate political speech. But this is simply a matter of legislative grace. The fact that the law currently grants a favored position to media corporations is no reason to overlook the danger inherent in accepting a theory that would allow government restrictions on their political speech. See generally *McConnell*, *supra*, at 283–286 (THOMAS, J., concurring in part, concurring in judgment in part, and dissenting in part).

These readings of *Austin* do no more than carry that decision's reasoning to its logical endpoint. In doing so, they highlight the threat *Austin* poses to First Amendment rights generally, even outside its specific factual context of corporate express advocacy. Because *Austin* is so difficult to confine to its facts—and because its logic threatens to undermine our First Amendment jurisprudence and the nature of public discourse more broadly—the costs of giving it *stare decisis* effect are unusually high.

Finally and most importantly, the Government's own effort to defend *Austin*—or, more accurately, to defend something that is not quite *Austin*—underscores its weakness as

a precedent of the Court. The Government concedes that *Austin* "is not the most lucid opinion," yet asks us to reaffirm its holding. Tr. of Oral Arg. 62 (Sept. 9, 2009). But while invoking *stare decisis* to support this position, the Government never once even *mentions* the compelling interest that *Austin* relied upon in the first place: the need to diminish "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas." 494 U. S., at 660.

Instead of endorsing *Austin* on its own terms, the Government urges us to reaffirm *Austin*'s specific holding on the basis of two new and potentially expansive interests—the need to prevent actual or apparent *quid pro quo* corruption, and the need to protect corporate shareholders. See Supp. Brief for Appellee 8–10, 12–13. Those interests may or may not support the *result* in *Austin*, but they were plainly not part of the *reasoning* on which *Austin* relied.

To its credit, the Government forthrightly concedes that *Austin* did not embrace either of the new rationales it now urges upon us. See, *e. g.*, Supp. Brief for Appellee 11 ("The Court did not decide in *Austin* . . . whether the compelling interest in preventing actual or apparent corruption provides a constitutionally sufficient justification for prohibiting the use of corporate treasury funds for independent electioneering"); Tr. of Oral Arg. 45 (Sept. 9, 2009) ("*Austin* did not articulate what we believe to be the strongest compelling interest"); *id.*, at 61 ("[The Court:] I take it we have never accepted your shareholder protection interest. This is a new argument. [The Government:] I think that that's fair"); *id.*, at 64 ("[The Court:] In other words, you are asking us to uphold *Austin* on the basis of two arguments, two principles, two compelling interests we have never accepted, in [the context of limits on political expenditures]. [The Government:] [I]n this particular context, fair enough").

To be clear: The Court in *Austin* nowhere relied upon the only arguments the Government now raises to support that decision. In fact, the only opinion in *Austin* endorsing the Government's argument based on the threat of *quid pro quo* corruption was JUSTICE STEVENS's concurrence. 494 U. S., at 678. The Court itself did not do so, despite the fact that the concurrence highlighted the argument. Moreover, the Court's only discussion of shareholder protection in *Austin* appeared in a section of the opinion that sought merely to distinguish *Austin*'s facts from those of *Federal Election Comm'n* v. *Massachusetts Citizens for Life, Inc.*, 479 U. S. 238 (1986). *Austin*, *supra*, at 663. Nowhere did *Austin* suggest that the goal of protecting shareholders is itself a compelling interest authorizing restrictions on First Amendment rights.

To the extent that the Government's case for reaffirming *Austin* depends on radically reconceptualizing its reasoning, that argument is at odds with itself. *Stare decisis* is a doctrine of preservation, not transformation. It counsels deference to past mistakes, but provides no justification for making new ones. There is therefore no basis for the Court to give precedential sway to reasoning that it has never accepted, simply because that reasoning happens to support a conclusion reached on different grounds that have since been abandoned or discredited.

Doing so would undermine the rule-of-law values that justify *stare decisis* in the first place. It would effectively license the Court to invent and adopt new principles of constitutional law solely for the purpose of rationalizing its past errors, without a proper analysis of whether those principles have merit on their own. This approach would allow the Court's past missteps to spawn future mistakes, undercutting the very rule-of-law values that *stare decisis* is designed to protect.

None of this is to say that the Government is barred from making new arguments to support the outcome in *Austin*.

On the contrary, it is free to do so. And of course the Court is free to accept them. But the Government's new arguments must stand or fall on their own; they are not entitled to receive the special deference we accord to precedent. They are, as grounds to support *Austin*, literally *un*precedented. Moreover, to the extent the Government relies on new arguments—and declines to defend *Austin* on its own terms—we may reasonably infer that it lacks confidence in that decision's original justification.

Because continued adherence to *Austin* threatens to subvert the "principled and intelligible" development of our First Amendment jurisprudence, *Vasquez*, 474 U. S., at 265, I support the Court's determination to overrule that decision.

* * *

We have had two rounds of briefing in this case, two oral arguments, and 54 *amicus* briefs to help us carry out our obligation to decide the necessary constitutional questions according to law. We have also had the benefit of a comprehensive dissent that has helped ensure that the Court has considered all the relevant issues. This careful consideration convinces me that Congress violates the First Amendment when it decrees that some speakers may not engage in political speech at election time, when it matters most.

JUSTICE SCALIA, with whom JUSTICE ALITO joins, and with whom JUSTICE THOMAS joins in part, concurring.

I join the opinion of the Court.[1]

I write separately to address JUSTICE STEVENS' discussion of "*Original Understandings*," *post*, at 425 (opinion concurring in part and dissenting in part) (hereinafter referred to as the dissent). This section of the dissent purports to show that today's decision is not supported by the original understanding of the First Amendment. The dissent at-

[1] JUSTICE THOMAS does not join Part IV of the Court's opinion.

tempts this demonstration, however, in splendid isolation from the text of the First Amendment. It never shows why "the freedom of speech" that was the right of Englishmen did not include the freedom to speak in association with other individuals, including association in the corporate form. To be sure, in 1791 (as now) corporations could pursue only the objectives set forth in their charters; but the dissent provides no evidence that their speech in the pursuit of those objectives could be censored.

Instead of taking this straightforward approach to determining the Amendment's meaning, the dissent embarks on a detailed exploration of the Framers' views about the "role of corporations in society." *Post*, at 426. The Framers did not like corporations, the dissent concludes, and therefore it follows (as night the day) that corporations had no rights of free speech. Of course the Framers' personal affection or disaffection for corporations is relevant only insofar as it can be thought to be reflected in the understood meaning of the text they enacted—not, as the dissent suggests, as a free-standing substitute for that text. But the dissent's distortion of proper analysis is even worse than that. Though faced with a constitutional text that makes no distinction between types of speakers, the dissent feels no necessity to provide even an isolated statement from the founding era to the effect that corporations are *not* covered, but places the burden on appellant to bring forward statements showing that they *are*. *Ibid.* ("[T]here is not a scintilla of evidence to support the notion that anyone believed [the First Amendment] would preclude regulatory distinctions based on the corporate form").

Despite the corporation-hating quotations the dissent has dredged up, it is far from clear that by the end of the 18th century corporations were despised. If so, how came there to be so many of them? The dissent's statement that there were few business corporations during the 18th century—"only a few hundred during all of the 18th century"—is mis-

leading. *Post*, at 426, n. 53. There were approximately 335 charters issued to business corporations in the United States by the end of the 18th century.[2] See 2 J. Davis, Essays in the Earlier History of American Corporations 24 (1917) (reprinted 2006) (hereinafter Davis). This was a "considerable extension of corporate enterprise in the field of business," *id.*, at 8, and represented "unprecedented growth," *id.*, at 309. Moreover, what seems like a small number by today's standards surely does not indicate the relative importance of corporations when the Nation was considerably smaller. As I have previously noted, "[b]y the end of the eighteenth century the corporation was a familiar figure in American economic life." *McConnell* v. *Federal Election Comm'n*, 540 U. S. 93, 256 (2003) (SCALIA, J., concurring in part, concurring in judgment in part, and dissenting in part) (quoting C. Cooke, Corporation Trust and Company 92 (1951) (hereinafter Cooke); internal quotation marks omitted).

Even if we thought it proper to apply the dissent's approach of excluding from First Amendment coverage what the Founders disliked, and even if we agreed that the Founders disliked founding-era corporations, modern corporations might not qualify for exclusion. Most of the Founders' resentment toward corporations was directed at the state-granted monopoly privileges that individually chartered corporations enjoyed.[3] Modern corporations do not have such

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[2] The dissent protests that 1791 rather than 1800 should be the relevant date, and that "[m]ore than half of the century's total business charters were issued between 1796 and 1800." *Post*, at 426, n. 53. I used 1800 only because the dissent did. But in any case, it is surely fanciful to think that a consensus of hostility toward corporations was transformed into general favor at some magical moment between 1791 and 1796.

[3] "[P]eople in 1800 identified corporations with franchised monopolies." L. Friedman, A History of American Law 194 (2d ed. 1985) (hereinafter Friedman). "The chief cause for the changed popular attitude towards business corporations that marked the opening of the nineteenth century was the elimination of their inherent monopolistic character. This was accomplished primarily by an extension of the principle of free incorpora-

privileges, and would probably have been favored by most of our enterprising Founders—excluding, perhaps, Thomas Jefferson and others favoring perpetuation of an agrarian society. Moreover, if the Founders' specific intent with respect to corporations is what matters, why does the dissent ignore the Founders' views about other legal entities that have more in common with modern business corporations than the founding-era corporations? At the time of the founding, religious, educational, and literary corporations were incorporated under general incorporation statutes, much as business corporations are today.[4] See Davis 16–17; R. Seavoy, Origins of the American Business Corporation, 1784–1855, p. 5 (1982); Cooke 94. There were also small unincorporated business associations, which some have argued were the "'true progenitors'" of today's business corporations. Friedman 200 (quoting S. Livermore, Early American Land Companies: Their Influence on Corporate Development 216 (1939)); see also Davis 33. Were all of these silently excluded from the protections of the First Amendment?

The lack of a textual exception for speech by corporations cannot be explained on the ground that such organizations did not exist or did not speak. To the contrary, colleges, towns and cities, religious institutions, and guilds had long been organized as corporations at common law and under the King's charter, see 1 W. Blackstone, Commentaries on the Laws of England 455–473 (1765); 1 S. Kyd, A Treatise on the Law of Corporations 1–32, 63 (1793) (reprinted 2006), and as

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tion under general laws." 1 W. Fletcher, Cyclopedia of the Law of Corporations § 2, p. 8 (rev. ed. 2006).

[4] At times (though not always) the dissent seems to exclude such non-"business corporations" from its denial of free-speech rights. See *post*, at 428. Finding in a seemingly categorical text a distinction between the rights of business corporations and the rights of nonbusiness corporations is even more imaginative than finding a distinction between the rights of *all* corporations and the rights of other associations.

I have discussed, the practice of incorporation only expanded in the United States. Both corporations and voluntary associations actively petitioned the Government and expressed their views in newspapers and pamphlets. For example: An antislavery Quaker corporation petitioned the First Congress, distributed pamphlets, and communicated through the press in 1790. W. diGiacomantonio, "For the Gratification of a Volunteering Society": Antislavery and Pressure Group Politics in the First Federal Congress, 15 J. Early Republic 169 (1995). The New York Sons of Liberty sent a circular to Colonies farther south in 1766. P. Maier, From Resistance to Revolution 79–80 (1972). And the Society for the Relief and Instruction of Poor Germans circulated a biweekly paper from 1755 to 1757. Adams, The Colonial German-language Press and the American Revolution, in The Press & the American Revolution 151, 161–162 (B. Bailyn & J. Hench eds. 1980). The dissent offers no evidence—none whatever—that the First Amendment's unqualified text was originally understood to exclude such associational speech from its protection.[5]

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[5] The best the dissent can come up with is that "[p]ostratification practice" supports its reading of the First Amendment. *Post*, at 431, n. 56. For this proposition, the dissent cites Justice White's statement (in dissent) that "[t]he common law was generally interpreted as prohibiting corporate political participation," *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765, 819 (1978). The sole authority Justice White cited for this proposition, *id.*, at 819, n. 14, was a law-review note that made no such claim. To the contrary, it stated that the cases dealing with the propriety of corporate political expenditures were "few." Note, Corporate Political Affairs Programs, 70 Yale L. J. 821, 852 (1961). More specifically, the note cites only two holdings to that effect, one by a Federal District Court, and one by the Supreme Court of Montana. *Ibid.*, n. 197. Of course even if the common law was "generally interpreted" to prohibit corporate political expenditures as ultra vires, that would have nothing to do with whether political expenditures that *were* authorized by a corporation's charter could constitutionally be suppressed.

As additional "[p]ostratification practice," the dissent notes that the Court "did not recognize *any* First Amendment protections for corpora-

Historical evidence relating to the textually similar clause "the freedom of . . . the press" also provides no support for the proposition that the First Amendment excludes conduct of artificial legal entities from the scope of its protection. The freedom of "the press" was widely understood to protect the publishing activities of individual editors and printers. See *McIntyre* v. *Ohio Elections Comm'n*, 514 U. S. 334, 360 (1995) (THOMAS, J., concurring in judgment); see also *McConnell*, 540 U. S., at 252–253 (opinion of SCALIA, J.). But these individuals often acted through newspapers, which (much like corporations) had their own names, outlived the individuals who had founded them, could be bought and sold, were sometimes owned by more than one person, and were operated for profit. See generally F. Mott, American Journalism: A History of Newspapers in the United States Through 250 Years 3–164 (1941); J. Smith, Freedom's Fetters (1956). Their activities were not stripped of First Amendment protection simply because they were carried out under the banner of an artificial legal entity. And the notion which follows from the dissent's view, that modern newspapers, since they are incorporated, have free-speech rights only at the sufferance of Congress, boggles the mind.[6]

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tions until the middle part of the 20th century." *Post*, at 431, n. 56. But it did that in *Grosjean* v. *American Press Co.*, 297 U. S. 233 (1936), a case involving freedom of the press—which the dissent acknowledges *did* cover corporations from the outset. The relative recency of that first case is unsurprising. All of our First Amendment jurisprudence was slow to develop. We did not consider application of the First Amendment to speech restrictions other than prior restraints until 1919, see *Schenck* v. *United States*, 249 U. S. 47; we did not invalidate a state law on First Amendment grounds until 1931, see *Stromberg* v. *California*, 283 U. S. 359, and a federal law until 1965, see *Lamont* v. *Postmaster General*, 381 U. S. 301.

[6] The dissent seeks to avoid this conclusion (and to turn a liability into an asset) by interpreting the Freedom of the Press Clause to refer to the institutional press (thus demonstrating, according to the dissent, that the Founders "did draw distinctions—explicit distinctions—between types of 'speakers,' or speech outlets or forms"). *Post*, at 431, and n. 57. It is passing strange to interpret the phrase "the freedom of speech, or of the

In passing, the dissent also claims that the Court's conception of corruption is unhistorical. The Framers "would have been appalled," it says, by the evidence of corruption in the congressional findings supporting the Bipartisan Campaign Reform Act of 2002. *Post*, at 451–452. For this proposition, the dissent cites a law-review article arguing that "corruption" was originally understood to include "moral decay" and even actions taken by citizens in pursuit of private rather than public ends. Teachout, The Anti-Corruption Principle, 94 Cornell L. Rev. 341, 373, 378 (2009). It is hard to see how this has anything to do with what sort of corruption can be combated by restrictions on political speech. Moreover, if speech can be prohibited because, in the view of the Government, it leads to "moral decay" or does not serve "public ends," then there is no limit to the Government's censorship power.

The dissent says that when the Framers "constitutionalized the right to free speech in the First Amendment, it was the free speech of individual Americans that they had in mind." *Post*, at 428. That is no doubt true. All the provisions of the Bill of Rights set forth the rights of individual

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press" to mean, not everyone's right to speak or publish, but rather everyone's right to speak or the institutional press's right to publish. No one thought that is what it meant. Patriot Noah Webster's 1828 dictionary contains, under the word "press," the following entry:

"*Liberty of the press*, in civil policy, is the free right of publishing books, pamphlets or papers without previous restraint; or the unrestrained right which every citizen enjoys of publishing his thoughts and opinions, subject only to punishment for publishing what is pernicious to morals or to the peace of the state." 2 American Dictionary of the English Language (1828) (reprinted 1970).

As the Court's opinion describes, *ante*, at 352, our jurisprudence agrees with Noah Webster and contradicts the dissent.

"The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. . . . The press in its historical connotation comprehends every sort of publication which affords a vehicle of information and opinion." *Lovell* v. *City of Griffin*, 303 U. S. 444, 452 (1938).

men and women—not, for example, of trees or polar bears. But the individual person's right to speak includes the right to speak *in association with other individual persons.* Surely the dissent does not believe that speech by the Republican Party or the Democratic Party can be censored because it is not the speech of "an individual American." It is the speech of many individual Americans, who have associated in a common cause, giving the leadership of the party the right to speak on their behalf. The association of individuals in a business corporation is no different—or at least it cannot be denied the right to speak on the simplistic ground that it is not "an individual American."[7]

But to return to, and summarize, my principal point, which is the conformity of today's opinion with the original meaning of the First Amendment. The Amendment is written in terms of "speech," not speakers. Its text offers no foothold

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[7] The dissent says that "'speech'" refers to oral communications of human beings, and since corporations are not human beings they cannot speak. *Post,* at 428, n. 55. This is sophistry. The authorized spokesman of a corporation is a human being, who speaks on behalf of the human beings who have formed that association—just as the spokesman of an unincorporated association speaks on behalf of its members. The power to publish thoughts, no less than the power to speak thoughts, belongs only to human beings, but the dissent sees no problem with a corporation's enjoying the freedom of the press.

The same footnote asserts that "it has been 'claimed that the notion of institutional speech . . . did not exist in post-revolutionary America.'" This is quoted from a law-review article by a Bigelow Fellow at the University of Chicago (Fagundes, State Actors as First Amendment Speakers, 100 Nw. U. L. Rev. 1637, 1654 (2006)), which offers as the sole support for its statement a treatise dealing with government speech, M. Yudof, When Government Speaks 42–50 (1983). The cited pages of that treatise provide no support whatever for the statement—unless, as seems overwhelmingly likely, the "institutional speech" referred to was speech by the subject of the law-review article, governmental institutions.

The other authority cited in the footnote, a law-review article by a professor at Washington and Lee Law School, Bezanson, Institutional Speech, 80 Iowa L. Rev. 735, 775 (1995), in fact contradicts the dissent, in that it would accord free-speech protection to associations.

for excluding any category of speaker, from single individuals to partnerships of individuals, to unincorporated associations of individuals, to incorporated associations of individuals—and the dissent offers no evidence about the original meaning of the text to support any such exclusion. We are therefore simply left with the question whether the speech at issue in this case is "speech" covered by the First Amendment. No one says otherwise. A documentary film critical of a potential Presidential candidate is core political speech, and its nature as such does not change simply because it was funded by a corporation. Nor does the character of that funding produce any reduction whatever in the "inherent worth of the speech" and "its capacity for informing the public," *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765, 777 (1978). Indeed, to exclude or impede corporate speech is to muzzle the principal agents of the modern free economy. We should celebrate rather than condemn the addition of this speech to the public debate.

JUSTICE STEVENS, with whom JUSTICE GINSBURG, JUSTICE BREYER, and JUSTICE SOTOMAYOR join, concurring in part and dissenting in part.

The real issue in this case concerns how, not if, the appellant may finance its electioneering. Citizens United is a wealthy nonprofit corporation that runs a political action committee (PAC) with millions of dollars in assets. Under the Bipartisan Campaign Reform Act of 2002 (BCRA), it could have used those assets to televise and promote *Hillary: The Movie* wherever and whenever it wanted to. It also could have spent unrestricted sums to broadcast *Hillary* at any time other than the 30 days before the last primary election. Neither Citizens United's nor any other corporation's speech has been "banned," *ante*, at 319. All that the parties dispute is whether Citizens United had a right to use the funds in its general treasury to pay for broadcasts during the 30-day period. The notion that the First Amendment

dictates an affirmative answer to that question is, in my judgment, profoundly misguided. Even more misguided is the notion that the Court must rewrite the law relating to campaign expenditures by *for-profit* corporations and unions to decide this case.

The basic premise underlying the Court's ruling is its iteration, and constant reiteration, of the proposition that the First Amendment bars regulatory distinctions based on a speaker's identity, including its "identity" as a corporation. While that glittering generality has rhetorical appeal, it is not a correct statement of the law. Nor does it tell us when a corporation may engage in electioneering that some of its shareholders oppose. It does not even resolve the specific question whether Citizens United may be required to finance some of its messages with the money in its PAC. The conceit that corporations must be treated identically to natural persons in the political sphere is not only inaccurate but also inadequate to justify the Court's disposition of this case.

In the context of election to public office, the distinction between corporate and human speakers is significant. Although they make enormous contributions to our society, corporations are not actually members of it. They cannot vote or run for office. Because they may be managed and controlled by nonresidents, their interests may conflict in fundamental respects with the interests of eligible voters. The financial resources, legal structure, and instrumental orientation of corporations raise legitimate concerns about their role in the electoral process. Our lawmakers have a compelling constitutional basis, if not also a democratic duty, to take measures designed to guard against the potentially deleterious effects of corporate spending in local and national races.

The majority's approach to corporate electioneering marks a dramatic break from our past. Congress has placed special limitations on campaign spending by corporations ever since the passage of the Tillman Act in 1907, ch. 420, 34 Stat. 864. We have unanimously concluded that this "reflects a

permissible assessment of the dangers posed by those entities to the electoral process," *FEC* v. *National Right to Work Comm.*, 459 U. S. 197, 209 (1982) *(NRWC)*, and have accepted the "legislative judgment that the special characteristics of the corporate structure require particularly careful regulation," *id.*, at 209–210. The Court today rejects a century of history when it treats the distinction between corporate and individual campaign spending as an invidious novelty born of *Austin* v. *Michigan Chamber of Commerce*, 494 U. S. 652 (1990). Relying largely on individual dissenting opinions, the majority blazes through our precedents, overruling or disavowing a body of case law including *FEC* v. *Wisconsin Right to Life, Inc.*, 551 U. S. 449 (2007) *(WRTL)*, *McConnell* v. *FEC*, 540 U. S. 93 (2003), *FEC* v. *Beaumont*, 539 U. S. 146 (2003), *FEC* v. *Massachusetts Citizens for Life, Inc.*, 479 U. S. 238 (1986) *(MCFL)*, *NRWC*, 459 U. S. 197, and *California Medical Assn.* v. *FEC*, 453 U. S. 182 (1981).

In his landmark concurrence in *Ashwander* v. *TVA*, 297 U. S. 288, 346 (1936), Justice Brandeis stressed the importance of adhering to rules the Court has "developed . . . for its own governance" when deciding constitutional questions. Because departures from those rules always enhance the risk of error, I shall review the background of this case in some detail before explaining why the Court's analysis rests on a faulty understanding of *Austin* and *McConnell* and of our campaign finance jurisprudence more generally.[1] I regret the length of what follows, but the importance and novelty of the Court's opinion require a full response. Although

[1] Specifically, Part I, *infra*, at 396–408, addresses the procedural history of the case and the narrower grounds of decision the majority has bypassed. Part II, *infra*, at 408–414, addresses *stare decisis*. Part III, *infra*, at 414–446, addresses the Court's assumptions that BCRA "bans" corporate speech, that identity-based distinctions may not be drawn in the political realm, and that *Austin* and *McConnell* were outliers in our First Amendment tradition. Part IV, *infra*, at 447–478, addresses the Court's treatment of the anticorruption, antidistortion, and shareholder protection rationales for regulating corporate electioneering.

I concur in the Court's decision to sustain BCRA's disclosure provisions and join Part IV of its opinion, I emphatically dissent from its principal holding.

I

The Court's ruling threatens to undermine the integrity of elected institutions across the Nation. The path it has taken to reach its outcome will, I fear, do damage to this institution. Before turning to the question whether to overrule *Austin* and part of *McConnell*, it is important to explain why the Court should not be deciding that question.

Scope of the Case

The first reason is that the question was not properly brought before us. In declaring § 203 of BCRA facially unconstitutional on the ground that corporations' electoral expenditures may not be regulated any more stringently than those of individuals, the majority decides this case on a basis relinquished below, not included in the questions presented to us by the litigants, and argued here only in response to the Court's invitation. This procedure is unusual and inadvisable for a court.[2] Our colleagues' suggestion that "we are asked to reconsider *Austin* and, in effect, *McConnell*," *ante*, at 319, would be more accurate if rephrased to state that "we have asked ourselves" to reconsider those cases.

In the District Court, Citizens United initially raised a facial challenge to the constitutionality of § 203. App. 23a–

[2] See *Yee* v. *Escondido*, 503 U. S. 519, 535 (1992) ("[U]nder this Court's Rule 14.1(a), only the questions set forth in the petition, or fairly included therein, will be considered by the Court" (internal quotation marks and alteration omitted)); *Wood* v. *Allen*, *ante*, at 304 ("[T]he fact that petitioner discussed [an] issue in the text of his petition for certiorari does not bring it before us. Rule 14.1(a) requires that a subsidiary question be fairly included in the *question presented* for our review" (internal quotation marks and brackets omitted)); *Cooper Industries, Inc.* v. *Aviall Services, Inc.*, 543 U. S. 157, 168–169 (2004) ("We ordinarily do not decide in the first instance issues not decided below" (internal quotation marks omitted)).

24a. In its motion for summary judgment, however, Citizens United expressly abandoned its facial challenge, 1:07–cv–2240–RCL–RWR, Docket Entry No. 52, pp. 1–2 (May 16, 2008), and the parties stipulated to the dismissal of that claim, *id.*, Nos. 53 (May 22, 2008), 54 (May 23, 2008), App. 6a. The District Court therefore resolved the case on alternative grounds,[3] and in its jurisdictional statement to this Court, Citizens United properly advised us that it was raising only "an as-applied challenge to the constitutionality of . . . BCRA § 203." Juris. Statement 5. The jurisdictional statement never so much as cited *Austin*, the key case the majority today overrules. And not one of the questions presented suggested that Citizens United was surreptitiously raising the facial challenge to § 203 that it previously agreed to dismiss. In fact, not one of those questions raised an issue based on Citizens United's corporate status. Juris. Statement (i). Moreover, even in its merits briefing, when Citizens United injected its request to overrule *Austin*, it never sought a declaration that § 203 was facially unconstitutional as to all corporations and unions; instead it argued only that the statute could not be applied to it because it was "funded overwhelmingly by individuals." Brief for Appellant 29; see also *id.*, at 10, 12, 16, 28 (affirming "as applied" character of challenge to § 203); Tr. of Oral Arg. 4–9 (Mar. 24, 2009) (coun-

[3] The majority states that, in denying Citizens United's motion for a preliminary injunction, the District Court "addressed" the facial validity of BCRA § 203. *Ante*, at 330. That is true, in the narrow sense that the court observed the issue was foreclosed by *McConnell* v. *FEC*, 540 U. S. 93 (2003). See 530 F. Supp. 2d 274, 278 (DC 2008) *(per curiam)*. Yet as explained above, Citizens United subsequently dismissed its facial challenge, so that by the time the District Court granted the Federal Election Commission's (FEC) motion for summary judgment, App. 261a–262a, any question about statutory validity had dropped out of the case. That latter ruling by the District Court was the "final decision" from which Citizens United appealed to this Court under BCRA § 403(a)(3). As regards the lower court decision that has come before us, the claim that § 203 is facially unconstitutional was neither pressed nor passed upon in any form.

sel for Citizens United conceding that § 203 could be applied to General Motors); *id.*, at 55 (counsel for Citizens United stating that "we accept the Court's decision in *[WRTL]*").

"'It is only in exceptional cases coming here from the federal courts that questions not pressed or passed upon below are reviewed,'" *Youakim* v. *Miller*, 425 U. S. 231, 234 (1976) *(per curiam)* (quoting *Duignan* v. *United States*, 274 U. S. 195, 200 (1927)), and it is "only in the most exceptional cases" that we will consider issues outside the questions presented, *Stone* v. *Powell*, 428 U. S. 465, 481, n. 15 (1976). The appellant in this case did not so much as assert an exceptional circumstance, and one searches the majority opinion in vain for the mention of any. That is unsurprising, for none exists.

Setting the case for reargument was a constructive step, but it did not cure this fundamental problem. Essentially, five Justices were unhappy with the limited nature of the case before us, so they changed the case to give themselves an opportunity to change the law.

As-Applied and Facial Challenges

This Court has repeatedly emphasized in recent years that "[f]acial challenges are disfavored." *Washington State Grange* v. *Washington State Republican Party*, 552 U. S. 442, 450 (2008); see also *Ayotte* v. *Planned Parenthood of Northern New Eng.*, 546 U. S. 320, 329 (2006) ("[T]he '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'" (quoting *Brockett* v. *Spokane Arcades, Inc.*, 472 U. S. 491, 504 (1985); alteration in original)). By declaring § 203 facially unconstitutional, our colleagues have turned an as-applied challenge into a facial challenge, in defiance of this principle.

This is not merely a technical defect in the Court's decision. The unnecessary resort to a facial inquiry "run[s] con-

trary to the fundamental principle of judicial restraint that courts should neither anticipate a question of constitutional law in advance of the necessity of deciding it nor formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." *Washington State Grange*, 552 U. S., at 450 (internal quotation marks omitted). Scanting that principle "threaten[s] to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution." *Id.*, at 451. These concerns are heightened when judges overrule settled doctrine upon which the legislature has relied. The Court operates with a sledge hammer rather than a scalpel when it strikes down one of Congress' most significant efforts to regulate the role that corporations and unions play in electoral politics. It compounds the offense by implicitly striking down a great many state laws as well.

The problem goes still deeper, for the Court does all of this on the basis of pure speculation. Had Citizens United maintained a facial challenge, and thus argued that there are virtually no circumstances in which BCRA § 203 can be applied constitutionally, the parties could have developed, through the normal process of litigation, a record about the *actual* effects of § 203, its actual burdens and its actual benefits, on *all* manner of corporations and unions.[4] "Claims of facial invalidity often rest on speculation," and consequently "raise the risk of premature interpretation of statutes on the

[4] Shortly before Citizens United mooted the issue by abandoning its facial challenge, the Government advised the District Court that it "require[d] time to develop a factual record regarding [the] facial challenge." 1:07–cv–2240–RCL–RWR, Docket Entry No. 47, p. 4 (Mar. 26, 2008). By reinstating a claim that Citizens United abandoned, the Court gives it a perverse litigating advantage over its adversary, which was deprived of the opportunity to gather and present information necessary to its rebuttal.

basis of factually barebones records." *Id.*, at 450 (internal quotation marks omitted). In this case, the record is not simply incomplete or unsatisfactory; it is nonexistent. Congress crafted BCRA in response to a virtual mountain of research on the corruption that previous legislation had failed to avert. The Court now negates Congress' efforts without a shred of evidence on how § 203 or its state-law counterparts have been affecting any entity other than Citizens United.[5]

Faced with this gaping empirical hole, the majority throws up its hands. Were we to confine our inquiry to Citizens United's as-applied challenge, it protests, we would commence an "extended" process of "draw[ing], and then redraw[ing], constitutional lines based on the particular media or technology used to disseminate political speech from a particular speaker." *Ante*, at 326. While tacitly acknowledging that some applications of § 203 might be found constitutional, the majority thus posits a future in which novel First Amendment standards must be devised on an ad hoc basis, and then leaps from this unfounded prediction to the unfounded conclusion that such complexity counsels the abandonment of all normal restraint. Yet it is a pervasive

[5] In fact, we do not even have a good evidentiary record of how § 203 has been affecting Citizens United, which never submitted to the District Court the details of *Hillary*'s funding or its own finances. We likewise have no evidence of how § 203 and comparable state laws were expected to affect corporations and unions in the future.

It is true, as the majority points out, that the *McConnell* Court evaluated the facial validity of § 203 in light of an extensive record. See *ante*, at 331–332. But that record is not before us in this case. And in any event, the majority's argument for striking down § 203 depends on its contention that the statute has proved too "chilling" in practice—and in particular on the contention that the controlling opinion in *WRTL*, 551 U. S. 449 (2007), failed to bring sufficient clarity and "breathing space" to this area of law. See *ante*, at 329, 333–336. We have no record with which to assess that claim. The Court complains at length about the burdens of complying with § 203, but we have no meaningful evidence to show how regulated corporations and unions have experienced its restrictions.

feature of regulatory systems that unanticipated events, such as new technologies, may raise some unanticipated difficulties at the margins. The fluid nature of electioneering communications does not make this case special. The fact that a Court can hypothesize situations in which a statute might, at some point down the line, pose some unforeseen as-applied problems, does not come close to meeting the standard for a facial challenge.[6]

The majority proposes several other justifications for the sweep of its ruling. It suggests that a facial ruling is necessary because, if the Court were to continue on its normal course of resolving as-applied challenges as they present themselves, that process would itself run afoul of the First Amendment. See, *e. g.*, *ante*, at 326 (as-applied review process "would raise questions as to the courts' own lawful authority"); *ibid.* ("Courts, too, are bound by the First Amendment"). This suggestion is perplexing. Our colleagues elsewhere trumpet "our duty 'to say what the law is,'" even when our predecessors on the bench and our counterparts in Congress have interpreted the law differently. *Ante*, at 365 (quoting *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803)). We do not typically say what the law *is not* as a hedge against future judicial error. The possibility that later courts will misapply a constitutional provision does not give

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[6] Our cases recognize a "type of facial challenge in the First Amendment context under which a law may be overturned as impermissibly overbroad because a substantial number of its applications are unconstitutional." *Washington State Grange* v. *Washington State Republican Party*, 552 U. S. 442, 449, n. 6 (2008) (internal quotation marks omitted). Citizens United has not made an overbreadth argument, and "[w]e generally do not apply the strong medicine of overbreadth analysis where the parties fail to describe the instances of arguable overbreadth of the contested law," *ibid.* (internal quotation marks omitted). If our colleagues nonetheless concluded that §203's fatal flaw is that it affects too much protected speech, they should have invalidated it for overbreadth and given guidance as to which applications are permissible, so that Congress could go about repairing the error.

us a basis for pretermitting litigation relating to that provision.[7]

The majority suggests that a facial ruling is necessary because anything less would chill too much protected speech. See *ante*, at 326–327, 329, 333–336. In addition to begging the question what types of corporate spending are constitutionally protected and to what extent, this claim rests on the assertion that some significant number of corporations have been cowed into quiescence by FEC "'censor[ship].'" *Ante*, at 335. That assertion is unsubstantiated, and it is hard to square with practical experience. It is particularly hard to square with the legal landscape following *WRTL*, which held that a corporate communication could be regulated under § 203 only if it was "susceptible of *no* reasonable interpretation other than as an appeal to vote for or against a specific candidate." 551 U. S., at 470 (opinion of ROBERTS, C. J.) (emphasis added). The whole point of this test was to make § 203 as simple and speech-protective as possible. The Court does not explain how, in the span of a single election cycle, it has determined THE CHIEF JUSTICE's project to be a failure. In this respect, too, the majority's critique of line-drawing collapses into a critique of the as-applied review method generally.[8]

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[7] Also perplexing is the majority's attempt to pass blame to the Government for its litigating position. By "hold[ing] out the possibility of ruling for Citizens United on a narrow ground yet refrain[ing] from adopting that position," the majority says, the Government has caused "added uncertainty [that] demonstrates the necessity to address the question of statutory validity." *Ante*, at 333. Our colleagues have apparently never heard of an alternative argument. Like every litigant, the Government would prefer to win its case outright; failing that, it would prefer to lose on a narrow ground. The fact that there are numerous different ways this case could be decided, and that the Government acknowledges as much, does not demonstrate anything about the propriety of a facial ruling.

[8] The majority's "chilling" argument is particularly inapposite with respect to 2 U. S. C. § 441b's longstanding restriction on the use of corporate general treasury funds for express advocacy. If there was ever any significant uncertainty about what counts as the functional equivalent of ex-

The majority suggests that, even though it expressly dismissed its facial challenge, Citizens United nevertheless preserved it—not as a freestanding "claim," but as a potential argument in support of "a claim that the FEC has violated its First Amendment right to free speech." *Ante*, at 330; see also *ante*, at 376 (ROBERTS, C. J., concurring) (describing Citizens United's claim as: "[T]he Act violates the First Amendment"). By this novel logic, virtually any submission could be reconceptualized as "a claim that the Government has violated my rights," and it would then be available to the Court to entertain any conceivable issue that might be relevant to that claim's disposition. Not only the as-applied/facial distinction, but the basic relationship between litigants and courts, would be upended if the latter had free rein to construe the former's claims at such high levels of generality. There would be no need for plaintiffs to argue their case; they could just cite the constitutional provisions they think relevant, and leave the rest to us.[9]

Finally, the majority suggests that though the scope of Citizens United's claim may be narrow, a facial ruling is necessary as a matter of remedy. Relying on a law review article, it asserts that Citizens United's dismissal of the facial challenge does not prevent us "'from making broader pronouncements of invalidity in properly "as-applied" cases.'" *Ante*, at 331 (quoting Fallon, As-Applied and Facial Challenges and

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press advocacy, there has been little doubt about what counts as express advocacy since the "magic words" test of *Buckley* v. *Valeo*, 424 U. S. 1, 44, n. 52 (1976) *(per curiam)*. Yet even though Citizens United's briefs never once mention § 441b's restriction on express advocacy; even though this restriction does not generate chilling concerns; and even though no one has suggested that *Hillary* counts as express advocacy; the majority nonetheless reaches out to opine that this statutory provision is "invalid" as well. *Ante*, at 365.

[9] The majority adds that the distinction between facial and as-applied challenges does not have "some automatic effect" that mechanically controls the judicial task. *Ante*, at 331. I agree, but it does not follow that in any given case we should ignore the distinction, much less invert it.

Third-Party Standing, 113 Harv. L. Rev. 1321, 1339 (2000) (hereinafter Fallon)); accord, *ante*, at 376 (opinion of ROBERTS, C. J.) ("Regardless whether we label Citizens United's claim a 'facial' or 'as-applied' challenge, the consequences of the Court's decision are the same"). The majority is on firmer conceptual ground here. Yet even if one accepts this part of Professor Fallon's thesis, one must proceed to ask *which* as-applied challenges, if successful, will "properly" invite or entail invalidation of the underlying statute.[10] The paradigmatic case is a judicial determination that the legislature acted with an impermissible purpose in enacting a provision, as this carries the necessary implication that all future as-applied challenges to the provision must prevail. See Fallon 1339–1340.

Citizens United's as-applied challenge was not of this sort. Until this Court ordered reargument, its contention was that BCRA § 203 could not lawfully be applied to a feature-length video-on-demand film (such as *Hillary*) or to a nonprofit corporation exempt from taxation under 26 U. S. C. § 501(c)(4)[11] and funded overwhelmingly by individuals (such as itself). See Brief for Appellant 16–41. Success on either of these claims would not necessarily carry any implications for the validity of § 203 as applied to other types of broadcasts, other

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[10] Professor Fallon proposes an intricate answer to this question that the majority ignores. Fallon 1327–1359. It bears mention that our colleagues have previously cited Professor Fallon's article for the exact opposite point from the one they wish to make today. In *Gonzales* v. *Carhart*, 550 U. S. 124 (2007), the Court explained that "[i]t is neither our obligation nor within our traditional institutional role to resolve questions of constitutionality with respect to each potential situation that might develop," and "[f]or this reason, '[a]s-applied challenges are the basic building blocks of constitutional adjudication.'" *Id.*, at 168 (opinion for the Court by KENNEDY, J.) (quoting Fallon 1328 (second alteration in original)).

[11] Internal Revenue Code § 501(c)(4) applies, *inter alia*, to nonprofit organizations "operated exclusively for the promotion of social welfare, . . . the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes."

types of corporations, or unions. It certainly would not invalidate the statute as applied to a large for-profit corporation. See Tr. of Oral Arg. 8, 4 (Mar. 24, 2009) (counsel for Citizens United emphasizing that appellant is "a small, nonprofit organization, which is very much like [an *MCFL* corporation]," and affirming that its argument "definitely would not be the same" if *Hillary* were distributed by General Motors).[12] There is no legitimate basis for resurrecting a facial challenge that dropped out of this case 20 months ago.

Narrower Grounds

It is all the more distressing that our colleagues have manufactured a facial challenge, because the parties have advanced numerous ways to resolve the case that would facilitate electioneering by nonprofit advocacy corporations such as Citizens United, without toppling statutes and precedents. Which is to say, the majority has transgressed yet another "cardinal" principle of the judicial process: "[I]f it is not necessary to decide more, it is necessary not to decide more," *PDK Labs. Inc.* v. *Drug Enforcement Admin.*, 362 F. 3d 786,

[12] THE CHIEF JUSTICE is therefore much too quick when he suggests that, "[e]ven if considered in as-applied terms, a holding in this case that the Act may not be applied to Citizens United—because corporations as well as individuals enjoy the pertinent First Amendment rights—would mean that any other corporation raising the same challenge would also win." *Ante*, at 376 (concurring opinion). That conclusion would only follow if the Court were to ignore Citizens United's plausible as-applied arguments and instead take the implausible position that *all* corporations and *all* types of expenditures enjoy the same First Amendment protections, which *always* trump the interests in regulation. At times, the majority appears to endorse this extreme view. At other times, however, it appears to suggest that nonprofit corporations have a better claim to First Amendment protection than for-profit corporations, see *ante*, at 337, 355, "advocacy" organizations have a better claim than other nonprofits, *ante*, at 337, domestic corporations have a better claim than foreign corporations, *ante*, at 362, small corporations have a better claim than large corporations, *ante*, at 354–356, and printed matter has a better claim than broadcast communications, *ante*, at 349. The majority never uses a multinational business corporation in its hypotheticals.

799 (CADC 2004) (Roberts, J., concurring in part and concurring in judgment).

Consider just three of the narrower grounds of decision that the majority has bypassed. First, the Court could have ruled, on statutory grounds, that a feature-length film distributed through video-on-demand does not qualify as an "electioneering communication" under § 203 of BCRA, 2 U. S. C. § 441b. BCRA defines that term to encompass certain communications transmitted by "broadcast, cable, or satellite." § 434(f)(3)(A). When Congress was developing BCRA, the video-on-demand medium was still in its infancy, and legislators were focused on a very different sort of programming: short advertisements run on television or radio. See *McConnell*, 540 U. S., at 207. The sponsors of BCRA acknowledge that the FEC's implementing regulations do not clearly apply to video-on-demand transmissions. See Brief for Senator John McCain et al. as *Amici Curiae* 17–18. In light of this ambiguity, the distinctive characteristics of video-on-demand, and "[t]he elementary rule . . . that every reasonable construction must be resorted to, in order to save a statute from unconstitutionality," *Hooper* v. *California*, 155 U. S. 648, 657 (1895), the Court could have reasonably ruled that § 203 does not apply to *Hillary*.[13]

Second, the Court could have expanded the *MCFL* exemption to cover § 501(c)(4) nonprofits that accept only a *de minimis* amount of money from for-profit corporations. Citizens United professes to be such a group: Its brief says it "is funded predominantly by donations from individuals who support [its] ideological message." Brief for Appellant 5. Numerous Courts of Appeals have held that *de minimis* business support does not, in itself, remove an otherwise

[13] The Court entirely ignores this statutory argument. It concludes that § 203 applies to *Hillary* on the basis of the film's content, *ante*, at 324–326, without considering the possibility that § 203 does not apply to video-on-demand transmissions generally.

qualifying organization from the ambit of *MCFL*.[14] This Court could have simply followed their lead.[15]

Finally, let us not forget Citizens United's as-applied constitutional challenge. Precisely because Citizens United looks so much like the *MCFL* organizations we have exempted from regulation, while a feature-length video-on-demand film looks so unlike the types of electoral advocacy Congress has found deserving of regulation, this challenge is a substantial one. As the appellant's own arguments show, the Court could have easily limited the breadth of its constitutional holding had it declined to adopt the novel notion that speakers and speech acts must always be treated identically—and always spared expenditures restrictions—in the political realm. Yet the Court nonetheless turns its back on the as-applied review process that has been a staple of campaign finance litigation since *Buckley* v. *Valeo*, 424 U. S. 1

[14] See *Colorado Right to Life Comm., Inc.* v. *Coffman*, 498 F. 3d 1137, 1148 (CA10 2007) (adopting this rule and noting that "every other circuit to have addressed this issue" has done likewise); Brief for Independent Sector as *Amicus Curiae* 10–11 (collecting cases). The Court rejects this solution in part because the Government "merely suggest[s] it" and "does not say that it agrees with the interpretation." *Ante*, at 328, 329. Our colleagues would thus punish a defendant for showing insufficient excitement about a ground it has advanced, at the same time that they decide the case on a ground the plaintiff expressly abandoned. The Court also protests that a *de minimis* standard would "requir[e] intricate case-by-case determinations." *Ante*, at 329. But *de minimis* tests need not be intricate at all. A test that granted *MCFL* status to § 501(c)(4) organizations if they received less than a fixed dollar amount of business donations in the previous year, or if such donations represent less than a fixed percentage of their total assets, would be perfectly easy to understand and administer.

[15] Another bypassed ground, not briefed by the parties, would have been to revive the Snowe-Jeffords Amendment in BCRA § 203(c), allowing certain nonprofit corporations to pay for electioneering communications with general treasury funds, to the extent they can trace the payments to individual contributions. See Brief for National Rifle Association as *Amicus Curiae* 5–15 (arguing forcefully that Congress intended this result).

(1976) *(per curiam)*, and that was affirmed and expanded just two Terms ago in *WRTL*, 551 U. S. 449.

This brief tour of alternative grounds on which the case could have been decided is not meant to show that any of these grounds is ideal, though each is perfectly "valid," *ante*, at 329 (majority opinion).[16] It is meant to show that there were principled, narrower paths that a Court that was serious about judicial restraint could have taken. There was also the straightforward path: applying *Austin* and *McConnell*, just as the District Court did in holding that the funding of Citizens United's film can be regulated under them. The only thing preventing the majority from affirming the District Court, or adopting a narrower ground that would retain *Austin*, is its disdain for *Austin*.

II

The final principle of judicial process that the majority violates is the most transparent: *stare decisis*. I am not an absolutist when it comes to *stare decisis*, in the campaign finance area or in any other. No one is. But if this principle is to do any meaningful work in supporting the rule of law, it must at least demand a significant justification, beyond the preferences of five Justices, for overturning settled doctrine. "[A] decision to overrule should rest on some special reason

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[16] THE CHIEF JUSTICE finds our discussion of these narrower solutions "quite perplexing" because we suggest that the Court should "latch on to one of them in order to avoid reaching the broader constitutional question," without doing the same ourselves. *Ante*, at 375. There is nothing perplexing about the matter, because we are not similarly situated to our colleagues in the majority. We do not share their view of the First Amendment. Our reading of the Constitution would not lead us to strike down any statutes or overturn any precedents in this case, and we therefore have no occasion to practice constitutional avoidance or to vindicate Citizens United's as-applied challenge. Each of the arguments made above is surely at least as strong as the statutory argument the Court accepted in last year's Voting Rights Act case, *Northwest Austin Municipal Util. Dist. No. One* v. *Holder*, 557 U. S. 193 (2009).

over and above the belief that a prior case was wrongly decided." *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833, 864 (1992). No such justification exists in this case, and to the contrary there are powerful prudential reasons to keep faith with our precedents.[17]

The Court's central argument for why *stare decisis* ought to be trumped is that it does not like *Austin*. The opinion "was not well reasoned," our colleagues assert, and it conflicts with First Amendment principles. *Ante*, at 363. This, of course, is the Court's merits argument, the many defects in which we will soon consider. I am perfectly willing to concede that if one of our precedents were dead wrong in its reasoning or irreconcilable with the rest of our doctrine, there would be a compelling basis for revisiting it. But neither is true of *Austin*, as I explain at length in Parts III and IV, *infra*, at 414–478, and restating a merits argument with additional vigor does not give it extra weight in the *stare decisis* calculus.

Perhaps in recognition of this point, the Court supplements its merits case with a smattering of assertions. The Court proclaims that "*Austin* is undermined by experience since its announcement." *Ante*, at 364. This is a curious claim to make in a case that lacks a developed record. The majority has no empirical evidence with which to substantiate the claim; we just have its *ipse dixit* that the real world has not been kind to *Austin*. Nor does the majority bother to specify in what sense *Austin* has been "undermined." Instead it treats the reader to a string of non sequiturs: "Our Nation's speech dynamic is changing," *ante*, at 364; "[s]peakers have become adept at presenting citizens with sound bites, talking points, and scripted messages," *ibid.*; "[c]orporations . . . do not have monolithic views," *ibid.* How any

[17] I will have more to say shortly about the merits—about why *Austin* and *McConnell* are not doctrinal outliers, as the Court contends, and why their logic is not only defensible but also compelling. For present purposes, I limit the discussion to *stare-decisis*-specific considerations.

of these ruminations weakens the force of *stare decisis* escapes my comprehension.[18]

The majority also contends that the Government's hesitation to rely on *Austin*'s antidistortion rationale "diminishe[s]" "the principle of adhering to that precedent." *Ante*, at 363; see also *ante*, at 382 (opinion of ROBERTS, C. J.) (Government's litigating position is "most importan[t]" factor undermining *Austin*). Why it diminishes the value of *stare decisis* is left unexplained. We have never thought fit to overrule a precedent because a litigant has taken any particular tack. Nor should we. Our decisions can often be defended on multiple grounds, and a litigant may have strategic or case-specific reasons for emphasizing only a subset of them. Members of the public, moreover, often rely on our bottom-line holdings far more than our precise legal arguments; surely this is true for the legislatures that have been regulating corporate electioneering since *Austin.* The task of evaluating the continued viability of precedents falls to this Court, not to the parties.[19]

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[18] THE CHIEF JUSTICE suggests that *Austin* has been undermined by subsequent dissenting opinions. *Ante*, at 380. Under this view, it appears that the more times the Court stands by a precedent in the face of requests to overrule it, the weaker that precedent becomes. THE CHIEF JUSTICE further suggests that *Austin* "is uniquely destabilizing because it threatens to subvert our Court's decisions even outside" its particular facts, as when we applied its reasoning in *McConnell.* *Ante*, at 380. Once again, the theory seems to be that the more we utilize a precedent, the more we call it into question. For those who believe *Austin* was correctly decided—as the Federal Government and the States have long believed, as the majority of Justices to have served on the Court since *Austin* have believed, and as we continue to believe—there is nothing "destabilizing" about the prospect of its continued application. It is gutting campaign finance laws across the country, as the Court does today, that will be destabilizing.

[19] Additionally, the majority cites some recent scholarship challenging the historical account of campaign finance law given in *United States* v. *Automobile Workers*, 352 U. S. 567 (1957). *Ante*, at 363–364. *Austin* did not so much as allude to this historical account, much less rely on it. Even

Although the majority opinion spends several pages making these surprising arguments, it says almost nothing about the standard considerations we have used to determine *stare decisis* value, such as the antiquity of the precedent, the workability of its legal rule, and the reliance interests at stake. It is also conspicuously silent about *McConnell*, even though the *McConnell* Court's decision to uphold BCRA § 203 relied not only on the antidistortion logic of *Austin* but also on the statute's historical pedigree, see, *e. g.*, 540 U. S., at 115–132, 223–224, and the need to preserve the integrity of federal campaigns, see *id.*, at 126–129, 205–208, and n. 88.

We have recognized that "*[s]tare decisis* has special force when legislators or citizens 'have acted in reliance on a previous decision, for in this instance overruling the decision would dislodge settled rights and expectations or require an extensive legislative response.' " *Hubbard* v. *United States*, 514 U. S. 695, 714 (1995) (plurality opinion) (quoting *Hilton* v. *South Carolina Public Railways Comm'n*, 502 U. S. 197, 202 (1991)). *Stare decisis* protects not only personal rights involving property or contract but also the ability of the elected branches to shape their laws in an effective and coherent fashion. Today's decision takes away a power that we have long permitted these branches to exercise. State legislatures have relied on their authority to regulate corporate electioneering, confirmed in *Austin*, for more than a century.[20] The Federal Congress has relied on this authority for a comparable stretch of time, and it specifically relied on *Austin* throughout the years it spent developing and de-

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if the scholarship cited by the majority is correct that certain campaign finance reforms were less deliberate or less benignly motivated than *Automobile Workers* suggested, the point remains that this body of law has played a significant and broadly accepted role in American political life for decades upon decades.

[20] See Brief for State of Montana et al. as *Amici Curiae* 5–13; see also Supp. Brief for Senator John McCain et al. as *Amici Curiae* 1a–8a (listing 24 States that presently limit or prohibit independent electioneering expenditures from corporate general treasuries).

bating BCRA. The total record it compiled was *100,000 pages* long.[21] Pulling out the rug beneath Congress after affirming the constitutionality of § 203 six years ago shows great disrespect for a coequal branch.

By removing one of its central components, today's ruling makes a hash out of BCRA's "delicate and interconnected regulatory scheme." *McConnell*, 540 U. S., at 172. Consider just one example of the distortions that will follow: Political parties are barred under BCRA from soliciting or spending "soft money," funds that are not subject to the statute's disclosure requirements or its source and amount limitations. 2 U. S. C. § 441i; *McConnell*, 540 U. S., at 122–126. Going forward, corporations and unions will be free to spend as much general treasury money as they wish on ads that support or attack specific candidates, whereas national parties will not be able to spend a dime of soft money on ads of any kind. The Court's ruling thus dramatically enhances the role of corporations and unions—and the narrow interests they represent—vis-à-vis the role of political parties—and the broad coalitions they represent—in determining who will hold public office.[22]

Beyond the reliance interests at stake, the other *stare decisis* factors also cut against the Court. Considerations of antiquity are significant for similar reasons. *McConnell* is only six years old, but *Austin* has been on the books for two decades, and many of the statutes called into question by today's opinion have been on the books for a half century or more. The Court points to no intervening change in circumstances that warrants revisiting *Austin*. Certainly nothing

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[21] Magleby, The Importance of the Record in *McConnell v. FEC*, 3 Election L. J. 285 (2004).

[22] To be sure, the majority may respond that Congress can correct the imbalance by removing BCRA's soft-money limits. Cf. Tr. of Oral Arg. 24 (Sept. 9, 2009) (query of KENNEDY, J.). But this is no response to any legislature that takes campaign finance regulation seriously. It merely illustrates the breadth of the majority's deregulatory vision.

relevant has changed since we decided *WRTL* two Terms ago. And the Court gives no reason to think that *Austin* and *McConnell* are unworkable.

In fact, no one has argued to us that *Austin*'s rule has proved impracticable, and not a single for-profit corporation, union, or State has asked us to overrule it. Quite to the contrary, leading groups representing the business community,[23] organized labor,[24] and the nonprofit sector,[25] together with more than half of the States,[26] urge that we preserve *Austin*. As for *McConnell*, the portions of BCRA it upheld may be prolix, but all three branches of Government have worked to make § 203 as user-friendly as possible. For instance, Congress established a special mechanism for expedited review of constitutional challenges, see note following 2 U. S. C. § 437h; the FEC has established a standardized process, with clearly defined safe harbors, for corporations to claim that a particular electioneering communication is permissible under *WRTL*, see 11 CFR § 114.15 (2009);[27] and, as noted above, THE CHIEF JUSTICE crafted his controlling opinion in *WRTL* with the express goal of maximizing clarity and administrability, 551 U. S., at 469–470, 473–474. The case for *stare decisis* may be bolstered, we have said, when

[23] See Brief for Committee for Economic Development as *Amicus Curiae;* Brief for American Independent Business Alliance as *Amicus Curiae.* But see Supp. Brief for Chamber of Commerce of the United States of America as *Amicus Curiae.*

[24] See Brief for American Federation of Labor and Congress of Industrial Organizations as *Amicus Curiae* 3, 9.

[25] See Brief for Independent Sector as *Amicus Curiae* 16–20.

[26] See Brief for State of Montana et al. as *Amici Curiae.*

[27] The FEC established this process following the Court's June 2007 decision in that case, 551 U. S. 449. In the brief interval between the establishment of this process and the 2008 election, corporations and unions used it to make $108.5 million in electioneering communications. Supp. Brief for Appellee 22–23; FEC, Electioneering Communication Summary, online at http://fec.gov/finance/disclosure/ECSummary.shtml (all Internet materials as visited Jan. 18, 2010, and available in Clerk of Court's case file).

subsequent rulings "have reduced the impact" of a precedent "while reaffirming the decision's core ruling." *Dickerson* v. *United States*, 530 U. S. 428, 443 (2000).[28]

In the end, the Court's rejection of *Austin* and *McConnell* comes down to nothing more than its disagreement with their results. Virtually every one of its arguments was made and rejected in those cases, and the majority opinion is essentially an amalgamation of resuscitated dissents. The only relevant thing that has changed since *Austin* and *McConnell* is the composition of this Court. Today's ruling thus strikes at the vitals of *stare decisis*, "the means by which we ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion" that "permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals." *Vasquez* v. *Hillery*, 474 U. S. 254, 265 (1986).

III

The novelty of the Court's procedural dereliction and its approach to *stare decisis* is matched by the novelty of its ruling on the merits. The ruling rests on several premises. First, the Court claims that *Austin* and *McConnell* have "banned" corporate speech. Second, it claims that the First Amendment precludes regulatory distinctions based on speaker identity, including the speaker's identity as a corpo-

[28] Concededly, *Austin* and *McConnell* were constitutional decisions, and we have often said that "claims of *stare decisis* are at their weakest in that field, where our mistakes cannot be corrected by Congress." *Vieth* v. *Jubelirer*, 541 U. S. 267, 305 (2004) (plurality opinion). As a general matter, this principle is a sound one. But the principle only takes on real force when an earlier ruling has obstructed the normal democratic process; it is the fear of making "mistakes [that] cannot be corrected by Congress," *ibid.*, that motivates us to review constitutional precedents with a more critical eye. *Austin* and *McConnell* did not obstruct state or congressional legislative power in any way. Although it is unclear how high a bar today's decision will pose to future attempts to regulate corporate electioneering, it will clearly restrain much legislative action.

ration. Third, it claims that *Austin* and *McConnell* were radical outliers in our First Amendment tradition and our campaign finance jurisprudence. Each of these claims is wrong.

The So-Called "Ban"

Pervading the Court's analysis is the ominous image of a "categorical ba[n]" on corporate speech. *Ante*, at 361. Indeed, the majority invokes the specter of a "ban" on nearly every page of its opinion. *Ante*, at 319, 321, 324, 327, 328, 329, 330, 333, 337, 339, 340, 343, 344, 345, 346, 347, 349, 351, 354, 355, 358, 360, 361, 362, 364, 369. This characterization is highly misleading, and needs to be corrected.

In fact it already has been. Our cases have repeatedly pointed out that, "[c]ontrary to the [majority's] critical assumptions," the statutes upheld in *Austin* and *McConnell* do "not impose an *absolute* ban on all forms of corporate political spending." *Austin*, 494 U. S., at 660; see also *McConnell*, 540 U. S., at 203–204; *Beaumont*, 539 U. S., at 162–163. For starters, both statutes provide exemptions for PACs, separate segregated funds established by a corporation for political purposes. See 2 U. S. C. § 441b(b)(2)(C); Mich. Comp. Laws Ann. § 169.255 (West 2005). "The ability to form and administer separate segregated funds," we observed in *McConnell*, "has provided corporations and unions with a constitutionally sufficient opportunity to engage in express advocacy. That has been this Court's unanimous view." 540 U. S., at 203.

Under BCRA, any corporation's "stockholders and their families and its executive or administrative personnel and their families" can pool their resources to finance electioneering communications. 2 U. S. C. § 441b(b)(4)(A)(i). A significant and growing number of corporations avail themselves of this option;[29] during the most recent election cycle,

[29] See FEC, Number of Federal PAC's Increases, http://fec.gov/press/press2008/20080812paccount.shtml.

corporate and union PACs raised nearly a billion dollars.[30] Administering a PAC entails some administrative burden, but so does complying with the disclaimer, disclosure, and reporting requirements that the Court today upholds, see *ante*, at 366–367, and no one has suggested that the burden is severe for a sophisticated for-profit corporation. To the extent the majority is worried about this issue, it is important to keep in mind that we have no record to show how substantial the burden really is, just the majority's own unsupported factfinding, see *ante*, at 337–339. Like all other natural persons, every shareholder of every corporation remains entirely free under *Austin* and *McConnell* to do however much electioneering she pleases outside of the corporate form. The owners of a "mom & pop" store can simply place ads in their own names, rather than the store's. If ideologically aligned individuals wish to make unlimited expenditures through the corporate form, they may utilize an *MCFL* organization that has policies in place to avoid becoming a conduit for business or union interests. See *MCFL*, 479 U. S., at 263–264.

The laws upheld in *Austin* and *McConnell* leave open many additional avenues for corporations' political speech. Consider the statutory provision we are ostensibly evaluating in this case, BCRA § 203. It has no application to genuine issue advertising—a category of corporate speech Congress found to be far more substantial than election-related advertising, see *McConnell*, 540 U. S., at 207—or to Internet,

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[30] See Supp. Brief for Appellee 16 (citing FEC statistics placing this figure at $840 million). The majority finds the PAC option inadequate in part because "[a] PAC is a separate association from the corporation." *Ante*, at 337. The formal "separateness" of PACs from their host corporations—which administer and control the PACs but which cannot funnel general treasury funds into them or force members to support them—is, of course, the whole point of the PAC mechanism.

telephone, and print advocacy.[31] Like numerous statutes, it exempts media companies' news stories, commentaries, and editorials from its electioneering restrictions, in recognition of the unique role played by the institutional press in sustaining public debate.[32] See 2 U. S. C. § 434(f)(3)(B)(i); *McConnell*, 540 U. S., at 208–209; see also *Austin*, 494 U. S., at 666–668. It also allows corporations to spend unlimited sums on political communications with their executives and shareholders, § 441b(b)(2)(A); 11 CFR § 114.3(a)(1), to fund additional PAC activity through trade associations, 2 U. S. C. § 441b(b)(4)(D), to distribute voting guides and voting records, 11 CFR §§ 114.4(c)(4)–(5), to underwrite voter registration and voter turnout activities, § 114.3(c)(4); § 114.4(c)(2), to host fundraising events for candidates within certain limits,

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[31] Roaming far afield from the case at hand, the majority worries that the Government will use § 203 to ban books, pamphlets, and blogs. *Ante*, at 333, 337, 349, 364. Yet by its plain terms, § 203 does not apply to printed material. See 2 U. S. C. § 434(f)(3)(A)(i); see also 11 CFR § 100.29(c)(1) ("[E]lectioneering communication does not include communications appearing in print media"). And in light of the ordinary understanding of the terms "broadcast, cable, [and] satellite," 2 U. S. C. § 434(f)(3)(A)(i), coupled with Congress' clear aim of targeting "a virtual torrent of televised election-related ads," *McConnell*, 540 U. S., at 207, we highly doubt that § 203 could be interpreted to apply to a Web site or book that happens to be transmitted at some stage over airwaves or cable lines, or that the FEC would ever try to do so. See 11 CFR § 100.26 (exempting most Internet communications from regulation as advertising); § 100.155 (exempting uncompensated Internet activity from regulation as an expenditure); Supp. Brief for Center for Independent Media et al. as *Amici Curiae* 14 (explaining that "the FEC has consistently construed [BCRA's] media exemption to apply to a variety of non-traditional media"). If it should, the Government acknowledges "there would be quite [a] good as-applied challenge." Tr. of Oral Arg. 65 (Sept. 9, 2009).

[32] As the Government points out, with a media corporation there is also a lesser risk that investors will not understand, learn about, or support the advocacy messages that the corporation disseminates. Supp. Reply Brief for Appellee 10. Everyone knows and expects that media outlets may seek to influence elections in this way.

§ 114.4(c); § 114.2(f)(2), and to publicly endorse candidates through a press release and press conference, § 114.4(c)(6).

At the time Citizens United brought this lawsuit, the only types of speech that could be regulated under § 203 were: (1) broadcast, cable, or satellite communications;[33] (2) capable of reaching at least 50,000 persons in the relevant electorate;[34] (3) made within 30 days of a primary or 60 days of a general federal election;[35] (4) by a labor union or a non-*MCFL*, nonmedia corporation;[36] (5) paid for with general treasury funds;[37] and (6) "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."[38] The category of communications meeting all of these criteria is not trivial, but the notion that corporate political speech has been "suppress[ed] . . . altogether," *ante*, at 319, that corporations have been "exclu[ded] . . . from the general public dialogue," *ante*, at 341, or that a work of fiction such as *Mr. Smith Goes to Washington* might be covered, *ante*, at 371–372, is nonsense.[39] Even the plaintiffs in *McConnell*, who had every incentive to depict BCRA as negatively as possible, declined to argue that § 203's prohibition on certain uses of general treasury funds amounts to a complete ban. See 540 U. S., at 204.

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[33] 2 U. S. C. § 434(f)(3)(A)(i).

[34] § 434(f)(3)(C).

[35] § 434(f)(3)(A)(i)(II).

[36] § 441b(b); *McConnell*, 540 U. S., at 211.

[37] § 441b(b)(2)(C).

[38] *WRTL*, 551 U. S. 449, 470 (2007) (opinion of ROBERTS, C. J.).

[39] It is likewise nonsense to suggest that the FEC's "'business is to censor.'" *Ante*, at 335 (quoting *Freedman* v. *Maryland*, 380 U. S. 51, 57 (1965)). The FEC's business is to administer and enforce the campaign finance laws. The regulatory body at issue in *Freedman* was a state *board of censors* that had virtually unfettered discretion to bar distribution of motion picture films it deemed not to be "'moral and proper.'" See *id.*, at 52–53, and n. 2. No movie could be shown in the State of Maryland that was not first approved and licensed by the board of censors. *Id.*, at 52, n. 1. It is an understatement to say that *Freedman* is not on point, and the majority's characterization of the FEC is deeply disconcerting.

In many ways, then, § 203 functions as a source restriction or a time, place, and manner restriction. It applies in a viewpoint-neutral fashion to a narrow subset of advocacy messages about clearly identified candidates for federal office, made during discrete time periods through discrete channels. In the case at hand, all Citizens United needed to do to broadcast *Hillary* right before the primary was to abjure business contributions or use the funds in its PAC, which by its own account is "one of the most active conservative PACs in America," Citizens United Political Victory Fund, http://www.cupvf.org/.[40]

So let us be clear: Neither *Austin* nor *McConnell* held or implied that corporations may be silenced; the FEC is not a "censor"; and in the years since these cases were decided, corporations have continued to play a major role in the national dialogue. Laws such as § 203 target a class of communications that is especially likely to corrupt the political process, that is at least one degree removed from the views of individual citizens, and that may not even reflect the views of those who pay for it. Such laws burden political speech, and that is always a serious matter, demanding careful scrutiny. But the majority's incessant talk of a "ban" aims at a straw man.

Identity-Based Distinctions

The second pillar of the Court's opinion is its assertion that "the Government cannot restrict political speech based on the speaker's . . . identity." *Ante*, at 346; accord, *ante*, at 319, 340–341, 342–343, 346–347, 347, 348, 349, 350, 364, 365.

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[40] Citizens United has administered this PAC for over a decade. See Defendant FEC's Memorandum in Opposition to Plaintiff's Second Motion for Preliminary Injunction in No. 07–2240 (ARR, RCL, RWR) (DC), p. 20. Citizens United also operates multiple "527" organizations that engage in partisan political activity. See Defendant FEC's Statement of Material Facts as to Which There Is No Genuine Dispute in No. 07–2240 (DC), ¶¶ 22–24.

The case on which it relies for this proposition is *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765 (1978). As I shall explain, *infra*, at 442–446, the holding in that case was far narrower than the Court implies. Like its paeans to unfettered discourse, the Court's denunciation of identity-based distinctions may have rhetorical appeal but it obscures reality.

"Our jurisprudence over the past 216 years has rejected an absolutist interpretation" of the First Amendment. *WRTL*, 551 U. S., at 482 (opinion of ROBERTS, C. J.). The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech, or of the press." Apart perhaps from measures designed to protect the press, that text might seem to permit no distinctions of any kind. Yet in a variety of contexts, we have held that speech can be regulated differentially on account of the speaker's identity, when identity is understood in categorical or institutional terms. The Government routinely places special restrictions on the speech rights of students,[41] prisoners,[42] members of the Armed Forces,[43] foreigners,[44] and its own employees.[45]

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[41] See, *e. g.*, *Bethel School Dist. No. 403* v. *Fraser*, 478 U. S. 675, 682 (1986) ("[T]he constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings").

[42] See, *e. g.*, *Jones* v. *North Carolina Prisoners' Labor Union, Inc.*, 433 U. S. 119, 129 (1977) ("In a prison context, an inmate does not retain those First Amendment rights that are inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system" (internal quotation marks omitted)).

[43] See, *e. g.*, *Parker* v. *Levy*, 417 U. S. 733, 758 (1974) ("While the members of the military are not excluded from the protection granted by the First Amendment, the different character of the military community and of the military mission requires a different application of those protections").

[44] See, *e. g.*, 2 U. S. C. § 441e(a)(1) (foreign nationals may not directly or indirectly make contributions or independent expenditures in connection with a U. S. election).

[45] See, *e. g.*, *Civil Service Comm'n* v. *Letter Carriers*, 413 U. S. 548, 550 (1973) (upholding statute prohibiting Executive Branch employees from taking "an active part in political management or in political campaigns"

When such restrictions are justified by a legitimate governmental interest, they do not necessarily raise constitutional problems.[46] In contrast to the blanket rule that the majority espouses, our cases recognize that the Government's interests may be more or less compelling with respect to different classes of speakers,[47] cf. *Minneapolis Star & Tribune Co.* v. *Minnesota Comm'r of Revenue*, 460 U. S. 575, 585 (1983) ("[D]ifferential treatment" is constitutionally suspect "*unless* justified by some special characteristic" of the regulated class of speakers (emphasis added)), and that the constitutional rights of certain categories of speakers, in certain contexts, "'are not automatically coextensive with the rights'" that are normally accorded to members of our soci-

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(internal quotation marks omitted)); *Public Workers* v. *Mitchell*, 330 U. S. 75 (1947) (same); *United States* v. *Wurzbach*, 280 U. S. 396, 398 (1930) (upholding statute prohibiting federal employees from making contributions to Members of Congress for "any political purpose whatever" (internal quotation marks omitted)); *Ex parte Curtis*, 106 U. S. 371 (1882) (upholding statute prohibiting certain federal employees from giving money to other employees for political purposes).

[46] The majority states that the cases just cited are "inapposite" because they "stand only for the proposition that there are certain governmental functions that cannot operate without some restrictions on particular kinds of speech." *Ante*, at 341. The majority's creative suggestion that these cases stand only for that one proposition is quite implausible. In any event, the proposition lies at the heart of this case, as Congress and half the state legislatures have concluded, over many decades, that their core functions of administering elections and passing legislation cannot operate effectively without some narrow restrictions on corporate electioneering paid for by general treasury funds.

[47] Outside of the law, of course, it is a commonplace that the identity and incentives of the speaker might be relevant to an assessment of his speech. See Aristotle, Poetics § 11.2(vi), pp. 43–44 (M. Heath transl. 1996) ("In evaluating any utterance or action, one must take into account not just the moral qualities of what is actually done or said, but also the identity of the agent or speaker, the addressee, the occasion, the means, and the motive"). The insight that the identity of speakers is a proper subject of regulatory concern, it bears noting, motivates the disclaimer and disclosure provisions that the Court today upholds.

ety, *Morse* v. *Frederick*, 551 U. S. 393, 396–397, 404 (2007) (quoting *Bethel School Dist. No. 403* v. *Fraser*, 478 U. S. 675, 682 (1986)).

The free speech guarantee thus does not render every other public interest an illegitimate basis for qualifying a speaker's autonomy; society could scarcely function if it did. It is fair to say that our First Amendment doctrine has "frowned on" certain identity-based distinctions, *Los Angeles Police Dept.* v. *United Reporting Publishing Corp.*, 528 U. S. 32, 47, n. 4 (1999) (STEVENS, J., dissenting), particularly those that may reflect invidious discrimination or preferential treatment of a politically powerful group. But it is simply incorrect to suggest that we have prohibited all legislative distinctions based on identity or content. Not even close.

The election context is distinctive in many ways, and the Court, of course, is right that the First Amendment closely guards political speech. But in this context, too, the authority of legislatures to enact viewpoint-neutral regulations based on content and identity is well settled. We have, for example, allowed state-run broadcasters to exclude independent candidates from televised debates. *Arkansas Ed. Television Comm'n* v. *Forbes*, 523 U. S. 666 (1998).[48] We have upheld statutes that prohibit the distribution or display of campaign materials near a polling place. *Burson* v. *Freeman*, 504 U. S. 191 (1992).[49] Although we have not reviewed

[48] I dissented in *Forbes* because the broadcaster's decision to exclude the respondent from its debate was done "on the basis of entirely subjective, ad hoc judgments," 523 U. S., at 690, that suggested anticompetitive viewpoint discrimination, *id.*, at 693–694, and lacked a compelling justification. Needless to say, my concerns do not apply to the instant case.

[49] The law at issue in *Burson* was far from unusual. "[A]ll 50 States," the Court observed, "limit access to the areas in or around polling places." 504 U. S., at 206 (plurality opinion); see also Note, 91 Ky. L. J. 715, 729, n. 89, 747–769 (2003) (collecting statutes). I dissented in *Burson* because the evidence adduced to justify Tennessee's law was "exceptionally thin," 504 U. S., at 219, and "the reason for [the] restriction [had] disappear[ed]"

them directly, we have never cast doubt on laws that place special restrictions on campaign spending by foreign nationals. See, *e. g.*, 2 U. S. C. § 441e(a)(1). And we have consistently approved laws that bar Government employees, but not others, from contributing to or participating in political activities. See n. 45, *supra*. These statutes burden the political expression of one class of speakers, namely, civil servants. Yet we have sustained them on the basis of longstanding practice and Congress' reasoned judgment that certain regulations which leave "untouched full participation . . . in political decisions at the ballot box," *Civil Service Comm'n* v. *Letter Carriers*, 413 U. S. 548, 556 (1973) (internal quotation marks omitted), help ensure that public officials are "sufficiently free from improper influences," *id.*, at 564, and that "confidence in the system of representative Government is not . . . eroded to a disastrous extent," *id.*, at 565.

The same logic applies to this case with additional force because it is the identity of corporations, rather than individuals, that the Legislature has taken into account. As we have unanimously observed, legislatures are entitled to decide "that the special characteristics of the corporate structure require particularly careful regulation" in an electoral context. *NRWC*, 459 U. S., at 209–210.[50] Not only has the distinctive potential of corporations to corrupt the electoral process long been recognized, but within the area of campaign finance, corporate spending is also "furthest from the core of political expression, since corporations' First Amendment speech and association interests are derived largely

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over time, *id.*, at 223. "In short," I concluded, "Tennessee ha[d] failed to point to any legitimate interest that would justify its selective regulation of campaign-related expression." *Id.*, at 225. These criticisms are inapplicable to the case before us.

[50] They are likewise entitled to regulate media corporations differently from other corporations "to ensure that the law 'does not hinder or prevent the institutional press from reporting on, and publishing editorials about, newsworthy events.'" *McConnell*, 540 U. S., at 208 (quoting *Austin* v. *Michigan Chamber of Commerce*, 494 U. S. 652, 668 (1990)).

from those of their members and of the public in receiving information," *Beaumont*, 539 U. S., at 161, n. 8 (citation omitted). Campaign finance distinctions based on corporate identity tend to be less worrisome, in other words, because the "speakers" are not natural persons, much less members of our political community, and the governmental interests are of the highest order. Furthermore, when corporations, as a class, are distinguished from noncorporations, as a class, there is a lesser risk that regulatory distinctions will reflect invidious discrimination or political favoritism.

If taken seriously, our colleagues' assumption that the identity of a speaker has *no* relevance to the Government's ability to regulate political speech would lead to some remarkable conclusions. Such an assumption would have accorded the propaganda broadcasts to our troops by "Tokyo Rose" during World War II the same protection as speech by Allied commanders. More pertinently, it would appear to afford the same protection to multinational corporations controlled by foreigners as to individual Americans: To do otherwise, after all, could "'enhance the relative voice'" of some (*i. e.*, humans) over others (*i. e.*, nonhumans). *Ante*, at 349–350 (quoting *Buckley*, 424 U. S., at 49).[51] Under the

[51] The Court all but confesses that a categorical approach to speaker identity is untenable when it acknowledges that Congress might be allowed to take measures aimed at "preventing foreign individuals or associations from influencing our Nation's political process." *Ante*, at 362. Such measures have been a part of U. S. campaign finance law for many years. The notion that Congress might lack the authority to distinguish foreigners from citizens in the regulation of electioneering would certainly have surprised the Framers, whose "obsession with foreign influence derived from a fear that foreign powers and individuals had no basic investment in the well-being of the country." Teachout, The Anti-Corruption Principle, 94 Cornell L. Rev. 341, 393, n. 245 (2009) (hereinafter Teachout); see also U. S. Const., Art. I, § 9, cl. 8 ("[N]o Person holding any Office of Profit or Trust . . . shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State"). Professor Teachout observes that a cor-

majority's view, I suppose it may be a First Amendment problem that corporations are not permitted to vote, given that voting is, among other things, a form of speech.[52]

In short, the Court dramatically overstates its critique of identity-based distinctions, without ever explaining why corporate identity demands the same treatment as individual identity. Only the most wooden approach to the First Amendment could justify the unprecedented line it seeks to draw.

Our First Amendment Tradition

A third fulcrum of the Court's opinion is the idea that *Austin* and *McConnell* are radical outliers, "aberration[s]," in our First Amendment tradition. *Ante*, at 355; see also *ante*, at 361, 372 (professing fidelity to "our law and our tradition"). The Court has it exactly backwards. It is today's holding that is the radical departure from what had been settled First Amendment law. To see why, it is useful to take a long view.

1. *Original Understandings*

Let us start from the beginning. The Court invokes "ancient First Amendment principles," *ante*, at 319 (internal quotation marks omitted), and original understandings, *ante*, at 353–354, to defend today's ruling, yet it makes only a perfunctory attempt to ground its analysis in the principles or

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poration might be analogized to a foreign power in this respect, "inasmuch as its legal loyalties necessarily exclude patriotism." Teachout 393, n. 245.

[52] See A. Bickel, The Supreme Court and the Idea of Progress 59–60 (1978); A. Meiklejohn, Political Freedom: The Constitutional Powers of the People 39–40 (1965); Tokaji, First Amendment Equal Protection: On Discretion, Inequality, and Participation, 101 Mich. L. Rev. 2409, 2508–2509 (2003). Of course, voting is not speech in a pure or formal sense, but then again neither is a campaign expenditure; both are nevertheless communicative acts aimed at influencing electoral outcomes. Cf. Strauss, Corruption, Equality, and Campaign Finance Reform, 94 Colum. L. Rev. 1369, 1383–1384 (1994) (hereinafter Strauss).

understandings of those who drafted and ratified the Amendment. Perhaps this is because there is not a scintilla of evidence to support the notion that anyone believed it would preclude regulatory distinctions based on the corporate form. To the extent that the Framers' views are discernible and relevant to the disposition of this case, they would appear to cut strongly against the majority's position.

This is not only because the Framers and their contemporaries conceived of speech more narrowly than we now think of it, see Bork, Neutral Principles and Some First Amendment Problems, 47 Ind. L. J. 1, 22 (1971), but also because they held very different views about the nature of the First Amendment right and the role of corporations in society. Those few corporations that existed at the founding were authorized by grant of a special legislative charter.[53] Corporate sponsors would petition the legislature, and the legislature, if amenable, would issue a charter that specified the corporation's powers and purposes and "authoritatively fixed

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[53] Scholars have found that only a handful of business corporations were issued charters during the colonial period, and only a few hundred during all of the 18th century. See E. Dodd, American Business Corporations Until 1860, p. 197 (1954); L. Friedman, A History of American Law 188–189 (2d ed. 1985); Baldwin, American Business Corporations Before 1789, 8 Am. Hist. Rev. 449, 450–459 (1903). JUSTICE SCALIA quibbles with these figures; whereas we say that "a few hundred" charters were issued to business corporations during the 18th century, he says that the number is "approximately 335." *Ante*, at 387 (concurring opinion). JUSTICE SCALIA also raises the more serious point that it is improper to assess these figures by today's standards, *ibid.*, though I believe he fails to substantiate his claim that "the corporation was a familiar figure in American economic life" by the century's end, *ibid.* (internal quotation marks omitted). His formulation of that claim is also misleading, because the relevant reference point is not 1800 but the date of the First Amendment's ratification, in 1791. And at that time, the number of business charters must have been significantly smaller than 335, because the pace of chartering only began to pick up steam in the last decade of the 18th century. More than half of the century's total business charters were issued between 1796 and 1800. Friedman, History of American Law, at 189.

the scope and content of corporate organization," including "the internal structure of the corporation." J. Hurst, The Legitimacy of the Business Corporation in the Law of the United States 1780–1970, pp. 15–16 (1970) (reprinted 2004). Corporations were created, supervised, and conceptualized as quasi-public entities, "designed to serve a social function for the state." Handlin & Handlin, Origins of the American Business Corporation, 5 J. Econ. Hist. 1, 22 (1945). It was "assumed that [they] were legally privileged organizations that had to be closely scrutinized by the legislature because their purposes had to be made consistent with public welfare." R. Seavoy, Origins of the American Business Corporation, 1784–1855, p. 5 (1982).

The individualized charter mode of incorporation reflected the "cloud of disfavor under which corporations labored" in the early years of this Nation. 1 W. Fletcher, Cyclopedia of the Law of Corporations §2, p. 8 (rev. ed. 2006); see also *Louis K. Liggett Co.* v. *Lee*, 288 U. S. 517, 548–549 (1933) (Brandeis, J., dissenting) (discussing fears of the "evils" of business corporations); L. Friedman, A History of American Law 194 (2d ed. 1985) ("The word 'soulless' constantly recurs in debates over corporations. . . . Corporations, it was feared, could concentrate the worst urges of whole groups of men"). Thomas Jefferson famously fretted that corporations would subvert the Republic.[54] General incorporation statutes, and widespread acceptance of business corporations as socially useful actors, did not emerge until the 1800's. See Hansmann & Kraakman, The End of History for Corporate Law, 89 Geo. L. J. 439, 440 (2001) (hereinafter Hansmann & Kraakman) ("[A]ll general business corporation statutes appear to date from well after 1800").

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[54] See Letter from Thomas Jefferson to Tom Logan (Nov. 12, 1816), in 12 The Works of Thomas Jefferson 42, 44 (P. Ford ed. 1905) ("I hope we shall . . . crush in [its] birth the aristocracy of our monied corporations which dare already to challenge our government to a trial of strength and bid defiance to the laws of our country").

The Framers thus took it as a given that corporations could be comprehensively regulated in the service of the public welfare. Unlike our colleagues, they had little trouble distinguishing corporations from human beings, and when they constitutionalized the right to free speech in the First Amendment, it was the free speech of individual Americans that they had in mind.[55] While individuals might join together to exercise their speech rights, business corporations, at least, were plainly not seen as facilitating such associational or expressive ends. Even "the notion that business corporations could invoke the First Amendment would probably have been quite a novelty," given that "at the time, the legitimacy of every corporate activity was thought to rest entirely in a concession of the sovereign." Shelledy, Autonomy, Debate, and Corporate Speech, 18 Hastings Const. L. Q. 541, 578 (1991); cf. *Trustees of Dartmouth College* v. *Woodward*, 4 Wheat. 518, 636 (1819) (Marshall,

[55] In normal usage then, as now, the term "speech" referred to oral communications by individuals. See, *e. g.*, 2 S. Johnson, Dictionary of the English Language 1853–1854 (4th ed. 1773) (reprinted 1978) (listing as primary definition of "speech": "The power of articulate utterance; the power of expressing thoughts by vocal words"); 2 N. Webster, American Dictionary of the English Language (1828) (reprinted 1970) (listing as primary definition of "speech": "The faculty of uttering articulate sounds or words, as in human beings; the faculty of expressing thoughts by words or articulate sounds. *Speech* was given to man by his Creator for the noblest purposes"). Indeed, it has been "claimed that the notion of institutional speech . . . did not exist in post-revolutionary America." Fagundes, State Actors as First Amendment Speakers, 100 Nw. U. L. Rev. 1637, 1654 (2006); see also Bezanson, Institutional Speech, 80 Iowa L. Rev. 735, 775 (1995) ("In the intellectual heritage of the eighteenth century, the idea that free speech was individual and personal was deeply rooted and clearly manifest in the writings of Locke, Milton, and others on whom the framers of the Constitution and the Bill of Rights drew"). Given that corporations were conceived of as artificial entities and do not have the technical capacity to "speak," the burden of establishing that the Framers and ratifiers understood "the freedom of speech" to encompass corporate speech is, I believe, far heavier than the majority acknowledges.

C. J.) ("A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it"); Eule, Promoting Speaker Diversity: Austin and Metro Broadcasting, 1990 S. Ct. Rev. 105, 129 ("The framers of the First Amendment could scarcely have anticipated its application to the corporation form. That, of course, ought not to be dispositive. What is compelling, however, is an understanding of who was supposed to be the beneficiary of the free speech guaranty—the individual"). In light of these background practices and understandings, it seems to me implausible that the Framers believed "the freedom of speech" would extend equally to all corporate speakers, much less that it would preclude legislatures from taking limited measures to guard against corporate capture of elections.

The Court observes that the Framers drew on diverse intellectual sources, communicated through newspapers, and aimed to provide greater freedom of speech than had existed in England. *Ante,* at 353. From these (accurate) observations, the Court concludes that "[t]he First Amendment was certainly not understood to condone the suppression of political speech in society's most salient media." *Ibid.* This conclusion is far from certain, given that many historians believe the Framers were focused on prior restraints on publication and did not understand the First Amendment to "prevent the subsequent punishment of such [publications] as may be deemed contrary to the public welfare." *Near* v. *Minnesota ex rel. Olson,* 283 U. S. 697, 714 (1931) (internal quotation marks omitted). Yet, even if the majority's conclusion were correct, it would tell us only that the First Amendment was understood to protect political speech *in* certain media. It would tell us little about whether the Amendment was understood to protect general treasury electioneering expenditures *by* corporations, and to what extent.

As a matter of original expectations, then, it seems absurd to think that the First Amendment prohibits legislatures from taking into account the corporate identity of a sponsor of electoral advocacy. As a matter of original meaning, it likewise seems baseless—unless one evaluates the First Amendment's "principles," *ante*, at 319, 363, or its "purpose," *ante*, at 376 (opinion of ROBERTS, C. J.), at such a high level of generality that the historical understandings of the Amendment cease to be a meaningful constraint on the judicial task. This case sheds a revelatory light on the assumption of some that an impartial judge's application of an originalist methodology is likely to yield more determinate answers, or to play a more decisive role in the decisional process, than his or her views about sound policy.

JUSTICE SCALIA criticizes the foregoing discussion for failing to adduce statements from the founding era showing that corporations were understood to be excluded from the First Amendment's free speech guarantee. *Ante*, at 386, 393. Of course, JUSTICE SCALIA adduces no statements to suggest the contrary proposition, or even to suggest that the contrary proposition better reflects the kind of right that the drafters and ratifiers of the Free Speech Clause thought they were enshrining. Although JUSTICE SCALIA makes a perfectly sensible argument that an individual's right to speak entails a right to speak with others for a common cause, cf. *MCFL*, 479 U. S. 238, he does not explain why those two rights must be precisely identical, or why that principle applies to electioneering by corporations that serve no "common cause." *Ante*, at 392. Nothing in his account dislodges my basic point that members of the founding generation held a cautious view of corporate power and a narrow view of corporate rights (not that they "despised" corporations, *ante*, at 386), and that they conceptualized speech in individualistic terms. If no prominent Framer bothered to articulate that corporate speech would have lesser status than individual speech, that may well be because the contrary proposition—

if not also the very notion of "corporate speech"—was inconceivable.[56]

JUSTICE SCALIA also emphasizes the unqualified nature of the First Amendment text. *Ante*, at 386, 392–393. Yet he would seemingly read out the Free Press Clause: How else could he claim that my purported views on newspapers must track my views on corporations generally? *Ante*, at 390.[57] Like virtually all modern lawyers, JUSTICE SCALIA presumably believes that the First Amendment restricts the Executive, even though its language refers to Congress alone. In any event, the text only leads us back to the questions who or what is guaranteed "the freedom of speech," and, just as critically, what that freedom consists of and under what circumstances it may be limited. JUSTICE SCALIA appears to believe that because corporations are created and utilized by individuals, it follows (as night the day) that their electioneering must be equally protected by the First Amendment

[56] Postratification practice bolsters the conclusion that the First Amendment, "as originally understood," *ante*, at 353, did not give corporations political speech rights on a par with the rights of individuals. Well into the modern era of general incorporation statutes, "[t]he common law was generally interpreted as prohibiting corporate political participation," *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765, 819 (1978) (White, J., dissenting), and this Court did not recognize *any* First Amendment protections for corporations until the middle part of the 20th century, see *ante*, at 342 (listing cases).

[57] In fact, the Free Press Clause might be turned against JUSTICE SCALIA, for two reasons. First, we learn from it that the drafters of the First Amendment did draw distinctions—explicit distinctions—between types of "speakers," or speech outlets or forms. Second, the Court's strongest historical evidence all relates to the Framers' views on the press, see *ante*, at 353–354; *ante*, at 388–390 (SCALIA, J., concurring), yet while the Court tries to sweep this evidence into the Free Speech Clause, the Free Press Clause provides a more natural textual home. The text and history highlighted by our colleagues suggests why one type of corporation, those that are part of the press, might be able to claim special First Amendment status, and therefore why some kinds of "identity"-based distinctions might be permissible after all. Once one accepts that much, the intellectual edifice of the majority opinion crumbles.

and equally immunized from expenditure limits. See *ante*, at 391–392. That conclusion certainly does not follow as a logical matter, and JUSTICE SCALIA fails to explain why the original public meaning leads it to follow as a matter of interpretation.

The truth is we cannot be certain how a law such as BCRA § 203 meshes with the original meaning of the First Amendment.[58] I have given several reasons why I believe the Constitution would have been understood then, and ought to be understood now, to permit reasonable restrictions on corporate electioneering, and I will give many more reasons in the pages to come. The Court enlists the Framers in its defense without seriously grappling with their understandings of corporations or the free speech right, or with the republican principles that underlay those understandings.

In fairness, our campaign finance jurisprudence has never attended very closely to the views of the Framers, see *Randall* v. *Sorrell*, 548 U. S. 230, 280 (2006) (STEVENS, J., dissenting), whose political universe differed profoundly from that of today. We have long since held that corporations are covered by the First Amendment, and many legal scholars have long since rejected the concession theory of the corporation. But "historical context is usually relevant," *ibid.* (internal quotation marks omitted), and in light of the Court's effort to cast itself as guardian of ancient values, it pays to remember that nothing in our constitutional history dictates today's outcome. To the contrary, this history helps illuminate just how extraordinarily dissonant the decision is.

2. *Legislative and Judicial Interpretation*

A century of more recent history puts to rest any notion that today's ruling is faithful to our First Amendment tradi-

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[58] Cf. L. Levy, Legacy of Suppression: Freedom of Speech and Press in Early American History 4 (1960) ("The meaning of no other clause of the Bill of Rights at the time of its framing and ratification has been so obscure to us" as the Free Speech and Press Clause).

tion. At the federal level, the express distinction between corporate and individual political spending on elections stretches back to 1907, when Congress passed the Tillman Act, ch. 420, 34 Stat. 864, banning all corporate contributions to candidates. The Senate Report on the legislation observed that "[t]he evils of the use of [corporate] money in connection with political elections are so generally recognized that the committee deems it unnecessary to make any argument in favor of the general purpose of this measure. It is in the interest of good government and calculated to promote purity in the selection of public officials." S. Rep. No. 3056, 59th Cong., 1st Sess., 2 (1906). President Roosevelt, in his 1905 annual message to Congress, declared:

> "'All contributions by corporations to any political committee or for any political purpose should be forbidden by law; directors should not be permitted to use stockholders' money for such purposes; and, moreover, a prohibition of this kind would be, as far as it went, an effective method of stopping the evils aimed at in corrupt practices acts.'" *United States* v. *Automobile Workers*, 352 U. S. 567, 572 (1957) (quoting 40 Cong. Rec. 96).

The Court has surveyed the history leading up to the Tillman Act several times, see *WRTL*, 551 U. S., at 508–510 (Souter, J., dissenting); *McConnell*, 540 U. S., at 115; *Automobile Workers*, 352 U. S., at 570–575, and I will refrain from doing so again. It is enough to say that the Act was primarily driven by two pressing concerns: first, the enormous power corporations had come to wield in federal elections, with the accompanying threat of both actual corruption and a public perception of corruption; and second, a respect for the interest of shareholders and members in preventing the use of their money to support candidates they opposed. See *ibid.*; *United States* v. *CIO*, 335 U. S. 106, 113 (1948); Winkler, "Other People's Money": Corporations, Agency Costs, and Campaign Finance Law, 92 Geo. L. J. 871 (2004).

Over the years, the limitations on corporate political spending have been modified in a number of ways, as Congress responded to changes in the American economy and political practices that threatened to displace the commonweal. Justice Souter recently traced these developments at length.[59] *WRTL*, 551 U. S., at 507–519 (dissenting opinion); see also *McConnell*, 540 U. S., at 115–133; *McConnell*, 251 F. Supp. 2d, at 188–205. The Taft-Hartley Act of 1947 is of special significance for this case. In that Act passed more than 60 years ago, Congress extended the prohibition on corporate support of candidates to cover not only direct contributions, but independent expenditures as well. Labor Management Relations Act, 1947, § 304, 61 Stat. 159. The bar on contributions "was being so narrowly construed" that corporations were easily able to defeat the purposes of the Act by supporting candidates through other means. *WRTL*, 551 U. S., at 511 (Souter, J., dissenting) (citing S. Rep. No. 1, 80th Cong., 1st Sess., 38–39 (1947)).

Our colleagues emphasize that in two cases from the middle of the 20th century, several Justices wrote separately to criticize the expenditure restriction as applied to unions, even though the Court declined to pass on its constitutionality. *Ante*, at 343–344. Two features of these cases are of far greater relevance. First, those Justices were writing separately; which is to say, their position failed to command a majority. Prior to today, this was a fact we found signifi-

[59] As the majority notes, there is some academic debate about the precise origins of these developments. *Ante*, at 363–364; see also n. 19, *supra*. There is *always* some academic debate about such developments; the motives of legislatures are never entirely clear or unitary. Yet the basic shape and trajectory of 20th-century campaign finance reform are clear, and one need not take a naive or triumphalist view of this history to find it highly relevant. The Court's skepticism does nothing to mitigate the absurdity of its claim that *Austin* and *McConnell* were outliers. Nor does it alter the fact that five Justices today destroy a longstanding American practice.

cant in evaluating precedents. Second, each case in this line expressed support for the principle that corporate and union political speech financed with PAC funds, collected voluntarily from the organization's stockholders or members, receives greater protection than speech financed with general treasury funds.[60]

This principle was carried forward when Congress enacted comprehensive campaign finance reform in the Federal Election Campaign Act of 1971 (FECA), 86 Stat. 3, which retained the restriction on using general treasury funds for contributions and expenditures, 2 U. S. C. § 441b(a). FECA

[60] See *Pipefitters* v. *United States*, 407 U. S. 385, 409, 414–415 (1972) (reading the statutory bar on corporate and union campaign spending not to apply to "the voluntary donations of employees," when maintained in a separate account, because "[t]he dominant [legislative] concern in requiring that contributions be voluntary was, after all, to protect the dissenting stockholder or union member"); *Automobile Workers*, 352 U. S., at 592 (advising the District Court to consider on remand whether the broadcast in question was "paid for out of the general dues of the union membership or [whether] the funds [could] be fairly said to have been obtained on a voluntary basis"); *United States* v. *CIO*, 335 U. S. 106, 123 (1948) (observing that "funds voluntarily contributed [by union members or corporate stockholders] for election purposes" might not be covered by the expenditure bar). Both the *Pipefitters* and the *Automobile Workers* Courts approvingly referenced Congress' goal of reducing "the effect of aggregated wealth on federal elections," understood as wealth drawn from a corporate or union general treasury without the stockholders' or members' "free and knowing choice." *Pipefitters*, 407 U. S., at 416; see *Automobile Workers*, 352 U. S., at 582.

The two dissenters in *Pipefitters* would not have read the statutory provision in question, a successor to § 304 of the Taft-Hartley Act, to allow such robust use of corporate and union funds to finance otherwise prohibited electioneering. "This opening of the door to extensive corporate and union influence on the elective and legislative processes," Justice Powell wrote, "must be viewed with genuine concern. This seems to me to be a regressive step as contrasted with the numerous legislative and judicial actions in recent years designed to assure that elections are indeed free and representative." 407 U. S., at 450 (opinion of Powell, J., joined by Burger, C. J.).

codified the option for corporations and unions to create PACs to finance contributions and expenditures forbidden to the corporation or union itself. § 441b(b).

By the time Congress passed FECA in 1971, the bar on corporate contributions and expenditures had become such an accepted part of federal campaign finance regulation that when a large number of plaintiffs, including several nonprofit corporations, challenged virtually every aspect of FECA in *Buckley*, 424 U. S. 1, no one even bothered to argue that the bar as such was unconstitutional. *Buckley* famously (or infamously) distinguished direct contributions from independent expenditures, *id.*, at 58–59, but its silence on corporations only reinforced the understanding that corporate expenditures could be treated differently from individual expenditures. "Since our decision in *Buckley*, Congress' power to prohibit corporations and unions from using funds in their treasuries to finance advertisements expressly advocating the election or defeat of candidates in federal elections has been firmly embedded in our law." *McConnell*, 540 U. S., at 203.

Thus, it was unremarkable, in a 1982 case holding that Congress could bar nonprofit corporations from soliciting nonmembers for PAC funds, that then-Justice Rehnquist wrote for a unanimous Court that Congress' "careful legislative adjustment of the federal electoral laws, in a cautious advance, step by step, to account for the particular legal and economic attributes of corporations . . . warrants considerable deference," and "reflects a permissible assessment of the dangers posed by those entities to the electoral process." *NRWC*, 459 U. S., at 209 (internal quotation marks and citation omitted). "The governmental interest in preventing both actual corruption and the appearance of corruption of elected representatives has long been recognized," the unanimous Court observed, "and there is no reason why it may not . . . be accomplished by treating . . . corporations . . . differently from individuals." *Id.*, at 210–211.

The corporate/individual distinction was not questioned by the Court's disposition, in 1986, of a challenge to the expenditure restriction as applied to a distinctive type of nonprofit corporation. In *MCFL*, 479 U. S. 238, we stated again "that 'the special characteristics of the corporate structure require particularly careful regulation,'" *id.*, at 256 (quoting *NRWC*, 459 U. S., at 209–210), and again we acknowledged that the Government has a legitimate interest in "regulat[ing] the substantial aggregations of wealth amassed by the special advantages which go with the corporate form," 479 U. S., at 257 (internal quotation marks omitted). Those aggregations can distort the "free trade in ideas" crucial to candidate elections, *ibid.* (internal quotation marks omitted), at the expense of members or shareholders who may disagree with the object of the expenditures, *id.*, at 260. What the Court held by a 5-to-4 vote was that a limited class of corporations must be allowed to use their general treasury funds for independent expenditures, because Congress' interests in protecting shareholders and "restrict[ing] 'the influence of political war chests funneled through the corporate form,'" *id.*, at 257 (quoting *FEC* v. *National Conservative Political Action Comm.*, 470 U. S. 480, 501 (1985) *(NCPAC)*), did not apply to corporations that were structurally insulated from those concerns.[61]

It is worth remembering for present purposes that the four *MCFL* dissenters, led by Chief Justice Rehnquist, thought the Court was carrying the First Amendment *too*

[61] Specifically, these corporations had to meet three conditions. First, they had to be formed "for the express purpose of promoting political ideas," so that their resources reflected political support rather than commercial success. *MCFL*, 479 U. S., at 264. Next, they had to have no shareholders, so that "persons connected with the organization will have no economic disincentive for disassociating with it if they disagree with its political activity." *Ibid.* Finally, they could not be "established by a business corporation or a labor union," nor "accept contributions from such entities," lest they "serv[e] as conduits for the type of direct spending that creates a threat to the political marketplace." *Ibid.*

far. They would have recognized congressional authority to bar general treasury electioneering expenditures even by this class of nonprofits; they acknowledged that "the threat from corporate political activity will vary depending on the particular characteristics of a given corporation," but believed these "distinctions among corporations" were "distinctions in degree," not "in kind," and thus "more properly drawn by the Legislature than by the Judiciary." 479 U. S., at 268 (opinion of Rehnquist, C. J.) (internal quotation marks omitted). Not a single Justice suggested that regulation of corporate political speech could be no more stringent than of speech by an individual.

Four years later, in *Austin*, 494 U. S. 652, we considered whether corporations falling outside the *MCFL* exception could be barred from using general treasury funds to make independent expenditures in support of, or in opposition to, candidates. We held they could be. Once again recognizing the importance of "the integrity of the marketplace of political ideas" in candidate elections, *MCFL*, 479 U. S., at 257, we noted that corporations have "special advantages—such as limited liability, perpetual life, and favorable treatment of the accumulation and distribution of assets," 494 U. S., at 658–659—that allow them to spend prodigious general treasury sums on campaign messages that have "little or no correlation" with the beliefs held by actual persons, *id.*, at 660. In light of the corrupting effects such spending might have on the political process, *ibid.*, we permitted the State of Michigan to limit corporate expenditures on candidate elections to corporations' PACs, which rely on voluntary contributions and thus "reflect actual public support for the political ideas espoused by corporations," *ibid.* Notwithstanding our colleagues' insinuations that *Austin* deprived the public of general "ideas," "facts," and "'knowledge,'" *ante*, at 354, 355, the decision addressed only candidate-focused expenditures and gave the State no license to regulate corporate spending on other matters.

In the 20 years since *Austin*, we have reaffirmed its holding and rationale a number of times, see, *e. g.*, *Beaumont*, 539 U. S., at 153–156, most importantly in *McConnell*, 540 U. S. 93, where we upheld the provision challenged here, § 203 of BCRA.[62] Congress crafted § 203 in response to a problem created by *Buckley*. The *Buckley* Court had construed FECA's definition of prohibited "expenditures" narrowly to avoid any problems of constitutional vagueness, holding it applicable only to "communications that expressly advocate the election or defeat of a clearly identified candidate," 424 U. S., at 80, *i. e.*, statements containing so-called "magic words" like " 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' [or] 'reject,' " *id.*, at 43–44, and n. 52. After *Buckley*, corporations and unions figured out how to circumvent the limits on express advocacy by using sham "issue ads" that "eschewed the use of magic words" but nonetheless "advocate[d] the election or defeat of clearly identified federal candidates." *McConnell*, 540 U. S., at 126. "Corporations and unions spent hundreds

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[62] According to THE CHIEF JUSTICE, we are "erroneou[s]" in claiming that *McConnell* and *Beaumont* " 'reaffirmed' " *Austin*. *Ante*, at 376–377. In both cases, the Court explicitly relied on *Austin* and quoted from it at length. See 540 U. S., at 204–205; 539 U. S., at 153–155, 158, 160, 163; see also *ante*, at 332 (opinion of the Court) ("The holding and validity of *Austin* were essential to the reasoning of the *McConnell* majority opinion"); Brief for Appellants National Rifle Association et al., O. T. 2003, No. 02–1675, p. 21 ("*Beaumont* reaffirmed . . . the *Austin* rationale for restricting expenditures"). The *McConnell* Court did so in the teeth of vigorous protests by Justices in today's majority that *Austin* should be overruled. See *ante*, at 332 (citing relevant passages); see also *Beaumont*, 539 U. S., at 163–164 (KENNEDY, J., concurring in judgment). Both Courts also heard criticisms of *Austin* from parties or *amici*. See Brief for Appellants Chamber of Commerce of the United States et al., O. T. 2003, No. 02–1756, p. 35, n. 22; Reply Brief for Appellants/Cross-Appellees Senator Mitch McConnell et al., O. T. 2003, No. 02–1674, pp. 13–14; Brief for Pacific Legal Foundation as *Amicus Curiae* in *FEC* v. *Beaumont*, O. T. 2002, No. 02–403, *passim*. If this does not qualify as reaffirmation of a precedent, then I do not know what would.

of millions of dollars of their general funds to pay for these ads." *Id.*, at 127. Congress passed § 203 to address this circumvention, prohibiting corporations and unions from using general treasury funds for electioneering communications that "refe[r] to a clearly identified candidate," whether or not those communications use the magic words. 2 U. S. C. § 434(f)(3)(A)(i)(I).

When we asked in *McConnell* "whether a compelling governmental interest justifie[d]" § 203, we found the question "easily answered": "We have repeatedly sustained legislation aimed at 'the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas.'" 540 U. S., at 205 (quoting *Austin*, 494 U. S., at 660). These precedents "represent respect for the legislative judgment that the special characteristics of the corporate structure require particularly careful regulation." 540 U. S., at 205 (internal quotation marks omitted). "Moreover, recent cases have recognized that certain restrictions on corporate electoral involvement permissibly hedge against '"circumvention of [valid] contribution limits."'" *Ibid.* (quoting *Beaumont*, 539 U. S., at 155, in turn quoting *FEC* v. *Colorado Republican Federal Campaign Comm.*, 533 U. S. 431, 456, and n. 18 (2001) *(Colorado II);* alteration in original). BCRA, we found, is faithful to the compelling governmental interests in "'preserving the integrity of the electoral process, preventing corruption, . . . sustaining the active, alert responsibility of the individual citizen in a democracy for the wise conduct of the government,'" and maintaining "'the individual citizen's confidence in government.'" 540 U. S., at 206–207, n. 88 (quoting *Bellotti*, 435 U. S., at 788–789; some internal quotation marks and brackets omitted). What made the answer even easier than it might have been otherwise was the option to form PACs, which give corporations, at the least,

"a constitutionally sufficient opportunity to engage in" independent expenditures. 540 U. S., at 203.

3. *Buckley and Bellotti*

Against this extensive background of congressional regulation of corporate campaign spending, and our repeated affirmation of this regulation as constitutionally sound, the majority dismisses *Austin* as "a significant departure from ancient First Amendment principles," *ante*, at 319 (internal quotation marks omitted). How does the majority attempt to justify this claim? Selected passages from two cases, *Buckley*, 424 U. S. 1, and *Bellotti*, 435 U. S. 765, do all of the work. In the Court's view, *Buckley* and *Bellotti* decisively rejected the possibility of distinguishing corporations from natural persons in the 1970's; it just so happens that in every single case in which the Court has reviewed campaign finance legislation in the decades since, the majority failed to grasp this truth. The Federal Congress and dozens of state legislatures, we now know, have been similarly deluded.

The majority emphasizes *Buckley*'s statement that "'[t]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment.'" *Ante*, at 349–350 (quoting 424 U. S., at 48–49); *ante*, at 379 (opinion of ROBERTS, C. J.). But this elegant phrase cannot bear the weight that our colleagues have placed on it. For one thing, the Constitution does, in fact, permit numerous "restrictions on the speech of some in order to prevent a few from drowning out the many": for example, restrictions on ballot access and on legislators' floor time. *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S. 377, 402 (2000) (BREYER, J., concurring). For another, the *Buckley* Court used this line in evaluating "the ancillary governmental interest in equalizing the relative ability of individuals and groups to influence the outcome of elections." 424 U. S., at 48. It is not apparent why this is relevant to the case

before us. The majority suggests that *Austin* rests on the foreign concept of speech equalization, *ante,* at 350; *ante,* at 379–381 (opinion of ROBERTS, C. J.), but we made it clear in *Austin* (as in several cases before and since) that a restriction on the way corporations spend their money is no mere exercise in disfavoring the voice of some elements of our society in preference to others. Indeed, we *expressly* ruled that the compelling interest supporting Michigan's statute was not one of "'equaliz[ing] the relative influence of speakers on elections,'" *Austin,* 494 U. S., at 660 (quoting *id.,* at 705 (KENNEDY, J., dissenting)), but rather the need to confront the distinctive corrupting potential of corporate electoral advocacy financed by general treasury dollars, *id.,* at 659–660.

For that matter, it should go without saying that when we made this statement in *Buckley,* we could not have been casting doubt on the restriction on corporate expenditures in candidate elections, which had not been challenged as "foreign to the First Amendment," *ante,* at 350 (quoting *Buckley,* 424 U. S., at 49), or for any other reason. *Buckley*'s independent expenditure analysis was focused on a very different statutory provision, 18 U. S. C. § 608(e)(1) (1970 ed., Supp. V). It is implausible to think, as the majority suggests, *ante,* at 346, that *Buckley* covertly invalidated FECA's separate corporate and union campaign expenditure restriction, § 610 (now codified at 2 U. S. C. § 441b), even though that restriction had been on the books for decades before *Buckley* and would remain on the books, undisturbed, for decades after.

The case on which the majority places even greater weight than *Buckley,* however, is *Bellotti,* 435 U. S. 765, claiming it "could not have been clearer" that *Bellotti*'s holding forbade distinctions between corporate and individual expenditures like the one at issue here, *ante,* at 346. The Court's reliance is odd. The only thing about *Bellotti* that could not be clearer is that it declined to adopt the majority's position. *Bellotti* ruled, in an explicit limitation on the scope of its holding, that "our consideration of a corporation's right to

speak on issues of general public interest implies no comparable right in the quite different context of participation in a political campaign for election to public office." 435 U. S., at 788, n. 26; see also *id.*, at 787–788 (acknowledging that the interests in preserving public confidence in Government and protecting dissenting shareholders may be "weighty . . . in the context of partisan candidate elections"). *Bellotti*, in other words, did not touch the question presented in *Austin* and *McConnell*, and the opinion squarely disavowed the proposition for which the majority cites it.

The majority attempts to explain away the distinction *Bellotti* drew—between general corporate speech and campaign speech intended to promote or prevent the election of specific candidates for office—as inconsistent with the rest of the opinion and with *Buckley*. *Ante*, at 347, 357–360. Yet the basis for this distinction is perfectly coherent: The anticorruption interests that animate regulations of corporate participation in candidate elections, the "importance" of which "has never been doubted," 435 U. S., at 788, n. 26, do not apply equally to regulations of corporate participation in referenda. A referendum cannot owe a political debt to a corporation, seek to curry favor with a corporation, or fear the corporation's retaliation. Cf. *Austin*, 494 U. S., at 678 (STEVENS, J., concurring); *Citizens Against Rent Control/Coalition for Fair Housing* v. *Berkeley*, 454 U. S. 290, 299 (1981). The majority likewise overlooks the fact that, over the past 30 years, our cases have repeatedly recognized the candidate/issue distinction. See, *e. g.*, *Austin*, 494 U. S., at 659; *NCPAC*, 470 U. S., at 495–496; *FCC* v. *League of Women Voters of Cal.*, 468 U. S. 364, 371, n. 9 (1984); *NRWC*, 459 U. S., at 210, n. 7. The Court's critique of *Bellotti*'s footnote 26 puts it in the strange position of trying to elevate *Bellotti* to canonical status, while simultaneously disparaging a critical piece of its analysis as unsupported and irreconcilable with *Buckley*. *Bellotti*, apparently, is both the font of all wisdom and internally incoherent.

The *Bellotti* Court confronted a dramatically different factual situation from the one that confronts us in this case: a state statute that barred business corporations' expenditures on some referenda but not others. Specifically, the statute barred a business corporation "from making contributions or expenditures 'for the purpose of . . . influencing or affecting the vote on any question submitted to the voters, other than one materially affecting any of the property, business or assets of the corporation,'" 435 U. S., at 768 (quoting Mass. Gen. Laws Ann., ch. 55, §8 (West Supp. 1977); alteration in original), and it went so far as to provide that referenda related to income taxation would not "'be deemed materially to affect the property, business or assets of the corporation,'" 435 U. S., at 768. As might be guessed, the legislature had enacted this statute in order to limit corporate speech on a proposed state constitutional amendment to authorize a graduated income tax. The statute was a transparent attempt to prevent corporations from spending money to defeat this amendment, which was favored by a majority of legislators but had been repeatedly rejected by the voters. See *id.*, at 769–770, and n. 3. We said that "where, as here, the legislature's suppression of speech suggests an attempt to give one side of a debatable public question an advantage in expressing its views to the people, the First Amendment is plainly offended." *Id.*, at 785–786 (footnote omitted).

Bellotti thus involved a *viewpoint-discriminatory* statute, created to effect a particular policy outcome. Even Justice Rehnquist, in dissent, had to acknowledge that "a very persuasive argument could be made that the [Massachusetts Legislature], desiring to impose a personal income tax but more than once defeated in that desire by the combination of the Commonwealth's referendum provision and corporate expenditures in opposition to such a tax, simply decided to muzzle corporations on this sort of issue so that it could succeed in its desire." *Id.*, at 827, n. 6. To make matters

worse, the law at issue did not make any allowance for corporations to spend money through PACs. *Id.*, at 768, n. 2 (opinion of the Court). This really was a complete ban on a specific, preidentified subject. See *MCFL*, 479 U. S., at 259, n. 12 (stating that 2 U. S. C. § 441b's expenditure restriction "is *of course distinguishable* from the complete foreclosure of any opportunity for political speech that we invalidated in the state referendum context in . . . *Bellotti*" (emphasis added)).

The majority grasps a quotational straw from *Bellotti*, that speech does not fall entirely outside the protection of the First Amendment merely because it comes from a corporation. *Ante*, at 346–347. Of course not, but no one suggests the contrary, and neither *Austin* nor *McConnell* held otherwise. They held that even though the expenditures at issue were subject to First Amendment scrutiny, the restrictions on those expenditures were justified by a compelling state interest. See *McConnell*, 540 U. S., at 205; *Austin*, 494 U. S., at 658, 660. We acknowledged in *Bellotti* that numerous "interests of the highest importance" can justify campaign finance regulation. 435 U. S., at 788–789. But we found no evidence that these interests were served by the Massachusetts law. *Id.*, at 789. We left open the possibility that our decision might have been different if there had been "record or legislative findings that corporate advocacy threatened imminently to undermine democratic processes, thereby denigrating rather than serving First Amendment interests." *Ibid.*

Austin and *McConnell*, then, sit perfectly well with *Bellotti*. Indeed, all six Members of the *Austin* majority had been on the Court at the time of *Bellotti*, and none so much as hinted in *Austin* that they saw any tension between the decisions. The difference between the cases is not that *Austin* and *McConnell* rejected First Amendment protection for corporations whereas *Bellotti* accepted it. The difference is that the statute at issue in *Bellotti* smacked of viewpoint

discrimination, targeted one class of corporations, and provided no PAC option; and the State has a greater interest in regulating independent corporate expenditures on candidate elections than on referenda, because in a functioning democracy the public must have faith that its representatives owe their positions to the people, not to the corporations with the deepest pockets.

* * *

In sum, over the course of the past century Congress has demonstrated a recurrent need to regulate corporate participation in candidate elections to "'[p]reserv[e] the integrity of the electoral process, preven[t] corruption, . . . sustai[n] the active, alert responsibility of the individual citizen,'" protect the expressive interests of shareholders, and "'[p]reserv[e] . . . the individual citizen's confidence in government.'" *McConnell*, 540 U. S., at 206–207, n. 88 (quoting *Bellotti*, 435 U. S., at 788–789; first alteration in original). These understandings provided the combined impetus behind the Tillman Act in 1907, see *Automobile Workers*, 352 U. S., at 570–575, the Taft-Hartley Act in 1947, see *WRTL*, 551 U. S., at 511 (Souter, J., dissenting), FECA in 1971, see *NRWC*, 459 U. S., at 209–210, and BCRA in 2002, see *McConnell*, 540 U. S., at 126–132. Continuously for over 100 years, this line of "[c]ampaign finance reform has been a series of reactions to documented threats to electoral integrity obvious to any voter, posed by large sums of money from corporate or union treasuries." *WRTL*, 551 U. S., at 522 (Souter, J., dissenting). Time and again, we have recognized these realities in approving measures that Congress and the States have taken. None of the cases the majority cites is to the contrary. The only thing new about *Austin* was the dissent, with its stunning failure to appreciate the legitimacy of interests recognized in the name of democratic integrity since the days of the Progressives.

IV

Having explained why this is not an appropriate case in which to revisit *Austin* and *McConnell* and why these decisions sit perfectly well with "First Amendment principles," *ante*, at 319, 363, I come at last to the interests that are at stake. The majority recognizes that *Austin* and *McConnell* may be defended on anticorruption, antidistortion, and shareholder protection rationales. *Ante*, at 348–362. It badly errs both in explaining the nature of these rationales, which overlap and complement each other, and in applying them to the case at hand.

The Anticorruption Interest

Undergirding the majority's approach to the merits is the claim that the only "sufficiently important governmental interest in preventing corruption or the appearance of corruption" is one that is "limited to *quid pro quo* corruption." *Ante*, at 359. This is the same "crabbed view of corruption" that was espoused by JUSTICE KENNEDY in *McConnell* and squarely rejected by the Court in that case. 540 U. S., at 152. While it is true that we have not always spoken about corruption in a clear or consistent voice, the approach taken by the majority cannot be right, in my judgment. It disregards our constitutional history and the fundamental demands of a democratic society.

On numerous occasions we have recognized Congress' legitimate interest in preventing the money that is spent on elections from exerting an "'undue influence on an officeholder's judgment'" and from creating "'the appearance of such influence,'" beyond the sphere of *quid pro quo* relationships. *Id.*, at 150; see also, *e. g.*, *id.*, at 143–144, 152–154; *Colorado II*, 533 U. S., at 441; *Shrink Missouri*, 528 U. S., at 389. Corruption can take many forms. Bribery may be the paradigm case. But the difference between selling a vote and selling access is a matter of degree, not kind. And sell-

ing access is not qualitatively different from giving special preference to those who spent money on one's behalf. Corruption operates along a spectrum, and the majority's apparent belief that *quid pro quo* arrangements can be neatly demarcated from other improper influences does not accord with the theory or reality of politics. It certainly does not accord with the record Congress developed in passing BCRA, a record that stands as a remarkable testament to the energy and ingenuity with which corporations, unions, lobbyists, and politicians may go about scratching each other's backs—and which amply supported Congress' determination to target a limited set of especially destructive practices.

The District Court that adjudicated the initial challenge to BCRA pored over this record. In a careful analysis, Judge Kollar-Kotelly made numerous findings about the corrupting consequences of corporate and union independent expenditures in the years preceding BCRA's passage. See *McConnell*, 251 F. Supp. 2d, at 555–560, 622–625; see also *id.*, at 804–805, 813, n. 143 (Leon, J.) (indicating agreement). As summarized in her own words:

> "The factual findings of the Court illustrate that corporations and labor unions routinely notify Members of Congress as soon as they air electioneering communications relevant to the Members' elections. The record also indicates that Members express appreciation to organizations for the airing of these election-related advertisements. Indeed, Members of Congress are particularly grateful when negative issue advertisements are run by these organizations, leaving the candidates free to run positive advertisements and be seen as 'above the fray.' Political consultants testify that campaigns are quite aware of who is running advertisements on the candidate's behalf, when they are being run, and where they are being run. Likewise, a prominent lob-

byist testifies that these organizations use issue advocacy as a means to influence various Members of Congress.

"The Findings also demonstrate that Members of Congress seek to have corporations and unions run these advertisements on their behalf. The Findings show that Members suggest that corporations or individuals make donations to interest groups with the understanding that the money contributed to these groups will assist the Member in a campaign. After the election, these organizations often seek credit for their support. . . . Finally, a large majority of Americans (80%) are of the view that corporations and other organizations that engage in electioneering communications, which benefit specific elected officials, receive special consideration from those officials when matters arise that affect these corporations and organizations." *Id.*, at 623–624 (citations and footnote omitted).

Many of the relationships of dependency found by Judge Kollar-Kotelly seemed to have a *quid pro quo* basis, but other arrangements were more subtle. Her analysis shows the great difficulty in delimiting the precise scope of the *quid pro quo* category, as well as the adverse consequences that *all* such arrangements may have. There are threats of corruption that are far more destructive to a democratic society than the odd bribe. Yet the majority's understanding of corruption would leave lawmakers impotent to address all but the most discrete abuses.

Our "undue influence" cases have allowed the American people to cast a wider net through legislative experiments designed to ensure, to some minimal extent, "that officeholders will decide issues . . . on the merits or the desires of their constituencies," and not "according to the wishes of those who have made large financial contributions"—or expenditures—"valued by the officeholder." *McConnell*, 540

U. S., at 153.[63] When private interests are seen to exert outsized control over officeholders solely on account of the money spent on (or withheld from) their campaigns, the result can depart so thoroughly "from what is pure or correct" in the conduct of Government, Webster's Third New International Dictionary 512 (1966) (defining "corruption"), that it amounts to a "subversion . . . of the . . . electoral process," *Automobile Workers*, 352 U. S., at 575. At stake in the legislative efforts to address this threat is therefore not only the legitimacy and quality of Government but also the public's faith therein, not only "the capacity of this democracy to represent its constituents [but also] the confidence of its citizens in their capacity to govern themselves," *WRTL*, 551 U. S., at 507 (Souter, J., dissenting). "Take away Congress' authority to regulate the appearance of undue influence and 'the cynical assumption that large donors call the tune could jeopardize the willingness of voters to take part in democratic governance.'" *McConnell*, 540 U. S., at 144 (quoting *Shrink Missouri*, 528 U. S., at 390).[64]

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[63] Cf. *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S. 377, 389 (2000) (recognizing "the broader threat from politicians too compliant with the wishes of large contributors"). Though discrete in scope, these experiments must impose some meaningful limits if they are to have a chance at functioning effectively and preserving the public's trust. "Even if it occurs only occasionally, the potential for such undue influence is manifest. And unlike straight cash-for-votes transactions, such corruption is neither easily detected nor practical to criminalize." *McConnell*, 540 U. S., at 153. There should be nothing controversial about the proposition that the influence being targeted is "undue." In a democracy, officeholders should not make public decisions with the aim of placating a financial benefactor, except to the extent that the benefactor is seen as representative of a larger constituency or its arguments are seen as especially persuasive.

[64] The majority declares by fiat that the appearance of undue influence by high-spending corporations "will not cause the electorate to lose faith in our democracy." *Ante*, at 360. The electorate itself has consistently indicated otherwise, both in opinion polls, see *McConnell* v. *FEC*, 251 F. Supp. 2d 176, 557–558, 623–624 (DC 2003) (opinion of Kollar-Kotelly, J.), and in the laws its representatives have passed, and our colleagues have no basis for elevating their own optimism into a tenet of constitutional law.

The cluster of interrelated interests threatened by such undue influence and its appearance has been well captured under the rubric of "democratic integrity." *WRTL*, 551 U. S., at 522 (Souter, J., dissenting). This value has underlined a century of state and federal efforts to regulate the role of corporations in the electoral process.[65]

Unlike the majority's myopic focus on *quid pro quo* scenarios and the free-floating "First Amendment principles" on which it rests so much weight, *ante*, at 319, 363, this broader understanding of corruption has deep roots in the Nation's history. "During debates on the earliest [campaign finance] reform acts, the terms 'corruption' and 'undue influence' were used nearly interchangeably." Pasquale, Reclaiming Egalitarianism in the Political Theory of Campaign Finance Reform, 2008 U. Ill. L. Rev. 599, 601. Long before *Buckley*, we appreciated that "[t]o say that Congress is without power to pass appropriate legislation to safeguard . . . an election from the improper use of money to influence the result is to deny to the nation in a vital particular the power of self protection." *Burroughs* v. *United States*, 290 U. S. 534, 545 (1934). And whereas we have no evidence to support the notion that the Framers would have wanted corporations to have the same rights as natural persons in the electoral context, we have ample evidence to suggest that they would

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[65] Quite distinct from the interest in preventing improper influences on the electoral process, I have long believed that "a number of [other] purposes, both legitimate and substantial, may justify the imposition of reasonable limitations on the expenditures permitted during the course of any single campaign." *Davis* v. *FEC*, 554 U. S. 724, 751 (2008) (opinion concurring in part and dissenting in part). In my judgment, such limitations may be justified to the extent they are tailored to "improving the quality of the exposition of ideas" that voters receive, *ibid.*, "free[ing] candidates and their staffs from the interminable burden of fundraising," *ibid.* (internal quotation marks omitted), and "protect[ing] equal access to the political arena," *Randall* v. *Sorrell*, 548 U. S. 230, 278 (2006) (STEVENS, J., dissenting) (internal quotation marks omitted). I continue to adhere to these beliefs, but they have not been briefed by the parties or *amici* in this case, and their soundness is immaterial to its proper disposition.

have been appalled by the evidence of corruption that Congress unearthed in developing BCRA and that the Court today discounts to irrelevance. It is fair to say that "[t]he Framers were obsessed with corruption," Teachout 348, which they understood to encompass the dependency of public officeholders on private interests, see *id.*, at 373–374; see also *Randall*, 548 U. S., at 280 (STEVENS, J., dissenting). They discussed corruption "more often in the Constitutional Convention than factions, violence, or instability." Teachout 352. When they brought our constitutional order into being, the Framers had their minds trained on a threat to republican self-government that this Court has lost sight of.

Quid Pro Quo Corruption

There is no need to take my side in the debate over the scope of the anticorruption interest to see that the Court's merits holding is wrong. Even under the majority's "crabbed view of corruption," *McConnell*, 540 U. S., at 152, the Government should not lose this case.

"The importance of the governmental interest in preventing [corruption through the creation of political debts] has never been doubted." *Bellotti*, 435 U. S., at 788, n. 26. Even in the cases that have construed the anticorruption interest most narrowly, we have never suggested that such *quid pro quo* debts must take the form of outright vote buying or bribes, which have long been distinct crimes. Rather, they encompass the myriad ways in which outside parties may induce an officeholder to confer a legislative benefit in direct response to, or anticipation of, some outlay of money the parties have made or will make on behalf of the officeholder. See *McConnell*, 540 U. S., at 143 ("We have not limited [the anticorruption] interest to the elimination of cash-for-votes exchanges. In *Buckley*, we expressly rejected the argument that antibribery laws provided a less restrictive alternative to FECA's contribution limits, noting that such laws 'deal[t] with only the most blatant and specific attempts

of those with money to influence governmental action'" (quoting 424 U. S., at 28; alteration in original)). It has likewise never been doubted that "[o]f almost equal concern as the danger of actual *quid pro quo* arrangements is the impact of the appearance of corruption." *Id.*, at 27. Congress may "legitimately conclude that the avoidance of the appearance of improper influence is also critical . . . if confidence in the system of representative Government is not to be eroded to a disastrous extent." *Ibid.* (internal quotation marks omitted; alteration in original). A democracy cannot function effectively when its constituent members believe laws are being bought and sold.

In theory, our colleagues accept this much. As applied to BCRA §203, however, they conclude "[t]he anticorruption interest is not sufficient to displace the speech here in question." *Ante*, at 357.

Although the Court suggests that *Buckley* compels its conclusion, *ante*, at 356–360, *Buckley* cannot sustain this reading. It is true that, in evaluating FECA's ceiling on independent expenditures by all persons, the *Buckley* Court found the governmental interest in preventing corruption "inadequate." 424 U. S., at 45. But *Buckley* did not evaluate corporate expenditures specifically, nor did it rule out the possibility that a future Court might find otherwise. The opinion reasoned that an expenditure limitation covering only express advocacy (*i. e.*, magic words) would likely be ineffectual, *ibid.*, a problem that Congress tackled in BCRA, and it concluded that "the independent advocacy restricted by [FECA §608(e)(1)] *does not presently appear* to pose dangers of real or apparent corruption comparable to those identified with large campaign contributions," *id.*, at 46 (emphasis added). *Buckley* expressly contemplated that an anticorruption rationale might justify restrictions on independent expenditures at a later date, "because it may be that, in some circumstances, 'large independent expenditures pose the same dangers of actual or apparent *quid pro quo*

arrangements as do large contributions.'" *WRTL*, 551 U. S., at 478 (opinion of ROBERTS, C. J.) (quoting *Buckley*, 424 U. S., at 45). Certainly *Buckley* did not foreclose this possibility with respect to electioneering communications made with corporate general treasury funds, an issue the Court had no occasion to consider.

The *Austin* Court did not rest its holding on *quid pro quo* corruption, as it found the broader corruption implicated by the antidistortion and shareholder protection rationales a sufficient basis for Michigan's restriction on corporate electioneering. 494 U. S., at 658–660. Concurring in that opinion, I took the position that "the danger of either the fact, or the appearance, of *quid pro quo* relationships [also] provides an adequate justification for state regulation" of these independent expenditures. *Id.*, at 678. I did not see this position as inconsistent with *Buckley*'s analysis of individual expenditures. Corporations, as a class, tend to be more attuned to the complexities of the legislative process and more directly affected by tax and appropriations measures that receive little public scrutiny; they also have vastly more money with which to try to buy access and votes. See Supp. Brief for Appellee 17 (stating that the Fortune 100 companies earned revenues of $13.1 trillion during the last election cycle). Business corporations must engage the political process in instrumental terms if they are to maximize shareholder value. The unparalleled resources, professional lobbyists, and single-minded focus they bring to this effort, I believed, make *quid pro quo* corruption and its appearance inherently more likely when they (or their conduits or trade groups) spend unrestricted sums on elections.

It is with regret rather than satisfaction that I can now say that time has borne out my concerns. The legislative and judicial proceedings relating to BCRA generated a substantial body of evidence suggesting that, as corporations grew more and more adept at crafting "issue ads" to help

or harm a particular candidate, these nominally independent expenditures began to corrupt the political process in a very direct sense. The sponsors of these ads were routinely granted special access after the campaign was over; "candidates and officials knew who their friends were," *McConnell*, 540 U. S., at 129. Many corporate independent expenditures, it seemed, had become essentially interchangeable with direct contributions in their capacity to generate *quid pro quo* arrangements. In an age in which money and television ads are the coin of the campaign realm, it is hardly surprising that corporations deployed these ads to curry favor with, and to gain influence over, public officials.

The majority appears to think it decisive that the BCRA record does not contain "direct examples of votes being exchanged for . . . expenditures." *Ante*, at 360 (internal quotation marks omitted). It would have been quite remarkable if Congress had created a record detailing such behavior by its own Members. Proving that a specific vote was exchanged for a specific expenditure has always been next to impossible: Elected officials have diverse motivations, and no one will acknowledge that he sold a vote. Yet, even if "[i]ngratiation and access . . . are not corruption" themselves, *ibid.*, they are necessary prerequisites to it; they can create both the opportunity for, and the appearance of, *quid pro quo* arrangements. The influx of unlimited corporate money into the electoral realm also creates new opportunities for the mirror image of *quid pro quo* deals: threats, both explicit and implicit. Starting today, corporations with large war chests to deploy on electioneering may find democratically elected bodies becoming much more attuned to their interests. The majority both misreads the facts and draws the wrong conclusions when it suggests that the BCRA record provides "only scant evidence that independent expenditures . . . ingratiate," and that, "in any event," none of it matters. *Ibid.*

In her analysis of the record, Judge Kollar-Kotelly documented the pervasiveness of this ingratiation and explained its significance under the majority's own touchstone for defining the scope of the anticorruption rationale, *Buckley*. See *McConnell*, 251 F. Supp. 2d, at 555–560, 622–625. Witnesses explained how political parties and candidates used corporate independent expenditures to circumvent FECA's "hard-money" limitations. See, *e. g.*, *id.*, at 478–479. One former Senator candidly admitted to the District Court that "'[c]andidates whose campaigns benefit from [phony "issue ads"] greatly appreciate the help of these groups. In fact, Members will also be favorably disposed to those who finance these groups when they later seek access to discuss pending legislation.'" *Id.*, at 556 (quoting declaration of Sen. Dale Bumpers). One prominent lobbyist went so far as to state, in uncontroverted testimony, that "'unregulated expenditures—whether soft money donations to the parties or issue ad campaigns—can sometimes generate *far more* influence than direct campaign contributions.'" *Ibid.* (quoting declaration of Wright Andrews; emphasis added). In sum, Judge Kollar-Kotelly found, "[t]he record powerfully demonstrates that electioneering communications paid for with the general treasury funds of labor unions and corporations endears those entities to elected officials in a way that could be perceived by the public as corrupting." *Id.*, at 622–623. She concluded that the Government's interest in preventing the appearance of corruption, as that concept was defined in *Buckley*, was itself sufficient to uphold BCRA §203. 251 F. Supp. 2d, at 622–625. Judge Leon agreed. See *id.*, at 804–805 (dissenting only with respect to the Wellstone Amendment's coverage of *MCFL* corporations).

When the *McConnell* Court affirmed the judgment of the District Court regarding §203, we did not rest our holding on a narrow notion of *quid pro quo* corruption. Instead we relied on the governmental interest in combating the unique forms of corruption threatened by corporations, as recog-

nized in *Austin*'s antidistortion and shareholder protection rationales, 540 U. S., at 205 (citing *Austin*, 494 U. S., at 660), as well as the interest in preventing circumvention of contribution limits, 540 U. S., at 128–129, 205, 206, n. 88. Had we felt constrained by the view of today's Court that *quid pro quo* corruption and its appearance are the only interests that count in this field, *ante*, at 348–362, we of course would have looked closely at that issue. And as the analysis by Judge Kollar-Kotelly reflects, it is a very real possibility that we would have found one or both of those interests satisfied and § 203 appropriately tailored to them.

The majority's rejection of the *Buckley* anticorruption rationale on the ground that independent corporate expenditures "do not give rise to *[quid pro quo]* corruption or the appearance of corruption," *ante*, at 357, is thus unfair as well as unreasonable. Congress and outside experts have generated significant evidence corroborating this rationale, and the only reason we do not have any of the relevant materials before us is that the Government had no reason to develop a record at trial for a facial challenge the plaintiff had abandoned. The Court cannot both *sua sponte* choose to relitigate *McConnell* on appeal and then complain that the Government has failed to substantiate its case. If our colleagues were really serious about the interest in preventing *quid pro quo* corruption, they would remand to the District Court with instructions to commence evidentiary proceedings.[66]

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[66] In fact, the notion that the "electioneering communications" covered by § 203 can breed *quid pro quo* corruption or the appearance of such corruption has only become more plausible since we decided *McConnell*. Recall that THE CHIEF JUSTICE's controlling opinion in *WRTL* subsequently limited BCRA's definition of "electioneering communications" to those that are "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." 551 U. S., at 470. The upshot was that after *WRTL*, a corporate or union expenditure could be regulated under § 203 only if everyone would understand it as an endorsement of or attack on a particular candidate for office. It does not

The insight that even technically independent expenditures can be corrupting in much the same way as direct contributions is bolstered by our decision last year in *Caperton* v. *A. T. Massey Coal Co.*, 556 U. S. 868 (2009). In that case, Don Blankenship, the chief executive officer of a corporation with a lawsuit pending before the West Virginia high court, spent large sums on behalf of a particular candidate, Brent Benjamin, running for a seat on that court. "In addition to contributing the $1,000 statutory maximum to Benjamin's campaign committee, Blankenship donated almost $2.5 million to 'And For The Sake Of The Kids,' " a § 527 corporation that ran ads targeting Benjamin's opponent. *Id.*, at 873. "This was not all. Blankenship spent, in addition, just over $500,000 on independent expenditures . . . ' "to support . . . Brent Benjamin." ' " *Ibid.* (second alteration in original). Applying its common sense, this Court accepted petitioners' argument that Blankenship's "pivotal role in getting Justice Benjamin elected created a constitutionally intolerable probability of actual bias" when Benjamin later declined to recuse himself from the appeal by Blankenship's corporation. *Id.*, at 882. "Though n[o] . . . bribe or criminal influence" was involved, we recognized that "Justice Benjamin would nevertheless feel a debt of gratitude to Blankenship for his extraordinary efforts to get him elected." *Ibid.* "The difficulties of inquiring into actual bias," we further noted, "simply underscore the need for objective rules," *id.*, at 883—rules which will perforce turn on the appearance of bias rather than its actual existence.

In *Caperton*, then, we accepted the premise that, at least in some circumstances, independent expenditures on candidate elections will raise an intolerable specter of *quid pro quo* corruption. Indeed, this premise struck the Court as so intuitive that it repeatedly referred to Blankenship's spending on behalf of Benjamin—spending that consisted of

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take much imagination to perceive why this type of advocacy might be especially apt to look like or amount to a deal or a threat.

99.97% independent expenditures ($3 million) and 0.03% direct contributions ($1,000)—as a "contribution." See, *e. g.*, *id.*, at 872 ("The basis for the [recusal] motion was that the justice had received campaign contributions in an extraordinary amount from" Blankenship); *id.*, at 873 (referencing "Blankenship's $3 million in contributions"); *id.*, at 884 ("Blankenship contributed some $3 million to unseat the incumbent and replace him with Benjamin"); *id.*, at 885 ("Blankenship's campaign contributions . . . had a significant and disproportionate influence on the electoral outcome"). The reason the Court so thoroughly conflated expenditures and contributions, one assumes, is that it realized that some expenditures may be functionally equivalent to contributions in the way they influence the outcome of a race, the way they are interpreted by the candidates and the public, and the way they taint the decisions that the officeholder thereafter takes.

Caperton is illuminating in several additional respects. It underscores the old insight that, on account of the extreme difficulty of proving corruption, "prophylactic measures, reaching some [campaign spending] not corrupt in purpose or effect, [may be] nonetheless required to guard against corruption." *Buckley*, 424 U. S., at 30; see also *Shrink Missouri*, 528 U. S., at 392, n. 5. It underscores that "certain restrictions on corporate electoral involvement" may likewise be needed to "hedge against circumvention of valid contribution limits." *McConnell*, 540 U. S., at 205 (internal quotation marks and brackets omitted); see also *Colorado II*, 533 U. S., at 456 ("[A]ll Members of the Court agree that circumvention is a valid theory of corruption"). It underscores that for-profit corporations associated with electioneering communications will often prefer to use nonprofit conduits with "misleading names," such as And For The Sake Of The Kids, "to conceal their identity" as the sponsor of those communications, thereby frustrating the utility of dis-

closure laws. *McConnell*, 540 U. S., at 128; see also *id.*, at 196–197.

And it underscores that the consequences of today's holding will not be limited to the legislative or executive context. The majority of the States select their judges through popular elections. At a time when concerns about the conduct of judicial elections have reached a fever pitch, see, *e. g.*, O'Connor, Justice for Sale, Wall St. Journal, Nov. 15, 2007, p. A25; Brief for Justice at Stake et al. as *Amici Curiae* 2, the Court today unleashes the floodgates of corporate and union general treasury spending in these races. Perhaps "*Caperton* motions" will catch some of the worst abuses. This will be small comfort to those States that, after today, may no longer have the ability to place modest limits on corporate electioneering even if they believe such limits to be critical to maintaining the integrity of their judicial systems.

Deference and Incumbent Self-Protection

Rather than show any deference to a coordinate branch of Government, the majority thus rejects the anticorruption rationale without serious analysis.[67] Today's opinion provides no clear rationale for being so dismissive of Congress, but the prior individual opinions on which it relies have offered one: the incentives of the legislators who passed BCRA. Section 203, our colleagues have suggested, may be little more than "an incumbency protection plan," *McConnell*, 540 U. S., at 306 (KENNEDY, J., concurring in judgment in part and dissenting in part); see also *id.*, at 249–250, 260–263 (SCALIA, J., concurring in part, concurring in judgment in part, and dissenting in part), a disreputable attempt at legislative self-dealing rather than an earnest effort to facilitate First Amendment values and safeguard the legitimacy

[67] "We must give weight" and "due deference" to Congress' efforts to dispel corruption, the Court states at one point. *Ante*, at 361. It is unclear to me what these maxims mean, but as applied by the Court they clearly do not entail "deference" in any normal sense of that term.

of our political system. This possibility, the Court apparently believes, licenses it to run roughshod over Congress' handiwork.

In my view, we should instead start by acknowledging that "Congress surely has both wisdom and experience in these matters that is far superior to ours." *Colorado Republican Federal Campaign Comm.* v. *FEC*, 518 U. S. 604, 650 (1996) (STEVENS, J., dissenting). Many of our campaign finance precedents explicitly and forcefully affirm the propriety of such presumptive deference. See, *e. g.*, *McConnell*, 540 U. S., at 158; *Beaumont*, 539 U. S., at 155–156; *NRWC*, 459 U. S., at 209–210. Moreover, "[j]udicial deference is particularly warranted where, as here, we deal with a congressional judgment that has remained essentially unchanged throughout a century of careful legislative adjustment." *Beaumont*, 539 U. S., at 162, n. 9 (internal quotation marks omitted); cf. *Shrink Missouri*, 528 U. S., at 391 ("The quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the justification raised"). In America, incumbent legislators pass the laws that govern campaign finance, just like all other laws. To apply a level of scrutiny that effectively bars them from regulating electioneering whenever there is the faintest whiff of self-interest, is to deprive them of the ability to regulate electioneering.

This is not to say that deference would be appropriate if there were a solid basis for believing that a legislative action was motivated by the desire to protect incumbents or that it will degrade the competitiveness of the electoral process.[68]

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[68] JUSTICE BREYER has suggested that we strike the balance as follows: "We should defer to [the legislature's] political judgment that unlimited spending threatens the integrity of the electoral process. But we should not defer in respect to whether its solution . . . insulates legislators from effective electoral challenge." *Shrink Missouri*, 528 U. S., at 403–404 (concurring opinion).

See *League of United Latin American Citizens* v. *Perry*, 548 U. S. 399, 447 (2006) (STEVENS, J., concurring in part and dissenting in part); *Vieth* v. *Jubelirer*, 541 U. S. 267, 317 (2004) (STEVENS, J., dissenting). Along with our duty to balance competing constitutional concerns, we have a vital role to play in ensuring that elections remain at least minimally open, fair, and competitive. But it is the height of recklessness to dismiss Congress' years of bipartisan deliberation and its reasoned judgment on this basis, without first confirming that the statute in question was intended to be, or will function as, a restraint on electoral competition. "Absent record evidence of invidious discrimination against challengers as a class, a court should generally be hesitant to invalidate legislation which on its face imposes evenhanded restrictions." *Buckley*, 424 U. S., at 31.

We have no record evidence from which to conclude that BCRA § 203, or any of the dozens of state laws that the Court today calls into question, reflects or fosters such invidious discrimination. Our colleagues have opined that "'*any* restriction upon a type of campaign speech that is equally available to challengers and incumbents tends to favor incumbents.'" *McConnell*, 540 U. S., at 249 (opinion of SCALIA, J.). This kind of airy speculation could easily be turned on its head. The electioneering prohibited by § 203 might well tend to favor incumbents, because incumbents have pre-existing relationships with corporations and unions, and groups that wish to procure legislative benefits may tend to support the candidate who, as a sitting officeholder, is already in a position to dispense benefits and is statistically likely to retain office. If a corporation's goal is to induce officeholders to do its bidding, the corporation would do well to cultivate stable, long-term relationships of dependency.

So we do not have a solid theoretical basis for condemning § 203 as a front for incumbent self-protection, and it seems equally if not more plausible that restrictions on corporate electioneering will be self-denying. Nor do we have a good

empirical case for skepticism, as the Court's failure to cite any empirical research attests. Nor does the legislative history give reason for concern. Congress devoted years of careful study to the issues underlying BCRA; "[f]ew legislative proposals in recent years have received as much sustained public commentary or news coverage"; "[p]olitical scientists and academic experts . . . with no self-interest in incumbent protectio[n] were central figures in pressing the case for BCRA"; and the legislation commanded bipartisan support from the outset. Pildes, The Supreme Court 2003 Term Foreword: The Constitutionalization of Democratic Politics, 118 Harv. L. Rev. 28, 137 (2004). Finally, it is important to remember just how incumbent-friendly congressional races were prior to BCRA's passage. As the Solicitor General aptly remarked at the time, "the evidence supports overwhelmingly that incumbents were able to get re-elected under the old system just fine." Tr. of Oral Arg. in *McConnell* v. *FEC*, O. T. 2003, No. 02–1674, p. 61. "It would be hard to develop a scheme that could be better for incumbents." *Id.*, at 63.

In this case, then, "there is no convincing evidence that th[e] important interests favoring expenditure limits are fronts for incumbency protection." *Randall*, 548 U. S., at 279 (STEVENS, J., dissenting). "In the meantime, a legislative judgment that 'enough is enough' should command the greatest possible deference from judges interpreting a constitutional provision that, at best, has an indirect relationship to activity that affects the quantity . . . of repetitive speech in the marketplace of ideas." *Id.*, at 279–280. The majority cavalierly ignores Congress' factual findings and its constitutional judgment: It acknowledges the validity of the interest in preventing corruption, but it effectively discounts the value of that interest to zero. This is quite different from conscientious policing for impermissibly anticompetitive motive or effect in a sensitive First Amendment context.

It is the denial of Congress' authority to regulate corporate spending on elections.

Austin and Corporate Expenditures

Just as the majority gives short shrift to the general societal interests at stake in campaign finance regulation, it also overlooks the distinctive considerations raised by the regulation of *corporate* expenditures. The majority fails to appreciate that *Austin*'s antidistortion rationale is itself an anticorruption rationale, see 494 U. S., at 660 (describing "a different type of corruption"), tied to the special concerns raised by corporations. Understood properly, "antidistortion" is simply a variant on the classic governmental interest in protecting against improper influences on officeholders that debilitate the democratic process. It is manifestly not just an "'equalizing'" ideal in disguise. *Ante*, at 350 (quoting *Buckley*, 424 U. S., at 48).[69]

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[69] THE CHIEF JUSTICE denies this, *ante*, at 380–382, citing scholarship that has interpreted *Austin* to endorse an equality rationale, along with an article by Justice Thurgood Marshall's former law clerk that states that Marshall, the author of *Austin*, accepted "equality of opportunity" and "equalizing access to the political process" as bases for campaign finance regulation, Garrett, New Voices in Politics: Justice Marshall's Jurisprudence on Law and Politics, 52 How. L. J. 655, 667–668 (2009) (internal quotation marks omitted). It is fair to say that *Austin* can bear an egalitarian reading, and I have no reason to doubt this characterization of Justice Marshall's beliefs. But the fact that *Austin* can be read a certain way hardly proves THE CHIEF JUSTICE's charge that there is nothing more to it. Many of our precedents can bear multiple readings, and many of our doctrines have some "equalizing" implications but do not rest on an equalizing theory: for example, our takings jurisprudence and numerous rules of criminal procedure. More importantly, the *Austin* Court expressly declined to rely on a speech-equalization rationale, see 494 U. S., at 660, and we have never understood *Austin* to stand for such a rationale. Whatever his personal views, Justice Marshall simply did not write the opinion that THE CHIEF JUSTICE suggests he did; indeed, he "would have viewed it as irresponsible to write an opinion that boldly staked out a rationale based on equality that no one other than perhaps Justice White would have even considered joining," Garrett, 52 How. L. J., at 674.

1. *Antidistortion*

The fact that corporations are different from human beings might seem to need no elaboration, except that the majority opinion almost completely elides it. *Austin* set forth some of the basic differences. Unlike natural persons, corporations have "limited liability" for their owners and managers, "perpetual life," separation of ownership and control, "and favorable treatment of the accumulation and distribution of assets . . . that enhance their ability to attract capital and to deploy their resources in ways that maximize the return on their shareholders' investments." 494 U. S., at 658–659. Unlike voters in U. S. elections, corporations may be foreign controlled.[70] Unlike other interest groups, business corporations have been "effectively delegated responsibility for ensuring society's economic welfare";[71] they inescapably structure the life of every citizen. "'[T]he resources in the treasury of a business corporation,'" furthermore, "'are not an indication of popular support for the corporation's political ideas.'" *Id.*, at 659 (quoting *MCFL*, 479 U. S., at 258). "'They reflect instead the economically motivated decisions of investors and customers. The availability of these resources may make a corporation a formidable political presence, even though the power of the corporation may be no reflection of the power of its ideas.'" 494 U. S., at 659 (quoting *MCFL*, 479 U. S., at 258).[72]

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[70] In state elections, even domestic corporations may be "foreign" controlled in the sense that they are incorporated in another jurisdiction and primarily owned and operated by out-of-state residents.

[71] Regan, Corporate Speech and Civic Virtue, in Debating Democracy's Discontent 289, 302 (A. Allen & M. Regan eds. 1998) (hereinafter Regan).

[72] Nothing in this analysis turns on whether the corporation is conceptualized as a grantee of a state concession, see, *e. g.*, *Trustees of Dartmouth College* v. *Woodward*, 4 Wheat. 518, 636 (1819) (Marshall, C. J.), a nexus of explicit and implicit contracts, see, *e. g.*, F. Easterbrook & D. Fischel, The Economic Structure of Corporate Law 12 (1991), a mediated hierarchy of stakeholders, see, *e. g.*, Blair & Stout, A Team Production Theory of Corpo-

It might also be added that corporations have no consciences, no beliefs, no feelings, no thoughts, no desires. Corporations help structure and facilitate the activities of human beings, to be sure, and their "personhood" often serves as a useful legal fiction. But they are not themselves members of "We the People" by whom and for whom our Constitution was established.

These basic points help explain why corporate electioneering is not only more likely to impair compelling governmental interests, but also why restrictions on that electioneering are less likely to encroach upon First Amendment freedoms. One fundamental concern of the First Amendment is to "protec[t] the individual's interest in self-expression." *Consolidated Edison Co. of N. Y.* v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 530, 534, n. 2 (1980); see also *Bellotti*, 435 U. S., at 777, n. 12. Freedom of speech helps "make men free to develop their faculties," *Whitney* v. *California*, 274 U. S. 357, 375 (1927) (Brandeis, J., concurring), it respects their "dignity and choice," *Cohen* v. *California*, 403 U. S. 15, 24 (1971), and it facilitates the value of "individual self-realization," Redish, The Value of Free Speech, 130 U. Pa. L. Rev. 591, 594 (1982). Corporate speech, however, is derivative speech, speech by proxy. A regulation such as BCRA § 203 may affect the way in which individuals disseminate certain messages through the corporate form, but it does not prevent anyone from speaking in his or her own voice. "Within the realm of [campaign spending] generally," corporate

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rate Law, 85 Va. L. Rev. 247 (1999) (hereinafter Blair & Stout), or any other recognized model. *Austin* referred to the structure and the advantages of corporations as "state-conferred" in several places, 494 U. S., at 660, 665, 667, but its antidistortion argument relied only on the basic descriptive features of corporations, as sketched above. It is not necessary to agree on a precise theory of the corporation to agree that corporations differ from natural persons in fundamental ways, and that a legislature might therefore need to regulate them differently if it is human welfare that is the object of its concern. Cf. Hansmann & Kraakman 441, n. 5.

spending is "furthest from the core of political expression." *Beaumont*, 539 U. S., at 161, n. 8.

It is an interesting question "who" is even speaking when a business corporation places an advertisement that endorses or attacks a particular candidate. Presumably it is not the customers or employees, who typically have no say in such matters. It cannot realistically be said to be the shareholders, who tend to be far removed from the day-to-day decisions of the firm and whose political preferences may be opaque to management. Perhaps the officers or directors of the corporation have the best claim to be the ones speaking, except their fiduciary duties generally prohibit them from using corporate funds for personal ends. Some individuals associated with the corporation must make the decision to place the ad, but the idea that these individuals are thereby fostering their self-expression or cultivating their critical faculties is fanciful. It is entirely possible that the corporation's electoral message will *conflict* with their personal convictions. Take away the ability to use general treasury funds for some of those ads, and no one's autonomy, dignity, or political equality has been impinged upon in the least.

Corporate expenditures are distinguishable from individual expenditures in this respect. I have taken the view that a legislature may place reasonable restrictions on individuals' electioneering expenditures in the service of the governmental interests explained above, and in recognition of the fact that such restrictions are not direct restraints on speech but rather on its financing. See, *e. g.*, *Randall*, 548 U. S., at 273 (dissenting opinion). But those restrictions concededly present a tougher case, because the primary conduct of actual, flesh-and-blood persons is involved. Some of those individuals might feel that they need to spend large sums of money on behalf of a particular candidate to vindicate the intensity of their electoral preferences. This is obviously not the situation with business corporations, as their routine practice of giving "substantial sums to *both* major national

parties" makes pellucidly clear. *McConnell*, 540 U. S., at 148. "[C]orporate participation" in elections, any business executive will tell you, "is more transactional than ideological." Supp. Brief for Committee for Economic Development as *Amicus Curiae* 10.

In this transactional spirit, some corporations have affirmatively urged Congress to place limits on their electioneering communications. These corporations fear that officeholders will shake them down for supportive ads, that they will have to spend increasing sums on elections in an ever-escalating arms race with their competitors, and that public trust in business will be eroded. See *id.*, at 10–19. A system that effectively forces corporations to use their shareholders' money both to maintain access to, and to avoid retribution from, elected officials may ultimately prove more harmful than beneficial to many corporations. It can impose a kind of implicit tax.[73]

In short, regulations such as § 203 and the statute upheld in *Austin* impose only a limited burden on First Amendment freedoms not only because they target a narrow subset of expenditures and leave untouched the broader "public dialogue," *ante*, at 341, but also because they leave untouched

[73] Not all corporations support BCRA § 203, of course, and not all corporations are large business entities or their tax-exempt adjuncts. Some nonprofit corporations are created for an ideological purpose. Some closely held corporations are strongly identified with a particular owner or founder. The fact that § 203, like the statute at issue in *Austin*, regulates some of these corporations' expenditures does not disturb the analysis above. See 494 U. S., at 661–665. Small-business owners may speak in their own names, rather than the business', if they wish to evade § 203 altogether. Nonprofit corporations that want to make unrestricted electioneering expenditures may do so if they refuse donations from businesses and unions and permit members to disassociate without economic penalty. See *MCFL*, 479 U. S. 238, 264 (1986). Making it plain that their decision is not motivated by a concern about BCRA's coverage of nonprofits that have ideological missions but lack *MCFL* status, our colleagues refuse to apply the Snowe-Jeffords Amendment or the lower courts' *de minimis* exception to *MCFL*. See *ante*, at 327–329.

the speech of natural persons. Recognizing the weakness of a speaker-based critique of *Austin*, the Court places primary emphasis not on the corporation's right to electioneer, but rather on the listener's interest in hearing what every possible speaker may have to say. The Court's central argument is that laws such as § 203 have "'deprived [the electorate] of information, knowledge and opinion vital to its function,'" *ante*, at 354 (quoting *CIO*, 335 U. S., at 144 (Rutledge, J., concurring in result)), and this, in turn, "interferes with the 'open marketplace' of ideas protected by the First Amendment," *ante*, at 354 (quoting *New York State Bd. of Elections* v. *Lopez Torres*, 552 U. S. 196, 208 (2008)).

There are many flaws in this argument. If the overriding concern depends on the interests of the audience, surely the public's perception of the value of corporate speech should be given important weight. That perception today is the same as it was a century ago when Theodore Roosevelt delivered the speeches to Congress that, in time, led to the limited prohibition on corporate campaign expenditures that is overruled today. See *WRTL*, 551 U. S., at 509–510 (Souter, J., dissenting) (summarizing President Roosevelt's remarks). The distinctive threat to democratic integrity posed by corporate domination of politics was recognized at "the inception of the republic" and "has been a persistent theme in American political life" ever since. Regan 302. It is only certain Members of this Court, not the listeners themselves, who have agitated for more corporate electioneering.

Austin recognized that there are substantial reasons why a legislature might conclude that unregulated general treasury expenditures will give corporations "unfai[r] influence" in the electoral process, 494 U. S., at 660, and distort public debate in ways that undermine rather than advance the interests of listeners. The legal structure of corporations allows them to amass and deploy financial resources on a scale few natural persons can match. The structure of a business corporation, furthermore, draws a line between the

corporation's economic interests and the political preferences of the individuals associated with the corporation; the corporation must engage the electoral process with the aim "to enhance the profitability of the company, no matter how persuasive the arguments for a broader or conflicting set of priorities," Brief for American Independent Business Alliance as *Amicus Curiae* 11; see also ALI, Principles of Corporate Governance: Analysis and Recommendations § 2.01(a), p. 55 (1992) ("[A] corporation . . . should have as its objective the conduct of business activities with a view to enhancing corporate profit and shareholder gain"). In a state election such as the one at issue in *Austin*, the interests of nonresident corporations may be fundamentally adverse to the interests of local voters. Consequently, when corporations grab up the prime broadcasting slots on the eve of an election, they can flood the market with advocacy that bears "little or no correlation" to the ideas of natural persons or to any broader notion of the public good, 494 U. S., at 660. The opinions of real people may be marginalized. "The expenditure restrictions of [2 U. S. C.] § 441b are thus meant to ensure that competition among actors in the political arena is truly competition among ideas." *MCFL*, 479 U. S., at 259.

In addition to this immediate drowning out of noncorporate voices, there may be deleterious effects that follow soon thereafter. Corporate "domination" of electioneering, *Austin*, 494 U. S., at 659, can generate the impression that corporations dominate our democracy. When citizens turn on their televisions and radios before an election and hear only corporate electioneering, they may lose faith in their capacity, as citizens, to influence public policy. A Government captured by corporate interests, they may come to believe, will be neither responsive to their needs nor willing to give their views a fair hearing. The predictable result is cynicism and disenchantment: an increased perception that large spenders "'call the tune'" and a reduced "'willingness of voters to take part in democratic governance.'" *McConnell*,

540 U. S., at 144 (quoting *Shrink Missouri*, 528 U. S., at 390). To the extent that corporations are allowed to exert undue influence in electoral races, the speech of the eventual winners of those races may also be chilled. Politicians who fear that a certain corporation can make or break their reelection chances may be cowed into silence about that corporation. On a variety of levels, unregulated corporate electioneering might diminish the ability of citizens to "hold officials accountable to the people," *ante*, at 339, and disserve the goal of a public debate that is "uninhibited, robust, and wide-open," *New York Times Co.* v. *Sullivan*, 376 U. S. 254, 270 (1964). At the least, I stress again, a legislature is entitled to credit these concerns and to take tailored measures in response.

The majority's unwillingness to distinguish between corporations and humans similarly blinds it to the possibility that corporations' "war chests" and their special "advantages" in the legal realm, *Austin*, 494 U. S., at 659 (internal quotation marks omitted), may translate into special advantages in the market for legislation. When large numbers of citizens have a common stake in a measure that is under consideration, it may be very difficult for them to coordinate resources on behalf of their position. The corporate form, by contrast, "provides a simple way to channel rents to only those who have paid their dues, as it were. If you do not own stock, you do not benefit from the larger dividends or appreciation in the stock price caused by the passage of private interest legislation." Sitkoff, Corporate Political Speech, Political Extortion, and the Competition for Corporate Charters, 69 U. Chi. L. Rev. 1103, 1113 (2002). Corporations, that is, are uniquely equipped to seek laws that favor their owners, not simply because they have a lot of money but because of their legal and organizational structure. Remove all restrictions on their electioneering, and the door may be opened to a type of rent seeking that is "far more destructive" than what noncorporations are capable of.

Ibid. It is for reasons such as these that our campaign finance jurisprudence has long appreciated that "the 'differing structures and purposes' of different entities 'may require different forms of regulation in order to protect the integrity of the electoral process.'" *NRWC*, 459 U. S., at 210 (quoting *California Medical Assn.*, 453 U. S., at 201).

The Court's facile depiction of corporate electioneering assumes away all of these complexities. Our colleagues ridicule the idea of regulating expenditures based on "nothing more" than a fear that corporations have a special "ability to persuade," *ante*, at 382 (opinion of ROBERTS, C. J.), as if corporations were our society's ablest debaters and viewpoint-neutral laws such as § 203 were created to suppress their best arguments. In their haste to knock down yet another straw man, our colleagues simply ignore the fundamental concerns of the *Austin* Court and the legislatures that have passed laws like § 203: to safeguard the integrity, competitiveness, and democratic responsiveness of the electoral process. All of the majority's theoretical arguments turn on a proposition with undeniable surface appeal but little grounding in evidence or experience, "that there is no such thing as too much speech," *Austin*, 494 U. S., at 695 (SCALIA, J., dissenting).[74] If individuals in our society had infinite free time to listen to and contemplate every last bit of speech uttered by anyone, anywhere; and if broadcast advertisements had no special ability to influence elections apart from the merits of their arguments (to the extent they make any); and if legislators always operated with nothing less than perfect virtue; then I suppose the majority's premise would be sound. In the real world, we have seen, corporate domination of the airwaves prior to an election may decrease the average listener's exposure to relevant viewpoints, and it may diminish citizens' willingness and capacity to participate in the democratic process.

[74] Of course, no presiding person in a courtroom, legislature, classroom, polling place, or family dinner would take this hyperbole literally.

None of this is to suggest that corporations can or should be denied an opportunity to participate in election campaigns or in any other public forum (much less that a work of art such as *Mr. Smith Goes to Washington* may be banned), or to deny that some corporate speech may contribute significantly to public debate. What it shows, however, is that *Austin*'s "concern about corporate domination of the political process," *id.*, at 659, reflects more than a concern to protect governmental interests outside of the First Amendment. It also reflects a concern to *facilitate* First Amendment values by preserving some breathing room around the electoral "marketplace" of ideas, *ante*, at 335, 350, 354, 367, 369, the marketplace in which the actual people of this Nation determine how they will govern themselves. The majority seems oblivious to the simple truth that laws such as § 203 do not merely pit the anticorruption interest against the First Amendment, but also pit competing First Amendment values against each other. There are, to be sure, serious concerns with any effort to balance the First Amendment rights of speakers against the First Amendment rights of listeners. But when the speakers in question are not real people and when the appeal to "First Amendment principles" depends almost entirely on the listeners' perspective, *ante*, at 319, 363, it becomes necessary to consider how listeners will actually be affected.

In critiquing *Austin*'s antidistortion rationale and campaign finance regulation more generally, our colleagues place tremendous weight on the example of media corporations. See *ante*, at 351–354, 361–362; *ante*, at 372–373, 382 (opinion of ROBERTS, C. J.); *ante*, at 390 (opinion of SCALIA, J.). Yet it is not at all clear that *Austin* would permit § 203 to be applied to them. The press plays a unique role not only in the text, history, and structure of the First Amendment but also in facilitating public discourse; as the *Austin* Court explained, "media corporations differ significantly from other corporations in that their resources are devoted to the collec-

tion of information and its dissemination to the public," 494 U. S., at 667. Our colleagues have raised some interesting and difficult questions about Congress' authority to regulate electioneering by the press, and about how to define what constitutes the press. *But that is not the case before us.* Section 203 does not apply to media corporations, and even if it did, Citizens United is not a media corporation. There would be absolutely no reason to consider the issue of media corporations if the majority did not, first, transform Citizens United's as-applied challenge into a facial challenge and, second, invent the theory that legislatures must eschew all "identity"-based distinctions and treat a local nonprofit news outlet exactly the same as General Motors.[75] This calls to mind George Berkeley's description of philosophers: "[W]e have first raised a dust, and then complain we cannot see." Principles of Human Knowledge/Three Dialogues 38, ¶ 3 (R. Woolhouse ed. 1988).

It would be perfectly understandable if our colleagues feared that a campaign finance regulation such as § 203 may be counterproductive or self-interested, and therefore attended carefully to the choices the Legislature has made. But the majority does not bother to consider such practical matters, or even to consult a record; it simply stipulates that "enlightened self-government" can arise only in the absence of regulation. *Ante,* at 339. In light of the distinctive features of corporations identified in *Austin*, there is no valid basis for this assumption. The marketplace of ideas is not actually a place where items—or laws—are meant to be bought and sold, and when we move from the realm of eco-

[75] Under the majority's view, the legislature is thus damned if it does and damned if it doesn't. If the legislature gives media corporations an exemption from electioneering regulations that apply to other corporations, it violates the newly minted First Amendment rule against identity-based distinctions. If the legislature does not give media corporations an exemption, it violates the First Amendment rights of the press. The only way out of this invented bind: no regulations whatsoever.

nomics to the realm of corporate electioneering, there may be no "reason to think the market ordering is intrinsically good at all," Strauss 1386.

The Court's blinkered and aphoristic approach to the First Amendment may well promote corporate power at the cost of the individual and collective self-expression the Amendment was meant to serve. It will undoubtedly cripple the ability of ordinary citizens, Congress, and the States to adopt even limited measures to protect against corporate domination of the electoral process. Americans may be forgiven if they do not feel the Court has advanced the cause of self-government today.

2. *Shareholder Protection*

There is yet another way in which laws such as §203 can serve First Amendment values. Interwoven with *Austin*'s concern to protect the integrity of the electoral process is a concern to protect the rights of shareholders from a kind of coerced speech: electioneering expenditures that do not "reflec[t] [their] support." 494 U. S., at 660–661. When corporations use general treasury funds to praise or attack a particular candidate for office, it is the shareholders, as the residual claimants, who are effectively footing the bill. Those shareholders who disagree with the corporation's electoral message may find their financial investments being used to undermine their political convictions.

The PAC mechanism, by contrast, helps ensure that those who pay for an electioneering communication actually support its content and that managers do not use general treasuries to advance personal agendas. *Ibid.* It "'allows corporate political participation without the temptation to use corporate funds for political influence, quite possibly at odds with the sentiments of some shareholders or members.'" *McConnell*, 540 U. S., at 204 (quoting *Beaumont*, 539 U. S., at 163). A rule that privileges the use of PACs thus does more than facilitate the political speech of like-minded share-

holders; it also curbs the rent seeking behavior of executives and respects the views of dissenters. *Austin*'s acceptance of restrictions on general treasury spending "simply allows people who have invested in the business corporation for purely economic reasons"—the vast majority of investors, one assumes—"to avoid being taken advantage of, without sacrificing their economic objectives." Winkler, Beyond *Bellotti*, 32 Loyola (LA) L. Rev. 133, 201 (1998).

The concern to protect dissenting shareholders and union members has a long history in campaign finance reform. It provided a central motivation for the Tillman Act in 1907 and subsequent legislation, see *Pipefitters* v. *United States*, 407 U. S. 385, 414–415 (1972); Winkler, 92 Geo. L. J., at 887–900, and it has been endorsed in a long line of our cases, see, *e. g.*, *McConnell*, 540 U. S., at 204–205; *Beaumont*, 539 U. S., at 152–154; *MCFL*, 479 U. S., at 258; *NRWC*, 459 U. S., at 207–208; *Pipefitters*, 407 U. S., at 414–416; see also n. 60, *supra*. Indeed, we have unanimously recognized the governmental interest in "protect[ing] the individuals who have paid money into a corporation or union for purposes other than the support of candidates from having that money used to support political candidates to whom they may be opposed." *NRWC*, 459 U. S., at 207–208.

The Court dismisses this interest on the ground that abuses of shareholder money can be corrected "through the procedures of corporate democracy," *ante*, at 362 (internal quotation marks omitted), and, it seems, through Internet-based disclosures, *ante*, at 370–371.[76] I fail to understand

[76] I note that, among the many other regulatory possibilities it has left open, ranging from new versions of § 203 supported by additional evidence of *quid pro quo* corruption or its appearance to any number of tax incentive or public financing schemes, today's decision does not require that a legislature rely solely on these mechanisms to protect shareholders. Legislatures remain free in their incorporation and tax laws to condition the types of activity in which corporations may engage, including electioneering activity, on specific disclosure requirements or on prior express approval by shareholders or members.

how this addresses the concerns of dissenting union members, who will also be affected by today's ruling, and I fail to understand why the Court is so confident in these mechanisms. By "corporate democracy," presumably the Court means the rights of shareholders to vote and to bring derivative suits for breach of fiduciary duty. In practice, however, many corporate lawyers will tell you that "these rights are so limited as to be almost nonexistent," given the internal authority wielded by boards and managers and the expansive protections afforded by the business judgment rule. Blair & Stout 320; see also *id.*, at 298–315; Winkler, 32 Loyola (LA) L. Rev., at 165–166, 199–200. Modern technology may help make it easier to track corporate activity, including electoral advocacy, but it is utopian to believe that it solves the problem. Most American households that own stock do so through intermediaries such as mutual funds and pension plans, see Evans, A Requiem for the Retail Investor? 95 Va. L. Rev. 1105 (2009), which makes it more difficult both to monitor and to alter particular holdings. Studies show that a majority of individual investors make no trades at all during a given year. *Id.*, at 1117. Moreover, if the corporation in question operates a PAC, an investor who sees the company's ads may not know whether they are being funded through the PAC or through the general treasury.

If and when shareholders learn that a corporation has been spending general treasury money on objectionable electioneering, they can divest. Even assuming that they reliably learn as much, however, this solution is only partial. The injury to the shareholders' expressive rights has already occurred; they might have preferred to keep that corporation's stock in their portfolio for any number of economic reasons; and they may incur a capital gains tax or other penalty from selling their shares, changing their pension plan, or the like. The shareholder protection rationale has been criticized as underinclusive, in that corporations also spend money on lobbying and charitable contributions in ways that any particu-

lar shareholder might disapprove. But those expenditures do not implicate the selection of public officials, an area in which "the interests of unwilling . . . corporate shareholders [in not being] forced to subsidize that speech" "are at their zenith." *Austin*, 494 U. S., at 677 (Brennan, J., concurring). And in any event, the question is whether shareholder protection provides a basis for regulating expenditures in the weeks before an election, not whether additional types of corporate communications might similarly be conditioned on voluntariness.

Recognizing the limits of the shareholder protection rationale, the *Austin* Court did not hold it out as an adequate and independent ground for sustaining the statute in question. Rather, the Court applied it to reinforce the antidistortion rationale, in two main ways. First, the problem of dissenting shareholders shows that even if electioneering expenditures can advance the political views of some members of a corporation, they will often compromise the views of others. See, *e. g.*, *id.*, at 663 (discussing risk that corporation's "members may be . . . reluctant to withdraw as members even if they disagree with [its] political expression"). Second, it provides an additional reason, beyond the distinctive legal attributes of the corporate form, for doubting that these "expenditures reflect actual public support for the political ideas espoused," *id.*, at 660. The shareholder protection rationale, in other words, bolsters the conclusion that restrictions on corporate electioneering can serve both speakers' and listeners' interests, as well as the anticorruption interest. And it supplies yet another reason why corporate expenditures merit less protection than individual expenditures.

V

Today's decision is backwards in many senses. It elevates the majority's agenda over the litigants' submissions, facial attacks over as-applied claims, broad constitutional theories

over narrow statutory grounds, individual dissenting opinions over precedential holdings, assertion over tradition, absolutism over empiricism, rhetoric over reality. Our colleagues have arrived at the conclusion that *Austin* must be overruled and that § 203 is facially unconstitutional only after mischaracterizing both the reach and rationale of those authorities, and after bypassing or ignoring rules of judicial restraint used to cabin the Court's lawmaking power. Their conclusion that the societal interest in avoiding corruption and the appearance of corruption does not provide an adequate justification for regulating corporate expenditures on candidate elections relies on an incorrect description of that interest, along with a failure to acknowledge the relevance of established facts and the considered judgments of state and federal legislatures over many decades.

In a democratic society, the longstanding consensus on the need to limit corporate campaign spending should outweigh the wooden application of judge-made rules. The majority's rejection of this principle "elevate[s] corporations to a level of deference which has not been seen at least since the days when substantive due process was regularly used to invalidate regulatory legislation thought to unfairly impinge upon established economic interests." *Bellotti*, 435 U. S., at 817, n. 13 (White, J., dissenting). At bottom, the Court's opinion is thus a rejection of the common sense of the American people, who have recognized a need to prevent corporations from undermining self-government since the founding, and who have fought against the distinctive corrupting potential of corporate electioneering since the days of Theodore Roosevelt. It is a strange time to repudiate that common sense. While American democracy is imperfect, few outside the majority of this Court would have thought its flaws included a dearth of corporate money in politics.

I would affirm the judgment of the District Court.

JUSTICE THOMAS, concurring in part and dissenting in part.

I join all but Part IV of the Court's opinion.

Political speech is entitled to robust protection under the First Amendment. Section 203 of the Bipartisan Campaign Reform Act of 2002 (BCRA) has never been reconcilable with that protection. By striking down § 203, the Court takes an important first step toward restoring full constitutional protection to speech that is "indispensable to the effective and intelligent use of the processes of popular government." *McConnell* v. *Federal Election Comm'n*, 540 U. S. 93, 265 (2003) (THOMAS, J., concurring in part, concurring in judgment in part, and dissenting in part) (internal quotation marks omitted). I dissent from Part IV of the Court's opinion, however, because the Court's constitutional analysis does not go far enough. The disclosure, disclaimer, and reporting requirements in BCRA §§ 201 and 311 are also unconstitutional. See *id.*, at 275–277, and n. 10.

Congress may not abridge the "right to anonymous speech" based on the "'simple interest in providing voters with additional relevant information,'" *id.*, at 276 (quoting *McIntyre* v. *Ohio Elections Comm'n*, 514 U. S. 334, 348 (1995)). In continuing to hold otherwise, the Court misapprehends the import of "recent events" that some *amici* describe "in which donors to certain causes were blacklisted, threatened, or otherwise targeted for retaliation." *Ante*, at 370. The Court properly recognizes these events as "cause for concern," *ibid.*, but fails to acknowledge their constitutional significance. In my view, *amici*'s submissions show why the Court's insistence on upholding §§ 201 and 311 will ultimately prove as misguided (and ill fated) as was its prior approval of § 203.

Amici's examples relate principally to Proposition 8, a state ballot proposition that California voters narrowly passed in the 2008 general election. Proposition 8 amended

California's Constitution to provide that "[o]nly marriage between a man and a woman is valid or recognized in California." Cal. Const., Art. I, § 7.5. Any donor who gave more than $100 to any committee supporting or opposing Proposition 8 was required to disclose his full name, street address, occupation, employer's name (or business name, if self-employed), and the total amount of his contributions.[1] See Cal. Govt. Code Ann. § 84211(f) (West 2005). The California Secretary of State was then required to post this information on the Internet. See §§ 84600–84601; §§ 84602–84602.1 (West Supp. 2010); §§ 84602.5–84604 (West 2005); § 85605 (West Supp. 2010); §§ 84606–84609 (West 2005).

Some opponents of Proposition 8 compiled this information and created Web sites with maps showing the locations of homes or businesses of Proposition 8 supporters. Many supporters (or their customers) suffered property damage, or threats of physical violence or death, as a result. They cited these incidents in a complaint they filed after the 2008 election, seeking to invalidate California's mandatory disclosure laws. Supporters recounted being told: "'Consider yourself lucky. If I had a gun I would have gunned you down along with each and every other supporter,'" or, "'we have plans for you and your friends.'" Complaint in *ProtectMarriage.com—Yes on 8* v. *Bowen*, Case No. 2:09–cv–00058–MCE–DAD (ED Cal.), ¶ 31. Proposition 8 opponents also allegedly harassed the measure's supporters by defacing or damaging their property. *Id.*, ¶ 32. Two religious organizations supporting Proposition 8 reportedly received through the mail envelopes containing a white powdery substance. *Id.*, ¶ 33.

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[1] BCRA imposes similar disclosure requirements. See, *e. g.*, 2 U. S. C. § 434(f)(2)(F) ("Every person who makes a disbursement for the direct costs of producing and airing electioneering communications in an aggregate amount in excess of $10,000 during any calendar year" must disclose "the names and addresses of all contributors who contributed an aggregate amount of $1,000 or more to the person making the disbursement").

Those accounts are consistent with media reports describing Proposition 8-related retaliation. The director of the nonprofit California Musical Theater gave $1,000 to support the initiative; he was forced to resign after artists complained to his employer. Lott & Smith, Donor Disclosure Has Its Downsides, Wall Street Journal, Dec. 26, 2008, p. A13. The director of the Los Angeles Film Festival was forced to resign after giving $1,500 because opponents threatened to boycott and picket the next festival. *Ibid.* And a woman who had managed her popular, family-owned restaurant for 26 years was forced to resign after she gave $100, because "throngs of [angry] protesters" repeatedly arrived at the restaurant and "shout[ed] 'shame on you' at customers." Lopez, Prop. 8 Stance Upends Her Life, Los Angeles Times, Dec. 14, 2008, p. B1. The police even had to "arriv[e] in riot gear one night to quell the angry mob" at the restaurant. *Ibid.* Some supporters of Proposition 8 engaged in similar tactics; one real estate businessman in San Diego who had donated to a group opposing Proposition 8 "received a letter from the Prop. 8 Executive Committee threatening to publish his company's name if he didn't also donate to the 'Yes on 8' campaign." Donor Disclosure, *supra*, at A13.

The success of such intimidation tactics has apparently spawned a cottage industry that uses forcibly disclosed donor information to *pre-empt* citizens' exercise of their First Amendment rights. Before the 2008 Presidential election, a "newly formed nonprofit group . . . plann[ed] to confront donors to conservative groups, hoping to create a chilling effect that will dry up contributions." Luo, Group Plans Campaign Against G.O.P. Donors, N. Y. Times, Aug. 8, 2008, p. A15. Its leader, "who described his effort as 'going for the jugular,'" detailed the group's plan to send a "warning letter . . . alerting donors who might be considering giving to right-wing groups to a variety of potential dangers, including

legal trouble, public exposure and watchdog groups digging through their lives." *Ibid.*

These instances of retaliation sufficiently demonstrate why this Court should invalidate mandatory disclosure and reporting requirements. But *amici* present evidence of yet another reason to do so—the threat of retaliation from *elected officials*. As *amici*'s submissions make clear, this threat extends far beyond a single ballot proposition in California. For example, a candidate challenging an incumbent state attorney general reported that some members of the State's business community feared donating to his campaign because they did not want to cross the incumbent; in his words, "'I go to so many people and hear the same thing: "I sure hope you beat [the incumbent], but I can't afford to have my name on your records. He might come after me next."'" Strassel, Challenging Spitzerism at the Polls, Wall Street Journal, Aug. 1, 2008, p. A11. The incumbent won reelection in 2008.

My point is not to express any view on the merits of the political controversies I describe. Rather, it is to demonstrate—using real-world, recent examples—the fallacy in the Court's conclusion that "[d]isclaimer and disclosure requirements . . . impose no ceiling on campaign-related activities, and do not prevent anyone from speaking." *Ante*, at 366 (internal quotation marks and citation omitted). Of course they do. Disclaimer and disclosure requirements enable private citizens and elected officials to implement political strategies *specifically calculated* to curtail campaign-related activity and prevent the lawful, peaceful exercise of First Amendment rights.

The Court nevertheless insists that as-applied challenges to disclosure requirements will suffice to vindicate those speech rights, as long as potential plaintiffs can "show a reasonable probability that disclosure . . . will subject them to threats, harassment, or reprisals from either Government of-

ficials or private parties." *Ante*, at 367 (internal quotation marks omitted). But the Court's opinion itself proves the irony in this compromise. In correctly explaining why it must address the facial constitutionality of § 203, see *ante*, at 322–336, the Court recognizes that "[t]he First Amendment does not permit laws that force speakers to . . . seek declaratory rulings before discussing the most salient political issues of our day," *ante*, at 324; that as-applied challenges to § 203 "would require substantial litigation over an extended time" and result in an "interpretive process [that] itself would create an inevitable, pervasive, and serious risk of chilling protected speech pending the drawing of fine distinctions that, in the end, would themselves be questionable," *ante*, at 326–327; that "a court would be remiss in performing its duties were it to accept an unsound principle merely to avoid the necessity of making a broader ruling," *ante*, at 329; and that avoiding a facial challenge to § 203 "would prolong the substantial, nationwide chilling effect" that § 203 causes, *ante*, at 333. This logic, of course, applies equally to as-applied challenges to §§ 201 and 311.

Irony aside, the Court's promise that as-applied challenges will adequately protect speech is a hollow assurance. Now more than ever, §§ 201 and 311 will chill protected speech because—as California voters can attest—"the advent of the Internet" enables "prompt disclosure of expenditures," which "provide[s]" political opponents "with the information needed" to intimidate and retaliate against their foes. *Ante*, at 370. Thus, "disclosure permits citizens . . . to react to the speech of [their political opponents] in a proper"—or undeniably *improper*—"way" long before a plaintiff could prevail on an as-applied challenge.[2] *Ante*, at 371.

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[2] But cf. *Hill* v. *Colorado*, 530 U. S. 703, 707–710 (2000) (approving a statute restricting speech "within 100 feet" of abortion clinics because it protected women seeking an abortion from " 'sidewalk counseling,' " which "consists of efforts 'to educate, counsel, persuade, or inform passersby about abortion and abortion alternatives by means of verbal or written

I cannot endorse a view of the First Amendment that subjects citizens of this Nation to death threats, ruined careers, damaged or defaced property, or pre-emptive and threatening warning letters as the price for engaging in "core political speech, the 'primary object of First Amendment protection.'" *McConnell*, 540 U. S., at 264 (THOMAS, J., concurring in part, concurring in judgment in part, and dissenting in part) (quoting *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S. 377, 410–411 (2000) (THOMAS, J., dissenting)). Accordingly, I respectfully dissent from the Court's judgment upholding BCRA §§ 201 and 311.

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speech,'" and which "sometimes" involved "strong and abusive language in face-to-face encounters").

Reporter's Note

The next page is purposely numbered 801. The numbers between 485 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 5, 2009, THROUGH JANUARY 19, 2010

OCTOBER 5, 2009

Certiorari Granted—Vacated and Remanded

No. 08–906. AFANWI *v.* HOLDER, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the position asserted by the Solicitor General in her brief for respondent filed August 26, 2009. Reported below: 526 F. 3d 788.

No. 08–10150. FRANKEL *v.* UNITED STATES. C. A. 2d 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 position asserted by the Solicitor General in her brief for respondent filed August 4, 2009.

No. 09–5115. HAMILTON *v.* MASSACHUSETTS. App. Ct. Mass. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Melendez-Diaz* v. *Massachusetts*, 557 U. S. 305 (2009). Reported below: 73 Mass. App. 1122, 900 N. E. 2d 914.

Certiorari Dismissed

No. 08–10117. BOYD *v.* WACHOVIA BANK N. A. ET AL. 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. 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: 308 Fed. Appx. 582.

No. 08–10168. HERSHIPS *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–10266. HOBLEY *v.* DISTRICT OF COLUMBIA. 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. 08–10401. HARRIS *v.* WALKER, WARDEN, 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.

No. 08–10457. CASTILLO *v.* GUIDRY. Ct. App. La., 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 995 So. 2d 50.

No. 08–10490. MCCRIGHT *v.* EVANS, WARDEN. 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. Reported below: 299 Fed. Appx. 743.

No. 08–10543. KARNOFEL *v.* GIRARD POLICE DEPARTMENT ET AL. Ct. App. Ohio, Trumbull County. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–10578. WELLS *v.* VASQUEZ, WARDEN. 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. 08–10595. MCGOWAN *v.* TENNESSEE. Ct. Crim. App. Tenn. 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 non-

criminal 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. 08–10619. ASEMANI *v.* ISLAMIC REPUBLIC OF IRAN ET AL. 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. Reported below: 322 Fed. Appx. 1.

No. 08–10650. DASISA *v.* UNIVERSITY OF MASSACHUSETTS BOARD OF TRUSTEES. C. A. 1st Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–10685. ASEMANI *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 328 Fed. Appx. 211.

No. 08–10783. SMITH *v.* CHARLESTON COUNTY SCHOOL DISTRICT ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 318 Fed. Appx. 193.

No. 08–10847. SIMMONS *v.* FLECKER. 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. 08–10890. SWAIN *v.* SMALL, WARDEN. 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. 08–10899. PENK *v.* COFFMAN, SECRETARY OF STATE OF COLORADO, ET AL. Sup. Ct. Colo. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–10923. SHABAZZ *v.* CALIFORNIA. Sup. Ct. Cal. 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. 08–10930. BROWN *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.

No. 08–10954. ASEMANI *v.* MARYLAND ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 325 Fed. Appx. 244.

No. 08–10969. ASEMANI *v.* FISHER 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. Reported below: 326 Fed. Appx. 210.

No. 08–10986. STRONG *v.* ILLINOIS DEPARTMENT OF HUMAN SERVICES. 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. Reported below: 299 Fed. Appx. 577.

No. 08–10989. DADE *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO. 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. 08–11013. ASEMANI *v.* SMITH ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 336 Fed. Appx. 336.

No. 08–11035. DEY *v.* CALIFORNIA. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–11118. FRANCIS *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.

No. 09–5029. MARTIN *v.* CALIFORNIA. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 09–5055. FENLON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. 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.

No. 09–5074. WAKEFIELD *v.* CORDIS CORP. 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: 304 Fed. Appx. 804.

No. 09–5078. JERRY *v.* PENNSYLVANIA. Super. Ct. Pa. 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: 964 A. 2d 943.

No. 09–5096. HOWARD *v.* INDUSTRIAL COMMISSION OF OHIO ET AL. Sup. Ct. Ohio. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 122 Ohio St. 3d 1417, 908 N. E. 2d 428.

No. 09–5099. YOUNG *v.* DEPARTMENT OF JUSTICE 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: 316 Fed. Appx. 764.

No. 09–5111. SIMMONS *v.* 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.

No. 09–5142. REDFORD *v.* REDFORD. Ct. App. Ga. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 09–5146. ASEMANI *v.* AHMADINEJAD, PRESIDENT OF THE ISLAMIC REPUBLIC OF IRAN. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 09–5190. REGER *v.* WALKER 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. Reported below: 312 Fed. Appx. 624.

No. 09–5214. EDMOND *v.* MISSISSIPPI. Sup. Ct. Miss. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 991 So. 2d 588.

No. 09–5281. BUTCHER *v.* GUTHRIE, JUDGE, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, 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. Reported below: 332 Fed. Appx. 161.

No. 09–5289. MOORE *v.* SCHUETZLE, WARDEN. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 09–5290. MUNIZ *v.* NEW MEXICO. Sup. Ct. N. M. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 146 N. M. 642, 213 P. 3d 792.

No. 09–5356. CURTO *v.* SIWEK. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. JUSTICE SOTOMAYOR took no part in the consideration or decision of this motion and this petition. Reported below: 322 Fed. Appx. 62.

No. 09–5383. GLOVER *v.* THURMER, 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. 09–5398. JAFFE *v.* US AIRWAYS, INC., ET AL. Ct. App. Ariz. 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. 09–5436. CRUTCHER *v.* WILLIAMS, WARDEN, 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.

No. 09–5451. RUSTON *v.* DALLAS COUNTY, TEXAS, 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. Reported below: 320 Fed. Appx. 262.

No. 09–5488. WALLACE *v.* MOBERG 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.

No. 09–5512. BROWN *v.* RIVERA, WARDEN. 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.

No. 09–5576. SMITH *v.* WRIGLEY, SUPERINTENDENT, NEW CASTLE CORRECTIONAL FACILITY. 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. 09–5630. ODUOK *v.* FERRO 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: 303 Fed. Appx. 790.

No. 09–5790. SIBLEY *v.* GRIEVANCE COMMITTEE OF THE SEVENTH JUDICIAL DISTRICT. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 61 App. Div. 3d 85, 874 N. Y. S. 2d 338.

No. 09–5800. DANSER *v.* LAWRENCE, JUDGE, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA. 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.

No. 09–5856. WAGNER *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 314 Fed. Appx. 626.

No. 09–5878. CHILDS *v.* WEINSHIENK, SENIOR JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO. 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: 320 Fed. Appx. 860.

No. 09–6054. VOINCHE *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA 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. Reported below: 327 Fed. Appx. 525.

Miscellaneous Orders

No. 08A1098 (08–1204). GIMBEL *v.* CALIFORNIA ET AL., 556 U. S. 1269. Application for leave to file petition for rehearing in excess of the word limit, addressed to JUSTICE GINSBURG and referred to the Court, denied.

No. 09A140 (09–246). BRIDGEPORT ROMAN CATHOLIC DIOCESAN CORP. *v.* NEW YORK TIMES CO. ET AL. Sup. Ct. Conn. Application for stay, addressed to JUSTICE SCALIA and referred to the Court, denied.

No. 08M92. TORRES *v.* AMERADA HESS CORP.;

No. 09M12. ROBERSON *v.* LFI FORT PIERCE, INC., ET AL.; and

No. 09M17. ABERCROMBIE *v.* DEPARTMENT OF AGRICULTURE. Motions to direct the Clerk to file petitions for writs of certiorari out of time under this Court's Rule 14.5 denied.

No. 09M1. STURDIVANT *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA;

No. 09M2. JONES *v.* GENERAL NUTRITION CENTERS, INC.;

No. 09M4. SCOHY *v.* SAND RIVER PROPERTIES, LLC;

No. 09M5. FRAZIER *v.* RILEY ET AL.;

No. 09M7. MOTTRAM *v.* DAVIS, WARDEN;

No. 09M8. COTTINGHAM *v.* POLICY STUDIES, INC.;

No. 09M9. VANG *v.* MCDONALD, ACTING WARDEN;

No. 09M10. EICHWEDEL *v.* ILLINOIS;

No. 09M13. BENITEZ *v.* SODEXHO MARRIOTT SERVICES;

No. 09M16. VANN *v.* UNITED AIRLINES, INC.;

No. 09M18. SELENSKY *v.* ALABAMA;

No. 09M19. SANDERS *v.* NORTH CAROLINA ET AL.;

No. 09M20. NDUKWE *v.* VIOLETTE ET AL.;

No. 09M21. SOLOMON *v.* PHILADELPHIA NEWSPAPERS ET AL.;

No. 09M22. HALE *v.* RIGGINS ET AL.;

No. 09M23. RILEY *v.* PENNSYLVANIA UNEMPLOYMENT COMPENSATION BOARD OF REVIEW;

No. 09M24. SANDERS *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL.;

No. 09M25. WATSON *v.* PRESLESNIK, WARDEN; and

No. 09M26. WEST *v.* UNITED STATES. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 09M3. MOORE *v.* ADVENTIST HEALTH SYSTEM/GEORGIA INC. ET AL.;

No. 09M6. LACEN-BERRIOS *v.* UNITED STATES;

No. 09M14. SEALED PETITIONER *v.* UNITED STATES; and

No. 09M15. SEALED PETITIONERS *v.* UNITED STATES. Motions for leave to file petitions for writs of certiorari under seal with redacted copies for the public record granted.

No. 09M11. STAUB *v.* PROCTOR HOSPITAL. Motion for leave to proceed as a veteran 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 $6,910.61 for the period July 1, 2008, through June 30, 2009, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 555 U. S. 806.]

No. 137, Orig. MONTANA *v.* WYOMING ET AL. Motion of the Special Master for allowance of fees and reimbursement of ex-

penses granted, and the Special Master is awarded a total of $40,808.96 for the period October 20, 2008, through June 12, 2009, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 555 U. S. 968.]

No. 08–472. SALAZAR, SECRETARY OF THE INTERIOR, ET AL. *v.* BUONO. C. A. 9th Cir. [Certiorari granted, 555 U. S. 1169.] Motion of Veterans of Foreign Wars of the United States et al. for leave to intervene denied.

No. 08–538. SCHWAB *v.* REILLY. C. A. 3d Cir. [Certiorari granted, 556 U. S. 1207.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 08–586. JONES ET AL. *v.* HARRIS ASSOCIATES L. P. C. A. 7th Cir. [Certiorari granted, 556 U. S. 1104.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 08–674. NRG POWER MARKETING, LLC, ET AL. *v.* MAINE PUBLIC UTILITIES COMMISSION ET AL. C. A. D. C. Cir. [Certiorari granted, 556 U. S. 1207.] Motion of the Solicitor General for divided argument granted.

No. 08–911. KUCANA *v.* HOLDER, ATTORNEY GENERAL. C. A. 7th Cir. [Certiorari granted, 556 U. S. 1207.] Motion of the Solicitor General for divided argument granted.

No. 08–1151. STOP THE BEACH RENOURISHMENT, INC. *v.* FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION ET AL. Sup. Ct. Fla. [Certiorari granted, 557 U. S. 903.] Motion of Owners' Counsel of America for leave to file a brief as *amicus curiae* out of time granted.

No. 08–1200. JERMAN *v.* CARLISLE, MCNELLIE, RINI, KRAMER & ULRICH LPA ET AL. C. A. 6th Cir. [Certiorari granted, 557 U. S. 933.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 08–1314. WILLIAMSON ET AL. *v.* MAZDA MOTOR OF AMERICA, INC., ET AL. Ct. App. Cal., 4th App. Dist., Div. 3;

No. 08–1423. COSTCO WHOLESALE CORP. *v.* OMEGA, S. A. C. A. 9th Cir.;

No. 08–1458. MISSOURI GAS ENERGY *v.* SCHMIDT, WOODS COUNTY, OKLAHOMA, ASSESSOR. Sup. Ct. Okla.; and

No. 08–1515. GOLDEN GATE RESTAURANT ASSN. *v.* CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA, ET AL. C. A. 9th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 08–1596. RHINE *v.* DEATON ET UX. Ct. App. Tex., 2d Dist. The Solicitor General of Texas is invited to file a brief in this case expressing the views of the State of Texas.

No. 08–7412. GRAHAM *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. [Certiorari granted, 556 U. S. 1220.] Motion of petitioner for appointment of counsel granted. Bryan S. Gowdy, Esq., of Jacksonville, Fla., is appointed to serve as counsel for petitioner in this case.

No. 08–8224. BURKE *v.* ANISKOVICH ET AL. C. A. 2d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [556 U. S. 1150] denied.

No. 08–9547. IN RE MINNFEE. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [556 U. S. 1268] denied.

No. 08–9603. IN RE HADDAD. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [556 U. S. 1281] denied.

No. 08–9685. VEALE ET AL. *v.* UNITED STATES ET AL. C. A. 1st Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [556 U. S. 1256] denied.

No. 08–9822. BAGLEY *v.* SOUTH CAROLINA. Sup. Ct. S. C. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [557 U. S. 902] granted. Order entered June 15, 2009, vacated.

No. 08–10258. HAYES *v.* UNITED STATES. C. A. Fed. Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [557 U. S. 917] denied.

No. 08–10306. IN RE FARLEY. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [556 U. S. 1280] denied.

No. 08–10333. MOORE *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [557 U. S. 901] denied.

No. 08–10440. FORD *v.* CHRISTIANA CARE HEALTH SYSTEMS ET AL. C. A. 3d Cir.;

No. 08–10625. GWANJUN KIM *v.* DEPARTMENT OF LABOR ET AL. C. A. 6th Cir.;

No. 08–10997. WILLIAMS *v.* CHURCH'S CHICKEN ET AL. Ct. App. Cal., 2d App. Dist.;

No. 09–5205. NICOLOUDAKIS *v.* ABRAHAM, PHILADELPHIA DISTRICT ATTORNEY, ET AL. C. A. 3d Cir.;

No. 09–5294. ORTEGA *v.* NAPA COUNTY, CALIFORNIA. Ct. App. Cal., 1st App. Dist.;

No. 09–5305. CORINES *v.* BROWARD COUNTY SHERIFF'S DEPARTMENT ET AL. C. A. 11th Cir.;

No. 09–5346. POTTER *v.* SOUTH COAST PLUMBING SYSTEMS, INC., ET AL. Ct. App. Cal., 4th App. Dist., Div. 2;

No. 09–5400. MENKE *v.* GADDY ET AL. Ct. App. N. M.;

No. 09–5448. RODRIGUEZ *v.* QUALITY ENGINEERING PRODUCTS ET AL. Dist. Ct. App. Fla., 1st Dist.;

No. 09–5496. ABBEY *v.* UNITED STATES. C. A. 11th Cir.;

No. 09–5515. QUINN *v.* UNITED STATES. C. A. 10th Cir.; and

No. 09–5728. HOLLIS *v.* UNITED STATES. C. A. 7th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until October 26, 2009, 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. 08–10564. IN RE SMITH;

No. 08–10988. IN RE CORINES;

No. 08–11038. IN RE SIMMONS;

No. 08–11050. IN RE SALAZAR;

No. 09–5139. IN RE ORTIZ;

No. 09–5156. IN RE MORRISON;

No. 09–5213. IN RE MARTINEZ;

No. 09–5308. IN RE JOHNSON;

No. 09–5606. IN RE STAMPS;

No. 09–5696. IN RE USHER;

No. 09–5719. IN RE BOJONQUEZ;

No. 09–5753. IN RE GORDON;

No. 09–5754. IN RE HERNANDEZ;
No. 09–5755. IN RE TAPIA-FIERRO;
No. 09–5803. IN RE SCHMIDT;
No. 09–5873. IN RE MORRIS;
No. 09–5880. IN RE COPPAGE;
No. 09–5882. IN RE NEAL-EL;
No. 09–5907. IN RE YORK;
No. 09–5912. IN RE BUTLER;
No. 09–5948. IN RE DEL TORO;
No. 09–5953. IN RE DAVIES;
No. 09–6049. IN RE CARTER;
No. 09–6145. IN RE JACKSON; and
No. 09–6189. IN RE BUSH. Petitions for writs of habeas corpus denied.

No. 08–10784. IN RE SMITH;
No. 08–10886. IN RE ALPINE;
No. 09–5106. IN RE SINQUEFIELD;
No. 09–5122. IN RE SHERRATT;
No. 09–5768. IN RE MILLER;
No. 09–5814. IN RE TREECE;
No. 09–5945. IN RE WILLIAMS;
No. 09–6154. IN RE MILLEN; and
No. 09–6233. IN RE CLUCK. Motions of petitioners for leave to proceed *in forma pauperis* denied, and petitions for writs of habeas corpus dismissed. See this Court's Rule 39.8.

No. 09–6291. IN RE BENNETT. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus 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. 08–1559. IN RE CORRIGAN;
No. 08–10443. IN RE RICHARD;
No. 08–10712. IN RE STONIER;
No. 08–10759. IN RE MANSHIP;
No. 08–10927. IN RE ROBERTS;

No. 08–10974. IN RE SHELTON;
No. 08–11007. IN RE BROWN;
No. 08–11123. IN RE WINNS;
No. 09–211. IN RE FLEMING ET UX.;
No. 09–5332. IN RE ROBINSON;
No. 09–5487. IN RE VANN; and
No. 09–5876. IN RE DALEY. Petitions for writs of mandamus denied.

No. 09–5612. IN RE BRAVO. 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. 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. 08–1549. IN RE BIRKS;
No. 08–11003. IN RE SINGLETARY;
No. 08–11070. IN RE AUGUSTIN; and
No. 09–5411. IN RE ARNOLD. Petitions for writs of mandamus and/or prohibition denied.

No. 08–10356. IN RE ALPINE;
No. 08–10732. IN RE ALPINE;
No. 08–10846. IN RE MICHALSKI;
No. 09–5098. IN RE FOOSE;
No. 09–5442. IN RE HILL; and
No. 09–5595. IN RE MUHAMMAD. Motions of petitioners for leave to proceed *in forma pauperis* denied, and petitions for writs of mandamus and/or prohibition dismissed. See this Court's Rule 39.8.

No. 08–10941. IN RE TELEMAQUE. Petition for writ of prohibition denied.

Certiorari Denied

No. 08–1048. MARQUARDT *v.* SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 5th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 112.

No. 08–1082. CITY OF MAYWOOD, CALIFORNIA, ET AL. *v.* DENSMORE. C. A. 9th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 497.

No. 08–1097. ADAM ET AL. *v.* SALAZAR, SECRETARY OF THE INTERIOR. C. A. 9th Cir. Certiorari denied. Reported below: 292 Fed. Appx. 646.

No. 08–1100. PIRANT *v.* UNITED STATES POSTAL SERVICE. C. A. 7th Cir. Certiorari denied. Reported below: 542 F. 3d 202.

No. 08–1117. BOWEN *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 215 Ore. App. 199, 168 P. 3d 1208, and 220 Ore. App. 380, 185 P. 3d 1129.

No. 08–1122. CLARK ET AL. *v.* JENKINS. Ct. App. Tex., 7th Dist. Certiorari denied. Reported below: 248 S. W. 3d 418.

No. 08–1133. WUTERICH *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 67 M. J. 63.

No. 08–1144. J. L. SPOONS, INC., ET AL. *v.* GUZMAN, DIRECTOR, OHIO DEPARTMENT OF PUBLIC SAFETY, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 538 F. 3d 379.

No. 08–1172. NACCHIO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 555 F. 3d 1234.

No. 08–1176. FORD *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 548 F. 3d 1.

No. 08–1184. BOWMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 564 F. 3d 765.

No. 08–1188. ROBINSON *v.* OHIO. Ct. App. Ohio, Lucas County. Certiorari denied.

No. 08–1205. BOTES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 316.

No. 08–1213. CARUSO, DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS, ET AL. *v.* BAZZETTA ET AL.; and

No. 08–1345. BAZZETTA ET AL. *v.* CARUSO, DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 290 Fed. Appx. 905.

No. 08–1216. BARRY *v.* HOLDER, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 305 Fed. Appx. 631.

No. 08–1232. CARLYLE FORTRAN TRUST *v.* nVIDIA CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 302 Fed. Appx. 514.

No. 08–1238. STOYANOV *v.* MABUS, SECRETARY OF THE NAVY, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 305 Fed. Appx. 945.

No. 08–1245. NATIONAL TAXPAYERS UNION *v.* SOCIAL SECURITY ADMINISTRATION, OFFICE OF THE INSPECTOR GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 302 Fed. Appx. 115.

No. 08–1266. GUERRA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 307 Fed. Appx. 283.

No. 08–1280. MIKOS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 539 F. 3d 706.

No. 08–1283. CHOOSE LIFE ILLINOIS, INC., ET AL. *v.* WHITE, SECRETARY OF STATE OF ILLINOIS. C. A. 7th Cir. Certiorari denied. Reported below: 547 F. 3d 853.

No. 08–1284. DBC *v.* PATENT AND TRADEMARK OFFICE, BOARD OF PATENT APPEALS AND INTERFERENCES. C. A. Fed. Cir. Certiorari denied. Reported below: 545 F. 3d 1373.

No. 08–1285. FINKER ET AL. *v.* WEBER. C. A. 11th Cir. Certiorari denied. Reported below: 554 F. 3d 1379.

No. 08–1287. FAMILY DOLLAR STORES, INC. *v.* MORGAN ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 551 F. 3d 1233.

No. 08–1291. TUCKER ET AL. *v.* HARDIN COUNTY, TENNESSEE, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 539 F. 3d 526.

No. 08–1295. CHEEK ET AL. *v.* CITY OF EDWARDSVILLE, KANSAS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 699.

No. 08–1300. GUNDERSON ET AL. *v.* LIBERTY MUTUAL INSURANCE CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 305 Fed. Appx. 170.

No. 08–1306. HENDRIX ET AL. *v.* COFFEY ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 305 Fed. Appx. 495.

No. 08–1309. HILL DERMACEUTICALS, INC. *v.* RX SOLUTIONS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 306 Fed. Appx. 450.

No. 08–1317. EMAN *v.* HOLDER, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 125.

No. 08–1321. NEW YORK *v.* ROMEO. Ct. App. N. Y. Certiorari denied. Reported below: 12 N. Y. 3d 51, 876 N. E. 2d 666.

No. 08–1325. BARR ET AL. *v.* LAFON, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS PRINCIPAL OF WILLIAM BLOUNT HIGH SCHOOL, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 538 F. 3d 554.

No. 08–1328. GREENWELL *v.* PARSLEY. C. A. 6th Cir. Certiorari denied. Reported below: 541 F. 3d 401.

No. 08–1330. SANDS *v.* DEPARTMENT OF HOMELAND SECURITY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 308 Fed. Appx. 418.

No. 08–1337. KNIGHT *v.* CHICAGO TRIBUNE CO. ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 385 Ill. App. 3d 347, 895 N. E. 2d 1007.

No. 08–1340. WIGGENHORN ET AL. *v.* AXA EQUITABLE LIFE INSURANCE CO. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 309 Fed. Appx. 722.

No. 08–1346. ACOSTA *v.* CAMPBELL ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 309 Fed. Appx. 315.

No. 08–1348. RAILSBACK *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 08–1349. COFFEY ET AL. *v.* SOUTHWESTERN BELL TELEPHONE, L. P., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 544 F. 3d 1101.

No. 08–1351. FRAZIER *v.* SMITH, COMMISSIONER, FLORIDA DEPARTMENT OF EDUCATION, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 535 F. 3d 1279.

No. 08–1352. ARKANSAS ANNUAL CONFERENCE OF THE AFRICAN METHODIST EPISCOPAL CHURCH, INC., ET AL. *v.* NEW DIRECTION PRAISE AND WORSHIP CENTER, INC. Sup. Ct. Ark. Certiorari denied. Reported below: 375 Ark. 428, 291 S. W. 3d 562.

No. 08–1353. BOROUGH OF CARLSTADT, NEW JERSEY, ET AL. *v.* TOMU DEVELOPMENT CO., INC. Super. Ct. N. J., App. Div. Certiorari denied.

No. 08–1355. LUCAS *v.* UNIVERSITY OF COLORADO, HEALTH SCIENCES CENTER. Ct. App. Colo. Certiorari denied.

No. 08–1359. FISHER *v.* VANLOVEREN ET AL. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 08–1360. CLAYTON *v.* PENNSYLVANIA DEPARTMENT OF WELFARE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 304 Fed. Appx. 104.

No. 08–1363. NARRON *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 193 N. C. App. 76, 666 S. E. 2d 860.

No. 08–1366. ROSCH *v.* WHATCOM COUNTY, WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 145 Wash. App. 1007.

No. 08–1368. GILBERT *v.* POST. Ct. Civ. App. Okla. Certiorari denied.

No. 08–1370. JOHNSON *v.* GEORGE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 299 Fed. Appx. 139.

No. 08–1373. STANCOURT ET UX., PARENTS OF STANCOURT *v.* WORTHINGTON CITY SCHOOL DISTRICT. Ct. App. Ohio, Morgan County. Certiorari denied.

No. 08–1374. ROBINSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 547 F. 3d 632.

No. 08–1376. CUNDIFF ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 555 F. 3d 200.

No. 08–1379. GONZALEZ *v.* CITY OF DEERFIELD BEACH, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 549 F. 3d 1331.

No. 08–1384. O'BRYAN ET AL. *v.* HOLY SEE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 556 F. 3d 361.

No. 08–1387. CAHOON *v.* UTAH. Sup. Ct. Utah. Certiorari denied. Reported below: 203 P. 3d 957.

No. 08–1391. ACHOBE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 560 F. 3d 259.

No. 08–1393. MAY *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 08–1396. COFFEE BEANERY, LTD., ET AL. *v.* WW, LLC, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 300 Fed. Appx. 415.

No. 08–1397. MORLEY ET UX. *v.* SMITH ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 309 Fed. Appx. 103.

No. 08–1403. DANIELS *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 165 Wash. 2d 627, 200 P. 3d 711.

No. 08–1404. DEVON ENERGY CORP. *v.* SALAZAR, SECRETARY OF THE INTERIOR. C. A. D. C. Cir. Certiorari denied. Reported below: 551 F. 3d 1030.

No. 08–1409. FORD MOTOR CO. *v.* DELAWARE DIRECTOR OF REVENUE. Sup. Ct. Del. Certiorari denied. Reported below: 963 A. 2d 115.

No. 08–1412. THOROGOOD *v.* SEARS, ROEBUCK & CO. C. A. 7th Cir. Certiorari denied. Reported below: 547 F. 3d 742.

No. 08–1414. L. M., A MINOR, BY AND THROUGH HIS GUARDIAN AD LITEM, SAM M. ET UX., ET AL. *v.* CAPISTRANO UNIFIED SCHOOL DISTRICT. C. A. 9th Cir. Certiorari denied. Reported below: 556 F. 3d 900.

No. 08–1421. VAN AUKEN *v.* CATRON, CATRON & POTTOW, P. A., ET AL. Ct. App. N. M. Certiorari denied. Reported below: 145 N. M. 573, 203 P. 3d 104.

No. 08–1424. ROSENTHAL *v.* COMMITTEE ON PROFESSIONAL STANDARDS, APPELLATE DIVISION, SUPREME COURT OF NEW YORK, THIRD JUDICIAL DEPARTMENT. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 57 App. Div. 3d 1085, 868 N. Y. S. 2d 820.

No. 08–1429. BEAL *v.* CSX CORP. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 308 Fed. Appx. 324.

No. 08–1430. SMITH ET AL., AS CO-PERSONAL REPRESENTATIVES OF THE ESTATE OF SMITH, DECEASED, ET AL. *v.* FORD MOTOR CO. ET AL. Ct. Civ. App. Okla. Certiorari denied.

No. 08–1431. REDDY *v.* MATTHEWS ET AL. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 08–1433. LAWRENCE *v.* GOLDBERG. C. A. 11th Cir. Certiorari denied.

No. 08–1434. KATZ *v.* MABUS, SECRETARY OF THE NAVY. C. A. 3d Cir. Certiorari denied. Reported below: 303 Fed. Appx. 125.

No. 08–1435. CHUNG *v.* SUPERIOR COURT OF CALIFORNIA, SAN FRANCISCO COUNTY, ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 08–1437. RUSSELL ET UX. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 551 F. 3d 1174.

No. 08–1440. HAEG *v.* COLE. Sup. Ct. Alaska. Certiorari denied. Reported below: 200 P. 3d 317.

No. 08–1444. ASPEN CREEK ESTATES, LTD. *v.* TOWN OF BROOKHAVEN, NEW YORK, ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 12 N. Y. 3d 735, 904 N. E. 2d 816.

No. 08–1445. CHILDRESS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 304 Fed. Appx. 169.

No. 08–1446. GRAIN ET UX. *v.* TRINITY HEALTH ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 551 F. 3d 374.

No. 08–1447. ST. JOHNS UNITED CHURCH OF CHRIST ET AL. *v.* BABBITT, ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION,

ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 550 F. 3d 1168.

No. 08–1449. CONNECTION DISTRIBUTING CO. ET AL. *v.* HOLDER, ATTORNEY GENERAL. C. A. 6th Cir. Certiorari denied. Reported below: 557 F. 3d 321.

No. 08–1450. JONES *v.* BAYER HEALTHCARE LLC. C. A. 9th Cir. Certiorari denied. Reported below: 302 Fed. Appx. 590.

No. 08–1451. MATTHEW ET AL. *v.* DEPARTMENT OF THE ARMY. C. A. 2d Cir. Certiorari denied. Reported below: 311 Fed. Appx. 409.

No. 08–1452. ADAMS ET AL. *v.* FEDERAL AVIATION ADMINISTRATION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 550 F. 3d 1174.

No. 08–1454. ASOCIACION DE EMPLEADOS DEL ESTADO LIBRE ASOCIADO DE PUERTO RICO *v.* MONTEAGUDO. C. A. 1st Cir. Certiorari denied. Reported below: 554 F. 3d 164.

No. 08–1455. BAUMHAMMERS *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 599 Pa. 1, 960 A. 2d 59.

No. 08–1456. QUINONES *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 12 N. Y. 3d 116, 879 N. E. 2d 1.

No. 08–1460. ARENSDORF *v.* COMMISSIONER OF INTERNAL REVENUE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 634.

No. 08–1461. MYLAN LABORATORIES, INC., ET AL. *v.* TAKEDA CHEMICAL INDUSTRIES, LTD.; and

No. 08–1463. ALPHAPHARM PTY., LTD., ET AL. *v.* TAKEDA CHEMICAL INDUSTRIES, LTD., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 549 F. 3d 1381.

No. 08–1464. EAST END PROPERTY COMPANY #1, LLC, ET AL. *v.* TOWN BOARD OF BROOKHAVEN, NEW YORK, ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 56 App. Div. 3d 773, 868 N. Y. S. 2d 264.

No. 08–1466. SUNARTO *v.* HOLDER, ATTORNEY GENERAL. C. A. 6th Cir. Certiorari denied. Reported below: 306 Fed. Appx. 957.

No. 08–1467. CARRANZA *v.* CHAVEZ ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 559 F. 3d 486.

No. 08–1468. DONOVAN *v.* ARKANSAS SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT. Sup. Ct. Ark. Certiorari denied. Reported below: 375 Ark. 350, 290 S. W. 3d 599.

No. 08–1469. ORION RESERVES LIMITED PARTNERSHIP *v.* SALAZAR, SECRETARY OF THE INTERIOR, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 553 F. 3d 697.

No. 08–1471. SHROPSHIRE, INDIVIDUALLY AND AS NEXT FRIEND OF SHROPSHIRE *v.* LAIDLAW TRANSIT, INC. C. A. 6th Cir. Certiorari denied. Reported below: 550 F. 3d 570.

No. 08–1474. JORDAN ET AL. *v.* MOSLEY. C. A. 11th Cir. Certiorari denied. Reported below: 298 Fed. Appx. 803.

No. 08–1475. HUNG LIN WU *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 428.

No. 08–1477. BADEN SPORTS, INC. *v.* MOLTEN USA, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 556 F. 3d 1300.

No. 08–1483. KUHN *v.* BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES. C. A. 5th Cir. Certiorari denied.

No. 08–1485. BROWN ET AL. *v.* ONE BEACON INSURANCE CO., INC. C. A. 11th Cir. Certiorari denied. Reported below: 317 Fed. Appx. 915.

No. 08–1486. GAGNON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 553 F. 3d 1021.

No. 08–1487. HART *v.* SAFEWAY, INC. Ct. App. Ore. Certiorari denied. Reported below: 219 Ore. App. 428, 182 P. 3d 325.

No. 08–1488. HK SYSTEMS, INC. *v.* EATON CORP. C. A. 7th Cir. Certiorari denied. Reported below: 553 F. 3d 1086.

No. 08–1489. FLYNN *v.* YARA ET AL. Sup. Ct. N. M. Certiorari denied.

No. 08–1490. HOPKINS *v.* D. C. CHAPMAN VENTURES, INC. Cir. Ct. W. Va., Nicholas County. Certiorari denied.

No. 08–1491. WAGENKNECHT *v.* LEVIN, OHIO TAX COMMISSIONER. Sup. Ct. Ohio. Certiorari denied. Reported below: 121 Ohio St. 3d 13, 901 N. E. 2d 772.

No. 08–1492. WILLETT *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 223 W. Va. 394, 674 S. E. 2d 602.

No. 08–1493. BABB *v.* WATSON ET AL., PERSONAL REPRESENTATIVES OF THE ESTATE OF WATSON, ET AL. Ct. App. S. C. Certiorari denied.

No. 08–1495. DUNN *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 888 N. E. 2d 858.

No. 08–1496. GLADKIHS *v.* COLORADO. Dist. Ct. Colo., Arapahoe County. Certiorari denied.

No. 08–1499. FISHER *v.* COLORADO. Sup. Ct. Colo. Certiorari denied. Reported below: 202 P. 3d 1186.

No. 08–1502. SAREEN *v.* SAREEN ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 51 App. Div. 3d 765, 858 N. Y. S. 2d 285.

No. 08–1503. ARGO *v.* TENNESSEE ET AL. C. A. 6th Cir. Certiorari denied.

No. 08–1504. BOTHE *v.* HANSEN. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 996 So. 2d 860.

No. 08–1505. ROACH *v.* ROACH. Ct. App. Ariz. Certiorari denied.

No. 08–1508. KYUNG SUH KIM ET AL. *v.* SYNOD OF SOUTHERN CALIFORNIA AND HAWAII ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–1510. GRIJALVA *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 306 Fed. Appx. 607.

No. 08–1511. GILLEY *v.* MONSANTO CO., INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 309 Fed. Appx. 362.

No. 08–1512. GATES ET VIR *v.* SPEEDWAY SUPERAMERICA, L. L. C. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 08–1514. STEPHENS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 67 M. J. 233.

No. 08–1516. COX *v.* DESOTO COUNTY, MISSISSIPPI. C. A. 5th Cir. Certiorari denied. Reported below: 564 F. 3d 745.

No. 08–1517. FERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 559 F. 3d 303.

No. 08–1518. MAYER UNIFIED SCHOOL DISTRICT ET AL. *v.* ARIZONA STATE LAND COMMISSIONER ET AL. Sup. Ct. Ariz. Certiorari denied. Reported below: 219 Ariz. 562, 201 P. 3d 523.

No. 08–1519. CHRIN *v.* IBRIX, INC. C. A. 3d Cir. Certiorari denied. Reported below: 293 Fed. Appx. 125.

No. 08–1522. JENKINS *v.* WORLEY, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY AS SECRETARY OF STATE OF ALABAMA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 306 Fed. Appx. 490.

No. 08–1523. LIONETTI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 298 Fed. Appx. 212.

No. 08–1525. IMPROV WEST ASSOCIATES ET AL. *v.* COMEDY CLUB, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 553 F. 3d 1277.

No. 08–1526. HAUMAN *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 909 A. 2d 879.

No. 08–1527. FINSTAD *v.* FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 295 Fed. Appx. 355.

No. 08–1531. WOLF *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 314 Wis. 2d 748, 760 N. W. 2d 184.

No. 08–1532. ASHER *v.* CHASE BANK USA, N. A. C. A. 7th Cir. Certiorari denied. Reported below: 310 Fed. Appx. 912.

No. 08–1533. MEHEN *v.* DELTA AIR LINES, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 297 Fed. Appx. 621.

No. 08–1534. ZDUN ET AL. *v.* HENDERSON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 308 Fed. Appx. 215.

No. 08–1535. KAVALI *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–1536. PALAZZO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 558 F. 3d 400.

No. 08–1537. KHANNA *v.* STATE BAR OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 308 Fed. Appx. 176.

No. 08–1538. FEIGENBAUM *v.* MERRILL LYNCH & CO. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 308 Fed. Appx. 585.

No. 08–1540. DIXON *v.* MIAMI-DADE COUNTY, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 307 Fed. Appx. 270.

No. 08–1541. COVARRUBIAS RUEZGA *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 08–1542. SPIELVOGEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–1544. JALLALI *v.* NOVA SOUTHEASTERN UNIVERSITY, INC. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 992 So. 2d 338.

No. 08–1545. EGHBAL ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 548 F. 3d 1281.

No. 08–1546. KEENER ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 551 F. 3d 1358.

No. 08–1548. BUSINESS PLANNING SYSTEMS, INC. *v.* PERSONNEL DECISIONS, INC. Sup. Ct. Del. Certiorari denied. Reported below: 970 A. 2d 256.

No. 08–1550. FRANKE *v.* POLY-AMERICA MEDICAL AND DENTAL BENEFITS PLAN. C. A. 8th Cir. Certiorari denied. Reported below: 555 F. 3d 656.

No. 08–1552. FREEMAN, INDIVIDUALLY AND IN HIS CAPACITY AS REPRESENTATIVE OF THE ESTATE OF FREEMAN, ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 556 F. 3d 326.

No. 08–1557. MARTI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 439.

No. 08–1558. IMPERIAL MERCHANT SERVICES, INC., DBA CHECK RECOVERY SYSTEMS, INC. *v.* HUNT, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED. C. A. 9th Cir. Certiorari denied. Reported below: 560 F. 3d 1137.

No. 08–1560. JOLLEY *v.* DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 299 Fed. Appx. 966.

No. 08–1561. TJONG *v.* HOLDER, ATTORNEY GENERAL. C. A. 6th Cir. Certiorari denied. Reported below: 308 Fed. Appx. 957.

No. 08–1563. ASTER *v.* ASTER. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 08–1565. KRIGER ET AL. *v.* BOWEN PROPERTY MANAGEMENT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 300 Fed. Appx. 526.

No. 08–1567. TEPOEL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 317 Fed. Appx. 549.

No. 08–1568. TURAY *v.* RICHARDS ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–1570. CURTIS *v.* NAPOLITANO, SECRETARY OF HOMELAND SECURITY. C. A. 5th Cir. Certiorari denied. Reported below: 316 Fed. Appx. 360.

No. 08–1572. HOFFMAN ET AL. *v.* JONESFILM; and
No. 09–75. JONESFILM *v.* HOFFMAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 311 Fed. Appx. 962.

No. 08–1573. FINE *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 08–1574. GABER *v.* HENDERSON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 210.

No. 08–1576. LINAM *v.* LINAM. Sup. Ct. Fla. Certiorari denied. Reported below: 2 So. 3d 982.

No. 08–1577. MILTON H. GREENE ARCHIVES, INC. *v.* BPI COMMUNICATIONS, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 572.

No. 08–1578. LUKE ET AL. *v.* EMERGENCY ROOMS, P. S., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 496.

No. 08–1579. RECTOR, WARDENS AND VESTRYMEN OF SAINT JAMES PARISH IN NEWPORT BEACH, CALIFORNIA, ET AL. *v.* PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF LOS ANGELES ET AL. Sup. Ct. Cal. Certiorari denied. Reported below: 45 Cal. 4th 467, 198 P. 3d 66.

No. 08–1580. SANDOVAL *v.* LOS ANGELES COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 169 Cal. App. 4th 1167, 87 Cal. Rptr. 3d 334.

No. 08–1581. BILAL *v.* ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION. Sup. Ct. Ill. Certiorari denied.

No. 08–1582. RADWANSKI *v.* RUIZ ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 325 Fed. Appx. 92.

No. 08–1583. QUINN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 337 Fed. Appx. 780.

No. 08–1584. VALUEPEST.COM OF CHARLOTTE, INC., FKA BUDGET PEST PREVENTION, INC., ET AL. *v.* BAYER CORP. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 561 F. 3d 282.

No. 08–1585. HARRIS *v.* STANDARD INSURANCE CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 583.

No. 08–1586. FALTAS *v.* KOON. Sup. Ct. S. C. Certiorari denied. Reported below: 379 S. C. 150, 666 S. E. 2d 230.

No. 08–1587. PAULL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 551 F. 3d 516.

No. 08–1588. MENSAH *v.* HOLDER, ATTORNEY GENERAL, ET AL. C. A. 6th Cir. Certiorari denied.

No. 08–1590. RAR DEVELOPMENT ASSOCIATES *v.* NEW JERSEY SCHOOLS CONSTRUCTION CORPORATION ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 08–1591. PICHOFF, SPECIAL ADMINISTRATOR OF THE ESTATE OF PICHOFF, DECEASED *v.* QHG OF SPRINGDALE, INC., DBA NORTHWEST HEALTH SYSTEM, AKA NORTHWEST MEDICAL CENTER OF WASHINGTON COUNTY, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 556 F. 3d 728.

No. 08–1593. NICHOLAS ET UX., INDIVIDUALLY AND AS SUCCESSORS IN INTEREST TO THE ESTATE OF NICHOLAS, DECEASED *v.* BOYD ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 317 Fed. Appx. 773.

No. 08–1594. KHALIL *v.* HOLDER, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 309 Fed. Appx. 624.

No. 08–7683. PATTON *v.* HARRIS ET AL. C. A. 7th Cir. Certiorari denied.

No. 08–8246. SAM *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 597 Pa. 523, 952 A. 2d 565.

No. 08–8672. FEURTADO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 306 Fed. Appx. 809.

No. 08–8682. MEISTER *v.* SCOTT ET AL. (two judgments). C. A. 11th Cir. Certiorari denied.

No. 08–8713. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 549 F. 3d 963.

No. 08–8844. IHMOUD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–8848. WATSON *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 597 Pa. 483, 952 A. 2d 541.

No. 08–8871. PAUL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 534 F. 3d 832.

No. 08–9100. MEZA SEGUNDO *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 270 S. W. 3d 79.

No. 08–9130. JONES *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 597 Pa. 286, 951 A. 2d 294.

No. 08–9180. SKLAR ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 549 F. 3d 1252.

No. 08–9276. FLORES-PEREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 311 Fed. Appx. 69.

No. 08–9303. SMITH *v.* HAWAII ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 304 Fed. Appx. 535.

No. 08–9319. BRENT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 300 Fed. Appx. 267.

No. 08–9339. ARMSTRONG ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 550 F. 3d 382.

No. 08–9481. ELASHI *v.* UNITED STATES;
No. 08–9602. ELASHI *v.* UNITED STATES;
No. 08–9938. ELASHI *v.* UNITED STATES; and
No. 08–9939. ELASHI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 554 F. 3d 480.

No. 08–9484. FRANKLIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 547 F. 3d 726.

No. 08–9493. MILLER *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 304 Fed. Appx. 39.

No. 08–9531. PALIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 305 Fed. Appx. 558.

No. 08–9535. MCFARLIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 306 Fed. Appx. 342.

No. 08–9543. ZWEIGART *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 344 Ore. 619, 188 P. 3d 242.

No. 08–9578. MOHR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 554 F. 3d 604.

No. 08–9606. WALKER ET AL. *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied.

No. 08–9607. GARCIA *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 382 Ill. App. 3d 1215, 967 N. E. 2d 499.

No. 08–9610. JONES *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 124 Nev. 1483, 238 P. 3d 827.

No. 08–9676. CARTER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 08–9684. BLAYLOCK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 535 F. 3d 922.

No. 08–9737. BOYNES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 08–9814. RAGIN *v.* UNITED STATES; and
No. 08–9977. HOWARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 309 Fed. Appx. 760.

No. 08–9834. HENDERSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 536 F. 3d 776.

No. 08–9882. SPENCE *v.* HOLDER, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied.

No. 08–9884. COOPER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 291 Fed. Appx. 98.

No. 08–9887. SAMPATH *v.* CONCURRENT TECHNOLOGIES CORP. C. A. 3d Cir. Certiorari denied. Reported below: 299 Fed. Appx. 143.

No. 08–9944. ZUNIGA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 553 F. 3d 1330.

No. 08–9948. PREVATTE *v.* FRENCH, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 547 F. 3d 1300.

No. 08–9992. MULLEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 311 Fed. Appx. 621.

No. 08–9994. BARNETT *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 541 F. 3d 804.

No. 08–9995. BANNISTER *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 232 Ill. 2d 52, 902 N. E. 2d 571.

No. 08–10000. HUFF *v.* KENTUCKY RETIREMENT SYSTEMS. Ct. App. Ky. Certiorari denied.

No. 08–10028. ROBLEDO-LEYVA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 307 Fed. Appx. 859.

No. 08–10038. BENNETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 555 F. 3d 962.

No. 08–10041. PELULLO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 305 Fed. Appx. 823.

No. 08–10046. FURNISH *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 267 S. W. 3d 656.

No. 08–10061. NYHAMMER *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 197 N. J. 383, 963 A. 2d 316.

No. 08–10071. GARCIA NUNEZ *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 104.

No. 08–10074. STITT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 552 F. 3d 345.

No. 08–10075. RASHID *v.* UNITED STATES;
No. 08–10508. HAQUE *v.* UNITED STATES; and
No. 09–5712. HAQUE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 315 Fed. Appx. 510.

No. 08–10079. RICE *v.* DAVIS, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 08–10080. SPEAR *v.* HOWERTON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 08–10083. RAY *v.* ALLEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–10084. RUIZ *v.* BIRKETT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–10085. McNeill *v.* Goff, Warden. C. A. 5th Cir. Certiorari denied.

No. 08–10087. Dumont *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 555 F. 3d 1288.

No. 08–10091. Bartsch *v.* California. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 167 Cal. App. 4th 896, 84 Cal. Rptr. 3d 410.

No. 08–10093. Bacon *v.* Laswell et al. Sup. Ct. Nev. Certiorari denied. Reported below: 124 Nev. 1450, 238 P. 3d 794.

No. 08–10094. Munoz *v.* Fortner et al. C. A. 5th Cir. Certiorari denied. Reported below: 308 Fed. Appx. 816.

No. 08–10099. Cook *v.* Florida. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 996 So. 2d 224.

No. 08–10106. Peoples *v.* Barber et al. (two judgments). C. A. 9th Cir. Certiorari denied.

No. 08–10107. Braley *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–10112. Curtis *v.* Oregon. Ct. App. Ore. Certiorari denied. Reported below: 223 Ore. App. 259, 195 P. 3d 923.

No. 08–10116. Bennett *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 45 Cal. 4th 577, 199 P. 3d 535.

No. 08–10118. Davis *v.* Third Judicial District Court of Nevada, Lyon County, et al. Sup. Ct. Nev. Certiorari denied.

No. 08–10120. Stubl *v.* Place. C. A. 6th Cir. Certiorari denied.

No. 08–10138. Anderson *v.* Cunningham. C. A. 10th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 706.

No. 08–10140. Beaty *v.* Ryan, Director, Arizona Department of Corrections. C. A. 9th Cir. Certiorari denied. Reported below: 554 F. 3d 780.

No. 08–10141. Beeks *v.* Uribe, Acting Warden. C. A. 9th Cir. Certiorari denied.

No. 08–10144. LUNA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 268 S. W. 3d 594.

No. 08–10148. MCMULLEN *v.* TENNIS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 562 F. 3d 231.

No. 08–10153. MASSIE *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 8 So. 3d 1134.

No. 08–10175. JENKINS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–10176. KAISER *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 08–10189. MORALES *v.* MARQUES. C. A. 11th Cir. Certiorari denied.

No. 08–10190. PANDOLFI *v.* WALL, DIRECTOR, RHODE ISLAND DEPARTMENT OF CORRECTIONS, ET AL. C. A. 1st Cir. Certiorari denied.

No. 08–10192. ALIX *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 309 Fed. Appx. 875.

No. 08–10193. PORTER *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–10194. HAMILTON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 45 Cal. 4th 963, 200 P. 3d 898.

No. 08–10195. FARIAS-GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 556 F. 3d 1181.

No. 08–10201. LEDBETTER *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 08–10205. JONES *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 08–10209. BERRY *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 08–10211. ROMANDETTA *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 302 Fed. Appx. 663.

No. 08–10214. WILSON *v.* BELLEQUE, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 554 F. 3d 816.

No. 08–10215. ATIENZA WAGAN *v.* ALAMEIDA. C. A. 9th Cir. Certiorari denied.

No. 08–10216. CONNER *v.* AMERICAN ARBITRATION ASSN. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 310 Fed. Appx. 611.

No. 08–10219. LAY *v.* SHEFFERMAN. C. A. 4th Cir. Certiorari denied.

No. 08–10221. CASTILLO *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 08–10225. SHABAZZ, AKA DENNIS *v.* FIRST CORRECTIONAL MEDICAL SERVICES ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–10230. HUNTER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 29 So. 3d 256.

No. 08–10234. RICH *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 317 Fed. Appx. 881.

No. 08–10235. ARNOLD *v.* LAMARQUE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–10237. TOLIVER *v.* HARTLEY, ACTING WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 298 Fed. Appx. 682.

No. 08–10244. HERMELO *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–10246. GREER *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–10247. ARMANN *v.* QUINTANAIS, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 549 F. 3d 279.

No. 08–10248. ARDLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 203.

No. 08–10255. HELTON *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 2 So. 3d 981.

No. 08–10257. HAWKINS *v.* HAMLET, LTD., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 296 Fed. Appx. 918.

No. 08–10259. HUGHES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 08–10261. MCKINNEY *v.* RAY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 289 Fed. Appx. 604.

No. 08–10262. YOUNG *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 08–10265. GONZALEZ *v.* SULLIVAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–10267. ISAAC *v.* LAFLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–10268. COLLEEN F. *v.* RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 08–10269. PACE *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 304 Fed. Appx. 189.

No. 08–10270. QUINTERO *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 08–10273. COLLINS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 310 Fed. Appx. 290.

No. 08–10278. KELLY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 307 Fed. Appx. 1.

No. 08–10282. BOND *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 539 F. 3d 256.

No. 08–10288. MOORE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 08–10291. RAMEY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 08–10296. UPDIKE *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 303 Fed. Appx. 152.

No. 08–10304. MOORER *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–10309. PAYNE *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 08–10312. SZANTO *v.* SZANTO. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 08–10315. ARCHER *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 08–10319. BETHANY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–10321. BISHOP *v.* TERRY, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 08–10323. SETTS *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 996 So. 2d 219.

No. 08–10326. GONZALEZ-ZOTELO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 556 F. 3d 736.

No. 08–10336. BATISTA *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 08–10338. BROWN *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 08–10341. CUNNIFF *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 995 So. 2d 962.

No. 08–10343. HAWKINS *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 598 Pa. 85, 953 A. 2d 1248.

No. 08–10346. HINES *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 08–10347. JOHNSON *v.* GIBSON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 307 Fed. Appx. 245.

No. 08–10350. GARCIA *v.* YARBOROUGH, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 310 Fed. Appx. 988.

No. 08–10351. SMITH *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 999 So. 2d 1140.

No. 08–10352. RILEY *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 08–10355. M. L. S. *v.* MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 275 S. W. 3d 293.

No. 08–10358. SWIFT *v.* STANFORD. C. A. 5th Cir. Certiorari denied.

No. 08–10361. MONACELLI *v.* UPS STORE ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–10362. CRUZ-MEZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 310 Fed. Appx. 634.

No. 08–10363. D'SAACHS *v.* HALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 317 Fed. Appx. 695.

No. 08–10365. GILL *v.* ROCK, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. Ct. App. N. Y. Certiorari denied. Reported below: 12 N. Y. 3d 1, 903 N. E. 2d 1146.

No. 08–10371. GARCIA *v.* RYAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–10372. GARDNER *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 08–10373. HEATH *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–10374. HUGHES *v.* ESTATE OF HUGHES, DECEASED. Ct. App. Minn. Certiorari denied.

No. 08–10375. HUMPHREY *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 979 So. 2d 283.

No. 08–10376. HERNANDEZ *v.* OLLISON, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 52.

No. 08–10378. GRAHAM *v.* WASHINGTON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 281 Fed. Appx. 221.

No. 08–10379. TREVINO *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 311 Fed. Appx. 970.

No. 08–10382. LUTZ *v.* OBAMA, PRESIDENT OF THE UNITED STATES, ET AL. C. A. 5th Cir. Certiorari denied.

No. 08–10387. SIMON *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 08–10393. ALLEN *v.* BELCHER. C. A. 11th Cir. Certiorari denied.

No. 08–10396. MCDANIEL *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 08–10397. DAVIS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 08–10398. HARDY *v.* BENNETT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 317 Fed. Appx. 362.

No. 08–10399. HAYES *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–10402. FRANCO *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–10403. GASKIN *v.* KELLY, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 08–10404. FULTZ *v.* STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. Sup. Ct. Del. Certiorari denied. Reported below: 966 A. 2d 347.

No. 08–10405. FORD *v.* POLK, WARDEN. C. A. 4th Cir. Certiorari denied.

No. 08–10408. CHRISTOPHER *v.* BETHUNE. Ct. App. D. C. Certiorari denied. Reported below: 950 A. 2d 75.

No. 08–10411. DAVIDSON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–10413. HODGE ET UX. *v.* CALVERT COUNTY PUBLIC SCHOOLS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 297 Fed. Appx. 224.

No. 08–10414. SIMPSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 3 So. 3d 1135.

No. 08–10415. SANTIFER *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 857.

No. 08–10416. REKOW *v.* HALL, SUPERINTENDENT, TWO RIVERS CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 311 Fed. Appx. 999.

No. 08–10421. ROGERS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 555 F. 3d 483.

No. 08–10422. PORTILLO *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–10424. OSBORNE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 544 F. 3d 943.

No. 08–10427. BABINSKI *v.* VOSS. C. A. 9th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 617.

No. 08–10428. BRIGHT *v.* WRIGHT, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 306 Fed. Appx. 813.

No. 08–10431. DAVIS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–10432. COATS *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 08–10434. HARRIS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 385 Ill. App. 3d 1129, 970 N. E. 2d 128.

No. 08–10435. HENDERSON *v.* LIGGIN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 300 Fed. Appx. 214.

No. 08–10438. GONZALEZ *v.* SMITH ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 304 Fed. Appx. 298.

No. 08–10439. IJADIMINI *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–10444. WARE *v.* LANEY ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–10445. TIMOTHY *v.* SKOLNIK, DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 314 Fed. Appx. 63.

No. 08–10450. PURPURA *v.* BUSHKIN, GAIMES, GAINS, JONAS & STREAM ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 317 Fed. Appx. 263.

No. 08–10451. O'KELLEY *v.* HALL, WARDEN. Sup. Ct. Ga. Certiorari denied. Reported below: 284 Ga. 758, 670 S. E. 2d 388.

No. 08–10458. COOK *v.* GALAZA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–10461. COLEMAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 08–10466. DAUGHTERY *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 08–10469. PIAZZA *v.* CURRY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–10471. BATES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 313 Fed. Appx. 881.

No. 08–10472. JOHNSON *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 08–10473. LAGAITE *v.* LIVINGSTON, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 08–10475. Wood *v.* Scutt, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 310 Fed. Appx. 861.

No. 08–10476. Woodard *v.* City of New Albany, Indiana. Ct. App. Ind. Certiorari denied. Reported below: 884 N. E. 2d 953.

No. 08–10477. Cairo Rodriguez *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–10480. Owens *v.* Grams, Warden. C. A. 7th Cir. Certiorari denied.

No. 08–10483. Olivares *v.* Garcia, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 494.

No. 08–10484. Philpot *v.* McNeil, Secretary, Florida Department of Corrections. Sup. Ct. Fla. Certiorari denied. Reported below: 7 So. 3d 535.

No. 08–10487. Widner *v.* McNeil, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 08–10488. Watts *v.* Runnels, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 302 Fed. Appx. 652.

No. 08–10489. Tucker *v.* Florida. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 987 So. 2d 717.

No. 08–10493. Stringer *v.* Iowa. Ct. App. Iowa. Certiorari denied. Reported below: 760 N. W. 2d 211.

No. 08–10496. Consalvo *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 3 So. 3d 1014.

No. 08–10497. Dorsey *v.* Coleman, Superintendent, Fayette State Correctional Institution. C. A. 3d Cir. Certiorari denied.

No. 08–10498. Chapman *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 385 Ill. App. 3d 1127, 970 N. E. 2d 127.

No. 08–10503. Fanfan *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 558 F. 3d 105.

No. 08–10504. HAWKINS *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 317 Fed. Appx. 694.

No. 08–10505. FIELDS *v.* BERRY ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–10506. GARRETT *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 08–10509. GAYLOR *v.* GERRY, WARDEN. Super. Ct. N. H., Merrimack County. Certiorari denied.

No. 08–10510. HARPER *v.* SOUTHERN STAR CONCRETE. C. A. 5th Cir. Certiorari denied.

No. 08–10511. RAIHALA *v.* WHITBECK ET AL. C. A. 6th Cir. Certiorari denied.

No. 08–10512. SWIFT *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 3 So. 3d 1108.

No. 08–10514. BUNN *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 08–10515. BURRUEL *v.* SPURGEON. C. A. 9th Cir. Certiorari denied.

No. 08–10518. BRIGHT *v.* O'FLAHERTY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 309 Fed. Appx. 701.

No. 08–10519. DOAN *v.* CARTER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 548 F. 3d 449.

No. 08–10523. SMALL *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 290 Conn. 128, 962 A. 2d 80.

No. 08–10525. ABRAHAM *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 968 A. 2d 491.

No. 08–10526. BRANNON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 521.

No. 08–10529. HUSSER *v.* DEXTER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–10532. RIVERA, AKA NOCHEZ-RIVERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 311 Fed. Appx. 698.

No. 08–10534. DIGGS *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 994 So. 2d 31.

No. 08–10535. RAMSAY *v.* BROWARD COUNTY SHERIFF'S OFFICE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 303 Fed. Appx. 761.

No. 08–10538. POWELL *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2009 Ark. 117.

No. 08–10540. VOTTA *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 73 Mass. App. 1117, 899 N. E. 2d 919.

No. 08–10541. VASQUEZ-OCHOA *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 08–10542. KHONDAKER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 712.

No. 08–10545. FLEMING *v.* RAPELJE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 556 F. 3d 520.

No. 08–10546. WAI MUI *v.* MCGRATH, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 302 Fed. Appx. 741.

No. 08–10547. BERKLEY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 310 Fed. Appx. 665.

No. 08–10552. JONES *v.* GOOGLE INC. ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–10553. RODRIGUEZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 08–10556. MERCER *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 381 S. C. 149, 672 S. E. 2d 556.

No. 08–10558. TUTEN *v.* TENNIS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–10559. MOWER *v.* BALLARD, WARDEN. Cir. Ct. Mercer County, W. Va. Certiorari denied.

No. 08–10560. SCOTTI *v.* CORRIVEAU ET AL. C. A. 6th Cir. Certiorari denied.

No. 08–10561. EVANS *v.* O'BRIEN, SUPERINTENDENT, OLD COLONY CORRECTIONAL CENTER. C. A. 1st Cir. Certiorari denied.

No. 08–10563. SMITH *v.* PEPSI BOTTLING GROUP ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 310 Fed. Appx. 567.

No. 08–10565. BURWELL *v.* CITY OF LAS VEGAS, NEVADA. Sup. Ct. Nev. Certiorari denied.

No. 08–10569. KENDALL *v.* STATE BAR OF MICHIGAN ET AL. Ct. App. Mich. Certiorari denied.

No. 08–10571. KAMPS *v.* MILLER-STOUT, SUPERINTENDENT, AIRWAY HEIGHTS CORRECTIONAL CENTER. C. A. 9th Cir. Certiorari denied.

No. 08–10572. PANTON *v.* NASH, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 317 Fed. Appx. 257.

No. 08–10575. DINKINS *v.* SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 11th Cir. Certiorari denied. Reported below: 315 Fed. Appx. 171.

No. 08–10576. YOUNG *v.* PRESLEY ET AL. C. A. 10th Cir. Certiorari denied.

No. 08–10577. WILLIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 544 F. 3d 683.

No. 08–10582. WHITTINGTON *v.* OWENS-ILLINOIS, INC. C. A. 9th Cir. Certiorari denied. Reported below: 308 Fed. Appx. 185.

No. 08–10583. MCGUIGAN *v.* HALL, SUPERINTENDENT, TWO RIVERS CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 986.

No. 08–10585. WRIGHT *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–10586. THORNE *v.* LARKINS, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 08–10588. KOR *v.* FELKER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 297 Fed. Appx. 610.

No. 08–10591. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 313 Fed. Appx. 654.

No. 08–10592. TUCKER *v.* PALMER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 541 F. 3d 652.

No. 08–10594. NICHOLS *v.* MILLS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–10597. MESHELL *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 2 So. 3d 132.

No. 08–10600. WRIGHT *v.* ZOELLER, ATTORNEY GENERAL OF INDIANA. C. A. 7th Cir. Certiorari denied.

No. 08–10603. BABB *v.* DRUG ENFORCEMENT ADMINISTRATION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 305 Fed. Appx. 148.

No. 08–10606. AGUILAR *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 3 So. 3d 316.

No. 08–10607. BERMUDEZ *v.* FISCHER, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 55 App. Div. 3d 1099, 865 N. Y. S. 2d 400.

No. 08–10612. STUBL *v.* PLACE. C. A. 6th Cir. Certiorari denied.

No. 08–10614. BARNETT *v.* BOATWRIGHT, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 08–10616. BURKE *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 931 A. 2d 41.

No. 08–10617. AYRES *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 08–10618. BRIDGEFORD *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 181 Md. App. 735.

No. 08–10626. SPENCER *v.* MICHIGAN DEPARTMENT OF CORRECTIONS. Ct. App. Mich. Certiorari denied.

No. 08–10629. BROWN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–10631. BRENT *v.* ANGLIN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 08–10632. MCCREE *v.* HARRY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–10634. PIERCE *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 2 So. 3d 641.

No. 08–10635. ATWATER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 6 So. 3d 51.

No. 08–10636. WILSON *v.* SIMPSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 515 F. 3d 682.

No. 08–10639. JACKSON *v.* BENTON, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 315 Fed. Appx. 788.

No. 08–10640. WOLLSTEIN *v.* MARY WASHINGTON HOSPITAL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 310 Fed. Appx. 568.

No. 08–10641. DAVIS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied.

No. 08–10643. KENYON *v.* WYOMING DEPARTMENT OF CORRECTIONS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 310 Fed. Appx. 250.

No. 08–10644. JACKSON *v.* ALMAGER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–10646. RAYMOND *v.* WEBER, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 552 F. 3d 680.

No. 08–10652. RENNEKE *v.* NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES. Sup. Ct. Neb. Certiorari denied.

No. 08–10658. MCNEILL *v.* WAYNE COUNTY, MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 300 Fed. Appx. 358.

No. 08–10659. CASSELL *v.* ADAM TOLER MEMORIAL FUNERAL HOME, INC. Cir. Ct. Wyoming County, W. Va. Certiorari denied.

No. 08–10661. DALE *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 553 F. 3d 876.

No. 08–10662. WATSON *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 55 App. Div. 3d 934, 865 N. Y. S. 2d 573.

No. 08–10664. TORRICELLAS *v.* DAVIDSON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 504.

No. 08–10665. WILLENBRING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 559 F. 3d 225.

No. 08–10667. WRENN *v.* OREGON BOARD OF PAROLE AND POST-PRISON SUPERVISION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 315 Fed. Appx. 609.

No. 08–10668. JILES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 08–10670. JENKINS *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 08–10671. LINK *v.* RHODES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 315 Fed. Appx. 624.

No. 08–10672. TRIUMPH *v.* CONNECTICUT. C. A. 2d Cir. Certiorari denied. Reported below: 308 Fed. Appx. 550.

No. 08–10676. SNIDER *v.* GRAYLESS ET AL. Sup. Ct. Okla. Certiorari denied.

No. 08–10678. JOHNSON *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 375 Ark. 462, 291 S. W. 3d 581.

No. 08–10680. WILSON *v.* GUTHRIA ET AL. C. A. 6th Cir. Certiorari denied.

No. 08–10681. WILSON *v.* CALDWELL ET AL. C. A. 6th Cir. Certiorari denied.

No. 08–10682. WILLIAMS *v.* BITNER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 307 Fed. Appx. 609.

No. 08–10683. BROWN *v.* MCQUIGGIN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–10684. BROWN *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–10686. BROWN *v.* GUTIERREZ ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 316 Fed. Appx. 590.

No. 08–10687. BETHEL *v.* CITY OF DAPHNE, ALABAMA. Sup. Ct. Ala. Certiorari denied.

No. 08–10689. RODRIGUEZ-ZAMOT *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 08–10690. SHUMYE *v.* FELLEKE. C. A. 9th Cir. Certiorari denied.

No. 08–10691. RUVALCABA *v.* BROWN, ATTORNEY GENERAL OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 08–10692. RODRIGUEZ *v.* MALLINCKRODT, INC. C. A. 8th Cir. Certiorari denied. Reported below: 316 Fed. Appx. 527.

No. 08–10693. CANDIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–10695. ROUSE *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 08–10696. MARTIN *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 315 Fed. Appx. 644.

No. 08–10697. LAY *v.* GANSLER, ATTORNEY GENERAL OF MARYLAND, ET AL. C. A. 4th Cir. Certiorari denied.

No. 08–10698. BROWN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 828.

No. 08–10700. FARRIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 598.

No. 08–10701. HARRIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 556 F. 3d 887.

No. 08–10702. GIL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 212.

No. 08–10703. FORD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 550 F. 3d 975.

No. 08–10704. IKBAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 304 Fed. Appx. 604.

No. 08–10705. HEATH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 559 F. 3d 263.

No. 08–10706. GRANADO-MENA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 315 Fed. Appx. 771.

No. 08–10707. HICKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 307 Fed. Appx. 758.

No. 08–10708. GARZA *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied. Reported below: 261 S. W. 3d 361.

No. 08–10709. HAGEMAN *v.* NOOTH, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 314 Fed. Appx. 996.

No. 08–10710. ZUNIGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 653.

No. 08–10711. TRAINOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–10713. SHAH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 951.

No. 08–10714. SCHEXNAYDER *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 994 So. 2d 29.

No. 08–10715. STAPLES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 08–10716. NORIEGA-VALENZUELA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 317 Fed. Appx. 655.

No. 08–10717. HARWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 188.

No. 08–10718. COLUMNA-ROMERO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 305 Fed. Appx. 42.

No. 08–10719. DOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 313 Fed. Appx. 596.

No. 08–10720. GARDNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 313 Fed. Appx. 668.

No. 08–10721. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 310 Fed. Appx. 707.

No. 08–10722. CUONG TAN HUYNH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–10725. GARNER *v.* MITCHELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 557 F. 3d 257.

No. 08–10726. MERO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 313 Fed. Appx. 544.

No. 08–10727. REYES *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 600 Pa. 45, 963 A. 2d 436.

No. 08–10728. STEVENS *v.* NEVADA. Sup. Ct. Nev. Certiorari denied.

No. 08–10729. SEAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 553 F. 3d 732.

No. 08–10730. SINGLETON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–10731. HAYMOND *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 313 Fed. Appx. 597.

No. 08–10733. BHATIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 545 F. 3d 757.

No. 08–10734. ALICEA-CARDOZA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 08–10736. ANDERSON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–10737. PERRITTE *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 4 So. 3d 1243.

No. 08–10738. OLIVIER *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–10739. BRADLEY *v.* MISSISSIPPI. C. A. 5th Cir. Certiorari denied.

No. 08–10740. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 313 Fed. Appx. 596.

No. 08–10741. JACOBS *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 08–10742. NEWELL *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 9 So. 3d 615.

No. 08–10743. OSWALD *v.* THURMER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 08–10744. THOMAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 305 Fed. Appx. 587.

No. 08–10745. TAYLOR *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 362 N. C. 514, 669 S. E. 2d 239.

No. 08–10746. WATSON *v.* CITY OF AKRON, OHIO, ET AL. Ct. App. Ohio, Summit County. Certiorari denied.

No. 08–10747. KOTH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 314 Fed. Appx. 66.

No. 08–10748. OSINAME *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 313 Fed. Appx. 939.

No. 08–10749. KAMARA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 304 Fed. Appx. 959.

No. 08–10750. ESCOBAR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–10751. JONES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 254 Fed. Appx. 711.

No. 08–10752. SALAZAR LOPEZ, AKA SALAZAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 315 Fed. Appx. 660.

No. 08–10753. SPRINGER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 315 Fed. Appx. 203.

No. 08–10754. HARVEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 305 Fed. Appx. 859.

No. 08–10755. JANNUZZI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 08–10756. BARRETT *v.* MISSISSIPPI. C. A. 5th Cir. Certiorari denied.

No. 08–10757. BROOKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 858.

No. 08–10758. ZAPATA *v.* HARTLEY, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 543.

No. 08–10761. LEMUS-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 563 F. 3d 88.

No. 08–10762. STYLES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–10763. SCOTT *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 08–10764. SMITH *v.* CAMERON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT CRESSON, ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 600 Pa. 368, 966 A. 2d 546.

No. 08–10765. CASTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 774.

No. 08–10767. DAVIS *v.* CITY OF NEW BERN, NORTH CAROLINA, ET AL. Ct. App. N. C. Certiorari denied. Reported below: 189 N. C. App. 723, 659 S. E. 2d 53.

No. 08–10768. TAI WANG MAK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 08–10769. LONG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 300 Fed. Appx. 804.

No. 08–10770. JEFFRIES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 304 Fed. Appx. 229.

No. 08–10771. PIGFORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 157.

No. 08–10772. SANDOVAL *v.* ULIBARRI, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 548 F. 3d 902.

No. 08–10773. STEWART *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–10774. STEWART *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 315 Fed. Appx. 554.

No. 08–10775. RODRIGUEZ-DUBERNEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 317 Fed. Appx. 430.

No. 08–10776. SIMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 08–10777. WILLIAMS *v.* DREW, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 08–10778. CRIM *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 08–10779. CRUTE, AKA GRIFFIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 239.

No. 08–10780. DITTRICH *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–10781. ANDRADE CALLES *v.* URIBE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–10782. CHEEK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 302 Fed. Appx. 816.

No. 08–10785. MERCED-RODRIGUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 08–10786. JOSEPH *v.* HOLDER, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 306 Fed. Appx. 495.

No. 08–10788. LITTLE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 306 Fed. Appx. 286.

No. 08–10789. PLUMP *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 08–10790. MCCALEB *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 552 F. 3d 1053.

No. 08–10791. ROOKS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 556 F. 3d 1145.

No. 08–10792. PINKSTON *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Stanly County, N. C. Certiorari denied.

No. 08–10793. ELASALI *v.* MAYER. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 08–10794. BROOKS *v.* JOHNSON ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 307 Fed. Appx. 247.

No. 08–10795. MOSERE *v.* HOLDER, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 552 F. 3d 397.

No. 08–10796. HARLEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 315 Fed. Appx. 437.

No. 08–10797. HERNANDEZ-GARAY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 687.

No. 08–10798. NUNEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 236.

No. 08–10800. MORGAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–10801. NABRIED *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 310 Fed. Appx. 529.

No. 08–10802. MOWATT *v.* VAIL, SECRETARY, WASHINGTON DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–10803. KING *v.* NOOTH, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 08–10804. JOHNSON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–10805. KINNEY *v.* BERGH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–10806. KELETA *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 552 F. 3d 861.

No. 08–10807. SMITH *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 08–10808. STRUNK *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–10809. SANTIAGO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 560 F. 3d 62.

No. 08–10810. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 780.

No. 08–10811. SANCHEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 801.

No. 08–10812. WEAVER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 554 F. 3d 718.

No. 08–10815. DISMUKE *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 08–10816. CALDWELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 316 Fed. Appx. 669.

No. 08–10818. KHALAFALA *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 08–10819. WATT *v.* ROTH ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–10820. WATTS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 553 F. 3d 603.

No. 08–10821. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 541 F. 3d 1087.

No. 08–10822. TARKINGTON *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY, ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–10824. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 296 Fed. Appx. 352.

No. 08–10825. LOGAN *v.* LOUISIANA. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 986 So. 2d 772.

No. 08–10826. SOTERO MENZOR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 309 Fed. Appx. 276.

No. 08–10828. MEDINA-VARGAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–10829. MURRAY *v.* LOCKE, STATE MEDICAL EXAMINER, ET AL. C. A. 4th Cir. Certiorari denied.

No. 08–10830. MOORE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 08–10831. BAUMRUK *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 280 S. W. 3d 600.

No. 08–10832. BACKEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–10833. BENHAM *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 08–10834. BARBEE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 08–10835. JACOBS *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 313 Fed. Appx. 42.

No. 08–10836. CLUTTER *v.* BALLARD, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 154.

No. 08–10837. DALEY *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 08–10838. RODRIGUEZ-MARRERO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 08–10839. RANDLE *v.* WOODS. C. A. 5th Cir. Certiorari denied. Reported below: 299 Fed. Appx. 466.

No. 08–10840. ROWELL *v.* NEVADA. Sup. Ct. Nev. Certiorari denied.

No. 08–10841. SAMUEL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 308 Fed. Appx. 662.

No. 08–10842. SONTCHI *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–10843. JONES *v.* TROMBLEY. C. A. 6th Cir. Certiorari denied. Reported below: 307 Fed. Appx. 931.

No. 08–10848. RILEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 296.

No. 08–10849. SENGVONG *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 4 So. 3d 1235.

No. 08–10850. REED *v.* SWILLEY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 266 Fed. Appx. 336.

No. 08–10851. SCOTT *v.* CURRY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–10852. JACKSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 555 F. 3d 635.

No. 08–10853. HABURN ET AL. *v.* KILBY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 580.

No. 08–10854. WEHR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 309 Fed. Appx. 821.

No. 08–10855. MCKEIGHAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 08–10856. COOPER *v.* CAREY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 566.

No. 08–10857. J. R. *v.* MENTAL HEALTH BOARD OF THE FOURTH JUDICIAL DISTRICT (Reported below: 277 Neb. 362, 762

N. W. 2d 305); and O. S. *v.* MENTAL HEALTH BOARD OF THE FOURTH JUDICIAL DISTRICT (277 Neb. 577, 763 N. W. 2d 723). Sup. Ct. Neb. Certiorari denied.

No. 08–10858. SMITH *v.* ATM VANCOM OF LAS VEGAS ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–10859. DEL RIO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 08–10863. CAMACHO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 314 Fed. Appx. 79.

No. 08–10864. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 314 Fed. Appx. 656.

No. 08–10865. HERNANDEZ TORRES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 547.

No. 08–10866. TURPIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 317 Fed. Appx. 514.

No. 08–10867. WALKER *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 08–10868. DANIELS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.; and DANIELS *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA. C. A. 5th Cir. Certiorari denied.

No. 08–10869. CHRISTIE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 311 Fed. Appx. 654.

No. 08–10870. CHISM *v.* TURNER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–10871. CALDWELL *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–10872. MILLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 351.

No. 08–10873. MCCULLIGAN *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 961 A. 2d 1279.

No. 08–10874. TURNER *v.* JACKSON PARK HOSPITAL ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 314 Fed. Appx. 879.

No. 08–10875. MOORE *v.* HOUSING AUTHORITY OF THE CITY OF LOS ANGELES, CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 08–10876. MCNULTY *v.* PENNEY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 305 Fed. Appx. 212.

No. 08–10877. VARGAS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 560 F. 3d 45.

No. 08–10878. WALTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 314 Fed. Appx. 741.

No. 08–10879. TROTTER *v.* HARRISON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 618.

No. 08–10880. MILLER *v.* PALMER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–10881. RIVERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 904.

No. 08–10882. MILLER *v.* TEXAS. Ct. App. Tex., 9th Dist. Certiorari denied. Reported below: 262 S. W. 3d 877.

No. 08–10883. DIAZ-PINEDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 314 Fed. Appx. 713.

No. 08–10884. WAIVIO *v.* ADVOCATE HEALTH CARE NETWORK ET AL. C. A. 7th Cir. Certiorari denied.

No. 08–10887. ADKINS *v.* SIX, ATTORNEY GENERAL OF KANSAS. C. A. 10th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 850.

No. 08–10888. BLUE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 557 F. 3d 682.

No. 08–10889. BILLUPS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 317 Fed. Appx. 370.

No. 08–10892. GWANJUN KIM *v.* WERNETTE ET AL. Ct. App. Mich. Certiorari denied.

No. 08–10893. MARTIN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 08–10894. JOHNSON *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 316 Wis. 2d 356, 763 N. W. 2d 248.

No. 08–10895. MAYER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 560 F. 3d 948.

No. 08–10896. KELLY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 313 Fed. Appx. 899.

No. 08–10897. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 227.

No. 08–10898. PENK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 733.

No. 08–10900. REY-GONZALEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 326 Fed. Appx. 95.

No. 08–10901. MUNOZ-MENDEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 316 Fed. Appx. 273.

No. 08–10903. MARTIN *v.* GRAYER, WARDEN, ET AL. Sup. Ct. Ga. Certiorari denied.

No. 08–10904. LEWIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–10905. BLACKWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 317 Fed. Appx. 373.

No. 08–10906. BERRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 229.

No. 08–10907. LEINENBACH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 318 Fed. Appx. 53.

No. 08–10908. FINNEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 316 Fed. Appx. 752.

No. 08–10909. HERNANDEZ *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 4 So. 3d 642.

No. 08–10911. FLORES *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 514.

No. 08–10912. RODEN ET AL. *v.* DIAH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 253.

No. 08–10913. WRIGHT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 300 Fed. Appx. 188.

No. 08–10915. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 307 Fed. Appx. 726.

No. 08–10916. PHARM *v.* BARTOW, DIRECTOR, WISCONSIN RESOURCE CENTER. C. A. 7th Cir. Certiorari denied.

No. 08–10917. THARPS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 759.

No. 08–10918. PHILLIPS *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 233 Ill. 2d 62, 908 N. E. 2d 1.

No. 08–10919. KEYES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 08–10920. CURRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 231.

No. 08–10921. MCCLAREN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 232.

No. 08–10922. LYNCH *v.* HERTZIG ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 08–10924. REED *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 08–10925. SATERSTAD *v.* STOVER ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 954 A. 2d 48.

No. 08–10926. RODGERS *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 08–10928. HAND *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 305 Fed. Appx. 547.

No. 08–10929. SUTTLE *v.* BARTOW, DIRECTOR, WISCONSIN RESOURCE CENTER. C. A. 7th Cir. Certiorari denied.

No. 08–10931. BAINES *v.* FOLINO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE. C. A. 3d Cir. Certiorari denied.

No. 08–10933. BLACKMON *v.* MCBRIDE, WARDEN. Certiorari denied.

No. 08–10934. BONNER *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–10935. ADAMSON *v.* POORTER ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–10936. MOORE *v.* COMAITES. C. A. 9th Cir. Certiorari denied.

No. 08–10937. MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 521.

No. 08–10938. MARTIN ET VIR *v.* SELECT PORTFOLIO SERVICING HOLDING CORP. ET AL. C. A. 6th Cir. Certiorari denied.

No. 08–10939. DEE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 578.

No. 08–10943. YOUNG *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–10944. URISTA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 08–10945. VASQUEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–10946. WILKERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 192.

No. 08–10947. WATLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 871.

No. 08–10948. STONE *v.* MCKEE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–10949. CERF *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–10950. BARBER *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 4 So. 3d 9.

No. 08–10951. BATES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 552 F. 3d 472.

No. 08–10952. BAVISHI *v.* UBS FINANCIAL SERVICES, INC., ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–10953. BROOMFIELD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 305 Fed. Appx. 441.

No. 08–10955. BENNETT *v.* HULICK, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 08–10956. BLACKSHEAR *v.* DOWLING ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–10957. SANDERS *v.* DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ET AL. C. A. 7th Cir. Certiorari denied.

No. 08–10958. HANDLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 08–10960. JOHNSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 583.

No. 08–10961. KING *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 559 F. 3d 810.

No. 08–10962. ROJAS-BARRERA *v.* WENGLER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–10963. REDD ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–10964. MCCLAIN *v.* WARREN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 08–10965. LOWE *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 120 Ohio St. 3d 1451, 898 N. E. 2d 966.

No. 08–10966. DOOLIN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 45 Cal. 4th 390, 198 P. 3d 11.

No. 08–10967. MEDINA-BELTRAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 542 F. 3d 729.

No. 08–10968. NESGODA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 559 F. 3d 867.

No. 08–10970. GONZALES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 558 F. 3d 1193.

No. 08–10972. NORWOOD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 08–10973. ROTEN *v.* DELOY, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–10975. SAUNDERS, AKA LUCENTE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 553 F. 3d 81.

No. 08–10976. YAUMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 313 Fed. Appx. 737.

No. 08–10977. LASKEY *v.* CHARLES INDUSTRIES. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 08–10978. WHITE *v.* DONLEY, SECRETARY OF THE AIR FORCE, ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–10979. LANZA *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–10980. LINNIMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 224.

No. 08–10981. BAZIRUWIHA *v.* SUPERSHUTTLE INTERNATIONAL CORP. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 286.

No. 08–10983. ABRAMS *v.* DEPARTMENT OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 306 Fed. Appx. 602.

No. 08–10984. AYALA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 316 Fed. Appx. 636.

No. 08–10985. RAZVI *v.* FIA CARD SERVICES, N. A., FKA MBNA AMERICA BANK, N. A. Super. Ct. N. J., App. Div. Certiorari denied.

No. 08–10987. ERICKSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 561 F. 3d 1150.

No. 08–10990. SEGURA MORENO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 314 Fed. Appx. 739.

No. 08–10991. PARR *v.* MIDDLE TENNESSEE STATE UNIVERSITY ET AL. C. A. 6th Cir. Certiorari denied.

No. 08–10992. BATAZ MARTINEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 848.

No. 08–10995. JARRARD ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 301 Fed. Appx. 839.

No. 08–10998. UDOINYION *v.* REMAX OF ATLANTA ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–10999. WALKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 307.

No. 08–11000. TAYLOR *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 276 S. W. 3d 800.

No. 08–11001. WILLIAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 314 Fed. Appx. 888.

No. 08–11002. RIALS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 384 Ill. App. 3d 1089, 973 N. E. 2d 1088.

No. 08–11004. STARLING *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2009 Ark. 156.

No. 08–11005. BENTLEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 561 F. 3d 803.

No. 08–11006. BODDEN *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 190 N. C. App. 505, 661 S. E. 2d 23.

No. 08–11008. MCCORKLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 804.

No. 08–11009. MORGAN *v.* FORD ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 532.

No. 08–11010. RANGEL *v.* ADAMS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 08–11011. THOMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 331 Fed. Appx. 263.

No. 08–11014. LASKEY *v.* UNITED ONLINE, INC. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 08–11015. KRAMER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 309 Fed. Appx. 84.

No. 08–11017. JAKAJ *v.* MICHIGAN. Cir. Ct. Wayne County, Mich. Certiorari denied.

No. 08–11018. KINNEY *v.* IOWA. C. A. 8th Cir. Certiorari denied.

No. 08–11019. PERRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 560 F. 3d 246.

No. 08–11020. MCGREGORY *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 378 Ill. App. 3d 1122, 955 N. E. 2d 185.

No. 08–11021. PERKINS *v.* NORTH CAROLINA. C. A. 4th Cir. Certiorari denied.

No. 08–11022. RHEAULT *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 561 F. 3d 55.

No. 08–11024. WARD *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 970 A. 2d 257.

No. 08–11025. WELLS *v.* CARRO, JUDGE, SUPREME COURT OF NEW YORK, NEW YORK COUNTY. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 60 App. Div. 3d 517, 874 N. Y. S. 2d 857.

No. 08–11026. WHEELER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 4 So. 3d 599.

No. 08–11027. WILLIAMS *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 300 Fed. Appx. 125.

No. 08–11028. JOHNSON *v.* WENGLER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–11029. KIRKEY *v.* MIZE, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 08–11030. EDWARDS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 260.

No. 08–11031. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 587.

No. 08–11032. CARTER *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 959 A. 2d 959.

No. 08–11033. JOHNSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 12 So. 3d 220.

No. 08–11036. DIAZ *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 08–11037. STEEL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 455.

No. 08–11039. SANCHEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 311 Fed. Appx. 925.

No. 08–11040. GONZALEZ RIVERA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 323 Fed. Appx. 148.

No. 08–11041. SHARPE *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 08–11042. LEWIS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 318 Fed. Appx. 1.

No. 08–11043. LONG *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 378 Ill. App. 3d 1122, 955 N. E. 2d 184.

No. 08–11044. LINDSEY ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 556 F. 3d 238.

No. 08–11045. LUGO *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 2 So. 3d 1.

No. 08–11046. KESSLER *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–11047. JIMENEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 284 Fed. Appx. 668.

No. 08–11048. SCHULZE *v.* SCHULTZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 626.

No. 08–11049. LUCAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 326.

No. 08–11051. MOYTEZ-PINEDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 859.

No. 08–11052. PEREZ-CRUZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 558 F. 3d 50.

No. 08–11053. CRAIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 329.

No. 08–11054. DEWEAVER *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 556 F. 3d 995.

No. 08–11055. CRANDELL *v.* LOUISIANA. Ct. App. La., 2d Cir. Certiorari denied. Reported below: 987 So. 2d 375.

No. 08–11056. ROBERSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 332 Fed. Appx. 290.

No. 08–11057. RAMIREZ *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 08–11059. FRANKLIN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 372 Ill. App. 3d 1095, 940 N. E. 2d 305.

No. 08–11061. FREEMAN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 386 Ill. App. 3d 1118, 970 N. E. 2d 623.

No. 08–11062. ISLAND *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 316 Fed. Appx. 804.

No. 08–11063. GOODMAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 08–11064. GATEWOOD *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 385 Ill. App. 3d 1128, 970 N. E. 2d 128.

No. 08–11066. SHIRAISHI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 316 Fed. Appx. 587.

No. 08–11067. STAMPS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 385 Ill. App. 3d 1132, 970 N. E. 2d 130.

No. 08–11068. BOWMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 215.

No. 08–11069. BOYD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 317 Fed. Appx. 415.

No. 08–11071. LUNA *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 994 So. 2d 14.

No. 08–11072. WRIGHT *v.* SOUTHWEST AIRLINES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 232.

No. 08–11073. WESTBROOK *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 375 Ill. App. 3d 1143, 945 N. E. 2d 697.

No. 08–11074. BRUCE *v.* OHIO. Ct. App. Ohio, Fairfield County. Certiorari denied.

No. 08–11075. BAKER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 08–11076. WORKS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 385 Ill. App. 3d 1134, 970 N. E. 2d 131.

No. 08–11077. BOUTTE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 342.

No. 08–11078. ADAMSON *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 08–11079. DIXON *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 16 So. 3d 136.

No. 08–11081. NESSELRODE *v.* MEASURE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 300 Fed. Appx. 509.

No. 08–11082. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 846.

No. 08–11083. PACE *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 556 F. 3d 1211.

No. 08–11084. WILLIAMS *v.* WILLIAM BEAUMONT HOSPITAL. C. A. 6th Cir. Certiorari denied.

No. 08–11085. COOPER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 304 Fed. Appx. 165.

No. 08–11086. COTTON *v.* KELLEY, TRUSTEE. C. A. 11th Cir. Certiorari denied.

No. 08–11087. ESTRADA-GUERRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–11088. EVANS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 08–11089. SMITH *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 08–11090. SIGALA-TREJO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–11091. SWANSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 868.

No. 08–11092. SCOTTI *v.* SCOTTI. Ct. App. Mich. Certiorari denied.

No. 08–11093. MENDOZA-SANDOVAL, AKA SANDOVAL MENDOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 308 Fed. Appx. 58.

No. 08–11094. PENA-GOMEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 348.

No. 08–11095. THOMPSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 554 F. 3d 450.

No. 08–11096. KNIGHT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 562 F. 3d 1314.

No. 08–11097. LOVETT *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 08–11098. WITHAM *v.* CHRISTIAN COUNTY, MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 286 Fed. Appx. 960.

No. 08–11099. MONDRAGON-SANTIAGO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 564 F. 3d 357.

No. 08–11100. WALLACE *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 384 Ill. App. 3d 1091, 973 N. E. 2d 1089.

No. 08–11101. PLUMLEE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 210.

No. 08–11102. TOWNSEND *v.* KNOWLES, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 562 F. 3d 1200.

No. 08–11103. BOUMAN *v.* ROBINSON ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 523.

No. 08–11104. VAUGHN *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–11106. CARRILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 08–11108. CHOINIERE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 517 F. 3d 967.

No. 08–11109. SEALED PETITIONER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 08–11110. GUNTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 551 F. 3d 472.

No. 08–11111. NELSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 904.

No. 08–11112. MITCHELL *v.* KDJM–FM ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 676.

No. 08–11113. HERNANDEZ-CASTILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 891.

No. 08–11114. HANDY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 283.

No. 08–11115. HERNANDEZ, AKA MORENO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 306 Fed. Appx. 719.

No. 08–11116. HUGHES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 307 Fed. Appx. 714.

No. 08–11117. FIGUEREO-SANCHEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–11119. HERNANDEZ-ZUNIGA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 310 Fed. Appx. 64.

No. 08–11120. HERNANDEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 305 Fed. Appx. 120.

No. 08–11121. HANNA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 520.

No. 08–11122. GANT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 08–11124. WINNS *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON. C. A. 9th Cir. Certiorari denied.

No. 08–11125. TECH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 317 Fed. Appx. 173.

No. 08–11126. TUCKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 307.

No. 08–11127. CHEESEMAN *v.* CITY OF REEDSPORT, OREGON, ET AL. Sup. Ct. Ore. Certiorari denied.

No. 08–11128. CAUGHMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 243.

No. 08–11131. GRANT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 39.

No. 08–11132. GRANT *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 08–11133. INGRAM *v.* VAZQUEZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–11134. HYCHE *v.* CHANDLER, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 299 Fed. Appx. 583.

No. 08–11135. ELLIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 564 F. 3d 370.

No. 08–11136. DAVIS *v.* JONES, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 306 Fed. Appx. 232.

No. 08–11137. NELSON *v.* UNITED STATES (two judgments). C. A. 7th Cir. Certiorari denied.

No. 08–11138. DAVIS *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 345 Ore. 551, 201 P. 3d 185.

No. 08–11139. WINNETT *v.* SALINE COUNTY JAIL ET AL. C. A. 8th Cir. Certiorari denied.

No. 08–11140. WILLIAMS *v.* SALAZAR, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 08–11141. THOMAS *v.* ST. LOUIS BOARD OF POLICE COMMISSIONERS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 449.

No. 08–11142. BURKE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 312 Fed. Appx. 125.

No. 09–2. FLAHERTY & CRUMRINE PREFERRED INCOME FUND INC. ET AL. *v.* TXU CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 565 F. 3d 200.

No. 09–4. EJIKEME *v.* VIOLET ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 307 Fed. Appx. 944.

No. 09–5. FREEMAN *v.* NORFOLK SOUTHERN CORP. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 307 Fed. Appx. 918.

No. 09–6. YOUNG ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 553 F. 3d 1035.

No. 09–7. STEVENS *v.* VONS COS., INC. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 09–11. RAYBESTOS PRODUCTS CO. *v.* INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT. Sup. Ct. Ind. Certiorari denied. Reported below: 897 N. E. 2d 469.

No. 09–12. SANDOVAL ET AL. *v.* CITY OF CHICAGO, ILLINOIS. C. A. 7th Cir. Certiorari denied. Reported below: 560 F. 3d 703.

No. 09–13. REDSTONE RESOURCES, INC. *v.* HOLME, ROBERTS & OWEN, LLP, ET AL. Ct. App. Colo. Certiorari denied.

No. 09–14. SHANNON, DIRECTOR, ILLINOIS DEPARTMENT OF LABOR, ET AL. *v.* 520 SOUTH MICHIGAN AVENUE ASSOCIATES, LTD., DBA CONGRESS PLAZA HOTEL & CONVENTION CENTER. C. A. 7th Cir. Certiorari denied. Reported below: 549 F. 3d 1119.

No. 09–15. ADAMO, EXECUTOR OF THE ESTATE OF ROSE, ET AL. *v.* BROWN & WILLIAMSON TOBACCO CORP., SUCCESSOR IN INTEREST TO AMERICAN TOBACCO CO., ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 11 N. Y. 3d 545, 900 N. E. 2d 966.

No. 09–16. MURASKI *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied.

No. 09–17. SILVERMAN ET AL. *v.* STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. C. A. 6th Cir. Certiorari denied. Reported below: 316 Fed. Appx. 440.

No. 09–18. GANG SONG *v.* TURNER ET AL. C. A. 6th Cir. Certiorari denied.

No. 09–19. HILL *v.* UNITED STATES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 296 Fed. Appx. 921.

No. 09–20. GREEN ET AL. *v.* JEFFERSON COUNTY COMMISSION ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 563 F. 3d 1243.

No. 09–22. JELOVSEK *v.* BREDESEN, GOVERNOR OF TENNESSEE, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 545 F. 3d 431.

No. 09–25. DIODORO *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 601 Pa. 6, 970 A. 2d 1100.

No. 09–27. HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 937 and 321 Fed. Appx. 606.

No. 09–30. MOORE *v.* WILLIAMSBURG REGIONAL HOSPITAL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 560 F. 3d 166.

No. 09–31. REYES *v.* BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ARAPAHOE, COLORADO, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 311 Fed. Appx. 113.

No. 09–33. LIN ET AL. *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 561 F. 3d 502.

No. 09–37. SANTOSO ET UX. *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 300 Fed. Appx. 569.

No. 09–39. DUFRENE BOATS, INC. *v.* NGA TRINH, INDIVIDUALLY AND ON BEHALF OF HAO TRAN ET AL. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 6 So. 3d 830.

No. 09–40. ILLINOIS INVESTMENT TRUST NO. 92–7163 *v.* AMERICAN GRADING CO. C. A. 7th Cir. Certiorari denied. Reported below: 562 F. 3d 824.

No. 09–41. LUNA-HERNANDEZ *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 301 Fed. Appx. 691.

No. 09–42. BUTLER *v.* GREIF, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 748.

No. 09–43. PANNELL *v.* HALL, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 09–44. CANO *v.* INDUSTRIAL COMMISSION OF ARIZONA ET AL. Ct. App. Ariz. Certiorari denied.

No. 09–46. UNITED STATES EX REL. VUYYURU *v.* JADHAV ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 555 F. 3d 337.

No. 09–48. LAWRENCE *v.* WELCH ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 531 F. 3d 364.

No. 09–50. LYGREN *v.* MIRROR IMAGE INTERNET, INC., ET AL. Sup. Ct. Del. Certiorari denied.

No. 09–51. SINGLETON *v.* FLORIDA DEPARTMENT OF JUVENILE JUSTICE. C. A. 11th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 222.

No. 09–52. SKROPITS *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 121 Ohio St. 3d 103, 902 N. E. 2d 464.

No. 09–54. DEPARTMENT OF THE INTERIOR ET AL. *v.* KERR-MCGEE OIL & GAS CORP. C. A. 5th Cir. Certiorari denied. Reported below: 554 F. 3d 1082.

No. 09–56. MARSHALL *v.* BRANDYWINE CHESAPEAKE HOUSING CORP. Ct. App. D. C. Certiorari denied.

No. 09–57. MITRANO *v.* KELLY. Ct. Sp. App. Md. Certiorari denied. Reported below: 183 Md. App. 766.

No. 09–58. ARSHAD, INDIVIDUALLY AND ON BEHALF OF ARSHAD, DECEASED, ET AL. *v.* CONGEMI, CHIEF OF POLICE, CITY OF KENNER, LOUISIANA, ET AL. C. A. 5th Cir. Certiorari denied.

No. 09–59. DOUGLAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 320.

No. 09–61. MEYERS *v.* SOVEREIGN BANK ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 959 A. 2d 475.

No. 09–62. PEYTON *v.* FRED'S STORES OF ARKANSAS, INC. C. A. 8th Cir. Certiorari denied. Reported below: 561 F. 3d 900.

No. 09–64. GEORGE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–65. SAMADI *v.* OLIVER. C. A. 11th Cir. Certiorari denied. Reported below: 306 Fed. Appx. 458.

No. 09–66. SESSOMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 09–67. WHITESIDE *v.* RUSSELLVILLE NEWSPAPERS, INC., ET AL. Sup. Ct. Ark. Certiorari denied. Reported below: 2009 Ark. 135, 295 S. W. 3d 798.

No. 09–68. ODOMES *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 6 So. 3d 790.

No. 09–72. BROCAIL *v.* DETROIT TIGERS, INC. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 268 S. W. 3d 90.

No. 09–73. LUNDEBY *v.* BRUINSMA, EXECUTIVE DIRECTOR, THOMAS J. FREDERICK JUVENILE JUSTICE CENTER, SOUTH BEND, INDIANA, CUSTODIAN, ET AL. C. A. 7th Cir. Certiorari denied.

No. 09–81. WILLIAMS CONTROLS, INC. *v.* CUESTA ET AL., INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED. Sup. Ct. Okla. Certiorari denied. Reported below: 209 P. 3d 278.

No. 09–83. POO-BAH ENTERPRISES, INC., DBA CRAZY HORSE TOO *v.* COOK COUNTY, ILLINOIS, ET AL. Sup. Ct. Ill. Certiorari denied. Reported below: 232 Ill. 2d 463, 905 N. E. 2d 781.

No. 09–85. HANI CHEN *v.* CITY OF NEW YORK, NEW YORK, ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 54 App. Div. 3d 797, 863 N. Y. S. 2d 373.

No. 09–87. MARTINEZ, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF GINN *v.* BEGGS, SHERIFF, CLEVELAND COUNTY, OKLAHOMA, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 563 F. 3d 1082.

No. 09–90. PIERCE ET AL. *v.* SAN DIEGO UNIFIED PORT DISTRICT. C. A. 9th Cir. Certiorari denied. Reported below: 340 Fed. Appx. 351.

No. 09–92. DAVIS ET VIR *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 6th Cir. Certiorari denied. Reported below: 301 Fed. Appx. 398.

No. 09–93. ANAPOELL *v.* AMERICAN EXPRESS BUSINESS FINANCE CORP. ET AL. C. A. 10th Cir. Certiorari denied.

No. 09–96. SOMMERS, EXECUTRIX OF THE ESTATE OF SOMMERS, DECEASED *v.* SOMMERS ET AL. Ct. App. Ind. Certiorari denied. Reported below: 898 N. E. 2d 1234.

No. 09–97. RITCHIE ET AL. *v.* VAST RESOURCES, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 563 F. 3d 1334.

No. 09–99. PATTERSON *v.* AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL–CIO, #2456. C. A. 3d Cir. Certiorari denied. Reported below: 320 Fed. Appx. 143.

No. 09–100. MICHIGAN *v.* DAVIS. Ct. App. Mich. Certiorari denied.

No. 09–101. SMITH ET AL. *v.* THOMAS JEFFERSON UNIVERSITY HOSPITAL ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–105. KARAGIANNOPOULOS *v.* CITY OF LOWELL, NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 305 Fed. Appx. 64.

No. 09–107. CORDY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 560 F. 3d 808.

No. 09–110. HCA, INC., ET AL. *v.* AON CORP. ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 384 Ill. App. 3d 1081, 973 N. E. 2d 1084.

No. 09–111. INGRUM *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 560 F. 3d 1311.

No. 09–112. RUIZ RIVERA ET AL. *v.* DEPARTMENT OF EDUCATION ET AL. C. A. 1st Cir. Certiorari denied.

No. 09–114. KIRKLAND ET AL. *v.* WAYNE COUNTY, MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 09–116. SECAREA *v.* REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 09–118. BRAQUET *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 336 Fed. Appx. 432.

No. 09–119. BADURA ET AL. *v.* SPAHN ET AL. Sup. Ct. Neb. Certiorari denied.

No. 09–120. T. G. *v.* KENTUCKY CABINET FOR HEALTH AND FAMILY SERVICES. Sup. Ct. Ky. Certiorari denied.

No. 09–121. HOY *v.* MENTOR TOWNSHIP, MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 482 Mich. 992, 756 N. W. 2d 64.

No. 09–123. KODRIN ET VIR *v.* STATE FARM FIRE & CASUALTY CO. C. A. 5th Cir. Certiorari denied. Reported below: 314 Fed. Appx. 671.

No. 09–124. MORRES *v.* DEER'S HEAD HOSPITAL CENTER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 216.

No. 09–125. PIERS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 69.

No. 09–126. TANDIONO *v.* HOLDER, ATTORNEY GENERAL. C. A. 6th Cir. Certiorari denied.

No. 09–127. BURNETT *v.* GENERAL MOTORS CORP. ET AL. Ct. App. Mich. Certiorari denied.

No. 09–128. COVALT ET AL. *v.* ALLSTATE INSURANCE CO. C. A. 10th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 717.

No. 09–129. AMERICAN CRYSTAL SUGAR CO. *v.* VILSACK, SECRETARY OF AGRICULTURE, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 563 F. 3d 822.

No. 09–130. OWENS *v.* STEELE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 549 F. 3d 399.

No. 09–131. PANNELL *v.* BURNETTE, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 09–132. DAVIS *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 285 Ga. 343, 676 S. E. 2d 215.

No. 09–134. RIPLEY *v.* WYOMING MEDICAL CENTER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 559 F. 3d 1119.

No. 09–135. GREEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 560 F. 3d 853.

No. 09–136. MARTIN *v.* CITY OF SAN ANTONIO, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 669.

No. 09–137. GOWAN *v.* WARD COUNTY COMMISSION. Sup. Ct. N. D. Certiorari denied. Reported below: 764 N. W. 2d 425.

No. 09–138. GRABER ET AL. *v.* FUQUA. Sup. Ct. Tex. Certiorari denied. Reported below: 279 S. W. 3d 608.

No. 09–143. HUDSON AREA SCHOOLS *v.* PATTERSON ET UX. C. A. 6th Cir. Certiorari denied. Reported below: 551 F. 3d 438.

No. 09–147. ESTATE OF MARTIN *v.* CALIFORNIA DEPARTMENT OF VETERANS AFFAIRS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 560 F. 3d 1042.

No. 09–148. MSEJ, LLC *v.* TRANSIT CASUALTY COMPANY IN RECEIVERSHIP. Sup. Ct. Mo. Certiorari denied. Reported below: 280 S. W. 3d 621.

No. 09–151. PHILLIPS ET AL. *v.* GATES, SECRETARY OF DEFENSE. C. A. 6th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 577.

No. 09–153. TAYLOR ACQUISITIONS, LLC *v.* CITY OF TAYLOR, MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 313 Fed. Appx. 826.

No. 09–154. FLORIDA ASSOCIATION OF PROFESSIONAL LOBBYISTS, INC., ET AL. *v.* DIVISION OF LEGISLATIVE INFORMATION SERVICES OF THE FLORIDA OFFICE OF LEGISLATIVE SERVICES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 566 F. 3d 1281.

No. 09–155. MARTINI ET UX. *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 09–156. APPLEBY *v.* GEREN, SECRETARY OF THE ARMY. C. A. D. C. Cir. Certiorari denied. Reported below: 330 Fed. Appx. 196.

No. 09–159. GARLAND *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 308 Fed. Appx. 636.

No. 09–169. ARENSDORF *v.* GEITHNER, SECRETARY OF THE TREASURY. C. A. 5th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 514.

No. 09–170. UNITED STATES EX REL. GRYNBERG *v.* PACIFIC GAS & ELECTRIC CO. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 562 F. 3d 1032.

No. 09–173. MING YEN HOU *v.* NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION. C. A. 2d Cir. Certiorari denied. Reported below: 321 Fed. Appx. 60.

No. 09–175. JAO ET AL. *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 302 Fed. Appx. 520.

No. 09–178. FARASH *v.* FLEET BANK, FKA SUMMIT BANK, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 326 Fed. Appx. 77.

No. 09–181. MCMATH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 559 F. 3d 657.

No. 09–184. WHITE *v.* DONLEY, SECRETARY OF THE AIR FORCE. C. A. 9th Cir. Certiorari denied. Reported below: 310 Fed. Appx. 159.

No. 09–189. HELGERSON *v.* TEXAS. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 09–190. ROBLES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 310 Fed. Appx. 971.

No. 09–192. JONES ET VIR *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 10th Cir. Certiorari denied. Reported below: 560 F. 3d 1196.

No. 09–206. FORSMAN, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF FORSMAN ET AL., ET AL. *v.* CESSNA AIRCRAFT CO. C. A. 11th Cir. Certiorari denied. Reported below: 562 F. 3d 1374.

No. 09–219. SCHERY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 767.

No. 09–238. NAVAR *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 557 F. 3d 511.

No. 09–245. CLARK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 395.

No. 09–5001. DAVIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–5002. GREEN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 635.

No. 09–5003. MOSES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 09–5004. MCCLAIN *v.* HALL, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 552 F. 3d 1245.

No. 09–5005. PEREIRA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 866.

No. 09–5006. LANDERS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 564 F. 3d 1217.

No. 09–5007. FERNANDEZ MARTINEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 317 Fed. Appx. 929.

No. 09–5008. KIPPLE *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 294 Ga. App. 420, 669 S. E. 2d 185.

No. 09–5009. LOPEZ-MOLDONADO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 318 Fed. Appx. 139.

No. 09–5010. JAMES *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 385 Ill. App. 3d 1129, 970 N. E. 2d 128.

No. 09–5011. MARSHALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 306 Fed. Appx. 825.

No. 09–5013. PHILLIPS ET AL. *v.* PHILLIPS, EXECUTOR OF THE ESTATE OF PHILLIPS, DECEASED, ET AL. Sup. Ct. Va. Certiorari denied.

No. 09–5014. MIDDLEBROOKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 847.

No. 09–5015. ALVARO F. *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 291 Conn. 1, 966 A. 2d 712.

No. 09–5017. ASKEW *v.* AYRES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–5018. BAEZ *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 759 A. 2d 936.

No. 09–5019. BENNETT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 558 F. 3d 716.

No. 09–5020. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 315 Fed. Appx. 494.

No. 09–5021. RAMOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 852.

No. 09–5023. MAXWELL *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2009 Ark. 125.

No. 09–5025. AMBROSE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–5026. BANKS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 385 Ill. App. 3d 1126, 970 N. E. 2d 127.

No. 09–5028. OLVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 301 Fed. Appx. 206.

No. 09–5030. VAN LILLY *v.* BURTT, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied.

No. 09–5031. LANGON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 996 So. 2d 212.

No. 09–5032. LEE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 298.

No. 09–5033. SPENCER *v.* HOFBAUER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–5034. RABY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–5036. SAVAGE *v.* BONAVITACOLA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 316 Fed. Appx. 191.

No. 09–5037. RUNYON *v.* OHIO. Ct. App. Ohio, Butler County. Certiorari denied.

No. 09–5038. SOLAN *v.* RANCK ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 326 Fed. Appx. 97.

No. 09–5039. DILLARD *v.* BAZZLE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 543.

No. 09–5040. ROBINSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 09–5042. FERGUSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–5044. HARPER *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 7 So. 3d 1105.

No. 09–5045. HOEFERT *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–5046. HAYWOOD *v.* TRIBECA LENDING CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 307 Fed. Appx. 869.

No. 09–5047. HOGUES *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 684.

No. 09–5048. HEAROD *v.* OLLISON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–5049. HARRIS *v.* JARRIEL, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 09–5050. GREEN *v.* HORNBREAK, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 915.

No. 09–5051. FARMER *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 182 Md. App. 741.

No. 09–5052. HICKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 300 Fed. Appx. 246.

No. 09–5053. GRUFF *v.* WILSON, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–5054. HOOKER *v.* THURMER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 09–5056. FLORA *v.* SHEETS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–5057. PETERSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 2 So. 3d 146.

No. 09–5058. PATTERSON *v.* CITY OF CHESAPEAKE, VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 573.

No. 09–5059. HARROD *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 09–5060. FONTENOT *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–5061. HAKIM *v.* THOMAS, SUPERINTENDENT, LUMBERTON CORRECTIONAL INSTITUTION. Sup. Ct. N. C. Certiorari denied.

No. 09–5062. TURNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 880.

No. 09–5063. WILHELM *v.* CLARK, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–5064. TORIOLA *v.* APPELLATE DIVISION, SUPREME COURT OF NEW YORK, SECOND JUDICIAL DEPARTMENT, ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 51 App. Div. 3d 937, 856 N. Y. S. 2d 874.

No. 09–5065. WELCH *v.* CHARLAN ET AL. C. A. 2d Cir. Certiorari denied.

No. 09–5066. WILLIAMS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 09–5067. WATSON *v.* ROZUM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET. C. A. 3d Cir. Certiorari denied.

No. 09–5068. HALLFORD *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 09–5069. HUGHES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 09–5071. DANIEL *v.* TRANCOSO, WARDEN. Sup. Ct. Ill. Certiorari denied.

No. 09–5072. ZAHN *v.* CITY OF SAN DIEGO, CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 591.

No. 09–5073. WHITFIELD *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 377 Ill. App. 3d 1145, 953 N. E. 2d 84.

No. 09–5075. JONES *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 784.

No. 09–5079. BRAZELTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 557 F. 3d 750.

No. 09–5080. AARON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 385 Ill. App. 3d 1125, 970 N. E. 2d 127.

No. 09–5081. VOIGT *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 09–5082. WEEKS *v.* WHITE'S MILL COLONY, INC. Ct. App. S. C. Certiorari denied.

No. 09–5084. MOREHOUSE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 318 Fed. Appx. 87.

No. 09–5085. PEOPLES *v.* DAVIS ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–5086. SMITH *v.* DENNY, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 309 Fed. Appx. 68.

No. 09–5087. GREENE *v.* FINGER LAKES DEVELOPMENTAL DISABILITIES SERVICE OFFICE ET AL. C. A. 2d Cir. Certiorari denied.

No. 09–5088. PEER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 305 Fed. Appx. 442.

No. 09–5091. GARCIA-GRACIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 286.

No. 09–5092. GREEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–5093. HAWTHORNE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 46 Cal. 4th 67, 205 P. 3d 245.

No. 09–5094. GODBOULDT *v.* LAMARQUE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 745.

No. 09–5095. FERNANDEZ-ROSARIO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–5097. HOSTETTER *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 09–5100. KING *v.* RYAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 564 F. 3d 1133.

No. 09–5101. JACKSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 324 Fed. Appx. 153.

No. 09–5103. ROMERO-FACIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 290.

No. 09–5104. RAMIREZ-ROSALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 295.

No. 09–5105. ROSE, AKA SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 324.

No. 09–5107. TLATENCHI-ENRIQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 304.

No. 09–5108. MORALES-MORALES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 321 Fed. Appx. 176.

No. 09–5109. WOODS *v.* SOCIAL SECURITY ADMINISTRATION. C. A. 5th Cir. Certiorari denied. Reported below: 313 Fed. Appx. 720.

No. 09–5110. DAVIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 339 Fed. Appx. 359.

No. 09–5112. BREWER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 561 F. 3d 676.

No. 09–5113. BRANIGAN ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–5116. GARRETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 294.

No. 09–5117. HERRERA-MIRANDA, AKA HERRERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 302.

No. 09–5118. GEMMILL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 309 Fed. Appx. 569.

No. 09–5119. EMERSON *v.* COUVILLION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 507.

No. 09–5121. SCOVILLE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 561 F. 3d 1174.

No. 09–5125. MAITRE *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 09–5126. MACIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 317 Fed. Appx. 925.

No. 09–5127. NIXON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 395.

No. 09–5129. BEAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 688.

No. 09–5130. AVALOS-RIOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 234.

No. 09–5132. CORJASSO *v.* BROWN, ATTORNEY GENERAL OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 304 Fed. Appx. 567.

No. 09–5133. WAGGONER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 687.

No. 09–5134. WOODARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 09–5136. PROPST *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 315 Fed. Appx. 483.

No. 09–5137. VAN LILLY *v.* KNOX ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 579.

No. 09–5140. PALEGA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 556 F. 3d 709.

No. 09–5141. MOORE *v.* LAWLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–5143. ROSA *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–5145. BROWN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 556 F. 3d 1108.

No. 09–5147. BELTRAN *v.* DEXTER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–5148. AGUADO-GUEL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–5149. ROBINSON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 09–5150. RUELAS *v.* ARIZONA. Super. Ct. Ariz., County of Maricopa. Certiorari denied.

No. 09–5151. THOMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 305 Fed. Appx. 960.

No. 09–5152. ZABALA *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 58 App. Div. 3d 554, 872 N. Y. S. 2d 104.

No. 09–5153. VIDAL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 561 F. 3d 1113.

No. 09–5154. BELL *v.* BASS-JONES LESURE, JUDGE, DISTRICT COURT FOR OKLAHOMA COUNTY. C. A. 10th Cir. Certiorari denied.

No. 09–5155. BERNAL-JIMENEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 09–5157. FULLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 557 F. 3d 859.

No. 09–5158. JONES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 827.

No. 09–5160. LOMAX *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 313 Fed. Appx. 646.

No. 09–5161. THOMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 307 Fed. Appx. 753.

No. 09–5163. LEONOR *v.* HOUSTON. C. A. 8th Cir. Certiorari denied.

No. 09–5165. CANNEDY *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 5 So. 3d 676.

No. 09–5166. CASTANEDA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 315 Fed. Appx. 564.

No. 09–5167. COWAN *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 330 Fed. Appx. 916.

No. 09–5169. KITTRELL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–5170. FLOOD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 327 Fed. Appx. 356.

No. 09–5172. FLANDERS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 09–5173. GARCIA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 705.

No. 09–5174. HATTON *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 09–5175. HUTCHINSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 316 Fed. Appx. 137.

No. 09–5176. GORDON *v.* SUPREME COURT OF TEXAS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 314 Fed. Appx. 702.

No. 09–5177. HARVEY *v.* LYNCH, SHERIFF, MCLENNAN COUNTY, TEXAS. C. A. 5th Cir. Certiorari denied.

No. 09–5178. ISWED *v.* BOOKER, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 09–5179. GRAHAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 306 Fed. Appx. 833.

No. 09–5180. FLOYD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–5181. HILL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 552 F. 3d 591.

No. 09–5182. FEREBEE *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 09–5184. GRIFFIN *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 09–5185. GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 881.

No. 09–5186. HERNANDEZ *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 09–5187. HOFFMAN *v.* LINCOLN GENERAL INSURANCE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 303 Fed. Appx. 77.

No. 09–5188. FEBLES *v.* RIDER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–5189. HAYES *v.* GARCIA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 293 Fed. Appx. 442.

No. 09–5191. SACCOCCIA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 564 F. 3d 502.

No. 09–5193. THURMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 316 Fed. Appx. 599.

No. 09–5196. JOHNSON *v.* PINCHAK ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–5197. GIDDINGS *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 349 Mont. 347, 208 P. 3d 363.

No. 09–5198. GORMAN *v.* NATIONAL TRANSPORTATION SAFETY BOARD ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 558 F. 3d 580.

No. 09–5199. PRICE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 558 F. 3d 270.

No. 09–5200. BYERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 561 F. 3d 825.

No. 09–5203. RUIZ-ARRIAGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 565 F. 3d 280.

No. 09–5204. SEBOLT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 468.

No. 09–5206. GUERRERO-ROBLEDO, AKA GUERRERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 565 F. 3d 940.

No. 09–5207. HAMMOND *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 563 F. 3d 95.

No. 09–5208. EASTOM *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 879.

No. 09–5209. LOYA-SOTELLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 251.

No. 09–5210. JONES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 689.

No. 09–5211. CLEMMONS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 835.

No. 09–5212. KISER *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 284 S. W. 3d 227.

No. 09–5215. COOK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 311 Fed. Appx. 936.

No. 09–5218. RODEBAUGH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 561 F. 3d 864.

No. 09–5219. TORRES-TONTLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 873.

No. 09–5223. PINEDA *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 09–5224. CARDOSA-FERREIRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 372.

No. 09–5225. TRAVIS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 385 Ill. App. 3d 1133, 970 N. E. 2d 130.

No. 09–5227. SOY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–5228. MCCARTHY *v.* JENKINS ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 09–5229. HAILEY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–5230. HOFFMAN *v.* NEW JERSEY ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–5231. FARRA *v.* CARLTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–5232. HOLBACH *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 763 N. W. 2d 761.

No. 09–5233. GIDDENS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 09–5234. GAINES *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 09–5235. HARRIS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 1 So. 3d 178.

No. 09–5236. GRUMBLES *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–5237. GREENE *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 09–5238. HUNT *v.* WOLFENBARGER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–5239. HAIRSTON *v.* HAYNES, SUPERINTENDENT, WARREN CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 297 Fed. Appx. 273.

No. 09–5240. HUNGATE *v.* MABUS, SECRETARY OF THE NAVY. C. A. 9th Cir. Certiorari denied. Reported below: 302 Fed. Appx. 579.

No. 09–5241. WALKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 281.

No. 09–5244. TENSLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 837.

No. 09–5245. CHO-ING TSENG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 311 Fed. Appx. 950.

No. 09–5246. BROOKS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 569 F. 3d 1284.

No. 09–5249. LEAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 704.

No. 09–5250. SAGER *v.* HALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–5252. MCGEE *v.* HIGGINS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 568 F. 3d 832.

No. 09–5253. BANNISTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 256.

No. 09–5254. ROBINSON ET AL. *v.* PENNSYLVANIA DEPARTMENT OF CORRECTIONS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 327 Fed. Appx. 321.

No. 09–5255. HEINEMANN *v.* WILSON, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 455.

No. 09–5257. ELLIOTT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 540.

No. 09–5258. EDWARDS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 481.

No. 09–5259. EL FARRA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 554 F. 3d 752.

No. 09–5260. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 557 F. 3d 556.

No. 09–5261. MARQUEZ *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 291 Conn. 122, 967 A. 2d 56.

No. 09–5262. JOHNSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 308 Fed. Appx. 996.

No. 09–5263. JONES *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 201 P. 3d 869.

No. 09–5264. JONES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 463.

No. 09–5265. MASCORRO-CHAVARRIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 385.

No. 09–5266. SMITH *v.* WORKMAN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 550 F. 3d 1258.

No. 09–5268. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 562 F. 3d 938.

No. 09–5271. CLAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 384.

No. 09–5272. CANTRELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 785.

No. 09–5273. EDWARDS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 754.

No. 09–5274. SONCZALLA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 561 F. 3d 842.

No. 09–5275. SANCHEZ-ALVAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 310 Fed. Appx. 653.

No. 09–5276. JONES *v.* PERLMAN, SUPERINTENDENT, MIDSTATE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 09–5277. MARTIN *v.* MERRILL, WARDEN. C. A. 1st Cir. Certiorari denied.

No. 09–5278. MARTIN *v.* HOLDER, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied.

No. 09–5279. JOINTER *v.* GARCIA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–5280. ALLEN *v.* HALL, SUPERINTENDENT, TWO RIVERS CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 09–5282. BEST *v.* GEICO CASUALTY CO. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 09–5284. MCFARLAND *v.* DEPPISCH, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 113.

No. 09–5286. PICKENS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 268.

No. 09–5287. MULLINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–5288. MINGO, AKA MINE *v.* LAWLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–5291. MONTUFAR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 896.

No. 09–5292. LUKE *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 51 So. 3d 411.

No. 09–5293. LETIZIA *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied.

No. 09–5295. MCFADDEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 913.

No. 09–5296. ROSSATY, AKA MENDEZ *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 09–5297. ROBINSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 264.

No. 09–5298. SANTOS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–5299. WASHINGTON *v.* EXPERIAN ET AL. C. A. 7th Cir. Certiorari denied.

No. 09–5300. WILSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 314 Fed. Appx. 911.

No. 09–5302. YEARBY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 790.

No. 09–5303. WALDRON-RAMSEY *v.* PACHOLKE, SUPERINTENDENT, STAFFORD CREEK CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 556 F. 3d 1008.

No. 09–5304. EVANS *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 993 So. 2d 1218.

No. 09–5306. LACHIRA *v.* SUTTON. App. Ct. Conn. Certiorari denied.

No. 09–5307. JOYNER *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 314 Fed. Appx. 619.

No. 09–5309. JARRELL *v.* HAINES, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 317 Fed. Appx. 376.

No. 09–5310. MAISANO *v.* RUIZ. C. A. 9th Cir. Certiorari denied.

No. 09–5311. SANCHEZ-OXIO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–5312. MONACELLI *v.* HEARTLAND EDUCATIONAL CONSORTIUM ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–5313. PERRY *v.* BYRNES (two judgments). C. A. 9th Cir. Certiorari denied.

No. 09–5314. AMELO-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 390.

No. 09–5315. BALOGH *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 09–5316. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 553 F. 3d 768.

No. 09–5317. ARIAS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 439.

No. 09–5318. BERGER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 553 F. 3d 1107.

No. 09–5319. OKORO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 09–5320. DUVALL *v.* LOMBARDI, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 8th Cir. Certiorari denied.

No. 09–5323. HERNANDEZ-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 09–5324. HERNANDEZ-LUNA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 377.

No. 09–5325. GONZALEZ *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 09–5326. E. L. G. *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 221 Ore. App. 507, 190 P. 3d 1239.

No. 09–5328. HOLLAND *v.* HOLLAND. Sup. Ct. S. C. Certiorari denied.

No. 09–5329. GIL-HERNANDEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 309 Fed. Appx. 566.

No. 09–5331. FIELD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 386.

No. 09–5333. MATHESON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 808.

No. 09–5334. SPIKES *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 111 Conn. App. 543, 961 A. 2d 426.

No. 09–5335. RHODES *v.* MURPHY, COMMISSIONER, CONNECTICUT DEPARTMENT OF CORRECTION. App. Ct. Conn. Certiorari denied. Reported below: 111 Conn. App. 903, 959 A. 2d 1094.

No. 09–5336. DEL VALLE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 323 Fed. Appx. 125.

No. 09–5337. FRANCO-FLORES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 558 F. 3d 978.

No. 09–5338. SIMPSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 270.

No. 09–5339. THOMAS *v.* PARKER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 626.

No. 09–5340. WILSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–5341. ROSS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 300 Fed. Appx. 386.

No. 09–5342. PRATER *v.* RUBITSCHUN ET AL. C. A. 6th Cir. Certiorari denied.

No. 09–5343. DARTY *v.* SUPERIOR DRIVE SOURCE. C. A. 6th Cir. Certiorari denied.

No. 09–5344. CROWE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–5345. VINCENT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 316 Fed. Appx. 275.

No. 09–5348. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 09–5349. MERRIWEATHER *v.* REYNOLDS, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied.

No. 09–5350. PELCH *v.* YARBOROUGH, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 607.

No. 09–5351. DONZO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 335 Fed. Appx. 191.

No. 09–5353. DEL CASTELLO *v.* SUPERIOR COURT OF CALIFORNIA, ALAMEDA COUNTY. C. A. 9th Cir. Certiorari denied.

No. 09–5354. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 557 F. 3d 943.

No. 09–5357. RASMUSSEN *v.* FRAKES, SUPERINTENDENT, COYOTE RIDGE CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 500.

No. 09–5358. MENDEZ-SANCHEZ, AKA LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 563 F. 3d 935.

No. 09–5359. TOMPKINS *v.* MITCHELL, CORRECTIONAL ADMINISTRATOR IV, MOUNTAIN VIEW CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 283.

No. 09–5360. WASHINGTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–5361. ALEXANDRE *v.* MAINE. C. A. 1st Cir. Certiorari denied.

No. 09–5362. BREWER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 09–5364. LYNCH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 275.

No. 09–5365. COLMAN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–5366. KING *v.* NOLAND ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 656.

No. 09–5368. SCOTT *v.* HICKMAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–5369. FORD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–5372. DE LA O *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 307.

No. 09–5373. MELSON *v.* ALLEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 548 F. 3d 993.

No. 09–5376. CARR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–5378. BANKS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 435.

No. 09–5379. POWELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 204.

No. 09–5380. ACUNA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 313 Fed. Appx. 283.

No. 09–5381. PRINCE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 307 Fed. Appx. 742.

No. 09–5382. BIRTHA *v.* LOUISIANA. Sup. Ct. La. Certiorari denied.

No. 09–5384. GONZALES *v.* SALAZAR, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–5385. FELIX *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 561 F. 3d 1036.

No. 09–5387. GRAHAM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–5390. FORD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–5392. CAMPBELL *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 1 So. 3d 176.

No. 09–5393. CARRASQUILLO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 559 F. 3d 34.

No. 09–5394. JEMISON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 310 Fed. Appx. 866.

No. 09–5395. COOKS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–5397. SHAMSUD-DIN *v.* OREGON BOARD OF PAROLE AND POST-PRISON SUPERVISION. Ct. App. Ore. Certiorari denied.

No. 09–5399. LEVY *v.* OHIO ET AL. C. A. 6th Cir. Certiorari denied.

No. 09–5402. McCloud *v.* Kentucky. Ct. App. Ky. Certiorari denied. Reported below: 279 S. W. 3d 162.

No. 09–5403. Vaughn *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 09–5404. R. W. *v.* United States. Ct. App. D. C. Certiorari denied. Reported below: 958 A. 2d 259.

No. 09–5405. Velazquez *v.* Lape, Superintendent, Coxsackie Correctional Facility, et al. C. A. 2d Cir. Certiorari denied.

No. 09–5406. Powell *v.* San Diego County Health and Human Services Agency. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 09–5408. Wilson *v.* Smith, Correctional Administrator, Albermarle Correctional Institution. C. A. 4th Cir. Certiorari denied. Reported below: 314 Fed. Appx. 608.

No. 09–5409. Graves *v.* Texas. Ct. App. Tex., 10th Dist. Certiorari denied. Reported below: 271 S. W. 3d 801.

No. 09–5410. Moment *v.* Maryland et al. C. A. 4th Cir. Certiorari denied. Reported below: 333 Fed. Appx. 767.

No. 09–5412. Brinda *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 464.

No. 09–5413. Adams *v.* United States. C. A. 4th Cir. Certiorari denied.

No. 09–5414. Pinnock *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 545.

No. 09–5415. Oloba-Aisony *v.* Scribner, Warden. C. A. 9th Cir. Certiorari denied.

No. 09–5416. Brown *v.* Johnson, Director, Virginia Department of Corrections. Sup. Ct. Va. Certiorari denied.

No. 09–5417. Rodriguez Pinero, aka Domieque-Rodriguez *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 805.

No. 09–5418. BERRYMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 322 Fed. Appx. 216.

No. 09–5420. CONCEPCION *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 09–5422. SCOTT *v.* PARKER, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 317 Fed. Appx. 758.

No. 09–5423. WIGGINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 331 Fed. Appx. 648.

No. 09–5424. OLDBEAR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 568 F. 3d 814.

No. 09–5425. VAZQUEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 555 F. 3d 923.

No. 09–5427. BUTLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 780.

No. 09–5428. BAKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 213.

No. 09–5431. BELCHER *v.* YOUNGER. App. Ct. Conn. Certiorari denied. Reported below: 112 Conn. App. 901, 963 A. 2d 114.

No. 09–5432. ANUFORO *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 293 Ga. App. 1, 666 S. E. 2d 50.

No. 09–5433. BRITO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 09–5435. STONE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 855.

No. 09–5438. GRIFFIN *v.* SEBULIBA. C. A. 7th Cir. Certiorari denied.

No. 09–5439. CORNES *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied.

No. 09–5440. DAVIS *v.* LAFLER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 441.

No. 09–5441. HILL *v.* HILLIER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 314 Fed. Appx. 614.

No. 09–5443. TUCKER *v.* CHIPLA COLLEGE. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 7 So. 3d 539.

No. 09–5444. VANCE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 853.

No. 09–5445. VILLEGAS-MARTINEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 260.

No. 09–5446. PINA-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 420.

No. 09–5447. BAUGH *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 536.

No. 09–5449. STEPHENS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–5450. SANTA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–5452. RAINEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 779.

No. 09–5453. SILVA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 301.

No. 09–5454. SMITH *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 125 Nev. 1081, 281 P. 3d 1222.

No. 09–5456. DIXON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 348.

No. 09–5457. DIAZ-ARGUETA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 564 F. 3d 1047.

No. 09–5458. ROBINSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–5459. SEPULVEDA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 820.

No. 09–5460. CALDERON *v.* HOLDER, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 309 Fed. Appx. 583.

No. 09–5461. DE LA FE *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 3 So. 3d 1248.

No. 09–5462. CIOCCHETTI *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 745.

No. 09–5463. CLEMENTS, AKA DION, AKA HARMON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 284.

No. 09–5464. LITTLES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 873.

No. 09–5465. MARSHALL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 801.

No. 09–5467. MARTIN *v.* SULLIVAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–5468. JOSEPH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–5469. KOON *v.* SOUTH CAROLINA. Ct. Common Pleas of Cherokee County, S. C. Certiorari denied.

No. 09–5470. PINE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 09–5471. MINES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 306 Fed. Appx. 719.

No. 09–5472. MONROE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 552.

No. 09–5473. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 168.

No. 09–5475. CORDELL *v.* SABOL, WARDEN, ET AL. C. A. 1st Cir. Certiorari denied.

No. 09–5476. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 316 Fed. Appx. 917.

No. 09–5477. WHITE *v.* MICHIGAN DEPARTMENT OF CORRECTIONS. C. A. 6th Cir. Certiorari denied.

No. 09–5478. WILLIAMS *v.* WOLFENBARGER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–5479. VELEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 314 Fed. Appx. 604.

No. 09–5481. WRIGHT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–5482. BECKLES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 565 F. 3d 832.

No. 09–5483. YOUNG *v.* SIRMONS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 551 F. 3d 942.

No. 09–5484. JONES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 563 F. 3d 725.

No. 09–5485. CARTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 560 F. 3d 1107.

No. 09–5486. CARNEAL *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 274 S. W. 3d 420.

No. 09–5489. BERRY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 565 F. 3d 332.

No. 09–5492. GUEYE *v.* THOMAS M. COOLEY LAW SCHOOL ET AL. C. A. 6th Cir. Certiorari denied.

No. 09–5493. ROGERS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–5494. FULTS *v.* UPTON, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 09–5495. ANDERSON *v.* SOUTHLAND BANK ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 21 So. 3d 1196.

No. 09–5497. BOICE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 301 Fed. Appx. 205.

No. 09–5498. ANDERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–5499. BURKELL *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 992 So. 2d 848.

No. 09–5500. MURPHY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–5501. MAGNAN *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 207 P. 3d 397.

No. 09–5504. JAQUEZ *v.* SANDOR, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–5505. AILSWORTH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 658.

No. 09–5506. POLAND *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 963 A. 2d 570.

No. 09–5507. MEIZLIK *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 7 So. 3d 1117.

No. 09–5508. ESPINOSA-MARTINEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 49.

No. 09–5509. NICHOLS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 563 F. 3d 240.

No. 09–5510. NIEVES *v.* PHELPS, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–5511. ROBINSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 676.

No. 09–5513. APONTE *v.* CHAMBERLAIN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MUNCY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–5514. WRIGHT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 800.

No. 09–5516. ERVIN *v.* HOREL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–5518. CREUSERE *v.* WEAVER ET AL. C. A. 6th Cir. Certiorari denied.

No. 09–5519. TRIPLETT *v.* ROY, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 720.

No. 09–5520. TROBEE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 551 F. 3d 835.

No. 09–5521. OWENS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–5522. PERRY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–5523. MOYA-BRETEON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 839.

No. 09–5524. TIPTON *v.* CARLTON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 306 Fed. Appx. 213.

No. 09–5525. TOAZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–5526. WILSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 198.

No. 09–5527. VAN SWAIT *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–5528. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 524.

No. 09–5529. MOONEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 303 Fed. Appx. 737.

No. 09–5530. MOORE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 567 F. 3d 187.

No. 09–5531. MOHAMMAD-OMAR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 259.

No. 09–5532. MORRIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 121.

No. 09–5534. CLARK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 563 F. 3d 771.

No. 09–5535. CRUM *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 7 So. 3d 537.

No. 09–5536. SMITHBACK *v.* CRAIN ET AL. C. A. 5th Cir. Certiorari denied.

No. 09–5537. RIVERA-GARCIA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 558 F. 3d 29.

No. 09–5538. FOWLER *v.* KELLY, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 09–5539. ROBINSON *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 290.

No. 09–5540. SINCLAIR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 880.

No. 09–5541. SEAMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 602.

No. 09–5543. JONES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–5544. FLOWERS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–5545. GHARB *v.* UNITRONICS (1989) (R"G) LTD. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 318 Fed. Appx. 902.

No. 09–5548. MARR *v.* WORTHY, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 09–5549. JOHNSON *v.* KELLY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 166.

No. 09–5551. WILSON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–5552. TATUM *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 67 M. J. 371.

No. 09–5554. BOONE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 272.

No. 09–5555. ABDULLAH *v.* BREWER, GOVERNOR OF ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–5557. ARGUETA-LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 265.

No. 09–5558. WILLIAMS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 09–5559. HARRELL *v.* IDAHO. Sup. Ct. Idaho. Certiorari denied.

No. 09–5560. GREENE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–5561. GEORGE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 897.

No. 09–5562. GREEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–5563. GRANGER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 525.

No. 09–5564. FERGUSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 560 F. 3d 1060.

No. 09–5565. HARRIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 315 Fed. Appx. 893.

No. 09–5566. FLUELLEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–5567. GILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 319.

No. 09–5568. HANNAH *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–5569. KILBOURNE *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 09–5570. FORTNER *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 315 Fed. Appx. 853.

No. 09–5571. FEARON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–5572. OLIVER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 824.

No. 09–5573. MONTEVERDE *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 09–5574. CARRASCO-FLORES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 366.

No. 09–5575. LAUER *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–5578. SPANO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–5579. ROSE *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 348 Mont. 291, 202 P. 3d 749.

No. 09–5580. USCANGA-MORA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 562 F. 3d 1289.

No. 09–5581. TROUP *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 869.

No. 09–5582. PHILLIPS *v.* MISSOURI. Ct. App. Mo., Southern Dist. Certiorari denied.

No. 09–5584. LAYTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 564 F. 3d 330.

No. 09–5585. MARTINEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 834.

No. 09–5586. KERN *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied.

No. 09–5587. JACKSON *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 09–5588. DUDLEY *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 59 App. Div. 3d 200, 873 N. Y. S. 2d 42.

No. 09–5590. ZIED-CAMPBELL *v.* RICHMAN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 317 Fed. Appx. 247.

No. 09–5592. HESS *v.* PENNSYLVANIA DEPARTMENT OF CORRECTIONS ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 600 Pa. 375, 966 A. 2d 550.

No. 09–5593. DEAN *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 09–5594. VAN MYERS *v.* ENNIS INDEPENDENT SCHOOL DISTRICT. C. A. 5th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 375.

No. 09–5596. HUDSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 338 Fed. Appx. 555.

No. 09–5600. HAMER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 366.

No. 09–5601. GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 618.

No. 09–5602. FRENCH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 09–5603. HERNANDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–5604. GREEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–5605. GONZALEZ *v.* ASSET ACCEPTANCE, LLC, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 308 Fed. Appx. 429.

No. 09–5607. ROBINSON *v.* SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 188.

No. 09–5608. SANTIAGO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 562 F. 3d 411.

No. 09–5609. ROBINSON *v.* JACKSON, SUPERINTENDENT, BROWN CREEK CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 315 Fed. Appx. 493.

No. 09–5611. MAULDIN *v.* UNITED STATES PROBATION OFFICE. C. A. 6th Cir. Certiorari denied.

No. 09–5613. ARAUJO-CONTRERAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 332.

No. 09–5614. PLEAZE *v.* KERESTES, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 335 Fed. Appx. 168.

No. 09–5616. PRICE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 985.

No. 09–5617. STOVER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 292 Fed. Appx. 755.

No. 09–5618. ALLEN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 973 A. 2d 734.

No. 09–5620. JONES *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 13 So. 3d 468.

No. 09–5621. JENSEN *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied.

No. 09–5622. DIALLO *v.* HOLDER, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 536.

No. 09–5623. CHARLES *v.* PENTAGON FEDERAL CREDIT UNION. Ct. App. Colo. Certiorari denied.

No. 09–5624. YATES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 277.

No. 09–5625. THOMAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 863.

No. 09–5626. THORWARD *v.* KNOWLES, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 568.

No. 09–5627. THOMPSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 365.

No. 09–5628. SOTO-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 330.

No. 09–5629. MCDONALD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 667.

No. 09–5631. FRASURE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 695.

No. 09–5632. GOODSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 222.

No. 09–5633. REED *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 223 W. Va. 312, 674 S. E. 2d 18.

No. 09–5634. MEANS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 316 Fed. Appx. 889.

No. 09–5635. DOBSHINSKY *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 09–5638. GRAVES *v.* ROZUM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–5640. HUDSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 332 Fed. Appx. 45.

No. 09–5643. HANKS *v.* WRIGHT, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 316 Fed. Appx. 261.

No. 09–5644. HALLMAN *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 963 A. 2d 566.

No. 09–5646. FREEMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–5647. HUGHES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 314 Fed. Appx. 626.

No. 09–5648. FIELDS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 565 F. 3d 290.

No. 09–5649. PATE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 684.

No. 09–5650. STEELE *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 386 Ill. App. 3d 1119, 970 N. E. 2d 624.

No. 09–5652. PADILLA-RODRIGUEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 335 Fed. Appx. 724.

No. 09–5653. DEVORE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 640.

No. 09–5654. WEATHERTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 567 F. 3d 149.

No. 09–5655. MARSHALL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 739.

No. 09–5656. HACKER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 565 F. 3d 522.

No. 09–5657. SAUCEDO-MARTINEZ, AKA SAUCEDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 373.

No. 09–5658. MILLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 362.

No. 09–5660. LECHUGA-MONTALVO, AKA LECHOGA-SANCHEZ, AKA LECHUGA-SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 666.

No. 09–5662. JACKSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 288.

No. 09–5666. HARRIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 544.

No. 09–5667. GROOMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 385.

No. 09–5668. IBANEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 328 Fed. Appx. 673.

No. 09–5669. SMITH *v.* TALLMAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 317 Fed. Appx. 688.

No. 09–5670. VASQUEZ-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 394.

No. 09–5671. ARRIAGA-GUERRERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 567 F. 3d 721.

No. 09–5672. BOHOL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 314 Fed. Appx. 86.

No. 09–5675. HILL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–5676. FELDER *v.* FISCHER, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 2d Cir. Certiorari denied.

No. 09–5677. HOLYFIELD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 315 Fed. Appx. 828.

No. 09–5680. HOUSTON *v.* HATHAWAY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 09–5682. INMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 558 F. 3d 742.

No. 09–5685. JOHNSON *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 538.

No. 09–5687. LONGORIA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–5688. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 916.

No. 09–5690. GORDON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 212.

No. 09–5691. NELSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 334 Fed. Appx. 209.

No. 09–5692. NJOKU *v.* HOLDER, ATTORNEY GENERAL, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 179.

No. 09–5699. MEDOWS *v.* CITY OF CAYCE, SOUTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 314 Fed. Appx. 611.

No. 09–5702. RAMIREZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–5703. SINGALA *v.* UNITED STATES ET AL. C. A. 1st Cir. Certiorari denied.

No. 09–5705. WRIGHT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 332 Fed. Appx. 257.

No. 09–5706. WHITE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 313 Fed. Appx. 652.

No. 09–5707. WHITE *v.* SUPREME COURT OF NEW JERSEY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 319 Fed. Appx. 171.

No. 09–5709. FRYE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 267.

No. 09–5722. REDD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 562 F. 3d 309.

No. 09–5729. THOMAS *v.* THOMAS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 554.

No. 09–5730. VARGAS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 552 F. 3d 550.

No. 09–5732. VALDES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 810.

No. 09–5736. KRSTIC *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 558 F. 3d 1010.

No. 09–5737. HALL *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–5738. FERGUSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 836.

No. 09–5743. BROWN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 314 Fed. Appx. 915.

No. 09–5745. AYALA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–5746. BARBOUR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 286 Fed. Appx. 802.

No. 09–5749. HADLEY *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 09–5752. FEKOS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 318 Fed. Appx. 122.

No. 09–5757. DICENSO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–5758. CRUZ-BARRIENTOS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 321 Fed. Appx. 150.

No. 09–5759. CUTHBERT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 296 Fed. Appx. 904.

No. 09–5760. DAVIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 351.

No. 09–5764. DRYDEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 563 F. 3d 1168.

No. 09–5766. MOORE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 309 Fed. Appx. 688.

No. 09–5769. ARTEAGA-GIRON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 428.

No. 09–5771. VENSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 543.

No. 09–5772. VANN *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–5773. BATAVICHUS *v.* HOLDER, ATTORNEY GENERAL. C. A. 1st Cir. Certiorari denied.

No. 09–5775. ROSADO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 321 Fed. Appx. 198.

No. 09–5779. HUNTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 558 F. 3d 495.

No. 09–5781. SHELTON, AKA HENDERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 530.

No. 09–5782. SIMBA *v.* BRANCH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 841.

No. 09–5783. RAMOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–5784. JERDINE *v.* WEST VIRGINIA. Cir. Ct. Kanawha County, W. Va. Certiorari denied.

No. 09–5785. CREED *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 771.

No. 09–5786. JAMES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–5787. FORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–5788. WILSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 842.

No. 09–5791. RENTERIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 557 F. 3d 1003.

No. 09–5792. BROWNER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 796.

No. 09–5793. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–5795. DENIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 560 F. 3d 872.

No. 09–5797. HINES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 564 F. 3d 754.

No. 09–5799. CLAUDIO-PANTOJAS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–5802. GARCIA-CARDENAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 555 F. 3d 1049.

No. 09–5804. MARINERO-REVELO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 753.

No. 09–5805. LOREDO-OLIVERA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 332 Fed. Appx. 349.

No. 09–5806. LOCKARD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–5808. CASTILLO-VALLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 739.

No. 09–5809. SIMMONS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 769.

No. 09–5810. ALEXANDER *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 972.

No. 09–5811. ROBINSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 322 Fed. Appx. 105.

No. 09–5817. YANN *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 09–5819. DOBLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 09–5820. DAWSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 782.

No. 09–5821. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 183.

No. 09–5823. WALKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 899.

No. 09–5824. WAGNER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 563 F. 3d 680.

No. 09–5826. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 224.

No. 09–5827. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 564 F. 3d 419.

No. 09–5831. JORDAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 303 Fed. Appx. 439.

No. 09–5837. ANDERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 773.

No. 09–5838. ACOSTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 632.

No. 09–5839. BARRAGAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 297 Fed. Appx. 604.

No. 09–5840. BARNES *v.* MARTINEZ, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 09–5841. ROBERTS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 09–5842. GONZALES SANCHEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 802.

No. 09–5845. PALMER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 401.

No. 09–5846. STREICH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 560 F. 3d 926.

No. 09–5847. RONWIN *v.* BAYER CORP. C. A. 10th Cir. Certiorari denied. Reported below: 332 Fed. Appx. 508.

No. 09–5848. BROOKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 310 Fed. Appx. 599.

No. 09–5853. MCCULLOUGH *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 09–5854. PRINCE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 333 Fed. Appx. 400.

No. 09–5857. WATERMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 569 F. 3d 144.

No. 09–5859. DADE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 09–5868. HOOD ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 556 F. 3d 226.

No. 09–5870. FALKNER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 699.

No. 09–5871. HARVEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 175.

No. 09–5875. HIRT *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 350 Mont. 162, 206 P. 3d 908.

No. 09–5879. DOAK *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 386 Ill. App. 3d 1132, 970 N. E. 2d 630.

No. 09–5881. PETER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–5884. LUNDY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–5888. MOORMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 317 Fed. Appx. 950.

No. 09–5890. SMITH *v.* MCBRIDE, WARDEN. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 224 W. Va. 196, 681 S. E. 2d 81.

No. 09–5893. RAINWATER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 317 Fed. Appx. 431.

No. 09–5895. HEWITT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 756.

No. 09–5897. GREGORY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 333 Fed. Appx. 425.

No. 09–5898. SERRANO-RANGEL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 334 Fed. Appx. 14.

No. 09–5900. SMITH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–5905. WALKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 183.

No. 09–5908. DAVIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 655.

No. 09–5909. LOBATO *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 125 Nev. 1057, 281 P. 3d 1196.

No. 09–5910. DOE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 850.

No. 09–5911. BRITO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 336 Fed. Appx. 225.

No. 09–5914. CORRALES *v.* NEVEN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 32.

No. 09–5915. RODRIGUEZ *v.* PENNSYLVANIA BOARD OF PROBATION AND PAROLE. Commw. Ct. Pa. Certiorari denied.

No. 09–5917. INGRAM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 382.

No. 09–5918. HUGHLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 171.

No. 09–5919. GIBSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 391.

No. 09–5922. CURTIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 09–5927. KERNS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 336 Fed. Appx. 916.

No. 09–5930. MCKINNEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 324 Fed. Appx. 180.

No. 09–5932. ROBERTS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 436.

No. 09–5933. STALLARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 317 Fed. Appx. 383.

No. 09–5934. BURT *v.* YARBOROUGH, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 313 Fed. Appx. 23.

No. 09–5936. MOORE, AKA ROBERTS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 674.

No. 09–5937. PLUMMER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 09–5939. FLAGLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 551.

No. 09–5940. SMITH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 650.

No. 09–5942. RINALDI *v.* SNIEZEK, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 302 Fed. Appx. 125.

No. 09–5946. THONGSOPHAPORN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–5947. THOMPSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 560 F. 3d 745.

No. 09–5950. PADILLA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 325 Fed. Appx. 131.

No. 09–5951. PETTIES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 786.

No. 09–5954. DEGARMO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 313 Fed. Appx. 928.

No. 09–5955. EASON ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–5957. CHAUDHRY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 321 Fed. Appx. 119.

No. 09–5958. JENKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 566 F. 3d 160.

No. 09–5959. LAM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 730.

No. 09–5961. MARCUSSE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 265 Fed. Appx. 434.

No. 09–5964. OTERO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 563 F. 3d 1127.

No. 09–5967. JORDAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–5968. ROBERGE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 565 F. 3d 1005.

No. 09–5969. BUSBY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 963 A. 2d 167.

No. 09–5970. BEVERS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 518.

No. 09–5971. BALDERAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 308 Fed. Appx. 55.

No. 09–5975. BOLANOS-RENTERIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–5978. ROBINSON *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE VIRGIN ISLANDS. C. A. 3d Cir. Certiorari denied. Reported below: 336 Fed. Appx. 171.

No. 09–5979. RAMIREZ-PONCE *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–5985. SISNEY *v.* BEST, INC., ET AL. Sup. Ct. S. D. Certiorari denied. Reported below: 769 N. W. 2d 456.

No. 09–5987. NICHOLS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 186.

No. 09–5991. VAZQUEZ-HENRIQUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–5992. TAPIA-CORTEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 793.

No. 09–5993. LUCAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 618.

No. 09–5996. JOHNSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 748.

No. 09–6000. KENNEDY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–6001. JOHNSON *v.* UNITED STATES (two judgments). Ct. App. D. C. Certiorari denied.

No. 09–6002. ALLEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 488.

No. 09–6003. BENITEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 328 Fed. Appx. 823.

No. 09–6005. BROWN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 333 Fed. Appx. 345.

No. 09–6007. BAXTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 830.

No. 09–6011. GAYNOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–6012. GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 503.

No. 09–6014. FRINK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 183.

No. 09–6015. HORTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–6016. GAINES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 300 Fed. Appx. 605.

No. 09–6017. HAYDEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–6018. HILL *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 969 A. 2d 895.

No. 09–6019. HORNE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–6023. STONE, AKA BLAZE, AKA MARSHALL, AKA VOLT, AKA HATCHET, AKA REESE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 745.

No. 09–6026. DENSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 872.

No. 09–6029. KELLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 395.

No. 09–6031. MARTIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 740.

No. 09–6032. MARTINEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 557 F. 3d 597.

No. 09–6039. BAYLOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 294 Fed. Appx. 765.

No. 09–6040. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 09–6041. WHITE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 226.

No. 09–6044. SCALLON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 814.

No. 09–6045. MOORE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 794.

No. 09–6047. DYSON *v.* CORBETT, ATTORNEY GENERAL OF PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–6051. SANTIAGO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 566 F. 3d 65.

No. 09–6052. MCKENZIE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 335 Fed. Appx. 834.

No. 09–6056. WIRSING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 437.

No. 09–6060. MOORE *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 324 Fed. Appx. 905.

No. 09–6063. THOMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 442.

No. 09–6065. HINES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–6067. WILSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–6069. CRAWFORD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 368.

No. 09–6070. GRANT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 912.

No. 09–6073. ALMONTE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–6074. ARMENTA-ALCANTAR *v.* UNITED STATES (Reported below: 286 Fed. Appx. 469); PIZARRO-MONTES *v.* UNITED STATES; and CONTRERAS-BRACAMONTE ET AL. *v.* UNITED STATES (338 Fed. Appx. 620). C. A. 9th Cir. Certiorari denied.

No. 09–6076. PARKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 436.

No. 09–6080. MARSHALL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 739.

No. 09–6082. PAUL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 336 Fed. Appx. 919.

No. 09–6087. MOSS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 304 Fed. Appx. 210.

No. 09–6088. MCKINNEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–6090. DAVIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 469.

No. 09–6091. CAMACHO-JIMENEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 654.

No. 09–6092. COLLAMORE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 708.

No. 09–6093. NEWTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 293 Fed. Appx. 201.

No. 09–6094. RAMIREZ-MEDINA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 485.

No. 09–6095. SANCHEZ-ROSADO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 555 F. 3d 277.

No. 09–6096. SCOTT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 555 F. 3d 605.

No. 09–6098. MARTIN *v.* UNITED STATES; and
No. 09–6123. GARRISON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 862.

No. 09–6100. SALAZAR-GALVAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 396.

No. 09–6104. ANDERSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 334 Fed. Appx. 8.

No. 09–6106. BROWN *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA. C. A. 8th Cir. Certiorari denied.

No. 09–6107. AZZARA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 09–6110. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 333 Fed. Appx. 439.

No. 09–6112. MCMULLIN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 568 F. 3d 1.

No. 09–6113. LACUE *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–6114. KUEHNE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 647 F. 3d 667.

No. 09–6115. LEWIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 858.

No. 09–6116. KNIGHTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–6117. WINDRIX *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 629.

No. 09–6122. CONARTE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 972 A. 2d 327.

No. 09–6124. HOFFMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 313 Fed. Appx. 601.

No. 09–6126. GREENSTEIN, AKA DINUNZIO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 322 Fed. Appx. 259.

No. 09–6128. HARRIS, AKA SULUKI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 244.

No. 09–6129. GREENWOOD, AKA GRIMES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 693.

No. 09–6131. FIGUEROA-CUEVAS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 843.

No. 09–6137. GRAHAM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 786.

No. 09–6138. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 859.

No. 09–6140. MORANTE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 957.

No. 09–6141. JARRETT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–6142. MATTHEWS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 330 Fed. Appx. 364.

No. 09–6143. JONES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 332 Fed. Appx. 767.

No. 09–6150. HALL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 317 Fed. Appx. 203.

No. 09–6151. HUNTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 272.

No. 09–6152. GANTT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 163.

No. 09–6155. CULBERSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–6158. PICKETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 963.

No. 09–6159. STARLING *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 477.

No. 09–6161. GRAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 562 F. 3d 1330.

No. 09–6162. ROSS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 323 Fed. Appx. 117.

No. 09–6163. SPEARMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–6164. LINTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 401.

No. 09–6171. HAVENS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 331 Fed. Appx. 280.

No. 09–6172. MITCHELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–6175. TAYLOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 229.

No. 09–6176. SHERRER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 09–6178. BROOKS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–6182. RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 751.

No. 09–6183. CAMERON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 317 Fed. Appx. 378.

No. 09–6187. COLEMAN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 948 A. 2d 534.

No. 09–6190. BROWN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–6191. BALLEZA-CORTEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 332 Fed. Appx. 174.

No. 09–6193. BILLUPS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 249.

No. 09–6195. DUARTE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 569 F. 3d 528.

No. 09–6196. DECLOUET *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 535.

No. 09–6210. GUEVARA-VIELMA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 486.

No. 09–6212. TEJADA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–6214. LEWIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 340 Fed. Appx. 595.

No. 09–6220. BOWMAN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 09–6221. ARZATE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 335 Fed. Appx. 363.

No. 09–6222. ALANDER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 331 Fed. Appx. 913.

No. 09–6223. ATWELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 538.

No. 08–1103. MICHIGAN *v.* WILLIAMS. Ct. App. Mich. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 08–1159. TEXAS *v.* MARTINEZ. Ct. Crim. App. Tex. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 272 S. W. 3d 615.

No. 08–1226. RICHARDSON *v.* COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 532 F. 3d 114.

No. 08–1242. BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. *v.* BOND. C. A. 3d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 539 F. 3d 256.

No. 08–1310. GIBBONS *v.* SAVAGE, SUPERINTENDENT, GOWANDA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 555 F. 3d 112.

No. 08–1319. ADCOCK ET AL. *v.* FREIGHTLINER LLC ET AL. C. A. 4th Cir. Motion of National Federation of Independent Business et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 550 F. 3d 369.

No. 08–1350. RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS *v.* STYERS. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 547 F. 3d 1026.

No. 08–1354. DESALVO *v.* VOLHARD ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 312 Fed. Appx. 394.

No. 08–1358. HOLMES *v.* LOUISIANA. Sup. Ct. La. Motions of National Organization on Fetal Alcohol Syndrome, Constitution Project, Louisiana Association of Criminal Lawyers, and National Center on Domestic and Sexual Violence et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 5 So. 3d 42.

No. 08–1361. SWISHER INTERNATIONAL, INC. *v.* VILSACK, SECRETARY OF AGRICULTURE. C. A. 11th Cir. Motion of Pacific Legal Foundation et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 550 F. 3d 1046.

No. 08–1389. PRELESNIK, WARDEN *v.* AVERY. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 548 F. 3d 434.

No. 08–1425. WELCH, WARDEN *v.* MOORE. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 531 F. 3d 393.

No. 08–1436. SMITH, LITIGATION TRUSTEE, FARMLAND DAIRIES LLC LITIGATION TRUST, ET AL. *v.* BANK OF AMERICA CORP. ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 309 Fed. Appx. 536.

No. 08–1439. ROE ET AL. *v.* CITY OF WATERBURY, CONNECTICUT, ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 542 F. 3d 31.

No. 08–1459. MICHIGAN *v.* DORSEY. Ct. App. Mich. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 08–1479. PFIZER INC. *v.* DOTSON; and
No. 09–29. DOTSON *v.* PFIZER INC. C. A. 4th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of these petitions. Reported below: 558 F. 3d 284.

No. 08–1506. TENENBAUM *v.* SONY BMG MUSIC ENTERTAINMENT ET AL. C. A. 1st Cir. Certiorari denied. THE CHIEF JUSTICE and JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 564 F. 3d 1.

No. 08–1528. SIKORSKI *v.* OKEMO MOUNTAIN, INC., ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 303 Fed. Appx. 938.

No. 08–1539. SMITH, AKA SHINNECOCK SMOKE SHOP *v.* CUOMO, ATTORNEY GENERAL OF NEW YORK. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 306 Fed. Appx. 645.

No. 08–1543. SONUGA *v.* NAPOLITANO, SECRETARY OF HOMELAND SECURITY. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 303 Fed. Appx. 901.

No. 08–1551. FALSO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 544 F. 3d 110.

No. 08–1556. THOMAS *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE BREYER and JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 305 Fed. Appx. 754.

No. 08–1562. SEA HAWK SEAFOODS, INC. *v.* EXXON MOBIL CORP. ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 303 Fed. Appx. 572.

No. 08–1589. DOW CHEMICAL CO. *v.* TANOH ET AL. C. A. 9th Cir. Motions of Chamber of Commerce of the United States of America et al. and Centerpoint Energy et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 561 F. 3d 945.

No. 08–9348. HENDERSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 08–9899. BRADLEY *v.* UNITED STATES;

No. 08–9990. HURELL *v.* UNITED STATES; and

No. 08–10019. WATKINS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of these petitions. Reported below: 555 F. 3d 122.

No. 08–10089. ZEDNER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 555 F. 3d 68.

No. 08–10274. COLE *v.* BRANKER, WARDEN. C. A. 4th Cir. Motions of North Carolina Conference of NAACP Branches and Arc of North Carolina for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 328 Fed. Appx. 149.

No. 08–10277. KILEY *v.* AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 296 Fed. Appx. 107.

No. 08–10328. ELGINDY, AKA PACIFIC, AKA VELASCO, AKA VELAZCO *v.* UNITED STATES; and

No. 08–10357. ROYER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of these petitions. Reported below: 549 F. 3d 886.

No. 08–10348. GIALTO *v.* OBAMA, PRESIDENT OF THE UNITED STATES, ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 296 Fed. Appx. 137.

No. 08–10567. ANTOINE *v.* PATTERSON, JUDGE, SUPREME COURT OF NEW YORK, KINGS COUNTY, ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 08–10593. PALMER *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 315 Fed. Appx. 350.

No. 08–10596. NELSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 308 Fed. Appx. 481.

No. 08–10620. DURAN *v.* ERCOLE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 08–10624. LAVAYEN *v.* ROCK, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 311 Fed. Appx. 468.

No. 08–10673. WELCH *v.* SELSKY ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 08–10724. FORNEY *v.* WOODS. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 325 Fed. Appx. 12.

No. 08–10787. LOPEZ-AJUADO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 08–10813. WILLIAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 316 Fed. Appx. 687.

No. 08–10817. CRAIG *v.* UNITED STATES. C. A. 10th Cir. Certiorari before judgment denied.

No. 08–10823. HUEZO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 546 F. 3d 174.

No. 08–10860. CRUZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 08–10861. SHISHKIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 309 Fed. Appx. 520.

No. 08–10891. JORGENSEN *v.* SONY BMG MUSIC ENTERTAINMENT. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 310 Fed. Appx. 419.

No. 08–10902. PALMER *v.* ERCOLE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 08–10910. HAYES *v.* CONWAY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 08–10959. GUERRERO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 322 Fed. Appx. 72.

No. 08–10971. CARR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 557 F. 3d 93.

No. 08–10996. LEGENO *v.* DOUGLAS ELLIMAN, LLC. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 311 Fed. Appx. 403.

No. 08–11012. MINAYA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 321 Fed. Appx. 37.

No. 08–11058. SAMAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 561 F. 3d 108.

No. 08–11107. EDWARDS *v.* MARSHALL, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 08–11129. DEEKS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 303 Fed. Appx. 507.

No. 08–11130. GREEN *v.* ROCK, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 09–8. WILLIAMS ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 299 Fed. Appx. 92.

No. 09–9. MADDOX *v.* PRUDENTI, ASSOCIATE JUSTICE, APPELLATE DIVISION, SUPREME COURT OF NEW YORK, SECOND JUDICIAL DEPARTMENT, ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 303 Fed. Appx. 962.

No. 09–24. AMERICAN FAMILY MUTUAL INSURANCE CO. ET AL. *v.* MONDRY. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 557 F. 3d 781.

No. 09–36. REPUBLIC OF ARGENTINA *v.* CAPITAL VENTURES INTERNATIONAL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 552 F. 3d 289.

No. 09–63. MCDANIEL, WARDEN *v.* SECHREST. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 549 F. 3d 789.

No. 09–71. SLATER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 322 Fed. Appx. 78.

No. 09–76. NORDELLA *v.* BLUE CROSS AND BLUE SHIELD OF CALIFORNIA ET AL. C. A. 11th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 324 Fed. Appx. 828.

No. 09–78. BRIARPATCH LTD., LP, ET AL. *v.* GEISLER ROBERDEAU, INC., ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 312 Fed. Appx. 433.

No. 09–80. SCHOEDINGER ET AL. *v.* UNITED HEALTHCARE OF THE MIDWEST, INC. C. A. 8th Cir. Certiorari denied. JUSTICE THOMAS took no part in the consideration or decision of this petition. Reported below: 557 F. 3d 872.

No. 09–84. MURPHY, COMMISSIONER, CONNECTICUT DEPARTMENT OF CORRECTION *v.* BRYANT. Sup. Ct. Conn. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 290 Conn. 502, 964 A. 2d 1186.

No. 09–214. PIGNARD *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 303 Fed. Appx. 923.

No. 09–5041. DAIGNEAULT *v.* EATON CORP. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 09–5077. JOHNSON *v.* GIRDICH, SUPERINTENDENT, UPSTATE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari de-

nied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 09–5083. MEJIA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 320 Fed. Appx. 82.

No. 09–5114. DRACHENBERG *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 09–5159. MARTINEZ *v.* ARTUS, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 09–5162. MAXWELL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 318 Fed. Appx. 23.

No. 09–5183. HOWARD *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 314 Fed. Appx. 344.

No. 09–5216. SPINELLI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 551 F. 3d 159.

No. 09–5222. MILORO, AKA RIZZO, AKA DEANGELO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 314 Fed. Appx. 384.

No. 09–5247. MARINO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 309 Fed. Appx. 523.

No. 09–5283. MONSIF *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR

took no part in the consideration or decision of this petition. Reported below: 308 Fed. Appx. 466.

No. 09–5322. MASON *v.* GUZDEK ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 09–5352. DEDE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 321 Fed. Appx. 35.

No. 09–5363. MALTSEV *v.* ALBANY COUNTY PROBATION DEPARTMENT ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 303 Fed. Appx. 973.

No. 09–5367. SMITH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 09–5375. CARROLL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 295 Fed. Appx. 382.

No. 09–5396. SPIGELMAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 320 Fed. Appx. 105.

No. 09–5430. BOOK *v.* NORCOTT ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 09–5503. LOCURTO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 306 Fed. Appx. 630.

No. 09–5517. DAIGNEAULT *v.* CONNECTICUT JUDICIAL BRANCH. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 309 Fed. Appx. 518.

No. 09–5599. GRANT *v.* WOODS. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 313 Fed. Appx. 376.

No. 09–5610. RAHEIM *v.* NEW YORK CITY BOARD OF EDUCATION ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 304 Fed. Appx. 905.

No. 09–5697. VALENCIA-LOPEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 312 Fed. Appx. 414.

No. 09–5710. FIGUEROA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 09–5726. PEACE *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 300 Fed. Appx. 63.

No. 09–5733. VARGAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 564 F. 3d 618.

No. 09–5833. NICHOLS *v.* HOLDER, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 09–5894. FORESTIER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 295 Fed. Appx. 428.

No. 09–5913. SALIM *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 549 F. 3d 67.

No. 09–5931. ROBINSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 323 Fed. Appx. 86.

No. 09–5976. BORCSOK *v.* CROWE, PAROLE COMMISSIONER, ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 310 Fed. Appx. 460.

No. 09–6120. SAVOY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 567 F. 3d 71.

Rehearing Denied

No. 08–7213. GILL ET AL. *v.* UNITED STATES, 555 U. S. 1080;

No. 08–9569. FLYNN *v.* KANSAS ET AL., 556 U. S. 1248;

No. 08–9773. HAWK *v.* REDDING ET AL. (two judgments), 557 U. S. 908;

No. 08–9942. SMITH *v.* WASHINGTON MUTUAL BANK FA ET AL., 557 U. S. 924;

No. 08–9980. SONACHANSINGH *v.* NEW YORK, 557 U. S. 940;

No. 08–10034. BALLARD *v.* SIMIEN ET AL., 557 U. S. 940;

No. 08–10044. HENDRICKSON *v.* WASHINGTON, 557 U. S. 940;

No. 08–10217. WAIVIO *v.* BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS AT CHICAGO ET AL., 557 U. S. 926; and

No. 08–10218. CONNER *v.* LIONS GATE ENTERTAINMENT CORP. ET AL., 557 U. S. 942. Petitions for rehearing denied.

No. 08–9749. PEARSON *v.* BESTCARE ET AL., 557 U. S. 907. Motion for leave to file petition for rehearing denied.

OCTOBER 8, 2009

Dismissal Under Rule 46

No. 09–250. COLUMBIA VENTURE, LLC, ET AL. *v.* FEDERAL EMERGENCY MANAGEMENT AGENCY ET AL. C. A. 4th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 562 F. 3d 290.

OCTOBER 13, 2009

Certiorari Dismissed

No. 09–5683. GRIFFIN *v.* SAMUELS, WARDEN, ET AL. 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.

No. 09–5789. SIBLEY *v.* UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT. 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. Reported below: 564 F. 3d 1335.

No. 09–5861. CARBIN *v.* BENNETT ET AL. C. A. 6th 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. 09–5885. SIBLEY *v.* FLORIDA BAR 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.

No. 09–5889. SMITH *v.* HUCKINS. Ct. App. Ind. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 904 N. E. 2d 728.

No. 09–5899. SOTO *v.* BIRKETT ET AL. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 09–5920. FARRIS *v.* WHALEY 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: 330 Fed. Appx. 833.

Miscellaneous Orders

No. 09A165. HALL *v.* GODDARD, ATTORNEY GENERAL OF ARIZONA, ET AL. C. A. 9th Cir. Application for stay, addressed to JUSTICE SOTOMAYOR and referred to the Court, denied.

No. D–2453. IN RE DISBARMENT OF SUTLEY. Disbarment entered. [For earlier order herein, see 557 U. S. 948.]

No. D–2456. IN RE DISBARMENT OF FEINMAN. Disbarment entered. [For earlier order herein, see 557 U. S. 948.]

No. 09M27. WANZER *v.* TEXAS;

No. 09M28. HEY *v.* ARLINGTON COUNTY DEPARTMENT OF HUMAN SERVICES; and

No. 09M31. SHARKOZY *v.* ALLISON. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 09M29. OWENS *v.* PROVIDIAN FINANCIAL ET AL.; and

No. 09M33. OYAGUE *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of these motions.

No. 09M30. WAHI *v.* CHARLESTON AREA MEDICAL CENTER ET AL. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 09M32. TYUS *v.* MONTGOMERY, SHERIFF, FAULKNER COUNTY, ARKANSAS, 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. 132, Orig. ALABAMA ET AL. *v.* NORTH CAROLINA. Exceptions to the Report of the Special Master are set for oral argument in due course. [For earlier order herein, see 556 U. S. 1206.]

No. 09–5713. O'DWYER *v.* BECNEL ET AL. C. A. 5th Cir.;

No. 09–5763. JAMES *v.* OKLAHOMA. Ct. Crim. App. Okla.;

No. 09–6392. ROUSE *v.* DEPARTMENT OF STATE ET AL. C. A. 9th Cir.; and

No. 09–6442. IN RE LEAF. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until November 3, 2009, 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. 09–6313. IN RE FREDRICK;

No. 09–6388. IN RE BEVERLY;

No. 09–6414. IN RE RAMIREZ;

No. 09–6448. IN RE DHURANDHAR;

No. 09–6529. IN RE NDOROMO; and

No. 09–6622. IN RE LILES. Petitions for writs of habeas corpus denied.

No. 09–5815. IN RE VANN. Petition for writ of mandamus denied.

No. 09–6108. IN RE BUSH. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 08–1394. SKILLING *v.* UNITED STATES. C. A. 5th Cir. Certiorari granted. Reported below: 554 F. 3d 529.

No. 09–38. HEALTH CARE SERVICE CORP. *v.* POLLITT ET AL. C. A. 7th Cir. Certiorari granted. Reported below: 558 F. 3d 615.

No. 08–1341. UNITED STATES *v.* MARCUS. C. A. 2d Cir. Certiorari granted. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 538 F. 3d 97.

No. 09–5327. HOLLAND *v.* FLORIDA. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 539 F. 3d 1334.

Certiorari Denied

No. 08–1211. CHURCH HOMES, INC., DBA AVERY HEIGHTS *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 2d Cir. Certiorari denied. Reported below: 303 Fed. Appx. 998.

No. 08–1356. SUNGWOOK KIM *v.* HOLDER, ATTORNEY GENERAL. C. A. 8th Cir. Certiorari denied. Reported below: 560 F. 3d 833.

No. 08–1395. WALLACE ET AL. *v.* MONTANA ET AL. (Reported below: 348 Mont. 205, 201 P. 3d 70); and KAFKA ET AL. *v.* BRIDGEWATER ET AL. (348 Mont. 80, 201 P. 3d 8). Sup. Ct. Mont. Certiorari denied.

No. 08–1476. LOVING *v.* DEPARTMENT OF DEFENSE ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 550 F. 3d 32.

No. 08–1478. KURJI *v.* HOLDER, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 306 Fed. Appx. 129.

No. 08–1482. MINCEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 233.

No. 08–1530. SIRMONS ET AL. *v.* WILLIAMS. C. A. 11th Cir. Certiorari denied. Reported below: 307 Fed. Appx. 354.

No. 08–9822. BAGLEY *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 08–10386. RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 558 F. 3d 408.

No. 08–10699. FAYALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 315 Fed. Appx. 448.

No. 08–10799. POE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 556 F. 3d 1113.

No. 08–10814. ALBERICO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 559 F. 3d 24.

No. 08–10862. CASTEL *v.* HOLDER, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 298 Fed. Appx. 492.

No. 09–23. SMITH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 555 F. 3d 1158.

No. 09–32. BARRETT ET UX. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 561 F. 3d 1140.

No. 09–53. KELLEY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 3 So. 3d 970.

No. 09–133. MORTERS *v.* BARR ET AL. Ct. App. Wis. Certiorari denied. Reported below: 316 Wis. 2d 413, 763 N. W. 2d 560.

No. 09–139. EVERSON *v.* LIBERTY MUTUAL ASSURANCE CO. C. A. 11th Cir. Certiorari denied.

No. 09–140. RUSHING *v.* KELLY, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 09–145. BARSCH *v.* O'TOOLE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 315 Fed. Appx. 637.

No. 09–146. ANDERSON *v.* VANGUARD CAR RENTAL USA INC. C. A. 11th Cir. Certiorari denied. Reported below: 304 Fed. Appx. 830.

No. 09–149. WALKER *v.* GEICO GENERAL INSURANCE CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 558 F. 3d 1025.

No. 09–161. MILLER, COMMISSIONER, INDIANA BUREAU OF MOTOR VEHICLES *v.* VILLEGAS ET AL. Ct. App. Ind. Certiorari denied. Reported below: 894 N. E. 2d 249.

No. 09–164. RICHMOND, PERSONAL REPRESENTATIVE OF THE ESTATE OF RICHMOND, DECEASED *v.* PEACEHEALTH, DBA PEACEHEALTH MEDICAL GROUP, ET AL. Ct. App. Ore. Certiorari denied. Reported below: 224 Ore. App. 477, 200 P. 3d 180.

No. 09–165. WHITEHEAD *v.* BRADLEY, ARANT, ROSE & WHITE, LLP, ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 54 So. 3d 966.

No. 09–171. HALLIWELL ET AL. *v.* SUPERIOR COURT OF CALIFORNIA, SONOMA COUNTY, ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 09–172. HALLIWELL ET AL. *v.* SUPERIOR COURT OF CALIFORNIA, SONOMA COUNTY, ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 09–177. BENNETT ET AL. *v.* HENDRIX, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS SHERIFF, FORSYTH COUNTY, GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 727.

No. 09–179. HOFMEISTER ET UX. *v.* CINCINNATI INSURANCE CO. Ct. App. Ky. Certiorari denied.

No. 09–180. TYLER HILL CORP. *v.* YAKIN. C. A. 2d Cir. Certiorari denied. Reported below: 566 F. 3d 72.

No. 09–196. WARD *v.* INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150, AFL–CIO. C. A. 7th Cir. Certiorari denied. Reported below: 563 F. 3d 276.

No. 09–210. FRAZIER *v.* SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 9th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 879.

No. 09–226. FRENCH *v.* LEMERY. C. A. 10th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 644.

No. 09–240. HAFTERSON ET VIR, PERSONAL REPRESENTATIVES OF THE ESTATE OF HAFTERSON, DECEASED *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–243. LEIBOWITZ, TRUSTEE *v.* SYSTEMS DIVISION, INC. C. A. 7th Cir. Certiorari denied. Reported below: 563 F. 3d 639.

No. 09–249. MARTINI *v.* AT&T INC. ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–255. VELEZ *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 388 Ill. App. 3d 493, 903 N. E. 2d 43.

No. 09–256. OLOFSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 563 F. 3d 652.

No. 09–268. MORRIS *v.* FAMILY DOLLAR STORES OF OHIO, INC. C. A. 6th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 330.

No. 09–269. WRIGHT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 333 Fed. Appx. 772.

No. 09–276. LIBERTY COUNSEL ET AL. *v.* FLORIDA BAR BOARD OF GOVERNORS ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 12 So. 3d 183.

No. 09–281. DEMAREST *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 570 F. 3d 1232.

No. 09–290. BATTLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 313 Fed. Appx. 283.

No. 09–295. BERT *v.* COMPTROLLER OF THE TREASURY OF MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 183 Md. App. 760.

No. 09–316. DAVIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–319. LACEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 569 F. 3d 319.

No. 09–324. WILEY *v.* GEITHNER, SECRETARY OF THE TREASURY, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 512.

No. 09–5012. MURRAY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 3 So. 3d 1108.

No. 09–5090. HYDE *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 13 So. 3d 997.

No. 09–5192. UPTON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 559 F. 3d 3.

No. 09–5251. ROACH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 303 Fed. Appx. 332.

No. 09–5269. MURPHY *v.* OHIO. C. A. 6th Cir. Certiorari denied. Reported below: 551 F. 3d 485.

No. 09–5636. HENDERSON *v.* HERNANDEZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–5637. HILL *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 09–5639. HUDSON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 332 Fed. Appx. 209.

No. 09–5641. HAYNES *v.* BLACKETTER ET AL. Ct. App. Ore. Certiorari denied. Reported below: 225 Ore. App. 376, 201 P. 3d 940.

No. 09–5642. GUNNETT *v.* WOOD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–5645. GREEN *v.* POLLARD, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 09–5651. ROACH *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 7 So. 3d 911.

No. 09–5663. WARLICK *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–5664. WARLICK *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–5665. RUCKER *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 563 F. 3d 766.

No. 09–5673. MCNEILL *v.* WAYNE COUNTY, MICHIGAN. Cir. Ct. Wayne County, Mich. Certiorari denied.

No. 09–5678. HUUSKO *v.* JENKINS, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 556 F. 3d 633.

No. 09–5679. HUNT *v.* FELKER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–5681. GROSS *v.* KNIGHT, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied. Reported below: 560 F. 3d 668.

No. 09–5684. GRAHAM *v.* ADDISON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 304 Fed. Appx. 670.

No. 09–5686. LOPEZ *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied. Reported below: 261 S. W. 3d 103.

No. 09–5689. LOPEZ *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 09–5693. MOORE *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–5695. THOMAS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 339 Fed. Appx. 364.

No. 09–5698. VALLADARES *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 09–5700. MOFFETT *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 09–5701. MCFARLAND *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–5704. WILLIAMS *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. Sup. Ct. Ark. Certiorari denied.

No. 09–5711. GRANT *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 205 P. 3d 1.

No. 09–5716. BONNER *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 596.

No. 09–5717. BATISTE *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–5718. BROOKS *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 09–5720. BAKER *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 295 Ga. App. 162, 671 S. E. 2d 206.

No. 09–5721. ANDREWS *v.* HOWES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–5723. SHANNON *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–5724. ROBINSON *v.* LEBLANC, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 09–5725. RICHARDSON *v.* THOMAS ET AL. Commw. Ct. Pa. Certiorari denied. Reported below: 964 A. 2d 61.

No. 09–5727. MCDANIEL *v.* SUTHERS, ATTORNEY GENERAL OF COLORADO, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 335 Fed. Appx. 734.

No. 09–5735. LOPEZ *v.* WALLACE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 782.

No. 09–5740. BROWN *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. C. A. 9th Cir. Certiorari denied.

No. 09–5741. BLAXTON *v.* BOCA GRANDE FOODS ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–5742. AGUILAR *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 09–5744. BARBER *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 994 So. 2d 376.

No. 09–5748. HAWKINS *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied.

No. 09–5750. HARRIS *v.* TERRY, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 09–5751. GOCIO *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 3 So. 3d 316.

No. 09–5756. PHILLIPS *v.* DISTRICT OF COLUMBIA ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 313 Fed. Appx. 332.

No. 09–5762. JOSEPH *v.* CURRY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 311 Fed. Appx. 982.

No. 09–5765. O'DIAH *v.* NEW YORK. Ct. App. N. Y. Certiorari denied.

No. 09–5770. ANTONSSON *v.* KAST. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 09–5774. CHUMPIA *v.* CITY OF MEMPHIS, TENNESSEE, ET AL. C. A. 6th Cir. Certiorari denied.

No. 09–5777. JOHNSON *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 931 So. 2d 906.

No. 09–5794. OLIVAREZ *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–5796. GASKINS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 09–5798. RANGEL *v.* TEXAS. Ct. App. Tex., 10th Dist. Certiorari denied.

No. 09–5807. DAVIS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 4 So. 3d 1220.

No. 09–5813. THOMAS ET AL. *v.* CITY OF ST. PAUL, MINNESOTA. C. A. 8th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 541.

No. 09–5822. TILLMAN *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 09–5825. TORRENCE *v.* OZMINT, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 305 Fed. Appx. 55.

No. 09–5828. LARRY *v.* BRANKER, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 552 F. 3d 356.

No. 09–5829. JOHNSON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 09–5832. LAY *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 10 So. 3d 726.

No. 09–5834. PAGE *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–5835. DEAN *v.* BLAISDELL, WARDEN. C. A. 1st Cir. Certiorari denied.

No. 09–5836. ALLEN *v.* BARNES, DEPUTY SHERIFF, LOS ANGELES COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 740.

No. 09–5843. LYLES *v.* LEMMON ET AL. C. A. 5th Cir. Certiorari denied.

No. 09–5849. BRYANT *v.* METRO/STATE NEWSPAPER. Sup. Ct. S. C. Certiorari denied.

No. 09–5850. PERKINS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 09–5851. MEDINA *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 381 Ill. App. 3d 1138, 966 N. E. 2d 604.

No. 09–5855. THOMPSON *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–5858. KELLEY *v.* OHIO. Ct. App. Ohio, Mahoning County. Certiorari denied. Reported below: 179 Ohio App. 3d 666, 903 N. E. 2d 365.

No. 09–5860. EWING *v.* BERGERON, SUPERINTENDENT, BRIDGEWATER STATE HOSPITAL. App. Ct. Mass. Certiorari denied. Reported below: 74 Mass. App. 1106, 904 N. E. 2d 494.

No. 09–5862. DORTCH *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 964 A. 2d 940.

No. 09–5864. MILLER *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–5865. MULDROW *v.* DENNEY, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 09–5866. BENSON *v.* LUTTRELL, SHERIFF, SHELBY COUNTY, TENNESSEE, ET AL. C. A. 6th Cir. Certiorari denied.

No. 09–5867. DAVIS *v.* VANDERVILLE ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–5869. HEARNS *v.* NEW HAMPSHIRE STATE PRISON. C. A. 1st Cir. Certiorari denied.

No. 09–5872. PEOPLES *v.* WILLIAMS ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–5874. GUADARRAMA *v.* TILTON ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–5877. CAMPBELL *v.* SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY (SEPTA). Sup. Ct. Pa. Certiorari denied. Reported below: 599 Pa. 463, 961 A. 2d 1228.

No. 09–5883. YOUNG *v.* HOLDERNESS ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 183 Md. App. 764, 772.

No. 09–5891. RUIZ *v.* HOFBAUER, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 427.

No. 09–5892. ROHDEN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 09–5902. GRIFFIN *v.* ORTIZ ET AL. Ct. App. Colo. Certiorari denied.

No. 09–5903. HARRIS *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 09–5904. HUNTER *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–5916. POWERS *v.* SNYDER ET AL. C. A. 7th Cir. Certiorari denied.

No. 09–5921. HAQUE *v.* IMMIGRATION AND CUSTOMS ENFORCEMENT ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–5925. LINTON *v.* HOLDER, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied.

No. 09–5928. NIKA *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 124 Nev. 1272, 198 P. 3d 839.

No. 09–5938. TYSON *v.* MIZE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 09–5956. CATLEDGE *v.* MUELLER, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 464.

No. 09–5962. WILSON *v.* SPENCER, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT NORFOLK. C. A. 1st Cir. Certiorari denied.

No. 09–5977. RITTNER *v.* WILLIAMS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–5980. SABET *v.* INTEL CORP. C. A. 9th Cir. Certiorari denied.

No. 09–5988. WARMAN *v.* MARBERRY, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 09–6006. BARNES *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 9 So. 3d 623.

No. 09–6010. GURNSEY *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–6013. HILL *v.* DISTRICT OF COLUMBIA DEPARTMENT OF EMPLOYMENT SERVICES ET AL. Ct. App. D. C. Certiorari denied. Reported below: 964 A. 2d 619.

No. 09–6028. CORTINAS *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 124 Nev. 1013, 195 P. 3d 315.

No. 09–6066. TAYLOR *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 561 F. 3d 859.

No. 09–6089. CHILDRESS *v.* CAMERON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT CRESSON. C. A. 3d Cir. Certiorari denied.

No. 09–6109. WALKER *v.* ZENK, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 323 Fed. Appx. 144.

No. 09–6119. CONN *v.* KLOPOTOSKI, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 331 Fed. Appx. 122.

No. 09–6174. GASTON *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 319 Fed. Appx. 155.

No. 09–6200. WILLIAMS *v.* DREW, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 09–6205. MCINTYRE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–6206. TRAVIS *v.* PARK CITY MUNICIPAL CORPORATION ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 565 F. 3d 1252.

No. 09–6207. TATE *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 313 Fed. Appx. 319.

No. 09–6211. TROXELLE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 319 Fed. Appx. 176.

No. 09–6217. SMITH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 561 F. 3d 934.

No. 09–6218. ROLLNESS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 561 F. 3d 996 and 320 Fed. Appx. 797.

No. 09–6219. SPRIGGS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 331 Fed. Appx. 163.

No. 09–6230. POLLINO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 478.

No. 09–6232. CLAY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 336 Fed. Appx. 403.

No. 09–6235. BROWN *v.* KERESTES, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–6240. HUSSAIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 313 Fed. Appx. 227.

No. 09–6242. ISOM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 331 Fed. Appx. 665.

No. 09–6246. TYLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–6247. ALEXEEV *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 330 Fed. Appx. 259.

No. 09–6251. BIRDSONG *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 573.

No. 09–6252. MENDOZA-ZARAGOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 567 F. 3d 431.

No. 09–6253. PAREDES *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 639.

No. 09–6254. MOORE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 736.

No. 09–6259. PINE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 318 Fed. Appx. 84.

No. 09–6262. HOEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 165.

No. 09–6263. ROBINSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 237.

No. 09–6264. PITTS, AKA SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 533.

No. 09–6269. DINKENS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–6271. ELMARDOUDI, AKA SAFIEDDINE, AKA LABIBE, AKA TARDELLI *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 313 Fed. Appx. 923.

No. 09–6275. NORRIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 522.

No. 09–6278. FONVILLE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 673.

No. 09–6279. ZALDIVAR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 839.

No. 09–6284. AZUBIKE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 564 F. 3d 59.

No. 09–6286. BERMEA-BOONE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 563 F. 3d 621.

No. 09–6287. MILLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 288.

No. 09–6288. RODRIGUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–6289. RIVERA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 334 Fed. Appx. 194.

No. 09–6290. SCALES, AKA SIMMS, AKA JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 335 Fed. Appx. 890.

No. 09–6292. GILYARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 09–6293. MIGGINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 319.

No. 09–6295. EPPS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 343 Fed. Appx. 924.

No. 09–6298. TODD *v.* FEDERAL CORRECTIONAL INSTITUTION, MEMPHIS, ET AL. C. A. 6th Cir. Certiorari denied.

No. 09–6300. ZAYAS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 568 F. 3d 43.

No. 09–6301. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 856.

No. 09–6303. ROBERTS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 332 Fed. Appx. 555.

No. 09–6305. STORY, AKA JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 422.

No. 09–6310. PRATT *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 568 F. 3d 11.

No. 09–6314. GREEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–6315. TAYLOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 336 Fed. Appx. 349.

No. 09–6316. WELLS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 333 Fed. Appx. 781.

No. 09–6317. LITTLEJOHN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 963 A. 2d 167.

No. 09–6320. COCHRAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 244.

No. 09–6321. DEAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 329 Fed. Appx. 377.

No. 09–6322. DE LEON-GODINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 334 Fed. Appx. 818.

No. 09–6323. CIOCAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 332 Fed. Appx. 773.

No. 09–6324. CANTU *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 09–6325. QUEZADA-ENRIQUEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 567 F. 3d 1228.

No. 09–6326. STEWART *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 333 Fed. Appx. 102.

No. 09–6329. SAVOCA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 567 F. 3d 802.

No. 09–6330. SETTLE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–6331. RIVERA *v.* NOLAN. C. A. 1st Cir. Certiorari denied.

No. 09–6333. SULLIVAN, AKA CATHEY, AKA EDWARDS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 445.

No. 09–6335. DICKENS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 09–6336. CHESTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 597.

No. 09–6337. DOYLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 706.

No. 09–6340. JACKSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–6342. LEWIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 332 Fed. Appx. 951.

No. 09–6343. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 332 Fed. Appx. 569.

No. 09–6346. LIRETTE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 09–6347. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 310 Fed. Appx. 776.

No. 09–6348. ALEXANDER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 333 Fed. Appx. 388.

No. 09–6349. BENITEZ-AVILA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 570 F. 3d 364.

No. 09–6350. KONSAVICH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 313.

No. 09–6354. BISHAWI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–6355. UNDERWOOD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 334 Fed. Appx. 825.

No. 09–6356. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–6357. WILLIAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–6358. THOMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 492.

No. 09–6359. UNDERWOOD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 333 Fed. Appx. 92.

No. 09–6360. PETTIETTE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 338 Fed. Appx. 362.

No. 09–6361. PORTER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 317 Fed. Appx. 848.

No. 09–6364. ROBERTS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 316 Fed. Appx. 388.

No. 09–6368. JORDAN *v.* FEDERAL BUREAU OF PRISONS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 315 Fed. Appx. 752.

No. 09–6370. DIAZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–6373. RASHAD, AKA COLEMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–6374. DAVIS *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 09–6377. HILL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–6380. GALLAGOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 332 Fed. Appx. 943.

No. 09–6381. MULLEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 61.

No. 09–6386. PHASUNG LU BACCAM *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 562 F. 3d 1197.

No. 09–6390. ROGERS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 334 Fed. Appx. 485.

No. 09–6393. TILGHMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 332 Fed. Appx. 269.

No. 09–6403. JAMES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 564 F. 3d 960.

No. 09–6404. MALONE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–6405. WHEELER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 250.

No. 09–6407. URBANO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 563 F. 3d 1150.

No. 09–6409. BLOCKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 151.

No. 09–6415. STYER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 573 F. 3d 151.

No. 09–6418. CLARK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 992.

No. 09–6423. SCOTT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 822.

No. 09–6427. MARGUET-PILLADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 560 F. 3d 1078.

No. 09–6432. BOAM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 336 Fed. Appx. 642.

No. 09–6438. THOMAS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 565 F. 3d 438.

No. 09–6444. DARTEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 308.

No. 09–6445. DOUGLAS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 569 F. 3d 635.

No. 09–6446. CHATMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 342 Fed. Appx. 555.

No. 09–6452. LOVE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–6455. POMALES-PIZARRO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 578 F. 3d 78.

No. 09–6456. MOORE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–6460. SETSER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 568 F. 3d 482.

No. 09–6466. ZETINO-MORALES, AKA CETY-MORALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 835.

No. 09–6476. COLSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 895.

No. 09–6478. COLLINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 825.

No. 09–6482. BELL *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 976 A. 2d 224.

No. 09–6484. BREWSTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 335 Fed. Appx. 8.

No. 09–6485. BARAJAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 334 Fed. Appx. 940.

No. 09–6487. JONES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–6489. JOHNS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 332 Fed. Appx. 737.

No. 09–6490. NOBLE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 326 Fed. Appx. 125.

No. 09–6496. BUNCHAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 580 F. 3d 66.

No. 09–6498. BROWN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–6499. BENDER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 337 Fed. Appx. 644.

No. 09–6503. SOTO-COSME *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–6506. EAMES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 279 Fed. Appx. 541.

No. 08–1407. DTD ENTERPRISES, INC., AKA TOGETHER, AKA TOGETHER-CLARK, AKA TOGETHER DATING SERVICE, ET AL. *v.* WELLS, ON BEHALF OF HERSELF AND ALL OTHERS SIMILARLY SITUATED. Super. Ct. N. J., Middlesex County. Certiorari denied.

Statement of JUSTICE KENNEDY, with whom THE CHIEF JUSTICE and JUSTICE SOTOMAYOR join, respecting the denial of the petition for writ of certiorari.

This case began with a contract action brought by DTD Enterprises, Inc. (hereinafter petitioner), a commercial dating-referral service, against respondent, one of petitioner's customers. The suit alleged that respondent refused to make payments due under a contract. Respondent answered by bringing a class action against petitioner. The trial court certified the class and ordered petitioner to bear all the costs of class notification, on the sole ground (or so it appears) that petitioner could afford to pay and respondent could not.

To the extent that New Jersey law allows a trial court to impose the onerous costs of class notification on a defendant simply because of the relative wealth of the defendant and without any consideration of the underlying merits of the suit, a serious due process question is raised. Where a court has concluded that a plaintiff lacks the means to pay for class certification, the defendant has little hope of recovering its expenditures later if the suit proves meritless; therefore, the court's order requiring the defendant to pay for the notification "finally destroy[s] a property interest." *Logan* v. *Zimmerman Brush Co.*, 455 U. S. 422, 433–434 (1982). The Due Process Clause requires a "'hearing appropriate to the nature of the case.'" *Boddie* v. *Connecticut*, 401 U. S. 371, 378 (1971). And there is considerable force to the argument that a hearing in which the trial court does not consider the underlying merits of the class-action suit is not consistent with due process because it is not sufficient, or appropriate, to protect the property interest at stake.

I nonetheless agree with the Court's denial of certiorari, for two reasons. First, the petition is interlocutory; the state appel-

late courts denied petitioner leave to appeal the trial court's action. Second, petitioner has filed for bankruptcy, and an automatic bankruptcy stay has issued pursuant to 11 U. S. C. § 362. Respondent contends that the present action comes within the scope of the automatic stay. If we were to grant the petition we would be required to construe New Jersey law without the aid of a reasoned state appellate court decision and to confront a procedural obstacle unrelated to the question presented. Under these circumstances, it is best to deny the petition. It seems advisable, however, to note that the petition for certiorari does implicate issues of constitutional significance.

No. 08–10604. BAKER ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 554 F. 3d 230.

No. 08–10885. MCCARGO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 09–45. NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION *v.* SASSER. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 553 F. 3d 1121.

No. 09–186. COLON, AKA LOPEZ *v.* HOLDER, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 328 Fed. Appx. 684.

No. 09–5194. JOSEPHBERG *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 562 F. 3d 478.

No. 09–5761. LUO *v.* TOWN OF HEMPSTEAD, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 316 Fed. Appx. 77.

No. 09–5816. UZAMERE *v.* ALLEN E. KAYE, P. C., ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 09–5863. DAVIS *v.* SMITH, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 09–6280. LUNA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 328 Fed. Appx. 721.

No. 09–6296. YALINCAK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 09–6408. AZZARA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 293 Fed. Appx. 814.

No. 09–6430. ALABI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 334 Fed. Appx. 379.

No. 09–6454. MITCHELL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 326 Fed. Appx. 1.

OCTOBER 20, 2009

Certiorari Granted—Vacated and Remanded. (See No. 08–10495, *ante*, p. 1.)

Certiorari Dismissed

No. 09–6035. MILLEN *v.* KANSAS CITY STAR. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 09–6121. SIBLEY *v.* UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 09–6312. POWELL *v.* KELLER ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 09–6525. GENEVIER *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY, ET AL. Ct. App. Cal., 2d App. Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 09–6165. DIGIANNI *v.* CUOMO, ATTORNEY GENERAL OF NEW YORK, ET AL. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. JUSTICE SOTOMAYOR took no part in the consideration or decision of this motion and this petition.

Miscellaneous Orders

No. 09A356. DOE ET AL. *v.* REED, SECRETARY OF STATE OF WASHINGTON, ET AL. Application, presented to JUSTICE KENNEDY, and by him referred to the Court, granted. Order of the United States Court of Appeals for the Ninth Circuit, case Nos. 09–35818, 09–35826, and 09–35863, entered October 15, 2009, is hereby stayed. The September 10, 2009, order of the United States District Court for the Western District of Washington, case No. C09–5456BHS, granting the motion for preliminary injunction shall remain in effect pending the timely filing and disposition of a 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 STEVENS would deny the application.

No. 09M34. WINSTEAD, NKA MUHAMMAD *v.* NEW JERSEY; and No. 09M35. CORREDOR *v.* FEDERAL AVIATION ADMINISTRATION. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 08–969. HEMI GROUP, LLC, ET AL. *v.* CITY OF NEW YORK, NEW YORK. C. A. 2d Cir. [Certiorari granted, 556 U. S. 1220.] Motion of The Campaign for Tobacco-Free Kids for leave to file a brief as *amicus curiae* granted. JUSTICE SOTOMAYOR took no part in the consideration or decision of this motion.

No. 08–1134. UNITED STUDENT AID FUNDS, INC. *v.* ESPINOSA. C. A. 9th Cir. [Certiorari granted, 557 U. S. 903.] Motion of

Professor Rafael I. Pardo for leave to file a brief as *amicus curiae* granted.

No. 08–1151. STOP THE BEACH RENOURISHMENT, INC. *v.* FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION ET AL. Sup. Ct. Fla. [Certiorari granted, 557 U. S. 903.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 09–5973. TORAIN *v.* AMERITECH ADVANCED DATA SERVICES. C. A. 7th Cir.;

No. 09–6078. GWANJUN KIM *v.* PROGRESSIVE EXPRESS INSURANCE CO. ET AL. C. A. 11th Cir.;

No. 09–6453. ROACH *v.* ROCKINGHAM COUNTY BOARD OF EDUCATION ET AL. C. A. 4th Cir.; and

No. 09–6595. SCHMITZ *v.* UNITED STATES. C. A. 11th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until November 10, 2009, 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. 09–6658. IN RE CURTIS;

No. 09–6677. IN RE WARREN;

No. 09–6716. IN RE MARTINEZ; and

No. 09–6733. IN RE VELARDE. Petitions for writs of habeas corpus denied.

No. 09–6708. IN RE BERRY; and

No. 09–6748. IN RE CARBIN. Motions of petitioners for leave to proceed *in forma pauperis* denied, and petitions for writs of habeas corpus dismissed. See this Court's Rule 39.8.

No. 09–5944. IN RE WILLIAMS; and

No. 09–6024. IN RE ROCHESTER. Motions of petitioners for leave to proceed *in forma pauperis* denied, and petitions for writs of mandamus dismissed. See this Court's Rule 39.8.

No. 09–204. IN RE KLAT. Petition for writ of mandamus and/or prohibition denied.

No. 09–6139. IN RE TRAYLOR. 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.

Certiorari Granted

No. 08–1234. KIYEMBA ET AL. *v.* OBAMA, PRESIDENT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Certiorari granted. Reported below: 555 F. 3d 1022.

No. 08–1553. KAWASAKI KISEN KAISHA LTD. ET AL. *v.* REGAL-BELOIT CORP. ET AL.; and

No. 08–1554. UNION PACIFIC RAILROAD CO. *v.* REGAL-BELOIT CORP. ET AL. C. A. 9th Cir. Certiorari granted, cases consolidated, and a total of one hour is allotted for oral argument. Reported below: 557 F. 3d 985.

Certiorari Denied

No. 08–1427. BROCKMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 310 Fed. Appx. 681.

No. 08–1428. BURKEY *v.* MARBERRY, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 556 F. 3d 142.

No. 08–1453. ROLLINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 552 F. 3d 739.

No. 08–1465. RODRIGUEZ *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 67 M. J. 110.

No. 08–9991. MOSLEY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 306 Fed. Appx. 40.

No. 08–10521. PARKER *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 991 So. 2d 411.

No. 08–10993. MACIAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 314 Fed. Appx. 50.

No. 09–183. ROBERTS *v.* BANK OF NEW YORK. Ct. App. Ore. Certiorari denied. Reported below: 223 Ore. App. 259, 195 P. 3d 923.

No. 09–185. ANDERSON *v.* IOWA CITY DEVELOPMENT BOARD ET AL. Ct. App. Iowa. Certiorari denied. Reported below: 767 N. W. 2d 420.

No. 09–191. J. W. *v.* KNIGHT, SENIOR STATUS JUDGE, CIRCUIT COURT OF MERCER COUNTY, WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 223 W. Va. 785, 679 S. E. 2d 617.

No. 09–193. ABNER *v.* PROBATE COURT OF MOBILE, ALABAMA. Sup. Ct. Ala. Certiorari denied.

No. 09–195. REUST *v.* ALASKA. Sup. Ct. Alaska. Certiorari denied. Reported below: 206 P. 3d 437.

No. 09–199. HALLIWELL ET AL. *v.* SUPERIOR COURT OF CALIFORNIA, SONOMA COUNTY, ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 09–209. CULVER *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 22 So. 3d 499.

No. 09–232. COX *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 09–266. BOWENS ET AL. *v.* QUINN, GOVERNOR OF ILLINOIS. C. A. 7th Cir. Certiorari denied. Reported below: 561 F. 3d 671.

No. 09–286. SULLIVAN *v.* UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT HOUSTON DENTAL BRANCH ET AL. Ct. App. Tex., 10th Dist. Certiorari denied.

No. 09–313. HOWARD *v.* DEPARTMENT OF THE ARMY. C. A. 4th Cir. Certiorari denied. Reported below: 307 Fed. Appx. 765.

No. 09–318. MORRIS ET AL. *v.* LANPHER ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 563 F. 3d 399.

No. 09–323. SCAMBOS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 221.

No. 09–332. MINH HUYNH ET UX. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 334 Fed. Appx. 636.

No. 09–339. TWAY ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 377.

No. 09–344. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 279.

No. 09–349. YAITSKY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 347.

No. 09–5022. ROTHERY *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 6 So. 3d 622.

No. 09–5128. BALENTINE *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 304.

No. 09–5131. DAVIS *v.* BRANKER, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 305 Fed. Appx. 926.

No. 09–5389. FIELDS *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 274 S. W. 3d 375.

No. 09–5391. EVERTSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 509.

No. 09–5896. CASSELL *v.* WHITE, CORRECTIONAL ADMINISTRATOR, MAURY CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 316 Fed. Appx. 245.

No. 09–5923. MAISANO *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–5926. REED *v.* CIRTIN. Ct. App. Mo., Southern Dist. Certiorari denied. Reported below: 280 S. W. 3d 143.

No. 09–5929. PRUITT *v.* SCHOFIELD, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 09–5952. OLIVAS *v.* NEVEN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 70.

No. 09–5960. LONG ET UX. *v.* WOOD MIZER PRODUCTS INC. C. A. 5th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 755.

No. 09–5963. TUNG *v.* CUEVAS ET AL. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 09–5965. NEUFER *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 09–5966. MOORMAN *v.* JOWERS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 313 Fed. Appx. 733.

No. 09–5972. MUHAMMAD, AKA COOPER *v.* KANNRINE ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–5974. BARNES *v.* CAIN, WARDEN. Sup. Ct. La. Certiorari denied. Reported below: 993 So. 2d 1233.

No. 09–5982. SUTTON *v.* CORRECTIONS CORPORATION OF AMERICA ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 685.

No. 09–5983. QAZZA *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 09–5984. SERNA *v.* GOODNO ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 567 F. 3d 944.

No. 09–5989. WORDLOW *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 387 Ill. App. 3d 1182, 981 N. E. 2d 539.

No. 09–5990. WILSON *v.* CURIEL ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–5997. JOHNSON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–5999. POWELL *v.* CURRY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 940.

No. 09–6008. DEAKINS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 09–6020. HARRIS *v.* SWEATT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–6021. GATES *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 09–6022. RODRIGUEZ *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 466.

No. 09–6025. CARVER *v.* VAIL, SECRETARY, WASHINGTON DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 558 F. 3d 869.

No. 09–6027. DANN *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 220 Ariz. 351, 207 P. 3d 604.

No. 09–6030. LACEY *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 349 Mont. 371, 204 P. 3d 1192.

No. 09–6033. LATHAM *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 306 Fed. Appx. 716.

No. 09–6042. HON *v.* COSMOS JEWELRY, LTD. C. A. 9th Cir. Certiorari denied.

No. 09–6046. HAMPTON *v.* BELLEQUE, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 601.

No. 09–6048. COLE *v.* TEXAS. C. A. 5th Cir. Certiorari denied.

No. 09–6053. KOPY *v.* RYAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 666.

No. 09–6057. BELL *v.* NORWOOD ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 306.

No. 09–6058. HIGGINS *v.* RANDALL COUNTY SHERIFF'S OFFICE. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 09–6059. GARCON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 7 So. 3d 1098.

No. 09–6061. OLIPHANT *v.* MENDOZA-POWERS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–6062. KRISTIADI *v.* HOLDER, ATTORNEY GENERAL. C. A. 1st Cir. Certiorari denied.

No. 09–6064. FAN *v.* ROE. Sup. Ct. Cal. Certiorari denied.

No. 09–6079. KNIGHT *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 6 So. 3d 733.

No. 09–6136. NESBITT *v.* CIRCUIT COURT OF ILLINOIS, COOK COUNTY. Sup. Ct. Ill. Certiorari denied.

No. 09–6180. BARRETT *v.* LAMARQUE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 131.

No. 09–6181. BALKO *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–6198. MONTAGUE *v.* CARLTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–6199. WILLIAMS *v.* QUINN, SUPERINTENDENT, MONROE CORRECTIONAL COMPLEX. C. A. 9th Cir. Certiorari denied. Reported below: 340 Fed. Appx. 364.

No. 09–6229. STAMOS *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 09–6238. LITTLE *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–6260. OWENS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 09–6273. OKAFOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 426.

No. 09–6277. LEFTWICH *v.* WEST VIRGINIA. Cir. Ct. Raleigh County, W. Va. Certiorari denied.

No. 09–6306. STOGNER *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 09–6327. WIEGAND *v.* ZAVARES, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 837.

No. 09–6332. SABINO-MORALES *v.* UNITED STATES; and
No. 09–6599. FLORES-DE-JESUS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 569 F. 3d 8.

No. 09–6383. LOCKETT ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 11th Cir. Certiorari denied. Reported below: 306 Fed. Appx. 464.

No. 09–6422. GORDON *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 09–6433. VORES *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 324 Fed. Appx. 883.

No. 09–6462. RASHID *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–6464. WRIGHT *v.* VOLLAND, JUDGE, SUPERIOR COURT OF ALASKA, THIRD JUDICIAL DISTRICT AT ANCHORAGE, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 331 Fed. Appx. 496.

No. 09–6494. WILSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 445.

No. 09–6495. BONILLA *v.* UNITED STATES; and
No. 09–6517. VILLATORO *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 968 A. 2d 39.

No. 09–6507. WERST *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 334 Fed. Appx. 779.

No. 09–6508. WRIGHT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 322 Fed. Appx. 148.

No. 09–6513. GONZALEZ-GAMEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 337 Fed. Appx. 629.

No. 09–6514. GREEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–6515. HAYES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 334 Fed. Appx. 222.

No. 09–6519. PETERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 228.

No. 09–6520. CARSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 332 Fed. Appx. 75.

No. 09–6523. DECKARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 09–6524. WHITE *v.* GATES, SECRETARY OF DEFENSE. C. A. 9th Cir. Certiorari denied. Reported below: 310 Fed. Appx. 134.

No. 09–6530. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 333 Fed. Appx. 457.

No. 09–6534. MATTHEWS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–6539. WILLIAMS ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–6541. DELAPAZ VASQUEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 560 F. 3d 461.

No. 09–6547. BOYD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 09–6548. BLUNTSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 960.

No. 09–6551. JOSEPH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 519.

No. 09–6555. LOPEZ-CASTAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 419.

No. 09–6561. DEVEAUX, AKA DOVER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 313 Fed. Appx. 595.

No. 09–6566. SOHN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 567 F. 3d 392.

No. 09–6567. ROBINSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 09–6568. RODRIGUEZ-OROZCO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 332 Fed. Appx. 968.

No. 09–6578. DURONIO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 09–6582. POWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 433.

No. 09–6588. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 254.

No. 09–6589. ROBINSON, AKA MATHURIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 876.

No. 09–6593. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–6596. SOTO-MACIEL, AKA MACIAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 09–6597. GARZA GALLEGO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 115.

No. 09–6611. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 334 Fed. Appx. 279.

No. 09–6612. LAMERE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 337 Fed. Appx. 669.

No. 09–6613. MANZO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 337 Fed. Appx. 642.

No. 09–6614. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 367.

No. 09–6615. MUNIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 524.

No. 09–6616. OVERTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 573 F. 3d 679.

No. 09–6618. O'CONNOR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 567 F. 3d 395.

No. 09–6620. MOHAMED *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 68 M. J. 150.

No. 09–6625. NIBLOCK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 165.

No. 09–6628. DEBERRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 151.

No. 09–6629. ESPINOSA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 889.

No. 09–6632. PETERSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 09–6633. RUSS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–6634. POINDEXTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 342 Fed. Appx. 871.

No. 08–1385. VIRGINIA *v.* HARRIS. Sup. Ct. Va. Certiorari denied. Reported below: 276 Va. 689, 668 S. E. 2d 141.

CHIEF JUSTICE ROBERTS, with whom JUSTICE SCALIA joins, dissenting.

Every year, close to 13,000 people die in alcohol-related car crashes—roughly one death every 40 minutes. See Dept. of Transp., Nat. Hwy. Traffic Safety Admin., Traffic Safety Facts, 2007 Traffic Safety Annual Assessment—Alcohol-Impaired Driving Fatalities 1 (No. 811016, Aug. 2008). Ordinary citizens are well aware of the dangers posed by drunk driving, and they frequently report such conduct to the police. A number of States have adopted programs specifically designed to encourage such tips—programs such as the "Drunkbuster Hotline" in New Mexico and the REDDI program (Report Every Drunk Driver Immediately) in force in several States. See Dept. of Transp., Nat. Hwy. Traffic Safety Admin., Programs Across the United States That Aid Motorists in the Reporting of Impaired Drivers to Law Enforcement (2007).

By a 4-to-3 vote, the Virginia Supreme Court below adopted a rule that will undermine such efforts to get drunk drivers off the road. The decision below commands that police officers following a driver reported to be drunk *do nothing* until they see the driver actually do something unsafe on the road—by which time it may be too late.

Here, a Richmond police officer pulled Joseph Harris over after receiving an anonymous tip that Harris was driving while intoxicated. The tip described Harris, his car, and the direction he was traveling in considerable detail. The officer did not personally witness Harris violate any traffic laws. When Harris was pulled over, however, he reeked of alcohol, his speech was slurred, he almost fell over in attempting to exit his car, and he failed the sobriety tests the officer administered on the scene. Harris was convicted of driving while intoxicated, but the Virginia Supreme

Court overturned the conviction. It concluded that because the officer had failed to independently verify that Harris was driving dangerously, the stop violated the Fourth Amendment's prohibition on unreasonable searches and seizures. 276 Va. 689, 696–698, 668 S. E. 2d 141, 146–147 (2008); see Pet. for Cert. 4 (citing record).

I am not sure that the Fourth Amendment requires such independent corroboration before the police can act, at least in the special context of anonymous tips reporting drunk driving. This is an important question that is not answered by our past decisions, and that has deeply divided federal and state courts. The Court should grant the petition for certiorari to answer the question and resolve the conflict.

On the one hand, our cases allow police to conduct investigative stops based on reasonable suspicion, viewed under the totality of the circumstances. *Terry* v. *Ohio*, 392 U. S. 1, 22 (1968); *Alabama* v. *White*, 496 U. S. 325, 328–331 (1990). In *Florida* v. *J. L.*, 529 U. S. 266, 270 (2000), however, we explained that anonymous tips, in the absence of additional corroboration, typically lack the "indicia of reliability" needed to justify a stop under the reasonable suspicion standard. In *J. L.*, the Court suppressed evidence seized by police after receiving an anonymous tip alleging that a young man, wearing a plaid shirt and waiting at a particular bus stop, was carrying a gun. The majority below relied extensively on *J. L.* in reversing Harris's conviction.

But it is not clear that *J. L.* applies to anonymous tips reporting drunk or erratic driving. *J. L.* itself suggested that the Fourth Amendment analysis might be different in other situations. The Court declined "to speculate about the circumstances under which the danger alleged in an anonymous tip might be so great as to justify a search even without a showing of reliability." *Id.*, at 273. It also hinted that "in quarters where the reasonable expectation of Fourth Amendment privacy is diminished," it might be constitutionally permissible to "conduct protective searches on the basis of information insufficient to justify searches elsewhere." *Id.*, at 274.

There is no question that drunk driving is a serious and potentially deadly crime, as our cases have repeatedly emphasized. See, *e. g.*, *Michigan Dept. of State Police* v. *Sitz*, 496 U. S. 444, 451 (1990) ("No one can seriously dispute the magnitude of the drunken driving problem or the States' interest in eradicating

it. Media reports of alcohol-related death and mutilation on the Nation's roads are legion"). The imminence of the danger posed by drunk drivers exceeds that at issue in other types of cases. In a case like *J. L.*, the police can often observe the subject of a tip and step in before actual harm occurs; with drunk driving, such a wait-and-see approach may prove fatal. Drunk driving is always dangerous, as it is occurring. This Court has in fact recognized that the dangers posed by drunk drivers are unique, frequently upholding anti-drunk-driving policies that might be constitutionally problematic in other, less exigent circumstances.[1]

In the absence of controlling precedent on point, a sharp disagreement has emerged among federal and state courts over how to apply the Fourth Amendment in this context. The majority of courts examining the question have upheld investigative stops of allegedly drunk or erratic drivers, even when the police did not personally witness any traffic violations before conducting the stops.[2] These courts have typically distinguished *J. L.*'s general rule based on some combination of (1) the especially grave and imminent dangers posed by drunk driving; (2) the enhanced reliability of tips alleging illegal activity in public, to which the tipster

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[1] See, *e. g.*, *Michigan Dept. of State Police* v. *Sitz*, 496 U. S. 444, 455 (1990) (approving use of field-sobriety checkpoints of all approaching drivers, despite fact that over 98 percent of such drivers were innocent); *South Dakota* v. *Neville*, 459 U. S. 553, 554, 560 (1983) (upholding state law allowing a defendant's refusal to take a blood-alcohol test to be introduced as evidence against him at trial); *Mackey* v. *Montrym*, 443 U. S. 1, 17–19 (1979) (upholding state law requiring mandatory suspension of a driver's license upon a drunk-driving suspect's refusal to submit to a breath-analysis test); see also *Indianapolis* v. *Edmond*, 531 U. S. 32, 37–38 (2000) (noting that in the Fourth Amendment context the Court has upheld government measures "aimed at removing drunk drivers from the road," distinguishing such measures from those with the primary purpose of "detect[ing] evidence of ordinary criminal wrongdoing").

[2] See, *e. g.*, *United States* v. *Wheat*, 278 F. 3d 722 (CA8 2001); *People* v. *Wells*, 38 Cal. 4th 1078, 136 P. 3d 810 (2006); *State* v. *Prendergast*, 103 Haw. 451, 83 P. 3d 714 (2004); *State* v. *Walshire*, 634 N. W. 2d 625 (Iowa 2001); *State* v. *Crawford*, 275 Kan. 492, 67 P. 3d 115 (2003); *Bloomingdale* v. *State*, 842 A. 2d 1212 (Del. 2004); *State* v. *Golotta*, 178 N. J. 205, 837 A. 2d 359 (2003); *State* v. *Scholl*, 2004 S. D. 85, 684 N. W. 2d 83; *State* v. *Boyea*, 171 Vt. 401, 765 A. 2d 862 (2000); *State* v. *Rutzinski*, 2001 WI 22, 241 Wis. 2d 729, 623 N. W. 2d 516.

was presumably an eyewitness; (3) the fact that traffic stops are typically less invasive than searches or seizures of individuals on foot; and (4) the diminished expectation of privacy enjoyed by individuals driving their cars on public roads. A minority of jurisdictions, meanwhile, take the same position as the Virginia Supreme Court, requiring that officers first confirm an anonymous tip of drunk or erratic driving through their own independent observation.[3] This conflict has been expressly noted by the lower courts.[4]

The conflict is clear and the stakes are high. The effect of the rule below will be to grant drunk drivers "one free swerve" before they can legally be pulled over by police. It will be difficult for an officer to explain to the family of a motorist killed by that swerve that the police had a tip that the driver of the other car was drunk, but that they were powerless to pull him over, even for a quick check.

Maybe the decision of the Virginia Supreme Court below was correct, and the Fourth Amendment bars police from acting on anonymous tips of drunk driving unless they can verify each tip. If so, then the dangerous consequences of this rule are unavoidable. But the police should have every legitimate tool at their disposal for getting drunk drivers off the road. I would grant certiorari to determine if this is one of them.

No. 08–1441. Boim et ux. *v.* Salah. C. A. 7th Cir. Motion of Zionist Organization of America for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 549 F. 3d 685.

No. 09–200. Kim *v.* City of Federal Way, Washington. C. A. 9th Cir. Certiorari before judgment denied.

No. 09–205. Lapetina *v.* Carlsen, Superintendent, Ulster Correctional Facility, et al. C. A. 2d Cir. Certiorari

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[3] See, *e. g.*, *McChesney* v. *State*, 988 P. 2d 1071 (Wyo. 1999); *Commonwealth* v. *Lubiejewski*, 49 Mass. App. 212, 729 N. E. 2d 288 (2000); *State* v. *Sparen*, No. CR00258199S, 2001 WL 206078 (Conn. Super. Ct., Feb. 9, 2001) (unpublished).

[4] See, *e. g.*, *Wheat*, *supra*, at 729–730 (reviewing cases upholding stops, then noting that some courts "have reached a different conclusion"); *Wells*, *supra*, at 1084, 136 P. 3d, at 814 ("split of authority").

denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 09–5906. WHEELER *v.* KENTUCKY. Sup. Ct. Ky. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied.

No. 09–5941. RODRIGUEZ *v.* ERCOLE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 09–5986. MENDOZA *v.* MARSHALL, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 330 Fed. Appx. 215.

No. 09–6037. RUEZGA *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 330 Fed. Appx. 656.

No. 09–6077. SAQIB *v.* FEDERAL BUREAU OF INVESTIGATION ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 09–7104 (09A363). MCCLAIN *v.* UPTON, WARDEN. Super. Ct. Butts County, Ga. 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. 09–5004 (09A338). MCCLAIN *v.* HALL, WARDEN, *ante*, p. 882. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Petition for rehearing denied.

OCTOBER 27, 2009

Miscellaneous Order

No. 09–7210 (09A387). IN RE BLANTON. 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. 09–7211 (09A391). BLANTON *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 29, 2009

Dismissals Under Rule 46

No. 08–1529. MIGLIACCIO ET AL. *v.* CASTANEDA, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF CASTANEDA, ET AL. C. A. 9th Cir. [Certiorari granted, 557 U. S. 966.] Writ of certiorari dismissed as to petitioners Eugene Migliaccio and Timothy Shack under this Court's Rule 46.1.

No. 08–1547. HENNEFORD *v.* CASTANEDA, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF CASTANEDA, ET AL. C. A. 9th Cir. [Certiorari granted, 557 U. S. 966.] Writ of certiorari dismissed under this Court's Rule 46.1.

NOVEMBER 2, 2009

Certiorari Granted—Vacated and Remanded

No. 09–69. NORWOOD *v.* UNITED STATES. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Melendez-Diaz* v. *Massachusetts*, 557 U. S. 305 (2009). Reported below: 555 F. 3d 1061.

Certiorari Dismissed

No. 08–10169. ORTIZ, AKA LOPEZ ORTIZ *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, 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.

No. 08–10844. NORTON *v.* NORRIS ET AL. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 08–10942. TIBBS *v.* MCWHORTER 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.

No. 08–11023. WHEELER *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, 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.

No. 09–5377. PIGGIE *v.* ROBERTSON ET AL. 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.

No. 09–5437. CRUTCHER *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA. 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. 09–5577. RICHARDSON *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 324 Fed. Appx. 209.

No. 09–5591. TIBBS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. 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.

No. 09–6192. HARRELL *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. 09–6228. JACKSON *v.* PROVINCE, 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: 341 Fed. Appx. 377.

No. 09–6234. CLUCK *v.* WASHINGTON. Sup. Ct. Wash. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 09–6536. NADDI *v.* HERNANDEZ, WARDEN, 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.

No. 09–6684. HOWARD *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO ET AL. 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.

Certificate Dismissed

No. 09–166. UNITED STATES *v.* SEALE. C. A. 5th Cir. Question certified by the United States Court of Appeals for the Fifth Circuit dismissed. Reported below: 577 F. 3d 566.

Statement of JUSTICE STEVENS, with whom JUSTICE SCALIA joins, respecting the dismissal of the certified question.

This certificate presents us with a pure question of law that may well determine the outcome of a number of cases of ugly racial violence remaining from the 1960's. The question is what statute of limitations applies to a prosecution under 18 U. S. C. § 1201 commenced in 2007 for a kidnaping offense that occurred in 1964.

James Ford Seale was found guilty of violating § 1201, a provision that does not include its own limitations period. Title 18 U. S. C. § 3281 provides that "any offense punishable by death" may be prosecuted "at any time without limitation," whereas § 3282(a) imposes a 5-year period of limitations for all other offenses "[e]xcept as otherwise expressly provided by law." In 1964 a violation of § 1201 was a capital offense when the victim was harmed, and since 1994 a violation of § 1201 has been a capital offense when the kidnaping results in the loss of life. But for more than two decades in between, Seale's crime was not punishable by death.

Several developments accounted for this. In 1968 this Court held that the death penalty provision in the old § 1201 was unconstitutional because it applied "only to those defendants who assert the right to contest their guilt before a jury," *United States* v. *Jackson*, 390 U. S. 570, 581, and in 1972 we cast significant doubt on the constitutionality of death penalty laws nationwide, *Furman* v. *Georgia*, 408 U. S. 238 *(per curiam)*. Following *Furman*, Congress repealed the death penalty clause of § 1201, see Act for

the Protection of Foreign Officials and Official Guests of the United States, Pub. L. 92–539, § 201, 86 Stat. 1072, which had the effect of changing the applicable statute of limitations from § 3281 to § 3282.

In this case, the District Court held that the 1972 repeal did not retroactively change the character of a violation of § 1201 as a capital offense within the meaning of § 3281—and therefore that the prosecution of Seale could go forward—but a panel of the Court of Appeals reversed. 542 F. 3d 1033 (CA5 2008). In response to the Government's petition for rehearing en banc, the full court vacated the panel decision and, by an equally divided 9-to-9 vote, affirmed the District Court's ruling on the limitations defense. 570 F. 3d 650 (2009) *(per curiam);* see also *id.*, at 651 (DeMoss, J., dissenting) (noting the affirmance's "nominal" nature in light of the deadlock). Following the procedure authorized by Congress in 28 U. S. C. § 1254(2) and by this Court's Rule 19, a majority of the members of the en banc court voted to certify this question of law to us for decision.

The question is narrow, debatable, and important. I recognize that the question reaches us in an interlocutory posture, as Seale appealed his conviction on numerous grounds, and that "[i]t is primarily the task of a Court of Appeals to reconcile its internal difficulties," *Wisniewski* v. *United States,* 353 U. S. 901, 902 (1957) *(per curiam).* Yet I see no benefit and significant cost to postponing the question's resolution. A prompt answer from this Court will expedite the termination of this litigation and determine whether other similar cases may be prosecuted. In these unusual circumstances, certification can serve the interests not only of legal clarity but also of prosecutorial economy and "the proper administration and expedition of judicial business." *Ibid.*

The certification process has all but disappeared in recent decades. The Court has accepted only a handful of certified cases since the 1940's and none since 1981; it is a newsworthy event these days when a lower court even tries for certification. Section 1254(2) and this Court's Rule 19 remain part of our law because the certification process serves a valuable, if limited, function. We ought to avail ourselves of it in an appropriate case. In my judgment, this case should be briefed and set for argument.

Miscellaneous Orders

No. 09A265. GIANNONE *v.* UNITED STATES. C. A. 4th Cir. Application for bail, addressed to JUSTICE SOTOMAYOR and referred to the Court, denied.

No. 09M36. RISER *v.* DEPARTMENT OF THE TREASURY;
No. 09M37. BURNES *v.* UNITED STATES;
No. 09M40. MCCOY *v.* ERCOLE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY;
No. 09M41. BARNES *v.* HARRISON-BELK ET AL.; and
No. 09M42. MANNS *v.* UNIVERSITY OF ARKANSAS MEDICAL CENTER ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 09M38. IN RE AL-GHIZZAWI. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted. Motion for leave to file petition for writ of habeas corpus under seal granted.

No. 09M39. NITRO DISTRIBUTING, INC., ET AL. *v.* ALTICOR, INC., ET AL. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 08–861. FREE ENTERPRISE FUND ET AL. *v.* PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD ET AL. C. A. D. C. Cir. [Certiorari granted, 556 U. S. 1234.] Motion of the Solicitor General for divided argument granted.

No. 08–1134. UNITED STUDENT AID FUNDS, INC. *v.* ESPINOSA. C. A. 9th Cir. [Certiorari granted, 557 U. S. 903.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 08–1322. ASTRUE, COMMISSIONER OF SOCIAL SECURITY *v.* RATLIFF. C. A. 8th Cir. [Certiorari granted, 557 U. S. 965.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 08–1438. SOSSAMON *v.* TEXAS ET AL. C. A. 5th Cir.;
No. 09–109. CARDINAL *v.* METRISH, WARDEN. C. A. 6th Cir.; and
No. 09–115. CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA ET AL. *v.* CANDELARIA ET AL. C. A. 9th Cir. The

Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 08–1498. HOLDER, ATTORNEY GENERAL, ET AL. *v.* HUMANITARIAN LAW PROJECT ET AL.; and

No. 09–89. HUMANITARIAN LAW PROJECT ET AL. *v.* HOLDER, ATTORNEY GENERAL, ET AL. C. A. 9th Cir. [Certiorari granted, 557 U. S. 966.] Motion of the parties to amend the briefing schedule granted. Petitioners in No. 09–89 will file an opening brief, not to exceed 18,000 words, on or before November 16, 2009. Petitioners in No. 08–1498 will file a response brief, not to exceed 18,000 words, on or before December 22, 2009. Petitioners in No. 09–89 will file a reply brief, not to exceed 12,000 words, on or before January 21, 2010. Petitioners in No. 08–1498 will file a reply brief, not to exceed 12,000 words, on or before February 12, 2010.

No. 09–34. PFIZER INC. *v.* ABDULLAHI 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. THE CHIEF JUSTICE and JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 09–5371. MCCARTHY *v.* VILSACK, SECRETARY OF AGRICULTURE, ET AL. C. A. 7th Cir.;

No. 09–6083. PRYOR *v.* WOLFE ET AL. C. A. 5th Cir.;

No. 09–6103. AUGUSTIN *v.* CHASE HOME FINANCE LLC. C. A. 1st Cir.; and

No. 09–6241. VADDE *v.* GEORGIA. Ct. App. Ga. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until November 23, 2009, 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. 09–6773. IN RE FULLERBLACK;

No. 09–6802. IN RE GRINKER;

No. 09–6899. IN RE SINGLETON; and

No. 09–6980. IN RE LESTER. Petitions for writs of habeas corpus denied.

No. 09–6157. IN RE MCCORVEY;

No. 09–6268. IN RE CARTER;

No. 09–6434. IN RE TELFAIR; and

No. 09–6776. IN RE GARRAUD. Petitions for writs of mandamus denied.

No. 08–10694. IN RE ROCHESTER. 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. 09–5226. IN RE RIVAS. Petition for writ of mandamus denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 09–5102. IN RE WHEELER; and

No. 09–6188. IN RE ALPINE. Motions of petitioners for leave to proceed *in forma pauperis* denied, and petitions for writs of mandamus and/or prohibition dismissed. See this Court's Rule 39.8.

No. 09–6435. IN RE TELFAIR. Petition for writ of prohibition denied.

Certiorari Granted

No. 08–1457. NEW PROCESS STEEL, L. P. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 7th Cir. Certiorari granted. Reported below: 564 F. 3d 840.

No. 09–223. LEVIN, TAX COMMISSIONER OF OHIO *v.* COMMERCE ENERGY, INC., ET AL. C. A. 6th Cir. Certiorari granted. Reported below: 554 F. 3d 1094.

No. 08–998. HAMILTON, CHAPTER 13 TRUSTEE *v.* LANNING. C. A. 10th Cir. Certiorari granted limited to the following question: "Whether, in calculating the debtor's 'projected disposable income' during the plan period, the bankruptcy court may consider evidence suggesting that the debtor's income or expenses during that period are likely to be different from her income or expenses during the prefiling period." Reported below: 545 F. 3d 1269.

Certiorari Denied

No. 08–1418. GROSDIDIER ET AL. *v.* CHAIRMAN, BROADCASTING BOARD OF GOVERNORS. C. A. D. C. Cir. Certiorari denied. Reported below: 560 F. 3d 495.

No. 08–10337. BISBY *v.* CRITES, ASSISTANT WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 312 Fed. Appx. 631.

No. 08–10666. YOST *v.* WEST VIRGINIA. Cir. Ct. Raleigh County, W. Va. Certiorari denied.

No. 08–10723. N. I. *v.* ORANGE COUNTY SOCIAL SERVICES AGENCY ET AL. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 08–10827. MUSICK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 291 Fed. Appx. 706.

No. 08–10845. OGUNDE *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 08–11065. GUTIERREZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 45 Cal. 4th 789, 200 P. 3d 847.

No. 09–3. DAEWOO ENGINEERING & CONSTRUCTION CO., LTD. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 557 F. 3d 1332.

No. 09–77. MARTINEZ-RODRIGUEZ *v.* HOLDER, ATTORNEY GENERAL. C. A. 10th Cir. Certiorari denied. Reported below: 313 Fed. Appx. 154.

No. 09–88. BILTMORE FOREST BROADCASTING FM, INC. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 555 F. 3d 1375.

No. 09–95. GRENADA STAMPING & ASSEMBLY INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 5th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 404.

No. 09–117. APOTEX, INC., ET AL. *v.* SANOFI-SYNTHELABO ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 550 F. 3d 1075.

No. 09–202. WARD *v.* TRANS UNION, LLC. C. A. 4th Cir. Certiorari denied. Reported below: 311 Fed. Appx. 613.

No. 09–212. LENHAM *v.* DISABLED AMERICAN VETERANS ET AL. Ct. App. N. M. Certiorari denied.

No. 09–215. RASPANTI *v.* OFFICE OF DISCIPLINARY COUNSEL. Sup. Ct. La. Certiorari denied. Reported below: 8 So. 3d 526.

No. 09–218. MCCRORY *v.* CAN DO, INC., ET AL. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 3 So. 3d 91.

No. 09–228. MARTINEZ ET UX. *v.* MASSERI ET AL. Ct. App. N. M. Certiorari denied.

No. 09–230. AMORRORTU *v.* REPUBLIC OF PERU. C. A. 5th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 400.

No. 09–236. VENTIMIGLIA *v.* ST. LOUIS, CHURCH OF GOD, INC., DBA TWIN RIVERS WORSHIP CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 09–237. RODRIGUEZ *v.* UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT. C. A. D. C. Cir. Certiorari denied.

No. 09–246. BRIDGEPORT ROMAN CATHOLIC DIOCESAN CORP. ET AL. *v.* NEW YORK TIMES CO. ET AL. Sup. Ct. Conn. Certiorari denied. Reported below: 292 Conn. 1, 970 A. 2d 656.

No. 09–248. MOHAWK INDUSTRIES, INC. *v.* WILLIAMS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 568 F. 3d 1350.

No. 09–251. SAFFRAN *v.* NOVASTAR MORTGAGE, INC. C. A. 1st Cir. Certiorari denied.

No. 09–254. AMERICAN INSURANCE CO. ET AL. *v.* ASTENJOHNSON, INC. C. A. 3d Cir. Certiorari denied. Reported below: 562 F. 3d 213.

No. 09–258. ARNOLD *v.* KPMG LLP ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 334 Fed. Appx. 349.

No. 09–260. WAYNE-DALTON CORP. *v.* AMARR CO. C. A. Fed. Cir. Certiorari denied. Reported below: 318 Fed. Appx. 906.

No. 09–262. USI MIDATLANTIC, INC., ET AL. *v.* WILLIAM A. GRAHAM CO., DBA GRAHAM CO. C. A. 3d Cir. Certiorari denied. Reported below: 568 F. 3d 425.

No. 09–267. BAZARGANI *v.* SNYDER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 329 Fed. Appx. 351.

No. 09–279. ROBERTSON *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 09–282. DAVIS ET AL. *v.* TILZER ET AL. Sup. Ct. Kan. Certiorari denied. Reported below: 288 Kan. 477, 204 P. 3d 617.

No. 09–283. REEVES *v.* DSI SECURITY SERVICES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 331 Fed. Appx. 659.

No. 09–284. INDEPENDENCE NEWS, INC., ET AL. *v.* CITY OF CHARLOTTE, NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 568 F. 3d 148.

No. 09–298. BLUM *v.* FEDERAL AVIATION ADMINISTRATION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 189.

No. 09–299. MICHIGAN *v.* SHAFIER. Sup. Ct. Mich. Certiorari denied. Reported below: 483 Mich. 205, 768 N. W. 2d 305.

No. 09–320. CHAPMAN ET AL. *v.* CASNER ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 315 Fed. Appx. 294.

No. 09–334. HEIMERMANN *v.* MCCAUGHTRY ET AL. Ct. App. Wis. Certiorari denied. Reported below: 316 Wis. 2d 355, 763 N. W. 2d 247.

No. 09–336. RX.COM, INC. *v.* MEDCO HEALTH SOLUTIONS, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 394.

No. 09–354. VILLARREAL *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 286 S. W. 3d 321.

No. 09–366. CURRY *v.* ALASKA. Sup. Ct. Alaska. Certiorari denied.

No. 09–378. AKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 335 Fed. Appx. 335.

No. 09–5016. BARRETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 309 Fed. Appx. 347.

No. 09–5043. HOVIND *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 305 Fed. Appx. 615.

No. 09–5070. AVILA *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 560 F. 3d 299.

No. 09–5089. GATEWOOD *v.* OUTLAW, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 560 F. 3d 843.

No. 09–5144. RISLEY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–5164. CRUZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 303 Fed. Appx. 133.

No. 09–5242. JONES *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 384 Ill. App. 3d 1087, 973 N. E. 2d 1087.

No. 09–5285. JOHNSON *v.* NEVADA DEPARTMENT OF CORRECTIONS ET AL. Sup. Ct. Nev. Certiorari denied.

No. 09–5321. COLLIER *v.* SEARS, ROEBUCK & CO. C. A. 9th Cir. Certiorari denied. Reported below: 308 Fed. Appx. 213.

No. 09–5347. THARP *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 478.

No. 09–5533. CASTRO-COELLO, AKA MOLINAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 354.

No. 09–5546. LERMA-VELEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 352.

No. 09–5550. LOPEZ-LEON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 367.

No. 09–5589. ERAZO-VILLATORO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 383.

No. 09–5619. ELDRIDGE *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 322.

No. 09–5674. FUTCH *v.* DEWEY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 317 Fed. Appx. 102.

No. 09–5714. O'DWYER *v.* NELSON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 310 Fed. Appx. 741.

No. 09–5886. OWENS *v.* VIRGINIA ET AL. Sup. Ct. Va. Certiorari denied.

No. 09–5981. REED *v.* HOFBAUER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–6009. COOK *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–6036. ROBENSON *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–6050. ROPER *v.* FARWELL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–6055. JUSTICE *v.* KING. Ct. App. N. Y. Certiorari denied. Reported below: 12 N. Y. 3d 908, 912 N. E. 2d 1066.

No. 09–6068. CUTAIA *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 17 So. 3d 1239.

No. 09–6071. MAISANO *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–6072. LANGOSH *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 09–6081. NICELEY *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 09–6084. WILLIAMS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 09–6086. WILLIAMS *v.* MCBRIDE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 235.

No. 09–6099. JONES *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–6102. KENDRICK *v.* FRANK ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 310 Fed. Appx. 34.

No. 09–6105. BORTHWELL *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–6111. SMITH *v.* OZMINT, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied.

No. 09–6118. RONE *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 483 Mich. 1018, 765 N. W. 2d 313.

No. 09–6127. HAWTHORNE *v.* CARUSO, DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS, ET AL. C. A. 6th Cir. Certiorari denied.

No. 09–6130. GUMBS *v.* HOLDER, ATTORNEY GENERAL, ET AL. C. A. 2d Cir. Certiorari denied.

No. 09–6132. FUENTES RIOS *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–6134. CARROLL *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 574 F. 3d 1354.

No. 09–6135. CAIN *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 486.

No. 09–6144. PEDROSO *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 993 So. 2d 1220.

No. 09–6146. ABRAHAM *v.* HEINEMANN. C. A. D. C. Cir. Certiorari denied. Reported below: 325 Fed. Appx. 4.

No. 09–6147. AMASON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–6148. SCOTT *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 6 So. 3d 622.

No. 09–6149. LOPEZ *v.* MCKUNE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 335 Fed. Appx. 695.

No. 09–6153. HARRIS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 385 Ill. App. 3d 1129, 970 N. E. 2d 128.

No. 09–6156. CHAVEZ *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 12 So. 3d 199.

No. 09–6160. FLEITAS *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 3 So. 3d 351.

No. 09–6166. JUDD *v.* NEW MEXICO. Ct. App. N. M. Certiorari denied.

No. 09–6168. WALSH *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 328 Fed. Appx. 806.

No. 09–6169. THEISS *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 09–6170. WEISER *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–6173. HIMMELBERGER *v.* AYERS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–6177. BROWN *v.* AMERICAN INSTITUTE FOR RESEARCH IN THE BEHAVIORAL SCIENCES, INC. C. A. 4th Cir. Certiorari denied. Reported below: 314 Fed. Appx. 614.

No. 09–6184. DAVIE *v.* MITCHELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 547 F. 3d 297.

No. 09–6185. JONES *v.* CALIFORNIA. App. Div., Super. Ct. Cal., County of Modoc. Certiorari denied.

No. 09–6194. DOYLE *v.* RITTER, GOVERNOR OF COLORADO, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 334 Fed. Appx. 164.

No. 09–6197. NEWMAN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 09–6201. TILTON *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–6202. THOMAS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 377 Ill. App. 3d 1144, 953 N. E. 2d 84.

No. 09–6203. MEREDITH *v.* ERATH ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 304 Fed. Appx. 579.

No. 09–6204. GRAYSON *v.* STEVENSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 159.

No. 09–6209. HANNON *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 562 F. 3d 1146.

No. 09–6215. LOPEZ *v.* KENNEDY ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–6216. MARTIN *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 09–6225. BLAKENEY *v.* BRANKER, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 314 Fed. Appx. 572.

No. 09–6226. BERNARD *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 09–6227. HARLEY *v.* BEIOH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 134.

No. 09–6236. HEARNE *v.* DAVIS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 171.

No. 09–6237. S. B. ET UX. *v.* J. L. Ct. App. Mo., Southern Dist. Certiorari denied. Reported below: 280 S. W. 3d 147.

No. 09–6244. THOMAS *v.* HOREL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 85.

No. 09–6248. BROWN *v.* SAMANO. C. A. 9th Cir. Certiorari denied.

No. 09–6249. ANSEL *v.* SUPERIOR COURT OF CALIFORNIA, SACRAMENTO COUNTY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 313 Fed. Appx. 34.

No. 09–6250. ASHIPA *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 09–6256. WICK *v.* PROSPER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 315 Fed. Appx. 624.

No. 09–6257. FLOWERS *v.* PHELPS, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–6258. GRAHAM *v.* MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 284 S. W. 3d 735.

No. 09–6261. TAYLOR *v.* MINNESOTA. C. A. 8th Cir. Certiorari denied.

No. 09–6265. BLIE *v.* ARTUS, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 09–6266. HARDY *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–6267. BIBBS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–6270. DAVIS *v.* KNOWLES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 557.

No. 09–6272. CARTER *v.* GAETZ, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 09–6274. MILLER *v.* SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE, AND PARDON SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 407.

No. 09–6276. PEREZ *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 09–6281. LAFAVORS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–6282. DERRICKSON *v.* DISTRICT ATTORNEY OF DELAWARE COUNTY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 316 Fed. Appx. 132.

No. 09–6283. ARTIS *v.* NEWPORT NEWS SHIPBUILDING & DRYDOCK CO. C. A. 4th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 306.

No. 09–6285. BROWN *v.* CITY OF PHILADELPHIA, PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 331 Fed. Appx. 898.

No. 09–6294. COX *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 383 Ill. App. 3d 1142, 968 N. E. 2d 217.

No. 09–6297. J. M. B. *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 197 N. J. 563, 964 A. 2d 752.

No. 09–6299. GARCIA *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 09–6304. SNOW *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 40 Kan. App. 2d 747, 195 P. 3d 282.

No. 09–6311. MENDEZ *v.* KNOWLES, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 556 F. 3d 757.

No. 09–6339. LEWIS *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 340 Fed. Appx. 670.

No. 09–6341. CARGYLE S. *v.* PRINCE GEORGE'S COUNTY CHILD PROTECTIVE SERVICES. Ct. App. Md. Certiorari denied.

No. 09–6363. ARMSTRONG *v.* KERESTES, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–6378. HUTCHINSON *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 969 A. 2d 923.

No. 09–6396. GARCELL *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 363 N. C. 10, 678 S. E. 2d 618.

No. 09–6417. SMITH *v.* RICHARDS. C. A. 9th Cir. Certiorari denied. Reported below: 569 F. 3d 991.

No. 09–6420. DENICTOLIS ET AL. *v.* CLARKE, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTION. C. A. 1st Cir. Certiorari denied.

No. 09–6436. ALMOND *v.* POLLARD, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied.

No. 09–6437. YODER *v.* BREWER, GOVERNOR OF ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–6440. PEREZ GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 840.

No. 09–6449. WILLIAMS, AKA STEWART *v.* ROZUM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–6512. SMITH *v.* WEBER, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 09–6527. BALL *v.* HOUSTON, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 332 Fed. Appx. 890.

No. 09–6535. PETERSON *v.* ROE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 337 Fed. Appx. 658.

No. 09–6537. TAYLOR *v.* PURKETT, SUPERINTENDENT, EASTERN RECEPTION, DIAGNOSTIC AND CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 09–6540. ASBELL *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–6552. JONES *v.* CARLSON, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 09–6558. ELLIS *v.* SHEARIN, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 212.

No. 09–6562. ELIZARES *v.* THOMAS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–6572. WHEELER *v.* MILLER. Ct. App. Md. Certiorari denied. Reported below: 408 Md. 151, 968 A. 2d 1066.

No. 09–6574. BOYD *v.* SHERROD, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 09–6576. ALBRIGHT-LAZZARI ET VIR *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied.

No. 09–6581. CORRAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 387.

No. 09–6584. BOWMAN *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 09–6601. TROTTER *v.* GATES, SECRETARY OF DEFENSE. C. A. 9th Cir. Certiorari denied. Reported below: 288 Fed. Appx. 398.

No. 09–6604. EVANS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–6607. CAMPBELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–6608. CAO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 331 Fed. Appx. 687.

No. 09–6626. CURRIE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 338 Fed. Appx. 158.

No. 09–6635. MORSE *v.* MAINE. C. A. 1st Cir. Certiorari denied.

No. 09–6638. BRYCE *v.* MARTINEZ, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 340 Fed. Appx. 759.

No. 09–6640. WALKER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 307 Fed. Appx. 230.

No. 09–6643. MCGHEE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–6644. VAZQUEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 335 Fed. Appx. 644.

No. 09–6646. WALLS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 546 F. 3d 728.

No. 09–6652. DAUBON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 334 Fed. Appx. 167.

No. 09–6653. DOLAMORE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 09–6655. MONROE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 331 Fed. Appx. 703.

No. 09–6656. DUNCAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 331 Fed. Appx. 270.

No. 09–6657. DOUBLIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 572 F. 3d 235.

No. 09–6660. MORALES-PITONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 335 Fed. Appx. 441.

No. 09–6661. YATES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 452.

No. 09–6663. SLINGER *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–6667. ELLIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 332 Fed. Appx. 471.

No. 09–6668. VALLE MERCADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 390.

No. 09–6670. CARRILLO-PALACIOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 511.

No. 09–6671. CROTO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 570 F. 3d 11.

No. 09–6678. HARDIMON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 660.

No. 09–6680. HUBER *v.* UNITED STATES PAROLE COMMISSION. C. A. 9th Cir. Certiorari denied. Reported below: 336 Fed. Appx. 699.

No. 09–6681. HAYNES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 335 Fed. Appx. 420.

No. 09–6685. BLANCO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 139.

No. 09–6687. CARTER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–6688. MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 339 Fed. Appx. 404.

No. 09–6691. SALDARRIAGA-PALACIO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–6700. SANTANA *v.* TRANI, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 341 Fed. Appx. 360.

No. 09–6702. BURGIE *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2009 Ark. 382.

No. 09–6704. BALENTINE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 09–6705. WAGONER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–6706. R. T. *v.* N. G. S. C. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 316 Fed. Appx. 240.

No. 09–6710. ROBINSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 287 Fed. Appx. 150.

No. 09–6713. SIMEK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 335 Fed. Appx. 433.

No. 09–6714. SUITT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 569 F. 3d 867.

No. 09–6717. JOHNSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 334 Fed. Appx. 172.

No. 09–6719. LEWIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 09–6720. KNIGHT *v.* KAMINSKI ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 331 Fed. Appx. 901.

No. 09–6722. ORTIZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 167.

No. 09–6725. WILLIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–6727. SCAIFE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 334 Fed. Appx. 172.

No. 09–6728. SURRATT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–6731. DODDS, AKA WILSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 569 F. 3d 336.

No. 09–6736. ARONJA-INDA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 333 Fed. Appx. 151.

No. 09–6737. ARELLANO-OCHOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 163.

No. 09–6739. KEEN *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–6743. HOLMES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 750.

No. 09–6745. GONZALEZ-RAMIREZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 561 F. 3d 22.

No. 09–6746. MAYLE *v.* SABOL, WARDEN. C. A. 1st Cir. Certiorari denied.

No. 09–6747. MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 09–6749. NASH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 386.

No. 09–6753. YOUNG *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 334 Fed. Appx. 477.

No. 09–6757. JIMENEZ-ALVARADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 479.

No. 09–6759. KINCHION *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 337 Fed. Appx. 743.

No. 09–6762. BURNEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 335 Fed. Appx. 885.

No. 09–6763. SCOTT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 343 Fed. Appx. 930.

No. 09–6766. MOMAH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 470.

No. 09–6770. HURT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 295 Fed. Appx. 541.

No. 09–6778. GUTIERREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 09–6779. GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–6781. JEAN-CHARLES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–6783. BOYD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 865.

No. 09–6787. BRITO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 09–6799. BARIAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–6800. BREWER *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 67 M. J. 408.

No. 09–6804. HAMANI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 09–6807. CHUNG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 862.

No. 09–6808. COLTRANE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 337 Fed. Appx. 283.

No. 09–6809. DE LA GARZA-VALLES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 307.

No. 09–6810. CELEDON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 09–6813. ROSS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 334 Fed. Appx. 700.

No. 09–6814. RINICK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 09–6815. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–6816. JONES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 566 F. 3d 353.

No. 09–6819. SANCHEZ-RAMIREZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 570 F. 3d 75.

No. 09–6820. WARFIELD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–6824. HUMBERT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 336 Fed. Appx. 132.

No. 09–6827. DHARNI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 554.

No. 09–6831. LACEN-BERRIOS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–6837. SEALED PETITIONER *v.* UNITED STATES; and
No. 09–6838. SEALED PETITIONERS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 305 Fed. Appx. 669.

No. 09–6840. CARNEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–6841. ROBERSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–6844. BROOKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 331 Fed. Appx. 195.

No. 09–6847. RAMIREZ REYNA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 336 Fed. Appx. 353.

No. 09–6856. BLANKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–6859. BROWN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 565 F. 3d 1093.

No. 09–6860. ALEJANDRE-ALCARAZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 122.

No. 09–6869. MORRIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–6872. VIGIL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 335 Fed. Appx. 775.

No. 09–6873. MONTOYA-CARMONA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 255.

No. 08–1415. FILEBARK ET AL. *v.* DEPARTMENT OF TRANSPORTATION ET AL. C. A. D. C. Cir. Motion of National Treasury Employees Union et al. for leave to file a brief as *amici curiae* out of time granted. Certiorari denied. Reported below: 555 F. 3d 1009.

No. 08–10982. BASARDH *v.* GATES, SECRETARY OF DEFENSE, ET AL. C. A. D. C. Cir. Certiorari before judgment denied.

No. 09–28. EASTERDAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 564 F. 3d 1004.

No. 09–49. LAZARENKO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 564 F. 3d 1026.

No. 09–74. SMITH, WARDEN *v.* MASON. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 543 F. 3d 766.

No. 09–104. AD HOC COMMITTEE OF KENTON COUNTY BONDHOLDERS *v.* DELTA AIR LINES, INC., ET AL. C. A. 2d Cir. Motion of Professor George W. Kuney for leave to file a brief as *amicus curiae* granted. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this motion and this petition. Reported below: 309 Fed. Appx. 455.

No. 09–141. BENNETT *v.* VERIZON WIRELESS. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 326 Fed. Appx. 9.

No. 09–188. FISHER *v.* PENN TRAFFIC CO. ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 319 Fed. Appx. 34.

No. 09–216. MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. *v.* ASAY. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 09–234. MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS *v.* THOMAS. C. A. 11th Cir. Motion of respondent

for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 09–261. WUBAYEH ET AL. *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 320 Fed. Appx. 60.

No. 09–321. GOTTLIEB *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 310 Fed. Appx. 424.

No. 09–6075. SAVINON *v.* KHAHAIFA, SUPERINTENDENT, ORLEANS CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 318 Fed. Appx. 41.

No. 09–6224. BASCIANO *v.* MARTINEZ, WARDEN. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 316 Fed. Appx. 50.

No. 09–6647. SIMMONS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 560 F. 3d 98.

No. 09–6675. NOSTER *v.* UNITED STATES. C. A. 9th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 573 F. 3d 664.

No. 09–6817. MARTINEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 313 Fed. Appx. 402.

No. 09–6825. KOPP *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 562 F. 3d 141.

No. 09–6858. ANDERSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

NOVEMBER 5, 2009

Miscellaneous Order

No. 09–7379 (09A431). IN RE OLIVER. 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.

NOVEMBER 9, 2009

Certiorari Granted—Reversed and Remanded. (See No. 09–144, *ante*, p. 4.)

Certiorari Dismissed

No. 09–6692. STRUCK *v.* COOK COUNTY PUBLIC GUARDIAN. App. Ct. Ill., 1st 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. Reported below: 387 Ill. App. 3d 867, 901 N. E. 2d 946.

No. 09–6715. LEAPHART *v.* CITY OF DETROIT, MICHIGAN, ET AL. Ct. App. Mich. 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. 09–6892. BOYD *v.* UNITED STATES. C. A. 8th 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. 09M44. RANDOLPH *v.* COLE. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 09M45. HOFFART *v.* HERMAN ET AL. Motion for leave to proceed as a veteran denied.

No. 132, Orig. ALABAMA ET AL. *v.* NORTH CAROLINA. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of the parties for enlargement of time for oral argument granted and time allocated as follows: 30 minutes for plaintiffs, 10 minutes for the Solicitor General, 40 minutes for defendant, and 10 minutes for plaintiffs. [For earlier order herein, see *ante,* p. 944.]

No. 08–240. MAC'S SHELL SERVICE, INC., ET AL. *v.* SHELL OIL PRODUCTS CO. LLC ET AL.; and

No. 08–372. SHELL OIL PRODUCTS CO. LLC ET AL. *v.* MAC'S SHELL SERVICE, INC., ET AL. C. A. 1st Cir. [Certiorari granted, 557 U. S. 903.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 08–304. GRAHAM COUNTY SOIL AND WATER CONSERVATION DISTRICT ET AL. *v.* UNITED STATES EX REL. WILSON. C. A. 4th Cir. [Certiorari granted, 557 U. S. 918.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 08–905. MERCK & CO., INC., ET AL. *v.* REYNOLDS ET AL. C. A. 3d Cir. [Certiorari granted, 556 U. S. 1257.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 08–1175. FLORIDA *v.* POWELL. Sup. Ct. Fla. [Certiorari granted, 557 U. S. 918.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 08–1214. GRANITE ROCK CO. *v.* INTERNATIONAL BROTHERHOOD OF TEAMSTERS ET AL. C. A. 9th Cir. [Certiorari granted, 557 U. S. 933.] Motion of respondents for divided argument granted.

No. 09–400. STAUB *v.* PROCTOR HOSPITAL. C. A. 7th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 09–5096. HOWARD *v.* INDUSTRIAL COMMISSION OF OHIO ET AL. Sup. Ct. Ohio. Motion of petitioner for reconsideration

of order denying leave to proceed *in forma pauperis* [*ante*, p. 805] denied.

No. 09–5856. WAGNER *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 808] denied.

No. 09–6154. IN RE MILLEN. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 813] denied.

No. 09–296. IN RE KALIL. Petition for writ of mandamus and/or prohibition denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

Certiorari Denied

No. 08–1413. LAROCHE *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 310 Fed. Appx. 389.

No. 08–1500. FEDERAL EXPRESS CORP. *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 9th Cir. Certiorari denied. Reported below: 558 F. 3d 842.

No. 08–1507. MEIER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 310 Fed. Appx. 976.

No. 08–1595. MANNING *v.* UNITED STATES ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 546 F. 3d 430.

No. 08–10454. KNOX ET AL. *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 12 N. Y. 3d 60, 903 N. E. 2d 1149.

No. 09–162. PERRY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 314 Fed. Appx. 663.

No. 09–168. PINNICK ET AL. *v.* CORBOY & DEMETRIO, P. C., ET AL. Sup. Ct. Ill. Certiorari denied.

No. 09–201. SIMPLICITY MANUFACTURING, INC. *v.* BERRIER ET UX. C. A. 3d Cir. Certiorari denied. Reported below: 563 F. 3d 38.

No. 09–235. MACERICH MANAGEMENT CO. ET AL. *v.* UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 586 ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 540 F. 3d 957.

No. 09–278. RIVAS *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 121 Ohio St. 3d 469, 905 N. E. 2d 618.

No. 09–292. MARTINI *v.* GODADDY.COM INC. ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–300. AVERY *v.* FIRST RESOLUTION MANAGEMENT CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 568 F. 3d 1018.

No. 09–311. HCA HEALTH SERVICES OF OKLAHOMA, INC., DBA OU MEDICAL CENTER, DBA CHILDREN'S HOSPITAL, ET AL. *v.* SHINN, A MINOR, BY AND THROUGH HIS PARENTS SHINN ET VIR. Ct. Civ. App. Okla. Certiorari denied.

No. 09–361. PIRINCCI *v.* UNITED PARCEL SERVICE. Sup. Ct. Fla. Certiorari denied. Reported below: 12 So. 3d 220.

No. 09–371. HUTZLER *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 223 W. Va. 461, 677 S. E. 2d 655.

No. 09–387. DAVIS *v.* CURRY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 332 Fed. Appx. 370.

No. 09–390. LABER *v.* GEREN, SECRETARY OF THE ARMY. C. A. 4th Cir. Certiorari denied. Reported below: 316 Fed. Appx. 266.

No. 09–408. POLE *v.* RANDOLPH, ACTING WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 570 F. 3d 922.

No. 09–413. HUSBAND *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 170.

No. 09–414. HENNESSY ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 6th Cir. Certiorari denied.

No. 09–422. MURTAGH *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 1st Cir. Certiorari denied.

No. 09–425. EVERY PENNY COUNTS, INC. *v.* AMERICAN EXPRESS CO. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 563 F. 3d 1378.

No. 09–5168. DELGADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 286.

No. 09–5267. BUNYARD *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 45 Cal. 4th 836, 200 P. 3d 879.

No. 09–5421. HAWKINS *v.* COYLE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 547 F. 3d 540.

No. 09–5598. HAZELWOOD *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 187 N. C. App. 94, 652 S. E. 2d 63.

No. 09–6307. SHARPE *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–6308. STONE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 09–6309. SPILLMAN *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 57 App. Div. 3d 580, 870 N. Y. S. 2d 363.

No. 09–6318. LOWERY *v.* UTAH ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 812.

No. 09–6319. LOPEZ *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–6328. YEAGER *v.* CITY OF SAN DIEGO, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 310 Fed. Appx. 133.

No. 09–6334. DALTON *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied. Reported below: 248 S. W. 3d 866.

No. 09–6344. KIMBROUGH *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 565 F. 3d 796.

No. 09–6345. LEE *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2009 Ark. 255, 308 S. W. 3d 596.

No. 09–6351. BYRD *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied.

No. 09–6352. BYNUM *v.* LEVENHAGEN, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied. Reported below: 560 F. 3d 678.

No. 09–6353. ATKINS *v.* VADLAMUDI ET AL. C. A. 6th Cir. Certiorari denied.

No. 09–6362. BROOKS *v.* HUBERT, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 09–6365. STAFFORD *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 6th Cir. Certiorari denied.

No. 09–6366. SEAMAN *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 3d Cir. Certiorari denied. Reported below: 321 Fed. Appx. 134.

No. 09–6391. RODRIGUEZ *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 335 Fed. Appx. 692.

No. 09–6416. RODGERS *v.* HEDGPETH, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 815.

No. 09–6461. RODRIGUEZ-MONTELVO *v.* UNITED STATES (Reported below: 326 Fed. Appx. 834); and MENDEZ-MONROY *v.* UNITED STATES (333 Fed. Appx. 840). C. A. 5th Cir. Certiorari denied.

No. 09–6470. EVANS *v.* CARTLEDGE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 152.

No. 09–6497. ALFREDO-CARDENAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 332 Fed. Appx. 965.

No. 09–6509. WILLIAMS *v.* THURMER, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 561 F. 3d 740.

No. 09–6510. ROBINSON *v.* CAIN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 331 Fed. Appx. 282.

No. 09–6557. DANIELS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 09–6560. EISENHAUER *v.* TEXAS DEPARTMENT OF TRANSPORTATION ET AL. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 09–6575. BOWMAN *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied. Reported below: 327 S. W. 3d 69.

No. 09–6603. TOWNSEND *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 767 N. W. 2d 11.

No. 09–6606. MOORE *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 09–6624. NORFLEET *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 389 Ill. App. 3d 1146, 976 N. E. 2d 1209.

No. 09–6637. CUMMINGS *v.* MOORE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 162.

No. 09–6648. MONCION *v.* POWER, ADMINISTRATOR, EAST JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–6694. ROSS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 09–6730. CRUZ *v.* UNITED STATES;
No. 09–6821. PRUDENTE *v.* UNITED STATES; and
No. 09–6912. FLORES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 572 F. 3d 1254.

No. 09–6744. HEFFINGTON, INDIVIDUALLY AND ON BEHALF OF HEFFINGTON, DECEASED *v.* BUSH, FORMER PRESIDENT OF THE UNITED STATES, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 337 Fed. Appx. 741.

No. 09–6767. NORMAN *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 976 A. 2d 843.

No. 09–6777. HERBERT *v.* UNITED STATES ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–6790. HOLT *v.* OBAMA, PRESIDENT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 321 Fed. Appx. 5.

No. 09–6801. HERNANDEZ *v.* GAETZ, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 09–6833. POINDEXTER *v.* ZAVARES, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 336 Fed. Appx. 850.

No. 09–6849. DOE ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 564 F. 3d 305.

No. 09–6853. OLD CHIEF *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 571 F. 3d 898.

No. 09–6863. JOHNSON *v.* GAETZ, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 09–6866. ROCHA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 09–6868. SAUNDERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 829.

No. 09–6874. COVINGTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 565 F. 3d 1336.

No. 09–6875. SALLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 247.

No. 09–6876. RUSSO *v.* HULICK, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 09–6879. GUIBILO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 336 Fed. Appx. 126.

No. 09–6881. DEFEO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 327 Fed. Appx. 257.

No. 09–6882. COPLEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 565 F. 3d 1094.

No. 09–6885. ANDREWS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 337 Fed. Appx. 227.

No. 09–6886. BURKE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 571 F. 3d 1048.

No. 09–6887. BIBB *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 336 Fed. Appx. 364.

No. 09–6889. BUENO-SIERRA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–6891. ALVAREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 334 Fed. Appx. 995.

No. 09–6898. WALLENFANG *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 568 F. 3d 649.

No. 09–6900. LANDIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–6901. SERRANO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–6903. COLEMAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 339 Fed. Appx. 643.

No. 09–6904. CHAMBERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 340 Fed. Appx. 854.

No. 09–6905. EPPS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 508.

No. 09–6906. CARRIZOZA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 234.

No. 09–6909. HORNE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 339 Fed. Appx. 343.

No. 09–6910. HARRIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 612.

No. 09–6911. GUILLORY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 344.

No. 09–6913. GILLESPIE, AKA MILLSPIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 336 Fed. Appx. 298.

No. 09–6914. GARCIA-SANCHEZ *v.* UNITED STATES (Reported below: 328 Fed. Appx. 426); and MARTINEZ-QUEZADA *v.* UNITED STATES (345 Fed. Appx. 222). C. A. 9th Cir. Certiorari denied.

No. 09–6917. QUIAH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 337 Fed. Appx. 233.

No. 09–6918. WARREN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 566 F. 3d 1211.

No. 09–6920. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 572 F. 3d 449.

No. 09–6921. KNIGHT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 336 Fed. Appx. 900.

No. 09–6922. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 335 Fed. Appx. 961.

No. 09–6929. MEADOWS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 571 F. 3d 131.

No. 09–6930. ESSELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 09–6932. ROSS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 569 F. 3d 821.

No. 09–6934. BARBOSA-TORRES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 09–6935. KNIBBS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 258.

No. 09–6940. GONZALEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–6942. HALTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–6944. HARRIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 444.

No. 09–6945. GARCIA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 426.

No. 09–6946. HANSLEY, AKA HANSELY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 824.

No. 09–6955. OSAKI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 302 Fed. Appx. 660.

No. 09–6960. FLECK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 264.

No. 09–6964. PORTER ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 334 Fed. Appx. 184.

No. 08–1410. HANDLE WITH CARE BEHAVIOR MANAGEMENT SYSTEM, INC. *v.* NEW YORK STATE DIVISION FOR YOUTH ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 546 F. 3d 230.

No. 09–312. GREENE *v.* HANOVER DIRECT, INC., ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 326 Fed. Appx. 57.

No. 09–330. JIN XIN YE *v.* UNITED STATES (Reported below: 338 Fed. Appx. 26); and YUNXIA LIU ET AL. *v.* UNITED STATES (336 Fed. Appx. 106). C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 09–424. PANNELL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 321 Fed. Appx. 51.

No. 09–6400. DAIGNEAULT *v.* EATON CORP. ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 09–6927. BROWN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 328 Fed. Appx. 57.

No. 09–7328 (09A428). MUHAMMAD *v.* KELLY, WARDEN. C. A. 4th Cir. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied. Reported below: 575 F. 3d 359.

Statement of JUSTICE STEVENS, with whom JUSTICE GINSBURG and JUSTICE SOTOMAYOR join, respecting the denial of the petition for writ of certiorari.

This case highlights once again the perversity of executing inmates before their appeals process has been fully concluded.

Under our normal practice, Muhammad's timely petition for certiorari would have been reviewed at our Conference on November 24, 2009. Virginia has scheduled his execution for November 10, however, so we must resolve the petition on an expedited basis unless we grant a temporary stay. By denying Muhammad's stay application, we have allowed Virginia to truncate our deliberative process on a matter—involving a death row inmate—that demands the most careful attention. This result is particularly unfortunate in light of the limited time Muhammad was given to make his case in the District Court.

I continue to believe that the Court would be wise to adopt a practice of staying all executions scheduled in advance of the completion of our review of a capital defendant's first application for a federal writ of habeas corpus. See, *e. g.*, *Emmett* v. *Kelly*, 552 U. S. 942 (2007) (STEVENS, J., joined by GINSBURG, J., respecting denial of certiorari); *Breard* v. *Greene*, 523 U. S. 371, 379 (1998) (STEVENS, J., dissenting). Such a practice would give meaningful effect to the distinction Congress has drawn between first and successive habeas petitions. See 28 U. S. C. § 2244(b). It would also serve the interests of avoiding irreversible error, facilitating the efficient management of our docket, and preserving basic fairness by ensuring death row inmates receive the same procedural safeguards that ordinary inmates receive.

Having reviewed petitioner's claims, I do not dissent from the Court's decision to deny certiorari. "I do, however, remain firmly convinced that no State should be allowed to foreshorten this Court's orderly review of . . . first-time habeas petition[s] by executing prisoners before that review can be completed." *Emmett*, 552 U. S., at 943.

Rehearing Denied

No. 08–9884. COOPER *v.* UNITED STATES, *ante*, p. 830;

No. 08–10450. PURPURA *v.* BUSHKIN, GAIMES, GAINS, JONAS & STREAM ET AL., *ante*, p. 840; and

No. 08–11025. WELLS *v.* CARRO, JUDGE, SUPREME COURT OF NEW YORK, NEW YORK COUNTY, *ante*, p. 866. Petitions for rehearing denied.

No. 08–608. FLIPPING ET AL. *v.* REILLY, 555 U. S. 1170. Motion for leave to file petition for rehearing denied.

NOVEMBER 16, 2009

Certiorari Granted—Reversed and Remanded. (See No. 08–1263, *ante,* p. 15.)

Certiorari Dismissed

No. 09–6447. COHEN *v.* SYME ET AL. Ct. App. Ariz. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 09–6459. SPURLOCK *v.* BANK OF AMERICA, N. A. Cir. Ct. Wayne County, W. Va. 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. 09–6554. PLUMMER *v.* CALIFORNIA. Sup. Ct. Cal. 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. 09–6586. SMITH *v.* KNIGHT, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY. Ct. App. Ind. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 908 N. E. 2d 1277.

Miscellaneous Orders

No. 09M46. DANIEL *v.* TRANS UNION CONSUMER REPORTING. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 09M47. OGEDENGBE *v.* UNITED STATES; and
No. 09M50. OGEDENGBE *v.* UNITED STATES. Motions for leave to file petitions for writs of certiorari under seal with redacted copies for the public record granted.

No. 09M48. AHMED *v.* GATES, SECRETARY OF DEFENSE. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. 09M49. JACKSON *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. Motion for leave to proceed as a veteran denied.

No. 08–1569. UNITED STATES *v.* O'BRIEN ET AL. C. A. 1st Cir. [Certiorari granted, 557 U. S. 966.] Motions of Arthur Burgess and Martin O'Brien for appointment of counsel granted. Leslie Feldman-Rumpler, Esq., of Boston, Mass., is appointed to serve as counsel for respondent Arthur Burgess in this case. Timothy P. O'Connell, Esq., of Charlestown, Mass., is appointed to serve as counsel for respondent Martin O'Brien in this case.

No. 08–10846. IN RE MICHALSKI. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 814] denied.

No. 08–10886. IN RE ALPINE. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 813] denied.

No. 09–1. HOLY SEE *v.* DOE. C. A. 9th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 09–5078. JERRY *v.* PENNSYLVANIA. Super. Ct. Pa. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 805] denied.

No. 09–5398. JAFFE *v.* US AIRWAYS, INC., ET AL. Ct. App. Ariz. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 806] denied.

No. 09–6389. BERAS *v.* CARVLIN ET AL. C. A. 2d Cir.; and
No. 09–6610. JOHNSON *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until December 7, 2009, 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. 09–7103. IN RE CALDWELL; and
No. 09–7202. IN RE MEDEL. Petitions for writs of habeas corpus denied.

No. 09–6467. IN RE MINIX; and
No. 09–7030. IN RE MAXWELL. Petitions for writs of mandamus denied.

No. 09–6501. IN RE WOERTH;
No. 09–6538. IN RE VAN BROUGHTON; and
No. 09–7006. IN RE MINNEMAN. Petitions for writs of mandamus and/or prohibition denied.

No. 09–6412. IN RE ALPINE; and
No. 09–6528. IN RE ALPINE. Motions of petitioner for leave to proceed *in forma pauperis* denied, and petitions for writs of mandamus and/or prohibition dismissed. See this Court's Rule 39.8.

Certiorari Granted

No. 09–158. MAGWOOD *v.* PATTERSON, WARDEN, ET AL. C. A. 11th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 555 F. 3d 968.

Certiorari Denied

No. 08–1378. CHF INDUSTRIES, INC. *v.* PARK B. SMITH, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 309 Fed. Appx. 411.

No. 08–1564. AMERICAN CIVIL LIBERTIES UNION OF FLORIDA ET AL. *v.* MIAMI-DADE COUNTY SCHOOL BOARD ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 557 F. 3d 1177.

No. 08–1566. MCCOMB ET AL. *v.* CREHAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 507.

No. 08–10440. FORD *v.* CHRISTIANA CARE HEALTH SYSTEMS ET AL. C. A. 3d Cir. Certiorari denied.

No. 08–10625. GWANJUN KIM *v.* DEPARTMENT OF LABOR ET AL. C. A. 6th Cir. Certiorari denied.

No. 09–47. UNITED STATES AVIATION UNDERWRITERS, INC., ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 562 F. 3d 1297.

No. 09–55. PLATONE *v.* DEPARTMENT OF LABOR. C. A. 4th Cir. Certiorari denied. Reported below: 548 F. 3d 322.

No. 09–108. DAVIS *v.* TARRANT COUNTY, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 565 F. 3d 214.

No. 09–187. ELLIOTT *v.* WHITE MOUNTAIN APACHE TRIBAL COURT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 566 F. 3d 842.

No. 09–198. MEDELA AG ET AL. *v.* KINETIC CONCEPTS, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 554 F. 3d 1010.

No. 09–207. J. R. Y., INDIVIDUALLY AND AS THE ADMINISTRATOR OF THE ESTATE OF B. M. Y., ET AL. *v.* WOODMEN OF THE WORLD LIFE INSURANCE SOCIETY. C. A. 5th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 216.

No. 09–208. WRINN *v.* JOHNSON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 315 Fed. Appx. 560.

No. 09–220. WHISENHANT *v.* ALLEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 556 F. 3d 1198.

No. 09–265. INDEPENDENCE INSTITUTE *v.* BUESCHER, SECRETARY OF STATE OF COLORADO. Ct. App. Colo. Certiorari denied. Reported below: 209 P. 3d 1130.

No. 09–280. OBIAJULU *v.* PROFESSIONAL, CLERICAL AND MISCELLANEOUS EMPLOYEES, TEAMSTERS LOCAL UNION NO. 995, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 794.

No. 09–303. SMITH *v.* UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT. C. A. 10th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 805.

No. 09–304. ROTHMAN ET AL. *v.* TARGET CORP. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 556 F. 3d 1310.

No. 09–307. BROWN ET UX. *v.* FALCONE ET AL. Sup. Ct. Del. Certiorari denied. Reported below: 976 A. 2d 170.

No. 09–308. U-HAUL COMPANY OF CALIFORNIA *v.* CITY OF BERKELEY, CALIFORNIA, ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 09–317. CITY OF PATTERSON, CALIFORNIA *v.* BUILDING INDUSTRY ASSOCIATION OF CENTRAL CALIFORNIA ET AL. Ct. App. Cal., 5th App. Dist. Certiorari denied. Reported below: 171 Cal. App. 4th 886, 90 Cal. Rptr. 3d 63.

No. 09–322. GREGORY ET AL. *v.* DILLARD'S INC. C. A. 8th Cir. Certiorari denied. Reported below: 565 F. 3d 464.

No. 09–326. HARJO ET AL. *v.* PRO-FOOTBALL, INC. C. A. D. C. Cir. Certiorari denied. Reported below: 565 F. 3d 880.

No. 09–327. SAMPSON *v.* SUN LIFE ASSURANCE COMPANY OF CANADA. C. A. 1st Cir. Certiorari denied. Reported below: 556 F. 3d 6.

No. 09–368. JENKINS *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 26 So. 3d 464.

No. 09–372. FORTE *v.* KNIGHT RIDDER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 307 Fed. Appx. 112.

No. 09–382. CORREA-RUIZ ET AL. *v.* FORTUNO, GOVERNOR OF PUERTO RICO, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 573 F. 3d 1.

No. 09–407. ABREU-VELEZ *v.* BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 611.

No. 09–421. MCCLAREN *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 318 Wis. 2d 739, 767 N. W. 2d 550.

No. 09–433. WILLS *v.* POTTER, POSTMASTER GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 300 Fed. Appx. 748.

No. 09–437. SPECHLER *v.* TOBIN. C. A. 11th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 870.

No. 09–443. BUCK *v.* INTERNAL REVENUE SERVICE. C. A. 8th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 540.

No. 09–450. KOLOAY *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 729.

No. 09–454. GAHAGAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–455. CLARKE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 564 F. 3d 949.

No. 09–456. ADAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 335 Fed. Appx. 338.

No. 09–467. MILLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 576 F. 3d 528.

No. 09–5330. GOSSELIN *v.* COLORADO. Ct. App. Colo. Certiorari denied. Reported below: 205 P. 3d 456.

No. 09–5346. POTTER *v.* SOUTH COAST PLUMBING SYSTEMS, INC., ET AL. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 09–5355. MONGANE *v.* HOLDER, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 218.

No. 09–5374. LUMSDEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 563 F. 3d 572.

No. 09–5388. FRANCIS *v.* MILLER, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 557 F. 3d 894.

No. 09–5448. RODRIGUEZ *v.* QUALITY ENGINEERING PRODUCTS ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 995 So. 2d 987.

No. 09–5474. CARTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 566 F. 3d 970.

No. 09–6004. BUTLER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 46 Cal. 4th 847, 209 P. 3d 596.

No. 09–6367. REED *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–6369. EDMOND *v.* CASKEY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 09–6371. ENRIQUEZ *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–6372. CLERVIL *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–6375. MCCARTHY *v.* UNKNOWN. C. A. 9th Cir. Certiorari denied.

No. 09–6376. D'ANGELO *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 338 Fed. Appx. 583.

No. 09–6382. ODOM *v.* OZMINT, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 254.

No. 09–6385. PETERSEN *v.* MICHIGAN DEPARTMENT OF CORRECTIONS. Sup. Ct. Mich. Certiorari denied.

No. 09–6387. BARKUS *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–6397. CHRISTIAN *v.* CALIFORNIA ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 09–6398. DEL RIO *v.* TEXAS ET AL. C. A. 5th Cir. Certiorari denied.

No. 09–6402. STATEN *v.* PARKER, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 334 Fed. Appx. 166.

No. 09–6410. BYNES *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 09–6411. WHIRTY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–6413. ROTH *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 943 A. 2d 321.

No. 09–6419. DUTRA *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 09–6421. DERRINGER *v.* MOORE ET AL. Ct. App. N. M. Certiorari denied.

No. 09–6424. SIMMONS *v.* BAZZLE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 332 Fed. Appx. 149.

No. 09–6426. SMALL *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 11 So. 3d 960.

No. 09–6428. MOHIUDDIN *v.* RAYTHEON CO. C. A. 9th Cir. Certiorari denied.

No. 09–6431. BABLES *v.* KANSAS CITY, MISSOURI, SCHOOL DISTRICT. C. A. 8th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 678.

No. 09–6439. MCGEE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 12 So. 3d 752.

No. 09–6443. MCCRAY *v.* GLASS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 09–6450. LOMAX *v.* MIZE, SUPERINTENDENT, RECEPTION DIAGNOSTIC CENTER. C. A. 7th Cir. Certiorari denied.

No. 09–6451. KITCHEN *v.* MICHIGAN ET AL. C. A. 6th Cir. Certiorari denied.

No. 09–6458. TORRES *v.* AMERADA HESS CORP. Super. Ct. N. J., App. Div. Certiorari denied.

No. 09–6463. BROWN *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 09–6468. TELFAIR *v.* TANDY, ADMINISTRATOR, DRUG ENFORCEMENT AGENCY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 564 F. 3d 176.

No. 09–6469. DANIEL *v.* SCOTT ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–6471. DALY *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–6473. COTTON *v.* COLEMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FAYETTE. C. A. 3d Cir. Certiorari denied.

No. 09–6474. DAVIS *v.* HARMON, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 448.

No. 09–6475. COLLIE *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 709.

No. 09–6477. DARBY *v.* MOORE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 567.

No. 09–6479. DAHL *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–6480. CHAVARRIA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 09–6481. TAYLOR *v.* MURPHY, COMMISSIONER, CONNECTICUT DEPARTMENT OF CORRECTION, ET AL. C. A. 2d Cir. Certiorari denied.

No. 09–6483. WHITE *v.* LUOMA, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–6486. ASANTE *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 47 App. Div. 3d 1129, 849 N. Y. S. 2d 184.

No. 09–6488. JUDD *v.* NEW MEXICO. Ct. App. N. M. Certiorari denied.

No. 09–6493. LARSON *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 09–6500. ANDREWS *v.* CITY OF SEATTLE, WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 09–6502. TAYLOR ET UX. *v.* NATIONAL CITY BANK. Sup. Ct. Ind. Certiorari denied.

No. 09–6505. MEEHAN *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied.

No. 09–6511. SANCHEZ *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–6522. EDE *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 600 Pa. 506, 968 A. 2d 228.

No. 09–6526. AYYAR *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 09–6532. MARSHALL *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 20 So. 3d 830.

No. 09–6533. LAFORGE *v.* IOWA. Ct. App. Iowa. Certiorari denied. Reported below: 772 N. W. 2d 15.

No. 09–6542. MONACELLI *v.* LEE COUNTY EDUCATION ASSN. ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–6543. MONACELLI *v.* HEARTLAND EDUCATIONAL CONSORTIUM ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–6544. TURNER *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–6545. NUNLEY *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 09–6546. MILLER *v.* FRIEL, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 09–6550. WELLS *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 147 Wash. App. 1018.

No. 09–6553. BROOM *v.* STRICKLAND, GOVERNOR OF OHIO, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 579 F. 3d 553.

No. 09–6556. WATKINS *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied.

No. 09–6559. DOORBAL *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 572 F. 3d 1222.

No. 09–6563. MONACELLI *v.* HEARTLAND EDUCATIONAL CONSORTIUM ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–6564. HUNG NGUYEN *v.* SUPERIOR COURT OF CALIFORNIA, ORANGE COUNTY, ET AL. Sup. Ct. Cal. Certiorari denied.

No. 09–6565. REEVES *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 11 So. 3d 1031.

No. 09–6569. BURROUGHS, BY AND THROUGH HER NEXT FRIEND BURROUGHS *v.* BROADSPIRE, FKA KEMPER INSURANCE CO. C. A. 11th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 730.

No. 09–6570. ADAMS *v.* HONDA ENGINEERING NORTH AMERICA, INC. Sup. Ct. Ohio. Certiorari denied. Reported below: 122 Ohio St. 3d 1411, 907 N. E. 2d 1194.

No. 09–6571. BOWNES *v.* EPPS, COMMISSIONER MISSISSIPPI DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied.

No. 09–6573. MAXWELL *v.* TALLEY ET AL. C. A. 8th Cir. Certiorari denied.

No. 09–6587. SCOTT *v.* HANSON. C. A. 5th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 490.

No. 09–6619. POLONCZYK *v.* ARKANSAS ET AL. C. A. 5th Cir. Certiorari denied.

No. 09–6639. YEBOAH-SEFAH *v.* RUSSO, SUPERINTENDENT, SOUZA-BARANOWSKI CORRECTIONAL CENTER. C. A. 1st Cir. Certiorari denied. Reported below: 556 F. 3d 53.

No. 09–6642. MUHAMMAD *v.* SAPP ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–6649. NDONGO *v.* HOLDER, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied.

No. 09–6695. SANG *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–6724. VALVERDE *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 220 Ariz. 582, 208 P. 3d 233.

No. 09–6735. BRAMIT *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 46 Cal. 4th 1221, 210 P. 3d 1171.

No. 09–6756. TATE *v.* WARREN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–6758. JEANLOUIS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 09–6761. OWENS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 09–6769. STANKO *v.* DAVIS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 335 Fed. Appx. 744.

No. 09–6772. FOBBS *v.* POTTER, POSTMASTER GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 338 Fed. Appx. 359.

No. 09–6793. MARTIN *v.* REYNOLDS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 304 Fed. Appx. 176.

No. 09–6870. JAMISON *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 977 A. 2d 898.

No. 09–6908. HYDE *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 336 Fed. Appx. 996.

No. 09–6923. MARK *v.* BAUER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 771.

No. 09–6941. HOLSTICK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–6958. BECKETT *v.* GANSLER, ATTORNEY GENERAL OF MARYLAND, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 338 Fed. Appx. 293.

No. 09–6963. HADDAD *v.* HERTZ CORP. C. A. 8th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 475.

No. 09–6978. LEATCH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 341 Fed. Appx. 12.

No. 09–6979. KOLLAR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–6981. MORGAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 338 Fed. Appx. 849.

No. 09–6984. DANIELS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 201.

No. 09–6989. GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–6990. WHITE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 484.

No. 09–6996. JEFFERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 370 F. 3d 557.

No. 09–6999. JONES *v.* PLATTEVIEW APARTMENTS ET AL. Ct. App. Neb. Certiorari denied.

No. 09–7002. WATTERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 572 F. 3d 479.

No. 09–7005. WISE *v.* FLOYD, JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 341 Fed. Appx. 908.

No. 09–7008. ALLEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 337 Fed. Appx. 796.

No. 09–7010. CAIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–7011. CRUZ-GRAMAJO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 570 F. 3d 1162.

No. 09–7015. SANCHES MONTES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 09–7020. KINDSFATHER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 09–7022. KNIGHT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 137.

No. 09–7024. HERRING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 431.

No. 09–7025. GABLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 576.

No. 09–7026. HICKS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 575 F. 3d 130.

No. 09–7027. HARRIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 894.

No. 09–7028. PORTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 338 Fed. Appx. 300.

No. 09–7032. WYLIE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 888.

No. 09–7034. RODRIGUEZ-MENDIOLA, AKA BANUELOS, AKA BANALES, AKA HERRERA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–7036. KARIM-PANAHI *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 09–7037. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 400.

No. 09–7038. MUNIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 340 Fed. Appx. 192.

No. 09–7039. MORGAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 337 Fed. Appx. 798.

No. 09–7041. CALLE-OCHOA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–7042. CASTRO-GUEVARRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 575 F. 3d 550.

No. 09–7044. ADAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 338 Fed. Appx. 417.

No. 09–7045. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 350 Fed. Appx. 320.

No. 09–7046. MACKAY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 339 Fed. Appx. 367.

No. 09–7049. HERNANDEZ SUAREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 09–7052. HERNANDEZ-HERNANDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–7053. GIBSON *v.* VAUGHAN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 340 Fed. Appx. 172.

No. 09–7055. GARCIA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–7059. GRESHAM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–7061. CANTU *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 340 Fed. Appx. 186.

No. 09–7065. LONGSTREET *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 567 F. 3d 911.

No. 09–7067. PONTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 337 Fed. Appx. 179.

No. 09–7068. NELSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 337 Fed. Appx. 709.

No. 09–7070. PULLIAM *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 566 F. 3d 784.

No. 09–7075. CAMERON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 399.

No. 09–7076. CAREY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 337 Fed. Appx. 256.

No. 09–7077. ESQUIVEL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–7078. DAHLER *v.* HOLINKA, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 09–7080. TORRES-TORRES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–7081. WOODBERRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 267 Fed. Appx. 221.

No. 09–7084. LOERA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 565 F. 3d 406.

No. 09–7090. POLAK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 573 F. 3d 428.

No. 09–7091. PUCKETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 817.

No. 09–7093. KIDERLEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 569 F. 3d 358.

No. 09–7095. LAURY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 334 Fed. Appx. 634.

No. 09–7100. TURNER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 569 F. 3d 637.

No. 09–7101. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 09–7105. CANIPE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 569 F. 3d 597.

No. 09–7107. OSUNA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 341 Fed. Appx. 147.

No. 09–7110. STRAHAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 565 F. 3d 1047.

No. 09–7111. SCOTT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 343 Fed. Appx. 907.

No. 09–7113. AKERS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 317 Fed. Appx. 798.

No. 09–7115. ANDERSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 557.

No. 09–7118. BLURTON *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 770 N. W. 2d 231.

No. 09–7122. OBASOHAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 798.

No. 09–7124. MONTOYA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 573 F. 3d 1011.

No. 09–7126. MARTINEZ-VASQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 09–7128. WALLACE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 573 F. 3d 82.

No. 09–7133. MICHEL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 568 F. 3d 125.

No. 09–7137. NELSON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–7138. CASTILLO-HERNANDEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–174. GLOGOWER *v.* CLARK, LIQUIDATOR OF NATIONAL BUSINESS ASSOCIATION TRUST ET AL. C. A. 9th Cir. Motion of National Association of Insurance Commissioners for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 320 Fed. Appx. 809.

No. 09–217. PETERS *v.* SCIVANTAGE ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 564 F. 3d 110.

No. 09–360. LEVINE *v.* MCCABE ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 327 Fed. Appx. 315.

No. 09–427. GRANT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 338 Fed. Appx. 19.

No. 09–444 (09A452). ELLIOTT *v.* KELLY, WARDEN. C. A. 4th Cir. 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 STEVENS, JUSTICE GINSBURG, and JUSTICE SOTOMAYOR would grant the application for stay of execution.

No. 09–6919. DUNLAP *v.* GRAHAM, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 583 F. 3d 160.

No. 09–6982. PITCHER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consid-

eration or decision of this petition. Reported below: 316 Fed. Appx. 60.

No. 09–7003. TOWNSEND *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 573 F. 3d 138.

No. 09–7064. TAVARES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 328 Fed. Appx. 741.

No. 09–7072. TYSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 338 Fed. Appx. 38.

No. 09–7106. PARRA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 249 Fed. Appx. 226.

Rehearing Denied

No. 08–10148. MCMULLEN *v.* TENNIS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL., *ante*, p. 833;

No. 08–10150. FRANKEL *v.* UNITED STATES, *ante*, p. 801;

No. 08–10268. COLLEEN F. *v.* RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, *ante*, p. 835;

No. 08–10504. HAWKINS *v.* CALIFORNIA ET AL., *ante*, p. 842;

No. 08–10508. HAQUE *v.* UNITED STATES, *ante*, p. 831;

No. 08–10512. SWIFT *v.* MISSISSIPPI, *ante*, p. 842;

No. 08–10576. YOUNG *v.* PRESLEY ET AL., *ante*, p. 844;

No. 08–10600. WRIGHT *v.* ZOELLER, ATTORNEY GENERAL OF INDIANA, *ante*, p. 845;

No. 08–10738. OLIVIER *v.* CALIFORNIA, *ante*, p. 851;

No. 08–10927. IN RE ROBERTS, *ante*, p. 813;

No. 08–11003. IN RE SINGLETARY, *ante*, p. 814;

No. 08–11127. CHEESEMAN *v.* CITY OF REEDSPORT, OREGON, ET AL., *ante*, p. 872;

No. 09–5034. RABY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 883;

No. 09–5086. SMITH *v.* DENNY, WARDEN, *ante,* p. 886;

No. 09–5237. GREENE *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante,* p. 893;

No. 09–5439. CORNES *v.* ILLINOIS, *ante,* p. 903;

No. 09–5793. BROWN *v.* UNITED STATES, *ante,* p. 919;

No. 09–5847. RONWIN *v.* BAYER CORP., *ante,* p. 921; and

No. 09–6060. MOORE *v.* MERIT SYSTEMS PROTECTION BOARD, *ante,* p. 927. Petitions for rehearing denied.

NOVEMBER 18, 2009

Certiorari Denied

No. 09–7505 (09A472). SIMPSON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. 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. JUSTICE STEVENS, JUSTICE GINSBURG, and JUSTICE SOTOMAYOR would grant the application for stay of execution. Reported below: 341 Fed. Appx. 68.

NOVEMBER 19, 2009

Certiorari Denied

No. 09–7567 (09A466). THOMPSON *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 23, 2009

Dismissal Under Rule 46

No. 09–563. PETERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari dismissed under this Court's Rule 46.1.

NOVEMBER 30, 2009

Certiorari Granted—Reversed and Remanded. (See No. 08–10537, *ante,* p. 30.)

Certiorari Granted—Vacated and Remanded

No. 08–10314. WEBSTER *v.* COOPER, WARDEN. 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 *Jimenez* v. *Quarterman*, 555 U. S. 113 (2009).

JUSTICE SCALIA, dissenting.

Petitioner was convicted and sentenced in Louisiana state court. His motion for reconsideration of the sentence was denied on April 15, 2003, and he did not appeal. After initiating postconviction relief, he filed in the trial court a "motion to vacate sentence and resentence defendant" on the ground that he had not had a lawyer present at the sentencing. That motion was granted, and on June 2, 2004, petitioner was resentenced, this time with a lawyer, to the same term of incarceration.

After the conclusion of state postconviction relief, petitioner filed a petition in federal court for habeas corpus under 28 U. S. C. § 2254. The District Court thought that the 1-year statute of limitations provided by § 2244(d)(1)(A) started to run on May 15, 2003, 30 days after the Louisiana trial court denied petitioner's motion for reconsideration of sentence. Accordingly, it concluded that the statute had expired before petitioner filed his federal habeas petition. The Fifth Circuit denied a certificate of appealability.

Our recent decision in *Jimenez* v. *Quarterman*, 555 U. S. 113 (2009), held that the statute of limitations of § 2244(d)(1)(A) does not begin to run until the expiration of the time allowed to seek direct appeal, even if the state court allows an out-of-time appeal during state collateral review. *Id.*, at 121. The parties do not agree, and it is not clear, whether under Louisiana law petitioner's motion to vacate would be regarded as restarting the clock for his direct appeal. If so, then the *Jimenez* error is obvious; if not, there is no error. Today, without request by (or even warning to) the parties, the Court grants certiorari, vacates the Fifth Circuit's judgment without determination of the merits, and remands for further consideration in light of *Jimenez*.

I certainly agree that we have the power to GVR "where an intervening factor has arisen that has a legal bearing upon the decision." *Lawrence* v. *Chater*, 516 U. S. 163, 191–192 (1996) (SCALIA, J., dissenting). The purpose of such an "intervening-factor" GVR is to give the court to which we remand the first opportunity to consider the factor—in this case a new decision of ours. Though we have sometimes GVR'd in light of decisions

that *preceded* the decision vacated, see, *e. g.*, *Grier* v. *United States*, 419 U. S. 989 (1974), I have acquiesced in this expansion of "intervening-factor" GVRs only when (as in *Grier*) our decision came so soon before the judgment in question "that the lower court might have been unaware of it," *Lawrence*, *supra*, at 181 (SCALIA, J., dissenting). This is not such a case: We decided *Jimenez* on January 13, 2009, more than two months before the Fifth Circuit denied the certificate. There is thus no basis for regarding that decision as an "intervening" factor—that is, one that the Court of Appeals did not have before it.

This is not, of course, the first time the Court has GVR'd on the basis of a case decided long before the Court of Appeals ruled, see, *e. g.*, *Robinson* v. *Story*, 469 U. S. 1081 (1984) (three months), nor the first time I have protested, see *Lawrence*, *supra*, at 184 (SCALIA, J., dissenting) (more than a year). This practice has created a new mode of disposition, a sort of ersatz summary reversal. We do not say that the judgment below was wrong, but since we suspect that it *may* be wrong and do not want to waste *our* time figuring it out, we instruct the Court of Appeals to do the job again, with a particular issue prominently in mind.

It surely suggests something is amiss that this case would be over, and petitioner would be worse off, if he had *asked* us to reverse the judgment below on the basis of *Jimenez*. Since he did not argue that ground to the Court of Appeals, and since that court did not address it, we would almost certainly deny certiorari. See *Adarand Constructors, Inc.* v. *Mineta*, 534 U. S. 103, 108–109 (2001) *(per curiam)* (dismissing a writ as improvidently granted because the question at issue was not raised or considered below). Have we established a new system in which a party's repetition before this Court of his failure below (here, the failure to invoke *Jimenez*) cures—and causes us to reward—his earlier failure? Or perhaps we are developing a new system in which *all* arguably valid points not raised and not discussed below—*whether or not* belatedly raised here—will be sent back for a redo by the Court of Appeals. And if we can apply this failure-friendly practice to a neglected precedent two months old, there is no reason in principle not to apply it to a neglected precedent two years old.

In my view we have no power to set aside the duly recorded judgments of lower courts unless we find them to be in error, or unless they are cast in doubt by a factor arising after they were

rendered. The GVR for consideration of a day's old Supreme Court case is already a technical violation of sound practice and should not be extended further. Since we review judgments rather than opinions, a lower court's failure to discuss a preexisting factor it *should* have discussed is no basis for reversal. Once we disregard the logic (and the attendant limits) of "intervening-factor" GVRs, they metastasize into today's monster. We should at least give it a new and honest name—not GVR, but perhaps SRMEOPR: Summary Remand for a More Extensive Opinion than Petitioner Requested. If the acronym is ugly, so is the monster.

No. 09–160. DEPARTMENT OF DEFENSE ET AL. *v.* AMERICAN CIVIL LIBERTIES UNION ET AL. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of § 565 of the Department of Homeland Security Appropriations Act, 2010, and the certification by the Secretary of Defense pursuant to that provision. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 543 F. 3d 59.

Certiorari Dismissed

No. 09–6600. SIKORA *v.* CLANDESTINE ATTACKERS/ASSAILANTS ET AL. C. A. 8th 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. 09–6686. BAUMER *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. 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. 09–6697. SMITH *v.* MCKUNE. 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.

No. 09–6721. WAKEFIELD *v.* WALT DISNEY CO. ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pau-*

peris denied, and certiorari dismissed. See this Court's Rule 39.8. JUSTICE ALITO took no part in the consideration or decision of this motion and this petition. Reported below: 321 Fed. Appx. 685.

No. 09–6741. HURST *v.* STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. ET AL. C. A. 4th 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: 324 Fed. Appx. 261.

No. 09–6750. DAVIS *v.* BAY AREA RAPID TRANSIT DISTRICT. Ct. App. Cal., 1st App. Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 09A208. COHEN *v.* HOLDER, ATTORNEY GENERAL. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. 09A280 (09–6959). ALBRIGHT-LAZZARI ET VIR *v.* CONNECTICUT. Sup. Ct. Conn. Application for stay, addressed to JUSTICE ALITO and referred to the Court, denied.

No. D–2457. IN RE DISCIPLINE OF SICILIANO. Anthony J. Siciliano, of West Springfield, Mass., 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–2458. IN RE DISCIPLINE OF DEMARCO. Leo P. DeMarco, of Malden, Mass., 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–2459. IN RE DISCIPLINE OF PASSMORE. J. Lincoln Passmore, of Dover, Mass., 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–2460. IN RE DISCIPLINE OF BERMAN. Jeffrey Neil Berman, of Newton Center, Mass., 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–2461. IN RE DISCIPLINE OF FINNERTY. Thomas E. Finnerty, of South Boston, Mass., 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–2462. IN RE DISCIPLINE OF SHEEHAN. Stafford Sheehan, of Fall River, Mass., 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–2463. IN RE DISCIPLINE OF SACHAR. Bruce N. Sachar, of Lynn, Mass., 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. 09M51. VILLE *v.* UNITED AIRLINES, INC.;

No. 09M52. GARGANO ET AL. *v.* LIBERTY INTERNATIONAL UNDERWRITERS, INC., ET AL.;

No. 09M53. ALVAREZ-OCANEGRA *v.* UNITED STATES;

No. 09M54. REX *v.* FEDERAL AVIATION ADMINISTRATION ET AL.;

No. 09M55. YANCEY *v.* LUDWIG, TRUSTEE; and

No. 09M56. MYERS *v.* SILBERMANN ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 07–11191. BRISCOE ET AL. *v.* VIRGINIA. Sup. Ct. Va. [Certiorari granted, 557 U. S. 933.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 08–1224. UNITED STATES *v.* COMSTOCK ET AL. C. A. 4th Cir. [Certiorari granted, 557 U. S. 918.] Motion of Kansas et al.

for leave to participate in oral argument as *amici curiae* and for divided argument denied.

No. 08–10543. KARNOFEL *v.* GIRARD POLICE DEPARTMENT ET AL. Ct. App. Ohio, Trumbull County. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 802] denied.

No. 08–10578. WELLS *v.* VASQUEZ, WARDEN. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 802] denied.

No. 08–10650. DASISA *v.* UNIVERSITY OF MASSACHUSETTS BOARD OF TRUSTEES. C. A. 1st Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 803] denied.

No. 08–10732. IN RE ALPINE. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 814] denied.

No. 08–10847. SIMMONS *v.* FLECKER. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 803] denied.

No. 08–10986. STRONG *v.* ILLINOIS DEPARTMENT OF HUMAN SERVICES. C. A. 7th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 804] denied.

No. 08–10997. WILLIAMS *v.* CHURCH'S CHICKEN ET AL. Ct. App. Cal., 2d App. Dist. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 812] denied.

No. 09–5074. WAKEFIELD *v.* CORDIS CORP. C. A. 11th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 805] denied.

No. 09–5111. SIMMONS *v.* CALIFORNIA ET AL. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 805] denied.

No. 09–5356. CURTO *v.* SIWEK. C. A. 2d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in*

forma pauperis [*ante*, p. 806] denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this motion.

No. 09–5373. MELSON *v.* ALLEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, *ante*, p. 900. Respondent is requested to file a response to the petition for rehearing within 30 days.

No. 09–5576. SMITH *v.* WRIGLEY, SUPERINTENDENT, NEW CASTLE CORRECTIONAL FACILITY. C. A. 7th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 807] denied.

No. 09–5814. IN RE TREECE. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 813] denied.

No. 09–5920. FARRIS *v.* WHALEY ET AL. C. A. 11th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 943] denied.

No. 09–5945. IN RE WILLIAMS. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 813] denied.

No. 09–6035. MILLEN *v.* KANSAS CITY STAR. C. A. 8th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 966] denied.

No. 09–6139. IN RE TRAYLOR. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 968] denied.

No. 09–6291. IN RE BENNETT. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 813] denied.

No. 09–6636. CLINE *v.* UTAH ET AL. Ct. App. Utah;

No. 09–6764. ROYSE *v.* CORNING GLASS WORKS, INC. C. A. 6th Cir.;

No. 09–6985. RUCKER *v.* ILLINOIS DEPARTMENT OF CHILDREN AND FAMILY SERVICES. C. A. 7th Cir.; and

No. 09–7326. ISA *v.* UNITED STATES. C. A. 7th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until December 21, 2009, 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. 09–6442. IN RE LEAF; and
No. 09–7258. IN RE NEWMAN. Petitions for writs of habeas corpus denied.

No. 09–351. IN RE PESARIK; and
No. 09–7229. IN RE WALSHE. Petitions for writs of mandamus denied.

No. 09–7050. IN RE DANTZLER. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 08–1191. MORRISON ET AL. *v.* NATIONAL AUSTRALIA BANK LTD. ET AL. C. A. 2d Cir. Certiorari granted. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 547 F. 3d 167.

No. 09–338. RENICO, WARDEN *v.* LETT. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 316 Fed. Appx. 421.

No. 09–5201. BARBER ET AL. *v.* THOMAS, WARDEN. C. A. 9th Cir. Motion of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted.

Certiorari Denied

No. 08–1392. MASSIS *v.* HOLDER, ATTORNEY GENERAL, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 549 F. 3d 631.

No. 08–1494. ARGUELLES-OLIVARES *v.* HOLDER, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 526 F. 3d 171.

No. 08–1575. LINDER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 552 F. 3d 391.

No. 09–10. JOYNER *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2009 Ark. 168, 303 S. W. 3d 54.

No. 09–26. HERTZ, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF HERTZ, DECEASED *v.* UNITED

STATES. C. A. 6th Cir. Certiorari denied. Reported below: 560 F. 3d 616.

No. 09–70. MODERN, INC., ET AL. *v.* ST. JOHNS RIVER WATER MANAGEMENT DISTRICT ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 308 Fed. Appx. 330.

No. 09–86. BOULWARE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 558 F. 3d 971.

No. 09–98. SCURLARK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 560 F. 3d 839.

No. 09–102. VIRGINIA *v.* RUDOLPH. Sup. Ct. Va. Certiorari denied. Reported below: 277 Va. 209, 722 S. E. 2d 527.

No. 09–106. PEDERNERA *v.* HOLDER, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied.

No. 09–113. PRICE *v.* UNITED STATES TRUSTEE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 564 F. 3d 1052.

No. 09–222. MATHENY, INDIVIDUALLY AND AS SURVIVING SPOUSE OF MATHENY, DECEASED, ET AL. *v.* TENNESSEE VALLEY AUTHORITY. C. A. 6th Cir. Certiorari denied. Reported below: 557 F. 3d 311.

No. 09–225. BLOCK ET AL. *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 329 Fed. Appx. 285.

No. 09–231. BROWN ET AL. *v.* HOVATTER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 561 F. 3d 357.

No. 09–241. WILKINSON *v.* PALMETTO STATE TRANSPORTATION CO. ET AL. Sup. Ct. S. C. Certiorari denied. Reported below: 382 S. C. 295, 676 S. E. 2d 700.

No. 09–242. PYKE, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF PYKE, DECEASED, ET AL. *v.* CUOMO ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 567 F. 3d 74.

No. 09–257. CORDER *v.* LEWIS PALMER SCHOOL DISTRICT NO. 38. C. A. 10th Cir. Certiorari denied. Reported below: 566 F. 3d 1219.

No. 09–297. FORD MOTOR CO. *v.* BUELL-WILSON ET AL. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 09–331. HARPER, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF HARPER, DECEASED, ET AL. *v.* UNITED SERVICES AUTOMOBILE ASSN. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 302.

No. 09–340. POWELL ET AL. *v.* CAREY INTERNATIONAL, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 829.

No. 09–345. GERARD *v.* BOARD OF REGENTS OF GEORGIA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 818.

No. 09–352. WHITMORE *v.* PIERCE COUNTY DEPARTMENT OF COMMUNITY CORRECTIONS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 595.

No. 09–362. BOSTON SCIENTIFIC CORP. ET AL. *v.* CORDIS CORP.; and

No. 09–365. CORDIS CORP. *v.* BOSTON SCIENTIFIC CORP. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 561 F. 3d 1319.

No. 09–363. COOPER *v.* AYERS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 510 F. 3d 870.

No. 09–369. MAGGARD ET VIR *v.* FORD MOTOR CO. C. A. 6th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 367.

No. 09–373. HALLINAN ET AL. *v.* FRATERNAL ORDER OF POLICE, CHICAGO LODGE 7, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 570 F. 3d 811.

No. 09–374. HOFFMAN *v.* UNITED AIRLINES, INC. C. A. 7th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 429.

No. 09–380. BELTRAN LOZANO *v.* HOLDER, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 334 Fed. Appx. 312.

No. 09–381. CONSTANT *v.* CALIFORNIA DEPARTMENT OF TRANSPORTATION. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 09–391. WHITE *v.* DEPARTMENT OF DEFENSE ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–393. BAUMGARTNER *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied. Reported below: 122 Ohio St. 3d 1457, 908 N. E. 2d 946.

No. 09–398. LOUISIANA *v.* ABSHIRE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 574 F. 3d 267.

No. 09–399. MOORE *v.* ADVENTIST HEALTH SYSTEM/GEORGIA INC. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 311 Fed. Appx. 209.

No. 09–411. THOMAS *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 09–415. ANDERSON-TULLY CO. *v.* MCDANIEL, ATTORNEY GENERAL OF ARKANSAS. C. A. 8th Cir. Certiorari denied. Reported below: 571 F. 3d 760.

No. 09–428. WASHINGTON *v.* DEPARTMENT OF DEFENSE, DEFENSE LOGISTICS AGENCY. C. A. 4th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 285.

No. 09–431. CITY OF ALBANY POLICE DEPARTMENT ET AL. *v.* LEWIS. C. A. 2d Cir. Certiorari denied. Reported below: 332 Fed. Appx. 641.

No. 09–449. PATRICK *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. 9th Cir. Certiorari denied.

No. 09–462. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 338 Fed. Appx. 397.

No. 09–463. BROOKENS *v.* SOLIS, SECRETARY OF LABOR. C. A. D. C. Cir. Certiorari denied.

No. 09–464. BENSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 561 F. 3d 718.

No. 09–478. TRIVEDI *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 679.

No. 09–486. HARLEY ET UX. *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 3d Cir. Certiorari denied. Reported below: 294 Fed. Appx. 711.

No. 09–496. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 571 F. 3d 492.

No. 09–5027. MCNEILL *v.* STAMPER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 255.

No. 09–5035. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–5305. CORINES *v.* BROWARD COUNTY SHERIFF'S DEPARTMENT ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 493.

No. 09–5429. BENALLY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 546 F. 3d 1230.

No. 09–5434. ABEBE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 09–5480. BARRIOS-BELTRAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 384.

No. 09–5496. ABBEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 560 F. 3d 513.

No. 09–5542. SHELTON *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 563 F. 3d 404.

No. 09–5547. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 890.

No. 09–5583. PARACHA *v.* GATES, SECRETARY OF DEFENSE. C. A. D. C. Cir. Certiorari denied.

No. 09–5597. GARCIA-ECHAVERRIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 353.

No. 09–5615. OLIVER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 550 F. 3d 734.

No. 09–5715. MIRANDA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 858.

No. 09–5728. HOLLIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 309 Fed. Appx. 14.

No. 09–5739. DEL GALLO *v.* PARENT ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 557 F. 3d 58.

No. 09–5747. FLICK *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 09–5780. HOJAN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 3 So. 3d 1204.

No. 09–6133. CARRUTH *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 21 So. 3d 770.

No. 09–6302. SMITH *v.* MITCHELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 567 F. 3d 246.

No. 09–6379. GARY *v.* HALL, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 558 F. 3d 1229.

No. 09–6392. ROUSE *v.* DEPARTMENT OF STATE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 567 F. 3d 408.

No. 09–6518. WALTER *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 600 Pa. 392, 966 A. 2d 560.

No. 09–6579. ENDENCIA *v.* ADT SECURITY SERVICES, INC. C. A. 7th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 457.

No. 09–6580. ENSEY *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 09–6583. WARE *v.* GARNETT ET AL. C. A. 7th Cir. Certiorari denied.

No. 09–6585. KILPATRICK *v.* HERNANDEZ ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 353 Fed. Appx. 84.

No. 09–6590. SMITH *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 9 So. 3d 633.

No. 09–6591. RAINES *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 09–6592. TORRES *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–6594. SKINNER *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 210 P. 3d 840.

No. 09–6602. WHITE *v.* SCHOOL DISTRICT OF PHILADELPHIA. C. A. 3d Cir. Certiorari denied. Reported below: 326 Fed. Appx. 102.

No. 09–6617. NITSCHKE *v.* COASTAL TANK CLEANING ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 310 Fed. Appx. 183.

No. 09–6621. JOHNSTON *v.* ALLEN. C. A. 4th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 231.

No. 09–6623. LARSON *v.* GONZALEZ, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–6631. EDWARDS *v.* ROZUM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 337 Fed. Appx. 236.

No. 09–6641. LAMARCA *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 568 F. 3d 929.

No. 09–6651. MCCREARY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 09–6654. COLEMAN *v.* OTT, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 09–6662. CUTTS *v.* HETZEL, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–6665. CARDENAS *v.* FIGUEROA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–6666. CORONA-CUEVAS *v.* HALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–6669. MOORE *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 222 Ariz. 1, 213 P. 3d 150.

No. 09–6672. VEALE *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied. Reported below: 158 N. H. 632, 972 A. 2d 1009.

No. 09–6674. MILLEN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 19 So. 3d 311.

No. 09–6676. MOSLEY *v.* UPTON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 09–6683. FALSO *v.* ABLEST STAFFING SERVICES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 328 Fed. Appx. 54.

No. 09–6689. JOHNSON *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 284 S. W. 3d 561.

No. 09–6690. HOLGUIN *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 09–6693. STARKS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–6696. BUNDRANT *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–6698. RIPPY *v.* BURKETT. C. A. 4th Cir. Certiorari denied. Reported below: 341 Fed. Appx. 898.

No. 09–6699. SPIVEY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–6701. RUNGE *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 09–6703. BERRY *v.* PORTERFIELD. C. A. 4th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 245.

No. 09–6707. THOMAS *v.* TELEGRAPH PUBLISHING CO. ET AL. Sup. Ct. N. H. Certiorari denied.

No. 09–6709. BROWN *v.* HATHAWAY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 09–6711. STREATER *v.* GREGORY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 520.

No. 09–6712. BROWER *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 09–6718. LEONARD *v.* IOWA. Ct. App. Iowa. Certiorari denied. Reported below: 771 N. W. 2d 651.

No. 09–6723. TRIMBLE *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 122 Ohio St. 3d 297, 911 N. E. 2d 242.

No. 09–6726. WALKER *v.* MCCANN ET AL. C. A. 7th Cir. Certiorari denied.

No. 09–6729. DALY *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 09–6734. WILSON *v.* HAUCK, ADMINISTRATOR, EDNA MAHAN CORRECTIONAL FACILITY FOR WOMEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–6740. MABE *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 385 Ill. App. 3d 1130, 970 N. E. 2d 129.

No. 09–6751. CULBERO *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 57 App. Div. 3d 316, 869 N. Y. S. 2d 78.

No. 09–6752. DAVIS *v.* CORRECTIONAL MEDICAL SYSTEMS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 334 Fed. Appx. 519.

No. 09–6754. PARKER *v.* BOARD OF SUPERVISORS, UNIVERSITY OF LOUISIANA-LAFAYETTE. C. A. 5th Cir. Certiorari denied. Reported below: 335 Fed. Appx. 465.

No. 09–6771. GROVES *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 324 Fed. Appx. 898.

No. 09–6788. CARDENAS NEGRETE *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 09–6794. OGUAGHA *v.* CRAVENER. C. A. 5th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 378.

No. 09–6797. HARTMAN *v.* VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 317 Fed. Appx. 364.

No. 09–6803. HRUSOVSKY *v.* SJOLUND. Super. Ct. Pa. Certiorari denied. Reported below: 965 A. 2d 309.

No. 09–6806. MCCALL *v.* CROSTHWAIT ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 336 Fed. Appx. 871.

No. 09–6830. MERRITT *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 337 Fed. Appx. 897.

No. 09–6877. JARDINE *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 124 Nev. 1481, 238 P. 3d 826.

No. 09–6883. CRAVER *v.* FRANCO. C. A. 9th Cir. Certiorari denied. Reported below: 337 Fed. Appx. 690.

No. 09–6890. BURNES *v.* ROGERS, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 09–6924. KRZYWKOWSKI *v.* BOBBY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–6948. GOMEZ *v.* CLARK, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–6968. HARTMANN *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 970 A. 2d 256.

No. 09–6986. ALSTON *v.* COURT OF APPEALS OF WISCONSIN, DISTRICT I. Sup. Ct. Wis. Certiorari denied. Reported below: 319 Wis. 2d 216, 775 N. W. 2d 104.

No. 09–6993. SLAUGHTER *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 731.

No. 09–7017. WRIGHT *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–7062. DE JESUS *v.* ACEVEDO, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 567 F. 3d 941.

No. 09–7069. GARNETT *v.* UTTECHT, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 671.

No. 09–7071. PARMELEE *v.* MCKENNA, ATTORNEY GENERAL OF WASHINGTON. C. A. 9th Cir. Certiorari denied.

No. 09–7074. PRENDERGAST *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 338 Fed. Appx. 843.

No. 09–7079. CHAVIS *v.* FISCHER, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 333 Fed. Appx. 641.

No. 09–7083. POWELL *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 09–7094. LOPEZ *v.* THURMER, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 573 F. 3d 484.

No. 09–7099. WILLIAMS *v.* GEITHNER, SECRETARY OF THE TREASURY. C. A. 11th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 175.

No. 09–7145. RIVERA *v.* RIOS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–7148. NAILOR *v.* CASTILLO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–7154. DOE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 09–7155. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–7157. MURPHY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 572 F. 3d 563.

No. 09–7159. PABLO-GONZALEZ, AKA GONZALES, AKA GARCIA-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 340 Fed. Appx. 246.

No. 09–7162. SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 569 F. 3d 995.

No. 09–7163. AMREYA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 825.

No. 09–7164. ARMSTRONG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 332 Fed. Appx. 889.

No. 09–7166. JUAREZ-GALVAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 572 F. 3d 1156.

No. 09–7169. WILLIAMS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 09–7171. BROCK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 573 F. 3d 497.

No. 09–7176. KING *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 09–7177. LOWE *v.* MATHY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 09–7178. WARRICK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 338 Fed. Appx. 881.

No. 09–7179. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 337 Fed. Appx. 840.

No. 09–7180. SUAREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 340 Fed. Appx. 551.

No. 09–7181. COX *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 565 F. 3d 1013.

No. 09–7182. DOTSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 570 F. 3d 1067.

No. 09–7183. COOPER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 337 Fed. Appx. 837.

No. 09–7184. CONTRERA-AGUILAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 338 Fed. Appx. 736.

No. 09–7185. GILDEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 332 Fed. Appx. 312.

No. 09–7187. BOYD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 340 Fed. Appx. 259.

No. 09–7189. BRIONES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 09–7190. BILLUE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 576 F. 3d 898.

No. 09–7192. GRANT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–7193. FROST *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 337 Fed. Appx. 725.

No. 09–7195. GALLOWAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 334 Fed. Appx. 829.

No. 09–7198. HERRERA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 349 Fed. Appx. 737.

No. 09–7200. AVERY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 259.

No. 09–7204. BARNETT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 574 F. 3d 600.

No. 09–7207. WATSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 226.

No. 09–7208. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 869.

No. 09–7213. BUSH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 337 Fed. Appx. 826.

No. 09–7214. PITA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 340 Fed. Appx. 537.

No. 09–7215. MCAFFEE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 333 Fed. Appx. 435.

No. 09–7216. POWELL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 09–7217. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–7221. ALLAN-SELVIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 347 Fed. Appx. 314.

No. 09–7222. SPAULDING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 942.

No. 09–7226. PETTIFORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 337 Fed. Appx. 352.

No. 09–7227. WADE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 509.

No. 09–7230. WRIGHT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–7231. WEATHERSPOON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 338 Fed. Appx. 143.

No. 09–7234. SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 337 Fed. Appx. 641.

No. 09–7235. LUGO LUNA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 332 Fed. Appx. 778.

No. 09–7237. MARTINEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 338 Fed. Appx. 846.

No. 09–7238. LIBMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 337 Fed. Appx. 614.

No. 09–7240. MACKEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 243.

No. 09–7248. WASHINGTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 338 Fed. Appx. 877.

No. 09–7249. TIMLEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 338 Fed. Appx. 782.

No. 09–7251. MADRIGAL-DIAZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 336 Fed. Appx. 657.

No. 09–7253. PIRTLE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 333 Fed. Appx. 108.

No. 09–7254. ANDERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 878.

No. 09–7256. WILSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–7261. STRICKLIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 337 Fed. Appx. 599.

No. 09–7269. MURPHY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 578 F. 3d 719.

No. 09–7271. PARRA-GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 887.

No. 09–7273. LEE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 541.

No. 09–7274. KATTARIA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 553 F. 3d 1171.

No. 09–7285. LNU *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 575 F. 3d 298.

No. 09–7288. SMITH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 575 F. 3d 308.

No. 09–7289. MITCHELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 336 Fed. Appx. 613.

No. 09–7295. EREME *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 339 Fed. Appx. 340.

No. 09–7296. DONOVAN *v.* GOVERNMENT OF THE VIRGIN ISLANDS. C. A. 3d Cir. Certiorari denied. Reported below: 335 Fed. Appx. 206.

No. 09–7298. PERAZA-CARRILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 344 Fed. Appx. 357.

No. 09–7299. COFFMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–7300. CHILDRESS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 340 Fed. Appx. 954.

No. 09–7301. DANIELS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–7303. BELTRAN-GARCIA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 338 Fed. Appx. 765.

No. 09–7304. LOPEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 552.

No. 09–7310. JACKSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 09–7312. GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 339 Fed. Appx. 400.

No. 09–7314. HOLMES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 339 Fed. Appx. 151.

No. 09–7315. HARRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 471.

No. 09–7316. GUERRERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 345 Fed. Appx. 274.

No. 09–7317. GLADNEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 338 Fed. Appx. 734.

No. 09–7318. FELAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 339 Fed. Appx. 499.

No. 09–7321. HALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 337 Fed. Appx. 340.

No. 09–7323. HAYMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 338 Fed. Appx. 872.

No. 09–7324. HOLYCROSS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 333 Fed. Appx. 81.

No. 09–7327. PEGUERO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 394.

No. 09–7331. ORTIZ-RUIZ, AKA GARCIA-SALGADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 66.

No. 09–7332. PEREIRA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–7334. MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 09–7335. LEWIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 905.

No. 09–7336. JACKSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 576 F. 3d 465.

No. 09–7337. JOHNSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–7340. BOUDREAU *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 564 F. 3d 431.

No. 09–7341. BANKS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–7342. ANGULO-HERNANDEZ ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 565 F. 3d 2.

No. 09–7343. BENTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 339 Fed. Appx. 969.

No. 09–7344. BERKEFELT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 566.

No. 09–7345. BOOKER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 576 F. 3d 506.

No. 09–7346. BRYANT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 334 Fed. Appx. 259.

No. 09–7348. BEVERLY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 44.

No. 09–7349. BUTLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–348. TRADIN ORGANICS USA, INC. *v.* MARYLAND CASUALTY CO. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 325 Fed. Appx. 10.

No. 09–376. PITKINS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT LAUREL HIGHLANDS, ET AL. *v.* HUMMEL. C. A. 3d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 564 F. 3d 290.

No. 09–383. PARK MINI STORAGE CENTER CO. *v.* SAM'S EAST, INC., DBA SAM'S CLUB. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 11 So. 3d 951.

No. 09–5217. SCOTT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 321 Fed. Appx. 71.

No. 09–5553. BRISCO *v.* ERCOLE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari de-

nied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 565 F. 3d 80.

No. 09–6609. DIXON *v.* GRANT ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 09–6645. WILLIAMS *v.* JONES, SUPERINTENDENT, HYDE CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari before judgment denied.

No. 09–6738. JONES *v.* SCRIBNER, WARDEN, ET AL. C. A. 9th Cir. Certiorari before judgment denied.

No. 09–7146. REYES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

Rehearing Denied

No. 08–1172. NACCHIO *v.* UNITED STATES, *ante*, p. 815;

No. 08–1348. RAILSBACK *v.* WASHINGTON, *ante*, p. 817;

No. 08–1421. VAN AUKEN *v.* CATRON, CATRON & POTTOW, P. A., ET AL., *ante*, p. 819;

No. 08–1485. BROWN ET AL. *v.* ONE BEACON INSURANCE CO., INC., *ante*, p. 822;

No. 08–1491. WAGENKNECHT *v.* LEVIN, OHIO TAX COMMISSIONER, *ante*, p. 823;

No. 08–1533. MEHEN *v.* DELTA AIR LINES, INC., ET AL., *ante*, p. 824;

No. 08–1576. LINAM *v.* LINAM, *ante*, p. 827;

No. 08–9887. SAMPATH *v.* CONCURRENT TECHNOLOGIES CORP., *ante*, p. 830;

No. 08–10257. HAWKINS *v.* HAMLET, LTD., ET AL., *ante*, p. 835;

No. 08–10358. SWIFT *v.* STANFORD, *ante*, p. 837;

No. 08–10361. MONACELLI *v.* UPS STORE ET AL., *ante*, p. 837;

No. 08–10431. DAVIS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 839;

No. 08–10444. WARE *v.* LANEY ET AL., *ante*, p. 840;

No. 08–10451. O'KELLEY *v.* HALL, WARDEN, *ante*, p. 840;

No. 08–10497. DORSEY *v.* COLEMAN, SUPERINTENDENT, FAYETTE STATE CORRECTIONAL INSTITUTION, *ante*, p. 841;

No. 08–10575. DINKINS *v.* SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, *ante*, p. 844;

No. 08–10617. AYRES *v.* VIRGINIA, *ante*, p. 845;

No. 08–10636. WILSON *v.* SIMPSON, WARDEN, *ante*, p. 846;

No. 08–10824. JONES *v.* UNITED STATES, *ante*, p. 856;

No. 08–10829. MURRAY *v.* LOCKE, STATE MEDICAL EXAMINER, ET AL., *ante*, p. 856;

No. 08–10956. BLACKSHEAR *v.* DOWLING ET AL., *ante*, p. 863;

No. 08–10978. WHITE *v.* DONLEY, SECRETARY OF THE AIR FORCE, ET AL., *ante*, p. 864;

No. 08–11007. IN RE BROWN, *ante*, p. 814;

No. 08–11036. DIAZ *v.* FLORIDA, *ante*, p. 867;

No. 08–11066. SHIRAISHI *v.* UNITED STATES, *ante*, p. 869;

No. 08–11084. WILLIAMS *v.* WILLIAM BEAUMONT HOSPITAL, *ante*, p. 870;

No. 09–7. STEVENS *v.* VONS COS., INC., *ante*, p. 874;

No. 09–19. HILL *v.* UNITED STATES ET AL., *ante*, p. 874;

No. 09–44. CANO *v.* INDUSTRIAL COMMISSION OF ARIZONA ET AL., *ante*, p. 875;

No. 09–46. UNITED STATES EX REL. VUYYURU *v.* JADHAV ET AL., *ante*, p. 875;

No. 09–72. BROCAIL *v.* DETROIT TIGERS, INC., *ante*, p. 877;

No. 09–99. PATTERSON *v.* AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL–CIO, #2456, *ante*, p. 878;

No. 09–116. SECAREA *v.* REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL., *ante*, p. 878;

No. 09–130. OWENS *v.* STEELE, WARDEN, *ante*, p. 879;

No. 09–133. MORTERS *v.* BARR ET AL., *ante*, p. 946;

No. 09–5046. HAYWOOD *v.* TRIBECA LENDING CORP. ET AL., *ante*, p. 884;

No. 09–5047. HOGUES *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 884;

No. 09–5058. PATTERSON *v.* CITY OF CHESAPEAKE, VIRGINIA, ET AL., *ante*, p. 885;

No. 09–5072. ZAHN *v.* CITY OF SAN DIEGO, CALIFORNIA, *ante*, p. 886;

No. 09–5082. WEEKS *v.* WHITE'S MILL COLONY, INC., *ante*, p. 886;

No. 09–5087. GREENE *v.* FINGER LAKES DEVELOPMENTAL DISABILITIES SERVICE OFFICE ET AL., *ante*, p. 886;

No. 09–5145. BROWN *v.* UNITED STATES, *ante*, p. 889;

No. 09–5198. GORMAN *v.* NATIONAL TRANSPORTATION SAFETY BOARD ET AL., *ante*, p. 892;

No. 09–5235. HARRIS *v.* FLORIDA, *ante*, p. 893;

No. 09–5238. HUNT *v.* WOLFENBARGER, WARDEN, *ante*, p. 894;

No. 09–5282. BEST *v.* GEICO CASUALTY CO., *ante*, p. 896;

No. 09–5287. MULLINS *v.* UNITED STATES, *ante*, p. 896;

No. 09–5312. MONACELLI *v.* HEARTLAND EDUCATIONAL CONSORTIUM ET AL., *ante*, p. 897;

No. 09–5328. HOLLAND *v.* HOLLAND, *ante*, p. 898;

No. 09–5359. TOMPKINS *v.* MITCHELL, CORRECTIONAL ADMINISTRATOR IV, MOUNTAIN VIEW CORRECTIONAL INSTITUTION, *ante*, p. 900;

No. 09–5406. POWELL *v.* SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY, *ante*, p. 902;

No. 09–5438. GRIFFIN *v.* SEBULIBA, *ante*, p. 903;

No. 09–5518. CREUSERE *v.* WEAVER ET AL., *ante*, p. 907;

No. 09–5552. TATUM *v.* UNITED STATES, *ante*, p. 909;

No. 09–5582. PHILLIPS *v.* MISSOURI, *ante*, p. 911;

No. 09–5643. HANKS *v.* WRIGHT, WARDEN, ET AL., *ante*, p. 914;

No. 09–5707. WHITE *v.* SUPREME COURT OF NEW JERSEY ET AL., *ante*, p. 916;

No. 09–5735. LOPEZ *v.* WALLACE ET AL., *ante*, p. 951;

No. 09–5770. ANTONSSON *v.* KAST, *ante*, p. 952;

No. 09–5921. HAQUE *v.* IMMIGRATION AND CUSTOMS ENFORCEMENT ET AL., *ante*, p. 955; and

No. 09–5979. RAMIREZ-PONCE *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 924. Petitions for rehearing denied.

No. 08–1354. DESALVO *v.* VOLHARD ET AL., *ante*, p. 932. Petition for rehearing denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 08–1511. GILLEY *v.* MONSANTO CO., INC., ET AL., *ante*, p. 823. Motion of petitioner to defer consideration of petition for rehearing denied. Petition for rehearing denied.

No. 08–8135. SIMS *v.* CITY OF NEW YORK, NEW YORK, ET AL., 556 U. S. 1110. Motion for leave to file petition for rehearing

denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this motion.

No. 09–5692. NJOKU *v.* HOLDER, ATTORNEY GENERAL, ET AL., *ante*, p. 916. Motion for leave to file petition for rehearing denied.

DECEMBER 2, 2009

Certiorari Denied

No. 09–7839 (09A521). JOHNSON *v.* BREDESEN, GOVERNOR OF TENNESSEE, ET AL. C. A. 6th Cir. Application for stay of execution of sentence of death, presented to JUSTICE STEVENS, and by him referred to the Court, denied. Certiorari denied.

Statement of JUSTICE STEVENS, with whom JUSTICE BREYER joins, respecting the denial of the petition for writ of certiorari.

Petitioner Cecil Johnson, Jr., has been confined to a solitary cell awaiting his execution for nearly 29 years.[1] Johnson bears little, if any, responsibility for this delay. After his execution date was set and on the day the Governor of Tennessee denied him clemency, Johnson brought this Eighth Amendment challenge under Rev. Stat. § 1979, 42 U. S. C. § 1983, to enjoin the State from executing him after this lengthy and inhumane delay. See *Lackey* v. *Texas*, 514 U. S. 1045, 1045–1046 (1995) (STEVENS, J., statement respecting denial of certiorari); see also *Thompson* v. *McNeil*, 556 U. S. 1114, 1115–1116 (2009) (same); *id.*, at 1119–1120 (BREYER, J., dissenting from denial of certiorari). Because I remain steadfast in my view "that executing defendants after such delays is unacceptably cruel," *id.*, at 1116, I would grant the stay application and the petition for certiorari.

Johnson was tried and convicted of three counts of first-degree murder in 1981. He continues to maintain his innocence. Verified Complaint in No. 3:09–1133 (MD Tenn.), ¶ 9, App. to Pet. for Cert. 15. There was no physical evidence tying Johnson to the crime. See *Johnson* v. *Bell*, 525 F. 3d 466, 490 (CA6 2008) (Cole, J., dissenting). In 1992 a change in state law gave Johnson access, for the first time, to substantial evidence undermining key

[1] "Inmates who are under a sentence of death shall be single-celled and housed in a maximum security unit separate from the general population." State of Tennessee, Dept. of Correction, Administrative Policies and Procedures, Index #506.14(VI)(B)(2) (2009), online at http://www.state.tn.us/correction/pdf/506-14.pdf (as visited Dec. 1, 2009).

eyewitness testimony against him. *Id.*, at 473. This evidence calls into question the persuasive force of the eyewitness' testimony, and, consequently, whether Johnson's conviction was infected with constitutional error. See *Brady* v. *Maryland*, 373 U. S. 83 (1963); *Johnson*, 525 F. 3d, at 490 (Cole, J., dissenting). The merits of Johnson's *Brady* claim are not before us; we denied certiorari on this issue several months ago. 556 U. S. 1154 (2009). But the constitutional concerns raised by Judge Cole's dissent only underscore my strongly held view that state-caused delay in state-sponsored killings can be unacceptably cruel. See *Thompson*, 556 U. S., at 1116.[2] We cannot know as a definitive matter whether, if the State had not withheld exculpatory evidence, Johnson would have been convicted of these crimes. We do know that Johnson would not have waited for 11 years on death row before the State met its disclosure obligations. In short, this is as compelling a case as I have encountered for addressing the constitutional concerns that I raised in *Lackey.*

This case deserves our full attention for another reason. Johnson has brought his Eighth Amendment claim under 42 U. S. C. § 1983. More typically, such claims have been brought in habeas corpus. See, *e. g.*, *Thompson* v. *Secretary for Dept. of Corrections*, 517 F. 3d 1279, 1280 (CA11 2008) *(per curiam); Allen* v. *Ornoski*, 435 F. 3d 946, 956–960 (CA9 2006); cf. *Knight* v. *Florida*, 528 U. S. 990, 998 (1999) (BREYER, J., dissenting from denial of certiorari) (discussing *Lackey* claim raised after state resentencing on successful habeas corpus petition). This case's posture raises two important questions: whether a *Lackey* claim is cognizable under § 1983; and, if it is not, whether a second federal habeas petition raising a *Lackey* claim is a successive petition under 28 U. S. C. § 2244(b)(2). The Sixth Circuit agreed with the District Court's conclusion that a stand-alone *Lackey* challenge under § 1983 is the "functional equivalent" of a habeas corpus challenge, App. to Pet. for Cert. 9 (District Court opinion), and thus must proceed under 28 U. S. C. § 2244(b)(2)'s successive petition bar, see *Allen*, 435 F. 3d, at 956–960. The resolution of these

[2] The possibility that there was constitutional error in Johnson's case is far from unique. See Root, Cruel and Unusual Punishment: A Reconsideration of the *Lackey* Claim, 27 N. Y. U. Rev. L. & Soc. Change 281, 312–313 (2002) (discussing error rates in capital trials) (citing J. Liebman, J. Fagan, & V. West, A Broken System: Error Rates in Capital Cases, 1973–1995, p. 5 (2000)).

questions below poses a nearly insurmountable hurdle for those seeking to raise similar Eighth Amendment challenges.

In my view, these procedural questions are inextricably linked to the two underlying evils of intolerable delay. First, the delay itself subjects death row inmates to decades of especially severe, dehumanizing conditions of confinement. See *Thompson*, 556 U. S., at 1115 (STEVENS, J., statement respecting denial of certiorari); *Lackey*, 514 U. S., at 1046–1047 (same); see also *Furman* v. *Georgia*, 408 U. S. 238, 288 (1972) (Brennan, J., concurring) ("[T]he prospect of pending execution exacts a frightful toll during the inevitable long wait between the imposition of sentence and the actual infliction of death"). Second, "delaying an execution does not further public purposes of retribution and deterrence but only diminishes whatever possible benefit society might receive from petitioner's death." *Thompson*, 556 U. S., at 1115 (STEVENS, J., statement respecting denial of certiorari). In other words, the penological justifications for the death penalty diminish as the delay lengthens. *Ibid.; Lackey*, 514 U. S., at 1046–1047. Thus, I find constitutionally significant both the conditions of confinement and the nature of the penalty itself.

In light of these coextensive concerns, I find it quite difficult to conclude, as the courts below did, that Johnson's § 1983 action is the functional equivalent of a habeas petition. Both the gravamen of petitioner's complaint and one of the central concerns animating *Lackey* is that the "method" of the State's execution of a death sentence—a lengthy delay due in no small part to the State's malfeasance in this case—is itself unconstitutional. We have held that "method" of execution claims are cognizable under § 1983. *Hill* v. *McDonough*, 547 U. S. 573, 580 (2006); see also *Nelson* v. *Campbell*, 541 U. S. 637, 645–647 (2004). But a successful *Lackey* claim would have the effect of rendering invalid a particular death sentence, suggesting that Johnson's *Lackey* claim "directly call[s] into question the 'fact' or 'validity' of the sentence itself," *Nelson*, 541 U. S., at 644. Were petitioner to prevail, it is true that the State will not be able to go forward in this case "by simply altering its method of execution," *ibid.* On the other hand, it is equally true that, had the State not carried out his sentence in this intolerably cruel manner, the State would have been quite free, as a constitutional matter, to "go forward with the sentence," *ibid.*

Although the Court of Appeals' treatment of Johnson's claim as a habeas challenge is a close question, its decision to apply § 2244(b)(2)'s successive habeas bar is not. The Sixth Circuit's decision has the curious effect of forcing Johnson to bring a *Lackey* claim prematurely, possibly at a time before it is ripe.[3] Moreover, construing this claim as the functional equivalent of a habeas action also has the unfortunate effect of inviting further delay: A petitioner would be compelled to return to state court to exhaust his *Lackey* claim in the first instance under 28 U. S. C. § 2254(b)(1). For these reasons, I am persuaded that a *Lackey* claim, like a claim that one is mentally incompetent to be executed, should, at the very least, not accrue until an execution date is set. See *Ceja* v. *Stewart*, 134 F. 3d 1368, 1371–1372 (CA9 1998) (Fletcher, J., dissenting); cf. *Panetti* v. *Quarterman*, 551 U. S. 930, 945 (2007).

When I first expressed my views in *Lackey*, I did not envision such procedural obstacles to the consideration of a claim that nearly three decades of delay on death row, much of it caused by the State, has deprived a person of his Eighth Amendment right to avoid cruel and unusual punishment. One does not need to accept the proposition "that the imposition of the death penalty represents 'the pointless and needless extinction of life with only marginal contributions to any discernible social or public purposes,'" *Baze* v. *Rees*, 553 U. S. 35, 86 (2008) (STEVENS, J., concurring in judgment) (quoting *Furman*, 408 U. S., at 312 (White, J., concurring)), in order to agree that the imposition of the death penalty on these extreme facts is without constitutional justification. Most regrettably, a majority of this Court continues to find these issues not of sufficient weight to merit our attention.

JUSTICE THOMAS, concurring.

In 1981, the petitioner in this case was convicted and sentenced to death for three brutal murders he committed in the course of

[3] The State argues, and the courts below agreed, that Johnson should have brought his Eighth Amendment claim in the federal habeas proceeding he commenced in 1999. At that point in time, Johnson had been on death row for 18 years. This was one year longer than the petitioner in *Lackey*. Of course, by 1999, the Court had denied certiorari in *Lackey* and in *Knight* v. *Florida*, 528 U. S. 990 (1999), which involved a 19-year delay. Therefore, when Johnson filed his federal habeas action, he had reason to believe that an 18-year delay was not long enough to trigger Eighth Amendment concerns and that any *Lackey*-based claim was premature.

a robbery. He spent the next 29 years challenging his conviction and sentence in state and federal judicial proceedings and in a petition for executive clemency. His challenges were unsuccessful. He now contends that the very proceedings he used to contest his sentence should prohibit the State from carrying it out, because executing him after the "lengthy and inhumane delay" occasioned by his appeals would violate the Eighth Amendment's prohibition on "cruel and unusual" punishment. See *ante*, at 1067 (STEVENS, J., statement respecting denial of certiorari) (citing *Lackey* v. *Texas*, 514 U. S. 1045, 1045–1046 (1995)).

It has been 14 years since JUSTICE STEVENS proposed this "novel" Eighth Amendment argument. *Id.*, at 1045. I was unaware of any constitutional support for the argument then. See *Knight* v. *Florida*, 528 U. S. 990 (1999) (THOMAS, J., concurring in denial of certiorari). And I am unaware of any support for it now. There is simply no authority "in the American constitutional tradition or in this Court's precedent for the proposition that a defendant can avail himself of the panoply of appellate and collateral procedures and then complain when his execution is delayed." *Thompson* v. *McNeil*, 556 U. S. 1114, 1116–1117 (2009) (same) (internal quotation marks omitted). Petitioner cites no evidence otherwise and, for all his current complaints about delay, did not raise a *Lackey* objection to the speed of his proceedings in the 1999 habeas petition he filed 18 years into his tenure on death row. See *ante*, at 1070, n. 3.

Undeterred, JUSTICE STEVENS insists that petitioner's Eighth Amendment claim warrants relief. It does not, and JUSTICE STEVENS' arguments to the contrary stand in stark contrast not only to history and precedent, but also to his own recent statement in *Muhammad* v. *Kelly*, *ante*, at 1019 (statement respecting denial of certiorari), decrying the "perversity of executing inmates before their appeals process has been fully concluded." In JUSTICE STEVENS' view, it seems the State can never get the timing just right. The reason, he has said, is that the death penalty itself is wrong. *McNeil*, *supra*, at 1116 (statement respecting denial of certiorari) (citing *Baze* v. *Rees*, 553 U. S. 35, 78, 86 (2008) (STEVENS, J., concurring in judgment)). But that is where he deviates from the Constitution and where proponents of his view are forced to find their support in precedent from the "European Court of Human Rights, the Supreme Court of Zimbabwe, the

Supreme Court of India, or the Privy Council." *Knight*, *supra*, at 990 (THOMAS, J., concurring in denial of certiorari).

Eager to distinguish this case from *Knight* and all the other cases in which the Court has refused to grant relief on *Lackey* grounds, JUSTICE STEVENS asserts that the petition here presents important questions regarding the proper procedural vehicle for bringing a *Lackey* claim that merit this Court's review. First, the procedural posture in which a *Lackey* claim arises does not change the fact that the claim itself has no constitutional foundation. Accordingly, the claim's procedural posture does not matter for purposes of merits relief; a *Lackey* claim would fail no matter how it arrived. In addition, JUSTICE STEVENS concedes that the unusual contours of petitioner's Eighth Amendment claim are the reason the procedural questions in this case are difficult. Given that, our order in this case rightly adheres to our precedents denying relief on *Lackey* claims, however presented. Second, even if the procedural claims in this case had merit, they would not warrant review because JUSTICE STEVENS admits that a "successful *Lackey* claim would have the effect of rendering invalid a particular death sentence," *ante*, at 1069, and thus would "'directly call into question the "fact" or "validity" of the sentence itself,'" *ibid.* (quoting *Nelson* v. *Campbell*, 541 U. S. 637, 644 (2004)). Accordingly, the Sixth Circuit plainly did not err in treating petitioner's §1983 motion as "the functional equivalent of" a habeas petition. *Ante*, at 1069. And for the reasons above, the panel's treatment of the petition as a second or successive petition would not, even if reversed, entitle petitioner to the merits relief he seeks.

At bottom, JUSTICE STEVENS' arguments boil down to policy disagreements with the Constitution and the Tennessee Legislature. *Ibid.* ("[D]elaying an execution does not further public purposes of retribution and deterrence but only diminishes whatever possible benefit society might receive from petitioner's death. . . . In other words, the penological justifications for the death penalty diminish as the delay lengthens" (internal quotation marks omitted)). Such views, no matter how "steadfast[ly]" held, *ante*, at 1067, are not grounds for enjoining petitioner's execution or for granting certiorari on the procedural questions that attend his *Lackey* claim. As long as our system affords capital defendants the procedural safeguards this Court has long endorsed, defendants who avail themselves of these procedures will face the

delays JUSTICE STEVENS laments. There are, of course, alternatives. As Blackstone observed, the principle that "punishment should follow the crime as early as possible" found expression in a "statute[,] 25 Geo. II. c. 37," decreeing that "in case of murder, the judge shall in his sentence direct execution to be performed on the next day but one after sentence passed." 4 W. Blackstone, Commentaries on the Laws of England 397 (1769). I have no doubt that such a system would avoid the diminishing justification problem JUSTICE STEVENS identifies, but I am equally confident that such a system would find little support from this Court. See *Knight*, *supra*, at 990, n. 1 (THOMAS, J., concurring). I thus concur in the denial of certiorari.

DECEMBER 3, 2009

Miscellaneous Order

No. 09–7843 (09A524). IN RE WOODS. 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. 09–7879 (09A533). WOODS *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. JUSTICE SOTOMAYOR would grant the application for stay of execution. Reported below: 296 S. W. 3d 587.

No. 09–7880 (09A535). WOODS *v.* LIVINGSTON, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE. 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: 354 Fed. Appx. 863.

DECEMBER 7, 2009

Certiorari Granted—Reversed and Remanded. (See No. 09–91, *ante*, p. 45.)

Certiorari Dismissed

No. 09–6768. STALEY *v.* HALL, WARDEN. 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.

No. 09–6818. SMITH *v.* DONAHUE ET AL. Ct. App. Ind. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 907 N. E. 2d 553.

No. 09–6828. CALDWELL *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. 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.

No. 09–6843. DASISA *v.* EXPERT CARE NURSING SERVICE, INC. C. A. 1st Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 09–6871. ADDLEMAN *v.* WASHINGTON 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.

No. 09–6878. HON CHUNG LAU *v.* GIURBINA, WARDEN, 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.

No. 09–6888. BEAVER *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. 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: 18 So. 3d 527.

No. 09–6969. GOSSETT *v.* ADMINISTRATION OF GEORGE W. BUSH 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: 336 Fed. Appx. 843.

Miscellaneous Orders

No. 09M43. DE JOHNSON *v.* HOLDER, ATTORNEY GENERAL. Motion of petitioner for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 08–1341. UNITED STATES *v.* MARCUS. C. A. 2d Cir. [Certiorari granted, *ante*, p. 945.] Motion of the Solicitor General

to dispense with printing the joint appendix granted. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 09–5327. HOLLAND *v.* FLORIDA. C. A. 11th Cir. [Certiorari granted, *ante,* p. 945.] Motion of petitioner for appointment of counsel granted. Todd G. Scher, Esq., of Miami Beach, Fla., is appointed to serve as counsel for petitioner in this case.

No. 09–5768. IN RE MILLER. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 813] denied.

No. 09–6525. GENEVIER *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY, ET AL. Ct. App. Cal., 2d App. Dist. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 967] denied.

No. 09–6684. HOWARD *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO ET AL. C. A. D. C. Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 985] denied.

No. 09–6732. ROGERS *v.* KBR TECHNICAL SERVICES, INC. C. A. 5th Cir.; and

No. 09–6765. MCGORE *v.* BIRKETT, WARDEN. C. A. 6th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until December 28, 2009, 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. 09–7290. IN RE AL-GHIZZAWI;

No. 09–7454. IN RE MILLER; and

No. 09–7511. IN RE BROMELL. Petitions for writs of habeas corpus denied.

No. 09–7470. IN RE ARMSTRONG. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 09–6857. IN RE BIVENS. Petition for writ of mandamus denied.

No. 09–6854. IN RE OYAGUE. Petition for writ of mandamus denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

Certiorari Granted

No. 08–1371. CHRISTIAN LEGAL SOCIETY CHAPTER OF THE UNIVERSITY OF CALIFORNIA, HASTINGS COLLEGE OF THE LAW, AKA HASTINGS CHRISTIAN FELLOWSHIP *v.* MARTINEZ ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 319 Fed. Appx. 645.

No. 09–6338. DILLON *v.* UNITED STATES. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 572 F. 3d 146.

Certiorari Denied

No. 08–10760. MOULING *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 557 F. 3d 658.

No. 09–270. MARLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 567 F. 3d 1030.

No. 09–341. D'ARIA *v.* GLASS ET AL.; and
No. 09–410. EVANS *v.* GLASS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 331 Fed. Appx. 452.

No. 09–396. HUDSON *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 296 Ga. App. 758, 675 S. E. 2d 603.

No. 09–397. HENLEY *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 285 Ga. 500, 678 S. E. 2d 884.

No. 09–401. FIEGER *v.* SUPREME COURT OF SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 09–403. JONES *v.* CITY OF FRANKLIN, TENNESSEE. C. A. 6th Cir. Certiorari denied. Reported below: 309 Fed. Appx. 938.

No. 09–404. YMCA OF METROPOLITAN CHICAGO ET AL. *v.* U. S. BANK, TRUSTEE OF THE ROE ANN LOCKHART OBRA '93 TRUST, ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 409 Ill. App. 3d 548, 946 N. E. 2d 850.

No. 09–405. UNITED STATES EX REL. DARIAN *v.* ACCENT BUILDERS, INC., ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–406. UNITED STATES EX REL. DARIAN *v.* PASTERNAK ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 342 Fed. Appx. 254.

No. 09–423. STACEY, EXECUTOR OF THE ESTATE OF STACEY, DECEASED *v.* TIERNEY. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 09–452. FASTOV *v.* CHRISTIE'S INTERNATIONAL PLC ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 324 Fed. Appx. 10.

No. 09–488. THOMAS KINKADE CO., LLC, ET AL. *v.* HAZLEWOOD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 336 Fed. Appx. 629.

No. 09–512. SMITH *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 333 Fed. Appx. 607.

No. 09–514. CLARKE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 562 F. 3d 1158.

No. 09–526. PHENGSENGKHAM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 339 Fed. Appx. 423.

No. 09–534. CATLETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 681.

No. 09–552. LEDINGHAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 340 Fed. Appx. 150.

No. 09–5076. KINCAID-CHAUNCEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 556 F. 3d 923.

No. 09–5515. QUINN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 308 Fed. Appx. 293.

No. 09–5694. BOLDEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 545 F. 3d 609.

No. 09–5708. AL UZAYTI, AKA AL LIBBI *v.* GATES, SECRETARY OF DEFENSE. C. A. D. C. Cir. Certiorari denied.

No. 09–5734. LUSTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 224.

No. 09–6078. GwanJun Kim *v.* Progressive Express Insurance Co. et al. C. A. 11th Cir. Certiorari denied.

No. 09–6186. Lewis *v.* Alabama. Sup. Ct. Ala. Certiorari denied. Reported below: 24 So. 3d 540.

No. 09–6243. Varga *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 390.

No. 09–6453. Roach *v.* Rockingham County Board of Education et al. C. A. 4th Cir. Certiorari denied.

No. 09–6774. Galache *v.* Kenan, Warden. C. A. 9th Cir. Certiorari denied.

No. 09–6775. Gates *v.* Michigan. Ct. App. Mich. Certiorari denied.

No. 09–6780. Frost *v.* Toney. C. A. 4th Cir. Certiorari denied. Reported below: 335 Fed. Appx. 296.

No. 09–6782. Bundrant *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 09–6784. Anderson *v.* McNeil, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 09–6786. Brown *v.* City of Philadelphia, Pennsylvania, et al. C. A. 3d Cir. Certiorari denied. Reported below: 331 Fed. Appx. 898.

No. 09–6789. Om *v.* California. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 09–6791. Garland *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 09–6796. Hrusovsky *v.* Harlow, Superintendent, State Regional Correctional Facility at Mercer, et al. C. A. 3d Cir. Certiorari denied.

No. 09–6798. HAGINS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 09–6805. PIERCE *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 09–6811. DUMAS *v.* WONG, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 442.

No. 09–6812. JOHNSON *v.* GARCIA ET AL. C. A. 7th Cir. Certiorari denied.

No. 09–6829. PELLETIER *v.* GERRY, WARDEN. C. A. 1st Cir. Certiorari denied.

No. 09–6836. MILLEN *v.* MANAGEMENT CLEANING CONTROLS. Sup. Ct. Tenn. Certiorari denied.

No. 09–6842. SHELTON *v.* KING, SUPERINTENDENT, SOUTH MISSISSIPPI CORRECTIONAL FACILITY. C. A. 5th Cir. Certiorari denied.

No. 09–6848. DE LA VEGA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 09–6850. DELEON-PUENTES *v.* SHERRY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–6851. DAY *v.* TRYBULSKI. C. A. 2d Cir. Certiorari denied.

No. 09–6852. PARADISE *v.* ROBERTS, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 09–6855. O'DWYER *v.* LOUISIANA ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 309 Fed. Appx. 833.

No. 09–6861. KNOWLES *v.* PROVINCE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 340 Fed. Appx. 439.

No. 09–6862. KUPERMAN *v.* GERRY, WARDEN. C. A. 1st Cir. Certiorari denied.

No. 09–6864. LEWIS *v.* BURTT, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 233.

No. 09–6867. IBARRA PEREZ *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 218 Ore. App. 375, 180 P. 3d 185.

No. 09–6880. COOPER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 17 So. 3d 705.

No. 09–6893. BARKER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 09–6894. ARRELLANO *v.* TEXAS. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 09–6895. BELL *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 492.

No. 09–6896. WALKER *v.* CARTER COUNTY, KENTUCKY, ET AL. C. A. 6th Cir. Certiorari denied.

No. 09–6897. YOUNG *v.* BODISON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 205.

No. 09–6926. KIRNON *v.* KLOPOTOSKI, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–6950. MIDI *v.* HOLDER, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 566 F. 3d 132.

No. 09–6971. IGNACIO *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 317 Fed. Appx. 689.

No. 09–6992. BALLENGER *v.* MAUNEY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 224.

No. 09–6994. MIDDLETON *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 09–7021. MARSHNER *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 184 Md. App. 751.

No. 09–7029. JOHNSON *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 346 Ore. 258, 210 P. 3d 906.

No. 09–7109. SANTOS *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–7120. LAMBERT *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 09–7129. CRUZ *v.* LAWLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–7135. DYKE *v.* CLARKE, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTION. C. A. 1st Cir. Certiorari denied.

No. 09–7139. SCRIBER *v.* KOPPEL, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 461.

No. 09–7150. RECTOR *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 285 Ga. 714, 681 S. E. 2d 157.

No. 09–7151. SWISHER *v.* WAKEFIELD ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–7152. SLADE *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 964 A. 2d 446.

No. 09–7194. HANSON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 206 P. 3d 1020.

No. 09–7196. FULLER *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 09–7205. BLEDSOE *v.* BRUCE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 569 F. 3d 1223.

No. 09–7209. PATTEN *v.* FLEMING, CHIEF JUDGE, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–7212. KIRKPATRICK *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 389 Ill. App. 3d 1151, 976 N. E. 2d 1211.

No. 09–7224. CLARK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 577 F. 3d 273.

No. 09–7241. MACIAS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 18 So. 3d 1038.

No. 09–7242. CLARK *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 599 Pa. 204, 961 A. 2d 80.

No. 09–7255. WHITE *v.* RABNER, CHIEF JUSTICE, SUPREME COURT OF NEW JERSEY. C. A. 3d Cir. Certiorari denied. Reported below: 349 Fed. Appx. 681.

No. 09–7329. SOLIS-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 09–7355. RICHARDSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 347 Fed. Appx. 481.

No. 09–7356. SHAREEF *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 576 F. 3d 365.

No. 09–7359. BARRERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 347 Fed. Appx. 51.

No. 09–7364. ROMERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 339 Fed. Appx. 470.

No. 09–7369. MATHIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 331 Fed. Appx. 997.

No. 09–7371. BRYANT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–7372. WELCH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 859.

No. 09–7375. CORDOVA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 340 Fed. Appx. 427.

No. 09–7376. DEPUTY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–7378. VELASQUEZ-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 331 Fed. Appx. 285.

No. 09–7380. PRATT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–7387. FOX *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 573 F. 3d 1050.

No. 09–7389. GAMBLE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 572 F. 3d 472.

No. 09–7393. OSEQUERA-MORALES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–7396. DIALLO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 575 F. 3d 252.

No. 09–7401. ORTKIESE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–7403. BALDWIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 341 Fed. Appx. 518.

No. 09–7404. ROBERTSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 568 F. 3d 1203.

No. 09–7406. SALDANA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–7407. SAVAGE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–7409. HARTSTEIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 557 F. 3d 589.

No. 09–7411. PAYAN-CARRILL, AKA MATA-CARILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 331 Fed. Appx. 292.

No. 09–7416. SANDERS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 975 A. 2d 165.

No. 09–7417. RIVERA-CASTANEDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 331 Fed. Appx. 337.

No. 09–7420. WILSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 340 Fed. Appx. 562.

No. 09–7421. CULVERHOUSE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 09–7422. GATHERUM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 338 Fed. Appx. 271.

No. 09–7427. GRIDER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 337 Fed. Appx. 820.

No. 09–7429. GARCIA-VILLEGAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 575 F. 3d 949.

No. 09–7430. HILLIARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 339 Fed. Appx. 500.

No. 09–7431. HENDERSON-EL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–7432. HOLMES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 339 Fed. Appx. 334.

No. 09–7434. HERNANDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–7437. GRUBER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–7438. HIGGINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 557 F. 3d 381.

No. 09–7439. GRIGGS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 569 F. 3d 341.

No. 09–7440. NWEKE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 340 Fed. Appx. 237.

No. 09–7447. ROMERO *v.* UNITED STATES PAROLE COMMISSION. C. A. 5th Cir. Certiorari denied. Reported below: 340 Fed. Appx. 245.

No. 09–7449. PORTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 09–7459. FRAUENDORFER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–7463. GAINER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 09–7464. HUNTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–7465. CARAPIA-GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–7473. MEDINA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 333 Fed. Appx. 493.

No. 09–7474. MICHAEL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 576 F. 3d 323.

No. 09–7475. ORUCHE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 333 Fed. Appx. 578.

No. 09–7477. MAYBERRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 341 Fed. Appx. 859.

No. 09–7482. YARBROUGH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 334 Fed. Appx. 266.

No. 09–7491. VASQUEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 08–1375. CASSENS TRANSPORT CO. ET AL. *v.* BROWN ET AL. C. A. 6th Cir. Motions of Michigan Self-Insurers Association, American Trucking Associations, Inc., DRI–The Voice of the Defense Bar, and National Council of Self-Insurers et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 546 F. 3d 347.

No. 09–536. BURKE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 09–7362. SURIEL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 335 Fed. Appx. 136.

No. 09–7397. FLORES CARRETO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 583 F. 3d 152.

No. 09–7908 (09A543). BIROS *v.* STRICKLAND, GOVERNOR OF OHIO, ET AL. C. A. 6th Cir. Application for stay of execution of sentence of death, presented to JUSTICE STEVENS, and by him referred to the Court, denied. Certiorari denied. Reported below: 588 F. 3d 921.

Rehearing Denied

No. 08–1389. PRELESNIK, WARDEN *v.* AVERY, *ante*, p. 932;
No. 08–10085. MCNEILL *v.* GOFF, WARDEN, *ante*, p. 832;

No. 08–10225. SHABAZZ, AKA DENNIS *v.* FIRST CORRECTIONAL MEDICAL SERVICES ET AL., *ante*, p. 834;

No. 08–10488. WATTS *v.* RUNNELS, WARDEN, ET AL., *ante*, p. 841;

No. 08–10511. RAIHALA *v.* WHITBECK ET AL., *ante*, p. 842;

No. 08–10643. KENYON *v.* WYOMING DEPARTMENT OF CORRECTIONS ET AL., *ante*, p. 846;

No. 08–10728. STEVENS *v.* NEVADA, *ante*, p. 850;

No. 08–10743. OSWALD *v.* THURMER, WARDEN, *ante*, p. 851;

No. 08–10841. SAMUEL *v.* UNITED STATES, *ante*, p. 857;

No. 08–10962. ROJAS-BARRERA *v.* WENGLER, WARDEN, *ante*, p. 863;

No. 08–10977. LASKEY *v.* CHARLES INDUSTRIES, *ante*, p. 864;

No. 08–11014. LASKEY *v.* UNITED ONLINE, INC., *ante*, p. 866;

No. 09–101. SMITH ET AL. *v.* THOMAS JEFFERSON UNIVERSITY HOSPITAL ET AL., *ante*, p. 878;

No. 09–171. HALLIWELL ET AL. *v.* SUPERIOR COURT OF CALIFORNIA, SONOMA COUNTY, ET AL., *ante*, p. 947;

No. 09–172. HALLIWELL ET AL. *v.* SUPERIOR COURT OF CALIFORNIA, SONOMA COUNTY, ET AL., *ante*, p. 947;

No. 09–199. HALLIWELL ET AL. *v.* SUPERIOR COURT OF CALIFORNIA, SONOMA COUNTY, ET AL., *ante*, p. 970;

No. 09–210. FRAZIER *v.* SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, *ante*, p. 947;

No. 09–295. BERT *v.* COMPTROLLER OF THE TREASURY OF MARYLAND, *ante*, p. 948;

No. 09–324. WILEY *v.* GEITHNER, SECRETARY OF THE TREASURY, ET AL., *ante*, p. 948;

No. 09–5097. HOSTETTER *v.* VIRGINIA, *ante*, p. 887;

No. 09–5109. WOODS *v.* SOCIAL SECURITY ADMINISTRATION, *ante*, p. 887;

No. 09–5228. MCCARTHY *v.* JENKINS ET AL., *ante*, p. 893;

No. 09–5349. MERRIWEATHER *v.* REYNOLDS, WARDEN, ET AL., *ante*, p. 899;

No. 09–5458. ROBINSON *v.* UNITED STATES, *ante*, p. 904;

No. 09–5605. GONZALEZ *v.* ASSET ACCEPTANCE, LLC, ET AL., *ante*, p. 912;

No. 09–5867. DAVIS *v.* VANDERVILLE ET AL., *ante*, p. 954;

No. 09–5902. GRIFFIN *v.* ORTIZ ET AL., *ante*, p. 954;

No. 09–6013. HILL *v.* DISTRICT OF COLUMBIA DEPARTMENT OF EMPLOYMENT SERVICES ET AL., *ante*, p. 955;

No. 09–6168. WALSH *v.* UNITED STATES ET AL., *ante*, p. 996;
No. 09–6211. TROXELLE *v.* UNITED STATES, *ante*, p. 956; and
No. 09–6773. IN RE FULLERBLACK, *ante*, p. 988. Petitions for rehearing denied.

No. 08–10348. GIALTO *v.* OBAMA, PRESIDENT OF THE UNITED STATES, ET AL., *ante*, p. 935;
No. 08–10996. LEGENO *v.* DOUGLAS ELLIMAN, LLC, *ante*, p. 937; and
No. 09–5610. RAHEIM *v.* NEW YORK CITY BOARD OF EDUCATION ET AL., *ante*, p. 941. Petitions for rehearing denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of these petitions.

DECEMBER 8, 2009

Certiorari Denied

No. 09–7912 (09A551). BIROS *v.* STRICKLAND, GOVERNOR OF OHIO, ET AL. C. A. 6th Cir. Application for stay of execution of sentence of death, presented to JUSTICE STEVENS, and by him referred to the Court, denied. Certiorari denied. Reported below: 589 F. 3d 210.

DECEMBER 14, 2009

Certiorari Granted—Vacated and Remanded

No. 09–285. INDIANA STATE POLICE PENSION TRUST ET AL. *v.* CHRYSLER LLC ET AL. C. A. 2d Cir. Motion of Washington Legal Foundation et al. for leave to file a brief as *amici curiae* granted. Certiorari granted, judgment vacated, and case remanded with instructions to dismiss the appeal as moot. See *United States* v. *Munsingwear, Inc.*, 340 U. S. 36 (1950). Reported below: 576 F. 3d 108.

Certiorari Dismissed

No. 09–6916. HOWARD *v.* SUPREME COURT OF OHIO ET AL. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 09–6938. MICHALSKI *v.* LEMPKE, SUPERINTENDENT, FIVE POINTS CORRECTIONAL FACILITY. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certio-

rari dismissed. See this Court's Rule 39.8. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 09–6943. HUMPHREY *v.* ONONDAGA COUNTY SHERIFF'S DEPARTMENT ET AL. C. A. 2d 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. 09–7123. PANNELL *v.* PENFOLD ET AL. Ct. App. Ind. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 09–7149. MILLEN *v.* NATIONAL COLLEGIATE ATHLETIC ASSN. ET AL. 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.

No. 09–7160. MILLEN *v.* COMMERCIAL APPEAL. C. A. 6th 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. 09–7260. REYNOSO *v.* ROCK, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 09–7398. SWENDRA *v.* COLORADO. Ct. App. Colo. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 09–7594. BAZEMORE *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA. 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. 09M57. SALTER *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS; and

No. 09M58. HUPP *v.* KURPINSKY ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 08–645. ABBOTT *v.* ABBOTT. C. A. 5th Cir. [Certiorari granted, 557 U. S. 933.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of S&W International ChildFind Program et al. for leave to participate in oral argument as *amici curiae* and for divided argument denied.

No. 08–661. AMERICAN NEEDLE, INC. *v.* NATIONAL FOOTBALL LEAGUE ET AL. C. A. 7th Cir. [Certiorari granted, 557 U. S. 933.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted and time allocated as follows: 30 minutes for petitioner, 10 minutes for the Solicitor General, and 30 minutes for respondents.

No. 08–810. CONKRIGHT ET AL. *v.* FROMMERT ET AL. C. A. 2d Cir. [Certiorari granted, 557 U. S. 933.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. JUSTICE SOTOMAYOR took no part in the consideration or decision of this motion.

No. 08–1200. JERMAN *v.* CARLISLE, MCNELLIE, RINI, KRAMER & ULRICH L. P. A. ET AL. C. A. 6th Cir. [Certiorari granted, 557 U. S. 933.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 08–1521. MCDONALD ET AL. *v.* CITY OF CHICAGO, ILLINOIS, ET AL. C. A. 7th Cir. [Certiorari granted, 557 U. S. 965.] Motion of American Legislative Exchange Council for leave to file a brief as *amicus curiae* granted.

No. 08–10457. CASTILLO *v.* GUIDRY. Ct. App. La., 5th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 802] denied.

No. 08–10783. SMITH *v.* CHARLESTON COUNTY SCHOOL DISTRICT ET AL. C. A. 4th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 803] denied.

No. 09–291. THOMPSON *v.* NORTH AMERICAN STAINLESS, LP. C. A. 6th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 09–5577. RICHARDSON *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 984] denied.

No. 09–5713. O'DWYER *v.* BECNEL ET AL. C. A. 5th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 944] denied.

No. 09–6188. IN RE ALPINE. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 989] denied.

No. 09–6595. SCHMITZ *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 968] denied.

No. 09–7899. QUINTANILLA *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner to expedite consideration of petition for writ of certiorari denied.

No. 09–7634. IN RE CAIN; and

No. 09–7688. IN RE TRUAX. Petitions for writs of habeas corpus denied.

Certiorari Granted

No. 08–1332. CITY OF ONTARIO, CALIFORNIA, ET AL. *v.* QUON ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 529 F. 3d 892.

No. 08–6261. ROBERTSON *v.* UNITED STATES EX REL. WATSON. Ct. App. D. C. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to the following question: "Whether an action for criminal contempt in a congressionally created court may constitutionally be brought in the name and pursuant to the power of a private person, rather than

in the name and pursuant to the power of the United States." Reported below: 940 A. 2d 1050.

No. 09–60. CARACHURI-ROSENDO *v.* HOLDER, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari granted. Reported below: 570 F. 3d 263.

Certiorari Denied

No. 08–1472. USA MOBILITY WIRELESS, INC. *v.* QUON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 529 F. 3d 892.

No. 08–10252. HONKEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 541 F. 3d 1146.

No. 09–157. JINGHAI LI *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 306 Fed. Appx. 387.

No. 09–227. RASUL ET AL. *v.* MYERS ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 563 F. 3d 527.

No. 09–244. UNITED STATES *v.* BOWDEN. C. A. 11th Cir. Certiorari denied.

No. 09–259. METRO LIGHTS, L. L. C. *v.* CITY OF LOS ANGELES, CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 551 F. 3d 898.

No. 09–274. RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS *v.* SCOTT. C. A. 9th Cir. Certiorari denied. Reported below: 567 F. 3d 573.

No. 09–301. COMMON CAUSE OF PENNSYLVANIA ET AL. *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 558 F. 3d 249.

No. 09–309. TIME WARNER TELECOM OF OREGON, LLC *v.* CITY OF PORTLAND, OREGON, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 496.

No. 09–353. MERRITT *v.* UNITED PARCEL SERVICE, INC. C. A. 5th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 410.

No. 09–429. ELLENBERG *v.* NEW MEXICO MILITARY INSTITUTE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 572 F. 3d 815.

No. 09–434. VATHIS *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 9 So. 3d 622.

No. 09–436. ROY *v.* MINNESOTA. Ct. App. Minn. Certiorari denied. Reported below: 761 N. W. 2d 883.

No. 09–441. VENTIMIGLIA ET UX. *v.* ST. LOUIS, CHURCH OF GOD, INC., DBA TWIN RIVERS WORSHIP CENTER, ET AL. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 284 S. W. 3d 681.

No. 09–465. BOWERS *v.* CITY OF EUGENE, OREGON, ET AL. Ct. App. Ore. Certiorari denied. Reported below: 227 Ore. App. 290, 205 P. 3d 890.

No. 09–492. LEWIS ET AL. *v.* CITGO PETROLEUM CORP. C. A. 7th Cir. Certiorari denied. Reported below: 561 F. 3d 698.

No. 09–508. NOVELTY, INC. *v.* DRUG ENFORCEMENT ADMINISTRATION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 571 F. 3d 1176.

No. 09–521. GRUND *v.* SPRINKLE. Sup. Ct. Ga. Certiorari denied.

No. 09–557. ROYAL OAK ENTERTAINMENT, L. L. C., ET AL. *v.* CITY OF ROYAL OAK, MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 316 Fed. Appx. 482.

No. 09–582. BETTS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 576 F. 3d 738.

No. 09–584. BURTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 469.

No. 09–5124. MARMOLEJO-CAMPOS, AKA RAMOS ARMANDO *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 558 F. 3d 903.

No. 09–5171. HERNANDEZ-CARRERA ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 547 F. 3d 1237.

No. 09–5466. LOPEZ-GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 565 F. 3d 1306.

No. 09–5767. NEAL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 564 F. 3d 1351.

No. 09–5812. AL-NASHIRI *v.* GATES, SECRETARY OF DEFENSE. C. A. D. C. Cir. Certiorari denied.

No. 09–5830. KAUFMAN ET UX. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 546 F. 3d 1242.

No. 09–5924. MARTINEZ-VALDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 507.

No. 09–5973. TORAIN *v.* AMERITECH ADVANCED DATA SERVICES. C. A. 7th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 433.

No. 09–6038. BRIGHAM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 569 F. 3d 220.

No. 09–6101. SIMPSON *v.* ALABAMA DEPARTMENT OF HUMAN RESOURCES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 311 Fed. Appx. 264.

No. 09–6395. HARRIMON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 568 F. 3d 531.

No. 09–6399. CLAYBORN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 322 Fed. Appx. 99.

No. 09–6406. YOUNG *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 283 S. W. 3d 854.

No. 09–6630. TERRAZAS LOYA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–6826. ESTEP *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–6884. DUQUESNE *v.* HARRISON ET AL. C. A. 4th Cir. Certiorari denied.

No. 09–6902. DAVIS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 13 So. 3d 468.

No. 09–6931. CORDELL *v.* PACIFIC INDEMNITY CO. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 335 Fed. Appx. 956.

No. 09–6933. McQUIRTER *v.* MICHIGAN. Cir. Ct. Jackson County, Mich. Certiorari denied.

No. 09–6936. KENNEDY *v.* REESE. C. A. 11th Cir. Certiorari denied.

No. 09–6939. ENTLER *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied.

No. 09–6947. HALL *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 09–6949. GARIBAY *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 568.

No. 09–6951. GARCIA *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 09–6952. FINFROCK *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 4 So. 3d 33.

No. 09–6953. FINFROCK *v.* CRIST, GOVERNOR OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–6954. VIRGLE *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 534.

No. 09–6956. KINNEY *v.* McQUIGGIN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–6957. HICKOX *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 7 So. 3d 1101.

No. 09–6959. ALBRIGHT-LAZZARI ET VIR *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 287 Conn. 925, 951 A. 2d 573.

No. 09–6961. HARDISON *v.* DAVIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–6962. IVY *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied.

No. 09–6965. FLORES *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–6966. ISRAEL *v.* RIDLEY-TURNER ET AL. Ct. App. Ind. Certiorari denied. Reported below: 906 N. E. 2d 283.

No. 09–6967. HAYNES *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–6970. GARCIA *v.* FELKER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–6972. HOLLIS *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–6973. HUTCHINS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–6974. HARRIS *v.* CITY OF CULVER CITY, CALIFORNIA, ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 09–6975. FREEMAN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 446.

No. 09–6976. DEBOSE *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–6987. BUNDRANT *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–6988. BUNDRANT *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–6991. MEJIA *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–6995. RIGGINS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 09–6997. MAYS *v.* DINWIDDIE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 580 F. 3d 1136.

No. 09–6998. MACHADO *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 09–7000. LARSON *v.* WILLIAMS ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–7001. MALONE *v.* CAMPBELL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–7004. PRICE ET VIR *v.* LOUISIANA DEPARTMENT OF EDUCATION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 559.

No. 09–7009. VAN DANG *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–7014. MORGAN *v.* CHANDLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–7016. YOUNG *v.* TRANSPORTATION DEPUTY SHERIFF I ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 340 Fed. Appx. 368.

No. 09–7040. EFFLER *v.* IOWA. Sup. Ct. Iowa. Certiorari denied. Reported below: 769 N. W. 2d 880.

No. 09–7085. KNIGHT *v.* BELLEQUE, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 09–7170. CARMONA *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 2d Cir. Certiorari denied.

No. 09–7223. SUMNER *v.* DAVIS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 340 Fed. Appx. 937.

No. 09–7243. ELMORE *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 122 Ohio St. 3d 472, 912 N. E. 2d 582.

No. 09–7281. ANTON *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–7339. BOSSE *v.* NAPOLITANO, SECRETARY OF HOMELAND SECURITY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 337 Fed. Appx. 633.

No. 09–7386. HABERMAN *v.* CENTURY 21 CHAMBERLAIN & ASSOCIATES ET AL. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied. Reported below: 173 Cal. App. 4th 1, 92 Cal. Rptr. 3d 249.

No. 09–7425. MCGRIGGS *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 14 So. 3d 746.

No. 09–7462. FIORE *v.* LINDSAY, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 336 Fed. Appx. 168.

No. 09–7467. CHARLES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 576 F. 3d 1060.

No. 09–7480. REED *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 342 Fed. Appx. 800.

No. 09–7494. HUTCHINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 349 Fed. Appx. 920.

No. 09–7500. SOLANO-MORETA *v.* RIOS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–7502. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 342 Fed. Appx. 905.

No. 09–7509. BURGESS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 576 F. 3d 1078.

No. 09–7514. MCKNIGHT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–7515. RELIFORD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–7518. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 331 Fed. Appx. 328.

No. 09–7521. BECERRA-FUENTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 341 Fed. Appx. 957.

No. 09–7522. SMITH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 576 F. 3d 762.

No. 09–7529. JENNINGS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–7530. LYNCH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 343 Fed. Appx. 570.

No. 09–7531. MILLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–7532. MURPHY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 342 Fed. Appx. 228.

No. 09–7533. ROSALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 341 Fed. Appx. 65.

No. 09–7536. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 09–7541. GOODSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 569 F. 3d 379.

No. 09–7543. HERNANDEZ-CURIEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 332 Fed. Appx. 418.

No. 09–7544. HULL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 341 Fed. Appx. 573.

No. 09–7545. OGEDENGBE *v.* UNITED STATES; and
No. 09–7546. OGEDENGBE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 09–7549. CARTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–7551. ANDREWS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 577 F. 3d 231.

No. 09–7552. MAJOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 341 Fed. Appx. 549.

No. 09–7555. PONS-MARTINEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–7559. SOUTHERN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 393.

No. 09–7562. VALENZUELA-RUIZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 343 Fed. Appx. 188.

No. 09–7572. DOVE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 343 Fed. Appx. 428.

No. 09–7573. DELGADO-HERNANDEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–7574. EMMANUEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 565 F. 3d 1324.

No. 09–7578. PRITCHETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–7580. JAMES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 567 F. 3d 846.

No. 09–7581. LIVINGSTONE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 576 F. 3d 881.

No. 09–7584. PROPHET, AKA FERRARI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 335 Fed. Appx. 250.

No. 09–7585. SANTOS MURILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 550.

No. 09–7588. YOUNGE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 316 Fed. Appx. 60.

No. 09–7589. VAZQUEZ-PADILLA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 883.

No. 09–7590. BARROS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 340 Fed. Appx. 509.

No. 09–7595. MARQUEZ-MENDOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 331 Fed. Appx. 308.

No. 09–7598. RILEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 336 Fed. Appx. 269.

No. 09–7602. AMPONSAH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 09–7607. PEREZ-OLIVEROS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–7608. PEREZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 324 Fed. Appx. 262.

No. 09–7614. NOE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 342 Fed. Appx. 805.

No. 09–7615. PHILLIPS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 583 F. 3d 1261.

No. 09–7618. SIMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 340 Fed. Appx. 959.

No. 09–7620. VALDEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 342 Fed. Appx. 382.

No. 09–7623. BARRON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 331 Fed. Appx. 327.

No. 09–253. ADAMES ET AL. *v.* BERETTA U. S. A. CORP. Sup. Ct. Ill. Motions of Children's Defense Fund and Legal Community Against Violence et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 233 Ill. 2d 276, 909 N. E. 2d 742.

No. 09–432. GLOBAL NETWORK COMMUNICATIONS, INC. *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 562 F. 3d 145.

No. 09–442. ONEIDA LTD. *v.* PENSION BENEFIT GUARANTY CORPORATION. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 562 F. 3d 154.

No. 09–5221. MCCOURTY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 562 F. 3d 458.

No. 09–5243. WARREN *v.* FISCHER, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES, ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 09–5490. MIDDLETON *v.* SCHULT, WARDEN. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 299 Fed. Appx. 94.

No. 09–7527. WRIGHT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 341 Fed. Appx. 709.

No. 09–7603. BETTS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 09–7621. HOFFENBERG *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 333 Fed. Appx. 625.

Rehearing Denied

No. 08–10439. IJADIMINI *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 840;

No. 08–10552. JONES *v.* GOOGLE INC. ET AL., *ante*, p. 843;

No. 08–10588. KOR *v.* FELKER, WARDEN, *ante*, p. 845;

No. 08–10629. BROWN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 846;

No. 08–10739. BRADLEY *v.* MISSISSIPPI, *ante*, p. 851;

No. 08–10752. SALAZAR LOPEZ, AKA SALAZAR *v.* UNITED STATES, *ante*, p. 852;

No. 08–10759. IN RE MANSHIP, *ante*, p. 813;

No. 08–10780. DITTRICH *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 853;

No. 08–10839. RANDLE *v.* WOODS, *ante*, p. 857;

No. 08–10922. LYNCH *v.* HERTZIG ET AL., *ante*, p. 861;

No. 08–11033. JOHNSON *v.* FLORIDA, *ante*, p. 867;

No. 08–11070. IN RE AUGUSTIN, *ante*, p. 814;

No. 08–11112. MITCHELL *v.* KDJM–FM ET AL., *ante*, p. 871;

No. 08–11141. THOMAS *v.* ST. LOUIS BOARD OF POLICE COMMISSIONERS ET AL., *ante*, p. 873;

No. 09–112. RUIZ RIVERA ET AL. *v.* DEPARTMENT OF EDUCATION ET AL., *ante*, p. 878;

No. 09–121. HOY *v.* MENTOR TOWNSHIP, MICHIGAN, *ante*, p. 878;

No. 09–318. MORRIS ET AL. *v.* LANPHER ET AL., *ante*, p. 970;

No. 09–5039. DILLARD *v.* BAZZLE, WARDEN, *ante*, p. 884;

No. 09–5061. HAKIM *v.* THOMAS, SUPERINTENDENT, LUMBERTON CORRECTIONAL INSTITUTION, *ante*, p. 885;

No. 09–5064. TORIOLA *v.* APPELLATE DIVISION, SUPREME COURT OF NEW YORK, SECOND JUDICIAL DEPARTMENT, ET AL., *ante*, p. 885;

No. 09–5180. FLOYD *v.* UNITED STATES, *ante*, p. 891;

No. 09–5229. HAILEY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 893;

No. 09–5353. DEL CASTELLO *v.* SUPERIOR COURT OF CALIFORNIA, ALAMEDA COUNTY, *ante*, p. 899;

No. 09–5405. VELAZQUEZ *v.* LAPE, SUPERINTENDENT, COXSACKIE CORRECTIONAL FACILITY, ET AL., *ante*, p. 902;

No. 09–5443. TUCKER *v.* CHIPLA COLLEGE, *ante*, p. 904;

No. 09–5507. MEIZLIK *v.* FLORIDA, *ante*, p. 907;

No. 09–5520. TROBEE *v.* UNITED STATES, *ante*, p. 907;

No. 09–5549. JOHNSON *v.* KELLY, WARDEN, *ante*, p. 909;

No. 09–5620. JONES *v.* FLORIDA, *ante*, p. 913;

No. 09–5787. FORD *v.* UNITED STATES, *ante*, p. 918;

No. 09–5835. DEAN *v.* BLAISDELL, WARDEN, *ante*, p. 953;

No. 09–5907. IN RE YORK, *ante*, p. 813;

No. 09–5926. REED *v.* CIRTIN, *ante*, p. 971;

No. 09–6104. ANDERSON *v.* UNITED STATES, *ante*, p. 928;

No. 09–6129. GREENWOOD, AKA GRIMES *v.* UNITED STATES, *ante*, p. 929;

No. 09–6181. BALKO *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 974;

No. 09–6258. GRAHAM *v.* MISSOURI, *ante*, p. 998;

No. 09–6434. IN RE TELFAIR, *ante*, p. 988;

No. 09–6435. IN RE TELFAIR, *ante*, p. 989;

No. 09–6468. TELFAIR *v.* TANDY, ADMINISTRATOR, DRUG ENFORCEMENT AGENCY, ET AL., *ante*, p. 1028;

No. 09–6524. WHITE *v.* GATES, SECRETARY OF DEFENSE, *ante*, p. 976;

No. 09–6529. IN RE NDOROMO, *ante*, p. 944; and

No. 09–6581. CORRAL *v.* UNITED STATES, *ante*, p. 1000. Petitions for rehearing denied.

No. 09–5183. HOWARD *v.* UNITED STATES, *ante*, p. 939;

No. 09–5322. MASON *v.* GUZDEK ET AL., *ante*, p. 940; and

No. 09–6077. SAQIB *v.* FEDERAL BUREAU OF INVESTIGATION ET AL., *ante*, p. 982. Petitions for rehearing denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of these petitions.

DECEMBER 23, 2009

Dismissal Under Rule 46

No. 09–94. ROBINSON *v.* NAPOLITANO, SECRETARY OF HOMELAND SECURITY, ET AL. C. A. 3d Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 554 F. 3d 358.

JANUARY 4, 2010

Dismissal Under Rule 46

No. 08–1065. POTTAWATTAMIE COUNTY, IOWA, ET AL. *v.* MCGHEE ET AL. C. A. 8th Cir. [Certiorari granted, 556 U. S. 1181.*] Writ of certiorari dismissed under this Court's Rule 46.

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*[REPORTER'S NOTE: Argued November 4, 2009. *Stephen S. Sanders* argued the cause *pro hac vice* for petitioners. With him on the briefs were *Jeffrey W. Sarles*, *Vincent J. Connelly*, *Stephen M. Shapiro*, *Sheldon H. Nahmod*, *Robert M. Livingston*, and *Kristopher K. Madsen*.

Deputy Solicitor General Katyal argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Kagan*, *Assistant Attorney General West*, *Benjamin J. Horwich*, and *Barbara L. Herwig*.

Paul D. Clement argued the cause for respondents. With him on the brief were *J. Douglas McCalla*, *Mel C. Orchard III*, *Larissa A. McCalla*, *Stephen D. Davis*, *William H. Jones*, and *Alan O. Olson*.

Briefs of *amici curiae* urging reversal were filed for the State of Colorado et al. by *John W. Suthers*, Attorney General of Colorado, *Daniel D. Domenico*, Solicitor General, *Kathleen M. Sullivan*, and *Daniel H. Bromberg*, by *Peter J. Nickles*, Attorney General of the District of Columbia, and by the Attorneys General for their respective States as follows: *Dustin McDaniel* of Arkansas, *Joseph R. Biden III* of Delaware, *Lawrence G. Wasden* of Idaho, *Gregory S. Zoeller* of Indiana, *Thomas J. Miller* of Iowa, *Jack Conway* of Kentucky, *James D. "Buddy" Caldwell* of Louisiana, *Janet T. Mills* of Maine, *Douglas F. Gansler* of Maryland, *Martha Coakley* of Massachusetts, *Michael A. Cox* of Michigan, *Jim Hood* of Mississippi, *Chris Koster* of Missouri, *Catherine Cortez Masto* of Nevada, *Gary K. King* of New Mexico, *Roy Cooper* of North Carolina, *Wayne Stenehjem* of North Dakota, *Richard Cordray* of Ohio, *W. A. Drew Edmondson*

JANUARY 8, 2010

Certiorari Granted

No. 09–367. DOLAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari granted. Reported below: 571 F. 3d 1022.

JANUARY 11, 2010

Reversed and Remanded After Certiorari Granted. (See No. 08–559, *ante*, p. 120.)

Certiorari Dismissed

No. 09–7023. KINNELL *v.* MCKUNE, WARDEN, 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. 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. 09–7035. SANDERS *v.* MCMASTER ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 328 Fed. Appx. 878.

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of Oklahoma, *Thomas J. Corbett, Jr.*, of Pennsylvania, *Henry D. McMaster* of South Carolina, *Lawrence E. Long* of South Dakota, *Robert E. Cooper, Jr.*, of Tennessee, *Mark L. Shurtleff* of Utah, *William C. Mims* of Virginia, and *Robert M. McKenna* of Washington; for Cook County, Illinois, by *Anita Alvarez*, *Patrick T. Driscoll, Jr.*, *Alan J. Spellberg*, *Louis R. Hegeman*, and *Paul A. Castiglione;* for the National Association of Assistant United States Attorneys et al. by *Thomas C. Goldstein* and *Amy Howe;* and for the National Association of Counties et al. by *Richard Ruda* and *Lawrence Rosenthal.*

Briefs of *amici curiae* urging affirmance were filed for Black Cops Against Police Brutality by *Mark Herrmann;* for the Center on the Administration of Criminal Law by *William A. Burck*, *Anthony S. Barkow*, and *David B. Edwards;* and for the National Association of Criminal Defense Lawyers et al. by *Joel B. Rudin*, *Joshua L. Dratel*, *Ilya Shapiro*, *Timothy Lynch*, and *Steven R. Shapiro.*]

No. 09–7060. ELINE *v.* LARA 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.

No. 09–7112. JACKSON *v.* MINNESOTA. Ct. App. Minn. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 09–7143. SWEED *v.* LNU 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.

No. 09–7147. MUNIZ *v.* MARSHALL, WARDEN. Sup. Ct. N. M. 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. 09–7186. HON CHUNG LAU *v.* SHUMSKY. 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. 09–7220. PLUMMER *v.* SULLIVAN, WARDEN. 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. Reported below: 324 Fed. Appx. 633.

No. 09–7266. PARKER *v.* LOUISIANA. Sup. Ct. La. 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: 17 So. 3d 376.

No. 09–7282. KARNOFEL *v.* BECK ET AL. Ct. App. Ohio, Trumbull County. 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. 09–7307. ZANI *v.* SOCIAL SECURITY ADMINISTRATION. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 323 Fed. Appx. 286.

No. 09–7384. CLARK *v.* CALIFORNIA. Sup. Ct. Cal. 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. 09–7418. HON LAU *v.* HERNANDEZ, WARDEN, 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.

No. 09–7419. HON LAU *v.* EVANS, WARDEN. 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. 09–7423. WHITE *v.* WORKMAN, WARDEN. 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.

No. 09–7436. SMITH *v.* CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. Ct. App. Cal., 5th App. Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 09–7667. MANTILLA *v.* UNITED STATES. 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.

No. 09–7673. MILLHOUSE *v.* GRONDOLSKY, WARDEN. 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: 331 Fed. Appx. 108.

Miscellaneous Orders

No. 09A648. HOLLINGSWORTH ET AL. *v.* PERRY ET AL. Upon consideration of the application for stay, presented to JUSTICE KENNEDY, and by him referred to the Court, it is ordered that the order of the United States District Court for the Northern District of California, case No. 3:09–cv–02292, permitting real-time streaming is stayed except as it permits streaming to other rooms within the confines of the courthouse in which the trial is to be held. Any additional order permitting broadcast of the proceedings is also stayed pending further order of this Court. To permit further consideration in this Court, this order will remain in effect until Wednesday, January 13, 2010, at 4 p.m. eastern time.

JUSTICE BREYER, dissenting.

I agree with the Court that further consideration is warranted, and I am pleased that the stay is time limited. However, I would undertake that consideration without a temporary stay in place. This stay prohibits the transmission of proceedings to other federal courthouses. In my view, the Court's standard for granting a stay is not met. See *Conkright* v. *Frommert,* 556 U. S. 1401, 1402–1403 (2009) (GINSBURG, J., in chambers). In particular, the papers filed, in my view, do not show a likelihood of "irreparable harm."

With respect, I dissent.

No. D–2458. IN RE DEMARCO. Leo P. DeMarco, of Malden, Mass., having requested to resign as a member of the Bar of this

Court, it is ordered that his name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on November 30, 2009 [*ante*, p. 1043], is discharged.

No. 09M59. CLARK *v.* BURTT, WARDEN;

No. 09M60. FILBRANDT *v.* MICHIGAN DEPARTMENT OF HUMAN SERVICES; and

No. 09M61. POLK *v.* DUNCKLE ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 09M62. P. S. ET AL. *v.* FRANKLIN COUNTY CHILDREN SERVICES. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. 08–1301. CARR *v.* UNITED STATES. C. A. 7th Cir. [Certiorari granted, 557 U. S. 965.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 08–1457. NEW PROCESS STEEL, L. P. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 7th Cir. [Certiorari granted, *ante*, p. 989.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 09–158. MAGWOOD *v.* PATTERSON, WARDEN, ET AL. C. A. 11th Cir. [Certiorari granted, *ante*, p. 1023.] Motions of petitioner to dispense with printing the joint appendix, for leave to proceed *in forma pauperis*, and for appointment of counsel granted. Jeffrey L. Fisher, Esq., of Stanford, Cal., is appointed to serve as counsel for petitioner in this case.

No. 09–233. TRIPLE-S MANAGEMENT CORP. ET AL. *v.* MUNICIPAL REVENUE COLLECTION CENTER. Sup. Ct. P. R.; and

No. 09–525. JANUS CAPITAL GROUP, INC., ET AL. *v.* FIRST DERIVATIVE TRADERS. C. A. 4th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 09–6233. IN RE CLUCK. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 813] denied.

No. 09–6234. CLUCK *v.* WASHINGTON. Sup. Ct. Wash. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 984] denied.

No. 09–6389. BERAS *v.* CARVLIN ET AL. C. A. 2d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 1022] denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this motion.

No. 09–6412. IN RE ALPINE. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 1023] denied.

No. 09–6610. JOHNSON *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 1022] denied.

No. 09–6682. HILL *v.* UNITED STATES. C. A. 11th Cir.;
No. 09–7108. MUINO *v.* FLORIDA POWER & LIGHT CO. ET AL. C. A. 11th Cir.;
No. 09–7275. JONES *v.* SHAW GROUP ET AL. C. A. 11th Cir.;
No. 09–7294. SOLOMON *v.* PIONEER ADULT REHABILITATION CENTER. C. A. 10th Cir.; and
No. 09–7306. ASBURY *v.* CITY OF ROANOKE, VIRGINIA. C. A. 4th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until February 1, 2010, 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. 09–6692. STRUCK *v.* COOK COUNTY PUBLIC GUARDIAN. App. Ct. Ill., 1st Dist. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 1009] denied.

No. 09–644. IN RE MOSES;
No. 09–7836. IN RE TOTARO;
No. 09–7960. IN RE WILLIAMS; and
No. 09–8019. IN RE SINGLETON. Petitions for writs of habeas corpus denied.

No. 09–7659. IN RE CHEKKOURI. Motion of petitioner to unseal pleadings before this Court denied. Petition for writ of habeas corpus denied.

No. 09–7961. IN RE WAGNER. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of

habeas corpus 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. 09–7561. IN RE TORRANCE; and

No. 09–7884. IN RE WASHINGTON. Petitions for writs of mandamus and/or prohibition denied.

Certiorari Denied

No. 08–1462. YORK ET AL. *v.* ROBINSON. C. A. 9th Cir. Certiorari denied. Reported below: 566 F. 3d 817.

No. 08–1571. COOLEY ET AL. *v.* ENG. C. A. 9th Cir. Certiorari denied. Reported below: 552 F. 3d 1062.

No. 08–10679. JOHNSON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–142. FIEGER *v.* SUPREME COURT OF MICHIGAN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 553 F. 3d 955.

No. 09–194. GOMIS *v.* HOLDER, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 571 F. 3d 353.

No. 09–229. KHAN ET AL. *v.* HOLDER, ATTORNEY GENERAL. C. A. 7th Cir. Certiorari denied. Reported below: 554 F. 3d 681.

No. 09–239. ALLEN *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 350 Mont. 562, 213 P. 3d 789.

No. 09–252. QUINN *v.* ROACH ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 280.

No. 09–275. RODIS *v.* CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 558 F. 3d 964.

No. 09–277. CONNECTICUT DEPARTMENT OF PUBLIC UTILITY CONTROL ET AL. *v.* FEDERAL ENERGY REGULATORY COMMISSION.

C. A. D. C. Cir. Certiorari denied. Reported below: 569 F. 3d 477.

No. 09–306. ALLEN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 09–346. MARTINEZ-MADERA *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 559 F. 3d 937.

No. 09–355. TREESH, COMMISSIONER, KENTUCKY DEPARTMENT OF REVENUE, ET AL. *v.* DIRECTV, INC., ET AL. Sup. Ct. Ky. Certiorari denied. Reported below: 290 S. W. 3d 638.

No. 09–356. PAULSEN ET AL. *v.* CNF, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 559 F. 3d 1061.

No. 09–358. MING WEI LIU *v.* BOARD OF TRUSTEES OF THE UNIVERSITY OF ALABAMA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 775.

No. 09–364. EDWARDS *v.* BLUE CROSS BLUE SHIELD OF TEXAS, A DIVISION OF HEALTH CARE SERVICE CORP. Ct. App. Tex., 5th Dist. Certiorari denied. Reported below: 273 S. W. 3d 461.

No. 09–370. LOVELY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 570 F. 3d 778.

No. 09–384. OFFICE OF ALASKA GOVERNOR *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 564 F. 3d 1062.

No. 09–386. AMBRACO, INC., ET AL. *v.* M/V CLIPPER FAITH ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 570 F. 3d 233.

No. 09–388. S & D TRADING ACADEMY, LLC, ET AL. *v.* AAFIS, Inc. C. A. 5th Cir. Certiorari denied. Reported below: 336 Fed. Appx. 443.

No. 09–409. PALMER, BY AND THROUGH HIS PARENTS AND LEGAL GUARDIANS, PALMER ET UX. *v.* WAXAHACHIE INDEPENDENT SCHOOL DISTRICT. C. A. 5th Cir. Certiorari denied. Reported below: 579 F. 3d 502.

No. 09–417. MANIGAULT ET AL. *v.* KING ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 339 Fed. Appx. 229.

No. 09–453. CARTER *v.* BURNS, JUDGE, CRIMINAL COURT OF TENNESSEE, 13TH JUDICIAL DISTRICT, ET AL. C. A. 6th Cir. Certiorari denied.

No. 09–457. O'BOYLE ET AL. *v.* BRAVERMAN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 337 Fed. Appx. 162.

No. 09–459. MELFI *v.* WMC MORTGAGE CORP. ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 568 F. 3d 309.

No. 09–460. MILWAUKEE DEPUTY SHERIFF'S ASSN. ET AL. *v.* CLARKE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 574 F. 3d 370.

No. 09–468. BODENSTAB *v.* COOK COUNTY, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 569 F. 3d 651.

No. 09–469. COLONIAL LIFE & ACCIDENT INSURANCE CO. *v.* MEDLEY ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 572 F. 3d 22.

No. 09–470. DANNER *v.* BOARD OF PROFESSIONAL RESPONSIBILITY OF THE SUPREME COURT OF TENNESSEE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 577.

No. 09–472. SPANN ET VIR *v.* COBB COUNTY SUPERIOR COURT JUDGES ET AL. Ct. App. Ga. Certiorari denied.

No. 09–473. DYER *v.* WAL-MART STORES, INC. C. A. 11th Cir. Certiorari denied. Reported below: 318 Fed. Appx. 843.

No. 09–474. DOROSHOW *v.* HARTFORD LIFE & ACCIDENT INSURANCE CO. C. A. 3d Cir. Certiorari denied. Reported below: 574 F. 3d 230.

No. 09–477. MARR ET AL. *v.* HUGHES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 91.

No. 09–482. HOLLADY *v.* MICHIGAN ET AL. C. A. 6th Cir. Certiorari denied.

No. 09–483. KONINKLIJKE BOSKALIS WESTMINSTER NV ET AL. *v.* COMPANIA NAVIERA JOANNA SA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 569 F. 3d 189.

No. 09–485. GRISHAM *v.* BROOKS, SUPERINTENDENT, ALBION STATE CORRECTIONAL INSTITUTION, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–487. ARKANSAS DAIRY COOPERATIVE ASSN. ET AL. *v.* DEPARTMENT OF AGRICULTURE ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 573 F. 3d 815.

No. 09–501. DANNER *v.* COMMISSION ON CONTINUING LEGAL EDUCATION AND SPECIALIZATION OF THE TENNESSEE SUPREME COURT ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 332 Fed. Appx. 228.

No. 09–502. GIAMPA *v.* GIAMPA. Sup. Ct. Nev. Certiorari denied.

No. 09–503. HENSE *v.* HENSE. Ct. App. N. Y. Certiorari denied. Reported below: 12 N. Y. 3d 897, 912 N. E. 2d 1058.

No. 09–505. 480.00 ACRES OF LAND ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 557 F. 3d 1297.

No. 09–506. CHILDREN'S FUND ET AL. *v.* SPRINGFIELD HOLDING CO. LTD. LLC ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 335 Fed. Appx. 699.

No. 09–507. HARGIS INDUSTRIES, INC., DBA SEALTITE BUILDING FASTENERS ET AL. *v.* B&B HARDWARE, INC. C. A. 8th Cir. Certiorari denied. Reported below: 569 F. 3d 383.

No. 09–509. JONES *v.* BURDETTE. C. A. 9th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 599.

No. 09–511. SHEPHERD *v.* SHEPHERD. Ct. App. Ore. Certiorari denied.

No. 09–515. WEISS *v.* SPEER ET AL. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 09–516. NORTHWEST LOUISIANA FISH & GAME PRESERVE COMMISSION *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 574 F. 3d 1386.

No. 09–522. NOVAK ET UX. *v.* JABLONSKI, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF JABLONSKI, DECEASED.

Super. Ct. Pa. Certiorari denied. Reported below: 959 A. 2d 980.

No. 09–524. NITRO DISTRIBUTING, INC., ET AL. *v.* ALTICOR, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 565 F. 3d 417.

No. 09–528. BRIDGEPORT PORT AUTHORITY *v.* BRIDGEPORT & PORT JEFFERSON STEAMBOAT CO. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 567 F. 3d 79.

No. 09–535. PAPIERZ *v.* JACKSON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 339 Fed. Appx. 587.

No. 09–537. SMITH *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 09–540. EL-HEWIE *v.* BERGEN COUNTY, NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 348 Fed. Appx. 790.

No. 09–541. JAFARI ET AL. *v.* WYNN LAS VEGAS, LLC, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 569 F. 3d 644.

No. 09–544. LOCK *v.* GENERAL SERVICES ADMINISTRATION. C. A. Fed. Cir. Certiorari denied. Reported below: 328 Fed. Appx. 662.

No. 09–545. KEENAN ET UX. *v.* PYLE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 339 Fed. Appx. 809.

No. 09–546. JAMES ET AL. *v.* HARRIS COUNTY, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 577 F. 3d 612.

No. 09–551. FRIEDLAND *v.* TIC-THE INDUSTRIAL CO. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 566 F. 3d 1203.

No. 09–554. ADAIR *v.* MCGUIREWOODS LLP ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 339 Fed. Appx. 294.

No. 09–562. SMITH *v.* UNITED STATES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 336 Fed. Appx. 789.

No. 09–566. BROWN *v.* KONTEH, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 567 F. 3d 191.

No. 09–572. DeOcampo *v.* Superior Court of California, Alameda County, et al. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 09–573. Cutter *v.* Northwest Administrators, Inc. C. A. 9th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 577.

No. 09–576. Cartledge *v.* Office of Personnel Management. C. A. Fed. Cir. Certiorari denied.

No. 09–578. Stark *v.* Maine. Sup. Jud. Ct. Me. Certiorari denied.

No. 09–591. Pizzonia *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 577 F. 3d 455.

No. 09–593. Nordberg *v.* Ocean Meadows Condominium Assn. Sup. Jud. Ct. Me. Certiorari denied.

No. 09–596. Cardiac Pacemakers, Inc., et al. *v.* St. Jude Medical, Inc., et al. C. A. Fed. Cir. Certiorari denied. Reported below: 576 F. 3d 1348.

No. 09–599. Allen *v.* Tennessee. Ct. Crim. App. Tenn. Certiorari denied.

No. 09–605. Joint Administrative Committee of the Plumbing and Pipefitting Industry in the Detroit Area et al. *v.* Washington Group International, Inc. C. A. 6th Cir. Certiorari denied. Reported below: 568 F. 3d 626.

No. 09–614. Babcock et al. *v.* Arthur J. Gallagher & Co. C. A. 5th Cir. Certiorari denied. Reported below: 339 Fed. Appx. 384.

No. 09–616. Ritchie *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 343 Fed. Appx. 238.

No. 09–622. Willaman *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 09–624. O'Dea *v.* BNSF Railway Co. C. A. 9th Cir. Certiorari denied. Reported below: 572 F. 3d 785.

No. 09–634. Schneider *v.* Commissioner of Internal Revenue. C. A. 4th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 143.

No. 09–645. ELLIS ET AL. *v.* MISSISSIPPI DEPARTMENT OF HEALTH ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 344 Fed. Appx. 43.

No. 09–648. MINCOFF *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 574 F. 3d 1186.

No. 09–5024. STEWART *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 57 App. Div. 3d 1312, 870 N. Y. S. 2d 157.

No. 09–5123. LATCHIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 554 F. 3d 709.

No. 09–5195. JACQUEMAIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 560 F. 3d 566.

No. 09–5371. MCCARTHY *v.* VILSACK, SECRETARY OF AGRICULTURE, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 456.

No. 09–5426. SNELLENBERGER, AKA CUTTER, AKA DAVIDSON, AKA FREHLY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 548 F. 3d 699.

No. 09–5556. WION *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 567 F. 3d 146.

No. 09–5659. MILLS *v.* CONNORS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 747.

No. 09–5994. LYONS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 415.

No. 09–6043. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 876.

No. 09–6083. PRYOR *v.* WOLFE ET AL. C. A. 5th Cir. Certiorari denied.

No. 09–6085. THOMPSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 335 Fed. Appx. 431.

No. 09–6213. KIRKLAND *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 567 F. 3d 316.

No. 09–6239. PATTERSON *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 285 Ga. 597, 679 S. E. 2d 716.

No. 09–6241. VADDE *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 296 Ga. App. 405, 674 S. E. 2d 323.

No. 09–6394. HALE *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 09–6465. BLALOCK *v.* WILSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 396.

No. 09–6491. WILSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 565 F. 3d 1059.

No. 09–6521. WHORLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 550 F. 3d 326.

No. 09–6549. THOMAS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–6659. SANCHEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 562 F. 3d 75.

No. 09–6673. BOWLING *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 09–6755. SKRZYPEK ET UX. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 333 Fed. Appx. 117.

No. 09–6834. THOMAS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 335 Fed. Appx. 386.

No. 09–6925. POPE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 335 Fed. Appx. 598.

No. 09–7013. HUNT *v.* HOUSTON, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 8th Cir. Certiorari denied. Reported below: 563 F. 3d 695.

No. 09–7031. LEMONS *v.* ATLANTIC CITY POLICE DEPARTMENT ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 347 Fed. Appx. 722.

No. 09–7033. SMITH *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–7047. STRONG *v.* DRAGOVICH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT CHESTER, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–7048. RUSH *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–7051. GIBERSON *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 315 Fed. Appx. 634.

No. 09–7054. HOWARD *v.* UPTON, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 09–7056. GOOD *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 10 So. 3d 1130.

No. 09–7057. TAYLOR *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 09–7058. TULEY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–7063. TAYLOR *v.* SAMPSON ET AL. C. A. 6th Cir. Certiorari denied.

No. 09–7082. WARE *v.* HARRY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–7086. CALDERON-LOPEZ *v.* PUERTO RICO COURT OF FIRST INSTANCE, SAN JUAN PART, ET AL. C. A. 1st Cir. Certiorari denied.

No. 09–7087. BUNDRANT *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–7088. SALERNO *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 09–7092. PINKSTON *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 906 N. E. 2d 284.

No. 09–7096. LEMONS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 339 Fed. Appx. 494.

No. 09–7097. WILLIAMS *v.* JABE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 339 Fed. Appx. 317.

No. 09–7098. THOMAS *v.* KNOWLES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–7102. DRAKE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 09–7114. BOTTOMLEY *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 09–7116. BYRD *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–7119. BUSSEY *v.* MARSHALL, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 320 Fed. Appx. 54.

No. 09–7121. ORSELLO *v.* GAFFNEY ET AL. Ct. App. Minn. Certiorari denied.

No. 09–7125. JACKSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 09–7130. COBBLE *v.* OWENS, COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 09–7134. MILLER *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–7136. DANIEL *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–7140. ROBENSON *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 18 So. 3d 529.

No. 09–7141. REDD *v.* LEBLANC, SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 348 Fed. Appx. 10.

No. 09–7142. ROBINSON *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 11 So. 3d 962.

No. 09–7144. SHARRIEFF *v.* RICCI, ASSOCIATE ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 574 F. 3d 225.

No. 09–7161. JONES *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 387 Ill. App. 3d 1179, 981 N. E. 2d 537.

No. 09–7165. ROJEM *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 207 P. 3d 385.

No. 09–7167. WALLS *v.* CANNON, JUDGE, CIRCUIT COURT OF ILLINOIS, COOK COUNTY. C. A. 7th Cir. Certiorari denied.

No. 09–7173. MONACELLI *v.* TARGET STORES ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–7174. MONACELLI *v.* ENTERPRISE LEASING CO. ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–7175. MONACELLI *v.* EDISON STATE COLLEGE ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–7191. HIGGINS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 385 Ill. App. 3d 1129, 970 N. E. 2d 128.

No. 09–7197. MULVEY *v.* NAITO. Int. Ct. App. Haw. Certiorari denied. Reported below: 120 Haw. 383, 205 P. 3d 648.

No. 09–7199. BEAL *v.* LEVINE ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied.

No. 09–7203. MILLER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 09–7206. VIZCARRA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 09–7218. AUSTIN *v.* MCCANN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 09–7219. MILLER *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 965 A. 2d 276.

No. 09–7225. CRUTCHFIELD *v.* FLORIDA DEPARTMENT OF CORRECTIONS ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–7228. WOODS *v.* MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 284 S. W. 3d 630.

No. 09–7232. TIFFER *v.* WORKER'S COMPENSATION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 332 Fed. Appx. 108.

No. 09–7233. PAYNE *v.* TINSLEY ET AL. C. A. 6th Cir. Certiorari denied.

No. 09–7239. JEFFERS *v.* MIZE, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 09–7244. WATKINS *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 285 Ga. 107, 674 S. E. 2d 275.

No. 09–7245. YENGLEE *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–7247. WILLIAMS *v.* HOREL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 341 Fed. Appx. 333.

No. 09–7259. REDMAN *v.* POTOMAC PLACE ASSOCIATES, LLC. Ct. App. D. C. Certiorari denied. Reported below: 972 A. 2d 316.

No. 09–7262. ROBERTS *v.* JENKINS, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 670.

No. 09–7263. SANDERS *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 17 So. 3d 1242.

No. 09–7264. STEPHENS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 09–7265. SUTTON *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 09–7267. TEAGLE *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 336 Fed. Appx. 209.

No. 09–7268. PARKER *v.* ALLEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 565 F. 3d 1258.

No. 09–7270. RUST *v.* SANDOR, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 346 Fed. Appx. 163.

No. 09–7272. STEPHENS *v.* BRANKER, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 570 F. 3d 198.

No. 09–7277. EPPS *v.* WAGNER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 133.

No. 09–7278. CAMILLO *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 345 Fed. Appx. 576.

No. 09–7279. CHRISTENSEN *v.* NEVADA. Sup. Ct. Nev. Certiorari denied.

No. 09–7280. FARNSWORTH *v.* MCNEIL ET AL. C. A. 6th Cir. Certiorari denied.

No. 09–7283. MARTIN *v.* LUOMA, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–7284. ST. AMANT *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 17 So. 3d 376.

No. 09–7286. ROSSER *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–7287. STEWART *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 09–7291. WILLIAMS *v.* VIRGINIA ET AL. Sup. Ct. Va. Certiorari denied.

No. 09–7292. VALENZUELA *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 09–7293. CREWS *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 11 So. 3d 401.

No. 09–7297. PRECIADO *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 343 Fed. Appx. 234.

No. 09–7302. BRZOWSKI *v.* TRISTANO ET AL. C. A. 7th Cir. Certiorari denied.

No. 09–7305. JOHNS *v.* MICHIGAN DEPARTMENT OF CORRECTIONS ET AL. C. A. 6th Cir. Certiorari denied.

No. 09–7308. BING YU *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 145 Wash. App. 1035.

No. 09–7309. WRIGHT *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 285 Ga. 428, 677 S. E. 2d 82.

No. 09–7311. DEL CASTELLO *v.* ALAMEDA COUNTY TRANSIT PARKING ENFORCEMENT CENTER. C. A. 9th Cir. Certiorari denied.

No. 09–7313. GRONTKOWSKI *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 09–7320. HAYGOOD ET UX. *v.* TILLEY. Ct. App. Ga. Certiorari denied. Reported below: 295 Ga. App. 90, 670 S. E. 2d 800.

No. 09–7325. GADDY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 337 Fed. Appx. 333.

No. 09–7330. WELLS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 09–7333. JOHNSON *v.* SISTO, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 19.

No. 09–7338. WILLIAMS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 287.

No. 09–7347. ABBOTT *v.* DEKALB ET AL. Sup. Ct. Ore. Certiorari denied. Reported below: 346 Ore. 306, 211 P. 3d 246.

No. 09–7350. ENNIS *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–7352. DAVIS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 46 Cal. 4th 539, 208 P. 3d 78.

No. 09–7353. POWELL *v.* CITY OF CHICAGO HUMAN RIGHTS COMMISSION ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 389 Ill. App. 3d 45, 906 N. E. 2d 24.

No. 09–7354. ALEXANDER *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied.

No. 09–7357. SCHRADER *v.* TURNER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 338 Fed. Appx. 761.

No. 09–7360. BUNCHE *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Wake County, N. C. Certiorari denied.

No. 09–7363. STEPPE *v.* CALIFORNIA INSURANCE COMMISSIONER. C. A. 9th Cir. Certiorari denied.

No. 09–7365. SMITH *v.* BRIDGESTONE FIRESTONE TIRE CO. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 874.

No. 09–7366. SMITH *v.* STRENGTH, SHERIFF, RICHMOND COUNTY, GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–7367. RICHARDSON *v.* MICHIGAN STATE TREASURER. C. A. 6th Cir. Certiorari denied.

No. 09–7377. CRISOSTOMOS *v.* LAWLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–7381. MILLER *v.* ROCK HILL CITY POLICE DEPARTMENT. C. A. 4th Cir. Certiorari denied. Reported below: 333 Fed. Appx. 703.

No. 09–7383. CHATMAN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 387 Ill. App. 3d 1177, 981 N. E. 2d 536.

No. 09–7388. GAW *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 285 S. W. 3d 318.

No. 09–7390. HOUSTON *v.* TEXAS. Ct. App. Tex., 9th Dist. Certiorari denied. Reported below: 286 S. W. 3d 604.

No. 09–7391. GUTZMORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 339 Fed. Appx. 985.

No. 09–7392. HAMILTON *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–7394. DIGGS *v.* STEVENSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 282.

No. 09–7399. SUGGS *v.* LINDAMOOD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–7400. MOORE *v.* DOE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 393.

No. 09–7402. KAZOUN *v.* KAZOUN. Ct. App. Ohio, Summit County. Certiorari denied.

No. 09–7410. HYNES *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied. Reported below: 159 N. H. 187, 978 A. 2d 264.

No. 09–7412. MCGRATH *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–7413. LEWIS *v.* BURGER KING. C. A. 10th Cir. Certiorari denied. Reported below: 344 Fed. Appx. 470.

No. 09–7415. STRONG *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 961 A. 2d 1284.

No. 09–7426. DAVIS *v.* CALIFORNIA WESTERN SCHOOL OF LAW ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 349 Fed. Appx. 218.

No. 09–7448. PENA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 09–7456. HAMMOND *v.* KELLER, SECRETARY, NORTH CAROLINA DEPARTMENT OF CORRECTION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 306 Fed. Appx. 830.

No. 09–7458. GARNTO *v.* MEKUSKER ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–7468. DENOMA *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 09–7469. COOK *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–7483. NOWLIN *v.* HAMRICK, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 09–7484. VASQUEZ *v.* KIRKLAND, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 572 F. 3d 1029.

No. 09–7487. MENDOZA *v.* STEELE, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 09–7488. AVILA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 46 Cal. 4th 680, 208 P. 3d 634.

No. 09–7490. WARFIELD *v.* GRAMS, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 341 Fed. Appx. 227.

No. 09–7504. H. R. *v.* ALAMEDA COUNTY SOCIAL SERVICES AGENCY. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 09–7507. ALLISON *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–7508. BACKUS *v.* HARTLEY, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 346 Fed. Appx. 336.

No. 09–7513. BROWN *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied.

No. 09–7520. BARBER *v.* WALKER, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 09–7523. WATSON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 09–7539. BOCTOR *v.* DEPARTMENT OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 342 Fed. Appx. 625.

No. 09–7548. EMBRY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 341 Fed. Appx. 187.

No. 09–7556. MYRIECKES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 09–7563. DYKES *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 46 Cal. 4th 731, 209 P. 3d 1.

No. 09–7582. KARR *v.* ARIZONA. Ct. App. Ariz. Certiorari denied. Reported below: 221 Ariz. 319, 212 P. 3d 11.

No. 09–7583. LINDSEY *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 285 Ga. 718, 681 S. E. 2d 141.

No. 09–7586. WATSON *v.* MILYARD, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 335 Fed. Appx. 741.

No. 09–7601. SAYBOLT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 577 F. 3d 195.

No. 09–7605. ROBBINS *v.* SMITH, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 09–7613. QUENGA *v.* LANIER, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 09–7622. SPEARS *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 19 So. 3d 992.

No. 09–7626. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 381.

No. 09–7627. ROSS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–7630. CEDENO-PEREZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 579 F. 3d 54.

No. 09–7632. CLINTON *v.* DIGUGLIELMO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD. C. A. 3d Cir. Certiorari denied.

No. 09–7635. PENA-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 342 Fed. Appx. 52.

No. 09–7641. VILLAFRANCA-MENDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–7642. WITHERSPOON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 09–7645. LOPEZ-FRAUSTO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 09–7648. SOSA-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 340 Fed. Appx. 987.

No. 09–7650. JOHNSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 332 Fed. Appx. 318.

No. 09–7652. SMITH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 569 F. 3d 1209.

No. 09–7656. CARMICHAEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 560 F. 3d 1270.

No. 09–7662. WORKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 338 Fed. Appx. 295.

No. 09–7663. TRENKLER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–7664. TILLERY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–7668. CHAPPELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 333 Fed. Appx. 728.

No. 09–7669. OSLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 349 Fed. Appx. 418.

No. 09–7671. PONCE-ALDONA, AKA PONCE-ALDANA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 579 F. 3d 1218.

No. 09–7675. SMALLS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 342 Fed. Appx. 505.

No. 09–7676. STERNBERG *v.* MICHIGAN STATE UNIVERSITY ET AL. Ct. App. Mich. Certiorari denied.

No. 09–7679. ARMBRISTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 343 Fed. Appx. 213.

No. 09–7680. BROWN *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA. C. A. 11th Cir. Certiorari denied.

No. 09–7681. BRIDGES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 241.

No. 09–7682. ALDRIDGE ET UX. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 561 F. 3d 759.

No. 09–7684. DAVIS *v.* UNITED STATES ET AL.; and DAVIS *v.* KANSAS STATE BOARD OF INDIGENT DEFENSE SERVICES ET AL. C. A. 10th Cir. Certiorari denied.

No. 09–7687. WILK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 572 F. 3d 1229.

No. 09–7689. NELSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 342 Fed. Appx. 215.

No. 09–7691. LEASURE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 331 Fed. Appx. 370.

No. 09–7695. BANDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 331 Fed. Appx. 311.

No. 09–7700. GOMEZ-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 349 Fed. Appx. 2.

No. 09–7703. GATLING *v.* UNITED STATES (two judgments). Ct. App. D. C. Certiorari denied.

No. 09–7704. FLORES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 341 Fed. Appx. 386.

No. 09–7705. HEALD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–7708. JIMENEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 344 Fed. Appx. 361.

No. 09–7709. MATHEWS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–7710. KEITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 341 Fed. Appx. 975.

No. 09–7712. MARTIN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 353 Fed. Appx. 140.

No. 09–7713. MAXWELL *v.* INTERNAL REVENUE SERVICE ET AL. C. A. 6th Cir. Certiorari denied.

No. 09–7715. PLATTE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 577 F. 3d 387.

No. 09–7716. PERKINS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 342 Fed. Appx. 403.

No. 09–7717. PURSLEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 577 F. 3d 1204.

No. 09–7718. PAIGE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 340 Fed. Appx. 804.

No. 09–7719. BAKER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 343 Fed. Appx. 194.

No. 09–7720. BREAULT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 344 Fed. Appx. 358.

No. 09–7721. BOWIE *v.* THURMER, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 342 Fed. Appx. 200.

No. 09–7723. PURYEAR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 335 Fed. Appx. 291.

No. 09–7726. TRUETTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–7727. TRULY *v.* ROBERT, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 347 Fed. Appx. 231.

No. 09–7738. MUHAMMAD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 337 Fed. Appx. 349.

No. 09–7739. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 566 F. 3d 410.

No. 09–7743. HARRELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 341 Fed. Appx. 965.

No. 09–7744. MONDRAGON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–7745. FLORES-SOTELO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 343 Fed. Appx. 404.

No. 09–7746. GARCIA-AGUILAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 339 Fed. Appx. 736.

No. 09–7747. GARIBAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 334 Fed. Appx. 91.

No. 09–7748. HILL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–7750. MURPHY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–7751. PADILLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 321 Fed. Appx. 382.

No. 09–7752. LUGO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 09–7755. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 333 Fed. Appx. 501.

No. 09–7756. MENDOZA ALCALA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 341 Fed. Appx. 985.

No. 09–7762. MARTINEZ-TORRES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–7765. JAMES *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 968 A. 2d 523.

No. 09–7766. LAUDERDALE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 571 F. 3d 657.

No. 09–7771. UPSHAW *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 898.

No. 09–7772. WARMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 578 F. 3d 320.

No. 09–7775. CHATMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 351 Fed. Appx. 658.

No. 09–7776. CIRILO-MUNOZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 582 F. 3d 54.

No. 09–7779. LOPEZ-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 332 Fed. Appx. 417.

No. 09–7781. LOPEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 343 Fed. Appx. 314.

No. 09–7782. WILKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 499.

No. 09–7783. RANDLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–7787. BURLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 325 Fed. Appx. 854.

No. 09–7788. BLAKE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 571 F. 3d 331.

No. 09–7792. RIVERA TORRES *v.* UNITED STATES; and
No. 09–7834. RIVERA CALDERON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 578 F. 3d 78.

No. 09–7799. SWAIN *v.* BARTLESON. Sup. Ct. Ohio. Certiorari denied. Reported below: 123 Ohio St. 3d 125, 914 N. E. 2d 403.

No. 09–7803. FRANK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 336 Fed. Appx. 581.

No. 09–7805. PAKALA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 568 F. 3d 47.

No. 09–7806. MILES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 346 Fed. Appx. 993.

No. 09–7807. ORR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 333 Fed. Appx. 709.

No. 09–7810. WILSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 344 Fed. Appx. 134.

No. 09–7812. PLUMMER ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 581 F. 3d 484.

No. 09–7814. MCCLELLON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 578 F. 3d 846.

No. 09–7827. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 579 F. 3d 672.

No. 09–7828. BRANTLEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 342 Fed. Appx. 762.

No. 09–7831. CARON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 09–7832. EVANS *v.* MITCHELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 344 Fed. Appx. 234.

No. 09–7841. WELCH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 577 F. 3d 195.

No. 09–7847. SALDANA, AKA RIVERA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 343 Fed. Appx. 486.

No. 09–7848. RODRIGUEZ-LAGUNA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 344 Fed. Appx. 381.

No. 09–7849. SANDOVAL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 572 F. 3d 1254.

No. 09–7850. SANCHEZ SALCIDO, AKA SALCIDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 342 Fed. Appx. 976.

No. 09–7851. SMITH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 332 Fed. Appx. 438.

No. 09–7852. RENE E., A JUVENILE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 583 F. 3d 8.

No. 09–7854. THIELEMANN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 575 F. 3d 265.

No. 09–7857. PLIEGO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 578 F. 3d 938.

No. 09–7859. CULLISON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 969 A. 2d 895.

No. 09–7861. ROBINSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 340.

No. 09–7864. PIRTLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 236.

No. 09–7869. FOUNTAIN, AKA MATTHEWS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 09–7871. GARCIA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 577 F. 3d 1271.

No. 09–7872. HUTTINGER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 350 Fed. Appx. 147.

No. 09–7875. FLUCKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 343 Fed. Appx. 474.

No. 09–7876. HOLMAN *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. 7th Cir. Certiorari denied.

No. 09–7881. MCRAE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 336 Fed. Appx. 301.

No. 09–7886. WILSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 337 Fed. Appx. 747.

No. 09–7888. LE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 344 Fed. Appx. 821.

No. 09–7889. JUVENILE FEMALE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 566 F. 3d 943.

No. 09–7898. STEVENS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 580 F. 3d 718.

No. 09–7899. QUINTANILLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 09–7901. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–7904. DAVIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 09–7906. OJEDA-ESTRADA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 577 F. 3d 871.

No. 09–7907. ESTES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 343 Fed. Appx. 97.

No. 09–7911. CHRISTENSEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 582 F. 3d 860.

No. 09–7913. WATFORD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–7919. BACA-QUIROZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 344 Fed. Appx. 362.

No. 09–7926. ISOM *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 580 F. 3d 43.

No. 09–7930. OLANDER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 572 F. 3d 764.

No. 09–7936. LEA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 350 Fed. Appx. 754.

No. 09–7942. BOYCE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 564 F. 3d 911.

No. 09–7943. BERRO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 348 Fed. Appx. 98.

No. 09–7944. AUGUSTINE-NERI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 343 Fed. Appx. 920.

No. 09–7954. MEZA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 351 Fed. Appx. 396.

No. 09–7957. MATTHEWS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 305 Fed. Appx. 106.

No. 09–7958. GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 336 Fed. Appx. 701.

No. 09–7962. WHEELER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 632.

No. 09–7965. JOHNSON *v.* UNITED STATES ET AL. (Reported below: 580 F. 3d 666); and WARD ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–7971. SHAW *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 343 Fed. Appx. 936.

No. 09–7972. STONE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 575 F. 3d 83.

No. 09–7973. BELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–7974. ALLEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 344 Fed. Appx. 844.

No. 09–7975. ROSENBAUM *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 585 F. 3d 259.

No. 09–7980. TAYLOR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 582 F. 3d 558.

No. 09–7983. TROGDON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 575 F. 3d 762.

No. 09–264. CENTAURI SHIPPING LTD. *v.* WESTERN BULK CARRIERS KS ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 323 Fed. Appx. 36.

No. 09–272. ATHENS DISPOSAL CO., INC., DBA ATHENS SERVICES *v.* FRANCO. Ct. App. Cal., 2d App. Dist. Motion of Pacific Legal Foundation et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 171 Cal. App. 4th 1277, 90 Cal. Rptr. 3d 539.

No. 09–288. PUGET SOUND ENERGY, INC., ET AL. *v.* CALIFORNIA ET AL. C. A. 9th Cir. Motion of Law Professors for leave to file a brief as *amici curiae* granted. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this motion and this petition. Reported below: 499 F. 3d 1016.

No. 09–335. ASTELLAS PHARMA, INC. *v.* LUPIN LTD. ET AL. C. A. Fed. Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 566 F. 3d 1282.

No. 09–458. WEINSTOCK *v.* WALKER. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 331 Fed. Appx. 101.

No. 09–471. FALCHENBERG *v.* NEW YORK STATE DEPARTMENT OF EDUCATION ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 338 Fed. Appx. 11.

No. 09–481. SHEEHAN *v.* JACKSON ET AL. C. A. 4th Cir. Motion of Roger Schlossberg et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 574 F. 3d 248.

No. 09–494. CRAWFORD ET AL. *v.* TRW AUTOMOTIVE U. S. LLC. C. A. 6th Cir. Motion of Maurice & Jane Sugar Law Center for Economic & Social Justice et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 560 F. 3d 607.

No. 09–500. DE GEORGE *v.* AMERICAN AIRLINES, INC., ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 338 Fed. Appx. 15.

No. 09–519. ALAMEIDA, WARDEN *v.* PHELPS. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 569 F. 3d 1120.

No. 09–560. CARLSON, WARDEN *v.* BOBADILLA. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 575 F. 3d 785.

No. 09–589. NGHIEM *v.* DEPARTMENT OF VETERANS AFFAIRS ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 323 Fed. Appx. 16.

No. 09–609. PITCHER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 559 F. 3d 120.

No. 09–5852. NICHOLAS *v.* MARSHALL, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 329 Fed. Appx. 313.

No. 09–6231. EL-HAGE, AKA SABBUR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 552 F. 3d 93, 157, and 177.

No. 09–7043. ALMEYDA *v.* TRAVIS. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 326 Fed. Appx. 585.

No. 09–7089. MABRY *v.* SCRIBNER, WARDEN, ET AL. C. A. 9th Cir. Certiorari before judgment denied.

No. 09–7153. SMITH *v.* TAYLOR ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 328 Fed. Appx. 739.

No. 09–7188. AGRON *v.* COLUMBIA UNIVERSITY. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 09–7535. SILVA *v.* HOLDER, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 303 Fed. Appx. 22.

No. 09–7591. BLAKE *v.* POTTER, POSTMASTER GENERAL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 330 Fed. Appx. 232.

No. 09–7702. GIORDANO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 340 Fed. Appx. 751.

No. 09–7732. OKUPE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 09–7804. MEJIA-ZAPATA, AKA ZAPATA, AKA MEGIA, AKA MEJIA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 327 Fed. Appx. 292.

No. 09–7816. MAIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 579 F. 3d 200.

Rehearing Denied

No. 08–1263. WONG, WARDEN *v.* BELMONTES, *ante*, p. 15;

No. 08–10337. BISBY *v.* CRITES, ASSISTANT WARDEN, ET AL., *ante*, p. 990;

No. 08–10438. GONZALEZ *v.* SMITH ET AL., *ante*, p. 840;

No. 08–10487. WIDNER *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 841;

No. 08–10510. HARPER *v.* SOUTHERN STAR CONCRETE, *ante*, p. 842;

No. 08–10625. GWANJUN KIM *v.* DEPARTMENT OF LABOR ET AL., *ante*, p. 1023;

No. 08–10693. CANDIA *v.* UNITED STATES, *ante*, p. 848;

No. 08–10833. BENHAM *v.* UNITED STATES, *ante*, p. 856;

No. 08–11142. BURKE *v.* UNITED STATES, *ante*, p. 873;

No. 09–120. T. G. *v.* KENTUCKY CABINET FOR HEALTH AND FAMILY SERVICES, *ante*, p. 878;

No. 09–202. WARD *v.* TRANS UNION, LLC, *ante*, p. 990;

No. 09–283. REEVES *v.* DSI SECURITY SERVICES ET AL., *ante*, p. 992;

No. 09–334. HEIMERMANN *v.* MCCAUGHTRY ET AL., *ante*, p. 992;

No. 09–407. ABREU-VELEZ *v.* BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA ET AL., *ante*, p. 1025;

No. 09–413. HUSBAND *v.* UNITED STATES, *ante*, p. 1012;

No. 09–433. WILLS *v.* POTTER, POSTMASTER GENERAL, *ante*, p. 1025;

No. 09–5023. MAXWELL *v.* ARKANSAS, *ante*, p. 883;

No. 09–5043. HOVIND *v.* UNITED STATES, *ante*, p. 992;

No. 09–5053. GRUFF *v.* WILSON, WARDEN, ET AL., *ante*, p. 884;

No. 09–5068. HALLFORD *v.* CALIFORNIA, *ante*, p. 885;

No. 09–5089. GATEWOOD *v.* OUTLAW, WARDEN, *ante*, p. 993;

No. 09–5187. HOFFMAN *v.* LINCOLN GENERAL INSURANCE ET AL., *ante*, p. 891;

No. 09–5293. LETIZIA *v.* NEW YORK, *ante*, p. 896;

No. 09–5306. LACHIRA *v.* SUTTON, *ante*, p. 897;

No. 09–5308. IN RE JOHNSON, *ante*, p. 812;

No. 09–5346. POTTER *v.* SOUTH COAST PLUMBING SYSTEMS, INC., ET AL., *ante*, p. 1026;

No. 09–5368. SCOTT *v.* HICKMAN, WARDEN, *ante*, p. 900;

No. 09–5475. CORDELL *v.* SABOL, WARDEN, ET AL., *ante*, p. 905;

No. 09–5493. ROGERS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 906;

No. 09–5545. GHARB *v.* UNITRONICS (1989) (R"G) LTD. ET AL., *ante*, p. 909;

No. 09–5594. VAN MYERS *v.* ENNIS INDEPENDENT SCHOOL DISTRICT, *ante*, p. 912;

No. 09–5647. HUGHES *v.* UNITED STATES, *ante*, p. 914;

No. 09–5693. MOORE *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 950;

No. 09–5701. MCFARLAND *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 950;

No. 09–5719. IN RE BOJONQUEZ, *ante*, p. 812;

No. 09–5746. BARBOUR *v.* UNITED STATES, *ante*, p. 917;

No. 09–5756. PHILLIPS *v.* DISTRICT OF COLUMBIA ET AL., *ante*, p. 952;

No. 09–5825. TORRENCE *v.* OZMINT, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, *ante*, p. 953;

No. 09–5831. JORDAN *v.* UNITED STATES, *ante*, p. 920;

No. 09–5843. LYLES *v.* LEMMON ET AL., *ante*, p. 953;

No. 09–5872. PEOPLES *v.* WILLIAMS ET AL., *ante*, p. 954;

No. 09–5880. IN RE COPPAGE, *ante*, p. 813;

No. 09–5925. LINTON *v.* HOLDER, ATTORNEY GENERAL, *ante*, p. 955;

No. 09–5960. LONG ET UX. *v.* WOOD MIZER PRODUCTS INC., *ante*, p. 971;

No. 09–5988. WARMAN *v.* MARBERRY, WARDEN, ET AL., *ante*, p. 955;

No. 09–6010. GURNSEY *v.* CALIFORNIA ET AL., *ante*, p. 955;

No. 09–6064. FAN *v.* ROE, *ante*, p. 973;

No. 09–6068. CUTAIA *v.* FLORIDA, *ante*, p. 994;

No. 09–6124. HOFFMAN *v.* UNITED STATES, *ante*, p. 929;

No. 09–6135. CAIN *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, *ante*, p. 995;

No. 09–6166. JUDD *v.* NEW MEXICO, *ante*, p. 996;

No. 09–6270. DAVIS *v.* KNOWLES ET AL., *ante*, p. 998;

No. 09–6282. DERRICKSON *v.* DISTRICT ATTORNEY OF DELAWARE COUNTY ET AL., *ante*, p. 998;

No. 09–6328. YEAGER *v.* CITY OF SAN DIEGO, CALIFORNIA, ET AL., *ante*, p. 1013;

No. 09–6414. IN RE RAMIREZ, *ante*, p. 944;

No. 09–6437. YODER *v.* BREWER, GOVERNOR OF ARIZONA, ET AL., *ante*, p. 1000;

No. 09–6469. DANIEL *v.* SCOTT ET AL., *ante*, p. 1028;

No. 09–6487. JONES *v.* UNITED STATES, *ante*, p. 963;

No. 09–6512. SMITH *v.* WEBER, WARDEN, *ante*, p. 1000;
No. 09–6542. MONACELLI *v.* LEE COUNTY EDUCATION ASSN. ET AL., *ante*, p. 1030;
No. 09–6543. MONACELLI *v.* HEARTLAND EDUCATIONAL CONSORTIUM ET AL., *ante*, p. 1030;
No. 09–6562. ELIZARES *v.* THOMAS, WARDEN, ET AL., *ante*, p. 1000;
No. 09–6563. MONACELLI *v.* HEARTLAND EDUCATIONAL CONSORTIUM ET AL., *ante*, p. 1030;
No. 09–6572. WHEELER *v.* MILLER, *ante*, p. 1000;
No. 09–6584. BOWMAN *v.* COLORADO, *ante*, p. 1001;
No. 09–6601. TROTTER *v.* GATES, SECRETARY OF DEFENSE, *ante*, p. 1001.
No. 09–6677. IN RE WARREN, *ante*, p. 968;
No. 09–6804. HAMANI *v.* UNITED STATES, *ante*, p. 1005;
No. 09–7005. WISE *v.* FLOYD, JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA, ET AL., *ante*, p. 1033;
No. 09–7036. KARIM-PANAHI *v.* UNITED STATES, *ante*, p. 1034; and
No. 09–7137. NELSON *v.* UNITED STATES, *ante*, p. 1037. Petitions for rehearing denied.

No. 08–11058. SAMAS *v.* UNITED STATES, *ante*, p. 937;
No. 09–312. GREENE *v.* HANOVER DIRECT, INC., ET AL., *ante*, p. 1019;
No. 09–424. PANNELL *v.* UNITED STATES, *ante*, p. 1019; and
No. 09–5726. PEACE *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY, *ante*, p. 941. Petitions for rehearing denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of these petitions.

No. 08–10112. CURTIS *v.* OREGON, *ante*, p. 832; and
No. 09–5922. CURTIS *v.* UNITED STATES, *ante*, p. 922. Motions for leave to file petitions for rehearing denied.

JANUARY 12, 2010

Miscellaneous Order. (For the Court's order approving revisions to the Rules of this Court, see *post*, p. 1162.)

Certiorari Denied

No. 09–8394 (09A628). JOHNSON *v.* TEXAS. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, pre-

sented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied.

JANUARY 13, 2010

Dismissal Under Rule 46

No. 09–6679. HARTMAN *v.* STRICKLAND, GOVERNOR OF OHIO, ET AL. C. A. 6th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 336 Fed. Appx. 497.

JANUARY 15, 2010

Certiorari Granted

No. 09–337. KRUPSKI *v.* COSTA CROCIERE S. P. A. C. A. 11th Cir. Certiorari granted. Petitioner's brief is to be filed on or before Thursday, February 25, 2010. Respondent's brief is to be filed on or before Thursday, March 25, 2010. Reply briefs, if any, are to be filed in accordance with this Court's Rule 25.3. Reported below: 330 Fed. Appx. 892.

No. 09–448. HARDT *v.* RELIANCE STANDARD LIFE INSURANCE CO. C. A. 4th Cir. Certiorari granted. Petitioner's brief is to be filed on or before Thursday, February 25, 2010. Respondent's brief is to be filed on or before Thursday, March 25, 2010. Reply briefs, if any, are to be filed in accordance with this Court's Rule 25.3. Reported below: 336 Fed. Appx. 332.

No. 09–475. MONSANTO CO. ET AL. *v.* GEERTSON SEED FARMS ET AL. C. A. 9th Cir. Certiorari granted. Petitioners' brief is to be filed on or before Thursday, February 25, 2010. Respondents' brief is to be filed on or before Thursday, March 25, 2010. Reply briefs, if any, are to be filed in accordance with this Court's Rule 25.3. JUSTICE Breyer took no part in the consideration or decision of this petition. Reported below: 570 F. 3d 1130.

No. 09–497. RENT-A-CENTER, WEST, INC. *v.* JACKSON. C. A. 9th Cir. Certiorari granted. Petitioner's brief is to be filed on or before Thursday, February 25, 2010. Respondent's brief is to be filed on or before Thursday, March 25, 2010. Reply briefs, if any, are to be filed in accordance with this Court's Rule 25.3. Reported below: 581 F. 3d 912.

No. 09–559. DOE ET AL. *v.* REED, SECRETARY OF STATE OF WASHINGTON, ET AL. C. A. 9th Cir. Certiorari granted. Peti-

tioners' brief is to be filed on or before Thursday, February 25, 2010. Respondents' brief is to be filed on or before Thursday, March 25, 2010. Reply briefs, if any, are to be filed in accordance with this Court's Rule 25.3. Reported below: 586 F. 3d 671.

JANUARY 19, 2010

Appeals Dismissed

No. 09–416. SCHWARZENEGGER, GOVERNOR OF CALIFORNIA, ET AL. *v.* PLATA ET AL.; and

No. 09–553. CALIFORNIA STATE REPUBLICAN LEGISLATOR INTERVENORS ET AL. *v.* PLATA ET AL. Appeals from D. C. E. D. & D. C. N. D. Cal. dismissed for want of jurisdiction. The Court takes note that a further order has been entered in these cases, but that order is not the subject of these appeals. It is also noted that the District Court has stayed its further order pending review by this Court.

Certiorari Granted—Reversed and Remanded. (See No. 09–5270, *ante*, p. 209.)

Certiorari Granted—Vacated and Remanded. (See also No. 09–5731, *ante*, p. 220.)

No. 07–1483. PATRICK, WARDEN *v.* SMITH. C. A. 9th 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 *McDaniel* v. *Brown*, *ante*, p. 120 *(per curiam)*. Reported below: 508 F. 3d 1256.

No. 08–652. BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. *v.* ABU-JAMAL. C. A. 3d 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 *Smith* v. *Spisak*, *ante*, p. 139. Reported below: 520 F. 3d 272.

No. 08–7757. WATTS *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 the position asserted by the Solicitor General in her brief for the United States filed on May 8, 2009.

No. 09–122. HUNTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari granted, judgment vacated, and case remanded for fur-

ther consideration in light of the position asserted by the Solicitor General in her brief for the United States filed on November 25, 2009. Reported below: 559 F. 3d 1188.

No. 09–5370. VAZQUEZ *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 the position asserted by the Solicitor General in her brief for the United States filed on November 16, 2009. Reported below: 558 F. 3d 1224.

No. 09–5995. JOHNSON *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 *Abuelhawa* v. *United States*, 556 U. S. 816 (2009). Reported below: 561 F. 3d 864.

No. 09–7408. LINTON *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 *United States* v. *Booker*, 543 U. S. 220 (2005).

Certiorari Dismissed

No. 09–7452. SLEZAK *v.* GLOVER ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 326 Fed. Appx. 236.

No. 09–7461. GHEE *v.* TARGET NATIONAL BANK. Ct. App. Ga. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 09–7498. HON LAU *v.* BROWN, ATTORNEY GENERAL 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.

No. 09–7499. HON LAU *v.* ADAMS, WARDEN. 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. 09–7537. ADAMSON *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Dist. Ct. App. Fla., 1st Dist. Mo-

tion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 15 So. 3d 582.

No. 09–7599. BAILEY *v.* WAKEFIELD ET AL. 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. 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. 09A541. NORTON *v.* FANNIE MAE. Ct. App. Ga. Application for stay, addressed to JUSTICE SOTOMAYOR and referred to the Court, denied.

No. 09M63. KASTNER *v.* MARTIN & DROUGHT, INC., FKA MARTIN, DROUGHT & TORRES, INC., ET AL.; and

No. 09M64. COOLEY *v.* ST. BERNARD PARISH BUREAU OF PRISONS ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 1, Orig. WISCONSIN ET AL. *v.* ILLINOIS ET AL.;

No. 2, Orig. MICHIGAN *v.* ILLINOIS ET AL.; and

No. 3, Orig. NEW YORK *v.* ILLINOIS ET AL. Motion of Michigan for preliminary injunction denied. [For earlier order herein, see, *e. g.*, 449 U. S. 48.]

No. 08–1234. KIYEMBA ET AL. *v.* OBAMA, PRESIDENT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 969.] Motion of petitioners for leave to proceed *in forma pauperis* granted.

No. 09–338. RENICO, WARDEN *v.* LETT. C. A. 6th Cir. [Certiorari granted, *ante*, p. 1047.] Motion of respondent for appointment of counsel granted. Marla R. McCowan, of Detroit, Mich., is appointed to serve as counsel for respondent in this case.

No. 09–529. VIRGINIA OFFICE OF PROTECTION AND ADVOCACY *v.* REINHARD, COMMISSIONER, VIRGINIA DEPARTMENT OF BEHAV-

IORAL HEALTH AND DEVELOPMENTAL SERVICES, ET AL. C. A. 4th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 09–6554. PLUMMER *v.* CALIFORNIA. Sup. Ct. Cal. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1021] denied.

No. 09–6764. ROYSE *v.* CORNING GLASS WORKS, INC. C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1046] denied.

No. 09–6888. BEAVER *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1074] denied.

No. 09–6916. HOWARD *v.* SUPREME COURT OF OHIO ET AL. C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1087] denied.

No. 09–7550. JONES *v.* LIBERTY BANK & TRUST CO. ET AL. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until February 9, 2010, 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. 09–7565. CORINES *v.* KILLIAN, WARDEN. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until February 9, 2010, 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. JUSTICE SOTOMAYOR took no part in the consideration or decision of this motion.

No. 09–8096. IN RE WALLS;
No. 09–8190. IN RE GUTIERREZ;
No. 09–8237. IN RE MILLER; and
No. 09–8285. IN RE BARTOLI. Petitions for writs of habeas corpus denied.

No. 09–7455. IN RE WILBER. Petition for writ of mandamus denied.

No. 09–7492. IN RE THOMAS. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied

No. 08–11060. FERGUSON *v.* WEST VIRGINIA. Cir. Ct. Kanawha County, W. Va. Certiorari denied.

No. 09–197. KIMCO OF EVANSVILLE, INC., NKA KCH ACQUISITION, INC., ET AL. *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 902 N. E. 2d 206.

No. 09–224. NICKELS *v.* GRAND TRUNK WESTERN RAILROAD, INC. C. A. 6th Cir. Certiorari denied. Reported below: 560 F. 3d 426.

No. 09–294. UNUS ET AL. *v.* KANE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 565 F. 3d 103.

No. 09–302. MASARIK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 567 F. 3d 901.

No. 09–310. WILLIAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 559 F. 3d 607.

No. 09–314. CITY OF VIRGINIA BEACH, VIRGINIA *v.* TANNER ET AL. Sup. Ct. Va. Certiorari denied. Reported below: 277 Va. 432, 674 S. E. 2d 848.

No. 09–325. ARONOV *v.* NAPOLITANO, SECRETARY OF HOMELAND SECURITY, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 562 F. 3d 84.

No. 09–343. EDISON ELECTRIC INSTITUTE ET AL. *v.* PIEDMONT ENVIRONMENTAL COUNCIL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 558 F. 3d 304.

No. 09–379. ALLMOND *v.* AKAL SECURITY, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 558 F. 3d 1312.

No. 09–385. BAKERY MACHINERY & FABRICATIONS, INC. *v.* TRADITIONAL BAKING, INC. C. A. 7th Cir. Certiorari denied. Reported below: 570 F. 3d 845.

No. 09–395. RICCI, ASSOCIATE ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. *v.* KAMIENSKI. C. A. 3d Cir. Certiorari denied. Reported below: 332 Fed. Appx. 740.

No. 09–412. SMC Corp. et al. *v.* Norgren, Inc., et al. C. A. Fed. Cir. Certiorari denied. Reported below: 336 Fed. Appx. 991.

No. 09–439. QSI Holdings, Inc., et al. *v.* Alford et al. C. A. 6th Cir. Certiorari denied. Reported below: 571 F. 3d 545.

No. 09–447. Hecker et al. *v.* Deere & Co. C. A. 7th Cir. Certiorari denied. Reported below: 556 F. 3d 575.

No. 09–518. Bullock *v.* Klein et al. C. A. 3d Cir. Certiorari denied. Reported below: 341 Fed. Appx. 812.

No. 09–549. United States et al. *v.* Smith. C. A. 10th Cir. Certiorari denied. Reported below: 561 F. 3d 1090.

No. 09–550. Fessler et ux. *v.* Kirk Sauer Community Development of Wilkes-Barre et al. C. A. 3d Cir. Certiorari denied. Reported below: 316 Fed. Appx. 174.

No. 09–555. Ashabranner *v.* Goodman, Individually and as Administratrix of the Estate of Goodman, Deceased; and

No. 09–574. Goodman, Individually and as Administratrix of the Estate of Goodman, Deceased *v.* Harris County, Texas, et al. C. A. 5th Cir. Certiorari denied. Reported below: 571 F. 3d 388.

No. 09–556. Schreiner *v.* Ewing et al. Ct. App. Wash. Certiorari denied. Reported below: 147 Wash. App. 1026.

No. 09–558. Ratcliff *v.* Texas. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 09–561. Parkhurst et ux., Individually and as Guardians and Next Friends of H. P. *v.* Tabor et al. C. A. 8th Cir. Certiorari denied. Reported below: 569 F. 3d 861.

No. 09–565. Bason *v.* Yukins, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 328 Fed. Appx. 323.

No. 09–568. Maremont Corp. *v.* St. John, Individually and as Administratrix ad Prosequendum of the Estate of St. John. C. A. 3d Cir. Certiorari denied.

No. 09–575. English-Speaking Union *v.* Johnson et al. C. A. D. C. Cir. Certiorari denied. Reported below: 321 Fed. Appx. 4.

No. 09–577. HALE ET AL. *v.* BEXAR COUNTY, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 342 Fed. Appx. 921.

No. 09–585. HARVEST INSTITUTE FREEDMAN FEDERATION ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 324 Fed. Appx. 923.

No. 09–586. O'CALLAGHAN ET AL. *v.* TEMPORARY GUARDIANSHIP OF MOULTON. Ct. App. Ind. Certiorari denied. Reported below: 903 N. E. 2d 1070.

No. 09–588. GOLDEN *v.* HOUSMAN, TRUSTEE, ET AL. Sup. Jud. Ct. Me. Certiorari denied.

No. 09–595. CIPTANAGARA *v.* HOLDER, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 840.

No. 09–598. MACDERMID, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF MACDERMID *v.* DISCOVER FINANCIAL SERVICES, DBA DISCOVER CHARGE CARD. C. A. 6th Cir. Certiorari denied. Reported below: 342 Fed. Appx. 138.

No. 09–603. COUNTY OF DELAWARE, PENNSYLVANIA, ET AL. *v.* FEDERAL AVIATION ADMINISTRATION ET AL.; and

No. 09–607. COUNTY OF ROCKLAND, NEW YORK, ET AL. *v.* FEDERAL AVIATION ADMINISTRATION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 335 Fed. Appx. 52.

No. 09–618. JIMINEZ *v.* VAUGHAN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 341 Fed. Appx. 890.

No. 09–633. CIMINI *v.* SMITH ET AL. App. Ct. Mass. Certiorari denied. Reported below: 74 Mass. App. 1122, 909 N. E. 2d 60.

No. 09–635. SHINNECOCK SMOKE SHOP *v.* KAPPOS, DIRECTOR, PATENT AND TRADEMARK OFFICE. C. A. Fed. Cir. Certiorari denied. Reported below: 571 F. 3d 1171.

No. 09–646. CARNIVAL CORP., DBA CARNIVAL CRUISE LINES, INC. *v.* THOMAS. C. A. 11th Cir. Certiorari denied. Reported below: 573 F. 3d 1113.

No. 09–649. KONOP *v.* HAWAIIAN AIRLINES, INC. C. A. 9th Cir. Certiorari denied. Reported below: 336 Fed. Appx. 705.

No. 09–651. HIRMER ET VIR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–653. GEARING *v.* CALIFORNIA. App. Div., Super. Ct. Cal., County of Los Angeles. Certiorari denied.

No. 09–655. WADE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 342 Fed. Appx. 375.

No. 09–691. EPIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 332 Fed. Appx. 409.

No. 09–692. OLIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 09–5202. BOOKER *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 5 So. 3d 356.

No. 09–5455. GILES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 560 F. 3d 754.

No. 09–6167. PATTERSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 561 F. 3d 1170.

No. 09–6179. AGUILERA-MEZA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 825.

No. 09–6245. HARGROVE *v.* WALKER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 708.

No. 09–6441. GLOVER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 335 Fed. Appx. 35.

No. 09–6457. MOLINA-GAZCA, AKA MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 571 F. 3d 470.

No. 09–6504. THOMPSON *v.* WILLIAMS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 320 Fed. Appx. 678.

No. 09–6577. MITCHELL *v.* O'BRIEN. Sup. Ct. Va. Certiorari denied.

No. 09–6605. BERRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 707.

No. 09–6650. PENDLETON *v.* BALLARD, WARDEN. Cir. Ct. Berkeley County, W. Va. Certiorari denied.

No. 09–6792. KERN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 336 Fed. Appx. 296.

No. 09–6835. VAN HOOSEN *v.* KRAMER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 319 Fed. Appx. 590.

No. 09–6846. WHITE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 571 F. 3d 365.

No. 09–6983. OWEN *v.* MCNEIL, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 568 F. 3d 894.

No. 09–6985. RUCKER *v.* ILLINOIS DEPARTMENT OF CHILDREN AND FAMILY SERVICES. C. A. 7th Cir. Certiorari denied. Reported below: 326 Fed. Appx. 397.

No. 09–7156. CORNWELL *v.* BOBBY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 559 F. 3d 398.

No. 09–7168. WADFORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 331 Fed. Appx. 198.

No. 09–7326. ISA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–7424. RAY *v.* FEDERAL INSURANCE CO. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 340 Fed. Appx. 105.

No. 09–7435. HAYWOOD *v.* BEDATSKY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 621.

No. 09–7442. JACKSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 18 So. 3d 1016.

No. 09–7443. HALE *v.* TENNIS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–7444. THOMAS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 09–7453. SAIRRAS *v.* SCHLEFFER ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 331 Fed. Appx. 698.

No. 09–7457. FULLER *v.* BERGH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–7460. HOOKS *v.* BRUTON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 316 Fed. Appx. 241.

No. 09–7466. CORDOVA ET AL. *v.* ARAGON ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 569 F. 3d 1183.

No. 09–7471. CHAVEZ *v.* SWARTHOUT, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 341 Fed. Appx. 341.

No. 09–7476. MURRAY *v.* MILWAUKEE COUNTY, WISCONSIN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 341 Fed. Appx. 213.

No. 09–7478. JOHNSON *v.* KELLY, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 09–7479. KETCHUM *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–7481. WILSON *v.* HAWS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 09–7496. LOGGINS *v.* CLINE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 317 Fed. Appx. 832.

No. 09–7497. KARES *v.* ENIEX ET AL. C. A. 6th Cir. Certiorari denied.

No. 09–7501. RUTLEDGE *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 344 Fed. Appx. 924.

No. 09–7503. STRAW *v.* KLOPOTOSKI, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–7506. BROWN *v.* KELLEY ET AL. Sup. Ct. Nev. Certiorari denied.

No. 09–7510. JENNER ET AL. *v.* ZAVARES, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 339 Fed. Appx. 879.

No. 09–7512. BEDFORD *v.* WEBB, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–7517. PEREZ *v.* TEXAS. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 09–7524. REESE *v.* TEXAS. Ct. App. Tex., 10th Dist. Certiorari denied.

No. 09–7525. WALDIE *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied. Reported below: 173 Cal. App. 4th 358, 92 Cal. Rptr. 3d 688.

No. 09–7526. TRUMP *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–7528. VILLARREAL *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 09–7534. VICTORIA *v.* CONWAY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 09–7538. BRONSON *v.* KELCHNER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT CAMP HILL, ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–7540. IVANOVA, AKA IVANOVA-WARNER *v.* MICHIGAN. Cir. Ct. Kent County, Mich. Certiorari denied.

No. 09–7542. GRUBER *v.* BUESCHER, SECRETARY OF STATE OF COLORADO, ET AL. Sup. Ct. Colo. Certiorari denied.

No. 09–7557. PERRY *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 09–7566. ERICKSON *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 74 Mass. App. 172, 905 N. E. 2d 127.

No. 09–7569. FELIX *v.* HOLDER, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 440.

No. 09–7570. MAJOR-DAVIS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 342 Fed. Appx. 952.

No. 09–7571. CLEVELAND *v.* ABERNATHY, MAYOR, CLEMSON, SOUTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 330 Fed. Appx. 39.

No. 09–7575. DAVIS *v.* EITEL ET AL. Sup. Ct. Nev. Certiorari denied.

No. 09–7587. VINNIE *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 454 Mass. 1016, 910 N. E. 2d 364.

No. 09–7593. ANTHONY *v.* THIRD CIRCUIT COURT OF MICHIGAN ET AL. C. A. 6th Cir. Certiorari denied.

No. 09–7597. MASON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 388 Ill. App. 3d 1138, 982 N. E. 2d 287.

No. 09–7600. BARNES *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–7606. TRAVALINE *v.* TRAVALINE. Super. Ct. Pa. Certiorari denied.

No. 09–7609. MOORE *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 09–7610. DILLEHAY *v.* DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 334 Fed. Appx. 53.

No. 09–7611. DIAZ *v.* TEXAS. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 09–7612. DUPONT *v.* GERRY, WARDEN. C. A. 1st Cir. Certiorari denied.

No. 09–7616. JOHNSON *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied.

No. 09–7617. MATYLINSKY *v.* BUDGE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 577 F. 3d 1083 and 344 Fed. Appx. 311.

No. 09–7619. VAN SWAIT *v.* EVANS, WARDEN (four judgments). C. A. 9th Cir. Certiorari denied.

No. 09–7625. SINGLETON *v.* JOHNSON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 323 Fed. Appx. 783.

No. 09–7651. NALL *v.* MCCALL, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 332 Fed. Appx. 101.

No. 09–7655. EVANS *v.* MERCY MEDICAL CENTER. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 09–7694. CHARLES *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 09–7696. SAQUIC-SACCHE *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 09–7701. GOLDEN *v.* HUBBELL INC. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 343 Fed. Appx. 226.

No. 09–7761. LASKEY *v.* VISION INFOSOFT. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 09–7790. WHITE *v.* FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES. C. A. 11th Cir. Certiorari denied. Reported below: 343 Fed. Appx. 532.

No. 09–7830. WATTS *v.* WILSON ET AL. C. A. 3d Cir. Certiorari denied.

No. 09–7866. RESTITUTO EMBUSCADO *v.* DC COMICS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 347 Fed. Appx. 700.

No. 09–7873. FOSTER *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 57 So. 3d 207.

No. 09–7893. JOHNSON *v.* COOK INC. C. A. 7th Cir. Certiorari denied. Reported below: 327 Fed. Appx. 661.

No. 09–7921. BLOUNT *v.* HARDY, CORRECTIONAL ADMINISTRATOR, NASH CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 337 Fed. Appx. 271.

No. 09–7985. CRESSWELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–7987. FISCHER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 521.

No. 09–7988. GOODMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 342 Fed. Appx. 993.

No. 09–7989. GARBA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 307 Fed. Appx. 698.

No. 09–7994. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 343 Fed. Appx. 472.

No. 09–7996. MCMILLAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 346 Fed. Appx. 945.

No. 09–7997. HAMDY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 325 Fed. Appx. 28.

No. 09–7999. VINSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 340 Fed. Appx. 882.

No. 09–8004. REED *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 338 Fed. Appx. 851.

No. 09–8008. WINGO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 341 Fed. Appx. 132.

No. 09–8009. SINGLETARY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 345 Fed. Appx. 466.

No. 09–8010. ROACH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 582 F. 3d 1192.

No. 09–8013. BRIDE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 581 F. 3d 888.

No. 09–8016. SUMMAGE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 575 F. 3d 864.

No. 09–8017. ROBERSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 961 A. 2d 1092.

No. 09–8025. CARDONA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 09–8027. BREWER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 344 Fed. Appx. 947.

No. 09–8028. ADAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 337 Fed. Appx. 336.

No. 09–8030. AKEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 337 Fed. Appx. 843.

No. 09–8032. EBERHARDT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 09–8033. FOWLER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 336 Fed. Appx. 561.

No. 09–8035. FALLS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 09–8036. GLAWSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 322 Fed. Appx. 957.

No. 09–8038. HUMPHREY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 09–8040. HAYES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 680.

No. 09–8045. GRAVELY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 340 Fed. Appx. 67.

No. 09–8047. HOBERECK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 347 Fed. Appx. 887.

No. 09–8051. COLIN-LUJAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 348 Fed. Appx. 913.

No. 09–8054. MEJIA-RIOS, AKA MEJIO-RIOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 332 Fed. Appx. 972.

No. 09–8056. ORTEGA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 344 Fed. Appx. 539.

No. 09–8058. REGISTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 09–8060. WALTERS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 343 Fed. Appx. 969.

No. 09–8062. CRUZ, AKA GALINDO-CRUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 343 Fed. Appx. 971.

No. 09–8063. CARDOZA-PUENTE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 344 Fed. Appx. 95.

No. 09–8064. GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 344 Fed. Appx. 441.

No. 09–8071. HERROD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 342 Fed. Appx. 180.

No. 09–8073. SIMPKINS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 966 A. 2d 398.

No. 09–8075. HECKE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 329 Fed. Appx. 676.

No. 08–1401. METRISH, WARDEN *v.* NEWMAN. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 543 F. 3d 793.

No. 09–315. BUSCH *v.* MARPLE NEWTON SCHOOL DISTRICT ET AL. C. A. 3d Cir. Motion of Indian River School District for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 567 F. 3d 89.

No. 09–333. GARCIA ET AL. *v.* VILSACK, SECRETARY OF AGRICULTURE. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 563 F. 3d 519.

No. 09–359. MALDONADO *v.* IWASAKI, DIRECTOR, CALIFORNIA DEPARTMENT OF TRANSPORTATION. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 556 F. 3d 1037.

No. 09–430. WAHI *v.* CHARLESTON AREA MEDICAL CENTER ET AL. C. A. 4th Cir. Motion of Association of American Physicians and Surgeons, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 562 F. 3d 599.

No. 09–484. O'BRIEN, SUPERINTENDENT, OLD COLONY CORRECTIONAL CENTER *v.* O'LAUGHLIN. C. A. 1st Cir. Motion of

respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 568 F. 3d 287.

No. 09–567. VAN DE BERG *v.* SOCIAL SECURITY ADMINISTRATION ET AL. C. A. D. C. Cir. Motion of petitioner to defer consideration of petition for writ of certioriari denied. Certiorari denied.

No. 09–7516. LEIGHT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 569 F. 3d 47 and 331 Fed. Appx. 850.

Rehearing Denied

No. 08–10000. HUFF *v.* KENTUCKY RETIREMENT SYSTEMS, *ante*, p. 831;

No. 08–10781. ANDRADE CALLES *v.* URIBE, WARDEN, *ante*, p. 853;

No. 09–5031. LANGON *v.* FLORIDA, *ante*, p. 883;

No. 09–5176. GORDON *v.* SUPREME COURT OF TEXAS ET AL., *ante*, p. 890;

No. 09–6411. WHIRTY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1027;

No. 09–6413. ROTH *v.* PENNSYLVANIA, *ante*, p. 1027;

No. 09–6546. MILLER *v.* FRIEL, WARDEN, *ante*, p. 1030;

No. 09–6569. BURROUGHS, BY AND THROUGH HER NEXT FRIEND BURROUGHS *v.* BROADSPIRE, FKA KEMPER INSURANCE CO., *ante*, p. 1031;

No. 09–6637. CUMMINGS *v.* MOORE ET AL., *ante*, p. 1015;

No. 09–6777. HERBERT *v.* UNITED STATES ET AL., *ante*, p. 1015;

No. 09–6980. IN RE LESTER, *ante*, p. 988;

No. 09–6999. JONES *v.* PLATTEVIEW APARTMENTS ET AL., *ante*, p. 1033;

No. 09–7006. IN RE MINNEMAN, *ante*, p. 1023;

No. 09–7015. SANCHES MONTES *v.* UNITED STATES, *ante*, p. 1033; and

No. 09–7348. BEVERLY *v.* UNITED STATES, *ante*, p. 1063. Petitions for rehearing denied.

RULES OF THE SUPREME COURT OF THE UNITED STATES

ADOPTED JANUARY 12, 2010

EFFECTIVE FEBRUARY 16, 2010

The following are the Rules of the Supreme Court of the United States as revised on January 12, 2010. See *post*, p. 1162. The amended Rules became effective February 16, 2010, as provided in Rule 48, *post*, p. 1223.

For previous revisions of the Rules of the Supreme Court see 346 U. S. 949, 388 U. S. 931, 398 U. S. 1013, 445 U. S. 985, 493 U. S. 1099, 515 U. S. 1197, 519 U. S. 1161, 525 U. S. 1191, 537 U. S. 1249, 544 U. S. 1073, and 551 U. S. 1195.

ORDER ADOPTING REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

TUESDAY, JANUARY 12, 2010

IT IS ORDERED that the revised Rules of this Court, approved by the Court and lodged with the Clerk, shall be effective February 16, 2010, and be printed as an appendix to the United States Reports.

IT IS FURTHER ORDERED that the Rules promulgated October 1, 2007, see 551 U. S. 1195, shall be rescinded as of February 15, 2010, and that the revised Rules shall govern all proceedings in cases commenced after that date and, to the extent feasible and just, cases then pending.

RULES OF THE SUPREME COURT OF THE UNITED STATES

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RULES OF THE SUPREME COURT OF THE UNITED STATES

ADOPTED JANUARY 12, 2010—EFFECTIVE FEBRUARY 16, 2010

PART I. THE COURT

Rule 1. Clerk

1. The Clerk receives documents for filing with the Court and has authority to reject any submitted filing that does not comply with these Rules.

2. The Clerk maintains the Court's records and will not permit any of them to be removed from the Court building except as authorized by the Court. Any document filed with the Clerk and made a part of the Court's records may not thereafter be withdrawn from the official Court files. After the conclusion of proceedings in this Court, original records and documents transmitted to this Court by any other court will be returned to the court from which they were received.

3. Unless the Court or the Chief Justice orders otherwise, the Clerk's office is open from 9 a.m. to 5 p.m., Monday through Friday, except on federal legal holidays listed in 5 U. S. C. § 6103.

Rule 2. Library

1. The Court's library is available for use by appropriate personnel of this Court, members of the Bar of this Court, Members of Congress and their legal staffs, and attorneys for the United States and for federal departments and agencies.

2. The library's hours are governed by regulations made by the Librarian with the approval of the Chief Justice or the Court.

3. Library books may not be removed from the Court building, except by a Justice or a member of a Justice's staff.

Rule 3. Term

The Court holds a continuous annual Term commencing on the first Monday in October and ending on the day before the first Monday in October of the following year. See 28 U. S. C. §2. At the end of each Term, all cases pending on the docket are continued to the next Term.

Rule 4. Sessions and Quorum

1. Open sessions of the Court are held beginning at 10 a.m. on the first Monday in October of each year, and thereafter as announced by the Court. Unless it orders otherwise, the Court sits to hear arguments from 10 a.m. until noon and from 1 p.m. until 3 p.m.

2. Six Members of the Court constitute a quorum. See 28 U. S. C. §1. In the absence of a quorum on any day appointed for holding a session of the Court, the Justices attending—or if no Justice is present, the Clerk or a Deputy Clerk—may announce that the Court will not meet until there is a quorum.

3. When appropriate, the Court will direct the Clerk or the Marshal to announce recesses.

Part II. Attorneys and Counselors

Rule 5. Admission to the Bar

1. To qualify for admission to the Bar of this Court, an applicant must have been admitted to practice in the highest court of a State, Commonwealth, Territory or Possession, or the District of Columbia for a period of at least three years immediately before the date of application; must not have been the subject of any adverse disciplinary action pronounced or in effect during that 3-year period; and must appear to the Court to be of good moral and professional character.

2. Each applicant shall file with the Clerk (1) a certificate from the presiding judge, clerk, or other authorized official

of that court evidencing the applicant's admission to practice there and the applicant's current good standing, and (2) a completely executed copy of the form approved by this Court and furnished by the Clerk containing (a) the applicant's personal statement, and (b) the statement of two sponsors endorsing the correctness of the applicant's statement, stating that the applicant possesses all the qualifications required for admission, and affirming that the applicant is of good moral and professional character. Both sponsors must be members of the Bar of this Court who personally know, but are not related to, the applicant.

3. If the documents submitted demonstrate that the applicant possesses the necessary qualifications, and if the applicant has signed the oath or affirmation and paid the required fee, the Clerk will notify the applicant of acceptance by the Court as a member of the Bar and issue a certificate of admission. An applicant who so wishes may be admitted in open court on oral motion by a member of the Bar of this Court, provided that all other requirements for admission have been satisfied.

4. Each applicant shall sign the following oath or affirmation: I, ..., do solemnly swear (or affirm) that as an attorney and as a counselor of this Court, I will conduct myself uprightly and according to law, and that I will support the Constitution of the United States.

5. The fee for admission to the Bar and a certificate bearing the seal of the Court is $200, payable to the United States Supreme Court. The Marshal will deposit such fees in a separate fund to be disbursed by the Marshal at the direction of the Chief Justice for the costs of admissions, for the benefit of the Court and its Bar, and for related purposes.

6. The fee for a duplicate certificate of admission to the Bar bearing the seal of the Court is $15, and the fee for a certificate of good standing is $10, payable to the United States Supreme Court. The proceeds will be maintained by the Marshal as provided in paragraph 5 of this Rule.

Rule 6. Argument *Pro Hac Vice*

1. An attorney not admitted to practice in the highest court of a State, Commonwealth, Territory or Possession, or the District of Columbia for the requisite three years, but otherwise eligible for admission to practice in this Court under Rule 5.1, may be permitted to argue *pro hac vice.*

2. An attorney qualified to practice in the courts of a foreign state may be permitted to argue *pro hac vice.*

3. Oral argument *pro hac vice* is allowed only on motion of the counsel of record for the party on whose behalf leave is requested. The motion shall state concisely the qualifications of the attorney who is to argue *pro hac vice.* It shall be filed with the Clerk, in the form required by Rule 21, no later than the date on which the respondent's or appellee's brief on the merits is due to be filed, and it shall be accompanied by proof of service as required by Rule 29.

Rule 7. Prohibition Against Practice

No employee of this Court shall practice as an attorney or counselor in any court or before any agency of government while employed by the Court; nor shall any person after leaving such employment participate in any professional capacity in any case pending before this Court or in any case being considered for filing in this Court, until two years have elapsed after separation; nor shall a former employee ever participate in any professional capacity in any case that was pending in this Court during the employee's tenure.

Rule 8. Disbarment and Disciplinary Action

1. Whenever a member of the Bar of this Court has been disbarred or suspended from practice in any court of record, or has engaged in conduct unbecoming a member of the Bar of this Court, the Court will enter an order suspending that member from practice before this Court and affording the member an opportunity to show cause, within 40 days, why a disbarment order should not be entered. Upon response, or if no response is timely filed, the Court will enter an appropriate order.

2. After reasonable notice and an opportunity to show cause why disciplinary action should not be taken, and after a hearing if material facts are in dispute, the Court may take any appropriate disciplinary action against any attorney who is admitted to practice before it for conduct unbecoming a member of the Bar or for failure to comply with these Rules or any Rule or order of the Court.

Rule 9. Appearance of Counsel

1. An attorney seeking to file a document in this Court in a representative capacity must first be admitted to practice before this Court as provided in Rule 5, except that admission to the Bar of this Court is not required for an attorney appointed under the Criminal Justice Act of 1964, see 18 U. S. C. § 3006A(d)(6), or under any other applicable federal statute. The attorney whose name, address, and telephone number appear on the cover of a document presented for filing is considered counsel of record, and a separate notice of appearance need not be filed. If the name of more than one attorney is shown on the cover of the document, the attorney who is counsel of record shall be clearly identified. See Rule 34.1(f).

2. An attorney representing a party who will not be filing a document shall enter a separate notice of appearance as counsel of record indicating the name of the party represented. A separate notice of appearance shall also be entered whenever an attorney is substituted as counsel of record in a particular case.

Part III. Jurisdiction on Writ of Certiorari

Rule 10. Considerations Governing Review on Certiorari

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

Rule 11. Certiorari to a United States Court of Appeals Before Judgment

A petition for a writ of certiorari to review a case pending in a United States court of appeals, before judgment is entered in that court, will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court. See 28 U. S. C. § 2101(e).

Rule 12. Review on Certiorari: How Sought; Parties

1. Except as provided in paragraph 2 of this Rule, the petitioner shall file 40 copies of a petition for a writ of certiorari, prepared as required by Rule 33.1, and shall pay the Rule 38(a) docket fee.

2. A petitioner proceeding *in forma pauperis* under Rule 39 shall file an original and 10 copies of a petition for a writ of certiorari prepared as required by Rule 33.2, together with an original and 10 copies of the motion for leave to proceed *in forma pauperis*. A copy of the motion shall precede and be attached to each copy of the petition. An inmate confined in an institution, if proceeding *in forma pauperis* and not represented by counsel, need file only an original petition and motion.

3. Whether prepared under Rule 33.1 or Rule 33.2, the petition shall comply in all respects with Rule 14 and shall be submitted with proof of service as required by Rule 29. The case then will be placed on the docket. It is the petitioner's duty to notify all respondents promptly, on a form supplied by the Clerk, of the date of filing, the date the case was placed on the docket, and the docket number of the case. The notice shall be served as required by Rule 29.

4. Parties interested jointly, severally, or otherwise in a judgment may petition separately for a writ of certiorari; or any two or more may join in a petition. A party not shown on the petition as joined therein at the time the petition is filed may not later join in that petition. When two or more judgments are sought to be reviewed on a writ of certiorari to the same court and involve identical or closely related questions, a single petition for a writ of certiorari covering all the judgments suffices. A petition for a writ of certiorari may not be joined with any other pleading, except that any motion for leave to proceed *in forma pauperis* shall be attached.

5. No more than 30 days after a case has been placed on the docket, a respondent seeking to file a conditional cross-petition (*i. e.*, a cross-petition that otherwise would be untimely) shall file, with proof of service as required by Rule 29, 40 copies of the cross-petition prepared as required by Rule 33.1, except that a cross-petitioner proceeding *in forma pauperis* under Rule 39 shall comply with Rule 12.2. The cross-petition shall comply in all respects with this Rule and Rule 14, except that material already reproduced in the ap-

pendix to the opening petition need not be reproduced again. A cross-petitioning respondent shall pay the Rule 38(a) docket fee or submit a motion for leave to proceed *in forma pauperis*. The cover of the cross-petition shall indicate clearly that it is a conditional cross-petition. The cross-petition then will be placed on the docket, subject to the provisions of Rule 13.4. It is the cross-petitioner's duty to notify all cross-respondents promptly, on a form supplied by the Clerk, of the date of filing, the date the cross-petition was placed on the docket, and the docket number of the cross-petition. The notice shall be served as required by Rule 29. A cross-petition for a writ of certiorari may not be joined with any other pleading, except that any motion for leave to proceed *in forma pauperis* shall be attached. The time to file a conditional cross-petition will not be extended.

6. All parties to the proceeding in the court whose judgment is sought to be reviewed are deemed parties entitled to file documents in this Court, unless the petitioner notifies the Clerk of this Court in writing of the petitioner's belief that one or more of the parties below have no interest in the outcome of the petition. A copy of such notice shall be served as required by Rule 29 on all parties to the proceeding below. A party noted as no longer interested may remain a party by notifying the Clerk promptly, with service on the other parties, of an intention to remain a party. All parties other than the petitioner are considered respondents, but any respondent who supports the position of a petitioner shall meet the petitioner's time schedule for filing documents, except that a response supporting the petition shall be filed within 20 days after the case is placed on the docket, and that time will not be extended. Parties who file no document will not qualify for any relief from this Court.

7. The clerk of the court having possession of the record shall keep it until notified by the Clerk of this Court to certify and transmit it. In any document filed with this Court, a party may cite or quote from the record, even if it has not been transmitted to this Court. When requested by the

Clerk of this Court to certify and transmit the record, or any part of it, the clerk of the court having possession of the record shall number the documents to be certified and shall transmit therewith a numbered list specifically identifying each document transmitted. If the record, or stipulated portions, have been printed for the use of the court below, that printed record, plus the proceedings in the court below, may be certified as the record unless one of the parties or the Clerk of this Court requests otherwise. The record may consist of certified copies, but if the lower court is of the view that original documents of any kind should be seen by this Court, that court may provide by order for the transport, safekeeping, and return of such originals.

Rule 13. Review on Certiorari: Time for Petitioning

1. Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort or a United States court of appeals (including the United States Court of Appeals for the Armed Forces) is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment. A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review.

2. The Clerk will not file any petition for a writ of certiorari that is jurisdictionally out of time. See, *e. g.*, 28 U. S. C. § 2101(c).

3. The time to file a petition for a writ of certiorari runs from the date of entry of the judgment or order sought to be reviewed, and not from the issuance date of the mandate (or its equivalent under local practice). But if a petition for rehearing is timely filed in the lower court by any party, or if the lower court appropriately entertains an untimely petition for rehearing or *sua sponte* considers rehearing, the time to file the petition for a writ of certiorari for all parties (whether or not they requested rehearing or joined in the

petition for rehearing) runs from the date of the denial of rehearing or, if rehearing is granted, the subsequent entry of judgment.

4. A cross-petition for a writ of certiorari is timely when it is filed with the Clerk as provided in paragraphs 1, 3, and 5 of this Rule, or in Rule 12.5. However, a conditional cross-petition (which except for Rule 12.5 would be untimely) will not be granted unless another party's timely petition for a writ of certiorari is granted.

5. For good cause, a Justice may extend the time to file a petition for a writ of certiorari for a period not exceeding 60 days. An application to extend the time to file shall set out the basis for jurisdiction in this Court, identify the judgment sought to be reviewed, include a copy of the opinion and any order respecting rehearing, and set out specific reasons why an extension of time is justified. The application must be filed with the Clerk at least 10 days before the date the petition is due, except in extraordinary circumstances. For the time and manner of presenting the application, see Rules 21, 22, 30, and 33.2. An application to extend the time to file a petition for a writ of certiorari is not favored.

Rule 14. Content of a Petition for a Writ of Certiorari

1. A petition for a writ of certiorari shall contain, in the order indicated:

(a) The questions presented for review, expressed concisely in relation to the circumstances of the case, without unnecessary detail. The questions should be short and should not be argumentative or repetitive. If the petitioner or respondent is under a death sentence that may be affected by the disposition of the petition, the notation "capital case" shall precede the questions presented. The questions shall be set out on the first page following the cover, and no other information may appear on that page. The statement of any question presented is deemed to comprise every subsidiary question fairly included therein. Only the questions set out in the petition, or fairly included therein, will be considered by the Court.

(b) A list of all parties to the proceeding in the court whose judgment is sought to be reviewed (unless the caption of the case contains the names of all the parties), and a corporate disclosure statement as required by Rule 29.6.

(c) If the petition exceeds five pages or 1,500 words, a table of contents and a table of cited authorities. The table of contents shall include the items contained in the appendix.

(d) Citations of the official and unofficial reports of the opinions and orders entered in the case by courts or administrative agencies.

(e) A concise statement of the basis for jurisdiction in this Court, showing:

(i) the date the judgment or order sought to be reviewed was entered (and, if applicable, a statement that the petition is filed under this Court's Rule 11);

(ii) the date of any order respecting rehearing, and the date and terms of any order granting an extension of time to file the petition for a writ of certiorari;

(iii) express reliance on Rule 12.5, when a cross-petition for a writ of certiorari is filed under that Rule, and the date of docketing of the petition for a writ of certiorari in connection with which the cross-petition is filed;

(iv) the statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari the judgment or order in question; and

(v) if applicable, a statement that the notifications required by Rule 29.4(b) or (c) have been made.

(f) The constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case, set out verbatim with appropriate citation. If the provisions involved are lengthy, their citation alone suffices at this point, and their pertinent text shall be set out in the appendix referred to in subparagraph 1(i).

(g) A concise statement of the case setting out the facts material to consideration of the questions presented, and also containing the following:

(i) If review of a state-court judgment is sought, specification of the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts; and pertinent quotations of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears (*e. g.*, court opinion, ruling on exception, portion of court's charge and exception thereto, assignment of error), so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari. When the portions of the record relied on under this subparagraph are voluminous, they shall be included in the appendix referred to in subparagraph 1(i).

(ii) If review of a judgment of a United States court of appeals is sought, the basis for federal jurisdiction in the court of first instance.

(h) A direct and concise argument amplifying the reasons relied on for allowance of the writ. See Rule 10.

(i) An appendix containing, in the order indicated:

(i) the opinions, orders, findings of fact, and conclusions of law, whether written or orally given and transcribed, entered in conjunction with the judgment sought to be reviewed;

(ii) any other relevant opinions, orders, findings of fact, and conclusions of law entered in the case by courts or administrative agencies, and, if reference thereto is necessary to ascertain the grounds of the judgment, of those in companion cases (each document shall include the caption showing the name of the issuing court or agency, the title and number of the case, and the date of entry);

(iii) any order on rehearing, including the caption showing the name of the issuing court, the title and number of the case, and the date of entry;

(iv) the judgment sought to be reviewed if the date of its entry is different from the date of the opinion or order required in sub-subparagraph (i) of this subparagraph;

(v) material required by subparagraphs 1(f) or 1(g)(i); and

(vi) any other material the petitioner believes essential to understand the petition.

If the material required by this subparagraph is voluminous, it may be presented in a separate volume or volumes with appropriate covers.

2. All contentions in support of a petition for a writ of certiorari shall be set out in the body of the petition, as provided in subparagraph 1(h) of this Rule. No separate brief in support of a petition for a writ of certiorari may be filed, and the Clerk will not file any petition for a writ of certiorari to which any supporting brief is annexed or appended.

3. A petition for a writ of certiorari should be stated briefly and in plain terms and may not exceed the word or page limitations specified in Rule 33.

4. The failure of a petitioner to present with accuracy, brevity, and clarity whatever is essential to ready and adequate understanding of the points requiring consideration is sufficient reason for the Court to deny a petition.

5. If the Clerk determines that a petition submitted timely and in good faith is in a form that does not comply with this Rule or with Rule 33 or Rule 34, the Clerk will return it with a letter indicating the deficiency. A corrected petition submitted in accordance with Rule 29.2 no more than 60 days after the date of the Clerk's letter will be deemed timely.

Rule 15. Briefs in Opposition; Reply Briefs; Supplemental Briefs

1. A brief in opposition to a petition for a writ of certiorari may be filed by the respondent in any case, but is not manda-

tory except in a capital case, see Rule 14.1(a), or when ordered by the Court.

2. A brief in opposition should be stated briefly and in plain terms and may not exceed the word or page limitations specified in Rule 33. In addition to presenting other arguments for denying the petition, the brief in opposition should address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted. Counsel are admonished that they have an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatement made in the petition. Any objection to consideration of a question presented based on what occurred in the proceedings below, if the objection does not go to jurisdiction, may be deemed waived unless called to the Court's attention in the brief in opposition.

3. Any brief in opposition shall be filed within 30 days after the case is placed on the docket, unless the time is extended by the Court or a Justice, or by the Clerk under Rule 30.4. Forty copies shall be filed, except that a respondent proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2, together with a motion for leave to proceed *in forma pauperis*, a copy of which shall precede and be attached to each copy of the brief in opposition. If the petitioner is proceeding *in forma pauperis*, the respondent shall prepare its brief in opposition, if any, as required by Rule 33.2, and shall file an original and 10 copies of that brief. Whether prepared under Rule 33.1 or Rule 33.2, the brief in opposition shall comply with the requirements of Rule 24 governing a respondent's brief, except that no summary of the argument is required. A brief in opposition may not be joined with any other pleading, except that any motion for leave to proceed *in forma pauperis* shall be attached. The brief in opposition shall be served as required by Rule 29.

4. No motion by a respondent to dismiss a petition for a writ of certiorari may be filed. Any objections to the jurisdiction of the Court to grant a petition for a writ of certiorari shall be included in the brief in opposition.

5. The Clerk will distribute the petition to the Court for its consideration upon receiving an express waiver of the right to file a brief in opposition, or, if no waiver or brief in opposition is filed, upon the expiration of the time allowed for filing. If a brief in opposition is timely filed, the Clerk will distribute the petition, brief in opposition, and any reply brief to the Court for its consideration no less than 10 days after the brief in opposition is filed.

6. Any petitioner may file a reply brief addressed to new points raised in the brief in opposition, but distribution and consideration by the Court under paragraph 5 of this Rule will not be deferred pending its receipt. Forty copies shall be filed, except that a petitioner proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The reply brief shall be served as required by Rule 29.

7. If a cross-petition for a writ of certiorari has been docketed, distribution of both petitions will be deferred until the cross-petition is due for distribution under this Rule.

8. Any party may file a supplemental brief at any time while a petition for a writ of certiorari is pending, calling attention to new cases, new legislation, or other intervening matter not available at the time of the party's last filing. A supplemental brief shall be restricted to new matter and shall follow, insofar as applicable, the form for a brief in opposition prescribed by this Rule. Forty copies shall be filed, except that a party proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The supplemental brief shall be served as required by Rule 29.

Rule 16. Disposition of a Petition for a Writ of Certiorari

1. After considering the documents distributed under Rule 15, the Court will enter an appropriate order. The order may be a summary disposition on the merits.

2. Whenever the Court grants a petition for a writ of certiorari, the Clerk will prepare, sign, and enter an order to that effect and will notify forthwith counsel of record and the court whose judgment is to be reviewed. The case then will be scheduled for briefing and oral argument. If the record has not previously been filed in this Court, the Clerk will request the clerk of the court having possession of the record to certify and transmit it. A formal writ will not issue unless specially directed.

3. Whenever the Court denies a petition for a writ of certiorari, the Clerk will prepare, sign, and enter an order to that effect and will notify forthwith counsel of record and the court whose judgment was sought to be reviewed. The order of denial will not be suspended pending disposition of a petition for rehearing except by order of the Court or a Justice.

Part IV. Other Jurisdiction

Rule 17. Procedure in an Original Action

1. This Rule applies only to an action invoking the Court's original jurisdiction under Article III of the Constitution of the United States. See also 28 U. S. C. § 1251 and U. S. Const., Amdt. 11. A petition for an extraordinary writ in aid of the Court's appellate jurisdiction shall be filed as provided in Rule 20.

2. The form of pleadings and motions prescribed by the Federal Rules of Civil Procedure is followed. In other respects, those Rules and the Federal Rules of Evidence may be taken as guides.

3. The initial pleading shall be preceded by a motion for leave to file, and may be accompanied by a brief in support of the motion. Forty copies of each document shall be filed,

with proof of service. Service shall be as required by Rule 29, except that when an adverse party is a State, service shall be made on both the Governor and the Attorney General of that State.

4. The case will be placed on the docket when the motion for leave to file and the initial pleading are filed with the Clerk. The Rule 38(a) docket fee shall be paid at that time.

5. No more than 60 days after receiving the motion for leave to file and the initial pleading, an adverse party shall file 40 copies of any brief in opposition to the motion, with proof of service as required by Rule 29. The Clerk will distribute the filed documents to the Court for its consideration upon receiving an express waiver of the right to file a brief in opposition, or, if no waiver or brief is filed, upon the expiration of the time allowed for filing. If a brief in opposition is timely filed, the Clerk will distribute the filed documents to the Court for its consideration no less than 10 days after the brief in opposition is filed. A reply brief may be filed, but consideration of the case will not be deferred pending its receipt. The Court thereafter may grant or deny the motion, set it for oral argument, direct that additional documents be filed, or require that other proceedings be conducted.

6. A summons issued out of this Court shall be served on the defendant 60 days before the return day specified therein. If the defendant does not respond by the return day, the plaintiff may proceed *ex parte*.

7. Process against a State issued out of this Court shall be served on both the Governor and the Attorney General of that State.

Rule 18. Appeal from a United States District Court

1. When a direct appeal from a decision of a United States district court is authorized by law, the appeal is commenced by filing a notice of appeal with the clerk of the district court within the time provided by law after entry of the judgment sought to be reviewed. The time to file may not be extended. The notice of appeal shall specify the parties taking

the appeal, designate the judgment, or part thereof, appealed from and the date of its entry, and specify the statute or statutes under which the appeal is taken. A copy of the notice of appeal shall be served on all parties to the proceeding as required by Rule 29, and proof of service shall be filed in the district court together with the notice of appeal.

2. All parties to the proceeding in the district court are deemed parties entitled to file documents in this Court, but a party having no interest in the outcome of the appeal may so notify the Clerk of this Court and shall serve a copy of the notice on all other parties. Parties interested jointly, severally, or otherwise in the judgment may appeal separately, or any two or more may join in an appeal. When two or more judgments involving identical or closely related questions are sought to be reviewed on appeal from the same court, a notice of appeal for each judgment shall be filed with the clerk of the district court, but a single jurisdictional statement covering all the judgments suffices. Parties who file no document will not qualify for any relief from this Court.

3. No more than 60 days after filing the notice of appeal in the district court, the appellant shall file 40 copies of a jurisdictional statement and shall pay the Rule 38 docket fee, except that an appellant proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2, together with a motion for leave to proceed *in forma pauperis*, a copy of which shall precede and be attached to each copy of the jurisdictional statement. The jurisdictional statement shall follow, insofar as applicable, the form for a petition for a writ of certiorari prescribed by Rule 14, and shall be served as required by Rule 29. The case will then be placed on the docket. It is the appellant's duty to notify all appellees promptly, on a form supplied by the Clerk, of the date of filing, the date the case was placed on the docket, and the docket number of the case. The notice shall be served as required by Rule 29. The appendix shall include a copy of the notice of appeal showing the date

it was filed in the district court. For good cause, a Justice may extend the time to file a jurisdictional statement for a period not exceeding 60 days. An application to extend the time to file a jurisdictional statement shall set out the basis for jurisdiction in this Court; identify the judgment sought to be reviewed; include a copy of the opinion, any order respecting rehearing, and the notice of appeal; and set out specific reasons why an extension of time is justified. For the time and manner of presenting the application, see Rules 21, 22, and 30. An application to extend the time to file a jurisdictional statement is not favored.

4. No more than 30 days after a case has been placed on the docket, an appellee seeking to file a conditional cross-appeal (*i. e.*, a cross-appeal that otherwise would be untimely) shall file, with proof of service as required by Rule 29, a jurisdictional statement that complies in all respects (including number of copies filed) with paragraph 3 of this Rule, except that material already reproduced in the appendix to the opening jurisdictional statement need not be reproduced again. A cross-appealing appellee shall pay the Rule 38 docket fee or submit a motion for leave to proceed *in forma pauperis.* The cover of the cross-appeal shall indicate clearly that it is a conditional cross-appeal. The cross-appeal then will be placed on the docket. It is the cross-appellant's duty to notify all cross-appellees promptly, on a form supplied by the Clerk, of the date of filing, the date the cross-appeal was placed on the docket, and the docket number of the cross-appeal. The notice shall be served as required by Rule 29. A cross-appeal may not be joined with any other pleading, except that any motion for leave to proceed *in forma pauperis* shall be attached. The time to file a cross-appeal will not be extended.

5. After a notice of appeal has been filed in the district court, but before the case is placed on this Court's docket, the parties may dismiss the appeal by stipulation filed in the district court, or the district court may dismiss the appeal on the appellant's motion, with notice to all parties. If a notice of appeal has been filed, but the case has not been

placed on this Court's docket within the time prescribed for docketing, the district court may dismiss the appeal on the appellee's motion, with notice to all parties, and may make any just order with respect to costs. If the district court has denied the appellee's motion to dismiss the appeal, the appellee may move this Court to docket and dismiss the appeal by filing an original and 10 copies of a motion presented in conformity with Rules 21 and 33.2. The motion shall be accompanied by proof of service as required by Rule 29, and by a certificate from the clerk of the district court, certifying that a notice of appeal was filed and that the appellee's motion to dismiss was denied. The appellant may not thereafter file a jurisdictional statement without special leave of the Court, and the Court may allow costs against the appellant.

6. Within 30 days after the case is placed on this Court's docket, the appellee may file a motion to dismiss, to affirm, or in the alternative to affirm or dismiss. Forty copies of the motion shall be filed, except that an appellee proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2, together with a motion for leave to proceed *in forma pauperis*, a copy of which shall precede and be attached to each copy of the motion to dismiss, to affirm, or in the alternative to affirm or dismiss. The motion shall follow, insofar as applicable, the form for a brief in opposition prescribed by Rule 15, and shall comply in all respects with Rule 21.

7. The Clerk will distribute the jurisdictional statement to the Court for its consideration upon receiving an express waiver of the right to file a motion to dismiss or to affirm or, if no waiver or motion is filed, upon the expiration of the time allowed for filing. If a motion to dismiss or to affirm is timely filed, the Clerk will distribute the jurisdictional statement, motion, and any brief opposing the motion to the Court for its consideration no less than 10 days after the motion is filed.

8. Any appellant may file a brief opposing a motion to dismiss or to affirm, but distribution and consideration by the

Court under paragraph 7 of this Rule will not be deferred pending its receipt. Forty copies shall be filed, except that an appellant proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The brief shall be served as required by Rule 29.

9. If a cross-appeal has been docketed, distribution of both jurisdictional statements will be deferred until the cross-appeal is due for distribution under this Rule.

10. Any party may file a supplemental brief at any time while a jurisdictional statement is pending, calling attention to new cases, new legislation, or other intervening matter not available at the time of the party's last filing. A supplemental brief shall be restricted to new matter and shall follow, insofar as applicable, the form for a brief in opposition prescribed by Rule 15. Forty copies shall be filed, except that a party proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The supplemental brief shall be served as required by Rule 29.

11. The clerk of the district court shall retain possession of the record until notified by the Clerk of this Court to certify and transmit it. See Rule 12.7.

12. After considering the documents distributed under this Rule, the Court may dispose summarily of the appeal on the merits, note probable jurisdiction, or postpone consideration of jurisdiction until a hearing of the case on the merits. If not disposed of summarily, the case stands for briefing and oral argument on the merits. If consideration of jurisdiction is postponed, counsel, at the outset of their briefs and at oral argument, shall address the question of jurisdiction. If the record has not previously been filed in this Court, the Clerk of this Court will request the clerk of the court in possession of the record to certify and transmit it.

13. If the Clerk determines that a jurisdictional statement submitted timely and in good faith is in a form that does not comply with this Rule or with Rule 33 or Rule 34, the Clerk

will return it with a letter indicating the deficiency. If a corrected jurisdictional statement is submitted in accordance with Rule 29.2 no more than 60 days after the date of the Clerk's letter, it will be deemed timely.

Rule 19. Procedure on a Certified Question

1. A United States court of appeals may certify to this Court a question or proposition of law on which it seeks instruction for the proper decision of a case. The certificate shall contain a statement of the nature of the case and the facts on which the question or proposition of law arises. Only questions or propositions of law may be certified, and they shall be stated separately and with precision. The certificate shall be prepared as required by Rule 33.2 and shall be signed by the clerk of the court of appeals.

2. When a question is certified by a United States court of appeals, this Court, on its own motion or that of a party, may consider and decide the entire matter in controversy. See 28 U. S. C. § 1254(2).

3. When a question is certified, the Clerk will notify the parties and docket the case. Counsel shall then enter their appearances. After docketing, the Clerk will submit the certificate to the Court for a preliminary examination to determine whether the case should be briefed, set for argument, or dismissed. No brief may be filed until the preliminary examination of the certificate is completed.

4. If the Court orders the case briefed or set for argument, the parties will be notified and permitted to file briefs. The Clerk of this Court then will request the clerk of the court in possession of the record to certify and transmit it. Any portion of the record to which the parties wish to direct the Court's particular attention should be printed in a joint appendix, prepared in conformity with Rule 26 by the appellant or petitioner in the court of appeals, but the fact that any part of the record has not been printed does not prevent the parties or the Court from relying on it.

5. A brief on the merits in a case involving a certified question shall comply with Rules 24, 25, and 33.1, except that

the brief for the party who is the appellant or petitioner below shall be filed within 45 days of the order requiring briefs or setting the case for argument.

Rule 20. Procedure on a Petition for an Extraordinary Writ

1. Issuance by the Court of an extraordinary writ authorized by 28 U. S. C. § 1651(a) is not a matter of right, but of discretion sparingly exercised. To justify the granting of any such writ, the petition must show that the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

2. A petition seeking a writ authorized by 28 U. S. C. § 1651(a), § 2241, or § 2254(a) shall be prepared in all respects as required by Rules 33 and 34. The petition shall be captioned "*In re* [name of petitioner]" and shall follow, insofar as applicable, the form of a petition for a writ of certiorari prescribed by Rule 14. All contentions in support of the petition shall be included in the petition. The case will be placed on the docket when 40 copies of the petition are filed with the Clerk and the docket fee is paid, except that a petitioner proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2, together with a motion for leave to proceed *in forma pauperis*, a copy of which shall precede and be attached to each copy of the petition. The petition shall be served as required by Rule 29 (subject to subparagraph 4(b) of this Rule).

3. (a) A petition seeking a writ of prohibition, a writ of mandamus, or both in the alternative shall state the name and office or function of every person against whom relief is sought and shall set out with particularity why the relief sought is not available in any other court. A copy of the judgment with respect to which the writ is sought, including any related opinion, shall be appended to the petition to-

gether with any other document essential to understanding the petition.

(b) The petition shall be served on every party to the proceeding with respect to which relief is sought. Within 30 days after the petition is placed on the docket, a party shall file 40 copies of any brief or briefs in opposition thereto, which shall comply fully with Rule 15. If a party named as a respondent does not wish to respond to the petition, that party may so advise the Clerk and all other parties by letter. All persons served are deemed respondents for all purposes in the proceedings in this Court.

4. (a) A petition seeking a writ of habeas corpus shall comply with the requirements of 28 U. S. C. §§ 2241 and 2242, and in particular with the provision in the last paragraph of § 2242, which requires a statement of the "reasons for not making application to the district court of the district in which the applicant is held." If the relief sought is from the judgment of a state court, the petition shall set out specifically how and where the petitioner has exhausted available remedies in the state courts or otherwise comes within the provisions of 28 U. S. C. § 2254(b). To justify the granting of a writ of habeas corpus, the petitioner must show that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court. This writ is rarely granted.

(b) Habeas corpus proceedings, except in capital cases, are *ex parte*, unless the Court requires the respondent to show cause why the petition for a writ of habeas corpus should not be granted. A response, if ordered, or in a capital case, shall comply fully with Rule 15. Neither the denial of the petition, without more, nor an order of transfer to a district court under the authority of 28 U. S. C. § 2241(b), is an adjudication on the merits, and therefore does not preclude further application to another court for the relief sought.

5. The Clerk will distribute the documents to the Court for its consideration when a brief in opposition under subparagraph 3(b) of this Rule has been filed, when a response

under subparagraph 4(b) has been ordered and filed, when the time to file has expired, or when the right to file has been expressly waived.

6. If the Court orders the case set for argument, the Clerk will notify the parties whether additional briefs are required, when they shall be filed, and, if the case involves a petition for a common-law writ of certiorari, that the parties shall prepare a joint appendix in accordance with Rule 26.

Part V. Motions and Applications

Rule 21. Motions to the Court

1. Every motion to the Court shall clearly state its purpose and the facts on which it is based and may present legal argument in support thereof. No separate brief may be filed. A motion should be concise and shall comply with any applicable page limits. Rule 22 governs an application addressed to a single Justice.

2. (a) A motion in any action within the Court's original jurisdiction shall comply with Rule 17.3.

(b) A motion to dismiss as moot (or a suggestion of mootness), a motion for leave to file a brief as *amicus curiae*, and any motion the granting of which would dispose of the entire case or would affect the final judgment to be entered (other than a motion to docket and dismiss under Rule 18.5 or a motion for voluntary dismissal under Rule 46) shall be prepared as required by Rule 33.1, and 40 copies shall be filed, except that a movant proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file a motion prepared as required by Rule 33.2, and shall file the number of copies required for a petition by such a person under Rule 12.2. The motion shall be served as required by Rule 29.

(c) Any other motion to the Court shall be prepared as required by Rule 33.2; the moving party shall file an original and 10 copies. The Court subsequently may order the moving party to prepare the motion as required by Rule 33.1; in that event, the party shall file 40 copies.

3. A motion to the Court shall be filed with the Clerk and shall be accompanied by proof of service as required by Rule 29. No motion may be presented in open Court, other than a motion for admission to the Bar, except when the proceeding to which it refers is being argued. Oral argument on a motion will not be permitted unless the Court so directs.

4. Any response to a motion shall be filed as promptly as possible considering the nature of the relief sought and any asserted need for emergency action, and, in any event, within 10 days of receipt, unless the Court or a Justice, or the Clerk under Rule 30.4, orders otherwise. A response to a motion prepared as required by Rule 33.1, except a response to a motion for leave to file an *amicus curiae* brief (see Rule 37.5), shall be prepared in the same manner if time permits. In an appropriate case, the Court may act on a motion without waiting for a response.

Rule 22. Applications to Individual Justices

1. An application addressed to an individual Justice shall be filed with the Clerk, who will transmit it promptly to the Justice concerned if an individual Justice has authority to grant the sought relief.

2. The original and two copies of any application addressed to an individual Justice shall be prepared as required by Rule 33.2, and shall be accompanied by proof of service as required by Rule 29.

3. An application shall be addressed to the Justice allotted to the Circuit from which the case arises. An application arising from the United States Court of Appeals for the Armed Forces shall be addressed to the Chief Justice. When the Circuit Justice is unavailable for any reason, the application addressed to that Justice will be distributed to the Justice then available who is next junior to the Circuit Justice; the turn of the Chief Justice follows that of the most junior Justice.

4. A Justice denying an application will note the denial thereon. Thereafter, unless action thereon is restricted by law to the Circuit Justice or is untimely under Rule 30.2,

the party making an application, except in the case of an application for an extension of time, may renew it to any other Justice, subject to the provisions of this Rule. Except when the denial is without prejudice, a renewed application is not favored. Renewed application is made by a letter to the Clerk, designating the Justice to whom the application is to be directed, and accompanied by 10 copies of the original application and proof of service as required by Rule 29.

5. A Justice to whom an application for a stay or for bail is submitted may refer it to the Court for determination.

6. The Clerk will advise all parties concerned, by appropriately speedy means, of the disposition made of an application.

Rule 23. Stays

1. A stay may be granted by a Justice as permitted by law.

2. A party to a judgment sought to be reviewed may present to a Justice an application to stay the enforcement of that judgment. See 28 U. S. C. § 2101(f).

3. An application for a stay shall set out with particularity why the relief sought is not available from any other court or judge. Except in the most extraordinary circumstances, an application for a stay will not be entertained unless the relief requested was first sought in the appropriate court or courts below or from a judge or judges thereof. An application for a stay shall identify the judgment sought to be reviewed and have appended thereto a copy of the order and opinion, if any, and a copy of the order, if any, of the court or judge below denying the relief sought, and shall set out specific reasons why a stay is justified. The form and content of an application for a stay are governed by Rules 22 and 33.2.

4. A judge, court, or Justice granting an application for a stay pending review by this Court may condition the stay on the filing of a supersedeas bond having an approved surety or sureties. The bond will be conditioned on the satisfaction of the judgment in full, together with any costs, interest, and damages for delay that may be awarded. If a part of the

judgment sought to be reviewed has already been satisfied, or is otherwise secured, the bond may be conditioned on the satisfaction of the part of the judgment not otherwise secured or satisfied, together with costs, interest, and damages.

Part VI. Briefs on the Merits and Oral Argument

Rule 24. Briefs on the Merits: In General

1. A brief on the merits for a petitioner or an appellant shall comply in all respects with Rules 33.1 and 34 and shall contain in the order here indicated:

(a) The questions presented for review under Rule 14.1(a). The questions shall be set out on the first page following the cover, and no other information may appear on that page. The phrasing of the questions presented need not be identical with that in the petition for a writ of certiorari or the jurisdictional statement, but the brief may not raise additional questions or change the substance of the questions already presented in those documents. At its option, however, the Court may consider a plain error not among the questions presented but evident from the record and otherwise within its jurisdiction to decide.

(b) A list of all parties to the proceeding in the court whose judgment is under review (unless the caption of the case in this Court contains the names of all parties). Any amended corporate disclosure statement as required by Rule 29.6 shall be placed here.

(c) If the brief exceeds five pages, a table of contents and a table of cited authorities.

(d) Citations of the official and unofficial reports of the opinions and orders entered in the case by courts and administrative agencies.

(e) A concise statement of the basis for jurisdiction in this Court, including the statutory provisions and time factors on which jurisdiction rests.

(f) The constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case, set out verbatim with appropriate citation. If the provisions involved are

lengthy, their citation alone suffices at this point, and their pertinent text, if not already set out in the petition for a writ of certiorari, jurisdictional statement, or an appendix to either document, shall be set out in an appendix to the brief.

(g) A concise statement of the case, setting out the facts material to the consideration of the questions presented, with appropriate references to the joint appendix, *e. g.*, App. 12, or to the record, *e. g.*, Record 12.

(h) A summary of the argument, suitably paragraphed. The summary should be a clear and concise condensation of the argument made in the body of the brief; mere repetition of the headings under which the argument is arranged is not sufficient.

(i) The argument, exhibiting clearly the points of fact and of law presented and citing the authorities and statutes relied on.

(j) A conclusion specifying with particularity the relief the party seeks.

2. A brief on the merits for a respondent or an appellee shall conform to the foregoing requirements, except that items required by subparagraphs 1(a), (b), (d), (e), (f), and (g) of this Rule need not be included unless the respondent or appellee is dissatisfied with their presentation by the opposing party.

3. A brief on the merits may not exceed the word limitations specified in Rule 33.1(g). An appendix to a brief may include only relevant material, and counsel are cautioned not to include in an appendix arguments or citations that properly belong in the body of the brief.

4. A reply brief shall conform to those portions of this Rule applicable to the brief for a respondent or an appellee, but, if appropriately divided by topical headings, need not contain a summary of the argument.

5. A reference to the joint appendix or to the record set out in any brief shall indicate the appropriate page number. If the reference is to an exhibit, the page numbers at which the exhibit appears, at which it was offered in evidence, and

at which it was ruled on by the judge shall be indicated, *e. g.*, Pl. Exh. 14, Record 199, 2134.

6. A brief shall be concise, logically arranged with proper headings, and free of irrelevant, immaterial, or scandalous matter. The Court may disregard or strike a brief that does not comply with this paragraph.

Rule 25. Briefs on the Merits: Number of Copies and Time to File

1. The petitioner or appellant shall file 40 copies of the brief on the merits within 45 days of the order granting the writ of certiorari, noting probable jurisdiction, or postponing consideration of jurisdiction. Any respondent or appellee who supports the petitioner or appellant shall meet the petitioner's or appellant's time schedule for filing documents.

2. The respondent or appellee shall file 40 copies of the brief on the merits within 30 days after the brief for the petitioner or appellant is filed.

3. The petitioner or appellant shall file 40 copies of the reply brief, if any, within 30 days after the brief for the respondent or appellee is filed, but any reply brief must actually be received by the Clerk not later than 2 p.m. one week before the date of oral argument. Any respondent or appellee supporting the petitioner or appellant may file a reply brief.

4. If cross-petitions or cross-appeals have been consolidated for argument, the Clerk, upon request of the parties, may designate one of the parties to file an initial brief and reply brief as provided in paragraphs 1 and 3 of this Rule (as if the party were petitioner or appellant), and may designate the other party to file an initial brief as provided in paragraph 2 of this Rule and, to the extent appropriate, a supplemental brief following the submission of the reply brief. In such a case, the Clerk may establish the time for the submission of the briefs and alter the otherwise applicable word limits. Except as approved by the Court or a Justice, the total number of words permitted for the briefs of the parties cumulatively shall not exceed the maximum that

would have been allowed in the absence of an order under this paragraph.

5. The time periods stated in paragraphs 1, 2, and 3 of this Rule may be extended as provided in Rule 30. An application to extend the time to file a brief on the merits is not favored. If a case is advanced for hearing, the time to file briefs on the merits may be abridged as circumstances require pursuant to an order of the Court on its own motion or that of a party.

6. A party wishing to present late authorities, newly enacted legislation, or other intervening matter that was not available in time to be included in a brief may file 40 copies of a supplemental brief, restricted to such new matter and otherwise presented in conformity with these Rules, up to the time the case is called for oral argument or by leave of the Court thereafter.

7. After a case has been argued or submitted, the Clerk will not file any brief, except that of a party filed by leave of the Court.

8. The Clerk will not file any brief that is not accompanied by proof of service as required by Rule 29.

9. An electronic version of every brief on the merits shall be transmitted to the Clerk of Court and to opposing counsel of record at the time the brief is filed in accordance with guidelines established by the Clerk. The electronic transmission requirement is in addition to the requirement that booklet-format briefs be timely filed.

Rule 26. Joint Appendix

1. Unless the Clerk has allowed the parties to use the deferred method described in paragraph 4 of this Rule, the petitioner or appellant, within 45 days after entry of the order granting the writ of certiorari, noting probable jurisdiction, or postponing consideration of jurisdiction, shall file 40 copies of a joint appendix, prepared as required by Rule 33.1. The joint appendix shall contain: (1) the relevant docket entries in all the courts below; (2) any relevant pleadings, jury instructions, findings, conclusions, or opinions; (3)

the judgment, order, or decision under review; and (4) any other parts of the record that the parties particularly wish to bring to the Court's attention. Any of the foregoing items already reproduced in a petition for a writ of certiorari, jurisdictional statement, brief in opposition to a petition for a writ of certiorari, motion to dismiss or affirm, or any appendix to the foregoing, that was prepared as required by Rule 33.1, need not be reproduced again in the joint appendix. The petitioner or appellant shall serve three copies of the joint appendix on each of the other parties to the proceeding as required by Rule 29.

2. The parties are encouraged to agree on the contents of the joint appendix. In the absence of agreement, the petitioner or appellant, within 10 days after entry of the order granting the writ of certiorari, noting probable jurisdiction, or postponing consideration of jurisdiction, shall serve on the respondent or appellee a designation of parts of the record to be included in the joint appendix. Within 10 days after receiving the designation, a respondent or appellee who considers the parts of the record so designated insufficient shall serve on the petitioner or appellant a designation of additional parts to be included in the joint appendix, and the petitioner or appellant shall include the parts so designated. If the Court has permitted the respondent or appellee to proceed *in forma pauperis*, the petitioner or appellant may seek by motion to be excused from printing portions of the record the petitioner or appellant considers unnecessary. In making these designations, counsel should include only those materials the Court should examine; unnecessary designations should be avoided. The record is on file with the Clerk and available to the Justices, and counsel may refer in briefs and in oral argument to relevant portions of the record not included in the joint appendix.

3. When the joint appendix is filed, the petitioner or appellant immediately shall file with the Clerk a statement of the cost of printing 50 copies and shall serve a copy of the statement on each of the other parties as required by Rule 29. Unless the parties agree otherwise, the cost of producing

the joint appendix shall be paid initially by the petitioner or appellant; but a petitioner or appellant who considers that parts of the record designated by the respondent or appellee are unnecessary for the determination of the issues presented may so advise the respondent or appellee, who then shall advance the cost of printing the additional parts, unless the Court or a Justice otherwise fixes the initial allocation of the costs. The cost of printing the joint appendix is taxed as a cost in the case, but if a party unnecessarily causes matter to be included in the joint appendix or prints excessive copies, the Court may impose these costs on that party.

4. (a) On the parties' request, the Clerk may allow preparation of the joint appendix to be deferred until after the briefs have been filed. In that event, the petitioner or appellant shall file the joint appendix no more than 14 days after receiving the brief for the respondent or appellee. The provisions of paragraphs 1, 2, and 3 of this Rule shall be followed, except that the designations referred to therein shall be made by each party when that party's brief is served. Deferral of the joint appendix is not favored.

(b) If the deferred method is used, the briefs on the merits may refer to the pages of the record. In that event, the joint appendix shall include in brackets on each page thereof the page number of the record where that material may be found. A party wishing to refer directly to the pages of the joint appendix may serve and file copies of its brief prepared as required by Rule 33.2 within the time provided by Rule 25, with appropriate references to the pages of the record. In that event, within 10 days after the joint appendix is filed, copies of the brief prepared as required by Rule 33.1 containing references to the pages of the joint appendix in place of, or in addition to, the initial references to the pages of the record, shall be served and filed. No other change may be made in the brief as initially served and filed, except that typographical errors may be corrected.

5. The joint appendix shall be prefaced by a table of contents showing the parts of the record that it contains, in the order in which the parts are set out, with references to the

pages of the joint appendix at which each part begins. The relevant docket entries shall be set out after the table of contents, followed by the other parts of the record in chronological order. When testimony contained in the reporter's transcript of proceedings is set out in the joint appendix, the page of the transcript at which the testimony appears shall be indicated in brackets immediately before the statement that is set out. Omissions in the transcript or in any other document printed in the joint appendix shall be indicated by asterisks. Immaterial formal matters (*e. g.*, captions, subscriptions, acknowledgments) shall be omitted. A question and its answer may be contained in a single paragraph.

6. Two lines must appear at the bottom of the cover of the joint appendix: (1) The first line must indicate the date the petition for the writ of certiorari was filed or the date the appeal was docketed; (2) the second line must indicate the date certiorari was granted or the date jurisdiction of the appeal was noted or postponed.

7. Exhibits designated for inclusion in the joint appendix may be contained in a separate volume or volumes suitably indexed. The transcript of a proceeding before an administrative agency, board, commission, or officer used in an action in a district court or court of appeals is regarded as an exhibit for the purposes of this paragraph.

8. The Court, on its own motion or that of a party, may dispense with the requirement of a joint appendix and may permit a case to be heard on the original record (with such copies of the record, or relevant parts thereof, as the Court may require) or on the appendix used in the court below, if it conforms to the requirements of this Rule.

9. For good cause, the time limits specified in this Rule may be shortened or extended by the Court or a Justice, or by the Clerk under Rule 30.4.

Rule 27. Calendar

1. From time to time, the Clerk will prepare a calendar of cases ready for argument. A case ordinarily will not be

called for argument less than two weeks after the brief on the merits for the respondent or appellee is due.

2. The Clerk will advise counsel when they are required to appear for oral argument and will publish a hearing list in advance of each argument session for the convenience of counsel and the information of the public.

3. The Court, on its own motion or that of a party, may order that two or more cases involving the same or related questions be argued together as one case or on such other terms as the Court may prescribe.

Rule 28. Oral Argument

1. Oral argument should emphasize and clarify the written arguments in the briefs on the merits. Counsel should assume that all Justices have read the briefs before oral argument. Oral argument read from a prepared text is not favored.

2. The petitioner or appellant shall open and may conclude the argument. A cross-writ of certiorari or cross-appeal will be argued with the initial writ of certiorari or appeal as one case in the time allowed for that one case, and the Court will advise the parties who shall open and close.

3. Unless the Court directs otherwise, each side is allowed one-half hour for argument. Counsel is not required to use all the allotted time. Any request for additional time to argue shall be presented by motion under Rule 21 in time to be considered at a scheduled Conference prior to the date of oral argument and no later than 7 days after the respondent's or appellee's brief on the merits is filed, and shall set out specifically and concisely why the case cannot be presented within the half-hour limitation. Additional time is rarely accorded.

4. Only one attorney will be heard for each side, except by leave of the Court on motion filed in time to be considered at a scheduled Conference prior to the date of oral argument and no later than 7 days after the respondent's or appellee's brief on the merits is filed. Any request for divided argu-

ment shall be presented by motion under Rule 21 and shall set out specifically and concisely why more than one attorney should be allowed to argue. Divided argument is not favored.

5. Regardless of the number of counsel participating in oral argument, counsel making the opening argument shall present the case fairly and completely and not reserve points of substance for rebuttal.

6. Oral argument will not be allowed on behalf of any party for whom a brief has not been filed.

7. By leave of the Court, and subject to paragraph 4 of this Rule, counsel for an *amicus curiae* whose brief has been filed as provided in Rule 37 may argue orally on the side of a party, with the consent of that party. In the absence of consent, counsel for an *amicus curiae* may seek leave of the Court to argue orally by a motion setting out specifically and concisely why oral argument would provide assistance to the Court not otherwise available. Such a motion will be granted only in the most extraordinary circumstances.

Part VII. Practice and Procedure

Rule 29. Filing and Service of Documents; Special Notifications; Corporate Listing

1. Any document required or permitted to be presented to the Court or to a Justice shall be filed with the Clerk.

2. A document is timely filed if it is received by the Clerk within the time specified for filing; or if it is sent to the Clerk through the United States Postal Service by first-class mail (including express or priority mail), postage prepaid, and bears a postmark, other than a commercial postage meter label, showing that the document was mailed on or before the last day for filing; or if it is delivered on or before the last day for filing to a third-party commercial carrier for delivery to the Clerk within 3 calendar days. If submitted by an inmate confined in an institution, a document is timely filed if it is deposited in the institution's internal mail system

on or before the last day for filing and is accompanied by a notarized statement or declaration in compliance with 28 U. S. C. § 1746 setting out the date of deposit and stating that first-class postage has been prepaid. If the postmark is missing or not legible, or if the third-party commercial carrier does not provide the date the document was received by the carrier, the Clerk will require the person who sent the document to submit a notarized statement or declaration in compliance with 28 U. S. C. § 1746 setting out the details of the filing and stating that the filing took place on a particular date within the permitted time.

3. Any document required by these Rules to be served may be served personally, by mail, or by third-party commercial carrier for delivery within 3 calendar days on each party to the proceeding at or before the time of filing. If the document has been prepared as required by Rule 33.1, three copies shall be served on each other party separately represented in the proceeding. If the document has been prepared as required by Rule 33.2, service of a single copy on each other separately represented party suffices. If personal service is made, it shall consist of delivery at the office of the counsel of record, either to counsel or to an employee therein. If service is by mail or third-party commercial carrier, it shall consist of depositing the document with the United States Postal Service, with no less than first-class postage prepaid, or delivery to the carrier for delivery within 3 calendar days, addressed to counsel of record at the proper address. When a party is not represented by counsel, service shall be made on the party, personally, by mail, or by commercial carrier. Ordinarily, service on a party must be by a manner at least as expeditious as the manner used to file the document with the Court.

4. (a) If the United States or any federal department, office, agency, officer, or employee is a party to be served, service shall be made on the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N. W., Washington, DC 20530-0001. When an agency

of the United States that is a party is authorized by law to appear before this Court on its own behalf, or when an officer or employee of the United States is a party, the agency, officer, or employee shall be served in addition to the Solicitor General.

(b) In any proceeding in this Court in which the constitutionality of an Act of Congress is drawn into question, and neither the United States nor any federal department, office, agency, officer, or employee is a party, the initial document filed in this Court shall recite that 28 U. S. C. § 2403(a) may apply and shall be served on the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N. W., Washington, DC 20530-0001. In such a proceeding from any court of the United States, as defined by 28 U. S. C. § 451, the initial document also shall state whether that court, pursuant to 28 U. S. C. § 2403(a), certified to the Attorney General the fact that the constitutionality of an Act of Congress was drawn into question. See Rule 14.1(e)(v).

(c) In any proceeding in this Court in which the constitutionality of any statute of a State is drawn into question, and neither the State nor any agency, officer, or employee thereof is a party, the initial document filed in this Court shall recite that 28 U. S. C. § 2403(b) may apply and shall be served on the Attorney General of that State. In such a proceeding from any court of the United States, as defined by 28 U. S. C. § 451, the initial document also shall state whether that court, pursuant to 28 U. S. C. § 2403(b), certified to the State Attorney General the fact that the constitutionality of a statute of that State was drawn into question. See Rule 14.1(e)(v).

5. Proof of service, when required by these Rules, shall accompany the document when it is presented to the Clerk for filing and shall be separate from it. Proof of service shall contain, or be accompanied by, a statement that all parties required to be served have been served, together with a list of the names, addresses, and telephone numbers of

counsel indicating the name of the party or parties each counsel represents. It is not necessary that service on each party required to be served be made in the same manner or evidenced by the same proof. Proof of service may consist of any one of the following:

(a) an acknowledgment of service, signed by counsel of record for the party served, and bearing the address and telephone number of such counsel;

(b) a certificate of service, reciting the facts and circumstances of service in compliance with the appropriate paragraph or paragraphs of this Rule, and signed by a member of the Bar of this Court representing the party on whose behalf service is made or by an attorney appointed to represent that party under the Criminal Justice Act of 1964, see 18 U. S. C. § 3006A(d)(6), or under any other applicable federal statute; or

(c) a notarized affidavit or declaration in compliance with 28 U. S. C. § 1746, reciting the facts and circumstances of service in accordance with the appropriate paragraph or paragraphs of this Rule, whenever service is made by any person not a member of the Bar of this Court and not an attorney appointed to represent a party under the Criminal Justice Act of 1964, see 18 U. S. C. § 3006A(d)(6), or under any other applicable federal statute.

6. Every document, except a joint appendix or *amicus curiae* brief, filed by or on behalf of a nongovernmental corporation shall contain a corporate disclosure statement identifying the parent corporations and listing any publicly held company that owns 10% or more of the corporation's stock. If there is no parent or publicly held company owning 10% or more of the corporation's stock, a notation to this effect shall be included in the document. If a statement has been included in a document filed earlier in the case, reference may be made to the earlier document (except when the earlier statement appeared in a document prepared under Rule 33.2), and only amendments to the statement to make it current need be included in the document being filed.

Rule 30. Computation and Extension of Time

1. In the computation of any period of time prescribed or allowed by these Rules, by order of the Court, or by an applicable statute, the day of the act, event, or default from which the designated period begins to run is not included. The last day of the period shall be included, unless it is a Saturday, Sunday, federal legal holiday listed in 5 U. S. C. § 6103, or day on which the Court building is closed by order of the Court or the Chief Justice, in which event the period shall extend until the end of the next day that is not a Saturday, Sunday, federal legal holiday, or day on which the Court building is closed.

2. Whenever a Justice or the Clerk is empowered by law or these Rules to extend the time to file any document, an application seeking an extension shall be filed within the period sought to be extended. An application to extend the time to file a petition for a writ of certiorari or to file a jurisdictional statement must be filed at least 10 days before the specified final filing date as computed under these Rules; if filed less than 10 days before the final filing date, such application will not be granted except in the most extraordinary circumstances.

3. An application to extend the time to file a petition for a writ of certiorari, to file a jurisdictional statement, to file a reply brief on the merits, or to file a petition for rehearing shall be made to an individual Justice and presented and served on all other parties as provided by Rule 22. Once denied, such an application may not be renewed.

4. An application to extend the time to file any document or paper other than those specified in paragraph 3 of this Rule may be presented in the form of a letter to the Clerk setting out specific reasons why an extension of time is justified. The letter shall be served on all other parties as required by Rule 29. The application may be acted on by the Clerk in the first instance, and any party aggrieved by the Clerk's action may request that the application be submitted to a Justice or to the Court. The Clerk will report action under this paragraph to the Court as instructed.

Rule 31. Translations

Whenever any record to be transmitted to this Court contains material written in a foreign language without a translation made under the authority of the lower court, or admitted to be correct, the clerk of the court transmitting the record shall advise the Clerk of this Court immediately so that this Court may order that a translation be supplied and, if necessary, printed as part of the joint appendix.

Rule 32. Models, Diagrams, Exhibits, and Lodgings

1. Models, diagrams, and exhibits of material forming part of the evidence taken in a case and brought to this Court for its inspection shall be placed in the custody of the Clerk at least two weeks before the case is to be heard or submitted.

2. All models, diagrams, exhibits, and other items placed in the custody of the Clerk shall be removed by the parties no more than 40 days after the case is decided. If this is not done, the Clerk will notify counsel to remove the articles forthwith. If they are not removed within a reasonable time thereafter, the Clerk will destroy them or dispose of them in any other appropriate way.

3. Any party or *amicus curiae* desiring to lodge non-record material with the Clerk must set out in a letter, served on all parties, a description of the material proposed for lodging and the reasons why the non-record material may properly be considered by the Court. The material proposed for lodging may not be submitted until and unless requested by the Clerk.

Rule 33. Document Preparation: Booklet Format; 8½- by 11-Inch Paper Format

1. *Booklet Format:* (a) Except for a document expressly permitted by these Rules to be submitted on 8½- by 11-inch paper, see, *e. g.*, Rules 21, 22, and 39, every document filed with the Court shall be prepared in a 6⅛- by 9¼-inch booklet format using a standard typesetting process (*e. g.*, hot metal, photocomposition, or computer typesetting) to produce text

printed in typographic (as opposed to typewriter) characters. The process used must produce a clear, black image on white paper. The text must be reproduced with a clarity that equals or exceeds the output of a laser printer.

(b) The text of every booklet-format document, including any appendix thereto, shall be typeset in a Century family (*e. g.*, Century Expanded, New Century Schoolbook, or Century Schoolbook) 12-point type with 2-point or more leading between lines. Quotations in excess of 50 words shall be indented. The typeface of footnotes shall be 10-point type with 2-point or more leading between lines. The text of the document must appear on both sides of the page.

(c) Every booklet-format document shall be produced on paper that is opaque, unglazed, and not less than 60 pounds in weight, and shall have margins of at least three-fourths of an inch on all sides. The text field, including footnotes, may not exceed $4\frac{1}{8}$ by $7\frac{1}{8}$ inches. The document shall be bound firmly in at least two places along the left margin (saddle stitch or perfect binding preferred) so as to permit easy opening, and no part of the text should be obscured by the binding. Spiral, plastic, metal, or string bindings may not be used. Copies of patent documents, except opinions, may be duplicated in such size as is necessary in a separate appendix.

(d) Every booklet-format document, shall comply with the word limits shown on the chart in subparagraph 1(g) of this Rule. The word limits do not include the questions presented, the list of parties and the corporate disclosure statement, the table of contents, the table of cited authorities, the listing of counsel at the end of the document, or any appendix. The word limits include footnotes. Verbatim quotations required under Rule 14.1(f), if set out in the text of a brief rather than in the appendix, are also excluded. For good cause, the Court or a Justice may grant leave to file a document in excess of the word limits, but application for such leave is not favored. An application to exceed word limits shall comply with Rule 22 and must be received by the Clerk at least 15 days before the filing date of the document in question, except in the most extraordinary circumstances.

(e) Every booklet-format document, shall have a suitable cover consisting of 65-pound weight paper in the color indicated on the chart in subparagraph 1(g) of this Rule. If a separate appendix to any document is filed, the color of its cover shall be the same as that of the cover of the document it supports. The Clerk will furnish a color chart upon request. Counsel shall ensure that there is adequate contrast between the printing and the color of the cover. A document filed by the United States, or by any other federal party represented by the Solicitor General, shall have a gray cover. A joint appendix, answer to a bill of complaint, motion for leave to intervene, and any other document not listed in subparagraph 1(g) of this Rule shall have a tan cover.

(f) Forty copies of a booklet-format document shall be filed.

(g) Word limits and cover colors for booklet-format documents are as follows:

	Type of Document	Word Limits	Color of Cover
(i)	Petition for a Writ of Certiorari (Rule 14); Motion for Leave to File a Bill of Complaint and Brief in Support (Rule 17.3); Jurisdictional Statement (Rule 18.3); Petition for an Extraordinary Writ (Rule 20.2)	9,000	white
(ii)	Brief in Opposition (Rule 15.3); Brief in Opposition to Motion for Leave to File an Original Action (Rule 17.5); Motion to Dismiss or Affirm (Rule 18.6); Brief in Opposition to Mandamus or Prohibition (Rule 20.3(b)); Response to a Petition for Habeas Corpus (Rule 20.4)	9,000	orange
(iii)	Reply to Brief in Opposition (Rules 15.6 and 17.5); Brief Opposing a Motion to Dismiss or Affirm (Rule 18.8)	3,000	tan
(iv)	Supplemental Brief (Rules 15.8, 17, 18.10, and 25.5)	3,000	tan
(v)	Brief on the Merits for Petitioner or Appellant (Rule 24); Exceptions by Plaintiff to Report of Special Master (Rule 17)	15,000	light blue
(vi)	Brief on the Merits for Respondent or Appellee (Rule 24.2); Brief on the Merits for Respondent or Appellee Supporting Petitioner or Appellant (Rule 12.6); Exceptions by Party Other Than Plaintiff to Report of Special Master (Rule 17)	15,000	light red

	Type of Document	Word Limits	Color of Cover
(vii)	Reply Brief on the Merits (Rule 24.4)	6,000	yellow
(viii)	Reply to Plaintiff's Exceptions to Report of Special Master (Rule 17)	15,000	orange
(ix)	Reply to Exceptions by Party Other Than Plaintiff to Report of Special Master (Rule 17)	15,000	yellow
(x)	Brief for an *Amicus Curiae* at the Petition Stage or pertaining to a Motion for Leave to file a Bill of Complaint (Rule 37.2)	6,000	cream
(xi)	Brief for an *Amicus Curiae* in Support of the Plaintiff, Petitioner, or Appellant, or in Support of Neither Party, on the Merits or in an Original Action at the Exceptions Stage (Rule 37.3)	9,000	light green
(xii)	Brief for an *Amicus Curiae* in Support of the Defendant, Respondent, or Appellee, on the Merits or in an Original Action at the Exceptions Stage (Rule 37.3)	9,000	dark green
(xiii)	Petition for Rehearing (Rule 44)	3,000	tan

(h) A document prepared under Rule 33.1 must be accompanied by a certificate signed by the attorney, the unrepresented party, or the preparer of the document stating that the brief complies with the word limitations. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the document. The word-processing system must be set to include footnotes in the word count. The certificate must state the number of words in the document. The certificate shall accompany the document when it is presented to the Clerk for filing and shall be separate from it. If the certificate is signed by a person other than a member of the Bar of this Court, the counsel of record, or the unrepresented party, it must contain a notarized affidavit or declaration in compliance with 28 U. S. C. § 1746.

2. *8½- by 11-Inch Paper Format:* (a) The text of every document, including any appendix thereto, expressly permitted by these Rules to be presented to the Court on 8½- by 11-inch paper shall appear double spaced, except for indented quotations, which shall be single spaced, on opaque, un-

glazed, white paper. The document shall be stapled or bound at the upper left-hand corner. Copies, if required, shall be produced on the same type of paper and shall be legible. The original of any such document (except a motion to dismiss or affirm under Rule 18.6) shall be signed by the party proceeding *pro se* or by counsel of record who must be a member of the Bar of this Court or an attorney appointed under the Criminal Justice Act of 1964, see 18 U. S. C. § 3006A(d)(6), or under any other applicable federal statute. Subparagraph 1(g) of this Rule does not apply to documents prepared under this paragraph.

(b) Page limits for documents presented on 8½- by 11-inch paper are: 40 pages for a petition for a writ of certiorari, jurisdictional statement, petition for an extraordinary writ, brief in opposition, or motion to dismiss or affirm; and 15 pages for a reply to a brief in opposition, brief opposing a motion to dismiss or affirm, supplemental brief, or petition for rehearing. The exclusions specified in subparagraph 1(d) of this Rule apply.

Rule 34. Document Preparation: General Requirements

Every document, whether prepared under Rule 33.1 or Rule 33.2, shall comply with the following provisions:

1. Each document shall bear on its cover, in the order indicated, from the top of the page:

(a) the docket number of the case or, if there is none, a space for one;

(b) the name of this Court;

(c) the caption of the case as appropriate in this Court;

(d) the nature of the proceeding and the name of the court from which the action is brought (*e. g.*, "On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit"; or, for a merits brief, "On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit");

(e) the title of the document (*e. g.*, "Petition for Writ of Certiorari," "Brief for Respondent," "Joint Appendix");

(f) the name of the attorney who is counsel of record for the party concerned (who must be a member of the Bar of this Court except as provided in Rule 9.1), and on whom service is to be made, with a notation directly thereunder identifying the attorney as counsel of record and setting out counsel's office address and telephone number. Only one counsel of record may be noted on a single document. The names of other members of the Bar of this Court or of the bar of the highest court of a State acting as counsel, and, if desired, their addresses, may be added, but counsel of record shall be clearly identified. Names of persons other than attorneys admitted to a state bar may not be listed, unless the party is appearing *pro se,* in which case the party's name, address, and telephone number shall appear. The foregoing shall be displayed in an appropriate typographic manner and, except for the identification of counsel, may not be set in type smaller than standard 11-point, if the document is prepared as required by Rule 33.1.

2. Every document exceeding five pages (other than a joint appendix), whether prepared under Rule 33.1 or Rule 33.2, shall contain a table of contents and a table of cited authorities (*i. e.*, cases alphabetically arranged, constitutional provisions, statutes, treatises, and other materials) with references to the pages in the document where such authorities are cited.

3. The body of every document shall bear at its close the name of counsel of record and such other counsel, identified on the cover of the document in conformity with subparagraph 1(f) of this Rule, as may be desired.

4. Every appendix to a document must be preceded by a table of contents that provides a description of each document in the appendix.

5. All references to a provision of federal statutory law should ordinarily be cited to the United States Code, if the provision has been codified therein. In the event the provision has not been classified to the United States Code, citation should be to the Statutes at Large. Additional or alternative citations should be provided only if there is a

particular reason why those citations are relevant or necessary to the argument.

Rule 35. Death, Substitution, and Revivor; Public Officers

1. If a party dies after the filing of a petition for a writ of certiorari to this Court, or after the filing of a notice of appeal, the authorized representative of the deceased party may appear and, on motion, be substituted as a party. If the representative does not voluntarily become a party, any other party may suggest the death on the record and, on motion, seek an order requiring the representative to become a party within a designated time. If the representative then fails to become a party, the party so moving, if a respondent or appellee, is entitled to have the petition for a writ of certiorari or the appeal dismissed, and if a petitioner or appellant, is entitled to proceed as in any other case of nonappearance by a respondent or appellee. If the substitution of a representative of the deceased is not made within six months after the death of the party, the case shall abate.

2. Whenever a case cannot be revived in the court whose judgment is sought to be reviewed, because the deceased party's authorized representative is not subject to that court's jurisdiction, proceedings will be conducted as this Court may direct.

3. When a public officer who is a party to a proceeding in this Court in an official capacity dies, resigns, or otherwise ceases to hold office, the action does not abate and any successor in office is automatically substituted as a party. The parties shall notify the Clerk in writing of any such successions. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting substantial rights of the parties will be disregarded.

4. A public officer who is a party to a proceeding in this Court in an official capacity may be described as a party by the officer's official title rather than by name, but the Court may require the name to be added.

Rule 36. Custody of Prisoners in Habeas Corpus Proceedings

1. Pending review in this Court of a decision in a habeas corpus proceeding commenced before a court, Justice, or judge of the United States, the person having custody of the prisoner may not transfer custody to another person unless the transfer is authorized under this Rule.

2. Upon application by a custodian, the court, Justice, or judge who entered the decision under review may authorize transfer and the substitution of a successor custodian as a party.

3. (a) Pending review of a decision failing or refusing to release a prisoner, the prisoner may be detained in the custody from which release is sought or in other appropriate custody or may be enlarged on personal recognizance or bail, as may appear appropriate to the court, Justice, or judge who entered the decision, or to the court of appeals, this Court, or a judge or Justice of either court.

(b) Pending review of a decision ordering release, the prisoner shall be enlarged on personal recognizance or bail, unless the court, Justice, or judge who entered the decision, or the court of appeals, this Court, or a judge or Justice of either court, orders otherwise.

4. An initial order respecting the custody or enlargement of the prisoner, and any recognizance or surety taken, shall continue in effect pending review in the court of appeals and in this Court unless for reasons shown to the court of appeals, this Court, or a judge or Justice of either court, the order is modified or an independent order respecting custody, enlargement, or surety is entered.

Rule 37. Brief for an *Amicus Curiae*

1. An *amicus curiae* brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court. An *amicus curiae* brief that does not serve this purpose burdens the Court, and its filing is not favored. An *amicus*

curiae brief may be filed only by an attorney admitted to practice before this Court as provided in Rule 5.

2. (a) An *amicus curiae* brief submitted before the Court's consideration of a petition for a writ of certiorari, motion for leave to file a bill of complaint, jurisdictional statement, or petition for an extraordinary writ may be filed if accompanied by the written consent of all parties, or if the Court grants leave to file under subparagraph 2(b) of this Rule. An *amicus curiae* brief in support of a petitioner or appellant shall be filed within 30 days after the case is placed on the docket or a response is called for by the Court, whichever is later, and that time will not be extended. An *amicus curiae* brief in support of a motion of a plaintiff for leave to file a bill of complaint in an original action shall be filed within 60 days after the case is placed on the docket, and that time will not be extended. An *amicus curiae* brief in support of a respondent, an appellee, or a defendant shall be submitted within the time allowed for filing a brief in opposition or a motion to dismiss or affirm. An *amicus curiae* shall ensure that the counsel of record for all parties receive notice of its intention to file an *amicus curiae* brief at least 10 days prior to the due date for the *amicus curiae* brief, unless the *amicus curiae* brief is filed earlier than 10 days before the due date. Only one signatory to any *amicus curiae* brief filed jointly by more than one *amicus curiae* must timely notify the parties of its intent to file that brief. The *amicus curiae* brief shall indicate that counsel of record received timely notice of the intent to file the brief under this Rule and shall specify whether consent was granted, and its cover shall identify the party supported.

(b) When a party to the case has withheld consent, a motion for leave to file an *amicus curiae* brief before the Court's consideration of a petition for a writ of certiorari, motion for leave to file a bill of complaint, jurisdictional statement, or petition for an extraordinary writ may be presented to the Court. The motion, prepared as required by Rule 33.1 and as one document with the brief sought to be filed, shall be submitted within the time allowed for filing an

amicus curiae brief, and shall indicate the party or parties who have withheld consent and state the nature of the movant's interest. Such a motion is not favored.

3. (a) An *amicus curiae* brief in a case before the Court for oral argument may be filed if accompanied by the written consent of all parties, or if the Court grants leave to file under subparagraph 3(b) of this Rule. The brief shall be submitted within 7 days after the brief for the party supported is filed, or if in support of neither party, within 7 days after the time allowed for filing the petitioner's or appellant's brief. Motions to extend the time for filing an *amicus curiae* brief will not be entertained. The 10-day notice requirement of subparagraph 2(a) of this Rule does not apply to an *amicus curiae* brief in a case before the Court for oral argument. An electronic version of every *amicus curiae* brief in a case before the Court for oral argument shall be transmitted to the Clerk of Court and to counsel for the parties at the time the brief is filed in accordance with guidelines established by the Clerk. The electronic transmission requirement is in addition to the requirement that booklet-format briefs be timely filed. The *amicus curiae* brief shall specify whether consent was granted, and its cover shall identify the party supported or indicate whether it suggests affirmance or reversal. The Clerk will not file a reply brief for an *amicus curiae*, or a brief for an *amicus curiae* in support of, or in opposition to, a petition for rehearing.

(b) When a party to a case before the Court for oral argument has withheld consent, a motion for leave to file an *amicus curiae* brief may be presented to the Court. The motion, prepared as required by Rule 33.1 and as one document with the brief sought to be filed, shall be submitted within the time allowed for filing an *amicus curiae* brief, and shall indicate the party or parties who have withheld consent and state the nature of the movant's interest.

4. No motion for leave to file an *amicus curiae* brief is necessary if the brief is presented on behalf of the United States by the Solicitor General; on behalf of any agency of

the United States allowed by law to appear before this Court when submitted by the agency's authorized legal representative; on behalf of a State, Commonwealth, Territory, or Possession when submitted by its Attorney General; or on behalf of a city, county, town, or similar entity when submitted by its authorized law officer.

5. A brief or motion filed under this Rule shall be accompanied by proof of service as required by Rule 29, and shall comply with the applicable provisions of Rules 21, 24, and 33.1 (except that it suffices to set out in the brief the interest of the *amicus curiae*, the summary of the argument, the argument, and the conclusion). A motion for leave to file may not exceed 1,500 words. A party served with the motion may file an objection thereto, stating concisely the reasons for withholding consent; the objection shall be prepared as required by Rule 33.2.

6. Except for briefs presented on behalf of *amicus curiae* listed in Rule 37.4, a brief filed under this Rule shall indicate whether counsel for a party authored the brief in whole or in part and whether such counsel or a party made a monetary contribution intended to fund the preparation or submission of the brief, and shall identify every person other than the *amicus curiae*, its members, or its counsel, who made such a monetary contribution. The disclosure shall be made in the first footnote on the first page of text.

Rule 38. Fees

Under 28 U. S. C. § 1911, the fees charged by the Clerk are:

(a) for docketing a case on a petition for a writ of certiorari or on appeal or for docketing any other proceeding, except a certified question or a motion to docket and dismiss an appeal under Rule 18.5, $300;

(b) for filing a petition for rehearing or a motion for leave to file a petition for rehearing, $200;

(c) for reproducing and certifying any record or paper, $1 per page; and for comparing with the original thereof any photographic reproduction of any record or paper, when fur-

nished by the person requesting its certification, $.50 per page;

(d) for a certificate bearing the seal of the Court, $10; and

(e) for a check paid to the Court, Clerk, or Marshal that is returned for lack of funds, $35.

Rule 39. Proceedings *In Forma Pauperis*

1. A party seeking to proceed *in forma pauperis* shall file a motion for leave to do so, together with the party's notarized affidavit or declaration (in compliance with 28 U. S. C. § 1746) in the form prescribed by the Federal Rules of Appellate Procedure, Form 4. The motion shall state whether leave to proceed *in forma pauperis* was sought in any other court and, if so, whether leave was granted. If the United States district court or the United States court of appeals has appointed counsel under the Criminal Justice Act of 1964, 18 U. S. C. § 3006A, or under any other applicable federal statute, no affidavit or declaration is required, but the motion shall cite the statute under which counsel was appointed.

2. If leave to proceed *in forma pauperis* is sought for the purpose of filing a document, the motion, and an affidavit or declaration if required, shall be filed together with that document and shall comply in every respect with Rule 21. As provided in that Rule, it suffices to file an original and 10 copies, unless the party is an inmate confined in an institution and is not represented by counsel, in which case the original, alone, suffices. A copy of the motion, and affidavit or declaration if required, shall precede and be attached to each copy of the accompanying document.

3. Except when these Rules expressly provide that a document shall be prepared as required by Rule 33.1, every document presented by a party proceeding under this Rule shall be prepared as required by Rule 33.2 (unless such preparation is impossible). Every document shall be legible. While making due allowance for any case presented under this Rule by a person appearing *pro se*, the Clerk will not file any document if it does not comply with the substance of these Rules or is jurisdictionally out of time.

4. When the documents required by paragraphs 1 and 2 of this Rule are presented to the Clerk, accompanied by proof of service as required by Rule 29, they will be placed on the docket without the payment of a docket fee or any other fee.

5. The respondent or appellee in a case filed *in forma pauperis* shall respond in the same manner and within the same time as in any other case of the same nature, except that the filing of an original and 10 copies of a response prepared as required by Rule 33.2, with proof of service as required by Rule 29, suffices. The respondent or appellee may challenge the grounds for the motion for leave to proceed *in forma pauperis* in a separate document or in the response itself.

6. Whenever the Court appoints counsel for an indigent party in a case set for oral argument, the briefs on the merits submitted by that counsel, unless otherwise requested, shall be prepared under the Clerk's supervision. The Clerk also will reimburse appointed counsel for any necessary travel expenses to Washington, D. C., and return in connection with the argument.

7. In a case in which certiorari has been granted, probable jurisdiction noted, or consideration of jurisdiction postponed, this Court may appoint counsel to represent a party financially unable to afford an attorney to the extent authorized by the Criminal Justice Act of 1964, 18 U. S. C. § 3006A, or by any other applicable federal statute.

8. If satisfied that a petition for a writ of certiorari, jurisdictional statement, or petition for an extraordinary writ is frivolous or malicious, the Court may deny leave to proceed *in forma pauperis.*

Rule 40. Veterans, Seamen, and Military Cases

1. A veteran suing under any provision of law exempting veterans from the payment of fees or court costs, may proceed without prepayment of fees or costs or furnishing security therefor and may file a motion for leave to proceed on papers prepared as required by Rule 33.2. The motion shall ask leave to proceed as a veteran and be accompanied by an affidavit or declaration setting out the moving party's vet-

eran status. A copy of the motion shall precede and be attached to each copy of the petition for a writ of certiorari or other substantive document filed by the veteran.

2. A seaman suing under 28 U. S. C. § 1916 may proceed without prepayment of fees or costs or furnishing security therefor and may file a motion for leave to proceed on papers prepared as required by Rule 33.2. The motion shall ask leave to proceed as a seaman and be accompanied by an affidavit or declaration setting out the moving party's seaman status. A copy of the motion shall precede and be attached to each copy of the petition for a writ of certiorari or other substantive document filed by the seaman.

3. An accused person petitioning for a writ of certiorari to review a decision of the United States Court of Appeals for the Armed Forces under 28 U. S. C. § 1259 may proceed without prepayment of fees or costs or furnishing security therefor and without filing an affidavit of indigency, but is not entitled to proceed on papers prepared as required by Rule 33.2, except as authorized by the Court on separate motion under Rule 39.

Part VIII. Disposition of Cases

Rule 41. Opinions of the Court

Opinions of the Court will be released by the Clerk immediately upon their announcement from the bench, or as the Court otherwise directs. Thereafter, the Clerk will cause the opinions to be issued in slip form, and the Reporter of Decisions will prepare them for publication in the preliminary prints and bound volumes of the United States Reports.

Rule 42. Interest and Damages

1. If a judgment for money in a civil case is affirmed, any interest allowed by law is payable from the date the judgment under review was entered. If a judgment is modified or reversed with a direction that a judgment for money be entered below, the courts below may award interest to the extent permitted by law. Interest in cases arising in a state

court is allowed at the same rate that similar judgments bear interest in the courts of the State in which judgment is directed to be entered. Interest in cases arising in a court of the United States is allowed at the interest rate authorized by law.

2. When a petition for a writ of certiorari, an appeal, or an application for other relief is frivolous, the Court may award the respondent or appellee just damages, and single or double costs under Rule 43. Damages or costs may be awarded against the petitioner, appellant, or applicant, against the party's counsel, or against both party and counsel.

Rule 43. Costs

1. If the Court affirms a judgment, the petitioner or appellant shall pay costs unless the Court otherwise orders.

2. If the Court reverses or vacates a judgment, the respondent or appellee shall pay costs unless the Court otherwise orders.

3. The Clerk's fees and the cost of printing the joint appendix are the only taxable items in this Court. The cost of the transcript of the record from the court below is also a taxable item, but shall be taxable in that court as costs in the case. The expenses of printing briefs, motions, petitions, or jurisdictional statements are not taxable.

4. In a case involving a certified question, costs are equally divided unless the Court otherwise orders, except that if the Court decides the whole matter in controversy, as permitted by Rule 19.2, costs are allowed as provided in paragraphs 1 and 2 of this Rule.

5. To the extent permitted by 28 U. S. C. § 2412, costs under this Rule are allowed for or against the United States or an officer or agent thereof, unless expressly waived or unless the Court otherwise orders.

6. When costs are allowed in this Court, the Clerk will insert an itemization of the costs in the body of the mandate or judgment sent to the court below. The prevailing side may not submit a bill of costs.

7. In extraordinary circumstances the Court may adjudge double costs.

Rule 44. Rehearing

1. Any petition for the rehearing of any judgment or decision of the Court on the merits shall be filed within 25 days after entry of the judgment or decision, unless the Court or a Justice shortens or extends the time. The petitioner shall file 40 copies of the rehearing petition and shall pay the filing fee prescribed by Rule 38(b), except that a petitioner proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The petition shall state its grounds briefly and distinctly and shall be served as required by Rule 29. The petition shall be presented together with certification of counsel (or of a party unrepresented by counsel) that it is presented in good faith and not for delay; one copy of the certificate shall bear the signature of counsel (or of a party unrepresented by counsel). A copy of the certificate shall follow and be attached to each copy of the petition. A petition for rehearing is not subject to oral argument and will not be granted except by a majority of the Court, at the instance of a Justice who concurred in the judgment or decision.

2. Any petition for the rehearing of an order denying a petition for a writ of certiorari or extraordinary writ shall be filed within 25 days after the date of the order of denial and shall comply with all the form and filing requirements of paragraph 1 of this Rule, including the payment of the filing fee if required, but its grounds shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. The petition shall be presented together with certification of counsel (or of a party unrepresented by counsel) that it is restricted to the grounds specified in this paragraph and that it is presented in good faith and not for delay; one copy of the certificate shall bear the signature of counsel (or of a

party unrepresented by counsel). The certificate shall be bound with each copy of the petition. The Clerk will not file a petition without a certificate. The petition is not subject to oral argument.

3. The Clerk will not file any response to a petition for rehearing unless the Court requests a response. In the absence of extraordinary circumstances, the Court will not grant a petition for rehearing without first requesting a response.

4. The Clerk will not file consecutive petitions and petitions that are out of time under this Rule.

5. The Clerk will not file any brief for an *amicus curiae* in support of, or in opposition to, a petition for rehearing.

6. If the Clerk determines that a petition for rehearing submitted timely and in good faith is in a form that does not comply with this Rule or with Rule 33 or Rule 34, the Clerk will return it with a letter indicating the deficiency. A corrected petition for rehearing submitted in accordance with Rule 29.2 no more than 15 days after the date of the Clerk's letter will be deemed timely.

Rule 45. Process; Mandates

1. All process of this Court issues in the name of the President of the United States.

2. In a case on review from a state court, the mandate issues 25 days after entry of the judgment, unless the Court or a Justice shortens or extends the time, or unless the parties stipulate that it issue sooner. The filing of a petition for rehearing stays the mandate until disposition of the petition, unless the Court orders otherwise. If the petition is denied, the mandate issues forthwith.

3. In a case on review from any court of the United States, as defined by 28 U. S. C. § 451, a formal mandate does not issue unless specially directed; instead, the Clerk of this Court will send the clerk of the lower court a copy of the opinion or order of this Court and a certified copy of the judgment. The certified copy of the judgment, prepared and signed by this Court's Clerk, will provide for costs if

any are awarded. In all other respects, the provisions of paragraph 2 of this Rule apply.

Rule 46. Dismissing Cases

1. At any stage of the proceedings, whenever all parties file with the Clerk an agreement in writing that a case be dismissed, specifying the terms for payment of costs, and pay to the Clerk any fees then due, the Clerk, without further reference to the Court, will enter an order of dismissal.

2. (a) A petitioner or appellant may file a motion to dismiss the case, with proof of service as required by Rule 29, tendering to the Clerk any fees due and costs payable. No more than 15 days after service thereof, an adverse party may file an objection, limited to the amount of damages and costs in this Court alleged to be payable or to showing that the moving party does not represent all petitioners or appellants. The Clerk will not file any objection not so limited.

(b) When the objection asserts that the moving party does not represent all the petitioners or appellants, the party moving for dismissal may file a reply within 10 days, after which time the matter will be submitted to the Court for its determination.

(c) If no objection is filed—or if upon objection going only to the amount of damages and costs in this Court, the party moving for dismissal tenders the additional damages and costs in full within 10 days of the demand therefor—the Clerk, without further reference to the Court, will enter an order of dismissal. If, after objection as to the amount of damages and costs in this Court, the moving party does not respond by a tender within 10 days, the Clerk will report the matter to the Court for its determination.

3. No mandate or other process will issue on a dismissal under this Rule without an order of the Court.

Part IX. Definitions and Effective Date

Rule 47. Reference to "State Court" and "State Law"

The term "state court," when used in these Rules, includes the District of Columbia Court of Appeals, the Supreme

Court of the Commonwealth of Puerto Rico, the courts of the Northern Mariana Islands, and the local courts of Guam. References in these Rules to the statutes of a State include the statutes of the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the Territory of Guam.

Rule 48. Effective Date of Rules

1. These Rules, adopted January 12, 2010, will be effective February 16, 2010.

2. The Rules govern all proceedings after their effective date except to the extent that, in the opinion of the Court, their application to a pending matter would not be feasible or would work an injustice, in which event the former procedure applies.

3. In any case in which a petitioner or appellant has filed its brief on the merits prior to the effective date of these revised Rules, all remaining briefs in that case may comply with the October 1, 2007, version of the Rules of the Supreme Court of the United States rather than with these revised Rules.

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