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CASES ADJUDGED

IN

THE SUPREME COURT

AT

OCTOBER TERM, 2003

BEGINNING OF TERM

OCTOBER 6, 2003, THROUGH MARCH 1, 2004

FRANK D. WAGNER

REPORTER OF DECISIONS

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JUSTICES

OF THE

SUPREME COURT

DURING THE TIME OF THESE REPORTS

WILLIAM H. REHNQUIST, Chief Justice.
JOHN PAUL STEVENS, Associate Justice.
SANDRA DAY O'CONNOR, Associate Justice.
ANTONIN SCALIA, Associate Justice.
ANTHONY M. KENNEDY, Associate Justice.
DAVID H. SOUTER, Associate Justice.
CLARENCE THOMAS, Associate Justice.
RUTH BADER GINSBURG, Associate Justice.
STEPHEN BREYER, Associate Justice.

OFFICERS OF THE COURT

JOHN D. ASHCROFT, Attorney General.
THEODORE B. OLSON, Solicitor General.
WILLIAM K. SUTER, Clerk.
FRANK D. WAGNER, Reporter of Decisions.
PAMELA TALKIN, Marshal.
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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 September 30, 1994, viz.:

For the District of Columbia Circuit, WILLIAM H. REHNQUIST, Chief Justice.

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

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

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

For the Fourth Circuit, WILLIAM H. REHNQUIST, Chief Justice.

For the Fifth Circuit, ANTONIN SCALIA, Associate Justice.

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

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

For the Eighth Circuit, CLARENCE THOMAS, Associate Justice.

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

For the Tenth Circuit, STEPHEN BREYER, Associate Justice.

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

For the Federal Circuit, WILLIAM H. REHNQUIST, Chief Justice.

September 30, 1994.

(For next previous allotment, and modifications, see 502 U. S., p. VI, 509 U. S., p. V, and 512 U. S., p. V.)

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CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 2003

YARBOROUGH, WARDEN, ET AL. *v.* GENTRY

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

No. 02–1597. Decided October 20, 2003

At respondent Gentry's California state trial on charges that he stabbed his girlfriend, his counsel's closing argument made several key points, but did not highlight some potentially exculpatory evidence. Gentry was convicted. His claim that the closing argument denied him his right to effective assistance of counsel was rejected on direct appeal. His subsequent petition for federal habeas relief was denied by the District Court, but the Ninth Circuit reversed.

Held: The Ninth Circuit erred in finding that Gentry was deprived of his right to effective assistance of counsel. That right is denied when a defense attorney's performance falls below an objective standard of reasonableness and thus prejudices the defense. If a state court has already rejected an ineffective-assistance claim, its application of governing federal law must be shown to be not only erroneous, but objectively unreasonable. The right to effective assistance of counsel extends to closing arguments, but deference to counsel's tactical decisions in closing is particularly important because of the broad range of legitimate defense strategy at that stage. The record supports the state court's conclusion that counsel's performance was not ineffective, and the potentially exculpatory evidence highlighted by the Ninth Circuit does not establish that the state court's decision was unreasonable. Focusing on a few key points may be more persuasive than a shotgun approach, and there is a strong presumption that counsel focuses on some issues to the exclusion of others for tactical reasons, see *Strickland* v. *Washington*,

466 U. S. 668, 690. Here, the issues omitted were not so clearly more persuasive than those counsel discussed that their omission can only be attributed to a professional error of constitutional magnitude. The Ninth Circuit's findings of other flaws in counsel's presentation also do not support that court's conclusion.

Certiorari granted; 320 F. 3d 891, reversed.

PER CURIAM.

I

Respondent Lionel Gentry was convicted in California state court of assault with a deadly weapon for stabbing his girlfriend, Tanaysha Handy. Gentry claimed he stabbed her accidentally during a dispute with a drug dealer.

Handy testified for the prosecution. She stated that she recalled being stabbed but could not remember the details of the incident. The prosecution then confronted Handy with her testimony from a preliminary hearing that Gentry had placed his hand around her throat before stabbing her twice.

Albert Williams, a security guard in a neighboring building, testified that he saw Gentry, Handy, and another man from his third-floor window. According to Williams, Gentry swung his hand into Handy's left side with some object, causing her to lean forward and scream. Williams was inconsistent about the quality of light at the time, stating variously that it was "pretty dark" or "getting dark," that "it wasn't that dark," and that the area of the stabbing was "lighted up." See *Gentry* v. *Roe*, 320 F. 3d 891, 896–897 (CA9 2003).

Gentry testified in his own defense that he had stabbed Handy accidentally while pushing her out of the way. When asked about prior convictions, he falsely stated that he had been convicted only once; evidence showed he had been separately convicted of burglary, grand theft, battery on a peace officer, and being a felon in possession of a firearm. He attributed his error to confusion about whether a plea bargain counted as a conviction.

In her closing argument, the prosecutor expressed sympathy for Handy's plight as a pregnant, drug-addicted mother of three and highlighted her damaging preliminary hearing testimony. She accused Gentry of telling the jury a "pack of lies." See *id.*, at 897–898. Defense counsel responded with the following closing argument:

> "'I don't have a lot to say today. Just once I'd like to find a prosecutor that doesn't know exactly what happened. Just once I'd like to find a D. A. that wasn't there and that can tell and they can stand up here and be honest and say I don't know who is lying and who is not 'cause she wasn't there, ladies and gentlemen. [I] wasn't there. None of the 12 of you were there. None of the other people in this courtroom were there except those two people and that one guy who saw parts of it, or saw it all. Pretty dark. Dark. It was light. Those are the three versions of his testimony with regard to what he saw and what he saw. I don't know what happened. I can't tell you. And if I sit here and try to tell you what happened, I'm lying to you. I don't know. I wasn't there. I don't have to judge. I don't have to decide. You heard the testimony come from the truth chair. You heard people testify. You heard good things that made you feel good. You heard bad things that made you feel bad.
>
> "'I don't care that Tanaysha is pregnant. I don't care that she has three children. I don't know why that had to be brought out in closing. What does that have to do with this case? She was stabbed.
>
> "'The question is, did he intend to stab her? He said he did it by accident. If he's lying and you think he's lying then you have to convict him. If you don't think he's lying, bad person, lousy drug addict, stinking thief, jail bird, all that to the contrary, he's not guilty. It's as simple as that. I don't care if he's been in prison. And for the sake of this thing you ought not care because

that doesn't have anything to do with what happened on April 30th, 1994.

"'He doesn't know whether or not he's been convicted. Didn't understand the term conviction. That is not inconsistent with this whole thing of being spoken and doing all this other crime stuff as opposed to going to school. I don't know. I can't judge the man. The reason that they bring 12 jurors from all different walks of life, let them sit here and listen to people testify, and the reason that the court will give you instructions with regard to not having your life experience, leaving it at the door, is because you can't just assume that because a guy has done a bunch of bad things that he's now done this thing.

"'I don't know if thievery and stabbing your girlfriend are all in the same pot. I don't know if just because of the fact that you stole some things in the past that means you must have stabbed your girlfriend. That sounds like a jump to me, but that's just [me]. I'm not one of the 12 over there.

"'All I ask you to do is to look at the evidence and listen to everything you've heard and then make a decision. Good decision or bad decision, it's still a decision. I would like all 12 of you to agree; but if you don't, I can't do anything about that either.

"'You heard everything just like all of us have heard it. I don't know who's lying. I don't know if anybody is lying. And for someone to stand here and tell you that they think someone is lying and that they know that lying goes on, ladies and gentlemen, if that person was on the witness stand I'd be objecting that they don't have foundation because they weren't there. And that's true. The defense attorney and the prosecutor, no different than 12 of you.

"'So I'd ask you to listen to what you've heard when you go back, ask you to take some time to think about

> it, and be sure that's what you want to do, then come out and do it.
>
> "'Thank you.'" *Id.*, at 898–899 (one paragraph break omitted).

After deliberating for about six hours, the jury convicted.

On direct appeal, Gentry argued that his trial counsel's closing argument deprived him of his right to effective assistance of counsel. The California Court of Appeal rejected that contention, and the California Supreme Court denied review. Gentry's petition for federal habeas relief was denied by the District Court, but the Court of Appeals for the Ninth Circuit reversed. We grant the State's petition for a writ of certiorari and the motion for leave to proceed *in forma pauperis* and reverse.

II

The Sixth Amendment guarantees criminal defendants the effective assistance of counsel. That right is denied when a defense attorney's performance falls below an objective standard of reasonableness and thereby prejudices the defense. *Wiggins* v. *Smith*, 539 U. S. 510, 521 (2003); *Strickland* v. *Washington*, 466 U. S. 668, 687 (1984). If a state court has already rejected an ineffective-assistance claim, a federal court may grant habeas relief if the 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). Where, as here, the state court's application of governing federal law is challenged, it must be shown to be not only erroneous, but objectively unreasonable. *Wiggins*, *supra*, at 520–521; *Woodford* v. *Visciotti*, 537 U. S. 19, 24–25 (2002) *(per curiam)*; *Williams* v. *Taylor*, 529 U. S. 362, 409 (2000).

The right to effective assistance extends to closing arguments. See *Bell* v. *Cone*, 535 U. S. 685, 701–702 (2002); *Herring* v. *New York*, 422 U. S. 853, 865 (1975). Nonetheless, counsel has wide latitude in deciding how best to represent

a client, and deference to counsel's tactical decisions in his closing presentation is particularly important because of the broad range of legitimate defense strategy at that stage. Closing arguments should "sharpen and clarify the issues for resolution by the trier of fact," *id.*, at 862, but which issues to sharpen and how best to clarify them are questions with many reasonable answers. Indeed, it might sometimes make sense to forgo closing argument altogether. See *Bell*, *supra*, at 701–702. Judicial review of a defense attorney's summation is therefore highly deferential—and doubly deferential when it is conducted through the lens of federal habeas.

In light of these principles, the Ninth Circuit erred in finding the California Court of Appeal's decision objectively unreasonable. The California court's opinion cited state case law setting forth the correct federal standard for evaluating ineffective-assistance claims and concluded that counsel's performance was not ineffective. That conclusion was supported by the record. The summation for the defense made several key points: that Williams's testimony about the quality of light was inconsistent; that Handy's personal circumstances were irrelevant to Gentry's guilt; that the case turned on whether the stabbing was accidental, and the jury had to acquit if it believed Gentry's version of events; that Gentry's criminal history was irrelevant to his guilt, particularly given the seriousness of the charge compared to his prior theft offenses; and that Gentry's misstatement of the number of times he had been convicted could be explained by his lack of education. Woven through these issues was a unifying theme—that the jury, like the prosecutor and defense counsel himself, were not at the scene of the crime and so could only speculate about what had happened and who was lying.

The Ninth Circuit rejected the state court's conclusion in large part because counsel did not highlight various other potentially exculpatory pieces of evidence: that Handy had

used drugs on the day of the stabbing and during the early morning hours of the day of her preliminary hearing; that Williams's inability to see the stabbing clearly was relevant to the issue of intent; that Gentry's testimony was consistent with Williams's in some respects; that the government did not call as a witness Williams's co-worker, who also saw the stabbing; that the stab wound was only one inch deep, suggesting it may have been accidental; that Handy testified she had been stabbed twice, but only had one wound; and that Gentry, after being confronted by Williams, did not try to retrieve his weapon but instead moved toward Handy while repeating, "she's my girlfriend." See 320 F. 3d, at 900–901.

These other potential arguments do not establish that the state court's decision was unreasonable. Some of the omitted items, such as Gentry's reaction to Williams, are thoroughly ambiguous. Some of the others might well have backfired. For example, although Handy claimed at trial she had used drugs before the preliminary hearing, she testified at the hearing that she was not under the influence and could remember exactly what had happened the day of the stabbing. And, although Handy's wound was only one inch deep, it still lacerated her stomach and diaphragm, spilling the stomach's contents into her chest cavity and requiring almost two hours of surgery. These are facts that the prosecutor could have exploited to great advantage in her rebuttal.

Even if some of the arguments would unquestionably have supported the defense, it does not follow that counsel was incompetent for failing to include them. Focusing on a small number of key points may be more persuasive than a shotgun approach. As one expert advises: "The number of issues introduced should definitely be restricted. Research suggests that there is an upper limit to the number of issues or arguments an attorney can present and still have persuasive effect." R. Matlon, Opening Statements/Closing Arguments 60 (1993) (citing Calder, Insko, & Yandell, The Relation of

Cognitive and Memorial Process to Persuasion in a Simulated Jury Trial, 4 J. Applied Social Psychology 62 (1974)). Another authority says: "The advocate is not required to summarize or comment upon all the facts, opinions, inferences, and law involved in a case. A decision not to address an issue, an opponent's theory, or a particular fact should be based on an analysis of the importance of that subject and the ability of the advocate and the opponent to explain persuasively the position to the fact finder." R. Haydock & J. Sonsteng, Advocacy: Opening and Closing § 3.10, p. 70 (1994). In short, judicious selection of arguments for summation is a core exercise of defense counsel's discretion.

When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he did so for tactical reasons rather than through sheer neglect. See *Strickland*, 466 U. S., at 690 (counsel is "strongly presumed" to make decisions in the exercise of professional judgment). That presumption has particular force where a petitioner bases his ineffective-assistance claim solely on the trial record, creating a situation in which a court "may have no way of knowing whether a seemingly unusual or misguided action by counsel had a sound strategic motive." *Massaro* v. *United States*, 538 U. S. 500, 505 (2003). Moreover, even if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight. See *Bell*, 535 U. S., at 702; *Kimmelman* v. *Morrison*, 477 U. S. 365, 382 (1986); *Strickland*, *supra*, at 689; *United States* v. *Cronic*, 466 U. S. 648, 656 (1984). To recall the words of Justice (and former Solicitor General) Jackson: "I made three arguments of every case. First came the one that I planned—as I thought, logical, coherent, complete. Second was the one actually presented—interrupted, incoherent, disjointed, disappointing. The third was the utterly devastating argument that I thought of after going to bed that night." Advocacy Before the Supreme Court, 37 A. B. A. J.

801, 803 (1951). Based on the record in this case, a state court could reasonably conclude that Gentry had failed to rebut the presumption of adequate assistance. Counsel plainly put to the jury the centerpiece of his case: that the only testimony regarding what had happened that the jury heard "come from the truth chair" was conflicting; that none of his client's testimony was demonstrably a lie; and that the testimony contradicting his client came in "three versions." See 320 F. 3d, at 898. The issues counsel omitted were not so clearly more persuasive than those he discussed that their omission can only be attributed to a professional error of constitutional magnitude.

The Ninth Circuit found other flaws in counsel's presentation. It criticized him for mentioning "a host of details that hurt his client's position, none of which mattered as a matter of law." *Id.*, at 900. Of course the reason counsel mentioned those details was precisely to remind the jury that they *were* legally irrelevant. That was not an unreasonable tactic. See F. Bailey & H. Rothblatt, Successful Techniques for Criminal Trials § 19:23, p. 461 (2d ed. 1985) ("Face up to [the defendant's] defects . . . [and] call upon the jury to disregard everything not connected to the crime with which he is charged"). The Ninth Circuit singled out for censure counsel's argument that the jury must acquit if Gentry was telling the truth, even though he was a "bad person, lousy drug addict, stinking thief, jail bird." See 320 F. 3d, at 900. It apparently viewed the remark as a gratuitous swipe at Gentry's character. While confessing a client's shortcomings might remind the jury of facts they otherwise would have forgotten, it might also convince them to put aside facts they would have remembered in any event. This is precisely the sort of calculated risk that lies at the heart of an advocate's discretion. By candidly acknowledging his client's shortcomings, counsel might have built credibility with the jury and persuaded it to focus on the relevant issues in the case. See J. Stein, Closing Argument § 204, p. 10 (1992–1996) ("[I]f

you make certain concessions showing that you are earnestly in search of the truth, then your comments on matters that are in dispute will be received without the usual apprehension surrounding the remarks of an advocate"). As Judge Kleinfeld pointed out in dissenting from denial of rehearing en banc, the court's criticism applies just as well to Clarence Darrow's closing argument in the Leopold and Loeb case: " 'I do not know how much salvage there is in these two boys. . . . [Y]our Honor would be merciful if you tied a rope around their necks and let them die; merciful to them, but not merciful to civilization, and not merciful to those who would be left behind.' " 320 F. 3d, at 895 (quoting Famous American Jury Speeches 1086 (F. Hicks ed. 1925) (reprint 1990)).

The Ninth Circuit rebuked counsel for making only a passive request that the jury reach some verdict, rather than an express demand for acquittal. But given a patronizing and overconfident summation by a prosecutor, a low-key strategy that stresses the jury's autonomy is not unreasonable. One treatise recommends just such a technique: "Avoid challenging the jury to find for your client, or phrasing your argument in terms suggesting what their finding must be. . . . [S]cientific research indicates that jurors will react against a lawyer who they think is blatantly trying to limit their freedom of thought." Stein, *supra*, § 206, at 15.

The Ninth Circuit faulted counsel for not arguing explicitly that the government had failed to prove guilt beyond a reasonable doubt. Counsel's entire presentation, however, made just that point. He repeatedly stressed that no one—not the prosecutor, the jury, nor even himself—could be sure who was telling the truth. This is the very essence of a reasonable-doubt argument. To be sure, he did not insist that the existence of a reasonable doubt would *require* the jury to acquit—but he could count on the judge's charge to remind them of that requirement, and by doing so he would preserve his strategy of appearing as the friend of jury autonomy.

Finally, the Ninth Circuit criticized counsel's approach on the ground that, by confessing that he too could not be sure of the truth, counsel "implied that even he did not believe Gentry's testimony." 320 F. 3d, at 900. But there is nothing wrong with a rhetorical device that personalizes the doubts anyone but an eyewitness must necessarily have. Winning over an audience by empathy is a technique that dates back to Aristotle. See P. Lagarias, Effective Closing Argument §§ 2.05–2.06, pp. 99–101 (1989) (citing Aristotle's Rhetoric for the point that "[a] speech should indicate to the audience that the speaker shares the attitudes of the listener, so that, in turn, the listener will respond positively to the views of the speaker"); *id.*, § 3.03, at 112 (deriving from this principle the advice that "counsel may couch his arguments in terms of 'we,' rather than 'you, the jury' ").

To be sure, Gentry's lawyer was no Aristotle or even Clarence Darrow. But the Ninth Circuit's conclusion—not only that his performance was deficient, but that any disagreement with that conclusion would be objectively unreasonable—gives too little deference to the state courts that have primary responsibility for supervising defense counsel in state criminal trials.

* * *

The judgment of the Ninth Circuit is reversed.

It is so ordered.

Syllabus

MITCHELL, WARDEN *v.* ESPARZA

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

No. 02–1369. Decided November 3, 2003

Respondent was sentenced to death for felony murder. On state postconviction review, he argued that he had not been convicted of an offense for which a death sentence could be imposed because the indictment did not charge him as a "principal offender" under the relevant Ohio statute. The Ohio appellate court, however, held that literal compliance with the statute was not required where, as here, only one defendant is named in the indictment. That court also rejected respondent's second state postconviction petition, which alleged, *inter alia*, ineffective assistance of appellate counsel for not arguing that the State's failure to comply with its sentencing procedures violated the Eighth Amendment. In granting respondent's subsequent federal habeas petition, the District Court concluded that the state court's decision was an unreasonable application of clearly established federal law. The Sixth Circuit affirmed, holding that the Eighth Amendment precluded respondent's death sentence and that harmless-error review was inappropriate.

Held: The Sixth Circuit exceeded the limits imposed on federal habeas review by 28 U. S. C. § 2254(d), which permits federal habeas relief only if the State's adjudication on the merits resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law. This Court's precedents do not support the Sixth Circuit's conclusion that Ohio's failure to charge respondent as a "principal" was the functional equivalent to dispensing with the reasonable-doubt requirement. In noncapital cases, this Court has often held that the trial court's failure to instruct a jury on all of the statutory elements is subject to harmless-error analysis. The Court's precedents do not require the opposite result where the violation occurs in a capital sentencing proceeding. Indeed, a number of this Court's harmless-error cases have involved capital defendants. Because the Ohio appellate court's decision does not conflict with the reasoning or holdings of this Court's precedent, it is not contrary to clearly established federal law. Nor is it an unreasonable application of federal law. Habeas relief is appropriate only if the state court applied harmless-error review in an "objectively unreasonable" manner. *Lockyer* v. *Andrade*, 538 U. S. 63, 75–77. That is not the case here. The Ohio Supreme Court has defined a principal offender as the actual killer, and the jury instructions

show that the verdict would surely have been the same had the jury been instructed to find the respondent a "principal" in the offense. After all, he was the only person charged in the indictment, and there was no evidence that anyone else was involved.

Certiorari granted; 310 F. 3d 414, reversed and remanded.

PER CURIAM.

The Court of Appeals for the Sixth Circuit affirmed the grant of habeas relief to respondent Gregory Esparza after concluding that, because the Eighth Amendment requires the State to narrow the class of death eligible defendants, the Ohio Court of Appeals had improperly subjected respondent's claims to harmless-error review. 310 F. 3d 414 (2002). This decision ignores the limits imposed on federal habeas review by 28 U. S. C. § 2254(d), and we therefore grant the petition for certiorari and reverse.

In February 1983, respondent Esparza entered a store in Toledo, Ohio, and approached two employees, Melanie Gerschultz and James Barailloux. No one else was in the store. At gunpoint, he ordered Gerschultz to open the cash register. Barailloux meanwhile fled the store through a rear door, entering the attached home of the storeowner, Evelyn Krieger. As Barailloux was alerting Krieger to the robbery, he heard a gunshot. Barailloux and Krieger returned to the store and found Gerschultz lying on the floor, fatally wounded by a single gunshot to her neck. The cash register was open and approximately $110 was missing.

Respondent was charged with aggravated murder during the commission of an aggravated robbery, Ohio Rev. Code Ann. § 2903.01 (Anderson 2002), and aggravated robbery, § 2911.01. He was convicted on both counts, and the trial judge accepted the jury's recommendation that he be sentenced to death for the murder conviction. The trial judge additionally sentenced respondent to 7 to 25 years' imprisonment for aggravated robbery, plus 3 years for the firearm specification. The Ohio Supreme Court affirmed the convic-

tions and the sentences. *State* v. *Esparza*, 39 Ohio St. 3d 8, 529 N. E. 2d 192 (1988), cert. denied, 490 U. S. 1012 (1989).

On state postconviction review, respondent argued, for the first time, that he had not been convicted of an offense for which a death sentence could be imposed under Ohio law. Although the indictment charged him with aggravated murder in the course of committing aggravated robbery, it did not charge him as a "principal offender."[1] The Ohio Court of Appeals rejected his claim, holding that literal compliance with the statute was not required: "[W]here only one defendant is named in an indictment alleging felony murder, it would be redundant to state that the defendant is being charged as a principal offender. Only where more than one defendant is named need the indictment specify the allegation 'principal offender.'" *State* v. *Esparza*, No. L–90–235, 1992 WL 113827, *9 (May 29, 1992), cause dism'd, 65 Ohio St. 3d 1453, 602 N. E. 2d 250 (1992).

Respondent then filed a second petition for state postconviction relief alleging, *inter alia*, ineffective assistance of appellate counsel because his attorney did not argue that the State's failure to comply with its sentencing procedures violated the Eighth Amendment. The Ohio Court of Appeals in a conclusory opinion denied his claim, referring back to its previous decision. *State* v. *Esparza*, No. L–84–225, 1994 WL 395114, *5 (July 27, 1994), cause dism'd, 70 Ohio St. 3d

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[1] Ohio Rev. Code Ann. §2929.04(A) (Anderson 2002) provides, in relevant part:

"Imposition of the death penalty for aggravated murder is precluded, unless one or more of the following is specified in the indictment or count in the indictment . . . and proved beyond a reasonable doubt:

. . . . . .

"(7) The offense was committed while the offender was committing, attempting to commit, or fleeing immediately after committing or attempting to commit . . . aggravated robbery, . . . and either the offender was the principal offender in the commission of the aggravated murder or, if not the principal offender, committed the aggravated murder with prior calculation and design."

1473, 640 N. E. 2d 845 (1994). The import of the court's decision was clear: Respondent failed to prove he was prejudiced because any error committed by counsel was harmless. In respondent's words, "The state court . . . determined that since [respondent] was the only individual charged, the jury must have determined that [respondent] was the principal offender." Brief in Opposition 2.

Having exhausted his avenues for relief under state law, respondent filed a habeas petition in the District Court for the Northern District of Ohio. The District Court concluded that the Ohio Court of Appeals' decision was an unreasonable application of clearly established federal law because it was contrary to our opinions in *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000), and *Sullivan* v. *Louisiana*, 508 U. S. 275 (1993). In light of this error, as well as others not relevant to this opinion, the court granted respondent's petition in part and issued a writ of habeas corpus as to the death sentence. *Esparza* v. *Anderson*, No. 3:96–CV–7434 (Oct. 13, 2000), App. to Pet. for Cert. 41a–240a. The Court of Appeals affirmed the District Court, holding that the Eighth Amendment precluded respondent's death sentence and that harmless-error review was inappropriate. The State of Ohio petitioned for a writ of certiorari, which we now grant, along with respondent's motion for leave to proceed *in forma pauperis*.

A federal court may grant a state habeas petitioner relief for a claim that was adjudicated on the merits in state court only if that adjudication "resulted in a decision that 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). The Court of Appeals, however, failed to cite, much less apply, this section.

A state court's decision is "contrary to" our clearly established law if it "applies a rule that contradicts the governing law set forth in our cases" or if it "confronts a set of facts

that are materially indistinguishable from a decision of this Court and nevertheless arrives at a result different from our precedent." *Williams* v. *Taylor*, 529 U. S. 362, 405–406 (2000); see also *Price* v. *Vincent*, 538 U. S. 634, 640 (2003); *Early* v. *Packer*, 537 U. S. 3, 7–8 (2002) *(per curiam)*. A state court's decision is not "contrary to . . . clearly established Federal law" simply because the court did not cite our opinions. *Id.*, at 8. We have held that a state court need not even be aware of our precedents, "so long as neither the reasoning nor the result of the state-court decision contradicts them." *Ibid.*

According to the Sixth Circuit, Ohio's failure to charge in the indictment that respondent was a "principal" was the functional equivalent of "dispensing with the reasonable doubt requirement." 310 F. 3d, at 421 (citing *Sullivan* v. *Louisiana*, *supra*, at 280). Our precedents, however, do not support its conclusion. In noncapital cases, we have often held that the trial court's failure to instruct a jury on all of the statutory elements of an offense is subject to harmless-error analysis. *E. g.*, *Neder* v. *United States*, 527 U. S. 1, 19 (1999); *California* v. *Roy*, 519 U. S. 2 (1996) *(per curiam)*; *Carella* v. *California*, 491 U. S. 263, 266 (1989) *(per curiam)*; *Pope* v. *Illinois*, 481 U. S. 497 (1987). In *Neder*, for example, we held that such an error "differs markedly from the constitutional violations we have found to defy harmless-error review." 527 U. S., at 8. In so holding, we explicitly distinguished *Sullivan* because the error in *Sullivan*—the failure to instruct the jury that the State must prove the elements of an offense beyond a reasonable doubt—"'vitiat[ed] *all* the jury's findings,'" 527 U. S., at 11, whereas the trial court's failure to instruct the jury on one element of an offense did not, see *id.*, at 13–15. Where the jury was precluded from determining only one element of an offense, we held that harmless-error review is feasible. *Ibid.*

We cannot say that because the violation occurred in the context of a capital sentencing proceeding that our precedent

requires the opposite result. Indeed, a number of our harmless-error cases have involved capital defendants,[2] *Arizona* v. *Fulminante*, 499 U. S. 279, 310 (1991) (unconstitutional admission of coerced confession at guilt stage); *Clemons* v. *Mississippi*, 494 U. S. 738 (1990) (unconstitutionally broad jury instructions at sentencing stage); *Satterwhite* v. *Texas*, 486 U. S. 249 (1988) (unconstitutional admission of evidence at sentencing stage), and we left a question similar to the one presented here open in another capital case, *Ring* v. *Arizona*, 536 U. S. 584, 609, n. 7 (2002) ("We do not reach the State's assertion that any error was harmless because a pecuniary gain finding was implicit in the jury's guilty verdict").

In relying on the absence of precedent to distinguish our noncapital cases, and to hold that harmless-error review is not available for this type of Eighth Amendment claim, the Sixth Circuit exceeded its authority under § 2254(d)(1). A federal court may not overrule a state court for simply holding a view different from its own, when the precedent from this Court is, at best, ambiguous. As the Ohio Court of Appeals' decision does not conflict with the reasoning or the holdings of our precedent, it is not "contrary to . . . clearly established Federal law."

The question then becomes whether the Ohio Court of Appeals' determination is an "unreasonable *application* of clearly established Federal law." § 2254(d)(1) (emphasis added; punctuation omitted). A constitutional error is harmless when "it appears 'beyond a reasonable doubt that

[2] The Sixth Circuit cited *Presnell* v. *Georgia*, 439 U. S. 14 (1978) *(per curiam)*, a due process case, noting that rather than remand for a harmless-error analysis, we simply reversed. In *Presnell*, we held that the Georgia Supreme Court violated due process when it sustained a death sentence because the sentence was supported by the evidence, even though the defendant was unaware of the charge and the issue was never submitted to a jury. *Presnell*, however, relied on the defendant's lack of notice and his inability to defend himself, not a faulty indictment or an incomplete jury instruction.

the error complained of did not contribute to the verdict obtained.'" *Neder*, *supra*, at 15 (quoting *Chapman* v. *California*, 386 U. S. 18, 24 (1967)); see also *Delaware* v. *Van Arsdall*, 475 U. S. 673, 681 (1986). We may not grant respondent's habeas petition, however, if the state court simply erred in concluding that the State's errors were harmless; rather, habeas relief is appropriate only if the Ohio Court of Appeals applied harmless-error review in an "objectively unreasonable" manner. *Lockyer* v. *Andrade*, 538 U. S. 63, 75–77 (2003); see also *Woodford* v. *Visciotti*, 537 U. S. 19, 25 (2002) *(per curiam); Williams*, *supra*, at 410 (An "*unreasonable* application of federal law is different from an *incorrect* application of federal law").

The Ohio Court of Appeals' conclusion was hardly objectively unreasonable. The Ohio Supreme Court has defined a "'principal offender'" as "'the actual killer,'" *State* v. *Chinn*, 85 Ohio St. 3d 548, 559, 709 N. E. 2d 1166, 1177 (1999), and in this case, the jury was instructed on the elements of aggravated murder, "'defined as purposely causing the death of another while committing Aggravated Robbery,'" 310 F. 3d, at 432 (Suhrheinrich, J., dissenting). The trial judge further instructed the jury that it must determine "'whether the State has proved beyond a reasonable doubt that the offense of Aggravated Murder was committed while the Defendant was committing Aggravated Robbery.'" *Ibid.* In light of these instructions, the jury verdict would surely have been the same had it been instructed to find as well that the respondent was a "principal" in the offense. After all, he was the only defendant charged in the indictment. There was no evidence presented that anyone other than respondent was involved in the crime or present at the store.[3]

[3] The Court of Appeals noted evidence brought to light for the first time in the habeas proceeding in the District Court that suggested there might have been another participant in the crime, Joe Jasso. The jury, however, was not presented with this evidence at trial, and thus it has no bearing on the correctness of the Ohio Court of Appeals' decision that the State

Cf. *Neder*, 527 U. S., at 19 ("[W]here a defendant did not, and apparently could not, bring forth facts contesting the omitted element, answering the question whether the jury verdict would have been the same absent the error does not fundamentally undermine the purposes of the jury trial guarantee"). Under these circumstances, we cannot say that the state court's conclusion that respondent was convicted of a capital offense was objectively unreasonable. That being the case, we may not set aside its decision on habeas review.[4]

The judgment of the United States Court of Appeals for the Sixth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

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need not charge a defendant as a principal offender if the failure to so charge is harmless error.

[4] Our decision, like the Court of Appeals', is limited to the issue presented here. We express no view whether habeas relief would be available to respondent on other grounds.

Syllabus

BARNHART, COMMISSIONER OF SOCIAL SECURITY *v.* THOMAS

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

No. 02–763. Argued October 14, 2003—Decided November 12, 2003

A person is disabled, and thereby eligible for Social Security disability insurance benefits and Supplemental Security Income (SSI), "only if his physical or mental impairment or impairments are of such severity that *he is not only unable to do his previous work but cannot*, considering his age, education, and work experience, *engage in any other kind of substantial gainful work which exists in the national economy.*" 42 U. S. C. §§ 423(d)(2)(A), 1382c(a)(3)(B) (emphasis added) (hereinafter § 423(d)(2)(A)). After her job as an elevator operator was eliminated, respondent Thomas applied for disability insurance benefits and SSI. An Administrative Law Judge (ALJ) found that her impairments did not prevent her from performing her past relevant work as an elevator operator, rejecting her argument that she is unable to do that work because it no longer exists in significant numbers in the national economy. The District Court affirmed the ALJ, concluding that whether Thomas's old job exists is irrelevant under the Social Security Administration's (SSA) regulations. In reversing and remanding, the en banc Third Circuit held that § 423(d)(2)(A) unambiguously provides that the ability to perform prior work disqualifies from benefits only if it is substantial gainful work which exists in the national economy.

Held: The SSA's determination that it can find a claimant not disabled where she remains physically and mentally able to do her previous work, without investigating whether that work exists in significant numbers in the national economy, is a reasonable interpretation of § 423(d)(2)(A) that is entitled to deference under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837. Section 423(d)(2)(A) establishes two requirements: An impairment must render an individual "unable to do his previous work" and must also preclude him from "engag[ing] in any other kind of substantial gainful work." The clause "which exists in the national economy" clearly qualifies the latter requirement. The issue in this case is whether that clause also qualifies the former requirement. The SSA's regulations, which create a five-step sequential evaluation process to determine disability, answer that question in the negative. At step four, the SSA will find not disabled a claimant who can do his previous work, without inquiring

whether that work exists in the national economy. Rather, it reserves inquiry into the national economy for the fifth step, when it considers vocational factors and determines whether the claimant can perform other jobs in the national economy. See 20 CFR §§ 404.1520(f), 404.1560(c), 416.920(f), 416.960(c). That interpretation is a reasonable construction of § 423(d)(2)(A). The Third Circuit's contrary reading ignores the grammatical "rule of the last antecedent," under which a limiting clause or phrase should be read to modify only the noun or phrase that it immediately follows. Construing § 423(d)(2)(A) in accord with this rule is quite sensible. Congress could have determined that an analysis of a claimant's capacity to do his previous work would in most cases be an effective and efficient administrative proxy for the claimant's ability to do *some* work that exists in the national economy. There is good reason to use such a proxy to avoid the more expansive and individualized step-five analysis. The proper *Chevron* inquiry is not whether an agency construction can give rise to undesirable results in some instances (which both the SSA's and the Third Circuit's constructions can), but whether, in light of the alternatives, the agency construction is reasonable. Here, the SSA's authoritative interpretation satisfies that test. Pp. 23–30.

294 F. 3d 568, reversed.

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

Jeffrey A. Lamken argued the cause for petitioner. With him on the briefs were *Solicitor General Olson*, *Assistant Attorney General McCallum*, *Deputy Solicitor General Kneedler*, *William Kanter*, *Wendy M. Keats*, and *Barbara L. Spivak*.

Abraham S. Alter argued the cause and filed a brief for respondent.

JUSTICE SCALIA delivered the opinion of the Court.

Under the Social Security Act, the Social Security Administration (SSA) is authorized to pay disability insurance benefits and Supplemental Security Income to persons who have a "disability." A person qualifies as disabled, and thereby eligible for such benefits, "only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering

his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy." 42 U. S. C. §§ 423(d)(2)(A), 1382c(a)(3)(B). The issue we must decide is whether the SSA may determine that a claimant is not disabled because she remains physically and mentally able to do her previous work, without investigating whether that previous work exists in significant numbers in the national economy.

I

Pauline Thomas worked as an elevator operator for six years until her job was eliminated in August 1995. In June 1996, at age 53, Thomas applied for disability insurance benefits under Title II and Supplemental Security Income under Title XVI of the Social Security Act. See 49 Stat. 622, as amended, 42 U. S. C. § 401 *et seq.* (Title II); as added, 86 Stat. 1465, and as amended, § 1381 *et seq.* (Title XVI). She claimed that she suffered from, and was disabled by, heart disease and cervical and lumbar radiculopathy.

After the SSA denied Thomas's application initially and on reconsideration, she requested a hearing before an Administrative Law Judge (ALJ). The ALJ found that Thomas had "hypertension, cardiac arrythmia, [and] cervical and lumbar strain/sprain." Decision of ALJ 5, Record 15. He concluded, however, that Thomas was not under a "disability" because her "impairments do not prevent [her] from performing her past relevant work as an elevator operator." *Id.*, at 6, Record 16. He rejected Thomas's argument that she is unable to do her previous work because that work no longer exists in significant numbers in the national economy. The SSA's Appeals Council denied Thomas's request for review.

Thomas then challenged the ALJ's ruling in the United States District Court for the District of New Jersey, renewing her argument that she is unable to do her previous work due to its scarcity. The District Court affirmed the ALJ,

concluding that whether Thomas's old job exists is irrelevant under the SSA's regulations. *Thomas* v. *Apfel*, Civ. No. 99–2234 (Aug. 17, 2000). The Court of Appeals for the Third Circuit, sitting en banc, reversed and remanded. Over the dissent of three of its members, it held that the statute unambiguously provides that the ability to perform prior work disqualifies from benefits only if it is "substantial gainful work which exists in the national economy." 294 F. 3d 568, 572 (2002). That holding conflicts with the decisions of four other Courts of Appeals. See *Quang Van Han* v. *Bowen*, 882 F. 2d 1453, 1457 (CA9 1989); *Garcia* v. *Secretary of Health and Human Services*, 46 F. 3d 552, 558 (CA6 1995); *Pass* v. *Chater*, 65 F. 3d 1200, 1206–1207 (CA4 1995); *Rater* v. *Chater*, 73 F. 3d 796, 799 (CA8 1996). We granted the SSA's petition for certiorari. 537 U. S. 1187 (2003).

II

As relevant to the present case, Title II of the Act defines "disability" as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U. S. C. § 423(d)(1)(A). That definition is qualified, however, as follows:

> "An individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that *he is not only unable to do his previous work but cannot*, considering his age, education, and work experience, *engage in any other kind of substantial gainful work which exists in the national economy*. . . ." § 423(d)(2)(A) (emphases added).

"[W]ork which exists in the national economy" is defined to mean "work which exists in significant numbers either in the

region where such individual lives or in several regions of the country." *Ibid.* Title XVI of the Act, which governs Supplemental Security Income for disabled indigent persons, employs the same definition of "disability" used in Title II, including a qualification that is verbatim the same as § 423(d)(2)(A). See 42 U. S. C. § 1382c(a)(3)(B). For simplicity's sake, we will refer only to the Title II provisions, but our analysis applies equally to Title XVI.

Section 423(d)(2)(A) establishes two requirements for disability. First, an individual's physical or mental impairment must render him "unable to do his previous work." Second, the impairment must also preclude him from "engag[ing] in any other kind of substantial gainful work." The parties agree that the *latter* requirement is qualified by the clause that immediately follows it—"which exists in the national economy." The issue in this case is whether that clause also qualifies "previous work."

The SSA has answered this question in the negative. Acting pursuant to its statutory rulemaking authority, 42 U. S. C. §§ 405(a) (Title II), 1383(d)(1) (Title XVI), the agency has promulgated regulations establishing a five-step sequential evaluation process to determine disability. See 20 CFR § 404.1520 (2003) (governing claims for disability insurance benefits); § 416.920 (parallel regulation governing claims for Supplemental Security Income). If at any step a finding of disability or nondisability can be made, the SSA will not review the claim further. At the first step, the agency will find nondisability unless the claimant shows that he is not working at a "substantial gainful activity." §§ 404.1520(b), 416.920(b). At step two, the SSA will find nondisability unless the claimant shows that he has a "severe impairment," defined as "any impairment or combination of impairments which significantly limits [the claimant's] physical or mental ability to do basic work activities." §§ 404.1520(c), 416.920(c). At step three, the agency determines whether the impairment which enabled the claimant to survive step

two is on the list of impairments presumed severe enough to render one disabled; if so, the claimant qualifies. §§ 404.1520(d), 416.920(d). If the claimant's impairment is not on the list, the inquiry proceeds to step four, at which the SSA assesses whether the claimant can do his previous work; unless he shows that he cannot, he is determined not to be disabled.[1] If the claimant survives the fourth stage, the fifth, and final, step requires the SSA to consider so-called "vocational factors" (the claimant's age, education, and past work experience), and to determine whether the claimant is capable of performing other jobs existing in significant numbers in the national economy. §§ 404.1520(f), 404.1560(c), 416.920(f), 416.960(c).[2]

As the above description shows, step four can result in a determination of no disability without inquiry into whether the claimant's previous work exists in the national economy; the regulations explicitly reserve inquiry into the national economy for step five. Thus, the SSA has made it perfectly clear that it does not interpret the clause "which exists in the national economy" in § 423(d)(2)(A) as applying to "previous work."[3] The issue presented is whether this agency interpretation must be accorded deference.

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[1] The step-four instructions to the claimant read as follows: "If we cannot make a decision based on your current work activity or on medical facts alone, and you have a severe impairment(s), we then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled." 20 CFR §§ 404.1520(e), 416.920(e) (2003).

[2] In regulations that became effective on September 25, 2003, the SSA amended certain aspects of the five-step process in ways not material to this opinion. The provisions referred to as subsections (e) and (f) in this opinion are now subsections (f) and (g).

[3] This interpretation was embodied in the regulations that first established the five-step process in 1978, see 43 Fed. Reg. 55349 (codified, as amended, at 20 CFR §§ 404.1520 and 416.920 (1982)). Even before enactment of § 423(d)(2)(A) as part of the Social Security Amendments of 1967, the SSA disallowed disability benefits when the inability to work was

As we held in *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 843 (1984), when a statute speaks clearly to the issue at hand we "must give effect to the unambiguously expressed intent of Congress," but when the statute "is silent or ambiguous" we must defer to a reasonable construction by the agency charged with its implementation. The Third Circuit held that, by referring first to "previous work" and then to "*any other* kind of substantial gainful work which exists in the national economy," 42 U. S. C. § 423(d)(2)(A) (emphasis added), the statute unambiguously indicates that the former is a species of the latter. "When," it said, "a sentence sets out one or more specific items followed by 'any other' and a description, the specific items must fall within the description." 294 F. 3d, at 572. We disagree. For the reasons discussed below, the interpretation adopted by SSA is at least a reasonable construction of the text and must therefore be given effect.

The Third Circuit's reading disregards—indeed, is precisely contrary to—the grammatical "rule of the last antecedent," according to which a limiting clause or phrase (here, the relative clause "which exists in the national economy") should ordinarily be read as modifying only the noun or phrase that it immediately follows (here, "any other kind of substantial gainful work"). See 2A N. Singer, Sutherland on Statutory Construction § 47.33, p. 369 (6th rev. ed. 2000) ("Referential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent"). While this rule is not an absolute and can assuredly be overcome by other indicia of meaning, we have said that construing a statute in accord with the rule is "quite sensible as a matter of grammar." *Nobelman* v. *American Savings Bank*, 508 U. S. 324, 330 (1993). In *FTC* v. *Mandel Brothers, Inc.*, 359 U. S. 385 (1959), this Court employed the rule to interpret a statute strikingly similar in structure to

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caused by "technological changes in the industry in which [the claimant] has worked." 20 CFR § 404.1502(b) (1961).

§ 423(d)(2)(A)—a provision of the Fur Products Labeling Act, 15 U. S. C. § 69, which defined "'invoice'" as "'a written account, memorandum, list, or catalog . . . transported or delivered to a purchaser, consignee, factor, bailee, correspondent, or agent, *or any other person who is engaged in dealing commercially in fur products or furs.*'" 359 U. S., at 386 (quoting 15 U. S. C. § 69(f)) (emphasis added). Like the Third Circuit here, the Court of Appeals in *Mandel Brothers* had interpreted the phrase "'any other'" as rendering the relative clause ("'who is engaged in dealing commercially'") applicable to all the specifically listed categories. 359 U. S., at 389. This Court unanimously reversed, concluding that the "limiting clause is to be applied only to the last antecedent." *Id.*, at 389, and n. 4 (citing 2 J. Sutherland, Statutory Construction § 4921 (3d ed. 1943)).

An example will illustrate the error of the Third Circuit's perception that the specifically enumerated "previous work" "must" be treated the same as the more general reference to "any other kind of substantial gainful work." 294 F. 3d, at 572. Consider, for example, the case of parents who, before leaving their teenage son alone in the house for the weekend, warn him, "You will be punished if you throw a party or engage in any other activity that damages the house." If the son nevertheless throws a party and is caught, he should hardly be able to avoid punishment by arguing that the house was not damaged. The parents proscribed (1) a party, and (2) any other activity that damages the house. As far as appears from what they said, their reasons for prohibiting the home-alone party may have had nothing to do with damage to the house—for instance, the risk that underage drinking or sexual activity would occur. And even if their only concern was to prevent damage, it does not follow from the fact that the same interest underlay both the specific and the general prohibition that proof of impairment of that interest is required for both. The parents, foreseeing that assessment of whether an activity had in fact "damaged" the house

could be disputed by their son, might have wished to preclude all argument by specifying and categorically prohibiting the one activity—hosting a party—that was most likely to cause damage and most likely to occur.

The Third Circuit suggested that interpreting the statute as does the SSA would lead to "absurd results." *Ibid.* See also *Kolman* v. *Sullivan*, 925 F. 2d 212, 213 (CA7 1991) (the fact that a claimant could perform a past job that no longer exists would not be "a rational ground for denying benefits"). The court could conceive of "no plausible reason why Congress might have wanted to deny benefits to an otherwise qualified person simply because that person, although unable to perform any job that actually exists in the national economy, could perform a previous job that no longer exists." 294 F. 3d, at 572–573. But on the very next page the Third Circuit conceived of *just* such a plausible reason, namely, that "in the vast majority of cases, a claimant who is found to have the capacity to perform her past work also will have the capacity to perform other types of work." *Id.*, at 574, n. 5. The conclusion which follows is that Congress could have determined that an analysis of a claimant's physical and mental capacity to do his previous work would "in the vast majority of cases" serve as an effective and efficient administrative proxy for the claimant's ability to do *some* work that does exist in the national economy. Such a proxy is useful because the step-five inquiry into whether the claimant's cumulative impairments preclude him from finding "other" work is very difficult, requiring consideration of "each of th[e] [vocational] factors and . . . an individual assessment of each claimant's abilities and limitations," *Heckler* v. *Campbell*, 461 U. S. 458, 460–461, n. 1 (1983) (citing 20 CFR §§ 404.1545–404.1565 (1982)). There is good reason to use a workable proxy that avoids the more expansive and individualized step-five analysis. As we have observed, "[t]he Social Security hearing system is 'probably the largest adjudicative

agency in the western world.' . . . The need for efficiency is self-evident." 461 U. S., at 461, n. 2 (citation omitted).

The Third Circuit rejected this proxy rationale because it would produce results that "may not always be true, and . . . may not be true in this case." 294 F. 3d, at 576. That logic would invalidate a vast number of the procedures employed by the administrative state. To generalize is to be imprecise. Virtually *every* legal (or other) rule has imperfect applications in particular circumstances. Cf. *Bowen* v. *Yuckert*, 482 U. S. 137, 157 (1987) (O'Connor, J., concurring) ("To be sure the Secretary faces an administrative task of staggering proportions in applying the disability benefits provisions of the Social Security Act. Perfection in processing millions of such claims annually is impossible"). It is true that, under the SSA's interpretation, a worker with severely limited capacity who has managed to find easy work in a declining industry could be penalized for his troubles if the job later disappears. It is also true, however, that under the Third Circuit's interpretation, impaired workers in declining or marginal industries who cannot do "other" work could simply refuse to return to their jobs—even though the jobs remain open and available—and nonetheless draw disability benefits. The proper *Chevron* inquiry is not whether the agency construction can give rise to undesirable results in some instances (as here *both* constructions can), but rather whether, in light of the alternatives, the agency construction is reasonable. In the present case, the SSA's authoritative interpretation certainly satisfies that test.

We have considered respondent's other arguments and find them to be without merit.

* * *

We need not decide today whether § 423(d)(2)(A) compels the interpretation given it by the SSA. It suffices to conclude, as we do, that § 423(d)(2)(A) does not unambiguously require a different interpretation, and that the SSA's regula-

tion is an entirely reasonable interpretation of the text. The judgment of the Court of Appeals is reversed.

It is so ordered.

Syllabus

UNITED STATES *v.* BANKS

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

No. 02–473. Argued October 15, 2003—Decided December 2, 2003

When federal and local law enforcement officers went to respondent Banks's apartment to execute a warrant to search for cocaine, they called out "police search warrant" and rapped on the front door hard enough to be heard by officers at the back door, waited for 15 to 20 seconds with no response, and then broke open the door. Banks was in the shower and testified that he heard nothing until the crash of the door. The District Court denied his motion to suppress the drugs and weapons found during the search, rejecting his argument that the officers waited an unreasonably short time before forcing entry in violation of both the Fourth Amendment and 18 U. S. C. § 3109. Banks pleaded guilty, but reserved his right to challenge the search on appeal. In reversing and ordering the evidence suppressed, the Ninth Circuit found, using a four-part scheme for vetting knock-and-announce entries, that the instant entry had no exigent circumstances, making forced entry by destruction of property permissible only if there was an explicit refusal of admittance or a time lapse greater than the one here.

Held:

1. The officers' 15-to-20-second wait before forcible entry satisfied the Fourth Amendment. Pp. 35–43.

(a) The standards bearing on whether officers can legitimately enter after knocking are the same as those for requiring or dispensing with knock and announce altogether. This Court has fleshed out the notion of reasonable execution on a case-by-case basis, but has pointed out factual considerations of unusual, albeit not dispositive, significance. The obligation to knock and announce before entering gives way when officers have reasonable grounds to expect futility or to suspect that an exigency, such as evidence destruction, will arise instantly upon knocking. *Richards* v. *Wisconsin*, 520 U. S. 385, 394. Since most people keep their doors locked, a no-knock entry will normally do some damage, a fact too common to require a heightened justification when a reasonable suspicion of exigency already justifies an unwarned entry. *United States* v. *Ramirez*, 523 U. S. 65, 70–71. Pp. 35–37.

(b) This case turns on the exigency revealed by the circumstances known to the officers after they knocked and announced, which the Government contends was the risk of losing easily disposable evidence.

Syllabus

After 15 to 20 seconds without a response, officers could fairly have suspected that Banks would flush away the cocaine if they remained reticent. Each of Banks's counterarguments—that he was in the shower and did not hear the officers, and that it might have taken him longer than 20 seconds to reach the door—rests on a mistake about the relevant enquiry. As to the first argument, the facts known to the police are what count in judging a reasonable waiting time, and there is no indication that they knew that Banks was in the shower and thus unaware of an impending search. As to the second, the crucial fact is not the time it would take Banks to reach the door but the time it would take him to destroy the cocaine. It is not unreasonable to think that someone could get in a position to destroy the drugs within 15 to 20 seconds. Once the exigency had matured, the officers were not bound to learn anything more or wait any longer before entering, even though the entry entailed some harm to the building. Pp. 37–40.

(c) This Court's emphasis on totality analysis leads it to reject the Government's position that the need to damage property should not be part of the analysis of whether the entry itself was reasonable and to disapprove of the Ninth Circuit's four-part vetting scheme. Pp. 41–42.

2. The entry here also satisfied 18 U. S. C. § 3109, which permits entry by force "if, after notice of his authority and purpose, [an officer] is refused admittance." Because § 3109 implicates the exceptions to the common law knock-and-announce requirement that inform the Fourth Amendment itself, § 3109 is also subject to an exigent circumstances exception, which qualifies the requirement of refusal after notice, just as it qualifies the obligation to announce in the first place. Pp. 42–43.

282 F. 3d 699, reversed.

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

David B. Salmons argued the cause *pro hac vice* for the United States. With him on the brief were *Solicitor General Olson, Assistant Attorney General Chertoff, Deputy Solicitor General Dreeben,* and *John A. Drennan.*

Randall J. Roske, by appointment of the Court, 538 U. S. 943, argued the cause and filed a brief for respondent.*

**Timothy A. Baughman* filed a brief for Wayne County, Michigan, as *amicus curiae* urging reversal.

A brief of *amici curiae* was filed for Americans for Effective Law Enforcement, Inc., et al. by *Richard Weintraub, Bernard J. Farber, Wayne W. Schmidt,* and *James P. Manak.*

JUSTICE SOUTER delivered the opinion of the Court.

Officers executing a warrant to search for cocaine in respondent Banks's apartment knocked and announced their authority. The question is whether their 15-to-20-second wait before a forcible entry satisfied the Fourth Amendment and 18 U. S. C. § 3109. We hold that it did.

I

With information that Banks was selling cocaine at home, North Las Vegas Police Department officers and Federal Bureau of Investigation agents got a warrant to search his two-bedroom apartment. As soon as they arrived there, about 2 o'clock on a Wednesday afternoon, officers posted in front called out "police search warrant" and rapped hard enough on the door to be heard by officers at the back door. Brief for United States 3 (internal quotation marks omitted). There was no indication whether anyone was home, and after waiting for 15 to 20 seconds with no answer, the officers broke open the front door with a battering ram. Banks was in the shower and testified that he heard nothing until the crash of the door, which brought him out dripping to confront the police. The search produced weapons, crack cocaine, and other evidence of drug dealing.

In response to drug and firearms charges, Banks moved to suppress evidence, arguing that the officers executing the search warrant waited an unreasonably short time before forcing entry, and so violated both the Fourth Amendment and 18 U. S. C. § 3109.[1] The District Court denied the motion, and Banks pleaded guilty, reserving his right to challenge the search on appeal.

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[1] The statute provides: "The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant."

A divided panel of the Ninth Circuit reversed and ordered suppression of the evidence found. 282 F. 3d 699 (2002). In assessing the reasonableness of the execution of the warrant, the panel majority set out a nonexhaustive list of "factors that an officer reasonably should consider" in deciding when to enter premises identified in a warrant, after knocking and announcing their presence but receiving no express acknowledgment:

> "(a) size of the residence; (b) location of the residence; (c) location of the officers in relation to the main living or sleeping areas of the residence; (d) time of day; (e) nature of the suspected offense; (f) evidence demonstrating the suspect's guilt; (g) suspect's prior convictions and, if any, the type of offense for which he was convicted; and (h) any other observations triggering the senses of the officers that reasonably would lead one to believe that immediate entry was necessary." *Id.*, at 704.

The majority also defined four categories of intrusion after knock and announcement, saying that the classification "aids in the resolution of the essential question whether the entry made herein was reasonable under the circumstances":

> "(1) entries in which exigent circumstances exist and non-forcible entry is possible, permitting entry to be made simultaneously with or shortly after announcement; (2) entries in which exigent circumstances exist and forced entry by destruction of property is required, necessitating more specific inferences of exigency; (3) entries in which no exigent circumstances exist and non-forcible entry is possible, requiring an explicit refusal of admittance or a lapse of a significant amount of time; and (4) entries in which no exigent circumstances exist and forced entry by destruction of property is required, mandating an explicit refusal of admittance or a

lapse of an even more substantial amount of time." *Ibid.*

The panel majority put the action of the officers here in the last category, on the understanding that they destroyed the door without hearing anything to suggest a refusal to admit even though sound traveled easily through the small apartment. The majority held the 15-to-20-second delay after knocking and announcing to be "[in]sufficient . . . to satisfy the constitutional safeguards." *Id.*, at 705.

Judge Fisher dissented, saying that the majority ought to come out the other way based on the very grounds it stressed: Banks's small apartment, the loud knock and announcement, the suspected offense of dealing in cocaine, and the time of the day. Judge Fisher thought the lapse of 15 to 20 seconds was enough to support a reasonable inference that admittance had been constructively denied. *Id.*, at 710.

We granted certiorari to consider how to go about applying the standard of reasonableness to the length of time police with a warrant must wait before entering without permission after knocking and announcing their intent in a felony case. 537 U. S. 1187 (2003). We now reverse.

II

There has never been a dispute that these officers were obliged to knock and announce their intentions when executing the search warrant, an obligation they concededly honored. Despite this agreement, we start with a word about standards for requiring or dispensing with a knock and announcement, since the same criteria bear on when the officers could legitimately enter after knocking.

The Fourth Amendment says nothing specific about formalities in exercising a warrant's authorization, speaking to the manner of searching as well as to the legitimacy of searching at all simply in terms of the right to be "secure . . . against unreasonable searches and seizures." Although the notion of reasonable execution must therefore be fleshed

out, we have done that case by case, largely avoiding categories and protocols for searches. Instead, we have treated reasonableness as a function of the facts of cases so various that no template is likely to produce sounder results than examining the totality of circumstances in a given case; it is too hard to invent categories without giving short shrift to details that turn out to be important in a given instance, and without inflating marginal ones. See, *e. g.*, *Ohio* v. *Robinette*, 519 U. S. 33, 39 (1996) ("[W]e have consistently eschewed bright-line rules, instead emphasizing the fact-specific nature of the reasonableness inquiry"); *Ker* v. *California*, 374 U. S. 23, 33 (1963) (reasonableness not susceptible to Procrustean application); *Go-Bart Importing Co.* v. *United States*, 282 U. S. 344, 357 (1931) (no formula for determining reasonableness; each case on its own facts and circumstances). We have, however, pointed out factual considerations of unusual, albeit not dispositive, significance.

In *Wilson* v. *Arkansas*, 514 U. S. 927 (1995), we held that the common law knock-and-announce principle is one focus of the reasonableness enquiry; and we subsequently decided that although the standard generally requires the police to announce their intent to search before entering closed premises, the obligation gives way when officers "have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or . . . would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence," *Richards* v. *Wisconsin*, 520 U. S. 385, 394 (1997). When a warrant applicant gives reasonable grounds to expect futility or to suspect that one or another such exigency already exists or will arise instantly upon knocking, a magistrate judge is acting within the Constitution to authorize a "no-knock" entry.[2] And even when executing a warrant silent about

[2] Some States give magistrate judges the authority to issue "no-knock" warrants, and some do not. See, *e. g.*, *Richards* v. *Wisconsin*, 520 U. S. 385, 396, n. 7 (1997) (collecting state statutes and cases).

that, if circumstances support a reasonable suspicion of exigency when the officers arrive at the door, they may go straight in. *Id.*, at 394, 396, n. 7.

Since most people keep their doors locked, entering without knocking will normally do some damage, a circumstance too common to require a heightened justification when a reasonable suspicion of exigency already justifies an unwarned entry. We have accordingly held that police in exigent circumstances may damage premises so far as necessary for a no-knock entrance without demonstrating the suspected risk in any more detail than the law demands for an unannounced intrusion simply by lifting the latch. *United States* v. *Ramirez*, 523 U. S. 65, 70–71 (1998). Either way, it is enough that the officers had a reasonable suspicion of exigent circumstances.[3]

III

Like *Ramirez*, this case turns on the significance of exigency revealed by circumstances known to the officers, for the only substantive difference between the two situations goes to the time at which the officers reasonably anticipated some danger calling for action without delay.[4] Whereas the

[3] The standard for a no-knock entry stated in *Richards* applies on reasonable suspicion of exigency or futility. Because the facts here go to exigency, not futility, we speak of that alone.

[4] *Ramirez* and *Richards* v. *Wisconsin*, 520 U. S. 385 (1997), our cases addressing the role of exigency in assessing the reasonableness of a no-knock entry, involved searches by warrant for evidence of a felony, as does this case. In a different context governed by the Fourth Amendment, we have held that the risk of losing evidence of a minor offense is insufficient to make it reasonable to enter a dwelling to make a warrantless arrest. See *Welsh* v. *Wisconsin*, 466 U. S. 740 (1984). Courts of Appeals have applied *Welsh* to warrantless entries simply to search for evidence, considering the gravity of the offense in determining whether exigent circumstances exist. See, *e. g.*, *United States* v. *Aquino*, 836 F. 2d 1268, 1271–1273 (CA10 1988); *United States* v. *Clement*, 854 F. 2d 1116, 1120 (CA8 1988) *(per curiam)*. We intimate nothing here about such warrantless entry cases. Nor do we express a view on the significance of the existence of a warrant in evaluating whether exigency justifies action in

Ramirez Magistrate Judge found in advance that the customary warning would raise an immediate risk that a wanted felon would elude capture or pose a threat to the officers, see *id.*, at 68, here the Government claims that a risk of losing evidence arose shortly after knocking and announcing. Although the police concededly arrived at Banks's door without reasonable suspicion of facts justifying a no-knock entry, they argue that announcing their presence started the clock running toward the moment of apprehension that Banks would flush away the easily disposable cocaine, prompted by knowing the police would soon be coming in. While it was held reasonable for the police in *Ramirez* to enter forcibly upon arrival, the Government argues it was equally reasonable for the officers to go in with force here as soon as the danger of disposal had ripened.

Banks does not, of course, deny that exigency may develop in the period beginning when officers with a warrant knock to be admitted, and the issue comes down to whether it was reasonable to suspect imminent loss of evidence after the 15 to 20 seconds the officers waited prior to forcing their way. Though we agree with Judge Fisher's dissenting opinion that this call is a close one, 282 F. 3d, at 707, we think that after 15 or 20 seconds without a response, police could fairly suspect that cocaine would be gone if they were reticent any longer. Courts of Appeals have, indeed, routinely held similar wait times to be reasonable in drug cases with similar facts including easily disposable evidence (and some courts have found even shorter ones to be reasonable enough).[5]

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knock-and-announce cases when the reason for the search is a minor offense.

[5] Several Courts of Appeals have explicitly taken into account the risk of disposal of drug evidence as a factor in evaluating the reasonableness of waiting time. See, *e. g.*, *United States* v. *Goodson*, 165 F. 3d 610, 612, 614 (CA8 1999) (holding a 20-second wait after a loud announcement at a one-story ranch reasonable); *United States* v. *Spikes*, 158 F. 3d 913, 925–927 (CA6 1998) (holding a 15-to-30-second wait in midmorning after a loud announcement reasonable); *United States* v. *Spriggs*, 996 F. 2d 320, 322–

A look at Banks's counterarguments shows why these courts reached sensible results, for each of his reasons for saying that 15 to 20 seconds was too brief rests on a mistake about the relevant enquiry: the fact that he was actually in the shower and did not hear the officers is not to the point, and the same is true of the claim that it might have taken him longer than 20 seconds if he had heard the knock and headed straight for the door. As for the shower, it is enough to say that the facts known to the police are what count in judging reasonable waiting time, cf., *e. g.*, *Graham* v. *Connor*, 490 U. S. 386, 396 (1989) ("The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight"), and there is no indication that the police knew that Banks was in the shower and thus unaware of an impending search that he would otherwise have tried to frustrate.

And the argument that 15 to 20 seconds was too short for Banks to have come to the door ignores the very risk that justified prompt entry. True, if the officers were to justify their timing here by claiming that Banks's failure to admit them fairly suggested a refusal to let them in, Banks could at least argue that no such suspicion can arise until an occu-

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323 (CADC 1993) (holding a 15-second wait after a reasonably audible announcement at 7:45 a.m. on a weekday reasonable); *United States* v. *Garcia*, 983 F. 2d 1160, 1168 (CA1 1993) (holding a 10-second wait after a loud announcement reasonable); *United States* v. *Jones*, 133 F. 3d 358, 361–362 (CA5 1998) *(per curiam)* (relying specifically on the concept of exigency, holding a 15-to-20-second wait reasonable). See also *United States* v. *Chavez-Miranda*, 306 F. 3d 973, 981–982, n. 7 (CA9 2002) ("*Banks* appears to be a departure from our prior decisions. . . . [W]e have found a 10 to 20 second wait to be reasonable in similar circumstances, albeit when the police heard sounds after the knock and announcement"); *United States* v. *Jenkins*, 175 F. 3d 1208, 1215 (CA10 1999) (holding a 14-to-20-second wait at 10 a.m. reasonable); *United States* v. *Markling*, 7 F. 3d 1309, 1318–1319 (CA7 1993) (holding a 7-second wait at a small motel room reasonable when officers acted on a specific tip that the suspect was likely to dispose of the drugs).

pant has had time to get to the door,[6] a time that will vary with the size of the establishment, perhaps five seconds to open a motel room door, or several minutes to move through a townhouse. In this case, however, the police claim exigent need to enter, and the crucial fact in examining their actions is not time to reach the door but the particular exigency claimed. On the record here, what matters is the opportunity to get rid of cocaine, which a prudent dealer will keep near a commode or kitchen sink. The significant circumstances include the arrival of the police during the day, when anyone inside would probably have been up and around, and the sufficiency of 15 to 20 seconds for getting to the bathroom or the kitchen to start flushing cocaine down the drain. That is, when circumstances are exigent because a pusher may be near the point of putting his drugs beyond reach, it is imminent disposal, not travel time to the entrance, that governs when the police may reasonably enter; since the bathroom and kitchen are usually in the interior of a dwelling, not the front hall, there is no reason generally to peg the travel time to the location of the door, and no reliable basis for giving the proprietor of a mansion a longer wait than the resident of a bungalow, or an apartment like Banks's. And 15 to 20 seconds does not seem an unrealistic guess about the time someone would need to get in a position to rid his quarters of cocaine.

Once the exigency had matured, of course, the officers were not bound to learn anything more or wait any longer before going in, even though their entry entailed some harm to the building. *Ramirez* held that the exigent need of law enforcement trumps a resident's interest in avoiding all property damage, see 523 U. S., at 70–71, and there is no reason to treat a post-knock exigency differently from the no-knock counterpart in *Ramirez* itself.

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[6] It is probably unrealistic even on its own terms. The apartment was "small," 282 F. 3d 699, 704 (CA9 2002), and a man may walk the length of today's small apartment in 15 seconds.

IV

Our emphasis on totality analysis necessarily rejects positions taken on each side of this case. *Ramirez*, for example, cannot be read with the breadth the Government espouses, as "reflect[ing] a general principle that the need to damage property in order to effectuate an entry to execute a search warrant should not be part of the analysis of whether the entry itself was reasonable." Brief for United States 18; Reply Brief for United States 4. At common law, the knock-and-announce rule was traditionally "justified in part by the belief that announcement generally would avoid 'the destruction or breaking of any house . . . by which great damage and inconvenience might ensue.'" *Wilson*, 514 U. S., at 935–936 (quoting *Semayne's Case*, 5 Co. Rep. 91a, 91b, 77 Eng. Rep. 194, 196 (K. B. 1603)). One point in making an officer knock and announce, then, is to give a person inside the chance to save his door. That is why, in the case with no reason to suspect an immediate risk of frustration or futility in waiting at all, the reasonable wait time may well be longer when police make a forced entry, since they ought to be more certain the occupant has had time to answer the door. It is hard to be more definite than that, without turning the notion of a reasonable time under all the circumstances into a set of sub-rules as the Ninth Circuit has been inclined to do. Suffice it to say that the need to damage property in the course of getting in is a good reason to require more patience than it would be reasonable to expect if the door were open. Police seeking a stolen piano may be able to spend more time to make sure they really need the battering ram.

On the other side, we disapprove of the Court of Appeals's four-part scheme for vetting knock-and-announce entries. To begin with, the demand for enhanced evidence of exigency before a door can reasonably be damaged by a warranted no-knock intrusion was already bad law before the Court of Appeals decided this case. In *Ramirez* (a case from the

Ninth Circuit), we rejected an attempt to subdivide felony cases by accepting "mild exigency" for entry without property damage, but requiring "more specific inferences of exigency" before damage would be reasonable. 523 U. S., at 69–71 (internal quotation marks omitted). The Court of Appeals did not cite *Ramirez.*

Nor did the appeals court cite *United States* v. *Arvizu,* 534 U. S. 266 (2002) (again, from the Ninth Circuit). There, we recently disapproved a framework for making reasonable suspicion determinations that attempted to reduce what the Circuit described as "troubling . . . uncertainty" in reasonableness analysis, by "describ[ing] and clearly delimit[ing]" an officer's consideration of certain factors. *Id.,* at 272, 275 (internal quotation marks omitted). Here, as in *Arvizu,* the Court of Appeals's overlay of a categorical scheme on the general reasonableness analysis threatens to distort the "totality of the circumstances" principle, by replacing a stress on revealing facts with resort to pigeonholes. *Id.,* at 274 (internal quotation marks omitted). Attention to cocaine rocks and pianos tells a lot about the chances of their respective disposal and its bearing on reasonable time. Instructions couched in terms like "significant amount of time," and "an even more substantial amount of time," 282 F. 3d, at 704, tell very little.

V

Last, there is Banks's claim that the entry violated 18 U. S. C. § 3109. *Ramirez* held that the result should be the same under the Fourth Amendment and § 3109, permitting an officer to enter by force "if, after notice of his authority and purpose, he is refused admittance." We explained the statute's "'requirement of prior notice . . . before forcing entry . . . [as] codif[ying] a tradition embedded in Anglo-American law,'" 523 U. S., at 72 (quoting *Miller* v. *United States,* 357 U. S. 301, 313 (1958)); see also *Sabbath* v. *United States,* 391 U. S. 585, 591, n. 8 (1968), and we held that § 3109 implicates the exceptions to the common law knock-and-

announce requirement that inform the Fourth Amendment itself, 523 U. S., at 73. The upshot is that § 3109 is subject to an exigent circumstances exception, *ibid.*, which qualifies the requirement of refusal after notice, just as it qualifies the obligation to announce in the first place. Absent exigency, the police must knock and receive an actual refusal or wait out the time necessary to infer one. But in a case like this, where the officers knocked and announced their presence, and forcibly entered after a reasonable suspicion of exigency had ripened, their entry satisfied § 3109 as well as the Fourth Amendment, even without refusal of admittance.

The judgment of the Court of Appeals is reversed.

So ordered.

Syllabus

RAYTHEON CO. *v.* HERNANDEZ

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

No. 02–749. Argued October 8, 2003—Decided December 2, 2003

After respondent tested positive for cocaine and admitted that his behavior violated petitioner's workplace conduct rules, he was forced to resign. More than two years later, he applied to be rehired, stating on his application that petitioner had previously employed him, and attaching letters both from his pastor about his active church participation and from an Alcoholics Anonymous counselor about his regular attendance at meetings and his recovery. The employee who reviewed and rejected respondent's application testified that petitioner has a policy against rehiring employees who are terminated for workplace misconduct and that she did not know that respondent was a former drug addict when she rejected his application. Respondent filed a charge with the Equal Employment Opportunity Commission (EEOC), claiming that he had been discriminated against in violation of the Americans with Disabilities Act of 1990 (ADA). The EEOC issued a right-to-sue letter, and respondent filed this ADA action, arguing that petitioner rejected his application because of his record of drug addiction and/or because he was regarded as being a drug addict. In response to petitioner's summary judgment motion, respondent for the first time argued in the alternative that if petitioner applied a neutral no-rehire policy in his case, it still violated the ADA because of that policy's disparate impact. The District Court granted petitioner's motion for summary judgment on the disparate-treatment claim and found that the disparate-impact claim had not been timely pleaded or raised. The Ninth Circuit agreed as to the disparate-impact claim, but held as to the disparate-treatment claim that, under the burden-shifting approach of *McDonnell Douglas Corp.* v. *Green*, 411 U. S. 792, respondent had proffered a prima facie case of discrimination, and petitioner had not met its burden to provide a legitimate, nondiscriminatory reason for its employment action because its no-rehire policy, though lawful on its face, was unlawful as applied to employees who were lawfully forced to resign for illegal drug use but have since been rehabilitated.

Held: The Ninth Circuit improperly applied a disparate-impact analysis to respondent's disparate-treatment claim. This Court has consistently distinguished between disparate-treatment and disparate-impact claims. The former arise when an employer treats some people less favorably

than others because of a protected characteristic. Liability depends on whether the protected trait actually motivated the employer's action. The latter involve facially neutral employment practices that fall more harshly on one group than another and cannot be justified by business necessity. Such practices may be deemed illegally discriminatory without evidence of the employer's subjective discrimination. Both claims are cognizable under the ADA, but courts must be careful to distinguish between the theories. Here, respondent was limited to the disparate-treatment theory that petitioner refused to rehire him because it regarded him as disabled and/or because of his record of disability. Petitioner's proffer of its neutral no-rehire policy plainly satisfied its obligation under *McDonnell Douglas* to provide a legitimate, nondiscriminatory reason for refusing to rehire respondent. Thus, the only remaining question before the Ninth Circuit was whether there was sufficient evidence from which a jury could conclude that petitioner did make its employment decision based on respondent's status as disabled despite its proffered explanation. Instead, that court concluded that, as a matter of law, the policy was not a legitimate, nondiscriminatory reason sufficient to defeat a prima facie case of discrimination. In doing so, the Ninth Circuit improperly focused on factors that pertain only to disparate-impact claims, and thus ignored the fact that petitioner's no-rehire policy is a quintessential legitimate, nondiscriminatory reason for refusing to rehire an employee who was terminated for violating workplace conduct rules. Pp. 52–55.

298 F. 3d 1030, vacated and remanded.

THOMAS, J., delivered the opinion of the Court, in which all other Members joined, except SOUTER, J., who took no part in the decision of the case, and BREYER, J., who took no part in the consideration or decision of the case.

Carter G. Phillips argued the cause for petitioner. With him on the briefs were *Alan Charles Raul*, *Paul Grossman*, *Paul W. Cane, Jr.*, *Neal D. Mollen*, *Jay B. Stephens*, and *Ronald Stolkin*.

Deputy Solicitor General Clement argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Olson*, *Assistant Attorney General Boyd*, *John P. Elwood*, *David K. Flynn*, and *Sarah E. Harrington*.

Stephen G. Montoya argued the cause and filed a brief for respondent.*

JUSTICE THOMAS delivered the opinion of the Court.

The Americans with Disabilities Act of 1990 (ADA), 104 Stat. 327, as amended, 42 U. S. C. § 12101 *et seq.*, makes it unlawful for an employer, with respect to hiring, to "discriminate against a qualified individual with a disability because of the disability of such individual." § 12112(a). We are asked to decide in this case whether the ADA confers preferential rehire rights on disabled employees lawfully terminated for violating workplace conduct rules. The United States Court of Appeals for the Ninth Circuit held that an employer's unwritten policy not to rehire employees who left the company for violating personal conduct rules contravenes the ADA, at least as applied to employees who were lawfully forced to resign for illegal drug use but have since been rehabilitated. Because the Ninth Circuit improperly applied a disparate-impact analysis in a disparate-treatment case in order to reach this holding, we vacate its judgment and remand the case for further proceedings consistent with this opinion. We do not, however, reach the question on which we granted certiorari. 537 U. S. 1187 (2003).

I

Respondent, Joel Hernandez, worked for Hughes Missile Systems for 25 years.[1] On July 11, 1991, respondent's ap-

**Ann Elizabeth Reesman, Stephen A. Bokat, Robin S. Conrad,* and *Ellen D. Bryant* filed a brief for the Equal Employment Advisory Council et al. as *amici curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the Betty Ford Center et al. by *David T. Goldberg* and *Daniel N. Abrahamson;* and for the National Employment Lawyers Association et al. by *Claudia Center, Brian East, Terisa E. Chaw,* and *Arlene Mayerson.*

[1] Hughes has since been acquired by petitioner, Raytheon Company. For the sake of clarity, we refer to Hughes and Raytheon collectively as petitioner or the company.

pearance and behavior at work suggested that he might be under the influence of drugs or alcohol. Pursuant to company policy, respondent took a drug test, which came back positive for cocaine. Respondent subsequently admitted that he had been up late drinking beer and using cocaine the night before the test. Because respondent's behavior violated petitioner's workplace conduct rules, respondent was forced to resign. Respondent's "Employee Separation Summary" indicated as the reason for separation: "discharge for personal conduct (quit in lieu of discharge)." App. 12a.

More than two years later, on January 24, 1994, respondent applied to be rehired by petitioner. Respondent stated on his application that he had previously been employed by petitioner. He also attached two reference letters to the application, one from his pastor, stating that respondent was a "faithful and active member" of the church, and the other from an Alcoholics Anonymous counselor, stating that respondent attends Alcoholics Anonymous meetings regularly and is in recovery. *Id.*, at 13a–15a.

Joanne Bockmiller, an employee in the company's Labor Relations Department, reviewed respondent's application. Bockmiller testified in her deposition that since respondent's application disclosed his prior employment with the company, she pulled his personnel file and reviewed his employee separation summary. She then rejected respondent's application. Bockmiller insisted that the company had a policy against rehiring employees who were terminated for workplace misconduct. *Id.*, at 62a. Thus, when she reviewed the employment separation summary and found that respondent had been discharged for violating workplace conduct rules, she rejected respondent's application. She testified, in particular, that she did not know that respondent was a former drug addict when she made the employment decision and did not see anything that would constitute a "record of" addiction. *Id.*, at 63a–64a.

Respondent subsequently filed a charge with the Equal Employment Opportunity Commission (EEOC). Respondent's charge of discrimination indicated that petitioner did not give him a reason for his nonselection, but that respondent believed he had been discriminated against in violation of the ADA.

Petitioner responded to the charge by submitting a letter to the EEOC, in which George M. Medina, Sr., Manager of Diversity Development, wrote:

> "The ADA specifically exempts from protection individuals currently engaging in the illegal use of drugs when the covered entity acts on the basis of that use. Contrary to Complainant's unfounded allegation, his nonselection for rehire is not based on any legitimate disability. Rather, Complainant's application was rejected based on his demonstrated drug use while previously employed and the complete lack of evidence indicating successful drug rehabilitation.
>
> "The Company maintains it's *[sic]* right to deny reemployment to employees terminated for violation of Company rules and regulations. . . . Complainant has provided no evidence to alter the Company's position that Complainant's conduct while employed by [petitioner] makes him ineligible for rehire." *Id.*, at 19a–20a.

This response, together with evidence that the letters submitted with respondent's employment application may have alerted Bockmiller to the reason for respondent's prior termination, led the EEOC to conclude that petitioner may have "rejected [respondent's] application based on his record of past alcohol and drug use." *Id.*, at 94a (EEOC Determination Letter, Nov. 20, 1997). The EEOC thus found that there was "reasonable cause to believe that [respondent] was denied hire to the position of Product Test Specialist because of his disability." *Id.*, at 95a. The EEOC issued a right-to-

sue letter, and respondent subsequently filed this action alleging a violation of the ADA.

Respondent proceeded through discovery on the theory that the company rejected his application because of his record of drug addiction and/or because he was regarded as being a drug addict. See 42 U. S. C. §§ 12102(2)(B)–(C).[2] In response to petitioner's motion for summary judgment, respondent for the first time argued in the alternative that if the company really did apply a neutral no-rehire policy in his case, petitioner still violated the ADA because such a policy has a disparate impact. The District Court granted petitioner's motion for summary judgment with respect to respondent's disparate-treatment claim. However, the District Court refused to consider respondent's disparate-impact claim because respondent had failed to plead or raise the theory in a timely manner.

The Court of Appeals agreed with the District Court that respondent had failed timely to raise his disparate-impact claim. *Hernandez* v. *Hughes Missile Systems Co.*, 298 F. 3d 1030, 1037, n. 20 (CA9 2002). In addressing respondent's disparate-treatment claim, the Court of Appeals proceeded under the familiar burden-shifting approach first adopted by this Court in *McDonnell Douglas Corp.* v. *Green*, 411 U. S. 792 (1973).[3] First, the Ninth Circuit found that with respect

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[2] The ADA defines the term "disability" as:

"(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

"(B) a record of such an impairment; or

"(C) being regarded as having such an impairment." 42 U. S. C. § 12102(2).

[3] The Court in *McDonnell Douglas* set forth a burden-shifting scheme for discriminatory-treatment cases. Under *McDonnell Douglas*, a plaintiff must first establish a prima facie case of discrimination. The burden then shifts to the employer to articulate a legitimate, nondiscriminatory reason for its employment action. 411 U. S., at 802. If the employer meets this burden, the presumption of intentional discrimination disappears, but the plaintiff can still prove disparate treatment by, for instance,

to respondent's prima facie case of discrimination, there were genuine issues of material fact regarding whether respondent was qualified for the position for which he sought to be rehired, and whether the reason for petitioner's refusal to rehire him was his past record of drug addiction.[4] 298 F. 3d, at 1034–1035. The Court of Appeals thus held that with respect to respondent's prima facie case of discrimination, respondent had proffered sufficient evidence to preclude a grant of summary judgment. *Id.*, at 1035. Because petitioner does not challenge this aspect of the Ninth Circuit's decision, we do not address it here.

The Court of Appeals then moved to the next step of *McDonnell Douglas*, where the burden shifts to the defendant to provide a legitimate, nondiscriminatory reason for its employment action. 411 U. S., at 802. Here, petitioner contends that Bockmiller applied the neutral policy against rehiring employees previously terminated for violating workplace conduct rules and that this neutral company policy constituted a legitimate and nondiscriminatory reason

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offering evidence demonstrating that the employer's explanation is pretextual. See *Reeves* v. *Sanderson Plumbing Products, Inc.*, 530 U. S. 133, 143 (2000). The Courts of Appeals have consistently utilized this burden-shifting approach when reviewing motions for summary judgment in disparate-treatment cases. See, *e. g.*, *Pugh* v. *Attica*, 259 F. 3d 619, 626 (CA7 2001) (applying burden-shifting approach to an ADA disparate-treatment claim).

[4] The Court of Appeals noted that "it is possible that a drug *user* may not be 'disabled' under the ADA if his drug use does not rise to the level of an addiction which substantially limits one or more of his major life activities." 298 F. 3d, at 1033–1034, n. 9. The parties do not dispute that respondent was "disabled" at the time he quit in lieu of discharge and thus a record of the disability exists. We therefore need not decide in this case whether respondent's employment record constitutes a "record of addiction," which triggers the protections of the ADA.

The parties are also not disputing in this Court whether respondent was qualified for the position for which he applied.

for its decision not to rehire respondent. The Court of Appeals, although admitting that petitioner's no-rehire rule was lawful on its face, held the policy to be unlawful "as applied to former drug addicts whose only work-related offense was testing positive because of their addiction." 298 F. 3d, at 1036. The Court of Appeals concluded that petitioner's application of a neutral no-rehire policy was not a legitimate, nondiscriminatory reason for rejecting respondent's application:

> "Maintaining a blanket policy against rehire of *all* former employees who violated company policy not only screens out persons with a record of addiction who have been successfully rehabilitated, but may well result, as [petitioner] contends it did here, in the staff member who makes the employment decision remaining unaware of the 'disability' and thus of the fact that she is committing an unlawful act. . . . Additionally, we hold that a policy that serves to bar the reemployment of a drug addict despite his successful rehabilitation violates the ADA." *Id.,* at 1036–1037.

In other words, while ostensibly evaluating whether petitioner had proffered a legitimate, nondiscriminatory reason for failing to rehire respondent sufficient to rebut respondent's prima facie showing of disparate treatment, the Court of Appeals held that a neutral no-rehire policy could never suffice in a case where the employee was terminated for illegal drug use, because such a policy has a disparate impact on recovering drug addicts. In so holding, the Court of Appeals erred by conflating the analytical framework for disparate-impact and disparate-treatment claims. Had the Court of Appeals correctly applied the disparate-treatment framework, it would have been obliged to conclude that a neutral no-rehire policy is, by definition, a legitimate, non-

discriminatory reason under the ADA.[5] And thus the only remaining question would be whether respondent could produce sufficient evidence from which a jury could conclude that "petitioner's stated reason for respondent's rejection was in fact pretext." *McDonnell Douglas*, *supra*, at 804.

II

This Court has consistently recognized a distinction between claims of discrimination based on disparate treatment and claims of discrimination based on disparate impact. The Court has said that "'[d]isparate treatment' . . . is the most easily understood type of discrimination. The employer simply treats some people less favorably than others because of their race, color, religion, sex, or [other protected characteristic]." *Teamsters* v. *United States*, 431 U. S. 324, 335, n. 15 (1977). See also *Hazen Paper Co.* v. *Biggins*, 507 U. S. 604, 609 (1993) (discussing disparate-treatment claims in the context of the Age Discrimination in Employment Act of 1967). Liability in a disparate-treatment case "depends on whether the protected trait . . . actually motivated the employer's decision." *Id.*, at 610. By contrast, disparate-impact claims "involve employment practices that are facially neutral in their treatment of different groups but that in fact fall more harshly on one group than another and cannot be justified by business necessity." *Teamsters*, *supra*, at 335–336, n. 15. Under a disparate-impact theory of discrimination, "a facially neutral employment practice may be deemed [illegally discriminatory] without evidence of

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[5] This would not, of course, resolve the dispute over whether petitioner did in fact apply such a policy in this case. Indeed, the Court of Appeals expressed some confusion on this point, as the court first held that respondent "raise[d] a genuine issue of material fact as to whether he was denied re-employment because of his past record of drug addiction," *id.*, at 1034, but then later stated that there was "no question that [petitioner] applied this [no-rehire] policy in rejecting [respondent's] application," *id.*, at 1036, n. 17.

the employer's subjective intent to discriminate that is required in a 'disparate-treatment' case." *Wards Cove Packing Co.* v. *Atonio*, 490 U. S. 642, 645–646 (1989), superseded by statute on other grounds, Civil Rights Act of 1991, § 105, 105 Stat. 1074–1075, 42 U. S. C. § 2000e–2(k) (1994 ed.).

Both disparate-treatment and disparate-impact claims are cognizable under the ADA. See 42 U. S. C. § 12112(b) (defining "discriminate" to include "utilizing standards, criteria, or methods of administration . . . that have the effect of discrimination on the basis of disability" and "using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability"). Because "the factual issues, and therefore the character of the evidence presented, differ when the plaintiff claims that a facially neutral employment policy has a discriminatory impact on protected classes," *Texas Dept. of Community Affairs* v. *Burdine*, 450 U. S. 248, 252, n. 5 (1981), courts must be careful to distinguish between these theories. Here, respondent did not timely pursue a disparate-impact claim. Rather, the District Court concluded, and the Court of Appeals agreed, that respondent's case was limited to a disparate-treatment theory, that the company refused to rehire respondent because it regarded respondent as being disabled and/or because of respondent's record of a disability. 298 F. 3d, at 1037, n. 20.

Petitioner's proffer of its neutral no-rehire policy plainly satisfied its obligation under *McDonnell Douglas* to provide a legitimate, nondiscriminatory reason for refusing to rehire respondent. Thus, the only relevant question before the Court of Appeals, after petitioner presented a neutral explanation for its decision not to rehire respondent, was whether there was sufficient evidence from which a jury could conclude that petitioner did make its employment decision based on respondent's status as disabled despite petitioner's proffered explanation. Instead, the Court of Appeals concluded that, as a matter of law, a neutral no-rehire policy was not

a legitimate, nondiscriminatory reason sufficient to defeat a prima facie case of discrimination.[6] The Court of Appeals did not even attempt, in the remainder of its opinion, to treat this claim as one involving only disparate treatment. Instead, the Court of Appeals observed that petitioner's policy "screens out persons with a record of addiction," and further noted that the company had not raised a business necessity defense, 298 F. 3d, at 1036–1037, and n. 19, factors that pertain to disparate-impact claims but not disparate-treatment claims. See, *e. g.*, *Grano* v. *Department of Development of Columbus*, 637 F. 2d 1073, 1081 (CA6 1980) ("In a disparate impact situation . . . the issue is whether a neutral selection device . . . screens out disproportionate numbers of [the protected class]").[7] By improperly focusing on these factors, the Court of Appeals ignored the fact that petitioner's no-rehire policy is a quintessential legitimate, nondiscriminatory reason for refusing to rehire an employee who was

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[6] The Court of Appeals characterized respondent's workplace misconduct as merely "testing positive because of [his] addiction." 298 F. 3d, at 1036. To the extent that the court suggested that, because respondent's workplace misconduct is related to his disability, petitioner's refusal to rehire respondent on account of that workplace misconduct violated the ADA, we point out that we have rejected a similar argument in the context of the Age Discrimination in Employment Act. See *Hazen Paper Co.* v. *Biggins*, 507 U. S. 604, 611 (1993).

[7] Indeed, despite the fact that the Nation's antidiscrimination laws are undoubtedly aimed at "the problem of inaccurate and stigmatizing stereotypes," *ibid.*, the Court of Appeals held that the unfortunate result of petitioner's application of its neutral policy was that Bockmiller may have made the employment decision in this case "remaining unaware of [respondent's] 'disability.'" 298 F. 3d, at 1036. The Court of Appeals did not explain, however, how it could be said that Bockmiller was motivated to reject respondent's application because of his disability if Bockmiller was entirely unaware that such a disability existed. If Bockmiller were truly unaware that such a disability existed, it would be impossible for her hiring decision to have been based, even in part, on respondent's disability. And, if no part of the hiring decision turned on respondent's status as disabled, he cannot, *ipso facto*, have been subject to disparate treatment.

terminated for violating workplace conduct rules. If petitioner did indeed apply a neutral, generally applicable no-rehire policy in rejecting respondent's application, petitioner's decision not to rehire respondent can, in no way, be said to have been motivated by respondent's disability.

The Court of Appeals rejected petitioner's legitimate, nondiscriminatory reason for refusing to rehire respondent because it "serves to bar the re-employment of a drug addict despite his successful rehabilitation." 298 F. 3d, at 1036–1037. We hold that such an analysis is inapplicable to a disparate-treatment claim. Once respondent had made a prima facie showing of discrimination, the next question for the Court of Appeals was whether petitioner offered a legitimate, nondiscriminatory reason for its actions so as to demonstrate that its actions were not motivated by respondent's disability. To the extent that the Court of Appeals strayed from this task by considering not only discriminatory intent but also discriminatory impact, we vacate its judgment and remand the case for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE SOUTER took no part in the decision of this case. JUSTICE BREYER took no part in the consideration or decision of this case.

Syllabus

VIRGINIA *v.* MARYLAND

ON EXCEPTIONS TO REPORT OF SPECIAL MASTER

No. 129, Orig. Argued October 7, 2003—Decided December 9, 2003

Maryland and Virginia have long disputed control of the Potomac River (River). Of particular relevance here, Article Seventh of the 1785 Compact between those States provided: "The citizens of each state . . . shall have full property in the shores of Potowmack river adjoining their lands, with all emoluments and advantages thereunto belonging, and the privilege of making and carrying out wharves and other improvements, so as not to obstruct or injure the navigation of the river." Because the 1785 Compact did not determine the boundary line between the two States, they submitted that question to an arbitration panel, which ultimately issued a binding award (hereinafter Black-Jenkins Award or Award) placing the boundary at the low-water mark on the River's Virginia shore. Although Maryland was thus granted ownership of the entire riverbed, Article Fourth of the Award further provided: "Virginia . . . is entitled not only to full dominion over the soil to [its shore's] low-water mark . . . , but has a right to such use of the river beyond the line of low-water mark as may be necessary to the full enjoyment of her riparian ownership, without impeding the navigation or otherwise interfering with the proper use of it by Maryland." Congress approved both the 1785 Compact and the Black-Jenkins Award pursuant to the Compact Clause of the Constitution. In 1933, Maryland established a permitting system for water withdrawal and waterway construction within her territory. For approximately 40 years, she issued, without objection, each of the numerous such permits requested by Virginia entities. The Maryland Department of the Environment (MDE) first denied such a permit when, in 1996, the Fairfax County, Va., Water Authority sought permission to construct a water intake structure, which would extend 725 feet from the Virginia shore above the River's tidal reach and was designed to improve water quality for county residents. Maryland officials opposed the project on the ground that it would harm Maryland's interests by facilitating urban sprawl in Virginia, and the MDE held that Virginia had not demonstrated a sufficient need for the offshore intake. Virginia pursued MDE administrative appeals for more than two years, arguing unsuccessfully at each stage that she was entitled to build the water intake structure under the 1785 Compact and the Black-Jenkins Award. Finally, Virginia brought this original action seeking a declaratory judgment that Maryland may not require Virginia,

her governmental subdivisions, or her citizens to obtain a permit in order to construct improvements appurtenant to her shore or to withdraw water from the River. The Court referred the action to a Special Master, who issued a Report that, *inter alia*, concluded that the 1785 Compact and the Black-Jenkins Award gave Virginia the right to use the River beyond the low-water mark as necessary to the full enjoyment of her riparian rights; found no support in either of those documents for Maryland's claimed sovereign authority over Virginia's exercise of her riparian rights; rejected Maryland's argument that Virginia had lost her rights of waterway construction and water withdrawal by acquiescing in Maryland's regulation of activities on the River; and recommended that the relief sought by Virginia be granted. Maryland filed exceptions to the Report.

Held:

1. The Black-Jenkins Award gives Virginia sovereign authority, free from regulation by Maryland, to build improvements appurtenant to her shore and to withdraw water from the River, subject to the constraints of federal common law and the Award. Article Fourth of the Award and Article Seventh of the 1785 Compact govern this controversy. The plain language of the latter grants the "citizens of each state" "full property" rights in the "shores of Potowmack river" and the "privilege" of building "improvements" from the shore. The notable absence of any grant or recognition of sovereign authority to regulate the exercise of this "privilege" of the "citizens of each state" contrasts with Article Seventh's second clause, which recognized a right held by the "citizens" of each State to fish in the River, and with Article Eighth, which subjects that right to mutually agreed-upon regulation by the States. These differing approaches to rights indicate that the 1785 Compact's drafters carefully delineated the instances in which the citizens of one State would be subjected to the regulatory authority of the other. Other portions of the 1785 Compact also reflect this design. If any inference is to be drawn from Article Seventh's silence on the subject of regulatory authority, it is that each State was left to regulate the activities of her own citizens. The Court rejects the historical premise underlying the argument that Article Seventh's regulatory silence must be read in Maryland's favor because her sovereignty over the River was "well-settled" by the time the 1785 Compact was drafted. The Court's own cases recognize that the scope of Maryland's sovereignty over the River was in dispute both before and after the 1785 Compact. See, *e. g.*, *Morris* v. *United States*, 174 U. S. 196, 224. The mere existence of the 1785 Compact further belies Maryland's argument in that the compact sought "to regulate and settle the jurisdiction and navigation"

of the River, 1785–1786 Md. Laws ch. 1 (preamble), an endeavor that would hardly have been required if, as Maryland claims, her well-settled sovereignty gave her exclusive authority to regulate all activity on the River. Accordingly, the Court reads Article Seventh simply to guarantee that each State's citizens would retain the right to build wharves and improvements regardless of which State ultimately was determined to be sovereign over the River. That would not be decided until the 1877 Black-Jenkins Award gave such sovereignty to Maryland. Unlike the 1785 Compact's Article Seventh, which concerned the rights of citizens, the plain language of the Award's Article Fourth gives Virginia, as a sovereign State, the right to use the River beyond the low-water mark. Nothing in Article Fourth suggests that Virginia's rights are subject to Maryland's regulation. Indeed, that Article limits Virginia's riparian rights only by Maryland's right of "proper use" and the proviso that Virginia not "imped[e] . . . navigation," limitations that hardly would have been necessary if Maryland retained the authority to regulate Virginia's actions. Maryland's argument to the contrary is rejected, since the States would hardly have submitted to binding arbitration "for the purpose of ascertaining and fixing the boundary" between them if that boundary was already well settled. Act of Mar. 3, 1879, ch. 196, 20 Stat. 481 (preamble). Indeed, the Black-Jenkins arbitrators' opinion dispels any doubt that sovereignty was in dispute, see, *e. g.,* App. to Report, p. D–2, and confirms that Virginia's Article Fourth rights are sovereign rights not subject to Maryland's regulation, see *id.,* at D–18 to D–19. Maryland's necessary concession that Virginia owns the soil to the low-water mark must also doom her claim that Virginia does not possess riparian rights to construct improvements beyond that mark and otherwise make use of the River's water. The Court rejects Maryland's remaining arguments that the Award merely confirmed the private property rights enjoyed by Virginia citizens under the 1785 Compact's Article Seventh and the common law, which rights are in turn subject to Maryland's regulation as sovereign over the River; that the Award could not have elevated the 1785 Compact's private property rights to sovereign rights; and that the requirement under the Award's Article Fourth that Virginia exercise her riparian rights on the River "without impeding the navigation *or otherwise interfering with the proper use of it by Maryland*" (emphasis added) indicates Maryland's continuing regulatory authority over Virginia's exercise of her riparian rights. Also rejected is JUSTICE KENNEDY's conclusion that, because the Black-Jenkins Opinion rested Virginia's prescriptive riparian rights solely on Maryland's assent to the riparian rights granted private citizens in the 1785 Compact, Maryland may regulate Virginia's right to

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use the River, so long as Virginia is not excluded from the River altogether. Pp. 65–75.

2. Virginia did not lose her sovereign riparian rights by acquiescing in Maryland's regulation of her water withdrawal and waterway construction activities. To succeed in her acquiescence defense, Maryland must show that Virginia "failed to protest" her assertion of sovereign authority over waterway construction and water withdrawal. *New Jersey* v. *New York*, 523 U. S. 767, 807. Maryland has not carried her burden. As the Special Master found, Virginia vigorously protested Maryland's asserted authority during the negotiations that led to the passage of § 181 of the Water Resources Development Act of 1976, which required those States to enter into an agreement with the Secretary of the Army apportioning the River's waters during low-flow periods. Section 181 and the ensuing Low Flow Allocation Agreement are conclusive evidence that, far from acquiescing in Maryland's regulation, Virginia explicitly asserted her sovereign riparian rights. Pp. 76–80.

Maryland's exceptions overruled; relief sought by Virginia granted; and Special Master's proposed decree entered.

REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, SOUTER, THOMAS, GINSBURG, and BREYER, JJ., joined. STEVENS, J., filed a dissenting opinion, in which KENNEDY, J., joined, *post*, p. 80. KENNEDY, J., filed a dissenting opinion, in which STEVENS, J., joined, *post*, p. 82.

Stuart A. Raphael argued the cause for plaintiff. With him on the brief were *Jerry W. Kilgore*, Attorney General of Virginia, *William H. Hurd*, Solicitor General, *Roger L. Chaffe* and *Frederick S. Fisher*, Senior Assistant Attorneys General, and *Jill M. Dennis*.

Andrew H. Baida, former Solicitor General of Maryland, argued the cause for defendant. With him on the briefs were *J. Joseph Curran, Jr.*, Attorney General, and *Maureen Mullen Dove*, *M. Rosewin Sweeney*, *Adam D. Snyder*, and *Randolph S. Sergent*, Assistant Attorneys General.*

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*Briefs of *amici curiae* were filed for the Audubon Naturalist Society by *Kathleen A. Behan* and *Christopher D. Man;* and for the Loudoun County Sanitation Authority of Virginia by *Stanley M. Franklin*, *E. Duncan Getchell, Jr.*, *Robert L. Hodges*, and *James E. Brown*.

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

Invoking this Court's original jurisdiction, the Commonwealth of Virginia seeks a declaration that it has a right to withdraw water from the Potomac River and to construct improvements appurtenant to the Virginia shore free from regulation by the State of Maryland. We granted Virginia leave to file a complaint, 530 U. S. 1201 (2000), and referred the action to a Special Master, 531 U. S. 922 (2001). The Special Master filed a Report recommending that we grant the relief sought by Virginia. Maryland has filed exceptions to that Report.

Rising in the Appalachian Highlands of Maryland and West Virginia, the Potomac River (River) flows nearly 400 miles before emptying into Chesapeake Bay. For the lower part of its course, it forms the boundary between Maryland and the District of Columbia on the north, and West Virginia and Virginia on the south.

Control of the River has been disputed for nearly 400 years. In the 17th century, both Maryland and Virginia laid claim to the River pursuant to conflicting royal charters issued by different British monarchs. See *Maryland* v. *West Virginia*, 217 U. S. 1, 24–29 (1910); *Morris* v. *United States*, 174 U. S. 196, 223–225 (1899).

Virginia traced her claim primarily to the 1609 charter issued by King James I to the London Company, and to a 1688 patent for Virginia's Northern Neck, issued by King James II to Lord Thomas Culpeper. *West Virginia*, *supra*, at 28–29; *Morris*, 174 U. S., at 223–224. Both the 1609 charter and the 1688 patent included the entire Potomac River. *Id.*, at 223. Maryland relied on the charter of 1632 from King Charles I to Lord Baltimore, which also included the Potomac River, although the precise scope of the grant remained in dispute. *West Virginia*, *supra*, at 20, 24–25; *Morris*, *supra*, at 223–225. In her Constitution of 1776, Virginia ceded ownership of the River to Maryland to the extent the

River was included in Maryland's 1632 charter. Va. Const., Art. XXI, reprinted in 9 W. Hening's Statutes at Large 118 (1821). Importantly for our purposes, Virginia specifically excepted from her cession "the free navigation and use of the rivers *Potowmack* and *Pocomoke*, with the property of the *Virginia* shores or strands bordering on either of the said rivers, and all improvements which have been or shall be made thereon." *Ibid.* In October of that same year, Maryland passed a resolution at a convention of her constitutional delegates that rejected the reservation in Virginia's Constitution. Proceedings of the Conventions of the Province of Maryland, held at the City of Annapolis, in 1774, 1775, 1776, pp. 292–293 (J. Lucas & E. Deaver eds. 1836). The unanimous convention asserted Maryland's "sole and exclusive jurisdiction" over the River. *Ibid.*

In the early years of the Republic, "great inconveniences were experienced by citizens of both Maryland and Virginia from the want of established and recognized regulations between those States respecting the jurisdiction and navigation of the river Potomac." *Wharton* v. *Wise*, 153 U. S. 155, 162 (1894). To address these problems, Maryland and Virginia appointed commissioners, who, at the invitation of George Washington, met at Mount Vernon in March 1785.[1] *Id.*, at 163; 2 The Diaries of George Washington 1748–1799, p. 354 (J. Fitzpatrick ed. 1925). The Mount Vernon conference produced a binding compact (1785 Compact) between the States, which was subsequently ratified by the Maryland and Virginia Legislatures. *Wharton*, *supra*, at 165–166; 1785–1786 Md. Laws ch. 1; 1785 Va. Acts ch. 17. The 1785 Compact's 13 articles provided, *inter alia*, that the River "shall be considered as a common highway, for the purpose of navigation and commerce to the citizens of Virginia, and Maryland" (Article Sixth); that all laws regulating fishing

[1] Maryland's Commissioners were Daniel of St. Thomas Jenifer, Thomas Stone, and Samuel Chase; Virginia was represented by George Mason and Alexander Henderson. 1785–1786 Md. Laws ch. 1 (preamble).

and navigation "shall be made with the mutual consent and approbation of both states" (Article Eighth); and that jurisdiction over criminal offenses shall be determined based on the citizenship of the offender and the victim (Article Tenth). Va. Code Ann. Compacts App., pp. 342–343 (Lexis 2001). Of particular relevance to this case, Article Seventh provided:

> "The citizens of each state respectively shall have full property in the shores of Potowmack river adjoining their lands, with all emoluments and advantages thereunto belonging, and the privilege of making and carrying out wharves and other improvements, so as not to obstruct or injure the navigation of the river." *Ibid.*

Although the 1785 Compact resolved many important navigational and jurisdictional issues, it did not determine the boundary line between the States, an issue that was "left . . . open to long continued disputes." *Marine Railway & Coal Co.* v. *United States*, 257 U. S. 47, 64 (1921); *Morris*, *supra*, at 224; *Rhode Island* v. *Massachusetts*, 12 Pet. 657, 724 (1838). In 1874, Virginia and Maryland submitted the boundary dispute to binding arbitration before a panel of "eminent lawyers" composed of Jeremiah S. Black, James B. Beck, and Charles J. Jenkins. *Maryland* v. *West Virginia*, 217 U. S. 577, 579 (1910). On January 16, 1877, the arbitrators issued their award (hereinafter Black-Jenkins Award or Award), placing the boundary at the low-water mark on the Virginia shore of the Potomac.[2] Although Maryland was thus granted ownership of the entire bed of the River, Article Fourth of the Award further provided:

> "Virginia is entitled not only to full dominion over the soil to low-water mark on the south shore of the Potomac, but has a right to such use of the river beyond the line of low-water mark as may be necessary to the full

[2] The "low-water mark" of a river is defined as "the point to which the water recedes at its lowest stage." Black's Law Dictionary 1586 (7th ed. 1999).

> enjoyment of her riparian ownership, without impeding the navigation or otherwise interfering with the proper use of it by Maryland, agreeably to the compact of seventeen hundred and eighty-five." Act of Mar. 3, 1879, ch. 196, 20 Stat. 482 (internal quotation marks omitted).

The Black-Jenkins Award was ratified by the Legislatures of Maryland and Virginia, 1878 Md. Laws ch. 274; 1878 Va. Acts ch. 246, and approved by the United States Congress, pursuant to the Compact Clause of the Constitution, Art. I, § 10, cl. 3; Act of Mar. 3, 1879, ch. 196, 20 Stat. 481. See also *Wharton*, 153 U. S., at 172–173. We held that when Congress approved the Black-Jenkins Award it implicitly consented to the 1785 Compact as well. *Id.*, at 173.[3]

In 1933, Maryland established a permitting system for water withdrawal and waterway construction taking place within Maryland territory. 1933 Md. Laws ch. 526, §§ 4, 5 (current version codified at Md. Envir. Code Ann. § 5–501 *et seq.* (1996)). In 1956, Fairfax County became the first Virginia municipal corporation to apply for a water withdrawal permit, seeking leave to withdraw up to 15 million gallons of water per day. App. to Exceptions of Maryland to Report of Special Master 196. Maryland granted that permit in 1957. Between 1957 and 1996, Maryland issued, without objection, at least 29 water withdrawal permits to Virginia entities. *Id.*, at 57, 197–205. Since 1968, it has likewise issued numerous waterway construction permits to Virginia entities. *Id.*, at 276–280.

In 1996, the Fairfax County Water Authority (FCWA) sought permits from Maryland for construction of a water intake structure extending 725 feet from the Virginia shore above the tidal reach of the Potomac River. The structure

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[3] Because Maryland and Virginia entered into the 1785 Compact prior to the adoption of the United States Constitution, Congress had not previously approved it pursuant to the Constitution's Compact Clause. See generally *Wharton*, 153 U. S., at 165–173.

was designed to improve water quality for Fairfax County residents. Several Maryland officials opposed Virginia's construction proposal, arguing that it would harm Maryland's interests by facilitating urban sprawl in Virginia. In late 1997, the Maryland Department of the Environment (MDE) refused to issue the permit, holding that Virginia had not demonstrated a sufficient need for the offshore intake. This marked the first time Maryland had denied such a permit to a Virginia entity. Virginia pursued MDE administrative appeals for more than two years, arguing at each stage that it was entitled to build the water intake structure under the 1785 Compact and the Black-Jenkins Award. In February 2000, Virginia, still lacking a permit, sought leave to file a bill of complaint in this Court, which we granted on March 30, 2000.[4] Ultimately, the MDE's "Final Decision Maker" determined that Virginia had demonstrated a sufficient need for the project. In 2001, Maryland finally issued the permit to FCWA, but only after the Maryland Legislature attached a condition to the permit requiring FCWA to place a permanent flow restrictor on the intake pipe to limit the amount of water that could be withdrawn from the River, 2000 Md. Laws ch. 557, § 1(b)(2)(ii). See Lodging Accompanying Reply by Virginia to Maryland's Exceptions to Report of Special Master L–336 to L–339 (hereinafter Va. Lodging) (permit issued to FCWA).

In October 2000, while Virginia's permit request was pending, we referred Virginia's bill of complaint to Special Master Ralph I. Lancaster, Jr. Virginia sought a declaratory judg-

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[4] This case marks the second time Virginia sought leave to file an original action against Maryland concerning Potomac River rights. See *Virginia* v. *Maryland*, 355 U. S. 269 (1957) *(per curiam)*. In the earlier fray, the Special Master persuaded the States to settle their dispute. They entered into a new compact, which superseded the 1785 Compact but specifically preserved the rights delineated in Article Seventh. See Potomac River Compact of 1958, 1959 Md. Laws ch. 269; 1959 Va. Acts ch. 28; Pub. L. 87–783, 76 Stat. 797.

ment that Maryland may not require Virginia, her governmental subdivisions, or her citizens to obtain a permit in order to construct improvements appurtenant to her shore or to withdraw water from the River. Maryland did not dispute that Virginia had rights to withdraw water and construct improvements under the 1785 Compact and the Black-Jenkins Award. Report of the Special Master 12 (hereinafter Report). Rather, Maryland asserted that, as sovereign over the River to the low-water mark, it was entitled to regulate Virginia's exercise of these rights.[5] *Ibid.* Maryland further argued that even if the 1785 Compact and the Award granted Virginia unrestricted rights of waterway construction and water withdrawal, Virginia lost those rights by acquiescing in Maryland's regulation of activities on the Potomac.

The Special Master recommended that we grant the relief sought by Virginia. Interpreting the 1785 Compact and the Black-Jenkins Award, he concluded that these two documents not only gave citizens of Virginia the right to construct improvements from their riparian property into the River, but gave the Commonwealth of Virginia the right to use the River beyond the low-water mark as necessary to the full enjoyment of her riparian rights. The Special Master rejected Maryland's claimed authority to regulate Virginia's exercise of her rights, finding no support for that proposition in either the 1785 Compact or the Award. Finally, the Special Master rejected Maryland's defense of acquiescence by Virginia.

Maryland filed exceptions to the Report of the Special Master. We now overrule those exceptions.

Virginia and Maryland agree that Article Seventh of the 1785 Compact and Article Fourth of the Black-Jenkins

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[5] Maryland also contended that the 1785 Compact and the Black-Jenkins Award did not apply to the nontidal portions of the River. The Special Master rejected that argument, Report 96, and Maryland does not pursue it before this Court.

Award govern the instant controversy. Determining whether Virginia's rights are subject to Maryland's regulatory authority obviously requires resort to those documents. We interpret a congressionally approved interstate compact "[j]ust as if [we] were addressing a federal statute." *New Jersey* v. *New York*, 523 U. S. 767, 811 (1998); see also *ibid.* ("[C]ongressional consent 'transforms an interstate compact . . . into a law of the United States'" (quoting *Cuyler* v. *Adams*, 449 U. S. 433, 438 (1981))). Article Seventh of the 1785 Compact provides:

> "The citizens of each state respectively shall have full property in the shores of Potowmack river adjoining their lands, with all emoluments and advantages thereunto belonging, and the privilege of making and carrying out wharves and other improvements, so as not to obstruct or injure the navigation of the river." Va. Code Ann. Compacts App., pp. 342–343.

The plain language of Article Seventh thus grants to the "citizens of each state" "full property" rights in the "shores of Potowmack river" and the "privilege" of building "improvements" from the shore. Notably absent is any grant or recognition of sovereign authority to regulate the exercise of this "privilege" of the "citizens of each state." The lack of such a grant of regulatory authority in the first clause of Article Seventh contrasts with the second clause of Article Seventh and Article Eighth, which also recognized a right held by the "citizens" of each State:

> "[T]he right of fishing in the river shall be common to, and equally enjoyed by, the citizens of both states . . . . *Eighth.* All laws and regulations which may be necessary for the preservation of fish . . . shall be made with the mutual consent and approbation of both states." *Id.*, at 343.

Thus, while the Article Seventh right to build improvements was not explicitly subjected to any sovereign regulatory au-

thority, the fishing right in the same article was subjected to mutually agreed-upon regulation. We agree with Virginia that these differing approaches to rights contained in the same article of the 1785 Compact indicate that the drafters carefully delineated the instances in which the citizens of one State would be subject to the regulatory authority of the other. Other portions of the 1785 Compact reflect this design. See Article Fourth (providing that certain vessels "may enter and trade in any part of either state, with a permit from the naval-officer of the district from which such vessel departs with her cargo . . ."); Article Eighth (providing for joint regulation of navigation on the River); Article Ninth (providing for a bistate commission to govern the erection of "light houses, beacons, buoys, or other signals"). *Id.*, at 342–343. If any inference at all is to be drawn from Article Seventh's silence on the subject of regulatory authority, we think it is that each State was left to regulate the activities of her own citizens.

Maryland, however, argues that we must read Article Seventh's regulatory silence in her favor because her sovereignty over the River was "well-settled" by the time the 1785 Compact was drafted. Exceptions of Maryland to Report of Special Master 19 (hereinafter Md. Brief). Maryland is doubtless correct that if her sovereignty over the River was well settled as of 1785, we would apply a strong presumption against reading the Compact as stripping her authority to regulate activities on the River. See, *e. g.*, *Massachusetts* v. *New York,* 271 U. S. 65, 89 (1926) ("[D]ominion over navigable waters, and property in the soil under them, are so identified with the exercise of the sovereign powers of government that a presumption against their separation from sovereignty must be indulged"). But we reject Maryland's historical premise.

Each State has produced reams of historical evidence to support its respective view about the status of sovereignty over the River as of 1785. We need not delve deeply into

this historical record to decide this issue. Our own cases recognize that the scope of Maryland's sovereignty over the River was in dispute both before and after the 1785 Compact. *Morris*, upon which Maryland relies, does not support her argument. Therein, we observed that "[o]wing to the conflicting descriptions, as respected the Potomac River, contained in [the] royal grants, a controversy early arose between Virginia and Maryland." 174 U. S., at 224. While the 1785 Compact resolved certain jurisdictional issues, it did not determine the boundary between the States. *Ibid.* Accordingly, the controversy over sovereignty was "still continuing . . . in 1874." *Ibid.* In *Marine Railway*, we likewise acknowledged that even *after* the 1785 Compact, "the question of boundary" was left "open to long continued disputes." 257 U. S., at 64. See also *Rhode Island*, 12 Pet., at 723 ("Maryland and Virginia were contending about boundaries in 1835 . . . and the dispute is yet an open one [in 1838]"). *Morris* did ultimately decide that Maryland's 1632 charter included the Potomac River from shore to shore, 174 U. S., at 225, but this conclusion, reached in 1899, hardly negates our statements in that and other cases recognizing that the dispute over the interstate boundary continued well into the 19th century.

The mere existence of the 1785 Compact further belies Maryland's argument. After all, the 1785 Compact sought "to regulate and settle the jurisdiction and navigation" of the River. 1785–1786 Md. Laws ch. 1 (preamble). This endeavor would hardly have been required if, as Maryland claims, her well-settled sovereignty gave her exclusive authority to regulate all activity on the River.[6] Nowhere is this more clear than with respect to the Article Seventh right of Virginia citizens to build improvements from the Virginia shore. In 1776, Virginia had purported to reserve

[6] For example, if Maryland had well-settled exclusive jurisdiction over the River, it certainly would not have agreed to *joint* regulation of fishing as it did in Article Eighth of the 1785 Compact.

sovereignty over "the property of the *Virginia* shores or strands bordering on either of the said rivers, and all improvements which have been or shall be made thereon." Va. Const., Art. XXI, reprinted in 9 W. Hening's Statutes at Large 118. It would be anomalous to conclude that *Maryland's* sovereign authority to regulate the construction of such improvements was so well established a mere nine years later that the 1785 Compact's drafters did not even need to mention it.

Accordingly, we read the 1785 Compact in light of the ongoing dispute over sovereignty. Article Seventh simply guaranteed that the citizens of each State would retain the right to build wharves and improvements regardless of which State ultimately was determined to be sovereign over the River. That would not be decided until the Black-Jenkins Award of 1877.

The Black-Jenkins arbitrators held that Maryland was sovereign over the River to the low-water mark on the Virginia shore. See Act of Mar. 3, 1879, ch. 196, 20 Stat. 481–482. "[I]n further explanation of this award, the arbitrators deem[ed] it proper to add" four articles, *id.*, at 482, the last of which provides:

> "'Virginia is entitled not only to full dominion over the soil to low-water mark on the south shore of the Potomac, but has a right to such use of the river beyond the line of low-water mark as may be necessary to the full enjoyment of her riparian ownership, without impeding the navigation or otherwise interfering with the proper use of it by Maryland, agreeably to the compact of seventeen hundred and eighty-five.'" *Ibid.*

Unlike the 1785 Compact's Article Seventh, which concerned the rights of citizens, the plain language of Article Fourth of the Award gives Virginia, as a sovereign State, the right to use the River beyond the low-water mark. Nothing in Article Fourth suggests that Virginia's rights are subject to

Maryland's regulation. Indeed, Virginia's riparian rights are limited only by Maryland's right of "proper use" and the proviso that Virginia not "imped[e] . . . navigation," limitations that hardly would have been necessary if Maryland retained the authority to regulate Virginia's actions. Maryland argues, however, that the Black-Jenkins Award simply confirmed her well-settled ownership of the Potomac, and thus the rights granted to Virginia in Article Fourth are subject to Maryland's regulatory authority.

We have already rejected Maryland's contention that the extent of her sovereignty over the Potomac was well settled before the 1785 Compact. Similarly, we fail to see why Maryland and Virginia would have submitted to binding arbitration "for the purpose of ascertaining and fixing the boundary" between them if that boundary was already well settled. *Id.*, at 481 (preamble). Indeed, the opinion issued by the arbitrators dispels any doubt that sovereignty was in dispute, and confirms that Virginia's Article Fourth rights are sovereign rights not subject to Maryland's regulation.

At the beginning of their opinion, the arbitrators explained that their task was to "ascertain what boundaries were assigned to Maryland" by her 1632 charter. Black-Jenkins Opinion (1877), App. to Report, p. D–2. The arbitrators then outlined the extent of the existing dispute over the boundary:

> "The State of Virginia, through her Commissioners and other public authorities, adhered for many years to her claim for a boundary on the left bank of the Potomac. But the gentlemen who represent her before us expressed with great candor their own opinion that a true interpretation of the King's concession would divide the river between the States by a line running in the middle of it. This latter view they urged upon us with all proper earnestness, and it was opposed with equal zeal by the counsel for Maryland, who contended that the

> whole river was within the limits of the grant to Lord Baltimore." *Id.*, at D–7.

Thus, contrary to Maryland's assertion, sovereignty over the River was hotly contested at the time of the arbitration. We see no reason, therefore, to depart from Article Fourth's plain language, which grants to Virginia the sovereign right to use the River beyond the low-water mark.

The reasoning contained in the Black-Jenkins Opinion confirms the plain language of Article Fourth of the Award. Although the arbitrators initially determined that the boundary contained in the 1632 charter was the high-water mark on the Virginia shore, *id.*, at D–9, they ultimately held that Virginia had gained ownership by prescription of the soil up to the low-water mark, *id.*, at D–18. In the same paragraph, the arbitrators explained that Virginia had a sovereign right to build improvements appurtenant to her shore:

> "The evidence is sufficient to show that Virginia, from the earliest period of her history, used the South bank of the Potomac as if the soil to low water-mark had been her own. She did not give this up by her Constitution of 1776, when she surrendered other claims within the charter limits of Maryland; but on the contrary, she expressly reserved 'the property of the Virginia shores or strands bordering on either of said rivers, (Potomac and Pocomoke,) and all improvements which have or will be made thereon.' By the compact of 1785, Maryland assented to this, and declared that 'the citizens of each State respectively shall have full property on the shores of Potomac and adjoining their lands, with all emoluments and advantages thereunto belonging, and the privilege of making and carrying out wharves and other improvements.' . . . Taking all together, we consider it established that Virginia has a proprietory right on the south shore to low water-mark, and, appurtenant thereto, has a privilege to erect any structures con-

> nected with the shore which may be necessary to the full enjoyment of her riparian ownership, and which shall not impede the free navigation or other common use of the river as a public highway.
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> "To that extent Virginia has shown her rights on the river so clearly as to make them indisputable." *Id.*, at D–18 to D–19.

The arbitrators did not differentiate between Virginia's dominion over the soil and her right to construct improvements beyond low-water mark. Indeed, Virginia's right "to erect . . . structures connected with the shore" is inseparable from, and "necessary to," the "full enjoyment of her riparian ownership" of the soil to low-water mark. *Ibid.* Like her ownership of the soil, Virginia gained the waterway construction right by a long period of prescription. That right was "reserved" in her 1776 Constitution, "assented to" by Maryland in the 1785 Compact, and "indisputabl[y]" shown by Virginia. *Ibid.* Thus, the right to use the River beyond low-water mark is a right of Virginia *qua* sovereign, and was nowhere made subject to Maryland's regulatory authority. Maryland's necessary concession that Virginia owns the soil to low-water mark must also doom her claim that Virginia does not possess riparian rights appurtenant to those lands to construct improvements beyond the low-water mark and otherwise make use of the water in the River.[7]

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[7] The sovereign character of Virginia's Article Fourth riparian rights is further confirmed by the proposal of Maryland's representatives before the arbitrators. Maryland contended that the "true" boundary line should be drawn around "all wharves and other improvements now extending or which may hereafter be extended, by authority of Virginia from the Virginia shore into the [Potomac] beyond low water mark." Va. Lodging L–130 (W. Whyte and I. Jones, Boundary Line Between the States of Maryland and Virginia, Before the Hons. Jeremiah S. Black, William A. Graham, and Charles J. Jenkins, Arbitrators upon the Boundary Line between the States of Virginia and Maryland (June 26, 1874)). In proceedings from 1870–1874, in which the States unsuccessfully attempted

We reject Maryland's remaining arguments. Maryland, as well as JUSTICE STEVENS, *post,* at 81 (dissenting opinion), contends that the Award merely confirmed the private property rights enjoyed by Virginia citizens under Article Seventh of the 1785 Compact and the common law, which rights are in turn subject to Maryland's regulation as sovereign over the River. The arbitration proceedings, however, were convened to "ascertai[n] and fi[x] the boundary" between coequal sovereigns, 20 Stat. 481 (preamble), not to adjudicate the property rights of private citizens. Neither Maryland nor JUSTICE STEVENS provides any reason to believe the arbitrators were addressing private property rights when they awarded "Virginia" a right to use the River beyond the low-water mark. Their interpretation, moreover, renders Article Fourth duplicative of the 1785 Compact and the common law (which secured riparian owners' property rights) and the rest of the Black-Jenkins Award (which granted Maryland sovereignty to low-water mark).[8] Only by read-

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to fix the boundary without the necessity of arbitration, Maryland's commissioners took the same position, which they described as follows:

"The line along the Potomac River is described in our first proposition according to our construction of the compact of 1785, and as we are informed, is according to the general understanding of the citizens of both States residing upon or owning lands bordering on the shores of that river, and also in accordance with the actual claim and exercise of jurisdiction by the authorities of the two States hitherto." *Id.,* at L–14 (Report and Journal of Proceedings of the Joint Commissioners to Adjust the Boundary Line of the States of Maryland and Virginia 27 (1874)).

Although the arbitrators did not accept Maryland's proposal to preserve Virginia's sovereign right to build improvements by including them within Virginia's territory, they accomplished the same result in Article Fourth of the Award.

[8] Similarly, JUSTICE KENNEDY does not adequately explain why Article Fourth—part of a document that grants unrestricted sovereign rights—would merely "affir[m] that Virginia, as much as its citizens, has riparian rights under the 1785 Compact," *post,* at 87 (dissenting opinion), when Virginia, as owner of the soil to low-water mark, already possessed such rights under the common law.

ing Article Fourth in accord with its plain language can this Court give effect to each portion of the Award. See, *e. g.*, *TRW Inc.* v. *Andrews*, 534 U. S. 19, 31 (2001) ("It is 'a cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant' ") (quoting *Duncan* v. *Walker*, 533 U. S. 167, 174 (2001) (some internal quotation marks omitted)).

Relatedly, Maryland argues that the Award could not have "elevate[d]," Md. Brief 29, the private property rights of the 1785 Compact to sovereign rights because the arbitrators disclaimed "authority for the construction of this compact," Black-Jenkins Opinion (1877), App. to Report, at D–18. Again, Maryland mischaracterizes the arbitrators' decision. In granting Virginia sovereign riparian rights, the arbitrators did not construe or alter any private rights under the 1785 Compact; rather, they held that Virginia had gained sovereign rights by prescription.

Finally, Maryland notes that under Article Fourth of the Award, Virginia must exercise her riparian rights on the River " 'without impeding the navigation *or otherwise interfering with the proper use of it by Maryland . . . .*' " 20 Stat. 482 (emphasis added). Maryland suggests that this language indicates her continuing regulatory authority over Virginia's exercise of her riparian rights. This seems to us a strained reading. The far more natural reading accords with the plain language of the Award and opinion: Maryland and Virginia each has a sovereign right to build improvements appurtenant to her own shore and to withdraw water, without interfering with the "proper use of" the River by the other.[9]

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[9] Federal common law governs interstate bodies of water, ensuring that the water is equitably apportioned between the States and that neither State harms the other's interest in the river. See, *e. g.*, *Colorado* v. *New Mexico*, 459 U. S. 176, 183 (1982) ("Equitable apportionment is the doctrine

JUSTICE KENNEDY, while acknowledging that Virginia has a right to use the River, argues that Maryland may regulate Virginia's riparian usage so long as she does not exclude Virginia from the River altogether. *Post*, p. 82 (dissenting opinion). To reach this conclusion, he reasons that the Black-Jenkins Opinion rested Virginia's prescriptive riparian rights solely on Maryland's assent to the riparian rights granted to private citizens in the 1785 Compact. *Post*, at 87–89. According to JUSTICE KENNEDY, therefore, "Virginia's claims under Black-Jenkins rise as high as the Compact but no higher." *Post*, at 89.

We have already held that the Award's plain language permits no inference of Maryland's regulatory authority, *supra*, at 69–70; we also disagree that the arbitrators relied solely on the 1785 Compact as support for Virginia's prescriptive rights. To the contrary, the arbitrators' opinion also relied upon Virginia's riparian usage "from the earliest period of her history" and her express reservation in her 1776 Constitution of the unrestricted right to build improvements from the Virginia shore. Black-Jenkins Opinion (1877), App. to Report, at D–18. Indeed, since the arbitrators disclaimed "authority for the construction of [the 1785] compact . . . because nothing which concern[ed] it" was before them, *ibid.*, it would be anomalous to conclude that Virginia's "sole right" under the Award "stem[s] from," and is "delimited" by, Article Seventh of the Compact. *Post*, at 90 (KENNEDY, J., dissenting).

Accordingly, we conclude that the Black-Jenkins Award gives Virginia sovereign authority, free from regulation by Maryland, to build improvements appurtenant to her shore and to withdraw water from the River, subject to the constraints of federal common law and the Award.

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of federal common law that governs the disputes between States concerning their rights to use the water of an interstate stream").

We next consider whether Virginia has lost her sovereign riparian rights by acquiescing in Maryland's regulation of her water withdrawal and waterway construction activities. We recently considered in depth the "affirmative defense of prescription and acquiescence" in *New Jersey*, 523 U. S., at 807. To succeed in her defense, Maryland must "'show by a preponderance of the evidence . . . a long and continuous . . . assertion of sovereignty over'" Virginia's riparian activities, as well as Virginia's acquiescence in her prescriptive acts. *Id.*, at 787 (quoting *Illinois* v. *Kentucky*, 500 U. S. 380, 384 (1991)). Maryland has not carried her burden.

Although "we have never established a minimum period of prescription" necessary for one State to prevail over a coequal sovereign on a claim of prescription and acquiescence, *New Jersey*, 523 U. S., at 789, we have noted that the period must be "substantial," *id.*, at 786. Maryland asserts that in the 125 years since the Black-Jenkins Award, Virginia has acquiesced in her pervasive exercise of police power over activities occurring on piers and wharves beyond the low-water mark. Among other things, Maryland claims, and Virginia does not dispute, that it has taxed structures erected on such improvements (*i. e.*, restaurants, etc.); issued licenses for activities occurring thereon (*i. e.*, liquor, gambling, etc.); and exercised exclusive criminal jurisdiction over crimes occurring on such improvements beyond the low-water mark. We agree with the Special Master that this evidence has little or no bearing on the narrower question whether Virginia acquiesced in Maryland's efforts to regulate her right to construct the improvements in the first instance and to withdraw water from the River. See Report 79–82. With respect to Maryland's regulation of these particular rights, the claimed prescriptive period is much shorter.

It is undisputed that Maryland issued her first water withdrawal permit to a Virginia entity in March 1957 and her first waterway construction permit in April 1968. The pre-

scriptive period ended, at the latest, in February 2000, when Virginia sought leave to file a bill of complaint in this Court. Accordingly, Maryland has asserted a right to regulate Virginia's water withdrawal for, at most, 43 years, and a right to regulate waterway construction for, at most, 32 years. Only once before have we deemed such a short period of time sufficient to prove prescription in a case involving our original jurisdiction. See *Nebraska* v. *Wyoming*, 507 U. S. 584, 594–595 (1993) (41 years). In that case, we held that Nebraska's sovereign right to water stored in certain inland lakes was established by a decree issued in 1945. *Id.*, at 595. We held, in the alternative, that "Wyoming's arguments are foreclosed by its postdecree acquiescence" for 41 years. *Ibid.* Here, it is Virginia's sovereign right that was clearly established by a prior agreement, and Maryland that seeks to defeat those rights by showing Virginia's acquiescence. Under these circumstances, it is far from clear that such a short prescriptive period is sufficient as a matter of law. Cf. *New Jersey*, 523 U. S., at 789 (noting that a prescriptive period of 64 years is "not insufficient as a matter of general law"). But even assuming such a short prescriptive period would be adequate to overcome a sovereign right granted in a federally approved interstate compact, Maryland's claim fails because it has not proved Virginia's acquiescence.

To succeed on the acquiescence prong of her defense, Maryland must show that Virginia "failed to protest" her assertion of sovereign authority over waterway construction and water withdrawal. *Id.*, at 807.[10] As the Special Master found, however, Virginia vigorously protested Maryland's asserted authority during the negotiations that led to the passage of § 181 of the Water Resources Development Act of 1976 (WRDA), 90 Stat. 2939–2940, codified at 42 U. S. C. § 1962d–11a.

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[10] Maryland's evidence that Virginia has never operated a permitting system for water withdrawal or waterway construction is insufficient to satisfy Maryland's burden. See *New Jersey*, 523 U. S., at 788, n. 9.

Section 181 ultimately required Maryland and Virginia to enter into an agreement with the Secretary of the Army apportioning the waters of the Potomac River during times of low flow. 90 Stat. 2939–2940. At the outset of negotiations over § 181, Maryland proposed a draft bill that asserted her exclusive authority to allocate water from the Potomac. Virginia officials protested Maryland's proposal in three congressional hearings during the summer of 1976, asserting Virginia's unqualified right to withdraw water from the River, and objecting that Maryland's bill "'might deprive Virginia of its riparian rights to the waters of the Potomac River as guaranteed by the 1785 compact . . . and the arbitration award of 1877 . . . .'" Omnibus Water Resources Development Act of 1976: Hearings before the Subcommittee on Water Resources of the Senate Committee on Public Works, 94th Cong., 2d Sess., 2068 (statement of J. Leo Bourassa) (Aug. 5, 1976); see also Potomac River: Hearings and Markup before the Subcommittee on Bicentennial Affairs, the Environment, and the International Community, and the House Committee on the District of Columbia, 94th Cong., 2d Sess., 680, 693–694, 703 (statement of Earl Shiflet) (June 25, 1976); Water Resources Development—1976: Hearings before the Subcommittee on Water Resources of the House Committee on Public Works and Transportation, 94th Cong., 2d Sess., 442–446 (statement of Eugene Jensen) (Aug. 31, 1976). As a result of Virginia's protest, the final legislation provided that "nothing in this section shall alter any riparian rights or other authority of . . . the Commonwealth of Virginia, or any political subdivision thereof . . . relative to the appropriation of water from, or the use of, the Potomac River." 42 U. S. C. § 1962d–11a(c). Similarly, nothing in the Low Flow Allocation Agreement reached by Maryland and Virginia pursuant to the WRDA suggested that Maryland had authority to regulate Virginia's riparian rights in the River. Va. Lodging L–285 to L–309. We hold that § 181 of the WRDA and the Low Flow Allocation Agreement are conclusive evi-

dence that, far from acquiescing in Maryland's regulation, Virginia explicitly asserted her sovereign riparian rights.[11]

* * *

Accordingly, we overrule Maryland's exceptions to the Report of the Special Master. We grant the relief sought by Virginia and enter the decree proposed by the Special Master.

It is so ordered.

DECREE

The Court having exercised original jurisdiction over this controversy between two sovereign States; the issues raised having been tried before the Special Master appointed by the Court; the Court having received briefs and heard oral argument on the parties' exceptions to the Report of the Special Master; and the Court having issued its Opinion on all issues announced, *ante*, p. 56.

It is Hereby Ordered, Adjudged, Declared, and Decreed as follows:

1. Article Seventh of the Compact of 1785 between the Commonwealth of Virginia and the State of Maryland, which governs the rights of the Commonwealth of Virginia, its governmental subdivisions and its citizens to withdraw water from the Potomac River and to construct improvements appurtenant to the Virginia shore, applies to the entire length of the Potomac River, including its nontidal reach.

2. Virginia, its governmental subdivisions, and its citizens may withdraw water from the Potomac River and construct improvements appurtenant to the Virginia shore of the Potomac River free of regulation by Maryland.

3. Any conditions attached to the construction/water appropriation permit granted by Maryland to the Fairfax

[11] Consequently, we need not discuss other evidence of Virginia's protests, which has been ably chronicled by the Special Master. See Report 83–89.

County Water Authority on January 24, 2001, are null and void and the State of Maryland is enjoined from enforcing them.

4. The Court retains jurisdiction to entertain such further proceedings, enter such orders, and issue such writs as may from time to time be considered necessary or desirable to give proper force and effect to this Decree or to effectuate the rights of the parties.

5. The party States shall share equally in the compensation of the Special Master and his assistants, and in the expenses of this litigation incurred by the Special Master.

JUSTICE STEVENS, with whom JUSTICE KENNEDY joins, dissenting.

The basic facts that should control the disposition of this case are not in dispute. Maryland owns the water in the Potomac River to the low-water mark on the river's southern shore. Virtually the entire river is located within Maryland. Maryland is therefore the sovereign that exercises regulatory jurisdiction over the river, subject only to the provisions of the Maryland-Virginia Compact of 1785 (1785 Compact)[1] and the Virginia and Maryland Boundary Agreement of 1878 (Black-Jenkins Award),[2] and to the authority of the United States to preserve the river's navigability and protect its water quality.

Article Seventh of the 1785 Compact provides that the "citizens of each state respectively shall have full property in the shores of Potowmack river adjoining their lands, with all emoluments and advantages thereunto belonging," including the specific privilege of making wharves and other improvements, and a "right of fishing in the river [that] shall be common to, and equally enjoyed by, the citizens of both

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[1] 1785–1786 Md. Laws ch. 1; 1785 Va. Acts ch. 17.

[2] 1878 Md. Laws ch. 274; 1878 Va. Acts ch. 246; Act of Mar. 3, 1879, ch. 196, 20 Stat. 481.

states . . . ."[3] The 1785 Compact is silent on the subject of water withdrawals. Nevertheless, the owners of property abutting the river unquestionably enjoy full riparian rights as part of the "emoluments and advantages" appurtenant to their title. Indeed, the Black-Jenkins Award confirms this understanding; under Article Fourth, Virginia "has a right to such use of the river beyond the line of low-water mark *as may be necessary to the full enjoyment of her riparian ownership* . . . ."[4]

The question for decision, therefore, is simple: Are riparian landowners' rights to withdraw water unlimited, or may they be restricted by the sovereign that owns and controls the adjacent water body (in this case, Maryland)? In my opinion—an opinion apparently shared by the responsible Virginia and Maryland officials in the years between 1956 and 1996, see *ante*, at 63, 76–77—the common law provides a straightforward answer to that question. Although riparian owners may withdraw water for domestic and agricultural purposes, the Federal Government and, "[i]n the absence of conflict with federal action or policy," the States "may exercise [their] police power[s] by controlling the initiation and conduct of riparian and nonriparian uses of water." Restatement (Second) of Torts § 856, Comment *e* (1979). Moreover, this case does not involve individual riparian landowners' withdrawals of water for their own domestic use, but the Fairfax County Water Authority's withdrawals for the use of county residents. Under Virginia law, such " 'use of the waters of a stream to supply the inhabitants of [an area] with water for domestic purposes is not a riparian right.' " *Purcellville* v. *Potts*, 179 Va. 514, 521, 19 S. E. 2d 700, 703 (1942). Clearly, then, the authority's proposed use of Potomac waters cannot be defended as an exercise of absolute and unregulable riparian rights. It necessarily follows, I believe, that such a use may only be made with the consent of the sover-

[3] Va. Code Ann. Compacts App., pp. 342–343 (Lexis 2001).

[4] *Id.*, § 7.1–7, at 94 (emphasis added).

eign that owns the river. That sovereign is, indisputably, the State of Maryland.

We need go no further. This case does not require us to determine the precise extent or character of Maryland's regulatory jurisdiction. Rather, the narrow issue before us is whether Maryland may impose *any* limits on withdrawals by Virginia landowners whose property happens to abut the Potomac. Because those landowners' riparian rights are—like all riparian rights at common law—subject to the paramount regulatory authority of the sovereign that owns the river, I would sustain Maryland's exceptions to the Report of the Special Master and enter judgment dismissing Virginia's complaint.

JUSTICE KENNEDY, with whom JUSTICE STEVENS joins, dissenting.

Failing to appreciate a basic rule of territorial adjudication, the Court concludes it must "reject Maryland's historical premise" that in 1785 the State had title to the Potomac River (River), its bed, and its waters. *Ante,* at 67. In my respectful view, and contrary to the majority's premise, the circumstance that two parties both claim rights to a parcel of land has no legal significance if one of the two parties has clear title already, absent some further argument that the claim against the holder of the title is reinforced by a history of prescription, estoppel, or adverse use. Contra, *ante,* at 68 (relying on the fact that "the scope of Maryland's sovereignty over the River was in dispute both before and after the 1785 Compact" to conclude that Maryland lacked sovereignty over the River in 1785). Just as this basic rule of property adjudication is true of disputes between two private persons, it is true of title disputes between States. "No court acts differently in deciding on boundary between states, than on lines between separate tracts of land." *Rhode Island* v. *Massachusetts,* 12 Pet. 657, 733 (1838). See also *Rhode Island* v. *Massachusetts,* 4 How. 591, 628

(1846) ("[A]scertain[ing] and determin[ing] the boundary in dispute . . . , disconnected with the consequences which follow, is a simple question, differing little, if any, in principle from a disputed line between individuals"). Cf. *Alabama* v. *Georgia*, 23 How. 505 (1860) (settling quiet title action between States by engaging in traditional quiet title analysis).

Since "[t]here is not in fact, or by any law can be, any territory which does not belong to one or the other state; so that the only question is, to which the territory belongs," 12 Pet., at 732, a competent authority's determination that a sovereign's title lies clear and unimpaired necessarily has retrospective force. This is so despite the losing sovereign's prior attempt to gain what was not its own.

The majority, in the face of these doctrines and precedents, nonetheless relies on the proposition that Maryland's historical title is to be doubted because Virginia long disputed it and the parties undertook to resolve the dispute. It is a curious proposition to suggest that by submitting to adjudication, arbitration, or compact negotiations a party concedes its rights are less than clear. The opposite inference is just as permissible. The implication of the majority's principle, moreover, is that self-help and obdurate refusal to submit a claim to resolution have some higher standing in the law than submission of disputes to a competent authority.

Until today, the competent authorities to whom Maryland and Virginia submitted their dispute have been clear and unanimous on this point: As of 1784, the year before the Compact, the Governor of Virginia could not enter the waters of the Potomac to cool himself by virtue of any title Virginia then had to the riverbed. Title to the whole River, and its bed, was in Maryland. First, in 1877, the parties agreed, with later congressional approval, that Maryland had clear title to the whole River dating from 1632. See Black-Jenkins Opinion (1877), App. to Report of Special Master, p. D–9 (hereinafter App. to Report of Special Master) ("The intent of the [original 1632 Maryland] charter is manifest all

through to include the whole river within Lord Baltimore's grant"). Then, as if this 1877 determination were not enough, this Court independently reviewed the question in 1899. The Court, too, reached the conclusion that Maryland had clear title to the whole River dating from 1632. The Court said, "the grant to Lord Baltimore, in unmistakable terms, included the Potomac River." *Morris* v. *United States*, 174 U. S. 196, 223 (1899). And the Court confirmed this determination in 1910. See *Maryland* v. *West Virginia*, 217 U. S. 1, 45–46. Thus, unless prescription had been worked by some previous conduct to give Virginia at least some limited rights, in 1784 Maryland had clear title to the whole River, as much as in 1632.

Neither Virginia's counsel nor the majority of the Court today contends that prescription occurred prior to the Compact of 1785. In 1784, therefore, under the law, Virginia had little more than a land border between it and Maryland in the area here under consideration; Virginia did not have a river border since the River was not its own. That in 1784 Virginia did not admit Maryland's clear title to this territory and was unwilling to comply with Maryland's continuing and consistent demands that it respect Maryland's sovereign control over the River did not cloud the smooth stretch of Maryland's title back to 1632.

Whether the Governor of the Commonwealth, in 2003, may cool himself in the River—or in this case, build a water pipe for the benefit of communities not on the riverbank—without so much as an "if you please" to the State of Maryland entirely depends upon whether in the intervening time since 1784 Maryland has in some way ceded its sovereignty over the River. See *United States* v. *Cherokee Nation of Okla.*, 480 U. S. 700, 707 (1987) ("[A] waiver of sovereign authority will not be implied, but instead must be 'surrendered in unmistakable terms' "); 12 Pet., at 732 ("[T]itle, jurisdiction, and sovereignty, are inseparable incidents, and remain so till the state makes some cession").

Virginia asserts that an agreement and an award set out in two documents establish that Maryland ceded Virginia an unqualified right to enter upon Maryland's territory. The case, therefore, turns on these two documents: the 1785 Compact between the two States and their 1877 arbitrated award (Black-Jenkins Award or Award).

Via the 1785 Compact, Article Seventh, both States promised the other rights to use the River that presuppose neither could exclude the other from the River.

> "The citizens of each state respectively shall have full property in the shores of Potowmack river adjoining their lands, with all emoluments and advantages thereunto belonging, and the privilege of making and carrying out wharves and other improvements, so as not to obstruct or injure the navigation of the river." Va. Code Ann. Compacts App., pp. 342–343 (Lexis 2001).

Thus, in effect, they gave one another assurances of River access in exchange for the identical, reciprocal pledge. The mutual promise was sensible enough since at the time both parties claimed to own the whole River, and equally, therefore, neither accepted the other's claim to have any right to gain access to the River. The Compact, in essence, was a predictable and intelligent hedging agreement (protecting both from the danger that at some later point the other's claim to full and clear title would be confirmed by a competent legal authority).

Once it was established by a competent legal authority that Maryland had clear title to the whole River, the terms of Article Seventh of the Compact, in retrospect, became the sole fount of Virginia's right to River access. The terms by which the parties promised River access to one another became relevant, as one would expect from a hedging agreement, after occurrence of the development the parties hedged against.

Maryland, as the territory's sovereign, once could have excluded Virginia landowners from the River, but Article Seventh abrogates Maryland's right of sovereignty to this extent. By its clear language, Article Seventh creates a right for citizen landowners to have some access to the River territory by, for example, the construction of improvements appurtenant to the shore.

Article Seventh, however, does not abrogate Maryland's sovereign right to exercise its police power, and the regulatory authority that implies, over its River territory; and the majority does not contend otherwise. The citizen landowner rights created by Article Seventh, as a consequence, remain subject to Maryland's sovereign powers insofar as that consists with Virginia's guaranteed access. That the landowners' rights are so limited is well illustrated by the very different language the parties used when they wanted to abrogate one another's police power over citizens or the other State. For example, as the majority agrees, Articles Fourth, Eighth, and Ninth of the Compact all contain express and particular police power abrogations. See *ante*, at 66–67. So does Article Tenth. Article Seventh, however, stands in clear contrast to these provisions. It does not contemplate the transfer or abrogation of Maryland's police power. It cannot be the basis for concluding that Virginia's citizens now have not just a right of access to the River, but the additional right of access free of Maryland's regulatory police power. See *Massachusetts* v. *New York*, 271 U. S. 65, 89 (1926) ("[D]ominion over navigable waters, and property in the soil under them, are so identified with the exercise of the sovereign powers of government that a presumption against their separation from sovereignty must be indulged").

As a result, Article Seventh sets up an awkward situation, forcing this Court to reconcile a landowner right not to be excluded with Maryland's sovereign regulatory authority. In effect, it forces the Court to inquire whether any particu-

lar regulation amounts instead to an exclusion prohibited by the Compact. That the Compact forces this determination, parallel to that at issue in a case of an overburdened easement, is no reason to deny its plain language or the accepted proposition that Maryland has long had title to the River and its bed.

The next step is to consider the 1877 Black-Jenkins Award and to ask whether that Award expands Virginia's rights of River access beyond what was provided in the Compact. The Black-Jenkins Award affirms that Virginia, as much as its citizens, has riparian rights under the 1785 Compact, to the extent of the Commonwealth's own riparian ownership. See *ante*, at 69. The question remains, however, whether Black-Jenkins converted Virginia's right of riparian ownership under Article Seventh to a right of sovereignty in the waters. For, if it did not do so, then Virginia's right of access to the River is limited like that of any other riparian owner under Article Seventh. In relevant part, the Award states:

> "Fourth. Virginia is entitled not only to full dominion over the soil to low-water mark on the south shore of the Potomac, but has a right to such use of the river beyond the line of low-water mark as may be necessary to the full enjoyment of her riparian ownership, without impeding the navigation or otherwise interfering with the proper use of it by Maryland, agreeably to the compact of seventeen hundred and eighty-five." Act of Mar. 3, 1879, ch. 196, 20 Stat. 482 (internal quotation marks omitted).

The majority suggests this language gives Virginia sovereign rights to the River because it uses the words "Virginia" and "full dominion." See *ante*, at 72 ("The arbitrators did not differentiate between Virginia's dominion over the soil and her right to construct improvements beyond low-water mark"). That reading cannot be right for two reasons.

First, the evident design of Paragraph Fourth is to acknowledge a Virginia access right parallel to that of its own citizens who were riparian landowners. Paragraph Fourth sets out two recitations, and they are in contradistinction. Virginia is granted "full dominion" up to the low-water line. This is unlimited. What comes next is not. As to the rights beyond this full dominion, that is to say beyond the low-water line, Virginia has only the rights of a riparian owner. If the arbitrators meant to set the two rights in parallel, as Virginia argues, they would not have used the word "but" to distinguish them. Further, the phrase "a right to such use" is limited by the phrase "riparian ownership." This is far different from saying Virginia has full dominion "up to the low-water line, and with respect to" any improvements it makes appurtenant to its shore.

Second, Black-Jenkins states that the limited rights Virginia has, the Commonwealth achieved by prescription. Maryland acquiesced to Virginia's adverse use, Black-Jenkins says, as a result of Maryland's adherence to Article Seventh of the Compact.

> "Virginia, from the earliest period of her history, used the South bank of the Potomac as if the soil to low water-mark had been her own. She did not give this up by her Constitution of 1776, when she surrendered other claims within the charter limits of Maryland; but on the contrary, she expressly reserved 'the property of the Virginia shores or strands bordering either side of said rivers, (Potomac and Pocomoke,) and all improvements which have or will be made thereon.' By the compact of 1785, Maryland assented to this, and declared that 'the citizens of each State respectively shall have full property on the shores of Potomac . . . and advantages thereunto belonging, and the privilege of making and carrying out wharves and other improvements.' We are not authority for the construction of this compact, because nothing which concerns it is submitted to

> us . . . . Taking all together, we consider it established that Virginia has a proprietory right on the south shore to low water-mark, and, appurtenant thereto, has a privilege to erect any structures connected with the shore which may be necessary to the full enjoyment of her riparian ownership, and which shall not impede the free navigation or other common use of the river as a public highway." App. to Report of Special Master D–18 to D–19 (quoting Article Seventh of the Compact).

That Maryland's "assent" and "declaration" in the Compact prove Maryland's acquiescence in Black-Jenkins' prescription analysis illustrates the limits of the Award: The prescriptive rights it recognized stemmed from the Compact. Virginia's claims under Black-Jenkins rise as high as the Compact but no higher. The Commonwealth can do no more than assert those rights granted to landowners by Article Seventh.

The above analysis, of course, does not depend on the conclusion that Maryland's acquiescence was the sole basis for the Black-Jenkins Award, as the majority contends. See *ante*, at 75. A factor in any test can be a necessary, though not sufficient, element. Here, the arbitrators' express aim was to apply "[u]sucaption, prescription, or the acquisition of title founded on long possession, uninterrupted and undisputed," which they noted were intended to help sovereigns avoid the "bloody wars" that territorial disputes occasion. See App. to Report of Special Master D–17 to D–18. The inquiry into acquiescence (*i. e.*, whether the territory was disputed) fits into that analytical framework as a necessary, though not sole, factor. The other factors, such as Virginia's long use, were also necessary, though not sole, factors. This explains why the arbitrators said Virginia's long use and Maryland's acquiescence were "Tak[en] all together." See *id.*, at D–19. It also explains why the text of the Award—which after all is of greater significance than the arbitrator's attached opinion—distinguishes between Virginia's full dominion up to the

low-water line and its use rights beyond that point, a distinction consistent with Article Seventh.

The majority's decision ultimately seems to rely on rights stemming from some other, additional prescription to conclude that Paragraph Fourth expands Virginia's rights. See *ante*, at 74. It fails to explain, however, what other rights Black-Jenkins identified other than those achieved by the prescription discussed above. Notwithstanding the majority's conclusory position, the sole right acknowledged in Black-Jenkins was that which was delimited by the operation of Article Seventh

The majority also implies, in footnote 9 of its opinion, that Virginia's right to use the River free from Maryland's regulation is equally a matter of federal common law. See *ante*, at 74–75, n. 9 (relying on *Colorado* v. *New Mexico*, 459 U. S. 176 (1982)). That suggestion cannot be right, however. The doctrine on which the majority relies pertains to interstate bodies of water. As explained above, the Potomac River belongs to Maryland and so is not an interstate body of water. Those cases in which we have considered the common-law rights of sovereigns who either both had title to half of a river, or who both had full title to a river but at different points in its flow, such as *Colorado*, are inapposite to this unique, sole-title context.

Since Black-Jenkins does not expand Virginia's right of access, Article Seventh's framework controls. The awkwardness of asking whether a regulation by Maryland amounts to exclusion is heightened here, where Virginia, as a riparian landowner, asserts its right to have access to the River for the purpose of serving needs well beyond recognized riparian use. This, in turn, raises the question whether Maryland can decide Virginia has too much population, and on that ground deny Virginia access for the purpose of meeting water demands.

This, to be sure, is a question of considerable difficulty, for it is not our law or our constitutional system to allow one

State to regulate transactions occurring in another or to project its legislative power beyond its own borders. See *Baldwin* v. *G. A. F. Seelig, Inc.*, 294 U. S. 511, 523 (1935). Virginia's access rights, though not rights of sovereignty, are rights held by a sovereign, which Maryland well knew when it signed the Compact. And, nothing in the Compact gives Maryland the power to regulate the Commonwealth of Virginia as most States can regulate their own riparian landowners; specifically, Paragraph Fourth of the Award (like Article Seventh of the Compact) prohibits Maryland from excluding Virginia from the River. These considerations counsel careful deliberation before deciding whether Maryland regulation amounts to an exclusion in light of the particular riparian use at issue.

Determining whether a regulation is either (1) a legitimate River regulation of riparian use, or (2) a wrongful exclusion, under the Compact, of the riparian owner from the River, may implicate some limitations based on a reasonable prediction of consequences to the River's flow. That is the question that Virginia should have submitted to the Special Master. The majority, however, simply holds that Virginia has a right to gain access to and enjoy the River coextensive with Maryland's own. Its ruling denies the force of the historical documents at issue. It has no logical basis either, unless the majority also makes the silent assumption that Virginia is constrained by some principle of reasonableness. The majority's interpretation, that Virginia's right is whole, sovereign, and unobstructed, otherwise leads to the conclusion that Virginia could build all the way across the River if the Commonwealth so chooses, as long as the Commonwealth itself concludes the construction is an improvement appurtenant to its shoreline and not an obstruction to the River's navigability.

The anomaly that exists because of the rather unusual circumstance that Maryland owns the entirety of the River affects this case's difficulty; but it does not affect the fact that

the Court must confront the problem, not ignore it and send Maryland and its rights away by fiat. This is particularly true in light of the fact that Virginia's right to access and Maryland's right to regulate have coexisted in actual application for nearly 50 years. See *ante*, at 63. History shows the framework can be workable.

If Maryland's attempted regulation of Virginia contradicts Virginia's place in the federal system, that matter can be explored from case to case. Here, however, the Commonwealth did not ask the Special Master, as it should have, to consider whether, given the nature of the riparian rights at issue, see *ante*, at 81–82 (STEVENS, J., dissenting), the effect of the proposed use on the River, and the attempted regulation at issue, Maryland has in effect excluded Virginia from its rightful riparian use, as distinct from enacting reasonable regulations of that use. Virginia is not due the broad relief it instead now receives: the majority's declaration that Virginia is the sovereign of whatever Maryland territory appurtenant to Virginia's shoreline Virginia now chooses to claim. In agreement with JUSTICE STEVENS, I would sustain Maryland's objections to the Report of the Special Master and enter judgment dismissing Virginia's complaint. For these reasons, with respect, I dissent.

Syllabus

McCONNELL, UNITED STATES SENATOR, ET AL. *v.* FEDERAL ELECTION COMMISSION ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 02–1674. Argued September 8, 2003—Decided December 10, 2003*

The Bipartisan Campaign Reform Act of 2002 (BCRA), which amended the Federal Election Campaign Act of 1971 (FECA), the Communications Act of 1934, and other portions of the United States Code, is the most recent of nearly a century of federal enactments designed "to purge national politics of what [is] conceived to be the pernicious influence of 'big money' campaign contributions." *United States* v. *Automobile Workers*, 352 U. S. 567, 572. In enacting BCRA, Congress sought to address three important developments in the years since this Court's landmark decision in *Buckley* v. *Valeo*, 424 U. S. 1 *(per curiam):* the increased importance of "soft money," the proliferation of "issue ads," and the disturbing findings of a Senate investigation into campaign practices related to the 1996 federal elections.

With regard to the first development, prior to BCRA, FECA's disclosure requirements and source and amount limitations extended only to so-called "hard money" contributions made for the purpose of influencing an election for federal office. Political parties and candidates were able to circumvent FECA's limitations by contributing "soft money"—money as yet unregulated under FECA—to be used for activities

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*Together with No. 02–1675, *National Rifle Association et al.* v. *Federal Election Commission et al.*, No. 02–1676, *Federal Election Commission et al.* v. *McConnell, United States Senator, et al.*, No. 02–1702, *McCain, United States Senator, et al.* v. *McConnell, United States Senator, et al.*, No. 02–1727, *Republican National Committee et al.* v. *Federal Election Commission et al.*, No. 02–1733, *National Right to Life Committee, Inc., et al.* v. *Federal Election Commission et al.*, No. 02–1734, *American Civil Liberties Union* v. *Federal Election Commission et al.*, No. 02–1740, *Adams et al.* v. *Federal Election Commission et al.*, No. 02–1747, *Paul, United States Congressman, et al.* v. *Federal Election Commission et al.*, No. 02–1753, *California Democratic Party et al.* v. *Federal Election Commission et al.*, No. 02–1755, *American Federation of Labor and Congress of Industrial Organizations et al.* v. *Federal Election Commission et al.*, and No. 02–1756, *Chamber of Commerce of the United States et al.* v. *Federal Election Commission et al.*, also on appeal from the same court.

intended to influence state or local elections; for mixed-purpose activities such as get-out-the-vote (GOTV) drives and generic party advertising; and for legislative advocacy advertisements, even if they mentioned a federal candidate's name, so long as the ads did not expressly advocate the candidate's election or defeat. With regard to the second development, parties and candidates circumvented FECA by using "issue ads" that were specifically intended to affect election results, but did not contain "magic words," such as "Vote Against Jane Doe," which would have subjected the ads to FECA's restrictions. Those developments were detailed in a 1998 Senate Committee Report summarizing an investigation into the 1996 federal elections, which concluded that the soft-money loophole had led to a meltdown of the campaign finance system; and discussed potential reforms, including a soft-money ban and restrictions on sham issue advocacy by nonparty groups.

Congress enacted many of the committee's proposals in BCRA: Title I regulates the use of soft money by political parties, officeholders, and candidates; Title II primarily prohibits corporations and unions from using general treasury funds for communications that are intended to, or have the effect of, influencing federal election outcomes; and Titles III, IV, and V set out other requirements. Eleven actions challenging BCRA's constitutionality were filed. A three-judge District Court held some parts of BCRA unconstitutional and upheld others. The parties challenging the law are referred to here as plaintiffs, and those who intervened in support of the law are intervenor-defendants.

Held: The judgment is affirmed in part and reversed in part.

251 F. Supp. 2d 176, 251 F. Supp. 2d 948, affirmed in part and reversed in part.

JUSTICE STEVENS and JUSTICE O'CONNOR delivered the Court's opinion with respect to BCRA Titles I and II, concluding that the statute's two principal, complementary features—Congress' effort to plug the soft-money loophole and its regulation of electioneering communications—must be upheld in the main. Pp. 133–224.

1. New FECA § 323 survives plaintiffs' facial First Amendment challenge. Pp. 133–189.

(a) In evaluating § 323, the Court applies the less rigorous standard of review applicable to campaign contribution limits under *Buckley* and its progeny. Such limits are subject only to "closely drawn" scrutiny, see 424 U. S., at 25, rather than to strict scrutiny, because, unlike restrictions on campaign expenditures, contribution limits "entai[l] only a marginal restriction upon the contributor's ability to engage in free communication," *e. g., id.,* at 20–21. Moreover, contribution limits are grounded in the important governmental interests in preventing "both

the actual corruption threatened by large financial contributions and the eroding of public confidence in the electoral process through the appearance of corruption." *E. g.*, *Federal Election Comm'n* v. *National Right to Work Comm.*, 459 U. S. 197, 208. The less rigorous review standard shows proper deference to Congress' ability to weigh competing constitutional interests in an area in which it enjoys particular expertise, and provides it with sufficient room to anticipate and respond to concerns about circumvention of regulations designed to protect the political process' integrity. Finally, because Congress, in its lengthy deliberations leading to BCRA's enactment, properly relied on *Buckley* and its progeny, *stare decisis* considerations, buttressed by the respect that the Legislative and Judicial Branches owe one another, provide additional powerful reasons for adhering to the analysis of contribution limits the Court has consistently followed since *Buckley*. The Court rejects plaintiffs' argument that the type of speech and associational burdens that § 323 imposes are fundamentally different from the burdens that accompanied *Buckley*'s contribution limits. Pp. 134–142.

(b) New FECA § 323(a)—which forbids national party committees and their agents to "solicit, receive, . . . direct . . . , or spend any funds, that are not subject to [FECA's] limitations, prohibitions, and reporting requirements," 2 U. S. C. § 441i(a)(1)—does not violate the First Amendment. Pp. 142–161.

(1) The governmental interest underlying § 323(a)—preventing the actual or apparent corruption of federal candidates and officeholders—constitutes a sufficiently important interest to justify contribution limits. That interest is not limited to the elimination of *quid pro quo*, cash-for-votes exchanges, see *Buckley*, *supra*, at 28, but extends also to "undue influence on an officeholder's judgment, and the appearance of such influence," *Federal Election Comm'n* v. *Colorado Republican Federal Campaign Comm.*, 533 U. S. 431, 441 *(Colorado II)*. These interests are sufficient to justify not only contribution limits themselves, but also laws preventing the circumvention of such limits. *Id.*, at 456. While the quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments varies with the novelty or plausibility of the justification raised, *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S. 377, 391, the idea that large contributions to a national party can corrupt or create the appearance of corruption of federal candidates and officeholders is neither novel nor implausible, see, *e. g.*, *Buckley*, *supra*, at 38. There is substantial evidence in these cases to support Congress' determination that such contributions of soft money give rise to corruption and the appearance of corruption. For instance, the record is replete with examples of national party commit-

tees peddling access to federal candidates and officeholders in exchange for large soft-money donations. Pp. 143–154.

(2) Section 323(a) is not impermissibly overbroad because it subjects *all* funds raised and spent by national parties to FECA's hard-money source and amount limits, including, *e. g.*, funds spent on purely state and local elections in which no federal office is at stake. The record demonstrates that the close relationship between federal officeholders and the national parties, as well as the means by which parties have traded on that relationship, have made all large soft-money contributions to national parties suspect, regardless of how those funds are ultimately used. The Government's strong interests in preventing corruption, and particularly its appearance, are thus sufficient to justify subjecting all donations to national parties to FECA's source, amount, and disclosure limitations. Pp. 154–156.

(3) Nor is § 323(a)'s prohibition on national parties' soliciting or directing soft-money contributions substantially overbroad. That prohibition's reach is limited, in that it bars only soft-money solicitations by national party committees and party officers acting in their official capacities; the committees themselves remain free to solicit hard money on their own behalf or that of state committees and state and local candidates and to contribute hard money to state committees and candidates. Plaintiffs argue unpersuasively that the solicitation ban's overbreadth is demonstrated by § 323(e), which allows federal candidates and officeholders to solicit limited amounts of soft money from individual donors under certain circumstances. The differences between §§ 323(a) and 323(e) are without constitutional significance, see *National Right to Work*, *supra*, at 210, reflecting Congress' reasonable and expert judgments about national committees' functions and their interactions with officeholders. Pp. 157–158.

(4) Section 323(a) is not substantially overbroad with respect to the speech and associational rights of minor parties, even though the latter may have slim prospects for electoral success. It is reasonable to require that all parties and candidates follow the same rules designed to protect the electoral process' integrity. *Buckley*, 424 U. S., at 34–35. A nascent or struggling minor party can bring an as-applied challenge if § 323(a) prevents it from amassing the resources necessary to engage in effective advocacy. *Id.*, at 21. Pp. 158–159.

(5) Plaintiffs' argument that § 323(a) unconstitutionally interferes with the ability of national committees to associate with state and local committees is unpersuasive because it hinges on an unnaturally broad reading of the statutory terms "spend," "receive," "direct," and "solicit." Nothing on § 323(a)'s face prohibits national party officers from sitting down with state and local party committees or candidates to plan

and advise how to raise and spend soft money, so long as the national officers do not personally spend, receive, direct, or solicit soft money. Pp. 159–161.

(c) On its face, new FECA § 323(b)—which prohibits state and local party committees from using soft money for activities affecting federal elections, 2 U. S. C. § 441i(b)—is closely drawn to match the important governmental interest of preventing corruption and its appearance. Pp. 161–173.

(1) Recognizing that the close ties between federal candidates and state party committees would soon render § 323(a)'s anticorruption measures ineffective if state and local committees remained available as a conduit for soft-money donations, Congress designed § 323(b) to prevent donors from contributing nonfederal funds to such committees to help finance "Federal election activity," which is defined to encompass (1) voter registration activity during the 120 days before a federal election; (2) voter identification, GOTV, and generic campaign activity "conducted in connection with an election in which a [federal] candidate . . . appears on the ballot"; (3) any "public communication" that "refers to a clearly identified [federal] candidate" and "promotes," "supports," "attacks," or "opposes" such a candidate; and (4) the services of a state committee employee who dedicates more than 25% of his or her compensated time to "activities in connection with a Federal election," 2 U. S. C. §§ 431(20)(A)(i)–(iv). All activities that fall within this definition must be funded with hard money. § 441i(b)(1). The Levin Amendment carves out an exception to this general rule, allowing state and local party committees to pay for certain federal election activities—namely, activities falling within categories (1) and (2) above that either do not refer to "a clearly identified candidate for Federal office," or, if they involve broadcast communications, refer "solely to a clearly identified candidate for State or local office," §§ 441i(b)(2)(B)(i)–(ii)—with an allocated ratio of hard money and so-called "Levin funds." Levin funds are subject only to state regulation, but for two additional restrictions. First, no contributor can donate more than $10,000 per year to a single committee's Levin account. § 441i(b)(2)(B)(iii). Second, both Levin funds and the allocated portion of hard money to pay for such activities must be raised by the state or local committee that spends them, though the committee can team up with other national, state, or local committees to solicit the hard-money portion. §§ 441i(b)(2)(B)(iv), 441i(b)(2)(C). Pp. 161–164.

(2) In addressing soft-money contributions to state committees, Congress both drew a conclusion and made a prediction. It concluded from the record that soft money's corrupting influence insinuates itself into the political process not only through national party committees,

but also through state committees, which function as an alternate avenue for precisely the same corrupting forces. Indeed, the evidence shows that both candidates and parties already ask donors who have reached their direct contribution limit to donate to state committees. Congress' reasonable prediction, based on the history of campaign finance regulation, was that donors would react to § 323(a) by directing soft-money contributions to state committees for the purpose of influencing federal candidates and elections, and that federal candidates would be just as indebted to these contributors as they had been to those who had formerly contributed to the national parties. Preventing corrupting activity from shifting wholesale to state committees and thereby eviscerating FECA clearly qualifies as an important governmental interest. Pp. 164–166.

(3) Plaintiffs argue unpersuasively that, even if § 323(b) serves a legitimate interest, its restrictions are so unjustifiably burdensome and overbroad that they cannot be considered "closely drawn" to match the Government's objectives. P. 166.

(i) Section 323(b) is not substantially overbroad. Although § 323(b) captures some activities that affect state campaigns for nonfederal offices, these are the same activities that were covered by the Federal Election Commission's (FEC) pre-BCRA allocation rules, and so had to be funded in part by hard money because they affected *both* federal and state elections. As a practical matter, BCRA merely codifies the FEC's allocation regime principles while justifiably adjusting the applicable formulas in order to restore the efficacy of FECA's longstanding restriction on contributions to state and local committees for the purpose of influencing federal elections. By limiting its reach to "Federal election activities," § 323(b) is narrowly focused on regulating contributions that directly benefit federal candidates and thus pose the greatest risk of corruption or its appearance. The first two categories of "Federal election activity"—voter registration efforts and voter identification, GOTV, and generic campaign activities conducted in connection with a federal election—clearly capture activities that confer a substantial benefit on federal candidates by getting like-minded voters to the polls. If a voter registration drive does not specifically mention a federal candidate, state committees can take advantage of the Levin Amendment's higher contribution limits and relaxed source restrictions. Moreover, because the record demonstrates abundantly that the third category of "Federal election activity," "public communication[s]" that promote or attack a federal candidate, directly affects the election in which that candidate is participating, application of § 323(b)'s contribution caps to such communications is closely drawn to the anticorruption interest it is intended to address. Finally, Congress' interest in pre-

venting circumvention of § 323(b)'s other restrictions justifies the requirement of the fourth category of "Federal election activity" that federal funds be used to pay any state or local party employee who spends more than 25% of his or her compensated time on activities connected with a federal election. Pp. 166–171.

(ii) The Levin Amendment does not unjustifiably burden association among party committees by forbidding transfers of Levin funds among state parties, transfers of hard money to fund the allocable federal portion of Levin expenditures, and joint fundraising of Levin funds by state parties. While preserving parties' associational freedom is important, not every minor restriction on parties' otherwise unrestrained ability to associate is of constitutional dimension. See *Colorado II*, 533 U. S., at 450, n. 11. Given the delicate and interconnected regulatory scheme at issue here, any associational burdens imposed by the Levin Amendment restrictions are far outweighed by the need to prevent circumvention of the entire scheme. Pp. 171–173.

(iii) The evidence supporting the argument that the Levin Amendment prevents parties from amassing the resources needed to engage in effective advocacy is speculative. The history of campaign finance regulation proves that political parties are extraordinarily flexible in adapting to new restrictions on their fundraising abilities. Moreover, the mere fact that § 323(b) may reduce the money available to state and local parties to fund federal election activities is largely inconsequential. The question is not whether the amount available over previous election cycles is reduced, but whether the reduction is so radical as to drive the sound of the recipient's voice below the level of notice. *Shrink Missouri*, 528 U. S., at 397. If state or local parties can make such a showing, as-applied challenges remain available. P. 173.

(d) New FECA § 323(d)—which forbids national, state, and local party committees and their agents to "solicit any funds for, or make or direct any donations" to § 501(c) tax-exempt organizations that make expenditures in connection with a federal election, and to § 527 political organizations "other than a political committee, a State, district, or local committee of a political party, or the authorized campaign committee of a candidate for State or local office," 2 U. S. C. § 441i(d)—is not facially invalid. Pp. 174–181.

(1) Section 323(d)'s restriction on solicitations is a valid anti-circumvention measure. Absent this provision, national, state, and local party committees would have significant incentives to mobilize their formidable fundraising apparatuses, including the peddling of access to federal officeholders, into the service of like-minded tax-exempt organizations that conduct activities benefiting their candidates. All of the corruption and the appearance of corruption attendant on the opera-

tion of those fundraising apparatuses would follow. Plaintiffs' argument that § 323(d)'s solicitations ban cannot be squared with § 323(e), which allows federal candidates and officeholders to solicit limited soft-money donations to tax-exempt organizations engaged in federal election activities, is not persuasive. If § 323(d)'s solicitation restriction is otherwise valid, it is not rendered unconstitutional by the mere fact that Congress chose not to regulate the activities of another group as stringently as it might have. See *National Right to Work*, 459 U. S., at 210. Furthermore, the difference between the two provisions is explained by the fact that national party officers, unlike federal candidates and officeholders, remain free to solicit soft money on behalf of nonprofit organizations in their individual capacities. Given § 323(e)'s tight content, source, and amount restrictions on soft-money solicitations by federal candidates and officeholders, as well as the less rigorous standard of review, § 323(e)'s greater solicitation allowances do not render § 323(d)'s solicitation restriction facially invalid. Pp. 174–178.

(2) Section 323(d)'s restriction on donations to qualifying § 501(c) or § 527 organizations is a valid anticircumvention measure insofar as it prohibits donations of funds not already raised in compliance with FECA. Absent such a restriction, state and local party committees could accomplish directly what the antisolicitation restrictions prevent them from doing indirectly—raising large sums of soft money to launder through tax-exempt organizations engaging in federal election activities. Although the ban raises overbreadth concerns if read to restrict donations from a party's federal account—*i. e.*, funds already raised in compliance with FECA's source, amount, and disclosure limitations—these concerns do not require that the facial challenge be sustained, given this Court's obligation to construe a statute, if possible, in such a way as to avoid constitutional questions, see, *e. g.*, *Crowell* v. *Benson*, 285 U. S. 22, 62. Because the record does not compel the conclusion that Congress intended "donations" to include donations from a party's hard-money account, and because of the constitutional infirmities such an interpretation would raise, the Court narrowly construes § 323(d)'s ban to apply only to donations of funds not raised in compliance with FECA. Pp. 178–181.

(e) New FECA § 323(e)—which, with many exceptions, forbids federal candidates and officeholders to "solicit, receive, direct, transfer, or spend" soft money in connection with federal elections, 2 U. S. C. § 441i(e)(1)(A), and limits their ability to do so for state and local elections, § 441i(e)(1)(B)—does not violate the First Amendment. No party seriously questions the constitutionality of the general ban on soft-money donations directly to federal candidates and officeholders and their agents. By severing the most direct link to the soft-money donor,

the ban is closely drawn to prevent the corruption or the appearance of corruption of federal candidates and officeholders. The solicitation restrictions are valid anticircumvention measures. Even before BCRA's passage, federal candidates and officeholders solicited donations to state and local parties, as well as tax-exempt organizations, in order to help their own, as well as their party's, electoral cause. See *Colorado II*, *supra*, at 458. The incentives to do so will only increase with Title I's restrictions on the raising and spending of soft money by national, state, and local parties. Section 323(e) addresses these concerns while accommodating the individual speech and associational rights of federal candidates and officeholders. Pp. 181–184.

(f) New FECA §323(f)—which forbids state and local candidates or officeholders to raise and spend soft money to fund ads and other "public communications" that promote or attack federal candidates, 2 U. S. C. §441i(f)—is a valid anticircumvention provision. The section places no cap on the funds that such candidates can spend on any activity, but, rather, limits only the source and amount of contributions that they can draw on to fund expenditures that directly impact federal elections. And, by regulating only contributions used to fund "public communications," the section focuses narrowly on those soft-money donations with the greatest potential to corrupt or give rise to the appearance of corruption of federal candidates and officeholders. Plaintiffs' principal arguments against the section—(1) that the definition of "public communications" as communications that support or attack a clearly identified federal candidate is unconstitutionally vague and overbroad; and (2) that soft-money contributions to state and local candidates for "public communications" do not corrupt or appear to corrupt federal candidates—are rejected. Pp. 184–185.

2. Several plaintiffs argue unpersuasively that BCRA Title I exceeds Congress' Election Clause authority to "make or alter" rules governing federal elections, U. S. Const., Art. I, §4, and violates constitutional federalism principles by impairing the States' authority to regulate their own elections. In examining federal Acts for Tenth Amendment infirmity, the Court focuses on whether States and state officials are commandeered to carry out federal regulatory schemes. See, *e. g.*, *Printz* v. *United States*, 521 U. S. 898. By contrast, Title I only regulates private parties' conduct, imposing no requirements upon States or state officials. And, because it does not expressly pre-empt state legislation, Title I leaves States free to enforce their own restrictions on state electoral campaign financing. Moreover, while this Court has policed the absolute boundaries of Congress' Article I power, see, *e. g.*, *United States* v. *Morrison*, 529 U. S. 598, plaintiffs offer no reason to believe that Congress has overstepped its Elections Clause power in enacting BCRA.

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Indeed, as already found, Title I is closely drawn to match Congress' important interest in preventing the corruption or the appearance of corruption of federal candidates and officeholders. That interest is sufficient to ground Congress' exercise of its Elections Clause power. Pp. 186–187.

3. Also rejected is the argument that BCRA Title I violates equal protection by discriminating against political parties in favor of special interest groups, which remain free to raise soft money to fund voter registration, GOTV activities, mailings, and broadcast advertising (other than electioneering communications). First, BCRA actually favors political parties in many ways, *e. g.*, by allowing party committees to receive individual contributions substantially exceeding FECA limits on contributions to nonparty political committees. More importantly, Congress is fully entitled to consider the salient, real-world differences between parties and interest groups when crafting a campaign finance regulation system, see *National Right to Work*, *supra*, at 210, including the fact that parties have influence and power in the legislature vastly exceeding any interest group's. Taken seriously, plaintiffs' equal protection arguments would call into question not just BCRA Title I, but much of FECA's pre-existing structure. Pp. 187–188.

4. Accordingly, the judgment below is affirmed insofar as it upheld §§ 323(e) and 323(f) and reversed insofar as it invalidated §§ 323(a), 323(b), and 323(d). Pp. 188–189.

5. The District Court's judgment is affirmed to the extent that it upheld the disclosure requirements in amended FECA § 304 and rejected the facial attack on the provisions relating to donors of $1,000 or more, but reversed to the extent that it invalidated FECA § 304(f)(5). Pp. 189–202.

(a) BCRA § 201 comprehensively amends FECA § 304, which requires political committees to file detailed periodic financial reports with the FEC. The narrowing construction adopted in *Buckley* limited FECA's disclosure requirement to communications expressly advocating the election or defeat of particular candidates. BCRA adopts a new term, "electioneering communication," which encompasses any "broadcast, cable, or satellite communication" that clearly identifies a candidate for federal office, airs within a specific time period (*e. g.*, within 60 days of a general election and 30 days of a primary), and is targeted to the relevant electorate. 2 U. S. C. § 434(f)(3)(A)(i). BCRA also amends § 304 to provide disclosure requirements for persons who fund electioneering communications (and BCRA § 203 amends FECA § 316(b)(2) to extend those requirements to corporations and labor unions).

Plaintiffs challenge the new term's constitutionality as it applies to both disclosures and expenditures, arguing primarily that *Buckley* drew

a constitutionally mandated line between express advocacy and so-called issue advocacy, and that speakers have an inviolable First Amendment right to engage in the latter category of speech. However, a plain reading of *Buckley* and *Federal Election Comm'n* v. *Massachusetts Citizens for Life, Inc.*, 479 U. S. 238 *(MCFL)*, shows that the express advocacy restriction is a product of statutory interpretation, not a constitutional command. Both the concept of express advocacy and the class of magic words were born of an effort to avoid constitutional problems of vagueness and overbreadth in the statute before the *Buckley* Court. Consistent with the principle that a constitutional rule should never be formulated more broadly than required by the facts to which it is to be applied, *Buckley* and *MCFL* were specific to the statutory language before the Court and in no way drew a constitutional boundary that forever fixed the permissible scope of provisions regulating campaign-related speech. The notion that the First Amendment erects a rigid barrier between express and issue advocacy also cannot be squared with this Court's longstanding recognition that the presence or absence of magic words cannot meaningfully distinguish electioneering speech from a true issue ad. *Buckley*'s express advocacy line has not aided the legislative effort to combat real or apparent corruption, and Congress enacted BCRA to correct the flaws it found. Finally, because the components of new FECA § 304(f)(3)'s definition of "electioneering communication" are both easily understood and objectively determinable, the vagueness objection that persuaded the *Buckley* Court to limit FECA's reach to express advocacy is inapposite here. Pp. 189–194.

(b) With regard to plaintiffs' other concerns about the use of the phrase "electioneering communication," the District Court correctly rejected their submission that new FECA § 304 unnecessarily requires disclosure of the names of persons who contributed $1,000 or more to the individual or group paying for the communication, but erred in finding § 304(f)(5) invalid because it mandates disclosure of executory contracts for communications that have not yet aired. Because the important state interests identified in *Buckley*—providing the electorate with information, deterring actual corruption and avoiding its appearance, and gathering data necessary to enforce more substantive electioneering restrictions—apply in full to BCRA, *Buckley* amply supports application of FECA § 304's disclosure requirements to the entire range of "electioneering communications." *Buckley* also forecloses a facial attack on the new § 304 provision that requires disclosure of the names of persons who contribute $1,000 or more to segregated funds or spend more than $10,000 in a calendar year on electioneering communications. Under *Buckley*'s standard of proof, the evidence here did not establish the requisite reasonable probability of harm to any plaintiff group or its mem-

bers resulting from compelled disclosure. However, the rejection of this facial challenge does not foreclose possible future challenges to particular applications of that disclosure requirement.

This Court is also unpersuaded by plaintiffs' challenge to new FECA §304(f)(5)'s requirement regarding the disclosure of executory contracts. The new provision mandates disclosure only when a person makes disbursements totaling more than $10,000 in any calendar year to pay for electioneering communications. Given the relatively short timeframes in which such communications are made, the interest in assuring that disclosures are made in time to provide relevant information to voters is significant. Yet fixing the deadline for filing disclosure statements based on the date when aggregate disbursements exceed $10,000 would open a significant loophole without the advance disclosure requirement, for political supporters could avoid preelection disclosures about ads slated to run during a campaign's final weeks simply by making a preelection downpayment of less than $10,000, with the balance payable after the election. The record contains little evidence of any harm that might flow from the requirement's enforcement, and the District Court's speculation about such harm cannot outweigh the public interest in ensuring full disclosure before an election actually takes place. Pp. 194–202.

6. The District Court's judgment is affirmed insofar as it held that plaintiffs advanced no basis for finding unconstitutional BCRA §202, which amends FECA §315(a)(7)(C) to provide that disbursements for electioneering communications that are coordinated with a candidate or party will be treated as contributions to, and expenditures by, that candidate or party, 2 U. S. C. §441a(a)(7)(C). That provision clarifies the scope of §315(a)(7)(B), which provides that expenditures made by any person in cooperation, consultation, or concert with, or at the request or suggestion of a candidate or party constitute contributions. BCRA pre-empts a possible claim that the term "expenditure" in §315(a)(7)(B) is limited to spending for express advocacy. Because *Buckley*'s narrow interpretation of that term was only a statutory limitation on Congress' power to regulate federal elections, there is no reason why Congress may not treat coordinated disbursements for electioneering communications in the same way it treats other coordinated expenditures. Pp. 202–203.

7. The District Court's judgment is affirmed to the extent that it upheld the constitutionality of new FECA §316(b)(2), and reversed to the extent that it invalidated any part of that section. BCRA §203 extends to all "electioneering communications" FECA §316(b)(2)'s restrictions on the use of corporate and union general treasury funds. 2 U. S. C. §441b(b)(2). Because those entities may still organize and administer

segregated funds, or PACs, for such communications, the provision is a regulation of, not a ban on, expression. *Federal Election Comm'n* v. *Beaumont*, 539 U. S. 146, 162. This Court's consideration of plaintiffs' claim that the expanded regulation is both overinclusive and underinclusive is informed by the conclusion that the distinction between express advocacy and so-called issue advocacy is not constitutionally compelled. Thus, the Court examines the degree to which BCRA burdens First Amendment expression and evaluates whether a compelling governmental interest justifies that burden. Plaintiffs have not carried their burden of proving that new FECA § 316(b)(2) is overbroad. They argue that the justifications that adequately support regulation of express advocacy do not apply to significant quantities of speech encompassed by the electioneering communications definition. That argument fails to the extent that issue ads broadcast during the 30- and 60-day periods preceding federal primary and general elections are the functional equivalent of express advocacy. The justifications for regulating express advocacy apply equally to those ads if they have an electioneering purpose, which the vast majority do. Also rejected is plaintiffs' argument that new FECA § 316(b)(2)'s segregated-fund requirement is underinclusive because it does not apply to print or Internet advertising. The record here reflects that corporations and unions used soft money to finance a virtual torrent of televised election-related ads during the relevant period. Congress justifiably concluded that remedial legislation was needed to stanch that flow of money. Finally, § 304(f)(3)(B)(i), which excludes news items and commentary from the electioneering communications definition, is wholly consistent with First Amendment principles as applied to the media. Pp. 203–209.

8. The District Court's judgment is affirmed to the extent that it upheld new FECA § 316(c)(6), as limited to nonprofit entities that are not so-called *MCFL* organizations. BCRA § 204, which adds § 316(c)(6), 2 U. S. C. § 441b(c)(2), extends to nonprofit corporations the prohibition on the use of general treasury funds to pay for electioneering communications. This Court upheld a similar restriction in *Beaumont*, *supra*, except as it applied to organizations that are formed for the express purpose of promoting political ideas, have no shareholders, are not established by a business corporation or labor union, and do not accept contributions from those entities, *MCFL*, 479 U. S., at 264. The same constitutional objection to applying the pre-BCRA restrictions to such organizations necessarily applies with equal force to FECA § 316(c)(6). That § 316(c)(6) does not, on its face, exempt *MCFL* organizations is not a sufficient reason to invalidate it. This Court presumes that the legislators were fully aware that the provision could not apply to

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MCFL-type entities, and the Government concedes that it does not. As so construed, the provision is plainly valid. Pp. 209–211.

9. Because this Court has already found BCRA § 201's executory contract disclosure requirement constitutional, plaintiffs' challenge to a similar disclosure requirement in BCRA § 212, which added FECA § 304(g), 2 U. S. C. § 434, is essentially moot. Pp. 211–212.

10. The District Court's judgment is affirmed to the extent that it invalidated BCRA § 213, which amends FECA § 315(d)(4) to require political parties to choose between coordinated and independent expenditures during the postnomination, preelection period. 2 U. S. C. § 441a(d)(4). That provision places an unconstitutional burden on the parties' right to make unlimited independent expenditures. Although the category of burdened speech is limited to independent expenditures for express advocacy—and therefore is relatively small—it plainly is entitled to First Amendment protection. The governmental interest in requiring parties to avoid using magic words is not sufficient to support the burden imposed by § 315(d)(4). The fact that the provision is cast as a choice rather than an outright prohibition on independent expenditures does not make it constitutional. Pp. 213–219.

11. The District Court's judgment is affirmed to the extent that it rejected plaintiffs' challenges to BCRA § 214, which adds FECA § 315(a)(7)(B)(ii), 2 U. S. C. § 441a(a)(7)(B)(ii). FECA § 315(a)(7)(B)(i) long has provided that expenditures that are controlled by or coordinated with a candidate will be treated as contributions to the candidate. BCRA § 214(a) extends that rule to expenditures coordinated with political parties; and §§ 214 (b) and (c) direct the FEC to promulgate new regulations that do not "require agreement or formal collaboration to establish coordination," 2 U. S. C. § 441a(a) note. FECA § 315(a)(7)(B)(ii) is not overbroad simply because it permits a finding of coordination in the absence of a pre-existing agreement. Congress has always treated expenditures made after a wink or nod as coordinated. Nor does the absence of an agreement requirement render § 315(a)(7)(B)(ii) unconstitutionally vague. An agreement has never been required under § 315(a)(7)(B)(i), which uses precisely the same language as the new provision to address coordination with candidates, and which has survived without constitutional challenge for almost three decades. Plaintiffs have provided no evidence that the definition has chilled political speech, and have made no attempt to explain how an agreement requirement would prevent the FEC from engaging in what they fear will be intrusive and politically motivated investigations. Finally, in this facial challenge to BCRA, plaintiffs' challenge to §§ 214(b) and (c) is not ripe to the extent that they allege constitutional infirmities in the FEC's new regulations rather than the statute. Pp. 219–224.

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THE CHIEF JUSTICE delivered the opinion of the Court with respect to miscellaneous BCRA Title III and IV provisions, concluding that the District Court's judgment with respect to these provisions must be affirmed. Pp. 224–233.

1. The plaintiffs' challenges to BCRA § 305, § 307, and the millionaire provisions are nonjusticiable. Pp. 224–230.

(a) The McConnell plaintiffs lack standing to challenge BCRA § 305, which amends the federal Communications Act of 1934 requirement that, 45 days before a primary or 60 days before a general election, broadcast stations sell air time to a qualified candidate at their "lowest unit charge," 47 U. S. C. § 315(b). Section 305's amendment, in turn, denies a candidate the benefit of that charge in specified circumstances. 47 U. S. C. §§ 315(b)(2)(A), (C). Senator McConnell's testimony that he plans to run ads critical of his opponents and had run them in the past is too remote temporally to satisfy the Article III standing requirement that a plaintiff demonstrate an "injury in fact" that is "actual or imminent," *Whitmore* v. *Arkansas*, 495 U. S. 149, 155, 158, given that the lowest unit charge requirement is not available until 45 days before a primary, that Senator McConnell's current term does not expire until 2009, and that, therefore, the earliest day he could be affected by § 305 is 45 days before the 2008 Republican primary election. Pp. 224–226.

(b) The Adams and Paul plaintiffs lack standing to challenge BCRA § 307, which amends FECA § 315(a)(1) to increase and index for inflation certain contribution limits. Neither injury alleged by the Adams plaintiffs, a group of voters, voter organizations, and candidates, is sufficient to confer standing. First, their assertion that § 307 deprives them of an equal ability to participate in the election process based on their economic status does not satisfy the standing requirement that a plaintiff's alleged injury be an invasion of a concrete and particularized legally protected interest, *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560, since political "free trade" does not necessarily require that all who participate in the political marketplace do so with exactly equal resources, *e. g.*, *Federal Election Comm'n* v. *Massachusetts Citizens for Life, Inc.*, 479 U. S. 238, 257 *(MCFL)*. Second, the Adams plaintiffs-candidates' contention that § 307 puts them at a "fundraising disadvantage" compared to their opponents because they do not wish to solicit or accept the large campaign contributions BCRA permits does not meet the standing requirement that their alleged injury be "fairly traceable" to § 307, see *Lujan*, *supra*, at 562, since their alleged inability to compete stems not from § 307's operation, but from their own personal choice not to solicit or accept large contributions. Also inadequate for standing purposes is the Paul plaintiffs' contention that their congressional campaigns and public interest advocacy involve traditional press

activities, such that § 307's contribution limits, together with FECA § 315's individual and political action committee contribution limitations, impose unconstitutional editorial control on them in violation of the First Amendment's Freedom of the Press Clause. These plaintiffs cannot show the requisite substantial likelihood their requested relief will remedy their alleged injury in fact, see *Vermont Agency of Natural Resources* v. *United States ex rel. Stevens*, 529 U. S. 765, 771, since, even if the Court were to strike down BCRA § 307's increases and indexes, as they ask, both FECA's contribution limits and an exemption for institutional news media would remain unchanged. Pp. 226–229.

(c) The Adams plaintiffs lack standing to challenge the so-called "millionaire provisions," BCRA §§ 304, 316, and 319, which provide for a series of staggered increases in otherwise applicable contribution-to-candidate limits if the candidate's opponent spends a triggering amount of his personal funds, and eliminate the coordinated expenditure limits in certain circumstances. Because these plaintiffs allege the same injuries that they alleged with regard to BCRA § 307, they fail to state a cognizable injury that is fairly traceable to BCRA. Additionally, none of them is a candidate in an election affected by the millionaire provisions, and it would be purely conjectural to assume that any of them ever will be. Pp. 229–230.

2. The District Court's decision upholding BCRA § 311's expansion of FECA § 318(a) to include mandatory electioneering-communications-disbursements disclosure is affirmed because such inclusion bears a sufficient relationship to the important governmental interest of "shed-[ding] the light of publicity" on campaign financing, *Buckley*, 424 U. S., at 81. Assuming, as the Court must, that FECA § 318 is valid both to begin with and as amended by BCRA § 311's amendments other than the electioneering-communications inclusion, the latter inclusion is not itself unconstitutional. Pp. 230–231.

3. BCRA § 318—which forbids individuals "17 years old or younger" to make contributions to candidates and political parties, 2 U. S. C. § 441k—violates the First Amendment rights of minors, see, *e. g.*, *Tinker* v. *Des Moines Independent Community School Dist.*, 393 U. S. 503, 511–513. Because limitations on an individual's political contributions impinge on the freedoms of expression and association, see *Buckley*, *supra*, at 20–22, the Court applies heightened scrutiny to such a limitation, asking whether it is justified by a "sufficiently important interest" and "closely drawn" to avoid unnecessary abridgment of the First Amendment, see, *e. g.*, *post*, at 136 (joint opinion of STEVENS and O'CONNOR, JJ.). The Government offers scant evidence for its assertion that § 318 protects against corruption by conduit—*i. e.*, donations by parents through their minor children to circumvent contribution limits applica-

ble to the parents. Absent a more convincing case of the claimed evil, this interest is simply too attenuated for § 318 to withstand heightened scrutiny. See *Shrink Missouri*, 528 U. S., at 391. Even assuming, *arguendo*, the Government advances an important interest, the provision is overinclusive, as shown by the States' adoption of more tailored approaches. Pp. 231–232.

4. Because the FEC clearly has standing, the Court need not address whether the intervenor-defendants, whose position here is identical to the FEC's, were properly granted intervention pursuant to, *inter alia*, BCRA § 403(b). See, *e. g.*, *Clinton* v. *City of New York*, 524 U. S. 417, 431–432, n. 19. P. 233.

JUSTICE BREYER delivered the Court's opinion with respect to BCRA Title V—§ 504 of which amends the Communications Act of 1934 to require broadcasters to keep publicly available records of politically related broadcasting requests, 47 U. S. C. § 315(e)—concluding that the portion of the judgment below invalidating § 504 as facially violative of the First Amendment must be reversed. Pp. 233–245.

1. Section 504's "candidate request" requirements—which call for broadcasters to keep records of broadcast requests "made by or on behalf of a . . . candidate," 47 U. S. C. § 315(e)(1)(A)—are upheld. They are virtually identical to those contained in a longstanding Federal Communications Commission (FCC) regulation. The McConnell plaintiffs' argument that the requirements are intolerably burdensome and invasive is rejected. The FCC has consistently estimated that its regulation imposes upon a licensee a comparatively small additional administrative burden. Moreover, the § 504 requirement is supported by significant governmental interests in verifying that licensees comply with their obligations to allow political candidates "equal time," 47 U. S. C. § 315(a), and to sell such time at the "lowest unit charge," § 315(b); in evaluating whether they are processing candidate requests in an evenhanded fashion to help assure broadcasting fairness, § 315(a); in making the public aware of how much candidates spend on broadcast messages, 2 U. S. C. § 434; and in providing an independently compiled set of data for verifying candidates' compliance with BCRA's and FECA's disclosure requirements and source limitations, *ibid.* Because the Court cannot, on the present record, find the longstanding FCC regulation unconstitutional, it cannot strike down BCRA § 504's "candidate request" provision, which simply embodies the regulation in a statute, thereby blocking any agency attempt to repeal it. Pp. 234–238.

2. Because § 504's "candidate request" requirements are constitutional, its "election message" requirements—which serve similar governmental interests and impose only a small incremental burden in requiring broadcasters to keep records of requests (made by anyone) to broadcast

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"message[s]" that refer either to a "legally qualified candidate" or to "any election to Federal office," 47 U. S. C. §§ 315(e)(1)(B)(i), (ii)—must be constitutional as well. Pp. 238–240.

3. BCRA § 504's "issue request" requirements—which call for broadcasters to keep records of requests (made by anyone) to broadcast "message[s]" related to a "national legislative issue of public importance," 47 U. S. C. § 315(e)(1)(B)(iii), or a "political matter of national importance," § 315(e)(1)(B)—survive the McConnell plaintiffs' facial challenge. These recordkeeping requirements seem likely to help determine whether broadcasters are fulfilling their obligations under the FCC's regulations to afford reasonable opportunity for the discussion of conflicting views on important public issues or whether they too heavily favor entertainment, discriminating against public affairs broadcasts. The plaintiffs' claim that the above-quoted statutory language is unconstitutionally vague or overbroad is unpersuasive, given that it is no more general than language Congress has used to impose other obligations upon broadcasters and is roughly comparable to other BCRA language upheld in this litigation. Whether the "issue request" requirements impose disproportionate administrative burdens will depend on how the FCC interprets and applies them. The parties remain free to challenge the provisions, as interpreted by the FCC's regulations, or as otherwise applied. Without the greater information any such challenge will likely provide, the Court cannot say that the provisions' administrative burdens are so great, or their justifications so minimal, as to warrant finding them facially unconstitutional. Similarly, the argument that the "issue request" requirement will force the purchasers to disclose information revealing their political strategies to opponents does not show that BCRA § 504 is facially unconstitutional, but the plaintiffs remain free to raise this argument when § 504 is applied. Pp. 240–246.

STEVENS and O'CONNOR, JJ., delivered the opinion of the Court with respect to BCRA Titles I and II, in which SOUTER, GINSBURG, and BREYER, JJ., joined. REHNQUIST, C. J., delivered the opinion of the Court with respect to BCRA Titles III and IV, in which O'CONNOR, SCALIA, KENNEDY, and SOUTER, JJ., joined, in which STEVENS, GINSBURG, and BREYER, JJ., joined except with respect to BCRA § 305, and in which THOMAS, J., joined with respect to BCRA §§ 304, 305, 307, 316, 319, and 403(b), *post*, p. 224. BREYER, J., delivered the opinion of the Court with respect to BCRA Title V, in which STEVENS, O'CONNOR, SOUTER, and GINSBURG, JJ., joined, *post*, p. 233. SCALIA, J., filed an opinion concurring with respect to BCRA Titles III and IV, dissenting with respect to BCRA Titles I and V, and concurring in the judgment in part and dissenting in

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part with respect to BCRA Title II, *post*, p. 247. THOMAS, J., filed an opinion concurring with respect to BCRA Titles III and IV, except for BCRA §§311 and 318, concurring in the result with respect to BCRA §318, concurring in the judgment in part and dissenting in part with respect to BCRA Title II, and dissenting with respect to BCRA Titles I, V, and §311, in which opinion SCALIA, J., joined as to Parts I, II–A, and II–B, *post*, p. 264. KENNEDY, J., filed an opinion concurring in the judgment in part and dissenting in part with respect to BCRA Titles I and II, in which REHNQUIST, C. J., joined, in which SCALIA, J., joined except to the extent the opinion upholds new FECA §323(e) and BCRA §202, and in which THOMAS, J., joined with respect to BCRA §213, *post*, p. 286. REHNQUIST, C. J., filed an opinion dissenting with respect to BCRA Titles I and V, in which SCALIA and KENNEDY, JJ., joined, *post*, p. 350. STEVENS, J., filed an opinion dissenting with respect to BCRA §305, in which GINSBURG and BREYER, JJ., joined, *post*, p. 363.

Kenneth W. Starr and *Floyd Abrams* argued the cause for plaintiffs below, Senator Mitch McConnell et al., appellants in No. 02–1674 and cross-appellees in Nos. 02–1676 and 02–1702. With them on the briefs were *Edward W. Warren*, *Susan Buckley*, *Brian Markley*, *Kathleen M. Sullivan*, *Valle Simms Dutcher*, *L. Lynn Hogue*, *Jan Witold Baran*, *Lee E. Goodman*, *G. Hunter Bates*, *Jack N. Goodman*, and *Jerianne Timmerman*.

Bobby R. Burchfield argued the cause for the political party plaintiffs below. With him on the briefs for the Republican National Committee et al., appellants in No. 02–1727, the California Democratic Party et al., appellants in No. 02–1753, and the Libertarian National Committee, Inc., one of the appellants in No. 02–1733, were *Thomas O. Barnett*, *Robert K. Kelner*, *Richard W. Smith*, *Lance H. Olson*, *Deborah B. Caplan*, *Joseph E. Sandler*, *John Hardin Young*, *Charles H. Bell, Jr.*, *Jan Witold Baran*, *Lee E. Goodman*, *Thomas J. Josefiak*, *Benjamin L. Ginsberg*, *Eric A. Kuwana*, *Michael A. Carvin*, *James Bopp, Jr.*, *Richard E. Coleson*, and *Thomas J. Marzen*.

Solicitor General Olson and *Deputy Solicitor General Clement* argued the cause for federal defendants below, the Federal Election Commission et al. With them on the briefs

were *Assistant Attorney General Keisler*, *Malcolm L. Stewart*, *Gregory G. Garre*, *Douglas N. Letter*, *Dana J. Martin*, *Terry M. Henry*, *Lawrence H. Norton*, *Richard B. Bader*, and *David Kolker*.

Seth P. Waxman argued the cause for the intervenor-defendants below, Senator John McCain et al. With him on the briefs were *Randolph D. Moss*, *Edward C. DuMont*, *Paul R. Q. Wolfson*, *Roger M. Witten*, *Burt Neuborne*, *Frederick A. O. Schwarz, Jr.*, *Charles G. Curtis, Jr.*, *David J. Harth*, *Bradley S. Phillips*, *E. Joshua Rosenkranz*, *Alan B. Morrison*, *Scott L. Nelson*, *Eric J. Mogilnicki*, *Michael D. Leffel*, *Fred Wertheimer*, *Alexandra Edsall*, and *Trevor Potter*.

Laurence E. Gold argued the cause for plaintiffs below, the American Federation of Labor and Congress of Industrial Organizations et al., appellants in No. 02–1755 and appellees in Nos. 02–1676 and 02–1702. With him on the briefs were *Jonathan P. Hiatt*, *Michael B. Trister*, and *Larry P. Weinberg*.

Jay Alan Sekulow argued the cause for plaintiffs below, Emily Echols et al. With him on the brief were *James M. Henderson, Sr.*, *Stuart J. Roth*, *Colby M. May*, *Joel H. Thornton*, *Walter M. Weber*, *James Bopp, Jr.*, *Richard E. Coleson*, and *Thomas J. Marzen*.

Briefs in No. 02–1675 were filed for appellants National Rifle Association et al. by *Charles J. Cooper*, *David H. Thompson*, *Hamish P. M. Hume*, *Brian S. Koukoutchos*, and *Cleta Mitchell*.

Briefs in No. 02–1733 were filed for plaintiffs-appellants/cross-appellees National Right to Life Committee, Inc., et al. by *James Bopp, Jr.*, *Richard E. Coleson*, and *Thomas J. Marzen*.

Briefs in No. 02–1734 were filed for appellant American Civil Liberties Union by *Mark J. Lopez*, *Steven R. Shapiro*, and *Joel M. Gora*.

Counsel

Briefs in No. 02–1740 were filed for appellants Victoria Jackson Gray Adams et al. by *John C. Bonifaz*, *Bonita P. Tenneriello*, *Lisa J. Danetz*, *Brenda Wright*, and *David A. Wilson.*

Briefs in No. 02–1747 were filed for appellants Congressman Ron Paul et al. by *William J. Olson*, *John S. Miles*, *Herbert W. Titus*, and *Gary G. Kreep.*

Briefs in No. 02–1756 were filed for appellants Chamber of Commerce of the United States et al. by *Jan Witold Baran*, *Lee E. Goodman*, *Stephen A. Bokat*, and *Jan Amundson.*†

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†A brief of *amici curiae* urging reversal was filed for the Commonwealth of Virginia et al. by *Jerry Kilgore,* Attorney General of Virginia, and *Craig Engle,* and by the Attorneys General for their respective States as follows: *Lawrence Wasden* of Idaho, *Steve Carter* of Indiana, *Phill Kline* of Kansas, *Jon Bruning* of Nebraska, *Wayne Stenehjem* of North Dakota, *Jim Petro* of Ohio, *Henry McMaster* of South Carolina, *Larry Long* of South Dakota, and *Mark Shurtleff* of Utah.

Briefs of *amici curiae* urging affirmance were filed for the Center for Governmental Studies by *Richard L. Hasen;* and for Thomas D. Grant et al. by *Christopher J. Wright* and *Timothy J. Simeone.*

Briefs of *amici curiae* were filed for the State of Iowa et al. by *Thomas J. Miller,* Attorney General of Iowa, and *Thomas Andrews,* Assistant Attorney General, *William H. Sorrell,* Attorney General of Vermont, and *Bridget C. Asay,* Assistant Attorney General, and *Richard Blumenthal,* Attorney General of Connecticut, and by the Attorneys General for their respective jurisdictions as follows: *Terry Goddard* of Arizona, *Ken Salazar* of Colorado, *Albert B. Chandler III* of Kentucky, *Richard P. Ieyoub* of Louisiana, *G. Steven Rowe* of Maine, *Thomas F. Reilly* of Massachusetts, *Mike Hatch* of Minnesota, *Mike Moore* of Mississippi, *Jeremiah (Jay) Nixon* of Missouri, *Mike McGrath* of Montana, *Eliot Spitzer* of New York, *W. A. Drew Edmondson* of Oklahoma, *Anabelle Rodríguez* of Puerto Rico, *Patrick Lynch* of Rhode Island, *Christine O. Gregoire* of Washington, *Peggy Lautenschlager* of Wisconsin, and *Iver A. Stridiron* of the Virgin Islands; for the Allen Temple Baptist Church et al. by *Martin R. Glick;* for the American Civil Rights Union by *John C. Armor* and *Peter Ferrara;* for Bipartisan Former Members of the United States Congress by *Randy L. Dryer* and *J. Michael Bailey;* for the California Student Public Interest Research Group, Inc., et al. by *Bonita Tenneriello*, *John C. Bonifaz*, *Brenda Wright*, *Lisa J. Danetz*, and *David A. Wilson;* for the Cato Insti-

JUSTICE STEVENS and JUSTICE O'CONNOR delivered the opinion of the Court with respect to BCRA Titles I and II.*

The Bipartisan Campaign Reform Act of 2002 (BCRA), 116 Stat. 81, contains a series of amendments to the Federal Election Campaign Act of 1971 (FECA or Act), 86 Stat. 11, as amended, 2 U. S. C. § 431 *et seq.* (2000 ed. and Supp. II), the Communications Act of 1934, 48 Stat. 1088, as amended, 47 U. S. C. § 315 (2000 ed. and Supp. II), and other portions of the United States Code, 18 U. S. C. § 607 (Supp. II), 36 U. S. C. §§ 510–511 (Supp. II), that are challenged in these cases.[1] In this opinion we discuss Titles I and II of BCRA. The opinion of the Court delivered by THE CHIEF JUSTICE, *post,* p. 224, discusses Titles III and IV, and the opinion of the Court delivered by JUSTICE BREYER, *post,* p. 233, discusses Title V.

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tute et al. by *Erik S. Jaffe;* for the Center for Responsive Politics by *Lawrence M. Noble* and *Paul Sanford;* for the Committee for Economic Development et al. by *Steven Alan Reiss, R. Bruce Rich,* and *Jonathan Bloom;* for Common Cause et al. by *Donald J. Simon, Daniel B. Kohrman,* and *Michael Schuster;* for Former Leaders of the American Civil Liberties Union by *Norman Dorsen* and *Eric M. Lieberman;* for the Interfaith Alliance Foundation et al. by *Evan A. Davis;* for the League of Women Voters by *Daniel R. Ortiz;* for Delaware State Representative Michael Castle et al. by *Richard Briffault, Charles Tiefer,* and *Jonathan W. Cuneo;* for the Honorable J. Dennis Hastert by *J. Randolph Evans* and *Stefan C. Passantino;* for Dr. David Moshman by *Kevin H. Theriot;* for Norman J. Ornstein et al. by *Teresa W. Roseborough* and *Judith A. O'Brien;* for Rodney A. Smith by *Clark Bensen;* and for the Honorable Fred Thompson by *David C. Frederick.*

*JUSTICE SOUTER, JUSTICE GINSBURG, and JUSTICE BREYER join this opinion in its entirety.

[1] The parties to the litigation are described in the findings of the District Court. 251 F. Supp. 2d 176, 221–226 (DC 2003) *(per curiam).* For the sake of clarity, we refer to the parties who challenged the law in the District Court as the "plaintiffs," referring to specific plaintiffs by name where necessary. We refer to the parties who intervened in defense of the law as the "intervenor-defendants."

I

More than a century ago the "sober-minded Elihu Root" advocated legislation that would prohibit political contributions by corporations in order to prevent "'the great aggregations of wealth, from using their corporate funds, directly or indirectly,'" to elect legislators who would "'vote for their protection and the advancement of their interests as against those of the public.'" *United States* v. *Automobile Workers*, 352 U. S. 567, 571 (1957) (quoting E. Root, Addresses on Government and Citizenship 143 (R. Bacon & J. Scott eds. 1916)). In Root's opinion, such legislation would "'strik[e] at a constantly growing evil which has done more to shake the confidence of the plain people of small means of this country in our political institutions than any other practice which has ever obtained since the foundation of our Government.'" 352 U. S., at 571. The Congress of the United States has repeatedly enacted legislation endorsing Root's judgment.

BCRA is the most recent federal enactment designed "to purge national politics of what was conceived to be the pernicious influence of 'big money' campaign contributions." *Id.*, at 572. As Justice Frankfurter explained in his opinion for the Court in *Automobile Workers*, the first such enactment responded to President Theodore Roosevelt's call for legislation forbidding all contributions by corporations "'to any political committee or for any political purpose.'" *Ibid.* (quoting 40 Cong. Rec. 96 (1905)). In his annual message to Congress in December 1905, President Roosevelt stated that "'directors should not be permitted to use stockholders' money'" for political purposes, and he recommended that "'a prohibition'" on corporate political contributions "'would be, as far as it went, an effective method of stopping the evils aimed at in corrupt practices acts.'" 352 U. S., at 572. The resulting 1907 statute completely banned corporate contributions of "money . . . in connection with" any federal election. Tillman Act, ch. 420, 34 Stat. 864. Congress soon amended

the statute to require the public disclosure of certain contributions and expenditures and to place "maximum limits on the amounts that congressional candidates could spend in seeking nomination and election." *Automobile Workers*, *supra*, at 575–576.

In 1925 Congress extended the prohibition of "contributions" "to include 'anything of value,' and made acceptance of a corporate contribution as well as the giving of such a contribution a crime." *Federal Election Comm'n* v. *National Right to Work Comm.*, 459 U. S. 197, 209 (1982) (citing Federal Corrupt Practices Act, 1925, §§ 301, 313, 43 Stat. 1070, 1074). During the debates preceding that amendment, a leading Senator characterized "'the apparent hold on political parties which business interests and certain organizations seek and sometimes obtain by reason of liberal campaign contributions'" as "'one of the great political evils of the time.'" *Automobile Workers*, *supra*, at 576 (quoting 65 Cong. Rec. 9507–9508 (1924)). We upheld the amended statute against a constitutional challenge, observing that "[t]he power of Congress to protect the election of President and Vice President from corruption being clear, the choice of means to that end presents a question primarily addressed to the judgment of Congress." *Burroughs* v. *United States*, 290 U. S. 534, 547 (1934).

Congress' historical concern with the "political potentialities of wealth" and their "untoward consequences for the democratic process," *Automobile Workers*, *supra*, at 577–578, has long reached beyond corporate money. During and shortly after World War II, Congress reacted to the "enormous financial outlays" made by some unions in connection with national elections. 352 U. S., at 579. Congress first restricted union contributions in the Hatch Act, 18 U. S. C. § 610,[2] and it later prohibited "union contributions in connec-

[2] The Hatch Act also limited both the amount political committees could expend and the amount they could receive in contributions. Act of July

tion with federal elections . . . altogether." *National Right to Work*, *supra*, at 209 (citing War Labor Disputes Act (Smith-Connally Anti-Strike Act), ch. 144, § 9, 57 Stat. 167). Congress subsequently extended that prohibition to cover unions' election-related expenditures as well as contributions, and it broadened the coverage of federal campaigns to include both primary and general elections. Labor Management Relations Act, 1947 (Taft-Hartley Act), 61 Stat. 136. See *Automobile Workers*, *supra*, at 578–584. During the consideration of those measures, legislators repeatedly voiced their concerns regarding the pernicious influence of large campaign contributions. See 93 Cong. Rec. 3428, 3522 (1947); H. R. Rep. No. 245, 80th Cong., 1st Sess. (1947); S. Rep. No. 1, 80th Cong., 1st Sess., pt. 2 (1947); H. R. Rep. No. 2093, 78th Cong., 2d Sess. (1945). As we noted in a unanimous opinion recalling this history, 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 and labor organizations warrants considerable deference." *National Right to Work*, *supra*, at 209 (citations omitted).

In early 1972 Congress continued its steady improvement of the national election laws by enacting FECA, 86 Stat. 3. As first enacted, that statute required disclosure of all contri-

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19, 1940, ch. 640, 54 Stat. 767. Senator Bankhead, in offering the amendment from the Senate floor, said:

"'We all know that money is the chief source of corruption. We all know that large contributions to political campaigns not only put the political party under obligation to the large contributors, who demand pay in the way of legislation, but we also know that large sums of money are used for the purpose of conducting expensive campaigns through the newspapers and over the radio; in the publication of all sorts of literature, true and untrue; and for the purpose of paying the expenses of campaigners sent out into the country to spread propaganda, both true and untrue.'" *United States* v. *Automobile Workers*, 352 U. S. 567, 577–578 (1957) (quoting 86 Cong. Rec. 2720 (1940)).

butions exceeding $100 and of expenditures by candidates and political committees that spent more than $1,000 per year. *Id.*, at 11–19. It also prohibited contributions made in the name of another person, *id.*, at 19, and by Government contractors, *id.*, at 10. The law ratified the earlier prohibition on the use of corporate and union general treasury funds for political contributions and expenditures, but it expressly permitted corporations and unions to establish and administer separate segregated funds (commonly known as political action committees, or PACs) for election-related contributions and expenditures. *Id.*, at 12–13.[3] See *Pipefitters* v. *United States*, 407 U. S. 385, 409–410 (1972).

As the 1972 Presidential elections made clear, however, FECA's passage did not deter unseemly fundraising and campaign practices. Evidence of those practices persuaded Congress to enact the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263. Reviewing a constitutional challenge to the amendments, the Court of Appeals for the District of Columbia Circuit described them as "by far the most comprehensive . . . reform legislation [ever] passed by Congress concerning the election of the President, Vice-President and members of Congress." *Buckley* v. *Valeo*, 519 F. 2d 821, 831 (1975) (en banc) *(per curiam)*.

The 1974 amendments closed the loophole that had allowed candidates to use an unlimited number of political committees for fundraising purposes and thereby to circumvent the limits on individual committees' receipts and disbursements. They also limited individual political contributions to any single candidate to $1,000 per election, with an overall annual limitation of $25,000 by any contributor; imposed ceilings on spending by candidates and political parties for national con-

[3] As a general rule, FECA permits corporations and unions to solicit contributions to their PACs from their shareholders or members, but not from outsiders. 2 U. S. C. §§ 441b(b)(4)(A), (C); see *Federal Election Comm'n* v. *National Right to Work Comm.*, 459 U. S. 197, 198–199, and n. 1 (1982).

ventions; required reporting and public disclosure of contributions and expenditures exceeding certain limits; and established the Federal Election Commission (FEC) to administer and enforce the legislation. *Id.*, at 831–834.

The Court of Appeals upheld the 1974 amendments almost in their entirety.[4] It concluded that the clear and compelling interest in preserving the integrity of the electoral process provided a sufficient basis for sustaining the substantive provisions of the Act. *Id.*, at 841. The court's opinion relied heavily on findings that large contributions facilitated access to public officials[5] and described methods of evading the con-

[4] The court held that one disclosure provision was unconstitutionally vague and overbroad. *Buckley* v. *Valeo*, 519 F. 2d 821, 832 (CADC 1975) (en banc) *(per curiam)* (invalidating 2 U. S. C. § 437a (1970 ed., Supp. V)). No appeal was taken from that holding. *Buckley* v. *Valeo*, 424 U. S. 1, 10, n. 7 (1976) *(per curiam)*.

[5] The Court of Appeals found:

"Large contributions are intended to, and do, gain access to the elected official after the campaign for consideration of the contributor's particular concerns. Senator Mathias not only describes this but also the corollary, that the feeling that big contributors gain special treatment produces a reaction that the average American has no significant role in the political process." *Buckley*, 519 F. 2d, at 838 (footnotes omitted).

The court also noted:

"Congress found and the District Court confirmed that such contributions were often made for the purpose of furthering business or private interests by facilitating access to government officials or influencing governmental decisions, and that, conversely, elected officials have tended to afford special treatment to large contributors. *See* S. Rep. No. 93–689, 93d Cong., 2d Sess. 4–5; Findings I, ¶¶ 108, 110, 118, 170." *Id.*, at 838, n. 32.

Citing further evidence of corruption, the court explained:

"The disclosures of illegal corporate contributions in 1972 included the testimony of executives that they were motivated by the perception that this was necessary as a 'calling card, something that would get us in the door and make our point of view heard,' *Hearings before the Senate Select Comm. on Presidential Campaign Activities*, 93d Cong., 1st Sess. 5442 (1973) (Ashland Oil Co.—Orin Atkins, Chairman) or 'in response to pressure for fear of a competitive disadvantage that might result,' *id.* at 5495, 5514 (American Airlines—George Spater, former chairman); *see* Findings I, ¶ 105. The record before Congress was replete with specific examples

tribution limits that had enabled contributors of massive sums to avoid disclosure. *Id.*, at 837–841.[6]

The Court of Appeals upheld the provisions establishing contribution and expenditure limitations on the theory that they should be viewed as regulations of conduct rather than speech. *Id.*, at 840–841 (citing *United States* v. *O'Brien*, 391 U. S. 367, 376–377 (1968)). This Court, however, concluded that each set of limitations raised serious—though different—concerns under the First Amendment. *Buckley* v. *Valeo*, 424 U. S. 1, 14–23 (1976) *(per curiam)*. We treated the limitations on candidate and individual expenditures as direct restraints on speech, but we observed that the contribution limitations, in contrast, imposed only "a marginal restriction upon the contributor's ability to engage in free communication." *Id.*, at 20–21. Considering the "deeply disturbing examples" of corruption related to candidate contributions discussed in the Court of Appeals' opinion, we determined that limiting contributions served an interest in protecting "the integrity of our system of representative democracy." *Id.*, at 26–27. In the end, the Act's primary purpose—"to limit the actuality and appearance of corruption resulting from large individual financial contributions"—pro-

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of improper attempts to obtain governmental favor in return for large campaign contributions. *See* Findings I, ¶¶ 159–64." *Id.*, at 839, n. 37.

[6] The court cited the intricate scheme of the American Milk Producers, Inc., as an example of the lengths to which contributors went to avoid their duty to disclose:

"Since the milk producers, on legal advice, worked on a $2500 limit per committee, they evolved a procedure, after consultation in November 1970 with Nixon fund raisers, to break down [their $2 million donation] into numerous smaller contributions to hundreds of committees in various states which could then hold the money for the President's reelection campaign, so as to permit the producers to meet independent reporting requirements without disclosure." *Id.*, at 839, n. 36.

The milk producers contributed large sums to the Nixon campaign "in order to gain a meeting with White House officials on price supports." *Ibid.*

vided "a constitutionally sufficient justification for the $1,000 contribution limitation." *Id.*, at 26.

We prefaced our analysis of the $1,000 limitation on expenditures by observing that it broadly encompassed every expenditure "'relative to a clearly identified candidate.'" *Id.*, at 39 (quoting 18 U. S. C. § 608(e)(1) (1970 ed., Supp. IV)). To avoid vagueness concerns we construed that phrase to apply only to "communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office." 424 U. S., at 42–44. We concluded, however, that as so narrowed, the provision would not provide effective protection against the dangers of *quid pro quo* arrangements, because persons and groups could eschew expenditures that expressly advocated the election or defeat of a clearly identified candidate while remaining "free to spend as much as they want to promote the candidate and his views." *Id.*, at 45. We also rejected the argument that the expenditure limits were necessary to prevent attempts to circumvent the Act's contribution limits, because FECA already treated expenditures controlled by or coordinated with the candidate as contributions, and we were not persuaded that independent expenditures posed the same risk of real or apparent corruption as coordinated expenditures. *Id.*, at 46–47. We therefore held that Congress' interest in preventing real or apparent corruption was inadequate to justify the heavy burdens on the freedoms of expression and association that the expenditure limits imposed.

We upheld all of the disclosure and reporting requirements in the Act that were challenged on appeal to this Court after finding that they vindicated three important interests: providing the electorate with relevant information about the candidates and their supporters; deterring actual corruption and discouraging the use of money for improper purposes; and facilitating enforcement of the prohibitions in the Act. *Id.*, at 66–68. In order to avoid an overbreadth problem, however, we placed the same narrowing construction on the

term "expenditure" in the disclosure context that we had adopted in the context of the expenditure limitations. Thus, we construed the reporting requirement for persons making expenditures of more than $100 in a year "to reach only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate." *Id.*, at 80 (footnote omitted).

Our opinion in *Buckley* addressed issues that primarily related to contributions and expenditures by individuals, since none of the parties challenged the prohibition on contributions by corporations and labor unions. We noted, however, that the statute authorized the use of corporate and union resources to form and administer segregated funds that could be used for political purposes. *Id.*, at 28–29, n. 31; see also n. 3, *supra.*

Three important developments in the years after our decision in *Buckley* persuaded Congress that further legislation was necessary to regulate the role that corporations, unions, and wealthy contributors play in the electoral process. As a preface to our discussion of the specific provisions of BCRA, we comment briefly on the increased importance of "soft money," the proliferation of "issue ads," and the disturbing findings of a Senate investigation into campaign practices related to the 1996 federal elections.

Soft Money

Under FECA, "contributions" must be made with funds that are subject to the Act's disclosure requirements and source and amount limitations. Such funds are known as "federal" or "hard" money. FECA defines the term "contribution," however, to include only the gift or advance of anything of value "made by any person for the purpose of influencing any election for *Federal* office." 2 U. S. C. § 431(8)(A)(i) (emphasis added). Donations made solely for the purpose of influencing state or local elections are therefore unaffected by FECA's requirements and prohibitions.

As a result, prior to the enactment of BCRA, federal law permitted corporations and unions, as well as individuals who had already made the maximum permissible contributions to federal candidates, to contribute "nonfederal money"—also known as "soft money"—to political parties for activities intended to influence state or local elections.

Shortly after *Buckley* was decided, questions arose concerning the treatment of contributions intended to influence both federal and state elections. Although a literal reading of FECA's definition of "contribution" would have required such activities to be funded with hard money, the FEC ruled that political parties could fund mixed-purpose activities—including get-out-the-vote drives and generic party advertising—in part with soft money.[7] In 1995 the FEC concluded that the parties could also use soft money to defray the costs of "legislative advocacy media advertisements," even if the ads mentioned the name of a federal candidate, so long as

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[7] In 1977 the FEC promulgated a rule allowing parties to allocate their administrative expenses "on a reasonable basis" between accounts containing funds raised in compliance with FECA and accounts containing nonfederal funds, including corporate and union donations. 11 CFR § 102.6(a)(2). In advisory opinions issued in 1978 and 1979, the FEC allowed parties similarly to allocate the costs of voter registration and get-out-the-vote drives between federal and nonfederal accounts. FEC Advisory Op. 1978–10; FEC Advisory Op. 1979–17. See 251 F. Supp. 2d, at 195–197 *(per curiam)*.

In 1990 the FEC clarified the phrase "on a reasonable basis" by promulgating fixed allocation rates. 11 CFR § 106.5 (1991). The regulations required the Republican National Committee (RNC) and Democratic National Committee (DNC) to pay for at least 60% of mixed-purpose activities (65% in Presidential election years) with funds from their federal accounts. § 106.5(b)(2). By contrast, the regulations required state and local committees to allocate similar expenditures based on the ratio of federal to nonfederal offices on the State's ballot, § 106.5(d)(1), which in practice meant that they could expend a substantially greater proportion of soft money than national parties to fund mixed-purpose activities affecting both federal and state elections. See 251 F. Supp. 2d, at 198–199 *(per curiam)*.

they did not expressly advocate the candidate's election or defeat. FEC Advisory Op. 1995–25.

As the permissible uses of soft money expanded, the amount of soft money raised and spent by the national political parties increased exponentially. Of the two major parties' total spending, soft money accounted for 5% ($21.6 million) in 1984, 11% ($45 million) in 1988, 16% ($80 million) in 1992, 30% ($272 million) in 1996, and 42% ($498 million) in 2000.[8] The national parties transferred large amounts of their soft money to the state parties, which were allowed to use a larger percentage of soft money to finance mixed-purpose activities under FEC rules.[9] In the year 2000, for example, the national parties diverted $280 million—more than half of their soft money—to state parties.

Many contributions of soft money were dramatically larger than the contributions of hard money permitted by FECA. For example, in 1996 the top five corporate soft-money donors gave, in total, more than $9 million in nonfederal funds to the two national party committees.[10] In the most recent election cycle the political parties raised almost $300 million—60% of their total soft-money fundraising—from just 800 donors, each of which contributed a minimum of $120,000.[11] Moreover, the largest corporate donors often made substantial contributions to both parties.[12] Such practices corroborate evidence indicating that many corporate contributions were motivated by a desire for access to candi-

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[8] 1 Defs. Exhs., Tab 1, Tbl. 2 (report of Thomas E. Mann, Chair & Sr. Fellow, Brookings Institution (hereinafter Mann Expert Report)); 251 F. Supp. 2d, at 197–201 *(per curiam)*.

[9] Mann Expert Report 26; 251 F. Supp. 2d, at 441 (Kollar-Kotelly, J.).

[10] *Id.*, at 494 (Kollar-Kotelly, J.).

[11] Mann Expert Report 24.

[12] In the 2000 election cycle, 35 of the 50 largest soft-money donors gave to both parties; 28 of the 50 gave more than $100,000 to both parties. Mann Expert Report Tbl. 6; see also 251 F. Supp. 2d, at 509 (Kollar-Kotelly, J.); *id.*, at 785, n. 77 (Leon, J.).

dates and a fear of being placed at a disadvantage in the legislative process relative to other contributors, rather than by ideological support for the candidates and parties.[13]

Not only were such soft-money contributions often designed to gain access to federal candidates, but they were in many cases solicited by the candidates themselves. Candidates often directed potential donors to party committees and tax-exempt organizations that could legally accept soft money. For example, a federal legislator running for reelection solicited soft money from a supporter by advising him that even though he had already "'contributed the legal maximum'" to the campaign committee, he could still make an additional contribution to a joint program supporting federal, state, and local candidates of his party.[14] Such solicitations were not uncommon.[15]

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[13] A former chief executive officer of a large corporation explained:

"Business and labor leaders believe, based on their experience, that disappointed Members, and their party colleagues, may shun or disfavor them because they have not contributed. Equally, these leaders fear that if they refuse to contribute (enough), competing interests who do contribute generously will have an advantage in gaining access to and influencing key Congressional leaders on matters of importance to the company or union." App. 283, ¶ 9 (declaration of Gerald Greenwald, United Airlines (hereinafter Greenwald Decl.)).

Amici Curiae Committee for Economic Development and various business leaders attest that corporate soft-money contributions are "coerced and, at bottom, wholly commercial" in nature, and that "[b]usiness leaders increasingly wish to be freed from the grip of a system in which they fear the adverse consequences of refusing to fill the coffers of the major parties." Brief for Committee for Economic Development et al. as *Amici Curiae* 28.

[14] See 251 F. Supp. 2d, at 480 (Kollar-Kotelly, J.); *id.*, at 842 (Leon, J.).

[15] See *id.*, at 479–480 (Kollar-Kotelly, J.); *id.*, at 842–843 (Leon, J.). One former party official explained to the District Court:

"'Once you've helped a federal candidate by contributing hard money to his or her campaign, you are sometimes asked to do more for the candidate by making donations of hard and/or soft money to the national party committees, the relevant state party (assuming it can accept corporate contri-

The solicitation, transfer, and use of soft money thus enabled parties and candidates to circumvent FECA's limitations on the source and amount of contributions in connection with federal elections.

Issue Advertising

In *Buckley* we construed FECA's disclosure and reporting requirements, as well as its expenditure limitations, "to reach only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate." 424 U. S., at 80 (footnote omitted). As a result of that strict reading of the statute, the use or omission of "magic words" such as "Elect John Smith" or "Vote Against Jane Doe" marked a bright statutory line separating "express advocacy" from "issue advocacy." See *id.*, at 44, n. 52. Express advocacy was subject to FECA's limitations and could be financed only using hard money. The political parties, in other words, could not use soft money to sponsor ads that used any magic words, and corporations and unions could not fund such ads out of their general treasuries. So-called issue ads, on the other hand, not only could be financed with soft money, but could be aired without disclosing the identity of, or any other information about, their sponsors.

While the distinction between "issue" and express advocacy seemed neat in theory, the two categories of advertisements proved functionally identical in important respects. Both were used to advocate the election or defeat of clearly identified federal candidates, even though the so-called issue ads eschewed the use of magic words.[16] Little difference

butions), or an outside group that is planning on doing an independent expenditure or issue advertisement to help the candidate's campaign.'" *Id.*, at 479 (Kollar-Kotelly, J.).

[16] *Id.*, at 532–537 (Kollar-Kotelly, J.); *id.*, at 875–879 (Leon, J.). As the former chair of one major advocacy organization's PAC put it: "'It is foolish to believe there is any practical difference between issue advocacy and advocacy of a political candidate. What separates issue advocacy and political advocacy is a line in the sand drawn on a windy day.'" *Id.*, at 536–537 (Kollar-Kotelly, J.) (quoting Tanya K. Metaksa, Opening Remarks

existed, for example, between an ad that urged viewers to "vote against Jane Doe" and one that condemned Jane Doe's record on a particular issue before exhorting viewers to "call Jane Doe and tell her what you think."[17] Indeed, campaign professionals testified that the most effective campaign ads, like the most effective commercials for products such as Coca-Cola, should, and did, avoid the use of the magic words.[18] Moreover, the conclusion that such ads were specifically intended to affect election results was confirmed by the fact that almost all of them aired in the 60 days immediately preceding a federal election.[19] Corporations and unions spent hundreds of millions of dollars of their general funds to pay for these ads,[20] and those expenditures, like

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at the American Assn. of Political Consultants Fifth General Session on "Issue Advocacy," Jan. 17, 1997, p. 2); 251 F. Supp. 2d, at 878–879 (Leon, J.) (same).

[17] *Id.*, at 304 (Henderson, J., concurring in judgment in part and dissenting in part); *id.*, at 534 (Kollar-Kotelly, J.); *id.*, at 875–879 (Leon, J.).

[18] It is undisputed that very few ads—whether run by candidates, parties, or interest groups—used words of express advocacy. *Id.*, at 303 (Henderson, J.); *id.*, at 529 (Kollar-Kotelly, J.); *id.*, at 874 (Leon, J.). In the 1998 election cycle, just 4% of candidate advertisements used magic words; in 2000, that number was a mere 5%. App. 1334 (report of Jonathan S. Krasno, Yale University, & Frank J. Sorauf, University of Minnesota, pp. 53–54 (hereinafter Krasno & Sorauf Expert Report); see 1 Defs. Exhs., Tab 2, pp. 53–54).

[19] 251 F. Supp. 2d, at 564, and n. 96 (Kollar-Kotelly, J.) (citing report of Kenneth M. Goldstein, University of Wisconsin-Madison, App. A, Tbl. 16; see 3–R Defs. Exhs., Tab 7); Tr. of Oral Arg. 202–203; see also 251 F. Supp. 2d, at 305 (Henderson, J.).

[20] The spending on electioneering communications climbed dramatically during the last decade. In the 1996 election cycle, $135 to $150 million was spent on multiple broadcasts of about 100 ads. In the next cycle (1997–1998), 77 organizations aired 423 ads at a total cost between $270 and $340 million. By the 2000 election, 130 groups spent over an estimated $500 million on more than 1,100 different ads. Two out of every three dollars spent on issue ads in the 2000 cycle were attributable to the two major parties and six major interest groups. *Id.*, at 303–304 (Henderson, J.) (citing Annenberg Public Policy Center, Issue Advertising in the 1999–2000 Election Cycle 1–15 (2001) (hereinafter Annenberg Report); see

soft-money donations to the political parties, were unregulated under FECA. Indeed, the ads were attractive to organizations and candidates precisely because they were beyond FECA's reach, enabling candidates and their parties to work closely with friendly interest groups to sponsor so-called issue ads when the candidates themselves were running out of money.[21]

Because FECA's disclosure requirements did not apply to so-called issue ads, sponsors of such ads often used misleading names to conceal their identity. "Citizens for Better Medicare," for instance, was not a grassroots organization of citizens, as its name might suggest, but was instead a platform for an association of drug manufacturers.[22] And "Republicans for Clean Air," which ran ads in the 2000 Republican Presidential primary, was actually an organization consisting of just two individuals—brothers who together spent $25 million on ads supporting their favored candidate.[23]

While the public may not have been fully informed about the sponsorship of so-called issue ads, the record indi-

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38 Defs. Exhs., Tab 22); 251 F. Supp. 2d, at 527 (Kollar-Kotelly, J.) (same); *id.*, at 879 (Leon, J.) (same).

[21] *Id.*, at 540 (Kollar-Kotelly, J.) (citing internal AFL–CIO Memorandum from Brian Weeks to Mike Klein, Electronic Buy for Illinois Senator (Oct. 9, 1996), AFL–CIO 005244); 251 F. Supp. 2d, at 886 (Leon, J.) (same).

[22] The association was known as the Pharmaceutical Research and Manufacturers of America (PhRMA). *Id.*, at 232 *(per curiam)*.

[23] *Id.*, at 232–233. Other examples of mysterious groups included "Voters for Campaign Truth," "Aretino Industries," "Montanans for Common Sense Mining Laws," "American Seniors, Inc.," "American Family Voices," App. 1355 (Krasno & Sorauf Expert Report 71–77), and the "Coalition to Make our Voices Heard," 251 F. Supp. 2d, at 538 (Kollar-Kotelly, J.). Some of the actors behind these groups frankly acknowledged that "'in some places it's much more effective to run an ad by the "Coalition to Make Our Voices Heard" than it is to say paid for by "the men and women of the AFL–CIO."'" *Ibid.* (Kollar-Kotelly, J.) (quoting report of David B. Magleby, Brigham Young University 18–19 (hereinafter Magleby Expert Report), App. 1484–1485).

cates that candidates and officeholders often were. A former Senator confirmed that candidates and officials knew who their friends were and "'sometimes suggest[ed] that corporations or individuals make donations to interest groups that run "issue ads."'"[24] As with soft-money contributions, political parties and candidates used the availability of so-called issue ads to circumvent FECA's limitations, asking donors who contributed their permitted quota of hard money to give money to nonprofit corporations to spend on "issue" advocacy.[25]

Senate Committee Investigation

In 1998 the Senate Committee on Governmental Affairs issued a six-volume report summarizing the results of an extensive investigation into the campaign practices in the 1996 federal elections. The report gave particular attention to the effect of soft money on the American political system, including elected officials' practice of granting special access in return for political contributions.

The committee's principal findings relating to Democratic Party fundraising were set forth in the majority's report, while the minority report primarily described Republican practices. The two reports reached consensus, however, on certain central propositions. They agreed that the "soft money loophole" had led to a "meltdown" of the campaign finance system that had been intended "to keep corporate, union and large individual contributions from influencing the electoral process."[26] One Senator stated that "the hearings provided overwhelming evidence that the twin loopholes of soft money and bogus issue advertising have virtually de-

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[24] 251 F. Supp. 2d, at 518–519 (Kollar-Kotelly, J.).

[25] *Id.*, at 478–479 (Kollar-Kotelly, J.) (citing declaration of Robert Hickmott, Senior V. P., Smith-Free Group ¶ 8 (hereinafter Hickmott Decl.); see 6–R Defs. Exhs., Tab 19, ¶ 8).

[26] S. Rep. No. 105–167, vol. 4, p. 4611 (1998) (hereinafter 1998 Senate Report); 5 *id.*, at 7515.

stroyed our campaign finance laws, leaving us with little more than a pile of legal rubble."[27]

The report was critical of both parties' methods of raising soft money, as well as their use of those funds. It concluded that both parties promised and provided special access to candidates and senior Government officials in exchange for large soft-money contributions. The committee majority described the White House coffees that rewarded major donors with access to President Clinton,[28] and the courtesies extended to an international businessman named Roger Tamraz, who candidly acknowledged that his donations of about $300,000 to the DNC and to state parties were motivated by his interest in gaining the Federal Government's support for an oil-line project in the Caucasus.[29] The minority described the promotional materials used by the RNC's two principal donor programs, "Team 100" and the "Republican Eagles," which promised "special access to high-ranking Republican elected officials, including governors, senators, and representatives."[30] One fundraising letter recited that the chairman of the RNC had personally escorted a donor on

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[27] 3 *id.*, at 4535 (additional views of Sen. Collins).

[28] 1 *id.*, at 41–42, 195–200. The report included a memorandum written by the DNC finance chairman suggesting the use of White House coffees and "overnights" to give major donors "quality time" with the President, and noted that the guests accounted for $26.4 million in contributions. *Id.*, at 194, 196.

[29] 2 *id.*, at 2913–2914, 2921. Despite concerns about Tamraz's background and a possible conflict with United States foreign policy interests, he was invited to six events attended by the President. *Id.*, at 2920–2921. Similarly, the minority noted that in exchange for Michael Kojima's contribution of $500,000 to the 1992 President's Dinner, he and his wife had been placed at the head table with President and Mrs. Bush. Moreover, Kojima received several additional meetings with the President, other administration officials, and United States embassy officials. 4 *id.*, at 5418, 5422, 5428.

[30] The former requires an initial contribution of $100,000, and $25,000 for each of the next three years; the latter requires annual contributions of $15,000. 5 *id.*, at 7968.

appointments that "'turned out to be very significant in the legislation affecting public utility holding companies'" and made the donor "'a hero in his industry.'"[31]

In 1996 both parties began to use large amounts of soft money to pay for issue advertising designed to influence federal elections. The committee found such ads highly problematic for two reasons. Since they accomplished the same purposes as express advocacy (which could lawfully be funded only with hard money), the ads enabled unions, corporations, and wealthy contributors to circumvent protections that FECA was intended to provide. Moreover, though ostensibly independent of the candidates, the ads were often actually coordinated with, and controlled by, the campaigns.[32] The ads thus provided a means for evading FECA's candidate contribution limits.

The report also emphasized the role of state and local parties. While the FEC's allocation regime permitted national parties to use soft money to pay for up to 40% of the costs of both generic voter activities and issue advertising, they allowed state and local parties to use larger percentages of soft money for those purposes.[33] For that reason, national parties often made substantial transfers of soft money to "state and local political parties for 'generic voter activities' that in fact ultimately benefit[ed] federal candidates because the funds for all practical purposes remain[ed] under the control of the national committees." The report concluded that "[t]he use of such soft money thus allow[ed] more corporate, union treasury, and large contributions from wealthy individuals into the system."[34]

The report discussed potential reforms, including a ban on soft money at the national and state party levels and restric-

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[31] *Id.*, at 7971.

[32] 1 *id.*, at 49; 3 *id.*, at 3997–4006.

[33] *Id.*, at 4466.

[34] *Ibid.*

tions on sham issue advocacy by nonparty groups.[35] The majority expressed the view that a ban on the raising of soft money by national party committees would effectively address the use of union and corporate general treasury funds in the federal political process only if it required that candidate-specific ads be funded with hard money.[36] The minority similarly recommended the elimination of soft-money contributions to political parties from individuals, corporations, and unions, as well as "reforms addressing candidate advertisements masquerading as issue ads."[37]

II

In BCRA, Congress enacted many of the committee's proposed reforms. BCRA's central provisions are designed to address Congress' concerns about the increasing use of soft money and issue advertising to influence federal elections. Title I regulates the use of soft money by political parties, officeholders, and candidates. Title II primarily prohibits corporations and labor unions from using general treasury funds for communications that are intended to, or have the effect of, influencing the outcome of federal elections.

Section 403 of BCRA provides special rules for actions challenging the constitutionality of any of the Act's provisions. 2 U. S. C. § 437h note (Supp. II). Eleven such actions were filed promptly after the statute went into effect in March 2002. As required by § 403, those actions were filed in the District Court for the District of Columbia and heard by a three-judge court. Section 403 directed the District Court to advance the cases on the docket and to expedite their disposition "to the greatest possible extent." The court received a voluminous record compiled by the parties and ultimately delivered a decision embodied in a two-judge *per curiam* opinion and three separate, lengthy opinions,

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[35] *Id.*, at 4468–4470, 4480–4481, 4491–4494.

[36] *Id.*, at 4492.

[37] 6 *id.*, at 9394.

each of which contained extensive commentary on the facts and a careful analysis of the legal issues. 251 F. Supp. 2d 176 (2003). The three judges reached unanimity on certain issues but differed on many. Their judgment, entered on May 1, 2003, held some parts of BCRA unconstitutional and upheld others. 251 F. Supp. 2d 948.

As authorized by § 403, all of the losing parties filed direct appeals to this Court within 10 days. 2 U. S. C. § 437h note. On June 5, 2003, we noted probable jurisdiction and ordered the parties to comply with an expedited briefing schedule and present their oral arguments at a special hearing on September 8, 2003. 539 U. S. 911. To simplify the presentation, we directed the parties challenging provisions of BCRA to proceed first on all issues, whether or not they prevailed on any issue in the District Court. *Ibid.* Mindful of § 403's instruction that we expedite our disposition of these appeals to the greatest extent possible, we also consider each of the issues in order. Accordingly, we first turn our attention to Title I of BCRA.

III

Title I is Congress' effort to plug the soft-money loophole. The cornerstone of Title I is new FECA § 323(a), which prohibits national party committees and their agents from soliciting, receiving, directing, or spending any soft money. 2 U. S. C. § 441i(a) (Supp. II).[38] In short, § 323(a) takes national parties out of the soft-money business.

The remaining provisions of new FECA § 323 largely reinforce the restrictions in § 323(a). New FECA § 323(b) prevents the wholesale shift of soft-money influence from

[38] The national party committees of the two major political parties are: the RNC; the DNC; the National Republican Senatorial Committee (NRSC); the National Republican Congressional Committee (NRCC); the Democratic Senatorial Campaign Committee (DSCC); and the Democratic Congressional Campaign Committee (DCCC). 251 F. Supp. 2d, at 468 (Kollar-Kotelly, J.).

national to state party committees by prohibiting state and local party committees from using such funds for activities that affect federal elections. 2 U. S. C. § 441i(b). These "Federal election activit[ies]," defined in new FECA § 301(20)(A), are almost identical to the mixed-purpose activities that have long been regulated under the FEC's pre-BCRA allocation regime. 2 U. S. C. § 431(20)(A). New FECA § 323(d) reinforces these soft-money restrictions by prohibiting political parties from soliciting and donating funds to tax-exempt organizations that engage in electioneering activities. 2 U. S. C. § 441i(d). New FECA § 323(e) restricts federal candidates and officeholders from receiving, spending, or soliciting soft money in connection with federal elections and limits their ability to do so in connection with state and local elections. 2 U. S. C. § 441i(e). Finally, new FECA § 323(f) prevents circumvention of the restrictions on national, state, and local party committees by prohibiting state and local candidates from raising and spending soft money to fund advertisements and other public communications that promote or attack federal candidates. 2 U. S. C. § 441i(f).

Plaintiffs mount a facial First Amendment challenge to new FECA § 323, as well as challenges based on the Elections Clause, U. S. Const., Art. I, § 4, principles of federalism, and the equal protection component of the Due Process Clause. We address these challenges in turn.

A

In *Buckley* and subsequent cases, we have subjected restrictions on campaign expenditures to closer scrutiny than limits on campaign contributions. See, *e. g.*, *Federal Election Comm'n* v. *Beaumont*, 539 U. S. 146, 161 (2003); see also *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S. 377, 387–388 (2000); *Buckley*, 424 U. S., at 19. In these cases we have recognized that contribution limits, unlike limits on expenditures, "entai[l] only a marginal restriction upon the

contributor's ability to engage in free communication." *Id.*, at 20; see also, *e. g.*, *Beaumont, supra,* at 161; *Shrink Missouri, supra,* at 386–388. In *Buckley* we said:

> "A contribution serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support. The quantity of communication by the contributor does not increase perceptibly with the size of the contribution, since the expression rests solely on the undifferentiated, symbolic act of contributing. At most, the size of the contribution provides a very rough index of the intensity of the contributor's support for the candidate. A limitation on the amount of money a person may give to a candidate or campaign organization thus involves little direct restraint on his political communication, for it permits the symbolic expression of support evidenced by a contribution but does not in any way infringe the contributor's freedom to discuss candidates and issues. While contributions may result in political expression if spent by a candidate or an association to present views to the voters, the transformation of contributions into political debate involves speech by someone other than the contributor." 424 U. S., at 21 (footnote omitted).

Because the communicative value of large contributions inheres mainly in their ability to facilitate the speech of their recipients, we have said that contribution limits impose serious burdens on free speech only if they are so low as to "preven[t] candidates and political committees from amassing the resources necessary for effective advocacy." *Ibid.*

We have recognized that contribution limits may bear "more heavily on the associational right than on freedom to speak," *Shrink Missouri, supra,* at 388, since contributions serve "to affiliate a person with a candidate" and "enabl[e] like-minded persons to pool their resources," *Buckley,* 424 U. S., at 22. Unlike expenditure limits, however, which

"preclud[e] most associations from effectively amplifying the voice of their adherents," contribution limits both "leave the contributor free to become a member of any political association and to assist personally in the association's efforts on behalf of candidates," and allow associations "to aggregate large sums of money to promote effective advocacy." *Ibid.* The "overall effect" of dollar limits on contributions is "merely to require candidates and political committees to raise funds from a greater number of persons." *Id.*, at 21–22. Thus, a contribution limit involving even "'significant interference'" with associational rights is nevertheless valid if it satisfies the "lesser demand" of being "'closely drawn'" to match a "'sufficiently important interest.'" *Beaumont*, *supra*, at 162 (quoting *Shrink Missouri*, *supra*, at 387–388).[39]

Our treatment of contribution restrictions reflects more than the limited burdens they impose on First Amendment freedoms. It also reflects the importance of the interests that underlie contribution limits—interests in preventing "both the actual corruption threatened by large financial contributions and the eroding of public confidence in the electoral process through the appearance of corruption." *National Right to Work*, 459 U. S., at 208; see also *Federal Election Comm'n* v. *Colorado Republican Federal Campaign Comm.*, 533 U. S. 431, 440–441 (2001) *(Colorado II)*. We have said that these interests directly implicate "'the integrity of our electoral process, and, not less, the responsibility of the individual citizen for the successful functioning

[39] JUSTICE KENNEDY accuses us of engaging in a sleight of hand by conflating "unseemly corporate speech" with the speech of political parties and candidates, and then adverting to the "corporate speech rationale as if it were the linchpin of the case." *Post*, at 290–291 (opinion concurring in judgment in part and dissenting in part). This is incorrect. The principles set forth here and relied upon in assessing Title I are the same principles articulated in *Buckley* and its progeny that regulations of contributions to candidates, parties, and political committees are subject to less rigorous scrutiny than direct restraints on speech—including "unseemly corporate speech."

of that process.'" *National Right to Work*, *supra*, at 208 (quoting *Automobile Workers*, 352 U. S., at 570). Because the electoral process is the very "means through which a free society democratically translates political speech into concrete governmental action," *Shrink Missouri*, 528 U. S., at 401 (BREYER, J., concurring), contribution limits, like other measures aimed at protecting the integrity of the process, tangibly benefit public participation in political debate. For that reason, when reviewing Congress' decision to enact contribution limits, "there is no place for a strong presumption against constitutionality, of the sort often thought to accompany the words 'strict scrutiny.'" *Id.*, at 400 (BREYER, J., concurring). The less rigorous standard of review we have applied to contribution limits (*Buckley*'s "closely drawn" scrutiny) shows proper deference to Congress' ability to weigh competing constitutional interests in an area in which it enjoys particular expertise. It also provides Congress with sufficient room to anticipate and respond to concerns about circumvention of regulations designed to protect the integrity of the political process.

Our application of this less rigorous degree of scrutiny has given rise to significant criticism in the past from our dissenting colleagues. See, *e. g.*, *Shrink Missouri*, 528 U. S., at 405–410 (KENNEDY, J., dissenting); *id.*, at 410–420 (THOMAS, J., dissenting); *Colorado Republican Federal Campaign Comm.* v. *Federal Election Comm'n*, 518 U. S. 604, 635–644 (1996) *(Colorado I)* (THOMAS, J., dissenting). We have rejected such criticism in previous cases for the reasons identified above. We are also mindful of the fact that in its lengthy deliberations leading to the enactment of BCRA, Congress properly relied on the recognition of its authority contained in *Buckley* and its progeny. Considerations of *stare decisis*, buttressed by the respect that the Legislative and Judicial Branches owe to one another, provide additional powerful reasons for adhering to the analysis of contribution limits that the Court has consistently followed since *Buckley*

was decided. See *Hilton* v. *South Carolina Public Railways Comm'n*, 502 U. S. 197, 202 (1991).[40]

Like the contribution limits we upheld in *Buckley*, § 323's restrictions have only a marginal impact on the ability of contributors, candidates, officeholders, and parties to engage in effective political speech. *Beaumont*, 539 U. S., at 161. Complex as its provisions may be, § 323, in the main, does little more than regulate the ability of wealthy individuals, corporations, and unions to contribute large sums of money to influence federal elections, federal candidates, and federal officeholders.

Plaintiffs contend that we must apply strict scrutiny to § 323 because many of its provisions restrict not only contributions but also the spending and solicitation of funds raised outside of FECA's contribution limits. But for purposes of determining the level of scrutiny, it is irrelevant that Congress chose in § 323 to regulate contributions on the demand rather than the supply side. See, *e. g.*, *National Right to Work*, *supra*, at 206–211 (upholding a provision restricting PACs' ability to solicit funds). The relevant inquiry is whether the mechanism adopted to implement the contribu-

[40] Since our decision in *Buckley*, we have consistently applied less rigorous scrutiny to contribution restrictions aimed at the prevention of corruption and the appearance of corruption. See, *e. g.*, 424 U. S., at 23–36 (applying less rigorous scrutiny to FECA's $1,000 limit on individual contributions to a candidate and FECA's $5,000 limit on PAC contributions to a candidate); *id.*, at 38 (applying less rigorous scrutiny to FECA's $25,000 aggregate yearly limit on contributions to candidates, political party committees, and political committees); *California Medical Assn.* v. *Federal Election Comm'n*, 453 U. S. 182, 195–196 (1981) (plurality opinion) (applying less rigorous scrutiny to FECA's $5,000 limit on contributions to multicandidate political committees); *National Right to Work*, 459 U. S., at 208–211 (applying less rigorous scrutiny to antisolicitation provision buttressing an otherwise valid contribution limit); *Colorado II*, 533 U. S. 431, 456 (2001) (applying less rigorous scrutiny to expenditures coordinated with a candidate); *Federal Election Comm'n* v. *Beaumont*, 539 U. S. 146, 161–162 (2003) (applying less rigorous scrutiny to provisions intended to prevent circumvention of otherwise valid contribution limits).

tion limit, or to prevent circumvention of that limit, burdens speech in a way that a direct restriction on the contribution itself would not. That is not the case here.

For example, while § 323(a) prohibits national parties from receiving or spending nonfederal money, and § 323(b) prohibits state party committees from spending nonfederal money on federal election activities, neither provision in any way limits the total amount of money parties can spend. 2 U. S. C. §§ 441i(a), (b) (Supp. II). Rather, they simply limit the source and individual amount of donations. That they do so by prohibiting the spending of soft money does not render them expenditure limitations.[41]

Similarly, the solicitation provisions of §§ 323(a) and 323(e), which restrict the ability of national party committees, federal candidates, and federal officeholders to solicit nonfederal funds, leave open ample opportunities for soliciting federal funds on behalf of entities subject to FECA's source and amount restrictions. Even § 323(d), which on its face enacts a blanket ban on party solicitations of funds to certain tax-exempt organizations, nevertheless allows parties to solicit funds to the organizations' federal PACs. 2 U. S. C. § 441i(d). As for those organizations that cannot or do not administer PACs, parties remain free to donate federal funds directly to such organizations, and may solicit funds expressly for that purpose. See *infra*, at 180–181 (construing § 323(d)'s restriction on donations by parties to apply only to donations from a party committee's nonfederal or soft-money account). And as with § 323(a), § 323(d) places no limits on other means of endorsing tax-exempt organizations or any restrictions on solicitations by party officers acting in their individual capacities. 2 U. S. C. §§ 441i(a), (d).

Section 323 thus shows "due regard for the reality that solicitation is characteristically intertwined with informative

[41] Indeed, Congress structured § 323(b) in such a way as to free individual, corporate, and union donations to state committees for *nonfederal* elections from federal source and amount restrictions.

and perhaps persuasive speech seeking support for particular causes or for particular views." *Schaumburg* v. *Citizens for a Better Environment*, 444 U. S. 620, 632 (1980). The fact that party committees and federal candidates and officeholders must now ask only for limited dollar amounts or request that a corporation or union contribute money through its PAC in no way alters or impairs the political message "intertwined" with the solicitation. Cf. *Riley* v. *National Federation of Blind of N. C., Inc.*, 487 U. S. 781, 795 (1988) (treating solicitation restriction that required fundraisers to disclose particular information as a content-based regulation subject to strict scrutiny because it "necessarily alter[ed] the content of the speech"). And rather than chill such solicitations, as was the case in *Schaumburg*, the restriction here tends to increase the dissemination of information by forcing parties, candidates, and officeholders to solicit from a wider array of potential donors. As with direct limits on contributions, therefore, § 323's spending and solicitation restrictions have only a marginal impact on political speech.[42]

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[42] JUSTICE KENNEDY's contention that less rigorous scrutiny applies only to regulations burdening political association, rather than political speech, misreads *Buckley*. In *Buckley*, we recognized that contribution limits burden both protected speech and association, though they generally have more significant impacts on the latter. 424 U. S., at 20–22. We nevertheless applied less rigorous scrutiny to FECA's contribution limits because neither burden was sufficiently weighty to overcome Congress' countervailing interest in protecting the integrity of the political process. See *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S. 377, 388 (2000) ("While we did not [in *Buckley*] attempt to parse [the] distinctions between the speech and association standards of scrutiny for contribution limits, we did make it clear that those restrictions bore more heavily on the associational right than on [the] freedom to speak. We consequently proceeded on the understanding that a contribution limitation surviving a claim of associational abridgment would survive a speech challenge as well, and we held the standard satisfied by the contribution limits under review" (citation omitted)). It is thus simply untrue in the campaign finance context that all "burdens on speech necessitate strict scrutiny review." *Post*, at 312.

Finally, plaintiffs contend that the type of associational burdens that § 323 imposes are fundamentally different from the burdens that accompanied *Buckley*'s contribution limits, and merit the type of strict scrutiny we have applied to attempts to regulate the internal processes of political parties. *E. g.*, *California Democratic Party* v. *Jones*, 530 U. S. 567, 573–574 (2000). In making this argument, plaintiffs greatly exaggerate the effect of § 323, contending that it precludes *any* collaboration among national, state, and local committees of the same party in fundraising and electioneering activities. We do not read the provisions in that way. See *infra*, at 161. Section 323 merely subjects a greater percentage of contributions to parties and candidates to FECA's source and amount limitations. *Buckley* has already acknowledged that such limitations "leave the contributor free to become a member of any political association and to assist personally in the association's efforts on behalf of candidates." 424 U. S., at 22. The modest impact that § 323 has on the ability of committees within a party to associate with each other does not independently occasion strict scrutiny. None of this is to suggest that the alleged associational burdens imposed on parties by § 323 have no place in the First Amendment analysis; it is only that we account for them in the application, rather than the choice, of the appropriate level of scrutiny.[43]

With these principles in mind, we apply the less rigorous scrutiny applicable to contribution limits to evaluate the constitutionality of new FECA § 323. Because the five

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[43] JUSTICE KENNEDY is no doubt correct that the associational burdens imposed by a particular piece of campaign-finance regulation may at times be so severe as to warrant strict scrutiny. *Post*, at 311. In light of our interpretation of § 323(a), however, see *infra*, at 161, § 323 does not present such a case. As JUSTICE KENNEDY himself acknowledges, even "*significant* interference" with "protected rights of association" are subject to less rigorous scrutiny. *Beaumont*, 539 U. S., at 162; see *post*, at 311. There is thus nothing inconsistent in our decision to account for the particular associational burdens imposed by § 323(a) when applying the appropriate level of scrutiny.

challenged provisions of § 323 implicate different First Amendment concerns, we discuss them separately. We are mindful, however, that Congress enacted § 323 as an integrated whole to vindicate the Government's important interest in preventing corruption and the appearance of corruption.

New FECA § 323(a)'s Restrictions on National Party Committees

The core of Title I is new FECA § 323(a), which provides that "national committee[s] of a political party . . . may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of this Act." 2 U. S. C. § 441i(a)(1) (Supp. II). The prohibition extends to "any officer or agent acting on behalf of such a national committee, and any entity that is directly or indirectly established, financed, maintained, or controlled by such a national committee." § 441i(a)(2).

The main goal of § 323(a) is modest. In large part, it simply effects a return to the scheme that was approved in *Buckley* and that was subverted by the creation of the FEC's allocation regime, which permitted the political parties to fund federal electioneering efforts with a combination of hard and soft money. See *supra,* at 123–125, and n. 7. Under that allocation regime, national parties were able to use vast amounts of soft money in their efforts to elect federal candidates. Consequently, as long as they directed the money to the political parties, donors could contribute large amounts of soft money for use in activities designed to influence federal elections.[44] New § 323(a) is designed to put a stop to that practice.

[44] The fact that the post-1990 explosion in soft-money spending on federal electioneering was accompanied by a series of efforts in Congress to clamp down on such uses of soft money (culminating, of course, in BCRA)

1. *Governmental Interests Underlying New FECA § 323(a)*

The Government defends § 323(a)'s ban on national parties' involvement with soft money as necessary to prevent the actual and apparent corruption of federal candidates and officeholders. Our cases have made clear that the prevention of corruption or its appearance constitutes a sufficiently important interest to justify political contribution limits. We have not limited that 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." 424 U. S., at 28. Thus, "[i]n speaking of 'improper influence' and 'opportunities for abuse' in addition to '*quid pro quo* arrangements,' we [have] recognized a concern not confined to bribery of public officials, but extending to the broader threat from politicians too compliant with the wishes of large contributors." *Shrink Missouri*, 528 U. S., at 389; see also *Colorado II*, 533 U. S., at 441 (acknowledging that corruption extends beyond explicit cash-for-votes agreements to "undue influence on an officeholder's judgment").

Of "almost equal" importance has been the Government's interest in combating the appearance or perception of corruption engendered by large campaign contributions.

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underscores the fact that the FEC regulations permitted more than Congress, in enacting FECA, had ever intended. See J. Cantor, Congressional Research Service Report for Congress: Campaign Finance Legislation in the 101st Congress (1990) (9 bills seeking to limit the influence of soft money introduced); J. Cantor, CRS Report for Congress: Campaign Finance Legislation in the 102d Congress (1991) (10 such bills introduced); J. Cantor, CRS Report for Congress: Campaign Finance Legislation in the 103d Congress (1993) (16 bills); J. Cantor, CRS Report for Congress: Campaign Finance Legislation in the 104th Congress (1996) (18 bills); see also 251 F. Supp. 2d, at 201–206 *(per curiam)* (discussing legislative efforts to curb soft money in 105th and subsequent Congresses).

Buckley, *supra*, at 27; see also *Shrink Missouri*, *supra*, at 390; *Federal Election Comm'n* v. *National Conservative Political Action Comm.*, 470 U. S. 480, 496–497 (1985). 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." *Shrink Missouri*, 528 U. S., at 390; see also *id.*, at 401 (BREYER, J., concurring). And because the First Amendment does not require Congress to ignore the fact that "candidates, donors, and parties test the limits of the current law," *Colorado II*, 533 U. S., at 457, these interests have been sufficient to justify not only contribution limits themselves, but laws preventing the circumvention of such limits, *id.*, at 456 ("[A]ll Members of the Court agree that circumvention is a valid theory of corruption").

"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." *Shrink Missouri*, *supra*, at 391. The idea that large contributions to a national party can corrupt or, at the very least, create the appearance of corruption of federal candidates and officeholders is neither novel nor implausible. For nearly 30 years, FECA has placed strict dollar limits and source restrictions on contributions that individuals and other entities can give to national, state, and local party committees for the purpose of influencing a federal election. The premise behind these restrictions has been, and continues to be, that contributions to a federal candidate's party in aid of that candidate's campaign threaten to create—no less than would a direct contribution to the candidate—a sense of obligation. See *Buckley*, *supra*, at 38 (upholding FECA's $25,000 limit on aggregate yearly contributions to a candidate, political committee, and political party committee as a "quite modest restraint . . . to prevent evasion of the $1,000 contribution limitation" by, among

other things, "huge contributions to the candidate's political party"). This is particularly true of contributions to national parties, with which federal candidates and officeholders enjoy a special relationship and unity of interest. This close affiliation has placed national parties in a unique position, "whether they like it or not," to serve as "agents for spending on behalf of those who seek to produce obligated officeholders." *Colorado II*, *supra*, at 452; see also *Shrink Missouri*, *supra*, at 406 (KENNEDY, J., dissenting) ("[Respondent] asks us to evaluate his speech claim in the context of a system which favors candidates and officeholders whose campaigns are supported by *soft money*, *usually funneled through political parties*" (emphasis added)). As discussed below, rather than resist that role, the national parties have actively embraced it.

The question for present purposes is whether large *soft-money* contributions to national party committees have a corrupting influence or give rise to the appearance of corruption. Both common sense and the ample record in these cases confirm Congress' belief that they do. As set forth above, *supra*, at 123–125, and n. 7, the FEC's allocation regime has invited widespread circumvention of FECA's limits on contributions to parties for the purpose of influencing federal elections. Under this system, corporate, union, and wealthy individual donors have been free to contribute substantial sums of soft money to the national parties, which the parties can spend for the specific purpose of influencing a particular candidate's federal election. It is not only plausible, but likely, that candidates would feel grateful for such donations and that donors would seek to exploit that gratitude.[45]

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[45] JUSTICE KENNEDY contends that the plurality's observation in *Colorado I* that large soft-money donations to a political party pose little threat of corruption "establish[es] that" such contributions are not corrupting. *Post*, at 301 (citing *Colorado I*, 518 U. S. 604, 616, 617–618 (1996)). The cited dictum has no bearing on the present cases. *Colorado I* addressed an entirely different question—namely, whether Congress could permissi-

The evidence in the record shows that candidates and donors alike have in fact exploited the soft-money loophole, the former to increase their prospects of election and the latter to create debt on the part of officeholders, with the national parties serving as willing intermediaries. Thus, despite FECA's hard-money limits on direct contributions to candidates, federal officeholders have commonly asked donors to make soft-money donations to national and state committees "'solely in order to assist federal campaigns,'" including the officeholder's own. 251 F. Supp. 2d, at 472 (Kollar-Kotelly, J.) (quoting declaration of Wade Randlett, CEO, Dashboard Technology ¶¶ 6–9 (hereinafter Randlett Decl.), App. 713–714); see also 251 F. Supp. 2d, at 471–473, 478–479 (Kollar-Kotelly, J.); *id.*, at 842–843 (Leon, J.). Parties kept tallies of the amounts of soft money raised by each officeholder, and "the amount of money a Member of Congress raise[d] for the national political party committees often affect[ed] the amount the committees g[a]ve to assist the Member's campaign." *Id.*, at 474–475 (Kollar-Kotelly, J.). Donors often asked that their contributions be credited to particular candidates, and the parties obliged, irrespective of whether the funds were hard or soft. *Id.*, at 477–478 (Kollar-Kotelly, J.); *id.*, at 824, 847 (Leon, J.). National party committees often teamed with individual candidates' campaign committees to create joint fundraising committees, which enabled the candidates to take advantage of the party's higher contribution limits while still allowing donors to give to their preferred candidate. *Id.*, at 478 (Kollar-Kotelly, J.); *id.*, at 847–848 (Leon, J.); see also App. 1286 (Krasno & Sorauf Expert Report (characterizing the joint fundraising committee as one

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bly limit a party's independent expenditures—and did so on an entirely different set of facts. It also had before it an evidentiary record frozen in 1990—well before the soft-money explosion of the 1990's. See *Federal Election Comm'n* v. *Colorado Republican Fed. Campaign Comm.*, 839 F. Supp. 1448, 1451 (Colo. 1993).

"in which Senate candidates in effect rais[e] soft money for use in their own races")). Even when not participating directly in the fundraising, federal officeholders were well aware of the identities of the donors: National party committees would distribute lists of potential or actual donors, or donors themselves would report their generosity to officeholders. 251 F. Supp. 2d, at 487–488 (Kollar-Kotelly, J.) ("[F]or a Member not to know the identities of these donors, he or she must actively avoid such knowledge as it is provided by the national political parties and the donors themselves"); *id.*, at 853–855 (Leon, J.).

For their part, lobbyists, CEOs, and wealthy individuals alike all have candidly admitted donating substantial sums of soft money to national committees not on ideological grounds, but for the express purpose of securing influence over federal officials. For example, a former lobbyist and partner at a lobbying firm in Washington, D. C., stated in his declaration:

> "'You are doing a favor for somebody by making a large [soft money] donation and they appreciate it. Ordinarily, people feel inclined to reciprocate favors. Do a bigger favor for someone—that is, write a larger check—and they feel even more compelled to reciprocate. In my experience, overt words are rarely exchanged about contributions, but people do have understandings.'" *Id.*, at 493 (Kollar-Kotelly, J.) (quoting declaration of Robert Rozen, partner, Ernst & Young ¶ 14; see 8–R Defs. Exhs., Tab 33).[46]

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[46] Other business leaders agreed. For example, the chairman of the board and CEO of a major toy company explained:

"'Many in the corporate world view large soft money donations as a cost of doing business . . . . I remain convinced that in some of the more publicized cases, federal officeholders actually appear to have sold themselves and the party cheaply. They could have gotten even more money, because of the potential importance of their decisions to the affected busi-

Particularly telling is the fact that, in 1996 and 2000, more than half of the top 50 soft-money donors gave substantial sums to *both* major national parties, leaving room for no other conclusion but that these donors were seeking influence, or avoiding retaliation, rather than promoting any particular ideology. See, *e. g.*, 251 F. Supp. 2d, at 508–510 (Kollar-Kotelly, J.) (citing Mann Expert Report Tbls. 5–6); 251 F. Supp. 2d, at 509 ("'Giving soft money to both parties, the Republicans and the Democrats, makes no sense at all unless the donor feels that he or she is buying access'" (quoting declaration of former Sen. Dale Bumpers ¶ 15, App. 175)).[47]

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ness.'" 251 F. Supp. 2d, at 491 (Kollar-Kotelly, J.) (quoting declaration of Alan G. Hassenfeld, CEO, Hasbro, Inc., ¶ 16; see 6–R Defs. Exhs., Tab 17). Similarly, the chairman emeritus of a major airline opined:

"'Though a soft money check might be made out to a political party, labor and business leaders know that those checks open the doors to the offices of individual and important Members of Congress and the Administration . . . . Labor and business leaders believe—based on experience and with good reason—that such access gives them an opportunity to shape and affect governmental decisions and that their ability to do so derives from the fact that they have given large sums of money to the parties.'" 251 F. Supp. 2d, at 498 (Kollar-Kotelly, J.) (quoting Greenwald Decl. ¶ 12, App. 283–284); 251 F. Supp. 2d, at 858–859 (Leon, J.) (same).

[47] Even more troubling is evidence in the record showing that national parties have actively exploited the belief that contributions purchase influence or protection to pressure donors into making contributions. As one CEO explained:

"'[I]f you're giving a lot of soft money to one side, the other side knows. For many economically-oriented donors, there is a risk in giving to only one side, because the other side may read through FEC reports and have staff or a friendly lobbyist call and indicate that someone with interests before a certain committee has had their contributions to the other side noticed. They'll get a message that basically asks: "Are you sure you want to be giving only to one side? Don't you want to have friends on both sides of the aisle?" If your interests are subject to anger from the other side of the aisle, you need to fear that you may suffer a penalty if you don't give. . . . [D]uring the 1990's, it became more and more acceptable to call someone, saying you saw he gave to this person, so he should also

The evidence from the federal officeholders' perspective is similar. For example, one former Senator described the influence purchased by nonfederal donations as follows:

> "'Too often, Members' first thought is not what is right or what they believe, but how it will affect fundraising. Who, after all, can seriously contend that a $100,000 donation does not alter the way one thinks about—and quite possibly votes on—an issue? . . . When you don't pay the piper that finances your campaigns, you will never get any more money from that piper. Since money is the mother's milk of politics, you never want to be in that situation.'" 251 F. Supp. 2d, at 481 (Kollar-Kotelly, J.) (quoting declaration of former Sen. Alan Simpson ¶ 10 (hereinafter Simpson Decl.), App. 811); 251 F. Supp. 2d, at 851 (Leon, J.) (same).

See also *id.*, at 489 (Kollar-Kotelly, J.) ("'The majority of those who contribute to political parties do so for business reasons, to gain access to influential Members of Congress and to get to know new Members'" (quoting Hickmott Decl., Exh. A, ¶ 46)). By bringing soft-money donors and federal candidates and officeholders together, "[p]arties are thus necessarily the instruments of some contributors whose object is not to support the party's message or to elect party candidates across the board, but rather to support a specific candidate for the sake of a position on one narrow issue, or even to support any candidate who will be obliged to the contributors." *Colorado II*, 533 U. S., at 451–452.

Plaintiffs argue that without concrete evidence of an instance in which a federal officeholder has actually switched a vote (or, presumably, evidence of a specific instance where the public believes a vote was switched), Congress has not shown that there exists real or apparent corruption. But

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give to you or the person's opponent.'" *Id.*, at 510 (Kollar-Kotelly, J.) (quoting Randlett Decl. ¶ 12, App. 715); 251 F. Supp. 2d, at 868 (Leon, J.) (same).

the record is to the contrary. The evidence connects soft money to manipulations of the legislative calendar, leading to Congress' failure to enact, among other things, generic drug legislation, tort reform, and tobacco legislation. See, *e. g.*, 251 F. Supp. 2d, at 482 (Kollar-Kotelly, J.); *id.*, at 852 (Leon, J.); App. 390–394 (declaration of Sen. John McCain ¶¶ 5, 8–11 (hereinafter McCain Decl.)); App. 811 (Simpson Decl. ¶ 10) ("Donations from the tobacco industry to Republicans scuttled tobacco legislation, just as contributions from the trial lawyers to Democrats stopped tort reform"); App. 805 (declaration of former Sen. Paul Simon ¶¶ 13–14). To claim that such actions do not change legislative outcomes surely misunderstands the legislative process.

More importantly, plaintiffs conceive of corruption too narrowly. Our cases have firmly established that Congress' legitimate interest extends beyond preventing simple cash-for-votes corruption to curbing "undue influence on an officeholder's judgment, and the appearance of such influence." *Colorado II*, *supra*, at 441. Many of the "deeply disturbing examples" of corruption cited by this Court in *Buckley*, 424 U. S., at 27, to justify FECA's contribution limits were not episodes of vote buying, but evidence that various corporate interests had given substantial donations to gain access to high-level government officials. See *Buckley*, 519 F. 2d, at 839–840, n. 36; nn. 5–6, *supra*. Even if that access did not secure actual influence, it certainly gave the "appearance of such influence." *Colorado II*, *supra*, at 441; see also 519 F. 2d, at 838.

The record in the present cases is replete with similar examples of national party committees peddling access to federal candidates and officeholders in exchange for large soft-money donations. See 251 F. Supp. 2d, at 492–506 (Kollar-Kotelly, J.). As one former Senator put it:

> "'Special interests who give large amounts of soft money to political parties do in fact achieve their objectives. They do get special access. Sitting Senators

> and House Members have limited amounts of time, but they make time available in their schedules to meet with representatives of business and unions and wealthy individuals who gave large sums to their parties. These are not idle chit-chats about the philosophy of democracy. . . . Senators are pressed by their benefactors to introduce legislation, to amend legislation, to block legislation, and to vote on legislation in a certain way.'" *Id.*, at 496 (Kollar-Kotelly, J.) (quoting declaration of former Sen. Warren Rudman ¶ 7 (hereinafter Rudman Decl.), App. 742); 251 F. Supp. 2d, at 858 (Leon, J.) (same).

So pervasive is this practice that the six national party committees actually furnish their own menus of opportunities for access to would-be soft-money donors, with increased prices reflecting an increased level of access. For example, the DCCC offers a range of donor options, starting with the $10,000-per-year Business Forum program, and going up to the $100,000-per-year National Finance Board program. The latter entitles the donor to bimonthly conference calls with the Democratic House leadership and chair of the DCCC, complimentary invitations to all DCCC fundraising events, two private dinners with the Democratic House leadership and ranking Members, and two retreats with the Democratic House leader and DCCC chair in Telluride, Colorado, and Hyannisport, Massachusetts. *Id.*, at 504–505 (Kollar-Kotelly, J.); see also *id.*, at 506 (describing records indicating that DNC offered meetings with President in return for large donations); *id.*, at 502–503 (describing RNC's various donor programs); *id.*, at 503–504 (same for NRSC); *id.*, at 500–503 (same for DSCC); *id.*, at 504 (same for NRCC). Similarly, "the RNC's donor programs offer greater access to federal office holders as the donations grow larger, with the highest level and most personal access offered to the largest soft money donors." *Id.*, at 500–503 (finding, further, that the RNC holds out the prospect of access to officeholders to attract soft-money donations and encourages

officeholders to meet with large soft-money donors); accord, *id.*, at 860–861 (Leon, J.).

Despite this evidence and the close ties that candidates and officeholders have with their parties, JUSTICE KENNEDY would limit Congress' regulatory interest *only* to the prevention of the actual or apparent *quid pro quo* corruption "inherent in" contributions made directly to, contributions made at the express behest of, and expenditures made in coordination with, a federal officeholder or candidate. *Post*, at 292, 298. Regulation of any other donation or expenditure—regardless of its size, the recipient's relationship to the candidate or officeholder, its potential impact on a candidate's election, its value to the candidate, or its unabashed and explicit intent to purchase influence—would, according to JUSTICE KENNEDY, simply be out of bounds. This crabbed view of corruption, and particularly of the appearance of corruption, ignores precedent, common sense, and the realities of political fundraising exposed by the record in this litigation.[48]

[48] In addition to finding no support in our recent cases, see, *e. g., Colorado II*, 533 U. S., at 441 (defining corruption more broadly than *quid pro quo* arrangements); *Shrink Missouri*, 528 U. S., at 389 (same), JUSTICE KENNEDY's contention that *Buckley* limits Congress to regulating contributions to a candidate ignores *Buckley* itself. There, we upheld FECA's $25,000 limit on aggregate yearly contributions to candidates, *political committees*, and *party committees* out of recognition that FECA's $1,000 limit on candidate contributions would be meaningless if individuals could instead make "huge contributions to the candidate's political party." 424 U. S., at 38. Likewise, in *California Medical Assn.* v. *Federal Election Comm'n*, 453 U. S. 182 (1981), we upheld FECA's $5,000 limit on contributions to multicandidate political committees. It is no answer to say that such limits were justified as a means of preventing individuals from using parties and political committees as pass-throughs to circumvent FECA's $1,000 limit on individual contributions to candidates. Given FECA's definition of "contribution," the $5,000 and $25,000 limits restricted not only the source and amount of funds available to parties and political committees to make candidate contributions, but also the source and amount of funds available to engage in express advocacy and numerous other noncoordinated expenditures. If indeed the First Amendment prohibited Congress from regulating contributions to fund the latter, the otherwise-easy-to-remedy exploitation of parties as pass-throughs (*e. g.*, a strict limit

JUSTICE KENNEDY's interpretation of the First Amendment would render Congress powerless to address more subtle but equally dispiriting forms of corruption. Just as troubling to a functioning democracy as classic *quid pro quo* corruption is the danger that officeholders will decide issues not on the merits or the desires of their constituencies, but according to the wishes of those who have made large financial contributions valued by the officeholder. 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. The best means of prevention is to identify and to remove the temptation. The evidence set forth above, which is but a sampling of the reams of disquieting evidence contained in the record, convincingly demonstrates that soft-money contributions to political parties carry with them just such temptation.

JUSTICE KENNEDY likewise takes too narrow a view of the appearance of corruption. He asserts that only those transactions with "inherent corruption potential," which he again limits to contributions directly to candidates, justify the inference "that regulating the conduct will stem the appearance of real corruption." *Post*, at 297–298.[49] In our view, however, Congress is not required to ignore historical evidence regarding a particular practice or to view conduct in isolation from its context. To be sure, mere political favoritism or opportunity for influence alone is insufficient to justify regulation. *Ibid.* As the record demonstrates, it is the manner in which parties have *sold* access to federal

on donations that could be used to fund candidate contributions) would have provided insufficient justification for such overbroad legislation.

[49] At another point, describing our "flawed reasoning," JUSTICE KENNEDY seems to suggest that Congress' interest in regulating the appearance of corruption extends only to those contributions that actually "create . . . corrupt donor favoritism among . . . officeholders." *Post*, at 299–300. This latter formulation would render Congress' interest in stemming the appearance of corruption indistinguishable from its interest in preventing actual corruption.

candidates and officeholders that has given rise to the appearance of undue influence. Implicit (and, as the record shows, sometimes explicit) in the sale of access is the suggestion that money buys influence. It is no surprise then that purchasers of such access unabashedly admit that they are seeking to purchase just such influence. It was not unwarranted for Congress to conclude that the selling of access gives rise to the appearance of corruption.

In sum, there is substantial evidence to support Congress' determination that large soft-money contributions to national political parties give rise to corruption and the appearance of corruption.

2. *New FECA § 323(a)'s Restriction on Spending and Receiving Soft Money*

Plaintiffs and THE CHIEF JUSTICE contend that § 323(a) is impermissibly overbroad because it subjects *all* funds raised and spent by national parties to FECA's hard-money source and amount limits, including, for example, funds spent on purely state and local elections in which no federal office is at stake.[50] *Post*, at 353–354 (REHNQUIST, C. J., dissenting). Such activities, THE CHIEF JUSTICE asserts, pose "little or no potential to corrupt . . . federal candidates and officeholders." *Post*, at 353 (dissenting opinion). This observation is beside the point. Section 323(a), like the remainder of § 323, regulates *contributions*, not activities. As the record demonstrates, it is the close relationship between federal officeholders and the national parties, as well as the means by which parties have traded on that relationship, that have

[50] In support of this claim, the political party plaintiffs assert that, in 2001, the RNC spent $15.6 million of nonfederal funds (30% of the nonfederal amount raised that year) on purely state and local election activity, including contributions to state and local candidates, transfers to state parties, and direct spending. See Tr. of Oral Arg. 102–103 (statement of counsel Bobby R. Burchfield); 251 F. Supp. 2d, at 336–337 (Henderson, J.); *id.*, at 464–465 (Kollar-Kotelly, J.); *id.*, at 830 (Leon, J.).

made all large soft-money contributions to national parties suspect.

As one expert noted, "'[t]here is no meaningful separation between the national party committees and the public officials who control them.'" 251 F. Supp. 2d, at 468–469 (Kollar-Kotelly, J.) (quoting Mann Expert Report 29). The national committees of the two major parties are both run by, and largely composed of, federal officeholders and candidates. Indeed, of the six national committees of the two major parties, four are composed entirely of federal officeholders. *Ibid.* The nexus between national parties and federal officeholders prompted one of Title I's framers to conclude:

> "Because the national parties operate at the national level, and are inextricably intertwined with federal officeholders and candidates, who raise the money for the national party committees, there is a close connection between the funding of the national parties and the corrupting dangers of soft money on the federal political process. The only effective way to address this [soft-money] problem of corruption is to ban entirely all raising and spending of soft money by the national parties." 148 Cong. Rec. H409 (Feb. 13, 2002) (statement of Rep. Shays).

Given this close connection and alignment of interests, large soft-money contributions to national parties are likely to create actual or apparent indebtedness on the part of federal officeholders, regardless of how those funds are ultimately used.

This close affiliation has also placed national parties in a position to sell access to federal officeholders in exchange for soft-money contributions that the party can then use for its own purposes. Access to federal officeholders is the most valuable favor the national party committees are able to give in exchange for large donations. The fact that officeholders comply by donating their valuable time indicates either that

officeholders place substantial value on the soft-money contribution themselves, without regard to their end use, or that national committees are able to exert considerable control over federal officeholders. See, *e. g.*, App. 1196–1198 (Expert Report of Donald P. Green, Yale University) (hereinafter Green Expert Report) ("Once elected to legislative office, public officials enter an environment in which political parties-in-government control the resources crucial to subsequent electoral success and legislative power. Political parties organize the legislative caucuses that make committee assignments"); App. 1298 (Krasno & Sorauf Expert Report) (indicating that officeholders' reelection prospects are significantly influenced by attitudes of party leadership). Either way, large soft-money donations to national party committees are likely to buy donors preferential access to federal officeholders no matter the ends to which their contributions are eventually put. As discussed above, Congress had sufficient grounds to regulate the appearance of undue influence associated with this practice. The Government's strong interests in preventing corruption, and in particular the appearance of corruption, are thus sufficient to justify subjecting all donations to national parties to the source, amount, and disclosure limitations of FECA.[51]

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[51] The close relationship of federal officeholders and candidates to their parties answers not only THE CHIEF JUSTICE's concerns about § 323(a), but also his fear that our analysis of § 323's remaining provisions bespeaks no limiting principle. *Post*, at 355–356 (dissenting opinion). As set forth in our discussion of those provisions, the record demonstrates close ties between federal officeholders and the state and local committees of their parties. That close relationship makes state and local parties effective conduits for donors desiring to corrupt federal candidates and officeholders. Thus, in upholding §§ 323(b), (d), and (f), we rely not only on the fact that they regulate contributions used to fund activities influencing federal elections, but also that they regulate contributions to, or at the behest of, entities uniquely positioned to serve as conduits for corruption. We agree with THE CHIEF JUSTICE that Congress could not regulate financial contributions to political talk show hosts or newspaper editors on the sole

3. *New FECA § 323(a)'s Restriction on Soliciting or Directing Soft Money*

Plaintiffs also contend that § 323(a)'s prohibition on national parties' soliciting or directing soft-money contributions is substantially overbroad. The reach of the solicitation prohibition, however, is limited. It bars only solicitations of soft money by national party committees and by party officers in their official capacities. The committees remain free to solicit hard money on their own behalf, as well as to solicit hard money on behalf of state committees and state and local candidates.[52] They also can contribute hard money to state committees and to candidates. In accordance with FEC regulations, furthermore, officers of national parties are free to solicit soft money in their individual capacities, or, if they are also officials of state parties, in that capacity. See 67 Fed. Reg. 49083 (2002).

This limited restriction on solicitation follows sensibly from the prohibition on national committees' receiving soft money. The same observations that led us to approve the latter compel us to reach the same conclusion regarding the former. A national committee is likely to respond favorably to a donation made at its request regardless of whether the

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basis that their activities conferred a *benefit* on the candidate. *Post*, at 355 (dissenting opinion).

[52] Plaintiffs claim that the option of soliciting hard money for state and local candidates is an illusory one, since several States prohibit state and local candidates from establishing multiple campaign accounts, which would preclude them from establishing separate accounts for federal funds. See Cal. Fair Pol. Practs. Comm'n Advisory Op. A–91–448 (Dec. 16, 1991), 1991 WL 772902; Colo. Const., Art. XXVIII, § 2(3); Iowa Code § 56.5A (2003); and Ohio Rev. Code Ann. § 3517.10(J) (Anderson Supp. 2002). Plaintiffs maintain that § 323(a) combines with these state laws to make it impossible for state and local candidates to receive hard-money donations. But the challenge we are considering is a facial one, and on its face § 323(a) permits solicitations. The fact that a handful of States might interfere with the mechanism Congress has chosen for such solicitations is an argument that may be addressed in an as-applied challenge.

recipient is the committee itself or another entity. This principle accords with common sense and appears elsewhere in federal laws. *E. g.*, 18 U. S. C. § 201(b)(2) (prohibition on public officials "demand[ing] [or] seek[ing] . . . anything of value personally *or for any other person or entity* . . ." (emphasis added)); 5 CFR § 2635.203(f)(2) (2003) (restriction on gifts to federal employees encompasses gifts "[g]iven to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee").

Plaintiffs argue that BCRA itself demonstrates the overbreadth of § 323(a)'s solicitation ban. They point in particular to § 323(e), which allows federal candidates and officeholders to solicit limited amounts of soft money from individual donors under certain circumstances. Compare 2 U. S. C. § 441i(a) with § 441i(e) (Supp. II). The differences between §§ 323(a) and 323(e), however, are without constitutional significance. We have recognized 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,'" *National Right to Work*, 459 U. S., at 210, and we respect Congress' decision to proceed in incremental steps in the area of campaign finance regulation, see *Federal Election Comm'n* v. *Massachusetts Citizens for Life, Inc.*, 479 U. S. 238, 258, n. 11 (1986) *(MCFL); Buckley*, 424 U. S., at 105. The differences between the two provisions reflect Congress' reasonable judgments about the function played by national committees and the interactions between committees and officeholders, subjects about which Members of Congress have vastly superior knowledge.

4. *New FECA § 323(a)'s Application to Minor Parties*

The McConnell and political party plaintiffs contend that § 323(a) is substantially overbroad and must be stricken on its face because it impermissibly infringes the speech and

associational rights of minor parties such as the Libertarian National Committee, which, owing to their slim prospects for electoral success and the fact that they receive few large soft-money contributions from corporate sources, pose no threat of corruption comparable to that posed by the RNC and DNC. In *Buckley*, we rejected a similar argument concerning limits on contributions to minor-party candidates, noting that "any attempt to exclude minor parties and independents en masse from the Act's contribution limitations overlooks the fact that minor-party candidates may win elective office or have a substantial impact on the outcome of an election." 424 U. S., at 34–35. We have thus recognized that the relevance of the interest in avoiding actual or apparent corruption is not a function of the number of legislators a given party manages to elect. It applies as much to a minor party that manages to elect only one of its members to federal office as it does to a major party whose members make up a majority of Congress. It is therefore reasonable to require that all parties and all candidates follow the same set of rules designed to protect the integrity of the electoral process.

We add that nothing in § 323(a) prevents individuals from pooling resources to start a new national party. *Post*, at 289 (KENNEDY, J., concurring in judgment in part and dissenting in part). Only when an organization has gained official status, which carries with it significant benefits for its members, will the proscriptions of § 323(a) apply. Even then, a nascent or struggling minor party can bring an as-applied challenge if § 323(a) prevents it from "amassing the resources necessary for effective advocacy." *Buckley*, *supra*, at 21.

5. *New FECA § 323(a)'s Associational Burdens*

Finally, plaintiffs assert that § 323(a) is unconstitutional because it impermissibly interferes with the ability of national committees to associate with state and local committees. By way of example, plaintiffs point to the Republican

Victory Plans, whereby the RNC acts in concert with the state and local committees of a given State to plan and implement joint, full-ticket fundraising and electioneering programs. See App. 693, 694–697 (declaration of John Peschong, RNC Western Reg. Political Dir. (describing the Republican Victory Plans)). The political parties assert that § 323(a) outlaws *any* participation in Victory Plans by RNC officers, including merely sitting down at a table and engaging in collective decisionmaking about how soft money will be solicited, received, and spent. Such associational burdens, they argue, are too great for the First Amendment to bear.

We are not persuaded by this argument because it hinges on an unnaturally broad reading of the terms "spend," "receive," "direct," and "solicit." 2 U. S. C. § 441i(a) (Supp. II). Nothing on the face of § 323(a) prohibits national party officers, whether acting in their official or individual capacities, from sitting down with state and local party committees or candidates to plan and advise how to raise and spend soft money. As long as the national party officer does not personally spend, receive, direct, or solicit soft money, § 323(a) permits a wide range of joint planning and electioneering activity. Intervenor-defendants, the principal drafters and proponents of the legislation, concede as much. Brief for Intervenor-Defendants Sen. John McCain et al. in No. 02–1674 et al., p. 22 ("BCRA leaves parties and candidates free to coordinate campaign plans and activities, political messages, and fundraising goals with one another"). The FEC's current definitions of § 323(a)'s terms are consistent with that view. See, *e. g.*, 11 CFR § 300.2(m) (2002) (defining "solicit" as "to *ask* . . . another person" (emphasis added)); § 300.2(n) (defining "direct" as "to *ask* a person who has expressed an intent to make a contribution . . . to make that contribution . . . including through a conduit or intermediary" (emphasis added)); § 300.2(c) (laying out the factors

that determine whether an entity will be considered to be controlled by a national committee).

Given the straightforward meaning of this provision, JUSTICE KENNEDY is incorrect that "[a] national party's mere involvement in the strategic planning of fundraising for a state ballot initiative" or its assistance in developing a state party's Levin-money fundraising efforts risks a finding that the officers are in "'indirect control'" of the state party and subject to criminal penalties. *Post*, at 289. Moreover, § 323(a) leaves national party committee officers entirely free to participate, in their official capacities, with state and local parties and candidates in soliciting and spending hard money; party officials may also solicit soft money in their unofficial capacities.

Accordingly, we reject the plaintiffs' First Amendment challenge to new FECA § 323(a).

New FECA § 323(b)'s Restrictions on State and Local Party Committees

In constructing a coherent scheme of campaign finance regulation, Congress recognized that, given the close ties between federal candidates and state party committees, BCRA's restrictions on national committee activity would rapidly become ineffective if state and local committees remained available as a conduit for soft-money donations.[53] Section 323(b) is designed to foreclose wholesale evasion of § 323(a)'s anticorruption measures by sharply curbing state committees' ability to use large soft-money contributions to influence federal elections. The core of § 323(b) is a straightforward contribution regulation: It prevents donors from

[53] Even opponents of campaign finance reform acknowledged that "a prohibition of soft money donations to national party committees alone would be wholly ineffective." The Constitution and Campaign Reform: Hearings on S. 522 before the Senate Committee on Rules and Administration, 106th Cong., 2d Sess., 301 (2000) (statement of Bobby R. Burchfield, Partner, Covington & Burling).

contributing nonfederal funds to state and local party committees to help finance "Federal election activity." 2 U. S. C. § 441i(b)(1) (Supp. II). The term "Federal election activity" encompasses four distinct categories of electioneering: (1) voter registration activity during the 120 days preceding a regularly scheduled federal election; (2) voter identification, get-out-the-vote (GOTV), and generic campaign activity[54] that is "conducted in connection with an election in which a candidate for Federal office appears on the ballot"; (3) any "public communication"[55] that "refers to a clearly identified candidate for Federal office" and "promotes," "supports," "attacks," or "opposes" a candidate for that office; and (4) the services provided by a state committee employee who dedicates more than 25% of his or her time to "activities in connection with a Federal election." §§ 431(20)(A)(i)–(iv). The Act explicitly excludes several categories of activity from this definition: public communications that refer solely to nonfederal candidates;[56] contributions to nonfederal candidates;[57] state and local political conventions; and the cost of grassroots campaign materials like bumper stickers that refer only to state candidates. § 431(20)(B). All activities that fall within the statutory definition must be funded with hard money. § 441i(b)(1).

Section 323(b)(2), the so-called Levin Amendment, carves out an exception to this general rule. A refinement on the pre-BCRA regime that permitted parties to pay for certain activities with a mix of federal and nonfederal funds, the

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[54] Generic campaign activity promotes a political party rather than a specific candidate. 2 U. S. C. § 431(21) (Supp. II).

[55] A public communication is "a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising." § 431(22).

[56] So long as the communication does not constitute voter registration, voter identification, GOTV, or generic campaign activity. § 431(20)(B)(i).

[57] Unless the contribution is earmarked for federal election activity. § 431(20)(B)(ii).

Levin Amendment allows state and local party committees to pay for certain types of federal election activity with an allocated ratio of hard money and "Levin funds"—that is, funds raised within an annual limit of $10,000 per person. 2 U. S. C. § 441i(b)(2). Except for the $10,000 cap and certain related restrictions to prevent circumvention of that limit, § 323(b)(2) leaves regulation of such contributions to the States.[58]

The scope of the Levin Amendment is limited in two ways. First, state and local parties can use Levin money to fund only activities that fall within categories (1) and (2) of the statute's definition of federal election activity—namely, voter registration activity, voter identification drives, GOTV drives, and generic campaign activities. 2 U. S. C. § 441i(b)(2)(A). And not all of these activities qualify: Levin funds cannot be used to pay for any activities that refer to "a clearly identified candidate for Federal office"; they likewise cannot be used to fund broadcast communications unless they refer "solely to a clearly identified candidate for State or local office." §§ 441i(b)(2)(B)(i)–(ii).

Second, both the Levin funds and the allocated portion of hard money used to pay for such activities must be raised entirely by the state or local committee that spends them. § 441i(b)(2)(B)(iv). This means that a state party committee cannot use Levin funds transferred from other party committees to cover the Levin funds portion of a Levin Amendment expenditure. It also means that a state party committee cannot use hard money transferred from other party committees to cover the hard-money portion of a Levin Amendment expenditure. Furthermore, national committees, federal candidates, and federal officeholders generally may not solicit Levin funds on behalf of state committees, and state committees may not team up to raise Levin funds.

[58] The statute gives the FEC responsibility for setting the allocation ratio. § 441i(b)(2)(A); see also 11 CFR § 300.33(b) (2003) (defining allocation ratios).

§ 441i(b)(2)(C). They can, however, jointly raise the hard money used to make Levin expenditures.

1. *Governmental Interests Underlying New FECA 323(b)*

We begin by noting that, in addressing the problem of soft-money contributions to state committees, Congress both drew a conclusion and made a prediction. Its conclusion, based on the evidence before it, was that the corrupting influence of soft money does not insinuate itself into the political process solely through national party committees. Rather, state committees function as an alternative avenue for precisely the same corrupting forces.[59] Indeed, both candidates and parties already ask donors who have reached the limit on their direct contributions to donate to state committees.[60] There is at least as much evidence as there was in

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[59] One former Senator noted:

"'The fact is that much of what state and local parties do helps to elect federal candidates. The national parties know it; the candidates know it; the state and local parties know it. If state and local parties can use soft money for activities that affect federal elections, then the problem will not be solved at all. The same enormous incentives to raise the money will exist; the same large contributions by corporations, unions, and wealthy individuals will be made; the federal candidates who benefit from state party use of these funds will know exactly whom their benefactors are; the same degree of beholdenness and obligation will arise; the same distortions on the legislative process will occur; and the same public cynicism will erode the foundations of our democracy—except it will all be worse in the public's mind because a perceived reform was undercut once again by a loophole that allows big money into the system.'" 251 F. Supp. 2d, at 467 (Kollar-Kotelly, J.) (quoting Rudman Decl. ¶ 19, App. 746).

[60] *E.g.*, 251 F. Supp. 2d, at 479 (Kollar-Kotelly, J.) ("'It is . . . not uncommon for the RNC to put interested donors in touch with various state parties. This often occurs when a donor has reached his or her federal dollar limits to the RNC, but wishes to make additional contributions to the state party'" (quoting declaration of Thomas Josefiak, RNC Chief Counsel ¶ 68, App. 308)); see also *Colorado II*, 533 U. S., at 458 (quoting Congressman Wayne Allard's Aug. 27, 1996, fundraising letter informing the recipient that "'you are at the limit of what you can directly contribute

Buckley that such donations have been made with the intent—and in at least some cases the effect—of gaining influence over federal officeholders.[61] Section 323(b) thus promotes an important governmental interest by confronting the corrupting influence that soft-money donations to political parties already have.

Congress also made a prediction. Having been taught the hard lesson of circumvention by the entire history of campaign finance regulation, Congress knew that soft-money donors would react to § 323(a) by scrambling to find another way to purchase influence. It was "neither novel nor implausible," *Shrink Missouri*, 528 U. S., at 391, for Congress to conclude that political parties would react to § 323(a) by directing soft-money contributors to the state committees, and that federal candidates would be just as indebted to these contributors as they had been to those who had formerly contributed to the national parties. We "must accord substantial deference to the predictive judgments of Congress," *Turner Broadcasting System, Inc.* v. *FCC*, 512 U. S. 622, 665 (1994) (plurality opinion), particularly when, as here, those predictions are so firmly rooted in relevant history and common sense. Preventing corrupting activity from shift-

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to my campaign,'" but "'you can further help my campaign by assisting the Colorado Republican Party'"); 251 F. Supp. 2d, at 454 (Kollar-Kotelly, J.) ("'Both political parties have found spending soft money with its accompanying hard money match through their state parties to work smoothly, for the most part, and state officials readily acknowledge they are simply "pass throughs" to the vendors providing the broadcast ads or direct mail'" (quoting Magleby Expert Report 37, App. 1510–1511)).

[61] The 1998 Senate Report found that, in exchange for a substantial donation to *state* Democratic committees and candidates, the DNC arranged meetings for the donor with the President and other federal officials. 1 1998 Senate Report 43–44; 2 *id.*, at 2907–2931; 5 *id.*, at 7519. That same Report also detailed how Native American tribes that operated casinos made sizable soft-money contributions to state Democratic committees in apparent exchange for access and influence. 1 *id.*, at 44–46; 2 *id.*, at 3167–3194; see also McCain Decl., Exh. I (Weisskopf, The Busy Back-Door Men, Time, Mar. 31, 1997, p. 40).

ing wholesale to state committees and thereby eviscerating FECA clearly qualifies as an important governmental interest.

2. *New FECA § 323(b)'s Tailoring*

Plaintiffs argue that even if some legitimate interest might be served by § 323(b), the provision's restrictions are unjustifiably burdensome and therefore cannot be considered "closely drawn" to match the Government's objectives. They advance three main contentions in support of this proposition. First, they argue that the provision is substantially overbroad because it federalizes activities that pose no conceivable risk of corrupting or appearing to corrupt federal officeholders. Second, they argue that the Levin Amendment imposes an unconstitutional burden on the associational rights of political parties. Finally, they argue that the provision prevents them from amassing the resources they need to engage in effective advocacy. We address these points in turn.

a. *§ 323(b)'s Application to Federal Election Activity*

Plaintiffs assert that § 323(b) represents a new brand of pervasive federal regulation of state-focused electioneering activities that cannot possibly corrupt or appear to corrupt federal officeholders and thus goes well beyond Congress' concerns about the corruption of the federal electoral process. We disagree.

It is true that § 323(b) captures some activities that affect state campaigns for nonfederal offices. But these are the same sorts of activities that already were covered by the FEC's pre-BCRA allocation rules, and thus had to be funded in part by hard money, because they affect federal as well as state elections. See 11 CFR § 106.5 (2002). As a practical matter, BCRA merely codifies the principles of the FEC's allocation regime while at the same time justifiably adjusting the formulas applicable to these activities in order to restore

the efficacy of FECA's longtime statutory restriction—approved by the Court and eroded by the FEC's allocation regime—on contributions to state and local party committees for the purpose of influencing federal elections. See 2 U. S. C. §§ 431(8)(A), 441a(a)(1)(C); see also *Buckley*, 424 U. S., at 38 (upholding FECA's $25,000 limit on aggregate contributions to candidates and political committees); cf. *California Medical Assn.* v. *Federal Election Comm'n*, 453 U. S. 182 (1981) (upholding FECA's $5,000 limit on contributions to multicandidate political committees).

Like the rest of Title I, § 323(b) is premised on Congress' judgment that if a large donation is capable of putting a federal candidate in the debt of the contributor, it poses a threat of corruption or the appearance of corruption. As we explain below, § 323(b) is narrowly focused on regulating contributions that pose the greatest risk of this kind of corruption: those contributions to state and local parties that can be used to benefit federal candidates directly. Further, these regulations all are reasonably tailored, with various temporal and substantive limitations designed to focus the regulations on the important anticorruption interests to be served. We conclude that § 323(b) is a closely drawn means of countering both corruption and the appearance of corruption.

The first two categories of "Federal election activity," voter registration efforts, § 301(20)(A)(i), and voter identification, GOTV, and generic campaign activities conducted in connection with a federal election, § 301(20)(A)(ii), clearly capture activity that benefits federal candidates. Common sense dictates, and it was "undisputed" below, that a party's efforts to register voters sympathetic to that party directly assist the party's candidates for federal office. 251 F. Supp. 2d, at 460 (Kollar-Kotelly, J.). It is equally clear that federal candidates reap substantial rewards from any efforts that increase the number of like-minded registered voters who

actually go to the polls.[62] See, *e. g.*, *id.*, at 459 ("'[The evidence] shows quite clearly that a campaign that mobilizes residents of a highly Republican precinct will produce a harvest of votes for Republican candidates for both state and federal offices. A campaign need not mention federal candidates to have a direct effect on voting for such a candidate. . . . [G]eneric campaign activity has a direct effect on federal elections'" (quoting Green Expert Report 14)). Representatives of the four major congressional campaign committees confirmed that they "'transfe[r] federal and nonfederal funds to state and/or local party committees for'" both voter registration and GOTV activities, and that "'[t]hese efforts have a significant effect on the election of federal candidates.'" 251 F. Supp. 2d, at 459, 461 (citations omitted).

The record also makes quite clear that federal officeholders are grateful for contributions to state and local parties that can be converted into GOTV-type efforts. See *id.*, at 459 (quoting a letter thanking a California Democratic Party donor and noting that CDP's voter registration and GOTV efforts would help "'increase the number of Californian Democrats in the United States Congress'" and "'deliver California's 54 electoral votes'" to the Democratic Presidential candidate).

Because voter registration, voter identification, GOTV, and generic campaign activity all confer substantial benefits on federal candidates, the funding of such activities creates a significant risk of actual and apparent corruption. Section 323(b) is a reasonable response to that risk. Its contribution limitations are focused on the subset of voter registration activity that is most likely to affect the election prospects of federal candidates: activity that occurs within 120 days before a federal election. And if the voter registration drive

[62] Since voter identification is a necessary precondition of any GOTV program, the findings regarding GOTV funding obviously apply with equal force to the funding of voter identification efforts.

does not specifically mention a federal candidate, state committees can take advantage of the Levin Amendment's higher contribution limits and relaxed source restrictions. 2 U. S. C. §§ 441i(b)(2)(B)(i)–(ii) (Supp. II). Similarly, the contribution limits applicable to § 301(20)(A)(ii) activities target only those voter identification, GOTV, and generic campaign efforts that occur "in connection with an election in which a candidate for a Federal office appears on the ballot." 2 U. S. C. § 431(20)(A)(ii). Appropriately, in implementing this subsection, the FEC has categorically excluded all activity that takes place during the runup to elections when no federal office is at stake.[63] Furthermore, state committees can take advantage of the Levin Amendment's higher contribution limits to fund any § 301(A)(20)(i) and § 301(A)(20)(ii) activities that do not specifically mention a federal candidate. 2 U. S. C. §§ 441i(b)(2)(B)(i)–(ii). The prohibition on the use of soft money in connection with these activities is therefore closely drawn to meet the sufficiently important governmental interests of avoiding corruption and its appearance.

"Public communications" that promote or attack a candidate for federal office—the third category of "Federal election activity," § 301(20)(A)(iii)—also undoubtedly have a dramatic effect on federal elections. Such ads were a prime motivating force behind BCRA's passage. See 3 1998 Senate Report 4535 (additional views of Sen. Collins) ("[T]he

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[63] With respect to GOTV, voter identification, and other generic campaign activity, the FEC has interpreted § 323(b) to apply only to those activities conducted after the earliest filing deadline for access to the federal election ballot or, in States that do not conduct primaries, after January 1 of even-numbered years. 11 CFR § 100.24(a)(1) (2002). Any activities conducted outside of those periods are completely exempt from regulation under § 323(b). Of course, this facial challenge does not present the question of the FEC regulations' constitutionality. But the fact that the statute provides this basis for the FEC reasonably to narrow § 301(20)(A)(ii) further calls into question plaintiffs' claims of facial overbreadth. See *Broadrick* v. *Oklahoma*, 413 U. S. 601, 613 (1973).

hearings provided overwhelming evidence that the twin loopholes of soft money and bogus issue advertising have virtually destroyed our campaign finance laws, leaving us with little more than a pile of legal rubble"). As explained below, any public communication that promotes or attacks a clearly identified federal candidate directly affects the election in which he is participating. The record on this score could scarcely be more abundant. Given the overwhelming tendency of public communications, as carefully defined in § 301(20)(A)(iii), to benefit directly federal candidates, we hold that application of § 323(b)'s contribution caps to such communications is also closely drawn to the anticorruption interest it is intended to address.[64]

As for the final category of "Federal election activity," § 301(20)(A)(iv), we find that Congress' interest in preventing circumvention of § 323(b)'s other restrictions justifies the requirement that state and local parties spend federal funds to pay the salary of any employee spending more than 25% of his or her compensated time on activities in connection with

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[64] We likewise reject the argument that § 301(20)(A)(iii) is unconstitutionally vague. The words "promote," "oppose," "attack," and "support" clearly set forth the confines within which potential party speakers must act in order to avoid triggering the provision. These words "provide explicit standards for those who apply them" and "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited." *Grayned* v. *City of Rockford*, 408 U. S. 104, 108–109 (1972). This is particularly the case here, since actions taken by political parties are presumed to be in connection with election campaigns. See *Buckley*, 424 U. S., at 79 (noting that a general requirement that political committees disclose their expenditures raised no vagueness problems because the term "political committee" "need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate" and thus a political committee's expenditures "are, by definition, campaign related"). Furthermore, should plaintiffs feel that they need further guidance, they are able to seek advisory opinions for clarification, see 2 U. S. C. § 437f(a)(1), and thereby "remove any doubt there may be as to the meaning of the law," *Civil Service Comm'n* v. *Letter Carriers*, 413 U. S. 548, 580 (1973).

a federal election. In the absence of this provision, a party might use soft money to pay for the equivalent of a full-time employee engaged in federal electioneering, by the simple expedient of dividing the federal workload among multiple employees. Plaintiffs have suggested no reason for us to strike down this provision. Accordingly, we give "deference to [the] congressional determination of the need for [this] prophylactic rule." *National Conservative Political Action Comm.*, 470 U. S., at 500.

b. *Associational Burdens Imposed by the Levin Amendment*

Plaintiffs also contend that § 323(b) is unconstitutional because the Levin Amendment unjustifiably burdens association among party committees by forbidding transfers of Levin funds among state parties, transfers of hard money to fund the allocable federal portion of Levin expenditures, and joint fundraising of Levin funds by state parties. We recognize, as we have in the past, the importance of preserving the associational freedom of parties. See, *e. g.*, *California Democratic Party* v. *Jones*, 530 U. S. 567 (2000); *Eu* v. *San Francisco County Democratic Central Comm.*, 489 U. S. 214 (1989). But not every minor restriction on parties' otherwise unrestrained ability to associate is of constitutional dimension. See *Colorado II*, 533 U. S., at 450, n. 11.

As an initial matter, we note that state and local parties can avoid these associational burdens altogether by forgoing the Levin Amendment option and electing to pay for federal election activities entirely with hard money. But in any event, the restrictions on the use, transfer, and raising of Levin funds are justifiable anticircumvention measures. Without the ban on transfers of Levin funds among state committees, donors could readily circumvent the $10,000 limit on contributions to a committee's Levin account by making multiple $10,000 donations to various committees that could then transfer the donations to the committee of

choice.[65] The same anticircumvention goal undergirds the ban on joint solicitation of Levin funds. Without this restriction, state and local committees could organize "all hands" fundraisers at which individual, corporate, or union donors could make large soft-money donations to be divided between the committees. In that case, the purpose, if not the letter, of § 323(b)(2)'s $10,000 limit would be thwarted: Donors could make large, visible contributions at fundraisers, which would provide ready means for corrupting federal officeholders. Given the delicate and interconnected regulatory scheme at issue here, any associational burdens imposed by the Levin Amendment restrictions are far outweighed by the need to prevent circumvention of the entire scheme.

Section 323(b)(2)(B)(iv)'s apparent prohibition on the transfer of hard money by a national, state, or local committee to help fund the allocable hard-money portion of a separate state or local committee's Levin expenditures presents a closer question. 2 U. S. C. § 441i(b)(2)(B)(iv) (Supp. II). The Government defends the restriction as necessary to prevent the donor committee, particularly a national committee, from leveraging the transfer of federal money to wrest control over the spending of the recipient committee's Levin funds. This purported interest is weak, particularly given the fact that § 323(a) already polices attempts by national parties to engage in such behavior. See 2 U. S. C. § 441i(a)(2) (extending § 323(a)'s restrictions to entities *controlled* by national party committees). However, the associational burdens posed by the hard-money transfer restriction are so insubstantial as to be *de minimis*. Party committees, including national party committees, remain free to transfer

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[65] Any doubts that donors would engage in such a seemingly complex scheme are put to rest by the record evidence in *Buckley* itself. See n. 6, *supra* (setting forth the Court of Appeals' findings regarding the efforts of milk producers to obtain a meeting with White House officials).

unlimited hard money so long as it is not used to fund Levin expenditures. State and local party committees can thus dedicate all "homegrown" hard money to their Levin activities while relying on outside transfers to defray the costs of other hard-money expenditures. Given the strong anticircumvention interest vindicated by § 323(b)(2)(B)(iv)'s restriction on the transfer of Levin funds, we will not strike down the entire provision based upon such an attenuated claim of associational infringement.

c. *New FECA § 323(b)'s Impact on Parties' Ability to Engage in Effective Advocacy*

Finally, plaintiffs contend that § 323(b) is unconstitutional because its restrictions on soft-money contributions to state and local party committees will prevent them from engaging in effective advocacy. As Judge Kollar-Kotelly noted, the political parties' evidence regarding the impact of BCRA on their revenues is "speculative and not based on any analysis." 251 F. Supp. 2d, at 524. If the history of campaign finance regulation discussed above proves anything, it is that political parties are extraordinarily flexible in adapting to new restrictions on their fundraising abilities. Moreover, the mere fact that § 323(b) may reduce the relative amount of money available to state and local parties to fund federal election activities is largely inconsequential. The question is not whether § 323(b) reduces the amount of funds available over previous election cycles, but whether it is "so radical in effect as to . . . drive the sound of [the recipient's] voice below the level of notice." *Shrink Missouri*, 528 U. S., at 397. If indeed state or local parties can make such a showing, as-applied challenges remain available.

We accordingly conclude that § 323(b), on its face, is closely drawn to match the important governmental interests of preventing corruption and the appearance of corruption.

New FECA § 323(d)'s Restrictions on Parties' Solicitations for, and Donations to, Tax-Exempt Organizations

Section 323(d) prohibits national, state, and local party committees, and their agents or subsidiaries, from "solicit-[ing] any funds for, or mak[ing] or direct[ing] any donations" to, any organization established under § 501(c) of the Internal Revenue Code[66] that makes expenditures in connection with an election for federal office, and any political organizations established under § 527 "other than a political committee, a State, district, or local committee of a political party, or the authorized campaign committee of a candidate for State or local office."[67] 2 U. S. C. § 441i(d) (Supp. II). The District Court struck down the provision on its face. We reverse and uphold § 323(d), narrowly construing the section's ban on donations to apply only to the donation of funds not raised in compliance with FECA.

1. *New FECA § 323(d)'s Regulation of Solicitations*

The Government defends § 323(d)'s ban on solicitations to tax-exempt organizations engaged in political activity as preventing circumvention of Title I's limits on contributions of soft money to national, state, and local party committees. That justification is entirely reasonable. The history of Congress' efforts at campaign finance reform well demonstrates that "candidates, donors, and parties test the limits of the

[66] Section 501(c) organizations are groups generally exempted from taxation under the Internal Revenue Code. 26 U. S. C. § 501(a). These include § 501(c)(3) charitable and educational organizations, as well as § 501(c)(4) social welfare groups.

[67] Section 527 "political organizations" are, unlike § 501(c) groups, organized for the express purpose of engaging in partisan political activity. They include any "party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures" for the purpose of "influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office." 26 U. S. C. § 527(e).

current law." *Colorado II*, 533 U. S., at 457. Absent the solicitation provision, national, state, and local party committees would have significant incentives to mobilize their formidable fundraising apparatuses, including the peddling of access to federal officeholders, into the service of like-minded tax-exempt organizations that conduct activities benefiting their candidates.[68] All of the corruption and appearance of corruption attendant on the operation of those fundraising apparatuses would follow. Donations made at the behest of party committees would almost certainly be regarded by party officials, donors, and federal officeholders alike as benefiting the party as well as its candidates. Yet, by soliciting the donations to third-party organizations, the parties would avoid FECA's source and amount limitations, as well as its disclosure restrictions. See 251 F. Supp. 2d, at 348 (Henderson, J.) (citing various declarations demonstrating that, prior to BCRA, most tax-exempt organizations did not disclose

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[68] The record shows that many of the targeted tax-exempt organizations engage in sophisticated and effective electioneering activities for the purpose of influencing federal elections, including waging broadcast campaigns promoting or attacking particular candidates and conducting large-scale voter registration and GOTV drives. For instance, during the final weeks of the 2000 Presidential campaign, the NAACP's National Voter Fund registered more than 200,000 people, promoted a GOTV hotline, ran three newspaper print ads, and made several direct mailings. 251 F. Supp. 2d, at 348–349 (Henderson, J.). The NAACP reports that the program turned out one million additional African-American voters and increased turnout over 1996 among targeted groups by 22% in New York, 50% in Florida, and 140% in Missouri. *Ibid.* The effort, which cost $10 million, was funded primarily by a $7 million contribution from an anonymous donor. *Id.*, at 349 (citing cross-examination of Donald P. Green, Yale University 15–20, Exh. 3; see I Defs. Refiling Trs. on Pub. Record); 251 F. Supp. 2d, at 522 (Kollar-Kotelly, J.) (same); *id.*, at 851 (Leon, J.) (same); see also *id.*, at 349 (Henderson, J.) (stating that in 2000 the National Abortion and Reproductive Rights Action League (NARAL) spent $7.5 million and mobilized 2.1 million pro-choice voters (citing declaration of Mary Jane Gallagher, Exec. V. P., NARAL 8, App. 271–272, ¶ 24)); 251 F. Supp. 2d, at 522 (Kollar-Kotelly, J.) (same).

the source or amount of contributions); *id.*, at 521 (Kollar-Kotelly, J.) (same).

Experience under the current law demonstrates that Congress' concerns about circumvention are not merely hypothetical. Even without the added incentives created by Title I, national, state, and local parties already solicit unregulated soft-money donations to tax-exempt organizations for the purpose of supporting federal electioneering activity. See, *e. g.*, 3 1998 Senate Report 4013 ("In addition to direct contributions from the RNC to nonprofit groups, the senior leadership of the RNC helped to raise funds for many of the coalition's nonprofit organizations"); 4 *id.*, at 5983 (minority views) ("Tax-exempt 'issue advocacy' groups and other conduits were systematically used to circumvent the federal campaign finance laws"); 251 F. Supp. 2d, at 517 (Kollar-Kotelly, J.); *id.*, at 848 (Leon, J.). Parties and candidates have also begun to take advantage of so-called "politician 527s," which are little more than soft-money fronts for the promotion of particular federal officeholders and their interests. See *id.*, at 519 (Kollar-Kotelly, J.) ("'Virtually every member of Congress in a formal leadership position has his or her own 527 group. . . . In all, Public Citizen found 63 current members of Congress who have their own 527s'" (quoting Public Citizen Congress Watch, Congressional Leaders' Soft Money Accounts Show Need for Campaign Finance Reform Bills, Feb. 26, 2002, p. 6)); 251 F. Supp. 2d, at 849–850 (Leon, J.). These 527s have been quite successful at raising substantial sums of soft money from corporate interests, as well as from the national parties themselves. See *id.*, at 519–520 (Kollar-Kotelly, J.) (finding that 27 industries had each donated over $100,000 in a single year to the top 25 politician 527 groups and that the DNC was the single largest contributor to politician 527 groups (citing Public Citizen Congress Watch, *supra*, at 10–11)); 251 F. Supp. 2d, at 850 (Leon, J.) (same). Given BCRA's tighter restrictions on

the raising and spending of soft money, the incentives for parties to exploit such organizations will only increase.

Section 323(d)'s solicitation restriction is closely drawn to prevent political parties from using tax-exempt organizations as soft-money surrogates. Though phrased as an absolute prohibition, the restriction does nothing more than subject contributions solicited by parties to FECA's regulatory regime, leaving open substantial opportunities for solicitation and other expressive activity in support of these organizations. First, and most obviously, § 323(d) restricts solicitations only to those § 501(c) groups "mak[ing] expenditures or disbursements in connection with an election for Federal office," 2 U. S. C. § 441i(d)(1) (Supp. II), and to § 527 organizations, which by definition engage in partisan political activity, § 441i(d)(2); 26 U. S. C. § 527(e). Second, parties remain free to solicit hard-money contributions to a § 501(c)'s federal PAC, as well as to § 527 organizations that already qualify as federal PACs.[69] Third, § 323(d) allows parties to endorse qualifying organizations in ways other than direct solicitations of unregulated donations. For example, with respect to § 501(c) organizations that are prohibited from administering PACs, parties can solicit hard-money donations to themselves for the express purpose of donating to these organizations. See *infra*, at 180–181. Finally, as with § 323(a), § 323(d) in no way restricts solicitations by party officers acting in their individual capacities. 2 U. S. C. § 441i(d) (extending restrictions to solicitations and donations

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[69] Notably, the FEC has interpreted § 323(d)(2) to permit state, district, and local party committees to solicit donations to § 527 organizations that are state-registered PACs, that support only state or local candidates, and that do not make expenditures or disbursements in connection with federal elections. 11 CFR § 300.37(a)(3)(iv) (2003). The agency determined that this interpretation of "political committee"—at least with respect to state, district, and local committees—was consistent with BCRA's fundamental purpose of prohibiting soft money from being used in connection with federal elections. 67 Fed. Reg. 49106 (2002).

made by "an officer or agent acting *on behalf of* any such party committee" (emphasis added)).

In challenging § 323(d)'s ban on solicitations, plaintiffs renew the argument they made with respect to § 323(a)'s solicitation restrictions: that it cannot be squared with § 323(e), which allows federal candidates and officeholders to solicit limited donations of soft money to tax-exempt organizations that engage in federal election activities. Compare 2 U. S. C. § 441i(d) with § 441i(e)(4). But if § 323(d)'s restrictions on solicitations are otherwise valid, they are not rendered unconstitutional by the mere fact that Congress chose not to regulate the activities of another group as stringently as it might have. See *National Right to Work*, 459 U. S., at 210; see also *Katzenbach* v. *Morgan*, 384 U. S. 641, 656–657 (1966). In any event, the difference between the two provisions is fully explained by the fact that national party officers, unlike federal candidates and officeholders, are able to solicit soft money on behalf of nonprofit organizations in their individual capacities. Section 323(e), which is designed to accommodate the individual associational and speech interests of candidates and officeholders in lending personal support to nonprofit organizations, also places tight content, source, and amount restrictions on solicitations of soft money by federal candidates and officeholders. Given those limits, as well as the less rigorous standard of review, the greater allowances of § 323(e) do not render § 323(d)'s solicitation restriction facially invalid.

2. *New FECA § 323(d)'s Regulation of Donations*

Section 323(d) also prohibits national, state, and local party committees from making or directing "any donatio[n]" to qualifying § 501(c) or § 527 organizations. 2 U. S. C. § 441i(d) (Supp. II). The Government again defends the restriction as an anticircumvention measure. We agree insofar as it prohibits the donation of soft money. Absent such a restriction, state and local party committees could

accomplish directly what the antisolicitation restrictions prevent them from doing indirectly—namely, raising large sums of soft money to launder through tax-exempt organizations engaging in federal election activities. Because the party itself would be raising and collecting the funds, the potential for corruption would be that much greater. We will not disturb Congress' reasonable decision to close that loophole, particularly given a record demonstrating an already robust practice of parties making such donations. See 251 F. Supp. 2d, at 517–518 (Kollar-Kotelly); *id.*, at 848–849 (Leon, J.).

The prohibition does raise overbreadth concerns if read to restrict donations from a party's federal account—*i. e.*, funds that have already been raised in compliance with FECA's source, amount, and disclosure limitations. Parties have many valid reasons for giving to tax-exempt organizations, not the least of which is to associate themselves with certain causes and, in so doing, to demonstrate the values espoused by the party. A complete ban on donations prevents parties from making even the "general expression of support" that a contribution represents. *Buckley*, 424 U. S., at 21. At the same time, prohibiting parties from donating funds already raised in compliance with FECA does little to further Congress' goal of preventing corruption or the appearance of corruption of federal candidates and officeholders.

The Government asserts that the restriction is necessary to prevent parties from leveraging their hard money to gain control over a tax-exempt group's soft money. Even if we accepted that rationale, it would at most justify a dollar limit, not a flat ban. Moreover, any legitimate concerns over capture are diminished by the fact that the restrictions set forth in §§ 323(a) and (b) apply not only to party committees, but to entities under their control. See 2 U. S. C. § 441i(a)(2) (extending prohibitions on national party committees to "any entity that is directly or indirectly established, financed, maintained, *or controlled* by such a national committee" (em-

phasis added)); § 441i(b)(1) (same for state and local party committees).

These observations do not, however, require us to sustain plaintiffs' facial challenge to § 323(d)'s donation restriction. "When the validity of an act of the Congress is drawn in question, and . . . a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided." *Crowell* v. *Benson*, 285 U. S. 22, 62 (1932); see also *Boos* v. *Barry*, 485 U. S. 312, 331 (1988); *New York* v. *Ferber*, 458 U. S. 747, 769, n. 24 (1982). Given our obligation to avoid constitutional problems, we narrowly construe § 323(d)'s ban to apply only to donations of funds not raised in compliance with FECA. This construction is consistent with the concerns animating Title I, whose purpose is to plug the soft-money loophole. Though there is little legislative history regarding BCRA generally, and almost nothing on § 323(d) specifically, the abuses identified in the 1998 Senate Report regarding campaign finance practices involve the use of nonprofit organizations as conduits for large *soft-money* donations. See, *e. g.*, 3 1998 Senate Report 4565 ("The evidence indicates that the soft-money loophole is fueling many of the campaign abuses investigated by the Committee. . . . Soft money also supplied the funds parties used to make contributions to tax-exempt groups, which in turn used the funds to pay for election-related activities"); *id.*, at 4568–4569 (describing as an "egregious exampl[e]" of misuse a $4.6 million donation of nonfederal funds by the RNC to Americans for Tax Reform, which the organization spent on "direct mail and phone bank operations to counter anti-Republican advertising"). We have found no evidence that Congress was concerned about, much less that it intended to prohibit, donations of money already fully regulated by FECA. Given Title I's exclusive focus on abuses related to soft money, we would expect that if Congress meant § 323(d)'s restriction to have this dramatic and

constitutionally questionable effect, it would say so explicitly. Because there is nothing that compels us to conclude that Congress intended "donations" to include transfers of federal money, and because of the constitutional infirmities such an interpretation would raise, we decline to read § 323(d) in that way. Thus, political parties remain free to make or direct donations of money to any tax-exempt organization that has otherwise been raised in compliance with FECA.

New FECA § 323(e)'s Restrictions on Federal Candidates and Officeholders

New FECA § 323(e) regulates the raising and soliciting of soft money by federal candidates and officeholders. 2 U. S. C. § 441i(e) (Supp. II). It prohibits federal candidates and officeholders from "solicit[ing], receiv[ing], direct[ing], transfer[ing], or spend[ing]" any soft money in connection with federal elections. § 441i(e)(1)(A). It also limits the ability of federal candidates and officeholders to solicit, receive, direct, transfer, or spend soft money in connection with state and local elections. § 441i(e)(1)(B).[70]

Section 323(e)'s general prohibition on solicitations admits of a number of exceptions. For instance, federal candidates and officeholders are permitted to "attend, speak, or be a featured guest" at a state or local party fundraising event. 2 U. S. C. § 441i(e)(3). Section 323(e) specifically provides

[70] Section 323(e)(1)(B) tightly constrains the ability of federal candidates and officeholders to solicit or spend nonfederal money in connection with state or local elections. Contributions cannot exceed FECA's analogous hard-money contribution limits or come from prohibited sources. In effect, § 323(e)(1)(B) doubles the limits on what individuals can contribute to or at the behest of federal candidates and officeholders, while restricting the use of the additional funds to activities not related to federal elections. If the federal candidate or officeholder is also a candidate for state or local office, he or she may solicit, receive, and spend an unlimited amount of nonfederal money in connection with that election, subject only to state regulation and the requirement that such solicitation or expenditures refer only to the relevant state or local office. 2 U. S. C. § 441i(e)(2).

that federal candidates and officeholders may make solicitations of soft money to § 501(c) organizations whose primary purpose is not to engage in "Federal election activit[ies]" as long as the solicitation does not specify how the funds will be spent, 2 U. S. C. § 441i(e)(4)(A); to § 501(c) organizations whose primary purpose *is* to engage in "Federal election activit[ies]" as long as the solicitations are limited to individuals and the amount solicited does not exceed $20,000 per year per individual, 2 U. S. C. § 441i(e)(4)(B); and to § 501(c) organizations for the express purpose of carrying out such activities, again so long as the amount solicited does not exceed $20,000 per year per individual, 2 U. S. C. § 441i(e)(4)(B).

No party seriously questions the constitutionality of § 323(e)'s general ban on donations of soft money made directly to federal candidates and officeholders, their agents, or entities established or controlled by them. Even on the narrowest reading of *Buckley*, a regulation restricting donations to a federal candidate, regardless of the ends to which those funds are ultimately put, qualifies as a contribution limit subject to less rigorous scrutiny. Such donations have only marginal speech and associational value, but at the same time pose a substantial threat of corruption. By severing the most direct link between the soft-money donor and the federal candidate, § 323(e)'s ban on donations of soft money is closely drawn to prevent the corruption or the appearance of corruption of federal candidates and officeholders.

Section 323(e)'s restrictions on solicitations are justified as valid anticircumvention measures. Large soft-money donations at a candidate's or officeholder's behest give rise to all of the same corruption concerns posed by contributions made directly to the candidate or officeholder. Though the candidate may not ultimately control how the funds are spent, the value of the donation to the candidate or officeholder is evident from the fact of the solicitation itself. Without some restriction on solicitations, federal candidates and officeholders could easily avoid FECA's contribution limits by so-

liciting funds from large donors and restricted sources to like-minded organizations engaging in federal election activities. As the record demonstrates, even before the passage of BCRA, federal candidates and officeholders had already begun soliciting donations to state and local parties, as well as tax-exempt organizations, in order to help their own, as well as their party's, electoral cause. See *Colorado II*, 533 U. S., at 458 (quoting fundraising letter from a Congressman explaining to contributor that "'you are at the limit of what you can directly contribute to my campaign,' but 'you can further help my campaign by assisting the Colorado Republican Party'"); 251 F. Supp. 2d, at 479–480 (Kollar-Kotelly, J.) (surveying evidence of federal officeholders soliciting funds to state and local parties); *id.*, at 848 (Leon, J.) (same); *id.*, at 518 (Kollar-Kotelly, J.) (surveying evidence of federal officeholders soliciting funds for nonprofits for electioneering purposes); *id.*, at 849 (Leon, J.) (same). The incentives to do so, at least with respect to solicitations to tax-exempt organizations, will only increase with Title I's restrictions on the raising and spending of soft money by national, state, and local parties.

Section 323(e) addresses these concerns while accommodating the individual speech and associational rights of federal candidates and officeholders. Rather than place an outright ban on solicitations to tax-exempt organizations, § 323(e)(4) permits limited solicitations of soft money. 2 U. S. C. § 441i(e)(4). This allowance accommodates individuals who have long served as active members of nonprofit organizations in both their official and individual capacities. Similarly, §§ 323(e)(1)(B) and 323(e)(3) preserve the traditional fundraising role of federal officeholders by providing limited opportunities for federal candidates and officeholders to associate with their state and local colleagues through joint fundraising activities. 2 U. S. C. §§ 441i(e)(1)(B), 441i(e)(3). Given these many exceptions, as well as the substantial threat of corruption or its appearance posed by dona-

tions to or at the behest of federal candidates and officeholders, § 323(e) is clearly constitutional. We accordingly uphold § 323(e) against plaintiffs' First Amendment challenge.

New FECA § 323(f)'s Restrictions on State Candidates and Officeholders

The final provision of Title I is new FECA § 323(f). 2 U. S. C. § 441i(f) (Supp. II). Section 323(f) generally prohibits candidates for state or local office, or state or local officeholders, from spending soft money to fund "public communications" as defined in § 301(20)(A)(iii)—*i. e.*, a communication that "refers to a clearly identified candidate for Federal office . . . and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office." 2 U. S. C. § 441i(f)(1); § 431(20)(A)(iii). Exempted from this restriction are communications made in connection with an election for state or local office which refer only to the state or local candidate or officeholder making the expenditure or to any other candidate for the same state or local office. § 441i(f)(2).

Section 323(f) places no cap on the amount of money that state or local candidates can spend on any activity. Rather, like §§ 323(a) and 323(b), it limits only the source and amount of contributions that state and local candidates can draw on to fund expenditures that directly impact federal elections. And, by regulating only contributions used to fund "public communications," § 323(f) focuses narrowly on those soft-money donations with the greatest potential to corrupt or give rise to the appearance of corruption of federal candidates and officeholders.

Plaintiffs advance two principal arguments against § 323(f). We have already rejected the first argument, that the definition of "public communications" in new FECA § 301(20)(A)(iii) is unconstitutionally vague and overbroad. See n. 64, *supra.* We add only that, plaintiffs' and JUSTICE KENNEDY's contrary reading notwithstanding, *post,* at 316–

317, this provision does not prohibit a state or local candidate from advertising that he has received a federal officeholder's endorsement.[71]

The second argument, that soft-money contributions to state and local candidates for "public communications" do not corrupt or appear to corrupt federal candidates, ignores both the record in this litigation and Congress' strong interest in preventing circumvention of otherwise valid contribution limits. The proliferation of sham issue ads has driven the soft-money explosion. Parties have sought out every possible way to fund and produce these ads with soft money: They have labored to bring them under the FEC's allocation regime; they have raised and transferred soft money from national to state party committees to take advantage of favorable allocation ratios; and they have transferred and solicited funds to tax-exempt organizations for production of such ads. We will not upset Congress' eminently reasonable prediction that, with these other avenues no longer available, state and local candidates and officeholders will become the next conduits for the soft-money funding of sham issue advertising. We therefore uphold § 323(f) against plaintiffs' First Amendment challenge.[72]

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[71] See 148 Cong. Rec. S2143 (Mar. 20, 2002) (statement of Sen. Feingold) (Section 323(f) does not prohibit "spending non-Federal money to run advertisements that mention that [state or local candidates] have been endorsed by a Federal candidate or say that they identify with a position of a named Federal candidate, so long as those advertisements do not support, attack, promote or oppose the Federal candidate").

[72] JUSTICE KENNEDY faults our "unwillingness" to confront that "Title I's entirety . . . look[s] very much like an incumbency protection plan," citing § 323(e), which provides officeholders and candidates with greater opportunities to solicit soft money than §§ 323(a) and (d) permit party officers. *Post*, at 306, 307. But, § 323(e) applies to both officeholders *and candidates* and allows only *minimally* greater opportunities for solicitation out of regard for the fact that candidates and officeholders, unlike party officers, can never step out of their official roles. *Supra*, at 183; 2 U. S. C. § 441i(e). Any concern that Congress might opportunistically

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Several plaintiffs contend that Title I exceeds Congress' Election Clause authority to "make or alter" rules governing federal elections, U. S. Const., Art. I, § 4, and, by impairing the authority of the States to regulate their own elections, violates constitutional principles of federalism. In examining congressional enactments for infirmity under the Tenth Amendment, this Court has focused its attention on laws that commandeer the States and state officials in carrying out federal regulatory schemes. See *Printz* v. *United States*, 521 U. S. 898 (1997); *New York* v. *United States*, 505 U. S. 144 (1992). By contrast, Title I of BCRA only regulates the conduct of private parties. It imposes no requirements whatsoever upon States or state officials, and, because it does not expressly pre-empt state legislation, it leaves the States free to enforce their own restrictions on the financing of state electoral campaigns. It is true that Title I, as amended, prohibits some fundraising tactics that would otherwise be permitted under the laws of various States, and that it may therefore have an indirect effect on the financing of state electoral campaigns. But these indirect effects do not render BCRA unconstitutional. It is not uncommon for federal law to prohibit private conduct that is legal in some States. See, *e. g.*, *United States* v. *Oakland Cannabis Buy-*

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pass campaign-finance regulation for self-serving ends is taken into account by the applicable level of scrutiny. Congress must show concrete evidence that a particular type of financial transaction is corrupting or gives rise to the appearance of corruption and that the chosen means of regulation are closely drawn to address that real or apparent corruption. It has done so here. At bottom, JUSTICE KENNEDY has long disagreed with the basic holding of *Buckley* and its progeny that less rigorous scrutiny—which shows a measure of deference to Congress in an area where it enjoys particular expertise—applies to assess limits on campaign contributions. *Colorado II*, 533 U. S., at 465 (THOMAS, J., dissenting) (joining JUSTICE THOMAS for the proposition that "*Buckley* should be overruled" (citation omitted)); *Shrink Missouri*, 528 U. S., at 405–410 (KENNEDY, J., dissenting).

ers' Cooperative, 532 U. S. 483 (2001). Indeed, such conflict is inevitable in areas of law that involve both state and federal concerns. It is not in and of itself a marker of constitutional infirmity. See *Ex parte Siebold*, 100 U. S. 371, 392 (1880).

Of course, in maintaining the federal system envisioned by the Founders, this Court has done more than just prevent Congress from commandeering the States. We have also policed the absolute boundaries of congressional power under Article I. See *United States* v. *Morrison*, 529 U. S. 598 (2000); *United States* v. *Lopez*, 514 U. S. 549 (1995). But plaintiffs offer no reason to believe that Congress has overstepped its Elections Clause power in enacting BCRA. Congress has a fully legitimate interest in maintaining the integrity of federal officeholders and preventing corruption of federal electoral processes through the means it has chosen. Indeed, our above analysis turns on our finding that those interests are sufficient to satisfy First Amendment scrutiny. Given that finding, we cannot conclude that those interests are insufficient to ground Congress' exercise of its Elections Clause power. See *Morrison*, *supra*, at 607 (respect owed to coordinate branches "demands that we invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds").

C

Finally, plaintiffs argue that Title I violates the equal protection component of the Due Process Clause of the Fifth Amendment because it discriminates against political parties in favor of special interest groups such as the National Rifle Association, American Civil Liberties Union, and Sierra Club. As explained earlier, BCRA imposes numerous restrictions on the fundraising abilities of political parties, of which the soft-money ban is only the most prominent. Interest groups, however, remain free to raise soft money to fund voter registration, GOTV activities, mailings, and

broadcast advertising (other than electioneering communications). We conclude that this disparate treatment does not offend the Constitution.

As an initial matter, we note that BCRA actually favors political parties in many ways. Most obviously, party committees are entitled to receive individual contributions that substantially exceed FECA's limits on contributions to nonparty political committees; individuals can give $25,000 to political party committees whereas they can give a maximum of $5,000 to nonparty political committees. In addition, party committees are entitled in effect to contribute to candidates by making coordinated expenditures, and those expenditures may greatly exceed the contribution limits that apply to other donors. See 2 U. S. C. § 441a(d) (Supp. II).

More importantly, however, Congress is fully entitled to consider the real-world differences between political parties and interest groups when crafting a system of campaign finance regulation. See *National Right to Work*, 459 U. S., at 210. Interest groups do not select slates of candidates for elections. Interest groups do not determine who will serve on legislative committees, elect congressional leadership, or organize legislative caucuses. Political parties have influence and power in the Legislature that vastly exceeds that of any interest group. As a result, it is hardly surprising that party affiliation is the primary way by which voters identify candidates, or that parties in turn have special access to and relationships with federal officeholders. Congress' efforts at campaign finance regulation may account for these salient differences. Taken seriously, plaintiffs' equal protection arguments would call into question not just Title I of BCRA, but much of the pre-existing structure of FECA as well. We therefore reject those arguments.

Accordingly, we affirm the judgment of the District Court insofar as it upheld §§ 323(e) and 323(f). We reverse the

judgment of the District Court insofar as it invalidated §§ 323(a), 323(b), and 323(d).

IV

Title II of BCRA, entitled "Noncandidate Campaign Expenditures," is divided into two subtitles: "Electioneering Communications" and "Independent and Coordinated Expenditures." We consider each challenged section of these subtitles in turn.

BCRA § 201's Definition of "Electioneering Communications"

The first section of Title II, § 201, comprehensively amends FECA § 304, which requires political committees to file detailed periodic financial reports with the FEC. The amendment coins a new term, "electioneering communications," to replace the narrowing construction of FECA's disclosure provisions adopted by this Court in *Buckley*. As discussed further below, that construction limited the coverage of FECA's disclosure requirement to communications expressly advocating the election or defeat of particular candidates. By contrast, the term "electioneering communication" is not so limited, but is defined to encompass any "broadcast, cable, or satellite communication" that

> "(I) refers to a clearly identified candidate for Federal office;
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> "(II) is made within—
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> "(aa) 60 days before a general, special, or runoff election for the office sought by the candidate; or
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> "(bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and
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> "(III) in the case of a communication which refers to a candidate for an office other than President or Vice

> President, is targeted to the relevant electorate." 2 U. S. C. § 434(f)(3)(A)(i) (Supp. II).[73]

New FECA § 304(f)(3)(C) further provides that a communication is "'targeted to the relevant electorate'" if it "can be received by 50,000 or more persons" in the district or State the candidate seeks to represent. 2 U. S. C. § 434(f)(3)(C).

In addition to setting forth this definition, BCRA's amendments to FECA § 304 specify significant disclosure requirements for persons who fund electioneering communications. BCRA's use of this new term is not, however, limited to the disclosure context: A later section of the Act (BCRA § 203, which amends FECA § 316(b)(2)) restricts corporations' and labor unions' funding of electioneering communications. Plaintiffs challenge the constitutionality of the new term as it applies in both the disclosure and the expenditure contexts.

The major premise of plaintiffs' challenge to BCRA's use of the term "electioneering communication" is that *Buckley* drew a constitutionally mandated line between express advocacy and so-called issue advocacy, and that speakers possess an inviolable First Amendment right to engage in the latter category of speech. Thus, plaintiffs maintain, Congress cannot constitutionally require disclosure of, or regulate expenditures for, "electioneering communications" without making an exception for those "communications" that do not meet *Buckley*'s definition of express advocacy.

That position misapprehends our prior decisions, for the express advocacy restriction was an endpoint of statutory interpretation, not a first principle of constitutional law. In

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[73] BCRA also provides a "backup" definition of "electioneering communication," which would become effective if the primary definition were "held to be constitutionally insufficient by final judicial decision to support the regulation provided herein." 2 U. S. C. § 434(f)(3)(A)(ii). We uphold all applications of the primary definition and accordingly have no occasion to discuss the backup definition.

Buckley we began by examining then-18 U. S. C. § 608(e)(1) (1970 ed., Supp. IV), which restricted expenditures " 'relative to a clearly identified candidate,' " and we found that the phrase " 'relative to' " was impermissibly vague. 424 U. S., at 40–42. We concluded that the vagueness deficiencies could "be avoided only by reading § 608(e)(1) as limited to communications that include explicit words of advocacy of election or defeat of a candidate."[74] *Id.*, at 43. We provided examples of words of express advocacy, such as " 'vote for,' 'elect,' 'support,' . . . 'defeat,' [and] 'reject,' " *id.*, at 44, n. 52, and those examples eventually gave rise to what is now known as the "magic words" requirement.

We then considered FECA's disclosure provisions, including 2 U. S. C. § 431(f) (1970 ed., Supp. IV), which defined " 'expenditur[e]' " to include the use of money or other assets " 'for the purpose of . . . influencing' " a federal election. *Buckley,* 424 U. S., at 77. Finding that the "ambiguity of this phrase" posed "constitutional problems," *ibid.*, we noted our "obligation to construe the statute, if that can be done consistent with the legislature's purpose, to avoid the shoals of vagueness," *id.*, at 77–78 (citations omitted). "To insure that the reach" of the disclosure requirement was "not impermissibly broad, we construe[d] 'expenditure' for purposes of that section in the same way we construed the terms of § 608(e)—to reach only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate." *Id.*, at 80 (footnote omitted).

Thus, a plain reading of *Buckley* makes clear that the express advocacy limitation, in both the expenditure and the

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[74] We then held that, so construed, the expenditure restriction did not advance a substantial government interest, because independent express advocacy did not pose a danger of real or apparent corruption, and the line between express advocacy and other electioneering activities was easily circumvented. Concluding that § 608(e)(1)'s heavy First Amendment burden was not justified, we invalidated the provision. *Buckley,* 424 U. S., at 45–48.

disclosure contexts, was the product of statutory interpretation rather than a constitutional command.[75] In narrowly reading the FECA provisions in *Buckley* to avoid problems of vagueness and overbreadth, we nowhere suggested that a statute that was neither vague nor overbroad would be required to toe the same express advocacy line. Nor did we suggest as much in *MCFL*, 479 U. S. 238 (1986), in which we addressed the scope of another FECA expenditure limitation and confirmed the understanding that *Buckley*'s express advocacy category was a product of statutory construction.[76]

In short, the concept of express advocacy and the concomitant class of magic words were born of an effort to avoid constitutional infirmities. See *NLRB* v. *Catholic Bishop of Chicago*, 440 U. S. 490, 500 (1979) (citing *Murray* v. *Schooner Charming Betsy*, 2 Cranch 64, 118 (1804)). We have long "'rigidly adhered'" to the tenet "'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) (citation omitted), for "[t]he nature of judicial review constrains us to consider the case that is actually before us," *James B. Beam Distilling Co.* v. *Georgia*, 501 U. S. 529, 547 (1991) (Blackmun, J., concurring). Consistent with that principle, our decisions in *Buckley* and *MCFL* were specific to the statutory language before us; they in no way drew a constitutional boundary that forever fixed the

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[75] Our adoption of a narrowing construction was consistent with our vagueness and overbreadth doctrines. See *Broadrick*, 413 U. S., at 613; *Grayned*, 408 U. S., at 108–114.

[76] The provision at issue in *MCFL*—2 U. S. C. § 441b (1982 ed.)—required corporations and unions to use separate segregated funds, rather than general treasury moneys, on expenditures made "'in connection with'" a federal election. 479 U. S., at 241. We noted that *Buckley* had limited the statutory term "'expenditure'" to words of express advocacy "in order to avoid problems of overbreadth." 479 U. S., at 248. We held that "a similar *construction*" must apply to the expenditure limitation before us in *MCFL* and that the reach of 2 U. S. C. § 441b was therefore constrained to express advocacy. 479 U. S., at 249 (emphasis added).

permissible scope of provisions regulating campaign-related speech.

Nor are we persuaded, independent of our precedents, that the First Amendment erects a rigid barrier between express advocacy and so-called issue advocacy. That notion cannot be squared with our longstanding recognition that the presence or absence of magic words cannot meaningfully distinguish electioneering speech from a true issue ad. See *Buckley*, *supra*, at 45. Indeed, the unmistakable lesson from the record in this litigation, as all three judges on the District Court agreed, is that *Buckley*'s magic-words requirement is functionally meaningless. 251 F. Supp. 2d, at 303–304 (Henderson, J.); *id.*, at 534 (Kollar-Kotelly, J.); *id.*, at 875–879 (Leon, J.). Not only can advertisers easily evade the line by eschewing the use of magic words, but they would seldom choose to use such words even if permitted.[77] And although the resulting advertisements do not urge the viewer to vote for or against a candidate in so many words, they are no less clearly intended to influence the election.[78] *Buckley*'s

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[77] As one major-party political consultant testified, "'it is rarely advisable to use such clumsy words as "vote for" or "vote against."'" 251 F. Supp. 2d, at 305 (Henderson, J.) (quoting declaration of Douglas L. Bailey, founder, Bailey, Deardourff & Assoc. 1–2, App. 24, ¶ 3). He explained: "'All advertising professionals understand that the most effective advertising leads the viewer to his or her own conclusion without forcing it down their throat.'" 251 F. Supp. 2d, at 305 (Henderson, J.). Other political professionals and academics confirm that the use of magic words has become an anachronism. See *id.*, at 531 (Kollar-Kotelly, J.) (citing declaration of Raymond D. Strother, Pres., Strother/Duffy/Strother ¶ 4, 9 Defs. Exhs., Tab 40); see Unsealed Pp. Vol., Tab 7; App. 1334–1335 (Krasno & Sorauf Expert Report); see also 251 F. Supp. 2d, at 305 (Henderson, J.); *id.*, at 532 (Kollar-Kotelly, J.); *id.*, at 875–876 (Leon, J.).

[78] One striking example is an ad that a group called "Citizens for Reform" sponsored during the 1996 Montana congressional race, in which Bill Yellowtail was a candidate. The ad stated:

"'Who is Bill Yellowtail? He preaches family values but took a swing at his wife. And Yellowtail's response? He only slapped her. But "her nose was not broken." He talks law and order . . . but is himself a con-

express advocacy line, in short, has not aided the legislative effort to combat real or apparent corruption, and Congress enacted BCRA to correct the flaws it found in the existing system.

Finally we observe that new FECA § 304(f)(3)'s definition of "electioneering communication" raises none of the vagueness concerns that drove our analysis in *Buckley*. The term "electioneering communication" applies only (1) to a broadcast (2) clearly identifying a candidate for federal office, (3) aired within a specific time period, and (4) targeted to an identified audience of at least 50,000 viewers or listeners. These components are both easily understood and objectively determinable. See *Grayned* v. *City of Rockford*, 408 U. S. 104, 108–114 (1972). Thus, the constitutional objection that persuaded the Court in *Buckley* to limit FECA's reach to express advocacy is simply inapposite here.

BCRA § 201's Disclosure Requirements

Having rejected the notion that the First Amendment requires Congress to treat so-called issue advocacy differently from express advocacy, we turn to plaintiffs' other concerns about the use of the term "electioneering communication" in amended FECA § 304's disclosure provisions. Under those provisions, whenever any person makes disbursements totaling more than $10,000 during any calendar year for the direct costs of producing and airing electioneering communications, he must file a statement with the FEC identifying the pertinent elections and all persons sharing the costs of the disbursements. 2 U. S. C. §§ 434(f)(2)(A), (B), and (D) (Supp. II). If the disbursements are made from a corporation's

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victed felon. And though he talks about protecting children, Yellowtail failed to make his own child support payments—then voted against child support enforcement. Call Bill Yellowtail. Tell him to support family values.'" 5 1998 Senate Report 6305 (minority views).

The notion that this advertisement was designed purely to discuss the issue of family values strains credulity.

or labor union's segregated account,[79] or by a single individual who has collected contributions from others, the statement must identify all persons who contributed $1,000 or more to the account or the individual during the calendar year. §§ 434(f)(2)(E), (F). The statement must be filed within 24 hours of each "disclosure date"—a term defined to include the first date and all subsequent dates on which a person's aggregate undisclosed expenses for electioneering communications exceed $10,000 for that calendar year. §§ 434(f)(1), (2), and (4). Another subsection further provides that the execution of a contract to make a disbursement is itself treated as a disbursement for purposes of FECA's disclosure requirements. § 434(f)(5).

In addition to the failed argument that BCRA's amendments to FECA § 304 improperly extend to both express and issue advocacy, plaintiffs challenge amended FECA § 304's disclosure requirements as unnecessarily (1) requiring disclosure of the names of persons who contributed $1,000 or more to the individual or group that paid for a communication, and (2) mandating disclosure of executory contracts for communications that have not yet aired. The District Court rejected the former submission but accepted the latter, finding invalid new FECA § 304(f)(5), which governs executory contracts. Relying on BCRA's severability provision,[80] the court held that invalidation of the executory contracts subsection did

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[79] As discussed below, *infra*, at 203–209, BCRA § 203 bars corporations and labor unions from funding electioneering communications with money from their general treasuries, instead requiring them to establish a "separate segregated fund" for such expenditures. 2 U. S. C. § 441b(b)(2).

[80] Section 401 of BCRA provides:

"If any provision of this Act or amendment made by this Act . . . , or the application of a provision or amendment to any person or circumstance, is held to be unconstitutional, the remainder of this Act and amendments made by this Act, and the application of the provisions and amendment to any person or circumstance, shall not be affected by the holding." 2 U. S. C. § 454 note.

not render the balance of BCRA's amendments to FECA § 304 unconstitutional. 251 F. Supp. 2d, at 242 *(per curiam)*.

We agree with the District Court that the important state interests that prompted the *Buckley* Court to uphold FECA's disclosure requirements—providing the electorate with information, deterring actual corruption and avoiding any appearance thereof, and gathering the data necessary to enforce more substantive electioneering restrictions—apply in full to BCRA.[81] Accordingly, *Buckley* amply supports application of FECA § 304's disclosure requirements to the entire range of "electioneering communications." As the authors of the District Court's *per curiam* opinion concluded after reviewing evidence concerning the use of purported "issue ads" to influence federal elections:

> "The factual record demonstrates that the abuse of the present law not only permits corporations and labor unions to fund broadcast advertisements designed to influence federal elections, but permits them to do so while concealing their identities from the public. BCRA's disclosure provisions require these organizations to reveal their identities so that the public is able to identify the source of the funding behind broadcast advertisements influencing certain elections. Plaintiffs' disdain for BCRA's disclosure provisions is nothing short of surprising. Plaintiffs challenge BCRA's restrictions on electioneering communications on the premise that they should be permitted to spend corporate and labor union general treasury funds in the sixty

[81] The disclosure requirements that BCRA § 201 added to FECA § 304 are actually somewhat less intrusive than the comparable requirements that have long applied to persons making independent expenditures. For example, the previous version of § 304 required groups making independent expenditures to identify donors who contributed more than $200. 2 U. S. C. § 434(c)(2)(C). The comparable requirement in the amendments applies only to donors of $1,000 or more. §§ 434(f)(2)(E), (F) (Supp. II).

days before the federal elections on broadcast advertisements, which refer to federal candidates, because speech needs to be 'uninhibited, robust, and wide-open.' McConnell Br. at 44 (quoting *New York Times Co.* v. *Sullivan*, 376 U. S. 254, 270 (1964)). Curiously, Plaintiffs want to preserve the ability to run these advertisements while hiding behind dubious and misleading names like: 'The Coalition-Americans Working for Real Change' (funded by business organizations opposed to organized labor), 'Citizens for Better Medicare' (funded by the pharmaceutical industry), 'Republicans for Clean Air' (funded by brothers Charles and Sam Wyly). Findings ¶¶ 44, 51, 52. Given these tactics, Plaintiffs never satisfactorily answer the question of how 'uninhibited, robust, and wide-open' speech can occur when organizations hide themselves from the scrutiny of the voting public. McConnell Br. at 44. Plaintiffs' argument for striking down BCRA's disclosure provisions does not reinforce the precious First Amendment values that Plaintiffs argue are trampled by BCRA, but ignores the competing First Amendment interests of individual citizens seeking to make informed choices in the political marketplace." 251 F. Supp. 2d, at 237.

The District Court was also correct that *Buckley* forecloses a facial attack on the new provision in § 304 that requires disclosure of the names of persons contributing $1,000 or more to segregated funds or individuals that spend more than $10,000 in a calendar year on electioneering communications. Like our earlier decision in *NAACP* v. *Alabama ex rel. Patterson*, 357 U. S. 449 (1958),[82] *Buckley* recognized

[82] *NAACP* v. *Alabama* arose out of a judgment holding the NAACP in contempt for refusing to produce the names and addresses of its members and agents in Alabama. The NAACP "made an uncontroverted showing that on past occasions revelation of the identity of its rank-and-file members ha[d] exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostil-

that compelled disclosures may impose an unconstitutional burden on the freedom to associate in support of a particular cause. Nevertheless, *Buckley* rejected the contention that FECA's disclosure requirements could not constitutionally be applied to minor parties and independent candidates because the Government's interest in obtaining information from such parties was minimal and the danger of infringing their rights substantial. In *Buckley*, unlike *NAACP*, we found no evidence that any party had been exposed to economic reprisals or physical threats as a result of the compelled disclosures. 424 U. S., at 69–70. We acknowledged that such a case might arise in the future, however, and addressed the standard of proof that would then apply:

> "We recognize that unduly strict requirements of proof could impose a heavy burden, but it does not follow that a blanket exemption for minor parties is necessary. Minor parties must be allowed sufficient flexibility in the proof of injury to assure a fair consideration of their claim. The evidence offered need show only a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties." *Id.*, at 74.

A few years later we used that standard to resolve a minor party's challenge to the constitutionality of the State of Ohio's disclosure requirements. We held that the First Amendment prohibits States from compelling disclosures that would subject identified persons to "threats, harassment, and reprisals," and that the District Court's findings

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ity." 357 U. S., at 462. We thought it apparent that the compelled disclosure would "affect adversely" the NAACP and its members' ability "to pursue their collective effort to foster beliefs which they admittedly have the right to advocate." *Id.*, at 462–463. Under these circumstances, we concluded that Alabama's interest in determining whether the NAACP was doing business in the State was plainly insufficient to justify its production order. *Id.*, at 464–466.

had established a "reasonable probability" of such a result.[83] *Brown* v. *Socialist Workers '74 Campaign Comm. (Ohio)*, 459 U. S. 87, 100 (1982).

In this litigation the District Court applied *Buckley*'s evidentiary standard and found—consistent with our conclusion in *Buckley*, and in contrast to that in *Brown*—that the evidence did not establish the requisite "reasonable probability" of harm to any plaintiff group or its members. The District Court noted that some parties had expressed such concerns, but it found a "lack of specific evidence about the basis for these concerns." 251 F. Supp. 2d, at 247 *(per curiam)*. We agree, but we note that, like our refusal to recognize a blanket exception for minor parties in *Buckley*, our rejection of plaintiffs' facial challenge to the requirement to disclose individual donors does not foreclose possible future challenges to particular applications of that requirement.

We also are unpersuaded by plaintiffs' challenge to new FECA § 304(f)(5), which requires disclosure of executory contracts for electioneering communications:

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[83] We stated:

"The District Court properly applied the *Buckley* test to the facts of this case. The District Court found 'substantial evidence of both governmental and private hostility toward and harassment of [Socialist Workers Party (SWP)] members and supporters.' Appellees introduced proof of specific incidents of private and government hostility toward the SWP and its members within the four years preceding the trial. These incidents, many of which occurred in Ohio and neighboring States, included threatening phone calls and hate mail, the burning of SWP literature, the destruction of SWP members' property, police harassment of a party candidate, and the firing of shots at an SWP office. There was also evidence that in the 12-month period before trial 22 SWP members, including 4 in Ohio, were fired because of their party membership. Although appellants contend that two of the Ohio firings were not politically motivated, the evidence amply supports the District Court's conclusion that 'private hostility and harassment toward SWP members make it difficult for them to maintain employment.' The District Court also found a past history of Government harassment of the SWP." *Brown* v. *Socialist Workers '74 Campaign Comm. (Ohio)*, 459 U. S. 87, 98–99 (1982) (paragraph break omitted).

> "Contracts to disburse
>
> "For purposes of this subsection, a person shall be treated as having made a disbursement if the person has executed a contract to make the disbursement." 2 U. S. C. § 434(f)(5) (Supp. II).

In our view, this provision serves an important purpose the District Court did not advance. BCRA's amendments to FECA § 304 mandate disclosure only if and when a person makes disbursements totaling more than $10,000 in any calendar year to pay for electioneering communications. Plaintiffs do not take issue with the use of a dollar amount, rather than the number or dates of the ads, to identify the time when a person paying for electioneering communications must make disclosures to the FEC. Nor do they question the need to make the contents of parties' disclosure statements available to curious voters in advance of elections. Given the relatively short timeframes in which electioneering communications are made, the interest in assuring that disclosures are made promptly and in time to provide relevant information to voters is unquestionably significant. Yet fixing the deadline for filing disclosure statements based on the date when aggregate disbursements exceed $10,000 would open a significant loophole if advertisers were not required to disclose executory contracts. In the absence of that requirement, political supporters could avoid preelection disclosures concerning ads slated to run during the final week of a campaign simply by making a preelection downpayment of less than $10,000, with the balance payable after the election. Indeed, if the advertiser waited to pay that balance until the next calendar year then, as long as the balance did not itself exceed $10,000, the advertiser might avoid the disclosure requirements completely.

The record contains little evidence identifying any harm that might flow from the enforcement of § 304(f)(5)'s "advance" disclosure requirement. The District Court speculated that disclosing information about contracts "that have

not been performed, and may never be performed, may lead to confusion and an unclear record upon which the public will evaluate the forces operating in the political marketplace." 251 F. Supp. 2d, at 241 *(per curiam)*. Without evidence relating to the frequency of nonperformance of executed contracts, such speculation cannot outweigh the public interest in ensuring full disclosure before an election actually takes place. It is no doubt true that § 304(f)(5) will sometimes require the filing of disclosure statements in advance of the actual broadcast of an advertisement.[84] But the same would be true in the absence of an advance disclosure requirement, if a television station insisted on advance payment for all of the ads covered by a contract. Thus, the possibility that amended § 304 may sometimes require disclosures prior to the airing of an ad is as much a function of the use of disbursements (rather than the date of an ad) to trigger the disclosure requirement as it is a function of § 304(f)(5)'s treatment of executory contracts.

As the District Court observed, amended FECA § 304's disclosure requirements are constitutional because they "'d[o] not prevent anyone from speaking.'" *Ibid.* (quoting Brief for FEC in Opposition in No. 02–582 et al. (DC), p. 112). Moreover, the required disclosures "'would not have to reveal the specific content of the advertisements, yet they would perform an important function in informing the public about various candidates' supporters *before* election day.'" 251 F. Supp. 2d, at 241 (quoting Brief for FEC in Opposition, *supra*, at 112) (emphasis in original). Accordingly, we affirm the judgment of the District Court insofar as it upheld the disclosure requirements in amended FECA § 304 and rejected the facial attack on the provisions relating to donors

[84] We cannot judge the likelihood that this will occur, as the record contains little if any description of the contractual provisions that commonly govern payments for electioneering communications. Nor does the record contain any evidence relating to JUSTICE KENNEDY's speculation, *post*, at 321, that advance disclosure may disadvantage an advertiser.

of $1,000 or more, and reverse that judgment insofar as it invalidated FECA § 304(f)(5).

BCRA § 202's Treatment of "Coordinated Communications" as Contributions

Section 202 of BCRA amends FECA § 315(a)(7)(C) to provide that disbursements for "electioneering communication[s]" that are coordinated with a candidate or party will be treated as contributions to, and expenditures by, that candidate or party. 2 U. S. C. § 441a(a)(7)(C) (Supp. II).[85] The amendment clarifies the scope of the preceding subsection, § 315(a)(7)(B), which states more generally that "expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of" a candidate or party will constitute contributions. 2 U. S. C. §§ 441a(a)(7)(B)(i)–(ii) (2000 ed. and Supp. II). In *Buckley* we construed the statutory term "expenditure" to reach only spending for express advocacy. 424 U. S., at 40–44, and n. 52 (addressing 18 U. S. C. § 608(e)(1) (1970 ed., Supp. IV), which placed a $1,000 cap on expenditures " 'relative to a clearly identified candidate' "). BCRA § 202 pre-empts a possible claim that § 315(a)(7)(B) is similarly limited, such that coordinated expenditures for communications that avoid express advocacy cannot be counted as contributions. As we ex-

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[85] New FECA § 315(a)(7)(C) reads as follows:

"[I]f—

"(i) any person makes, or contracts to make, any disbursement for any electioneering communication (within the meaning of section 434(f)(3) of this title); and

"(ii) such disbursement is coordinated with a candidate or an authorized committee of such candidate, a Federal, State, or local political party or committee thereof, or an agent or official of any such candidate, party, or committee;

"such disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate's party and as an expenditure by that candidate or that candidate's party . . . ." 2 U. S. C. § 441a(a)(7)(C).

plained above, see *supra,* at 190–193, *Buckley*'s narrow interpretation of the term "expenditure" was not a constitutional limitation on Congress' power to regulate federal elections. Accordingly, there is no reason why Congress may not treat coordinated disbursements for electioneering communications in the same way it treats all other coordinated expenditures. We affirm the judgment of the District Court insofar as it held that plaintiffs had advanced "no basis for finding Section 202 unconstitutional." 251 F. Supp. 2d, at 250.

BCRA § 203's Prohibition of Corporate and Labor Disbursements for Electioneering Communications

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. The ability to form and administer separate segregated funds authorized by FECA § 316, 2 U. S. C. § 441b (2000 ed. and Supp. II), has provided corporations and unions with a constitutionally sufficient opportunity to engage in express advocacy. That has been this Court's unanimous view,[86] and it is not challenged in this litigation.

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[86] We have explained:

"The statutory purpose of § 441b . . . is to prohibit contributions or expenditures by corporations or labor organizations in connection with federal elections. 2 U. S. C. § 441b(a). The section, however, permits some participation of unions and corporations in the federal electoral process by allowing them to establish and pay the administrative expenses of 'separate segregated fund[s],' which may be 'utilized for political purposes.' 2 U. S. C. § 441b(b)(2)(C). The Act restricts the operations of such segregated funds, however, by making it unlawful for a corporation to solicit contributions to a fund established by it from persons other than its 'stockholders and their families and its executive or administrative personnel and their families.' 2 U. S. C. § 441b(b)(4)(A)." *National Right to Work,* 459 U. S., at 201–202.

Section 203 of BCRA amends FECA § 316(b)(2) to extend this rule, which previously applied only to express advocacy, to all "electioneering communications" covered by the definition of that term in amended FECA § 304(f)(3), discussed above. 2 U. S. C. § 441b(b)(2) (Supp. II).[87] Thus, under BCRA, corporations and unions may not use their general treasury funds to finance electioneering communications, but they remain free to organize and administer segregated funds, or PACs, for that purpose. Because corporations can still fund electioneering communications with PAC money, it is "simply wrong" to view the provision as a "complete ban" on expression rather than a regulation. *Beaumont*, 539 U. S., at 162. As we explained in *Beaumont:*

> "The PAC option 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, and it lets the government regulate campaign activity through registration and disclosure, see [2 U. S. C.] §§ 432–434, without jeopardizing the associational rights of advocacy organizations' members." *Id.*, at 163 (citation omitted).

See also *Austin* v. *Michigan Chamber of Commerce*, 494 U. S. 652, 658 (1990).

Rather than arguing that the prohibition on the use of general treasury funds is a complete ban that operates as a prior restraint, plaintiffs instead challenge the expanded regulation on the grounds that it is both overbroad and underinclusive. Our consideration of plaintiffs' challenge is informed by our earlier conclusion that the distinction between ex-

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[87] The amendment is straightforward. Prior to BCRA, FECA § 316(a) made it "unlawful . . . for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with" certain federal elections. 2 U. S. C. § 441b(a) (2000 ed.). BCRA amends FECA § 316(b)(2)'s definition of the term "contribution or expenditure" to include "any applicable electioneering communication." § 441b(b)(2) (Supp. II).

press advocacy and so-called issue advocacy is not constitutionally compelled. In that light, we must examine the degree to which BCRA burdens First Amendment expression and evaluate whether a compelling governmental interest justifies that burden. *Id.*, at 657. The latter question—whether the state interest is compelling—is easily answered by our prior decisions regarding campaign finance regulation, which "represent respect for the 'legislative judgment that the special characteristics of the corporate structure require particularly careful regulation.'" *Beaumont*, *supra*, at 155 (quoting *National Right to Work*, 459 U. S., at 209–210). 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." *Austin*, *supra*, at 660; see *Beaumont*, *supra*, at 154–155; *National Right to Work*, *supra*, at 209–210. Moreover, recent cases have recognized that certain restrictions on corporate electoral involvement permissibly hedge against "'circumvention of [valid] contribution limits.'" *Beaumont*, *supra*, at 155 (quoting *Colorado II*, 533 U. S., at 456, and n. 18.)

In light of our precedents, plaintiffs do not contest that the Government has a compelling interest in regulating advertisements that expressly advocate the election or defeat of a candidate for federal office. Nor do they contend that the speech involved in so-called issue advocacy is any more core political speech than are words of express advocacy. After all, "the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office," *Monitor Patriot Co.* v. *Roy*, 401 U. S. 265, 272 (1971), and "[a]dvocacy of the election or defeat of candidates for federal office is no less entitled to protection under the First Amendment than the discussion of political policy generally or advocacy of the passage or defeat of legislation," *Buckley*, 424 U. S., at 48. Rather, plaintiffs argue that

the justifications that adequately support the regulation of express advocacy do not apply to significant quantities of speech encompassed by the definition of electioneering communications.

This argument fails to the extent that the issue ads broadcast during the 30- and 60-day periods preceding federal primary and general elections are the functional equivalent of express advocacy. The justifications for the regulation of express advocacy apply equally to ads aired during those periods if the ads are intended to influence the voters' decisions and have that effect. The precise percentage of issue ads that clearly identified a candidate and were aired during those relatively brief preelection timespans but had no electioneering purpose is a matter of dispute between the parties and among the judges on the District Court. See 251 F. Supp. 2d, at 307–312 (Henderson, J.); *id.*, at 583–587 (Kollar-Kotelly, J.); *id.*, at 796–798 (Leon, J.). Nevertheless, the vast majority of ads clearly had such a purpose. Annenberg Report 13–14; App. 1330–1348 (Krasno & Sorauf Expert Report); 251 F. Supp. 2d, at 573–578 (Kollar-Kotelly, J.); *id.*, at 826–827 (Leon, J.). Moreover, whatever the precise percentage may have been in the past, in the future corporations and unions may finance genuine issue ads during those timeframes by simply avoiding any specific reference to federal candidates, or in doubtful cases by paying for the ad from a segregated fund.[88]

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[88] As JUSTICE KENNEDY emphasizes in dissent, *post,* at 326–328, we assume that the interests that justify the regulation of campaign speech might not apply to the regulation of genuine issue ads. The premise that apparently underlies JUSTICE KENNEDY's principal submission is a conclusion that the two categories of speech are nevertheless entitled to the same constitutional protection. If that is correct, JUSTICE KENNEDY must take issue with the basic holding in *Buckley* and, indeed, with our recognition in *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765 (1978), that unusually important interests underlie the regulation of corporations' campaign-related speech. In *Bellotti* we cited *Buckley,* among other cases, for the proposition that "[p]reserving the integrity of the electoral

We are therefore not persuaded that plaintiffs have carried their heavy burden of proving that amended FECA § 316(b)(2) is overbroad. See *Broadrick* v. *Oklahoma*, 413 U. S. 601, 613 (1973). Even if we assumed that BCRA will inhibit some constitutionally protected corporate and union speech, that assumption would not "justify prohibiting all enforcement" of the law unless its application to protected speech is substantial, "not only in an absolute sense, but also relative to the scope of the law's plainly legitimate applications." *Virginia* v. *Hicks*, 539 U. S. 113, 120 (2003). Far from establishing that BCRA's application to pure issue ads is substantial, either in an absolute sense or relative to its application to election-related advertising, the record strongly supports the contrary conclusion.

Plaintiffs also argue that FECA § 316(b)(2)'s segregated-fund requirement for electioneering communications is underinclusive because it does not apply to advertising in the print media or on the Internet. 2 U. S. C. § 434(f)(3)(A) (Supp. II). The records developed in this litigation and by the Senate Committee adequately explain the reasons for this legislative choice. Congress found that corporations and unions used soft money to finance a virtual torrent of televised election-related ads during the periods immediately preceding federal elections, and that remedial legislation was needed to stanch that flow of money. 251 F. Supp. 2d, at 569–573 (Kollar-Kotelly, J.); *id.*, at 799 (Leon, J.); 3 1998 Senate Report 4465, 4474–4481; 5 *id.*, at 7521–7525. As we held in *Buckley*, "reform may take one step at a time,

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process, preventing corruption, and 'sustain[ing] the active, alert responsibility of the individual citizen in a democracy for the wise conduct of the government' are interests of the highest importance." 435 U. S., at 788–789 (citations and footnote omitted). "Preservation of the individual citizen's confidence in government," we added, "is equally important." *Id.*, at 789. BCRA's fidelity to those imperatives sets it apart from the statute in *Bellotti*—and, for that matter, from the Ohio statute banning the distribution of anonymous campaign literature, struck down in *McIntyre* v. *Ohio Elections Comm'n*, 514 U. S. 334 (1995).

addressing itself to the phase of the problem which seems most acute to the legislative mind." 424 U. S., at 105 (internal quotation marks and citations omitted). One might just as well argue that the electioneering communication definition is underinclusive because it leaves advertising 61 days in advance of an election entirely unregulated. The record amply justifies Congress' line-drawing.

In addition to arguing that § 316(b)(2)'s segregated-fund requirement is underinclusive, some plaintiffs contend that it unconstitutionally discriminates in favor of media companies. FECA § 304(f)(3)(B)(i) excludes from the definition of electioneering communications any "communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless such facilities are owned or controlled by any political party, political committee, or candidate." 2 U. S. C. § 434(f)(3)(B)(i) (Supp. II). Plaintiffs argue this provision gives free rein to media companies to engage in speech without resort to PAC money. Section 304(f)(3)(B)(i)'s effect, however, is much narrower than plaintiffs suggest. The provision excepts news items and commentary only; it does not afford *carte blanche* to media companies generally to ignore FECA's provisions. The statute's narrow exception is wholly consistent with First Amendment principles. "A valid distinction . . . exists between corporations that are part of the media industry and other corporations that are not involved in the regular business of imparting news to the public." *Austin*, 494 U. S., at 668. Numerous federal statutes have drawn this distinction to ensure that the law "does not hinder or prevent the institutional press from reporting on, and publishing editorials about, newsworthy events." *Ibid.* (citations omitted); see, *e. g.*, 2 U. S. C. § 431(9)(B)(i) (exempting news stories, commentaries, and editorials from FECA's definition of "expenditure"); 15 U. S. C. §§ 1801–1804 (providing a limited antitrust exemption for newspapers); 47 U. S. C. § 315(a) (excepting newscasts, news

interviews, and news documentaries from the requirement that broadcasters provide equal time to candidates for public office).[89]

We affirm the District Court's judgment to the extent that it upheld the constitutionality of FECA § 316(b)(2); to the extent that it invalidated any part of § 316(b)(2), we reverse the judgment.

BCRA § 204's Application to Nonprofit Corporations

Section 204 of BCRA, which adds FECA § 316(c)(6), applies the prohibition on the use of general treasury funds to pay for electioneering communications to not-for-profit corporations.[90] Prior to the enactment of BCRA, FECA re-

[89] In a different but somewhat related argument, one set of plaintiffs contends that political campaigns and issue advocacy involve press activities, and that BCRA therefore interferes with speakers' rights under the Freedom of the Press Clause. U. S. Const., Amdt. 1. We affirm the District Court's conclusion that this contention lacks merit.

[90] The statutory scheme is somewhat complex. In its provision dealing with "Rules Relating to Electioneering Communications," BCRA § 203(c)(2) (adding FECA § 316(c)(2)) makes a blanket exception for designated nonprofit organizations, which reads as follows:

"Exception

"Notwithstanding paragraph (1), the term 'applicable electioneering communication' does not include a communication by a section 501(c)(4) organization or a political organization (as defined in section 527(e)(1) of title 26) made under section 434(f)(2)(E) or (F) of this title if the communication is paid for exclusively by funds provided directly by individuals who are United States citizens or nationals or lawfully admitted for permanent residence (as defined in section 1101(a)(20) of title 8). For purposes of the preceding sentence, the term 'provided directly by individuals' does not include funds the source of which is an entity described in subsection (a) of this section." 2 U. S. C. § 441b(c)(2) (Supp. II).

BCRA § 204, however, amends FECA § 316(c) to exclude "targeted communications" from that exception. New FECA § 316(c)(6) states that the § 316(c)(2) exception "shall not apply in the case of a targeted communication that is made by an organization described" in § 316(b)(2). 2 U. S. C. § 441b(c)(6)(A). Subparagraph (B) then defines the term "targeted communication" for the purpose of the provision as including all

quired such corporations, like business corporations, to pay for their express advocacy from segregated funds rather than from their general treasuries. Our recent decision in *Federal Election Comm'n* v. *Beaumont*, 539 U. S. 146 (2003), confirmed that the requirement was valid except insofar as it applied to a subcategory of corporations described as "*MCFL* organizations," as defined by our decision in *MCFL*, 479 U. S. 238 (1986).[91] The constitutional objection to applying FECA's segregated-fund requirement to so-called *MCFL* organizations necessarily applies with equal force to FECA § 316(c)(6).

Our decision in *MCFL* related to a carefully defined category of entities. We identified three features of the organization at issue in that case that were central to our holding:

> "*First*, it was formed for the express purpose of promoting political ideas, and cannot engage in business activities. If political fundraising events are expressly denominated as requests for contributions that will be used for political purposes, including direct expenditures, these events cannot be considered business activities. This ensures that political resources reflect political support. *Second*, it has no shareholders or other persons affiliated so as to have a claim on its assets or earnings. This ensures that persons connected with

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electioneering communications. The parties and the judges on the District Court have assumed that amended FECA § 316(c)(6) completely canceled the exemption for nonprofit corporations set forth in § 316(c)(2). 251 F. Supp. 2d, at 804 (Leon, J.) ("Section 204 completely cancels out the exemption for all nonprofit corporations provided by Section 203").

[91] "[A] unanimous Court in *National Right to Work* did not think the regulatory burdens on PACs, including restrictions on their ability to solicit funds, rendered a PAC unconstitutional as an advocacy corporation's sole avenue for making political contributions. See 459 U. S., at 201–202. There is no reason to think the burden on advocacy corporations is any greater today, or to reach a different conclusion here." *Beaumont*, 539 U. S., at 163.

> the organization will have no economic disincentive for disassociating with it if they disagree with its political activity. *Third,* MCFL was not established by a business corporation or a labor union, and it is its policy not to accept contributions from such entities. This prevents such corporations from serving as conduits for the type of direct spending that creates a threat to the political marketplace." *Id.*, at 264.

That FECA § 316(c)(6) does not, on its face, exempt *MCFL* organizations from its prohibition is not a sufficient reason to invalidate the entire section. If a reasonable limiting construction "has been or could be placed on the challenged statute" to avoid constitutional concerns, we should embrace it. *Broadrick,* 413 U. S., at 613; *Buckley,* 424 U. S., at 44. Because our decision in the *MCFL* case was on the books for many years before BCRA was enacted, we presume that the legislators who drafted § 316(c)(6) were fully aware that the provision could not validly apply to *MCFL*-type entities. See *Bowen* v. *Massachusetts,* 487 U. S. 879, 896 (1988); *Cannon* v. *University of Chicago,* 441 U. S. 677, 696–697 (1979). Indeed, the Government itself concedes that § 316(c)(6) does not apply to *MCFL* organizations. As so construed, the provision is plainly valid. See *Austin,* 494 U. S., at 661–665 (holding that a segregated-fund requirement that did not explicitly carve out an *MCFL* exception could apply to a nonprofit corporation that did not qualify for *MCFL* status).

Accordingly, the judgment of the District Court upholding § 316(c)(6) as so limited is affirmed.

BCRA § 212's Reporting Requirement for $1,000 Expenditures

Section 212 of BCRA amends FECA § 304 to add a new disclosure requirement, FECA § 304(g), which applies to persons making independent expenditures of $1,000 or more during the 20-day period immediately preceding an election.

Like FECA § 304(f)(5), discussed above, new § 304(g) treats the execution of a contract to make a disbursement as the functional equivalent of a payment for the goods or services covered by the contract.[92] In challenging this provision, plaintiffs renew the argument we rejected in the context of § 304(f)(5): that they have a constitutional right to postpone any disclosure until after the performance of the services purchased by their expenditure.

The District Court held that the challenge to FECA § 304(g) was not ripe because the FEC has issued regulations "provid[ing] Plaintiffs with the exact remedy they seek"—that is, specifically declining to "require disclosure of independent express advocacy expenditures prior to their 'publi[c] disseminat[ion].'" 251 F. Supp. 2d, at 251, and n. 85 *(per curiam)* (citing 68 Fed. Reg. 404, 452 (2003) (codified at 11 CFR §§ 109.10(c), (d) (2003))). We are not certain that a regulation purporting to limit the range of circumstances in which a speech-burdening statute will be enforced can render nonjusticiable a facial challenge to the (concededly broader) underlying statute. Nevertheless, we need not separately address the constitutionality of § 304(g), for our ruling as to BCRA § 201, see *supra*, at 194–202, renders the issue essentially moot.

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[92] New FECA § 304(g) provides:

"Time for reporting certain expenditures

"(1) Expenditures aggregating $1,000

"(A) Initial report

"A person (including a political committee) that makes or contracts to make independent expenditures aggregating $1,000 or more after the 20th day, but more than 24 hours, before the date of an election shall file a report describing the expenditures within 24 hours.

"(B) Additional reports

"After a person files a report under subparagraph (A), the person shall file an additional report within 24 hours after each time the person makes or contracts to make independent expenditures aggregating an additional $1,000 with respect to the same election as that to which the initial report relates." 2 U. S. C. § 434(g) (Supp. II).

BCRA § 213's Requirement that Political Parties Choose Between Coordinated and Independent Expenditures After Nominating a Candidate

Section 213 of BCRA amends FECA § 315(d)(4) to impose certain limits on party spending during the postnomination, preelection period.[93] At first blush, the text of § 315(d)(4)(A) appears to require political parties to make a straightforward choice between using limited coordinated expenditures or unlimited independent expenditures to support their nominees. All three judges on the District Court concluded that the provision placed an unconstitutional burden on the parties' right to make unlimited independent expenditures.

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[93] New FECA § 315(d)(4) reads as follows:

"Independent versus coordinated expenditures by party

"(A) In general

"On or after the date on which a political party nominates a candidate, no committee of the political party may make—

"(i) any coordinated expenditure under this subsection with respect to the candidate during the election cycle at any time after it makes any independent expenditure (as defined in section 431(17) of this title) with respect to the candidate during the election cycle; or

"(ii) any independent expenditure (as defined in section 431(17) of this title) with respect to the candidate during the election cycle at any time after it makes any coordinated expenditure under this subsection with respect to the candidate during the election cycle.

"(B) Application

"For purposes of this paragraph, all political committees established and maintained by a national political party (including all congressional campaign committees) and all political committees established and maintained by a State political party (including any subordinate committee of a State committee) shall be considered to be a single political committee.

"(C) Transfers

"A committee of a political party that makes coordinated expenditures under this subsection with respect to a candidate shall not, during an election cycle, transfer any funds to, assign authority to make coordinated expenditures under this subsection to, or receive a transfer of funds from, a committee of the political party that has made or intends to make an independent expenditure with respect to the candidate." 2 U. S. C. § 441a(d)(4) (Supp. II).

251 F. Supp. 2d, at 388 (Henderson, J.); *id.*, at 650–651 (Kollar-Kotelly, J.), *id.*, at 805–808 (Leon, J.). In the end, we agree with that conclusion but believe it important to identify certain complexities in the text of § 315(d)(4) that affect our analysis of the issue.

Section 315 of FECA sets forth various limitations on contributions and expenditures by individuals, political parties, and other groups. Section 315(a)(2) restricts "contributions" by parties to $5,000 per candidate. 2 U. S. C. § 441a(a)(2). Because § 315(a)(7) treats expenditures that are coordinated with a candidate as contributions to that candidate, 2 U. S. C. § 441a(a)(7) (2000 ed. and Supp. II), the $5,000 limit also operates as a cap on parties' coordinated expenditures. Section 315(d), however, provides that, "[n]otwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions," political parties may make "expenditures" in support of their candidates under a formula keyed to the voting-age population of the candidate's home State or, in the case of a candidate for President, the voting-age population of the United States. 2 U. S. C. §§ 441a(d)(1)–(3) (2000 ed. and Supp. II).[94] In

[94] After exempting political parties from the general contribution and expenditure limitations of the statute, 2 U. S. C. § 441a(d)(1) (Supp. II), FECA § 315(d) imposes the following substitute limitations on party spending:

"(2) The national committee of a political party may not make any expenditure in connection with the general election campaign of any candidate for President of the United States who is affiliated with such party which exceeds an amount equal to 2 cents multiplied by the voting age population of the United States (as certified under subsection (e) of this section). Any expenditure under this paragraph shall be in addition to any expenditure by a national committee of a political party serving as the principal campaign committee of a candidate for the office of President of the United States.

"(3) The national committee of a political party, or a State committee of a political party, including any subordinate committee of a State committee, may not make any expenditure in connection with the general election

the year 2000, that formula permitted expenditures ranging from $33,780 to $67,650 for House of Representatives races, and from $67,650 to $1.6 million for Senate races. *Colorado II*, 533 U. S., at 439, n. 3. We held in *Colorado I* that parties have a constitutional right to make unlimited independent expenditures, and we invalidated § 315(d) to the extent that it restricted such expenditures. As a result of that decision, § 315(d) applies only to coordinated expenditures, replacing the $5,000 cap on contributions set out in § 315(a)(2) with the more generous limitations prescribed by §§ 315(d)(1)–(3). We sustained that limited application in *Colorado II*, *supra*.

Section 213 of BCRA amends § 315(d) by adding a new paragraph (4). New § 315(d)(4)(A) provides that, after a party nominates a candidate for federal office, it must choose between two spending options. Under the first option, a party that "makes any independent expenditure (as defined in section [301(17)])" is thereby barred from making "any coordinated expenditure under this subsection." 2 U. S. C. § 441a(d)(4)(A)(i) (Supp. II). The phrase "this subsection" is a reference to subsection (d) of § 315. Thus, the consequence of making an independent expenditure is not a complete prohibition of any coordinated expenditure: Although the party cannot take advantage of the increased spending limits under §§ 315(d)(1)–(3), it still may make up to $5,000 in coordinated expenditures under § 315(a)(2). As the difference between $5,000 and $1.6 million demonstrates,

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campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds—

"(A) in the case of a candidate for election to the office of Senator, or of Representative from a State which is entitled to only one Representative, the greater of—

"(i) 2 cents multiplied by the voting age population of the State (as certified under subsection (e) of this section); or

"(ii) $20,000; and

"(B) in the case of a candidate for election to the office of Representative, Delegate, or Resident Commissioner in any other State, $10,000." 2 U. S. C. §§ 441a(d)(2)–(3).

however, that is a significant cost to impose on the exercise of a constitutional right.

The second option is the converse of the first. It provides that a party that makes any coordinated expenditure "under this subsection" (*i. e.*, one that exceeds the ordinary $5,000 limit) cannot make "any independent expenditure (as defined in section [301(17)]) with respect to the candidate." 2 U. S. C. § 441a(d)(4)(A)(ii). Section 301(17) defines "'independent expenditure'" to mean a noncoordinated expenditure "expressly advocating the election or defeat of a clearly identified candidate." 2 U. S. C. § 431(17)(A).[95] Therefore, as was true of the first option, the party's choice is not as stark as it initially appears: The consequence of the larger coordinated expenditure is not a complete prohibition of any independent expenditure, but the forfeiture of the right to make independent expenditures *for express advocacy.* As we explained in our discussion of the provisions relating to electioneering communications, *supra*, at 189–194, express advocacy represents only a tiny fraction of the political communications made for the purpose of electing or defeating candidates during a campaign. Regardless of which option parties choose, they remain free to make independent ex-

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[95] As amended by BCRA, § 301(17) provides:

"Independent expenditure

"The term 'independent expenditure' means an expenditure by a person—

"(A) expressly advocating the election or defeat of a clearly identified candidate; and

"(B) that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents." 2 U. S. C. § 431(17) (Supp. II).

The version of the definition prior to its amendment by BCRA also included the phrase "expressly advocating the election or defeat of a clearly identified candidate." 2 U. S. C. § 431(17) (2000 ed.). That definition had been adopted in 1976, presumably to reflect the narrowing construction that the Court adopted in *Buckley.* Federal Election Campaign Act Amendments of 1976, 90 Stat. 475.

penditures for the vast majority of campaign ads that avoid the use of a few magic words.

In sum, the coverage of new FECA §315(d)(4) is much more limited than it initially appears. A party that wishes to spend more than $5,000 in coordination with its nominee is forced to forgo only the narrow category of independent expenditures that make use of magic words. But while the category of burdened speech is relatively small, it plainly is entitled to First Amendment protection. See *Buckley*, 424 U. S., at 44–45, 48. Under §315(d)(4), a political party's exercise of its constitutionally protected right to engage in "core First Amendment expression," *id.*, at 48, results in the loss of a valuable statutory benefit that has been available to parties for many years. To survive constitutional scrutiny, a provision that has such consequences must be supported by a meaningful governmental interest.

The interest in requiring political parties to avoid the use of magic words is not such an interest. We held in *Buckley* that a $1,000 cap on expenditures that applied only to express advocacy could not be justified as a means of avoiding circumvention of contribution limits or preventing corruption and the appearance of corruption because its restrictions could easily be evaded: "So long as persons and groups eschew expenditures that in express terms advocate the election or defeat of a clearly identified candidate, they are free to spend as much as they want to promote the candidate and his views." *Id.*, at 45. The same is true in this litigation. Any claim that a restriction on independent express advocacy serves a strong Government interest is belied by the overwhelming evidence that the line between express advocacy and other types of election-influencing expression is, for Congress' purposes, functionally meaningless. Indeed, Congress enacted the new "electioneering communication[s]" provisions precisely because it recognized that the express advocacy test was woefully inadequate at capturing communications designed to influence candidate elections. In light of that recognition, we are hard pressed to conclude that any

meaningful purpose is served by § 315(d)(4)'s burden on a party's right to engage independently in express advocacy.

The Government argues that § 315(d)(4) nevertheless is constitutional because it is not an outright ban (or cap) on independent expenditures, but rather offers parties a voluntary choice between a constitutional right and a statutory benefit. Whatever merit that argument might have in the abstract, it fails to account for new § 315(d)(4)(B), which provides:

> "For purposes of this paragraph, all political committees established and maintained by a national political party (including all congressional campaign committees) and all political committees established and maintained by a State political party (including any subordinate committee of a State committee) shall be considered to be a single political committee." 2 U. S. C. § 441a(d)(4)(B) (Supp. II).

Given that provision, it simply is not the case that each party committee can make a voluntary and independent choice between exercising its right to engage in independent advocacy and taking advantage of the increased limits on coordinated spending under §§ 315(d)(1)–(3). Instead, the decision resides solely in the hands of the first mover, such that a local party committee can bind both the state and national parties to its chosen spending option.[96] It is one thing to say that Congress may require a party committee to give

[96] Although the District Court and all the parties to this litigation endorse the interpretation set forth in the text, it is not clear that subparagraph (B) should be read so broadly: The reference to "a State" instead of "the States" suggests that Congress meant to distinguish between committees associated with the party for each State (which would be grouped together by State, with each grouping treated as a single committee for purposes of the choice) and committees associated with a national party (which would likewise be grouped together and treated as a separate political committee). We need not resolve the interpretive puzzle, however, because even under the more limited reading a local party committee would be able to tie the hands of a state committee or other local committees in the same State.

up its right to make independent expenditures if it believes that it can accomplish more with coordinated expenditures. It is quite another thing, however, to say that the RNC must limit itself to $5,000 in coordinated expenditures in support of its Presidential nominee if any state or local committee first makes an independent expenditure for an ad that uses magic words. That odd result undermines any claim that new § 315(d)(4) can withstand constitutional scrutiny simply because it is cast as a voluntary choice rather than an outright prohibition on independent expenditures.

The portion of the judgment of the District Court invalidating BCRA § 213 is affirmed.

BCRA § 214's Changes in FECA's Provisions Covering Coordinated Expenditures

Ever since our decision in *Buckley*, it has been settled that expenditures by a noncandidate that are "controlled by or coordinated with the candidate and his campaign" may be treated as indirect contributions subject to FECA's source and amount limitations. 424 U. S., at 46. Thus, FECA § 315(a)(7)(B)(i) long has provided that "expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate." 2 U. S. C. § 441a(a)(7)(B)(i). Section 214(a) of BCRA creates a new FECA § 315(a)(7)(B)(ii) that applies the same rule to expenditures coordinated with "a national, State, or local committee of a political party." 2 U. S. C. § 441a(a)(7)(B)(ii) (Supp. II).[97] Sections 214(b) and (c) direct the FEC to repeal

[97] The italicized portion of the following partial quotation of FECA § 315(a)(7) was added by § 214 of BCRA:

"For purposes of this subsection—

"(A) contributions to a named candidate made to any political committee authorized by such candidate to accept contributions on his behalf shall be considered to be contributions made to such candidate;

"(B)(i) expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his author-

its current regulations [98] and to promulgate new regulations dealing with "coordinated communications" paid for by persons other than candidates or their parties. Subsection (c) provides that the new "regulations shall not require agreement or formal collaboration to establish coordination." Note following 2 U. S. C. § 441a(a) (Supp. II).

Plaintiffs do not dispute that Congress may apply the same coordination rules to parties as to candidates. They argue instead that new FECA § 315(a)(7)(B)(ii) and its implementing regulations are overbroad and unconstitutionally vague because they permit a finding of coordination even in the absence of an agreement. Plaintiffs point out that political supporters may be subjected to criminal liability if they exceed the contribution limits with expenditures that ultimately are deemed coordinated. Thus, they stress the importance of a clear definition of "coordination" and argue any definition that does not hinge on the presence of an agreement cannot provide the "precise guidance" that the First Amendment demands. Brief for Appellant Chamber of Commerce of the United States et al. in No. 02–1756, p. 48. As plaintiffs readily admit, that argument reaches beyond BCRA, calling into question FECA's pre-existing provisions governing expenditures coordinated with candidates.

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ized political committees, or their agents, shall be considered to be a contribution to such candidate;

"(ii) *expenditures made by any person (other than a candidate or candidate's authorized committee) in cooperation, consultation, or concert with, or at the request or suggestion of, a national, State, or local committee of a political party, shall be considered to be contributions made to such party committee . . . .*" 2 U. S. C. § 441a(a)(7) (2000 ed. and Supp. II).

[98] Pre-BCRA FEC regulations defined coordinated expenditures to include expenditures made "[a]t the request or suggestion of" a candidate or party; communications in which a candidate or party "exercised control or decision-making authority over the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement"; and communications produced "[a]fter substantial discussion or negotiation" with a party or candidate, "the result of which is collaboration or agreement." 11 CFR § 100.23(c)(2) (2001).

We are not persuaded that the presence of an agreement marks the dividing line between expenditures that are coordinated—and therefore may be regulated as indirect contributions—and expenditures that truly are independent. We repeatedly have struck down limitations on expenditures "made totally independently of the candidate and his campaign," *Buckley*, 424 U. S., at 47, on the ground that such limitations "impose far greater restraints on the freedom of speech and association" than do limits on contributions and coordinated expenditures, *id.*, at 44, while "fail[ing] to serve any substantial governmental interest in stemming the reality or appearance of corruption in the electoral process," *id.*, at 47–48. See also *Colorado I*, 518 U. S., at 613–614 (striking down limit on expenditure made by party officials prior to nomination of candidates and without any consultation with potential nominees). We explained in *Buckley:*

> "Unlike contributions, . . . independent expenditures may well provide little assistance to the candidate's campaign and indeed may prove counterproductive. 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." 424 U. S., at 47.

Thus, the rationale for affording special protection to wholly independent expenditures has nothing to do with the absence of an agreement and everything to do with the functional consequences of different types of expenditures. Independent expenditures "are poor sources of leverage for a spender because they might be duplicative or counterproductive from a candidate's point of view." *Colorado II*, 533 U. S., at 446. By contrast, expenditures made after a "wink or nod" often will be "as useful to the candidate as cash." *Id.*, at 442, 446. For that reason, Congress has always

treated expenditures made "at the request or suggestion of" a candidate as coordinated.[99] 2 U. S. C. § 441a(a)(7)(B)(i). A supporter easily could comply with a candidate's request or suggestion without first agreeing to do so, and the resulting expenditure would be "'virtually indistinguishable from [a] simple contributio[n],'" *Colorado II*, *supra*, at 444–445. Therefore, we cannot agree with the submission that new FECA § 315(a)(7)(B)(ii) is overbroad because it permits a finding of coordination or cooperation notwithstanding the absence of a pre-existing agreement.

Nor are we persuaded that the absence of an agreement requirement renders § 315(a)(7)(B)(ii) unconstitutionally vague. An agreement has never been required to support a finding of coordination with a candidate under § 315(a)(7)(B)(i), which refers to expenditures made "in cooperation, consultation, or concer[t] with, or at the request or suggestion of" a candidate. Congress used precisely the same language in new § 315(a)(7)(B)(ii) to address expenditures coordinated with parties. FECA's longstanding definition of coordination "delineates its reach in words of common understanding." *Cameron* v. *Johnson*, 390 U. S. 611, 616 (1968). Not surprisingly, therefore, the relevant statutory language has survived without constitutional challenge for almost three decades. Although that fact does not insulate the definition from constitutional scrutiny, it does undermine plaintiffs' claim that the language of § 315(a)(7)(B)(ii) is intolerably vague. Plaintiffs do not present any evidence that

[99] Contrary to plaintiffs' contention, the statutory framework was not significantly different at the time of our decision in *Buckley*. The relevant provision, 18 U. S. C. § 608(e)(1) (1970 ed., Supp. IV), treated as coordinated any expenditures "authorized *or requested* by the candidate." (Emphasis added.) And the legislative history, on which we relied for "guidance in differentiating individual expenditures that are contributions . . . from those treated as independent expenditures," described as "independent" an expenditure made by a supporter "'completely on his own, and not at the request or suggestion of the candidate or his agen[t].'" 424 U. S., at 46–47, n. 53 (quoting S. Rep. No. 93–689, p. 18 (1974)).

the definition has chilled political speech, whether between candidates and their supporters or by the supporters to the general public. See *Reno* v. *American Civil Liberties Union*, 521 U. S. 844, 874 (1997) (noting risk that vague statutes may chill protected expression). And, although plaintiffs speculate that the FEC could engage in intrusive and politically motivated investigations into alleged coordination, they do not even attempt to explain why an agreement requirement would solve that problem. Moreover, the only evidence plaintiffs have adduced regarding the enforcement of the coordination provision during its 27-year history concerns three investigations in the late 1990's into groups on different sides of the political aisle. Such meager evidence does not support the claim that § 315(a)(7)(B)(ii) will "foster 'arbitrary and discriminatory application.'" *Buckley*, *supra*, at 41, n. 48 (quoting *Grayned* v. *City of Rockford*, 408 U. S., at 108–109). We conclude that FECA's definition of coordination gives "fair notice to those to whom [it] is directed," *American Communications Assn.* v. *Douds*, 339 U. S. 382, 412 (1950), and is not unconstitutionally vague.

Finally, portions of plaintiffs' challenge to BCRA § 214 focus on the regulations the FEC has promulgated under § 214(c). 11 CFR § 109.21 (2003). As the District Court explained, issues concerning the regulations are not appropriately raised in this facial challenge to BCRA, but must be pursued in a separate proceeding. Thus, we agree with the District Court that plaintiffs' challenge to §§ 214(b) and (c) is not ripe to the extent that the alleged constitutional infirmities are found in the implementing regulations rather than the statute itself.

The portions of the District Court judgment rejecting plaintiffs' challenges to BCRA § 214 are affirmed.

V

Many years ago we observed that "[t]o say that Congress is without power to pass appropriate legislation to safe-

guard . . . 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., at 545. We abide by that conviction in considering Congress' most recent effort to confine the ill effects of aggregated wealth on our political system. We are under no illusion that BCRA will be the last congressional statement on the matter. Money, like water, will always find an outlet. What problems will arise, and how Congress will respond, are concerns for another day. In the main we uphold BCRA's two principal, complementary features: the control of soft money and the regulation of electioneering communications. Accordingly, we affirm in part and reverse in part the District Court's judgment with respect to Titles I and II.

It is so ordered.

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court with respect to BCRA Titles III and IV.*

This opinion addresses issues involving miscellaneous Title III and IV provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA), 116 Stat. 81. For the reasons discussed below, we affirm the judgment of the District Court with respect to these provisions.

BCRA § 305

BCRA § 305 amends the federal Communications Act of 1934 (Communications Act) § 315(b), 48 Stat. 1088, as amended, 86 Stat. 4, which requires that, 45 days before a primary or 60 days before a general election, broadcast stations must sell a qualified candidate the "lowest unit charge

*JUSTICE O'CONNOR, JUSTICE SCALIA, JUSTICE KENNEDY, and JUSTICE SOUTER join this opinion in its entirety. JUSTICE STEVENS, JUSTICE GINSBURG, and JUSTICE BREYER join this opinion, except with respect to BCRA § 305. JUSTICE THOMAS joins this opinion with respect to BCRA §§ 304, 305, 307, 316, 319, and 403(b).

of the station for the same class and amount of time for the same period," 47 U. S. C. §315(b)(1). Section 305's amendment, in turn, denies a candidate the benefit of that lowest unit charge unless the candidate "provides written certification to the broadcast station that the candidate (and any authorized committee of the candidate) shall not make any direct reference to another candidate for the same office," or the candidate, in the manner prescribed in BCRA §305(a)(3), clearly identifies herself at the end of the broadcast and states that she approves of the broadcast. 47 U. S. C. §§315(b)(2)(A), (C) (Supp. II).

The McConnell plaintiffs challenge §305. They argue that Senator McConnell's testimony that he plans to run advertisements critical of his opponents in the future and that he had run them in the past is sufficient to establish standing. We think not.

Article III of the Constitution limits the "judicial power" to the resolution of "cases" and "controversies." One element of the "bedrock" case-or-controversy requirement is that plaintiffs must establish that they have standing to sue. *Raines* v. *Byrd*, 521 U. S. 811, 818 (1997). On many occasions, we have reiterated the three requirements that constitute the "'irreducible constitutional minimum'" of standing. *Vermont Agency of Natural Resources* v. *United States ex rel. Stevens*, 529 U. S. 765, 771 (2000). First, a plaintiff must demonstrate an "injury in fact," which is "concrete," "distinct and palpable," and "actual or imminent." *Whitmore* v. *Arkansas*, 495 U. S. 149, 155 (1990) (internal quotation marks and citation omitted). Second, a plaintiff must establish "a causal connection between the injury and the conduct complained of—the injury has to be 'fairly trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] some third party not before the court.'" *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560–561 (1992) (quoting *Simon* v. *Eastern Ky. Welfare Rights Organization*, 426 U. S. 26, 41–42 (1976)). Third, a plaintiff must show the

" 'substantial likelihood' that the requested relief will remedy the alleged injury in fact." *Stevens*, *supra*, at 771.

As noted above, § 305 amended the Communications Act's requirements with respect to the lowest unit charge for broadcasting time. But this price is not available to qualified candidates until 45 days before a primary election or 60 days before a general election. Because Senator McConnell's current term does not expire until 2009, the earliest day he could be affected by § 305 is 45 days before the Republican primary election in 2008. This alleged injury in fact is too remote temporally to satisfy Article III standing. See *Whitmore*, *supra*, at 158 ("A threatened injury must be *certainly impending* to constitute injury in fact" (internal quotation marks and citations omitted)); see also *Los Angeles* v. *Lyons*, 461 U. S. 95, 102 (1983) (A plaintiff seeking injunctive relief must show he is " 'immediately in danger of sustaining some direct injury' as [a] result" of the challenged conduct). Because we hold that the McConnell plaintiffs lack standing to challenge § 305, we affirm the District Court's dismissal of the challenge to BCRA § 305.

BCRA § 307

BCRA § 307, which amends § 315(a)(1) of the Federal Election Campaign Act of 1971 (FECA), 86 Stat. 3, as added, 90 Stat. 487, increases and indexes for inflation certain FECA contribution limits. The Adams and Paul plaintiffs challenge § 307 in this Court. Both groups contend that they have standing to sue. Again, we disagree.

The Adams plaintiffs, a group consisting of voters, organizations representing voters, and candidates, allege two injuries, and argue each is legally cognizable, "as established by case law outlawing electoral discrimination based on economic status . . . and upholding the right to an equally meaningful vote . . . ." Brief for Appellant Adams et al. in No. 02–1740, p. 31.

First, they assert that the increases in hard-money limits enacted by § 307 deprive them of an equal ability to participate in the election process based on their economic status. But, to satisfy our standing requirements, a plaintiff's alleged injury must be an invasion of a concrete and particularized legally protected interest. *Lujan*, *supra*, at 560. We have noted that "[a]lthough standing in no way depends on the merits of the plaintiff's contention that particular conduct is illegal, . . . it often turns on the nature and source of the claim asserted." *Warth* v. *Seldin*, 422 U. S. 490, 500 (1975) (internal quotation marks and citations omitted). We have never recognized a legal right comparable to the broad and diffuse injury asserted by the Adams plaintiffs. Their reliance on this Court's voting rights cases is misplaced. They rely on cases requiring nondiscriminatory access to the ballot and a single, equal vote for each voter. See, *e. g.*, *Lubin* v. *Panish*, 415 U. S. 709 (1974) (invalidating a statute requiring a ballot-access fee fixed at a percentage of the salary for the office sought because it unconstitutionally burdened the right to vote); *Harper* v. *Virginia Bd. of Elections*, 383 U. S. 663, 666–668 (1966) (invalidating a state poll tax because it effectively denied the right to vote).

None of these plaintiffs claims a denial of equal access to the ballot or the right to vote. Instead, the plaintiffs allege a curtailment of the scope of their participation in the electoral process. But we have noted that "[p]olitical 'free trade' does not necessarily require that all who participate in the political marketplace do so with exactly equal resources." *Federal Election Comm'n* v. *Massachusetts Citizens for Life, Inc.*, 479 U. S. 238, 257 (1986); see also *Buckley* v. *Valeo*, 424 U. S. 1, 48 (1976) *(per curiam)* (rejecting the asserted government interest of "equalizing the relative ability of individuals and groups to influence the outcome of elections" to justify the burden on speech presented by expenditure limits). This claim of injury by the Adams plaintiffs is, therefore, not to a legally cognizable right.

Second, the Adams plaintiffs-candidates contend that they have suffered a competitive injury. Their candidates "do not wish to solicit or accept large campaign contributions as permitted by BCRA" because "[t]hey believe such contributions create the appearance of unequal access and influence." Adams Complaint ¶ 53. As a result, they claim that BCRA § 307 puts them at a "fundraising disadvantage," making it more difficult for them to compete in elections. See *id.*, ¶ 56.

The second claimed injury is based on the same premise as the first: BCRA § 307's increased hard-money limits allow plaintiffs-candidates' opponents to raise more money, and, consequently, the plaintiffs-candidates' ability to compete or participate in the electoral process is diminished. But they cannot show that their alleged injury is "fairly traceable" to BCRA § 307. See *Lujan*, 504 U. S. at 562. Their alleged inability to compete stems not from the operation of § 307, but from their own personal "wish" not to solicit or accept large contributions, *i.e.*, their personal choice. Accordingly, the Adams plaintiffs fail here to allege an injury in fact that is "fairly traceable" to BCRA.

The Paul plaintiffs maintain that BCRA § 307 violates the Freedom of Press Clause of the First Amendment. They contend that their political campaigns and public interest advocacy involve traditional press activities and that, therefore, they are protected by the First Amendment's guarantee of the freedom of press. The Paul plaintiffs argue that the contribution limits imposed by BCRA § 307, together with the individual and political action committee contribution limitations of FECA § 315, impose unconstitutional editorial control upon candidates and their campaigns. The Paul plaintiffs argue that by imposing economic burdens upon them, but not upon the institutional media, see 2 U. S. C. § 431(9)(B)(i) (exempting "any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled

by any political party, political committee, or candidate" from the definition of expenditure), BCRA § 307 and FECA § 315 violate the freedom of the press.

The Paul plaintiffs cannot show the "'substantial likelihood' that the requested relief will remedy [their] alleged injury in fact," *Stevens*, 529 U. S., at 771. The relief the Paul plaintiffs seek is for this Court to strike down the contribution limits, removing the alleged disparate editorial controls and economic burdens imposed on them. But § 307 merely increased and indexed for inflation certain FECA contribution limits. This Court has no power to adjudicate a challenge to the FECA limits in this litigation because challenges to the constitutionality of FECA provisions are subject to direct review before an appropriate en banc court of appeals, as provided in 2 U. S. C. § 437h, not in the three-judge District Court convened pursuant to BCRA § 403(a). Although the Court has jurisdiction to hear a challenge to § 307, if the Court were to strike down the increases and indexes established by BCRA § 307, it would not remedy the Paul plaintiffs' alleged injury because both the limitations imposed by FECA and the exemption for news media would remain unchanged. A ruling in the Paul plaintiffs' favor, therefore, would not redress their alleged injury, and they accordingly lack standing. See *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83, 105–110 (1998).

For the reasons above, we affirm the District Court's dismissal of the Adams and Paul plaintiffs' challenges to BCRA § 307 for lack of standing.

BCRA §§ 304, 316, and 319

BCRA §§ 304 and 316, which amend FECA § 315, and BCRA § 319, which adds FECA § 315A, collectively known as the "millionaire provisions," provide for a series of staggered increases in otherwise applicable contribution-to-candidate limits if the candidate's opponent spends a triggering amount

of his personal funds.[1] The provisions also eliminate the coordinated expenditure limits in certain circumstances.[2]

In their challenge to the millionaire provisions, the Adams plaintiffs allege the same injuries that they alleged with regard to BCRA § 307. For the reasons discussed above, they fail to allege a cognizable injury that is "fairly traceable" to BCRA. Additionally, as the District Court noted, "none of the Adams plaintiffs is a candidate in an election affected by the millionaire provisions—i. e., one in which an opponent chooses to spend the triggering amount in his own funds—and it would be purely 'conjectural' for the court to assume that any plaintiff ever will be." 251 F. Supp. 2d 176, 431 (DC 2003) (case below) (Henderson, J., concurring in judgment in part and dissenting in part) (quoting *Lujan*, 504 U. S., at 560). We affirm the District Court's dismissal of the Adams plaintiffs' challenge to the millionaire provisions for lack of standing.

BCRA § 311

FECA § 318 requires that certain communications "authorized" by a candidate or his political committee clearly identify the candidate or committee or, if not so authorized, identify the payor and announce the lack of authorization. 2 U. S. C. § 441d (2000 ed. and Supp. II). BCRA § 311 makes several amendments to FECA § 318, among them the expansion of this identification regime to include disbursements for "electioneering communications" as defined in BCRA § 201.

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[1] To qualify for increased candidate contribution limits, the "opposition personal funds amount," which depends on expenditures by a candidate and her self-financed opponent, must exceed a "threshold amount." 2 U. S. C. §§ 441a(i)(1)(D), 441a–1(a)(2)(A) (Supp. II).

[2] If the "opposition personal funds amount" is at least 10 times the "threshold amount" in a Senate race, or exceeds $350,000 in a House of Representatives race, the coordinated party expenditure limits do not apply. §§ 441a(i)(1)(C)(iii), 441a–1(a)(1)(C).

The McConnell and Chamber of Commerce plaintiffs challenge BCRA § 311 by simply noting that § 311, along with all of the "electioneering communications" provisions of BCRA, is unconstitutional. We disagree. We think BCRA § 311's inclusion of electioneering communications in the FECA § 318 disclosure regime bears a sufficient relationship to the important governmental interest of "shed[ding] the light of publicity" on campaign financing. *Buckley*, 424 U. S., at 81. Assuming as we must that FECA § 318 is valid to begin with, and that FECA § 318 is valid as amended by BCRA § 311's amendments other than the inclusion of electioneering communications, the challenged inclusion of electioneering communications is not itself unconstitutional. We affirm the District Court's decision upholding § 311's expansion of FECA § 318(a) to include disclosure of disbursements for electioneering communications.

BCRA § 318

BCRA § 318, which adds FECA § 324, prohibits individuals "17 years old or younger" from making contributions to candidates and contributions or donations to political parties. 2 U. S. C. § 441k (Supp. II). The McConnell and Echols plaintiffs challenge the provision; they argue that § 318 violates the First Amendment rights of minors. We agree.

Minors enjoy the protection of the First Amendment. See, *e. g.*, *Tinker* v. *Des Moines Independent Community School Dist.*, 393 U. S. 503, 511–513 (1969). Limitations on the amount that an individual may contribute to a candidate or political committee impinge on the protected freedoms of expression and association. See *Buckley*, *supra*, at 20–22. When the Government burdens the right to contribute, we apply heightened scrutiny. See *ante*, at 136 (joint opinion of STEVENS and O'CONNOR, JJ.) ("[A] contribution limit involving even '"significant interference"' with associational rights is nevertheless valid if it satisfies the 'lesser demand' of being '"closely drawn"' to match a '"sufficiently important

interest"'" (quoting *Federal Election Comm'n* v. *Beaumont*, 539 U. S. 146, 162 (2003))). We ask whether there is a "sufficiently important interest" and whether the statute is "closely drawn" to avoid unnecessary abridgment of First Amendment freedoms. *Ante*, at 136; *Buckley*, *supra*, at 25. The Government asserts that the provision protects against corruption by conduit; that is, donations by parents through their minor children to circumvent contribution limits applicable to the parents. But the Government offers scant evidence of this form of evasion.[3] Perhaps the Government's slim evidence results from sufficient deterrence of such activities by § 320 of FECA, which prohibits any person from "mak[ing] a contribution in the name of another person" or "knowingly accept[ing] a contribution made by one person in the name of another," 2 U. S. C. § 441f. Absent a more convincing case of the claimed evil, this interest is simply too attenuated for § 318 to withstand heightened scrutiny. See *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S. 377, 391 (2000) ("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").

Even assuming, *arguendo*, the Government advances an important interest, the provision is overinclusive. The States have adopted a variety of more tailored approaches—*e. g.*, counting contributions by minors against the total permitted for a parent or family unit, imposing a lower cap on contributions by minors, and prohibiting contributions by very young children. Without deciding whether any of these alternatives is sufficiently tailored, we hold that the provision here sweeps too broadly. We therefore affirm the District Court's decision striking down § 318 as unconstitutional.

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[3] Although some examples were presented to the District Court, 251 F. Supp. 2d 176, 588–590 (DC 2003) (Kollar-Kotelly, J.), none were offered to this Court.

BCRA § 403(b)

The National Right to Life plaintiffs argue that the District Court's grant of intervention to the intervenor-defendants, pursuant to Federal Rule of Civil Procedure 24(a) and BCRA § 403(b), must be reversed because the intervenor-defendants lack Article III standing. It is clear, however, that the Federal Election Commission (FEC) has standing, and therefore we need not address the standing of the intervenor-defendants, whose position here is identical to the FEC's. See, *e. g.*, *Clinton* v. *City of New York*, 524 U. S. 417, 431–432, n. 19 (1998); *Bowsher* v. *Synar*, 478 U. S. 714, 721 (1986). Cf. *Diamond* v. *Charles*, 476 U. S. 54, 68–69, n. 21 (1986) (reserving the question for another day).

For the foregoing reasons, we affirm the District Court's judgment finding the plaintiffs' challenges to BCRA § 305, § 307, and the millionaire provisions nonjusticiable, striking down as unconstitutional BCRA § 318, and upholding BCRA § 311. The judgment of the District Court is

Affirmed.

JUSTICE BREYER delivered the opinion of the Court with respect to BCRA Title V.*

We consider here the constitutionality of § 504 of the Bipartisan Campaign Reform Act of 2002 (BCRA), amending the Communications Act of 1934. That section requires broadcasters to keep publicly available records of politically related broadcasting requests. 47 U. S. C. § 315(e) (Supp. II). The McConnell plaintiffs, who include the National Association of Broadcasters, argue that § 504 imposes onerous administrative burdens, lacks any offsetting justification, and consequently violates the First Amendment. For similar reasons, the three judges on the District Court found BCRA § 504 unconstitutional on its face. 251 F. Supp. 2d

*JUSTICE STEVENS, JUSTICE O'CONNOR, JUSTICE SOUTER, and JUSTICE GINSBURG join this opinion in its entirety.

176, 186 (DC 2003) *(per curiam)* (case below). We disagree, and we reverse that determination.

I

BCRA § 504's key requirements are the following:

(1) A "candidate request" requirement calls for broadcasters to keep records of broadcast requests "made by or on behalf of" any "legally qualified candidate for public office." 47 U. S. C. § 315(e)(1)(A) (Supp. II).

(2) An "election message request" requirement calls for broadcasters to keep records of requests (made by anyone) to broadcast "message[s]" that refer either to a "legally qualified candidate" or to "any election to Federal office." §§ 315(e)(1)(B)(i), (ii).

(3) An "issue request" requirement calls for broadcasters to keep records of requests (made by anyone) to broadcast "message[s]" related to a "national legislative issue of public importance," § 315(e)(1)(B)(iii), or otherwise relating to a "political matter of national importance," § 315(e)(1)(B).

We shall consider each provision in turn.

II

BCRA § 504's "candidate request" requirements are virtually identical to those contained in a regulation that the Federal Communications Commission (FCC) promulgated as early as 1938 and which with slight modifications the FCC has maintained in effect ever since. 47 CFR § 73.1943 (2002); compare 3 Fed. Reg. 1692 (1938) (47 CFR § 36a4); 13 Fed. Reg. 7486 (1948) (47 CFR §§ 3.190(d), 3.290(d), 3.690(d)); 17 Fed. Reg. 4711 (1952) (47 CFR § 3.590(d)); 19 Fed. Reg. 5949 (1954); 23 Fed. Reg. 7817 (1958); 28 Fed. Reg. 13593 (1963) (47 CFR § 73.120(d)); 43 Fed. Reg. 32796 (1978) (47 CFR § 73.1940(d)); 57 Fed. Reg. 210 (1992) (47 CFR § 73.1943). See generally Brief in Opposition to Motion of Appellee National Association of Broadcasters for Summary

Affirmance in No. 02–1676, pp. 9–10 (hereinafter Brief Opposing Summary Affirmance).

In its current form the FCC regulation requires broadcast licensees to "keep" a publicly available file "of all requests for broadcast time made by or on behalf of a candidate for public office," along with a notation showing whether the request was granted, and (if granted) a history that includes "classes of time," "rates charged," and when the "spots actually aired." 47 CFR § 73.1943(a) (2002); § 76.1701(a) (same for cable systems). These regulation-imposed requirements mirror the statutory requirements imposed by BCRA § 504 with minor differences which no one here challenges. Compare 47 CFR § 73.1943 with 47 U. S. C. § 315(e)(2) (Supp. II) (see Appendix, *infra*).

The McConnell plaintiffs argue that these requirements are "intolerabl[y]" "burdensome and invasive." Brief for Appellant/Cross-Appellee Sen. Mitch McConnell et al. in No. 02–1674 et al., p. 74 (hereinafter Brief for McConnell Plaintiffs). But we do not see how that could be so. The FCC has consistently estimated that its "candidate request" regulation imposes upon each licensee an additional administrative burden of six to seven hours of work per year. See 66 Fed. Reg. 37468 (2001); *id.*, at 18090; 63 Fed. Reg. 26593 (1998); *id.*, at 10379; 57 Fed. Reg. 18492 (1992); see also 66 Fed. Reg. 29963 (2001) (total annual burden of one hour per cable system). That burden means annual costs of a few hundred dollars at most, a microscopic amount compared to the many millions of dollars of revenue broadcasters receive from candidates who wish to advertise.

Perhaps for this reason, broadcasters in the past did not strongly oppose the regulation or its extension. Cf., *e. g.*, 17 Fed. Reg. 4711 (1952) ("No comments adverse to the adoption of the proposed rule have been received"); 43 Fed. Reg. 32794 (1978) (no adverse comments). Indeed in 1992, "CBS" itself "suggest[ed]" that the candidate file "include a record of all requests for time." 57 Fed. Reg. 206 (1992); cf. 63 Fed. Reg.

49493 (1998) (FCC "not persuaded that the current retention period [two years] is overly burdensome to licensees").

In any event, as the FCC wrote in an analogous context, broadcaster recordkeeping requirements "'simply run with the territory.'" 40 Fed. Reg. 18398 (1975). Broadcasters must keep and make publicly available numerous records. See 47 CFR § 73.3526 (2002) (general description of select recordkeeping requirements for commercial stations); see also §§ 73.1202, 73.3526(e)(9)(i) (retention of all "written comments and suggestions [including letters and e-mail] received from the public regarding operation of the station" for three years); § 73.1212(e) (sponsorship identification records, including the identification of a sponsoring entity's executive officers and board-level members when sponsoring "political matter or matter involving the discussion of a controversial issue of public importance"); § 73.1840 (retention of station logs); § 73.1942 (candidate broadcast records); § 73.2080 (equal employment opportunities records); §§ 73.3526(e)(11)(i), (e)(12) ("list of programs that have provided the station's most significant treatment of community issues during the preceding three month period," including "brief narrative describing [the issues, and] time, date, duration, and title"); §§ 73.3526(e)(11)(ii), (iii) (reports of children's program, and retention of records sufficient to substantiate "compliance with the commercial limits on children's programming"); § 73.3613(a) (network affiliation contracts); §§ 73.3613(b), 73.3615, 73.3526(e)(5) (ownership-related reports); § 73.3613(c) ("[m]anagement consultant agreements"); § 73.3613(d) ("[t]ime brokerage agreements"). Compared to these longstanding recordkeeping requirements, an additional six to seven hours is a small drop in a very large bucket.

The McConnell plaintiffs also claim that the "candidate requests" requirement fails significantly to further any important governmental interest. Brief for McConnell Plaintiffs 74. But, again, we cannot agree. The FCC has pointed out

that "[t]hese records are necessary to permit political candidates and others to verify that licensees have complied with their obligations relating to use of their facilities by candidates for political office" pursuant to the "equal time" provision of 47 U. S. C. § 315(a). 63 Fed. Reg. 49493 (1998). They also help the FCC determine whether broadcasters have violated their obligation to sell candidates time at the "lowest unit charge." 47 U. S. C. § 315(b). As reinforced by BCRA, the "candidate request" requirements will help the FCC, the Federal Election Commission, and "the public to evaluate whether broadcasters are processing [candidate] requests in an evenhanded fashion," Brief Opposing Summary Affirmance 10, thereby helping to assure broadcasting fairness. 47 U. S. C. § 315(a); *Red Lion Broadcasting Co.* v. *FCC*, 395 U. S. 367, 390 (1969). They will help make the public aware of how much money candidates may be prepared to spend on broadcast messages. 2 U. S. C. § 434 (2000 ed. and Supp. II); see *ante*, at 194–199 (joint opinion of STEVENS and O'CONNOR, JJ.) (hereinafter joint opinion). And they will provide an independently compiled set of data for purposes of verifying candidates' compliance with the disclosure requirements and source limitations of BCRA and the Federal Election Campaign Act of 1971. 2 U. S. C. § 434; cf. *Adventure Communications, Inc.* v. *Kentucky Registry of Election Finance*, 191 F. 3d 429, 433 (CA4 1999) (candidate compliance verification); 63 Fed. Reg. 49493 (1998) (FCC finding record retention provision provides public with "necessary and adequate access").

We note, too, that the FCC's regulatory authority is broad. *Red Lion*, *supra*, at 380 ("broad" mandate to assure broadcasters operate in public interest); *National Broadcasting Co.* v. *United States*, 319 U. S. 190, 219 (1943) (same). And we have previously found broad governmental authority for agency information demands from regulated entities. Compare *United States* v. *Morton Salt Co.*, 338 U. S. 632, 642–643 (1950); *Oklahoma Press Publishing Co.* v. *Walling*, 327 U. S.

186, 209 (1946); *Donovan* v. *Lone Steer, Inc.*, 464 U. S. 408, 414–415 (1984).

THE CHIEF JUSTICE suggests that the Government has not made these particular claims. But it has—though succinctly—for it has cross-referenced the relevant regulatory rules. Compare *post*, at 359–361 (REHNQUIST, C. J., dissenting), with Brief Opposing Summary Affirmance; Brief for McConnell Plaintiffs 73–74; Brief for FEC et al. in No. 02–1674 et al., pp. 132–133. And succinctness through cross-reference was necessary given our procedural requirement that the Government set forth in a 140-page brief *all* its arguments concerning each of the *20* BCRA provisions here under contest. 251 F. Supp. 2d, at 186–188.

In sum, given the Government's reference to the 65-year-old FCC regulation and the related considerations we have mentioned, we cannot accept the argument that the constitutionality of the "candidate request" provision lacks evidentiary support. The challengers have made no attempt to explain away the FCC's own contrary conclusions and the mass of evidence in related FCC records and proceedings. *E. g.*, 57 Fed. Reg. 189 (1992); cf. *supra*, at 235–236; *ante*, at 222–223 (joint opinion) (upholding BCRA's coordination provision based, in part, on prior experience under similar provision). Because we cannot, on the present record, find the long-standing FCC regulation unconstitutional, we likewise cannot strike down the "candidate request" provision in BCRA § 504; for the latter simply embodies the regulation in a statute, thereby blocking any agency attempt to repeal it.

III

BCRA § 504's "election message request" requirements call for broadcasters to keep records of requests (made by any member of the public) to broadcast a "message" about "a legally qualified candidate" or "any election to Federal office." 47 U. S. C. §§ 315(e)(1)(B)(i), (ii) (Supp. II). Although these requirements are somewhat broader than the

"candidate request" requirement, they serve much the same purposes. A candidate's supporters or opponents account for many of the requests to broadcast "message[s]" about a "candidate." Requests to broadcast messages about an "election" may include messages that favor one candidate or another, along with other messages that may be more neutral.

Given the nature of many of the messages, recordkeeping can help both the regulatory agencies and the public evaluate broadcasting fairness, and determine the amount of money that individuals or groups, supporters or opponents, intend to spend to help elect a particular candidate. Cf. *ante*, at 206–207 (joint opinion) (upholding stringent restrictions on *all* election-time advertising that refers to a candidate because such advertising will *often* convey message of support or opposition). Insofar as the request is to broadcast neutral material about a candidate or election, the disclosure can help the FCC carry out other statutory functions, for example, determining whether a broadcasting station is fulfilling its licensing obligation to broadcast material important to the community and the public. 47 U. S. C. § 315(a) ("obligation . . . to afford reasonable opportunity for the discussion of conflicting views on issues of public importance"); 47 CFR § 73.1910 (2002); §§ 73.3526(e)(11)(i), (e)(12) (recordkeeping requirements for issues important to the community).

For reasons previously discussed, *supra*, at 235–236, and on the basis of the material presented, we cannot say that these requirements will impose disproportionate administrative burdens. They ask the broadcaster to keep information about the disposition of the request, and information identifying the individual or company requesting the broadcast time (name, address, contact information, or, if the requester is not an individual, the names of company officials). 47 U. S. C. § 315(e)(2) (Supp. II). Insofar as the "request" is made by a candidate's "supporters," the "candidate request" regulation apparently already requires broadcasters

to keep such records. 43 Fed. Reg. 32794 (1978). Regardless, the information should prove readily available, for the individual requesting a broadcast must provide it to the broadcaster should the broadcaster accept the request. 47 CFR § 73.1212(e) (2002). And as we have previously pointed out, the recordkeeping requirements do not reach significantly beyond other FCC recordkeeping rules, for example, those requiring broadcasting licensees to keep material showing compliance with their license-related promises to broadcast material on issues of public importance. See, *e. g.*, §§ 73.3526(e)(11)(i), (e)(12) (recordkeeping requirements for issues important to the community); *supra*, at 236 (collecting regulations); *Office of Communication of United Church of Christ* v. *FCC*, 707 F. 2d 1413, 1421–1422 (CADC 1983) (describing FCC rules, in force during 1960–1981, that required nonentertainment programming in 14 specific areas and mandated publicly available records detailing date, time, source, and description to substantiate compliance). If, as we have held, the "candidate request" requirements are constitutional, *supra*, at 238, the "election message" requirements, which serve similar governmental interests and impose only a small incremental burden, must be constitutional as well.

IV

The "issue request" requirements call for broadcasters to keep records of requests (made by any member of the public) to broadcast "message[s]" about "a national legislative issue of public importance" or "any political matter of national importance." 47 U. S. C. §§ 315(e)(1)(B), (e)(1)(B)(iii) (Supp. II). These recordkeeping requirements seem likely to help the FCC determine whether broadcasters are carrying out their "obligations to afford reasonable opportunity for the discussion of conflicting views on issues of public importance," 47 CFR § 73.1910 (2002), and whether broadcasters are too heavily favoring entertainment, and discriminating

against broadcasts devoted to public affairs, see *ibid.;* 47 U. S. C. § 315(a); *Red Lion*, 395 U. S., at 380.

The McConnell plaintiffs claim that the statutory language—"political matter of national importance" or "national legislative issue of public importance"—is unconstitutionally vague or overbroad. Brief for McConnell Plaintiffs 74–75. But that language is no more general than the language that Congress has used to impose other obligations upon broadcasters. Compare 47 U. S. C. § 315(e)(1)(B) (Supp. II) ("political matter of national importance") and § 315(e)(1)(B)(iii) ("national legislative issue of public importance") (both added by BCRA § 504), with 47 U. S. C. § 315(a) ("obligation . . . to operate in the public interest" and to afford reasonable opportunity for discussion of "issues of public importance"); § 317(a)(2) (FCC disclosure requirements relating to any "political program" or "discussion of any controversial issue"); cf. 47 CFR § 73.1212(e) (2002) ("political matter or . . . a controversial issue of public importance") and 9 Fed. Reg. 14734 (1944) ("public controversial issues"); *ante*, at 222–223 (joint opinion) (noting that the experience under longstanding regulations undermines claims of chilling effect). And that language is also roughly comparable to other language in BCRA that we uphold today. *E. g.*, *ante*, at 169–170, and n. 64 (joint opinion) (upholding 2 U. S. C. § 431(20)(A)(iii) (Supp. II) ("public communication that refers to a clearly identified candidate for Federal office . . . and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office")); *ante*, at 222–223 (upholding 2 U. S. C. § 441a(a)(7)(B)(ii) (Supp. II) (counting as coordinated disbursements that are made "in cooperation, consultation, or concert with, or at the request or suggestion of [a political party]") against challenge and noting that an "agreement" is not necessary for precision).

Whether these requirements impose disproportionate administrative burdens is more difficult to say. On the one

hand, the burdens are likely less heavy than many that other FCC regulations have imposed, for example, the burden of keeping and disclosing "[a]ll written comments and suggestions" received from the public, including every e-mail. 47 CFR §§ 73.1202, 73.3526(e)(9) (2002); see also *supra*, at 236. On the other hand, the burdens are likely heavier than those imposed by BCRA § 504's other provisions, previously discussed.

The regulatory burden, in practice, will depend on how the FCC interprets and applies this provision. The FCC has adequate legal authority to write regulations that may limit, and make more specific, the provision's potential linguistic reach. 47 U. S. C. § 315(d). It has often ameliorated regulatory burdens by interpretation in the past, and there is no reason to believe it will not do so here. See 14 FCC Rcd. 4653, 4665, ¶ 25 (1999) (relaxing the recordkeeping requirements in respect to cable systems that serve fewer than 5,000 subscribers); 14 FCC Rcd. 11113, 11121–11122, ¶¶ 20–22 (1999) (requiring candidates to inspect the political file at a station rather than requiring licensees to send out photocopies of the files to candidates upon telephone request). The parties remain free to challenge the provisions, as interpreted by the FCC in regulations, or as otherwise applied. Any such challenge will likely provide greater information about the provisions' justifications and administrative burdens. Without that additional information, we cannot now say that the burdens are so great, or the justifications so minimal, as to warrant finding the provisions unconstitutional on their face.

The McConnell plaintiffs and THE CHIEF JUSTICE make one final claim. They say that the "issue request" requirement will force them to disclose information that will reveal their political strategies to opponents, perhaps prior to a broadcast. See *post*, at 362 (dissenting opinion). We are willing to assume that the Constitution includes some form of protection against premature disclosure of campaign strat-

egy—though, given the First Amendment interest in free and open discussion of campaign issues, we make this assumption purely for argument's sake. Nonetheless, even on that assumption we do not see how BCRA § 504 can be unconstitutional on its face.

For one thing, the statute requires disclosure of names, addresses, and the fact of a request; it does not require disclosure of substantive campaign content. See 47 U. S. C. § 315(e)(2) (Supp. II). For another, the statutory words "as soon as possible," § 315(e)(3), would seem to permit FCC disclosure-timing rules that would avoid any premature disclosure that the Constitution itself would forbid. Further, the plaintiffs do not point to—and our own research cannot find—any specific indication of such a "strategy-disclosure" problem arising during the past 65 years in respect to the existing FCC "candidate request" requirement, where the strategic problem might be expected to be more acute. Finally, we today reject an analogous facial attack—premised on speculations of "advance disclosure"—on a similar BCRA provision. See *ante*, at 200–201 (joint opinion). Thus, the "strategy disclosure" argument does not show that BCRA § 504 is unconstitutional on its face, but the plaintiffs remain free to raise this argument when § 504 is applied.

V

THE CHIEF JUSTICE makes two important arguments in response to those we have set forth. First, he says that we "approac[h] § 504 almost exclusively from the perspective of the broadcast licensees, ignoring the interests of candidates and other purchasers, whose speech and association rights are affected." *Post*, at 359 (dissenting opinion). THE CHIEF JUSTICE is certainly correct in emphasizing the importance of the speech interests of candidates and other potential speakers, but we have not ignored their First Amendment "perspective."

To the contrary, we have discussed the speakers' interests together with the broadcasters' interests because the two sets of interests substantially overlap. For example, the speakers' vagueness argument is no different from the broadcasters', and it fails for the same reasons, *e. g.*, the fact that BCRA § 504's language is just as definite and precise as other language that we today uphold. See *supra*, at 241.

We have separately discussed the *one and only* speech-related claim advanced on behalf of candidates (or other speakers) that differs from the claims set forth by the broadcasters. See *supra*, at 242–243. This is the claim that the statute's disclosure requirements will require candidates to reveal their political strategies to opponents. We just said, and we now repeat, that BCRA § 504 can be applied, in a significant number of cases, without requiring any such political-strategy disclosure—either because disclosure in many cases will not create any such risk or because the FCC may promulgate rules requiring disclosure only after any such risk disappears, or both.

Moreover, candidates (or other speakers) whom § 504 affects adversely in this way (or in other ways) remain free to challenge the lawfulness of FCC implementing regulations and to challenge the constitutionality of § 504 as applied. To find that the speech-related interests of candidates and others may be vindicated in an as-applied challenge is not to "ignor[e]" those interests.

Second, THE CHIEF JUSTICE says that "the Government, in its brief, proffers no interest whatever to support § 504 as a whole," adding that the existence of "pre-existing unchallenged agency regulations imposing similar disclosure requirements" cannot "compel the conclusion that § 504 is constitutional," nor somehow "relieve the Government of its burden of advancing a constitutionally sufficient justification for § 504." *Post*, at 359–360, 361 (dissenting opinion).

Again THE CHIEF JUSTICE is correct in saying that the mere *existence* of similar FCC regulation-imposed require-

ments—even if unchallenged for at least 65 years—cannot prove that those requirements are constitutional. But the existence of those regulations means that we must read beyond the briefs in these cases before holding those requirements unconstitutional. Before evaluating the relevant burdens and justifications, we must at least become acquainted with the FCC's own view of the matter. We must follow the Government's regulation-related references to the relevant regulatory records, related FCC regulatory conclusions, and the FCC's enforcement experience. We must take into account, for example, the likelihood that the *reason* there is "nothing in the record that indicates licensees have treated purchasers unfairly," *post*, at 361 (REHNQUIST, C. J., dissenting), is that for many decades similar FCC regulations have made that unfair treatment unlawful. And, if we are to avoid disrupting related agency law, we must evaluate what we find in agency records and related experience before holding this similar statutory provision unconstitutional on its face.

Even a superficial examination of those relevant agency materials reveals strong supporting justifications, and a lack of significant administrative burdens. And any additional burden that the statute, viewed facially, imposes upon interests protected by the First Amendment seems slight compared to the strong enforcement-related interests that it serves. Given the FCC regulations and their history, the statutory requirements must survive a *facial* attack under any potentially applicable First Amendment standard, including that of heightened scrutiny.

That is why the regulations are relevant. That is why the brevity of the Government's discussion here cannot be determinative. That is why we fear that THE CHIEF JUSTICE's contrary view would lead us into an unfortunate—and at present unjustified—revolution in communications law. And that is why we disagree with his dissent.

The portion of the judgment of the District Court invalidating BCRA § 504 is reversed.

It is so ordered.

APPENDIX TO OPINION OF THE COURT

Title 47 U. S. C. § 315(e) (Supp. II), as amended by BCRA § 504, provides:

"Political record

"(1) In general

"A licensee shall maintain, and make available for public inspection, a complete record of a request to purchase broadcast time that—

"(A) is made by or on behalf of a legally qualified candidate for public office; or

"(B) communicates a message relating to any political matter of national importance, including—

"(i) a legally qualified candidate;

"(ii) any election to Federal office; or

"(iii) a national legislative issue of public importance.

"(2) Contents of record

"A record maintained under paragraph (1) shall contain information regarding—

"(A) whether the request to purchase broadcast time is accepted or rejected by the licensee;

"(B) the rate charged for the broadcast time;

"(C) the date and time on which the communication is aired;

"(D) the class of time that is purchased;

"(E) the name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);

"(F) in the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized

committee of the candidate, and the treasurer of such committee; and

"(G) in the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person.

"(3) Time to maintain file

"The information required under this subsection shall be placed in a political file as soon as possible and shall be retained by the licensee for a period of not less than 2 years."

Title 47 CFR § 73.1943 (2002) provides:

"Political file.

"(a) Every licensee shall keep and permit public inspection of a complete and orderly record (political file) of all requests for broadcast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if the request is granted. The 'disposition' includes the schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased.

"(b) When free time is provided for use by or on behalf of candidates, a record of the free time provided shall be placed in the political file.

"(c) All records required by this paragraph shall be placed in the political file as soon as possible and shall be retained for a period of two years. As soon as possible means immediately absent unusual circumstances."

JUSTICE SCALIA, concurring with respect to BCRA Titles III and IV, dissenting with respect to BCRA Titles I and V,

and concurring in the judgment in part and dissenting in part with respect to BCRA Title II.

With respect to Titles I, II, and V: I join in full the dissent of THE CHIEF JUSTICE; I join the opinion of JUSTICE KENNEDY, except to the extent it upholds new § 323(e) of the Federal Election Campaign Act of 1971 (FECA) and § 202 of the Bipartisan Campaign Reform Act of 2002 (BCRA) in part; and because I continue to believe that *Buckley* v. *Valeo*, 424 U. S. 1 (1976) *(per curiam)*, was wrongly decided, I also join Parts I, II–A, and II–B of the opinion of JUSTICE THOMAS. With respect to Titles III and IV, I join THE CHIEF JUSTICE's opinion for the Court. Because these cases are of such extraordinary importance, I cannot avoid adding to the many writings a few words of my own.

This is a sad day for the freedom of speech. Who could have imagined that the same Court which, within the past four years, has sternly disapproved of restrictions upon such inconsequential forms of expression as virtual child pornography, *Ashcroft* v. *Free Speech Coalition*, 535 U. S. 234 (2002), tobacco advertising, *Lorillard Tobacco Co.* v. *Reilly*, 533 U. S. 525 (2001), dissemination of illegally intercepted communications, *Bartnicki* v. *Vopper*, 532 U. S. 514 (2001), and sexually explicit cable programming, *United States* v. *Playboy Entertainment Group, Inc.*, 529 U. S. 803 (2000), would smile with favor upon a law that cuts to the heart of what the First Amendment is meant to protect: the right to criticize the government. For that is what the most offensive provisions of this legislation are all about. We are governed by Congress, and this legislation prohibits the criticism of Members of Congress by those entities most capable of giving such criticism loud voice: national political parties and corporations, both of the commercial and the not-for-profit sort. It forbids pre-election criticism of incumbents by corporations, even not-for-profit corporations, by use of their general funds; and forbids national-party use of "soft" money to fund "issue ads" that incumbents find so offensive.

To be sure, the legislation is evenhanded: It similarly prohibits criticism of the candidates who oppose Members of Congress in their reelection bids. But as everyone knows, this is an area in which evenhandedness is not fairness. If *all* electioneering were evenhandedly prohibited, incumbents would have an enormous advantage. Likewise, if incumbents and challengers are limited to the same quantity of electioneering, incumbents are favored. In other words, *any* restriction upon a type of campaign speech that is equally available to challengers and incumbents tends to favor incumbents.

Beyond that, however, the present legislation *targets* for prohibition certain categories of campaign speech that are particularly harmful to incumbents. Is it accidental, do you think, that incumbents raise about three times as much "hard money"—the sort of funding generally *not* restricted by this legislation—as do their challengers? See FEC, 1999–2000 Financial Activity of All Senate and House Campaigns (Jan. 1, 1999–Dec. 31, 2000) (last modified on May 15, 2001), http://www.fec.gov/press/051501congfinact/tables/allcong2000.xls (all Internet materials as visited Dec. 4, 2003, and available in Clerk of Court's case file). Or that lobbyists (who seek the favor of incumbents) give 92 percent of their money in "hard" contributions? See U. S. Public Interest Research Group, The Lobbyist's Last Laugh: How K Street Lobbyists Would Benefit from the McCain-Feingold Campaign Finance Bill 3 (July 5, 2001), http://www.pirg.org/democracy/democracy.asp?id2=5068. Is it an oversight, do you suppose, that the so-called "millionaire provisions" raise the contribution limit for a candidate running against an individual who devotes to the campaign (as challengers often do) great personal wealth, but do not raise the limit for a candidate running against an individual who devotes to the campaign (as incumbents often do) a massive election "war chest"? See BCRA §§304, 316, and 319. And is it mere happenstance, do you estimate, that national-party funding,

which is severely limited by the Act, is more likely to assist cash-strapped challengers than flush-with-hard-money incumbents? See A. Gierzynski & D. Breaux, The Financing Role of Parties, in Campaign Finance in State Legislative Elections 195–200 (J. Thompson & S. Moncrief eds. 1998). Was it unintended, by any chance, that incumbents are free personally to receive some soft money and even to solicit it for other organizations, while national parties are not? See new FECA §§323(a) and (e).

I wish to address three fallacious propositions that might be thought to justify some or all of the provisions of this legislation—only the last of which is explicitly embraced by the principal opinion for the Court, but all of which underlie, I think, its approach to these cases.

(a) Money is Not Speech

It was said by congressional proponents of this legislation, see 143 Cong. Rec. 20746 (1997) (remarks of Sen. Boxer); 145 Cong. Rec. S12612 (Oct. 14, 1999) (remarks of Sen. Cleland); 147 Cong. Rec. S2436 (Mar. 19, 2001) (remarks of Sen. Dodd), with support from the law reviews, see, *e. g.*, Wright, Politics and the Constitution: Is Money Speech? 85 Yale L. J. 1001 (1976), that since this legislation regulates nothing but the expenditure of money for speech, as opposed to speech itself, the burden it imposes is not subject to full First Amendment scrutiny; the government may regulate the raising and spending of campaign funds just as it regulates other forms of conduct, such as burning draft cards, see *United States* v. *O'Brien*, 391 U. S. 367 (1968), or camping out on the National Mall, see *Clark* v. *Community for Creative Non-Violence*, 468 U. S. 288 (1984). That proposition has been endorsed by one of the two authors of today's principal opinion: "The right to use one's own money to hire gladiators, [and] to fund 'speech by proxy,' . . . [are] property rights . . . not entitled to the same protection as the right to say what one pleases." *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S. 377,

399 (2000) (STEVENS, J., concurring). Until today, however, that view has been categorically rejected by our jurisprudence. As we said in *Buckley*, 424 U. S., at 16, "this Court has never suggested that the dependence of a communication on the expenditure of money operates itself to introduce a nonspeech element or to reduce the exacting scrutiny required by the First Amendment."

Our traditional view was correct, and today's cavalier attitude toward regulating the financing of speech (the "exacting scrutiny" test of *Buckley*, see *ibid.*, is not uttered in any majority opinion, and is not observed in the ones from which I dissent) frustrates the fundamental purpose of the First Amendment. In any economy operated on even the most rudimentary principles of division of labor, effective public communication requires the speaker to make use of the services of others. An author may write a novel, but he will seldom publish and distribute it himself. A freelance reporter may write a story, but he will rarely edit, print, and deliver it to subscribers. To a government bent on suppressing speech, this mode of organization presents opportunities: Control any cog in the machine, and you can halt the whole apparatus. License printers, and it matters little whether authors are still free to write. Restrict the sale of books, and it matters little who prints them. Predictably, repressive regimes have exploited these principles by attacking all levels of the production and dissemination of ideas. See, *e. g.*, Printing Act of 1662, 14 Car. II, ch. 33, §§ 1, 4, 7 (punishing printers, importers, and booksellers); Printing Act of 1649, 2 Acts and Ordinances of the Interregnum 245, 246, 250 (punishing authors, printers, booksellers, importers, and buyers). In response to this threat, we have interpreted the First Amendment broadly. See, *e. g.*, *Bantam Books, Inc.* v. *Sullivan*, 372 U. S. 58, 65, n. 6 (1963) ("The constitutional guarantee of freedom of the press embraces the circulation of books as well as their publication . . .").

Division of labor requires a means of mediating exchange, and in a commercial society, that means is supplied by money. The publisher pays the author for the right to sell his book; it pays its staff who print and assemble the book; it demands payments from booksellers who bring the book to market. This, too, presents opportunities for repression: Instead of regulating the various parties to the enterprise individually, the government can suppress their ability to coordinate by regulating their use of money. What good is the right to print books without a right to buy works from authors? Or the right to publish newspapers without the right to pay deliverymen? The right to speak would be largely ineffective if it did not include the right to engage in financial transactions that are the incidents of its exercise.

This is not to say that *any* regulation of money is a regulation of speech. The government may apply general commercial regulations to those who use money for speech if it applies them evenhandedly to those who use money for other purposes. But where the government singles out money used to fund speech as its legislative object, it is acting against speech as such, no less than if it had targeted the paper on which a book was printed or the trucks that deliver it to the bookstore.

History and jurisprudence bear this out. The best early examples derive from the British efforts to tax the press after the lapse of licensing statutes by which the press was first regulated. The Stamp Act of 1712 imposed levies on all newspapers, including an additional tax for each advertisement. 10 Anne, ch. 18, § 113. It was a response to unfavorable war coverage, "obvious[ly] . . . designed to check the publication of those newspapers and pamphlets which depended for their sale on their cheapness and sensationalism." F. Siebert, Freedom of the Press in England, 1476–1776, pp. 309–310 (1952). It succeeded in killing off approximately half the newspapers in England in its first year. *Id.*, at 312. In 1765, Parliament applied a similar Act to the Col-

onies. 5 Geo. III, ch. 12, §1. The colonial Act likewise placed exactions on sales and advertising revenue, the latter at 2s. per advertisement, which was "by any standard . . . excessive, since the publisher himself received only from 3 to 5s. and still less for repeated insertions." A. Schlesinger, Prelude to Independence: The Newspaper War on Britain, 1764–1776, p. 68 (1958). The founding generation saw these taxes as grievous incursions on the freedom of the press. See, *e. g.*, 1 D. Ramsay, History of the American Revolution 61–62 (L. Cohen ed. 1990); J. Adams, A Dissertation on the Canon and Feudal Law (1765), reprinted in 3 Life and Works of John Adams 445, 464 (C. Adams ed. 1851). See generally *Grosjean* v. *American Press Co.*, 297 U. S. 233, 245–249 (1936); Schlesinger, *supra*, at 67–84.

We have kept faith with the Founders' tradition by prohibiting the selective taxation of the press. *Minneapolis Star & Tribune Co.* v. *Minnesota Comm'r of Revenue*, 460 U. S. 575 (1983) (ink and paper tax); *Grosjean*, *supra* (advertisement tax). And we have done so whether the tax was the product of illicit motive or not. See *Minneapolis Star & Tribune Co.*, *supra*, at 592. These press-taxation cases belie the claim that regulation of money used to fund speech is not regulation of speech itself. A tax on a newspaper's advertising revenue does not prohibit anyone from saying anything; it merely appropriates part of the revenue that a speaker would otherwise obtain. That is even a step short of totally prohibiting advertising revenue—which would be analogous to the total prohibition of certain campaign-speech contributions in the present cases. Yet it is unquestionably a violation of the First Amendment.

Many other cases exemplify the same principle that an attack upon the funding of speech is an attack upon speech itself. In *Schaumburg* v. *Citizens for a Better Environment*, 444 U. S. 620 (1980), we struck down an ordinance limiting the amount charities could pay their solicitors. In *Simon & Schuster, Inc.* v. *Members of N. Y. State Crime Vic-*

tims Bd., 502 U. S. 105 (1991), we held unconstitutional a state statute that appropriated the proceeds of criminals' biographies for payment to the victims. And in *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819 (1995), we held unconstitutional a university's discrimination in the disbursement of funds to speakers on the basis of viewpoint. Most notable, perhaps, is our famous opinion in *New York Times Co.* v. *Sullivan*, 376 U. S. 254 (1964), holding that paid advertisements in a newspaper were entitled to full First Amendment protection:

> "Any other conclusion would discourage newspapers from carrying 'editorial advertisements' of this type, and so might shut off an important outlet for the promulgation of information and ideas by persons who do not themselves have access to publishing facilities—who wish to exercise their freedom of speech even though they are not members of the press. The effect would be to shackle the First Amendment in its attempt to secure 'the widest possible dissemination of information from diverse and antagonistic sources.'" *Id.*, at 266 (citations omitted).

This passage was relied on in *Buckley* for the point that restrictions on the expenditure of money for speech are equivalent to restrictions on speech itself. 424 U. S., at 16–17. That reliance was appropriate. If denying protection to paid-for speech would "shackle the First Amendment," so also does forbidding or limiting the right to pay for speech.

It should be obvious, then, that a law limiting the amount a person can spend to broadcast his political views is a direct restriction on speech. That is no different from a law limiting the amount a newspaper can pay its editorial staff or the amount a charity can pay its leafletters. It is equally clear that a limit on the amount a candidate can *raise* from any one individual for the purpose of speaking is also a direct limitation on speech. That is no different from a law limit-

ing the amount a publisher can accept from any one shareholder or lender, or the amount a newspaper can charge any one advertiser or customer.

(b) Pooling Money is Not Speech

Another proposition which could explain at least some of the results of today's opinion is that the First Amendment right to spend money for speech does not include the right to combine with others in spending money for speech. Such a proposition fits uncomfortably with the concluding words of our Declaration of Independence: "And for the support of this Declaration, . . . we mutually pledge to each other our Lives, *our Fortunes* and our sacred Honor." (Emphasis added.) The freedom to associate with others for the dissemination of ideas—not just by singing or speaking in unison, but by pooling financial resources for expressive purposes—is part of the freedom of speech.

> "Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association. This right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic freedoms in America has traditionally been through the media of political associations. Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents." *NAACP* v. *Button*, 371 U. S. 415, 431 (1963) (internal quotation marks omitted).
>
> "The First Amendment protects political association as well as political expression. The constitutional right of association explicated in *NAACP* v. *Alabama*, 357 U. S. 449, 460 (1958), stemmed from the Court's recognition that '[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association.' Subsequent decisions have made clear that the First and Fourteenth Amendments guarantee '"freedom to associate with oth-

> ers for the common advancement of political beliefs and ideas,' ' . . . ." *Buckley*, *supra*, at 15.

We have said that "implicit in the right to engage in activities protected by the First Amendment" is "a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends." *Roberts* v. *United States Jaycees*, 468 U. S. 609, 622 (1984). That "right to associate . . . in pursuit" includes the right to pool financial resources.

If it were otherwise, Congress would be empowered to enact legislation requiring newspapers to be sole proprietorships, banning their use of partnership or corporate form. That sort of restriction would be an obvious violation of the First Amendment, and it is incomprehensible why the conclusion should change when what is at issue is the pooling of funds for the most important (and most perennially threatened) category of speech: electoral speech. The principle that such financial association does not enjoy full First Amendment protection threatens the existence of all political parties.

(c) Speech by Corporations Can Be Abridged

The last proposition that might explain at least some of today's casual abridgment of free-speech rights is this: that the particular form of association known as a corporation does not enjoy full First Amendment protection. Of course the text of the First Amendment does not limit its application in this fashion, even though "[b]y the end of the eighteenth century the corporation was a familiar figure in American economic life." C. Cooke, Corporation, Trust and Company 92 (1951). Nor is there any basis in reason why First Amendment rights should not attach to corporate associations—and we have said so. In *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765 (1978), we held unconstitutional a state prohibition of corporate speech designed to influence the vote on referendum proposals. We said:

> "[T]here is practically universal agreement that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs. If the speakers here were not corporations, no one would suggest that the State could silence their proposed speech. It is the type of speech indispensable to decisionmaking in a democracy, and this is no less true because the speech comes from a corporation rather than an individual. The inherent worth of the speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual." *Id.*, at 776–777 (internal quotation marks, footnotes, and citations omitted).

In *NAACP* v. *Button*, *supra*, at 428–429, 431, we held that the NAACP could assert First Amendment rights "on its own behalf, . . . though a corporation," and that the activities of the corporation were "modes of expression and association protected by the First and Fourteenth Amendments." In *Pacific Gas & Elec. Co.* v. *Public Util. Comm'n of Cal.*, 475 U. S. 1, 8 (1986), we held unconstitutional a state effort to compel corporate speech. "The identity of the speaker," we said, "is not decisive in determining whether speech is protected. 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." And in *Buckley*, 424 U. S. 1, we held unconstitutional FECA's limitation upon independent corporate expenditures.

The Court changed course in *Austin* v. *Michigan Chamber of Commerce*, 494 U. S. 652 (1990), upholding a state prohibition of an independent corporate expenditure in support of a candidate for state office. I dissented in that case, see *id.*, at 679, and remain of the view that it was error. In the modern world, giving the government power to exclude corporations from the political debate enables it effectively to muffle the voices that best represent the most significant

segments of the economy and the most passionately held social and political views. People who associate—who pool their financial resources—for purposes of economic enterprise overwhelmingly do so in the corporate form; and with increasing frequency, incorporation is chosen by those who associate to defend and promote particular ideas—such as the American Civil Liberties Union and the National Rifle Association, parties to these cases. Imagine, then, a government that wished to suppress nuclear power—or oil and gas exploration, or automobile manufacturing, or gun ownership, or civil liberties—and that had the power to prohibit corporate advertising against its proposals. To be sure, the individuals involved in, or benefited by, those industries, or interested in those causes, could (given enough time) form political action committees or other associations to make their case. But the organizational form in which those enterprises already *exist*, and in which they can most quickly and most effectively get their message across, is the corporate form. The First Amendment does not in my view permit the restriction of that political speech. And the same holds true for corporate electoral speech: A candidate should not be insulated from the most effective speech that the major participants in the economy and major incorporated interest groups can generate.

But what about the danger to the political system posed by "amassed wealth"? The most direct threat from that source comes in the form of undisclosed favors and payoffs to elected officials—which have already been criminalized, and will be rendered no more discoverable by the legislation at issue here. The use of corporate wealth (like individual wealth) to speak to the electorate is unlikely to "distort" elections—*especially* if disclosure requirements *tell* the people where the speech is coming from. The premise of the First Amendment is that the American people are neither sheep nor fools, and hence fully capable of considering both the substance of the speech presented to them and its proxi-

mate and ultimate source. If that premise is wrong, our democracy has a much greater problem to overcome than merely the influence of amassed wealth. Given the premises of democracy, there is no such thing as *too much* speech.

But, it is argued, quite apart from its effect upon the electorate, corporate speech in the form of contributions to the candidate's campaign, or even in the form of independent expenditures supporting the candidate, engenders an obligation which is later paid in the form of greater access to the officeholder, or indeed in the form of votes on particular bills. Any *quid-pro-quo* agreement for votes would of course violate criminal law, see 18 U. S. C. § 201, and actual payoff *votes* have not even been claimed by those favoring the restrictions on corporate speech. It cannot be denied, however, that corporate (like noncorporate) allies will have greater access to the officeholder, and that he will tend to favor the same causes as those who support him (which is usually *why* they supported him). That is the nature of politics—if not indeed human nature—and how this can properly be considered "corruption" (or "the appearance of corruption") with regard to corporate allies and not with regard to other allies is beyond me. If the Bill of Rights had intended an exception to the freedom of speech in order to combat this malign proclivity of the officeholder to agree with those who agree with him, and to speak more with his supporters than his opponents, it would surely have said so. It did not do so, I think, because the juice is not worth the squeeze. Evil corporate (and private affluent) influences are well enough checked (so long as adequate campaign-expenditure disclosure rules exist) by the politician's fear of being portrayed as "in the pocket" of so-called moneyed interests. The incremental benefit obtained by muzzling corporate speech is more than offset by loss of the information and persuasion that corporate speech can contain. That, at least, is the assumption of a constitutional guarantee which prescribes that Congress shall make no law abridging the freedom of speech.

But let us not be deceived. While the Government's briefs and arguments before this Court focused on the horrible "appearance of corruption," the most passionate floor statements during the debates on this legislation pertained to so-called attack ads, which the Constitution surely protects, but which Members of Congress analogized to "crack cocaine," 144 Cong. Rec. 1601 (1998) (remarks of Sen. Daschle), "drive-by shooting[s]," *id.*, at 1613 (remarks of Sen. Durbin), and "air pollution," 143 Cong. Rec. 20505 (1997) (remarks of Sen. Dorgan). There is good reason to believe that the ending of negative campaign ads was the principal attraction of the legislation. A Senate sponsor said, "I hope that we will not allow our attention to be distracted from the real issues at hand—how to raise the tenor of the debate in our elections and give people real choices. No one benefits from negative ads. They don't aid our Nation's political dialog." *Id.*, at 20521–20522 (remarks of Sen. McCain). He assured the body that "[y]ou cut off the soft money, you are going to see a lot less of that [attack ads]. Prohibit unions and corporations, and you will see a lot less of that. If you demand full disclosure for those who pay for those ads, you are going to see a lot less of that. . . ." 147 Cong. Rec. S3116 (Mar. 29, 2001). See also, *e. g.*, 148 Cong. Rec. S2117 (Mar. 20, 2002) (remarks of Sen. Cantwell) ("This bill is about slowing the ad war. . . . It is about slowing political advertising and making sure the flow of negative ads by outside interest groups does not continue to permeate the airwaves"); 143 Cong. Rec. 20746 (1997) (remarks of Sen. Boxer) ("These so-called issues ads are not regulated at all and mention candidates by name. They directly attack candidates without any accountability. It is brutal. . . . We have an opportunity in the McCain-Feingold bill to stop that . . ."); 145 Cong. Rec. S12606–S12607 (Oct. 14, 1999) (remarks of Sen. Wellstone) ("I think these issue advocacy ads are a nightmare. I think all of us should hate them. . . . [By passing the legislation], [w]e could get some of this poison politics off television").

Another theme prominent in the legislative debates was the notion that there is too much money spent on elections. The first principle of "reform" was that "there should be less money in politics." 147 Cong. Rec. S3236 (Apr. 2, 2001) (remarks of Sen. Murray). "The enormous amounts of special interest money that flood our political system have become a cancer in our democracy." 148 Cong. Rec. S2151 (Mar. 20, 2002) (remarks of Sen. Kennedy). "[L]arge sums of money drown out the voice of the average voter." *Id.*, at H373 (Feb. 13, 2002) (remarks of Rep. Langevin). The system of campaign finance is "drowning in money." *Id.*, at H404 (remarks of Rep. Menendez). And most expansively:

> "Despite the ever-increasing sums spent on campaigns, we have not seen an improvement in campaign discourse, issue discussion or voter education. More money does not mean more ideas, more substance or more depth. Instead, it means more of what voters complain about most. More 30-second spots, more negativity and an increasingly longer campaign period." *Id.*, at S2150 (Mar. 20, 2002) (remarks of Sen. Kerry).

Perhaps voters do detest these 30-second spots—though I suspect they detest even more hour-long campaign-debate interruptions of their favorite entertainment programming. Evidently, however, these ads *do persuade* voters, or else they would not be so routinely used by sophisticated politicians of all parties. The point, in any event, is that it is not the proper role of those who govern us to judge which campaign speech has "substance" and "depth" (do you think it might be that which is least damaging to incumbents?) and to abridge the rest.

And what exactly are these outrageous sums frittered away in determining who will govern us? A report prepared for Congress concluded that the total amount, in hard and soft money, spent on the 2000 federal elections was be-

tween $2.4 and $2.5 billion. J. Cantor, CRS Report for Congress, Campaign Finance in the 2000 Federal Elections: Overview and Estimates of the Flow of Money (2001). *All* campaign spending in the United States, including state elections, ballot initiatives, and judicial elections, has been estimated at $3.9 billion for 2000, Nelson, Spending in the 2000 Elections, in Financing the 2000 Election 24, Tbl. 2–1 (D. Magleby ed. 2002), which was a year that "shattered spending and contribution records," *id.*, at 22. Even taking this last, larger figure as the benchmark, it means that Americans spent about half as much electing all their Nation's officials, state and federal, as they spent on movie tickets ($7.8 billion); about a fifth as much as they spent on cosmetics and perfume ($18.8 billion); and about a sixth as much as they spent on pork (the nongovernmental sort) ($22.8 billion). See U. S. Dept. of Commerce, Bureau of Economic Analysis, Personal Consumption Expenditures, Tbl. 2.6U (col. AS; rows 356, 214, and 139). If our democracy is drowning from this much spending, it cannot swim.

* * *

Which brings me back to where I began: This litigation is about preventing criticism of the government. I cannot say for certain that many, or some, or even any, of the Members of Congress who voted for this legislation did so not to produce "fairer" campaigns, but to mute criticism of their records and facilitate reelection. Indeed, I will stipulate that all those who voted for BCRA believed they were acting for the good of the country. There remains the problem of the Charlie Wilson Phenomenon, named after Charles Wilson, former president of General Motors, who is supposed to have said during the Senate hearing on his nomination as Secretary of Defense that "what's good for General Motors

is good for the country."* Those in power, even giving them the benefit of the greatest good will, are inclined to believe that what is good for them is good for the country. Whether in prescient recognition of the Charlie Wilson Phenomenon, or out of fear of good old-fashioned, malicious, self-interested manipulation, "[t]he fundamental approach of the First Amendment . . . was to assume the worst, and to rule the regulation of political speech 'for fairness' sake' simply out of bounds." *Austin,* 494 U. S., at 693 (SCALIA, J., dissenting). Having abandoned that approach to a limited extent in *Buckley,* we abandon it much further today.

We will unquestionably be called upon to abandon it further still in the future. The most frightening passage in the lengthy floor debates on this legislation is the following assurance given by one of the cosponsoring Senators to his colleagues:

> "This is a modest step, it is a first step, it is an essential step, but it does not even begin to address, in some ways, the fundamental problems that exist with the hard money aspect of the system." 148 Cong. Rec. S2101 (Mar. 20, 2002) (statement of Sen. Feingold).

The system indeed. The first instinct of power is the retention of power, and, under a Constitution that requires periodic elections, that is best achieved by the suppression of election-time speech. We have witnessed merely the second scene of Act I of what promises to be a lengthy tragedy. In scene 3 the Court, having abandoned most of the First Amendment weaponry that *Buckley* left intact, will be even less equipped to resist the incumbents' writing of the rules

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*It is disillusioning to learn that the fabled quote is inaccurate. Wilson actually said: "[F]or years I thought what was good for our country was good for General Motors, and vice versa. The difference did not exist." Hearings before the Senate Committee on Armed Services, 83d Cong., 1st Sess., 26 (1953).

of political debate. The federal election campaign laws, which are already (as today's opinions show) so voluminous, so detailed, so complex, that no ordinary citizen dare run for office, or even contribute a significant sum, without hiring an expert adviser in the field, can be expected to grow more voluminous, more detailed, and more complex in the years to come—and always, always, with the objective of reducing the excessive amount of speech.

JUSTICE THOMAS, concurring with respect to BCRA Titles III and IV, except for BCRA §§ 311 and 318, concurring in the result with respect to BCRA § 318, concurring in the judgment in part and dissenting in part with respect to BCRA Title II, and dissenting with respect to BCRA Titles I, V, and § 311.*

The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech." Nevertheless, the Court today upholds what can only be described as the most significant abridgment of the freedoms of speech and association since the Civil War. With breathtaking scope, the Bipartisan Campaign Reform Act of 2002 (BCRA), directly targets and constricts core political speech, the "primary object of First Amendment protection." *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S. 377, 410–411 (2000) (THOMAS, J., dissenting). Because "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)), our duty is to approach these restrictions "with the utmost skepticism" and subject them to the "strictest scrutiny." *Shrink Missouri*, *supra*, at 412 (THOMAS, J., dissenting).

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* JUSTICE SCALIA joins Parts I, II–A, and II–B of this opinion.

In response to this assault on the free exchange of ideas and with only the slightest consideration of the appropriate standard of review or of the Court's traditional role of protecting First Amendment freedoms, the Court has placed its *imprimatur* on these unprecedented restrictions. The very "purpose of the First Amendment [is] to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail." *Red Lion Broadcasting Co.* v. *FCC*, 395 U. S. 367, 390 (1969). Yet today the fundamental principle that "the best test of truth is the power of the thought to get itself accepted in the competition of the market," *Abrams* v. *United States*, 250 U. S. 616, 630 (1919) (Holmes, J., dissenting), is cast aside in the purported service of preventing "corruption," or the mere "appearance of corruption." *Buckley* v. *Valeo*, 424 U. S. 1, 26 (1976) *(per curiam)*. Apparently, the marketplace of ideas is to be fully open only to defamers, *New York Times Co.* v. *Sullivan*, 376 U. S. 254 (1964); nude dancers, *Barnes* v. *Glen Theatre, Inc.*, 501 U. S. 560 (1991) (plurality opinion); pornographers, *Ashcroft* v. *Free Speech Coalition*, 535 U. S. 234 (2002); flag burners, *United States* v. *Eichman*, 496 U. S. 310 (1990); and cross burners, *Virginia* v. *Black*, 538 U. S. 343 (2003).

Because I cannot agree with the treatment given by JUSTICE STEVENS' and JUSTICE O'CONNOR's opinion (hereinafter joint opinion) to speech that is "indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society," *Thornhill* v. *Alabama*, 310 U. S. 88, 103 (1940), I respectfully dissent. I also dissent from JUSTICE BREYER's opinion upholding BCRA § 504. I join THE CHIEF JUSTICE's opinion in regards to BCRA §§ 304, 305, 307, 316, 319, and 403(b); concur in the result as to § 318; and dissent from the opinion as to § 311. I also fully agree with JUSTICE KENNEDY's discussion of § 213 and join that portion of his opinion. *Post*, at 320.

I

A

"[C]ampaign finance laws are subject to strict scrutiny," *Federal Election Comm'n* v. *Beaumont*, 539 U. S. 146, 164 (2003) (THOMAS, J., dissenting), and thus Title I must satisfy that demanding standard even if it were (incorrectly) conceived of as nothing more than a contribution limitation. The defendants do not even attempt to defend Title I under this standard, and for good reason: The various restrictions imposed by Title I are much less narrowly tailored to target only corrupting or problematic donations than even the contribution limits in *Shrink Missouri*. See 528 U. S., at 427–430 (THOMAS, J., dissenting); see also *Colorado Republican Federal Campaign Comm.* v. *Federal Election Comm'n*, 518 U. S. 604, 641–644 (1996) *(Colorado I)* (THOMAS, J., concurring in judgment and dissenting in part). And, as I have previously noted, it is unclear why "[b]ribery laws [that] bar precisely the *quid pro quo* arrangements that are targeted here" and "disclosure laws" are not "less restrictive means of addressing [the Government's] interest in curtailing corruption." *Shrink Missouri*, *supra*, at 428.

The joint opinion not only continues the errors of *Buckley* v. *Valeo*, by applying a low level of scrutiny to contribution ceilings, but also builds upon these errors by expanding the anticircumvention rationale beyond reason. Admittedly, exploitation of an anticircumvention concept has a long pedigree, going back at least to *Buckley* itself. *Buckley* upheld a $1,000 contribution ceiling as a way to combat both the "actuality and appearance of corruption." 424 U. S., at 26. The challengers in *Buckley* contended both that bribery laws represented "a less restrictive means of dealing with 'proven and suspected *quid pro quo* arrangements,'" *id.*, at 27, and that the $1,000 contribution ceiling was overbroad as "most large contributors do not seek improper influence over a candidate's position or an officeholder's action," *id.*, at 29. The

Court rejected the first argument on the grounds that "laws making criminal the giving and taking of bribes deal with only the most blatant and specific attempts of those with money to influence governmental action," *id.*, at 27–28, and rejected the second on the grounds that "it [is] difficult to isolate suspect contributions," *id.*, at 30.[1] But a broadly drawn bribery law[2] would cover even subtle and general attempts to influence government officials corruptly, eliminating the Court's first concern. And, an effective bribery law would deter actual *quid pro quos* and would, in all likelihood, eliminate any appearance of corruption in the system.

Hence, at root, the *Buckley* Court was concerned that bribery laws could not be effectively enforced to prevent *quid pro quos* between donors and officeholders, and the only rational reading of *Buckley* is that it approved the $1,000 contribution ceiling on this ground. The Court then, however, having at least in part concluded that individual contribution ceilings were necessary to prevent easy evasion of bribery laws, proceeded to uphold a separate contribution limitation, using, as the only justification, the "prevent[ion] [of] evasion of the $1,000 contribution limitation." *Id.*, at 38. The need to prevent circumvention of a limitation that was itself an anticircumvention measure led to the upholding of

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[1] The Court also rejected an overbreadth challenge, reasoning that "Congress was justified in concluding that the interest in safeguarding against the appearance of impropriety requires that the opportunity for abuse inherent in the process of raising large monetary contributions be eliminated." *Buckley*, 424 U. S., at 30. But this justification was inextricably intertwined with the Court's concern over the difficulty of isolating suspect contributions. If it were easy to isolate suspect contributions, and if bribery laws could be quickly and effectively enforced, then there would be no "opportunity for abuse inherent in the process," *ibid.*, and hence no need for an otherwise overbroad contribution ceiling.

[2] Arguably, the current antibribery statute, 18 U. S. C. §201, is broad enough to cover the unspecified other "attempts . . . to influence governmental action" that the *Buckley* Court seemed worried about. 424 U. S., at 28.

another significant restriction on individuals' freedom of speech.

The joint opinion now repeats this process. New Federal Election Campaign Act of 1971 (FECA) § 323(a), 2 U. S. C. § 441i(a) (Supp. II), is intended to prevent easy circumvention of the (now) $2,000 contribution ceiling. The joint opinion even recognizes this, relying heavily on evidence that, for instance, "candidates and donors alike have in fact exploited the soft-money loophole, the former to increase their prospects of election and the latter to create debt on the part of officeholders, with the national parties serving as willing intermediaries." *Ante*, at 146. The joint opinion upholds § 323(a), in part, on the grounds that it had become too easy to circumvent the $2,000 cap by using the national parties as go-betweens.

And the remaining provisions of new FECA § 323 are upheld mostly as measures preventing circumvention of other contribution limits, including § 323(a), *ante*, at 164–166 (§ 323(b)); *ante*, at 174–177 (§ 323(d)); *ante*, at 182–183 (§ 323(e)); *ante*, at 184–185 (§ 323(f)), which, as I have already explained, is a second-order anticircumvention measure. The joint opinion's handling of § 323(f) is perhaps most telling, as it upholds § 323(f) only because of "Congress' eminently reasonable *prediction* that . . . state and local candidates and officeholders will become the next conduits for the soft-money funding of sham issue advertising." *Ante*, at 185 (emphasis added). That is, this Court upholds a third-order anticircumvention measure based on Congress' anticipation of circumvention of these second-order anticircumvention measures that might possibly, at some point in the future, pose some problem.

It is not difficult to see where this leads. Every law has limits, and there will always be behavior not covered by the law but at its edges; behavior easily characterized as "circumventing" the law's prohibition. Hence, speech regulation will again expand to cover new forms of "circumvention," only to spur supposed circumvention of the new

regulations, and so forth. Rather than permit this never-ending and self-justifying process, I would require that the Government explain why proposed speech restrictions are needed in light of actual Government interests, and, in particular, why the bribery laws are not sufficient.

B

But Title I falls even on the joint opinion's terms. This Court has held that "[t]he 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." *Shrink Missouri*, 528 U. S., at 391. And three Members of today's majority have observed that "the opportunity for corruption" presented by "[u]nregulated 'soft money' contributions" is, "at best, attenuated." *Colorado I*, 518 U. S., at 616 (opinion of BREYER, J., joined by O'CONNOR and SOUTER, JJ.). Such an observation is quite clearly correct. A donation to a political party is a clumsy method by which to influence a candidate, as the party is free to spend the donation however it sees fit, and could easily spend the money as to provide no help to the candidate. And, a soft-money donation to a party will be of even less benefit to a candidate, "because of legal restrictions on how the money may be spent." Brief for FEC et al. in No. 02–1674 et al., p. 43. It follows that the defendants bear an especially heavy empirical burden in justifying Title I.

The evidence cited by the joint opinion does not meet this standard and would barely suffice for anything more than rational-basis review. The first category of the joint opinion's evidence is evidence that "federal officeholders have commonly asked donors to make soft-money donations to national and state committees solely in order to assist federal campaigns, including the officeholder's own." *Ante*, at 146 (internal quotation marks omitted). But to the extent that donors and federal officeholders have collaborated so that donors could give donations to a national party committee "for

the purpose of influencing any election for Federal office," the alleged soft-money donation is in actuality a regular "contribution" as already defined and regulated by FECA. See 2 U. S. C. § 431(8)(A)(i). Neither the joint opinion nor the defendants present evidence that enforcement of pre-BCRA law has proved to be impossible, ineffective, or even particularly difficult.

The second category is evidence that "lobbyists, CEOs, and wealthy individuals" have "donat[ed] substantial sums of soft money to national committees not on ideological grounds, but for the express purpose of securing influence over federal officials." *Ante*, at 147. Even if true (and the cited evidence consists of nothing more than vague allegations of wrongdoing), it is unclear why existing bribery laws could not address this problem. Again, neither the joint opinion nor the defendants point to evidence that the enforcement of bribery laws has been or would be ineffective. If the problem has been clear and widespread, as the joint opinion suggests, I would expect that convictions, or at least prosecutions, would be more frequent.

The third category is evidence characterized by the joint opinion as "connect[ing] soft money to manipulations of the legislative calendar, leading to Congress' failure to enact, among other things, generic drug legislation, tort reform, and tobacco legislation." *Ante*, at 150. But the evidence for this is no stronger than the evidence that there has been actual vote buying or vote switching for soft money. The joint opinion's citations to the record do not stand for the propositions that they claim. For instance, the McCain declaration does not provide any evidence of any exchange of legislative action for donations of any kind (hard or soft).[3]

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[3] Indeed, the principal contents of Senator McCain's declaration are his complaints that several bills he supported were defeated. The Senator also suggests, without evidence, that there had been some connection between the defeat of his favored policy outcomes and certain soft-money donors. See, *e. g.*, App. 393–394, ¶10 (declaration of Sen. John McCain

Neither do the Simpson or Simon declarations, with perhaps one exception effectively addressed by JUSTICE KENNEDY's opinion.[4] See *post*, at 301–303. In fact, the findings by two of the District Court's judges confirm that the evidence of any *quid pro quo* corruption is exceedingly weak, if not nonexistent. See 251 F. Supp. 2d 176, 349–352 (DC 2003) (Henderson, J., concurring in judgment in part and dissenting in part); *id.*, at 851–853 (Leon, J.). The evidence cited by the joint opinion is properly described as, "at best, [the Members of Congress'] personal conjecture regarding the impact of soft money donations on the voting practices of their present and former colleagues." *Id.*, at 852 (Leon, J.).

The joint opinion also places a substantial amount of weight on the fact that "in 1996 and 2000, more than half of the top 50 soft-money donors gave substantial sums to *both* major national parties," and suggests that this fact "leav[es] room for no other conclusion but that these donors were seeking influence, or avoiding retaliation, rather than promoting any particular ideology." *Ante*, at 148 (emphasis in original). But that is not necessarily the case. The two major parties are not perfect ideological opposites, and supporters or opponents of certain policies or ideas might find substantial overlap between the two parties. If donors feel that both major parties are in general agreement over an issue of importance to them, it is unremarkable that such

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¶10) (noting Democratic "parliamentary procedural device" used to block one of Senator McCain's proposed amendments to the Sarbanes-Oxley corporate governance bill). The possibility that his favored policy outcomes lost due to lack of public support, or because the opponents of the amendment honestly believed it would do harm to the public, does not appear to be addressed.

[4] Former Senators Simpson and Simon both seem to have the same response as Senator McCain, see n. 3, *supra*, in having their favored interests voted down, and similarly do not consider alternative explanations for the failure of their proposals. See App. 811, ¶ 11 (declaration of former Sen. Alan Simpson ¶11); *id.*, at 805, ¶14 (declaration of former Sen. Paul Simon ¶14).

donors show support for both parties. This commonsense explanation surely belies the joint opinion's too-hasty conclusion drawn from a relatively innocent fact.

The Court today finds such sparse evidence sufficient. This cannot be held to satisfy even the "relatively complaisant review" of *Beaumont*, 539 U. S., at 161, unless, as it appears, the Court intends to abdicate entirely its role.[5]

II

The Court is not content with "balanc[ing] away First Amendment freedoms," *Shrink Missouri*, 528 U. S., at 410 (THOMAS, J., dissenting), in the context of the restrictions imposed by Title I, which could arguably (if wrongly) be thought to be mere contribution limits. The Court also, in upholding virtually all of Title II, proceeds to do the same for limitations on expenditures, which constitute "political expression 'at the core of our electoral process and of the First Amendment freedoms,'" *Buckley*, 424 U. S., at 39 (quoting *Williams* v. *Rhodes*, 393 U. S. 23, 32 (1968)). Today's holding continues a disturbing trend: the steady decrease in the level of scrutiny applied to restrictions on core political speech. See *Buckley*, *supra*, at 16 (First Amendment requires "exacting scrutiny"); *Shrink Missouri*, *supra*, at 387 (applying "*Buckley*'s standard of scrutiny"); *Beaumont*, *supra*, at 161 (referencing "relatively complaisant review").[6] Although this trend is most obvious in the review of contribution limits, it has now reached what even this Court today would presumably recognize as a direct restriction on core political speech: limitations on independent expenditures.

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[5] Because there is not an iota of evidence supporting the Government's asserted interests in BCRA §318, I concur in the Court's conclusion that this provision is unconstitutional.

[6] The joint opinion continues yet another disturbing trend: the application of a complaisant level of scrutiny under the guise of "strict scrutiny." See *Grutter* v. *Bollinger*, 539 U. S. 306 (2003).

A

Of course, by accepting Congress' expansion of what constitutes "coordination" for purposes of treating expenditures as limitations, the Court can pretend that it is, in fact, still only restricting primarily "contributions." I need not say much about this illusion. I have already discussed how the language used in new FECA § 315(a)(7)(B)(ii) is, even under *Buckley*'s framework, overly broad and restricts fully protected speech. See *Federal Election Comm'n* v. *Colorado Republican Federal Campaign Comm.*, 533 U. S. 431, 467–468 (2001) *(Colorado II)* (THOMAS, J., dissenting). The particular language used, "expenditures made by any person . . . in cooperation, consultation, or concert with, or at the request or suggestion of, a national, State, or local committee of a political party," BCRA § 214(a)(2), captures expenditures with "no constitutional difference" from "a purely independent one." *Id.*, at 468 (THOMAS, J., dissenting).[7] And new FECA § 315(a)(7)(C), although using the neutral term "coordinated," certainly has the purpose of "clarif[ying] the scope of the preceding subsection, § 315(a)(7)(B)," *ante,* at 202 (joint opinion), and thus should be read to be as expansive as the overly broad language in § 315(a)(7)(B). Hence, it too is unconstitutional.

B

As for §§ 203 and 204, the Court rests its decision on another vast expansion of the First Amendment framework described in *Buckley,* this time of the Court's, rather than Congress', own making. In *Austin* v. *Michigan Chamber of Commerce,* 494 U. S. 652, 659–660 (1990), the Court recognized a "different type of corruption" from the "'financial *quid pro quo*'": the "corrosive and distorting effects of im-

[7] This is doubly so now that the Court has decided that there is no constitutional need for the showing even of an "agreement" in order to transform an expenditure into a "coordinated expenditur[e]" and hence into a contribution for FECA purposes. *Ante,* at 220–223 (joint opinion).

mense 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." The only effect, however, that the "immense aggregations" of wealth will have (in the context of independent expenditures) on an election is that they might be used to fund communications to convince voters to select certain candidates over others. In other words, the "corrosive and distorting effects" described in *Austin* are that corporations, on behalf of their shareholders, will be able to convince voters of the correctness of their ideas. Apparently, winning in the marketplace of ideas is no longer a sign that "the ultimate good" has been "reached by free trade in ideas," or that the speaker has survived "the best test of truth" by having "the thought . . . get itself accepted in the competition of the market." *Abrams*, 250 U. S., at 630 (Holmes, J., dissenting). It is now evidence of "corruption." This conclusion is antithetical to everything for which the First Amendment stands. See, *e. g.*, *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765, 790 (1978) ("[T]he fact that advocacy may persuade the electorate is hardly a reason to suppress it"); *Kingsley Int'l Pictures Corp.* v. *Regents of Univ. of N. Y.*, 360 U. S. 684, 689 (1959) ("[I]n the realm of ideas [the Constitution] protects expression which is eloquent no less than that which is unconvincing").

Because *Austin*'s definition of "corruption" is incompatible with the First Amendment, I would overturn *Austin* and hold that the potential for corporations and unions to influence voters, via independent expenditures aimed at convincing these voters to adopt particular views, is not a form of corruption justifying any state regulation or suppression. Without *Austin*'s peculiar variation of "corruption," §§ 203 and 204 are supported by no compelling government interest. The joint opinion does not even argue that these provi-

sions address *quid pro quo* corruption.[8] And the shareholder protection rationale is equally unavailing. The "shareholder invests in a corporation of his own volition and is free to withdraw his investment at any time and for any reason," *Bellotti*, 435 U. S., at 794, n. 34. Hence, no compelling interest can be found in protecting minority shareholders from the corporation's use of its general treasury, especially where, in other contexts, "equally important and controversial corporate decisions are made by management or by a predetermined percentage of the shareholders." *Ibid.*

C

I must now address an issue on which I differ from all of my colleagues: the disclosure provisions in BCRA § 201, now contained in new FECA § 304(f). The "historical evidence indicates that Founding-era Americans opposed attempts to require that anonymous authors reveal their identities on the ground that forced disclosure violated the 'freedom of the press.'" *McIntyre* v. *Ohio Elections Comm'n*, 514 U. S. 334, 361 (1995) (THOMAS, J., concurring in judgment).[9] Indeed, this Court has explicitly recognized that "the interest in having anonymous works enter the marketplace of ideas unquestionably outweighs any public interest in requiring disclo-

[8] The National Rifle Association (NRA) plaintiffs compellingly state that "[a]s a measure designed to prevent official corruption, of either the *quid pro quo* or the 'gratitude' variety, Title II . . . makes no more sense than a bribery statute requiring corporations to pay for their bribes using funds from PACs." Brief for Appellant NRA et al. in No. 02–1675, pp. 24–25. And, regarding the appearance of corruption: "Defendants' own witnesses concede that the public's perceptions of ads is not affected in the slightest by whether they are purchased with general treasury funds or with PAC money." *Id.*, at 25.

[9] The fact that the Founders located the right to anonymous speech in the "freedom of the press" is of no moment, as "it makes little difference in terms of our analysis, which seeks to determine only whether the First Amendment, as originally understood, protects anonymous writing." *McIntyre*, 514 U. S., at 360 (THOMAS, J., concurring in judgment).

sure as a condition of entry," and thus that "an author's decision to remain anonymous . . . is an aspect of the freedom of speech protected by the First Amendment." *Id.*, at 342. The Court now backs away from this principle, allowing the established right to anonymous speech to be stripped away based on the flimsiest of justifications.

The only plausible interest asserted by the defendants to justify the disclosure provisions is the interest in providing "information" about the speaker to the public. But we have already held that "[t]he simple interest in providing voters with additional relevant information does not justify a state requirement that a writer make statements or disclosures she would otherwise omit." *Id.*, at 348. Of course, *Buckley* upheld the disclosure requirement on expenditures for communications using words of express advocacy based on this informational interest. 424 U. S., at 81. And admittedly, *McIntyre* purported to distinguish *Buckley*. *McIntyre*, *supra*, at 355–356. But the two ways *McIntyre* distinguished *Buckley*—one, that the disclosure of "an expenditure and its use, without more, reveals far less information [than a forced identification of the author of a pamphlet,]" 514 U. S., at 355; and two, that in candidate elections, the "Government can identify a compelling state interest in avoiding the corruption that might result from campaign expenditures," *id.*, at 356—are inherently implausible. The first is simply wrong. The revelation of one's political expenditures for independent communications about candidates can be just as revealing as the revelation of one's name on a pamphlet for a noncandidate election. See also *id.*, at 384 (SCALIA, J., dissenting). The second was outright rejected in *Buckley* itself, where the Court concluded that independent expenditures did not create any substantial risk of real or apparent corruption. 424 U. S., at 47. Hence, the only reading of *McIntyre* that remains consistent with the principles it contains is that it overturned *Buckley* to the extent that *Buckley* upheld a disclosure requirement solely based on the governmental interest in providing information to the voters.

The right to anonymous speech cannot be abridged based on the interests asserted by the defendants. I would thus hold that the disclosure requirements of BCRA § 201 are unconstitutional. Because of this conclusion, the so-called advance disclosure requirement of § 201 necessarily falls as well.[10]

D

I have long maintained that *Buckley* was incorrectly decided and should be overturned. See *Colorado II*, 533 U. S., at 465; *Shrink Missouri*, 528 U. S., at 410; *Colorado I*, 518 U. S., at 640. But, most of Title II should still be held unconstitutional even under the *Buckley* framework. Under *Buckley* and *Federal Election Comm'n* v. *Massachusetts Citizens for Life, Inc.*, 479 U. S. 238 (1986) *(MCFL)*, it is, or at least was, clear that any regulation of political speech beyond communications using words of express advocacy is unconstitutional. Hence, even under the joint opinion's framework, most of Title II is unconstitutional, as both the "primary definition" and "backup definition" of "electioneer-

[10] BCRA § 212(a) is also unconstitutional. Although the plaintiffs only challenge the advance disclosure requirement of § 212(a), by requiring disclosure of communications using express advocacy, the entire reporting requirement is unconstitutional for the same reasons that § 201 is unconstitutional. Consequently, it follows that the advance disclosure provision is unconstitutional.

BCRA §§ 311 and 504 also violate the First Amendment. By requiring any television or radio advertisement that satisfies the definition of "electioneering communication" to include the identity of the sponsor, and even a "full-screen view of a representative of the political committee or other person making the statement" in the case of a television advertisement, new FECA § 318, § 311 is a virtual carbon copy of the law at issue in *McIntyre* v. *Ohio Elections Comm'n*, 514 U. S. 334 (1995) (the only difference being the irrelevant distinction between a printed pamphlet and a television or radio advertisement). And § 504 not only has the precise flaws of § 201, but also sweeps broadly as well, covering any "message relating to any political matter of national importance, including . . . a national legislative issue of public importance." Hence, both §§ 311 and 504 should be struck down.

ing communications" cover a significant number of communications that do not use words of express advocacy. 2 U. S. C. § 434(f)(3)(A) (Supp. II).[11]

In *Buckley*, the Court was presented with the ambiguous language " 'any expenditure . . . relative to a clearly identified candidate.' " 424 U. S., at 41. The Court noted that the "use of so indefinite a phrase as 'relative to' a candidate fails to clearly mark the boundary between permissible and impermissible speech." *Ibid.* Hence, the Court read the phrase to mean "advocating the election or defeat of a candidate." *Id.*, at 42 (internal quotation marks omitted). But this construction did not complete the vagueness inquiry. As the Court observed:

> "[T]he distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application. Candidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions. Not only do candidates campaign on the basis of their positions on various public issues, but campaigns themselves generate issues of public interest." *Ibid.*

The Court then recognized that the constitutional issues raised by the provision "can be avoided only by reading

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[11] The Court, in upholding most of its provisions by concluding that the "express advocacy" limitation derived by *Buckley* is not a constitutionally mandated line, has, in one blow, overturned every Court of Appeals that has addressed this question (except, perhaps, one). See *Clifton* v. *FEC*, 114 F. 3d 1309, 1312 (CA1 1997); *Vermont Right to Life Comm., Inc.* v. *Sorrell*, 221 F. 3d 376, 387 (CA2 2000); *FEC* v. *Christian Action Network, Inc.*, 110 F. 3d 1049, 1064 (CA4 1997); *Chamber of Commerce* v. *Moore*, 288 F. 3d 187, 193 (CA5 2000); *Iowa Right to Life Comm., Inc.* v. *Williams*, 187 F. 3d 963, 968–970 (CA8 1999); *Citizens for Responsible Govt. State Political Action Comm.* v. *Davidson*, 236 F. 3d 1174, 1187 (CA10 2000). The one possible exception is the Ninth Circuit. See *FEC* v. *Furgatch*, 807 F. 2d 857, 862–863 (1987).

§ 608(e)(1) as limited to communications that include explicit words of advocacy of election or defeat of a candidate." *Id.*, at 43.

The joint opinion argues that *Buckley* adopted this narrow reading only to avoid addressing a constitutional question. "[T]he concept of express advocacy and the concomitant class of magic words were born of an effort to avoid constitutional infirmities," concludes the joint opinion after examining the language of *Buckley*. *Ante*, at 192. This ignores the fact that the Court then struck down the expenditure limitation precisely because it was too narrow:

> "The exacting interpretation of the statutory language necessary to avoid unconstitutional vagueness thus undermines the limitation's effectiveness as a loophole-closing provision by facilitating circumvention by those seeking to exert improper influence upon a candidate or officeholder. It would naively underestimate the ingenuity and resourcefulness of persons and groups desiring to buy influence to believe that they would have much difficulty devising expenditures that skirted the restriction on express advocacy of election or defeat but nevertheless benefited the candidate's campaign. Yet no substantial societal interest would be served by a loophole-closing provision designed to check corruption that permitted unscrupulous persons and organizations to expend unlimited sums of money in order to obtain improper influence over candidates for elective office." 424 U. S., at 45.

Far from saving the provision from constitutional doubt, the Court read the provision in such a way as to guarantee its unconstitutionality. If there were some possibility that regulation of communications without words of express advocacy were constitutional, the provision would have to have been read to include these communications, and the constitu-

tional question addressed head on.[12] Indeed, the exceedingly narrow reading of the relevant language in *Buckley* is far from mandated by the text; it is, in fact, a highly strained reading. "'[A]ny expenditure . . . relative to a clearly identified candidate,'" *id.*, at 41, would be better read to cover, for instance, any expenditure for an advertisement aired close to an election that is "intended to influence the voters' decisions and ha[s] that effect," a standard apparently endorsed by the joint opinion as being sufficiently "equivalent" to express advocacy to justify its regulation. *Ante*, at 206. By deliberately adopting a strained and narrow reading of the statutory text and then striking down the provision in question for being too narrow, the Court made clear that regulation of nonexpress advocacy was strictly forbidden.

This reading is confirmed by other portions of *Buckley* and by other cases. For instance, in limiting FECA's disclosure provisions to expenditures involving express advocacy, the Court noted that it gave such a narrowing interpretation "[t]o insure that the reach of [the disclosure provision] is not *impermissibly broad.*" 424 U. S., at 80 (emphasis added). If overbreadth were a concern in limiting the scope of a disclosure provision, it surely was equally a concern in the limitation of an actual cap on expenditures. And, in *MCFL*, the Court arguably eliminated any ambiguity remaining in *Buckley* when it explicitly stated that the narrowing interpretations taken in *Buckley* were necessary "in order to avoid problems of overbreadth." *MCFL*, 479 U. S., at 248. The joint opinion's attempt to explain away *MCFL*'s uncomfortable language is unpersuasive. The joint opinion emphasizes that the *MCFL* Court "held that a 'similar *con-*

[12] After all, the constitutional avoidance doctrine counsels us to adopt constructions of statutes to "avoid decision of constitutional questions," not to deliberately create constitutional questions. *United States* v. *Thirty-seven Photographs*, 402 U. S. 363, 373 (1971); see also *United States ex rel. Attorney General* v. *Delaware & Hudson Co.*, 213 U. S. 366, 408 (1909).

struction' must apply to the expenditure limitation," as if that somehow proved its point. *Ante*, at 192, n. 76 (emphasis in original). The fact that the *MCFL* Court said this does not establish anything, of course; adopting a narrow construction of a statute "in order to avoid problems of overbreadth," 479 U. S., at 248, is perfectly consistent with a holding that, lacking the narrowing construction, the statute would be overly broad, *i. e.*, unconstitutional.

The defendants' principal argument in response is that

> "it would be bizarre to conclude that the Constitution permits Congress to prohibit the use of corporate or union general treasury funds for electioneering advertisements, but that the *only* standard that it can constitutionally use (express advocacy) is one that misses the vast majority (88.6 percent) of advertisements that candidates themselves use for electioneering." Brief for FEC et al. in No. 02–1674 et al., p. 103 (emphasis in original).

The joint opinion echoes this, stating that the express advocacy line "cannot be squared with our longstanding recognition that the presence or absence of magic words cannot meaningfully distinguish electioneering speech from a true issue ad." *Ante*, at 193. First, the presence of the "magic words" *does* differentiate in a meaningful way between categories of speech. Speech containing the "magic words" is "unambiguously campaign related," *Buckley, supra,* at 81, while speech without these words is not. Second, it is far from bizarre to suggest that (potentially regulable) speech that is in practice impossible to differentiate from fully protected speech must be fully protected. It is, rather, part and parcel of First Amendment first principles. See, *e. g.*, *Free Speech Coalition*, 535 U. S., at 255 ("The Government may not suppress lawful speech as the means to suppress unlawful speech. Protected speech does not become unprotected merely because it resembles the latter. The Consti-

tution requires the reverse"). In fact, First Amendment protection was extended to that fundamental category of artistic and entertaining speech not for its own sake, but only because it was indistinguishable, practically, from speech intended to inform. See *Joseph Burstyn, Inc.* v. *Wilson*, 343 U. S. 495, 501 (1952); *Winters* v. *New York*, 333 U. S. 507, 510 (1948) (rejecting suggestion that "the constitutional protection for a free press applies only to the exposition of ideas" as the "line between the informing and the entertaining is too elusive for the protection of that basic right," noting that "[w]hat is one man's amusement, teaches another's doctrine"). This principle clearly played a significant role in *Buckley* itself, see 424 U. S., at 42 (after noting that "the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application," holding that the "express advocacy" standard must be adopted as the interpretation of the relevant language in FECA). The express-advocacy line was drawn to ensure the protection of the "discussion of issues and candidates," not out of some strange obsession of the Court to create meaningless lines. And the joint opinion misses the point when it notes that "*Buckley*'s express advocacy line, in short, has not aided the legislative effort to combat real or apparent corruption." *Ante,* at 193–194. *Buckley* did not draw this line solely to aid in combating real or apparent corruption, but rather also to ensure the protection of speech unrelated to election campaigns.[13]

Nor is this to say that speech with words of express advocacy is somehow less protected, as the joint opinion implies.

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[13] These cases are an excellent example of why such a bright-line rule is necessary. The Court, having "rejected the notion that the First Amendment requires Congress to treat so-called issue advocacy differently from express advocacy," *ante,* at 194, proceeds to uphold significant new restrictions on speech that is, in every sense of the word, pure issue-related speech. The Court abandons the bright-line rule, and now subjects political speech of virtually any kind to the risk of regulation by Congress.

Ante, at 205–206. The Court in *Buckley* recognized an informational interest that justified the imposition of a disclosure requirement on campaign-related speech. See 424 U. S., at 81. This interest is not implicated with regard to speech that is unrelated to an election campaign. Hence, it would be unconstitutional to impose such a disclosure requirement on non-election-related speech. And, as "the distinction between discussion of issues and candidates . . . may often dissolve in practical application," *id.*, at 42, the only way to prevent the unjustified burdening of nonelection speech is to impose the regulation only on speech that is "unambiguously campaign related," *id.*, at 81, *i. e.*, speech using words of express advocacy. Hence, speech that uses words of express advocacy is protected under the same standard, strict scrutiny, as all other forms of speech. The only difference is that, under *Buckley*, there is a governmental interest supporting some regulation of those using words of express advocacy not present in other forms of speech.

* * *

The chilling endpoint of the Court's reasoning is not difficult to foresee: outright regulation of the press. None of the rationales offered by the defendants, and none of the reasoning employed by the Court, exempts the press. "This is so because of the difficulty, and perhaps impossibility, of distinguishing, either as a matter of fact or constitutional law, media corporations from [nonmedia] corporations." *Bellotti*, 435 U. S., at 796 (Burger, C. J., concurring). Media companies can run procandidate editorials as easily as nonmedia corporations can pay for advertisements. Candidates can be just as grateful to media companies as they can be to corporations and unions. In terms of "the corrosive and distorting effects" of wealth accumulated by corporations that has "little or no correlation to the public's support for the corporation's political ideas," *Austin*, 494 U. S., at 660, there is no distinction between a media corporation and

a nonmedia corporation.[14] Media corporations are influential. There is little doubt that the editorials and commentary they run can affect elections. Nor is there any doubt that media companies often wish to influence elections. One would think that the New York Times fervently hopes that its endorsement of Presidential candidates will actually influence people. What is to stop a future Congress from determining that the press is "too influential," and that the "appearance of corruption" is significant when media organizations endorse candidates or run "slanted" or "biased" news stories in favor of candidates or parties? Or, even easier, what is to stop a future Congress from concluding that the availability of unregulated media corporations creates a loophole that allows for easy "circumvention" of the limitations of the current campaign finance laws?[15]

Indeed, I believe that longstanding and heretofore unchallenged opinions such as *Miami Herald Publishing Co.* v. *Tornillo*, 418 U. S. 241 (1974), are in peril. There, the Court noted that "[c]hains of newspapers, national newspapers, national wire and news services, and one-newspaper towns, are

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[14] Chief Justice Burger presciently commented on precisely this point in *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765, 796–797 (1978) (concurring opinion) (citations omitted):

"In terms of 'unfair advantage in the political process' and 'corporate domination of the electoral process,' it could be argued that such media conglomerates as I describe pose a much more realistic threat to valid interests than do appellants and similar entities not regularly concerned with shaping popular opinion on public issues. See *Miami Herald Publishing Co.* v. *Tornillo*, [418 U. S. 241 (1974)]. In *Tornillo*, for example, we noted the serious contentions advanced that a result of the growth of modern media empires 'has been to place in a few hands the power to inform the American people and shape public opinion.' 418 U. S., at 250."

[15] It appears that "circumvention" of the campaign finance laws by exploiting media exemptions is already being planned by one of the plaintiffs in this litigation. See Theimer, NRA Seeks Status as News Outlet, Washington Post, Dec. 7, 2003, p. A09 (reporting that the NRA is looking to acquire a broadcast outlet and seeking to be classified as a news organization).

the dominant features of a press that has become noncompetitive and enormously powerful and influential in its capacity to manipulate popular opinion and change the course of events." *Id.*, at 249. Despite expressing some sympathy for those arguing for a legally created "right of access" to encourage diversity in viewpoints in the media, the Court struck down such laws, noting that these laws acted both to suppress speech and to "intru[de] into the function of editors" by interfering with "the exercise of editorial control and judgment." *Id.*, at 257–258. Now, supporters of such laws need only argue that the press' "capacity to manipulate popular opinion" gives rise to an "appearance of corruption," especially when this capacity is used to promote a particular candidate or party. After drumming up some evidence,[16] laws regulating media outlets in their issuance of editorials would be upheld under the joint opinion's reasoning (a result considered so beyond the pale in *Miami Herald Publishing* that the Court there used it as a *reductio ad absurdum* against the right-of-access law being addressed, see *id.*, at 256). Nor is there anything in the joint opinion that would prevent Congress from imposing the Fairness Doctrine, not just on radio and television broadcasters, but on the entire media. See *Red Lion Broadcasting*, 395 U. S., at 369 (defining the "fairness doctrine" as a "requirement that discussion of public issues be presented . . . and that each side of those issues must be given fair coverage").

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[16] Given the quality of the evidence the Court relies upon to uphold Title I, the evidence should not be hard to come by. See Kane & Preston, Fox Chief on Hot Seat, Roll Call, June 12, 2003 ("GOP leaders such as House Majority Leader Tom DeLay (R-Texas) have labeled CNN as the 'Communist News Network' and the 'Clinton News Network'—suggesting they only presented the liberal viewpoint and that of former President Clinton"); Jones, Fox News Moves from the Margins to the Mainstream, Shorenstein Center, Harvard, Dec. 1, 2002 (quoting Al Gore as describing Fox News and the Washington Times as "part and parcel of the Republican Party").

Hence, "the freedom of the press," described as "one of the greatest bulwarks of liberty," 1 J. Elliot, Debates on the Federal Constitution 335 (2d ed. 1876) (declaration of Rhode Island upon the ratification of the Constitution),[17] could be next on the chopping block. Although today's opinion does not expressly strip the press of First Amendment protection, there is no principle of law or logic that would prevent the application of the Court's reasoning in that setting. The press now operates at the whim of Congress.

JUSTICE KENNEDY, concurring in the judgment in part and dissenting in part with respect to BCRA Titles I and II.*

The First Amendment guarantees our citizens the right to judge for themselves the most effective means for the expression of political views and to decide for themselves which entities to trust as reliable speakers. Significant portions of Titles I and II of the Bipartisan Campaign Reform Act of 2002 (BCRA or Act) constrain that freedom. These new laws force speakers to abandon their own preference for speaking through parties and organizations. And they provide safe harbor to the mainstream press, suggesting that the corporate media alone suffice to alleviate the burdens the Act places on the rights and freedoms of ordinary citizens.

Today's decision upholding these laws purports simply to follow *Buckley* v. *Valeo*, 424 U. S. 1 (1976) *(per curiam)*, and to abide by *stare decisis*, see *ante*, at 137–138 (joint opinion of STEVENS and O'CONNOR, JJ. (hereinafter Court or majority)); but the majority, to make its decision work, must abridge free speech where *Buckley* did not. *Buckley* did

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[17] See also 4 W. Blackstone, Commentaries on the Laws of England 151 (1769) ("The liberty of the press is indeed essential to the nature of a free state").

*THE CHIEF JUSTICE joins this opinion in its entirety. JUSTICE SCALIA joins this opinion except to the extent it upholds new FECA § 323(e) and BCRA § 202. JUSTICE THOMAS joins this opinion with respect to BCRA § 213.

not authorize Congress to decide what shapes and forms the national political dialogue is to take. To reach today's decision, the Court surpasses *Buckley*'s limits and expands Congress' regulatory power. In so doing, it replaces discrete and respected First Amendment principles with new, amorphous, and unsound rules, rules which dismantle basic protections for speech.

A few examples show how BCRA reorders speech rights and codifies the Government's own preferences for certain speakers. BCRA would have imposed felony punishment on Ross Perot's 1996 efforts to build the Reform Party. Compare Federal Election Campaign Act of 1971 (FECA) §§ 309(d)(1)(A), 315(a)(1)(B), and 323(a)(1) (prohibiting, by up to five years' imprisonment, any individual from giving over $25,000 annually to a national party), with Spending By Perot, The Houston Chronicle, Dec. 13, 1996, p. 43, 1996 WL 11581440 (reporting Perot's $8 million founding contribution to the Reform Party). BCRA makes it a felony for an environmental group to broadcast an ad, within 60 days of an election, exhorting the public to protest a Congressman's impending vote to permit logging in national forests. See BCRA § 203. BCRA escalates Congress' discrimination in favor of the speech rights of giant media corporations and against the speech rights of other corporations, both profit and nonprofit. Compare BCRA § 203 with *Austin* v. *Michigan Chamber of Commerce*, 494 U. S. 652, 659–660 (1990) (first sanctioning this type of discrimination).

To the majority, all this is not only valid under the First Amendment but also is part of Congress' "steady improvement of the national election laws." *Ante*, at 117. We should make no mistake. It is neither. It is the codification of an assumption that the mainstream media alone can protect freedom of speech. It is an effort by Congress to ensure that civic discourse takes place only through the modes of its choosing. And BCRA is only the beginning, as its congressional proponents freely admit:

> "This is a modest step, it is a first step, it is an essential step, but it does not even begin to address, in some ways, the fundamental problems that exist with the hard money aspect of the system." 148 Cong. Rec. S2101 (Mar. 20, 2002) (statement of Sen. Feingold).

Id., at S2097 (statement of Sen. Wellstone) ("[P]assing this legislation . . . will whet people's appetite for more"); *id.*, at S2101 (statement of Sen. Boxer) ("[T]his bill is not the be-all or the end-all, but it is a strong start"); *id.*, at S2152 (statement of Sen. Corzine) ("[T]his should not and will not be the last time campaign finance reform is debated on the Senate floor. We have many more important campaign finance issues to explore"); *id.*, at S2157 (statement of Sen. Torricelli) ("Make [BCRA] the beginning of a reform, not the end of reform"); *id.*, at H442 (Feb. 13, 2002) (statement of Rep. Doggett) ("Mr. Chairman, if [BCRA] has any defect, it is that it does too little, not too much").

Our precedents teach, above all, that Government cannot be trusted to moderate its own rules for suppression of speech. The dangers posed by speech regulations have led the Court to insist upon principled constitutional lines and a rigorous standard of review. The majority now abandons these distinctions and limitations.

With respect, I dissent from the majority opinion upholding BCRA Titles I and II. I concur in the judgment as to BCRA § 213 and new FECA § 323(e) and concur in the judgment in part and dissent in part as to BCRA §§ 201, 202, and 214.

I. TITLE I AND COORDINATION PROVISIONS

Title I principally bans the solicitation, receipt, transfer, and spending of soft money by the national parties (new FECA § 323(a), 2 U. S. C. § 441i(a) (Supp. II)). It also bans certain uses of soft money by state parties (new FECA § 323(b)); the transfer of soft money from national parties to nonprofit groups (new FECA § 323(d)); the solicitation, re-

ceipt, transfer, and spending of soft money by federal candidates and officeholders (new FECA § 323(e)); and certain uses of soft money by state candidates (new FECA § 323(f)). These provisions, and the other provisions with which this opinion is principally concerned, are set out in full, see Appendix, *infra*. Even a cursory review of the speech and association burdens these laws create makes their First Amendment infirmities obvious:

> Title I bars individuals with shared beliefs from pooling their money above limits set by Congress to form a new third party. See new FECA § 323(a).
>
> Title I bars national party officials from soliciting or directing soft money to state parties for use on a state ballot initiative. This is true even if no federal office appears on the same ballot as the state initiative. See *ibid.*
>
> A national party's mere involvement in the strategic planning of fundraising for a state ballot initiative risks a determination that the national party is exercising "indirect control" of the state party. If that determination is made, the state party must abide by federal regulations. And this is so even if the federal candidate on the ballot, if there is one, runs unopposed or is so certain of election that the only voter interest is in the state and local campaigns. See *ibid.*
>
> Title I compels speech. Party officials who want to engage in activity such as fundraising must now speak magic words to ensure the solicitation cannot be interpreted as anything other than a solicitation for hard, not soft, money. See *ibid.*
>
> Title I prohibits the national parties from giving any sort of funds to nonprofit entities, even federally regulated hard money, and even if the party hoped to sponsor the interest group's exploration of a particular issue in advance of the party's addition of it to their platform. See new FECA § 323(d).

By express terms, Title I imposes multiple different forms of spending caps on parties, candidates, and their agents. See new FECA §§ 323(a), (e), and (f).

Title I allows state parties to raise quasi-soft-money Levin funds for use in activities that might affect a federal election; but the Act prohibits national parties from assisting state parties in developing and executing these fundraising plans, even when the parties seek only to advance state election interests. See new FECA § 323(b).

Until today's consolidated cases, the Court has accepted but two principles to use in determining the validity of campaign finance restrictions. First is the anticorruption rationale. The principal concern, of course, is the agreement for a *quid pro quo* between officeholders (or candidates) and those who would seek to influence them. The Court has said the interest in preventing corruption allows limitations on receipt of the *quid* by a candidate or officeholder, regardless of who gives it or of the intent of the donor or officeholder. See *Buckley*, 424 U. S., at 26–27, 45–48; *infra*, at 291–294. Second, the Court has analyzed laws that classify on the basis of the speaker's corporate or union identity under the corporate speech rationale. The Court has said that the willing adoption of the entity form by corporations and unions justifies regulating them differently: Their ability to give candidates *quids* may be subject not only to limits but also to outright bans; their electoral speech may likewise be curtailed. See *Austin*, 494 U. S., at 659–660; *Federal Election Comm'n* v. *National Right to Work Comm.*, 459 U. S. 197, 201–211 (1982).

The majority today opens with rhetoric that suggests a conflation of the anticorruption rationale with the corporate speech rationale. See *ante*, at 115–118 (hearkening back to, among others, Elihu Root and his advocacy against the use of corporate funds in political campaigning). The conflation appears designed to cast the speech regulated here as un-

seemly corporate speech. The effort, however, is unwarranted, and not just because money is not *per se* the evil the majority thinks. Most of the regulations at issue, notably all of the Title I soft-money bans and the Title II coordination provisions, do not draw distinctions based on corporate or union status. Referring to the corporate speech rationale as if it were the linchpin of the case, when corporate speech is not primarily at issue, adds no force to the Court's analysis. Instead, the focus must be on *Buckley*'s anticorruption rationale and the First Amendment rights of individual citizens.

A. Constitutionally Sufficient Interest

In *Buckley*, the Court held that one, and only one, interest justified the significant burden on the right of association involved there: eliminating, or preventing, actual corruption or the appearance of corruption stemming from contributions to candidates.

> "It is unnecessary to look beyond the Act's primary purpose—to limit the actuality and appearance of corruption resulting from large individual financial contributions—in order to find a constitutionally sufficient justification for the $1,000 contribution limitation." 424 U. S., at 26.

See also *ibid.* (concluding this corruption interest was sufficiently "significant" to sustain "closely drawn" interference with protected First Amendment rights).

In parallel, *Buckley* concluded the expenditure limitations in question were invalid because they did not advance that same interest. See *id.*, at 47–48 ("[T]he independent expenditure ceiling thus fails to serve any substantial governmental interest in stemming the reality or appearance of corruption in the electoral process"); see also *id.*, at 45, 46.

Thus, though *Buckley* subjected expenditure limits to strict scrutiny and contribution limits to less exacting review, it held neither could withstand constitutional challenge

unless it was shown to advance the anticorruption interest. In these consolidated cases, unless *Buckley* is to be repudiated, we must conclude that the regulations further that interest before considering whether they are closely drawn or narrowly tailored. If the interest is not advanced, the regulations cannot comport with the Constitution, quite apart from the standard of review.

Buckley made clear, by its express language and its context, that the corruption interest only justifies regulating candidates' and officeholders' receipt of what we can call the "*quids*" in the *quid pro quo* formulation. The Court rested its decision on the principle that campaign finance regulation that restricts speech without requiring proof of particular corrupt action withstands constitutional challenge only if it regulates conduct posing a demonstrable *quid pro quo* danger:

> "To the extent that large contributions are given to secure a political *quid pro quo* from current and potential office holders, the integrity of our system of representative democracy is undermined." *Id.*, at 26–27.

See also *id.*, at 45 ("[A]ssuming, *arguendo*, that large independent expenditures pose the same dangers of actual or apparent *quid pro quo* arrangements as do large contributions . . ."). That *Buckley* rested its decision on this *quid pro quo* standard is not a novel observation. We have held this was the case:

> "The exception [of contribution limits being justified under the First Amendment] relates to the perception of undue influence of large contributions to a *candidate:* 'To the extent that large contributions are given to secure a political *quid pro quo* from current and potential office holders, the integrity of our system of representative democracy is undermined.'" *Citizens Against Rent Control/Coalition for Fair Housing* v. *Berkeley*,

> 454 U. S. 290, 297 (1981) (quoting *Buckley*, *supra*, at 26–27).

See also *Federal Election Comm'n* v. *Beaumont*, 539 U. S. 146 (2003) (furthering this anticorruption rationale by upholding limits on contributions given directly to candidates); *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S. 377 (2000) (same).

Despite the Court's attempt to rely on language from cases like *Shrink Missouri* to establish that the standard defining corruption is broader than conduct that presents a *quid pro quo* danger, see *ante*, at 152–153, n. 48, in those cases the Court in fact upheld limits on conduct possessing *quid pro quo* dangers, and nothing more. See also *infra*, at 296. For example, the *Shrink Missouri* Court's distinguishing of what was at issue there and *quid pro quo*, in fact, shows only that it used the term *quid pro quo* to refer to actual corrupt, vote-buying exchanges, as opposed to interactions that possessed *quid pro quo* potential even if innocently undertaken. Thus, the Court said:

> "[W]e spoke in Buckley of the perception of corruption 'inherent in a regime of large individual financial contributions' to candidates for public office . . . as a source of concern 'almost equal' to *quid pro quo* improbity." 528 U. S., at 390 (citations omitted).

Thus, the perception of corruption that the majority now asserts is somehow different from the *quid pro quo* potential discussed in this opinion was created by an exchange featuring *quid pro quo* potential—contributions directly to a candidate.

In determining whether conduct poses a *quid pro quo* danger the analysis is functional. In *Buckley*, the Court confronted an expenditure limitation provision that capped the amount of money individuals could spend on any activity intended to influence a federal election (*i. e.*, it reached to both independent and coordinated expenditures). See 424 U. S.,

at 46–47. The Court concluded that though the limitation reached both coordinated and independent expenditures, there were other valid FECA provisions that barred coordinated expenditures. Hence, the limit at issue only added regulation to independent expenditures. On that basis it concluded the provision was unsupported by any valid corruption interest. The conduct to which it added regulation (independent expenditures) posed no *quid pro quo* danger. See *ibid.*

Placing *Buckley*'s anticorruption rationale in the context of the federal legislative power yields the following rule: Congress' interest in preventing corruption provides a basis for regulating federal candidates' and officeholders' receipt of *quids*, whether or not the candidate or officeholder corruptly received them. Conversely, the rule requires the Court to strike down campaign finance regulations when they do not add regulation to "actual or apparent *quid pro quo* arrangements." *Id.*, at 45.

The Court ignores these constitutional bounds and in effect interprets the anticorruption rationale to allow regulation not just of "actual or apparent *quid pro quo* arrangements," *ibid.*, but of any conduct that wins goodwill from or influences a Member of Congress. It is not that there is any quarrel between this opinion and the majority that the inquiry since *Buckley* has been whether certain conduct creates "undue influence." See *ante*, at 154. On that we agree. The very aim of *Buckley*'s standard, however, was to define undue influence by reference to the presence of *quid pro quo* involving the officeholder. The Court, in contrast, concludes that access, without more, proves influence is undue. Access, in the Court's view, has the same legal ramifications as actual or apparent corruption of officeholders. This new definition of corruption sweeps away all protections for speech that lie in its path.

The majority says it is not abandoning our cases in this way, but its reasoning shows otherwise:

"More importantly, plaintiffs conceive of corruption too narrowly. Our cases have firmly established that Congress' legitimate interest extends beyond preventing simple cash-for-votes corruption to curbing 'undue influence on an officeholder's judgment, and the appearance of such influence.' *[Federal Election Comm'n* v. *Colorado Republican Federal Campaign Comm.*, 533 U. S. 431, 441 (2001) *(Colorado II)]*. Many of the 'deeply disturbing examples' of corruption cited by this Court in *Buckley* to justify FECA's contribution limits were not episodes of vote buying, but evidence that various corporate interests had given substantial donations to gain access to high-level government officials. Even if that access did not secure actual influence, it certainly gave the 'appearance of such influence.' *Colorado II*, *supra,* at 441; see also [*Buckley* v. *Valeo,* 519 F. 2d 821, 838 (CADC 1975)].

"The record in the present case is replete with similar examples of national party committees peddling access to federal candidates and officeholders in exchange for large soft-money donations. See [251 F. Supp. 2d 176, 492–506 (DC 2003) (Kollar-Kotelly, J.)]." *Ante,* at 150 (some internal citations omitted).

The majority notes that access flowed from the regulated conduct at issue in *Buckley* and its progeny, then uses that fact as the basis for concluding that access peddling by the parties equals corruption by the candidates. That conclusion, however, is tenable only by a quick and subtle shift, and one that breaks new ground: The majority ignores the *quid pro quo* nature of the regulated conduct central to our earlier decisions. It relies instead solely on the fact that access flowed from the conduct.

To ignore the fact that in *Buckley* the money at issue was given to candidates, creating an obvious *quid pro quo* danger as much as it led to the candidates also providing access to the donors, is to ignore the Court's comments in *Buckley*

that show *quid pro quo* was of central importance to the analysis. See 424 U. S., at 26–27, 45. The majority also ignores that in *Buckley*, and ever since, those party contributions that have been subject to congressional limit were not general party-building contributions but were only contributions used to influence particular elections. That is, they were contributions that flowed to a particular candidate's benefit, again posing a *quid pro quo* danger. And it ignores that in *Colorado II*, the party spending was that which was coordinated with a particular candidate, thereby implicating *quid pro quo* dangers. In all of these ways the majority breaks the necessary tether between *quid* and access and assumes that access, all by itself, demonstrates corruption and so can support regulation. See also *ante*, at 156 ("[L]arge soft-money donations to national party committees are likely to buy donors preferential access to federal officeholders no matter the ends to which their contributions are eventually put").

Access in itself, however, shows only that in a general sense an officeholder favors someone or that someone has influence on the officeholder. There is no basis, in law or in fact, to say favoritism or influence in general is the same as corrupt favoritism or influence in particular. By equating vague and generic claims of favoritism or influence with actual or apparent corruption, the Court adopts a definition of corruption that dismantles basic First Amendment rules, permits Congress to suppress speech in the absence of a *quid pro quo* threat, and moves beyond the rationale that is *Buckley*'s very foundation.

The generic favoritism or influence theory articulated by the Court is at odds with standard First Amendment analyses because it is unbounded and susceptible to no limiting principle. Any given action might be favored by any given person, so by the Court's reasoning political loyalty of the purest sort can be prohibited. There is no remaining principled method for inquiring whether a campaign finance

regulation does in fact regulate corruption in a serious and meaningful way. We are left to defer to a congressional conclusion that certain conduct creates favoritism or influence.

Though the majority cites common sense as the foundation for its definition of corruption, see *ante*, at 145, 152, in the context of the real world only a single definition of corruption has been found to identify political corruption successfully and to distinguish good political responsiveness from bad—that is *quid pro quo*. Favoritism and influence are not, as the Government's theory suggests, 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. *Quid pro quo* corruption has been, until now, the only agreed upon conduct that represents the bad form of responsiveness and presents a justiciable standard with a relatively clear limiting principle: Bad responsiveness may be demonstrated by pointing to a relationship between an official and a *quid*.

The majority attempts to mask its extension of *Buckley* under claims that BCRA prevents the appearance of corruption, even if it does not prevent actual corruption, since some assert that any donation of money to a political party is suspect. See *ante*, at 149–152. Under *Buckley*'s holding that Congress has a valid "interest in stemming the reality or appearance of corruption," 424 U. S., at 47–48, however, the inquiry does not turn on whether some persons assert that an appearance of corruption exists. Rather, the inquiry turns on whether the Legislature has established that the regulated conduct has inherent corruption potential, thus justifying the inference that regulating the conduct will stem

the appearance of real corruption. *Buckley* was guided and constrained by this analysis. In striking down expenditure limits the Court in *Buckley* did not ask whether people thought large election expenditures corrupt, because clearly at that time many persons, including a majority of Congress and the President, did. See *id.*, at 25 ("According to the parties and *amici*, the primary interest served . . . by the Act as a whole, is the prevention of corruption and the appearance of corruption"). Instead, the Court asked whether the Government had proved that the regulated conduct, the expenditures, posed inherent *quid pro quo* corruption potential. See *id.*, at 46.

The *Buckley* decision made this analysis even clearer in upholding contribution limitations. It stated that even if actual corrupt contribution practices had not been proved, Congress had an interest in regulating the appearance of corruption that is "inherent in a regime of large individual financial contributions." *Id.*, at 27 (discussing contributions to candidates). See also *id.*, at 28, 30. The *quid pro quo* nature of candidate contributions justified the conclusion that the contributions pose inherent corruption potential; and this in turn justified the conclusion that their regulation would stem the appearance of real corruption.

From that it follows that the Court today should not ask, as it does, whether some persons, even Members of Congress, conclusorily assert that the regulated conduct appears corrupt to them. Following *Buckley*, it should instead inquire whether the conduct now prohibited inherently poses a real or substantive *quid pro quo* danger, so that its regulation will stem the appearance of *quid pro quo* corruption.

1. New FECA §§ 323(a), (b), (d), and (f)

Sections 323(a), (b), (d), and (f), 2 U. S. C. §§ 441i(a), (b), (d), and (f) (Supp. II), cannot stand because they do not add regulation to conduct that poses a demonstrable *quid pro quo* danger. They do not further *Buckley*'s corruption interest.

The majority, with a broad brush, paints § 323(a) as aimed at limiting contributions possessing federal officeholder corruption potential. From there it would justify § 323's remaining provisions as necessary complements to ensure the national parties cannot circumvent § 323(a)'s prohibitions. The broad brush approach fails, however, when the provisions are reviewed under *Buckley*'s proper definition of corruption potential.

On its face § 323(a) does not regulate federal candidates' or officeholders' receipt of *quids* because it does not regulate contributions to, or conduct by, candidates or officeholders. See BCRA § 101(a) (setting out new FECA § 323(a): National parties may not "solicit, receive, or direct to another person . . . or spend any [soft money]").

The realities that underlie the statute, furthermore, do not support the majority's interpretation. Before BCRA's enactment, parties could only use soft money for a candidate's "benefit" (*e. g.*, through issue ads, which all parties now admit may influence elections) independent of that candidate. And, as discussed later, § 323(e) validly prohibits federal candidate and officeholder solicitation of soft-money party donations. See *infra*, at 314. Section 323(a), therefore, only adds regulation to soft-money party donations not solicited by, or spent in coordination with, a candidate or officeholder.

These donations (noncandidate or officeholder solicited soft-money party donations that are independently spent) do not pose the *quid pro quo* dangers that provide the basis for restricting protected speech. Though the Government argues § 323(a) does regulate federal candidates' and officeholders' receipt of *quids*, it bases its argument on this flawed reasoning:

> (1) "[F]ederal elected officeholders are inextricably linked to their political parties," Brief for Appellee/Cross Appellant FEC et al. in No. 02–1674 et al., p. 21; cf. *Colorado Republican Federal Campaign Comm.* v. *Federal Election Comm'n*, 518 U. S. 604, 626 (1996) *(Col-*

orado I) (KENNEDY, J., concurring in judgment and dissenting in part).

(2) All party receipts must be connected to, and must create, corrupt donor favoritism among these officeholders.

(3) Therefore, regulation of party receipts equals regulation of *quids* to the party's officeholders.

The reasoning is flawed because the Government's reliance on reasoning parallel to the *Colorado I* concurrence only establishes the first step in its chain of logic: that a party is a proxy for its candidates generally. It does not establish the second step: that as a proxy for its candidates generally, *all* moneys the party receives (not just candidate solicited, soft-money donations, or donations used in coordinated activity) represent *quids* for all the party's candidates and officeholders. The Government's analysis is inconsistent with what a majority of the Justices, in different opinions, have said.

JUSTICE THOMAS' dissent in *Federal Election Comm'n* v. *Colorado Republican Campaign Comm.*, 533 U. S. 431, 476–477 (2001) *(Colorado II)*, taken together with JUSTICE BREYER's opinion announcing the judgment of the Court in *Colorado I*, rebuts the second step of the Government's argument. JUSTICE THOMAS demonstrated that a general party-candidate corruption linkage does not exist. As he pointed out:

> "The dearth of evidence [of such corruption] is unsurprising in light of the unique relationship between a political party and its candidates: 'The very aim of a political party is to influence its candidate's stance on issues and, if the candidate takes office or is reelected, his votes.' If coordinated expenditures help achieve this aim, the achievement 'does not . . . constitute "a subversion of the political process."'" *Colorado II*, *supra*, at 476–477 (citations omitted).

JUSTICE BREYER reached the same conclusion about the corrupting effect general party receipts could have on particular candidates, though on narrower grounds. He concluded that independent party conduct lacks *quid pro quo* corruption potential. See *Colorado I*, 518 U. S., at 617–618; *id.*, at 617 ("If anything, an independent [party] expenditure made possible by a $20,000 donation, but controlled and directed by a party rather than the donor, would seem less likely to corrupt than the same (or a much larger) independent expenditure made directly by that donor"); *id.*, at 616 ("[T]he opportunity for corruption posed by [soft-money] contributions is, at best, attenuated" because they may not be used for the purposes of influencing a federal election under FECA).

These opinions establish that independent party activity, which by definition includes independent receipt and spending of soft money, lacks a possibility for *quid pro quo* corruption of federal officeholders. This must be all the more true of a party's independent receipt and spending of soft-money donations neither directed to nor solicited by a candidate.

The Government's premise is also unsupported by the record before us. The record confirms that soft-money party contributions, without more, do not create *quid pro quo* corruption potential. As a conceptual matter, generic party contributions may engender good will from a candidate or officeholder because, as the Government says: "[A] Member of Congress can be expected to feel a natural temptation to favor those persons who have helped the 'team,'" Brief for Appellee/Cross-Appellant FEC et al. in No. 02–1674 et al., p. 33. Still, no Member of Congress testified this favoritism changed voting behavior.

The piece of record evidence the Government puts forward on this score comes by way of deposition testimony from former Senator Simon and Senator Feingold. See 251 F. Supp. 2d, at 482 (Kollar-Kotelly, J.). Senator Simon reported an unidentified colleague indicated frustration with Simon's op-

position to legislation that would benefit a party contributor on the grounds that "'we've got to pay attention to who is buttering our bread'" and testified he did not think there was any question "'this'" (*i. e.*, "donors getting their way") was why the legislation passed. See App. 805. Senator Feingold, too, testified an unidentified colleague suggested he support the legislation because "'they [*i. e.*, the donor] just gave us [*i. e.*, the party] $100,000.'" 251 F. Supp. 2d, at 482 (Kollar-Kotelly, J.).

That evidence in fact works against the Government. These two testifying Senators expressed disgust toward the favoring of a soft-money giver, and not the good will one would have expected under the Government's theory. That necessarily undercuts the inference of corruption the Government would have us draw from the evidence.

Even more damaging to the Government's argument from the testimony is the absence of testimony that the Senator who allegedly succumbed to corrupt influence had himself solicited soft money from the donor in question. Equally, there is no indication he simply favored the company with his vote because it had, without any involvement from him, given funds to the party to which he belonged. This fact is crucial. If the Senator himself had been the solicitor of the soft-money funds in question, the incident does nothing more than confirm that Congress' efforts at campaign finance reform ought to be directed to conduct that implicates *quid pro quo* relationships. Only if there was some evidence that the officeholder had not solicited funds from the donor could the Court extrapolate from this episode that general party contributions function as *quids*, inspiring corrupt favoritism among party members. The episode is the single one of its type reported in the record and does not seem sufficient basis for major incursions into settled practice. Given the Government's claim that the corrupt favoritism problem is widespread, its inability to produce more than a single instance purporting to illustrate the point demonstrates the

Government has not fairly characterized the general attitudes of Members toward soft-money donors from whom they have not solicited.

Other aspects of the record confirm the Government has not produced evidence that Members corruptly favor soft-money donors to their party as a *per se* matter. Most testimony from which the Government would have the Court infer corruption is testimony that Members are rewarded by their parties for soliciting soft money. See *id.*, at 438–521 (Kollar-Kotelly, J.). This says nothing about how Members feel about a party's soft-money donors from whom they have not solicited. Indeed, record evidence on this point again cuts against the Government:

> "'As a Member of the Senate Finance Committee, I experienced the pressure first hand. On several occasions when we were debating important tax bills, I needed a police escort to get into the Finance Committee hearing room because so many lobbyists were crowding the halls, trying to get one last chance to make their pitch to each Senator. Senators generally knew which lobbyist represented the interests of which large donor. I was often glad that I limited the amount of soft money fundraising I did and did not take PAC contributions, because it would be extremely difficult not to feel beholden to these donors otherwise.'" *Id.*, at 482 (testimony of former Senator Boren; see 6–R Defs. Exhs., Tab 8, ¶ 8).

Thus, one of the handful of Senators on whom the Government relies to make its case candidly admits the pressure of appeasing soft-money donors derives from the Members' solicitation of donors, not from those donors' otherwise giving to their party.

In light of all this, § 323(a) has no valid anticorruption interest. The anticircumvention interests the Government offers in defense of §§ 323(b), (d), and (f) must also fall with the

interests asserted to justify § 323(a). Any anticircumvention interest can be only as compelling as the interest justifying the underlying regulation.

None of these other sections has an independent justifying interest. Section 323(b), for example, adds regulation only to activity undertaken by a state party. In the District Court two of the three judges found as fact that particular state and local parties exist primarily to participate in state and local elections, that they spend the majority of their resources on those elections, and that their voter registration and get-out-the-vote (GOTV) activities, in particular, are directed primarily at state and local elections. See 251 F. Supp. 2d, at 301–302 (Henderson, J., concurring in judgment in part and dissenting in part); *id.*, at 837–840 (Leon, J.). These findings, taken together with BCRA's other, valid prohibitions barring coordination with federal candidates or officeholders and their soft-money solicitation, demonstrate that § 323(b) does not add regulation to conduct that poses a danger of a federal candidate's or officeholder's receipt of *quids.*

Even § 323(b)'s narrowest regulation, which bans state party soft-money funded ads that (1) refer to a clearly identified federal candidate, and (2) either support or attack any candidate for the office of the clearly mentioned federal candidate, see new FECA § 301(20)(A)(iii), fails the constitutional test. The ban on conduct that by the statute's own definition may serve the interest of a federal candidate suggests to the majority that it is conduct that poses *quid pro quo* danger for federal candidates or officeholders. Yet, even this effect—considered after excising the coordination and candidate-solicited funding aspects elsewhere prohibited by BCRA §§ 202 and 214(a) and new FECA § 323(a)—poses no danger of a federal candidate's or officeholder's receipt of a *quid.* That conduct is no different from an individual's independent expenditure referring to and supporting

a clearly identified candidate—and this poses no regulable danger.

Section 323(d), which governs relationships between the national parties and nonprofit groups, fails for similar reasons. It is worth noting that neither the record nor our own experience tells us how significant these funds transfers are at this time. It is plain, however, that the First Amendment ought not to be manipulated to permit Congress to forbid a political party from aiding other speakers whom the party deems more effective in addressing discrete issues. One of the central flaws in BCRA is that Congress is determining what future course the creation of ideas and the expression of views must follow. Its attempt to foreclose new and creative partnerships for speech, as illustrated here, is consistent with neither the traditions nor principles of our free speech guarantee, which insists that the people, and not the Congress, decide what modes of expression are the most legitimate and effective.

The majority's upholding § 323(d) is all the more unsettling because of the way it ignores the Act as Congress wrote it. Congress said national parties "shall not solicit any funds for, or make or direct any donations to," § 501(c) nonprofit organizations that engage in federal election activity or to § 527 political committees. The Court, however, reads out the word "any" and construes the words "funds" and "donations" to mean "soft-money funds" and "soft-money donations." See *ante,* at 180 ("This construction is consistent with the concerns animating Title I, whose purpose is to plug the soft-money loophole"). The Court's statutory amendment may be consistent with its anti-soft-money rationale; it is not, however, consistent with the plain and unavoidable statutory text Congress has given us. Even as construed by the Court, moreover, it is invalid.

The majority strains to save the provision from what must seem to it an unduly harsh First Amendment. It does so by making a legislative determination Congress chose not to

make: to prefer hard money to soft money within the construct of national party relationships with nonprofit groups. Congress gave no indication of a preference to regulate either hard money or soft in this context. Rather, it simply proscribed all transfers of money between the two organizations and all efforts by the national parties to raise any money on the nonprofit groups' behalf. The question the Court faces is not which part of a text to sever and strike, but whether Congress can prohibit such transfers altogether. The answer, as the majority recognizes, is no. See *ante*, at 179 ("[P]rohibiting parties from donating funds already raised in compliance with FECA does little to further Congress' goal of preventing corruption or the appearance of corruption of federal candidates and officeholders").

Though § 323(f) in effect imposes limits on candidate contributions, it does not address federal candidate and officeholder contributions. Yet it is the possibility of federal officeholder *quid pro quo* corruption potential that animates *Buckley*'s rule as it relates to Acts of Congress (as opposed to Acts of state legislatures). See 424 U. S., at 13 ("The constitutional power of Congress to regulate federal elections is well established").

When one recognizes that §§ 323(a), (b), (d), and (f) do not serve the interest the anticorruption rationale contemplates, Title I's entirety begins to look very much like an incumbency protection plan. See J. Miller, Monopoly Politics 84–101 (1999) (concluding that regulations limiting election fundraising and spending constrain challengers more than incumbents). That impression is worsened by the fact that Congress exempted its officeholders from the more stringent prohibitions imposed on party officials. Compare new FECA § 323(a) with new FECA § 323(e). Section 323(a) raises an inflexible bar against soft-money solicitation, in any way, by parties or party officials. Section 323(e), in contrast, enacts exceptions to the rule for federal officeholders (the

very centerpiece of possible corruption), and allows them to solicit soft money for various uses and organizations.

The law in some respects even weakens the regulation of federal candidates and officeholders. Under former law, officeholders were understood to be limited to receipt of hard money by their campaign committees. See 2 U. S. C. §§ 431, 441a (2000 ed. and Supp. II) (setting out the pre-BCRA FECA regime). BCRA, however, now allows them and their campaign committees to receive soft money that fits the hard-money source-and-amount restrictions, so long as the officeholders direct that money on to other nonfederal candidates. See new FECA § 323(e)(1)(B). The majority's characterization of this weakening of the regime as "tightly constrain[ing]" candidates, *ante*, at 181, n. 70, is a prime example of its unwillingness to confront Congress' own interest or the persisting fact that the regulations violate First Amendment freedoms. The more lenient treatment accorded to incumbency-driven politicians than to party officials who represent broad national constituencies must render all the more suspect Congress' claim that the Act's sole purpose is to stop corruption.

The majority answers this charge by stating the obvious, that "§ 323(e) applies to both officeholders *and candidates.*" *Ante*, at 185, n. 72. The controlling point, of course, is the practical burden on challengers. That the prohibition applies to both incumbents and challengers in no way establishes that it burdens them equally in that regard. Name recognition and other advantages held by incumbents ensure that as a general rule incumbents will be advantaged by the legislation the Court today upholds.

The Government identifies no valid anticorruption interest justifying §§ 323(a), (b), (d), and (f). The very nature of the restrictions imposed by these provisions makes one all the more skeptical of the Court's explanation of the interests at stake. These provisions cannot stand under the First Amendment.

2. New FECA § 323(e)

Ultimately, only one of the challenged Title I provisions satisfies *Buckley*'s anticorruption rationale and the First Amendment's guarantee. It is § 323(e). This provision is the sole aspect of Title I that is a direct and necessary regulation of federal candidates' and officeholders' receipt of *quids*. Section 323(e) governs "candidate[s], individual[s] holding Federal office, agent[s] of a candidate or an individual holding Federal office, or an entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of 1 or more candidates or individuals holding Federal office." 2 U. S. C. § 441i(e) (Supp. II). These provisions, and the regulations that follow, limit candidates' and their agents' solicitation of soft money. The regulation of a candidate's receipt of funds furthers a constitutionally sufficient interest. More difficult, however, is the question whether regulation of a candidate's solicitation of funds also furthers this interest if the funds are given to another.

I agree with the Court that the broader solicitation regulation does further a sufficient interest. The making of a solicited gift is a *quid* both to the recipient of the money and to the one who solicits the payment (by granting his request). Rules governing candidates' or officeholders' solicitation of contributions are, therefore, regulations governing their receipt of *quids*. This regulation fits under *Buckley*'s anticorruption rationale.

B. Standard of Review

It is common ground between the majority and this opinion that a speech-suppressing campaign finance regulation, even if supported by a sufficient Government interest, is unlawful if it cannot satisfy our designated standard of review. See *ante*, at 134–137. In *Buckley*, we applied "closely drawn" scrutiny to contribution limitations and strict scrutiny to expenditure limitations. Compare 424 U. S., at 25, with *id.*, at 44–45. Against that backdrop, the majority as-

sumes that because *Buckley* applied the rationale in the context of contribution and expenditure limits, its application gives Congress and the Court the capacity to classify any challenged campaign finance regulation as either a contribution or an expenditure limit. Thus, it first concludes Title I's regulations are contribution limits and then proceeds to apply the lesser scrutiny.

> "Complex as its provisions may be, § 323, in the main, does little more than regulate the ability of wealthy individuals, corporations, and unions to contribute large sums of money to influence federal elections, federal candidates, and federal officeholders." *Ante*, at 138.

Though the majority's analysis denies it, Title I's dynamics defy this facile, initial classification.

Title I's provisions prohibit the receipt of funds; and in most instances, but not all, this can be defined as a contribution limit. They prohibit the spending of funds; and in most instances this can be defined as an expenditure limit. They prohibit the giving of funds to nonprofit groups; and this falls within neither definition as we have ever defined it. Finally, they prohibit fundraising activity; and the parties dispute the classification of this regulation (the challengers say it is core political association, while the Government says it ultimately results only in a limit on contribution receipts).

The majority's classification overlooks these competing characteristics and exchanges *Buckley*'s substance for a formulaic caricature of it. Despite the parties' and the majority's best efforts on both sides of the question, it ignores reality to force these regulations into one of the two legal categories as either contribution or expenditure limitations. Instead, these characteristics seem to indicate Congress has enacted regulations that are neither contribution nor expenditure limits, or are perhaps both at once.

Even if the laws could be classified in broad terms as only contribution limits, as the majority is inclined to do, that still

leaves the question what "contribution limits" can include if they are to be upheld under *Buckley*. *Buckley*'s application of a less exacting review to contribution limits must be confined to the narrow category of money gifts that are directed, in some manner, to a candidate or officeholder. Any broader definition of the category contradicts *Buckley*'s *quid pro quo* rationale and overlooks *Buckley*'s language, which contemplates limits on contributions to a candidate or campaign committee in explicit terms. See 424 U. S., at 13 (applying less exacting review to "contribution . . . limitations in the Act prohibit[ing] individuals from contributing more than $25,000 in a single year or more than $1,000 to any single candidate for an election campaign"); *id.*, at 45 ("[T]he contribution limitation[s] [apply a] total ban on the giving of large amounts of money to candidates"). See also *id.*, at 20, 25, 28.

The Court, it must be acknowledged, both in *Buckley* and on other occasions, has described contribution limits due some more deferential review in less than precise terms. At times it implied that donations to political parties would also qualify as contributions whose limitation too would be subject to less exacting review. See *id.*, at 23–24, n. 24 ("[T]he general understanding of what constitutes a political contribution[:] Funds provided to a candidate or political party or campaign committee either directly or indirectly through an intermediary constitute a contribution"). See also *Federal Election Comm'n* v. *Beaumont*, 539 U. S., at 161 ("'[C]ontributions may result in political expression if spent by a candidate or an association'" (quoting *Buckley*, *supra*, at 21)).

These seemingly conflicting statements are best reconciled by reference to *Buckley*'s underlying rationale for applying less exacting review. In a similar, but more imperative, sense proper application of the standard of review to regulations that are neither contribution nor expenditure limits (or which are both at once) can only be determined by reference to that rationale.

Buckley's underlying rationale is this: Less exacting review applies to Government regulations that "significantly interfere" with First Amendment rights of association. But any regulation of speech or associational rights creating "markedly greater interference" than such significant interference receives strict scrutiny. Unworkable and ill advised though it may be, *Buckley* unavoidably sets forth this test:

> "Even a ' "significant interference" with protected rights of political association' may be sustained if the State demonstrates [1] a sufficiently important interest and [2] employs means closely drawn to avoid unnecessary abridgment of associational freedoms. *Cousins* v. *Wigoda*, [419 U. S. 477, 488 (1975)]; *NAACP* v. *Button*, [371 U. S. 415, 438 (1963)]; *Shelton* v. *Tucker*, [364 U. S. 479, 488 (1960)]." 424 U. S., at 25.
>
> "The markedly greater burden on basic freedoms [referring to 'the freedom of speech and association'] caused by [expenditure limits] thus cannot be sustained simply by invoking the interest in maximizing the effectiveness of the less intrusive contribution limitations. Rather, the constitutionality of [the expenditure limits] turns on whether the governmental interests advanced in its support satisfy the exacting scrutiny applicable to limitations on core First Amendment rights of political expression." *Id.*, at 44–45.*

The majority, oddly enough, first states this standard with relative accuracy, but then denies it. Compare:

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* See also *Federal Election Comm'n* v. *Beaumont*, 539 U. S. 146, 161 (2003) ("[T]he basic premise we have followed in setting First Amendment standards for reviewing political financial restrictions [is that] the level of scrutiny is based on the importance of the 'political activity at issue' to effective speech or political association"); *California Democratic Party* v. *Jones*, 530 U. S. 567, 582 (2000) ("We can think of no heavier burden on a political party's associational freedom. Proposition 198 is therefore unconstitutional unless it is narrowly tailored to serve a compelling state interest").

> "The relevant inquiry [in determining the level of scrutiny] is whether the mechanism adopted to implement the contribution limit, or to prevent circumvention of that limit, burdens speech in a way that a direct restriction on the contribution itself would not," *ante,* at 138–139, with:
>
> "None of this is to suggest that the alleged associational burdens imposed on parties by § 323 have no place in the First Amendment analysis; it is only that we account for them in the application, rather than the choice, of the appropriate level of scrutiny," *ante,* at 141.

The majority's attempt to separate out how burdens on speech rights and burdens on associational rights affect the standard of review is misguided. It is not even true to *Buckley*'s unconventional test. *Buckley,* as shown in the quotations above, explained the lower standard of review by reference to the level of burden on associational rights, and it explained the need for a higher standard of review by reference to the higher burdens on both associational and speech rights. In light of *Buckley*'s rationale, and in light of this Court's ample precedent affirming that burdens on speech necessitate strict scrutiny review, see 424 U. S., at 44–45 ("[E]xacting scrutiny [applies] to limitations on core First Amendment rights of political expression"), "closely drawn" scrutiny should be employed only in review of a law that burdens rights of association, and only where that burden is significant, not markedly greater. Since the Court professes not to repudiate *Buckley,* it was right first to say we must determine how significant a burden BCRA's regulations place on First Amendment rights, though it should have specified that the rights implicated are those of association. Its later denial of that analysis flatly contradicts *Buckley.*

The majority makes *Buckley*'s already awkward and imprecise test all but meaningless in its application. If one

is viewing BCRA through *Buckley*'s lens, as the majority purports to do, one must conclude the Act creates markedly greater associational burdens than the significant burden created by contribution limitations and, unlike contribution limitations, also creates significant burdens on speech itself. While BCRA contains federal contribution limitations, which significantly burden association, it goes even further. The Act entirely reorders the nature of relations between national political parties and their candidates, between national political parties and state and local parties, and between national political parties and nonprofit organizations.

The many and varied aspects of Title I's regulations impose far greater burdens on the associational rights of the parties, their officials, candidates, and citizens than do regulations that do no more than cap the amount of money persons can contribute to a political candidate or committee. The evidence shows that national parties have a long tradition of engaging in essential associational activities, such as planning and coordinating fundraising with state and local parties, often with respect to elections that are not federal in nature. This strengthens the conclusion that the regulations now before us have unprecedented impact. It makes impossible, moreover, the contrary conclusion—which the Court's standard of review determination necessarily implies—that BCRA's soft-money regulations will not much change the nature of association between parties, candidates, nonprofit groups, and the like. Similarly, Title I now compels speech by party officials. These officials must be sure their words are not mistaken for words uttered in their official capacity or mistaken for soliciting prohibited soft, and not hard, money. Few interferences with the speech, association, and free expression of our people are greater than attempts by Congress to say which groups can or cannot advocate a cause, or how they must do it.

Congress has undertaken this comprehensive reordering of association and speech rights in the name of enforcing con-

tribution limitations. Here, however, as in *Buckley*, "[t]he markedly greater burden on basic freedoms caused by [BCRA's pervasive regulation] cannot be sustained simply by invoking the interest in maximizing the effectiveness of the less intrusive contribution limitations." *Ibid.* BCRA fundamentally alters, and thereby burdens, protected speech and association throughout our society. Strict scrutiny ought apply to review of its constitutionality. Under strict scrutiny, the congressional scheme, for the most part, cannot survive. This is all but acknowledged by the Government, which fails even to argue that strict scrutiny could be met.

1. New FECA § 323(e)

Because most of the Title I provisions discussed so far do not serve a compelling or sufficient interest, the standard of review analysis is only dispositive with respect to new FECA § 323(e). As to § 323(e), 2 U. S. C. § 441i(e) (Supp. II), I agree with the Court that this provision withstands constitutional scrutiny.

Section 323(e) is directed solely to federal candidates and their agents; it does not ban all solicitation by candidates, but only their solicitation of soft-money contributions; and it incorporates important exceptions to its limits (candidates may receive, solicit, or direct funds that comply with hard-money standards; candidates may speak at fundraising events; candidates may solicit or direct unlimited funds to organizations not involved with federal election activity; and candidates may solicit or direct up to $20,000 per individual per year for organizations involved with certain federal election activity (*e. g.*, GOTV, voter registration)). These provisions help ensure that the law is narrowly tailored to satisfy First Amendment requirements. For these reasons, I agree § 323(e) is valid.

2. New FECA §§ 323(a), (b), (d), and (f)

Though these sections do not survive even the first test of serving a constitutionally valid interest, it is necessary as

well to examine the vast overbreadth of the remainder of Title I, so the import of the majority's holding today is understood. Sections 323(a), (b), (d), and (f), 2 U. S. C. §§ 441i(a), (b), (d), and (f) (Supp. II), are not narrowly tailored, cannot survive strict scrutiny, and cannot even be considered closely drawn, unless that phrase is emptied of all meaning.

First, the sections all possess fatal overbreadth. By regulating conduct that does not pose *quid pro quo* dangers, they are incursions on important categories of protected speech by voters and party officials.

At the next level of analytical detail, § 323(a) is overly broad as well because it regulates all national parties, whether or not they present candidates in federal elections. It also regulates the national parties' solicitation and direction of funds in odd-numbered years when only state and local elections are at stake.

Likewise, while § 323(b) might prohibit some state party conduct that would otherwise be undertaken in conjunction with a federal candidate, it reaches beyond that to a considerable range of campaign speech by the state parties on nonfederal issues. A state or local party might want to say: "The Democratic slate for state assembly opposes President Bush's tax policy . . . . Elect the Republican slate to tell Washington, D. C. we don't want higher taxes." Section 323(b) encompasses this essential speech and prohibits it equally with speech that poses a federal officeholder *quid quo pro* danger.

Other predictable political circumstances further demonstrate § 323(b)'s overbreadth. It proscribes the use of soft money for all state party voter registration efforts occurring within 120 days of a federal election. So, the vagaries of election timing, not any real interest related to corruption, will control whether state parties can spend nonfederally regulated funds on ballot efforts. This overreaching contradicts important precedents that recognize the need to pro-

tect political speech for campaigns related to ballot measures. See generally *Citizens Against Rent Control/Coalition for Fair Housing* v. *Berkeley*, 454 U. S. 290 (1981); *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765 (1978).

Section 323(b) also fails the narrow tailoring requirement because less burdensome regulatory options were available. The Government justifies the provision as an attempt to stop national parties from circumventing the soft-money allocation constraints they faced under the prior FECA regime. We are told that otherwise the national parties would let the state parties spend money on their behalf. If, however, the problem were avoidance of allocation rates, Congress could have made any soft money transferred by a national party to a state party subject to the allocation rates that governed the national parties' similar use of the money.

Nor is § 323(d) narrowly tailored. The provision, proscribing any solicitation or direction of funds, prohibits the parties from even distributing or soliciting regulated money (*i. e.*, hard money). It is a complete ban on this category of speech. To prevent circumvention of contribution limits by imposing a complete ban on contributions is to burden the circumventing conduct more severely than the underlying suspect conduct could be burdened.

By its own terms, the statute prohibits speech that does not implicate federal elections. The provision prohibits any transfer to a § 527 organization, irrespective of whether the organization engages in federal election activity. This is unnecessary, as well, since Congress enacted a much narrower provision in § 323(a)(2) to prevent circumvention by the parties via control of other organizations. Section 323(a)(2) makes "any entity that is directly or indirectly . . . controlled by" the national parties subject to the same § 323(a) prohibitions as the parties themselves. 2 U. S. C. § 441i (Supp. II).

Section 323(f), too, is not narrowly tailored or even close to it. It burdens a substantial body of speech and expres-

sion made entirely independent of any federal candidate. The record, for example, contains evidence of Alabama Attorney General Pryor's reelection flyers showing a picture of Pryor shaking hands with President Bush and stating: "Bush appointed Pryor to be Alabama co-chairman of the George W. Bush for President campaign." A host of circumstances could make such statements advisable for state candidates to use without any coordination with a federal candidate. Section 323(f) incorporates no distinguishing feature, such as an element of coordination, to ensure First Amendment protected speech is not swept up within its bounds.

Compared to the narrowly tailored effort of § 323(e), which addresses in direct and specific terms federal candidates' and officeholders' quest for dollars, these sections cast a wide net not confined to the critical categories of federal candidate or officeholder involvement. They are not narrowly tailored; they are not closely drawn; they flatly violate the First Amendment; and even if they do encompass some speech that poses a regulable *quid pro quo* danger, that little assurance does not justify or permit a regime which silences so many legitimate voices in this protected sphere.

C. Coordination Provisions

Other BCRA Title II sections require analysis alongside the provisions of Title I, for they, too, are regulations that principally operate within the ambit of *Buckley*'s anticorruption principle. BCRA §§ 202 and 214 are two of these provisions. They involve the Act's new definition of coordination. BCRA § 213 is another. It institutes a new system in which the parties are forced to choose between two different types of relationships with their candidates.

1.

I agree with the majority that §§ 214(b) and (c) do not merit our review because they are not now justiciable. See *ante*, at 223. I disagree, however, with the majority's view

that § 214(a), § 214's sole justiciable provision, is valid. Nor can I agree that § 202 is valid in its entirety.

Section 214(a) amends FECA to define, as hard-money contributions to a political party, expenditures an individual makes in concert with the party. See *ante*, at 219. This provision, in my view, must fall. As the earlier discussion of Title I explains, individual contributions to the political parties cannot be capped in the soft-money context. Since an individual's soft-money contributions to a party may not be limited, it follows with even greater force that an individual's expenditure of money, coordinated with the party for activities on which the party could spend unlimited soft money, cannot be capped.

This conclusion emerges not only from an analysis of Title I but also from *Colorado I*. There, JUSTICE BREYER's opinion announcing the judgment of the Court concluded political parties had a constitutional right to engage in independent advocacy on behalf of a candidate. 518 U. S. 604 (1996). That parties can spend unlimited soft money on this activity follows by necessary implication. A political party's constitutional right to spend money on advocacy independent of a candidate is burdened by § 214(a) in a direct and substantial way. The statute commands the party to refrain from coordinating with an individual engaging in advocacy even if the individual is acting independently of the candidate.

Section 202 functions in a manner similar to the operation of § 214(a). It directs that when persons make "electioneering communication," see new FECA § 304(f)(3), 2 U. S. C. § 434(f)(3) (Supp. II), in a coordinated fashion with a candidate or a party, the coordinated communication expense must be treated as a hard-money contribution by the person to that candidate or party. The trial court erroneously believed it needed to determine whether § 304's definition of electioneering communications was itself unconstitutional to assess this provision. While a statutory definition may lead

to an unconstitutional result under one application, it may lead to a constitutional result under another. Compare *infra* this page and 321–322 with *infra*, at 333–337. It is unhelpful to talk in terms of the definition being unconstitutional or constitutional when the only relevant question is whether, as animated by a substantive prohibition, here § 202, the definition leads to unconstitutional results. The other Title II provisions that employ § 304's electioneering communication definition are analyzed below, within the context of the corporate speech rationale and the disclosure provisions. Section 202, however, must be judged under the anticorruption rationale because it does not distinguish according to corporate or union status, and it does not involve disclosure requirements. Section 202 simply limits the speech of all "persons."

Section 202 does satisfy *Buckley*'s anticorruption rationale in one respect: It treats electioneering communications expenditures made by a person in coordination with a candidate as hard-money contributions to that candidate. For many of the same reasons that § 323(e) is valid, § 202, in this single way, is valid: It regulates conduct that poses a *quid pro quo* danger—satisfaction of a candidate's request.

Insofar as § 202 regulates coordination with a political party, however, it suffers from the same flaws as § 214(a). Congress has instructed us, as much as possible, to sever any infirm portions of statutory text from the valid parts, see BCRA § 401. Following that instruction, I would uphold § 202's text as to its candidate coordination regulation (the first clause of new FECA § 315(a)(7)(C)(ii), 2 U. S. C. § 441a(a)(7)(C)(ii) (Supp. II), but rule invalid its text that applies the coordination provision to political parties.

This provision includes an "advance contracts" aspect as well. That aspect of the provision, on its own, would be invalid, for many of the reasons discussed below with respect to the advance disclosure requirements embodied in BCRA §§ 201 and 212. See *infra*, at 321–322.

2.

The final aspect of BCRA that implicates *Buckley*'s anti-corruption rationale is § 213, the forced choice provision. The majority concludes § 213 violates the Constitution. I agree and write on this aspect of the case to point out that the section's unlawfulness flows not from the unique contours of the statute that settle how much political parties may spend on their candidate's campaign, see *ante*, at 215–219, but from its raw suppression of constitutionally protected speech.

Section 213 unconstitutionally forces the parties to surrender one of two First Amendment rights. We affirmed that parties have a constitutionally protected right to make independent expenditures in *Colorado I*. I continue to believe, moreover, that even under *Buckley* a political party has a protected right to make coordinated expenditures with its candidates. See *Colorado II*, 533 U. S., at 466–482 (THOMAS, J., dissenting). Our well-established constitutional tradition respects the role parties play in the electoral process and in stabilizing our representative democracy. "There can be little doubt that the emergence of a strong and stable two-party system in this country has contributed enormously to sound and effective government." *Davis* v. *Bandemer*, 478 U. S. 109, 144–145 (1986) (O'CONNOR, J., concurring in judgment). This role would be undermined in the absence of a party's ability to coordinate with candidates. Cf. *Colorado I*, *supra*, at 629 (KENNEDY, J., concurring in judgment and dissenting in part) (parties can "give effect to their views only by selecting and supporting candidates"). Section 213's command that the parties abandon one First Amendment right or the other offends the Constitution even more than a command that a person choose between a First Amendment right and a statutory right.

II. TITLE II PROVISIONS

A. Disclosure Provisions

BCRA § 201, which requires disclosure of electioneering communications, including those coordinated with the party but independent of the candidate, does not substantially relate to a valid interest in gathering data about compliance with contribution limits or in deterring corruption. Contra, *ante*, at 196. As the above analysis of Title I demonstrates, Congress has no valid interest in regulating soft-money contributions that do not pose *quid pro quo* corruption potential. In the absence of a valid basis for imposing such limits the effort here to ensure compliance with them and to deter their allegedly corrupting effects cannot justify disclosure. The regulation does substantially relate to the other interest the majority details, however. See *ibid.* This assures its constitutionality. For that reason, I agree with the Court's judgment upholding the disclosure provisions contained in § 201 of Title II, with one exception.

Section 201's advance disclosure requirement—the aspect of the provision requiring those who have contracted to speak to disclose their speech in advance—is, in my view, unconstitutional. Advance disclosure imposes real burdens on political speech that *post hoc* disclosure does not. It forces disclosure of political strategy by revealing where ads are to be run and what their content is likely to be (based on who is running the ad). It also provides an opportunity for the ad buyer's opponents to dissuade broadcasters from running ads. See Brief for Plaintiff-Appellant/Cross-Appellee National Right to Life Committee, Inc., et al. in No. 02–1733 et al., pp. 44–46, and nn. 42–43. Against those tangible additional burdens, the Government identifies no additional interest uniquely served by advance disclosure. If Congress intended to ensure that advertisers could not flout these disclosure laws by running an ad before the elec-

tion, but paying for it afterwards, see *ante*, at 200, then Congress should simply have required the disclosure upon the running of the ad. Burdening the First Amendment further by requiring advance disclosure is not a constitutionally acceptable alternative. To the extent § 201 requires advance disclosure, it finds no justification in its subordinating interests and imposes greater burdens than the First Amendment permits.

Section 212, another disclosure provision, likewise incorporates an advance disclosure requirement. The plaintiffs challenge only this advance disclosure requirement, and not the broader substance of this section. The majority concludes this challenge is not ripe. I disagree.

The statute commands advance disclosure. The Federal Election Commission has issued a regulation under § 212 that, by its terms, does not implement this particular requirement. See 68 Fed. Reg. 404, 452 (2003) (to be codified at 11 CFR § 109.10(c)(d)). Adoption of a regulation that does not implement the statute to its full extent does not erase the statutory requirement. This is not a case in which a statute is ambiguous and the agency interpretation can be relied upon to avoid a statutory obligation that is uncertain or arguable. The failure of the regulation at this point to require advance disclosure is of no moment. Contra, 251 F. Supp. 2d, at 251 *(per curiam)*. The validity of § 212 is an issue presented for our determination; it is ripe; and the advance disclosure requirement, for the reasons given when discussing the parallel provision under § 201, is unconstitutional. Contra, *ante*, at 212 (declining to address the ripeness question in light of the majority's rejection of the challenge to advance notice in § 201).

B. BCRA § 203

The majority permits a new and serious intrusion on speech when it upholds § 203, the key provision in Title II that prohibits corporations and labor unions from using money from their general treasury to fund electioneering

communications. The majority compounds the error made in *Austin* v. *Michigan Chamber of Commerce*, 494 U. S. 652 (1990), and silences political speech central to the civic discourse that sustains and informs our democratic processes. Unions and corporations, including nonprofit corporations, now face severe criminal penalties for broadcasting advocacy messages that "refe[r] to a clearly identified candidate," 2 U. S. C. § 431(20)(A)(iii) (Supp. II), in an election season. Instead of extending *Austin* to suppress new and vibrant voices, I would overrule it and return our campaign finance jurisprudence to principles consistent with the First Amendment.

1.

The Government and the majority are right about one thing: The express-advocacy requirement, with its list of magic words, is easy to circumvent. The Government seizes on this observation to defend BCRA § 203, arguing it will prevent what it calls "sham issue ads" that are really to the same effect as their more express counterparts. *Ante*, at 185, 193–194. What the Court and the Government call sham, however, are the ads speakers find most effective. Unlike express ads that leave nothing to the imagination, the record shows that issue ads are preferred by almost all candidates, even though politicians, unlike corporations, can lawfully broadcast express ads if they so choose. It is a measure of the Government's disdain for protected speech that it would label as a sham the mode of communication sophisticated speakers choose because it is the most powerful.

The Government's use of the pejorative label should not obscure § 203's practical effect: It prohibits a mass communication technique favored in the modern political process for the very reason that it is the most potent. That the Government would regulate it for this reason goes only to prove the illegitimacy of the Government's purpose. The majority's validation of it is not sustainable under accepted First Amendment principles. The problem is that the majority

uses *Austin*, a decision itself unfaithful to our First Amendment precedents, to justify banning a far greater range of speech. This has it all backwards. If protected speech is being suppressed, that must be the end of the inquiry.

The majority's holding cannot be reconciled with *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765 (1978), which invalidated a Massachusetts law prohibiting banks and business corporations from making expenditures "for the purpose of" influencing referendum votes on issues that do not "materially affect" their business interests. *Id.*, at 767. *Bellotti* was decided in the face of the same arguments on which the majority now relies. Corporate participation, the Government argued in *Bellotti*, "would exert an undue influence on the outcome of a referendum vote." *Id.*, at 789. The influence, presumably, was undue because "immense aggregations of wealth" were facilitated by the "unique state-conferred corporate structure." *Austin*, 494 U. S., at 660. With these "state-created advantages," *id.*, at 659, corporations would "drown out other points of view" and "destroy the confidence of the people in the democratic process," *Bellotti*, 435 U. S., at 789. *Bellotti* rejected these arguments in emphatic terms:

> "To be sure, corporate advertising may influence the outcome of the vote; this would be its purpose. But the fact that advocacy may persuade the electorate is hardly a reason to suppress it: The Constitution 'protects expression which is eloquent no less than that which is unconvincing.' *Kingsley Int'l Pictures Corp.* v. *Regents*, 360 U. S., at 689. . . . '[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 . . . .' *Buckley*, 424 U. S., at 48–49." *Id.*, at 790–791.

Bellotti similarly dismissed the argument that the prohibition was necessary to "protec[t] corporate shareholders"

"by preventing the use of corporate resources in furtherance of views with which some shareholders may disagree." *Id.*, at 792–793. Among other problems, the statute was overinclusive:

> "[It] would prohibit a corporation from supporting or opposing a referendum proposal even if its shareholders unanimously authorized the contribution or expenditure. . . . Acting through their power to elect the board of directors or to insist upon protective provisions in the corporation's charter, shareholders normally are presumed competent to protect their own interests. . . . [M]inority shareholders generally have access to the judicial remedy of a derivative suit to challenge corporate disbursements . . . . Assuming, *arguendo*, that protection of shareholders is a 'compelling' interest under the circumstances of this case, we find 'no substantially relevant correlation between the governmental interest asserted and the State's effort' to prohibit appellants from speaking." *Id.*, at 794–795 (quoting *Shelton* v. *Tucker*, 364 U. S. 479, 485 (1960)).

See also *Abood* v. *Detroit Bd. of Ed.*, 431 U. S. 209 (1977) (providing analogous protections to union members).

Austin turned its back on this holding, not because the *Bellotti* Court had overlooked the Government's interest in combating *quid pro quo* corruption, but because a new majority decided to recognize "a different type of corruption," *Austin*, 494 U. S., at 660, *i. e.*, the same "corrosive and distorting effects of immense aggregations of wealth," *ibid.*, found insufficient to sustain a similar prohibition just a decade earlier. Unless certain narrow exceptions apply, see *Federal Election Comm'n* v. *Massachusetts Citizens for Life, Inc.*, 479 U. S. 238 (1986) *(MCFL)*, the prohibition extends even to nonprofit corporations organized to promote a point of view. Aside from its disregard of precedents, the majority's ready willingness to equate corruption with all

organizations adopting the corporate form is a grave insult to nonprofit and for-profit corporations alike, entities that have long enriched our civic dialogue.

Austin was the first and, until now, the only time our Court had allowed the Government to exercise the power to censor political speech based on the speaker's corporate identity. The majority's contrary contention is simply incorrect. Contra, *ante*, at 203 ("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"). I dissented in *Austin*, 494 U. S., at 695, and continue to believe that the case represents an indefensible departure from our tradition of free and robust debate. Two of my colleagues joined the dissent, including a Member of today's majority. *Ibid.* (O'CONNOR and SCALIA, JJ.). See also *id.*, at 679 (SCALIA, J., dissenting).

To be sure, *Bellotti* concerns issue advocacy, whereas *Austin* is about express advocacy. This distinction appears to have accounted for the position of at least two Members of the Court. See 494 U. S., at 675–676 (Brennan, J., concurring) ("The Michigan law . . . prohibits corporations from using treasury funds only for making independent expenditures in support of, or in opposition to, any candidate in state elections. A corporation remains free . . . to use general treasury funds to support an initiative proposal in a state referendum" (citations omitted)); *id.*, at 678 (STEVENS, J., concurring) ("[T]here is a vast difference between lobbying and debating public issues on the one hand, and political campaigns for election to public office on the other"). The distinction, however, between independent expenditures for commenting on issues, on the one hand, and supporting or opposing a candidate, on the other, has no First Amendment significance apart from *Austin*'s arbitrary line.

Austin was based on a faulty assumption. Contrary to JUSTICE STEVENS' proposal that there is "vast difference between lobbying and debating public issues on the one hand, and political campaigns for election to public office on the other," *ibid.*, there is a general recognition now that discussions of candidates and issues are quite often intertwined in practical terms. See, *e. g.*, Brief for Intervenor-Defendant Sen. John McCain et al. in No. 02–1674 et al., p. 42 ("'[The] legal . . . wall between issue advocacy and political advocacy . . . is built of the same sturdy material as the emperor's clothing. Everyone sees it. No one believes it'" (quoting the chair of the Political Action Committee (PAC) of the National Rifle Association (NRA))). To abide by *Austin*'s repudiation of *Bellotti* on the ground that *Bellotti* did not involve express advocacy is to adopt a fiction. Far from providing a rationale for expanding *Austin*, the evidence in these consolidated cases calls for its reexamination. Just as arguments about immense aggregations of corporate wealth and concerns about protecting shareholders and union members do not justify a ban on issue ads, they cannot sustain a ban on independent expenditures for express ads. In holding otherwise, *Austin* "forced a substantial amount of political speech underground" and created a species of covert speech incompatible with our free and open society. *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S., at 406 (KENNEDY, J., dissenting).

The majority not only refuses to heed the lessons of experience but also perpetuates the conflict *Austin* created with fundamental First Amendment principles. *Buckley* foresaw that "the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application," 424 U. S., at 42; see also *id.*, at 45. It recognized that "'[p]ublic discussion of public issues which also are campaign issues readily and often unavoidably draws in candidates and their positions, their voting records and other official conduct.'" *Id.*, at 42,

n. 50. Hence, "'[d]iscussions of those issues, and as well more positive efforts to influence public opinion on them, tend naturally and inexorably to exert some influence on voting at elections.'" *Ibid.* In glossing over *Austin*'s opposite—and false—assumption that express advocacy is different, the majority ignores reality and elevates a distinction rejected by *Buckley* in clear terms.

Even after *Buckley* construed the statute then before the Court to reach only express advocacy, it invalidated limits on independent expenditures, observing that "[a]dvocacy of the election or defeat of candidates for federal office is no less entitled to protection under the First Amendment than the discussion of political policy generally or advocacy of the passage or defeat of legislation." 424 U. S., at 48. *Austin* defied this principle. It made the impermissible content-based judgment that commentary on candidates is less deserving of First Amendment protection than discussions of policy. In its haste to reaffirm *Austin* today, the majority refuses to confront this basic conflict between *Austin* and *Buckley*. It once more diminishes the First Amendment by ignoring its command that the Government has no power to dictate what topics its citizens may discuss. See *Consolidated Edison Co. of N. Y.* v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 530 (1980).

Continued adherence to *Austin*, of course, cannot be justified by the corporate identity of the speaker. Not only does this argument fail to account for *Bellotti*, 435 U. S., at 777 ("The inherent worth of the speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual"), but *Buckley* itself warned that "[t]he First Amendment's protection against governmental abridgment of free expression cannot properly be made to depend on a person's financial ability to engage in public discussion." 424 U. S., at 49; see also *id.*, at 48–49; *Police Dept. of Chicago* v. *Mosley*, 408 U. S. 92 (1972). The exemption for broadcast media

companies, moreover, makes the First Amendment problems worse, not better. See *Austin*, 494 U. S., at 712 (KENNEDY, J., dissenting) ("An independent ground for invalidating this statute is the blanket exemption for media corporations. . . . All corporations communicate with the public to some degree, whether it is their business or not; and communication is of particular importance for nonprofit corporations"); see also *id.*, at 690–691 (SCALIA, J., dissenting) ("Amassed corporate wealth that regularly sits astride the ordinary channels of information is much more likely to produce the New Corruption (too much of one point of view) than amassed corporate wealth that is generally busy making money elsewhere"). In the end the majority can supply no principled basis to reason away *Austin*'s anomaly. *Austin*'s errors stand exposed, and it is our duty to say so.

I surmise that even the majority, along with the Government, appreciates these problems with *Austin*. That is why it invents a new justification. We are now told that "the government also has a compelling interest in insulating federal elections from the type of corruption arising from the real or apparent creation of political debts." Brief for Appellee/Cross-Appellant FEC et al. in No. 02–1674 et al., p. 88. "[E]lectioneering communications paid for with the general treasury funds of labor unions and corporations," the Government warns, "endea[r] those entities to elected officials in a way that could be perceived by the public as corrupting." See 251 F. Supp. 2d, at 622–623 (Kollar-Kotelly, J.) (stating the Government's position).

This rationale has no limiting principle. Were we to accept it, Congress would have the authority to outlaw even pure issue ads, because they, too, could endear their sponsors to candidates who adopt the favored positions. Taken to its logical conclusion, the alleged Government interest "in insulating federal elections from . . . the real or apparent creation of political debts" also conflicts with *Buckley*. If a candidate feels grateful to a faceless, impersonal corporation for mak-

ing independent expenditures, the gratitude cannot be any less when the money came from the CEO's own pocket. *Buckley*, however, struck down limitations on independent expenditures and rejected the Government's corruption argument absent evidence of coordination. See 424 U. S., at 51. The Government's position would eviscerate the line between expenditures and contributions and subject both to the same "complaisant review under the First Amendment." *Federal Election Comm'n* v. *Beaumont*, 539 U. S., at 161. Complaisant or otherwise, we cannot cede authority to the Legislature to do with the First Amendment as it pleases. Since *Austin* is inconsistent with the First Amendment, its extension diminishes the First Amendment even further. For this reason § 203 should be held unconstitutional.

2.

Even under *Austin*, BCRA § 203 could not stand. All parties agree strict scrutiny applies; § 203, however, is far from narrowly tailored.

The Government is unwilling to characterize § 203 as a ban, citing the possibility of funding electioneering communications out of a separate segregated fund. This option, though, does not alter the categorical nature of the prohibition on the corporation. "[T]he corporation *as a corporation* is prohibited from speaking." *Austin*, 494 U. S., at 681, n. (SCALIA, J., dissenting). What the law allows—permitting the corporation "to serve as the founder and treasurer of a different association of individuals that can endorse or oppose political candidates"—"is not speech by the corporation." *Ibid.*

Our cases recognize the practical difficulties corporations face when they are limited to communicating through PACs. The majority need look no further than *MCFL*, 479 U. S. 238, for an extensive list of hurdles PACs have to confront:

> "Under [2 U. S. C.] § 432 [(1982 ed.)], [MCFL] must appoint a treasurer, § 432(a); ensure that contributions are

forwarded to the treasurer within 10 or 30 days of receipt, depending on the amount of contribution, § 432(b)(2); see that its treasurer keeps an account of every contribution regardless of amount, the name and address of any person who makes a contribution in excess of $50, all contributions received from political committees, and the name and address of any person to whom a disbursement is made regardless of amount, § 432(c); and preserve receipts for all disbursements over $200 and all records for three years, §§ 432(c), (d). Under § 433, MCFL must file a statement of organization containing its name, address, the name of its custodian of records, and its banks, safety deposit boxes, or other depositories, §§ 433(a), (b); must report any change in the above information within 10 days, § 433(c); and may dissolve only upon filing a written statement that it will no longer receive any contributions nor make disbursements, and that it has no outstanding debts or obligations, § 433(d)(1).

"Under § 434, MCFL must file either monthly reports with the FEC or reports on the following schedule: quarterly reports during election years, a pre-election report no later than the 12th day before an election, a postelection report within 30 days after an election, and reports every 6 months during nonelection years. §§ 434(a)(4)(A), (B). 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. § 434(b). In addition, MCFL may solicit contributions for its separate segregated fund only from its 'members,' §§ 441b(b)(4)(A), (C), which does not include those persons who have merely contributed to or indicated support for the organization in the past." *Id.*, at 253–254.

These regulations are more than minor clerical requirements. Rather, they create major disincentives for speech, with the effect falling most heavily on smaller entities that often have the most difficulty bearing the costs of compliance. Even worse, for an organization that has not yet set up a PAC, spontaneous speech that "refers to a clearly identified candidate for Federal office" becomes impossible, even if the group's vital interests are threatened by a piece of legislation pending before Congress on the eve of a federal election. See Brief for Appellant Chamber of Commerce of the United States et al. in No. 02–1756 et al., p. 37. Couple the litany of administrative burdens with the categorical restriction limiting PACs' solicitation activities to "members," and it is apparent that PACs are inadequate substitutes for corporations in their ability to engage in unfettered expression.

Even if the newly formed PACs manage to attract members and disseminate their messages against these heavy odds, they have been forced to assume a false identity while doing so. As the American Civil Liberties Union (ACLU) points out, political committees are regulated in minute detail because their primary purpose is to influence federal elections. "The ACLU and thousands of other organizations like it," however, "are not created for this purpose and therefore should not be required to operate as if they were." Reply Brief for Appellant ACLU in No. 02–1734 et al., p. 15. A requirement that coerces corporations to adopt alter egos

in communicating with the public is, by itself, sufficient to make the PAC option a false choice for many civic organizations. Forcing speech through an artificial "secondhand endorsement structure . . . debases the value of the voice of nonprofit corporate speakers . . . [because] PAC's are interim, ad hoc organizations with little continuity or responsibility." *Austin*, 494 U. S., at 708–709 (KENNEDY, J., dissenting). In contrast, their sponsoring organizations "have a continuity, a stability, and an influence" that allows "their members and the public at large to evaluate their . . . credibility." *Id.*, at 709.

The majority can articulate no compelling justification for imposing this scheme of compulsory ventriloquism. If the majority is concerned about corruption and distortion of the political process, it makes no sense to diffuse the corporate message and, under threat of criminal penalties, to compel the corporation to spread the blame to its ad hoc intermediary.

For all these reasons, the PAC option cannot advance the Government's argument that the provision meets the test of strict scrutiny. See, *e. g.*, *id.*, at 657–660; *MCFL*, 479 U. S. 238; see also *United States* v. *Playboy Entertainment Group, Inc.*, 529 U. S. 803, 826 (2000) ("When the purpose and design of a statute is to regulate speech by reason of its content, special consideration or latitude is not accorded to the Government merely because the law can somehow be described as a burden rather than outright suppression").

Once we turn away from the distraction of the PAC option, the provision cannot survive strict scrutiny. Under the primary definition, § 203 prohibits unions and corporations from funding from their general treasury any broadcast, cable, or satellite communication which—

> "(I) refers to a clearly identified candidate for Federal office;
>
> "(II) is made within—

> "(aa) 60 days before a general, special, or runoff election for the office sought by the candidate; or
>
> "(bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and
>
> "(III) in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate." 2 U. S. C. § 434(f)(3)(A)(i) (Supp. II).

The prohibition, with its crude temporal and geographic proxies, is a severe and unprecedented ban on protected speech. As discussed at the outset, suppose a few Senators want to show their constituents in the logging industry how much they care about working families and propose a law, 60 days before the election, that would harm the environment by allowing logging in national forests. Under § 203, a nonprofit environmental group would be unable to run an ad referring to these Senators in their districts. The suggestion that the group could form and fund a PAC in the short time required for effective participation in the political debate is fanciful. For reasons already discussed, moreover, an ad hoc PAC would not be as effective as the environmental group itself in gaining credibility with the public. Never before in our history has the Court upheld a law that suppresses speech to this extent.

The group would want to refer to these Senators, either by name or by photograph, not necessarily because an election is at stake. It might be supposed the hypothetical Senators have had an impeccable environmental record, so the environmental group might have no previous or present interest in expressing an opinion on their candidacies. Or, the election might not be hotly contested in some of the districts, so whatever the group says would have no practical effect on the electoral outcome. The ability to refer to candidates

and officeholders is important because it allows the public to communicate with them on issues of common concern. Section 203's sweeping approach fails to take into account this significant free speech interest. Under any conventional definition of overbreadth, it fails to meet strict scrutiny standards. It forces electioneering communications sponsored by an environmental group to contend with faceless and nameless opponents and consign their broadcast, as the NRA well puts it, to a world where politicians who threaten the environment must be referred to as "'He Whose Name Cannot Be Spoken.'" Reply Brief for Appellant NRA et al. in No. 02–1675 et al., p. 19.

In the example above, it makes no difference to § 203 or to the Court that the bill sponsors may have such well-known ideological biases that revealing their identity would provide essential instruction to citizens on whether the policy benefits them or their community. Nor does it make any difference that the names of the bill sponsors, perhaps through repetition in the news media, have become so synonymous with the proposal that referring to these politicians by name in an ad is the most effective way to communicate with the public. Section 203 is a comprehensive censor: On the pain of a felony offense, the ad must not refer to a candidate for federal office during the crucial weeks before an election.

We are supposed to find comfort in the knowledge that the ad is banned under § 203 only if it "is targeted to the relevant electorate," defined as communications that can be received by 50,000 or more persons in the candidate's district. See 2 U. S. C. § 434(f)(3)(C) (Supp. II). This Orwellian criterion, however, is analogous to a law, unconstitutional under any known First Amendment theory, that would allow a speaker to say anything he chooses, so long as his intended audience could not hear him. See *Kleindienst* v. *Mandel*, 408 U. S. 753, 762–765 (1972) (discussing the "First Amendment right to receive information and ideas" (internal quotation marks omitted)). A central purpose of issue ads is to

urge the public to pay close attention to the candidate's platform on the featured issues. By banning broadcast in the very district where the candidate is standing for election, § 203 shields information at the heart of the First Amendment from precisely those citizens who most value the right to make a responsible judgment at the voting booth.

In defending against a facial attack on a statute with substantial overbreadth, it is no answer to say that corporations and unions may bring as-applied challenges on a case-by-case basis. When a statute is as out of bounds as § 203, our law simply does not force speakers to "undertake the considerable burden (and sometimes risk) of vindicating their rights through case-by-case litigation." *Virginia* v. *Hicks*, 539 U. S. 113, 119 (2003). If they instead "abstain from protected speech," they "har[m] not only themselves but society as a whole, which is deprived of an uninhibited marketplace of ideas." *Ibid.* Not the least of the ill effects of today's decision is that our overbreadth doctrine, once a bulwark of protection for free speech, has now been manipulated by the Court to become but a shadow of its former self.

In the end the Government and intervenor-defendants cannot dispute the looseness of the connection between § 203 and the Government's proffered interest in stemming corruption. At various points in their briefs, they drop all pretense that the electioneering ban bears a close relation to anticorruption purposes. Instead, they defend § 203 on the ground that the targeted ads "may influence," are "likely to influence," or "will in all likelihood have the effect of influencing" a federal election. See Brief for Appellee/Cross-Appellant FEC et al. in No. 02–1674 et al., pp. 14, 24, 84, 92–93, 94; Brief for Intervenor-Defendant Sen. John McCain et al. in No. 02–1674 et al., pp. 42–43. The mere fact that an ad may, in one fashion or another, influence an election is an insufficient reason for outlawing it. I should have thought influencing elections to be the whole point of political speech. Neither strict scrutiny nor any other standard

the Court has adopted to date permits outlawing speech on the ground that it might influence an election, which might lead to greater access to politicians by the sponsoring organization, which might lead to actual corruption or the appearance of corruption. Settled law requires a real and close connection between end and means. The attenuated causation the majority endorses today is antithetical to the concept of narrow tailoring.

3.

As I would invalidate § 203 under the primary definition, it is necessary to add a few words about the backup provision. As applied in § 203, the backup definition prohibits corporations and unions from financing from their general treasury funds

> "any broadcast, cable, or satellite communication which promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate) and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate." 2 U. S. C. § 434(f)(3)(A)(ii) (Supp. II).

The prohibition under the backup has much of the same imprecision as the ban under the primary definition, though here there is even more overbreadth. Unlike the primary definition, the backup contains no temporal or geographic limitation. Any broadcast, cable, or satellite communications—not just those aired within a certain blackout period and received by a certain segment of the population—are prohibited, provided they "promote," "support," "attack," or "oppose" a candidate. There is no showing that such a permanent and ubiquitous restriction meets First Amendment standards for the relationship between means and ends.

The backup definition is flawed for the further reason that it is vague. The crucial words—"promote," "support," "at-

tack," "oppose"—are nowhere defined. In this respect the backup is similar to the provision in the Federal Election Campaign Act that *Buckley* held to be unconstitutionally vague. Cf. 424 U. S., at 39–44 ("'No person may make any expenditure . . . relative to a clearly identified candidate during a calendar year which, when added to all other expenditures made by such person during the year advocating the election or defeat of such candidate, exceeds $1,000'").

The statutory phrase "suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate" cannot cure the overbreadth or vagueness of the backup definition. Like other key terms in the provision, these words are not defined. The lack of guidance presents serious problems of uncertainty. If "plausible" means something close to "reasonable in light of the totality of the circumstances," speakers will be provided with an insufficient degree of protection and will, as a result, engage in widespread self-censorship to avoid severe criminal penalties.

Given the statute's vagueness, even defendants' own experts disagree among themselves about whether specific ads fall within the prohibition. Hence, people "of common intelligence must necessarily guess at [the backup definition's] meaning and differ as to its application," *Connally* v. *General Constr. Co.*, 269 U. S. 385, 391 (1926). For these reasons, I would also invalidate the ban on electioneering communication under the backup definition.

4.

Before concluding the analysis on Title II, it is necessary to add a few words about the majority's analysis of § 204. The majority attempts to minimize the damage done under § 203 by construing § 204 (the Wellstone Amendment) to incorporate an exception for *MCFL*-type corporations. See *MCFL*, 479 U. S. 238. Section 204, however, does no such thing. As even the majority concedes, the provision "does not, on its face, exempt *MCFL* organizations from its prohi-

bition." *Ante,* at 211. Although we normally presume that legislators would not deliberately enact an unconstitutional statute, that presumption is inapplicable here. There is no ambiguity regarding what § 204 is intended to accomplish. Enacted to supersede the Snowe-Jeffords Amendment that would have carved out precisely this exception for *MCFL* corporations, § 204 was written to broaden BCRA's scope to include issue-advocacy groups. See, *e. g.,* App. to Brief for Appellant NRA et al. in No. 02–1675 et al., pp. 65a, 67a (Sen. Wellstone) ("[I]ndividuals with all this wealth" will "make their soft money contributions to these sham issue ads run by all these . . . organizations, which under this loophole can operate with impunity" to run "poisonous ads." I have an amendment that . . . make[s] sure . . . this big money doesn't get [through]"). Instead of deleting the Snowe-Jeffords Amendment from the bill, however, the Wellstone Amendment was inserted in a separate section to preserve severability.

Were we to indulge the presumption that Congress understood the law when it legislated, the Wellstone Amendment could be understood only as a frontal challenge to *MCFL.* Even were I to agree with the majority's interpretation of § 204, however, my analysis of Title II remains unaffected. The First Amendment protects the right of all organizations, not just a subset of them, to engage in political speech. See *Austin,* 494 U. S., at 700–701 (KENNEDY, J., dissenting) ("The First Amendment does not permit courts to exercise speech suppression authority denied to legislatures").

5.

Title II's vagueness and overbreadth demonstrate Congress' fundamental misunderstanding of the First Amendment. The Court, it must be said, succumbs to the same mistake. The majority begins with a denunciation of direct campaign contributions by corporations and unions. It then uses this rhetorical momentum as its leverage to uphold the

Act. The problem, however, is that Title II's ban on electioneering communications covers general commentaries on political issues and is far removed from laws prohibiting direct contributions from corporate and union treasuries. The severe First Amendment burden of this ban on independent expenditures requires much stronger justifications than the majority offers. See *Buckley*, *supra*, at 23.

The hostility toward corporations and unions that infuses the majority opinion is inconsistent with the viewpoint neutrality the First Amendment demands of all Government actors, including the Members of this Court. Corporations, after all, are the engines of our modern economy. They facilitate complex operations on which the Nation's prosperity depends. To say these entities cannot alert the public to pending political issues that may threaten the country's economic interests is unprecedented. Unions are also an established part of the national economic system. They, too, have their own unique insights to contribute to the political debate, but the law's impact on them is just as severe. The costs of the majority's misplaced concerns about the "corrosive and distorting effects of immense aggregations of wealth," *Austin*, *supra*, at 660, moreover, will weigh most heavily on budget-strapped nonprofit entities upon which many of our citizens rely for political commentary and advocacy. These groups must now choose between staying on the sidelines in the next election or establishing a PAC against their institutional identities. PACs are a legal construct sanctioned by Congress. They are not necessarily the means of communication chosen and preferred by the citizenry.

In the same vein the Court is quite incorrect to suggest that the mainstream press is a sufficient palliative for the novel and severe constraints this law imposes on the political process. The Court should appreciate the dynamic contribution diverse groups and associations make to the intellectual and cultural life of the Nation. It should not permit

Congress to foreclose or restrict those groups from participating in the political process by constraints not applicable to the established press.

CONCLUSION

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.

The First Amendment commands that Congress "shall make no law . . . abridging the freedom of speech." The command cannot be read to allow Congress to provide for the imprisonment of those who attempt to establish new political parties and alter the civic discourse. Our pluralistic society is filled with voices expressing new and different viewpoints, speaking through modes and mechanisms that must be allowed to change in response to the demands of an interested public. As communities have grown and technology has evolved, concerted speech not only has become more effective than a single voice but also has become the natural preference and efficacious choice for many Americans. The Court, upholding multiple laws that suppress both spontaneous and concerted speech, leaves us less free than before. Today's decision breaks faith with our tradition of robust and unfettered debate.

For the foregoing reasons, with respect, I dissent from the Court's decision upholding the main features of Titles I and II.

APPENDIX TO OPINION OF KENNEDY, J.

BCRA § 101(a), 116 Stat. 81, which sets forth new FECA § 323, 2 U. S. C. § 441i (Supp. II), provides:

"SEC. 323. SOFT MONEY OF POLITICAL PARTIES.

"(a) NATIONAL COMMITTEES.—

"(1) IN GENERAL.—A national committee of a political party (including a national congressional campaign committee of a political party) may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of this Act.

"(2) APPLICABILITY.—The prohibition established by paragraph (1) applies to any such national committee, any officer or agent acting on behalf of such a national committee, and any entity that is directly or indirectly established, financed, maintained, or controlled by such a national committee.

"(b) STATE, DISTRICT, AND LOCAL COMMITTEES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), an amount that is expended or disbursed for Federal election activity by a State, district, or local committee of a political party (including an entity that is directly or indirectly established, financed, maintained, or controlled by a State, district, or local committee of a political party and an officer or agent acting on behalf of such committee or entity), or by an association or similar group of candidates for State or local office or of individuals holding State or local office, shall be made from funds subject to the limitations, prohibitions, and reporting requirements of this Act.

"(2) APPLICABILITY.—

"(A) IN GENERAL.—Notwithstanding clause (i) or (ii) of section 301(20)(A), and subject to subparagraph (B), paragraph (1) shall not apply to any amount expended or disbursed by a State, district, or local committee of a political party for an activity described in either such clause to the extent the amounts expended or disbursed for such activity are allocated (under regulations prescribed by the Commission) among amounts—

"(i) which consist solely of contributions subject to the limitations, prohibitions, and reporting requirements of this Act (other than amounts described in subparagraph (B)(iii)); and

"(ii) other amounts which are not subject to the limitations, prohibitions, and reporting requirements of this Act (other than any requirements of this subsection).

"(B) CONDITIONS.—Subparagraph (A) shall only apply if—

"(i) the activity does not refer to a clearly identified candidate for Federal office;

"(ii) the amounts expended or disbursed are not for the costs of any broadcasting, cable, or satellite communication, other than a communication which refers solely to a clearly identified candidate for State or local office;

"(iii) the amounts expended or disbursed which are described in subparagraph (A)(ii) are paid from amounts which are donated in accordance with State law and which meet the requirements of subparagraph (C), except that no person (including any person established, financed, maintained, or controlled by such person) may donate more than $10,000 to a State, district, or local committee of a political party in a calendar year for such expenditures or disbursements; and

"(iv) the amounts expended or disbursed are made solely from funds raised by the State, local, or district committee which makes such expenditure or disbursement, and do not include any funds provided to such committee from—

"(I) any other State, local, or district committee of any State party,

"(II) the national committee of a political party (including a national congressional campaign committee of a political party),

"(III) any officer or agent acting on behalf of any committee described in subclause (I) or (II), or

"(IV) any entity directly or indirectly established, financed, maintained, or controlled by any committee described in subclause (I) or (II).

"(C) PROHIBITING INVOLVEMENT OF NATIONAL PARTIES, FEDERAL CANDIDATES AND OFFICEHOLDERS, AND STATE PARTIES ACTING JOINTLY.—Notwithstanding subsection (e) (other than subsection (e)(3)), amounts specifically authorized to be spent under subparagraph (B)(iii) meet the requirements of this subparagraph only if the amounts—

"(i) are not solicited, received, directed, transferred, or spent by or in the name of any person described in subsection (a) or (e); and

"(ii) are not solicited, received, or directed through fundraising activities conducted jointly by 2 or more State, local, or district committees of any political party or their agents, or by a State, local, or district committee of a political party on behalf of the State, local, or district committee of a political party or its agent in one or more other States.

"(c) FUNDRAISING COSTS.—An amount spent by a person described in subsection (a) or (b) to raise funds that are used, in whole or in part, for expenditures and disbursements for a Federal election activity shall be made from funds subject to the limitations, prohibitions, and reporting requirements of this Act.

"(d) TAX-EXEMPT ORGANIZATIONS.—A national, State, district, or local committee of a political party (including a national congressional campaign committee of a political party), an entity that is directly or indirectly established, financed, maintained, or controlled by any such national, State, district, or local committee or its agent, and an officer or agent acting on behalf of any

such party committee or entity, shall not solicit any funds for, or make or direct any donations to—

"(1) an organization that is described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code (or has submitted an application for determination of tax exempt status under such section) and that makes expenditures or disbursements in connection with an election for Federal office (including expenditures or disbursements for Federal election activity); or

"(2) an organization described in section 527 of such Code (other than a political committee, a State, district, or local committee of a political party, or the authorized campaign committee of a candidate for State or local office).

"(e) FEDERAL CANDIDATES.—

"(1) IN GENERAL.—A candidate, individual holding Federal office, agent of a candidate or an individual holding Federal office, or an entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of 1 or more candidates or individuals holding Federal office, shall not—

"(A) solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office, including funds for any Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act; or

"(B) solicit, receive, direct, transfer, or spend funds in connection with any election other than an election for Federal office or disburse funds in connection with such an election unless the funds—

"(i) are not in excess of the amounts permitted with respect to contributions to candidates and political committees under paragraphs (1), (2), and (3) of section 315(a); and

"(ii) are not from sources prohibited by this Act from making contributions in connection with an election for Federal office.

"(2) STATE LAW.—Paragraph (1) does not apply to the solicitation, receipt, or spending of funds by an individual described in such paragraph who is or was also a candidate for a State or local office solely in connection with such election for State or local office if the solicitation, receipt, or spending of funds is permitted under State law and refers only to such State or local candidate, or to any other candidate for the State or local office sought by such candidate, or both.

"(3) FUNDRAISING EVENTS.—Notwithstanding paragraph (1) or subsection (b)(2)(C), a candidate or an individual holding Federal office may attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party.

"(4) PERMITTING CERTAIN SOLICITATIONS.—

"(A) GENERAL SOLICITATIONS.—Notwithstanding any other provision of this subsection, an individual described in paragraph (1) may make a general solicitation of funds on behalf of any organization that is described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code (or has submitted an application for determination of tax exempt status under such section) (other than an entity whose principal purpose is to conduct activities described in clauses (i) and (ii) of section 301(20)(A)) where such solicitation does not specify how the funds will or should be spent.

"(B) CERTAIN SPECIFIC SOLICITATIONS.—In addition to the general solicitations permitted under subparagraph (A), an individual described in paragraph (1) may make a solicitation explicitly to obtain funds for

carrying out the activities described in clauses (i) and (ii) of section 301(20)(A), or for an entity whose principal purpose is to conduct such activities, if—

"(i) the solicitation is made only to individuals; and

"(ii) the amount solicited from any individual during any calendar year does not exceed $20,000.

"(f) STATE CANDIDATES.—

"(1) IN GENERAL.—A candidate for State or local office, individual holding State or local office, or an agent of such a candidate or individual may not spend any funds for a communication described in section 301(20)(A)(iii) unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act.

"(2) EXCEPTION FOR CERTAIN COMMUNICATIONS.—Paragraph (1) shall not apply to an individual described in such paragraph if the communication involved is in connection with an election for such State or local office and refers only to such individual or to any other candidate for the State or local office held or sought by such individual, or both."

BCRA § 101(b) adds a definition of "federal election activity" to FECA § 301, 2 U. S. C. § 431(20) (Supp. II), which provides as follows:

"(20) FEDERAL ELECTION ACTIVITY.—

"(A) IN GENERAL.—The term 'Federal election activity' means—

"(i) voter registration activity during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election;

"(ii) voter identification, get-out-the-vote activity, or generic campaign activity conducted in connection with

an election in which a candidate for Federal office appears on the ballot (regardless of whether a candidate for State or local office also appears on the ballot);

"(iii) a public communication that refers to a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified) and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate); or

"(iv) services provided during any month by an employee of a State, district, or local committee of a political party who spends more than 25 percent of that individual's compensated time during that month on activities in connection with a Federal election.

"(B) EXCLUDED ACTIVITY.—The term 'Federal election activity' does not include an amount expended or disbursed by a State, district, or local committee of a political party for—

"(i) a public communication that refers solely to a clearly identified candidate for State or local office, if the communication is not a Federal election activity described in subparagraph (A)(i) or (ii);

"(ii) a contribution to a candidate for State or local office, provided the contribution is not designated to pay for a Federal election activity described in subparagraph (A);

"(iii) the costs of a State, district, or local political convention; and

"(iv) the costs of grassroots campaign materials, including buttons, bumper stickers, and yard signs, that name or depict only a candidate for State or local office."

Title 2 U. S. C. §§ 441b(a) and (b)(1)–(2) (2000 ed. and Supp. II), as amended by BCRA § 203, provide:

"(a) It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section, or any officer or any director of any corporation or any national bank or any officer of any labor organization to consent to any contribution or expenditure by the corporation, national bank, or labor organization, as the case may be, prohibited by this section.

"(b)(1) For the purposes of this section the term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

"(2) For purposes of this section and section 79*l*(h) of title 15, the term 'contribution or expenditure' includes a contribution or expenditure, as those terms are defined in section 431 of this title, and also includes any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and reg-

> ulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section or for any applicable electioneering communication, but shall not include (A) communications by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and their families on any subject; (B) nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel and their families, or by a labor organization aimed at its members and their families; and (C) the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock."

CHIEF JUSTICE REHNQUIST, dissenting with respect to BCRA Titles I and V.*

Although I join JUSTICE KENNEDY's opinion in full, I write separately to highlight my disagreement with the Court on Title I of the Bipartisan Campaign Reform Act of 2002 (BCRA), 116 Stat. 81, and to dissent from the Court's opinion upholding § 504 of Title V.

I

The issue presented by Title I is not, as the Court implies, whether Congress can permissibly regulate campaign contributions to candidates, *de facto* or otherwise, or seek to eliminate corruption in the political process. Rather, the issue is whether Congress can permissibly regulate much speech that has no plausible connection to candidate contributions or corruption to achieve those goals. Under our precedent,

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*JUSTICE SCALIA and JUSTICE KENNEDY join this opinion in its entirety.

restrictions on political contributions implicate important First Amendment values and are constitutional only if they are "closely drawn" to reduce the corruption of federal candidates or the appearance of corruption. *Buckley* v. *Valeo*, 424 U. S. 1, 25–27 (1976) *(per curiam)*. Yet, the Court glosses over the breadth of the restrictions, characterizing Title I of BCRA as "do[ing] little more than regulat[ing] the ability of wealthy individuals, corporations, and unions to contribute large sums of money to influence federal elections, federal candidates, and federal officeholders." *Ante*, at 138 (joint opinion of STEVENS and O'CONNOR, JJ.). Because, in reality, Title I is much broader than the Court allows, regulating a good deal of speech that does *not* have the potential to corrupt federal candidates and officeholders, I dissent.

The linchpin of Title I, new FECA § 323(a), prohibits national political party committees from "solicit[ing]," "receiv[ing]," "direct[ing] to another person," and "spend[ing]" *any* funds not subject to federal regulation, even if those funds are used for non-election-related activities. 2 U. S. C. § 441i(a)(1) (Supp. II). The Court concludes that such a restriction is justified because under FECA, "donors have been free to contribute substantial sums of soft money to the national parties, which the parties can spend for the specific purpose of influencing a particular candidate's federal election." *Ante*, at 145. Accordingly, "[i]t is not only plausible, but likely, that candidates would feel grateful for such donations and that donors would seek to exploit that gratitude." *Ibid.* But the Court misses the point. Certainly "infusions of money into [candidates'] campaigns," *Federal Election Comm'n* v. *National Conservative Political Action Comm.*, 470 U. S. 480, 497 (1985), can be regulated, but § 323(a) does not regulate only donations given to influence a particular federal election; it regulates *all donations* to national political committees, no matter the use to which the funds are put.

The Court attempts to sidestep the unprecedented breadth of this regulation by stating that the "close relationship be-

tween federal officeholders and the national parties" makes all donations to the national parties "suspect." *Ante*, at 154–155. But a close association with others, especially in the realm of political speech, is not a surrogate for corruption; it is one of our most treasured First Amendment rights. See *California Democratic Party* v. *Jones*, 530 U. S. 567, 574 (2000); *Eu* v. *San Francisco County Democratic Central Comm.*, 489 U. S. 214, 225 (1989); *Tashjian* v. *Republican Party of Conn.*, 479 U. S. 208, 214 (1986). The Court's willingness to impute corruption on the basis of a relationship greatly infringes associational rights and expands Congress' ability to regulate political speech. And there is nothing in the Court's analysis that limits congressional regulation to national political parties. In fact, the Court relies in part on this closeness rationale to regulate *nonprofit organizations*. *Ante*, at 156–157, n. 51. Who knows what association will be deemed too close to federal officeholders next. When a donation to an organization has no potential to corrupt a federal officeholder, the relationship between the officeholder and the organization is simply irrelevant.

The Court fails to recognize that the national political parties are exemplars of political speech at all levels of government, in addition to effective fundraisers for federal candidates and officeholders. For sure, national political party committees exist in large part to elect federal candidates, but as a majority of the District Court found, they also promote coordinated political messages and participate in public policy debates unrelated to federal elections, promote, even in off-year elections, state and local candidates and seek to influence policy at those levels, and increase public participation in the electoral process. See 251 F. Supp. 2d 176, 334–337 (DC 2003) (Henderson, J., concurring in judgment in part and dissenting in part); *id.*, at 820–821 (Leon, J.). Indeed, some national political parties exist primarily for the purpose of expressing ideas and generating debate. App. 185–

186 (declaration of Stephen L. Dasbach et al. ¶11 (describing Libertarian Party)).

As these activities illustrate, political parties often foster speech crucial to a healthy democracy, 251 F. Supp. 2d, at 820 (Leon, J.), and fulfill the need for like-minded individuals to band together and promote a political philosophy, see *Jones*, *supra*, at 574; *Eu*, *supra*, at 225. When political parties engage in pure political speech that has little or no potential to corrupt their federal candidates and officeholders, the Government cannot constitutionally burden their speech any more than it could burden the speech of individuals engaging in these same activities. *E. g.*, *National Conservative Political Action Comm.*, *supra*, at 496–497; *Citizens Against Rent Control/Coalition for Fair Housing* v. *Berkeley*, 454 U. S. 290, 297–298 (1981); *Buckley*, 424 U. S., at 27. Notwithstanding the Court's citation to the numerous abuses of FECA, under any definition of "exacting scrutiny," the means chosen by Congress, restricting all donations to national parties no matter the purpose for which they are given or are used, are not "closely drawn to avoid unnecessary abridgment of associational freedoms," *id.*, at 25.

BCRA's overinclusiveness is not limited to national political parties. To prevent the circumvention of the ban on the national parties' use of nonfederal funds, BCRA extensively regulates state parties, primarily state elections, and state candidates. For example, new FECA §323(b), by reference to new FECA §§301(20)(A)(i)–(ii), prohibits state parties from using nonfederal funds[1] for general partybuilding activities such as voter registration, voter identification, and get out the vote for state candidates even if federal candidates are not mentioned. See 2 U. S. C. §§441i(b), 431(20)(A)(i)–(ii) (Supp. II). New FECA §323(d) prohib-

[1] The Court points out that state parties may use Levin funds for certain activities. Levin funds, however, are still federal restrictions on speech, even if they are less onerous than the restrictions placed on national parties.

its state and local political party committees, like their national counterparts, from soliciting and donating "any funds" to nonprofit organizations such as the National Rifle Association or the National Association for the Advancement of Colored People (NAACP). See 2 U. S. C. § 441i(d). And, new FECA § 323(f) requires a state gubernatorial candidate to abide by federal funding restrictions when airing a television ad that tells voters that, if elected, he would oppose the President's policy of increased oil and gas exploration within the State because it would harm the environment. See 2 U. S. C. §§ 441i(f), 431(20)(A)(iii) (regulating "public communication[s] that refe[r] to a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified) and that . . . attacks or opposes a candidate for that office").

Although these provisions are more focused on activities that may *affect* federal elections, there is scant evidence in the record to indicate that federal candidates or officeholders are corrupted or would appear corrupted by donations for these activities. See 251 F. Supp. 2d, at 403, 407, 416, 422 (Henderson, J., concurring in judgment in part and dissenting in part); *id.*, at 779–780, 791 (Leon, J.); see also *Colorado Republican Federal Campaign Comm.* v. *Federal Election Comm'n*, 518 U. S. 604, 616 (1996) (plurality opinion) (noting that "the opportunity for corruption posed by [nonfederal contributions for state elections, get-out-the-vote, and voter registration activities] is, at best, attenuated"). Nonetheless, the Court concludes that because these activities *benefit* federal candidates and officeholders, see *ante*, at 167, or prevent the circumvention of pre-existing or contemporaneously enacted restrictions,[2] see *ante*, at 165–166, 174–177, 178–179,

[2] Ironically, in the Court's view, Congress cannot be trusted to exercise judgment independent of its parties' large donors in its usual voting decisions because donations may be used to further its members' reelection campaigns, but yet must be deferred to when it passes a comprehensive regulatory regime that restricts election-related speech. It seems to me

185, it must defer to the "'predictive judgments of Congress,'" *ante*, at 165 (quoting *Turner Broadcasting System, Inc.* v. *FCC*, 512 U. S. 622, 665 (1994) (plurality opinion)).

Yet the Court cannot truly mean what it says. Newspaper editorials and political talk shows *benefit* federal candidates and officeholders every bit as much as a generic voter registration drive conducted by a state party; there is little doubt that the endorsement of a major newspaper *affects* federal elections, and federal candidates and officeholders are surely "grateful," *ante*, at 168, for positive media coverage. I doubt, however, the Court would seriously contend that we must defer to Congress' judgment if it chose to reduce the influence of political endorsements in federal elections.[3] See *Miami Herald Publishing Co.* v. *Tornillo*, 418 U. S. 241, 247, 250 (1974) (holding unconstitutional a state law that required newspapers to provide "right to reply" to any candidate who was personally or professionally assailed in order to eliminate the "abuses of bias and manipulative reportage" by the press).

It is also true that any circumvention rationale ultimately must rest on the circumvention itself leading to the corruption of federal candidates and officeholders. See *Buckley*, *supra*, at 38 (upholding restrictions on funds donated to na-

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no less likely that Congress would create rules that favor its Members' reelection chances, than be corrupted by the influx of money to its political parties, which may in turn be used to fund a portion of the Members' reelection campaigns.

[3] The Court's suggestion that the "close relationship" between federal officeholders and state and local political parties in some way excludes the media from its rationale is unconvincing, see *ante*, at 285, n. 16 (THOMAS, J., concurring in part, concurring in result in part, and dissenting in part), particularly because such a relationship may be proved with minimal evidence. Indeed, although the Court concludes that local political parties have a "close relationship" with federal candidates, thus warranting greater congressional regulation, I am unaware of *any* evidence in the record that indicates that local political parties have *any* relationship with federal candidates.

tional political parties "for the purpose of influencing any election for a Federal office" because they were prophylactic measures designed "to prevent evasion" of the contribution limit on *candidates*). All political speech that is not sifted through federal regulation circumvents the regulatory scheme to some degree or another, and thus by the Court's standard would be a "loophole" in the current system.[4] Unless the Court would uphold federal regulation of all funding of political speech, a rationale dependent on circumvention alone will not do. By untethering its inquiry from corruption or the appearance of corruption, the Court has removed the touchstone of our campaign finance precedent and has failed to replace it with any logical limiting principle.

But such an untethering is necessary to the Court's analysis. Only by using amorphous language to conclude a federal interest, however vaguely defined, exists can the Court avoid the obvious fact that new FECA §§ 323(a), (b), (d), and (f) are vastly overinclusive. Any campaign finance law aimed at reducing corruption will almost surely affect federal elections or prohibit the circumvention of federal law, and if broad enough, most laws will generally reduce some appearance of corruption. Indeed, it is precisely because

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[4] BCRA does not even close all of the "loopholes" that currently exist. Nonprofit organizations are currently able to accept, without disclosing, unlimited donations for voter registration, voter identification, and get-out-the-vote activities, and the record indicates that such organizations already receive large donations, sometimes in the millions of dollars, for these activities, 251 F. Supp. 2d 176, 323 (DC 2003) (Henderson, J., concurring in judgment in part and dissenting in part) (noting that the NAACP Voter Fund received a single, anonymous $7 million donation for get-out-the-vote activities). There is little reason why all donations to these nonprofit organizations, no matter the purpose for which the money is used, will deserve any more protection than the Court provides state parties if Congress decides to regulate them. And who knows what the next "loophole" will be.

broad laws are likely to nominally further a legitimate interest that we require Congress to tailor its restrictions; requiring all federal candidates to self-finance their campaigns would surely reduce the appearance of donor corruption, but it would hardly be constitutional. In allowing Congress to rely on general principles such as affecting a federal election or prohibiting the circumvention of existing law, the Court all but eliminates the "closely drawn" tailoring requirement and meaningful judicial review.

No doubt Congress was convinced by the many abuses of the current system that something in this area must be done. Its response, however, was too blunt. Many of the abuses described by the Court involve donations that were made for the "purpose of influencing a federal election," and thus are already regulated. See *Buckley*, *supra*. Congress could have sought to have the existing restrictions enforced or to enact other restrictions that are "closely drawn" to its legitimate concerns. But it should not be able to broadly restrict political speech in the fashion it has chosen. Today's decision, by not requiring tailored restrictions, has significantly reduced the protection for political speech having little or nothing to do with corruption or the appearance of corruption.

II

BCRA § 504 amends § 315 of the Communications Act of 1934 to require broadcast licensees to maintain and disclose records of any *request* to purchase broadcast time that "is made by or on behalf of a legally qualified candidate for public office" or that "communicates a message relating to any political matter of national importance," including communications relating to "a legally qualified candidate," "any election to Federal office," and "a national legislative issue of public importance." BCRA § 504; 47 U. S. C. § 315(e)(1)

(Supp. II).[5] This section differs from other BCRA disclosure sections because it requires *broadcast licensees* to disclose *requests* to purchase broadcast time rather than requiring *purchasers* to disclose their *disbursements* for broadcast time. See, *e. g.*, BCRA § 201. The Court concludes that § 504 "must survive a *facial* attack under any potentially ap-

[5] Section 315(e), as amended by BCRA § 504, provides:

"Political record

"(1) In general

"A licensee shall maintain, and make available for public inspection, a complete record of a request to purchase broadcast time that—

"(A) is made by or on behalf of a legally qualified candidate for public office; or

"(B) communicates a message relating to any political matter of national importance, including—

"(i) a legally qualified candidate;

"(ii) any election to Federal office; or

"(iii) a national legislative issue of public importance.

"(2) Contents of record

"A record maintained under paragraph (1) shall contain information regarding—

"(A) whether the request to purchase broadcast time is accepted or rejected by the licensee;

"(B) the rate charged for the broadcast time;

"(C) the date and time on which the communication is aired;

"(D) the class of time that is purchased;

"(E) the name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);

"(F) in the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and

"(G) in the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person.

"(3) Time to maintain file

"The information required under this subsection shall be placed in a political file as soon as possible and shall be retained by the licensee for a period of not less than 2 years."

plicable First Amendment standard, including that of heightened scrutiny." *Ante*, at 285 (opinion of BREYER, J.). I disagree.

This section is deficient because of the absence of a sufficient governmental interest to justify disclosure of mere requests to purchase broadcast time, as well as purchases themselves. The Court approaches § 504 almost exclusively from the perspective of the broadcast licensees, ignoring the interests of candidates and other purchasers, whose speech and association rights are affected by § 504. See, *e. g.*, *ante*, at 236 (noting that broadcasters are subject to numerous recordkeeping requirements); *ante*, at 237 (opining that this Court has recognized "broad governmental authority for agency information demands from regulated entities"); *ante*, at 239 ("[W]e cannot say that these requirements will impose disproportionate administrative burdens"). An approach that simply focuses on whether the administrative burden is justifiable is untenable. Because § 504 impinges on core First Amendment rights, it is subject to a more demanding test than mere rational-basis review. The Court applies the latter by asking essentially whether there is any conceivable reason to support § 504. See *ibid.* (discussing the ways in which the disclosure "can help" the FCC and the public); *ante*, at 240 (noting that the "recordkeeping requirements seem likely to help the FCC" enforce the fairness doctrine).

Required disclosure provisions that deter constitutionally protected association and speech rights are subject to heightened scrutiny. See *Buckley*, 424 U. S., at 64. When applying heightened scrutiny, we first ask whether the Government has asserted an interest sufficient to justify the disclosure of requests to purchase broadcast time. *Ibid.;* see *ante*, at 196 (joint opinion of STEVENS and O'CONNOR, JJ.) (concluding that the important state interests the *Buckley* Court held justified FECA's disclosure requirements apply to BCRA § 201's disclosure requirement). But the Govern-

ment, in its brief, proffers no interest whatever to support § 504 as a whole.

Contrary to the Court's suggestion, *ante*, at 238 (opinion of BREYER, J.), the Government's brief does not succinctly present interests sufficient to support § 504. The two paragraphs that the Court relies on provide the following:

> "As explained in the government's brief in opposition to the motion for summary affirmance on this issue filed by plaintiff National Association of Broadcasters (NAB), longstanding FCC regulations impose disclosure requirements with respect to the sponsorship of broadcast matter 'involving the discussion of a controversial issue of public importance.' 47 C. F. R. 73.1212(d) and (e) (2002); see 47 C. F. R. 76.1701(d) (2002) (same standard used in disclosure regulation governing cablecasting). By enabling viewers and listeners to identify the persons actually responsible for communications aimed at a mass audience, those regulations assist the public in evaluating the message transmitted. See *Bellotti*, 435 U. S. at 792 n. 32 ('Identification of the source of advertising may be required . . . so that the people will be able to evaluate the arguments to which they are being subjected.').
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> "The range of information required to be disclosed under BCRA § 504 is comparable to the disclosures mandated by pre-existing FCC rules. Compare 47 U. S. C. 315(e)(2)(G) (added by BCRA § 504), with 47 C. F. R. 73.1212(e) and 76.1701(d) (2002). Plaintiffs do not attempt to show that BCRA § 504's requirements are more onerous than the FCC's longstanding rules, nor do they contend that the pre-existing agency regulations are themselves unconstitutional. See generally 02–1676 Gov't Br. in Opp. to Mot. of NAB for Summ. Aff. 4–9. Because BCRA § 504 is essentially a codification of established and unchallenged regulatory requirements,

> plaintiffs' First Amendment claim should be rejected." Brief for FEC et al. in No. 02–1674 et al., pp. 132–133.

While these paragraphs attempt to set forth a justification for the new Communications Act § 315(e)(1)(B), discussed below, I fail to see any justification for BCRA § 504 in its entirety. Nor do I find persuasive the Court's and the Government's argument that pre-existing unchallenged agency regulations imposing similar disclosure requirements compel the conclusion that § 504 is constitutional and somehow relieve the Government of its burden of advancing a constitutionally sufficient justification for § 504.

At oral argument, the Government counsel indicated that one of the interests supporting § 504 in its entirety stems from the fairness doctrine, Tr. of Oral Arg. 192, which in general imposes an obligation on licensees to devote a "reasonable percentage" of broadcast time to issues of public importance in a way that reflects opposing views. See *Red Lion Broadcasting Co.* v. *FCC*, 395 U. S. 367 (1969). Assuming, *arguendo*, this latter-day assertion should be considered, I think the District Court correctly noted that there is nothing in the record that indicates licensees have treated purchasers unfairly. 251 F. Supp. 2d, at 812 (Leon, J.). In addition, this interest seems wholly unconnected to the central purpose of BCRA, and it is not at all similar to the governmental interests in *Buckley* that we found to be "sufficiently important to outweigh the possibility of infringement," 424 U. S., at 66.

As to the disclosure requirements involving "any political matter of national importance" under the new Communications Act § 315(e)(1)(B), the Government suggests that the disclosure enables viewers to evaluate the message transmitted.[6] First, insofar as BCRA § 504 requires reporting of

[6] Communications relating to candidates will be covered by the new Communications Act § 315(e)(1)(A), so, in this context, we must consider, for example, the plaintiff-organizations, which may attempt to use the broadcast medium to convey a message espoused by the organizations.

"request[s for] broadcast time" as well as actual broadcasts, it is not supported by this goal. Requests that do not mature into actual purchases will have no viewers, but the information may allow competitors or adversaries to obtain information regarding organizational or political strategies of purchasers. Second, even as to broadcasts themselves, in this noncandidate-related context, this goal is a far cry from the Government interests endorsed in *Buckley*, which were limited to evaluating and preventing corruption of federal candidates. *Ibid.;* see also *McIntyre* v. *Ohio Elections Comm'n*, 514 U. S. 334, 354 (1995).

As to disclosure requirements with respect to candidates under the new Communications Act § 315(e)(1)(A), BCRA § 504 significantly overlaps with § 201, which is today also upheld by this Court, *ante*, at 194–202 (joint opinion of STEVENS and O'CONNOR, JJ.), and requires purchasers of "electioneering communications" to disclose a wide array of information, including the amount of each disbursement and the elections to which electioneering communications pertain. While I recognize that there is this overlap, § 504 imposes a different burden on the purchaser's First Amendment rights: as noted above, § 201 is limited to *purchasers'* disclosure of *disbursements* for electioneering communications, whereas § 504 requires *broadcast licensees'* disclosure of *requests* for broadcast time by purchasers. Not only are the purchasers' requests, which may never result in an actual advertisement, subject to the disclosure requirements, but § 504 will undoubtedly result in increased costs of communication because the licensees will shift the costs of the onerous disclosure and recordkeeping requirements to purchasers. The Government fails to offer a reason for the separate burden and apparent overlap.

The Government cannot justify, and for that matter, has not attempted to justify, its requirement that "request[s for] broadcast" time be publicized. On the record before this Court, I cannot even speculate as to a governmental interest

that would allow me to conclude that the disclosure of "requests" should be upheld. Such disclosure risks, *inter alia*, allowing candidates and political groups the opportunity to ferret out a purchaser's political strategy and, ultimately, unduly burdens the First Amendment freedoms of purchasers.

Absent some showing of a Government interest served by § 504 and in light of the breadth of disclosure of "requests," I must conclude that § 504 fails to satisfy First Amendment scrutiny.

JUSTICE STEVENS, dissenting with respect to § 305.*

THE CHIEF JUSTICE, writing for the Court, concludes that the McConnell plaintiffs lack standing to challenge § 305 of the Bipartisan Campaign Reform Act of 2002 (BCRA) because Senator McConnell cannot be affected by the provision until "45 days before the Republican primary election in 2008." *Ante*, at 226. I am not persuaded that Article III's case-or-controversy requirement imposes such a strict temporal limit on our jurisdiction. By asserting that he has run attack ads in the past, that he plans to run such ads in his next campaign, and that § 305 will adversely affect his campaign strategy, Senator McConnell has identified a "concrete," "'distinct,'" and "actual" injury, *Whitmore* v. *Arkansas*, 495 U. S. 149, 155 (1990). That the injury is distant in time does not make it illusory.

The second prong of the standing inquiry—whether the alleged injury is fairly traceable to the defendants' challenged action and not the result of a third party's independent choices†—poses a closer question. Section 305 does not *require* broadcast stations to charge a candidate higher rates for unsigned ads that mention the candidate's opponent. Rather, the provision simply permits stations to charge their normal rates for such ads. Some stations may take advan-

*JUSTICE GINSBURG and JUSTICE BREYER join this opinion in its entirety.

† *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560–561 (1992).

tage of this regulatory gap and adopt pricing schemes that discriminate between the kind of ads that Senator McConnell has run in the past and those that strictly comply with § 305. It is also possible, however, that instead of incurring the transaction costs of policing candidates' compliance with § 305, stations will continue to charge the same rates for attack ads as for all other campaign ads. In the absence of any record evidence that stations will uniformly choose to charge Senator McConnell higher rates for the attack ads he proposes to run in 2008, it is at least arguable that his alleged injury is not traceable to BCRA § 305.

Nevertheless, I would entertain plaintiffs' challenge to § 305 on the merits and uphold the section. Like BCRA §§ 201, 212, and 311, § 305 serves an important—and constitutionally sufficient—informational purpose. Moreover, § 305's disclosure requirements largely overlap those of § 311, and plaintiffs identify no reason why any candidate already in compliance with § 311 will be harmed by the marginal additional burden of complying with § 305. Indeed, I am convinced that "the important governmental interest of 'shed[ding] the light of publicity' on campaign financing," invoked above in connection with § 311, *ante*, at 231 (opinion of REHNQUIST, C. J.), would suffice to support a legislative provision expressly requiring all sponsors of attack ads to identify themselves in their ads. That § 305 seeks to achieve the same purpose indirectly, by withdrawing a statutory benefit, does not render the provision any less sound.

Finally, I do not regard § 305 as a constitutionally suspect "viewpoint-based regulation." Brief for Appellant/Cross-Appellee Sen. Mitch McConnell et al. in No. 02–1674 et al., p. 67. Like BCRA's other disclosure requirements, § 305 evenhandedly regulates speech based on its electioneering content. Although the section reaches only ads that mention opposing candidates, it applies equally to all such ads. Disagreement with one's opponent obviously expresses a

"viewpoint," but § 305 treats that expression exactly like the opponent's response.

In sum, I would uphold § 305.

Syllabus

MARYLAND *v.* PRINGLE

CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

No. 02–809. Argued November 3, 2003—Decided December 15, 2003

A police officer stopped a car for speeding at 3:16 a.m.; searched the car, seizing $763 from the glove compartment and cocaine from behind the back-seat armrest; and arrested the car's three occupants after they denied ownership of the drugs and money. Respondent Pringle, the front-seat passenger, was convicted of possession with intent to distribute cocaine and possession of cocaine, and was sentenced to 10 years' incarceration without the possibility of parole. The Maryland Court of Special Appeals affirmed, but the State Court of Appeals reversed, holding that, absent specific facts tending to show Pringle's knowledge and dominion or control over the drugs, the mere finding of cocaine in the back armrest when Pringle was a front-seat passenger in a car being driven by its owner was insufficient to establish probable cause for an arrest for possession.

Held: Because the officer had probable cause to arrest Pringle, the arrest did not contravene the Fourth and Fourteenth Amendments. Maryland law authorizes police officers to execute warrantless arrests, *inter alia*, where the officer has probable cause to believe that a felony has been committed or is being committed in the officer's presence. Here, it is uncontested that the officer, upon recovering the suspected cocaine, had probable cause to believe a felony had been committed; the question is whether he had probable cause to believe Pringle committed that crime. The "substance of all the definitions of probable cause is a reasonable ground for belief of guilt," *Brinegar* v. *United States*, 338 U. S. 160, 175, and that belief must be particularized with respect to the person to be searched or seized, *Ybarra* v. *Illinois*, 444 U. S. 85, 91. To determine whether an officer had probable cause to make an arrest, a court must examine the events leading up to the arrest, and then decide "whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to" probable cause. *Ornelas* v. *United States*, 517 U. S. 690, 696. As it is an entirely reasonable inference from the facts here that any or all of the car's occupants had knowledge of, and exercised dominion and control over, the cocaine, a reasonable officer could conclude that there was probable cause to believe Pringle committed the crime of possession of cocaine, either solely or jointly. Pringle's attempt to characterize this as a guilt-by-association case is

unavailing. *Ybarra* v. *Illinois*, *supra*, and *United States* v. *Di Re*, 332 U. S. 581, distinguished. Pp. 369–374.

370 Md. 525, 805 A. 2d 1016, reversed and remanded.

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

Gary E. Bair, Solicitor General of Maryland, argued the cause for petitioner. With him on the briefs were *J. Joseph Curran, Jr.*, Attorney General, and *Kathryn Grill Graeff* and *Shannon E. Avery*, Assistant Attorneys General.

Sri Srinivasan argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Olson*, *Assistant Attorney General Chertoff*, *Deputy Solicitor General Dreeben*, and *Deborah Watson*.

Nancy S. Forster argued the cause for respondent. With her on the brief were *Stephen E. Harris* and *Sherrie Glasser*.*

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

In the early morning hours a passenger car occupied by three men was stopped for speeding by a police officer. The

*Briefs of *amici curiae* urging reversal were filed for the State of Ohio et al. by *Jim Petro*, Attorney General of Ohio, *Douglas R. Cole*, State Solicitor, *Stephen P. Carney*, Senior Deputy Solicitor, and *Diane Richards Brey*, Deputy Solicitor, and by the Attorneys General for their respective jurisdictions as follows: *William H. Pryor, Jr.*, of Alabama, *Gregg Renkes* of Alaska, *Christopher L. Morano* of Connecticut, *M. Jane Brady* of Delaware, *Mark J. Bennett* of Hawaii, *Lisa Madigan* of Illinois, *Richard P. Ieyoub* of Louisiana, *Michael A. Cox* of Michigan, *Jeremiah W. (Jay) Nixon* of Missouri, *Mike McGrath* of Montana, *Brian Sandoval* of Nevada, *Patricia A. Madrid* of New Mexico, *W. A. Drew Edmondson* of Oklahoma, *Anabelle Rodríguez* of Puerto Rico, *Henry Dargan McMaster* of South Carolina, *Larry Long* of South Dakota, *Greg Abbott* of Texas, *Mark L. Shurtleff* of Utah, *Jerry W. Kilgore* of Virginia, and *Darrell V. McGraw, Jr.*, of West Virginia; and for the Criminal Justice Legal Foundation by *Kent S. Scheidegger* and *Charles L. Hobson*.

Steven R. Shapiro and *Lisa Kemler* filed a brief for the American Civil Liberties Union et al. as *amici curiae* urging affirmance.

officer, upon searching the car, seized $763 of rolled-up cash from the glove compartment and five glassine baggies of cocaine from between the back-seat armrest and the back seat. After all three men denied ownership of the cocaine and money, the officer arrested each of them. We hold that the officer had probable cause to arrest Pringle—one of the three men.

At 3:16 a.m. on August 7, 1999, a Baltimore County Police officer stopped a Nissan Maxima for speeding. There were three occupants in the car: Donte Partlow, the driver and owner, respondent Pringle, the front-seat passenger, and Otis Smith, the back-seat passenger. The officer asked Partlow for his license and registration. When Partlow opened the glove compartment to retrieve the vehicle registration, the officer observed a large amount of rolled-up money in the glove compartment. The officer returned to his patrol car with Partlow's license and registration to check the computer system for outstanding violations. The computer check did not reveal any violations. The officer returned to the stopped car, had Partlow get out, and issued him an oral warning.

After a second patrol car arrived, the officer asked Partlow if he had any weapons or narcotics in the vehicle. Partlow indicated that he did not. Partlow then consented to a search of the vehicle. The search yielded $763 from the glove compartment and five plastic glassine baggies containing cocaine from behind the back-seat armrest. When the officer began the search the armrest was in the upright position flat against the rear seat. The officer pulled down the armrest and found the drugs, which had been placed between the armrest and the back seat of the car.

The officer questioned all three men about the ownership of the drugs and money, and told them that if no one admitted to ownership of the drugs he was going to arrest them all. The men offered no information regarding the owner-

ship of the drugs or money. All three were placed under arrest and transported to the police station.

Later that morning, Pringle waived his rights under *Miranda* v. *Arizona*, 384 U. S. 436 (1966), and gave an oral and written confession in which he acknowledged that the cocaine belonged to him, that he and his friends were going to a party, and that he intended to sell the cocaine or "[u]se it for sex." App. 26. Pringle maintained that the other occupants of the car did not know about the drugs, and they were released.

The trial court denied Pringle's motion to suppress his confession as the fruit of an illegal arrest, holding that the officer had probable cause to arrest Pringle. A jury convicted Pringle of possession with intent to distribute cocaine and possession of cocaine. He was sentenced to 10 years' incarceration without the possibility of parole. The Court of Special Appeals of Maryland affirmed. 141 Md. App. 292, 785 A. 2d 790 (2001).

The Court of Appeals of Maryland, by divided vote, reversed, holding that, absent specific facts tending to show Pringle's knowledge and dominion or control over the drugs, "the mere finding of cocaine in the back armrest when [Pringle] was a front seat passenger in a car being driven by its owner is insufficient to establish probable cause for an arrest for possession." 370 Md. 525, 545, 805 A. 2d 1016, 1027 (2002). We granted certiorari, 538 U. S. 921 (2003), and now reverse.

Under the Fourth Amendment, made applicable to the States by the Fourteenth Amendment, *Mapp* v. *Ohio*, 367 U. S. 643 (1961), the people are "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, . . . and no Warrants shall issue, but upon probable cause . . . ." U. S. Const., Amdt. 4. Maryland law authorizes police officers to execute warrantless arrests, *inter alia*, for felonies committed in an officer's presence or where an officer has probable cause to believe that a felony

has been committed or is being committed in the officer's presence. Md. Ann. Code, Art. 27, § 594B (1996) (repealed 2001). A warrantless arrest of an individual in a public place for a felony, or a misdemeanor committed in the officer's presence, is consistent with the Fourth Amendment if the arrest is supported by probable cause. *United States* v. *Watson*, 423 U. S. 411, 424 (1976); see *Atwater* v. *Lago Vista*, 532 U. S. 318, 354 (2001) (stating that "[i]f an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender").

It is uncontested in the present case that the officer, upon recovering the five plastic glassine baggies containing suspected cocaine, had probable cause to believe a felony had been committed. Md. Ann. Code, Art. 27, § 287 (1996) (repealed 2002) (prohibiting possession of controlled dangerous substances). The sole question is whether the officer had probable cause to believe that Pringle committed that crime.[1]

The long-prevailing standard of probable cause protects "citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime," while giving "fair leeway for enforcing the law in the community's protection." *Brinegar* v. *United States*, 338 U. S. 160, 176 (1949). On many occasions, we have reiterated that the probable-cause standard is a "'practical, nontechnical conception'" that deals with "'the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" *Illinois* v. *Gates*, 462 U. S. 213, 231 (1983) (quoting *Brinegar, supra*, at 175–176); see, *e. g.*, *Ornelas* v. *United States*, 517 U. S. 690, 695 (1996); *United States* v. *Sokolow*, 490 U. S. 1, 7–8 (1989). "[P]robable cause is a fluid

[1] Maryland law defines "possession" as "the exercise of actual or constructive dominion or control over a thing by one or more persons." Md. Ann. Code, Art. 27, § 277(s) (1996) (repealed 2002).

concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules." *Gates*, 462 U. S., at 232.

The probable-cause standard is incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstances. See *ibid.*; *Brinegar*, 338 U. S., at 175. We have stated, however, that "[t]he substance of all the definitions of probable cause is a reasonable ground for belief of guilt," *ibid.* (internal quotation marks and citations omitted), and that the belief of guilt must be particularized with respect to the person to be searched or seized, *Ybarra* v. *Illinois*, 444 U. S. 85, 91 (1979). In *Illinois* v. *Gates*, we noted:

> "As early as *Locke* v. *United States*, 7 Cranch 339, 348 (1813), Chief Justice Marshall observed, in a closely related context: '[T]he term "probable cause," according to its usual acceptation, means less than evidence which would justify condemnation . . . . It imports a seizure made under circumstances which warrant suspicion.' More recently, we said that 'the *quanta* . . . of proof' appropriate in ordinary judicial proceedings are inapplicable to the decision to issue a warrant. *Brinegar*, 338 U. S., at 173. Finely tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence, useful in formal trials, have no place in the [probable-cause] decision." 462 U. S., at 235.

To determine whether an officer had probable cause to arrest an individual, we examine the events leading up to the arrest, and then decide "whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to" probable cause, *Ornelas*, *supra*, at 696.

In this case, Pringle was one of three men riding in a Nissan Maxima at 3:16 a.m. There was $763 of rolled-up cash

in the glove compartment directly in front of Pringle.[2] Five plastic glassine baggies of cocaine were behind the back-seat armrest and accessible to all three men. Upon questioning, the three men failed to offer any information with respect to the ownership of the cocaine or the money.

We think it an entirely reasonable inference from these facts that any or all three of the occupants had knowledge of, and exercised dominion and control over, the cocaine. Thus, a reasonable officer could conclude that there was probable cause to believe Pringle committed the crime of possession of cocaine, either solely or jointly.

Pringle's attempt to characterize this case as a guilt-by-association case is unavailing. His reliance on *Ybarra* v. *Illinois*, *supra*, and *United States* v. *Di Re*, 332 U. S. 581 (1948), is misplaced. In *Ybarra*, police officers obtained a warrant to search a tavern and its bartender for evidence of possession of a controlled substance. Upon entering the tavern, the officers conducted patdown searches of the customers present in the tavern, including Ybarra. Inside a cigarette pack retrieved from Ybarra's pocket, an officer found six tinfoil packets containing heroin. We stated:

> "[A] person's mere propinquity to others independently suspected of criminal activity does not, without more,

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[2] The Court of Appeals of Maryland dismissed the $763 seized from the glove compartment as a factor in the probable-cause determination, stating that "[m]oney, without more, is innocuous." 370 Md. 524, 546, 805 A. 2d 1016, 1028 (2002). The court's consideration of the money in isolation, rather than as a factor in the totality of the circumstances, is mistaken in light of our precedents. See, *e. g.*, *Illinois* v. *Gates*, 462 U. S. 213, 230–231 (1983) (opining that the totality of the circumstances approach is consistent with our prior treatment of probable cause); *Brinegar* v. *United States*, 338 U. S. 160, 175–176 (1949) ("Probable cause exists where 'the facts and circumstances within their [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed"). We think it is abundantly clear from the facts that this case involves more than money alone.

> give rise to probable cause to search that person. *Sibron* v. *New York*, 392 U. S. 40, 62–63 (1968). Where the standard is probable cause, a search or seizure of a person must be supported by probable cause particularized with respect to that person. This requirement cannot be undercut or avoided by simply pointing to the fact that coincidentally there exists probable cause to search or seize another or to search the premises where the person may happen to be." 444 U. S., at 91.

We held that the search warrant did not permit body searches of all of the tavern's patrons and that the police could not pat down the patrons for weapons, absent individualized suspicion. *Id.*, at 92.

This case is quite different from *Ybarra*. Pringle and his two companions were in a relatively small automobile, not a public tavern. In *Wyoming* v. *Houghton*, 526 U. S. 295 (1999), we noted that "a car passenger—unlike the unwitting tavern patron in *Ybarra*—will often be engaged in a common enterprise with the driver, and have the same interest in concealing the fruits or the evidence of their wrongdoing." *Id.*, at 304–305. Here we think it was reasonable for the officer to infer a common enterprise among the three men. The quantity of drugs and cash in the car indicated the likelihood of drug dealing, an enterprise to which a dealer would be unlikely to admit an innocent person with the potential to furnish evidence against him. In *Di Re*, a federal investigator had been told by an informant, Reed, that he was to receive counterfeit gasoline ration coupons from a certain Buttitta at a particular place. The investigator went to the appointed place and saw Reed, the sole occupant of the rear seat of the car, holding gasoline ration coupons. There were two other occupants in the car: Buttitta in the driver's seat and Di Re in the front passenger's seat. Reed informed the investigator that Buttitta had given him counterfeit coupons. Thereupon, all three men were arrested and searched. After noting that the officers had no information implicating

Di Re and no information pointing to Di Re's possession of coupons, unless presence in the car warranted that inference, we concluded that the officer lacked probable cause to believe that Di Re was involved in the crime. 332 U. S., at 592–594. We said "[a]ny inference that everyone on the scene of a crime is a party to it must disappear if the Government informer singles out the guilty person." *Id.*, at 594. No such singling out occurred in this case; none of the three men provided information with respect to the ownership of the cocaine or money.

We hold that the officer had probable cause to believe that Pringle had committed the crime of possession of a controlled substance. Pringle's arrest therefore did not contravene the Fourth and Fourteenth Amendments. Accordingly, the judgment of the Court of Appeals of Maryland is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Syllabus

CASTRO *v.* UNITED STATES

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

No. 02–6683. Argued October 15, 2003—Decided December 15, 2003

In 1994, petitioner Castro attacked his federal drug conviction in a *pro se* motion for a new trial pursuant to Federal Rule of Criminal Procedure 33. The Government responded that the claims were more cognizable as federal habeas claims under 28 U. S. C. § 2255. The District Court denied Castro's motion on the merits, referring to it as both a Rule 33 and a § 2255 motion. Castro did not challenge this recharacterization of his motion on his *pro se* appeal, and the Eleventh Circuit summarily affirmed. In 1997, Castro, again *pro se*, filed a § 2255 motion raising, *inter alia*, a new claim for ineffective assistance of counsel. The District Court denied the motion, but the Eleventh Circuit remanded for the District Court to consider, among other things, whether this was Castro's second § 2255 motion. The District Court appointed counsel, determined that the 1997 motion was indeed Castro's second § 2255 motion (the 1994 motion being his first), and dismissed the motion for failure to comply with § 2255's requirement that Castro obtain the Court of Appeals' permission to file a "second or successive" motion. The Eleventh Circuit affirmed.

Held:

1. This Court's review of Castro's claim is not barred by the requirement that the "grant or denial of an authorization by a court of appeals to file a second or successive application . . . shall not be the subject of a [certiorari] petition," 28 U. S. C. § 2244(b)(3)(E). Castro nowhere asked the Eleventh Circuit to grant, and it nowhere denied, such authorization. Contrary to the Government's position, the court's statement that Castro's petition could not meet the requirements for second or successive petitions cannot be taken as a statutorily relevant "denial" of an authorization request not made. Even accepting the Government's characterization, the argument would founder because the certiorari petition's "subject" is not the Eleventh Circuit's authorization "denial," but the lower courts' refusal to recognize that this § 2255 motion is Castro's first. Moreover, reading the statute as the Government suggests would create procedural anomalies, allowing review where the lower court decision disfavors, but denying review where it favors, the Government; would close this Court's doors to a class of habeas petitioners without any clear indication that such was Congress' intent; and

Syllabus

would be difficult to reconcile with the principle that this Court reads limitations on its jurisdiction narrowly. Pp. 379–381.

2. A federal court cannot recharacterize a *pro se* litigant's motion as a first § 2255 motion *unless* it first informs the litigant of its intent to recharacterize, warns the litigant that this recharacterization means that any subsequent § 2255 motion will be subject to the restrictions on "second or successive" motions, and provides the litigant an opportunity to withdraw the motion or to amend it so that it contains all the § 2255 claims he believes he has. If these warnings are not given, the motion cannot be considered to have become a § 2255 motion for purposes of applying to later motions the law's "second or successive" restrictions. Nine Circuits have placed such limits on recharacterization, and no one here contests the lawfulness of this judicially created requirement. Pp. 381–383.

3. Because the District Court failed to give the prescribed warnings, Castro's 1994 motion cannot be considered a first § 2255 motion and his 1997 motion cannot be considered a second or successive one. The Government argues that Castro's failure to appeal the 1994 recharacterization makes the recharacterization valid as a matter of "law of the case." And, according to the Government, since the 1994 recharacterization is valid, the 1997 § 2255 motion is Castro's second, not his first. This Court disagrees. The point of a warning is to help the *pro se* litigant understand not only (1) whether he should withdraw or amend his motion, but also (2) whether he should *contest* the recharacterization, say, on appeal. The lack of warning prevents his making an informed judgment as to both. The failure to appeal simply underscores the practical importance of providing the warning. Hence, an unwarned recharacterization cannot count as a § 2255 motion for purposes of the "second or successive" provision whether or not the unwarned *pro se* litigant takes an appeal. Even assuming that the law of the case doctrine applies here, the doctrine simply expresses common judicial practice; it does not limit the courts' power. Pp. 383–384.

290 F. 3d 1270, vacated and remanded.

BREYER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O'CONNOR, KENNEDY, SOUTER, and GINSBURG, JJ., joined, and in which SCALIA and THOMAS, JJ., joined as to Parts I and II. SCALIA, J., filed an opinion concurring in part and concurring in the judgment, in which THOMAS, J., joined, *post*, p. 385.

Michael G. Frick, by appointment of the Court, *post*, p. 807, argued the cause and filed briefs for petitioner.

Dan Himmelfarb argued the cause for the United States. With him on the brief were *Solicitor General Olson, Assistant Attorney General Chertoff, Deputy Solicitor General Dreeben*, and *Nina Goodman*.*

JUSTICE BREYER delivered the opinion of the Court.

Under a longstanding practice, a court sometimes treats as a request for habeas relief under 28 U. S. C. § 2255 a motion that a *pro se* federal prisoner has labeled differently. Such recharacterization can have serious consequences for the prisoner, for it subjects any subsequent motion under § 2255 to the restrictive conditions that federal law imposes upon a "second or successive" (but not upon a first) federal habeas motion. § 2255, ¶ 8. In light of these consequences, we hold that the court cannot so recharacterize a *pro se* litigant's motion as the litigant's first § 2255 motion *unless* the court informs the litigant of its intent to recharacterize, warns the litigant that the recharacterization will subject subsequent § 2255 motions to the law's "second or successive" restrictions, and provides the litigant with an opportunity to withdraw, or to amend, the filing. Where these things are not done, a recharacterized motion will not count as a § 2255 motion for purposes of applying § 2255's "second or successive" provision.

I

This case focuses upon two motions that Hernan O'Ryan Castro, a federal prisoner acting *pro se*, filed in federal court. He filed the first motion in 1994, the second in 1997.

A

The relevant facts surrounding the 1994 motion are the following:

**Paul Mogin* and *Lisa B. Kemler* filed a brief for the National Association of Criminal Defense Lawyers as *amicus curiae* urging reversal.

(1) On July 5, 1994, Castro filed a *pro se* motion attacking his federal drug conviction, a motion that he called a Rule 33 motion for a new trial. See Fed. Rule Crim. Proc. 33.

(2) The Government, in its response, said that Castro's claims were "more properly cognizable" as federal habeas corpus claims, *i. e.*, claims made under the authority of 28 U. S. C. § 2255. But, the Government added, it did not object to the court's considering Castro's motion as having invoked both Rule 33 and § 2255.

(3) The District Court denied Castro's motion on the merits. In its accompanying opinion, the court generally referred to Castro's motion as a Rule 33 motion; but the court twice referred to it as a § 2255 motion as well. App. 137–144.

(4) Castro, still acting *pro se*, appealed, but he did not challenge the District Court's recharacterization of his motion.

(5) The Court of Appeals summarily affirmed. It said in its one-paragraph order that it was ruling on a motion based upon both Rule 33 and § 2255. Judgt. order reported at 82 F. 3d 429 (CA11 1996); App. 147.

B

The relevant facts surrounding the 1997 motion are the following:

(1) On April 18, 1997, Castro, acting *pro se*, filed what he called a § 2255 motion. The motion included claims not raised in the 1994 motion, including a claim of ineffective assistance of counsel.

(2) The District Court denied the motion; Castro appealed; and the Court of Appeals remanded for further consideration of the ineffective-assistance-of-counsel claim. It also asked the District Court to consider whether, in light of the 1994 motion, Castro's motion was his second § 2255 motion, rather than his first.

(3) On remand, the District Court appointed counsel for Castro. It then decided that the 1997 motion was indeed

Castro's second § 2255 motion (the 1994 motion being his first). And it dismissed the motion for failure to comply with one of § 2255's restrictive "second or successive" conditions (namely, Castro's failure to obtain the Court of Appeals' permission to file a "second or successive" motion). § 2255, ¶ 8. The District Court granted Castro a certificate to appeal its "second or successive" determination. § 2253(c)(1).

(4) The Eleventh Circuit affirmed by a split (2-to-1) vote. 290 F. 3d 1270 (2002). The majority "suggested" and "urged" district courts in the future to "warn prisoners of the consequences of recharacterization and provide them with the opportunity to amend or dismiss their filings." *Id.*, at 1273, 1274. But it held that the 1994 court's failure to do so did not legally undermine its recharacterization. Hence, Castro's current § 2255 motion was indeed his second habeas motion. *Id.*, at 1274.

Other Circuits have taken a different approach. *E. g.*, *United States* v. *Palmer*, 296 F. 3d 1135, 1145–1147 (CADC 2002) (announcing a rule *requiring* courts to notify *pro se* litigants prior to recharacterization and refusing to find the § 2255 motion before it "second or successive" since such notice was lacking). We consequently granted Castro's petition for certiorari.

II

We begin with a jurisdictional matter. We asked the parties to consider the relevance of a provision in the federal habeas corpus statutes that says that the

> "grant or denial of an authorization by a court of appeals to file a second or successive application . . . shall not be the subject of a petition for . . . a writ of certiorari." 28 U. S. C. § 2244(b)(3)(E).

After receiving the parties' responses, we conclude that this provision does not bar our review here.

Castro's appeal to the Eleventh Circuit did not concern an "authorization . . . to file a second or successive application."

The District Court certified for appeal the question whether Castro's § 2255 motion was his first such motion or his second. Castro then argued to the Eleventh Circuit that his § 2255 motion was his first; and he asked the court to reverse the District Court's dismissal of that motion. He nowhere asked the Court of Appeals to grant, and it nowhere denied, any "authorization . . . to file a second or successive application."

The Government argues that the Eleventh Circuit's opinion had the *effect* of denying "authorization . . . to file a second . . . application" because the court said in its opinion that Castro's motion could not meet the requirements for second or successive motions. 290 F. 3d, at 1273. For that reason, the Government concludes, the court's decision falls within the scope of the jurisdictional provision. Brief for United States 16.

In our view, however, this argument stretches the words of the statute too far. Given the context, we cannot take these words in the opinion as a statutorily relevant "denial" of a request that was not made. Even if, for argument's sake, we were to accept the Government's characterization, the argument nonetheless would founder on the statute's requirement that the "denial" must be the "*subject*" of the certiorari petition. The "subject" of Castro's petition is not the Court of Appeals' "denial of an authorization." It is the lower courts' refusal to recognize that this § 2255 motion is his first, not his second. That is a very different question. Cf. *Adamo Wrecking Co.* v. *United States,* 434 U. S. 275, 282–283 (1978) (statute barring court review of lawfulness of agency "emission standard" in criminal case does not bar court review of whether regulation *is* an "emission standard").

Moreover, reading the statute as the Government suggests would produce troublesome results. It would create procedural anomalies, allowing review where the lower court decision disfavors, but denying review where it favors, the Gov-

ernment. Cf. *Stewart* v. *Martinez-Villareal*, 523 U. S. 637, 641–642 (1998) (allowing the Government to obtain review of a decision that a habeas corpus application is *not* "second or successive"). It would close our doors to a class of habeas petitioners seeking review without any clear indication that such was Congress' intent. Cf. *Felker* v. *Turpin*, 518 U. S. 651, 660–661 (1996). And any such conclusion would prove difficult to reconcile with the basic principle that we "read limitations on our jurisdiction to review narrowly." *Utah* v. *Evans*, 536 U. S. 452, 463 (2002).

We conclude that we have the power to review Castro's claim, and we turn to the merits of that claim.

III

Federal courts sometimes will ignore the legal label that a *pro se* litigant attaches to a motion and recharacterize the motion in order to place it within a different legal category. See, *e. g.*, *Raineri* v. *United States*, 233 F. 3d 96, 100 (CA1 2000); *United States* v. *Detrich*, 940 F. 2d 37, 38 (CA2 1991); *United States* v. *Miller*, 197 F. 3d 644, 648 (CA3 1999); *Raines* v. *United States*, 423 F. 2d 526, 528, n. 1 (CA4 1970); *United States* v. *Santora*, 711 F. 2d 41, 42 (CA5 1983); *United States* v. *McDowell*, 305 F. 2d 12, 14 (CA6 1962); *Henderson* v. *United States*, 264 F. 3d 709, 711 (CA7 2001); *McIntyre* v. *United States*, 508 F. 2d 403, n. 1 (CA8 1975) *(per curiam)*; *United States* v. *Eatinger*, 902 F. 2d 1383, 1385 (CA9 1990) *(per curiam)*; *United States* v. *Kelly*, 235 F. 3d 1238, 1242 (CA10 2000); *United States* v. *Jordan*, 915 F. 2d 622, 625 (CA11 1990); *United States* v. *Tindle*, 522 F. 2d 689, 693 (CADC 1975) *(per curiam)*. They may do so in order to avoid an unnecessary dismissal, *e. g.*, *id.*, at 692–693, to avoid inappropriately stringent application of formal labeling requirements, see *Haines* v. *Kerner*, 404 U. S. 519, 520 (1972) *(per curiam)*, or to create a better correspondence between the substance of a *pro se* motion's claim and its underlying

legal basis, see *Hughes* v. *Rowe*, 449 U. S. 5, 10 (1980) *(per curiam); Andrews* v. *United States*, 373 U. S. 334 (1963).

We here address one aspect of this practice, namely, certain legal limits that nine Circuits have placed on recharacterization. Those Circuits recognize that, by recharacterizing as a first § 2255 motion a *pro se* litigant's filing that did not previously bear that label, the court may make it significantly more difficult for that litigant to file another such motion. They have consequently concluded that a district court may not recharacterize a *pro se* litigant's motion as a request for relief under § 2255—unless the court first warns the *pro se* litigant about the consequences of the recharacterization, thereby giving the litigant an opportunity to contest the recharacterization, or to withdraw or amend the motion. See *Adams* v. *United States*, 155 F. 3d 582, 583 (CA2 1998) *(per curiam); United States* v. *Miller*, *supra*, at 646–647 (CA3); *United States* v. *Emmanuel*, 288 F. 3d 644, 646–647 (CA4 2002); *In re Shelton*, 295 F. 3d 620, 622 (CA6 2002) *(per curiam); Henderson* v. *United States*, *supra*, at 710–711 (CA7); *Morales* v. *United States*, 304 F. 3d 764, 767 (CA8 2002); *United States* v. *Seesing*, 234 F. 3d 456, 463 (CA9 2000); *United States* v. *Kelly*, *supra*, at 1240–1241 (CA10); *United States* v. *Palmer*, 296 F. 3d, at 1146 (CADC); see also 290 F. 3d, at 1273, 1274 (case below) (*suggesting* that courts provide such warnings).

No one here contests the lawfulness of this judicially created requirement. The Government suggests that Federal Rule of Appellate Procedure 47 provides adequate underlying legal authority for the procedural practice. Brief for United States 42. It suggests that this Court has the authority to regulate the practice through "the exercise" of our "supervisory powers" over the Federal Judiciary. *E. g.*, *McNabb* v. *United States*, 318 U. S. 332, 340–341 (1943). And it notes that limiting the courts' authority to recharacterize, approximately as the Courts of Appeals have done,

"is likely to reduce and simplify litigation over questions of characterization, which are often quite difficult." Brief for United States 42.

We agree with these suggestions. We consequently hold, as almost every Court of Appeals has already held, that the lower courts' recharacterization powers are limited in the following way:

The limitation applies when a court recharacterizes a *pro se* litigant's motion as a first § 2255 motion. In such circumstances the district court must notify the *pro se* litigant that it intends to recharacterize the pleading, warn the litigant that this recharacterization means that any subsequent § 2255 motion will be subject to the restrictions on "second or successive" motions, and provide the litigant an opportunity to withdraw the motion or to amend it so that it contains all the § 2255 claims he believes he has. If the court fails to do so, the motion cannot be considered to have become a § 2255 motion for purposes of applying to later motions the law's "second or successive" restrictions. § 2255, ¶ 8.

IV

The District Court that considered Castro's 1994 motion failed to give Castro warnings of the kind we have described. Moreover, this Court's "supervisory power" determinations normally apply, like other judicial decisions, retroactively, at least to the case in which the determination was made. *McNabb*, *supra*, at 347 (applying new supervisory rule to case before the Court). Hence, given our holding in Part III, *supra*, Castro's 1994 motion cannot be considered a first § 2255 motion, and his 1997 motion cannot be considered a "second or successive" motion—unless there is something special about Castro's case.

The Government argues that there is something special: Castro failed to appeal the 1994 recharacterization. According to the Government, that fact makes the 1994 recharacter-

ization valid as a matter of "law of the case." And, since the 1994 recharacterization is valid, the 1997 § 2255 motion is Castro's second, not his first.

We do not agree. No Circuit that has considered whether to treat a § 2255 motion as successive (based on a prior unwarned recharacterization) has found that the litigant's failure to challenge that recharacterization makes a difference. See *Palmer*, *supra*, at 1147; see also *Henderson*, 264 F. 3d, at 711–712; *Raineri*, 233 F. 3d, at 100; *In re Shelton*, *supra*, at 622. That is not surprising, for the very point of the warning is to help the *pro se* litigant understand not only (1) whether he should withdraw or amend his motion, but also (2) whether he should *contest* the recharacterization, say, on appeal. The "lack of warning" prevents his making an informed judgment in respect to the latter just as it does in respect to the former. Indeed, an unwarned *pro se* litigant's failure to appeal a recharacterization simply underscores the practical importance of providing the warning. Hence, an unwarned recharacterization cannot count as a § 2255 motion for purposes of the "second or successive" provision, whether the unwarned *pro se* litigant does, or does not, take an appeal.

The law of the case doctrine cannot pose an insurmountable obstacle to our reaching this conclusion. Assuming for argument's sake that the doctrine applies here, it simply "expresses" common judicial "practice"; it does not "limit" the courts' power. See *Messenger* v. *Anderson*, 225 U. S. 436, 444 (1912) (Holmes, J.). It cannot prohibit a court from disregarding an earlier holding in an appropriate case which, for the reasons set forth, we find this case to be.

The judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

So ordered.

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, concurring in part and concurring in the judgment.

I concur in Parts I and II of the Court's opinion and in the judgment of the Court. I also agree that this Court's consideration of Castro's challenge to the status of his recharacterized motion is neither barred by nor necessarily resolved by the doctrine of law of the case.

I write separately because I disagree with the Court's laissez-faire attitude toward recharacterization. The Court promulgates a new procedure to be followed if the district court desires the recharacterized motion to count against the *pro se* litigant as a first 28 U. S. C. § 2255 motion in later litigation. (This procedure, by the way, can be ignored with impunity by a court bent upon aiding *pro se* litigants at all costs; the only consequence will be that the litigants' later § 2255 submissions cannot be deemed "second or successive.") The Court does not, however, place any limits on when recharacterization may occur, but to the contrary treats it as a routine practice which may be employed "to avoid an unnecessary dismissal," "to avoid inappropriately stringent application of formal labeling requirements," or "to create a better correspondence between the substance of a *pro se* motion's claim and its underlying legal basis." *Ante*, at 381–382. The Court does not address whether Castro's motion filed under Federal Rule of Criminal Procedure 33 should have been recharacterized, and its discussion scrupulously avoids placing any limits on the circumstances in which district courts are permitted to recharacterize. That is particularly regrettable since the Court's new recharacterization procedure does not include an option for the *pro se* litigant to insist that the district court rule on his motion as filed; and gives scant indication of what might be a meritorious ground for contesting the recharacterization on appeal.

In my view, this approach gives too little regard to the exceptional nature of recharacterization within an adversar-

ial system, and neglects the harm that may be caused *pro se* litigants even when courts do comply with the Court's newly minted procedure. The practice of judicial recharacterization of *pro se* litigants' motions is a mutation of the principle that the allegations of a *pro se* litigant's complaint are to be held "to less stringent standards than formal pleadings drafted by lawyers." *Haines* v. *Kerner*, 404 U. S. 519, 520 (1972) *(per curiam)*. "Liberal construction" of *pro se* pleadings is merely an embellishment of the notice-pleading standard set forth in the Federal Rules of Civil Procedure, and thus is consistent with the general principle of American jurisprudence that "the party who brings a suit is master to decide what law he will rely upon." *The Fair* v. *Kohler Die & Specialty Co.*, 228 U. S. 22, 25 (1913). Our adversary system is designed around the premise that the parties know what is best for them, and are responsible for advancing the facts and arguments entitling them to relief.

Recharacterization is unlike "liberal construction," in that it requires a court deliberately to override the *pro se* litigant's choice of procedural vehicle for his claim. It is thus a paternalistic judicial exception to the principle of party self-determination, born of the belief that the "parties know better" assumption does not hold true for *pro se* prisoner litigants.

I am frankly not enamored of any departure from our traditional adversarial principles. It is not the job of a federal court to create a "better correspondence" between the substance of a claim and its underlying procedural basis. But if departure from traditional adversarial principles is to be allowed, it should certainly not occur in any situation where there is a risk that the patronized litigant will be harmed rather than assisted by the court's intervention. It is not just a matter of whether the litigant is *more likely*, or even *much more likely*, to be helped rather than harmed. For the overriding rule of judicial intervention must be "First, do *no harm.*" The injustice caused by letting the litigant's

own mistake lie is regrettable, but incomparably less than the injustice of *producing* prejudice through the court's intervention.

The risk of harming the litigant always exists when the court recharacterizes into a first § 2255 motion a claim that is procedurally or substantively deficient in the manner filed. The court essentially substitutes the litigant's ability to bring his merits claim now, for the litigant's *later* ability to bring the same claim (or any other claim), perhaps with stronger evidence. For the later § 2255 motion will then be burdened by the limitations on second or successive petitions imposed by the Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214. A *pro se* litigant whose non-§ 2255 motion is dismissed on procedural grounds and one whose recharacterized § 2255 claim is denied on the merits both end up as losers in their particular actions, but the loser on procedure is better off because he is not stuck with the consequences of a § 2255 motion that he never filed.

It would be an inadequate response to this concern to state that district courts should recharacterize into first § 2255 motions *only* when doing so is (1) procedurally necessary (2) to grant relief on the merits of the underlying claim. Ensuring that these conditions are met would often enmesh district courts in fact- and labor-intensive inquiries. It is an inefficient use of judicial resources to analyze the merits of every claim brought by means of a questionable procedural vehicle simply in order to determine whether to recharacterize—particularly in the common situation in which entitlement to relief turns on resolution of disputed facts. Moreover, even after that expenditure of effort the district court cannot be certain it is not prejudicing the litigant: the court of appeals may not agree with it on the merits of the claim.

In other words, even fully informed district courts that try their best not to harm *pro se* litigants by recharacterizing may nonetheless end up doing so because they cannot predict and protect against every possible adverse effect that may

flow from recharacterization. But if district courts are unable to provide this sort of protection, they should not recharacterize into first § 2255 motions at all. This option is available under the Court's opinion, even though the opinion does not prescribe it.

The Court today relieves Castro of the consequences of the recharacterization (to wit, causing his current § 2255 motion to be dismissed as "second or successive") because he was not given the warning that its opinion prescribes. I reach the same result for a different reason. Even if one does not agree with me that, because of the risk involved, pleadings should *never* be recharacterized into first § 2255 motions, surely one must agree that running the risk is unjustified *when there is nothing whatever to be gained by the recharacterization.* That is the situation here. Castro's Rule 33 motion was valid as a procedural matter, and the claim it raised was no weaker on the merits when presented under Rule 33 than when presented under § 2255. The recharacterization was therefore unquestionably improper, and Castro should be relieved of its consequences.

Accordingly, I concur in the judgment of the Court.

Syllabus

SECURITIES AND EXCHANGE COMMISSION *v.* EDWARDS

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

No. 02–1196. Argued November 4, 2003—Decided January 13, 2004

Respondent was the chairman, chief executive officer, and sole shareholder of ETS Payphones, Inc., which sold payphones to the public via independent distributors. The payphones were offered with an agreement under which ETS leased back the payphone from the purchaser for a fixed monthly payment, thereby giving purchasers a fixed 14% annual return on their investment. Although ETS' marketing materials trumpeted the "incomparable pay phone" as "an exciting business opportunity," the payphones did not generate enough revenue for ETS to make the payments required by the leaseback agreements, so the company depended on funds from new investors to meet its obligations. After ETS filed for bankruptcy protection, the Securities and Exchange Commission (SEC) brought this civil enforcement action, alleging, among other things, that respondent and ETS had violated registration requirements and antifraud provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934, and Rule 10b–5 thereunder. The District Court concluded that the sale-and-leaseback arrangement was an "investment contract" within the meaning of, and therefore subject to, the federal securities laws. The Eleventh Circuit reversed, holding that (1) this Court's opinions require an "investment contract" to offer either capital appreciation or a participation in an enterprise's earnings, and thus exclude schemes offering a fixed rate of return; and (2) those opinions' requirement that the return on the investment be derived solely from the efforts of others was not satisfied when the purchasers had a contractual entitlement to the return.

Held: An investment scheme promising a fixed rate of return can be an "investment contract" and thus a "security" subject to the federal securities laws. Section 2(a)(1) of the 1933 Act and § 3(a)(10) of the 1934 Act define "security" to include an "investment contract," but do not define "investment contract." This Court has established that the test for determining whether a particular scheme is an investment contract is "whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others." *SEC* v. *W. J. Howey Co.*, 328 U. S. 293, 301. This definition embodies a flexible, rather than a static, principle that is capable of adaptation to meet

the countless and variable schemes devised by those seeking to use others' money on the promise of profits. *Id.*, at 299. The profits this Court was speaking of in *Howey* are profits—in the sense of the income or return—that investors seek on their investment, not the profits of the scheme in which they invest, and may include, for example, dividends, other periodic payments, or the increased value of the investment. There is no reason to distinguish between promises of fixed returns and promises of variable returns for purposes of the test, so understood. In both cases, the investing public is attracted by representations of investment income. Moreover, investments pitched as low risk (such as those offering a "guaranteed" fixed return) are particularly attractive to individuals more vulnerable to investment fraud, including older and less sophisticated investors. Under the reading respondent advances, unscrupulous marketers of investments could evade the securities laws by picking a rate of return to promise. This Court will not read into the securities laws a limitation not compelled by the language that would so undermine the laws' purposes. Respondent's claim that including investment schemes promising a fixed return among investment contracts conflicts with precedent is mistaken, as no distinction between fixed and variable returns was drawn in the blue sky law cases that the *Howey* Court relied on, and no post-*Howey* decision is to the contrary, see *United Housing Foundation, Inc.* v. *Forman*, 421 U. S. 837, 852–853. Dictum suggesting otherwise in *Reves* v. *Ernst & Young*, 494 U. S. 56, 68, n. 4, was incorrect. The SEC has consistently maintained that a promise of a fixed return does not preclude a scheme from being an investment contract. The Eleventh Circuit's alternative holding, that respondent's scheme falls outside the definition because purchasers had a contractual entitlement to a return, is incorrect and inconsistent with this Court's precedent. Pp. 393–397.

300 F. 3d 1281, reversed and remanded.

O'Connor, J., delivered the opinion for a unanimous Court.

Solicitor General Olson argued the cause for petitioner. With him on the briefs were *Deputy Solicitor General Kneedler*, *Matthew D. Roberts*, *Meyer Eisenberg*, *Jacob H. Stillman*, and *Susan S. McDonald.*

Michael K. Wolensky argued the cause for respondent. With him on the brief was *Ethan H. Cohen.**

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*Briefs of *amici curiae* urging reversal were filed for AARP by *Stacy Canan*, *Deborah M. Zuckerman*, and *Michael R. Schuster;* for the North American Securities Administrators Association, Inc., by *Mark J. Davis;*

JUSTICE O'CONNOR delivered the opinion of the Court.

"Opportunity doesn't always knock . . . sometimes it rings." App. 113 (ETS Payphones promotional brochure). And sometimes it hangs up. So it did for the 10,000 people who invested a total of $300 million in the payphone sale-and-leaseback arrangements touted by respondent under that slogan. The Securities and Exchange Commission (SEC) argues that the arrangements were investment contracts, and thus were subject to regulation under the federal securities laws. In this case, we must decide whether a moneymaking scheme is excluded from the term "investment contract" simply because the scheme offered a contractual entitlement to a fixed, rather than a variable, return.

I

Respondent Charles Edwards was the chairman, chief executive officer, and sole shareholder of ETS Payphones, Inc. (ETS).† ETS, acting partly through a subsidiary also controlled by respondent, sold payphones to the public via independent distributors. The payphones were offered packaged with a site lease, a 5-year leaseback and management agreement, and a buyback agreement. All but a tiny fraction of purchasers chose this package, although other management options were offered. The purchase price for the payphone packages was approximately $7,000. Under the leaseback and management agreement, purchasers received $82 per month, a 14% annual return. Purchasers were not involved in the day-to-day operation of the payphones they owned. ETS selected the site for the phone, installed the

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for the Public Investors Arbitration Bar Association, Inc., by *Joseph C. Long;* and for Securities Regulators for the State of Florida et al. by *Cynthia K. Maynard.*

†Because the Court of Appeals ordered the complaint dismissed, we treat the case as we would an appeal from a successful motion to dismiss and accept as true the allegations in the complaint. *SEC* v. *Zandford*, 535 U. S. 813, 818 (2002); *Saudi Arabia* v. *Nelson*, 507 U. S. 349, 351, 354 (1993).

equipment, arranged for connection and long-distance service, collected coin revenues, and maintained and repaired the phones. Under the buyback agreement, ETS promised to refund the full purchase price of the package at the end of the lease or within 180 days of a purchaser's request.

In its marketing materials and on its Web site, ETS trumpeted the "incomparable pay phone" as "an exciting business opportunity," in which recent deregulation had "open[ed] the door for profits for individual pay phone owners and operators." According to ETS, "[v]ery few business opportunities can offer the potential for ongoing revenue generation that is available in today's pay telephone industry." App. 114–115 (ETS brochure); *id.*, at 227 (ETS Web site); see *id.*, at 13 (Complaint ¶¶ 37–38).

The payphones did not generate enough revenue for ETS to make the payments required by the leaseback agreements, so the company depended on funds from new investors to meet its obligations. In September 2000, ETS filed for bankruptcy protection. The SEC brought this civil enforcement action the same month. It alleged that respondent and ETS had violated the registration requirements of §§ 5(a) and (c) of the Securities Act of 1933, 68 Stat. 684, 15 U. S. C. §§ 77e(a), (c), the antifraud provisions of both § 17(a) of the Securities Act of 1933, 114 Stat. 2763A–452, 15 U. S. C. § 77q(a), and § 10(b) of the Securities Exchange Act of 1934, 48 Stat. 891, as amended, 114 Stat. 2763A–454, 15 U. S. C. § 78j(b), and Rule 10b–5 thereunder, 17 CFR § 240.10b–5 (2003). The District Court concluded that the payphone sale-and-leaseback arrangement was an investment contract within the meaning of, and therefore was subject to, the federal securities laws. *SEC* v. *ETS Payphones, Inc.*, 123 F. Supp. 2d 1349 (ND Ga. 2000). The Court of Appeals reversed. 300 F. 3d 1281 (CA11 2002) *(per curiam)*. It held that respondent's scheme was not an investment contract, on two grounds. First, it read this Court's opinions to require that an investment contract offer either capital appreciation

or a participation in the earnings of the enterprise, and thus to exclude schemes, such as respondent's, offering a fixed rate of return. *Id.*, at 1284–1285. Second, it held that our opinions' requirement that the return on the investment be "derived solely from the efforts of others" was not satisfied when the purchasers had a contractual entitlement to the return. *Id.*, at 1285. We conclude that it erred on both grounds.

II

"Congress' purpose in enacting the securities laws was to regulate *investments*, in whatever form they are made and by whatever name they are called." *Reves* v. *Ernst & Young*, 494 U. S. 56, 61 (1990). To that end, it enacted a broad definition of "security," sufficient "to encompass virtually any instrument that might be sold as an investment." *Ibid.* Section 2(a)(1) of the 1933 Act, 15 U. S. C. § 77b(a)(1), and § 3(a)(10) of the 1934 Act, 15 U. S. C. § 78c(a)(10), in slightly different formulations which we have treated as essentially identical in meaning, *Reves*, *supra*, at 61, n. 1, define "security" to include "any note, stock, treasury stock, security future, bond, debenture, . . . investment contract, . . . [or any] instrument commonly known as a 'security.'" "Investment contract" is not itself defined.

The test for whether a particular scheme is an investment contract was established in our decision in *SEC* v. *W. J. Howey Co.*, 328 U. S. 293 (1946). We look to "whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others." *Id.*, at 301. This definition "embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits." *Id.*, at 299.

In reaching that result, we first observed that when Congress included "investment contract" in the definition of security, it "was using a term the meaning of which had been

crystallized" by the state courts' interpretation of their "'blue sky'" laws. *Id.*, at 298. (Those laws were the precursors to federal securities regulation and were so named, it seems, because they were "aimed at promoters who 'would sell building lots in the blue sky in fee simple.'" 1 L. Loss & J. Seligman, Securities Regulation 36, 31–43 (3d ed. 1998) (quoting Mulvey, Blue Sky Law, 36 Can. L. Times 37 (1916)).) The state courts had defined an investment contract as "a contract or scheme for 'the placing of capital or laying out of money in a way intended to secure income or profit from its employment,'" and had "uniformly applied" that definition to "a variety of situations where individuals were led to invest money in a common enterprise with the expectation that they would earn a profit solely through the efforts of the promoter or [a third party]." *Howey*, *supra*, at 298 (quoting *State* v. *Gopher Tire & Rubber Co.*, 146 Minn. 52, 56, 177 N. W. 937, 938 (1920)). Thus, when we held that "profits" must "come solely from the efforts of others," we were speaking of the profits that investors seek on their investment, not the profits of the scheme in which they invest. We used "profits" in the sense of income or return, to include, for example, dividends, other periodic payments, or the increased value of the investment.

There is no reason to distinguish between promises of fixed returns and promises of variable returns for purposes of the test, so understood. In both cases, the investing public is attracted by representations of investment income, as purchasers were in this case by ETS' invitation to "'watch the profits add up.'" App. 13 (Complaint ¶ 38). Moreover, investments pitched as low risk (such as those offering a "guaranteed" fixed return) are particularly attractive to individuals more vulnerable to investment fraud, including older and less sophisticated investors. See 2 S. Rep. No. 102–261, App., p. 326 (1992) (Staff Summary of Federal Trade Commission Activities Affecting Older Consumers). Under the reading respondent advances, unscrupulous marketers of in-

vestments could evade the securities laws by picking a rate of return to promise. We will not read into the securities laws a limitation not compelled by the language that would so undermine the laws' purposes.

Respondent protests that including investment schemes promising a fixed return among investment contracts conflicts with our precedent. We disagree. No distinction between fixed and variable returns was drawn in the blue sky law cases that the *Howey* Court used, in formulating the test, as its evidence of Congress' understanding of the term. 328 U. S., at 298, and n. 4. Indeed, two of those cases involved an investment contract in which a fixed return was promised. *People* v. *White*, 124 Cal. App. 548, 550–551, 12 P. 2d 1078, 1079 (1932) (agreement between defendant and investors stated that investor would give defendant $5,000, and would receive $7,500 from defendant one year later); *Stevens* v. *Liberty Packing Corp.*, 111 N. J. Eq. 61, 62–63, 161 A. 193, 193–194 (1932) ("ironclad contract" offered by defendant to investors entitled investors to $56 per year for 10 years on initial investment of $175, ostensibly in sale and leaseback of breeding rabbits).

None of our post-*Howey* decisions is to the contrary. In *United Housing Foundation, Inc.* v. *Forman*, 421 U. S. 837 (1975), we considered whether "shares" in a nonprofit housing cooperative were investment contracts under the securities laws. We identified the "touchstone" of an investment contract as "the presence of an investment in a common venture premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others," and then laid out two examples of investor interests that we had previously found to be "profits." *Id.*, at 852. Those were "capital appreciation resulting from the development of the initial investment" and "participation in earnings resulting from the use of investors' funds." *Ibid.* We contrasted those examples, in which "the investor is 'attracted solely by the prospects of a return' " on the investment, with

housing cooperative shares, regarding which the purchaser "is motivated by a desire to use or consume the item purchased." *Id.*, at 852–853 (quoting *Howey*, *supra*, at 300). Thus, *Forman* supports the commonsense understanding of "profits" in the *Howey* test as simply "financial returns on . . . investments." 421 U. S., at 853.

Concededly, *Forman*'s illustrative description of prior decisions on "profits" appears to have been mistaken for an exclusive list in a case considering the scope of a different term in the definition of a security, "note." See *Reves*, 494 U. S., at 68, n. 4. But that was a misreading of *Forman*, and we will not bind ourselves unnecessarily to passing dictum that would frustrate Congress' intent to regulate all of the "countless and variable schemes devised by those who seek the use of the money of others on the promise of profits." *Howey*, *supra*, at 299.

Given that respondent's position is supported neither by the purposes of the securities laws nor by our precedents, it is no surprise that the SEC has consistently taken the opposite position, and maintained that a promise of a fixed return does not preclude a scheme from being an investment contract. It has done so in formal adjudications, *e. g.*, *In re Abbett, Sommer & Co.*, 44 S. E. C. 104 (1969) (holding that mortgage notes, sold with a package of management services and a promise to repurchase the notes in the event of default, were investment contracts); see also *In re Union Home Loans* (Dec. 16, 1982), 26 S. E. C. Docket 1517, 1519 (report and order regarding settlement, stating that sale of promissory notes secured by deeds of trust, coupled with management services and providing investors "a specified percentage return on their investment," were investment contracts), and in enforcement actions, *e. g.*, *SEC* v. *Universal Service Assn.*, 106 F. 2d 232, 234, 237 (CA7 1939) (accepting SEC's position that an investment scheme promising "assured profit of 30% per annum with no chance of risk or loss to the contributor" was a security because it satisfied the pertinent

substance of the *Howey* test, "'[t]he investment of money with the expectation of profit through the efforts of other persons'"); see also *SEC* v. *American Trailer Rentals Co.*, 379 U. S. 594, 598 (1965) (noting that "the SEC advised" the respondent that its "sale and lease-back arrangements," in which investors received "a set 2% of their investment per month for 10 years," "were investment contracts and therefore securities" under the 1933 Act).

The Eleventh Circuit's perfunctory alternative holding, that respondent's scheme falls outside the definition because purchasers had a contractual entitlement to a return, is incorrect and inconsistent with our precedent. We are considering investment *contracts*. The fact that investors have bargained for a return on their investment does not mean that the return is not also expected to come solely from the efforts of others. Any other conclusion would conflict with our holding that an investment contract was offered in *Howey* itself. 328 U. S., at 295–296 (service contract entitled investors to allocation of net profits).

We hold that an investment scheme promising a fixed rate of return can be an "investment contract" and thus a "security" subject to the federal securities laws. The judgment of the United States Court of Appeals for the Eleventh Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

VERIZON COMMUNICATIONS INC. *v.* LAW OFFICES OF CURTIS V. TRINKO, LLP

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

No. 02–682. Argued October 14, 2003—Decided January 13, 2004

The Telecommunications Act of 1996 imposes upon an incumbent local exchange carrier (LEC) the obligation to share its telephone network with competitors, 47 U. S. C. § 251(c), including the duty to provide access to individual network elements on an "unbundled" basis, see § 251(c)(3). New entrants, so-called competitive LECs, combine and resell these unbundled network elements (UNEs). Petitioner Verizon Communications Inc., the incumbent LEC in New York State, has signed interconnection agreements with rivals such as AT&T, as § 252 obliges it to do, detailing the terms on which it will make its network elements available. Part of Verizon's § 251(c)(3) UNE obligation is the provision of access to operations support systems (OSS), without which a rival cannot fill its customers' orders. Verizon's interconnection agreement, approved by the New York Public Service Commission (PSC), and its authorization to provide long-distance service, approved by the Federal Communications Commission (FCC), each specified the mechanics by which its OSS obligation would be met. When competitive LECs complained that Verizon was violating that obligation, the PSC and FCC opened parallel investigations, which led to the imposition of financial penalties, remediation measures, and additional reporting requirements on Verizon. Respondent, a local telephone service customer of AT&T, then filed this class action alleging, *inter alia*, that Verizon had filled rivals' orders on a discriminatory basis as part of an anticompetitive scheme to discourage customers from becoming or remaining customers of competitive LECs in violation of § 2 of the Sherman Act, 15 U. S. C. § 2. The District Court dismissed the complaint, concluding that respondent's allegations of deficient assistance to rivals failed to satisfy § 2's requirements. The Second Circuit reinstated the antitrust claim.

Held: Respondent's complaint alleging breach of an incumbent LEC's 1996 Act duty to share its network with competitors does not state a claim under § 2 of the Sherman Act. Pp. 405–416.

(a) The 1996 Act has no effect upon the application of traditional antitrust principles. Its saving clause—which provides that "nothing in this Act . . . shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws," 47 U. S. C. § 152, note—preserves

claims that satisfy established antitrust standards, but does not create new claims that go beyond those standards. Pp. 405–407.

(b) The activity of which respondent complains does not violate preexisting antitrust standards. The leading case imposing § 2 liability for refusal to deal with competitors is *Aspen Skiing Co.* v. *Aspen Highlands Skiing Corp.*, 472 U. S. 585, in which the Court concluded that the defendant's termination of a voluntary agreement with the plaintiff suggested a willingness to forsake short-term profits to achieve an anticompetitive end. *Aspen* is at or near the outer boundary of § 2 liability, and the present case does not fit within the limited exception it recognized. Because the complaint does not allege that Verizon ever engaged in a voluntary course of dealing with its rivals, its prior conduct sheds no light upon whether its lapses from the legally compelled dealing were anticompetitive. Moreover, the *Aspen* defendant turned down its competitor's proposal to sell at its own retail price, suggesting a calculation that its future monopoly retail price would be higher, whereas Verizon's reluctance to interconnect at the cost-based rate of compensation available under § 251(c)(3) is uninformative. More fundamentally, the *Aspen* defendant refused to provide its competitor with a product it already sold at retail, whereas here the unbundled elements offered pursuant to § 251(c)(3) are not available to the public, but are provided to rivals under compulsion and at considerable expense. The Court's conclusion would not change even if it considered to be established law the "essential facilities" doctrine crafted by some lower courts. The indispensable requirement for invoking that doctrine is the unavailability of access to the "essential facilities"; where access exists, as it does here by virtue of the 1996 Act, the doctrine serves no purpose. Pp. 407–411.

(c) Traditional antitrust principles do not justify adding the present case to the few existing exceptions from the proposition that there is no duty to aid competitors. Antitrust analysis must always be attuned to the particular structure and circumstances of the industry at issue. When there exists a regulatory structure designed to deter and remedy anticompetitive harm, the additional benefit to competition provided by antitrust enforcement will tend to be small, and it will be less plausible that the antitrust laws contemplate such additional scrutiny. Here Verizon was subject to oversight by the FCC and the PSC, both of which agencies responded to the OSS failure raised in respondent's complaint by imposing fines and other burdens on Verizon. Against the slight benefits of antitrust intervention here must be weighed a realistic assessment of its costs. Allegations of violations of § 251(c)(3) duties are both technical and extremely numerous, and hence difficult for antitrust courts to evaluate. Applying § 2's requirements to this regime can readily result in "false positive" mistaken inferences that chill the very

conduct the antitrust laws are designed to protect. *Matsushita Elec. Industrial Co.* v. *Zenith Radio Corp.*, 475 U. S. 574, 594. Pp. 411–416.

305 F. 3d 89, reversed and remanded.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, KENNEDY, GINSBURG, and BREYER, JJ., joined. STEVENS, J., filed an opinion concurring in the judgment, in which SOUTER and THOMAS, JJ., joined, *post*, p. 416.

Richard G. Taranto argued the cause for petitioner. With him on the briefs were *John Thorne*, *Michael K. Kellogg*, *Mark C. Hansen*, *Aaron M. Panner*, and *Henry B. Gutman*.

Solicitor General Olson argued the cause for the United States et al. as *amici curiae* urging reversal. With him on the brief were *Acting Assistant Attorney General Pate*, *Deputy Solicitor General Clement*, *Jeffrey A. Lamken*, *Catherine G. O'Sullivan*, *Nancy C. Garrison*, and *David Seidman*.

Donald B. Verrilli, Jr., argued the cause for respondent. With him on the brief were *Alice McInerney*, *Bruce V. Spiva*, *Ian Heath Gershengorn*, *Marc A. Goldman*, *Elaine J. Goldenberg*, and *Chester T. Kamin*.*

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*Briefs of *amici curiae* urging reversal were filed for the Commonwealth of Virginia et al. by *Jerry W. Kilgore*, Attorney General of Virginia, *William H. Hurd*, State Solicitor, *Maureen Riley Matsen* and *William E. Thro*, Deputy State Solicitors, *Judith Williams Jagdmann*, Deputy Attorney General, *C. Meade Browder, Jr.*, Senior Assistant Attorney General, and *Sarah Oxenham Allen* and *Raymond L. Doggett, Jr.*, Assistant Attorneys General, and by the Attorneys General for their respective States as follows: *William H. Pryor, Jr.*, of Alabama, *M. Jane Brady* of Delaware, *Steve Carter* of Indiana, *Jon Bruning* of Nebraska, *Peter W. Heed* of New Hampshire, *W. A. Drew Edmondson* of Oklahoma, and *Mark L. Shurtleff* of Utah; for BellSouth Corp. et al. by *Stephen M. Shapiro*, *John E. Muench*, *Jeffrey W. Sarles*, *Marc Gary*, *Marc W. F. Galonsky*, and *William M. Schur;* for the Communications Workers of America by *Patrick M. Scanlon*, *Andrew D. Roth*, and *Laurence Gold;* for the Telecommunications Industry Association by *Donald I. Baker;* for United Parcel Service, Inc., et al. by *Drew S. Days III*, *W. Stephen Smith*, *Beth S. Brinkmann*, *Paul T. Friedman*, and *Peter M. Kreindler;* for the United

JUSTICE SCALIA delivered the opinion of the Court.

The Telecommunications Act of 1996, Pub. L. 104–104, 110 Stat. 56, imposes certain duties upon incumbent local telephone companies in order to facilitate market entry by competitors, and establishes a complex regime for monitoring and enforcement. In this case we consider whether a complaint alleging breach of the incumbent's duty under the 1996 Act to share its network with competitors states a claim under § 2 of the Sherman Act, 26 Stat. 209.

States Telecom Association by *William T. Lake*, *James F. Rill*, *James W. Olson*, and *Michael T. McMenamin;* and for the Washington Legal Foundation by *Steven G. Bradbury*, *Daniel J. Popeo*, and *David A. Price.*

Briefs of *amici curiae* urging affirmance were filed for the State of New York et al. by *Eliot Spitzer*, Attorney General of New York, *Caitlin J. Halligan*, Solicitor General, *Michelle Aronowitz*, Deputy Solicitor General, *Daniel J. Chepaitis*, Assistant Solicitor General, and *Jay L. Himes*, *Susanna M. Zwerling*, *Richard L. Schwartz*, and *Keith H. Gordon*, Assistant Attorneys General, by *Robert J. Spagnoletti*, Corporation Counsel of the District of Columbia, and by the Attorneys General for their respective jurisdictions as follows: *Terry Goddard* of Arizona, *Richard Blumenthal* of Connecticut, *G. Steven Rowe* of Maine, *J. Joseph Curran, Jr.*, of Maryland, *Michael A. Cox* of Michigan, *Mike Hatch* of Minnesota, *Jeremiah W. (Jay) Nixon* of Missouri, *Mike McGrath* of Montana, *Hardy Myers* of Oregon, *Anabelle Rodríguez* of Puerto Rico, *William Sorrell* of Vermont, *Darrell V. McGraw, Jr.*, of West Virginia, and *Peggy A. Lautenschlager* of Wisconsin; for Allegiance Telecom, Inc., et al. by *Richard M. Rindler*, *Eric J. Branfman*, *Rebecca P. Dick*, *Christopher A. Holt*, and *Richard Metzger;* for the American Antitrust Institute by *Jonathan L. Rubin* and *Albert A. Foer;* for AT&T Corp. et al. by *David W. Carpenter* and *Stephen T. Perkins;* for the Consumers Union et al. by *Michael D. McNeely* and *Patrick J. O'Connor;* for Covad Communications Co., Inc., by *Alfred C. Pfeiffer, Jr.;* for Economics Professors by *Carter G. Phillips* and *C. Frederick Beckner III;* for Law Professors by *Steven Semeraro;* for the National Association of State Utility Consumer Advocates by *Gerald A. Norlander* and *Robert S. Tongren;* and for Z-Tel Technologies, Inc., by *Christopher J. Wright.*

Robert H. Bork filed a brief for the Project to Promote Competition and Innovation in the Digital Age as *amicus curiae.*

I

Petitioner Verizon Communications Inc. is the incumbent local exchange carrier (LEC) serving New York State. Before the 1996 Act, Verizon,[1] like other incumbent LECs, enjoyed an exclusive franchise within its local service area. The 1996 Act sought to "uproo[t]" the incumbent LECs' monopoly and to introduce competition in its place. *Verizon Communications Inc.* v. *FCC*, 535 U. S. 467, 488 (2002). Central to the scheme of the Act is the incumbent LEC's obligation under 47 U. S. C. § 251(c) to share its network with competitors, see *AT&T Corp.* v. *Iowa Utilities Bd.*, 525 U. S. 366, 371 (1999), including provision of access to individual elements of the network on an "unbundled" basis. § 251(c)(3). New entrants, so-called competitive LECs, resell these unbundled network elements (UNEs), recombined with each other or with elements belonging to the LECs.

Verizon, like other incumbent LECs, has taken two significant steps within the Act's framework in the direction of increased competition. First, Verizon has signed interconnection agreements with rivals such as AT&T, as it is obliged to do under § 252, detailing the terms on which it will make its network elements available. (Because Verizon and AT&T could not agree upon terms, the open issues were subjected to compulsory arbitration under §§ 252(b) and (c).) In 1997, the state regulator, New York's Public Service Commission (PSC), approved Verizon's interconnection agreement with AT&T.

Second, Verizon has taken advantage of the opportunity provided by the 1996 Act for incumbent LECs to enter the long-distance market (from which they had long been excluded). That required Verizon to satisfy, among other things, a 14-item checklist of statutory requirements, which

[1] In 1996, NYNEX was the incumbent LEC for New York State. NYNEX subsequently merged with Bell Atlantic Corporation, and the merged entity retained the Bell Atlantic name; a further merger produced Verizon. We use "Verizon" to refer to NYNEX and Bell Atlantic as well.

includes compliance with the Act's network-sharing duties. §§ 271(d)(3)(A) and (c)(2)(B). Checklist item two, for example, includes "[n]ondiscriminatory access to network elements in accordance with the requirements" of § 251(c)(3). § 271(c)(2)(B)(ii). Whereas the state regulator approves an interconnection agreement, for long-distance approval the incumbent LEC applies to the Federal Communications Commission (FCC). In December 1999, the FCC approved Verizon's § 271 application for New York.

Part of Verizon's UNE obligation under § 251(c)(3) is the provision of access to operations support systems (OSS), a set of systems used by incumbent LECs to provide services to customers and ensure quality. Verizon's interconnection agreement and long-distance authorization each specified the mechanics by which its OSS obligation would be met. As relevant here, a competitive LEC sends orders for service through an electronic interface with Verizon's ordering system, and as Verizon completes certain steps in filling the order, it sends confirmation back through the same interface. Without OSS access a rival cannot fill its customers' orders.

In late 1999, competitive LECs complained to regulators that many orders were going unfilled, in violation of Verizon's obligation to provide access to OSS functions. The PSC and FCC opened parallel investigations, which led to a series of orders by the PSC and a consent decree with the FCC.[2] Under the FCC consent decree, Verizon undertook

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[2] Order Directing Improvements To Wholesale Service Performance, *MCI WorldCom, Inc.* v. *Bell Atlantic-New York*, Nos. 00–C–0008, 00–C–0009, 2000 WL 363378 (N. Y. PSC, Feb. 11, 2000); Order Directing Market Adjustments and Amending Performance Assurance Plan, *MCI WorldCom, Inc.* v. *Bell Atlantic-New York*, Nos. 00–C–0008, 00–C–0009, 99–C–0949, 2000 WL 517633 (N. Y. PSC, Mar. 23, 2000); Order Addressing OSS Issues, *MCI WorldCom, Inc.* v. *Bell Atlantic-New York*, Nos. 00–C–0008, 00–C–0009, 99–C–0949, 2000 WL 1531916 (N. Y. PSC, July 27, 2000); *In re Bell Atlantic-New York Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service In the State of New York*, 15 FCC Rcd. 5413 (2000) (Order); *id.*, at 5415 (Consent Decree).

to make a "voluntary contribution" to the U. S. Treasury in the amount of $3 million, 15 FCC Rcd. 5415, 5421, ¶ 16 (2000); under the PSC orders, Verizon incurred liability to the competitive LECs in the amount of $10 million. Under the consent decree and orders, Verizon was subjected to new performance measurements and new reporting requirements to the FCC and PSC, with additional penalties for continued noncompliance. In June 2000, the FCC terminated the consent decree. Enforcement Bureau Announces that Bell Atlantic Has Satisfied Consent Decree Regarding Electronic Ordering Systems in New York (June 20, 2000), http://www.fcc.gov/eb/News_Releases/bellatlet.html (all Internet materials as visited Dec. 12, 2003, and available in Clerk of Court's case file). The next month the PSC relieved Verizon of the heightened reporting requirement. Order Addressing OSS Issues, *MCI WorldCom, Inc.* v. *Bell Atlantic-New York*, Nos. 00–C–0008, 00–C–0009, 99–C–0949, 2000 WL 1531916 (N. Y. PSC, July 27, 2000).

Respondent Law Offices of Curtis V. Trinko, LLP, a New York City law firm, was a local telephone service customer of AT&T. The day after Verizon entered its consent decree with the FCC, respondent filed a complaint in the District Court for the Southern District of New York, on behalf of itself and a class of similarly situated customers. See App. 12–33. The complaint, as later amended, *id.*, at 34–50, alleged that Verizon had filled rivals' orders on a discriminatory basis as part of an anticompetitive scheme to discourage customers from becoming or remaining customers of competitive LECs, thus impeding the competitive LECs' ability to enter and compete in the market for local telephone service. See, *e. g.*, *id.*, at 34–35, 46–47, ¶¶ 1, 2, 52, 54. According to the complaint, Verizon "has filled orders of [competitive LEC] customers after filling those for its own local phone service, has failed to fill in a timely manner, or not at all, a substantial number of orders for [competitive LEC] customers . . . , and has systematically failed to inform [com-

petitive LECs] of the status of their customers' orders." *Id.*, at 39, ¶ 21. The complaint set forth a single example of the alleged "failure to provide adequate access to [competitive LECs]," namely, the OSS failure that resulted in the FCC consent decree and PSC orders. *Id.*, at 40, ¶ 22. It asserted that the result of Verizon's improper "behavior with respect to providing access to its local loop" was to "deter potential customers [of rivals] from switching." *Id.*, at 35, 47, ¶¶ 2, 57. The complaint sought damages and injunctive relief for violation of § 2 of the Sherman Act, 15 U. S. C. § 2, pursuant to the remedy provisions of §§ 4 and 16 of the Clayton Act, 38 Stat. 731, as amended, 15 U. S. C. §§ 15, 26. The complaint also alleged violations of the 1996 Act, § 202(a) of the Communications Act of 1934, 48 Stat. 1064, as amended, 47 U. S. C. § 151 *et seq.*, and state law.

The District Court dismissed the complaint in its entirety. As to the antitrust portion, it concluded that respondent's allegations of deficient assistance to rivals failed to satisfy the requirements of § 2. The Court of Appeals for the Second Circuit reinstated the complaint in part, including the antitrust claim. 305 F. 3d 89, 113 (2002). We granted certiorari, limited to the question whether the Court of Appeals erred in reversing the District Court's dismissal of respondent's antitrust claims. 538 U. S. 905 (2003).

II

To decide this case, we must first determine what effect (if any) the 1996 Act has upon the application of traditional antitrust principles. The Act imposes a large number of duties upon incumbent LECs—above and beyond those basic responsibilities it imposes upon all carriers, such as assuring number portability and providing access to rights-of-way, see 47 U. S. C. §§ 251(b)(2), (4). Under the sharing duties of § 251(c), incumbent LECs are required to offer three kinds of access. Already noted, and perhaps most intrusive, is the duty to offer access to UNEs on "just, reasonable, and non-

discriminatory" terms, § 251(c)(3), a phrase that the FCC has interpreted to mean a price reflecting long-run incremental cost. See *Verizon Communications Inc.* v. *FCC*, 535 U. S., at 495–496. A rival can interconnect its own facilities with those of the incumbent LEC, or it can simply purchase services at wholesale from the incumbent and resell them to consumers. See §§ 251(c)(2), (4). The Act also imposes upon incumbents the duty to allow physical "collocation"—that is, to permit a competitor to locate and install its equipment on the incumbent's premises—which makes feasible interconnection and access to UNEs. See § 251(c)(6).

That Congress created these duties, however, does not automatically lead to the conclusion that they can be enforced by means of an antitrust claim. Indeed, a detailed regulatory scheme such as that created by the 1996 Act ordinarily raises the question whether the regulated entities are not shielded from antitrust scrutiny altogether by the doctrine of implied immunity. See, *e. g.*, *United States* v. *National Assn. of Securities Dealers, Inc.*, 422 U. S. 694 (1975); *Gordon* v. *New York Stock Exchange, Inc.*, 422 U. S. 659 (1975). In some respects the enforcement scheme set up by the 1996 Act is a good candidate for implication of antitrust immunity, to avoid the real possibility of judgments conflicting with the agency's regulatory scheme "that might be voiced by courts exercising jurisdiction under the antitrust laws." *United States* v. *National Assn. of Securities Dealers, Inc.*, *supra*, at 734.

Congress, however, precluded that interpretation. Section 601(b)(1) of the 1996 Act is an antitrust-specific saving clause providing that "nothing in this Act or the amendments made by this Act shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws." 110 Stat. 143, 47 U. S. C. § 152, note. This bars a finding of implied immunity. As the FCC has put the point, the saving clause preserves those "claims that satisfy established antitrust standards." Brief for United States and the Federal

Communications Commission as *Amici Curiae* Supporting Neither Party in No. 02–7057, *Covad Communications Co.* v. *Bell Atlantic Corp.* (CADC), p. 8.

But just as the 1996 Act preserves claims that satisfy existing antitrust standards, it does not create new claims that go beyond existing antitrust standards; that would be equally inconsistent with the saving clause's mandate that nothing in the Act "modify, impair, or supersede the applicability" of the antitrust laws. We turn, then, to whether the activity of which respondent complains violates pre-existing antitrust standards.

III

The complaint alleges that Verizon denied interconnection services to rivals in order to limit entry. If that allegation states an antitrust claim at all, it does so under § 2 of the Sherman Act, 15 U. S. C. § 2, which declares that a firm shall not "monopolize" or "attempt to monopolize." *Ibid.* It is settled law that this offense requires, in addition to the possession of monopoly power in the relevant market, "the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident." *United States* v. *Grinnell Corp.*, 384 U. S. 563, 570–571 (1966). The mere possession of monopoly power, and the concomitant charging of monopoly prices, is not only not unlawful; it is an important element of the free-market system. The opportunity to charge monopoly prices—at least for a short period—is what attracts "business acumen" in the first place; it induces risk taking that produces innovation and economic growth. To safeguard the incentive to innovate, the possession of monopoly power will not be found unlawful unless it is accompanied by an element of anticompetitive *conduct.*

Firms may acquire monopoly power by establishing an infrastructure that renders them uniquely suited to serve their customers. Compelling such firms to share the source of their advantage is in some tension with the underlying pur-

pose of antitrust law, since it may lessen the incentive for the monopolist, the rival, or both to invest in those economically beneficial facilities. Enforced sharing also requires antitrust courts to act as central planners, identifying the proper price, quantity, and other terms of dealing—a role for which they are ill suited. Moreover, compelling negotiation between competitors may facilitate the supreme evil of antitrust: collusion. Thus, as a general matter, the Sherman Act "does not restrict the long recognized right of [a] trader or manufacturer engaged in an entirely private business, freely to exercise his own independent discretion as to parties with whom he will deal." *United States* v. *Colgate & Co.*, 250 U. S. 300, 307 (1919).

However, "[t]he high value that we have placed on the right to refuse to deal with other firms does not mean that the right is unqualified." *Aspen Skiing Co.* v. *Aspen Highlands Skiing Corp.*, 472 U. S. 585, 601 (1985). Under certain circumstances, a refusal to cooperate with rivals can constitute anticompetitive conduct and violate § 2. We have been very cautious in recognizing such exceptions, because of the uncertain virtue of forced sharing and the difficulty of identifying and remedying anticompetitive conduct by a single firm. The question before us today is whether the allegations of respondent's complaint fit within existing exceptions or provide a basis, under traditional antitrust principles, for recognizing a new one.

The leading case for § 2 liability based on refusal to cooperate with a rival, and the case upon which respondent understandably places greatest reliance, is *Aspen Skiing*, *supra*. The Aspen ski area consisted of four mountain areas. The defendant, who owned three of those areas, and the plaintiff, who owned the fourth, had cooperated for years in the issuance of a joint, multiple-day, all-area ski ticket. After repeatedly demanding an increased share of the proceeds, the defendant canceled the joint ticket. The plaintiff, concerned that skiers would bypass its mountain without some joint

offering, tried a variety of increasingly desperate measures to re-create the joint ticket, even to the point of in effect offering to buy the defendant's tickets at retail price. *Id.*, at 593–594. The defendant refused even that. We upheld a jury verdict for the plaintiff, reasoning that "[t]he jury may well have concluded that [the defendant] elected to forgo these short-run benefits because it was more interested in reducing competition . . . over the long run by harming its smaller competitor." *Id.*, at 608.

Aspen Skiing is at or near the outer boundary of § 2 liability. The Court there found significance in the defendant's decision to cease participation in a cooperative venture. See *id.*, at 608, 610–611. The unilateral termination of a voluntary *(and thus presumably profitable)* course of dealing suggested a willingness to forsake short-term profits to achieve an anticompetitive end. *Ibid.* Similarly, the defendant's unwillingness to renew the ticket *even if compensated at retail price* revealed a distinctly anticompetitive bent.

The refusal to deal alleged in the present case does not fit within the limited exception recognized in *Aspen Skiing.* The complaint does not allege that Verizon voluntarily engaged in a course of dealing with its rivals, or would ever have done so absent statutory compulsion. Here, therefore, the defendant's prior conduct sheds no light upon the motivation of its refusal to deal—upon whether its regulatory lapses were prompted not by competitive zeal but by anticompetitive malice. The contrast between the cases is heightened by the difference in pricing behavior. In *Aspen Skiing*, the defendant turned down a proposal to sell at its own retail price, suggesting a calculation that its future monopoly retail price would be higher. Verizon's reluctance to interconnect at the cost-based rate of compensation available under § 251(c)(3) tells us nothing about dreams of monopoly.

The specific nature of what the 1996 Act compels makes this case different from *Aspen Skiing* in a more fundamental

way. In *Aspen Skiing*, what the defendant refused to provide to its competitor was a product that it already sold at retail—to oversimplify slightly, lift tickets representing a bundle of services to skiers. Similarly, in *Otter Tail Power Co.* v. *United States*, 410 U. S. 366 (1973), another case relied upon by respondent, the defendant was already in the business of providing a service to certain customers (power transmission over its network), and refused to provide the same service to certain other customers. *Id.*, at 370–371, 377–378. In the present case, by contrast, the services allegedly withheld are not otherwise marketed or available to the public. The sharing obligation imposed by the 1996 Act created "something brand new"—"the wholesale market for leasing network elements." *Verizon Communications Inc.* v. *FCC*, 535 U. S., at 528. The unbundled elements offered pursuant to § 251(c)(3) exist only deep within the bowels of Verizon; they are brought out on compulsion of the 1996 Act and offered not to consumers but to rivals, and at considerable expense and effort. New systems must be designed and implemented simply to make that access possible—indeed, it is the failure of one of those systems that prompted the present complaint.[3]

We conclude that Verizon's alleged insufficient assistance in the provision of service to rivals is not a recognized antitrust claim under this Court's existing refusal-to-deal precedents. This conclusion would be unchanged even if we considered to be established law the "essential facilities" doctrine crafted by some lower courts, under which the Court of Appeals concluded respondent's allegations might state a claim. See generally Areeda, Essential Facilities: An Epi-

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[3] Respondent also relies upon *United States* v. *Terminal Railroad Assn. of St. Louis*, 224 U. S. 383 (1912), and *Associated Press* v. *United States*, 326 U. S. 1 (1945). These cases involved *concerted* action, which presents greater anticompetitive concerns and is amenable to a remedy that does not require judicial estimation of free-market forces: simply requiring that the outsider be granted nondiscriminatory admission to the club.

thet in Need of Limiting Principles, 58 Antitrust L. J. 841 (1989). We have never recognized such a doctrine, see *Aspen Skiing Co.*, 472 U. S., at 611, n. 44; *AT&T Corp.* v. *Iowa Utilities Bd.*, 525 U. S., at 428 (opinion of BREYER, J.), and we find no need either to recognize it or to repudiate it here. It suffices for present purposes to note that the indispensable requirement for invoking the doctrine is the unavailability of access to the "essential facilities"; where access exists, the doctrine serves no purpose. Thus, it is said that "essential facility claims should . . . be denied where a state or federal agency has effective power to compel sharing and to regulate its scope and terms." P. Areeda & H. Hovenkamp, Antitrust Law, p. 150, ¶ 773e (2003 Supp.). Respondent believes that the existence of sharing duties under the 1996 Act supports its case. We think the opposite: The 1996 Act's extensive provision for access makes it unnecessary to impose a judicial doctrine of forced access. To the extent respondent's "essential facilities" argument is distinct from its general § 2 argument, we reject it.

IV

Finally, we do not believe that traditional antitrust principles justify adding the present case to the few existing exceptions from the proposition that there is no duty to aid competitors. Antitrust analysis must always be attuned to the particular structure and circumstances of the industry at issue. Part of that attention to economic context is an awareness of the significance of regulation. As we have noted, "careful account must be taken of the pervasive federal and state regulation characteristic of the industry." *United States* v. *Citizens & Southern Nat. Bank*, 422 U. S. 86, 91 (1975); see also IA P. Areeda & H. Hovenkamp, Antitrust Law, p. 12, ¶ 240c3 (2d ed. 2000). "[A]ntitrust analysis must sensitively recognize and reflect the distinctive economic and legal setting of the regulated industry to which it applies." *Concord* v. *Boston Edison Co.*, 915 F. 2d 17,

22 (CA1 1990) (Breyer, C. J.) (internal quotation marks omitted).

One factor of particular importance is the existence of a regulatory structure designed to deter and remedy anticompetitive harm. Where such a structure exists, the additional benefit to competition provided by antitrust enforcement will tend to be small, and it will be less plausible that the antitrust laws contemplate such additional scrutiny. Where, by contrast, "[t]here is nothing built into the regulatory scheme which performs the antitrust function," *Silver* v. *New York Stock Exchange*, 373 U. S. 341, 358 (1963), the benefits of antitrust are worth its sometimes considerable disadvantages. Just as regulatory context may in other cases serve as a basis for implied immunity, see, *e. g.*, *United States* v. *National Assn. of Securities Dealers, Inc.*, 422 U. S., at 730–735, it may also be a consideration in deciding whether to recognize an expansion of the contours of § 2.

The regulatory framework that exists in this case demonstrates how, in certain circumstances, "regulation significantly diminishes the likelihood of major antitrust harm." *Concord* v. *Boston Edison Co.*, *supra*, at 25. Consider, for example, the statutory restrictions upon Verizon's entry into the potentially lucrative market for long-distance service. To be allowed to enter the long-distance market in the first place, an incumbent LEC must be on good behavior in its local market. Authorization by the FCC requires state-by-state satisfaction of § 271's competitive checklist, which as we have noted includes the nondiscriminatory provision of access to UNEs. Section 271 applications to provide long-distance service have now been approved for incumbent LECs in 47 States and the District of Columbia. See FCC Authorizes SBC to Provide Long Distance Service in Illinois, Indiana, Ohio and Wisconsin (Oct. 15, 2003), http://hraunfoss.fcc.gov/edocs_ public/attachmatch/DOC-239978A1.pdf.

The FCC's § 271 authorization order for Verizon to provide long-distance service in New York discussed at great length Verizon's commitments to provide access to UNEs, including

the provision of OSS. *In re Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd. 3953, 3989–4077, ¶¶ 82–228 (1999) (Memorandum Opinion and Order) (hereinafter *In re Application*). Those commitments are enforceable by the FCC through continuing oversight; a failure to meet an authorization condition can result in an order that the deficiency be corrected, in the imposition of penalties, or in the suspension or revocation of long-distance approval. See 47 U. S. C. § 271(d)(6)(A). Verizon also subjected itself to oversight by the PSC under a so-called "Performance Assurance Plan" (PAP). See *In re New York Telephone Co.*, 197 P. U. R. 4th 266, 280–281 (N. Y. PSC, 1999) (Order Adopting the Amended PAP). The PAP, which by its terms became binding upon FCC approval, provides specific financial penalties in the event of Verizon's failure to achieve detailed performance requirements. The FCC described Verizon's having entered into a PAP as a significant factor in its § 271 authorization, because that provided "a strong financial incentive for post-entry compliance with the section 271 checklist," and prevented "'backsliding.'" *In re Application* 3958–3959, ¶¶ 8, 12.

The regulatory response to the OSS failure complained of in respondent's suit provides a vivid example of how the regulatory regime operates. When several competitive LECs complained about deficiencies in Verizon's servicing of orders, the FCC and PSC responded. The FCC soon concluded that Verizon was in breach of its sharing duties under § 251(c), imposed a substantial fine, and set up sophisticated measurements to gauge remediation, with weekly reporting requirements and specific penalties for failure. The PSC found Verizon in violation of the PAP even earlier, and imposed additional financial penalties and measurements with *daily* reporting requirements. In short, the regime was an effective steward of the antitrust function.

Against the slight benefits of antitrust intervention here, we must weigh a realistic assessment of its costs. Under the best of circumstances, applying the requirements of § 2 "can be difficult" because "the means of illicit exclusion, like the means of legitimate competition, are myriad." *United States* v. *Microsoft Corp.*, 253 F. 3d 34, 58 (CADC 2001) (en banc) *(per curiam)*. Mistaken inferences and the resulting false condemnations "are especially costly, because they chill the very conduct the antitrust laws are designed to protect." *Matsushita Elec. Industrial Co.* v. *Zenith Radio Corp.*, 475 U. S. 574, 594 (1986). The cost of false positives counsels against an undue expansion of § 2 liability. One false-positive risk is that an incumbent LEC's failure to provide a service with sufficient alacrity might have nothing to do with exclusion. Allegations of violations of § 251(c)(3) duties are difficult for antitrust courts to evaluate, not only because they are highly technical, but also because they are likely to be extremely numerous, given the incessant, complex, and constantly changing interaction of competitive and incumbent LECs implementing the sharing and interconnection obligations. *Amici* States have filed a brief asserting that competitive LECs are threatened with "death by a thousand cuts," Brief for New York et al. as *Amici Curiae* 10 (internal quotation marks omitted)—the identification of which would surely be a daunting task for a generalist antitrust court. Judicial oversight under the Sherman Act would seem destined to distort investment and lead to a new layer of interminable litigation, atop the variety of litigation routes already available to and actively pursued by competitive LECs.

Even if the problem of false positives did not exist, conduct consisting of anticompetitive violations of § 251 may be, as we have concluded with respect to above-cost predatory pricing schemes, "beyond the practical ability of a judicial tribunal to control." *Brooke Group Ltd.* v. *Brown & Williamson Tobacco Corp.*, 509 U. S. 209, 223 (1993). Effective

remediation of violations of regulatory sharing requirements will ordinarily require continuing supervision of a highly detailed decree. We think that Professor Areeda got it exactly right: "No court should impose a duty to deal that it cannot explain or adequately and reasonably supervise. The problem should be deemed irremedia[ble] by antitrust law when compulsory access requires the court to assume the day-to-day controls characteristic of a regulatory agency." Areeda, 58 Antitrust L. J., at 853. In this case, respondent has requested an equitable decree to "[p]reliminarily and permanently enjoi[n] [Verizon] from providing access to the local loop market . . . to [rivals] on terms and conditions that are not as favorable" as those that Verizon enjoys. App. 49–50. An antitrust court is unlikely to be an effective day-to-day enforcer of these detailed sharing obligations.[4]

* * *

The 1996 Act is, in an important respect, much more ambitious than the antitrust laws. It attempts "*to eliminate the monopolies* enjoyed by the inheritors of AT&T's local franchises." *Verizon Communications Inc.* v. *FCC*, 535 U. S., at 476 (emphasis added). Section 2 of the Sherman Act, by contrast, seeks merely to prevent *unlawful monopolization.* It would be a serious mistake to conflate the two goals. The Sherman Act is indeed the "Magna Carta of free enterprise," *United States* v. *Topco Associates, Inc.*, 405 U. S. 596, 610 (1972), but it does not give judges *carte blanche* to insist that a monopolist alter its way of doing business whenever some

[4] The Court of Appeals also thought that respondent's complaint might state a claim under a "monopoly leveraging" theory (a theory barely discussed by respondent, see Brief for Respondent 24, n. 10). We disagree. To the extent the Court of Appeals dispensed with a requirement that there be a "dangerous probability of success" in monopolizing a second market, it erred, *Spectrum Sports, Inc.* v. *McQuillan*, 506 U. S. 447, 459 (1993). In any event, leveraging presupposes anticompetitive conduct, which in this case could only be the refusal-to-deal claim we have rejected.

other approach might yield greater competition. We conclude that respondent's complaint fails to state a claim under the Sherman Act.[5]

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.

JUSTICE STEVENS, with whom JUSTICE SOUTER and JUSTICE THOMAS join, concurring in the judgment.

In complex cases it is usually wise to begin by deciding whether the plaintiff has standing to maintain the action. Respondent, the plaintiff in this case, is a local telephone service customer of AT&T. Its complaint alleges that it has received unsatisfactory service because Verizon has engaged in conduct that adversely affects AT&T's ability to serve its customers, in violation of § 2 of the Sherman Act. 15 U. S. C. § 2. Respondent seeks from Verizon treble damages, a remedy that § 4 of the Clayton Act makes available to "any person who shall be injured in his business or property." 15 U. S. C. § 15. The threshold question presented by the complaint is whether, assuming the truth of its allegations, respondent is a "person" within the meaning of § 4.

Respondent would unquestionably be such a "person" if we interpreted the text of the statute literally. But we have eschewed a literal reading of § 4, particularly in cases in which there is only an indirect relationship between the defendant's alleged misconduct and the plaintiff's asserted injury. *Associated Gen. Contractors of Cal., Inc.* v. *Carpenters*, 459 U. S. 519, 529–535 (1983). In such cases, "the importance of avoiding either the risk of duplicate recoveries

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[5] Our disposition makes it unnecessary to consider petitioner's alternative contention that respondent lacks antitrust standing. See *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83, 97, and n. 2 (1998); *National Railroad Passenger Corporation* v. *National Assn. of Railroad Passengers*, 414 U. S. 453, 456 (1974).

on the one hand, or the danger of complex apportionment of damages on the other," weighs heavily against a literal reading of § 4. *Id.*, at 543–544. Our interpretation of § 4 has thus adhered to Justice Holmes' observation that the "general tendency of the law, in regard to damages at least, is not to go beyond the first step." *Southern Pacific Co.* v. *Darnell-Taenzer Lumber Co.*, 245 U. S. 531, 533 (1918).

I would not go beyond the first step in this case. Although respondent contends that its injuries were, like the plaintiff's injuries in *Blue Shield of Va.* v. *McCready*, 457 U. S. 465, 479 (1982), "the very means by which . . . [Verizon] sought to achieve its illegal ends," it remains the case that whatever antitrust injury respondent suffered because of Verizon's conduct was purely derivative of the injury that AT&T suffered. And for that reason, respondent's suit, unlike *McCready*, runs both the risk of duplicative recoveries and the danger of complex apportionment of damages. The task of determining the monetary value of the harm caused to respondent by AT&T's inferior service, the portion of that harm attributable to Verizon's misconduct, whether all or just some of such possible misconduct was prohibited by the Sherman Act, and what offset, if any, should be allowed to make room for a recovery that would make AT&T whole, is certain to be daunting. AT&T, as the direct victim of Verizon's alleged misconduct, is in a far better position than respondent to vindicate the public interest in enforcement of the antitrust laws. Denying a remedy to AT&T's customer is not likely to leave a significant antitrust violation undetected or unremedied, and will serve the strong interest "in keeping the scope of complex antitrust trials within judicially manageable limits." *Associated Gen. Contractors*, 459 U. S., at 543.

In my judgment, our reasoning in *Associated General Contractors* requires us to reverse the judgment of the Court of Appeals. I would not decide the merits of the § 2

claim unless and until such a claim is advanced by either AT&T or a similarly situated competitive local exchange carrier.

Syllabus

ILLINOIS *v.* LIDSTER

CERTIORARI TO THE SUPREME COURT OF ILLINOIS

No. 02–1060. Argued November 5, 2003—Decided January 13, 2004

Police set up a highway checkpoint to obtain information from motorists about a hit-and-run accident occurring about one week earlier at the same location and time of night. Officers stopped each vehicle for 10 to 15 seconds, asked the occupants whether they had seen anything happen there the previous weekend, and handed each driver a flyer describing and requesting information about the accident. As respondent Lidster approached, his minivan swerved, nearly hitting an officer. The officer smelled alcohol on Lidster's breath. Another officer administered a sobriety test and then arrested Lidster. He was convicted in Illinois state court of driving under the influence of alcohol. He challenged his arrest and conviction on the ground that the government obtained evidence through use of a checkpoint stop that violated the Fourth Amendment. The trial court rejected that challenge, but the state appellate court reversed. The State Supreme Court agreed, holding that, in light of *Indianapolis* v. *Edmond*, 531 U. S. 32, the stop was unconstitutional.

Held: The checkpoint stop did not violate the Fourth Amendment. Pp. 423–428.

(a) *Edmond* does not govern the outcome of this case. In *Edmond*, this Court held that, absent special circumstances, the Fourth Amendment forbids police to make stops without individualized suspicion at a checkpoint set up primarily for general "crime control" purposes. 531 U. S., at 41, 44. Specifically, the checkpoint in *Edmond* was designed to ferret out drug crimes committed by the motorists themselves. Here, the stop's primary law enforcement purpose was *not* to determine whether a vehicle's occupants were committing a crime, but to ask the occupants, as members of the public, for help in providing information about a crime in all likelihood committed by others. *Edmond*'s language, as well as its context, makes clear that an information-seeking stop's constitutionality was not then before this Court. Pp. 423–424.

(b) Nor does the Fourth Amendment require courts to apply an *Edmond*-type rule of automatic unconstitutionality to such stops. The fact that they normally lack individualized suspicion cannot by itself determine the constitutional outcome, as the Fourth Amendment does not treat a motorist's car as his castle, see, *e. g.*, *New York* v. *Class*, 475 U. S. 106, 112–113, and special law enforcement concerns will sometimes

justify highway stops without individualized suspicion, see, *e. g.*, *Michigan Dept. of State Police* v. *Sitz*, 496 U. S. 444. Moreover, the context here (seeking information from the public) is one in which, by definition, the concept of individualized suspicion has little role to play, and an information-seeking stop is not the kind of event that involves suspicion, or lack thereof, of the relevant individual. In addition, information-seeking highway stops are less likely to provoke anxiety or to prove intrusive, since they are likely brief, the questions asked are not designed to elicit self-incriminating information, and citizens will often react positively when police ask for help. The law also ordinarily permits police to seek the public's voluntary cooperation in a criminal investigation. That the importance of soliciting the public's assistance is offset to some degree by the need to stop a motorist—which amounts to a "seizure" in Fourth Amendment terms, *e. g.*, *Edmond*, *supra*, at 40—is not important enough to justify an *Edmond*-type rule here. Finally, such a rule is not needed to prevent an unreasonable proliferation of police checkpoints. Practical considerations of limited police resources and community hostility to traffic tieups seem likely to inhibit any such proliferation, and the Fourth Amendment's normal insistence that the stop be reasonable in context will still provide an important legal limitation on checkpoint use. Pp. 424–427.

(c) The checkpoint stop was constitutional. In judging its reasonableness, hence, its constitutionality, this Court looks to "the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty." *Brown* v. *Texas*, 443 U. S. 47, 51. The relevant public concern was grave, as the police were investigating a crime that had resulted in a human death, and the stop advanced this concern to a significant degree given its timing and location. Most importantly, the stops interfered only minimally with liberty of the sort the Fourth Amendment seeks to protect. Viewed objectively, each stop required only a brief wait in line and contact with police for only a few seconds. Viewed subjectively, the systematic contact provided little reason for anxiety or alarm, and there is no allegation that the police acted in a discriminatory or otherwise unlawful manner. Pp. 427–428.

202 Ill. 2d 1, 779 N. E. 2d 855, reversed.

BREYER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, KENNEDY, and THOMAS, JJ., joined, and in which STEVENS, SOUTER, and GINSBURG, JJ., joined as to Parts I and II. STEVENS, J., filed an opinion concurring in part and dissenting in part, in which SOUTER and GINSBURG, JJ., joined, *post*, p. 428.

Gary Feinerman, Solicitor General of Illinois, argued the cause for petitioner. With him on the briefs were *Lisa Madigan*, Attorney General, and *Linda D. Woloshin*, *Lisa Anne Hoffman*, and *Karen Kaplan*, Assistant Attorneys General.

Patricia A. Millett argued the cause for the United States as *amicus curiae* urging reversal. With her on the brief were *Solicitor General Olson*, *Acting Assistant Attorney General Wray*, *Deputy Solicitor General Dreeben*, and *Patty Merkamp Stemler*.

Donald John Ramsell argued the cause and filed a brief for respondent.*

JUSTICE BREYER delivered the opinion of the Court.

This Fourth Amendment case focuses upon a highway checkpoint where police stopped motorists to ask them for information about a recent hit-and-run accident. We hold that the police stops were reasonable, hence, constitutional.

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*Briefs of *amici curiae* urging reversal were filed for the State of Ohio et al. by *Jim Petro*, Attorney General of Ohio, *Douglas R. Cole*, State Solicitor, and *Robert C. Maier*, Assistant Solicitor, *Robert J. Spagnoletti*, Acting Corporation Counsel of the District of Columbia, and by the Attorneys General for their respective jurisdictions as follows: *William H. Pryor, Jr.*, of Alabama, *Terry Goddard* of Arizona, *M. Jane Brady* of Delaware, *Steve Carter* of Indiana, *Thomas J. Miller* of Iowa, *G. Steven Rowe* of Maine, *J. Joseph Curran, Jr.*, of Maryland, *Mike Hatch* of Minnesota, *Mike McGrath* of Montana, *Brian Sandoval* of Nevada, *Peter Heed* of New Hampshire, *W. A. Drew Edmondson* of Oklahoma, *Hardy Myers* of Oregon, *D. Michael Fisher* of Pennsylvania, *Henry Dargan McMaster* of South Carolina, *Lawrence E. Long* of South Dakota, *Greg Abbott* of Texas, *Mark L. Shurtleff* of Utah, *William H. Sorrell* of Vermont, *Jerry W. Kilgore* of Virginia, and *Iver A. Stridiron* of the Virgin Islands; for the Criminal Justice Legal Foundation by *Kent S. Scheidegger* and *Charles L. Hobson;* and for the Illinois Association of Chiefs of Police et al. by *James G. Sotos*.

Briefs of *amici curiae* urging affirmance were filed for the National Association of Criminal Defense Lawyers et al. by *Lawrence S. Lustberg*, *Joshua L. Dratel*, *Steven R. Shapiro*, and *Harvey Grossman;* and for the National College for DUI Defense by *Barry T. Simons* and *W. Troy McKinney*.

I

The relevant background is as follows: On Saturday, August 23, 1997, just after midnight, an unknown motorist traveling eastbound on a highway in Lombard, Illinois, struck and killed a 70-year-old bicyclist. The motorist drove off without identifying himself. About one week later at about the same time of night and at about the same place, local police set up a highway checkpoint designed to obtain more information about the accident from the motoring public.

Police cars with flashing lights partially blocked the eastbound lanes of the highway. The blockage forced traffic to slow down, leading to lines of up to 15 cars in each lane. As each vehicle drew up to the checkpoint, an officer would stop it for 10 to 15 seconds, ask the occupants whether they had seen anything happen there the previous weekend, and hand each driver a flyer. The flyer said "ALERT . . . FATAL HIT & RUN ACCIDENT" and requested "ASSISTANCE IN IDENTIFYING THE VEHICLE AND DRIVER INVOLVED IN THIS ACCIDENT WHICH KILLED A 70 YEAR OLD BICYCLIST." App. 9.

Robert Lidster, the respondent, drove a minivan toward the checkpoint. As he approached the checkpoint, his van swerved, nearly hitting one of the officers. The officer smelled alcohol on Lidster's breath. He directed Lidster to a side street where another officer administered a sobriety test and then arrested Lidster. Lidster was tried and convicted in Illinois state court of driving under the influence of alcohol.

Lidster challenged the lawfulness of his arrest and conviction on the ground that the government had obtained much of the relevant evidence through use of a checkpoint stop that violated the Fourth Amendment. The trial court rejected that challenge. But an Illinois appellate court reached the opposite conclusion. 319 Ill. App. 3d 825, 747 N. E. 2d 419 (2001). The Illinois Supreme Court agreed

with the appellate court. It held (by a vote of 4 to 3) that our decision in *Indianapolis* v. *Edmond*, 531 U. S. 32 (2000), required it to find the stop unconstitutional. 202 Ill. 2d 1, 779 N. E. 2d 855 (2002).

Because lower courts have reached different conclusions about this matter, we granted certiorari. See *Burns* v. *Commonwealth*, 261 Va. 307, 541 S. E. 2d 872, cert. denied, 534 U. S. 1043 (2001) (finding similar checkpoint stop constitutional). We now reverse the Illinois Supreme Court's determination.

II

The Illinois Supreme Court basically held that our decision in *Edmond* governs the outcome of this case. We do not agree. *Edmond* involved a checkpoint at which police stopped vehicles to look for evidence of drug crimes committed by occupants of those vehicles. After stopping a vehicle at the checkpoint, police would examine (from outside the vehicle) the vehicle's interior; they would walk a drug-sniffing dog around the exterior; and, if they found sufficient evidence of drug (or other) crimes, they would arrest the vehicle's occupants. 531 U. S., at 35. We found that police had set up this checkpoint primarily for general "crime control" purposes, *i. e.*, "to detect evidence of ordinary criminal wrongdoing." *Id.*, at 41. We noted that the stop was made without individualized suspicion. And we held that the Fourth Amendment forbids such a stop, in the absence of special circumstances. *Id.*, at 44.

The checkpoint stop here differs significantly from that in *Edmond*. The stop's primary law enforcement purpose was *not* to determine whether a vehicle's occupants were committing a crime, but to ask vehicle occupants, as members of the public, for their help in providing information about a crime in all likelihood committed by others. The police expected the information elicited to help them apprehend, not the vehicle's occupants, but other individuals.

Edmond's language, as well as its context, makes clear that the constitutionality of this latter, information-seeking kind of stop was not then before the Court. *Edmond* refers to the subject matter of its holding as "stops justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that *any given motorist has committed some crime*." *Ibid.* (emphasis added). We concede that *Edmond* describes the law enforcement objective there in question as a "general interest in crime control," but it specifies that the phrase "general interest in crime control" does not refer to every "law enforcement" objective. *Id.*, at 44, n. 1. We must read this and related general language in *Edmond* as we often read general language in judicial opinions—as referring in context to circumstances similar to the circumstances then before the Court and not referring to quite different circumstances that the Court was not then considering.

Neither do we believe, *Edmond* aside, that the Fourth Amendment would have us apply an *Edmond*-type rule of automatic unconstitutionality to brief, information-seeking highway stops of the kind now before us. For one thing, the fact that such stops normally lack individualized suspicion cannot by itself determine the constitutional outcome. As in *Edmond*, the stop here at issue involves a motorist. The Fourth Amendment does not treat a motorist's car as his castle. See, *e. g.*, *New York* v. *Class*, 475 U. S. 106, 112–113 (1986); *United States* v. *Martinez-Fuerte*, 428 U. S. 543, 561 (1976). And special law enforcement concerns will sometimes justify highway stops without individualized suspicion. See *Michigan Dept. of State Police* v. *Sitz*, 496 U. S. 444 (1990) (sobriety checkpoint); *Martinez-Fuerte*, *supra* (Border Patrol checkpoint). Moreover, unlike *Edmond*, the context here (seeking information from the public) is one in which, by definition, the concept of individualized suspicion has little role to play. Like certain other forms of police activity, say,

crowd control or public safety, an information-seeking stop is not the kind of event that involves suspicion, or lack of suspicion, of the relevant individual.

For another thing, information-seeking highway stops are less likely to provoke anxiety or to prove intrusive. The stops are likely brief. The police are not likely to ask questions designed to elicit self-incriminating information. And citizens will often react positively when police simply ask for their help as "responsible citizen[s]" to "give whatever information they may have to aid in law enforcement." *Miranda* v. *Arizona*, 384 U. S. 436, 477–478 (1966).

Further, the law ordinarily permits police to seek the voluntary cooperation of members of the public in the investigation of a crime. "[L]aw enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, [or] by putting questions to him if the person is willing to listen." *Florida* v. *Royer*, 460 U. S. 491, 497 (1983). See also ALI, Model Code of Pre-Arraignment Procedure § 110.1(1) (1975) ("[L]aw enforcement officer may . . . request any person to furnish information or otherwise cooperate in the investigation or prevention of crime"). That, in part, is because voluntary requests play a vital role in police investigatory work. See, *e. g.*, *Haynes* v. *Washington*, 373 U. S. 503, 515 (1963) ("[I]nterrogation of witnesses . . . is undoubtedly an essential tool in effective law enforcement"); U. S. Dept. of Justice, Eyewitness Evidence: A Guide for Law Enforcement 14–15 (Oct. 1999) (instructing law enforcement to gather information from witnesses near the scene).

The importance of soliciting the public's assistance is offset to some degree by the need to stop a motorist to obtain that help—a need less likely present where a pedestrian, not a motorist, is involved. The difference is significant in light of our determinations that such an involuntary stop amounts

to a "seizure" in Fourth Amendment terms. *E. g.*, *Edmond*, 531 U. S., at 40. That difference, however, is not important enough to justify an *Edmond*-type rule here. After all, as we have said, the motorist stop will likely be brief. Any accompanying traffic delay should prove no more onerous than many that typically accompany normal traffic congestion. And the resulting voluntary questioning of a motorist is as likely to prove important for police investigation as is the questioning of a pedestrian. Given these considerations, it would seem anomalous were the law (1) ordinarily to allow police freely to seek the voluntary cooperation of pedestrians but (2) ordinarily to forbid police to seek similar voluntary cooperation from motorists.

Finally, we do not believe that an *Edmond*-type rule is needed to prevent an unreasonable proliferation of police checkpoints. Cf. 202 Ill. 2d, at 9–10, 779 N. E. 2d, at 859–860 (expressing that concern). Practical considerations—namely, limited police resources and community hostility to related traffic tieups—seem likely to inhibit any such proliferation. See Fell, Ferguson, Williams, & Fields, Why Aren't Sobriety Checkpoints Widely Adopted as an Enforcement Strategy in the United States? 35 Accident Analysis & Prevention 897 (Nov. 2003) (finding that sobriety checkpoints are not more widely used due to the lack of police resources and the lack of community support). And, of course, the Fourth Amendment's normal insistence that the stop be reasonable in context will still provide an important legal limitation on police use of this kind of information-seeking checkpoint.

These considerations, taken together, convince us that an *Edmond*-type presumptive rule of unconstitutionality does not apply here. That does not mean the stop is automatically, or even presumptively, constitutional. It simply means that we must judge its reasonableness, hence, its constitutionality, on the basis of the individual circumstances. And as this Court said in *Brown* v. *Texas*, 443 U. S. 47, 51

(1979), in judging reasonableness, we look to "the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty." See also *Sitz*, 496 U. S., at 450–455 (balancing these factors in determining reasonableness of a checkpoint stop); *Martinez-Fuerte*, 428 U. S., at 556–564 (same).

III

We now consider the reasonableness of the checkpoint stop before us in light of the factors just mentioned, an issue that, in our view, has been fully argued here. See Brief for Petitioner 14–18; Brief for Respondent 17–27. We hold that the stop was constitutional.

The relevant public concern was grave. Police were investigating a crime that had resulted in a human death. No one denies the police's need to obtain more information at that time. And the stop's objective was to help find the perpetrator of a specific and known crime, not of unknown crimes of a general sort. Cf. *Edmond*, *supra*, at 44.

The stop advanced this grave public concern to a significant degree. The police appropriately tailored their checkpoint stops to fit important criminal investigatory needs. The stops took place about one week after the hit-and-run accident, on the same highway near the location of the accident, and at about the same time of night. And police used the stops to obtain information from drivers, some of whom might well have been in the vicinity of the crime at the time it occurred. See App. 28–29 (describing police belief that motorists routinely leaving work after night shifts at nearby industrial complexes might have seen something relevant).

Most importantly, the stops interfered only minimally with liberty of the sort the Fourth Amendment seeks to protect. Viewed objectively, each stop required only a brief wait in line—a very few minutes at most. Contact with the police lasted only a few seconds. Cf. *Martinez-Fuerte*, *supra*, at 547 (upholding stops of three-to-five minutes); *Sitz*, *supra*,

at 448 (upholding delays of 25 seconds). Police contact consisted simply of a request for information and the distribution of a flyer. Cf. *Martinez-Fuerte*, *supra*, at 546 (upholding inquiry as to motorists' citizenship and immigration status); *Sitz*, *supra*, at 447 (upholding examination of all drivers for signs of intoxication). Viewed subjectively, the contact provided little reason for anxiety or alarm. The police stopped all vehicles systematically. Cf. *Martinez-Fuerte*, *supra*, at 558; *Sitz*, *supra*, at 452–453. And there is no allegation here that the police acted in a discriminatory or otherwise unlawful manner while questioning motorists during stops.

For these reasons we conclude that the checkpoint stop was constitutional.

The judgment of the Illinois Supreme Court is

Reversed.

JUSTICE STEVENS, with whom JUSTICE SOUTER and JUSTICE GINSBURG join, concurring in part and dissenting in part.

There is a valid and important distinction between seizing a person to determine whether she has committed a crime and seizing a person to ask whether she has any information about an unknown person who committed a crime a week earlier. I therefore join Parts I and II of the Court's opinion explaining why our decision in *Indianapolis* v. *Edmond*, 531 U. S. 32 (2000), is not controlling in this case. However, I find the issue discussed in Part III of the opinion closer than the Court does and believe it would be wise to remand the case to the Illinois state courts to address that issue in the first instance.

In contrast to pedestrians, who are free to keep walking when they encounter police officers handing out flyers or seeking information, motorists who confront a roadblock are required to stop, and to remain stopped for as long as the officers choose to detain them. Such a seizure may seem

relatively innocuous to some, but annoying to others who are forced to wait for several minutes when the line of cars is lengthened—for example, by a surge of vehicles leaving a factory at the end of a shift. Still other drivers may find an unpublicized roadblock at midnight on a Saturday somewhat alarming.

On the other side of the equation, the likelihood that questioning a random sample of drivers will yield useful information about a hit-and-run accident that occurred a week earlier is speculative at best. To be sure, the sample in this case was not entirely random: The record reveals that the police knew that the victim had finished work at the Post Office shortly before the fatal accident, and hoped that other employees of the Post Office or the nearby industrial park might work on similar schedules and, thus, have been driving the same route at the same time the previous week. That is a plausible theory, but there is no evidence in the record that the police did anything to confirm that the nearby businesses in fact had shift changes at or near midnight on Saturdays, or that they had reason to believe that a roadblock would be more effective than, say, placing flyers on the employees' cars.

In short, the outcome of the multifactor test prescribed in *Brown* v. *Texas*, 443 U. S. 47 (1979), is by no means clear on the facts of this case. Because the Illinois Appellate Court and the State Supreme Court held that the Lombard roadblock was *per se* unconstitutional under *Indianapolis* v. *Edmond*, neither court attempted to apply the *Brown* test. "We ordinarily do not decide in the first instance issues not resolved below." *Pierce County* v. *Guillen*, 537 U. S. 129, 148, n. 10 (2003). We should be especially reluctant to abandon our role as a court of review in a case in which the constitutional inquiry requires analysis of local conditions and practices more familiar to judges closer to the scene. I would therefore remand the case to the Illinois

courts to undertake the initial analysis of the issue that the Court resolves in Part III of its opinion. To that extent, I respectfully dissent.

Syllabus

FREW, ON BEHALF OF HER DAUGHTER, FREW, ET AL. *v.* HAWKINS, COMMISSIONER, TEXAS HEALTH AND HUMAN SERVICES COMMISSION, ET AL.

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

No. 02–628. Argued October 7, 2003—Decided January 14, 2004

As a participant in the Medicaid program, Texas must meet certain federal requirements, including that it have an Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program for children. The petitioners, mothers of children eligible for EPSDT services in Texas, sought injunctive relief against state agencies and various state officials, claiming that the Texas program did not meet federal requirements. The claims against the state agencies were dismissed on Eleventh Amendment grounds, but the state officials remained in the suit and entered into a consent decree approved by the Federal District Court. In contrast with the federal statute's brief and general mandate, the decree required state officials to implement many specific proposals. Two years later, when the petitioners filed an enforcement action, the District Court rejected the state officials' argument that the Eleventh Amendment rendered the decree unenforceable, found violations of the decree, and directed the parties to submit proposals outlining possible remedies. On interlocutory appeal, the Fifth Circuit reversed, holding that the Eleventh Amendment prevented enforcement of the decree because the violations of the decree did not also constitute violations of the Medicaid Act.

Held: Enforcement of the consent decree does not violate the Eleventh Amendment. Pp. 436–442.

(a) This case involves the intersection of two areas of federal law: the Eleventh Amendment and the rules governing consent decrees. The state officials argue that a federal court should not enforce a consent decree arising under *Ex parte Young*, 209 U. S. 123, unless it first identifies, at the enforcement stage, a violation of federal law such as the EPSDT statute itself. This Court disagrees. The decree here is a federal-court order that springs from a federal dispute and furthers the objectives of federal law. *Firefighters* v. *Cleveland*, 478 U. S. 501, 525. The petitioners' enforcement motion sought a remedy consistent with *Ex parte Young* and *Firefighters* and accepted by the state officials when they asked the court to approve the consent decree. *Pennhurst State School and Hospital* v. *Halderman*, 465 U. S. 89, in which this

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Court found *Ex parte Young*'s rationale inapplicable to suits brought against state officials alleging state-law violations, is distinguishable from this case, which involves a federal decree entered to implement a federal statute. Enforcing the decree vindicates an agreement that the state officials reached to comply with federal law. Federal courts are not reduced to approving consent decrees and hoping for compliance. Once entered, that decree may be enforced. See *Hutto* v. *Finney*, 437 U. S. 678. Pp. 436–440.

(b) The state officials and *amici* state attorneys general express legitimate concerns that enforcement of consent decrees can undermine sovereign interests and accountability of state governments. However, when a consent decree is entered under *Ex parte Young*, the response to their concerns has its source not in the Eleventh Amendment but in the court's equitable powers and in the direction given by Federal Rule of Civil Procedure 60(b)(5), which encompasses an equity court's traditional power to modify its decree in light of changed circumstances. See, *e. g.*, *Rufo* v. *Inmates of Suffolk County Jail*, 502 U. S. 367. If a detailed order is required to ensure compliance with a decree for prospective relief that in effect mandates the State to administer a significant federal program, federalism principles require that state officials with front-line responsibility for the program be given latitude and substantial discretion. The federal court must ensure that when the decree's objects have been attained, responsibility for discharging the State's obligations is returned promptly to the State and its officials. The basic obligations of federal law may remain the same, but the precise manner of their discharge may not. If the State establishes reason to modify the decree, the court should make the necessary changes; otherwise, the decree should be enforced according to its terms. Pp. 441–442.

300 F. 3d 530, reversed and remanded.

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

Susan Finkelstein Zinn argued the cause for petitioners. With her on the briefs were *Edward B. Cloutman III* and *Jane Kathryn Swanson.*

Irving L. Gornstein argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Olson*, *Assistant Attorney General McCallum, Deputy Solicitor General Kneedler, Mark B. Stern*, and *Alisa B. Klein.*

Rafael Edward Cruz, Solicitor General of Texas, argued the cause for respondents. With him on the briefs were *Greg Abbott*, Attorney General, *Barry R. McBee*, First Assistant Attorney General, *Jeffrey S. Boyd*, Deputy Attorney General, and *Melanie P. Sarwal*, Assistant Solicitor General.*

JUSTICE KENNEDY delivered the opinion of the Court.

In this case we consider whether the Eleventh Amendment bars enforcement of a federal consent decree entered into by state officials.

I

Medicaid is a cooperative federal-state program that provides federal funding for state medical services to the poor. See *Wilder* v. *Virginia Hospital Assn.*, 496 U. S. 498, 502 (1990). State participation is voluntary; but once a State elects to join the program, it must administer a state plan that meets federal requirements. One requirement is that every participating State must have an Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program. See 79 Stat. 343, as amended, 42 U. S. C. §§ 1396a(a)(43), 1396d(r). EPSDT programs provide health care services to

**David T. Goldberg* filed a brief for AARP et al. as *amici curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the State of Utah et al. by *Mark L. Shurtleff*, Attorney General of Utah, and *Alain C. Balmanno* and *Joni J. Jones*, Assistant Attorneys General, and by the Attorneys General for their respective States as follows: *Ken Salazar* of Colorado, *M. Jane Brady* of Delaware, *Mark J. Bennett* of Hawaii, *Lawrence Wasden* of Idaho, *Richard P. Ieyoub* of Louisiana, *J. Joseph Curran, Jr.*, of Maryland, *Michael A. Cox* of Michigan, *Mike Moore* of Mississippi, *Brian Sandoval* of Nevada, *Peter W. Heed* of New Hampshire, *Wayne Stenehjem* of North Dakota, *W. A. Drew Edmondson* of Oklahoma, *D. Michael Fisher* of Pennsylvania, *Lawrence E. Long* of South Dakota, *Jerry Kilgore* of Virginia, *William H. Sorrell* of Vermont, *Peg Lautenschlager* of Wisconsin, and *Pat Crank* of Wyoming; and for the National Conference of State Legislatures et al. by *Richard Ruda* and *James I. Crowley*.

children to reduce lifelong vulnerability to illness or disease. The EPSDT provisions of the Medicaid statute require participating States to provide various medical services to eligible children, and to provide notice of the services. See *ibid.*

Petitioners here are mothers of children eligible for EPSDT services in Texas. In 1993 they filed a civil action pursuant to Rev. Stat. § 1979, 42 U. S. C. § 1983, seeking injunctive relief against the Texas Department of Health and the Texas Health and Human Services Commission, as well as various officials at these agencies charged with implementing the Texas EPSDT program. The named officials included the commissioners of the two agencies, the Texas State Medicaid Director, and certain employees at the Texas Department of Health. The individuals were sued in their official capacities and were represented throughout the litigation by the office of the Texas attorney general.

Petitioners alleged that the Texas program did not satisfy the requirements of federal law. They asserted that the Texas program did not ensure eligible children would receive health, dental, vision, and hearing screens; failed to meet annual participation goals; and gave eligible recipients inadequate notice of available services. Petitioners also claimed the program lacked proper case management and corrective procedures and did not provide uniform services throughout Texas.

After the suit was filed, the two Texas state agencies named in the suit moved to dismiss the claims against them on Eleventh Amendment grounds. Petitioners did not object, and in 1994 the District Court dismissed the state agencies as parties. The state officials remained in the suit, and the District Court certified a class consisting of children in Texas entitled to EPSDT services, a class of more than 1 million persons. Following extensive settlement negotiations, petitioners and the state officials agreed to resolve the suit by entering into a consent decree. The District

Court conducted a fairness hearing, approved the consent decree, and entered it in 1996.

Judicial enforcement of the 1996 consent decree is the subject of the present dispute. The decree is a detailed document about 80 pages long that orders a comprehensive plan for implementing the federal statute. In contrast with the brief and general mandate in the statute itself, the consent decree requires the state officials to implement many specific procedures. An example illustrates the nature of the difference. The EPSDT statute requires States to "provid[e] or arrang[e] for the provision of . . . screening services in all cases where they are requested," and also to arrange for "corrective treatment" in such cases. 42 U. S. C. §§ 1396a(a)(43)(B), (C). The consent decree implements the provision in part by directing the Texas Department of Health to staff and maintain toll-free telephone numbers for eligible recipients who seek assistance in scheduling and arranging appointments. Consent Decree ¶¶ 241–242, Lodging of Petitioners 63–64. According to the decree, the advisors at the toll-free numbers must furnish the name, address, and telephone numbers of one or more health care providers in the appropriate specialty in a convenient location, and they also must assist with transportation arrangements to and from appointments. *Id.*, ¶¶ 243–245, Lodging of Petitioners 64. The advisers must inform recipients enrolled in managed care health plans that they are free to choose a primary care physician upon enrollment. *Id.*, ¶ 244, Lodging of Petitioners 64.

Two years after the consent decree was entered, petitioners filed a motion to enforce it in the District Court. The state officials, it was alleged, had not complied with the decree in various respects. The officials denied the allegations and maintained that the Eleventh Amendment rendered the decree unenforceable even if they were in noncompliance. After an evidentiary hearing, the District Court issued a detailed opinion concluding that certain provisions

of the consent decree had been violated. *Frew* v. *Gilbert*, 109 F. Supp. 2d 579 (ED Tex. 2000). The District Court rejected the Eleventh Amendment argument, *id.*, at 660–678, and directed the parties to submit proposals outlining possible remedies for the violations.

The state officials filed an interlocutory appeal, and the Court of Appeals for the Fifth Circuit reversed. The Court of Appeals held that the Eleventh Amendment prevented enforcement of the decree unless the violation of the consent decree was also a statutory violation of the Medicaid Act that imposed a clear and binding obligation on the State. *Frazar* v. *Gilbert*, 300 F. 3d 530, 543 (2002). The Court of Appeals assessed the violations identified by the District Court and concluded that none provided a valid basis for enforcement. Regardless of whether the EPSDT program complied with the detailed consent decree, the Court of Appeals reasoned, the program was good enough to comply with the general mandates of federal law. The Court of Appeals concluded that because petitioners had not established a violation of federal law, the District Court lacked jurisdiction to remedy the consent decree violations. *Id.*, at 546–551.

Other Circuits have reached a contrary result, holding that the Eleventh Amendment does not bar enforcement of consent decrees in like circumstances. See, *e. g.*, *Kozlowski* v. *Coughlin*, 871 F. 2d 241, 244 (CA2 1989); *Wisconsin Hospital Assn.* v. *Reivitz*, 820 F. 2d 863, 868 (CA7 1987). We granted certiorari to resolve the conflict among the Courts of Appeals. 538 U. S. 905 (2003).

II

Petitioners advance two reasons why the consent decree can be enforced without violating the Eleventh Amendment. First, they argue the State waived its Eleventh Amendment immunity in the course of litigation. Second, they contend that enforcement is permitted under the principles of *Ex parte Young*, 209 U. S. 123 (1908). We agree that

the decree is enforceable under *Ex parte Young*, and so we do not address the waiver argument.

This case involves the intersection of two areas of federal law: the reach of the Eleventh Amendment and the rules governing consent decrees. The Eleventh Amendment confirms the sovereign status of the States by shielding them from suits by individuals absent their consent. *Seminole Tribe of Fla.* v. *Florida*, 517 U. S. 44, 54 (1996). To ensure the enforcement of federal law, however, the Eleventh Amendment permits suits for prospective injunctive relief against state officials acting in violation of federal law. *Ex parte Young*, *supra*. This standard allows courts to order prospective relief, see *Edelman* v. *Jordan*, 415 U. S. 651 (1974); *Milliken* v. *Bradley*, 433 U. S. 267 (1977), as well as measures ancillary to appropriate prospective relief, *Green* v. *Mansour*, 474 U. S. 64, 71–73 (1985). Federal courts may not award retrospective relief, for instance, money damages or its equivalent, if the State invokes its immunity. *Edelman*, *supra*, at 668.

Consent decrees have elements of both contracts and judicial decrees. *Firefighters* v. *Cleveland*, 478 U. S. 501, 519 (1986). A consent decree "embodies an agreement of the parties" and is also "an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments and decrees." *Rufo* v. *Inmates of Suffolk County Jail*, 502 U. S. 367, 378 (1992). Consent decrees entered in federal court must be directed to protecting federal interests. In *Firefighters*, we observed that a federal consent decree must spring from, and serve to resolve, a dispute within the court's subject-matter jurisdiction; must come within the general scope of the case made by the pleadings; and must further the objectives of the law upon which the complaint was based. 478 U. S., at 525.

This brings us to the intersection of the principles governing consent decrees and the Eleventh Amendment. As we

understand their argument, the state officials do not contend that the terms of the decree were impermissible under *Ex parte Young*. Nor do they contend that the consent decree failed to comply with *Firefighters*. The officials challenge only the enforcement of the decree, not its entry. They argue that the Eleventh Amendment narrows the circumstances in which courts can enforce federal consent decrees involving state officials.

The theory advanced by the state officials is similar to the one accepted by the Court of Appeals. The officials reason that *Ex parte Young* creates a narrow exception to the general rule of Eleventh Amendment immunity from suit. Consent decrees involving state representatives threaten to broaden this exception, they contend, because decrees allow state officials to bind state governments to significantly more commitments than what federal law requires. Brief for Respondents 9–22. Permitting the enforcement of a broad consent decree would give courts jurisdiction over not just federal law, but also everything else that officials agreed to when they entered into the consent decree. A State in full compliance with federal law could remain subject to federal-court oversight through a course of judicial proceedings brought to enforce the consent decree. To avoid circumventing Eleventh Amendment protections, the officials argue, a federal court should not enforce a consent decree arising from an *Ex parte Young* suit unless the court first identifies, at the enforcement stage, a violation of federal law such as the EPSDT statute itself. Brief for Respondents 9–22.

We disagree with this view of the Eleventh Amendment. The decree is a federal-court order that springs from a federal dispute and furthers the objectives of federal law. See *Firefighters*, *supra*, at 525. The decree states that it creates "a mandatory, enforceable obligation." Consent Decree ¶ 302, Lodging of Petitioners 76. In light of the State's assertion of its Eleventh Amendment immunity, the state

officials lacked the authority to agree to remedies beyond the scope of *Ex parte Young* absent a waiver, as petitioners concede. Tr. of Oral Arg. 12. We can assume, moreover, that the state officials could not enter into a consent decree failing to satisfy the general requirements of consent decrees outlined in *Firefighters.* Petitioners' motion to enforce, however, sought enforcement of a remedy consistent with *Ex parte Young* and *Firefighters,* a remedy the state officials themselves had accepted when they asked the District Court to approve the decree. Enforcing the agreement does not violate the Eleventh Amendment.

The theory advanced by the state officials relies heavily on our decision in *Pennhurst State School and Hospital* v. *Halderman,* 465 U. S. 89 (1984). *Pennhurst* is distinguishable. In that case we found the rationale of *Ex parte Young* inapplicable to suits brought against state officials alleging violations of state law. 465 U. S., at 106. Jurisdiction was improper because "[a] federal court's grant of relief against state officials on the basis of state law, whether prospective or retroactive, does not vindicate the supreme authority of federal law." *Ibid.* Here, by contrast, the order to be enforced is a federal decree entered to implement a federal statute. The decree does implement the Medicaid statute in a highly detailed way, requiring the state officials to take some steps that the statute does not specifically require. The same could be said, however, of any effort to implement the general EPSDT statute in a particular way. The decree reflects a choice among various ways that a State could implement the Medicaid Act. As a result, enforcing the decree vindicates an agreement that the state officials reached to comply with federal law.

Hutto v. *Finney,* 437 U. S. 678 (1978), is instructive on this point. In *Finney,* the Court upheld a District Court's award of attorney's fees designed to encourage state compliance with an existing court order. State prisoners had sued state prison officials claiming that the conditions of their confine-

ment violated the Eighth Amendment, and the District Court had ordered the officials to improve prison conditions. When the officials refused to comply in good faith with the order, the District Court awarded attorney's fees to the prisoners' lawyers to be paid from the state treasury. *Id.*, at 685. The state officials objected, arguing that the relief was not valid under the Eleventh Amendment because it exceeded the scope of *Ex parte Young.* The Court rejected this argument:

> "In exercising their prospective powers under *Ex parte Young* and *Edelman* v. *Jordan*, federal courts are not reduced to issuing injunctions against state officers and hoping for compliance. Once issued, an injunction may be enforced. . . . If a state agency refuses to adhere to a court order, a financial penalty may be the most effective means of insuring compliance. The principles of federalism that inform Eleventh Amendment doctrine surely do not require federal courts to enforce their decrees only by sending high state officials to jail. The less intrusive power to impose a fine is properly treated as ancillary to the federal court's power to impose injunctive relief." 437 U. S., at 690–691 (footnote omitted).

The award of attorney's fees "vindicated the District Court's authority over a recalcitrant litigant," the Court continued. "We see no reason to distinguish this award from any other penalty imposed to enforce a prospective injunction." *Id.*, at 691–692.

While *Finney* is somewhat different from the present case in that it involved the scope of remedies for violation of a prior order rather than the antecedent question whether remedies are permitted in the first instance, a similar principle applies. Federal courts are not reduced to approving consent decrees and hoping for compliance. Once entered, a consent decree may be enforced.

III

The state officials warn that enforcement of consent decrees can undermine the sovereign interests and accountability of state governments. Brief for Respondents 23–32. The attorneys general of 19 States assert similar arguments as *amici curiae.* Brief for Utah et al. as *Amici Curiae.* The concerns they express are legitimate ones. If not limited to reasonable and necessary implementations of federal law, remedies outlined in consent decrees involving state officeholders may improperly deprive future officials of their designated legislative and executive powers. They may also lead to federal-court oversight of state programs for long periods of time even absent an ongoing violation of federal law.

When a federal court has entered a consent decree under *Ex parte Young,* the law's primary response to these concerns has its source not in the Eleventh Amendment but in the court's equitable powers and the direction given by the Federal Rules of Civil Procedure. In particular, Rule 60(b)(5) allows a party to move for relief if "it is no longer equitable that the judgment should have prospective application." The Rule encompasses the traditional power of a court of equity to modify its decree in light of changed circumstances. In *Rufo* v. *Inmates of Suffolk County Jail,* 502 U. S. 367 (1992), the Court explored the application of the Rule to consent decrees involving institutional reform. The Court noted that district courts should apply a "flexible standard" to the modification of consent decrees when a significant change in facts or law warrants their amendment. *Id.,* at 393. See also *Philadelphia Welfare Rights Org.* v. *Shapp,* 602 F. 2d 1114 (CA3 1979) (modifying consent decree implementing Pennsylvania's EPSDT program in light of changed circumstances).

Rufo rejected the idea that the institutional concerns of government officials were "only marginally relevant" when officials moved to amend a consent decree, and noted that

"principles of federalism and simple common sense require the [district] court to give significant weight" to the views of government officials. 502 U. S., at 392, n. 14. When a suit under *Ex parte Young* requires a detailed order to ensure compliance with a decree for prospective relief, and the decree in effect mandates the State, through its named officials, to administer a significant federal program, principles of federalism require that state officials with front-line responsibility for administering the program be given latitude and substantial discretion.

The federal court must exercise its equitable powers to ensure that when the objects of the decree have been attained, responsibility for discharging the State's obligations is returned promptly to the State and its officials. As public servants, the officials of the State must be presumed to have a high degree of competence in deciding how best to discharge their governmental responsibilities. A State, in the ordinary course, depends upon successor officials, both appointed and elected, to bring new insights and solutions to problems of allocating revenues and resources. The basic obligations of federal law may remain the same, but the precise manner of their discharge may not. If the State establishes reason to modify the decree, the court should make the necessary changes; where it has not done so, however, the decree should be enforced according to its terms.

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.

Syllabus

KONTRICK *v.* RYAN

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

No. 02–819. Argued November 3, 2003—Decided January 14, 2004

A creditor in Chapter 7 liquidation proceedings has "60 days after the first date set for the meeting of creditors" to file a complaint objecting to the debtor's discharge. Fed. Rule Bkrtcy. Proc. 4004(a). The bankruptcy court may extend that period "for cause" on motion "filed before the time has expired." Fed. Rule Bkrtcy. Proc. 4004(b). Reinforcing Rule 4004(b)'s restriction on extension of the Rule 4004(a) deadline, Rule 9006(b)(3) allows enlargement of "the time for taking action" under Rule 4004(a) "only to the extent and under the conditions stated in [that rule]," *i. e.*, only as permitted by Rule 4004(b).

On April 4, 1997, petitioner Kontrick filed a Chapter 7 bankruptcy petition. After gaining three successive time extensions from the Bankruptcy Court, respondent Ryan, Kontrick's creditor, filed a complaint on January 13, 1998, objecting to Kontrick's discharge. Ryan alleged that Kontrick had transferred property, within one year of filing his petition, with the intent to defraud creditors, and therefore did not qualify for discharge under 11 U. S. C. §§ 727(a)(2)–(5). Ryan filed an amended complaint on May 6, 1998, with leave of court, but without seeking or gaining a court-approved time extension. The amended complaint alleged with particularity that Kontrick had fraudulently transferred money to his wife, first by removing his own name from the family's once-joint checking account, then by continuing regularly to deposit his salary checks into the account, from which his wife routinely paid family expenses (the "family-account" claim). Kontrick's June 10, 1998, answer to the amended complaint did not raise the untimeliness of the family-account claim; on the merits, the answer admitted the transfers to the family account but denied that Kontrick had violated § 727(a)(2)(A). In response to Ryan's summary judgment motion, which appended a statement of material facts, Kontrick cross-moved to strike portions of Ryan's summary judgment filings, but did not ask the court to strike the amended complaint's family-account allegations. On February 25, 2000, the Bankruptcy Court awarded Ryan summary judgment on the family-account claim, concluding that Kontrick was not entitled to discharge because his transfers to the family account were made with intent to defraud at least creditor Ryan. Kontrick then moved for reconsideration. For the first time, Kontrick urged that the court was

powerless to adjudicate the family-account claim. The amended complaint containing that claim, Kontrick observed, was untimely under Rules 4004(a) and (b) and 9006(b)(3). Those rules, Kontrick maintained, establish a mandatory, unalterable time limit of the kind Kontrick called "jurisdictional." The Bankruptcy Court denied reconsideration and entered final judgment, holding that Rule 4004's complaint-filing time instructions are not "jurisdictional," and that Kontrick had waived the right to assert the untimeliness of the amended complaint by failing squarely to raise the point before the court reached the merits of Ryan's objections to discharge. The District Court sustained the denial of discharge, and the Seventh Circuit affirmed. Both courts relied on decisions of sister Circuits holding that the timeliness provisions at issue are not "jurisdictional."

Held: A debtor forfeits the right to rely on Rule 4004 if the debtor does not raise the Rule's time limitation before the bankruptcy court reaches the merits of the creditor's objection to discharge. Pp. 452–460.

(a) Only Congress may determine a lower federal court's subject-matter jurisdiction. U. S. Const., Art. III, § 1. Congress did so, as pertinent here, by instructing that "objections to discharges" are "[c]ore proceedings" within the bankruptcy courts' jurisdiction. 28 U. S. C. § 157(b)(2)(J). Congress did not build time constraints into that statutory authorization. Rather, the time constraints applicable to objections to discharge are contained in Bankruptcy Rules prescribed pursuant to § 2075. Such rules "do not create or withdraw federal jurisdiction." *Owen Equipment & Erection Co.* v. *Kroger*, 437 U. S. 365, 370. As Bankruptcy Rule 9030 states, the Bankruptcy Rules "shall not be construed to extend or limit the jurisdiction of the courts." The filing deadlines prescribed in Rules 4004 and 9006(b)(3) are claim-processing rules that do not delineate what cases bankruptcy courts are competent to adjudicate. Although Kontrick now concedes that those Rules are not properly labeled "jurisdictional" in the sense of describing a court's subject-matter jurisdiction, he maintains that the Rules have the same import as provisions governing subject-matter jurisdiction. A litigant generally may raise a court's lack of subject-matter jurisdiction at any time in the same civil action. *Mansfield, C. & L. M. R. Co.* v. *Swan*, 111 U. S. 379, 382. Similarly, Kontrick urges, a debtor may challenge a creditor's objection to discharge as untimely under Rules 4004 and 9006(b)(3) at any time in the proceedings, even initially on appeal or certiorari. The equation Kontrick advances overlooks the critical difference between a rule governing subject-matter jurisdiction and an inflexible claim-processing rule. Characteristically, a court's subject-matter jurisdiction cannot be expanded to account for the par-

ties' litigation conduct; a claim-processing rule, on the other hand, even if unalterable on a party's application, can nonetheless be forfeited if the party asserting the rule waits too long to raise the point. Pp. 452–456.

(b) No reasonable construction of complaint-processing rules would allow a litigant situated as Kontrick is to defeat a claim, as filed too late, after the party has litigated and lost the case on the merits. The relevant claim-processing rules in this case, Bankruptcy Rules 4004(a) and (b) and 9006(b)(3), include, among their primary purposes, affording the debtor an affirmative defense to a complaint filed outside the Rules 4004(a) and (b) time limits. It is uncontested that Ryan filed his complaint objecting to Kontrick's discharge outside those limits. Kontrick urges that nothing occurring thereafter counts, for the Rules' time prescriptions are unalterable, allowing no recourse to equitable exceptions. This case, however, involves no issue of equitable tolling or any other equity-based exception. Neither at the time Ryan filed the amended complaint containing the family-account claim nor anytime thereafter did he assert circumstances—equitable or otherwise—qualifying him for a time extension. The sole question is whether Kontrick forfeited his right to assert the untimeliness of Ryan's amended complaint by failing to raise the issue until after that complaint was adjudicated on the merits. In other words, how long did the affirmative defense Rules 4004(a) and (b) and 9006(b)(3) afforded Kontrick linger in the proceedings? The Seventh Circuit followed the proper path on this key question. It noted that time bars generally must be raised in an answer or responsive pleading. See Fed. Rule Civ. Proc. 8(c) (made applicable to bankruptcy court adversary proceedings by Fed. Rule Bkrtcy. Proc. 7008(a)). An answer may be amended to include an inadvertently omitted affirmative defense, and even after the time to amend "of course" has passed, "leave [to amend] shall be freely given when justice so requires." Fed. Rule Civ. Proc. 15(a) (made applicable to adversary proceedings by Fed. Rule Bkrtcy. Proc. 7015). Kontrick not only failed to assert the time constraints of Rules 4004(a) and (b) and 9006(b)(3) in a pleading or amended pleading responsive to Ryan's amended complaint. In addition, Kontrick moved to delete certain items from Ryan's summary judgment filings, but, even that far into the litigation, he did not ask the Bankruptcy Court to strike the family-account claim. Ordinarily, a defense is lost if it is not included in the answer or amended answer. See Fed. Rule Bkrtcy. Proc. 7012(b) (Fed. Rules Civ. Proc. 12(b)–(h) apply in adversary proceedings). Rules 12(h)(2) and (3) prolong the life of certain defenses, but time prescriptions are not among them. Even if a defense based on Bankruptcy Rule 4004 could be equated to "failure to state a claim upon which relief can be granted," the issue could be raised, at the latest, "at the trial on the merits."

Fed. Rule Civ. Proc. 12(h)(2). Only lack of subject-matter jurisdiction is preserved post-trial. Fed. Rule Civ. Proc. 12(h)(3). Kontrick's resistance to the family-account claim is not of that order. Pp. 456–460.
295 F. 3d 724, affirmed.

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

E. King Poor argued the cause for petitioner. With him on the briefs were *Kimball R. Anderson*, *Michael J. Stepek*, and *Laura D. Cullison*.

James R. Figliulo argued the cause for respondent. With him on the brief were *James H. Bowhay*, *Michael A. Pollard*, and *G. Eric Brunstad, Jr.*

Kent L. Jones argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Olson*, *Assistant Attorney General McCallum*, *Deputy Solicitor General Clement*, *William Kanter*, and *Michael E. Robinson*.*

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns the duration of a right to object to a pleading on the ground that it was filed out of time. Under the Bankruptcy Rules governing Chapter 7 liquidation proceedings, a creditor has "60 days after the first date set for the meeting of creditors" to file a complaint objecting to the debtor's discharge. Fed. Rule Bkrtcy. Proc. 4004(a). That period may be extended "for cause" on motion "filed before the time has expired." Fed. Rule Bkrtcy. Proc. 4004(b). In the matter before us a creditor, in an untimely pleading, objected to the debtor's discharge. The debtor, however, did not promptly move to dismiss the creditor's plea as impermissibly late. Only after the Bankruptcy Court decided, on the merits, that the discharge should be refused did the debtor, in a motion for reconsideration, urge the untimeliness of the creditor's plea.

**Henry J. Sommer* filed a brief for the National Association of Consumer Bankruptcy Attorneys as *amicus curiae* urging reversal.

Bankruptcy Rule 4004's time prescription, the debtor maintains, is "jurisdictional," *i. e.*, dispositive whenever raised in the proceedings. Rejecting the debtor's "jurisdictional" characterization, the courts below held that Rule 4004's time prescription could not be invoked to upset an adjudication on the merits. We agree that Rule 4004 is not "jurisdictional." Affirming the judgment of the Court of Appeals for the Seventh Circuit, we hold that a debtor forfeits the right to rely on Rule 4004 if the debtor does not raise the Rule's time limitation before the bankruptcy court reaches the merits of the creditor's objection to discharge.

I

A debtor in a Chapter 7 liquidation case qualifies for an order discharging his debts if he satisfies the conditions stated in § 727(a) of the Bankruptcy Code. 11 U. S. C. § 727(a).[1] A discharge granted under § 727(a) frees the debtor from all debts existing at the commencement of the bankruptcy proceeding other than obligations § 523 of the Code excepts from discharge. § 727(b).[2]

A debtor's discharge may be opposed by the trustee, the United States trustee, or any creditor. § 727(c)(1). Adjudication of "objections to discharg[e]," Congress provided, is a

[1] Under § 727(a), the court may not grant a discharge of any debts if the debtor, *inter alia:* (1) is not an individual; (2) has, with intent to defraud a creditor, concealed, transferred, or destroyed property of the estate (A) in the year preceding bankruptcy or (B) during the bankruptcy case; (3) has destroyed books or records; (4) has knowingly (A) given a false oath or account, (B) presented or used a false claim, (C) attempted to obtain money by acting or forbearing to act, or (D) withheld documents relating to the debtor's property or financial affairs; or (5) has failed to explain a loss or deficiency of assets. 11 U. S. C. §§ 727(a)(1)–(5).

[2] Section 523 categorizes debts that are nondischargeable. See, *e. g.*, 11 U. S. C. § 523(a)(1) (certain debts "for a tax or a customs duty"); § 523(a)(2)(A) (certain debts for money obtained by "false pretenses, a false representation, or actual fraud"); § 523(a)(5) (certain debts "to a spouse, former spouse, or child of the debtor" for "support of such spouse or child"); § 523(a)(6) (debts for "willful and malicious injury by the debtor").

"[c]ore proceedin[g]" within the jurisdiction of the bankruptcy courts. 28 U. S. C. § 157(b)(2)(J). No statute, however, specifies a time limit for filing a complaint objecting to the debtor's discharge. Instead, the controlling time prescriptions are contained in the Federal Rules of Bankruptcy Procedure, specifically, Rules 4004(a) and (b) and 9006(b)(3).

In relevant part, Bankruptcy Rule 4004(a) states: "[A] complaint objecting to the debtor's discharge under § 727(a) of the Code shall be filed no later than 60 days after the first date set for the meeting of creditors." Rule 4004(b), governing extensions of the Rule 4004(a) filing deadline, provides: "[T]he court may for cause extend the time [Rule 4004(a) allows] to file a complaint objecting to discharge" if the motion is "filed before the time has expired." Reinforcing Rule 4004(b)'s restriction on extension of the Rule 4004(a) deadline, Rule 9006(b)(3) allows enlargement of "the time for taking action" under Rule 4004(a) "only to the extent and under the conditions stated in [that rule]," *i. e.*, only as permitted by Rule 4004(b).[3]

II

On April 4, 1997, petitioner, Dr. Andrew J. Kontrick, filed a Chapter 7 bankruptcy petition. Respondent, Dr. Robert A. Ryan, a major creditor and Kontrick's former associate in

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[3] Under Bankruptcy Rule 4007(c), essentially the same time prescriptions apply to complaints targeting the discharge of a particular debt pursuant to 11 U. S. C. § 523(c). See *supra*, at 447, n. 2. Rule 4007(c) tracks Rules 4004(a) and (b), and Rule 9006(b)(3) lists Rule 4007(c) as well as Rule 4004(a) among time prescriptions bankruptcy courts may enlarge "only to the extent and under the conditions stated [in the rules themselves]." Because of the practical identity of the time prescriptions for objections to the discharge of any debts under § 727(a) and for objections to the discharge of particular debts under § 523(c), courts have considered decisions construing Rule 4007(c) in determining whether the time limits delineated in Rules 4004(a) and (b) may be forfeited. See, *e. g.*, *In re Kontrick*, 295 F. 3d 724, 730, n. 3 (CA7 2002) (citing *In re Santos*, 112 B. R. 1001, 1004, n. 2 (BAP CA9 1990)).

a cosmetic and plastic surgery practice, opposed Kontrick's discharge. After gaining three successive time extensions from the Bankruptcy Court, Ryan filed an original complaint on January 13, 1998, in which he objected to the discharge of any of Kontrick's debts. Ryan alleged that Kontrick had transferred property, within one year of filing the bankruptcy petition, with intent to defraud creditors, and therefore did not qualify for a discharge under 11 U. S. C. §§ 727(a)(2)–(5). App. to Pet. for Cert. 40.

Ryan filed an amended complaint on May 6, 1998, with leave of court, *ibid.*, but without seeking or gaining a court-approved time extension. The amended complaint particularized for the first time the debtor's violation of § 727(a)(2)(A) in this regard: Debtor Kontrick, creditor Ryan alleged, had fraudulently transferred money to Kontrick's wife, first by removing Kontrick's own name from the family's once-joint checking account, then by continuing regularly to deposit his salary checks into the account, from which his wife routinely paid family expenses (the "family-account" claim). *Id.*, at 52–53.[4]

Kontrick answered Ryan's amended complaint on June 10, 1998. His answer "did not raise the untimeliness of [the family-account] claim," Brief for Petitioner 4; on the merits, he admitted the transfers to the family account but denied violating § 727(a)(2)(A). In March 1999, after the parties engaged in acrimonious discovery, Ryan moved for summary judgment. As Local Bankruptcy Rule 402(M) (Bkrtcy. Ct. ND Ill. 1994) instructs, Ryan appended to his motion "a statement of material facts as to which [he] contend[ed] there [was] no genuine issue." Kontrick cross-moved, in Au-

[4] Although Kontrick took his name off the family bank account some four years prior to his bankruptcy petition, his salary check deposits continued into the one-year period preceding bankruptcy specified in 11 U. S. C. § 727(a)(2)(A) (described *supra*, at 447, n. 1). See App. to Pet. for Cert. 33, 52–53.

gust 1999, to strike portions of Ryan's summary judgment filings.

Kontrick's motion to strike sought deletion of "new allegations," *i. e.*, allegations making their first appearance in the litigation in Ryan's summary judgment submissions—Ryan's statement of facts pursuant to Local Rule 402(M), accompanying exhibits, and corresponding portions of the summary judgment motion and memorandum. Motion to Strike and Response to [Ryan's] Statement of Facts Under Local Rule 402 N in No. 97 B 10353 (Bkrtcy. Ct. ND Ill.), pp. 2, 5, 26. Although Kontrick noted that the family-account allegations were stated only in the amended complaint and were absent from the original complaint, *id.*, at 3–4, he did not ask the court to strike those allegations. His response, instead, and in line with Local Rule 402(N), addressed the substance of the family-account claim. He admitted taking his name off the account, but observed that he did so "over four years before bankruptcy." *Id.*, at 13. He also acknowledged that, thereafter, he "deposited his paycheck into the account the same way he had always done." *Ibid.*

On February 25, 2000, the Bankruptcy Court ruled on the cross-motions, granting in part Kontrick's motion to strike, awarding summary judgment to Ryan on the family-account claim, and dismissing the remaining claims. The court used the amended complaint as its baseline; it struck as untimely "allegations not included in [that] complaint." App. to Pet. for Cert. 47; see *id.*, at 48–50. Homing in on Kontrick's continuing deposits into the account from which he had removed his name, the court concluded that Kontrick had transferred property with intent "to hinder, delay or defraud at least [creditor] Ryan." *Id.*, at 55. That course of conduct, coupled with Kontrick's testimony,[5] the court concluded, sufficed to prove a violation of § 727(a)(2) (described *supra*, at 447,

[5] In a prebankruptcy deposition, Kontrick admitted he transferred the once-joint bank account to his wife to prevent his creditors from attaching the funds. See App. to Pet. for Cert. 53; 295 F. 3d, at 727–728.

n. 1). App. to Pet. for Cert. 55, 64. Accordingly, the court held, Kontrick was not entitled to a discharge of his debts.

Kontrick moved for reconsideration. He argued that the Bankruptcy Court lacked jurisdiction over the sole claim on which the court had granted summary judgment, the family-account claim. See *id.*, at 71. The court was powerless to adjudicate the claim, Kontrick insisted, because the amended complaint containing the claim was untimely. Governing Rules 4004(a) and (b) and 9006(b)(3), see *supra*, at 448, Kontrick maintained, establish a mandatory, unalterable time limit of the kind he then called "jurisdictional." App. to Pet. for Cert. 71. It was the first time Kontrick appended a jurisdictional label to any pleading he filed relating to the family-account claim.

The Bankruptcy Court denied the reconsideration motion on June 8, 2000, and entered final judgment five days later. The court held that Rule 4004's complaint-filing time instructions are not "jurisdictional," and that Kontrick had waived the right to assert the untimeliness of the amended complaint by failing squarely to raise the point before the court reached the merits of Ryan's objections to discharge.

The District Court sustained the Bankruptcy Court's decision denying Kontrick's discharge. App. to Pet. for Cert. 25–38. The Court of Appeals for the Seventh Circuit, in turn, affirmed the judgment of the District Court. *In re Kontrick*, 295 F. 3d 724 (2002). Both courts relied on decisions of sister Circuits holding that "the timeliness provisions at issue here are not jurisdictional." *Id.*, at 733 (citing *In re Benedict*, 90 F. 3d 50, 54–55 (CA2 1996), and *Farouki* v. *Emirates Bank Int'l, Ltd.*, 14 F. 3d 244, 248 (CA4 1994)); accord App. to Pet. for Cert. 31–32. Both courts also agreed with the Bankruptcy Court that Kontrick had waived the right to challenge Ryan's amended complaint as impermissibly late.

The Seventh Circuit found in Kontrick's papers opposing summary judgment nothing that placed in issue the timeli-

ness of allegations in the amended complaint. 295 F. 3d, at 735. Instead, according to the Court of Appeals, Kontrick apparently accepted creditor Ryan's amended complaint as properly filed; Kontrick used that complaint, not the original complaint, as a baseline to object to new allegations Ryan made for the first time in his statement of facts supporting summary judgment. *Ibid.* The Seventh Circuit further commented that "[t]he policy concerns of expeditious administration of bankruptcy matters and the finality of the bankruptcy court's decision hardly are fostered by requiring the bankruptcy court to consider the timeliness of an issue that it already has adjudicated." *Ibid.*

We granted certiorari in view of the division of opinion on whether Rule 4004 is "jurisdictional,"[6] 538 U. S. 998 (2003), and we now affirm the judgment of the Seventh Circuit.[7]

III

Only Congress may determine a lower federal court's subject-matter jurisdiction. U. S. Const., Art. III, § 1.

[6] Compare, *e. g., In re Coggin*, 30 F. 3d 1443, 1450–1451 (CA11 1994) (referring to Rule 4004(b) as a "jurisdictional requirement" and a "jurisdictional bar"), with, *e. g., In re Benedict*, 90 F. 3d 50, 54 (CA2 1996) ("time period imposed by Rule 4007(c) is not jurisdictional").

[7] On brief and at oral argument, counsel for Kontrick suggested that, by noting that the family-account claim was not stated in the original complaint, Kontrick had implicitly invited dismissal of the claim. See Tr. of Oral Arg. 5; Brief for Petitioner 5 ("Kontrick . . . argued that in opposing Ryan's many other allegations as untimely, he had also sufficiently raised the untimeliness of the family account claim."). Kontrick's notation that the family-account claim was absent from the original complaint, the courts below agreed, fell short of an argument that the claim was untimely. 295 F. 3d, at 735; App. to Pet. for Cert. 72. We have no cause to disturb that determination. In any event, we train our attention on the question Kontrick here presented: "[W]hether the deadline set by Rule 4004 is mandatory and jurisdictional and thus cannot be waived." Brief for Petitioner i. See also Pet. for Cert. i. We note, too, that the question whether the family-account claim could properly "relate back" to the original complaint was neither raised in the Seventh Circuit, 295 F. 3d, at 729, n. 2, nor aired in this Court, see Tr. of Oral Arg. 33.

Congress did so with respect to bankruptcy courts in Title 28 (Judiciary and Judicial Procedure); in cataloging core bankruptcy proceedings, Congress authorized bankruptcy courts to adjudicate, *inter alia*, objections to discharge. See 28 U. S. C. §§ 157(b)(1) and (b)(2)(I) and (J). Certain statutory provisions governing bankruptcy courts contain built-in time constraints. For example, § 157(c)(1) addresses *de novo* district court review of bankruptcy court findings and conclusions in noncore proceedings; that provision confines review to "matters to which any party has timely and specifically objected."[8] The provision conferring jurisdiction over objections to discharge, however, contains no timeliness condition. Section 157(b)(2)(J) instructs only that "objections to discharges" are "[c]ore proceedings" within the jurisdiction of the bankruptcy courts.

The time constraints applicable to objections to discharge are contained in Bankruptcy Rules prescribed by this Court for "the practice and procedure in cases under title 11." 28 U. S. C. § 2075; cf. § 2072 (similarly providing for Court-prescribed "rules of practice and procedure" for cases in the federal district courts and courts of appeals). "[I]t is axiomatic" that such rules "do not create or withdraw federal jurisdiction." *Owen Equipment & Erection Co.* v. *Kroger*, 437 U. S. 365, 370 (1978). As Bankruptcy Rule 9030 states, the Bankruptcy Rules "shall not be construed to extend or limit the jurisdiction of the courts." Rule 9030's forerunner—its counterpart in the Federal Rules of Civil Procedure,

[8] Provisions of a similar order, with built-in time constraints, include 28 U. S. C. § 2401(b) (tort claim against United States "shall be forever barred" unless presented "to the appropriate Federal agency within two years after [the] claim accrues" or civil action "is begun within six months after . . . notice of final denial of the claim by the agency to which it was presented"); and § 2107(a) ("Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree.").

Rule 82—similarly states: "These rules shall not be construed to extend or limit the jurisdiction of the United States district courts . . . ." See 12 C. Wright, A. Miller, & R. Marcus, Federal Practice and Procedure § 3141, pp. 484–485 (2d ed. 1997) ("Rule 82 states [the] important principle" that "[t]he rules merely prescribe the method by which the jurisdiction granted the courts by Congress is to be exercised."); *Schacht* v. *United States*, 398 U. S. 58, 64 (1970) ("The procedural rules adopted by the Court for the orderly transaction of its business are not jurisdictional . . . ."). In short, the filing deadlines prescribed in Bankruptcy Rules 4004 and 9006(b)(3) are claim-processing rules that do not delineate what cases bankruptcy courts are competent to adjudicate.

This much is common ground. Kontrick does not contend in this Court that the timing rules in question affect the subject-matter jurisdiction of the bankruptcy courts. See Tr. of Oral Arg. 9 (acknowledging that "[t]his case does not deal with subject matter jurisdiction"); *id.*, at 9–10 (explaining that counsel for Kontrick used the word "jurisdiction" "as a shorthand" to indicate a nonextendable time limit).

Courts, including this Court, it is true, have been less than meticulous in this regard; they have more than occasionally used the term "jurisdictional" to describe emphatic time prescriptions in rules of court. "Jurisdiction," the Court has aptly observed, "is a word of many, too many, meanings." *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83, 90 (1998) (internal quotation marks omitted). For example, we have described Federal Rule of Civil Procedure 6(b), on time enlargement, and correspondingly, Federal Rule of Criminal Procedure 45(b), on extending time, as "mandatory and jurisdictional." *United States* v. *Robinson*, 361 U. S. 220, 228–229 (1960). But see *Carlisle* v. *United States*, 517 U. S. 416, 419–433 (1996) (holding that, over the prosecutor's objection, a court may not grant a postverdict motion for a judgment of acquittal filed one day outside the time limit allowed by Fed. Rule Crim. Proc. 29(c); this Court did not characterize

the Rule as "jurisdictional"); *Taylor* v. *Freeland & Kronz*, 503 U. S. 638, 642–646 (1992) (similar ruling regarding Fed. Rule Bkrtcy. Proc. 4003(b)). "[C]lassify[ing] time prescriptions, even rigid ones, under the heading 'subject matter jurisdiction'" can be confounding. *Carlisle*, 517 U. S., at 434 (GINSBURG, J., concurring). Clarity would be facilitated if courts and litigants used the label "jurisdictional" not for claim-processing rules, but only for prescriptions delineating the classes of cases (subject-matter jurisdiction) and the persons (personal jurisdiction) falling within a court's adjudicatory authority.

Though Kontrick concedes that Rules 4004 and 9006(b)(3) are not properly labeled "jurisdictional" in the sense of describing a court's subject-matter jurisdiction, he maintains that the Rules have the same import as provisions governing subject-matter jurisdiction. A litigant generally may raise a court's lack of subject-matter jurisdiction at any time in the same civil action, even initially at the highest appellate instance. *Mansfield, C. & L. M. R. Co.* v. *Swan*, 111 U. S. 379, 382 (1884) (challenge to a federal court's subject-matter jurisdiction may be made at any stage of the proceedings, and the court should raise the question *sua sponte*); *Capron* v. *Van Noorden*, 2 Cranch 126, 127 (1804) (judgment loser successfully raised lack of diversity jurisdiction for the first time before the Supreme Court); Fed. Rule Civ. Proc. 12(h)(3) ("Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.").[9] Just so, Kontrick urges, a debtor may challenge a creditor's objection to discharge as untimely under Rules 4004 and 9006(b)(3) any time in the proceedings, even initially on appeal or certiorari. Tr. of Oral Arg. 10–11 (a debtor may object after final judgment or on appeal "so long as it's within the same proceed-

[9] Even subject-matter jurisdiction, however, may not be attacked collaterally. *Des Moines Nav. & R. Co.* v. *Iowa Homestead Co.*, 123 U. S. 552 (1887); see Restatement (Second) of Judgments § 12 (1980).

ing"); Brief for Petitioner 25, and n. 7 (same); Reply Brief 16, and n. 7 (citing lower court decisions supporting Kontrick's argument on the longevity of time limits stated in Rules 4004 and 9006(b)(3), *e. g.*, *In re Poskanzer*, 146 B. R. 125, 131 (NJ 1992); *In re Rinde*, 276 B. R. 330, 333 (Bkrtcy. Ct. RI 2002); *In re Barley*, 130 B. R. 66, 69 (Bkrtcy. Ct. ND Ind. 1991); *In re Kirsch*, 65 B. R. 297, 300, 302 (Bkrtcy. Ct. ND Ill. 1986)).

The equation Kontrick advances overlooks a critical difference between a rule governing subject-matter jurisdiction and an inflexible claim-processing rule. Characteristically, a court's subject-matter jurisdiction cannot be expanded to account for the parties' litigation conduct; a claim-processing rule, on the other hand, even if unalterable on a party's application, can nonetheless be forfeited if the party asserting the rule waits too long to raise the point.

IV

We turn back now to the relevant claim-processing rules in this case. Bankruptcy Rules 4004(a) and (b) and 9006(b)(3), governing proceedings over which bankruptcy courts have subject-matter jurisdiction,[10] serve three primary purposes. First, they inform the pleader, *i. e.*, the objecting creditor, of the time he has to file a complaint. Second, they instruct the court on the limits of its discretion to grant motions for complaint-filing-time enlargements. Third, they afford the debtor an affirmative defense to a complaint filed outside the Rules 4004(a) and (b) limits. This case involves the third office of the Rules.

It is uncontested that creditor Ryan filed his complaint objecting to debtor Kontrick's discharge outside the Rules'

[10] Like Federal Rule of Criminal Procedure 45(b) and Federal Rule of Appellate Procedure 26(b), Bankruptcy Rule 9006(b) is modeled on Federal Rule of Civil Procedure 6(b). See Advisory Committee's Note accompanying Rule 9006 ("*Subdivision (b)* is patterned after Rule 6(b) F. R. Civ. P. and Rule 26(b) F. R. App. P." (emphasis in original)).

time limits. Kontrick urges that nothing occurring thereafter counts, for the Rules' time prescriptions are unalterable, allowing no recourse to "equitable exceptions." Brief for Petitioner 13, n. 4; see *id.*, at 8, 16–18. This case, however, involves no issue of equitable tolling or any other equity-based exception. Neither at the time creditor Ryan filed the amended complaint containing the family-account claim nor anytime thereafter did he assert circumstances—equitable or otherwise—qualifying him for a time extension. Whether the Rules, despite their strict limitations, could be softened on equitable grounds[11] is therefore a question we do not reach.[12] See Brief for United States as *Amicus Curiae* 16 ("[M]uch of [Kontrick's] argument is actually directed to an issue that is not presented in this case," *i. e.*, whether the timing rules here in question are alterable by recourse to "'equitable exceptions imported from outside the rules.'" (quoting Brief for Petitioner 13)); Tr. of Oral Arg. 40 ("Whether [the bankruptcy court] would have had discretion

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[11] Lower courts have divided on the question whether Bankruptcy Rules 4004 and 4007(c) allow equitable exceptions. Compare, *e. g.*, 295 F. 3d, at 733 (Rules 4004 and 4007(c) "are subject to equitable defenses"); *In re Benedict*, 90 F. 3d, at 54 (same conclusion regarding Rule 4007(c)); *Farouki* v. *Emirates Bank Int'l, Ltd.*, 14 F. 3d 244, 248 (CA4 1994) (same conclusion regarding Rule 4004), with, *e. g.*, *In re Alton*, 837 F. 2d 457, 459 (CA11 1988) *(per curiam)* (Rule 4007(c) confers no discretion to grant an untimely motion to extend the time to object, even if the creditor lacked notice of the bar date); *Neeley* v. *Murchison*, 815 F. 2d 345, 346–347 (CA5 1987) (same).

[12] Nor should anything in this opinion be read to suggest that a debtor and creditor may stipulate to the assertion of time-barred claims when such an accommodation would operate to the detriment of other creditors. See, *e. g.*, *In re Dollar*, 257 B. R. 364, 366 (Bkrtcy. Ct. SD Ga. 2001) ("Although the defendant debtor would significantly benefit by the allowance of the amended complaint [reflecting the parties' pretrial agreement to substitute an untimely § 523(a)(6) cause of action for a timely § 727(a)(2) claim,] the defendant's other creditors would be significantly harmed.").

to allow a late complaint . . . isn't before the Court, because [Ryan has not] claimed that [in this case] there is any equitable groun[d] for enlarging or extending the deadline, so that question isn't presented.").

We can assume, *arguendo*, that had Kontrick timely asserted the untimeliness of Ryan's amended complaint, Kontrick would have prevailed in the litigation. The question, in that event, would have been "whether the time restrictions in th[e] Rules are in such 'emphatic form'" as to preclude equitable exceptions. Brief for United States as *Amicus Curiae* 16 (citation omitted). See, *e. g.*, *Carlisle*, 517 U. S., at 419–433 (upholding timely challenge to one-day-late filing under Fed. Rule Crim. Proc. 29(c)); *Taylor*, 503 U. S., at 642–646 (similar ruling regarding Fed. Rule Bkrtcy. Proc. 4003(b)); *Robinson*, 361 U. S., at 222–230 (similar ruling regarding Fed. Rule Crim. Proc. 45(b)). Here, however, the sole question is whether Kontrick forfeited his right to assert the untimeliness of Ryan's amended complaint by failing to raise the issue until after that complaint was adjudicated on the merits.[13] In other words, how long did the affirmative defense Rules 4004(a) and (b) and 9006(b)(3) afforded Kontrick linger in the proceedings?

The Court of Appeals, we agree, followed the proper path on this key question. See 295 F. 3d, at 734–735. Time bars, that court noted, generally must be raised in an answer or responsive pleading. See Fed. Rule Civ. Proc. 8(c) (made applicable to adversary proceedings in bankruptcy courts by

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[13] As the Government notes, "[t]he issue in this case is more accurately described as one of forfeiture rather than waiver." Brief for United States as *Amicus Curiae* 7, n. 5. Although jurists often use the words interchangeably, "forfeiture is the failure to make the timely assertion of a right[;] waiver is the 'intentional relinquishment or abandonment of a known right.' *United States* v. *Olano*, 507 U. S. 725, 733 (1993) (quoting *Johnson* v. *Zerbst*, 304 U. S. 458, 464 (1938))." *Ibid.* (some internal quotation marks omitted).

Fed. Rule Bkrtcy. Proc. 7008(a)).[14] An answer may be amended to include an inadvertently omitted affirmative defense, and even after the time to amend "of course" has passed, "leave [to amend] shall be freely given when justice so requires." Fed. Rule Civ. Proc. 15(a); see Fed. Rule Bkrtcy. Proc. 7015 ("Rule 15 F. R. Civ. P. applies in adversary proceedings.").

Kontrick not only failed to assert the time constraints of Rules 4004(a) and (b) and 9006(b)(3) in a pleading or amended pleading responsive to Ryan's amended complaint. As earlier recounted, see *supra*, at 449–450, Kontrick moved to delete certain items from Ryan's summary judgment filings, but, even that far into the litigation, he did not ask the Bankruptcy Court to strike the family-account claim.

Ordinarily, under the Bankruptcy Rules as under the Civil Rules, a defense is lost if it is not included in the answer or amended answer. See Fed. Rule Bkrtcy. Proc. 7012(b) ("Rule 12(b)–(h) F. R. Civ. P. applies in adversary proceedings."); 5A C. Wright & A. Miller, Federal Practice and Procedure § 1347, p. 184 (2d ed. 1990) ("A defense or objection that is not raised by motion or in the responsive pleading is waived unless it is protected by Rules 12(h)(2) or 12(h)(3) or by the successful invocation of the liberal amendment policy of Rule 15."). Rules 12(h)(2) and (3) prolong the life of certain defenses, but time prescriptions are not among those provisions. Even if a defense based on Bankruptcy Rule 4004 could be equated to "failure to state a claim upon which relief can be granted," the issue could be raised, at the latest, "at the trial on the merits." Fed. Rule Civ. Proc. 12(h)(2). Only lack of subject-matter jurisdiction is preserved post-trial. Fed. Rule Civ. Proc. 12(h)(3). And, as we earlier explained, see *supra*, at 452–456, Kontrick's resistance to the

[14] In fuller detail, Bankruptcy Rule 4004(d) provides that "[a] proceeding commenced by a complaint objecting to discharge is governed by Part VII of these rules." Part VII includes Bankruptcy Rule 7008(a), which states that "Rule 8 F. R. Civ. P. applies in adversary proceedings."

family-account claim is not of that order. No reasonable construction of complaint-processing rules, in sum, would allow a litigant situated as Kontrick is to defeat a claim, as filed too late, after the party has litigated and lost the case on the merits.

* * *

For the reasons stated, the judgment of the United States Court of Appeals for the Seventh Circuit is

Affirmed.

Syllabus

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL.

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

No. 02–658. Argued October 8, 2003—Decided January 21, 2004

The Clean Air Act's (CAA or Act) Prevention of Significant Deterioration (PSD) program, 42 U. S. C. § 7477, was designed to ensure that the air quality in "attainment areas," *i. e.*, areas that are already "clean," will not degrade, see § 7470(1). The program bars construction of any major air pollutant emitting facility not equipped with "the best available control technology" (BACT). § 7475(a)(4). The Act defines BACT as "an emission limitation based on the maximum degree of [pollutant] reduction . . . which the [state] permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for [the] facility." § 7479(3). Two provisions of the Act vest enforcement authority in the Environmental Protection Agency (EPA or Agency). Section 113(a)(5) generally authorizes the EPA, when it finds that a State is not complying with a CAA "requirement" governing construction of a pollutant source, to pursue remedial action, including issuance of "an order prohibiting the construction." 42 U. S. C. § 7413(a). Directed specifically to the PSD program, CAA § 167 instructs EPA to "take such measures, including issuance of an order, . . . as necessary to prevent the construction" of a major pollutant emitting facility that does not conform to the "requirements" of the program. Because EPA has classified northwest Alaska, the region here at issue, as an attainment area for nitrogen dioxide, the PSD program applies to emissions of that pollutant in the region. No "major emitting facility," including any source emitting more than 250 tons of nitrogen oxides per year, § 7479(1), may be constructed or modified unless a PSD permit has been issued for the facility, § 7475(a)(1). A PSD permit may not issue unless the proposed facility is subject to BACT for each CAA-regulated pollutant emitted from the facility. § 7475(a)(4).

In this case, "the permitting authority" under § 7479(3) is Alaska, acting through petitioner, the Alaska Department of Environmental Conservation (ADEC). In 1988, Teck Cominco Alaska Inc. (Cominco) obtained authorization to operate a zinc concentrate mine in northwest Alaska. The mine is a "major emitting facility" under § 7475. Its ini-

tial PSD permit authorized five diesel electric generators, MG–1 through MG–5, subject to operating restrictions. Under a second PSD permit issued in 1994, Cominco added a sixth generator, MG–6. In 1996, Cominco initiated a project to expand zinc production by 40% and applied to ADEC for a PSD permit to allow, *inter alia*, increased electricity generation by MG–5. ADEC preliminarily proposed as BACT for MG–5 an emission control technology known as selective catalytic reduction (SCR), which reduces nitrogen oxide emissions by 90%. Amending its application, Cominco added a seventh generator, MG–17, and proposed, as BACT, an alternative control technology—Low NOx—that achieves a 30% reduction in nitrogen oxide pollutants. In May 1999, ADEC issued a first draft PSD permit and preliminary technical analysis report, concluding that Low NOx was BACT for MG–5 and MG–17. ADEC identified SCR as the most stringent technology then technically and economically feasible. ADEC nevertheless endorsed Cominco's proffered emissions-offsetting alternative of fitting MG–17 and all six existing generators with Low NOx, rather than fitting MG–5 and MG–17 with SCR. This proposal, ADEC submitted, would achieve a maximum NOx reduction similar to the reduction SCR could achieve, and was logistically and economically less onerous for Cominco. In July 1999, EPA objected that ADEC had identified SCR as the best control technology, but failed to require it as BACT. ADEC responded with a second draft PSD permit and technical analysis report in September 1999, again finding Low NOx to be BACT for MG–17. ADEC's second draft abandoned that agency's May 1999 emissions-offsetting justification. ADEC further conceded that, lacking data from Cominco, it could make no judgment as to SCR's impact on the mine's operation, profitability, and competitiveness. It nonetheless concluded, contradicting its earlier finding that SCR was technically and economically feasible, that SCR imposed "a disproportionate cost" on the mine. In support of this conclusion, ADEC analogized the mine to a rural utility that would have to increase prices were it required to use SCR. Protesting that Cominco had not adequately demonstrated site-specific factors supporting the assertion of SCR's economical infeasibility, EPA suggested that ADEC include an analysis of SCR's adverse economic impacts on Cominco. Expressing confidentiality concerns, Cominco declined to submit financial data. In December 1999, ADEC issued a final permit and technical analysis report approving Low NOx as BACT for MG–17. Again conceding that it made no judgment as to SCR's impact on the mine's operation, profitability, and competitiveness, ADEC advanced, as cause for its decision, SCR's adverse effect on the mine's unique and continuing impact on the region's economic diversity and the venture's "world competitiveness." ADEC reiterated its rural Alaska utility

analogy, and compared SCR's cost to the costs of other, less stringent, control technologies.

EPA then issued three orders to ADEC under §§ 113(a)(5) and 167 of the Act. Those orders prohibited ADEC from issuing a PSD permit to Cominco without satisfactorily documenting why SCR was not BACT for MG–17. In addition, EPA prohibited Cominco from beginning construction or modification activities at the mine, with limited exceptions. Ruling on ADEC's and Cominco's challenges to these orders, the Ninth Circuit held that EPA had authority under §§ 113(a)(5) and 167 to determine the reasonableness or adequacy of the State's justification for its BACT decision. The Court of Appeals emphasized that provision of a reasoned justification for a BACT determination by a permitting authority is undeniably a CAA "requirement." EPA had properly exercised its discretion in issuing the three orders, the Ninth Circuit held, because (1) Cominco failed to demonstrate SCR's economical infeasibility, and (2) ADEC failed to provide a reasoned justification for its elimination of SCR as a control option.

Held: CAA authorizes EPA to stop construction of a major pollutant emitting facility permitted by a state authority when EPA finds that an authority's BACT determination is unreasonable in light of 42 U. S. C. § 7479(3)'s prescribed guides. Pp. 483–502.

(a) In holding that the EPA orders constituted reviewable "final action" under § 7607(b)(1), the Ninth Circuit correctly applied *Bennett* v. *Spear*, 520 U. S. 154: To be "final," agency action must "mark the consummation of the agency's decisionmaking process," and must either determine "rights or obligations" or occasion "legal consequences," *id.*, at 177–178. As the Ninth Circuit noted, EPA had asserted its final position on the factual circumstances underpinning the orders. If the orders survived judicial review, Cominco could not escape the practical and legal consequences of any ADEC-permitted construction Cominco endeavored. P. 483.

(b) EPA may issue a stop-construction order, under CAA §§ 113(a)(5) and 167, if a state permitting authority's BACT selection is not reasonable. Pp. 484–496.

(1) EPA has rationally construed CAA's BACT definition, 42 U. S. C. § 7479(3), and the statute's listing of BACT as a "[p]reconstruction requiremen[t]" for the PSD program, §§ 7475(a)(1) and (4), to mandate a determination of BACT faithful to the statute's definition. EPA urges that state permitting authorities' statutory discretion is constrained by § 7479(3)'s strong, normative terms "maximum" and "achievable." EPA accordingly reads §§ 113(a)(5) and 167 to empower the federal Agency to check a state agency's unreasonably lax BACT desig-

nation. In support of this reading, EPA notes that Congress intended the PSD program to prevent significant deterioration of air quality in clean-air areas. Without a federal Agency surveillance role that extends to BACT determinations, EPA maintains, this goal is unlikely to be realized. The Act's legislative history suggests that, absent national guidelines, a State deciding to set and enforce strict clean-air standards may lose existing industrial plants to more permissive States. The legislative history further suggests that without a federal check, new plants will play one State off against another with threats to locate in whichever State adopts the most permissive pollution controls. The Court agrees with EPA's reading of the statutory provisions. EPA's CAA construction is reflected in interpretive guides EPA has several times published. Although an interpretation presented in internal guidance memoranda does not qualify for dispositive force under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 865–866, a cogent administrative interpretation nevertheless warrants respect, *Washington State Dept. of Social and Health Servs.* v. *Guardianship Estate of Keffeler*, 537 U. S. 371, 385. Pp. 484–488.

(2) ADEC's several arguments do not persuade the Court to reject as impermissible EPA's longstanding, consistently maintained interpretation. ADEC argues that CAA's BACT definition, § 7479(3), unambiguously assigns to "the permitting authority" alone the decision of the control technology qualifying as "best available." In ADEC's view, EPA's enforcement role is restricted to assuring that the permit contain a BACT limitation. CAA entrusts state authorities with initial responsibility to make BACT determinations because they are best positioned to adjust for local circumstances that might make a technology "unavailable" in a particular area. According state authorities initial responsibility, however, does not signify that there can be no *unreasonable* state agency BACT determinations. Congress vested EPA with explicit and sweeping authority to enforce CAA "requirements" relating to the construction and modification of sources under the PSD program, including BACT. Having expressly endorsed an expansive surveillance role for EPA in two independent CAA provisions, Congress would not have implicitly precluded EPA from verifying a state authority's substantive compliance with the BACT requirement. Nor would Congress have limited EPA to determining whether the state permitting authority had uttered the key words "BACT." The fact that § 7475(a)(8) expressly requires EPA approval of a State's BACT determination in a limited category of cases does not mean EPA lacks supervisory authority in all other cases. Sections 113(a)(5) and 167 sensibly do not *require* EPA approval of all state BACT determinations. Those provisions simply authorize EPA to act in the unusual case in which a state permit-

ting authority has determined BACT arbitrarily. Also unavailing is ADEC's argument that any reasoned justification requirement for a BACT determination may be enforced only through state administrative and judicial processes in order to allow development of an adequate factual record, to ensure EPA carries the burdens of proof, and to promote certainty. The Court declines to read into CAA's silence the unusual requirement that a federal agency's decisions enforcing federal law must be remitted solely to state court. EPA has rationally interpreted the BACT provisions and its own §§ 113(a)(5) and 167 enforcement powers not to require recourse to state processes before stopping a facility's construction. Nor is the Court persuaded by ADEC's practical concerns. There is no reason to conclude that an appropriate record cannot be developed to allow informed federal-court review when EPA disputes a BACT decision's reasonableness. In this very case, the Ninth Circuit ordered EPA to submit a complete administrative record. After EPA did so, all the parties agreed to the record's adequacy. As to the burdens of production and persuasion, the Court holds that EPA bears both burdens in a challenge to an EPA stop-construction order as well as in an EPA-initiated civil action. The underlying question a reviewing court must answer is the same in either case: Was the BACT determination unreasonable given the statutory guides and the state administrative record. Nor does the Court find compelling the suggestion that, if state courts are not the exclusive judicial arbiters, EPA will be free to invalidate a BACT determination months or years after a permit issues. This case involves preconstruction orders issued by EPA, not postconstruction federal directives. EPA itself regards it as imperative to act on a timely basis. Courts are also less likely to require new sources to accept more stringent permit conditions the further planning and construction have progressed. Pp. 488–495.

(c) In this case, EPA properly exercised its statutory authority under §§ 113(a)(5) and 167 in finding that ADEC's acceptance of Low NOx as BACT for MG–17 lacked evidentiary support. EPA's orders, therefore, were neither arbitrary nor capricious. Pp. 496–502.

(1) The Court considers whether EPA's finding was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" under the applicable review standard set forth in the Administrative Procedure Act, 5 U. S. C. § 706(2)(A). While EPA's three skeletal orders were not composed with ideal clarity, they properly ground EPA's BACT determination when read together with EPA's accompanying explanatory correspondence. See *Bowman Transp., Inc.* v. *Arkansas-Best Freight System, Inc.*, 419 U. S. 281, 286. As the Ninth Circuit determined, EPA validly issued stop orders because ADEC's BACT designation did not qualify as reasonable in light of statutory guides. In

the May 1999 draft permit, ADEC first concluded that SCR was the most stringent emission-control technology that was both technically and economically feasible. That technology should have been designated BACT absent considerations justifying a conclusion that SCR was not achievable in this case. ADEC, however, selected Low NOx as BACT based on Cominco's emissions-offsetting suggestion. In September and December 1999, ADEC again rejected SCR as BACT but no longer relied on that suggestion. Rather, ADEC candidly stated that it aimed to support Cominco's project and its contributions to the region. ADEC's selection of Low NOx thus rested squarely and solely on SCR's "disproportionate cost." EPA rightly concluded that ADEC's switch from finding SCR economically feasible in May 1999 to finding SCR economically infeasible in September 1999 had no factual basis in the record. ADEC forthrightly conceded it was disarmed from reaching a judgment on SCR's economic impact on the mine by Cominco's refusal to provide relevant financial data. No record evidence suggests that the mine, were it to use SCR, would be obliged to cut personnel or raise zinc prices. Having acknowledged that it lacked information needed to judge SCR's impact on the mine's operation, profitability, or competitiveness, ADEC could not simultaneously proffer threats to the mine's operation and competitiveness as reasons for declaring SCR economically infeasible. Nor has ADEC otherwise justified its choice. To bolster its assertion that SCR was too expensive, ADEC invoked cost figures discussed in four BACT determinations made in regard to diesel generators used for primary power production. ADEC itself, however, had previously found SCR's per-ton cost to be well within what ADEC and EPA consider economically feasible. No reasoned explanation for ADEC's retreat from this position appears in the permit ADEC issued. ADEC's basis for selecting Low NOx thus reduces to a readiness to support Cominco's project and its contributions to the region. This justification, however, hardly meets ADEC's own standard of a source-specific economic impact that demonstrates SCR to be inappropriate as BACT. ADEC's justification that lower aggregate emissions would result from Cominco's agreement to install Low NOx on *all* its generators is also unpersuasive. The final PSD permit did not offset MG–17's emissions against those of the mine's six existing generators. As ADEC recognized in September and December 1999, a State may treat emissions from several pollutant sources as falling under one "bubble" for PSD permit purposes only if every pollutant source so aggregated is part of the permit action. In December 1999, however, only MG–17 figured in the permit action. Pp. 496–501.

(2) This decision does not impede ADEC from revisiting its BACT determination. In letters and orders throughout the permitting process and at oral argument, EPA repeatedly acknowledged that ADEC

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may yet prepare an appropriate record supporting its selection of Low NOx as BACT. There is no reason not to take EPA at its word. Pp. 501–502.

298 F. 3d 814, affirmed.

GINSBURG, J., delivered the opinion of the Court, in which STEVENS, O'CONNOR, SOUTER, and BREYER, JJ., joined. KENNEDY, J., filed a dissenting opinion, in which REHNQUIST, C. J., and SCALIA and THOMAS, JJ., joined, *post*, p. 502.

Jonathan S. Franklin argued the cause for petitioner. With him on the briefs were *John G. Roberts, Jr.*, *Lorane F. Hebert*, *Gregg D. Renkes*, Attorney General of Alaska, and *Cameron M. Leonard*, Assistant Attorney General. *Robert J. Mahoney*, *Robert T. Connery*, and *Marcy G. Glenn* filed briefs in support of petitioner for Teck Cominco Alaska Inc., respondent under this Court's Rule 12.6.

Deputy Solicitor General Hungar argued the cause for respondents. With him on the brief were *Solicitor General Olson*, *Acting Assistant Attorney General Johnson*, *Deputy Solicitor General Kneedler*, *James A. Feldman*, *Andrew J. Doyle*, *Robert E. Fabricant*, *Carol S. Holmes*, and *Juliane R. B. Matthews*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of North Dakota et al. by *Wayne Stenehjem*, Attorney General of North Dakota, *Lyle Witham*, Assistant Attorney General, *Patrick J. Crank*, Attorney General of Wyoming, and *Theodore C. Preston*, Assistant Attorney General, and by the Attorneys General for their respective States as follows: *William H. Pryor, Jr.*, of Alabama, *M. Jane Brady* of Delaware, *Thomas J. Miller* of Iowa, *Jon Bruning* of Nebraska, *Brian Sandoval* of Nevada, *W. A. Drew Edmondson* of Oklahoma, *Larry Long* of South Dakota, *Mark L. Shurtleff* of Utah, and *Jerry W. Kilgore* of Virginia; for NANA Regional Corp., Inc., by *James E. Torgerson* and *Matthew Cohen;* for the National Environmental Development Association et al. by *Janet Pitterle Holt;* and for the Pacific Legal Foundation by *M. Reed Hopper* and *Robin L. Rivett.*

Briefs of *amici curiae* urging affirmance were filed for the State of Vermont et al. by *William H. Sorrell*, Attorney General of Vermont, and *Kevin O. Leske* and *Erick Titrud*, Assistant Attorneys General, and by the Attorneys General for their respective States as follows: *Bill Lockyer*

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns the authority of the Environmental Protection Agency (EPA or Agency) to enforce the provisions of the Clean Air Act's (CAA or Act) Prevention of Significant Deterioration (PSD) program. Under that program, no major air pollutant emitting facility may be constructed unless the facility is equipped with "the best available control technology" (BACT). As added by § 165, 91 Stat. 735, and amended, 42 U. S. C. § 7475(a)(4). BACT, as defined in the CAA, means, for any major air pollutant emitting facility, "an emission limitation based on the maximum degree of [pollutant] reduction . . . which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for [the] facility. . . ." § 7479(3).

Regarding EPA oversight, the Act includes a general instruction and one geared specifically to the PSD program. The general prescription, § 113(a)(5) of the Act, authorizes EPA, when it finds that a State is not complying with a CAA requirement governing construction of a pollutant source, to issue an order prohibiting construction, to prescribe an administrative penalty, or to commence a civil action for injunctive relief. 42 U. S. C. § 7413(a). Directed specifically to the PSD program, CAA § 167 instructs EPA to "take such measures, including issuance of an order, or seeking in-

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of California, *Richard Blumenthal* of Connecticut, *G. Steven Rowe* of Maine, *Thomas F. Reilly* of Massachusetts, *Michael A. Cox* of Michigan, *Peter W. Heed* of New Hampshire, *Peter C. Harvey* of New Jersey, *Eliot Spitzer* of New York, *Hardy Myers* of Oregon, *Patrick C. Lynch* of Rhode Island, and *Peggy A. Lautenschlager* of Wisconsin; for Environmental Defense et al. by *Sean H. Donahue;* and for the Native Village of Kivalina, Alaska, by *Michael J. Frank* and *Peter Van Tuyn.*

Briefs of *amici curiae* were filed for the Center for Energy and Economic Development by *Paul M. Seby;* and for the Northwest Environmental Defense Center by *Donald B. Potter.*

junctive relief, as necessary to prevent the construction" of a major pollutant emitting facility that does not conform to the PSD requirements of the Act. 42 U. S. C. § 7477.

In the case before us, "the permitting authority" under § 7479(3) is the State of Alaska, acting through Alaska's Department of Environmental Conservation (ADEC). The question presented is what role EPA has with respect to ADEC's BACT determinations. Specifically, may EPA act to block construction of a new major pollutant emitting facility permitted by ADEC when EPA finds ADEC's BACT determination unreasonable in light of the guides § 7479(3) prescribes? We hold that the Act confers that checking authority on EPA.

I

A

Congress enacted the Clean Air Amendments of 1970, 84 Stat. 1676, 42 U. S. C. § 7401 *et seq.*, in response to "dissatisfaction with the progress of existing air pollution programs." *Union Elec. Co.* v. *EPA*, 427 U. S. 246, 249 (1976). The amendments aimed "to guarantee the prompt attainment and maintenance of specified air quality standards." *Ibid.;* D. Currie, Air Pollution § 1.13, p. 1–16 (1981) (summary of 1970 amendments). Added by the 1970 amendments, §§ 108(a) and 109(a) of the Act require EPA to publish lists of emissions that "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare," and to promulgate primary and secondary national ambient air quality standards (NAAQS) for such pollutants. 42 U. S. C. §§ 7408(a) and 7409(a); *Whitman* v. *American Trucking Assns., Inc.*, 531 U. S. 457, 462–463 (2001). NAAQS "define [the] levels of air quality that must be achieved to protect public health and welfare." R. Belden, Clean Air Act 6 (2001). The Agency published initial NAAQS in 1971, *Union Elec.*, 427 U. S., at 251 (citing 40

CFR pt. 50 (1975)), and in 1985, NAAQS for the pollutant at issue in this case, nitrogen dioxide. 40 CFR § 50.11 (2002).[1]

Under § 110 of the Act, also added in 1970, each State must submit for EPA approval "a plan which provides for implementation, maintenance, and enforcement of [NAAQS]." 42 U. S. C. § 7410(a)(1); cf. § 7410(c)(1) (EPA shall promulgate an implementation plan if the State's plan is inadequate). Relevant to this case, EPA has approved Alaska's implementation plan. 48 Fed. Reg. 30626 (1983), as amended, 56 Fed. Reg. 19288 (1991); 40 CFR § 52.96(a) (2002). To gain EPA approval, a "state implementation plan" (SIP) must "include enforceable emission limitations and other control measures, means, or techniques . . . as may be necessary or appropriate to meet the applicable [CAA] requirements." 42 U. S. C. § 7410(a)(2)(A). While States have "wide discretion" in formulating their plans, *Union Elec.*, 427 U. S., at 250, SIPs must include certain measures Congress specified "to assure that national ambient air quality standards are achieved," 42 U. S. C. § 7410(a)(2)(C). Among those measures are permit provisions, § 7475, basic to the administration of the program involved in this case, CAA's "Prevention of Significant Deterioration of Air Quality" (PSD) program.

The PSD requirements, enacted as part of 1977 amendments to the Act, Title I, § 160 *et seq.*, 91 Stat. 731, "are designed to ensure that the air quality in attainment areas or areas that are already 'clean' will not degrade," Belden, *supra*, at 43. See 42 U. S. C. § 7470(1) (purpose of PSD pro-

[1] Emissions levels for nitrogen dioxide, a regulated pollutant under the Act, are defined in terms of quantities of all oxides of nitrogen. R. Belden, Clean Air Act 47, n. 11 (2001). "The term nitrogen oxides refers to a family of compounds of nitrogen and oxygen. The principal nitrogen oxides component present in the atmosphere at any time is nitrogen dioxides. Combustion sources emit mostly nitric oxide, with some nitrogen dioxide. Upon entering the atmosphere, the nitric oxide changes rapidly, mostly to nitrogen dioxide." EPA, Prevention of Significant Deterioration for Nitrogen Oxides, 53 Fed. Reg. 40656 (1988). Nitrogen oxides are also termed "NOx."

gram is to "protect public health and welfare from any actual or potential adverse effect which in [EPA's] judgment may reasonably be anticipate[d] to occur from air pollution . . . notwithstanding attainment and maintenance of all national ambient air quality standards"). Before 1977, no CAA provision specifically addressed potential air quality deterioration in areas where pollutant levels were lower than the NAAQS. *Alabama Power Co.* v. *Costle*, 636 F. 2d 323, 346–347 (CADC 1979). Responding to litigation initiated by an environmental group,[2] however, EPA issued regulations in 1974 requiring that SIPs include a PSD program. *Id.*, at 347, and n. 18 (citing 39 Fed. Reg. 42510 (1974)). Three years later, Congress adopted the current PSD program. See S. Rep. No. 95–127, p. 11 (1977) (Congress itself has "a responsibility to delineate a policy for protecting clean air").

The PSD program imposes on States a regime governing areas "designated pursuant to [42 U. S. C. § 7407] as attainment or unclassifiable." § 7471.[3] An attainment area is one in which the air "meets the national primary or secondary ambient air quality standard for [a regulated pollutant]." § 7407(d)(1)(A)(ii). Air in an unclassifiable area "cannot be classified on the basis of available information as meeting or not meeting the national primary or secondary ambient air quality standard for the pollutant." § 7407(d)(1)(A)(iii). Northwest Alaska, the region this case concerns, is classified as an attainment or unclassifiable area for nitrogen dioxide, 40 CFR § 81.302 (2002); therefore, the PSD program applies to emissions of that pollutant in the region. In 2002, the Agency reported that "[a]ll areas of the country that once

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[2] *Sierra Club* v. *Ruckelshaus*, 344 F. Supp. 253 (DC 1972), aff'd *per curiam*, 4 E. R. C. 1815, 2 Env. L. Rep. 20656 (CADC 1972), aff'd by an equally divided court *sub nom. Fri* v. *Sierra Club*, 412 U. S. 541 (1973) *(per curiam)*.

[3] The PSD program also requires visibility control measures, 42 U. S. C. §§ 7491–7492, not at issue in this case.

violated the NAAQS for [nitrogen dioxide] now meet that standard." EPA, Latest Findings on National Air Quality 7 (Aug. 2003).

Section 165 of the Act, 42 U. S. C. § 7475, installs a permitting requirement for any "major emitting facility," defined to include any source emitting more than 250 tons of nitrogen oxides per year, § 7479(1). No such facility may be constructed or modified unless a permit prescribing emission limitations has been issued for the facility. § 7475(a)(1); see § 7479(2)(C) (defining "construction" to include "modification"). Alaska's SIP imposes an analogous requirement. 18 Alaska Admin. Code § 50.300(c)(1) (2003). Modifications to major emitting facilities that increase nitrogen oxide emissions in excess of 40 tons per year require a PSD permit. 40 CFR § 51.166(b)(23)(i) (2002); 18 Alaska Admin. Code § 50.300(h)(3)(B)(ii) (2003).

The Act sets out preconditions for the issuance of PSD permits. *Inter alia*, no PSD permit may issue unless "the proposed facility is subject to the best available control technology for each pollutant subject to [CAA] regulation . . . emitted from . . . [the] facility." 42 U. S. C. § 7475(a)(4). As described in the Act's definitional provisions, "best available control technology" (BACT) means:

> "an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this chapter emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques . . . . In no event shall application of 'best available control technology' result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant

> to section 7411 or 7412 of this title [emission standards for new and existing stationary sources]." § 7479(3).

40 CFR § 51.166(b)(12) (2002) (repeating statutory definition). Alaska's SIP contains provisions that track the statutory BACT requirement and definition. 18 Alaska Admin. Code §§ 50.310(d)(3) and 50.990(13) (2003). The State, with slightly variant terminology, defines BACT as "the emission limitation that represents the maximum reduction achievable for each regulated air contaminant, taking into account energy, environmental and economic impacts, and other costs." § 50.990(13). Under the federal Act, a limited class of sources must gain advance EPA approval for the BACT prescribed in the permit. 42 U. S. C. § 7475(a)(8).

CAA also provides that a PSD permit may issue only if a source "will not cause, or contribute to, air pollution in excess of any . . . maximum allowable increase or maximum allowable concentration for any pollutant" or any NAAQS. § 7475(a)(3). Congress left to the Agency the determination of most maximum allowable increases, or "increments," in pollutants. EPA regulations have defined increments for nitrogen oxides. 40 CFR § 51.166(c) (2002). Typically, to demonstrate that increments will not be exceeded, applicants use mathematical models of pollutant plumes, their behavior, and their dispersion. Westbrook, Air Dispersion Models: Tools to Assess Impacts from Pollution Sources, 13 Natural Resources & Env. 546, 547–548 (1999).

Among measures EPA may take to ensure compliance with the PSD program, two have special relevance here. The first prescription, § 113(a)(5) of the Act, provides that "[w]henever, on the basis of any available information, [EPA] finds that a State is not acting in compliance with any requirement or prohibition of the chapter relating to the construction of new sources or the modification of existing sources," 42 U. S. C. § 7413(a)(5), EPA may "issue an order prohibiting the construction or modification of any major stationary source in any area to which such requirement ap-

plies," § 7413(a)(5)(A).[4] The second measure, § 167 of the Act, trains on enforcement of the PSD program; it requires EPA to "take such measures, including issuance of an order, or seeking injunctive relief, as necessary to prevent the construction or modification of a major emitting facility which does not conform to the [PSD] requirements." § 7477.

B

Teck Cominco Alaska Inc. (Cominco) operates a zinc concentrate mine, the Red Dog Mine, in northwest Alaska approximately 100 miles north of the Arctic Circle and close to the native Alaskan villages of Kivalina and Noatak. App. to Pet. for Cert. 3a; Brief for Petitioner 8; Brief for Respondents 4. The mine is the region's largest private employer. Brief for Petitioner 9. It supplies a quarter of the area's wage base. *Ibid.* Cominco leases the land from the NANA Regional Corporation, an Alaskan corporation formed pursuant to the Alaska Native Claims Settlement Act, 85 Stat. 688, as amended, 43 U. S. C. § 1601 *et seq.* Brief for NANA Regional Corporation, Inc., as *Amicus Curiae* 1–2, 4.

In 1988, Cominco obtained authorization to operate the mine, a "major emitting facility" under the Act and Alaska's SIP. App. 106. The mine's PSD permit authorized five 5,000 kilowatt Wartsila diesel electric generators, MG–1 through MG–5, subject to operating restrictions; two of the five generators were permitted to operate only in standby status. *Ibid.* Petitioner Alaska Department of Environmental Conservation (ADEC) issued a second PSD permit in 1994 allowing addition of a sixth full-time generator (MG–6), removing standby status from MG–2, and imposing a new

[4] As enacted in 1977, § 113(a)(5) extended only to solid waste combustion and sources in nonattainment areas. See Title I, § 111(a), 91 Stat. 685. Congress extended § 113(a)(5) in 1990 amendments to the Act to cover attainment areas, and thus to encompass enforcement of PSD permitting requirements. Title VII, 104 Stat. 2672.

operational cap that allowed all but one generator to run full time. *Ibid.*

In 1996, Cominco initiated a project, with funding from the State, to expand zinc production by 40%. Brief for Petitioner 10; Reply Brief for Petitioner 11, n. 9. Anticipating that the project would increase nitrogen oxide emissions by more than 40 tons per year, see *supra*, at 472, Cominco applied to ADEC for a PSD permit to allow, *inter alia*, increased electricity generation by its standby generator, MG–5. App. 107–108; App. to Pet. for Cert. 33a. On March 3, 1999, ADEC preliminarily proposed as BACT for MG–5 the emission control technology known as selective catalytic reduction (SCR),[5] which reduces nitrogen oxide emissions by 90%. App. 72, 108. In response, Cominco amended its application to add a seventh generator, MG–17, and to propose as BACT an alternative control technology—Low NOx[6]—that achieves a 30% reduction in nitrogen oxide pollutants. Brief for Respondents 5, and n. 1; App. 84.

On May 4, 1999, ADEC, in conjunction with Cominco's representative, issued a first draft PSD permit and preliminary technical analysis report that concluded Low NOx was BACT for MG–5 and MG–17. *Id.*, at 55–95. To determine BACT, ADEC employed EPA's recommended top-down methodology, *id.*, at 61:

> "In brief, the top-down process provides that all available control technologies be ranked in descending order of control effectiveness. The PSD applicant first examines the most stringent—or 'top'—alternative. That al-

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[5] SCR requires injections of "ammonia or urea into the exhaust before the exhaust enters a catalyst bed made with vanadium, titanium, or platinum. The reduction reaction occurs when the flue gas passes over the catalyst bed where the NOx and ammonia combine to become nitrogen, oxygen, and water . . . ." App. 71.

[6] In Low NOx, changes are made to a generator to improve fuel atomization and modify the combustion space to enhance the mixing of air and fuel. *Id.*, at 75.

> ternative is established as BACT unless the applicant demonstrates, and the permitting authority in its informed judgment agrees, that technical considerations, or energy, environmental, or economic impacts justify a conclusion that the most stringent technology is not 'achievable' in that case. If the most stringent technology is eliminated in this fashion, then the next most stringent alternative is considered, and so on." EPA, New Source Review Workshop Manual B.2 (Draft Oct. 1990) (hereinafter New Source Review Manual); App. 61–62.[7]

Applying top-down methodology, ADEC first homed in on SCR as BACT for MG–5, and the new generator, MG–17. "[W]ith an estimated reduction of 90%," ADEC stated, SCR "is the most stringent" technology. *Id.*, at 79. Finding SCR "technically and economically feasible," *id.*, at 65, ADEC characterized as "overstated" Cominco's cost estimate of $5,643 per ton of nitrogen oxide removed by SCR, *id.*, at 113. Using Cominco's data, ADEC reached a cost estimate running between $1,586 and $2,279 per ton. *Id.*, at 83. Costs in that range, ADEC observed, "are well within what ADEC and EPA conside[r] economically feasible." *Id.*, at 84. Responding to Cominco's comments on the preliminary permit, engineering staff in ADEC's Air Permits Program pointed out that, according to information Cominco provided to ADEC, "SCR has been installed on similar diesel-fired engines throughout the world." *Id.*, at 102.

Despite its staff's clear view "that SCR (the most effective individual technology) [was] technologically, environmentally, and economically feasible for the Red Dog power plant engines," *id.*, at 103–104, ADEC endorsed the alternative prof-

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[7] Nothing in the Act or its implementing regulations mandates top-down analysis. See 42 U. S. C. § 7479(3); 40 CFR § 52.21(j) (2002). EPA represents that permitting authorities "commonly" use top-down methodology. Brief for Respondents 3.

fered by Cominco. To achieve nitrogen oxide emission reductions commensurate with SCR's 90% impact, Cominco proposed fitting the new generator MG–17 and the six existing generators with Low NOx. *Ibid.*[8] Cominco asserted that it could lower net emissions by 396 tons per year if it fitted all seven generators with Low NOx rather than fitting two (MG–5 and MG–17) with SCR and choosing one of them as the standby unit. *Id.*, at 87. Cominco's proposal hinged on the "assumption . . . that under typical operating conditions one or more engines will not be running due to maintenance of standby-generation capacity." *Ibid.* If all seven generators ran continuously, however, Cominco's alternative would increase emissions by 79 tons per year. *Ibid.* Accepting Cominco's submission, ADEC stated that Cominco's Low NOx solution "achieve[d] a similar maximum NOx reduction as the most stringent controls; [could] potentially result in a greater NOx reduction; and is logistically and economically less onerous to Cominco." *Id.*, at 87–88.

On the final day of the public comment period, June 2, 1999, the United States Department of the Interior, National Parks Service (NPS), submitted comments to ADEC. App. to Pet. for Cert. 33a; App. 97, 108. NPS objected to the projected offset of new emissions from MG–5 and MG–17 against emissions from other existing generators that were not subject to BACT. Letter from John Notar, NPS Air Resources Division, to Jim Baumgartner, ADEC (June 2, 1999). Such an offset, NPS commented, "is neither allowed by BACT, nor achieves the degree of reduction that would result if all the generators that are subject to BACT were equipped with SCR." *Id.*, at 3. NPS further observed that the proposed production-increase project would remove operating restrictions that the 1994 PSD permit had placed on four of the existing generators—MG–1, MG–3, MG–4,

[8] Two generators already were fitted with a technology called Fuel Injection Timing Retard that results in a 20% to 30% reduction in nitrogen oxide emissions. App. 75–76, 86.

and MG–5. App. to Pet. for Cert. 34a. Due to that alteration, NPS urged, those generators, too, became part of the production-expansion project and would be subject to the BACT requirement. *Ibid.*

Following NPS' lead, EPA wrote to ADEC on July 29, 1999, commenting: "Although ADEC states in its analysis that [SCR], the most stringent level of control, is economically and technologically feasible, ADEC did not propose to require SCR. . . . [O]nce it is determined that an emission unit is subject to BACT, the PSD program does not allow the imposition of a limit that is less stringent than BACT." App. 96–97. A permitting authority, EPA agreed with NPS, could not offset new emissions "by imposing new controls on other emission units" that were not subject to BACT. *Id.*, at 97. New emissions could be offset only against reduced emissions from sources covered by the same BACT authorization. *Id.*, at 285–286. EPA further agreed with NPS that, based on the existing information, BACT would be required for MG–1, MG–3, MG–4, and MG–5. *Id.*, at 97.

After receiving EPA comments, ADEC issued a second draft PSD permit and technical analysis report on September 1, 1999, again finding Low NOx to be BACT for MG–17. *Id.*, at 105–117. Abandoning the emissions-offsetting justification advanced in the May 4 draft permit, ADEC agreed with NPS and EPA that "emission reductions from sources that were not part of the permit action," here MG–1, MG–2, MG–3, MG–4, MG–5, and MG–6, could not be considered in determining BACT for MG–17. *Id.*, at 111; *id.*, at 199 (same).[9]

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[9] Rather than subject MG–1, MG–3, MG–4, and MG–5 to BACT, ADEC and Cominco "agreed to permit conditions that would require low NOx controls on MG–1, MG–3, MG–4, and MG–5, and emission limits that reflect the previous 'bubbled' limits. Under this approach, the permit would result in no increase in actual or allowable emissions from any of these engines and the installation of BACT would not be necessary for these four

ADEC conceded that, lacking data from Cominco, it had made "no judgment . . . as to the impact of . . . [SCR] on the operation, profitability, and competitiveness of the Red Dog Mine." *Id.*, at 116. Contradicting its May 1999 conclusion that SCR was "technically and economically feasible," see *supra*, at 476, ADEC found in September 1999 that SCR imposed "a disproportionate cost" on the mine. App. 116. ADEC concluded, on a "cursory review," that requiring SCR for a rural Alaska utility would lead to a 20% price increase, and that in comparison with other BACT technologies, SCR came at a "significantly higher" cost. *Ibid.* No economic basis for a comparison between the mine and a rural utility appeared in ADEC's technical analysis.

EPA protested the revised permit. In a September 15, 1999, letter, the Agency stated: "Cominco has not adequately demonstrated any site-specific factors to support their claim that the installation of [SCR] is economically infeasible at the Red Dog Mine. Therefore, elimination of SCR as BACT based on cost-effectiveness grounds is not supported by the record and is clearly erroneous." *Id.*, at 127; see *id.*, at 138 (ADEC's record does not support the departure from ADEC's initial view that the costs for SCR were economically feasible).

To justify the September 1, 1999, permit, EPA suggested, ADEC could "include an analysis of whether requiring Cominco to install and operate [SCR] would have any adverse economic impacts upon Cominco specifically." *Id.*, at 127. Stating that such an inquiry was unnecessary and expressing "concerns related to confidentiality," Cominco declined to submit financial data. *Id.*, at 134. In this regard, Cominco simply asserted, without detail, that the company's "overall debt remains quite high" despite continuing profits. *Id.*, at

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units." *Id.*, at 149. EPA found no cause to question this ADEC-Cominco agreement. *Ibid.*

134–135. Cominco also invoked the need for "[i]ndustrial development in rural Alaska." *Id.*, at 135.

On December 10, 1999, ADEC issued the final permit and technical analysis report. Once again, ADEC approved Low NOx as BACT for MG–17 "[t]o support Cominco's Red Dog Mine Production Rate Increase Project, and its contributions to the region." *Id.*, at 208. ADEC did not include the economic analysis EPA had suggested. *Id.*, at 152–246. Indeed, ADEC conceded again that it had made "no judgment . . . as to the impact of . . . [SCR's] cost on the operation, profitability, and competitiveness of the Red Dog Mine." *Id.*, at 207. Nonetheless, ADEC advanced, as cause for its decision, SCR's adverse effect on the mine's "unique and continuing impact on the economic diversity of th[e] region" and on the venture's "world competitiveness." *Id.*, at 208. ADEC did not explain how its inferences of adverse effects on the region's economy or the mine's "world competitiveness" could be made without financial information showing SCR's impact on the "operation, profitability, and competitiveness" of the mine. *Id.*, at 207, 299. Instead, ADEC reiterated its rural Alaska utility analogy, and again compared SCR's cost to the costs of other, less stringent, control technologies. *Id.*, at 205–207.

The same day, December 10, 1999, EPA issued an order to ADEC, under §§ 113(a)(5) and 167 of the Act, 42 U. S. C. §§ 7413(a)(5) and 7477, prohibiting ADEC from issuing a PSD permit to Cominco "unless ADEC satisfactorily documents why SCR is not BACT for the Wartsila diesel generator [MG–17]." App. to Pet. for Cert. 36a. In the letter accompanying the order, the Agency stated that "ADEC's own analysis supports the determination that BACT is [SCR], and that ADEC's decision in the proposed permit therefore is both arbitrary and erroneous." App. 149.

On February 8, 2000, EPA, again invoking its authority under §§ 113(a)(5) and 167 of the Act, issued a second order,

this time prohibiting Cominco from beginning "construction or modification activities at the Red Dog mine." App. to Pet. for Cert. 49a. A third order, issued on March 7, 2000, superseding and vacating the February 8 order, generally prohibited Cominco from acting on ADEC's December 10 PSD permit but allowed limited summer construction. *Id.*, at 62a–64a. On April 25, 2000, EPA withdrew its December 10 order. App. 300; App. to Pet. for Cert. 6a. Once ADEC issued the permit, EPA explained, that order lacked utility. On July 16, 2003, ADEC granted Cominco a PSD permit to construct MG–17 with SCR as BACT. Letter from Theodore B. Olson, Solicitor General, to William K. Suter, Clerk of the Court (Aug. 21, 2003). Under the July 16, 2003, permit, SCR ceases to be BACT "if and when the case currently pending before the Supreme Court of the United States of America is decided in favor of the State of Alaska." ADEC, Air Quality Control Construction Permit, Final Technical Analysis Report, Permit No. 9932–AC005, Revision 2, p. 7.

The day EPA issued its first order against Cominco, February 8, 2000, ADEC and Cominco petitioned the Court of Appeals for the Ninth Circuit for review of EPA's orders. App. 11. The Agency initially moved to dismiss, urging that the Court of Appeals lacked subject-matter jurisdiction. In an order released March 27, 2001, the Ninth Circuit concluded that it had adjudicatory authority pursuant to 42 U. S. C. § 7607(b)(1), which lodges jurisdiction over challenges to "any . . . final [EPA] action" in the Courts of Appeals. *Alaska* v. *United States EPA*, 244 F. 3d 748, 750–751.[10]

The Court of Appeals resolved the merits in a judgment released July 30, 2002. 298 F. 3d 814 (CA9). It held that

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[10] At oral argument, counsel for EPA confirmed that the Agency no longer questions the Court of Appeals' adjudicatory authority, satisfied that the finality requirement was met because the stop-construction order imposed "new legal obligations on Cominco." Tr. of Oral Arg. 43–44 (punctuation omitted).

EPA had authority under §§ 113(a)(5) and 167 to issue the contested orders, and that the Agency had properly exercised its discretion in doing so. *Id.*, at 820–823. Concerning EPA's authority under §§ 113(a)(5) and 167, the Court of Appeals observed first that "the question presented is what requirements the *state* must meet" under the Act to issue a PSD permit, not what the correct BACT might be. *Id.*, at 821 (emphasis in original). Concluding that EPA had "authority to determine the reasonableness or adequacy of the state's justification for its decision," the Court of Appeals emphasized that the "provision of a reasoned justification" by a permitting authority is undeniably a "requirement" of the Act. *Ibid.* EPA had properly exercised its discretion in issuing the three orders, the Ninth Circuit ultimately determined, because (1) Cominco failed to "demonstrat[e] that SCR was economically infeasible," and (2) "ADEC failed to provide a reasoned justification for its elimination of SCR as a control option." *Id.*, at 823. We granted certiorari, 537 U. S. 1186 (2003), to resolve an important question of federal law, *i. e.*, the scope of EPA's authority under §§ 113(a)(5) and 167, and now affirm the Ninth Circuit's judgment.

II

ADEC contested EPA's orders under 42 U. S. C. § 7607 (b)(1), which renders reviewable in the appropriate federal court of appeals any EPA "final action." Before the Ninth Circuit, EPA unsuccessfully urged that its orders were "interlocutory," and therefore unreviewable in court unless and until EPA chose to commence an enforcement action.[11] A preenforcement contest could be maintained in the Court of Appeals under § 7607(b)(1), the Ninth Circuit held, for in the circumstances presented, EPA's actions had the requisite finality.

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[11] Such an action would lie in district court, under 42 U. S. C. § 7413(b).

It was undisputed, the Court of Appeals observed, that EPA had spoken its "'last word'" on whether ADEC had adequately justified its conclusion that Low NOx was the best available control technology for the MG–17 generator. 244 F. 3d, at 750. Further, EPA's orders effectively halted construction of the MG–17 generator, for Cominco would risk civil and criminal penalties if it defied a valid EPA directive.

In this Court, EPA agrees with the Ninth Circuit's finality determination. See Brief for Respondents 16–20; Tr. of Oral Arg. 43–44. We are satisfied that the Court of Appeals correctly applied the guides we set out in *Bennett* v. *Spear*, 520 U. S. 154, 177–178 (1997) (to be "final," agency action must "mark the 'consummation' of the agency's decisionmaking process," and must either determine "rights or obligations" or occasion "legal consequences" (some internal quotation marks omitted)). As the Court of Appeals stated, EPA had "asserted its final position on the factual circumstances" underpinning the Agency's orders, 244 F. 3d, at 750, and if EPA's orders survived judicial review, Cominco could not escape the practical and legal consequences (lost costs and vulnerability to penalties) of any ADEC-permitted construction Cominco endeavored, *ibid.*

No question has been raised here, we note, about the adequacy of EPA's preorder procedures under the Due Process Clause or the Administrative Procedure Act. Cf. *Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council, Inc.*, 435 U. S. 519, 544 (1978) (agencies have authority to "fashion their own rules of procedure," even when a statute does not specify what process to use). Furthermore, in response to ADEC's initial contention that the record was incomplete, the Ninth Circuit gave EPA an opportunity to supplement the record, and thereafter obtained from all parties agreement "that the record as it stood was adequate to resolve [ADEC's review petition]." 298 F. 3d, at 818.

III

A

Centrally at issue in this case is the question whether EPA's oversight role, described by Congress in CAA §§ 113(a)(5) and 167, see *supra,* at 473–474, extends to ensuring that a state permitting authority's BACT determination is reasonable in light of the statutory guides. Sections 113(a)(5) and 167 lodge in the Agency encompassing supervisory responsibility over the construction and modification of pollutant emitting facilities in areas covered by the PSD program. 42 U. S. C. §§ 7413(a)(5) and 7477. In notably capacious terms, Congress armed EPA with authority to issue orders stopping construction when "a State is not acting in compliance with any [CAA] requirement or prohibition . . . relating to the construction of new sources or the modification of existing sources," § 7413(a)(5), or when "construction or modification of a major emitting facility . . . does not conform to the requirements of [the PSD program]," § 7477.

The federal Act enumerates several "[p]reconstruction requirements" for the PSD program. § 7475. Absent these, "[n]o major emitting facility . . . may be constructed." *Ibid.* One express preconstruction requirement is inclusion of a BACT determination in a facility's PSD permit. §§ 7475(a)(1) and (4). As earlier set out, see *supra,* at 472, the Act defines BACT as "an emission limitation based on the maximum degree of reduction of [a] pollutant . . . which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for [a] facility." § 7479(3). Under this formulation, the permitting authority, ADEC here, exercises primary or initial responsibility for identifying BACT in line with the Act's definition of that term.

All parties agree that one of the "many requirements in the PSD provisions that the EPA may enforce" is "that a

[PSD] permit contain a BACT limitation." Brief for Petitioner 34; see *id.*, at 22, 25 (same). See also Brief for Respondents 23. It is therefore undisputed that the Agency may issue an order to stop a facility's construction if a PSD permit contains no BACT designation.

EPA reads the Act's definition of BACT, together with CAA's explicit listing of BACT as a "[p]reconstruction requiremen[t]," to mandate not simply *a* BACT designation, but a determination of BACT faithful to the statute's definition. In keeping with the broad oversight role §§ 113(a)(5) and 167 vest in EPA, the Agency maintains, it may review permits to ensure that a State's BACT determination is reasonably moored to the Act's provisions. See *id.*, at 24. We hold, as elaborated below, that the Agency has rationally construed the Act's text and that EPA's construction warrants our respect and approbation.

BACT's statutory definition requires selection of an emission control technology that results in the "maximum" reduction of a pollutant "achievable for [a] facility" in view of "energy, environmental, and economic impacts and other costs." 42 U. S. C. § 7479(3). This instruction, EPA submits, cabins state permitting authorities' discretion by granting only "authority to make *reasonable* BACT determinations," Brief for Respondents 27 (emphasis in original), *i. e.*, decisions made with fidelity to the Act's purpose "to insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources," 42 U. S. C. § 7470(3). Noting that state permitting authorities' statutory discretion is constrained by CAA's strong, normative terms "maximum" and "achievable," § 7479(3),[12] EPA reads §§ 113(a)(5)

[12] Formulations similar to the BACT definition's "maximum degree of [pollutant] reduction . . . achievable" appear in the Act's standards for new sources in nonattainment areas, 42 U. S. C. §§ 7501(3) and 7503(a)(2) ("lowest achievable emission rate" (internal quotation marks omitted)), and its technology-based standard for hazardous emissions, § 7412(d)(2) ("maximum degree of reduction . . . achievable").

and 167 to empower the federal Agency to check a state agency's unreasonably lax BACT designation. See Brief for Respondents 27.

EPA stresses Congress' reason for enacting the PSD program—to prevent significant deterioration of air quality in clean-air areas within a State and in neighboring States. §§ 7470(3), (4); see *id.*, at 33. That aim, EPA urges, is unlikely to be realized absent an EPA surveillance role that extends to BACT determinations. The Agency notes in this regard a House Report observation:

> "Without national guidelines for the prevention of significant deterioration a State deciding to protect its clean air resources will face a double threat. The prospect is very real that such a State would lose existing industrial plants to more permissive States. But additionally the State will likely become the target of 'economic-environmental blackmail' from new industrial plants that will play one State off against another with threats to locate in whichever State adopts the most permissive pollution controls." H. R. Rep. No. 95–294, p. 134 (1977).

The House Report further observed that "a community that sets and enforces strict standards may still find its air polluted from sources in another community or another State." *Id.*, at 135 (quoting 116 Cong. Rec. 32909 (1970)). Federal Agency surveillance of a State's BACT designation is needed, EPA asserts, to restrain the interjurisdictional pressures to which Congress was alert. See Brief for Respondents 33–34, 43; Brief for Vermont et al. as *Amici Curiae* 12 ("If EPA has authority to ensure a reasonable level of consistency among BACT determinations nationwide, then every State can feel more confident about maintaining stringent standards without fear of losing its current industry or alienating prospective industry.").

The CAA construction EPA advances in this litigation is reflected in interpretive guides the Agency has several times published. See App. 268–269 (1983 EPA PSD guidance memorandum noting the Agency's "oversight function"); *id.*, at 274 (1988 EPA guidance memorandum stating EPA may find a BACT determination deficient if it is "not based on a reasoned analysis"); *id.*, at 281–282 (1993 guidance memorandum stating that "EPA acts to ensure that the state exercises its discretion within the bounds of the law" (internal quotation marks omitted); as to BACT, EPA will not intervene if the state agency has given "a reasoned justification for the basis of its decision" (internal quotation marks omitted)). See also Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia—Prevention of Significant Deterioration Program, 63 Fed. Reg. 13797 (1998) (EPA will "review whether any determination by the permitting authority was made on reasonable grounds properly supported on the record, described in enforceable terms, and consistent with all applicable requirements"). We "normally accord particular deference to an agency interpretation of 'longstanding' duration," *Barnhart* v. *Walton*, 535 U. S. 212, 220 (2002) (quoting *North Haven Bd. of Ed.* v. *Bell*, 456 U. S. 512, 522, n. 12 (1982)), recognizing that "well-reasoned views" of an expert administrator rest on "'a body of experience and informed judgment to which courts and litigants may properly resort for guidance,'" *Bragdon* v. *Abbott*, 524 U. S. 624, 642 (1998) (quoting *Skidmore* v. *Swift & Co.*, 323 U. S. 134, 139–140 (1944)).

We have previously accorded dispositive effect to EPA's interpretation of an ambiguous CAA provision. See *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 865–866 (1984); *Union Elec.*, 427 U. S., at 256. The Agency's interpretation in this case, presented in internal guidance memoranda, however, does not qualify for the dispositive force described in *Chevron*. See *Christensen* v. *Harris County*, 529 U. S. 576, 587 (2000) ("Interpretations

such as those in . . . policy statements, agency manuals, and enforcement guidelines, all of which lack the force of law—do not warrant *Chevron*-style deference."); accord *United States* v. *Mead Corp.*, 533 U. S. 218, 234 (2001). Cogent "administrative interpretations . . . not [the] products of formal rulemaking . . . nevertheless warrant respect." *Washington State Dept. of Social and Health Servs.* v. *Guardianship Estate of Keffeler*, 537 U. S. 371, 385 (2003). We accord EPA's reading of the relevant statutory provisions, §§ 7413(a)(5), 7470(3), 7470(4), 7475(a)(4), 7477, and 7479(3), that measure of respect.

B

ADEC assails the Agency's construction of the Act on several grounds. Its arguments do not persuade us to reject as impermissible EPA's longstanding, consistently maintained interpretation.

ADEC argues that the statutory definition of BACT, § 7479(3), unambiguously assigns to "the permitting authority" alone determination of the control technology qualifying as "best available." Brief for Petitioner 21–26. Because the Act places responsibility for determining BACT with "the permitting authority," ADEC urges, CAA excludes federal Agency surveillance reaching the substance of the BACT decision. *Id.*, at 22–25. EPA's enforcement role, ADEC maintains, is restricted to the requirement "that the permit contain a BACT limitation." *Id.*, at 34.

Understandably, Congress entrusted state permitting authorities with initial responsibility to make BACT determinations "case-by-case." § 7479(3). A state agency, no doubt, is best positioned to adjust for local differences in raw materials or plant configurations, differences that might make a technology "unavailable" in a particular area. But the fact that the relevant statutory guides—"maximum" pollution reduction, considerations of energy, environmental, and economic impacts—may not yield a "single, objectively 'correct' BACT determination," *id.*, at 23, surely does not

signify that there can be no *unreasonable* determinations. Nor does Congress' sensitivity to site-specific factors necessarily imply a design to preclude in this context meaningful EPA oversight under §§ 113(a)(5) and 167. EPA claims no prerogative to designate the correct BACT; the Agency asserts only the authority to guard against unreasonable designations. See 298 F. 3d, at 821 ("the question presented is what requirements the *state* must meet," not what final substantive decision the State must make (emphasis in original)).[13]

Under ADEC's interpretation, EPA properly inquires whether a BACT determination appears in a PSD permit,

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[13] The dissent admonishes that "a statute is to be read as a whole." *Post*, at 504 (quoting *King* v. *St. Vincent's Hospital*, 502 U. S. 215, 221 (1991)). We give that unexceptional principle effect by attending both to the unequivocal grant of supervisory authority to EPA in §§ 113(a)(5) and 167, and to the statutory control on permitting authorities' discretion contained in the BACT definition, 42 U. S. C. § 7479(3). It is, moreover, "a cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *TRW Inc.* v. *Andrews*, 534 U. S. 19, 31 (2001) (quoting *Duncan* v. *Walker*, 533 U. S. 167, 174 (2001)). The Act instructs permitting authorities to identify the "best," "maximum" emission reduction technique, taking account of costs. 42 U. S. C. § 7479(3). The dissent does not explain how that instruction can be construed as something other than a constraint on permitting authorities' discretion. Ultimately, the dissent recognizes the essential statutory requirement: selection of "the technology that can *best* reduce pollution within practical constraints." *Post*, at 505 (emphasis added).

Nor do we find enlightening Congress' inclusion of the word "determines" in the BACT definition. *Post*, at 503–504. Even under the dissent's view of the Act, state permitting authorities' BACT determinations are not "conclusiv[e] and authoritativ[e]." *Post*, at 504 (internal quotation marks and citation omitted). As the dissent develops at length, review of such BACT determinations may be sought in state court. *Post*, at 509–512; Alaska Stat. § 44.62.560 (2002). And EPA actions, of course, are subject to "the process of judicial review," *post*, at 503, Congress empowered federal courts to provide, here in 42 U. S. C. § 7607(b)(1). See *supra*, at 482–483.

Brief for Petitioner 34, but not whether that BACT determination "was made on reasonable grounds properly supported on the record," 63 Fed. Reg., at 13797. Congress, however, vested EPA with explicit and sweeping authority to enforce CAA "requirements" relating to the construction and modification of sources under the PSD program, including BACT. We fail to see why Congress, having expressly endorsed an expansive surveillance role for EPA in two independent CAA provisions, would then implicitly preclude the Agency from verifying substantive compliance with the BACT provisions and, instead, limit EPA's superintendence to the insubstantial question whether the state permitting authority had uttered the key words "BACT."

We emphasize, however, that EPA's rendition of the Act's less than crystalline text leaves the "permitting authority" considerable leeway. The Agency acknowledges "the need to accord appropriate deference" to States' BACT designations, Brief for Respondents 43, and disclaims any intention to "'second guess' state decisions," 63 Fed. Reg., at 13797. Only when a state agency's BACT determination is "not based on a reasoned analysis," App. 274, may EPA step in to ensure that the statutory requirements are honored.[14] EPA

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[14] According to the Agency, "[i]t has proven to be relatively rare that a state agency has put EPA in the position of having to exercise [its] authority," noting that only two other reported judicial decisions concern EPA orders occasioned by States' faulty BACT determinations. Brief for Respondents 30, and n. 9 (citing *Allsteel, Inc.* v. *EPA*, 25 F. 3d 312 (CA6 1994), and *Solar Turbines Inc.* v. *Seif*, 879 F. 2d 1073 (CA3 1989)). EPA's restrained and moderate use of its authority hardly supports the dissent's speculation that the federal Agency will "displac[e]" or "degrad[e]" state agencies or relegate them to the performance of "ministerial" functions. *Post*, at 516, 518. Nor has EPA ever asserted authority to override a state-court judgment. Cf. *post*, at 511. Preclusion principles, we note in this regard, unquestionably do apply against the United States, its agencies and officers. See, *e. g.*, *Montana* v. *United States*, 440 U. S. 147 (1979).

adhered to that limited role here, explaining why ADEC's BACT determination was "arbitrary" and contrary to ADEC's own findings. *Id.*, at 149–150. EPA's limited but vital role in enforcing BACT is consistent with a scheme that "places primary responsibilities and authority with the States, backed by the Federal Government." S. Rep. No. 95–127, p. 29.

ADEC also points to 42 U. S. C. § 7475(a)(8), a provision of the Act expressly requiring, in a limited category of cases, EPA approval of a state permitting authority's BACT determination before a facility may be constructed. See Brief for Petitioner 25; Reply Brief for Petitioner 6. Had Congress intended EPA superintendence of BACT determinations, ADEC urges, Congress would have said so expressly by mandating Agency approval of all, not merely some, BACT determinations. Brief for Petitioner 25–26. ADEC's argument overlooks the obvious difference between a statutory *requirement*, *e. g.*, § 7475(a)(8), and a statutory *authorization*. Sections 113(a)(5) and 167 sensibly do not require EPA approval of all state BACT determinations, they simply authorize EPA to act in the unusual case in which a state permitting authority has determined BACT arbitrarily. EPA recognizes that its authorization to issue a stop order may be exercised only when a state permitting authority's decision is unreasonable; in contrast, a required approval may be withheld if EPA would come to a different determination on the merits. See, *e. g.*, 57 Fed. Reg. 28095 (1992) ("EPA acknowledges that states have the primary role in administering and enforcing the various components of the PSD program. States have been largely successful in this effort, and EPA's involvement in interpretative and enforcement issues is limited to only a small number of cases.").

Even if the Act imposes a requirement of reasoned justification for a BACT determination, ADEC ultimately argues, such a requirement may be enforced only through state ad-

ministrative and judicial processes. Brief for Petitioner 34–38.[15] State review of BACT decisions, according to ADEC, allows development of an adequate factual record, properly imposes the burden of persuasion on EPA when it challenges a State's BACT determination, and promotes certainty. *Id.*, at 36–37. Unless EPA review of BACT determinations is channeled into state administrative and judicial forums, ADEC suggests, "there is nothing to prevent the EPA from invalidating a BACT determination at any time—months, even years, after a permit has been issued." *Id.*, at 35.

It would be unusual, to say the least, for Congress to remit a federal agency enforcing federal law solely to state court. We decline to read such an uncommon regime into the Act's silence. EPA, the expert federal agency charged with enforcing the Act, has interpreted the BACT provisions and its own §§ 113(a)(5) and 167 enforcement powers not to require recourse to state processes before stopping a facility's con-

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[15] From the availability of state-court judicial review, the dissent concludes, it necessarily "follows that EPA . . . must take the same procedural steps," of filing suit in state court, as any other person or entity seeking to challenge the issuance of a PSD permit. *Post*, at 509. Interpreted otherwise, the dissent asserts, the Act contains a "loophole" that allows an EPA "end run around the State's process." *Post*, at 511. In designing the Act, however, Congress often gave EPA a choice of enforcement measures. For example, EPA has three options to address a failure to comply with new source requirements. Compare 42 U. S. C. § 7413(a)(5)(A) (EPA may "issue an order prohibiting the construction or modification of any major stationary source") with § 7413(a)(5)(B) (EPA may "issue an administrative penalty order") and § 7413(a)(5)(C) (EPA may "bring a civil action"). Other sections of the Act provide EPA with similar options. See, *e. g.*, §§ 7413(a)(1)–(3). Following the dissent's logic, EPA's authority to bring a civil action would rule out, as a "loophole," its authority to issue a stop-construction order.

Moreover, the existence of concurrent authority is hardly at odds with the Act. As ADEC itself concedes, EPA can issue a checking order if a PSD permit lacks a BACT determination, Brief for Petitioner 34, even if state-court jurisdiction could be invoked instead.

struction. See *supra,* at 485–488. That rational interpretation, we agree, is surely permissible.[16]

Nor are we persuaded by ADEC's practical concerns. We see no reason to conclude that an appropriate record generally cannot be developed to allow informed federal-court review when EPA disputes a BACT decision's reasonableness. ADEC contends that, in this very case, "the State's BACT determination was reviewed by the Ninth Circuit on an incomplete record." Brief for Petitioner 37. ADEC, however, offers no particulars to back up its assertion that the Court of Appeals proceeded on an inadequate evidentiary record. We note again that the Ninth Circuit ordered EPA to submit a complete administrative record. 298 F. 3d, at 818. After the Agency declared that the record was complete, "all the parties effectively agreed that the record as it stood was adequate to resolve the issues on appeal." *Ibid.*

As to the burdens of production and persuasion, nothing in the Act suggests that EPA gains a proof-related tactical advantage by issuing a stop-construction order instead of seeking relief through a civil action. But cf. *post,* at 510 (EPA authority to issue stop-construction orders creates "the anomaly of shifting the burden of pleading and of initiating litigation from EPA to the State"). Correspondingly, nothing in our decision today invites or permits EPA to achieve an unfair advantage through its choice of litigation forum. In granting EPA a choice between initiating a civil action and exercising its stop-construction-order authority, see *supra,* at 473–474, 492, n. 15, Congress nowhere suggested that the allocation of proof burdens would differ depending upon which enforcement route EPA selected. The

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[16] Experience, we have already noted, see *supra,* at 490, n. 14, affords no grounding for the dissent's predictions that EPA oversight, which is undeniably subject to federal-court review, will "rewor[k] . . . the balance between State and Federal Governments" and threaten state courts' independence. *Post,* at 511–512.

point ought not to be left in doubt. Accordingly, we hold that in either an EPA-initiated civil action or a challenge to an EPA stop-construction order filed in state or federal court, the production and persuasion burdens remain with EPA and the underlying question a reviewing court resolves remains the same: Whether the state agency's BACT determination was reasonable, in light of the statutory guides and the state administrative record. See *supra*, at 485–486, 491.[17]

The Ninth Circuit's review of EPA's order is in keeping with our holding that EPA may not reduce the burden it must carry by electing to invoke its stop-construction-order authority. Specifically, the Court of Appeals rested its judgment on what EPA showed from ADEC's own report: "(1) Cominco failed to meet its burden of demonstrating [to ADEC] that SCR was economically infeasible; and (2) ADEC failed to provide a reasoned justification for its elimination of SCR as a control option." 298 F. 3d, at 823. EPA's conclusions, and the basis for them, support the Court of Appeals' determination that the federal Agency's grounds for issuing the orders under review were not "arbitrar[y] and capriciou[s]." *Ibid.* Our own analysis, *infra*, at 497–502, similarly hinges on the question whether ADEC's BACT determination was a reasonable one. Our analysis would have

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[17] "[L]ooking for the burden of pleading is not a foolproof guide to the allocation of the burdens of proof. The latter burdens do not invariably follow the pleadings." 2 J. Strong, McCormick on Evidence § 337, pp. 411–412 (5th ed. 1999). No "single principle or rule . . . solve[s] all cases and afford[s] a general test for ascertaining the incidence" of proof burdens. 9 J. Wigmore, Evidence § 2486, p. 288 (J. Chadbourn rev. ed. 1981) (emphasis deleted). "[I]n a case of first impression," which we address today, "reference to which party has pleaded a fact is no help at all." 2 McCormick, *supra*, § 337, at 412. Among other considerations, allocations of burdens of production and persuasion may depend on which party—plaintiff or defendant, petitioner or respondent—has made the "affirmative allegation" or "presumably has peculiar means of knowledge." 9 Wigmore, *supra*, § 2486, at 288, 290 (emphases deleted); accord *Campbell* v. *United States*, 365 U. S. 85, 96 (1961).

taken the same path had EPA initiated a civil action pursuant to § 113(a)(5)(C), or if the suit under consideration had been filed initially in state court.

Nor do we find compelling ADEC's suggestion, reiterated by the dissent, that, if state courts are not the exclusive judicial arbiters, EPA would be free to invalidate a BACT determination "months, even years, after a permit has been issued." Brief for Petitioner 35; *post,* at 512–514. This case threatens no such development. It involves preconstruction orders issued by EPA, see *supra,* at 481, not postconstruction federal Agency directives. EPA itself regards it as "imperative" to act on a timely basis, recognizing that courts are "less likely to require new sources to accept more stringent permit conditions the farther planning and construction have progressed." App. 273 (July 15, 1988, EPA guidance memorandum). In the one instance of untimely EPA action ADEC identifies, the federal courts declined to permit enforcement to proceed. See *United States* v. *AM General Corp.*, 34 F. 3d 472, 475 (CA7 1994) (affirming District Court's dismissal of an EPA-initiated enforcement action where EPA did not act until well after the facility received a PSD permit and completed plant modifications). EPA, we are confident, could not indulge in the inequitable conduct ADEC and the dissent hypothesize while the federal courts sit to review EPA's actions. Cf. *Walz* v. *Tax Comm'n of City of New York,* 397 U. S. 664, 678–679 (1970); *Panhandle Oil Co.* v. *Mississippi ex rel. Knox*, 277 U. S. 218, 223 (1928) (Holmes, J., dissenting), overruled in part by *Alabama* v. *King & Boozer*, 314 U. S. 1, 8–9 (1941).

In sum, EPA interprets the Act to allow substantive federal Agency surveillance of state permitting authorities' BACT determinations subject to federal-court review. We credit EPA's longstanding construction of the Act and confirm EPA's authority, pursuant to §§ 113(a)(5) and 167, to rule on the reasonableness of BACT decisions by state permitting authorities.

IV

A

We turn finally, and more particularly, to the reasons why we conclude that EPA properly exercised its statutory authority in this case. ADEC urges that, even if the Act allows the Agency to issue stop-construction orders when a state permitting authority unreasonably determines BACT, EPA acted impermissibly in this instance. See Brief for Petitioner 39–48. We note, first, EPA's threshold objection. ADEC's petition to this Court questioned whether the Act accorded EPA oversight authority with respect to a State's BACT determination. Pet. for Cert. 13–22. ADEC did not present, as a discrete issue, the question whether EPA, assuming it had authority to review the substance of a state BACT determination, nevertheless abused its authority by countermanding ADEC's permit for the Red Dog Mine expansion. See Brief for Respondents 44–45; cf. Reply Brief for Petitioner 15–16, n. 12 ("EPA asserts authority to overturn only 'arbitrary or unreasoned' state BACT determinations. . . . Thus, whether the State issued a reasoned justification is 'fairly included' within the question presented[.]"). Treating the case-specific issue as embraced within the sole question presented, we are satisfied that EPA did not act arbitrarily in finding that ADEC furnished no tenable accounting for its determination that Low NOx was BACT for MG–17.

Because the Act itself does not specify a standard for judicial review in this instance,[18] we apply the familiar default standard of the Administrative Procedure Act, 5 U. S. C. § 706(2)(A), and ask whether the Agency's action was "arbi-

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[18] The Court of Appeals referred to 42 U. S. C. § 7607(d)(9)(A) when it considered whether EPA's decision was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 298 F. 3d 814, 822 (CA9 2002). Section 7607(d)(9), however, applies only to the "subsection" concerning rulemaking in which it is embedded.

trary, capricious, an abuse of discretion, or otherwise not in accordance with law." Even when an agency explains its decision with "less than ideal clarity," a reviewing court will not upset the decision on that account "if the agency's path may reasonably be discerned." *Bowman Transp., Inc.* v. *Arkansas-Best Freight System, Inc.*, 419 U. S. 281, 286 (1974). EPA's three skeletal orders to ADEC and Cominco surely are not composed with ideal clarity. These orders, however, are properly read together with accompanying explanatory correspondence from EPA; so read, the Agency's comments and orders adequately ground the determination that ADEC's acceptance of Low NOx for MG–17 was unreasonable given the facts ADEC found.

In the two draft permits and the final permit, ADEC formally followed the EPA-recommended top-down methodology to determine BACT, as Cominco had done in its application. App. 61, 109, 175; see *supra*, at 475–476. Employing that methodology in the May 1999 draft permit, ADEC first concluded that SCR was the most stringent emission-control technology that was both "technically and economically feasible." App. 65; see *supra*, at 476. That technology should have been designated BACT absent "technical considerations, or energy, environmental, or economic impacts justif[ying] a conclusion that [SCR was] not 'achievable' in [this] case." New Source Review Manual, p. B.2; App. 61–62. ADEC nevertheless selected Low NOx as BACT; ADEC did so in May 1999 based on Cominco's suggestion that fitting all Red Dog Mine generators with Low NOx would reduce aggregate emissions. *Id.*, at 87, 111–112; see *supra*, at 476–477.

In September and December 1999, ADEC again rejected SCR as BACT but no longer relied on Cominco's suggestion that it could reduce aggregate emissions by equipping all generators with Low NOx. See *supra*, at 478–480. ADEC candidly stated that it aimed "[t]o support Cominco's Red Dog Mine Production Rate Increase Project, and its contri-

butions to the region." App. 208. In these second and third rounds, ADEC rested its selection of Low NOx squarely and solely on SCR's "disproportionate cost." *Id.*, at 116; *id.*, at 112–117, 203–208; *supra*, at 478–480.

EPA concluded that ADEC's switch from finding SCR economically feasible in May 1999 to finding SCR economically infeasible in September 1999 had no factual basis in the record. See App. 138. In the September and December 1999 technical analyses, ADEC acknowledged that "no judgment [could then] be made as to the impact of [SCR's] cost on the operation, profitability, and competitiveness of the Red Dog Mine." *Id.*, at 116, 207. ADEC nevertheless concluded that SCR would threaten both the Red Dog Mine's "unique and continuing impact on the economic diversity" of northwest Alaska and the mine's "world competitiveness." *Id.*, at 208. ADEC also stressed the mine's role as employer in an area with "historical high unemployment and limited permanent year-round job opportunities." *Id.*, at 207.

We do not see how ADEC, having acknowledged that no determination "[could] be made as to the impact of [SCR's] cost on the operation . . . and competitiveness of the [mine]," *ibid.*, could simultaneously proffer threats to the mine's operation or competitiveness as reasons for declaring SCR economically infeasible. ADEC, indeed, forthrightly explained why it was disarmed from reaching any judgment on whether, or to what extent, implementation of SCR would adversely affect the mine's operation or profitability: Cominco had declined to provide the relevant financial data, disputing the need for such information and citing "confidentiality" concerns, *id.*, at 134; see *supra*, at 479–480; 298 F. 3d, at 823 ("Cominco failed to meet its burden of demonstrating that SCR was economically infeasible."). No record evidence suggests that the mine, were it to use SCR for its new generator, would be obliged to cut personnel or raise zinc prices. Absent evidence of that order, ADEC lacked cause

for selecting Low NOx as BACT based on the more stringent control's impact on the mine's operation or competitiveness.

Nor has ADEC otherwise justified its choice of Low NOx. To bolster its assertion that SCR was too expensive, ADEC invoked four BACT determinations made in regard to diesel generators used for primary power production; BACT's cost, in those instances, ranged from $0 to $936 per ton of nitrogen oxide removed. App. 205–206; *supra*, at 480. ADEC itself, however, had previously found SCR's per-ton cost, then estimated as $2,279, to be "well within what ADEC and EPA considers economically feasible." App. 84; cf. *id.*, at 204 (estimating SCR's per ton cost to be $2,100). No reasoned explanation for ADEC's retreat from this position appears in the final permit. See *id.*, at 138 ("[SCR's cost falls] well within the range of costs EPA has seen permitting authorities nationwide accept as economically feasible for NOx control except where there are compelling site specific factors that indicate otherwise."). Tellingly, as to examples of low-cost BACT urged by Cominco, ADEC acknowledged: "The cited examples of engines permitted in Alaska without requiring SCR are not valid examples as they either took place over 18 months ago or were not used for similar purposes." *Id.*, at 233–234 (footnote omitted). ADEC added that it has indeed "permitted [Alaska] projects requiring SCR." *Id.*, at 234. Further, EPA rejected ADEC's comparison between the mine and a rural utility, see *supra*, at 479, because "no facts exist to suggest that the 'economic impact' of the incrementally higher cost of SCR on the world's largest producer of zinc concentrates would be anything like its impact on a rural, non-profit utility that must pass costs on to a small base of individual consumers," Brief for Respondents 49; App. 138–139 (similar observation in Nov. 10, 1999, EPA letter).

ADEC's basis for selecting Low NOx thus reduces to a readiness "[t]o support Cominco's Red Dog Mine Production Rate Increase Project, and its contributions to the region."

Id., at 208. This justification, however, hardly meets ADEC's own standard of a "source-specific . . . economic impac[t] which demonstrate[s] [SCR] to be inappropriate as BACT." *Id.*, at 177. In short, as the Ninth Circuit determined, EPA validly issued stop orders because ADEC's BACT designation simply did not qualify as reasonable in light of the statutory guides.

In its briefs to this Court, ADEC nonetheless justifies its selection of Low NOx as BACT for MG–17 on the ground that lower aggregate emissions would result from Cominco's "agree[ment] to install Low NOx on *all* its generators." Brief for Petitioner 42, and n. 12 (emphasis added); *id.*, at 29; Reply Brief for Petitioner 19, n. 16. We need not dwell on ADEC's attempt to resurrect Cominco's emissions-offsetting suggestion, see *supra*, at 477, adopted in the initial May 1999 draft permit, but thereafter dropped. As ADEC acknowledges, the final PSD permit did not offset MG–17's emissions against those of the mine's six existing generators, installations that were not subject to BACT. Brief for Petitioner 42, n. 12; App. 149. ADEC recognized in September and December 1999 that a State may treat emissions from several pollutant sources as falling under one "bubble"[19] for PSD permit purposes only if every pollutant source so aggregated is "part of the permit action." *Id.*, at 111, 199. Offsetting new emissions against those from any of the mine's other generators, ADEC agreed, "[was] not a consideration of the BACT review provided for by the applicable law or guidelines," for those generators remained outside the permit's compass. *Id.*, at 112, 199. ADEC plainly did not, and could not, base its December 10, 1999, permit and technical analysis on an emissions-offsetting rationale drawing in gen-

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[19] Cf. *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 853–859 (1984) (upholding EPA regulations allowing States to treat all pollutant-emitting devices within the same stationary source in a nonattainment area as though encased in a single "bubble").

erators not subject to BACT. *Id.*, at 111–112.[20] By that time, only MG–17 was "part of the permit action." *Id.*, at 111, 199.

B

We emphasize that today's disposition does not impede ADEC from revisiting the BACT determination in question. In letters and orders throughout the permitting process, EPA repeatedly commented that it was open to ADEC to prepare "an appropriate record" supporting its selection of Low NOx as BACT. Tr. of Oral Arg. 35; see App. 127 (attachment to Sept. 28, 1999, EPA letter to ADEC, stating "an analysis of whether requiring Cominco to install and operate [SCR] would have any adverse economic impacts upon Cominco specifically" might demonstrate SCR's economic infeasibility); *id.*, at 150 (letter accompanying EPA's Dec. 10, 1999, finding of noncompliance and order reiterating the Agency's willingness to "review and consider any additional information or analyses provided by ADEC or Cominco" on Low NOx as BACT); App. to Pet. for Cert. 36a (EPA Dec. 10, 1999, order inviting ADEC to justify its choice of Low NOx by "document[ing] why SCR is not BACT [for MG–17]"); *id.*, at 49a (similar statement in Feb. 8, 2000, order). At oral argument, counsel for EPA reaffirmed that, "absolutely," ADEC could reconsider the matter and, on an "appropriate

[20] The May 4, 1999, draft permit considered whether adding Low NOx to seven generators would result in lower emissions than adding SCR to only two and choosing one of the latter as a standby unit. App. 86–87. Before December 10, 1999, however, Cominco agreed to install Low NOx controls on four of the mine's six existing generators—MG–1, MG–3, MG–4, and MG–5—in order to increase use of those generators without exceeding the 1994 PSD permit's operating restriction. *Id.*, at 149. Having agreed to use Low NOx on four generators, Cominco could propose in the December 10, 1999, permit only the addition of Low NOx to two generators—MG–2 and MG–6—to offset increases in emissions from MG–17. No facts in the record support any suggestion that addition of Low NOx to three generators, MG–2, MG–6, and MG–17, would result in lower aggregate emissions than the addition of SCR to MG–17 alone.

record," endeavor to support Low NOx as BACT. Tr. of Oral Arg. 35.[21] We see no reason not to take EPA at its word.

* * *

In sum, we conclude that EPA has supervisory authority over the reasonableness of state permitting authorities' BACT determinations and may issue a stop-construction order, under §§ 113(a)(5) and 167, if a BACT selection is not reasonable. We further conclude that, in exercising that authority, the Agency did not act arbitrarily or capriciously in finding that ADEC's BACT decision in this instance lacked evidentiary support. EPA's orders, therefore, were neither arbitrary nor capricious. The judgment of the Court of Appeals is accordingly

Affirmed.

JUSTICE KENNEDY, with whom THE CHIEF JUSTICE, JUSTICE SCALIA, and JUSTICE THOMAS join, dissenting.

The majority, in my respectful view, rests its holding on mistaken premises, for its reasoning conflicts with the express language of the Clean Air Act (CAA or Act), with sound rules of administrative law, and with principles that preserve the integrity of States in our federal system. The State of Alaska had in place procedures that were in full compliance with the governing statute and accompanying regulations promulgated by the Environmental Protection Agency (EPA). As I understand the opinion of the Court and the parties' submissions, there is no disagreement on this point. Alaska followed these procedures to determine the best available control technology (BACT). EPA, how-

[21] The dissent is daunted by the hypothesis that "[b]ecause there can always be an additional procedure to ensure that the preceding process was followed," the State "may never reach" the goal of issuing a permit. *Post,* at 515 ("The majority creates a sort of Zeno's paradox for state agencies."). Again, the dissent can point to no instance in which EPA has indulged in any piling of process upon process. See *supra,* at 493, n. 16.

ever, sought to overturn the State's decision, not by the process of judicial review, but by administrative fiat. The Court errs, in my judgment, by failing to hold that EPA, based on nothing more than its substantive disagreement with the State's discretionary judgment, exceeded its powers in setting aside Alaska's BACT determination.

I

As the majority explains, the case begins with §§ 113(a)(5) and 167 of the Act. 42 U. S. C. §§ 7413(a)(5), 7477. These provisions give EPA authority to enforce "requirements" of the CAA. The meaning of the word "requiremen[t]," though, is not defined in these provisions. Other provisions of the Act must be consulted. All parties agree that the requirement in this case is the "preconstruction requiremen[t]" that a "major emitting facility" be "subject to the best available control technology [BACT] for each pollutant subject to regulation under this chapter emitted from, or which results from, such facility." § 7475(a)(4). BACT, in turn, is defined as

> "an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this chapter emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques . . . ." § 7479(3).

The majority holds that, under the CAA, state agencies are vested with "initial responsibility for identifying BACT in line with the Act's definition of that term" and that EPA has a "broad oversight role" to ensure that a State's BACT determination is "reasonably moored to the Act's provisions." *Ante*, at 484–485. The statute, however, contem-

plates no such arrangement. It directs the "permitting authority"—here, the Alaska Department of Environmental Conservation (ADEC)—to "determine" what constitutes BACT. To "determine" is not simply to make an initial recommendation that can later be overturned. It is "[t]o decide or settle . . . conclusively and authoritatively." American Heritage Dictionary 495 (4th ed. 2000). Cf. 5 U. S. C. § 554 ("to be determined on the record after opportunity for an agency hearing").

The BACT definition presumes that the permitting authority will exercise discretion. It presumes, in addition, that the BACT decision will accord full consideration to the statutory factors and other relevant and necessary criteria. Contrary to the majority's holding, the statute does not direct the State to find as BACT the technology that results in the "maximum reduction of a pollutant achievable for [a] facility" in the abstract. *Ante*, at 485 (internal quotation marks omitted). Indeed, for a State to do so without regard to the other mandatory criteria would be to ignore the words of the statute. The Act requires a more comprehensive judgment. It provides that the permitting authority must "tak[e] into account" a set of contextual considerations—"energy, environmental, and economic impacts and other costs"—to identify the best control technology "on a case-by-case basis." 42 U. S. C. § 7479(3). The majority reaches its narrow view of the scope of the State's discretion only by wresting two adjectives, "maximum" and "achievable," out of context. In doing so, it ignores "the cardinal rule that a statute is to be read as a whole." *King* v. *St. Vincent's Hospital*, 502 U. S. 215, 221 (1991).

To be sure, §§ 113(a)(5) and 167 authorize EPA to enforce requirements of the Act. These provisions, however, do not limit the States' latitude and responsibility to balance all the statutory factors in making their discretionary judgments. If a State has complied with the Act's requirements, §§ 113(a)(5) and 167 are not implicated and can supply no sep-

arate basis for EPA to exercise a supervisory role over a State's discretionary decision. The Court of Appeals for the Ninth Circuit had it altogether backwards when it reasoned that, "because neither Section 113(a)(5) nor Section 167 contains any exemption for requirements that involve the state's exercise of discretion," EPA had the authority to issue orders countermanding the State's BACT determination. 298 F. 3d 814, 820 (2002). The question is not whether the two sections contain any exemption. Rather, it is about the nature of the Act's requirements and whether EPA has the authority to set aside a BACT determination when no requirement of the Act was violated in the first place. In affirming the judgment of the Court of Appeals, the majority repeats the same analytical error. See *ante*, at 490 ("We fail to see why Congress, having expressly endorsed an expansive surveillance role for EPA in two independent CAA provisions, would then implicitly preclude the Agency from verifying substantive compliance with [BACT] . . ."). When the statute is read as a whole, it is clear that the CAA commits BACT determinations to the discretion of the relevant permitting authorities. Unless an objecting party, including EPA, prevails on judicial review, the determinations are conclusive.

Here the state agency, ADEC, recognized it was required to make a BACT determination. It issued two detailed reports in response to comments by interested parties and concluded that Low Nitrogen Oxide (NOx) was BACT. The requirement that the agency weigh the list of statutory factors, study all other relevant considerations, and decide the technology that can best reduce pollution within practical constraints was met in full. As even EPA acknowledged, ADEC "provid[ed] a detailed accounting of the process." App. 286. This is not a case, then, where the state agency failed to have a BACT review procedure in place or altogether refused to apply the statute's formal requirements. EPA's only quarrel is with ADEC's substantive conclusion.

In disagreeing with ADEC, EPA's sole contention, in the section of its order titled "Findings of *Fact*," is that "[selective catalytic reduction] is BACT." App. to Pet. for Cert. 30a, 34a (emphasis added). In addition, EPA does not allege that using Low NOx would violate other CAA requirements, such as the National Ambient Air Quality Standards, Alaska's Prevention of Significant Deterioration (PSD) increments, or other applicable emission standards, see 42 U. S. C. § 7475(a)(3). On this state of the record there is no deviation from any statutory "requirement." As a result, EPA has no statutory basis to invoke the enforcement authority of §§ 113(a)(5) and 167.

When Congress intends to give EPA general supervisory authority, it says so in clear terms. In addition to requiring EPA's advance approval of BACT determinations in some instances, 42 U. S. C. § 7475(a)(8), the statute grants EPA powers to block the construction or operation of polluting sources in circumstances not at issue here, §§ 7426(b), (c)(1), 7410(a)(2)(D)(i). Outside the context of the CAA, Congress likewise knows how to establish federal oversight in unambiguous language. See, *e. g.*, 42 U. S. C. § 1396a(a)(13)(A) (1994 ed.) (requiring, under the Medicaid Act, reimbursement according to rates that a "State finds, and makes assurances satisfactory to the Secretary [of Health and Human Services], are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities"); *Wilder* v. *Virginia Hospital Assn.*, 496 U. S. 498 (1990). No analogous language is used in the statutory definition of BACT.

EPA insists it needs oversight authority to prevent a "race to the bottom," where jurisdictions compete with each other to lower environmental standards to attract new industries and keep existing businesses within their borders. Whatever the merits of these arguments as a general matter, EPA's distrust of state agencies is inconsistent with the Act's clear mandate that States bear the primary role in control-

ling pollution and, here, the exclusive role in making BACT determinations. In "cho[osing] not to dictate a Federal response to balancing sometimes conflicting goals" at the expense of "[m]aximum flexibility and State discretion," H. R. Rep. No. 95–294, p. 146 (1977), Congress made the overriding judgment that States are more responsive to local conditions and can strike the right balance between preserving environmental quality and advancing competing objectives. By assigning certain functions to the States, Congress assumed they would have a stake in implementing the environmental objectives of the Act. At the same time, Congress charged EPA with setting ambient standards and enforcing emission limits, 42 U. S. C. § 7475(a)(3), to ensure that the Nation takes the necessary steps to reduce air pollution.

The presumption that state agencies are not to be trusted to do their part is unwarranted in another respect: EPA itself said so. As EPA concedes, States, by and large, take their statutory responsibility seriously, and EPA sees no reason to intervene in the vast majority of cases. Brief for Respondents 30, n. 9; 57 Fed. Reg. 28095 (1992) ("States have been largely successful in ['administering and enforcing the various components of the PSD program'], and EPA's involvement in interpretative and enforcement issues is limited . . ."). In light of this concession, EPA and *amici* not only fail to overcome the established presumption that States act in good faith, see *Alden* v. *Maine*, 527 U. S. 706, 755 (1999) ("We are unwilling to assume the States will refuse to honor . . . or obey the binding laws of the United States"), but also admit that their fears about a race to the bottom bear little relation to the real-world experience under the statute. See *ante*, at 502 ("We see no reason not to take EPA at its word").

II

The statute contains safeguards to correct arbitrary and capricious BACT decisions when they do occur. Before EPA approves a State's PSD permit program that allows a

state agency to make BACT determinations, EPA must be satisfied that the State provides "an opportunity for state judicial review." 61 Fed. Reg. 1882 (1996). Furthermore, before an individual permit may issue, the State must allow all "interested persons," including "representatives of the [EPA] Administrator," to submit comments on, among other things, "control technology requirements." 42 U. S. C. § 7475(a)(2). To facilitate EPA's participation in the State's public comment process, the statute further provides that specific procedures be followed to inform the EPA Administrator of "every action" taken in the course of the permit approval process. § 7475(d) ("Each State shall transmit to the Administrator a copy of each permit application relating to a major emitting facility received by such State and provide notice to the Administrator of every action related to the consideration of such permit"). Any person who participated in the comment process can pursue an administrative appeal of the State's decision, followed, as mentioned, by judicial review in state courts.

EPA followed none of the normal procedures here. Only after the period for public comments expired did it intervene and seek to overturn Alaska's decision that Low NOx was BACT. To justify its decision to opt out of the State's administrative and judicial review process and, instead, to issue a unilateral order after everyone had spoken, EPA complains that it has not before intervened in "any State administrative review proceedings in State courts" and should not now be forced to do so. Tr. of Oral Arg. 35. With scant analysis, the majority agrees. *Ante,* at 492 ("It would be unusual, to say the least, for Congress to remit a federal agency enforcing federal law solely to state court. We decline to read such an uncommon regime into the Act's silence"). The problem, of course, is that it is all the more unusual to allow a federal agency to take unilateral action to set aside a State's administrative decision.

Despite EPA's protestations, the statute makes explicit provision for EPA to challenge a state agency's BACT determination in state proceedings. The statute requires States to set up an administrative process for "interested persons" to submit comments. § 7475(a)(2). "[I]nterested persons," Congress took care to note, include "representatives of the [EPA] Administrator." *Ibid.;* see also Alaska Stat. § 46.14.990(20) (2002) (defining "person" to include "an agency of the United States"). Given that EPA itself requires, as a condition of approving a State's PSD program, that this process culminate in judicial review in state courts, 61 Fed. Reg., at 1882, it follows that EPA, a subset of all "interested persons," must take the same procedural steps and cannot evade the more painstaking state process by a mere stroke of the pen under the agency's letterhead.

On a more fundamental level, EPA and the majority confuse a substantive environmental statute like the CAA with a general administrative law statute like the Administrative Procedure Act (APA). EPA, the federal agency charged only with the CAA's implementation, has no roving commission to ferret out arbitrary and capricious conduct by state agencies under the state equivalent of the APA. That task is left to state courts. See *Idaho* v. *Coeur d'Alene Tribe of Idaho*, 521 U. S. 261, 276 (1997) ("[T]he elaboration of administrative law . . . is one of the primary responsibilities of the state judiciary").

Like federal courts, state courts are charged with reviewing agency actions to ensure that they comport with principles of rationality and due process. See, *e. g.*, 5 U. S. C. § 706(2)(A); Alaska Stat. § 44.62.570(b)(3) (2002). Counsel for respondents were unable to identify, either in their briefs or at oral argument, a single State that "does not have in its law the requirement that its own agencies . . . act rationally." Tr. of Oral Arg. 30. Although it remains an open question whether EPA can bypass the state judiciary and go directly into federal district court under 28 U. S. C. § 1345, the avail-

ability of state judicial review defeats the Government's argument that, absent EPA's oversight, there is a legal vacuum where BACT decisions are not subject to review.

Requiring EPA to seek administrative and judicial review of a State's BACT determination, instead of allowing it to be overturned by fiat, avoids the anomaly of shifting the burden of pleading and of initiating litigation from EPA to the State. Whether the BACT decision is reviewed in state court, or in federal district court if that option is available, see *supra*, at 509 and this page, EPA, as petitioner, bears the initial burden and costs of filing a petition for review alleging that the State acted arbitrarily. Under the scheme endorsed by the majority today, the tables are turned. Once EPA has issued an enforcement order, and the State seeks to invalidate that order, the State bears the burden of alleging that EPA acted arbitrarily. EPA and the majority concede that, because States enjoy substantial discretion in making BACT determinations, courts reviewing EPA's order must ask not simply whether EPA acted arbitrarily but the convoluted question whether EPA acted arbitrarily in finding the State acted arbitrarily. Even under this unwieldy standard of review, and even if the burdens of persuasion and production remain with EPA, see *ante*, at 493–494, the initial burden of pleading and litigation now belongs to the State.

To make its decision more palatable, the majority holds that EPA still bears the burdens of production and persuasion, but there is little authority for this. The Court purports to rely on McCormick on Evidence for the proposition that "'looking for the burden of pleading is not a foolproof guide to the allocation of the burdens of proof.'" *Ante*, at 494, n. 17 (quoting 2 J. Strong, McCormick on Evidence § 337, pp. 411–412 (5th ed. 1999)). The example—affirmative defense—discussed in that passage of the treatise, however, is far afield from the issues raised in this case. In fact, the treatise instructs that "[i]n most cases, the party who has the burden of pleading a fact will have the burdens of producing

evidence and of persuading the jury of its existence as well." *Id.*, at 411. This is because "[t]he burdens of pleading and proof with regard to most facts have been and should be assigned to the plaintiff who generally seeks to change the present state of affairs and who therefore naturally should be expected to bear the risk of failure of proof or persuasion." *Id.*, at 412. In this case, EPA changed the *status quo ante* by issuing an order invalidating ADEC's decision. Without upsetting accepted evidentiary principles, the majority cannot explain why EPA, as respondent in federal court—as opposed to the State, as petitioner alleging that EPA's *fait accompli* was arbitrary—should bear the burdens of persuasion and production, or how this unusual reallocation of burdens should work in practice.

In any event, even the majority accepts that, under its reading of the statute, the State now bears the burden of pleading. With this burden-shifting benefit alone, EPA is most unlikely to follow the procedure, prescribed by federal law, of participating in the State's administrative process and seeking judicial review in state courts. Instead, EPA can simply issue a unilateral order invalidating the State's BACT determination and put the burden on the State to challenge EPA's order. This end run around the State's process is sure to undermine it. Unless Congress was on a fool's errand, the loophole the majority finds goes only to demonstrate the inconsistency between its approach and the statutory scheme.

There is a further, and serious, flaw in the Court's ruling. Suppose, before EPA issued its orders setting aside the State's BACT determination, an Alaska state court had reviewed the matter and found no error of law or abuse of discretion in ADEC's determination. The majority's interpretation of the statute would allow EPA to intervene at this point for the first time, announce that ADEC's determination is unreasoned under the CAA, and issue its own orders nullifying the state court's ruling. This reworking of the bal-

ance between State and Federal Governments, not to mention the reallocation of authority between the Executive and Judicial Branches, shows the implausibility of the majority's reasoning.

If a federal agency were to exercise an analogous power to review the decisions of federal courts, the arrangement would violate the well-established rule that the judgments of Article III courts cannot be revised by the Executive or Legislative Branches. See *Hayburn's Case*, 2 Dall. 409, 410, n. (1792) ("'[B]y the Constitution, neither the Secretary [of] War, nor any other Executive officer, nor even the Legislature, are authorized to sit as a court of errors on . . . judicial acts or opinions . . .'"); see also *Plaut* v. *Spendthrift Farm, Inc.*, 514 U. S. 211 (1995). The principle that judicial decisions cannot be reopened at the whim of the Executive or the Legislature is essential to preserving separation of powers and judicial independence. Judges cannot, without sacrificing the autonomy of their office, put onto the scales of justice some predictive judgment about the probability that an administrator might reverse their rulings.

The Court today denies state judicial systems the same judicial independence it has long guarded for itself—only that the injury here is worse. Under the majority's holding, decisions by state courts would be subject to being overturned, not just by any agency, but by an agency established by a different sovereign. We should be reluctant to interpret a congressional statute to deny to States the judicial independence guaranteed by their own constitutions. See *Buckalew* v. *Holloway*, 604 P. 2d 240, 245 (Alaska 1979) ("There is no doubt that judicial independence was a paramount concern of the delegates [to the Alaska Constitutional Convention]"); see also, *e. g.*, Cal. Const., Art. 3, §3 ("The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution"); see also 7 B. Witkin, Summary of

California Law § 107, pp. 159–160 (9th ed. 1988) ("[Under] the principle of separation of powers . . . , one [department] cannot exercise or interfere with the functions of either of the others"). The Federal Government is free, within its vast legislative authority, to impose federal standards. For States to have a role, however, their own governing processes must be respected. *New York* v. *United States*, 505 U. S. 144 (1992). If, by some course of reasoning, state courts must live with the insult that their judgments can be revised by a federal agency, the Court should at least insist upon a clear instruction from Congress. That directive cannot be found here. Cf. *Gregory* v. *Ashcroft*, 501 U. S. 452, 460 (1991) ("[I]f Congress intends to alter the usual constitutional balance between the States and the Federal Government, it must make its intention to do so unmistakably clear in the language of the statute" (internal quotation marks omitted)).

There is a final deficiency in the scheme the majority finds in the statute. Nothing in the Court's analysis prevents EPA from issuing an order setting aside a BACT determination months, or even years, later. Congress cannot have intended this result. After all, when Congress provides for EPA's involvement, it directs the agency to act sooner rather than later by establishing a preauthorization procedure. 42 U. S. C. § 7475(a)(8). The majority misses the point when it faults ADEC for "overlook[ing] the obvious difference between a statutory requirement . . . and a statutory authorization." *Ante*, at 491 (emphasis deleted). ADEC does not overlook the difference between approval before the fact and oversight after the fact. Rather, ADEC, unlike the majority, recognizes that the Act's explicit provision for a preauthorization process underscores the need for finality in state permitting decisions, making implausible an interpretation of the statute that would allow a *post hoc* veto procedure that upsets the same reliance and expectation interests.

The majority's initial response that "[t]his case threatens no such development [because] [i]t involves preconstruction orders issued by EPA . . . , not postconstruction federal Agency directives," *ante*, at 495, provides no assurance that the logic of its reasoning would not in the future allow EPA's belated interventions. When the majority confronts the problem, it concludes that "EPA, we are confident, could not indulge in the inequitable conduct ADEC and the dissent hypothesize while the federal courts sit to review EPA's actions." *Ibid.* The authority it cites for this proposition, however, consists of nothing more than a religious exemption case that is far removed from the issues presented here and a dissent from a case that has been overruled in part. *Ibid.* State agencies rely on this dictum at their own risk.

The majority's reassurance to the States will likely be to no avail. "The principle that the United States are not bound by any statute of limitations, nor barred by any laches of their officers, however gross, in a suit brought by them as a sovereign Government to enforce a public right, or to assert a public interest, is established past all controversy or doubt." *United States* v. *Beebe*, 127 U. S. 338, 344 (1888); see also *United States* v. *Summerlin*, 310 U. S. 414, 416 (1940) ("It is well settled that the United States is not bound by state statutes of limitation or subject to the defense of laches in enforcing its rights"); *Utah Power & Light Co.* v. *United States*, 243 U. S. 389, 409 (1917) ("[L]aches or neglect of duty on the part of officers of the Government is no defense to a suit by it to enforce a public right or protect a public interest. . . . A suit by the United States to enforce and maintain its policy . . . stands upon a different plane in this and some other respects from the ordinary private suit . . ."). Section 167, moreover, is mandatory. Once a violation of a statutory "requirement" is found, "[t]he Administrator shall . . . take such measures, including issuance of an order, or seeking injunctive relief, as necessary to prevent the construction or modification of a major emitting fa-

cility which does not conform to the requirements of this part . . . ." 42 U. S. C. § 7477. In short, EPA's enforcement authority can—indeed, must—be exercised at any point. In light of our precedents a court would be hard pressed to hold otherwise.

The majority seeks to limit the consequence of its holding by quoting the response by respondents' counsel at oral argument that ADEC could "absolutely" arrive at the same BACT determination if only it would pile on another layer of procedure and justify its decision on an "'appropriate record.'" *Ante,* at 501–502 (quoting Tr. of Oral Arg. 35). As the Court of Appeals recognized in a prior case, however, this option gives no solace to the States:

> "The hardship is the process itself. Process costs money. If a federal licensee must spend years attempting to satisfy an elaborate, shifting array of state procedural requirements, then he must borrow a fortune to pay lawyers, economists, accountants, archaeologists, historians, engineers, recreational consultants, environmental consultants, biologists and others, with no revenue, no near-term prospect of revenue, and no certainty that there ever will be revenue. Meanwhile, politics, laws, interest rates, construction costs, and costs of alternatives change. Undue process may impose cost and uncertainty sufficient to thwart the federal determination that a power project should proceed." *Sayles Hydro Associates* v. *Maughan,* 985 F. 2d 451, 454 (CA9 1993).

If there is to be a second look, notwithstanding the 18 months ADEC spent analyzing BACT, a third or fourth look is just as permissible. The majority creates a sort of Zeno's paradox for state agencies. Because there can always be an additional procedure to ensure that the preceding process was followed, no matter how many steps States take toward the objective, they may never reach it.

This is a most regrettable result. In the proper discharge of their responsibilities to implement the CAA in different conditions and localities nationwide, the States maintain permanent staffs within special agencies. These state employees, who no doubt take pride in their own resourcefulness, expertise, and commitment to the law, are the officials directed by Congress to make case-by-case, site-specific, determinations under the Act. Regulated persons and entities should be able to consult an agency staff with certainty and confidence, giving due consideration to agency recommendations and guidance. After today's decision, however, a state agency can no longer represent itself as the real governing body. No matter how much time was spent in consultation and negotiation, a single federal administrator can in the end set all aside by a unilateral order. This is a great step backward in Congress' design to grant States a significant stake in developing and enforcing national environmental objectives.

If EPA were to announce that permit applications subject to BACT review must be submitted to it in the first instance and can be forwarded to the State only with EPA's advance approval, I should assume even the majority would find the basic structure of the BACT provisions undercut. In practical terms, however, the majority displaces state agencies, and degrades their role, in much the same way. In the case before us the applicant made elaborate submissions to ADEC. For over a year and a half, there ensued the constructive discourse that is the very object of the agency process, with both the ADEC staff and the applicant believing the State's decision would be dispositive. EPA did not participate in the administrative process, but waited until after the record was closed to intervene by issuing an order setting aside the BACT determination.

We are advised that an applicant sometimes must spend up to $500,000 on the permit process and that, for a complex project, the time for approval can take from five to

seven years. Brief for National Environmental Development Association et al. as *Amici Curiae* 8. Under the new multiple-tiered process, permit expenditures become less justified, state officials less credible, reliance less certain. The Court should be under no illusion that its decision respects the State's administrative process.

The federal balance is remitted, in many instances, to Congress. Here the Court remits it to a single agency official. This is inconsistent with the assurance Congress gave to regulated entities when it allowed state agencies to decide upon the grant or denial of a permit under the BACT provisions of the CAA.

III

In the end EPA appears to realize the weakness of its arguments and asks us simply to defer to its expertise in light of the purported statutory ambiguity. See Brief for Respondents 41–43 (asking for deference under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984)). To its credit, the majority holds *Chevron* deference inapplicable. Deference is inappropriate for all the reasons the majority recites, *ante*, at 487–488, plus one more: The statute is not in any way ambiguous. As a result, our inquiry should proceed no further.

Actions, however, speak louder than words, and the majority ends up giving EPA the very *Chevron* deference—and more—it says should be denied. The Court's opinion is chock full of *Chevron*-like language. Compare 467 U. S., at 843 ("whether the agency's answer is based on a permissible construction of the statute"); *id.*, at 845 ("whether the Administrator's view . . . is a reasonable one"), with *ante*, at 488 ("[EPA's] arguments do not persuade us to reject [them] as impermissible"); *ante*, at 493 ("That rational interpretation, we agree, is surely permissible"). So deficient are its statutory arguments that the majority must hide behind *Chevron*'s vocabulary, despite its explicit holding that *Chevron* does not apply. In applying *Chevron de facto* under these

circumstances, however, the majority undermines the well-established distinction our precedents draw between *Chevron* and less deferential forms of judicial review.

The broader implication of today's decision is more unfortunate still. The CAA is not the only statute that relies on a close and equal partnership between federal and state authorities to accomplish congressional objectives. See, *e. g.*, *New York* v. *United States*, 505 U. S., at 167 (listing examples). Under the majority's reasoning, these other statutes, too, could be said to confer on federal agencies ultimate decisionmaking authority, relegating States to the role of mere provinces or political corporations, instead of coequal sovereigns entitled to the same dignity and respect. Cf. *Alden* v. *Maine*, 527 U. S. 706 (1999). If cooperative federalism, *Hodel* v. *Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U. S. 264, 289 (1981), is to achieve Congress' goal of allowing state governments to be accountable to the democratic process in implementing environmental policies, federal agencies cannot consign States to the ministerial tasks of information gathering and making initial recommendations, while reserving to themselves the authority to make final judgments under the guise of surveillance and oversight.

For these reasons, and with all respect, I dissent from the opinion and the judgment of the Court.

Syllabus

FELLERS *v.* UNITED STATES

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

No. 02–6320. Argued December 10, 2003—Decided January 26, 2004

Police officers went to petitioner's home and advised him that they had come to discuss his involvement in drug distribution. They told him that they had a federal warrant for his arrest and that a grand jury had indicted him for conspiracy to distribute methamphetamine. During the course of a brief discussion, petitioner made several inculpatory statements. Once at the county jail, petitioner was advised of his rights under *Miranda* v. *Arizona*, 384 U. S. 436, and *Patterson* v. *Illinois*, 487 U. S. 285, signed a waiver of those rights, and reiterated his earlier statements. Before trial, he moved to suppress the inculpatory statements he made at his home and at the jail. A Magistrate Judge recommended that the home statements be suppressed because the officers had not informed petitioner of his *Miranda* rights, and that portions of his jailhouse statements be suppressed as fruits of the prior failure to provide *Miranda* warnings. The District Court suppressed the unwarned home statements but admitted the jailhouse statements pursuant to *Oregon* v. *Elstad*, 470 U. S. 298, concluding that petitioner had knowingly and voluntarily waived his *Miranda* rights before making the statements. The Eighth Circuit affirmed the conviction, holding that petitioner's jailhouse statements were properly admitted under *Elstad*, and that the officers had not violated his Sixth Amendment right to counsel under *Patterson* because they did not interrogate him at his home.

Held: The Eighth Circuit erred in holding that the absence of an "interrogation" foreclosed petitioner's claim that his jailhouse statements should have been suppressed as fruits of the statements taken from him at his home. Pp. 523–525.

(a) An accused is denied the protections of the Sixth Amendment "when there [is] used against him at his trial . . . his own incriminating words, which federal agents . . . deliberately elicited from him after he had been indicted and in the absence of his counsel." *Massiah* v. *United States*, 377 U. S. 201, 206. This Court has consistently applied the deliberate-elicitation standard in subsequent Sixth Amendment cases, see, *e. g.*, *United States* v. *Henry*, 447 U. S. 264, and has expressly distinguished it from the Fifth Amendment custodial-interrogation standard, see, *e. g.*, *Michigan* v. *Jackson*, 475 U. S. 625. There is no

question here that the officers "deliberately elicited" information from petitioner at his home. Because their discussion took place after petitioner had been indicted, outside the presence of counsel, and in the absence of any waiver of his Sixth Amendment rights, the officers' actions violated the Sixth Amendment standards established in *Massiah*, *supra*, and its progeny. Pp. 523–525.

(b) Because of its erroneous determination that petitioner was not questioned in violation of Sixth Amendment standards, the Eighth Circuit improperly conducted its "fruits" analysis under the Fifth Amendment. In applying *Elstad*, *supra*, to hold that the admissibility of the jailhouse statements turned solely on whether they were knowing and voluntary, the court did not reach the question whether the Sixth Amendment requires suppression of those statements on the ground that they were the fruits of previous questioning that violated the Sixth Amendment deliberate-elicitation standard. As this Court has not had occasion to decide whether the rationale of *Elstad* applies when a suspect makes incriminating statements after a knowing and voluntary waiver of his right to counsel notwithstanding earlier police questioning in violation of Sixth Amendment standards, the case is remanded to the Eighth Circuit to address this issue in the first instance. P. 525.

285 F. 3d 721, reversed and remanded.

O'Connor, J., delivered the opinion for a unanimous Court.

Seth P. Waxman, by appointment of the Court, 538 U. S. 997, argued the cause for petitioner. With him on the briefs was *Paul R. Q. Wolfson.*

Deputy Solicitor General Dreeben argued the cause for the United States. With him on the brief were *Solicitor General Olson*, *Assistant Attorney General Wray*, *John P. Elwood*, and *Joel M. Gershowitz.**

Justice O'Connor delivered the opinion of the Court.

After a grand jury indicted petitioner John J. Fellers, police officers arrested him at his home. During the course of the arrest, petitioner made several inculpatory statements.

**Kent S. Scheidegger* and *Charles L. Hobson* filed a brief for the Criminal Justice Legal Foundation as *amicus curiae* urging affirmance.

Alfred P. Carlton and *Thomas C. Goldstein* filed a brief for the American Bar Association as *amicus curiae.*

He argued that the officers deliberately elicited these statements from him outside the presence of counsel, and that the admission at trial of the fruits of those statements therefore violated his Sixth Amendment right to counsel. Petitioner contends that in rejecting this argument, the Court of Appeals for the Eighth Circuit improperly held that the Sixth Amendment right to counsel was "not applicable" because "the officers did not interrogate [petitioner] at his home." 285 F. 3d 721, 724 (2002). We granted the petition for a writ of certiorari, 538 U. S. 905 (2003), and now reverse.

I

On February 24, 2000, after a grand jury indicted petitioner for conspiracy to distribute methamphetamine, Lincoln Police Sergeant Michael Garnett and Lancaster County Deputy Sheriff Jeff Bliemeister went to petitioner's home in Lincoln, Nebraska, to arrest him. App. 111. The officers knocked on petitioner's door and, when petitioner answered, identified themselves and asked if they could come in. *Ibid.* Petitioner invited the officers into his living room. *Ibid.*

The officers advised petitioner they had come to discuss his involvement in methamphetamine distribution. *Id.*, at 112. They informed petitioner that they had a federal warrant for his arrest and that a grand jury had indicted him for conspiracy to distribute methamphetamine. *Ibid.* The officers told petitioner that the indictment referred to his involvement with certain individuals, four of whom they named. *Ibid.* Petitioner then told the officers that he knew the four people and had used methamphetamine during his association with them. *Ibid.*

After spending about 15 minutes in petitioner's home, the officers transported petitioner to the Lancaster County jail. *Ibid.* There, the officers advised petitioner for the first time of his rights under *Miranda* v. *Arizona*, 384 U. S. 436 (1966), and *Patterson* v. *Illinois*, 487 U. S. 285 (1988). App. 112. Petitioner and the two officers signed a *Miranda* waiver

form, and petitioner then reiterated the inculpatory statements he had made earlier, admitted to having associated with other individuals implicated in the charged conspiracy, App. 29–39, and admitted to having loaned money to one of them even though he suspected that she was involved in drug transactions, *id.*, at 34.

Before trial, petitioner moved to suppress the inculpatory statements he made at his home and at the county jail. A Magistrate Judge conducted a hearing and recommended that the statements petitioner made at his home be suppressed because the officers had not informed petitioner of his *Miranda* rights. App. 110–111. The Magistrate Judge found that petitioner made the statements in response to the officers' "implici[t] questions," noting that the officers had told petitioner that the purpose of their visit was to discuss his use and distribution of methamphetamine. *Id.*, at 110. The Magistrate Judge further recommended that portions of petitioner's jailhouse statement be suppressed as fruits of the prior failure to provide *Miranda* warnings. App. 110–111.

The District Court suppressed the "unwarned" statements petitioner made at his house but admitted petitioner's jailhouse statements pursuant to *Oregon* v. *Elstad*, 470 U. S. 298 (1985), concluding petitioner had knowingly and voluntarily waived his *Miranda* rights before making the statements. App. 112–115.

Following a jury trial at which petitioner's jailhouse statements were admitted into evidence, petitioner was convicted of conspiring to possess with intent to distribute methamphetamine. Petitioner appealed, arguing that his jailhouse statements should have been suppressed as fruits of the statements obtained at his home in violation of the Sixth Amendment. The Court of Appeals affirmed. 285 F. 3d 721 (CA8 2002). With respect to petitioner's argument that the officers' failure to administer *Miranda* warnings at his home violated his Sixth Amendment right to counsel under

Patterson, *supra*, the Court of Appeals stated: "*Patterson* is not applicable here . . . for the officers did not interrogate [petitioner] at his home." 285 F. 3d, at 724. The Court of Appeals also concluded that the statements from the jail were properly admitted under the rule of *Elstad*, *supra*. 285 F. 3d, at 724 ("'Though *Miranda* requires that the unwarned admission must be suppressed, the admissibility of any subsequent statement should turn in these circumstances solely on whether it is knowingly and voluntarily made'" (quoting *Elstad*, *supra*, at 309)).

Judge Riley filed a concurring opinion. He concluded that during their conversation at petitioner's home, officers "deliberately elicited incriminating information" from petitioner. 285 F. 3d, at 726–727. That "post-indictment conduct outside the presence of counsel," Judge Riley reasoned, violated petitioner's Sixth Amendment rights. *Id.*, at 727. Judge Riley nevertheless concurred in the judgment, concluding that the jailhouse statements were admissible under the rationale of *Elstad* in light of petitioner's knowing and voluntary waiver of his right to counsel. 285 F. 3d, at 727.

II

The Sixth Amendment right to counsel is triggered "at or after the time that judicial proceedings have been initiated . . . 'whether by way of formal charge, preliminary hearing, indictment, information, or arraignment.'" *Brewer* v. *Williams*, 430 U. S. 387, 398 (1977) (quoting *Kirby* v. *Illinois*, 406 U. S. 682, 689 (1972)). We have held that an accused is denied "the basic protections" of the Sixth Amendment "when there [is] used against him at his trial evidence of his own incriminating words, which federal agents . . . deliberately elicited from him after he had been indicted and in the absence of his counsel." *Massiah* v. *United States*, 377 U. S. 201, 206 (1964); cf. *Patterson*, *supra* (holding that the Sixth Amendment does not bar postindictment questioning in the absence of counsel if a defendant waives the right to counsel).

We have consistently applied the deliberate-elicitation standard in subsequent Sixth Amendment cases, see *United States* v. *Henry*, 447 U. S. 264, 270 (1980) ("The question here is whether under the facts of this case a Government agent 'deliberately elicited' incriminating statements . . . within the meaning of *Massiah*"); *Brewer*, *supra*, at 399 (finding a Sixth Amendment violation where a detective "deliberately and designedly set out to elicit information from [the suspect]"), and we have expressly distinguished this standard from the Fifth Amendment custodial-interrogation standard, see *Michigan* v. *Jackson*, 475 U. S. 625, 632, n. 5 (1986) ("[T]he Sixth Amendment provides a right to counsel . . . even when there is no interrogation and no Fifth Amendment applicability"); *Rhode Island* v. *Innis*, 446 U. S. 291, 300, n. 4 (1980) ("The definitions of 'interrogation' under the Fifth and Sixth Amendments, if indeed the term 'interrogation' is even apt in the Sixth Amendment context, are not necessarily interchangeable"); cf. *United States* v. *Wade*, 388 U. S. 218 (1967) (holding that the Sixth Amendment provides the right to counsel at a postindictment lineup even though the Fifth Amendment is not implicated).

The Court of Appeals erred in holding that the absence of an "interrogation" foreclosed petitioner's claim that the jailhouse statements should have been suppressed as fruits of the statements taken from petitioner at his home. First, there is no question that the officers in this case "deliberately elicited" information from petitioner. Indeed, the officers, upon arriving at petitioner's house, informed him that their purpose in coming was to discuss his involvement in the distribution of methamphetamine and his association with certain charged co-conspirators. 285 F. 3d, at 723; App. 112. Because the ensuing discussion took place after petitioner had been indicted, outside the presence of counsel, and in the absence of any waiver of petitioner's Sixth Amendment rights, the Court of Appeals erred in holding that the offi-

cers' actions did not violate the Sixth Amendment standards established in *Massiah*, *supra*, and its progeny.

Second, because of its erroneous determination that petitioner was not questioned in violation of Sixth Amendment standards, the Court of Appeals improperly conducted its "fruits" analysis under the Fifth Amendment. Specifically, it applied *Elstad* to hold that the admissibility of the jailhouse statements turns solely on whether the statements were "'knowingly and voluntarily made.'" 285 F. 3d, at 724 (quoting *Elstad*, 470 U. S., at 309). The Court of Appeals did not reach the question whether the Sixth Amendment requires suppression of petitioner's jailhouse statements on the ground that they were the fruits of previous questioning conducted in violation of the Sixth Amendment deliberate-elicitation standard. We have not had occasion to decide whether the rationale of *Elstad* applies when a suspect makes incriminating statements after a knowing and voluntary waiver of his right to counsel notwithstanding earlier police questioning in violation of Sixth Amendment standards. We therefore remand to the Court of Appeals to address this issue in the first instance.

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.

Syllabus

LAMIE *v.* UNITED STATES TRUSTEE

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

No. 02–693. Argued November 10, 2003—Decided January 26, 2004

Before 1994, § 330(a) of the Bankruptcy Code authorized a court to "award to a trustee, *to* an examiner, to a professional person employed under section 327 . . . , *or to the debtor's attorney*" "(1) reasonable compensation for . . . services rendered by such trustee, examiner, professional person, or attorney . . . ." (Emphasis added to highlight text later deleted.) In 1994 Congress amended the Code with a reform Act. The Act altered § 330(a) by deleting "or to the debtor's attorney" from what was § 330(a) and is now § 330(a)(1). This change created an apparent legislative drafting error in the current section. The section is left with a missing "or" that infects its grammar. And its inclusion of "attorney" in what was § 330(a)(1) and is now § 330(a)(1)(A) defeats the neat parallelism that otherwise marks the relationship between current §§ 330(a)(1) ("trustee, . . . examiner, [or] professional person") and 330(a)(1)(A) ("trustee, examiner, professional person, or attorney"). In this case, petitioner filed an application with the Bankruptcy Court seeking attorney's fees under § 330(a)(1) for the time he spent working on behalf of a debtor in a Chapter 7 proceeding. The Government objected to the application. It argued that § 330(a) makes no provision for the estate to compensate an attorney who is not employed by the estate trustee and approved by the court under § 327. Petitioner admitted he was not employed by the trustee and approved by the court under § 327, but nonetheless contended § 330(a) authorized a fee award to him because he was a debtor's attorney. In denying petitioner's application, the Bankruptcy Court, District Court, and Fourth Circuit all held that in a Chapter 7 proceeding § 330(a)(1) does not authorize payment of attorney's fees unless the attorney has been appointed under § 327.

Held: Under the Code's plain language, § 330(a)(1) does not authorize compensation awards to debtors' attorneys from estate funds, unless they are employed as authorized by § 327. If the attorney is to be paid from estate funds under § 330(a)(1) in a Chapter 7 case, he must be employed by the trustee and approved by the court. Pp. 533–542.

(a) Petitioner argues that this Court must look to legislative history to determine Congress' intent because the existing statutory text is

ambiguous in light of its predecessor. He claims that subsection (A)'s "attorney" is facially irreconcilable with the section's first part since the two parts' lists were previously parallel. He claims also that only a drafting error can explain the missing conjunction "or" between "an examiner" and "a professional person" since the text was previously grammatically correct. The starting point in discerning congressional intent, however, is the existing statutory text, *Hughes Aircraft Co.* v. *Jacobson*, 525 U. S. 432, and not predecessor statutes. So this Court begins with the present statute. Pp. 533–534.

(b) That the present statute is awkward, and even ungrammatical, does not make it ambiguous on the point at issue. A debtor's attorney not engaged under § 327 does not fall within the eligible class of persons that the first part of § 330(a)(1) authorizes to receive compensation: trustees, examiners, and § 327 professional persons. Subsection (A) allows compensation for services rendered by four types of persons (the same three plus attorneys), but unless an applicant is in one of the classes named in the first part, the kind of service rendered is irrelevant. The missing "or" does not change this conclusion. Numerous federal statutes inadvertently lack a conjunction, but are read for their plain meaning. Here, the missing "or" neither alters the text's substance nor obscures its meaning. Subsection (A)'s nonparalleled fourth category also does not cloud the statute's meaning. "Attorney" can be straightforwardly read to refer to those attorneys who qualify as § 327 professional persons. Likewise, neighboring § 331, which permits both debtors' attorneys and § 327 professional persons to receive interim compensation, most straightforwardly refers to § 327 debtors' attorneys. This reading may make "attorney" in § 330(a)(1)(A) surplusage, but surplusage does not always produce ambiguity. When there are two ways to read the text—either attorney is surplusage, which makes the text plain, or attorney is nonsurplusage, which makes the text ambiguous—applying a rule against surplusage is inappropriate. Pp. 534–536.

(c) The plain meaning that § 330(a)(1) sets forth does not lead to absurd results. Petitioner's arguments—that this Court's interpretation will lead to a departure from the principle of prompt and effectual administration of bankruptcy law and attributes to Congress an intent to eliminate compensation essential to debtors' receipt of legal services—overstate § 330(a)(1)'s effect. Compensation remains available through various permitted means. Compensation for debtors' attorneys in Chapter 12 and 13 bankruptcies, for example, is not much disturbed by § 330 as a whole. Moreover, compensation for debtors' attorneys in Chapter 7 proceedings is not altogether prohibited. Sections 327 and

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330, taken together, allow Chapter 7 trustees to engage attorneys, including debtors' counsel, and allow courts to award them fees. Section 327's limitation on a debtor's incurring debts for professional services without the trustee's approval also advances the trustee's responsibility for preserving the Chapter 7 estate. Add to this the apparent sound functioning of the bankruptcy system in the Fifth and Eleventh Circuits, which have both adopted the plain meaning approach, and petitioner's arguments become unconvincing. And § 330(a)(1) does not prevent a debtor from engaging in the common practice of paying counsel compensation in advance to ensure that a bankruptcy filing is in order. Pp. 536–538.

(d) With a plain, nonabsurd meaning in view, this Court will not read "attorney" in § 330(a)(1)(A) to refer to "debtors' attorneys," in effect enlarging the statute's scope. See *Iselin* v. *United States*, 270 U. S. 245, 251. This Court's unwillingness to soften the import of Congress' chosen words even if it believes the words lead to a harsh outcome is longstanding. Pp. 538–539.

(e) Though it is unnecessary to rely on the 1994 Act's legislative history, it is instructive to note that the history creates more confusion than clarity about the congressional intent. History and policy considerations lend support both to petitioner's interpretation and to the holding reached here. This uncertainty illustrates the difficulty of relying on legislative history and the advantage of resting on the statutory text. Pp. 539–542.

290 F. 3d 739, affirmed.

KENNEDY, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SOUTER, THOMAS, GINSBURG, and BREYER, JJ., joined, and in which SCALIA, J., joined except for Part III. STEVENS, J., filed an opinion concurring in the judgment, in which SOUTER and BREYER, JJ., joined, *post*, p. 542.

Thomas C. Goldstein argued the cause for petitioner. With him on the briefs were *John M. Lamie*, *pro se*, *Amy Howe*, *G. Eric Brunstad, Jr.*, *John A. E. Pottow*, and *Craig Goldblatt*.

Lisa S. Blatt argued the cause for respondent. With her on the brief were *Solicitor General Olson*, *Assistant Attorney General Keisler*, and *Deputy Solicitor General Hungar*.

JUSTICE KENNEDY delivered the opinion of the Court.*

Section 330(a)(1) of the Bankruptcy Code, 11 U. S. C. § 330(a)(1), regulates court awards of professional fees, including fees for services rendered by attorneys in connection with bankruptcy proceedings. Petitioner, a bankruptcy attorney, sought compensation under the section for legal services he provided to a bankrupt debtor after the proceeding was converted to a Chapter 7 bankruptcy. His application for fees was denied by the Bankruptcy Court, the District Court, and the United States Court of Appeals for the Fourth Circuit. Each court held that in a Chapter 7 proceeding § 330(a)(1) does not authorize payment of attorney's fees unless the attorney has been appointed under § 327 of the Code. See 11 U. S. C. §§ 327 and 701 *et seq.* Petitioner was not so appointed, and his fee request was denied. Having granted the petition for certiorari to review this holding, we now affirm.

I

In 1994 Congress amended the Bankruptcy Code. Bankruptcy Reform Act of 1994 (Act), 108 Stat. 4106. The subject of professional fees was addressed and comprehensive changes were made. See 3 Collier on Bankruptcy ¶ 330.LH[5], pp. 330–75 to 330–76 (rev. 15th ed. 2003). Most of the changes served to clarify the standards for the award of professional fees; but various courts disagree over the proper interpretation of the portion of the statute relevant to this dispute, concerning attorney's fees.

The Act replaced the predecessor section to the one in issue here. Compare 108 Stat. 4130–4131 (§ 224(b) of the Act amending 11 U. S. C. § 330(a)) with 11 U. S. C. § 330(a) (1988 ed.). Before the 1994 Act, § 330(a) had read as follows:

> "(a) After notice to *any* parties in interest and *to* the United States trustee and a hearing, and subject to sec-

*JUSTICE SOUTER and JUSTICE BREYER join this opinion in its entirety. JUSTICE SCALIA joins this opinion except for Part III.

> tions 326, 328, and 329 *of this title,* the court may award to a trustee, *to* an examiner, to a professional person employed under section 327 or 1103 *of this title, or to the debtor's attorney*—
>
> "(1) reasonable compensation for actual, necessary services rendered by such trustee, examiner, professional person, or attorney . . . and by any paraprofessional persons employed by such trustee, professional person, or attorney . . . ; and
>
> "(2) reimbursement for actual, necessary expenses." *Ibid.* (emphasis added to highlight text later deleted).

Pursuant to the 1994 Act, 11 U. S. C. § 330(a)(1) now reads as follows:

> "(a)(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103—
>
> "(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person; and
>
> "(B) reimbursement for actual, necessary expenses."

As can be noted, the 1994 enactment's principal, substantive alteration was its deletion of the five words at the end of what was § 330(a) and is now § 330(a)(1): "or to the debtor's attorney."

The deletion created an apparent legislative drafting error. It left current § 330(a)(1) with a missing "or" that infects its grammar (*i. e.*, "an examiner, [or] a professional person . . ."). Furthermore, the Act's inclusion of the word "attorney" in § 330(a)(1)(A) defeats the neat parallelism that otherwise marks the relationship between §§ 330(a)(1) and 330(a)(1)(A) (*i. e.*, in § 330(a)(1): "trustee, . . . examiner, [or] professional person"; in § 330(a)(1)(A): "trustee, examiner, professional

person, or attorney") and so casts some doubt on the proper presence of "attorney." That the pre-1994 text had no grammatical error and was parallel in its structure strengthens the sense that error exists in the new text.

The Courts of Appeals for the Fifth and Eleventh Circuits, when asked to interpret current § 330(a)(1), concluded that its language was plain irrespective of these quirks and history. Under the statutory language as written, those courts held, fees may be awarded to attorneys for services rendered only to the extent they are payments to "a professional person employed under section 327," see, *e. g.*, § 327(a) (authorizing an appointed trustee in a Chapter 7 bankruptcy action to "employ one or more attorneys . . . to represent or assist the trustee in carrying out the trustee's duties under this title"); § 327(e) (authorizing an appointed trustee in a Chapter 7 bankruptcy action to "employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, . . ."). See *In re Pro-Snax Distributors, Inc.*, 157 F. 3d 414 (CA5 1998); *In re American Steel Product, Inc.*, 197 F. 3d 1354 (CA11 1999). The Courts of Appeals for the Second, Third, and Ninth Circuits, in contrast, concluded that the text's apparent errors rendered the section ambiguous, requiring consideration of the provision's legislative history. That history, those courts held, shows Congress intended § 330(a)(1) to continue to allow compensation of Chapter 7 debtors' attorneys, irrespective of qualification under § 327. *In re Ames Dept. Stores, Inc.*, 76 F. 3d 66 (CA2 1996); *In re Top Grade Sausage, Inc.*, 227 F. 3d 123 (CA3 2000); *In re Century Cleaning Services, Inc.*, 195 F. 3d 1053 (CA9 1999). See also 3 Collier on Bankruptcy, *supra*, ¶ 330.LH[5], at 330–75 to 330–76.

This interpretive divide became relevant to petitioner in his representation of Equipment Services, Inc. (ESI). ESI retained petitioner to prepare, file, and prosecute a Chapter 11 bankruptcy proceeding on its behalf. He did so, all the

while representing ESI with the approval of the court under § 327. See *In re Equipment Services, Inc.*, 290 F. 3d 739, 742 (CA4 2002) (case below). See also 11 U. S. C. § 1107(a) (authorizing debtor-in-possession to exercise the statutory rights and powers of an estate trustee, including to retain counsel under § 327). Three months into the Chapter 11 reorganization, the United States Trustee (Government) filed a motion to convert the action into a Chapter 7 liquidation proceeding. The court granted the Government's motion and appointed an estate trustee pursuant to § 701, 11 U. S. C. § 701(a). This terminated ESI's status as debtor-in-possession and so terminated petitioner's service under § 327 as an attorney for the debtor-in-possession. Yet petitioner continued to provide legal services to ESI, the debtor, even though he did not have the trustee's authorization to do so. He prepared reports detailing debts incurred and property acquired since the initial filing; he amended asset schedules; and he appeared at a hearing on an adversary complaint.

In due course petitioner filed an application seeking fees under § 330(a)(1) for the time he spent on ESI's behalf after the Chapter 7 conversion. The Government objected to the application. It argued that § 330(a)(1) makes no provision for the estate to compensate an attorney not authorized under § 327. The court agreed and denied the fees. *In re Equipment Services, Inc.*, 253 B. R. 724 (Bkrtcy. Ct. WD Va. 2000). (Petitioner was paid fees for the services he provided to ESI before conversion of the proceeding to Chapter 7 and when ESI was the debtor-in-possession. The parties do not contest those fees.)

Petitioner unsuccessfully sought reversal of the Bankruptcy Court's determination, first from the District Court, see *In re Equipment Services, Inc.*, 260 B. R. 273 (WD Va. 2001), then from the Court of Appeals, see 290 F. 3d 739 (CA4 2002). Both courts concluded the plain language of § 330(a)(1) controlled and that attorneys who provide services to debtors in Chapter 7 proceedings must be hired by

the trustee under § 327 to be eligible for compensation. The Court of Appeals acknowledged that its holding deepened the divide among the various Circuits, but held fast to the statute's plain language, "particularly because application of that plain language supports a reasonable interpretation of the Bankruptcy Code," *id.*, at 745. We granted the petition for certiorari, 538 U. S. 905 (2003), and now resolve the issue.

II

Petitioner argues that the existing statutory text is ambiguous and so requires us to consult legislative history to determine whether Congress intended to allow fees for services rendered by a debtor's attorney in a Chapter 7 proceeding, where that attorney is not authorized under § 327. He makes the case for ambiguity, for the most part, by comparing the present statute with its predecessor. Thus, he says the statute is ambiguous because subsection (A)'s "attorney" is "facially irreconcilable" with the section's first part since

> "[e]ither Congress inadvertently omitted the 'debtor's attorney' from the 'payees' list, on which the court of appeals relied, or it inadvertently retained the reference to the attorney in the latter, 'payees' list." Brief for Petitioner 17.

Similarly, with respect to the missing conjunction "or" he says,

> "[t]here is no apparent reason, other than a drafting error, that Congress would have rewritten the statute to produce a grammatically incorrect provision." *Ibid.*

This is the analysis followed by the Courts of Appeals that hold the statute is ambiguous. See *In re Top Grade Sausage, supra,* at 129 (noting in its search for ambiguity that "[p]rior to amendment, it was undisputed that the repetition of officers in § 330(a)(1)(A) was meant to parallel the officers

previously listed in § 330(a)(1)"); see also *In re Century Cleaning Services*, 195 F. 3d, at 1057–1058 (engaging in same resort to previous enactment to inquire as to the current text's ambiguity). One determines ambiguity, under this contention, by relying on the grammatical soundness of the prior statute. That contention is wrong.

The starting point in discerning congressional intent is the existing statutory text, see *Hughes Aircraft Co.* v. *Jacobson*, 525 U. S. 432, 438 (1999), and not the predecessor statutes. It is well established that "when the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." *Hartford Underwriters Ins. Co.* v. *Union Planters Bank, N. A.*, 530 U. S. 1, 6 (2000) (internal quotation marks omitted) (quoting *United States* v. *Ron Pair Enterprises, Inc.*, 489 U. S. 235, 241 (1989), in turn quoting *Caminetti* v. *United States*, 242 U. S. 470, 485 (1917)). So we begin with the present statute.

A

The statute is awkward, and even ungrammatical; but that does not make it ambiguous on the point at issue. In its first part, the statute authorizes an award of compensation to one of three types of persons: trustees, examiners, and § 327 professional persons. A debtor's attorney not engaged as provided by § 327 is simply not included within the class of persons eligible for compensation. In subsection (A) the statute further defines what type of compensation may be awarded: compensation that is reasonable; and for actual, necessary services; and rendered by four types of persons (the same three plus attorneys). Unless the applicant for compensation is in one of the named classes of persons in the first part, the kind of service rendered is irrelevant.

The missing conjunction "or" does not change our conclusion. The Government points to numerous federal statutes that inadvertently lack a conjunction. They are read, none-

theless, for their plain meaning. See Brief for Respondent 17, n. 4. Here, the missing conjunction neither alters the text's substance nor obscures its meaning. This is not a case where a "not" is missing or where an "or" inadvertently substitutes for an "and." The sentence may be awkward; yet it is straightforward.

Subsection (A)'s nonparalleled fourth category of persons who can render compensable services does not cloud the statute's meaning. Petitioner reasons that since the section is a single sentence, and since it appears to strive for parallelism between those authorized to receive fees and those whose services are compensable, there is an ambiguity as to what "attorney" in § 330(a)(1)(A) refers to in § 330(a)(1). He also points to neighboring § 331, which provides for both debtors' attorneys and § 327 professional persons to receive interim compensation after an order for relief is entered but before an application for § 330 fees is filed. He argues that since § 331 contemplates debtors' attorneys' receiving interim compensation there is reason to conclude that "attorney" in § 330(a)(1)(A) refers to debtors' attorneys in § 330(a)(1), though they go unmentioned in that clause.

Subsection (A)'s "attorney," however, can be read in a straightforward fashion to refer to those attorneys whose fees are authorized by § 330(a)(1): attorneys qualified as § 327 professional persons, that is, in a Chapter 7 context, those employed by the trustee and approved by the court. See § 327(a) (appointed trustee may "employ one or more attorneys . . . to represent or assist the trustee in carrying out the trustee's duties under this title); § 327(e) (appointed trustee may "employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, . . ."). Likewise, § 331's reference to interim compensation for debtors' attorneys most straightforwardly refers to debtors' attorneys authorized under § 327.

It must be acknowledged that, under our reading of the text, the word "attorney" in subsection (A) may well be surplusage. Subsection (A)'s reference to § 327 professional persons undoubtedly includes attorneys, as much as does § 330(a)(1)'s reference to professional persons. That is not controlling, however. Surplusage does not always produce ambiguity and our preference for avoiding surplusage constructions is not absolute. See *Chickasaw Nation* v. *United States*, 534 U. S. 84, 94 (2001) (the preference "is sometimes offset by the canon that permits a court to reject words 'as surplusage' if 'inadvertently inserted or if repugnant to the rest of the statute' "). Where there are two ways to read the text—either attorney is surplusage, in which case the text is plain; or attorney is nonsurplusage (*i. e.*, it refers to an ambiguous component in § 330(a)(1)), in which case the text is ambiguous—applying the rule against surplusage is, absent other indications, inappropriate. We should prefer the plain meaning since that approach respects the words of Congress. In this manner we avoid the pitfalls that plague too quick a turn to the more controversial realm of legislative history.

B

The plain meaning that § 330(a)(1) sets forth does not lead to absurd results requiring us to treat the text as if it were ambiguous. See *supra*, at 534 (citing *Hartford Underwriters*). Petitioner disagrees and argues that our interpretation will "entail an inexplicable, wholesale departure from . . . the guiding principle of the 'prompt and effectual administration' of federal bankruptcy law." Brief for Petitioner 30. He says that our reading "attribute[s] to Congress an illogical, penny-wise and pound-foolish determination to eliminate entirely—as a purportedly asset-preserving measure—compensation that is essential to debtors' receipt of legal services." *Id.*, at 35.

These arguments overstate the effect of § 330(a)(1). Under the text's instruction compensation remains available to

debtors' attorneys through various permitted means. First, while § 330(a)(1) requires proper authorization for payment to attorneys from estate funds in Chapter 7 filings, it does not extend throughout all bankruptcy law. Compensation for debtors' attorneys in Chapter 12 and 13 bankruptcies, for example, is not much disturbed by § 330 as a whole. See, *e. g.*, 11 U. S. C. § 330(a)(4)(B) ("In a chapter 12 or chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor's attorney").

Compensation for debtors' attorneys working on Chapter 7 bankruptcies, moreover, is not altogether prohibited. Sections 327 and 330, taken together, allow Chapter 7 trustees to engage attorneys, including debtors' counsel, and allow courts to award them fees. See §§ 327(a) and (e). Section 327's limitation on debtors' incurring debts for professional services without the Chapter 7 trustee's approval is not absurd. In the context of a Chapter 7 liquidation it advances the trustee's responsibility for preserving the estate.

If we add to all this the apparent sound functioning of the bankruptcy system under the plain meaning approach, petitioner's arguments become unconvincing. Seeming order has attended the rule's application for five years in the Fifth Circuit and for four years in the Eleventh Circuit. See *In re American Steel Product, Inc.*, 197 F. 3d 1354 (CA11 1999); *In re Pro-Snax Distributors, Inc.*, 157 F. 3d 414 (CA5 1998). It appears to be routine for debtors to pay reasonable fees for legal services before filing for bankruptcy to ensure compliance with statutory requirements. See generally Collier Compensation, Employment and Appointment of Trustees and Professionals in Bankruptcy Cases ¶ 3.02[1], p. 3–2 (2002) ("In the majority of cases, the debtor's counsel will accept an individual or a joint consumer chapter 7 case only after being paid a retainer that covers the 'standard fee' and the cost of filing the petition"). So our interpretation accords with common practice. Section 330(a)(1) does not

prevent a debtor from engaging counsel before a Chapter 7 conversion and paying reasonable compensation in advance to ensure that the filing is in order. Indeed, the Code anticipates these arrangements. See, *e. g.*, § 329 (debtors' attorneys must disclose fees they receive from a debtor in the year prior to its bankruptcy filing and courts may order excessive payments returned to the estate).

C

Petitioner's argument stumbles on still harder ground in the face of another canon of interpretation. His interpretation of the Act—reading the word "attorney" in § 330(a)(1)(A) to refer to "debtors' attorneys" in § 330(a)(1)—would have us read an absent word into the statute. That is, his argument would result "not [in] a construction of [the] statute, but, in effect, an enlargement of it by the court, so that what was omitted, presumably by inadvertence, may be included within its scope." *Iselin* v. *United States*, 270 U. S. 245, 251 (1926). With a plain, nonabsurd meaning in view, we need not proceed in this way. "There is a basic difference between filling a gap left by Congress' silence and rewriting rules that Congress has affirmatively and specifically enacted." *Mobil Oil Corp.* v. *Higginbotham*, 436 U. S. 618, 625 (1978).

Our unwillingness to soften the import of Congress' chosen words even if we believe the words lead to a harsh outcome is longstanding. It results from "deference to the supremacy of the Legislature, as well as recognition that Congressmen typically vote on the language of a bill." *United States* v. *Locke*, 471 U. S. 84, 95 (1985) (citing *Richards* v. *United States*, 369 U. S. 1, 9 (1962)).

Adhering to conventional doctrines of statutory interpretation, we hold that § 330(a)(1) does not authorize compensation awards to debtors' attorneys from estate funds, unless they are employed as authorized by § 327. If the attorney is to be paid from estate funds under § 330(a)(1) in a Chapter

7 case, he must be employed by the trustee and approved by the court.

III

Though we find it unnecessary to rely on the legislative history behind the 1994 enactment of § 330(a)(1), we find it instructive that the history creates more confusion than clarity about the congressional intent. History and policy considerations lend support both to petitioner's interpretation and to the holding we reach based on the plain language of the statute.

Petitioner, for instance, cites evidence supporting the conclusion that a scrivener's error obscures what was Congress' real intent. For over 100 years debtors' attorneys have been considered by Congress and the courts to be an integral part of the bankruptcy process. See Bankruptcy Act of 1898, ch. 541, §§ 59(d) and 64(b), 30 Stat. 561, 563. See also *In re Kross*, 96 F. 816 (SDNY 1899). It is fair to doubt that Congress would so rework their longstanding role without announcing the change in the congressional record. Cf. *Cohen* v. *de la Cruz*, 523 U. S. 213, 221 (1998) ("We . . . will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure" (internal quotation marks and citation omitted)).

The legislative processes behind the change also lend some support to petitioner's claim. In 1994 the original proposed draft of new § 330(a)(1) featured two changes: stylistic changes throughout the section and the addition of a new provision giving the Government a right to object to fee applications. See S. 540, 103d Cong., 1st Sess. (1993), reprinted in S. Rep. No. 103–168 (1993). The right to object provision was added at § 330(a)(1)'s end. Thus it came immediately after the critical text "or to the debtor's attorney," which the draft edited to read "or the debtors *[sic]* attorney." *Ibid.* Before voting the Act into law, however, Congress amended the proposed draft. See 140 Cong. Rec. 8383

(1994) (setting out amendment 1645 to S. 540). Amendment 1645 made only two changes to § 330(a)(1): It deleted the Government's right to object provision and the critical words ("or the debtors *[sic]* attorney"). The rest of the original proposed draft remained intact. Legislative history explains the first deletion, for the provision was installed elsewhere, as new § 330(a)(2). Nothing, however, explains the second. That the Government's right to object was deleted and reinstated (*i. e.*, reorganized), while the words at issue, which had preceded the moved provision, were deleted with no notation in the legislative history suggests the scrivener just reached too far in his deletion. These factors combined to convince a leading treatise on bankruptcy law, Collier, that the deletion was a scrivener's error and ought not have any effect. See 3 Collier on Bankruptcy ¶ 330.LH[5], at 330–75 to 330–76.

There are other aspects of the legislative record, however, that undermine this interpretation. These considerations suggest Congress may have intended the change the scrivener worked. For example, amendment 1645 was part of a reform Act designed to curtail abuses in fee awards, according to statements by the amendment's sponsor. See 140 Cong. Rec., at 28753 (statement of Sen. Metzenbaum). These abuses were not ghosts seen only by Congress. Some bankruptcy courts had reached the same conclusion. See, *e. g.*, *In re NRG Resources, Inc.*, 64 B. R. 643 (Bkrtcy. Ct. WD La. 1986). The deletion at issue furthered this reform by ensuring that Chapter 7 debtors' attorneys would receive no estate compensation absent the trustee's authorization of their work. This objective is not inconsistent with the interest of involving debtors' attorneys in bankruptcy proceedings. As noted, the Act still allows debtors' attorneys to be compensated in different ways. See *supra*, at 536–539.

Amendment 1645, viewed in its entirety, gives further reason to think Congress may have intended the change. The amendment added a new section that authorizes fee awards

to debtors' attorneys in Chapter 12 and 13 bankruptcies. 140 Cong. Rec., at 8383 (setting out new 11 U. S. C. § 330(a)(4)(B)). Since the amendment's deletion of "or the debtors *[sic]* attorney" from the original proposed draft affected Chapter 12 and 13 debtors' attorneys as much as Chapter 7 debtors' attorneys, § 330(a)(4)(B) shows a special intent to authorize the formers' fee awards in the face of the new, broad exclusion.

If Congress' action does not prove the point, the House of Representatives' inaction may. The House passed the Act after having the deletion, as well as its impact, called to its attention. See Bankruptcy Reform: Hearing before the Subcommittee on Economic and Commercial Law of the House Committee on the Judiciary, 103d Cong., 2d Sess., 551 (1994). The National Association of Consumer Bankruptcy Attorneys (NACBA), which represents those lawyers most likely to be affected by § 330(a)(1)'s change, declined to object to the deletion. *Ibid.* (noting the deletion but stating that the NACBA did "not oppose" amendment 1645's passage). This alert, followed by the Legislature's nonresponse, should support a presumption of legislative awareness and intention. The Act may now contain surplusage, along with grammatical error; but that may have been the result of trying to make the substantive change with the fewest possible textual alterations or of an error by the scrivener in carrying out the change.

These competing interpretations of the legislative history make it difficult to say with assurance whether petitioner or the Government lays better historical claim to the congressional intent. The alert to the change in policy was given, to be sure, before the House passed the final version, but that particular circumstance cannot bear too much weight. The alert was not the subject of testimony from any witness at the congressional hearing. It consisted of but two sentences contained within 472 pages of written statements delivered to the legislative subcommittee for its August 17,

1994, hearing day. Those 472 pages were added to 236 pages of prepared statements and testimony transcribed from the day's testifying witnesses. Within the NACBA's filing, the two relevant sentences appear on the 18th page of the 27-page report. Nothing in the legislative history confirms that this particular point bore on the congressional deliberations or was given specific consideration.

These uncertainties illustrate the difficulty of relying on legislative history here and the advantage of our determination to rest our holding on the statutory text.

* * *

If Congress enacted into law something different from what it intended, then it should amend the statute to conform it to its intent. "It is beyond our province to rescue Congress from its drafting errors, and to provide for what we might think . . . is the preferred result." *United States* v. *Granderson*, 511 U. S. 39, 68 (1994) (concurring opinion). This allows both of our branches to adhere to our respected, and respective, constitutional roles. In the meantime, we must determine intent from the statute before us. The judgment of the Court of Appeals is affirmed.

It is so ordered.

JUSTICE STEVENS, concurring in the judgment, joined by JUSTICE SOUTER and JUSTICE BREYER, concurring.

As the majority recognizes, *ante*, at 539–540, a leading bankruptcy law treatise concluded that the 1994 amendments to § 330(a)(1) contained an unintended error. 3 Collier on Bankruptcy ¶ 330.LH[5], pp. 330–75 to 330–76 (rev. 15th ed. 2003). Whenever there is such a plausible basis for believing that a significant change in statutory law resulted from a scrivener's error, I believe we have a duty to examine leg-

islative history.[1] In this case, that history reveals that the National Association of Consumer Bankruptcy Attorneys (NACBA) not only called the assumed drafting error to Congress' attention in a timely fashion, but also deemed the error unworthy of objection.[2] This evidence convinces me that the Court's reading of the text, which surely is more natural than petitioner's, is correct. I therefore concur in the judgment.

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[1] As Chief Justice Marshall stated, "Where the mind labours to discover the design of the legislature, it seizes every thing from which aid can be derived . . . ." *United States* v. *Fisher*, 2 Cranch 358, 386 (1805).

[2] See *ante*, at 541. Specifically, three months after the Senate passed the relevant amendment, the NACBA submitted written comments to the House Subcommittee on Economic and Commercial Law, which was considering the change. Those comments first noted that the amended version of § 330(a)(1) "appears to have some minor drafting errors, including the apparently inadvertent removal of debtors' attorneys from the list of professionals whose compensation awards are covered." Bankruptcy Reform: Hearing before the Subcommittee on Economic and Commercial Law of the House Committee on the Judiciary, 103d Cong., 2d Sess., 551 (1994). With no proviso that these alleged errors be corrected, the NACBA then expressly did "*not* oppose" passage of the amendment. *Ibid.* (emphasis added).

Syllabus

ILLINOIS *v.* FISHER

ON PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

No. 03–374. Decided February 23, 2004

After Chicago police conducted four tests on a white powdery substance seized during respondent's arrest, he was charged with possession of cocaine and filed a discovery motion for all physical evidence the State intended to use at trial. He then fled while released on bail, and the court issued an arrest warrant. When that warrant was finally executed 10 years later, the State reinstated the possession charge, informing respondent that the police, acting under established procedures, had destroyed the substance seized during his arrest. Respondent formally requested production of the substance and moved to dismiss the charge based on the destruction of evidence. The trial court denied his motion, and he was convicted. The Appellate Court reversed, holding that the Due Process Clause required dismissal of the charge and finding that such a result was not foreclosed by *Arizona* v. *Youngblood*, 488 U. S. 51, 58, in which this Court held that "unless a criminal defendant can show bad faith on the part of police, failure to preserve potentially useful evidence does not constitute a denial of due process of law."

Held: Respondent has failed to establish a due process violation. While the prosecution's good or bad faith is irrelevant when a State suppresses or fails to disclose material exculpatory evidence, *Youngblood* recognizes that bad faith is relevant when dealing with the State's failure to preserve "potentially useful evidence." The substance seized here was plainly the latter sort of evidence. At most, respondent could hope that a fifth test of the substance would have exonerated him. He did not allege, nor did the Appellate Court find, that the police acted in bad faith in destroying the substance. To the contrary, police testing inculpated respondent, and the police acted in good faith and in accord with their normal practice. This Court has never held or suggested that the existence of a pending discovery request eliminates the necessity of a bad-faith showing. Nor does the Court agree that *Youngblood* does not apply when the contested evidence is a defendant's only hope for exoneration and is essential to the case's outcome. The *Youngblood* bad-faith requirement's applicability depends not on the contested evidence's centrality to the case, but on the distinction between "material exculpatory" evidence and "potentially useful" evidence. 488 U. S., at 57–58.

Certiorari granted; reversed and remanded.

PER CURIAM.

The Appellate Court of Illinois held here that the Fourteenth Amendment's Due Process Clause required the dismissal of criminal charges because the police, acting in good faith and according to normal police procedures, destroyed evidence that respondent had requested more than 10 years earlier in a discovery motion. Petitioner, the State of Illinois, contends that such a result is foreclosed by our decision in *Arizona* v. *Youngblood*, 488 U. S. 51 (1988). There we held that "unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." *Id.*, at 58. We agree with petitioner, grant the petition for certiorari and respondent's motion for leave to proceed *in forma pauperis*, and reverse the judgment of the Appellate Court.

In September 1988, Chicago police arrested respondent in the course of a traffic stop during which police observed him furtively attempting to conceal a plastic bag containing a white powdery substance. Four tests conducted by the Chicago Police Crime Lab and the Illinois State Police Crime Lab confirmed that the bag seized from respondent contained cocaine.

Respondent was charged with possession of cocaine in the Circuit Court of Cook County in October 1988. He filed a motion for discovery eight days later requesting all physical evidence the State intended to use at trial. The State responded that all evidence would be made available at a reasonable time and date upon request. Respondent was released on bond pending trial. In July 1989, however, he failed to appear in court, and the court issued an arrest warrant to secure his presence. Respondent remained a fugitive for over 10 years, apparently settling in Tennessee. The outstanding arrest warrant was finally executed in November 1999, after respondent was detained on an unrelated matter. The State then reinstated the 1988 cocaine-possession charge.

Before trial, the State informed respondent that in September 1999, the police, acting in accord with established procedures, had destroyed the substance seized from him during his arrest. Respondent thereupon formally requested production of the substance and filed a motion to dismiss the cocaine-possession charge based on the State's destruction of evidence. The trial court denied the motion, and the case proceeded to a jury trial. The State introduced evidence tending to prove the facts recounted above. Respondent's case in chief consisted solely of his own testimony, in which he denied that he ever possessed cocaine and insinuated that the police had "framed" him for the crime. The jury returned a verdict of guilty, and respondent was sentenced to one year of imprisonment.

The Appellate Court reversed the conviction, holding that the Due Process Clause required dismissal of the charge. Relying on the Illinois Supreme Court's decision in *Illinois* v. *Newberry*, 166 Ill. 2d 310, 652 N. E. 2d 288 (1995), the Appellate Court reasoned:

> "'Where evidence is requested by the defense in a discovery motion, the State is on notice that the evidence must be preserved, and the defense is not required to make an independent showing that the evidence has exculpatory value in order to establish a due process violation. If the State proceeds to destroy the evidence, appropriate sanctions may be imposed even if the destruction is inadvertent. No showing of bad faith is necessary.'" App. to Pet. for Cert. 12 (quoting *Newberry*, *supra*, at 317, 652 N. E. 2d, at 292) (citation omitted in original).

The Appellate Court observed that *Newberry* distinguished our decision in *Youngblood* on the ground that the police in *Youngblood* did not destroy evidence subsequent to a discovery motion by the defendant. App. to Pet. for Cert. 13. While acknowledging that "there is nothing in the record to

indicate that the alleged cocaine was destroyed in bad faith," *id.*, at 15, the court further determined that *Newberry* dictated dismissal because, unlike in *Youngblood*, the destroyed evidence provided respondent's "only hope for exoneration," App. to Pet. for Cert. 15, and was " 'essential to and determinative of the outcome of the case,' " App. to Pet. for Cert. 16 (quoting *Newberry*, *supra*, at 315, 652 N. E. 2d, at 291). Consequently, the court concluded that respondent "was denied due process when he was tried subsequent to the destruction of the alleged cocaine." App. to Pet. for Cert. 16. The Illinois Supreme Court denied leave to appeal.*

We have held that when the State suppresses or fails to disclose material exculpatory evidence, the good or bad faith of the prosecution is irrelevant: a due process violation occurs whenever such evidence is withheld. See *Brady* v. *Maryland*, 373 U. S. 83 (1963); *United States* v. *Agurs*, 427 U. S. 97 (1976). In *Youngblood*, by contrast, we recognized that the Due Process Clause "requires a different result when we deal with the failure of the State to preserve evidentiary material of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant." 488 U. S., at 57. We concluded that the failure to preserve this "potentially

*Respondent suggests that we lack jurisdiction because the Appellate Court relied on *Newberry*, which in turn relied on an adequate and independent state ground. See, *e. g.*, *Michigan* v. *Long*, 463 U. S. 1032, 1040–1042 (1983). Respondent is correct that *Newberry* relied on both the Due Process Clause, and in the alternative, Illinois Supreme Court Rule 415(g)(i) (1990). 166 Ill. 2d, at 314–317, 652 N. E. 2d, at 290–292. The Appellate Court, however, relied only on the portion of *Newberry* that addressed due process, and the Appellate Court based its decision solely on the Due Process Clause. Accordingly, we have jurisdiction to review that decision. See, *e. g.*, *Long*, *supra*, at 1038, n. 4 ("We may review a state case decided on a federal ground even if it is clear that there was an available state ground for decision on which the state court could properly have relied" (citing *Beecher* v. *Alabama*, 389 U. S. 35, 37, n. 3 (1967) *(per curiam)*)).

useful evidence" does not violate due process "*unless a criminal defendant can show bad faith on the part of the police.*" *Id.*, at 58 (emphasis added).

The substance seized from respondent was plainly the sort of "potentially useful evidence" referred to in *Youngblood*, not the material exculpatory evidence addressed in *Brady* and *Agurs*. At most, respondent could hope that, had the evidence been preserved, a *fifth* test conducted on the substance would have exonerated him. See *Youngblood*, 488 U. S., at 57. But respondent did not allege, nor did the Appellate Court find, that the Chicago police acted in bad faith when they destroyed the substance. Quite the contrary, police testing indicated that the chemical makeup of the substance inculpated, not exculpated, respondent, see *id.*, at 57, n., and it is undisputed that police acted in "good faith and in accord with their normal practice," *id.*, at 56 (internal quotation marks omitted) (quoting *California* v. *Trombetta*, 467 U. S. 479, 488 (1984), in turn quoting *Killian* v. *United States*, 368 U. S. 231, 242 (1961)). Under *Youngblood*, then, respondent has failed to establish a due process violation.

We have never held or suggested that the existence of a pending discovery request eliminates the necessity of showing bad faith on the part of police. Indeed, the result reached in this case demonstrates why such a *per se* rule would negate the very reason we adopted the bad-faith requirement in the first place: to "limi[t] the extent of the police's obligation to preserve evidence to reasonable grounds and confin[e] it to that class of cases where the interests of justice most clearly require it." 488 U. S., at 58.

We also disagree that *Youngblood* does not apply whenever the contested evidence provides a defendant's "only hope for exoneration" and is " 'essential to and determinative of the outcome of the case.' " App. to Pet. for Cert. 15–16 (citing *Newberry*, *supra*, at 315, 652 N. E. 2d, at 291). In *Youngblood*, the Arizona Court of Appeals said that the destroyed evidence "could [have] eliminate[d] the defendant

as the perpetrator." 488 U. S., at 54 (quotation marks and citations omitted). Similarly here, an additional test might have provided the defendant with an opportunity to show that the police tests were mistaken. It is thus difficult to distinguish the two cases on this basis. But in any event, the applicability of the bad-faith requirement in *Youngblood* depended not on the centrality of the contested evidence to the prosecution's case or the defendant's defense, but on the distinction between "material exculpatory" evidence and "potentially useful" evidence. 488 U. S., at 57–58. As we have held, *supra*, at 548, the substance destroyed here was, at best, "potentially useful" evidence, and therefore *Youngblood*'s bad-faith requirement applies.

The judgment of the Appellate Court of Illinois is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE STEVENS, concurring in the judgment.

While I did not join the three Justices who dissented in *Arizona* v. *Youngblood*, 488 U. S. 51 (1988), I also declined to join the majority opinion because I was convinced then, and remain convinced today, that "there may well be cases in which the defendant is unable to prove that the State acted in bad faith but in which the loss or destruction of evidence is nonetheless so critical to the defense as to make a criminal trial fundamentally unfair." *Id.*, at 61 (STEVENS, J., concurring in judgment).* This, like *Youngblood*, is not such a case.

**Youngblood*'s focus on the subjective motivation of the police represents a break with our usual understanding that the presence or absence of constitutional error in suppression of evidence cases depends on the character of the evidence, not the character of the person who withholds it. *United States* v. *Agurs*, 427 U. S. 97, 110 (1976). Since *Youngblood* was decided, a number of state courts have held as a matter of state constitutional law that the loss or destruction of evidence critical to the defense does violate due process, even in the absence of bad faith. As the Con-

Neither is it a case that merited review in this Court, however. The judgment of the Illinois Appellate Court has limited precedential value, and may well be reinstated on remand because the result is supported by the state-law holding in *People* v. *Newberry*, 166 Ill. 2d 310, 652 N. E. 2d 288 (1995). See *ante*, at 547, n. In my judgment the State's petition for a writ of certiorari should have been denied.

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necticut Supreme Court has explained, "[f]airness dictates that when a person's liberty is at stake, the sole fact of whether the police or another state official acted in good or bad faith in failing to preserve evidence cannot be determinative of whether the criminal defendant received due process of law." *State* v. *Morales*, 232 Conn. 707, 723, 657 A. 2d 585, 593 (1995) (footnote omitted). See also *State* v. *Ferguson*, 2 S. W. 3d 912, 916–917 (Tenn. 1999); *State* v. *Osakalumi*, 194 W. Va. 758, 765–767, 461 S. E. 2d 504, 511–512 (1995); *State* v. *Delisle*, 162 Vt. 293, 309, 648 A. 2d 632, 642 (1994); *Ex parte Gingo*, 605 So. 2d 1237, 1241 (Ala. 1992); *Commonwealth* v. *Henderson*, 411 Mass. 309, 310–311, 582 N. E. 2d 496, 497 (1991); *State* v. *Matafeo*, 71 Haw. 183, 186–187, 787 P. 2d 671, 673 (1990); *Hammond* v. *State*, 569 A. 2d 81, 87 (Del. 1989); *Thorne* v. *Department of Public Safety*, 774 P. 2d 1326, 1330, n. 9 (Alaska 1989).

Syllabus

GROH *v.* RAMIREZ ET AL.

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

No. 02–811. Argued November 4, 2003—Decided February 24, 2004

Petitioner, a Bureau of Alcohol, Tobacco and Firearms agent, prepared and signed an application for a warrant to search respondents' Montana ranch, which stated that the search was for specified weapons, explosives, and records. The application was supported by petitioner's detailed affidavit setting forth his basis for believing that such items were on the ranch and was accompanied by a warrant form that he completed. The Magistrate Judge (Magistrate) signed the warrant form even though it did not identify any of the items that petitioner intended to seize. The portion calling for a description of the "person or property" described respondents' house, not the alleged weapons; the warrant did not incorporate by reference the application's itemized list. Petitioner led federal and local law enforcement officers to the ranch the next day but found no illegal weapons or explosives. Petitioner left a copy of the warrant, but not the application, with respondents. Respondents sued petitioner and others under *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388, and 42 U. S. C. § 1983, claiming, *inter alia*, a Fourth Amendment violation. The District Court granted the defendants summary judgment, finding no Fourth Amendment violation, and finding that even if such a violation occurred, the defendants were entitled to qualified immunity. The Ninth Circuit affirmed except as to the Fourth Amendment claim against petitioner, holding that the warrant was invalid because it did not describe with particularity the place to be searched and the items to be seized. The court also concluded that *United States* v. *Leon*, 468 U. S. 897, precluded qualified immunity for petitioner because he was the leader of a search who did not read the warrant and satisfy himself that he understood its scope and limitations and that it was not obviously defective.

Held:

1. The search was clearly "unreasonable" under the Fourth Amendment. Pp. 557–563.

(a) The warrant was plainly invalid. It did not meet the Fourth Amendment's unambiguous requirement that a warrant "particularly describ[e] . . . the persons or things to be seized." The fact that the application adequately described those things does not save the warrant; Fourth Amendment interests are not necessarily vindicated when an-

other document says something about the objects of the search, but that document's contents are neither known to the person whose home is being searched nor available for her inspection. It is not necessary to decide whether the Amendment permits a warrant to cross-reference other documents, because such incorporation did not occur here. Pp. 557–558.

(b) Petitioner's argument that the search was nonetheless reasonable is rejected. Because the warrant did not describe the items *at all*, it was so obviously deficient that the search must be regarded as warrantless, and thus presumptively unreasonable. This presumptive rule applies to searches whose only defect is a lack of particularity in the warrant. Petitioner errs in arguing that such searches should be exempt from the presumption if they otherwise satisfy the particularity requirement's goals. Unless items in the affidavit are set forth in the warrant, there is no written assurance that the Magistrate actually found probable cause for a search as broad as the affiant requested. The restraint petitioner showed in conducting the instant search was imposed by the agent himself, not a judicial officer. Moreover, the particularity requirement's purpose is not limited to preventing general searches; it also assures the individual whose property is searched and seized of the executing officer's legal authority, his need to search, and the limits of his power to do so. This case presents no occasion to reach petitioner's argument that the particularity requirements' goals were served when he orally described the items to respondents, because respondents dispute his account. Pp. 558–563.

2. Petitioner is not entitled to qualified immunity despite the constitutional violation because "it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted," *Saucier* v. *Katz*, 533 U. S. 194, 202. Given that the particularity requirement is stated in the Constitution's text, no reasonable officer could believe that a warrant that did not comply with that requirement was valid. Moreover, because petitioner prepared the warrant, he may not argue that he reasonably relied on the Magistrate's assurance that it contained an adequate description and was valid. Nor could a reasonable officer claim to be unaware of the basic rule that, absent consent or exigency, a warrantless search of a home is presumptively unconstitutional. "[A] warrant may be so facially deficient . . . that the executing officers cannot reasonably presume it to be valid." *Leon*, 468 U. S., at 923. This is such a case. Pp. 563–565.

298 F. 3d 1022, affirmed.

STEVENS, J., delivered the opinion of the Court, in which O'CONNOR, SOUTER, GINSBURG, and BREYER, JJ., joined. KENNEDY, J., filed a dis-

senting opinion, in which REHNQUIST, C. J., joined, *post*, p. 566. THOMAS, J., filed a dissenting opinion, in which SCALIA, J., joined, and in which REHNQUIST, C. J., joined as to Part III, *post*, p. 571.

Richard A. Cordray argued the cause for petitioner. With him on the briefs was *Harry Litman*.

Austin C. Schlick argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Olson*, *Assistant Attorney General McCallum*, *Deputy Solicitor General Clement*, *Barbara L. Herwig*, and *Howard S. Scher*.

Vincent J. Kozakiewicz argued the cause for respondents. With him on the brief was *W. G. Gilbert III*.*

JUSTICE STEVENS delivered the opinion of the Court.

Petitioner conducted a search of respondents' home pursuant to a warrant that failed to describe the "persons or things to be seized." U. S. Const., Amdt. 4. The questions presented are (1) whether the search violated the Fourth Amendment, and (2) if so, whether petitioner nevertheless is entitled to qualified immunity, given that a Magistrate Judge (Magistrate), relying on an affidavit that particularly described the items in question, found probable cause to conduct the search.

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*A brief of *amici curiae* urging reversal was filed for the State of Texas et al. by *Greg Abbott*, Attorney General of Texas, *R. Ted Cruz*, Solicitor General, *Barry R. McBee*, First Assistant Attorney General, *Jay Kimbrough*, Deputy Attorney General, and *Ryan D. Clinton*, Assistant Solicitor General, and by the Attorneys General for their respective States as follows: *Gregg D. Renkes* of Alaska, *M. Jane Brady* of Delaware, *Charles J. Crist, Jr.*, of Florida, *Mark J. Bennett* of Hawaii, *Steve Carter* of Indiana, *J. Joseph Curran, Jr.*, of Maryland, *Mike Hatch* of Minnesota, *Mike Moore* of Mississippi, *Brian Sandoval* of Nevada, *W. A. Drew Edmondson* of Oklahoma, *D. Michael Fisher* of Pennsylvania, *Lawrence E. Long* of South Dakota, *William H. Sorrell* of Vermont, *Jerry W. Kilgore* of Virginia, *Christine O. Gregoire* of Washington, and *Peggy A. Lautenschlager* of Wisconsin.

I

Respondents, Joseph Ramirez and members of his family, live on a large ranch in Butte-Silver Bow County, Montana. Petitioner, Jeff Groh, has been a Special Agent for the Bureau of Alcohol, Tobacco and Firearms (ATF) since 1989. In February 1997, a concerned citizen informed petitioner that on a number of visits to respondents' ranch the visitor had seen a large stock of weaponry, including an automatic rifle, grenades, a grenade launcher, and a rocket launcher.[1] Based on that information, petitioner prepared and signed an application for a warrant to search the ranch. The application stated that the search was for "any automatic firearms or parts to automatic weapons, destructive devices to include but not limited to grenades, grenade launchers, rocket launchers, and any and all receipts pertaining to the purchase or manufacture of automatic weapons or explosive devices or launchers." App. to Pet. for Cert. 28a. Petitioner supported the application with a detailed affidavit, which he also prepared and executed, that set forth the basis for his belief that the listed items were concealed on the ranch. Petitioner then presented these documents to a Magistrate, along with a warrant form that petitioner also had completed. The Magistrate signed the warrant form.

Although the application particularly described the place to be searched and the contraband petitioner expected to find, the warrant itself was less specific; it failed to identify any of the items that petitioner intended to seize. In the portion of the form that called for a description of the "person or property" to be seized, petitioner typed a description of respondents' two-story blue house rather than the alleged stockpile of firearms.[2] The warrant did not incorporate by

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[1] Possession of these items, if unregistered, would violate 18 U. S. C. § 922(*o*)(1) and 26 U. S. C. § 5861.

[2] The warrant stated: "[T]here is now concealed [on the specified premises] a certain person or property, namely [a] single dwelling residence two story in height which is blue in color and has two additions attached to

reference the itemized list contained in the application. It did, however, recite that the Magistrate was satisfied the affidavit established probable cause to believe that contraband was concealed on the premises, and that sufficient grounds existed for the warrant's issuance.[3]

The day after the Magistrate issued the warrant, petitioner led a team of law enforcement officers, including both federal agents and members of the local sheriff's department, in the search of respondents' premises. Although respondent Joseph Ramirez was not home, his wife and children were. Petitioner states that he orally described the objects of the search to Mrs. Ramirez in person and to Mr. Ramirez by telephone. According to Mrs. Ramirez, however, petitioner explained only that he was searching for "'an explosive device in a box.'" *Ramirez* v. *Butte-Silver Bow County*, 298 F. 3d 1022, 1026 (CA9 2002). At any rate, the officers' search uncovered no illegal weapons or explosives. When the officers left, petitioner gave Mrs. Ramirez a copy of the search warrant, but not a copy of the application, which had been sealed. The following day, in response to a request from respondents' attorney, petitioner faxed the attorney a copy of the page of the application that listed the items to be seized. No charges were filed against the Ramirezes.

Respondents sued petitioner and the other officers under *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388 (1971), and Rev. Stat. § 1979, 42 U. S. C. § 1983, raising eight claims, including violation of the Fourth Amendment. App. 17–27. The District Court entered summary judgment for all defendants. The court found no Fourth Amendment violation, because it considered the case comparable to one in which the warrant contained an inaccurate address, and in such a case, the court reasoned, the warrant is sufficiently

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the east. The front entrance to the residence faces in a southerly direction." App. to Pet. for Cert. 26a.

[3] The affidavit was sealed. Its sufficiency is not disputed.

detailed if the executing officers can locate the correct house. App. to Pet. for Cert. 20a–22a. The court added that even if a constitutional violation occurred, the defendants were entitled to qualified immunity because the failure of the warrant to describe the objects of the search amounted to a mere "typographical error." *Id.*, at 22a–24a.

The Court of Appeals affirmed the judgment with respect to all defendants and all claims, with the exception of respondents' Fourth Amendment claim against petitioner. 298 F. 3d, at 1029–1030. On that claim, the court held that the warrant was invalid because it did not "describe with particularity the place to be searched and the items to be seized," and that oral statements by petitioner during or after the search could not cure the omission. *Id.*, at 1025–1026. The court observed that the warrant's facial defect "increased the likelihood and degree of confrontation between the Ramirezes and the police" and deprived respondents of the means "to challenge officers who might have exceeded the limits imposed by the magistrate." *Id.*, at 1027. The court also expressed concern that "permitting officers to expand the scope of the warrant by oral statements would broaden the area of dispute between the parties in subsequent litigation." *Ibid.* The court nevertheless concluded that all of the officers except petitioner were protected by qualified immunity. With respect to petitioner, the court read our opinion in *United States* v. *Leon*, 468 U. S. 897 (1984), as precluding qualified immunity for the leader of a search who fails to "read the warrant and satisfy [himself] that [he] understand[s] its scope and limitations, and that it is not defective in some obvious way." 298 F. 3d, at 1027. The court added that "[t]he leaders of the search team must also make sure that a copy of the warrant is available to give to the person whose property is being searched at the commencement of the search, and that such copy has no missing pages or other obvious defects." *Ibid.* (footnote omitted). We granted certiorari. 537 U. S. 1231 (2003).

II

The warrant was plainly invalid. The Fourth Amendment states unambiguously that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and *particularly describing* the place to be searched, and *the persons or things to be seized.*" (Emphasis added.) The warrant in this case complied with the first three of these requirements: It was based on probable cause and supported by a sworn affidavit, and it described particularly the place of the search. On the fourth requirement, however, the warrant failed altogether. Indeed, petitioner concedes that "the warrant . . . was deficient in particularity because it provided no description of the type of evidence sought." Brief for Petitioner 10.

The fact that the *application* adequately described the "things to be seized" does not save the *warrant* from its facial invalidity. The Fourth Amendment by its terms requires particularity in the warrant, not in the supporting documents. See *Massachusetts* v. *Sheppard*, 468 U. S. 981, 988, n. 5 (1984) ("[A] warrant that fails to conform to the particularity requirement of the Fourth Amendment is unconstitutional"); see also *United States* v. *Stefonek*, 179 F. 3d 1030, 1033 (CA7 1999) ("The Fourth Amendment requires that the *warrant* particularly describe the things to be seized, not the papers presented to the judicial officer . . . asked to issue the warrant" (emphasis in original)). And for good reason: "The presence of a search warrant serves a high function," *McDonald* v. *United States*, 335 U. S. 451, 455 (1948), and that high function is not necessarily vindicated when some other document, somewhere, says something about the objects of the search, but the contents of that document are neither known to the person whose home is being searched nor available for her inspection. We do not say that the Fourth Amendment prohibits a warrant from cross-referencing other documents. Indeed, most Courts of Appeals have held that a court may construe a warrant with reference to a supporting application or affidavit if the war-

rant uses appropriate words of incorporation, and if the supporting document accompanies the warrant. See, *e. g.*, *United States* v. *McGrew*, 122 F. 3d 847, 849–850 (CA9 1997); *United States* v. *Williamson*, 1 F. 3d 1134, 1136, n. 1 (CA10 1993); *United States* v. *Blakeney*, 942 F. 2d 1001, 1025–1026 (CA6 1991); *United States* v. *Maxwell*, 920 F. 2d 1028, 1031 (CADC 1990); *United States* v. *Curry*, 911 F. 2d 72, 76–77 (CA8 1990); *United States* v. *Roche*, 614 F. 2d 6, 8 (CA1 1980). But in this case the warrant did not incorporate other documents by reference, nor did either the affidavit or the application (which had been placed under seal) accompany the warrant. Hence, we need not further explore the matter of incorporation.

Petitioner argues that even though the warrant was invalid, the search nevertheless was "reasonable" within the meaning of the Fourth Amendment. He notes that a Magistrate authorized the search on the basis of adequate evidence of probable cause, that petitioner orally described to respondents the items to be seized, and that the search did not exceed the limits intended by the Magistrate and described by petitioner. Thus, petitioner maintains, his search of respondents' ranch was functionally equivalent to a search authorized by a valid warrant.

We disagree. This warrant did not simply omit a few items from a list of many to be seized, or misdescribe a few of several items. Nor did it make what fairly could be characterized as a mere technical mistake or typographical error. Rather, in the space set aside for a description of the items to be seized, the warrant stated that the items consisted of a "single dwelling residence . . . blue in color." In other words, the warrant did not describe the items to be seized *at all*. In this respect the warrant was so obviously deficient that we must regard the search as "warrantless" within the meaning of our case law. See *Leon*, 468 U. S., at 923; cf. *Maryland* v. *Garrison*, 480 U. S. 79, 85 (1987); *Steele* v. *United States*, 267 U. S. 498, 503–504 (1925). "We are not

dealing with formalities." *McDonald*, 335 U. S., at 455. Because "'the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion'" stands "'[a]t the very core' of the Fourth Amendment," *Kyllo* v. *United States*, 533 U. S. 27, 31 (2001) (quoting *Silverman* v. *United States*, 365 U. S. 505, 511 (1961)), our cases have firmly established the "'basic principle of Fourth Amendment law' that searches and seizures inside a home without a warrant are presumptively unreasonable," *Payton* v. *New York*, 445 U. S. 573, 586 (1980) (footnote omitted). Thus, "absent exigent circumstances, a warrantless entry to search for weapons or contraband is unconstitutional even when a felony has been committed and there is probable cause to believe that incriminating evidence will be found within." *Id.*, at 587–588 (footnote omitted). See *Kyllo*, 533 U. S., at 29; *Illinois* v. *Rodriguez*, 497 U. S. 177, 181 (1990); *Chimel* v. *California*, 395 U. S. 752, 761–763 (1969); *McDonald*, 335 U. S., at 454; *Johnson* v. *United States*, 333 U. S. 10 (1948).

We have clearly stated that the presumptive rule against warrantless searches applies with equal force to searches whose only defect is a lack of particularity in the warrant. In *Sheppard*, for instance, the petitioner argued that even though the warrant was invalid for lack of particularity, "the search was constitutional because it was reasonable within the meaning of the Fourth Amendment." 468 U. S., at 988, n. 5. In squarely rejecting that position, we explained:

> "The uniformly applied rule is that a search conducted pursuant to a warrant that fails to conform to the particularity requirement of the Fourth Amendment is unconstitutional. *Stanford* v. *Texas*, 379 U. S. 476 (1965); *United States* v. *Cardwell*, 680 F. 2d 75, 77–78 (CA9 1982); *United States* v. *Crozier*, 674 F. 2d 1293, 1299 (CA9 1982); *United States* v. *Klein*, 565 F. 2d 183, 185 (CA1 1977); *United States* v. *Gardner*, 537 F. 2d 861, 862 (CA6 1976); *United States* v. *Marti*, 421 F. 2d 1263, 1268–

> 1269 (CA2 1970). That rule is in keeping with the well-established principle that 'except in certain carefully defined classes of cases, a search of private property without proper consent is "unreasonable" unless it has been authorized by a valid search warrant.' *Camara* v. *Municipal Court*, 387 U. S. 523, 528–529 (1967). See *Steagald* v. *United States*, 451 U. S. 204, 211–212 (1981); *Jones* v. *United States*, 357 U. S. 493, 499 (1958)." *Ibid.*

Petitioner asks us to hold that a search conducted pursuant to a warrant lacking particularity should be exempt from the presumption of unreasonableness if the goals served by the particularity requirement are otherwise satisfied. He maintains that the search in this case satisfied those goals—which he says are "to prevent general searches, to prevent the seizure of one thing under a warrant describing another, and to prevent warrants from being issued on vague or dubious information," Brief for Petitioner 16—because the scope of the search did not exceed the limits set forth in the application. But unless the particular items described in the affidavit are also set forth in the warrant itself (or at least incorporated by reference, and the affidavit present at the search), there can be no written assurance that the Magistrate actually found probable cause to search for, and to seize, every item mentioned in the affidavit. See *McDonald*, 335 U. S., at 455 ("Absent some grave emergency, the Fourth Amendment has interposed a magistrate between the citizen and the police. This was done . . . so that an objective mind might weigh the need to invade [the citizen's] privacy in order to enforce the law"). In this case, for example, it is at least theoretically possible that the Magistrate was satisfied that the search for weapons and explosives was justified by the showing in the affidavit, but not convinced that any evidentiary basis existed for rummaging through respondents' files and papers for receipts pertaining to the purchase or manufacture of such items. Cf. *Stanford* v. *Texas*, 379 U. S. 476, 485–486 (1965). Or, conceivably, the Magistrate might

have believed that some of the weapons mentioned in the affidavit could have been lawfully possessed and therefore should not be seized. See 26 U. S. C. § 5861 (requiring registration, but not banning possession of, certain firearms). The mere fact that the Magistrate issued a warrant does not necessarily establish that he agreed that the scope of the search should be as broad as the affiant's request. Even though petitioner acted with restraint in conducting the search, "the inescapable fact is that this restraint was imposed by the agents themselves, not by a judicial officer." *Katz* v. *United States*, 389 U. S. 347, 356 (1967).[4]

We have long held, moreover, that the purpose of the particularity requirement is not limited to the prevention of general searches. See *Garrison*, 480 U. S., at 84. A particular warrant also "assures the individual whose property is searched or seized of the lawful authority of the executing officer, his need to search, and the limits of his power to search." *United States* v. *Chadwick*, 433 U. S. 1, 9 (1977) (citing *Camara* v. *Municipal Court of City and County of San Francisco*, 387 U. S. 523, 532 (1967)), abrogated on other grounds, *California* v. *Acevedo*, 500 U. S. 565 (1991). See also *Illinois* v. *Gates*, 462 U. S. 213, 236 (1983) ("[P]ossession

[4] For this reason petitioner's argument that any constitutional error was committed by the Magistrate, not petitioner, is misplaced. In *Massachusetts* v. *Sheppard*, 468 U. S. 981 (1984), we suggested that "the judge, not the police officers," may have committed "[a]n error of constitutional dimension," *id.*, at 990, because the judge had assured the officers requesting the warrant that he would take the steps necessary to conform the warrant to constitutional requirements, *id.*, at 986. Thus, "it was not unreasonable for the police in [that] case to rely on the judge's assurances that the warrant authorized the search they had requested." *Id.*, at 989, n. 6. In this case, by contrast, petitioner did not alert the Magistrate to the defect in the warrant that petitioner had drafted, and we therefore cannot know whether the Magistrate was aware of the scope of the search he was authorizing. Nor would it have been reasonable for petitioner to rely on a warrant that was so patently defective, even if the Magistrate was aware of the deficiency. See *United States* v. *Leon*, 468 U. S. 897, 915, 922, n. 23 (1984).

of a warrant by officers conducting an arrest or search greatly reduces the perception of unlawful or intrusive police conduct").[5]

Petitioner argues that even if the goals of the particularity requirement are broader than he acknowledges, those goals nevertheless were served because he orally described to respondents the items for which he was searching. Thus, he submits, respondents had all of the notice that a proper warrant would have accorded. But this case presents no occasion even to reach this argument, since respondents, as noted above, dispute petitioner's account. According to Mrs. Ramirez, petitioner stated only that he was looking for an "'explosive device in a box.'" 298 F. 3d, at 1026. Because this dispute is before us on petitioner's motion for summary judgment, App. to Pet. for Cert. 13a, "[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in [her] favor," *Anderson* v. *Liberty Lobby, Inc.*, 477 U. S. 242, 255 (1986) (citation omitted). The posture of the case therefore obliges us to credit Mrs. Ramirez's account, and we find that petitioner's description of "'an explo-

[5] It is true, as petitioner points out, that neither the Fourth Amendment nor Rule 41 of the Federal Rules of Criminal Procedure requires the executing officer to serve the warrant on the owner before commencing the search. Rule 41(f)(3) provides that "[t]he officer executing the warrant must: (A) give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken; or (B) leave a copy of the warrant and receipt at the place where the officer took the property." Quite obviously, in some circumstances—a surreptitious search by means of a wiretap, for example, or the search of empty or abandoned premises—it will be impracticable or imprudent for the officers to show the warrant in advance. See *Katz* v. *United States*, 389 U. S. 347, 355, n. 16 (1967); *Ker* v. *California*, 374 U. S. 23, 37–41 (1963). Whether it would be unreasonable to refuse a request to furnish the warrant at the outset of the search when, as in this case, an occupant of the premises is present and poses no threat to the officers' safe and effective performance of their mission, is a question that this case does not present.

sive device in a box'" was little better than no guidance at all. See *Stefonek*, 179 F. 3d, at 1032–1033 (holding that a search warrant for "'evidence of crime'" was "[s]o open-ended" in its description that it could "only be described as a general warrant").

It is incumbent on the officer executing a search warrant to ensure the search is lawfully authorized and lawfully conducted.[6] Because petitioner did not have in his possession a warrant particularly describing the things he intended to seize, proceeding with the search was clearly "unreasonable" under the Fourth Amendment. The Court of Appeals correctly held that the search was unconstitutional.

III

Having concluded that a constitutional violation occurred, we turn to the question whether petitioner is entitled to qualified immunity despite that violation. See *Wilson* v. *Layne*, 526 U. S. 603, 609 (1999). The answer depends on whether the right that was transgressed was "'clearly established'"—that is, "whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Saucier* v. *Katz*, 533 U. S. 194, 202 (2001).

Given that the particularity requirement is set forth in the text of the Constitution, no reasonable officer could believe that a warrant that plainly did not comply with that requirement was valid. See *Harlow* v. *Fitzgerald*, 457 U. S. 800, 818–819 (1982) ("If the law was clearly established, the im-

[6] The Court of Appeals' decision is consistent with this principle. Petitioner mischaracterizes the court's decision when he contends that it imposed a novel proofreading requirement on officers executing warrants. The court held that officers leading a search team must "mak[e] sure that they have a proper warrant that in fact authorizes the search and seizure they are about to conduct." 298 F. 3d 1022, 1027 (CA9 2002). That is not a duty to proofread; it is, rather, a duty to ensure that the warrant conforms to constitutional requirements.

munity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct"). Moreover, because petitioner himself prepared the invalid warrant, he may not argue that he reasonably relied on the Magistrate's assurance that the warrant contained an adequate description of the things to be seized and was therefore valid. Cf. *Sheppard*, 468 U. S., at 989–990. In fact, the guidelines of petitioner's own department placed him on notice that he might be liable for executing a manifestly invalid warrant. An ATF directive in force at the time of this search warned: "Special agents are liable if they exceed their authority while executing a search warrant and must be sure that a search warrant is sufficient on its face even when issued by a magistrate." Searches and Examinations, ATF Order O 3220.1(7)(d) (Feb. 13, 1997). See also *id.*, at 3220.1(23)(b) ("If any error or deficiency is discovered and there is a reasonable probability that it will invalidate the warrant, such warrant shall not be executed. The search shall be postponed until a satisfactory warrant has been obtained").[7] And even a cursory reading of the warrant in this case—perhaps just a simple glance—would have revealed a glaring deficiency that any reasonable police officer would have known was constitutionally fatal.

No reasonable officer could claim to be unaware of the basic rule, well established by our cases, that, absent consent or exigency, a warrantless search of the home is presumptively unconstitutional. See *Payton*, 445 U. S., at 586–588. Indeed, as we noted nearly 20 years ago in *Sheppard:* "The uniformly applied rule is that a search conducted pursuant to a warrant that fails to conform to the particularity requirement of the Fourth Amendment is unconstitutional."

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[7] We do not suggest that an official is deprived of qualified immunity whenever he violates an internal guideline. We refer to the ATF Order only to underscore that petitioner should have known that he should not execute a patently defective warrant.

468 U. S., at 988, n. 5.[8] Because not a word in any of our cases would suggest to a reasonable officer that this case fits within any exception to that fundamental tenet, petitioner is asking us, in effect, to craft a new exception. Absent any support for such an exception in our cases, he cannot reasonably have relied on an expectation that we would do so.

Petitioner contends that the search in this case was the product, at worst, of a lack of due care, and that our case law requires more than negligent behavior before depriving an official of qualified immunity. See *Malley* v. *Briggs*, 475 U. S. 335, 341 (1986). But as we observed in the companion case to *Sheppard*, "a warrant may be so facially deficient—*i. e.*, in failing to particularize the place to be searched or the things to be seized—that the executing officers cannot reasonably presume it to be valid." *Leon*, 468 U. S., at 923. This is such a case.[9]

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[8] Although both *Sheppard* and *Leon* involved the application of the "good faith" exception to the Fourth Amendment's general exclusionary rule, we have explained that "the same standard of objective reasonableness that we applied in the context of a suppression hearing in *Leon* defines the qualified immunity accorded an officer." *Malley* v. *Briggs*, 475 U. S. 335, 344 (1986) (citation omitted).

[9] JUSTICE KENNEDY argues in dissent that we have not allowed "'ample room for mistaken judgments,'" *post*, at 571 (quoting *Malley*, 475 U. S., at 343), because "difficult and important tasks demand the officer's full attention in the heat of an ongoing and often dangerous criminal investigation," *post*, at 568. In this case, however, petitioner does not contend that any sort of exigency existed when he drafted the affidavit, the warrant application, and the warrant, or when he conducted the search. This is not the situation, therefore, in which we have recognized that "officers in the dangerous and difficult process of making arrests and executing search warrants" require "some latitude." *Maryland* v. *Garrison*, 480 U. S. 79, 87 (1987).

Nor are we according "the correctness of paper forms" a higher status than "substantive rights." *Post*, at 571. As we have explained, the Fourth Amendment's particularity requirement assures the subject of the search that a magistrate has duly authorized the officer to conduct a search of limited scope. This substantive right is not protected when the officer fails to take the time to glance at the authorizing document and

Accordingly, the judgment of the Court of Appeals is affirmed.

It is so ordered.

JUSTICE KENNEDY, with whom THE CHIEF JUSTICE joins, dissenting.

I agree with the Court that the Fourth Amendment was violated in this case. The Fourth Amendment states that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." The warrant issued in this case did not particularly describe the things to be seized, and so did not comply with the Fourth Amendment. I disagree with the Court on whether the officer who obtained the warrant and led the search team is entitled to qualified immunity for his role in the search. In my view, the officer should receive qualified immunity.

An officer conducting a search is entitled to qualified immunity if "a reasonable officer could have believed" that the search was lawful "in light of clearly established law and the information the searching officers possessed." *Anderson* v. *Creighton*, 483 U. S. 635, 641 (1987). As the Court notes, this is the same objective reasonableness standard applied under the "'good faith'" exception to the exclusionary rule. See *ante*, at 565, n. 8 (citing *Malley* v. *Briggs*, 475 U. S. 335, 344 (1986)). The central question is whether someone in the officer's position could reasonably but mistakenly conclude that his conduct complied with the Fourth Amendment. *Creighton*, *supra*, at 641. See also *Saucier* v. *Katz*, 533 U. S. 194, 206 (2001); *Hunter* v. *Bryant*, 502 U. S. 224, 227 (1991) *(per curiam)*.

An officer might reach such a mistaken conclusion for several reasons. He may be unaware of existing law and how it should be applied. See, *e. g.*, *Saucier*, *supra*. Alter-

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detect a glaring defect that JUSTICE KENNEDY agrees is of constitutional magnitude, *post* this page.

natively, he may misunderstand important facts about the search and assess the legality of his conduct based on that misunderstanding. See, *e. g.*, *Arizona* v. *Evans*, 514 U. S. 1 (1995). Finally, an officer may misunderstand elements of both the facts and the law. See, *e. g.*, *Creighton*, *supra.* Our qualified immunity doctrine applies regardless of whether the officer's error is a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact. *Butz* v. *Economou*, 438 U. S. 478, 507 (1978) (noting that qualified immunity covers "mere mistakes in judgment, whether the mistake is one of fact or one of law").

The present case involves a straightforward mistake of fact. Although the Court does not acknowledge it directly, it is obvious from the record below that the officer simply made a clerical error when he filled out the proposed warrant and offered it to the Magistrate Judge. The officer used the proper description of the property to be seized when he completed the affidavit. He also used the proper description in the accompanying application. When he typed up the description a third time for the proposed warrant, however, the officer accidentally entered a description of the place to be searched in the part of the warrant form that called for a description of the property to be seized. No one noticed the error before the search was executed. Although the record is not entirely clear on this point, the mistake apparently remained undiscovered until the day after the search when respondents' attorney reviewed the warrant for defects. The officer, being unaware of his mistake, did not rely on it in any way. It is uncontested that the officer trained the search team and executed the warrant based on his mistaken belief that the warrant contained the proper description of the items to be seized.

The question is whether the officer's mistaken belief that the warrant contained the proper language was a reasonable belief. In my view, it was. A law enforcement officer charged with leading a team to execute a search warrant for

illegal weapons must fulfill a number of serious responsibilities. The officer must establish probable cause to believe the crime has been committed and that evidence is likely to be found at the place to be searched; must articulate specific items that can be seized, and a specific place to be searched; must obtain the warrant from a magistrate judge; and must instruct a search team to execute the warrant within the time allowed by the warrant. The officer must also oversee the execution of the warrant in a way that protects officer safety, directs a thorough and professional search for the evidence, and avoids unnecessary destruction of property. These difficult and important tasks demand the officer's full attention in the heat of an ongoing and often dangerous criminal investigation.

An officer who complies fully with all of these duties can be excused for not being aware that he had made a clerical error in the course of filling out the proposed warrant. See *Maryland* v. *Garrison*, 480 U. S. 79, 87 (1987) (recognizing "the need to allow some latitude for honest mistakes that are made by officers in the dangerous and difficult process of making arrests and executing search warrants"). An officer who drafts an affidavit, types up an application and proposed warrant, and then obtains a judge's approval naturally assumes that he has filled out the warrant form correctly. Even if the officer checks over the warrant, he may very well miss a mistake. We all tend toward myopia when looking for our own errors. Every lawyer and every judge can recite examples of documents that they wrote, checked, and doublechecked, but that still contained glaring errors. Law enforcement officers are no different. It would be better if the officer recognizes the error, of course. It would be better still if he does not make the mistake in the first place. In the context of an otherwise proper search, however, an officer's failure to recognize his clerical error on a warrant form can be a reasonable mistake.

The Court reaches a different result by construing the officer's error as a mistake of law rather than a mistake of fact. According to the Court, the officer should not receive qualified immunity because "no reasonable officer could believe that a warrant that plainly did not comply with [the particularity] requirement was valid." *Ante*, at 563. The majority is surely right that a reasonable officer must know that a defective warrant is invalid. This much is obvious, if not tautological. It is also irrelevant, for the essential question here is whether a reasonable officer in petitioner's position would necessarily know that the warrant had a clerical error in the first place. The issue in this case is whether an officer can reasonably fail to recognize a clerical error, not whether an officer who recognizes a clerical error can reasonably conclude that a defective warrant is legally valid.

The Court gives little attention to this important and difficult question. It receives only two sentences at the very end of the Court's opinion. In the first sentence, the Court quotes dictum from *United States* v. *Leon*, 468 U. S. 897, 923 (1984), to the effect that "'a warrant may be so facially deficient—*i. e.*, in failing to particularize the place to be searched or the things to be seized—that the executing officers cannot reasonably presume it to be valid.'" *Ante*, at 565. In the second sentence, the Court informs us without explanation that "[t]his is such a case." *Ibid.* This reasoning is not convincing.

To understand the passage from *Leon* that the Court relies upon, it helps to recognize that most challenges to defective search warrants arise when officers rely on the defect and conduct a search that should not have occurred. The target of the improper search then brings a civil action challenging the improper search, or, if charges have been filed, moves to suppress the fruits of the search. The inquiry in both instances is whether the officers' reliance on the defect was reasonable. See, *e. g.*, *Garrison*, *supra* (apartment wrongly searched because the searching officers did not realize that

there were two apartments on the third floor and obtained a warrant to search the entire floor); *Arizona* v. *Evans*, 514 U. S. 1 (1995) (person wrongly arrested and searched because a court employee's clerical error led officer to believe a warrant existed for person's arrest); *McCleary* v. *Navarro*, 504 U. S. 966 (1992) (White, J., dissenting from denial of certiorari) (house wrongly searched because informant told officers the suspect lived in the second house on the right, but the suspect lived in the third house on the right).

The language the Court quotes from *Leon* comes from a discussion of when "an officer [who] has obtained a [defective] warrant and abided by its terms" has acted reasonably. 468 U. S., at 922. The discussion notes that there are some cases in which "no reasonably well trained officer should rely on the warrant." *Id.*, at 923. The passage also includes several examples, among them the one that the Court relies on in this case: "[D]epending on the circumstances of the particular case, a warrant may be so facially deficient—*i.e.*, in failing to particularize the place to be searched or the things to be seized—that the executing officers cannot reasonably presume it to be valid." *Ibid.*

The Court interprets this language to mean that a clerical mistake can be so obvious that an officer who fails to recognize the mistake should not receive qualified immunity. Read in context, however, the quoted language is addressed to a quite different issue. The most natural interpretation of the language is that a clerical mistake can be so obvious that the officer cannot reasonably rely on the mistake in the course of executing the warrant. In other words, a defect can be so clear that an officer cannot reasonably "abid[e] by its terms" and execute the warrant as written. *Id.*, at 922.

We confront no such issue here, of course. No one suggests that the officer reasonably could have relied on the defective language in the warrant. This is a case about an officer being unaware of a clerical error, not a case about an officer relying on one. The respondents do not make the

usual claim that they were injured by a defect that led to an improper search. Rather, they make an unusual claim that they were injured simply because the warrant form did not contain the correct description of the property to be seized, even though no property was seized. The language from *Leon* is not on point.

Our Court has stressed that "the purpose of encouraging recourse to the warrant procedure" can be served best by rejecting overly technical standards when courts review warrants. *Illinois* v. *Gates*, 462 U. S. 213, 237 (1983). We have also stressed that qualified immunity "provides ample protection to all but the plainly incompetent or those who knowingly violate the law." *Malley*, 475 U. S., at 341. The Court's opinion is inconsistent with these principles. Its analysis requires our Nation's police officers to concentrate more on the correctness of paper forms than substantive rights. The Court's new "duty to ensure that the warrant conforms to constitutional requirements" sounds laudable, *ante*, at 563, n. 6, but would be more at home in a regime of strict liability than within the "ample room for mistaken judgments" that our qualified immunity jurisprudence traditionally provides, *Malley*, *supra*, at 343.

For these reasons, I dissent.

JUSTICE THOMAS, with whom JUSTICE SCALIA joins, and with whom THE CHIEF JUSTICE joins as to Part III, dissenting.

The Fourth Amendment provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." The precise relationship between the Amendment's Warrant Clause and Unreasonableness Clause is unclear. But neither Clause explicitly requires a warrant.

While "it is of course textually possible to consider [a warrant requirement] implicit within the requirement of reasonableness," *California* v. *Acevedo*, 500 U. S. 565, 582 (1991) (SCALIA, J., concurring in judgment), the text of the Fourth Amendment certainly does not mandate this result. Nor does the Amendment's history, which is clear as to the Amendment's principal target (general warrants), but not as clear with respect to when warrants were required, if ever. Indeed, because of the very different nature and scope of federal authority and ability to conduct searches and arrests at the founding, it is possible that neither the history of the Fourth Amendment nor the common law provides much guidance.

As a result, the Court has vacillated between imposing a categorical warrant requirement and applying a general reasonableness standard. Compare *Thompson* v. *Louisiana*, 469 U. S. 17, 20 (1984) *(per curiam)*, with *United States* v. *Rabinowitz*, 339 U. S. 56, 65 (1950). The Court has most frequently held that warrantless searches are presumptively unreasonable, see, *e. g.*, *Katz* v. *United States*, 389 U. S. 347, 357 (1967); *Payton* v. *New York*, 445 U. S. 573, 583 (1980), but has also found a plethora of exceptions to presumptive unreasonableness, see, *e. g.*, *Chimel* v. *California*, 395 U. S. 752, 762–763 (1969) (searches incident to arrest); *United States* v. *Ross*, 456 U. S. 798, 800 (1982) (automobile searches); *United States* v. *Biswell*, 406 U. S. 311, 315–317 (1972) (searches of "pervasively regulated" businesses); *Camara* v. *Municipal Court of City and County of San Francisco*, 387 U. S. 523, 534–539 (1967) (administrative searches); *Warden, Md. Penitentiary* v. *Hayden*, 387 U. S. 294, 298 (1967) (exigent circumstances); *California* v. *Carney*, 471 U. S. 386, 390–394 (1985) (mobile home searches); *Illinois* v. *Lafayette*, 462 U. S. 640, 648 (1983) (inventory searches); *Almeida-Sanchez* v. *United States*, 413 U. S. 266, 272 (1973) (border searches). That is, our cases stand for

the illuminating proposition that warrantless searches are *per se* unreasonable, except, of course, when they are not.

Today the Court holds that the warrant in this case was "so obviously deficient" that the ensuing search must be regarded as a warrantless search and thus presumptively unreasonable. *Ante*, at 558–559. However, the text of the Fourth Amendment, its history, and the sheer number of exceptions to the Court's categorical warrant requirement seriously undermine the bases upon which the Court today rests its holding. Instead of adding to this confusing jurisprudence, as the Court has done, I would turn to first principles in order to determine the relationship between the Warrant Clause and the Unreasonableness Clause. But even within the Court's current framework, a search conducted pursuant to a defective warrant is constitutionally different from a "warrantless search." Consequently, despite the defective warrant, I would still ask whether this search was unreasonable and would conclude that it was not. Furthermore, even if the Court were correct that this search violated the Constitution (and in particular, respondents' Fourth Amendment rights), given the confused state of our Fourth Amendment jurisprudence and the reasonableness of petitioner's actions, I cannot agree with the Court's conclusion that petitioner is not entitled to qualified immunity. For these reasons, I respectfully dissent.

I

"[A]ny Fourth Amendment case may present two separate questions: whether the search was conducted pursuant to a warrant issued in accordance with the second Clause, and, if not, whether it was nevertheless 'reasonable' within the meaning of the first." *United States* v. *Leon*, 468 U. S. 897, 961 (1984) (STEVENS, J., dissenting). By categorizing the search here to be a "warrantless" one, the Court declines to perform a reasonableness inquiry and ignores the fact that this search is quite different from searches that the Court has considered to be "warrantless" in the past. Our cases

involving "warrantless" searches do not generally involve situations in which an officer has obtained a warrant that is later determined to be facially defective, but rather involve situations in which the officers neither sought nor obtained a warrant. See, *e. g.*, *Anderson* v. *Creighton*, 483 U. S. 635 (1987) (officer entitled to qualified immunity despite conducting a warrantless search of respondents' home in the mistaken belief that a robbery suspect was hiding there); *Payton* v. *New York*, *supra* (striking down a New York statute authorizing the warrantless entry into a private residence to make a routine felony arrest). By simply treating this case as if no warrant had even been sought or issued, the Court glosses over what should be the key inquiry: whether it is always appropriate to treat a search made pursuant to a warrant that fails to describe particularly the things to be seized as presumptively unreasonable.

The Court bases its holding that a defect in the particularity of the warrant by itself renders a search "warrantless" on a citation of a single footnote in *Massachusetts* v. *Sheppard*, 468 U. S. 981 (1984). In *Sheppard*, the Court, after noting that "the sole issue . . . in th[e] case is whether the officers reasonably believed that the search they conducted was authorized by a valid warrant," *id.*, at 988, rejected the petitioner's argument that despite the invalid warrant, the otherwise reasonable search was constitutional, *id.*, at 988, n. 5. The Court recognized that under its case law a reasonableness inquiry would be appropriate if one of the exceptions to the warrant requirement applied. But the Court declined to consider whether such an exception applied and whether the search actually violated the Fourth Amendment because that question presented merely a "fact-bound issue of little importance." *Ibid.* Because the Court in *Sheppard* did not conduct any sort of inquiry into whether a Fourth Amendment violation actually occurred, it is clear that the Court assumed a violation for the purposes of its analysis. Rather than rely on dicta buried in a footnote in

Sheppard, the Court should actually analyze the arguably dispositive issue in this case.

The Court also rejects the argument that the details of the warrant application and affidavit save the warrant, because "'[t]he presence of a search warrant serves a high function.'" *Ante*, at 557 (quoting *McDonald* v. *United States*, 335 U. S. 451, 455 (1948)). But it is not only the physical existence of the warrant and its typewritten contents that serve this high function. The Warrant Clause's principal protection lies in the fact that the "'Fourth Amendment has interposed a magistrate between the citizen and the police . . . so that an objective mind might weigh the need to invade [the searchee's] privacy in order to enforce the law.'" *Ante*, at 560. The Court has further explained:

> "The point of the Fourth Amendment . . . is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime. Any assumption that evidence sufficient to support a magistrate's disinterested determination to issue a search warrant will justify the officers in making a search without a warrant would reduce the Amendment to a nullity and leave the people's homes secure only in the discretion of police officers. . . . When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or government enforcement agent." *Johnson* v. *United States*, 333 U. S. 10, 13–14 (1948) (footnotes omitted).

But the actual contents of the warrant are simply manifestations of this protection. Hence, in contrast to the case of a truly warrantless search, where a warrant (due to a mistake) does not specify on its face the particular items to be seized

but the warrant application passed on by the magistrate judge contains such details, a searchee still has the benefit of a determination by a neutral magistrate that there is probable cause to search a particular place and to seize particular items. In such a circumstance, the principal justification for applying a rule of presumptive unreasonableness falls away.

In the instant case, the items to be seized were clearly specified in the warrant application and set forth in the affidavit, both of which were given to the Judge (Magistrate). The Magistrate reviewed all of the documents and signed the warrant application and made no adjustment or correction to this application. It is clear that respondents here received the protection of the Warrant Clause, as described in *Johnson* and *McDonald*. Under these circumstances, I would not hold that any ensuing search constitutes a presumptively unreasonable warrantless search. Instead, I would determine whether, despite the invalid warrant, the resulting search was reasonable and hence constitutional.

II

Because the search was not unreasonable, I would conclude that it was constitutional. Prior to execution of the warrant, petitioner briefed the search team and provided a copy of the search warrant application, the supporting affidavit, and the warrant for the officers to review. Petitioner orally reviewed the terms of the warrant with the officers, including the specific items for which the officers were authorized to search. Petitioner and his search team then conducted the search entirely within the scope of the warrant application and warrant; that is, within the scope of what the Magistrate had authorized. Finding no illegal weapons or explosives, the search team seized nothing. 298 F. 3d 1022, 1025 (CA9 2002). When petitioner left, he gave respondents a copy of the search warrant. Upon request the next day, petitioner faxed respondents a copy of the more detailed

warrant application. Indeed, putting aside the technical defect in the warrant, it is hard to imagine how the actual search could have been carried out any more reasonably.

The Court argues that this eminently reasonable search is nonetheless unreasonable because "there can be no written assurance that the Magistrate actually found probable cause to search for, and to seize, every item mentioned in the affidavit" "unless the particular items described in the affidavit are also set forth in the warrant itself." *Ante*, at 560. The Court argues that it was at least possible that the Magistrate intended to authorize a much more limited search than the one petitioner requested. *Ante*, at 560–561. As a theoretical matter, this may be true. But the more reasonable inference is that the Magistrate intended to authorize everything in the warrant application, as he signed the application and did not make any written adjustments to the application or the warrant itself.

The Court also attempts to bolster its focus on the faulty warrant by arguing that the purpose of the particularity requirement is not only to prevent general searches, but also to assure the searchee of the lawful authority for the search. *Ante*, at 561. But as the Court recognizes, neither the Fourth Amendment nor Federal Rule of Criminal Procedure 41 requires an officer to serve the warrant on the searchee before the search. *Ante*, at 562, n. 5. Thus, a search should not be considered *per se* unreasonable for failing to apprise the searchee of the lawful authority prior to the search, especially where, as here, the officer promptly provides the requisite information when the defect in the papers is detected. Additionally, unless the Court adopts the Court of Appeals' view that the Constitution protects a searchee's ability to "be on the lookout and to challenge officers," while the officers are actually carrying out the search, 298 F. 3d, at 1027, petitioner's provision of the requisite information the following day is sufficient to satisfy this interest.

III

Even assuming a constitutional violation, I would find that petitioner is entitled to qualified immunity. The qualified immunity inquiry rests on "the 'objective legal reasonableness' of the action, *Harlow* [v. *Fitzgerald*, 457 U. S. 800, 819 (1982)], assessed in light of the legal rules that were 'clearly established' at the time it was taken." *Anderson* v. *Creighton*, 483 U. S., at 639. The outcome of this inquiry "depends substantially upon the level of generality at which the relevant 'legal rule' is . . . identified. For example, the right to due process of law is quite clearly established by the Due Process Clause, and thus there is a sense in which any action that violates that Clause . . . violates a clearly established right." *Ibid.* To apply the standard at such a high level of generality would allow plaintiffs "to convert the rule of qualified immunity . . . into a rule of virtually unqualified liability simply by alleging violation of extremely abstract rights." *Ibid.* The Court in *Anderson* criticized the Court of Appeals for considering the qualified immunity question only in terms of the petitioner's "right to be free from warrantless searches of one's home unless the searching officers have probable cause and there are exigent circumstances." *Id.*, at 640. The Court of Appeals should have instead considered "the objective (albeit fact-specific) question whether a reasonable officer could have believed Anderson's warrantless search to be lawful, in light of clearly established law and the information the searching officers possessed." *Id.*, at 641.

The Court errs not only by defining the question at too high a level of generality but also by assessing the question without regard to the relevant circumstances. Even if it were true that no reasonable officer could believe that a search of a home pursuant to a warrant that fails the particularity requirement is lawful absent exigent circumstances—a proposition apparently established by dicta buried in a footnote in *Sheppard*—petitioner did not know when he car-

ried out the search that the search warrant was invalid—let alone legally nonexistent. Petitioner's entitlement to qualified immunity, then, turns on whether his belief that the search warrant was valid was objectively reasonable. Petitioner's belief surely was reasonable.

The Court has stated that "depending on the circumstances of the particular case, a warrant may be so facially deficient . . . that the executing officers cannot reasonably presume it to be valid." *United States* v. *Leon*, 468 U. S., at 923. This language makes clear that this exception to *Leon*'s good-faith exception does not apply in every circumstance. And the Court does not explain why it should apply here. As an initial matter, the Court does not even argue that the fact that petitioner made a mistake in preparing the warrant was objectively unreasonable, nor could it. Given the sheer number of warrants prepared and executed by officers each year, combined with the fact that these same officers also prepare detailed and sometimes somewhat comprehensive documents supporting the warrant applications, it is inevitable that officers acting reasonably and entirely in good faith will occasionally make such errors.

The only remaining question is whether petitioner's failure to notice the defect was objectively unreasonable. The Court today points to no cases directing an officer to proofread a warrant after it has been passed on by a neutral magistrate, where the officer is already fully aware of the scope of the intended search and the magistrate gives no reason to believe that he has authorized anything other than the requested search. Nor does the Court point to any case suggesting that where the same officer both prepares and executes the invalid warrant, he can never rely on the magistrate's assurance that the warrant is proper. Indeed, in *Massachusetts* v. *Sheppard*, 468 U. S. 981 (1984), the Court suggested that although an officer who is not involved in the warrant application process would normally read the issued warrant to determine the object of the search, an executing

officer who is also the affiant might not need to do so. *Id.*, at 989, n. 6.

Although the Court contends that it does not impose a proofreading requirement upon officers executing warrants, *ante*, at 563, n. 6, I see no other way to read its decision, particularly where, as here, petitioner could have done nothing more to ensure the reasonableness of his actions than to proofread the warrant. After receiving several allegations that respondents possessed illegal firearms and explosives, petitioner prepared an application for a warrant to search respondents' ranch, along with a supporting affidavit detailing the history of allegations against respondents, petitioner's investigation into these allegations, and petitioner's verification of the sources of the allegations. Petitioner properly filled out the warrant application, which described both the place to be searched and the things to be seized, and obtained the Magistrate's signature on both the warrant application and the warrant itself. Prior to execution of the warrant, petitioner briefed the search team to ensure that each officer understood the limits of the search. Petitioner and his search team then executed the warrant within those limits. And when the error in the search warrant was discovered, petitioner promptly faxed the missing information to respondents. In my view, petitioner's actions were objectively reasonable, and thus he should be entitled to qualified immunity.

For the foregoing reasons, I respectfully dissent.

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GENERAL DYNAMICS LAND SYSTEMS, INC. *v.* CLINE ET AL.

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

No. 02–1080. Argued November 12, 2003—Decided February 24, 2004

A collective-bargaining agreement between petitioner company and a union eliminated the company's obligation to provide health benefits to subsequently retired employees, except as to then-current workers at least 50 years old. Respondent employees (collectively, Cline)—who were then at least 40 and thus protected by the Age Discrimination in Employment Act of 1967 (ADEA), but under 50 and so without promise of the benefits—claimed before the Equal Employment Opportunity Commission (EEOC) that the agreement violated the ADEA because it "discriminate[d against them] . . . because of [their] age," 29 U. S. C. § 623(a)(1). The EEOC agreed, and invited the company and the union to settle informally with Cline. When they failed, Cline brought this action under the ADEA and state law. The District Court dismissed, calling the federal claim one of "reverse age discrimination" upon which no court had ever granted relief under the ADEA, and relying on a Seventh Circuit decision holding that the ADEA does not protect younger workers *against* older workers. The Sixth Circuit reversed, reasoning that § 623(a)(1)'s prohibition of discrimination is so clear on its face that if Congress had meant to limit its coverage to protect only the older worker against the younger, it would have said so. The court acknowledged that its ruling conflicted with earlier cases, but criticized those decisions for paying too much attention to the general language of Congress's ADEA findings. The court also drew support from the EEOC's position in an interpretive regulation.

Held: The ADEA's text, structure, purpose, history, and relationship to other federal statutes show that the statute does not mean to stop an employer from favoring an older employee over a younger one. Pp. 586–600.

1. The ADEA's prohibition covers "discriminat[ion] . . . because of [an] individual's age" that helps the younger by hurting the older. In the abstract, that phrase is open to the broader construction that it also prohibits favor for the old over the young, since § 623(a)(1)'s reference to "age" carries no express modifier, and the word could be read to look two ways. This more expansive possible understanding does not, however, square with the natural reading of the whole provision prohib-

iting discrimination. In fact Congress's interpretive clues speak almost unanimously to an understanding of discrimination as directed against workers who are older than the ones getting treated better. The ADEA's prefatory finding and purpose provisions and their legislative history make a case to this effect that is beyond reasonable doubt. Nor is it remarkable that the record is devoid of any evidence that younger workers were suffering at their elders' expense, let alone that a social problem required a federal statute to place a younger worker in parity with an older one. The ADEA's restriction of the protected class to those 40 and above confirms this interpretation. If Congress had been worrying about protecting the younger against the older, it would not likely have ignored everyone under 40. The federal case reports are as replete with decisions taking this position as they are nearly devoid of decisions like the one under review. While none of this Court's cases directly addresses the question presented here, all of them show the Court's consistent understanding that the text, structure, and history point to the ADEA as a remedy for unfair preference based on relative youth, leaving complaints of the relatively young outside the statutory concern. See, *e. g.*, *Hazen Paper Co.* v. *Biggins*, 507 U. S. 604, 610. The very strength of this consensus is enough to rule out any serious claim of ambiguity, and congressional silence after years of judicial interpretation supports adherence to that view. Pp. 586–594.

2. This Court rejects the three rejoinders proffered by Cline and *amicus* EEOC in favor of their view that the statutory age discrimination prohibition works both ways. Pp. 594–600.

(a) The argument that, because other instances of "age" in the ADEA are not limited to old age, § 623(a)(1)'s "discriminat[ion] . . . because of [an] individual's age" phrase means treatment that would not have occurred if the individual's span of years had been either longer or shorter, rests on two mistakes. First, it erroneously assumes that the word "age" has the same meaning wherever the ADEA uses it. The presumption that identical words in different parts of the same Act are intended to have the same meaning, see, *e. g.*, *Atlantic Cleaners & Dyers, Inc.* v. *United States*, 286 U. S. 427, 433, is not rigid and readily yields where, as here, there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the Act with different intent, *e. g.*, *ibid.* Second, the argument for uniform usage ignores the cardinal rule that statutory language must be read in context since a phrase gathers meaning from the words around it. *E. g.*, *Jones* v. *United States*, 527 U. S. 373, 389. Social history emphatically reveals an understanding of age discrimination as aimed against the old, and the statutory reference to age discrimination in this idiomatic sense is confirmed by legislative

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history. For the very reason that reference to context shows that "age" means "old age" when teamed with "discrimination," § 623(f)'s provision of an affirmative defense when age is a bona fide occupational qualification readily shows that "age" as a qualification means comparative youth. As context shows that "age" means one thing in § 623(a)(1) and another in § 623(f), so it also demonstrates that the presumption of uniformity cannot sensibly operate here. Pp. 594–598.

(b) Cline's and the EEOC's second argument—that their view is supported by a colloquy on the Senate floor involving an ADEA sponsor—has more substance than the first, but is still not enough to unsettle this Court's holding. Senator Yarborough's view is the only item in all the ADEA hearings, reports, and debates that goes against the grain of the common understanding of age discrimination. Even from a sponsor, a single outlying statement cannot stand against a tide of context and history, not to mention 30 years of judicial interpretation producing no apparent legislative qualms. Pp. 598–599.

(c) Finally, the argument that the Court owes deference to the EEOC's contrary reading falls short because the EEOC is clearly wrong. Even for an agency able to claim all the authority possible under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, deference to its statutory interpretation is called for only when the devices of judicial construction have been tried and found to yield no clear sense of congressional intent, *e. g., INS* v. *Cardoza-Fonseca*, 480 U. S. 421, 446. Here, regular interpretive method leaves no serious question. The word "age" takes on a definite meaning from being in the phrase "discriminat[ion] . . . because of such individual's age," occurring as that phrase does in a statute structured and manifestly intended to protect the older from arbitrary favor for the younger. Pp. 599–600.

296 F. 3d 466, reversed.

SOUTER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O'CONNOR, GINSBURG, and BREYER, JJ., joined. SCALIA, J., filed a dissenting opinion, *post*, p. 601. THOMAS, J., filed a dissenting opinion, in which KENNEDY, J., joined, *post*, p. 602.

Donald B. Verrilli, Jr., argued the cause for petitioner. With him on the briefs were *Deanne E. Maynard*, *William J. Kilberg*, and *Craig C. Martin.*

Mark W. Biggerman argued the cause for respondents. With him on the brief were *Erin Stottlemyer Gold*, *E. Bruce Hadden*, and *Joanne C. Brant.*

Acting Solicitor General Clement argued the cause for the United States et al. as *amici curiae* urging affirmance. With him on the brief were *Irving L. Gornstein*, *Carolyn L. Wheeler*, *Lorraine C. Davis*, *Robert J. Gregory*, and *Susan R. Oxford.**

JUSTICE SOUTER delivered the opinion of the Court.

The Age Discrimination in Employment Act of 1967 (ADEA or Act), 81 Stat. 602, 29 U. S. C. § 621 *et seq.*, forbids discriminatory preference for the young over the old. The question in this case is whether it also prohibits favoring the old over the young. We hold it does not.

I

In 1997, a collective-bargaining agreement between petitioner General Dynamics and the United Auto Workers eliminated the company's obligation to provide health benefits to subsequently retired employees, except as to then-current workers at least 50 years old. Respondents (collectively, Cline) were then at least 40 and thus protected by the Act, see 29 U. S. C. § 631(a), but under 50 and so without promise of the benefits. All of them objected to the new terms, although some had retired before the change in order to get

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*Briefs of *amici curiae* urging reversal were filed for AARP by *Laurie A. McCann*, *Daniel B. Kohrman*, and *Melvin Radowitz;* for the American Federation of Labor and Congress of Industrial Organizations et al. by *Jonathan P. Hiatt*, *James B. Coppess*, *Daniel W. Sherrick*, *Michael F. Saggau*, and *Laurence Gold;* for the Central States, Southeast and Southwest Areas Health and Welfare Fund by *Thomas C. Nyhan*, *James P. Condon*, and *John J. Franczyk*, *Jr.;* for the Equal Employment Advisory Council et al. by *Ann Elizabeth Reesman*, *Daniel V. Yager*, *Katherine Y. K. Cheung*, *Stephen A. Bokat*, *Robin S. Conrad*, and *Ellen Dunham Bryant;* for the ERISA Industry Committee by *Caroline M. Brown* and *John M. Vine;* and for the National Education Association by *Robert H. Chanin*, *John M. West*, and *Douglas L. Greenfield.*

the prior advantage, some retired afterwards with no benefit, and some worked on, knowing the new contract would give them no health coverage when they were through.

Before the Equal Employment Opportunity Commission (EEOC or Commission) they claimed that the agreement violated the ADEA, because it "discriminate[d against them] . . . with respect to . . . compensation, terms, conditions, or privileges of employment, because of [their] age," § 623(a)(1). The EEOC agreed, and invited General Dynamics and the union to settle informally with Cline.

When they failed, Cline brought this action against General Dynamics, combining claims under the ADEA and state law. The District Court called the federal claim one of "reverse age discrimination," upon which, it observed, no court had ever granted relief under the ADEA. 98 F. Supp. 2d 846, 848 (ND Ohio 2000). It dismissed in reliance on the Seventh Circuit's opinion in *Hamilton* v. *Caterpillar Inc.*, 966 F. 2d 1226 (1992), that "the ADEA 'does not protect . . . the younger *against* the older,'" *id.*, at 1227 (quoting *Karlen* v. *City Colleges of Chicago*, 837 F. 2d 314, 318 (CA7), cert. denied *sub nom. Teachers* v. *City Colleges of Chicago*, 486 U. S. 1044 (1988)).

A divided panel of the Sixth Circuit reversed, 296 F. 3d 466 (2002), with the majority reasoning that the prohibition of § 623(a)(1), covering discrimination against "any individual . . . because of such individual's age," is so clear on its face that if Congress had meant to limit its coverage to protect only the older worker against the younger, it would have said so. *Id.*, at 472. The court acknowledged the conflict of its ruling with earlier cases, including *Hamilton* and *Schuler* v. *Polaroid Corp.*, 848 F. 2d 276 (1988) (opinion of Breyer, J.), from the First Circuit, but it criticized the cases going the other way for paying too much attention to the "hortatory, generalized language" of the congressional findings incorporated in the ADEA. 296 F. 3d, at 470. The Sixth Circuit

drew support for its view from the position taken by the EEOC in an interpretive regulation.[1] *Id.*, at 471.

Judge Cole, concurring, saw the issue as one of plain meaning that produced no absurd result, although he acknowledged a degree of tension with *O'Connor* v. *Consolidated Coin Caterers Corp.*, 517 U. S. 308 (1996), in which this Court spoke of age discrimination as giving better treatment to a "'substantially younger'" worker. 296 F. 3d, at 472. Judge Williams dissented in preference for *Hamilton* and the consensus of the federal courts, thinking it "obvious that the older a person is, the greater his or her needs become." 296 F. 3d, at 476.

We granted certiorari to resolve the conflict among the Circuits, 538 U. S. 976 (2003), and now reverse.

II

The common ground in this case is the generalization that the ADEA's prohibition covers "discriminat[ion] . . . because of [an] individual's age," 29 U. S. C. § 623(a)(1), that helps the younger by hurting the older. In the abstract, the phrase is open to an argument for a broader construction, since reference to "age" carries no express modifier and the word could be read to look two ways. This more expansive possible understanding does not, however, square with the natural reading of the whole provision prohibiting discrimination, and in fact Congress's interpretive clues speak almost unanimously to an understanding of discrimination as directed against workers who are older than the ones getting treated better.

Congress chose not to include age within discrimination forbidden by Title VII of the Civil Rights Act of 1964, § 715,

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[1] 29 CFR § 1625.2(a) (2003) ("[I]f two people apply for the same position, and one is 42 and the other 52, the employer may not lawfully turn down either one on the basis of age, but must make such decision on the basis of some other factor"). We discuss this regulation at greater length, *infra*, at 599–600.

78 Stat. 265, being aware that there were legitimate reasons as well as invidious ones for making employment decisions on age. Instead it called for a study of the issue by the Secretary of Labor, *ibid.*, who concluded that age discrimination was a serious problem, but one different in kind from discrimination on account of race.[2] The Secretary spoke of disadvantage to older individuals from arbitrary and stereotypical employment distinctions (including then-common policies of age ceilings on hiring), but he examined the problem in light of rational considerations of increased pension cost and, in some cases, legitimate concerns about an older person's ability to do the job. Wirtz Report 2. When the Secretary ultimately took the position that arbitrary discrimination against older workers was widespread and persistent enough to call for a federal legislative remedy, *id.*, at 21–22, he placed his recommendation against the background of common experience that the potential cost of employing someone rises with age, so that the older an employee is, the greater the inducement to prefer a younger substitute. The report contains no suggestion that reactions to age level off at some point, and it was devoid of any indication that the Secretary had noticed unfair advantages accruing to older employees at the expense of their juniors.

Congress then asked for a specific proposal, Fair Labor Standards Amendments of 1966, § 606, 80 Stat. 845, which the Secretary provided in January 1967. 113 Cong. Rec. 1377 (1967); see also Public Papers of the Presidents, Lyndon

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[2] That report found that "[e]mployment discrimination because of race is identified . . . with . . . feelings about people entirely unrelated to their ability to do the job. There is *no* significant discrimination of this kind so far as older workers are concerned. The most closely related kind of discrimination in the non-employment of older workers involves their rejection because of assumptions about the effect of age on their ability to do a job *when there is in fact no basis for these assumptions.*" Report of the Secretary of Labor, The Older American Worker: Age Discrimination in Employment 2 (June 1965) (hereinafter Wirtz Report) (emphasis in original).

B. Johnson, Vol. 1, Jan. 23, 1967, p. 37 (1968) (message to Congress urging that "[o]pportunity . . . be opened to the many Americans over 45 who are qualified and willing to work"). Extensive House and Senate hearings ensued. See Age Discrimination in Employment: Hearings on H. R. 3651 et al. before the General Subcommittee on Labor of the House Committee on Education and Labor, 90th Cong., 1st Sess. (1967) (hereinafter House Hearings); Age Discrimination in Employment: Hearings on S. 830 and S. 788 before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, 90th Cong., 1st Sess. (1967) (hereinafter Senate Hearings). See generally *EEOC* v. *Wyoming*, 460 U. S. 226, 229–233 (1983).

The testimony at both hearings dwelled on unjustified assumptions about the effect of age on ability to work. See, *e. g.*, House Hearings 151 (statement of Rep. Joshua Eilberg) ("At age 40, a worker may find that age restrictions become common . . . . By age 45, his employment opportunities are likely to contract sharply; they shrink more severely at age 55 and virtually vanish by age 65"); *id.*, at 422 (statement of Rep. Claude Pepper) ("We must provide meaningful opportunities for employment to the thousands of workers 45 and over who are well qualified but nevertheless denied jobs which they may desperately need because someone has arbitrarily decided that they are too old"); Senate Hearings 34 (statement of Sen. George Murphy) ("[A]n older worker often faces an attitude on the part of some employers that prevents him from receiving serious consideration or even an interview in his search for employment").[3] The hearings specif-

[3] See also House Hearings 449 (statement of Rep. James A. Burke) ("Discrimination arises for [the older job seeker] because of assumptions that are made about the effects of age on performance"); Senate Hearings 179 (statement of Dr. Harold L. Sheppard) ("[O]ne of the underlying conditions for this upward trend in unemployment rates for a given group of so-called older workers over a period of time . . . is related to the barrier of age discrimination"); *id.*, at 215 (statement of Sen. Harrison A. Williams)

ically addressed higher pension and benefit costs as heavier drags on hiring workers the older they got. See, *e. g.*, House Hearings 45 (statement of Norman Sprague) (Apart from stereotypes, "labor market conditions, seniority and promotion-from-within policies, job training costs, pension and insurance costs, and mandatory retirement policies often make employers reluctant to hire older workers"). The record thus reflects the common facts that an individual's chances to find and keep a job get worse over time; as between any two people, the younger is in the stronger position, the older more apt to be tagged with demeaning stereotype. Not surprisingly, from the voluminous records of the hearings, we have found (and Cline has cited) nothing suggesting that any workers were registering complaints about discrimination in favor of their seniors.

Nor is there any such suggestion in the introductory provisions of the ADEA, 81 Stat. 602, which begins with statements of purpose and findings that mirror the Wirtz Report and the committee transcripts. *Id.*, § 2. The findings stress the impediments suffered by "older workers . . . in their efforts to retain . . . and especially to regain employment," *id.*, § 2(a)(1); "the [burdens] of arbitrary age limits regardless of potential for job performance," *id.*, § 2(a)(2); the costs of "otherwise desirable practices [that] may work to the disadvantage of older persons," *ibid.;* and "the incidence of unemployment, especially long-term unemployment[, which] is, relative to the younger ages, high among older workers," *id.*, § 2(a)(3). The statutory objects were "to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; [and]

("'Unfavorable beliefs and generalizations about older persons have grown up and have been translated into restrictive policies and practices in hiring new employees which bar older jobseekers from employment principally because of age'" (quoting earlier report of Senate Special Committee on Aging)).

to help employers and workers find ways of meeting problems arising from the impact of age on employment." *Id.*, § 2(b).

In sum, except on one point, all the findings and statements of objectives are either cast in terms of the effects of age as intensifying over time, or are couched in terms that refer to "older" workers, explicitly or implicitly relative to "younger" ones. The single subject on which the statute speaks less specifically is that of "arbitrary limits" or "arbitrary age discrimination." But these are unmistakable references to the Wirtz Report's finding that "[a]lmost three out of every five employers covered by [a] 1965 survey have in effect age limitations (most frequently between 45 and 55) on new hires which they apply without consideration of an applicant's other qualifications." Wirtz Report 6. The ADEA's ban on "arbitrary limits" thus applies to age caps that exclude older applicants, necessarily to the advantage of younger ones.

Such is the setting of the ADEA's core substantive provision, § 4 (as amended, 29 U. S. C. § 623), prohibiting employers and certain others from "discriminat[ion] . . . because of [an] individual's age," whenever (as originally enacted) the individual is "at least forty years of age but less than sixty-five years of age," § 12, 81 Stat. 607.[4] The prefatory provisions and their legislative history make a case that we think is beyond reasonable doubt, that the ADEA was concerned

[4] In 1978, Congress changed the upper age limit to 70 years, Pub. L. 95–256, § 3(a), 92 Stat. 189, and then struck it entirely in 1986, Pub. L. 99–592, § 2(c)(1), 100 Stat. 3342. The President transferred authority over the ADEA from the Department of Labor to the EEOC in 1978. Reorg. Plan No. 1 of 1978, 5 U. S. C. App. § 2, p. 206. Congress has also made other changes, including extending the ADEA to government employees (state, local, and federal), Pub. L. 93–259, 88 Stat. 74–75 (amending 29 U. S. C. § 630(b) and adding § 633a), and clarifying that it extends, with certain exceptions, to employee benefits, Pub. L. 101–433, 104 Stat. 978 (amending among other provisions 29 U. S. C. § 630(*l*)).

to protect a relatively old worker from discrimination that works to the advantage of the relatively young.

Nor is it remarkable that the record is devoid of any evidence that younger workers were suffering at the expense of their elders, let alone that a social problem required a federal statute to place a younger worker in parity with an older one. Common experience is to the contrary, and the testimony, reports, and congressional findings simply confirm that Congress used the phrase "discriminat[ion] . . . because of [an] individual's age" the same way that ordinary people in common usage might speak of age discrimination any day of the week. One commonplace conception of American society in recent decades is its character as a "youth culture," and in a world where younger is better, talk about discrimination because of age is naturally understood to refer to discrimination against the older.

This same, idiomatic sense of the statutory phrase is confirmed by the statute's restriction of the protected class to those 40 and above. If Congress had been worrying about protecting the younger against the older, it would not likely have ignored everyone under 40. The youthful deficiencies of inexperience and unsteadiness invite stereotypical and discriminatory thinking about those a lot younger than 40, and prejudice suffered by a 40-year-old is not typically owing to youth, as 40-year-olds sadly tend to find out. The enemy of 40 is 30, not 50. See H. R. Rep. No. 805, 90th Cong., 1st Sess., 6 (1967) ("[T]estimony indicated [40] to be the age at which age discrimination in employment becomes evident"). Even so, the 40-year threshold was adopted over the objection that some discrimination against older people begins at an even younger age; female flight attendants were not fired at 32 because they were too young, *ibid.* See also Senate Hearings 47 (statement of Sec'y Wirtz) (lowering the minimum age limit "would change the nature of the proposal from an over-age employment discrimination measure"). Thus, the 40-year threshold makes sense as identifying a class re-

quiring protection against preference for their juniors, not as defining a class that might be threatened by favoritism toward seniors.[5]

The federal reports are as replete with cases taking this position as they are nearly devoid of decisions like the one reviewed here. To start closest to home, the best example is *Hazen Paper Co.* v. *Biggins*, 507 U. S. 604 (1993), in which we held there is no violation of the ADEA in firing an employee because his pension is about to vest, a basis for action that we took to be analytically distinct from age, even though it would never occur without advanced years. *Id.*, at 611–612. We said that "the very essence of age discrimination [is] for an older employee to be fired because the employer believes that productivity and competence decline with old age," *id.*, at 610, whereas discrimination on the basis of pension status "would not constitute discriminatory treatment on the basis of age [because t]he prohibited stereotype [of

[5] JUSTICE THOMAS, *post*, at 606–613 (dissenting opinion), charges our holding with unnaturally limiting a comprehensive prohibition of age discrimination to "the principal evil that Congress targeted," *post*, at 607, which he calls inconsistent with the method of *McDonald* v. *Santa Fe Trail Transp. Co.*, 427 U. S. 273 (1976) (the Title VII prohibition of discrimination because of race protects whites), and *Oncale* v. *Sundowner Offshore Services, Inc.*, 523 U. S. 75 (1998) (the Title VII prohibition of discrimination because of sex protects men from sexual harassment by other men). His objection is aimed at the wrong place. As we discuss at greater length *infra*, at 596–598, we are not dealing here with a prohibition expressed by the unqualified use of a term without any conventionally narrow sense (as "race" or "sex" are used in Title VII), and are not narrowing such a prohibition so that it covers only instances of the particular practice that induced Congress to enact the general prohibition. We hold that Congress expressed a prohibition by using a term in a commonly understood, narrow sense ("age" as "relatively old age"). JUSTICE THOMAS may think we are mistaken, *post*, at 603–606, when we infer that Congress used "age" as meaning the antithesis of youth rather than meaning any age, but we are not making the particular mistake of confining the application of terms used in a broad sense to the relatively narrow class of cases that prompted Congress to address their subject matter.

the faltering worker] would not have figured in this decision, and the attendant stigma would not ensue," *id.*, at 612. And we have relied on this same reading of the statute in other cases. See, *e. g.*, *O'Connor*, 517 U. S., at 313 ("Because the ADEA prohibits discrimination on the basis of age . . . the fact that a replacement is substantially younger than the plaintiff is a . . . reliable indicator of age discrimination"); *Western Air Lines, Inc.* v. *Criswell*, 472 U. S. 400, 409 (1985) ("[T]he legislative history of the ADEA . . . repeatedly emphasize[s that] the process of psychological and physiological degeneration caused by aging varies with each individual"). While none of these cases directly addresses the question presented here, all of them show our consistent understanding that the text, structure, and history point to the ADEA as a remedy for unfair preference based on relative youth, leaving complaints of the relatively young outside the statutory concern.

The Courts of Appeals and the District Courts have read the law the same way, and prior to this case have enjoyed virtually unanimous accord in understanding the ADEA to forbid only discrimination preferring young to old. So the Seventh Circuit held in *Hamilton*, and the First Circuit said in *Schuler*, and so the District Courts have ruled in cases too numerous for citation here in the text.[6] The very

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[6] See *Lawrence* v. *Irondequoit*, 246 F. Supp. 2d 150, 161 (WDNY 2002) (following *Hamilton*); *Greer* v. *Pension Benefit Guaranty Corporation*, 85 FEP Cases 416, 419 (SDNY 2001) (noting unanimity of the courts); *Dittman* v. *General Motors Corp.-Delco Chassis Div.*, 941 F. Supp. 284, 286–287 (Conn. 1996) (alternative holding) (following *Hamilton*); *Parker* v. *Wakelin*, 882 F. Supp. 1131, 1140 (Me. 1995) ("The ADEA has never been construed to permit younger persons to claim discrimination against them in favor of older persons"); *Wehrly* v. *American Motors Sales Corp.*, 678 F. Supp. 1366, 1382 (ND Ind. 1988) (following *Karlen* v. *City Colleges of Chicago*, 837 F. 2d 314, 318 (CA7), cert. denied *sub nom. Teachers* v. *City Colleges of Chicago*, 486 U. S. 1044 (1988)). The only case we have found arguably to the contrary is *Mississippi Power & Light Co.* v. *Local Union*

strength of this consensus is enough to rule out any serious claim of ambiguity, and congressional silence after years of judicial interpretation supports adherence to the traditional view.[7]

III

Cline and *amicus* EEOC proffer three rejoinders in favor of their competing view that the prohibition works both ways. First, they say (as does JUSTICE THOMAS, *post*, at 602–605) that the statute's meaning is plain when the word "age" receives its natural and ordinary meaning and the statute is read as a whole giving "age" the same meaning throughout. And even if the text does not plainly mean what they say it means, they argue that the soundness of their version is shown by a colloquy on the floor of the Senate involving Senator Yarborough, a sponsor of the bill that became the ADEA. Finally, they fall back to the position (fortified by JUSTICE SCALIA's dissent) that we should defer to the EEOC's reading of the statute. On each point, however, we think the argument falls short of unsettling our view of the natural meaning of the phrase speaking of discrimination, read in light of the statute's manifest purpose.

A

The first response to our reading is the dictionary argument that "age" means the length of a person's life, with the

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Nos. 605 & 985, IBEW, 945 F. Supp. 980, 985 (SD Miss. 1996), which allowed a claim objecting to a benefit given to individuals between 60 and 65 and denied to those outside that range, without discussing *Hamilton* or any of the other authority holding that the plaintiffs under 60 would lack a cause of action.

[7] Congress has not been shy in revising other judicial constructions of the ADEA. See *Public Employees Retirement System of Ohio* v. *Betts*, 492 U. S. 158, 167–168 (1989) (observing that the 1978 amendment to the ADEA "changed the specific result" of this Court's earlier case of *United Air Lines, Inc.* v. *McMann*, 434 U. S. 192 (1977)); H. R. Rep. No. 101–664, pp. 10–11, 34 (1990) (stating that Congress in 1978 had also disapproved *McMann*'s reasoning, and that with the 1990 amendments it meant to overrule *Betts* as well).

phrase "because of such individual's age" stating a simple test of causation: "discriminat[ion] . . . because of [an] individual's age" is treatment that would not have occurred if the individual's span of years had been longer or shorter. The case for this reading calls attention to the other instances of "age" in the ADEA that are not limited to old age, such as 29 U. S. C. § 623(f), which gives an employer a defense to charges of age discrimination when "age is a bona fide occupational qualification." Cline and the EEOC argue that if "age" meant old age, § 623(f) would then provide a defense (old age is a bona fide qualification) only for an employer's action that on our reading would never clash with the statute (because preferring the older is not forbidden).

The argument rests on two mistakes. First, it assumes that the word "age" has the same meaning wherever the ADEA uses it. But this is not so, and Cline simply misemploys the "presumption that identical words used in different parts of the same act are intended to have the same meaning." *Atlantic Cleaners & Dyers, Inc.* v. *United States*, 286 U. S. 427, 433 (1932). Cline forgets that "the presumption is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent." *Ibid.;* see also *United States* v. *Cleveland Indians Baseball Co.*, 532 U. S. 200, 213 (2001) (phrase "wages paid" has different meanings in different parts of Title 26 U. S. C.); *Robinson* v. *Shell Oil Co.*, 519 U. S. 337, 343–344 (1997) (term "employee" has different meanings in different parts of Title VII). The presumption of uniform usage thus relents[8] when a word used

[8] It gets too little credit for relenting, though. "The tendency to assume that a word which appears in two or more legal rules, and so in connection with more than one purpose, has and should have precisely the same scope in all of them, runs all through legal discussions. It has all the tenacity of original sin and must constantly be guarded against." Cook, "Substance" and "Procedure" in the Conflict of Laws, 42 Yale L. J. 333, 337

has several commonly understood meanings among which a speaker can alternate in the course of an ordinary conversation, without being confused or getting confusing.

"Age" is that kind of word. As JUSTICE THOMAS (*post*, at 603) agrees, the word "age" standing alone can be readily understood either as pointing to any number of years lived, or as common shorthand for the longer span and concurrent aches that make youth look good. Which alternative was probably intended is a matter of context; we understand the different choices of meaning that lie behind a sentence like "Age can be shown by a driver's license," and the statement, "Age has left him a shut-in." So it is easy to understand that Congress chose different meanings at different places in the ADEA, as the different settings readily show. Hence the second flaw in Cline's argument for uniform usage: it ignores the cardinal rule that "[s]tatutory language must be read in context [since] a phrase 'gathers meaning from the words around it.'" *Jones* v. *United States*, 527 U. S. 373, 389 (1999) (quoting *Jarecki* v. *G. D. Searle & Co.*, 367 U. S. 303, 307 (1961)). The point here is that we are not asking an abstract question about the meaning of "age"; we are seeking the meaning of the whole phrase "discriminate . . . because of such individual's age," where it occurs in the ADEA, 29 U. S. C. § 623(a)(1). As we have said, social history emphatically reveals an understanding of age discrimination as aimed against the old, and the statutory reference to age discrimination in this idiomatic sense is confirmed by legislative history. For the very reason that reference to context shows that "age" means "old age" when teamed with "discrimination," the provision of an affirmative defense when age is a bona fide occupational qualification readily shows that "age" as a qualification means comparative youth. As

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(1933). The passage has become a staple of our opinions. See *United States* v. *Cleveland Indians Baseball Co.*, 532 U. S. 200, 213 (2001); *NationsBank of N. C., N. A.* v. *Variable Annuity Life Ins. Co.*, 513 U. S. 251, 262 (1995); *CAB* v. *Delta Air Lines, Inc.*, 367 U. S. 316, 328 (1961).

context tells us that "age" means one thing in § 623(a)(1) and another in § 623(f),[9] so it also tells us that the presumption of uniformity cannot sensibly operate here.[10]

The comparisons JUSTICE THOMAS urges, *post*, at 608–612, to *McDonald* v. *Santa Fe Trail Transp. Co.*, 427 U. S. 273 (1976), and *Oncale* v. *Sundowner Offshore Services, Inc.*, 523 U. S. 75 (1998), serve to clarify our position. Both cases involved Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e *et seq.*, and its prohibition on employment discrimination "because of [an] individual's *race* . . . [or] *sex*," § 2000e–2(a)(1) (emphasis added). The term "age" employed by the ADEA is not, however, comparable to the terms "race" or "sex" employed by Title VII. "Race" and "sex" are general terms that in every day usage require modifiers to indicate

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[9] An even wider contextual enquiry supports our conclusion, for the uniformity Cline and the EEOC claim for the uses of "age" within the ADEA itself would introduce unwelcome discord among the federal statutes on employee benefit plans. For example, the Tax Code requires an employer to allow certain employees who reach age 55 to diversify their stock ownership plans in part, 26 U. S. C. § 401(a)(28)(B); removes a penalty on early distributions from retirement plans at age 59½, § 72(t)(2)(A)(i); requires an employer to allow many employees to receive benefits immediately upon retiring at age 65, § 401(a)(14); and requires an employer to adjust upward an employee's pension benefits if that employee continues to work past age 70½, § 401(a)(9)(C)(iii). The Employee Retirement Income Security Act of 1974 makes similar provisions. See, *e. g.*, 29 U. S. C. § 1002(24) ("normal retirement age" may come at age 65, although the plan specifies later); § 1053(a) (a plan must pay full benefits to employees who retire at normal retirement age). Taken one at a time any of these statutory directives might be viewed as an exception Congress carved out of a generally recognized principle that employers may not give benefits to older employees that they withhold from younger ones. Viewed as a whole, however, they are incoherent with the alleged congressional belief that such a background principle existed.

[10] Essentially the same answer suffices for Cline's and the EEOC's suggestion that our reading is at odds with the statute's ban on employers' "print[ing] . . . any notice or advertisement relating to employment . . . indicating any preference, limitation, specification, or discrimination . . . based on age." § 623(e).

any relatively narrow application. We do not commonly understand "race" to refer only to the black race, or "sex" to refer only to the female. But the prohibition of age discrimination is readily read more narrowly than analogous provisions dealing with race and sex. That narrower reading is the more natural one in the textual setting, and it makes perfect sense because of Congress's demonstrated concern with distinctions that hurt older people.

B

The second objection has more substance than the first, but still not enough. The record of congressional action reports a colloquy on the Senate floor between two of the legislators most active in pushing for the ADEA, Senators Javits and Yarborough. Senator Javits began the exchange by raising a concern mentioned by Senator Dominick, that "the bill might not forbid discrimination between two persons each of whom would be between the ages of 40 and 65." 113 Cong. Rec. 31255 (1967). Senator Javits then gave his own view that, "if two individuals ages 52 and 42 apply for the same job, and the employer selected the man aged 42 solely . . . because he is younger than the man 52, then he will have violated the act," and asked Senator Yarborough for his opinion. *Ibid.* Senator Yarborough answered that "[t]he law prohibits age being a factor in the decision to hire, as to one age over the other, whichever way [the] decision went." *Ibid.*

Although in the past we have given weight to Senator Yarborough's views on the construction of the ADEA because he was a sponsor, see, *e. g.*, *Public Employees Retirement System of Ohio* v. *Betts*, 492 U. S. 158, 179 (1989), his side of this exchange is not enough to unsettle our reading of the statute. It is not merely that the discussion was prompted by the question mentioned in *O'Connor* v. *Consolidated Coin Caterers Corp.*, 517 U. S. 308 (1996), the possibility of a 52-year-old suing over a preference for someone

younger but in the over-40 protected class. What matters is that the Senator's remark, "whichever way [the] decision went," is the only item in all the 1967 hearings, reports, and debates going against the grain of the common understanding of age discrimination.[11] Even from a sponsor, a single outlying statement cannot stand against a tide of context and history, not to mention 30 years of judicial interpretation producing no apparent legislative qualms. See *Consumer Product Safety Comm'n* v. *GTE Sylvania, Inc.*, 447 U. S. 102, 118 (1980) ("[O]rdinarily even the contemporaneous remarks of a single legislator who sponsors a bill are not controlling in analyzing legislative history").

C

The third objection relies on a reading consistent with the Yarborough comment, adopted by the agency now charged with enforcing the statute, as set out at 29 CFR § 1625.2(a) (2003), and quoted in full, n. 1, *supra*. When the EEOC adopted § 1625.2(a) in 1981, shortly after assuming administrative responsibility for the ADEA, it gave no reasons for the view expressed, beyond noting that the provision was carried forward from an earlier Department of Labor regulation, see 44 Fed. Reg. 68858 (1979); 46 Fed. Reg. 47724 (1981); that earlier regulation itself gave no reasons, see 33 Fed. Reg. 9172 (1968) (reprinting 29 CFR § 860.91, rescinded by 46 Fed. Reg. 47724 (1981)).

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[11] It is only fair to add, though, that Senator Dominick himself does appear to have sought clarification on the question presented, asking in a statement appended to the Committee Report whether "the prospective employer [is] open to a charge of discrimination if he hires the younger man and would . . . be open to a charge of discrimination by the younger man if he hired the older one." S. Rep. No. 723, 90th Cong., 1st Sess., 15–16 (1967); see also *id.*, at 16 (mentioning confusion among committee counsel). Senator Dominick considered this result undesirable. See *ibid.* ("[M]any legal complexities surrounding this bill . . . have not been adequately dealt with by the committee").

The parties contest the degree of weight owed to the EEOC's reading, with General Dynamics urging us that *Skidmore* v. *Swift & Co.*, 323 U. S. 134 (1944), sets the limit, while Cline and the EEOC say that § 1625.2(a) deserves greater deference under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984). Although we have devoted a fair amount of attention lately to the varying degrees of deference deserved by agency pronouncements of different sorts, see *United States* v. *Mead Corp.*, 533 U. S. 218 (2001); *Christensen* v. *Harris County*, 529 U. S. 576 (2000), the recent cases are not on point here. In *Edelman* v. *Lynchburg College*, 535 U. S. 106, 114 (2002), we found no need to choose between *Skidmore* and *Chevron*, or even to defer, because the EEOC was clearly right; today, we neither defer nor settle on any degree of deference because the Commission is clearly wrong.

Even for an agency able to claim all the authority possible under *Chevron*, deference to its statutory interpretation is called for only when the devices of judicial construction have been tried and found to yield no clear sense of congressional intent. *INS* v. *Cardoza-Fonseca*, 480 U. S. 421, 446–448 (1987) (citing *Chevron*, *supra*, at 843, n. 9). Here, regular interpretive method leaves no serious question, not even about purely textual ambiguity in the ADEA. The word "age" takes on a definite meaning from being in the phrase "discriminat[ion] . . . because of such individual's age," occurring as that phrase does in a statute structured and manifestly intended to protect the older from arbitrary favor for the younger.

IV

We see the text, structure, purpose, and history of the ADEA, along with its relationship to other federal statutes, as showing that the statute does not mean to stop an employer from favoring an older employee over a younger one. The judgment of the Court of Appeals is

Reversed.

JUSTICE SCALIA, dissenting.

The Age Discrimination in Employment Act of 1967 (ADEA or Act), 29 U. S. C. §§ 621–634, makes it unlawful for an employer to "discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age." § 623(a)(1). The question in this case is whether, in the absence of an affirmative defense, the ADEA prohibits an employer from favoring older over younger workers when both are protected by the Act, *i. e.*, are 40 years of age or older.

The Equal Employment Opportunity Commission (EEOC) has answered this question in the affirmative. In 1981, the agency adopted a regulation which states, in pertinent part:

> "It is unlawful in situations where this Act applies, for an employer to discriminate in hiring or in any other way by giving preference because of age between individuals 40 and over. Thus, if two people apply for the same position, and one is 42 and the other 52, the employer may not lawfully turn down either one on the basis of age, but must make such decision on the basis of some other factor." 29 CFR § 1625.2(a) (2003).

This regulation represents the interpretation of the agency tasked by Congress with enforcing the ADEA. See 29 U. S. C. § 628.

The Court brushes aside the EEOC's interpretation as "clearly wrong." *Ante*, at 600. I cannot agree with the contention upon which that rejection rests: that "regular interpretive method leaves no serious question, not even about purely textual ambiguity in the ADEA." *Ibid.* It is evident, for the reasons given in Part II of JUSTICE THOMAS's dissenting opinion, that the Court's interpretive method is anything but "regular." And for the reasons given in Part I of that opinion, the EEOC's interpretation is neither foreclosed by the statute nor unreasonable.

Because § 623(a) "does not unambiguously require a different interpretation, and . . . the [EEOC's] regulation is an entirely reasonable interpretation of the text," *Barnhart* v. *Thomas*, *ante*, at 29–30, I would defer to the agency's authoritative conclusion. See *United States* v. *Mead Corp.*, 533 U. S. 218, 257 (2001) (SCALIA, J., dissenting). I respectfully dissent.

JUSTICE THOMAS, with whom JUSTICE KENNEDY joins, dissenting.

This should have been an easy case. The plain language of 29 U. S. C. § 623(a)(1) mandates a particular outcome: that the respondents are able to sue for discrimination against them in favor of older workers. The agency charged with enforcing the statute has adopted a regulation and issued an opinion as an adjudicator, both of which adopt this natural interpretation of the provision. And the only portion of legislative history relevant to the question before us is consistent with this outcome. Despite the fact that these traditional tools of statutory interpretation lead inexorably to the conclusion that respondents can state a claim for discrimination against the relatively young, the Court, apparently disappointed by this result, today adopts a different interpretation. In doing so, the Court, of necessity, creates a new tool of statutory interpretation, and then proceeds to give this newly created "social history" analysis dispositive weight. Because I cannot agree with the Court's new approach to interpreting antidiscrimination statutes, I respectfully dissent.

I

"The starting point for [the] interpretation of a statute is always its language," *Community for Creative Non-Violence* v. *Reid*, 490 U. S. 730, 739 (1989), and "courts must presume that a legislature says in a statute what it means and means in a statute what it says there," *Connecticut Nat. Bank* v. *Germain*, 503 U. S. 249, 253–254 (1992). Thus,

rather than looking through the historical background of the Age Discrimination in Employment Act of 1967 (ADEA), I would instead start with the text of § 623(a)(1) itself, and if "the words of [the] statute are unambiguous," my "judicial inquiry [would be] complete." *Id.*, at 254 (internal quotation marks omitted).

The plain language of the ADEA clearly allows for suits brought by the relatively young when discriminated against in favor of the relatively old. The phrase "discriminate . . . because of such individual's age," 29 U. S. C. § 623(a)(1), is not restricted to discrimination because of relatively *older* age. If an employer fired a worker for the sole reason that the worker was under 45, it would be entirely natural to say that the worker had been discriminated against because of his age. I struggle to think of what other phrase I would use to describe such behavior. I wonder how the Court would describe such incidents, because the Court apparently considers such usage to be unusual, atypical, or aberrant. See *ante*, at 591 (concluding that the "common usage" of language would exclude discrimination against the relatively young from the phrase "discriminat[ion] . . . because of [an] individual's age").

The parties do identify a possible ambiguity, centering on the multiple meanings of the word "age." As the parties note, "age" does have an alternative meaning, namely, "[t]he state of being old; old age." American Heritage Dictionary 33 (3d ed. 1992); see also Oxford American Dictionary 18 (1999); Webster's Third New International Dictionary 40 (1993). First, this secondary meaning is, of course, less commonly used than the primary meaning, and appears restricted to those few instances where it is clear in the immediate context of the phrase that it could have no other meaning. The phrases "hair white with age," American Heritage Dictionary, *supra*, at 33, or "*eyes . . . dim with age*," Random House Dictionary of the English Language 37 (2d ed. 1987), cannot possibly be using "age" to include "young

age," unlike a phrase such as "he fired her because of her age." Second, the use of the word "age" in other portions of the statute effectively destroys any doubt. The ADEA's advertising prohibition, 29 U. S. C. § 623(e), and the bona fide occupational qualification defense, § 623(f)(1), would both be rendered incoherent if the term "age" in those provisions were read to mean only "older age."[1] Although it is true that the " 'presumption that identical words used in different parts of the same act are intended to have the same meaning' " is not "rigid" and can be overcome when the context is clear, *ante*, at 595 (quoting *Atlantic Cleaners & Dyers, Inc.* v. *United States*, 286 U. S. 427, 433 (1932)), the presumption is not rebutted here. As noted, the plain and common reading of the phrase "such individual's age" refers to the individual's chronological age. At the very least, it is manifestly unclear that it bars *only* discrimination against the relatively older. Only by incorrectly concluding that § 623(a)(1) clearly and unequivocally bars only discrimination as "against the older," *ante*, at 591, can the Court then conclude that the "context" of §§ 623(f)(1) and 623(e) allows for an alternative meaning of the term "age," *ante*, at 596–597.

The one structural argument raised by the Court in defense of its interpretation of "discriminates . . . because of such individual's age" is the provision limiting the ADEA's protections to those over 40 years of age. See 29 U. S. C.

[1] Section 623(f)(1) provides a defense where "age is a bona fide occupational qualification." If "age" were limited to "older age," then § 623(f)(1) would provide a defense only where a defense is not needed, since under the Court's reading, discrimination against the relatively young is always legal under the ADEA. Section 623(e) bans the "print[ing] . . . [of] any notice or advertisement relating to . . . indicating any preference, limitation, specification, or discrimination . . . based on age." Again, if "age" were read to mean only "older age," an employer could print advertisements asking only for young applicants for a new job (where hiring or considering only young applicants is banned by the ADEA), but could not print advertisements requesting only older applicants (where hiring only older applicants would be legal under the Court's reading of the ADEA).

§ 631(a). At first glance, this might look odd when paired with the conclusion that § 623(a)(1) bars discrimination against the relatively young as well as the relatively old, but there is a perfectly rational explanation. Congress could easily conclude that age discrimination directed against those under 40 is not as damaging, since a young worker unjustly fired is likely to find a new job or otherwise recover from the discrimination. A person over 40 fired due to irrational age discrimination (whether because the worker is too young or too old) might have a more difficult time recovering from the discharge and finding new employment. Such an interpretation also comports with the many findings of the Wirtz report, United States Dept. of Labor, The Older American Worker: Age Discrimination in Employment (June 1965), and the parallel findings in the ADEA itself. See, *e. g.*, 29 U. S. C. § 621(a)(1) (finding that "older workers find themselves disadvantaged in their efforts to retain employment, and especially to regain employment when displaced from jobs"); § 621(a)(3) (finding that "the incidence of unemployment, especially long-term unemployment with resultant deterioration of skill, morale, and employer acceptability is, relative to the younger ages, high among older workers").

This plain reading of the ADEA is bolstered by the interpretation of the agency charged with administering the statute. A regulation issued by the Equal Employment Opportunity Commission (EEOC) adopts the view contrary to the Court's, 29 CFR § 1625.2(a) (2003), and the only binding EEOC decision that addresses the question before us also adopted the view contrary to the Court's, see *Garrett* v. *Runyon,* Appeal No. 01960422, 1997 WL 574739, *1 (EEOC, Sept. 5, 1997). I agree with the Court that we need not address whether deference under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984), would apply to the EEOC's regulation in this case. See *ante,* at 600. Of course, I so conclude because the EEOC's interpretation is consistent with the best reading

of the statute. The Court's position, on the other hand, is untenable. Even if the Court disagrees with my interpretation of the language of the statute, it strains credulity to argue that such a reading is so unreasonable that an agency could not adopt it. To suggest that, in the instant case, the "regular interpretive method leaves no serious question, not even about purely textual ambiguity in the ADEA," *ibid.*, is to ignore the entirely reasonable (and, incidentally, correct) contrary interpretation of the ADEA that the EEOC and I advocate.

Finally, the only relevant piece of legislative history addressing the question before the Court—whether it would be possible for a younger individual to sue based on discrimination against him in favor of an older individual—comports with the plain reading of the text. Senator Yarborough, in the only exchange that the parties identified from the legislative history discussing this particular question, confirmed that the text really meant what it said. See 113 Cong. Rec. 31255 (1967).[2] Although the statute is clear, and hence there is no need to delve into the legislative history, this history merely confirms that the plain reading of the text is correct.

II

Strangely, the Court does not explain why it departs from accepted methods of interpreting statutes. It does, however, clearly set forth its principal reason for adopting its particular reading of the phrase "discriminate . . . based on [an] individual's age" in Part III–A of its opinion. "The point here," the Court states, "is that we are not asking an abstract question about the meaning of 'age'; we are seeking the meaning of the whole phrase 'discriminate . . . because of such individual's age.' . . . As we have said, *social history* emphatically reveals an understanding of age discrimination as aimed against the old, and the statutory reference to age

[2] See *ante*, at 598 (citing exchange between Sens. Yarborough and Javits).

discrimination in this idiomatic sense is confirmed by legislative history." *Ante*, at 596 (emphasis added). The Court does not define "social history," although it is apparently something different from legislative history, because the Court refers to legislative history as a separate interpretive tool in the very same sentence. Indeed, the Court has never defined "social history" in any previous opinion, probably because it has never sanctioned looking to "social history" as a method of statutory interpretation. Today, the Court takes this unprecedented step, and then places dispositive weight on the new concept.

It appears that the Court considers the "social history" of the phrase "discriminate . . . because of [an] individual's age" to be the principal evil that Congress targeted when it passed the ADEA. In each section of its analysis, the Court pointedly notes that there was no evidence of widespread problems of antiyouth discrimination, and that the primary concerns of Executive Branch officials and Members of Congress pertained to problems that workers generally faced as they increased in age.[3] The Court reaches its final, legal conclusion as to the meaning of the phrase (that "ordinary people" employing the common usage of language would "talk about discrimination because of age [as] naturally [referring to] discrimination against the older," *ante*, at 591) only after concluding both that "the ADEA was concerned to protect a relatively old worker from discrimination that works to the advantage of the relatively young" and that

[3] See *ante*, at 587 ("The [Wirtz] report contains no suggestion that reactions to age level off at some point, and it was devoid of any indication that the Secretary [of Labor] had noticed unfair advantages accruing to older employees at the expense of their juniors"); *ante*, at 589 (finding from the records of congressional hearings "nothing suggesting that any workers were registering complaints about discrimination in favor of their seniors"); *ante*, at 590 (finding that, with one exception, "all the findings and statements of objectives are either cast in terms of the effects of age as intensifying over time, or are couched in terms that refer to 'older' workers, explicitly or implicitly relative to 'younger' ones").

"the record is devoid of any evidence that younger workers were suffering at the expense of their elders, let alone that a social problem required a federal statute to place a younger worker in parity with an older one." *Ante*, at 590–591. Hence, the Court apparently concludes that if Congress has in mind a particular, principal, or primary form of discrimination when it passes an antidiscrimination provision prohibiting persons from "discriminating because of [some personal quality]," then the phrase "discriminate because of [some personal quality]" only covers the principal or most common form of discrimination relating to this personal quality.

The Court, however, has not typically interpreted nondiscrimination statutes in this odd manner. "[S]tatutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed." *Oncale* v. *Sundowner Offshore Services, Inc.*, 523 U. S. 75, 79 (1998). The oddity of the Court's new technique of statutory interpretation is highlighted by this Court's contrary approach to the racial-discrimination prohibition of Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U. S. C. § 2000e *et seq.*

There is little doubt that the motivation behind the enactment of the Civil Rights Act of 1964 was to prevent invidious discrimination against racial minorities, especially blacks. See 110 Cong. Rec. 6552 (1964) (statement of Sen. Humphrey) ("The goals of this bill are simple ones: To extend to Negro citizens the same rights and the same opportunities that white Americans take for granted"). President Kennedy, in announcing his Civil Rights proposal, identified several social problems, such as how a "Negro baby born in America today . . . has about one-half as much chance of completing a high school as a white baby . . . one-third as much chance of becoming a professional man, twice as much chance of becoming unemployed, . . . and the prospects of earning only half

as much." Radio and Television Report to the American People on Civil Rights, Public Papers of the Presidents, John F. Kennedy, No. 237, June 11, 1963, pp. 468–469 (1964). He gave no examples, and cited no occurrences, of discrimination against whites or indicated that such discrimination motivated him (even in part) to introduce the bill. Considered by some to be the impetus for the submission of a Civil Rights bill to Congress,[4] the 1961 Civil Rights Commission Report focused its employment section solely on discrimination against racial minorities, noting, for instance, that the "twin problems" of unemployment and a lack of skilled workers "are magnified for minority groups that are subject to discrimination." 3 U. S. Commission on Civil Rights Report 1 (1961). It also discussed and analyzed the more severe unemployment statistics of black workers compared to white workers. See *id.*, at 1–4; see also *id.*, at 153 (summarizing findings of the Commission, listing examples only of discrimination against blacks). The report presented no evidence of any problems (or even any incidents) of discrimination against whites.

The congressional debates and hearings, although filled with statements decrying discrimination against racial minorities and setting forth the disadvantages those minorities suffered, contain no references that I could find to any problem of discrimination against whites. See, *e. g.*, 110 Cong. Rec. 7204 (1964) (statement of Sen. Clark) ("I turn now to the background of racial discrimination in the job market, which is the basis for the need for this legislation. I suggest that economics is at the heart of racial bias. The Negro has been condemned to poverty because of lack of equal job opportunities. This poverty has kept the Negro out of the mainstream of American life"); *id.*, at 7379 (statement of Sen. Kennedy) ("Title VII is directed toward what, in my judgment, American Negroes need most to increase their health

[4] See R. Loevy, To End All Segregation: The Politics of the Passage of the Civil Rights Act of 1964, p. 24 (1990).

and happiness. . . . [T]o be deprived of the chance to make a decent living and of the income needed to bring up children is a family tragedy"); *id.*, at 6547 (statement of Sen. Humphrey) ("I would like to turn now to the problem of racial discrimination in employment. At the present time Negroes and members of other minority groups do not have an equal chance to be hired, to be promoted, and to be given the most desirable assignments"); *ibid.* (citing disfavorable unemployment rates of nonwhites as compared to whites); *ibid.* ("Discrimination in employment is not confined to any region—it is widespread in every part of the country. It is harmful to Negroes and to members of other minority groups"); *id.*, at 6548 ("The crux of the problem is to open employment opportunities for Negroes in occupations which have been traditionally closed to them"); *id.*, at 6562 (statement of Sen. Kuchel) ("If a Negro or a Puerto Rican or an Indian or a Japanese-American or an American of Mexican descent cannot secure a job and the opportunity to advance on that job commensurate with his skill, then his right to be served in places of public accommodation is a meaningless one . . . . And if a member of a so-called minority group believes that no matter how hard he studies, he will be confronted with a life of unskilled and menial labor, then a loss has occurred, not only for a human being, but also for our Nation"); *id.*, at 6748 (statement of Sen. Moss) ("All of us, that is except the person who is discriminated against on the basis of race, color, or national origin . . . . He frequently knows that he is not going to school to prepare for a job. . . . He frequently knows that no matter how hard he works, how diligently he turns up day after day, how much overtime he puts in, that he will never get to be the boss of a single work crew or the foreman of a single division. And that is what the fair employment practices title is about—not the right to displace a white man or be given preference over him—but simply the right to be in the running"). I find no evidence that even a single legislator appeared concerned about

whether there were incidents of discrimination against whites, and I find no citation to any such incidents.

In sum, there is no record evidence "that [white] workers were suffering at the expense of [racial minorities]," and in 1964, discrimination against whites in favor of racial minorities was hardly "a social problem requir[ing] a federal statute to place a [white] worker in parity with [racial minorities]." *Ante*, at 591. Thus, "talk about discrimination because of [race would] naturally [be] understood to refer to discrimination against [racial minorities]." *Ibid.* In light of the Court's opinion today, it appears that this Court has been treading down the wrong path with respect to Title VII since at least 1976.[5] See *McDonald* v. *Santa Fe Trail Transp. Co.*, 427 U. S. 273 (1976) (holding that Title VII protected whites discriminated against in favor of racial minorities).

In *McDonald*, the Court relied on the fact that the terms of Title VII, prohibiting the discharge of "any individual" because of "such individual's race," 42 U. S. C. §2000e–2(a)(1), "are not limited to discrimination against members of any particular race." 427 U. S., at 278–279. Admittedly, the Court there also relied on the EEOC's interpretation of Title VII as given in its decisions, *id.*, at 279–280, and also on statements from the legislative history of the enactment of Title VII. See *id.*, at 280 (citing 110 Cong. Rec., at 2578 (remarks of Rep. Celler); *id.*, at 7218 (memorandum of Sen. Clark); *id.*, at 7213 (memorandum of Sens. Clark and Case); *id.*, at 8912 (remarks of Sen. Williams)). But, in the instant case, as I have already noted above, see *supra*, at 605, the EEOC has issued a regulation and a binding EEOC decision adopting the view contrary to the Court's and in line with the interpretation of Title VII. And, again as already noted, see *supra*, at 606, the only relevant piece of legislative history with respect to the question before the Court is in the same posture as the legislative history behind Title VII:

[5] The same could likely be said, of course, of most, if not all, of the other provisions of the Civil Rights Act of 1964.

namely, a statement that age discrimination cuts both ways and a relatively younger individual could sue when discriminated against. See 113 Cong. Rec., at 31255 (statement of Sen. Yarborough).

It is abundantly clear, then, that the Court's new approach to antidiscrimination statutes would lead us far astray from well-settled principles of statutory interpretation. The Court's examination of "social history" is in serious tension (if not outright conflict) with our prior cases in such matters. Under the Court's current approach, for instance, *McDonald* and *Oncale*[6] are wrongly decided. One can only hope that this new technique of statutory interpretation does not catch on, and that its errors are limited to only this case.

Responding to this dissent, the Court insists that it is not making this "particular mistake," namely, "confining the application of terms used in a broad sense to the relatively narrow class of cases that prompted Congress to address their subject matter." *Ante*, at 592, n. 5. It notes that, in contrast to the term "age," the terms "race" and "sex" are "general terms that in every day usage require modifiers to indicate any relatively narrow application." *Ante*, at 597–598. The Court, thus, seems to claim that it is merely trying to identify whether the "narrower reading" of the term "age" is "the more natural one in the textual setting." *Ante*, at 598.[7] But the Court does not seriously attempt to ana-

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[6] "[M]ale-on-male sexual harassment in the workplace was assuredly not the principal evil Congress was concerned with when it enacted Title VII." *Oncale*, 523 U. S., at 79. I wonder if there is even a single reference in all the committee reports and congressional debates on Title VII's prohibition of sex discrimination to any "social problem requir[ing] a federal statute [to correct]," *ante*, at 591, arising out of excessive male-on-male sexual harassment.

[7] The Court phrases this differently: It states that the "prohibition of age *discrimination* is readily read more narrowly than analogous provisions dealing with race and sex." *Ante*, at 598 (emphasis added). But this can only be true if the Court believes that the term "age" is more appropriately read in the narrower sense.

lyze whether the term "age" is more naturally read narrowly in the context of § 623(a)(1). Instead, the Court jumps immediately to, and rests its entire "common usage" analysis, *ante*, at 591, on, the "social history" of the "whole phrase 'discriminate . . . because of such individual's age.'" *Ante*, at 596. In other words, the Court concludes that the "common usage" of "age discrimination" refers exclusively to discrimination against the relatively old *only because* the "social history" of the phrase as a whole mandates such a reading. As I have explained here, the "social history" of the "whole phrase 'discriminate . . . because of such individual's age,'" *ibid.*, found in § 623(a)(1) is no different than the "social history" of the whole phrase "discriminate . . . because of such individual's race." 42 U. S. C. § 2000e–2(a)(1).

* * *

As the ADEA clearly prohibits discrimination because of an individual's age, whether the individual is too old or too young, I would affirm the Court of Appeals. Because the Court resorts to interpretive sleight of hand to avoid addressing the plain language of the ADEA, I respectfully dissent.

Syllabus

DOE *v.* CHAO, SECRETARY OF LABOR

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

No. 02–1377. Argued December 3, 2003—Decided February 24, 2004

After petitioner Doe filed a black lung benefits claim with the Department of Labor, the agency used his Social Security number to identify his claim on official agency documents, including a multicaptioned hearing notice that was sent to a group of claimants, their employers, and lawyers. Doe and other black lung claimants sued the Department, claiming that such disclosures violated the Privacy Act of 1974. The Government stipulated to an order prohibiting future publication of Social Security numbers on multicaptioned hearing notices, and the parties moved for summary judgment. The District Court entered judgment against all plaintiffs but Doe, finding that they had raised no issues of cognizable harm. However, the court accepted Doe's uncontroverted testimony about his distress on learning of the improper disclosure, granted him summary judgment, and awarded him $1,000, the minimum statutory damages award under 5 U. S. C. § 552a(g)(4). The Fourth Circuit reversed on Doe's claim, holding that the $1,000 minimum is available only to plaintiffs who suffer actual damages, and that Doe had not raised a triable issue of fact about such damages, having submitted no corroboration for his emotional distress claim.

Held: Plaintiffs must prove some actual damages to qualify for the minimum statutory award. Pp. 618–627.

(a) The Privacy Act gives agencies detailed instructions for managing their records and provides various sorts of civil relief to persons aggrieved by the Government's failure to comply with the Act's requirements. Doe's claim falls within a catchall category for someone who suffers an "adverse effect" from a failure not otherwise specified in the remedial section of the Act. § 552a(g)(1)(D). If a court determines in a subsection (g)(1)(D) suit that the agency acted in an "intentional or willful" manner, the Government is liable for "actual damages sustained by the individual . . . , but in no case shall a person entitled to recovery receive less than . . . $1,000." § 552a(g)(4)(A). Pp. 618–619.

(b) A straightforward textual analysis supports the Government's position that the minimum guarantee goes only to victims who prove some actual damages. By the time the statute guarantees the $1,000 minimum, it not only has confined eligibility to victims of adverse effects caused by intentional or willful actions, but has provided expressly for

liability to such victims for "actual damages sustained." When the next clause of the sentence containing such an explicit provision guarantees $1,000 to the "person entitled to recovery," the obvious referent is the immediately preceding provision for recovering actual damages, the Act's sole provision for recovering anything. Doe's theory that the minimum requires nothing more than proof of a statutory violation is immediately questionable in ignoring the "actual damages" language so directly at hand and instead looking for "a person entitled to recovery" in a separate part of the statute devoid of any mention of recovery or of what might be recovered. Doe ignores statutory language by reading the statute to speak of liability in a freestanding, unqualified way, when it actually speaks in a limited way, by referencing enumerated damages. His reading is also at odds with the traditional understanding that tort recovery requires both wrongful act plus causation and proof of some harm for which damages can reasonably be assessed. And an uncodified provision of the Act demonstrates that Congress left for another day the question whether to authorize general damages, *i. e.*, an award calculated without reference to specific harm. In fact, drafting history shows that Congress cut out the very language in the bill that would have authorized such damages. Finally, Doe's reading leaves the entitlement to recovery reference with no job to do. As he treats the text, Congress could have accomplished its object simply by providing that the Government would be liable for actual damages but in no case less than $1,000. Pp. 620–623.

(c) Doe's argument suggests that it would have been illogical for Congress to create a cause of action for anyone suffering an adverse effect from intentional or willful agency action, then deny recovery without actual damages. But subsection (g)(1)(D)'s recognition of a civil action was not meant to provide a complete cause of action. A subsequent provision requires proof of intent or willfulness in addition to adverse effect, and if the specific state of mind must be proven additionally, it is consistent with logic to require some actual damages as well. Doe also suggests that it is peculiar to offer guaranteed damages, as a form of presumed damages not requiring proof of amount, only to plaintiffs who can demonstrate actual damages. But this approach parallels the common-law remedial scheme for certain defamation claims in which plaintiffs can recover presumed damages only if they can demonstrate some actual, quantifiable pecuniary loss. Finally, Doe points to subsequently enacted statutes with remedial provisions similar to § 552a(g)(4). However, the text of one provision is too far different from the Privacy Act's language to serve as a sound basis for analogy; and even as to the other provisions, this Court has said repeatedly that subsequent legislative history will rarely override a reasonable interpreta-

tion of a statute that can be gleaned from its language and legislative history prior to its enactment. Pp. 624–627.

306 F. 3d 170, affirmed.

SOUTER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, KENNEDY, and THOMAS, JJ., joined, and in which SCALIA, J., joined except as to the penultimate paragraph of Part III and footnote 8. GINSBURG, J., filed a dissenting opinion, in which STEVENS and BREYER, JJ., joined, *post*, p. 627. BREYER, J., filed a dissenting opinion, *post*, p. 641.

Jack W. Campbell IV argued the cause for petitioner. With him on the briefs were *Donald B. Ayer*, *Dominick V. Freda*, and *Joseph E. Wolfe*.

Malcolm L. Stewart argued the cause for respondent. With him on the brief were *Solicitor General Olson*, *Assistant Attorney General Keisler*, *Deputy Solicitor General Kneedler*, *Patricia A. Millett*, *Leonard Schaitman*, *Anthony A. Yang*, *Howard M. Radzely*, *Allen H. Feldman*, *Nathaniel I. Spiller*, and *Michael P. Doyle*.*

JUSTICE SOUTER delivered the opinion of the Court.

The United States is subject to a cause of action for the benefit of at least some individuals adversely affected by a federal agency's violation of the Privacy Act of 1974. The question before us is whether plaintiffs must prove some actual damages to qualify for a minimum statutory award of $1,000. We hold that they must.

I

Petitioner Buck Doe filed for benefits under the Black Lung Benefits Act, 83 Stat. 792, 30 U. S. C. § 901 *et seq.*, with the Office of Workers' Compensation Programs, the division

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**David K. Colapinto*, *Stephen M. Kohn*, and *Michael D. Kohn* filed a brief for Linda R. Tripp et al. as *amici curiae* urging reversal.

Briefs of *amici curiae* were filed for the Electronic Privacy Information Center et al. by *Marc Rotenberg* and *David L. Sobel;* and for the Reporters Committee for Freedom of the Press by *Lucy A. Dalglish*.

of the Department of Labor responsible for adjudicating it. The application form called for a Social Security number, which the agency then used to identify the applicant's claim, as on documents like "multicaptioned" notices of hearing dates, sent to groups of claimants, their employers, and the lawyers involved in their cases. The Government concedes that following this practice led to disclosing Doe's Social Security number beyond the limits set by the Privacy Act. See 5 U. S. C. § 552a(b).

Doe joined with six other black lung claimants to sue the Department of Labor, alleging repeated violations of the Act and seeking certification of a class of "'all claimants for Black Lung Benefits since the passage of the Privacy Act.'" Pet. for Cert. 6a. Early on, the United States stipulated to an order prohibiting future publication of applicants' Social Security numbers on multicaptioned hearing notices, and the parties then filed cross-motions for summary judgment. The District Court denied class certification and entered judgment against all individual plaintiffs except Doe, finding that their submissions had raised no issues of cognizable harm. As to Doe, the court accepted his uncontroverted evidence of distress on learning of the improper disclosure, granted summary judgment, and awarded $1,000 in statutory damages under 5 U. S. C. § 552a(g)(4).

A divided panel of the Fourth Circuit affirmed in part but reversed on Doe's claim, holding the United States entitled to summary judgment across the board. 306 F. 3d 170 (2002). The Circuit treated the $1,000 statutory minimum as available only to plaintiffs who suffered actual damages because of the agency's violation, *id.*, at 176–179, and then found that Doe had not raised a triable issue of fact about actual damages, having submitted no corroboration for his claim of emotional distress, such as evidence of physical symptoms, medical treatment, loss of income, or impact on his behavior. In fact, the only indication of emotional affliction was Doe's conclusory allegations that he was "'torn . . .

all to pieces'" and "'greatly concerned and worried'" because of the disclosure of his Social Security number and its potentially "'devastating'" consequences. *Id.*, at 181.

Doe petitioned for review of the holding that some actual damages must be proven before a plaintiff may receive the minimum statutory award. See Pet. for Cert. i. Because the Fourth Circuit's decision requiring proof of actual damages conflicted with the views of other Circuits, see, *e. g.*, *Orekoya* v. *Mooney*, 330 F. 3d 1, 7–8 (CA1 2003); *Wilborn* v. *Department of Health and Human Servs.*, 49 F. 3d 597, 603 (CA9 1995); *Waters* v. *Thornburgh*, 888 F. 2d 870, 872 (CADC 1989); *Johnson* v. *Department of Treasury, IRS*, 700 F. 2d 971, 977, and n. 12 (CA5 1983); *Fitzpatrick* v. *IRS*, 665 F. 2d 327, 330–331 (CA11 1982), we granted certiorari. 539 U. S. 957 (2003). We now affirm.

II

"[I]n order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary . . . to regulate the collection, maintenance, use, and dissemination of information by such agencies." Privacy Act of 1974, § 2(a)(5), 88 Stat. 1896. The Act gives agencies detailed instructions for managing their records and provides for various sorts of civil relief to individuals aggrieved by failures on the Government's part to comply with the requirements.

Subsection (g)(1) recognizes a civil action for agency misconduct fitting within any of four categories (the fourth, in issue here, being a catchall), 5 U. S. C. §§ 552a(g)(1)(A)–(D), and then makes separate provision for the redress of each. The first two categories cover deficient management of records: subsection (g)(1)(A) provides for the correction of any inaccurate or otherwise improper material in a record, and subsection (g)(1)(B) provides a right of access against any agency refusing to allow an individual to inspect a record kept on him. In each instance, further provisions specify

such things as the *de novo* nature of the suit (as distinct from any form of deferential review), §§ 552a(g)(2)(A), (g)(3)(A), and mechanisms for exercising judicial equity jurisdiction (by *in camera* inspection, for example), § 552a(g)(3)(A).

The two remaining categories deal with derelictions having consequences beyond the statutory violations *per se*. Subsection (g)(1)(C) describes an agency's failure to maintain an adequate record on an individual, when the result is a determination "adverse" to that person. Subsection (g)(1)(D) speaks of a violation when someone suffers an "adverse effect" from any other failure to hew to the terms of the Act. Like the inspection and correction infractions, breaches of the statute with adverse consequences are addressed by specific terms governing relief:

> "In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—
>
> "(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of $1,000; and
>
> "(B) the costs of the action together with reasonable attorney fees as determined by the court." § 552a (g)(4).[1]

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[1] The Privacy Act says nothing about standards of proof governing equitable relief that may be open to victims of adverse determinations or effects, although it may be that this inattention is explained by the general provisions for equitable relief within the Administrative Procedure Act (APA), 5 U. S. C. § 706. Indeed, the District Court relied on the APA in determining that it had jurisdiction to enforce the stipulated order prohibiting the Department of Labor from using Social Security numbers in multiparty captions. *Doe* v. *Herman*, Civ. Action No. 97–0043–B, 1998 WL 34194937, *5–*7 (DC Va., Mar. 18, 1998).

III

Doe argues that subsection (g)(4)(A) entitles any plaintiff adversely affected by an intentional or willful violation to the $1,000 minimum on proof of nothing more than a statutory violation: anyone suffering an adverse consequence of intentional or willful disclosure is entitled to recovery. The Government claims the minimum guarantee goes only to victims who prove some actual damages. We think the Government has the better side of the argument.

To begin with, the Government's position is supported by a straightforward textual analysis. When the statute gets to the point of guaranteeing the $1,000 minimum, it not only has confined any eligibility to victims of adverse effects caused by intentional or willful actions, but has provided expressly for liability to such victims for "actual damages sustained." It has made specific provision, in other words, for what a victim within the limited class may recover. When the very next clause of the sentence containing the explicit provision guarantees $1,000 to a "person entitled to recovery," the simplest reading of that phrase looks back to the immediately preceding provision for recovering actual damages, which is also the Act's sole provision for recovering anything (as distinct from equitable relief). With such an obvious referent for "person entitled to recovery" in the plaintiff who sustains "actual damages," Doe's theory is immediately questionable in ignoring the "actual damages" language so directly at hand and instead looking for "a person entitled to recovery" in a separate part of the statute devoid of any mention either of recovery or of what might be recovered.

Nor is it too strong to say that Doe does ignore statutory language. When Doe reads the statute to mean that the United States shall be liable to any adversely affected subject of an intentional or willful violation, without more, he treats willful action as the last fact necessary to make the Government "liable," and he is thus able to describe anyone

to whom it is liable as entitled to the $1,000 guarantee. But this way of reading the statute simply pays no attention to the fact that the statute does not speak of liability (and consequent entitlement to recovery) in a freestanding, unqualified way, but in a limited way, by reference to enumerated damages.[2]

Doe's manner of reading "entitle[ment] to recovery" as satisfied by adverse effect caused by intentional or willful violation is in tension with more than the text, however. It is at odds with the traditional understanding that tort recovery requires not only wrongful act plus causation reaching to the plaintiff, but proof of some harm for which damages can reasonably be assessed. See, *e. g.*, W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts § 30 (5th ed. 1984). Doe, instead, identifies a person as entitled to recover without any reference to proof of damages, actual or otherwise. Doe might respond that it makes sense to speak of a privacy tort victim as entitled to recover without reference to damages because analogous common law would not require him to show particular items of injury in order to receive a dollar recovery. Traditionally, the common law has provided such victims with a claim for "general" damages, which for privacy and defamation torts are presumed damages: a monetary award calculated without reference to specific harm.[3]

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[2] Indeed, if adverse effect of intentional or willful violation were alone enough to make a person entitled to recovery, then Congress could have conditioned the entire subsection (g)(4)(A) as applying only to "a person entitled to recovery." That, of course, is not what Congress wrote. As we mentioned before, Congress used the entitled-to-recovery phrase only to describe those entitled to the $1,000 guarantee, and it spoke of entitlement and guarantee only after referring to an individual's actual damages, indicating that "actual damages" is a further touchstone of the entitlement.

[3] 3 Restatement of Torts § 621, Comment *a* (1938) ("It is not necessary for the plaintiff [who is seeking general damages in an action for defamation] to prove any specific harm to his reputation or any other loss caused thereby"); 4 *id.*, § 867, Comment *d* (1939) (noting that damages are avail-

Such a rejoinder would not pass muster under the Privacy Act, however, because a provision of the Act not previously mentioned indicates beyond serious doubt that general damages are not authorized for a statutory violation. An uncodified section of the Act established a Privacy Protection Study Commission, which was charged, among its other jobs, to consider "whether the Federal Government should be liable for general damages incurred by an individual as the result of a willful or intentional violation of the provisions of sections 552a(g)(1)(C) or (D) of title 5."[4] § 5(c)(2)(B)(iii), 88 Stat. 1907. Congress left the question of general damages, that is, for another day. Because presumed damages are therefore clearly unavailable, we have no business treating just any adversely affected victim of an intentional or willful violation as entitled to recovery, without something more.

This inference from the terms of the Commission's mandate is underscored by drafting history showing that Congress cut out the very language in the bill that would have authorized any presumed damages.[5] The Senate bill would have authorized an award of "actual and general damages

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able for privacy torts "in the same way in which general damages are given for defamation," without proof of "pecuniary loss [or] physical harm"); see also 3 Restatement (Second) of Torts § 621, Comment *a* (1976).

[4] The Commission ultimately recommended that the Act should "permit the recovery of special and general damages . . . but in no case should a person entitled to recovery receive less than the sum of $1,000 or more than the sum of $10,000 for general damages in excess of the dollar amount of any special damages." Personal Privacy in an Information Society: The Report of the Privacy Protection Study Commission 531 (July 1977).

[5] On this point, we do not understand JUSTICE GINSBURG's dissent to take issue with our conclusion that Congress explicitly rejected the proposal to make presumed damages available for Privacy Act violations. Instead, JUSTICE GINSBURG appears to argue only that Congress would have wanted nonpecuniary harm to qualify as actual damages under subsection (g)(4)(A). *Post*, at 635, n. 4 (plaintiff may recover for emotional distress "'that he proves to have been actually suffered by him'" (quoting 3 Restatement (Second) of Torts, *supra*, at 402, Comment *b*)). That issue, however, is not before us today. See n. 12, *infra*.

sustained by any person," with that language followed by the guarantee that "in no case shall a person entitled to recovery receive less than the sum of $1,000." S. 3418, 93d Cong., 2d Sess., § 303(c)(1) (1974). Although the provision for general damages would have covered presumed damages, see n. 3, *supra*, this language was trimmed from the final statute, subject to any later revision that might be recommended by the Commission. The deletion of "general damages" from the bill is fairly seen, then, as a deliberate elimination of any possibility of imputing harm and awarding presumed damages.[6] The deletion thus precludes any hope of a sound interpretation of entitlement to recovery without reference to actual damages.[7]

Finally, Doe's reading is open to the objection that no purpose is served by conditioning the guarantee on a person's being entitled to recovery. As Doe treats the text, Congress could have accomplished its object simply by providing that the Government would be liable to the individual for actual damages "but in no case . . . less than the sum of $1,000" plus fees and costs. Doe's reading leaves the reference to entitlement to recovery with no job to do, and it accordingly accomplishes nothing.[8]

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[6] While theoretically there could also have been a third category, that of "nominal damages," it is implausible that Congress intended tacitly to recognize a nominal damages remedy after eliminating the explicit reference to general damages.

[7] JUSTICE SCALIA does not join this paragraph or footnote 8.

[8] JUSTICE GINSBURG responds that our reading is subject to a similar criticism: "Congress more rationally [c]ould have written: 'actual damages . . . but in no case shall a person who proves such damages [in any amount] receive less than $1,000.'" *Post*, at 630. Congress's use of the entitlement phrase actually contained in the statute, however, is explained by drafting history. The first bill passed by the Senate authorized recovery of both actual and general damages. See *supra*, at 622 and this page. At that point, when discussing eligibility for the $1,000 guarantee, it was reasonable to refer to plaintiffs with either sort of damages by the general term "a person entitled to recovery." When subsequent amendment limited recovery to actual damages by eliminating the general, no one appar-

IV

There are three loose ends. Doe's argument suggests it would have been illogical for Congress to create a cause of action for anyone who suffers an adverse effect from intentional or willful agency action, then deny recovery without actual damages. But this objection assumes that the language in subsection (g)(1)(D) recognizing a federal "civil action" on the part of someone adversely affected was meant, without more, to provide a complete cause of action, and of course this is not so. A subsequent provision requires proof of intent or willfulness in addition to adverse effect, and if the specific state of mind must be proven additionally, it is equally consistent with logic to require some actual damages as well. Nor does our view deprive the language recognizing a civil action by an adversely affected person of any independent effect, for it may readily be understood as having a limited but specific function: the reference in § 552a(g)(1)(D) to "adverse effect" acts as a term of art identifying a potential plaintiff who satisfies the injury-in-fact and causation requirements of Article III standing, and who may consequently bring a civil action without suffering dismissal for want of standing to sue. See *Director, Office of Workers' Compensation Programs* v. *Newport News Shipbuilding & Dry Dock Co.*, 514 U. S. 122, 126 (1995) ("The phrase 'person adversely affected or aggrieved' is a term of art used in many statutes to designate those who have standing to challenge or appeal an agency decision, within the agency or before the courts"); see also 5 U. S. C. § 702 (providing review of agency action under the Administrative Procedure Act to individuals who have been "adversely affected or aggrieved"). That is, an individual subjected to an adverse ef-

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ently thought to delete the inclusive reference to entitlement. But this failure to remove the old language did not affect its reference to "actual damages," the term remaining from the original pair, "actual and general."

fect has injury enough to open the courthouse door, but without more has no cause of action for damages under the Privacy Act.[9]

Next, Doe also suggests there is something peculiar in offering some guaranteed damages, as a form of presumed damages not requiring proof of amount, only to those plaintiffs who can demonstrate actual damages. But this approach parallels another remedial scheme that the drafters of the Privacy Act would probably have known about. At common law, certain defamation torts were redressed by general damages but only when a plaintiff first proved some "special harm," *i. e.*, "harm of a material and generally of a pecuniary nature." 3 Restatement of Torts § 575, Comments *a* and *b* (1938) (discussing defamation torts that are "not actionable per se"); see also 3 Restatement (Second) of Torts § 575, Comments *a* and *b* (1976) (same). Plaintiffs claiming such torts could recover presumed damages only if they could demonstrate some actual, quantifiable pecuniary loss. Because the recovery of presumed damages in these cases was supplemental to compensation for specific harm, it was hardly unprecedented for Congress to make a guaranteed minimum contingent upon some showing of actual damages, thereby avoiding giveaways to plaintiffs with nothing

[9] Nor are we convinced by the analysis mentioned in the dissenting opinion in the Court of Appeals, that any plaintiff who can demonstrate that he was adversely affected by intentional or willful agency action is entitled to costs and reasonable attorney's fees under 5 U. S. C. § 552a(g)(4)(B), and is for that reason "a person entitled to recovery" under subsection (g)(4)(A). See 306 F. 3d 170, 188–189 (CA4 2002). Instead of treating damages as a recovery entitling a plaintiff to costs and fees, see, *e. g.*, 42 U. S. C. § 1988(b) (allowing "a reasonable attorney's fee" to a "prevailing party" under many federal civil rights statutes); *Alyeska Pipeline Service Co.* v. *Wilderness Society*, 421 U. S. 240, 247–258 (1975) (discussing history of American courts' power to award fees and costs to prevailing plaintiffs), this analysis would treat costs and fees as the recovery entitling a plaintiff to minimum damages; it would get the cart before the horse.

more than "abstract injuries," *Los Angeles* v. *Lyons*, 461 U. S. 95, 101–102 (1983).[10]

In a final effort to save his claim, Doe points to a pair of statutes with remedial provisions that are worded similarly to § 552a(g)(4). See Tax Reform Act of 1976, § 1201(i)(2)(A), 90 Stat. 1665–1666, 26 U. S. C. § 6110(j)(2)(A); § 1202(e)(1), 90 Stat. 1687, 26 U. S. C. § 7217(c) (1976 ed., Supp. V) (repealed 1982); Electronic Communications Privacy Act of 1986, § 201, 100 Stat. 1866, 18 U. S. C. § 2707(c). He contends that legislative history of these subsequent enactments shows that Congress sometimes used language similar to 5 U. S. C. § 552a(g)(4) with the object of authorizing true liquidated damages remedies. See, *e. g.*, S. Rep. No. 94–938, p. 348 (1976) (discussing § 1202(e)(1) of the Tax Reform Act); S. Rep. No. 99–541, p. 43 (1986) (discussing § 201 of the Electronic Communications Privacy Act). There are two problems with this argument. First, as to § 1201(i)(2)(A) of the Tax Reform Act, the text is too far different from the language of the Privacy Act to serve as any sound basis for analogy; it does not include the critical limiting phrase "entitled to recovery." But even as to § 1202(e)(1) of the Tax Reform Act and § 201 of the Electronic Communications Privacy Act, the trouble with Doe's position is its reliance on the legislative histories of completely separate statutes passed well after the Privacy Act. Those of us who look to legislative history have been wary about expecting to find reliable interpretive help outside the record of the statute being construed, and we have said repeatedly that " 'subsequent legis-

[10] We also reject the related suggestion that the category of cases with actual damages not exceeding $1,000 is so small as to render the minimum award meaningless under our reading. It is easy enough to imagine pecuniary expenses that might turn out to be reasonable in particular cases but fall well short of $1,000: fees associated with running a credit report, for example, or the charge for a Valium prescription. Since we do not address the definition of actual damages today, see n. 12, *infra*, this challenge is too speculative to overcome our interpretation of the statute's plain language and history.

lative history will rarely override a reasonable interpretation of a statute that can be gleaned from its language and legislative history prior to its enactment,'" *Solid Waste Agency of Northern Cook Cty.* v. *Army Corps of Engineers*, 531 U. S. 159, 170, n. 5 (2001) (quoting *Consumer Product Safety Comm'n* v. *GTE Sylvania, Inc.*, 447 U. S. 102, 118, n. 13 (1980)).[11]

V

The "entitle[ment] to recovery" necessary to qualify for the $1,000 minimum is not shown merely by an intentional or willful violation of the Act producing some adverse effect. The statute guarantees $1,000 only to plaintiffs who have suffered some actual damages.[12] The judgment of the Fourth Circuit is affirmed.

It is so ordered.

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

In this Privacy Act suit brought under 5 U. S. C. § 552a(g)(1)(D), the Government concedes the alleged viola-

[11] In support of Doe's position, JUSTICE GINSBURG's dissent also cites another item of extratextual material, an interpretation of the Privacy Act that was published by the Office of Management and Budget in 1975 as a guideline for federal agencies seeking to comply with the Act. *Post*, at 633. The dissent does not claim that any deference is due this interpretation, however, and we do not find its unelaborated conclusion persuasive.

[12] The Courts of Appeals are divided on the precise definition of actual damages. Compare *Fitzpatrick* v. *IRS*, 665 F. 2d 327, 331 (CA11 1982) (actual damages are restricted to pecuniary loss), with *Johnson* v. *Department of Treasury, IRS*, 700 F. 2d 971, 972–974 (CA5 1983) (actual damages can cover adequately demonstrated mental anxiety even without any out-of-pocket loss). That issue is not before us, however, since the petition for certiorari did not raise it for our review. We assume without deciding that the Fourth Circuit was correct to hold that Doe's complaints in this case did not rise to the level of alleging actual damages. We do not suggest that out-of-pocket expenses are necessary for recovery of the $1,000 minimum; only that they suffice to qualify under any view of actual damages.

tion and does not challenge the District Court's finding that the agency in question (the Department of Labor) acted in an intentional or willful manner. Tr. of Oral Arg. 35; Brief for Respondent (I). Nor does the Government here contest that Buck Doe, the only petitioner before us, suffered an "adverse effect" from the Privacy Act violation. The case therefore cleanly presents a sole issue for this Court's resolution: Does a claimant who has suffered an "adverse effect"—in this case and typically, emotional anguish—from a federal agency's intentional or willful Privacy Act violation, but has proved no "actual damages" beyond psychological harm, qualify as "a person entitled to recovery" within the meaning of § 552a(g)(4)(A)? In accord with Circuit Judge Michael, who disagreed with the Fourth Circuit's majority on the need to show actual damages, I would answer that question yes.

Section 552a(g)(4)(A) affords a remedy for violation of a Privacy Act right safeguarded by § 552a(g)(1)(C) or (D). The words "a person entitled to recovery," as used in § 552a(g)(4)(A)'s remedial prescription, are most sensibly read to include anyone experiencing an "adverse effect" as a consequence of an agency's intentional or willful commission of a Privacy Act violation of the kind described in § 552a(g)(1)(C) or (D). The Act's text, structure, and purpose warrant this construction, under which Doe need not show a current pecuniary loss, or "actual damages" of some other sort, to recover the minimum award of $1,000, attorney's fees, and costs.

I

Section 552a(g)(4) provides:

> "In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—

"(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of $1,000; and

"(B) the costs of the action together with reasonable attorney fees as determined by the court."

The opening clause of § 552a(g)(4) prescribes two conditions on which liability depends. *First*, the claimant's suit must lie under § 552a(g)(1)(C) or (D); both provisions require an agency action "adverse" to the claimant. Section 552a(g)(1)(C) authorizes a civil action when an agency "fails to maintain [a] record concerning [an] individual with [the] accuracy, relevance, timeliness, and completeness" needed to determine fairly "the qualifications, character, rights, or opportunities of, or benefits to the individual," if the agency's lapse yields a "determination . . . *adverse to the individual.*" (Emphasis added.) Section 552a(g)(1)(D) allows a civil action when an agency "fails to comply with [a] provision of [§ 552a], or [a] rule promulgated thereunder, in such a way as to have *an adverse effect on an individual.*" (Emphasis added.) *Second*, the agency action triggering the suit under § 552a(g)(1)(C) or (D) must have been "intentional or willful." § 552a(g)(4). If those two liability-determining conditions are satisfied (suit under § 552a(g)(1)(C) or (D); intentional or willful conduct), the next clause specifies the consequences: "[T]he United States shall be liable to the individual in an amount equal to the sum of" the recovery allowed under § 552a(g)(4)(A) and the costs and fees determined under § 552a(g)(4)(B).

The terms "actual damages" and "person entitled to recovery" appear only in the text describing the relief attendant upon the agency's statutory dereliction; they do not appear in the preceding text describing the conditions on which the agency's liability turns. Most reasonably read, § 552a(g)(4)(A) does not wend back to add "actual damages" as a third liability-determining element. See *Davis* v. *Mich-*

igan Dept. of Treasury, 489 U. S. 803, 809 (1989) ("It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.").

Nor, when Congress used different words, here "actual damages sustained by the individual" and "a person entitled to recovery," should a court ordinarily equate the two phrases. Had Congress intended the meaning that the Government urged upon this Court, one might have expected the statutory instruction to read, not as it does: "actual damages . . . but in no case shall a person entitled to recovery receive less than . . . $1,000." Instead, Congress more rationally would have written: "actual damages . . . but in no case shall a person who proves such damages [in any amount] receive less than $1,000." Cf. *Barnhart* v. *Sigmon Coal Co.*, 534 U. S. 438, 454 (2002) ("'We refrain from concluding here that the differing language in the two subsections has the same meaning in each. We would not presume to ascribe this difference to a simple mistake in draftsmanship.'" (quoting *Russello* v. *United States*, 464 U. S. 16, 23 (1983))). Just as the words "person entitled to recovery" suggest greater breadth than "individual [who has sustained] actual damages," so the term "recovery" ordinarily encompasses more than "'get[ting] or win[ning] back,'" Brief for Respondent 26 (quoting Webster's Third New International Dictionary 1898 (1966)). "Recovery" generally embraces "[t]he obtain[ing] of a right to something (esp. damages) by a judgment or decree" and "[a]n amount awarded in or collected from a judgment or decree." Black's Law Dictionary 1280 (7th ed. 1999). So comprehended, "recovery" here would yield a claimant who suffers an "adverse effect" from an agency's intentional or willful § 552a(g)(1)(C) or (D) violation a minimum of $1,000 plus costs and attorney's fees, whether or not the claimant proves "actual damages."

"It is 'a cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if

it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" *TRW Inc.* v. *Andrews*, 534 U. S. 19, 31 (2001) (quoting *Duncan* v. *Walker*, 533 U. S. 167, 174 (2001)). The Court's reading of § 552a(g)(4) is hardly in full harmony with that principle. Under the Court's construction, the words "a person entitled to recovery" have no office, see *ante*, at 623, n. 8, and the liability-determining element "adverse effect" becomes superfluous, swallowed up by the "actual damages" requirement.[1] Further, the Court's interpretation renders the word "recovery" nothing more than a synonym for "actual damages," and it turns the phrase "shall be liable" into "may be liable." In part because it fails to "'give effect . . . to every clause and word'" Congress wrote, *United States* v. *Menasche*, 348 U. S. 528, 538–539 (1955) (quoting *Montclair* v. *Ramsdell*, 107 U. S. 147, 152 (1883)), the Court's reading of § 552a(g)(4) is at odds with the interpretation prevailing in the Federal Circuits.

I would adhere to the interpretation of the key statutory terms advanced by most courts of appeals. As interpreted by those courts, § 552a(g)(4) authorizes a minimum $1,000 award that need not be hinged to proof of actual damages. See *Orekoya* v. *Mooney*, 330 F. 3d 1, 5 (CA1 2003) (§ 552a(g)(4) makes available "[b]oth 'actual damages sustained by the individual' and statutory minimum damages of $1,000"); *Wilborn* v. *Department of Health and Human*

[1] The Court interprets "the reference in § 552a(g)(1)(D) to 'adverse effect' . . . as a term of art identifying a potential plaintiff who satisfies the injury-in-fact and causation requirements of Article III standing, and who may consequently bring a civil action without suffering dismissal for want of standing to sue." *Ante*, at 624. Under the Court's reading, § 552a(g)(1)(D) "open[s] the courthouse door" to individuals "adversely affected" by an intentional or willful agency violation of the Privacy Act, *ante*, at 624–625, while § 552a(g)(4) bars those individuals from recovering anything if they do not additionally show actual damages. See *infra*, at 635–636. In other words, the open door for plaintiffs like Buck Doe is an illusion: what one hand opens, the other shuts.

Servs., 49 F. 3d 597, 603 (CA9 1995) ("statutory minimum of $1,000" under § 552a(g)(4)(A) meant to provide plaintiffs "with 'no provable damages' the incentive to sue" (quoting *Fitzpatrick* v. *IRS*, 665 F. 2d 327, 330 (CA11 1982))); *Waters* v. *Thornburgh*, 888 F. 2d 870, 872 (CADC 1989) (If a plaintiff establishes that she suffered an "adverse effect" from an "intentional or willful" violation of § 552a(e)(2), "the plaintiff is entitled to the greater of $1,000 or the actual damages sustained." (internal quotation marks omitted)); *Johnson* v. *Department of Treasury, IRS*, 700 F. 2d 971, 977, and n. 12 (CA5 1983) (Even without proof of actual damages, "[t]he statutory minimum of $1,000 [under § 552a(g)(4)(A)], of course, is recoverable."); *Fitzpatrick*, 665 F. 2d, at 331 ("Because [the plaintiff] proved only that he suffered a general mental injury from the disclosure, he could not recover beyond the statutory $1,000 minimum damages, costs, and reasonable attorneys' fees [under § 552a(g)(4)]."); cf. *Quinn* v. *Stone*, 978 F. 2d 126, 131 (CA3 1992) ("adverse effect" but not "actual damages" is a "necessary" element "to maintain a suit for damages under the catch-all provision of 5 U. S. C. § 552a(g)(1)(D)" (internal quotation marks omitted)); *Parks* v. *IRS*, 618 F. 2d 677, 680, 683 (CA10 1980) (plaintiffs seeking "the award of a minimum of $1,000 damages together with attorney's fees" under § 552a(g)(4) state a claim by alleging the agency acted intentionally or willfully when it illegally disclosed protected information, causing "psychological damage or harm"). But see *Hudson* v. *Reno*, 130 F. 3d 1193, 1207 (CA6 1997) ("A final basis for affirming the District Court's decision with respect to [the plaintiff]'s claims under the Privacy Act is her failure to show 'actual damages,' as required by [§ 552a(g)(4)]."), overruled in part on other grounds, *Pollard* v. *E. I. du Pont de Nemours & Co.*, 532 U. S. 843 (2001); *Molerio* v. *FBI*, 749 F. 2d 815, 826 (CADC 1984) ("This cause of action under [§§ 552a(g)(1)(C) and (g)(4)(A)] requires, however, not merely an intentional or

willful failure to maintain accurate records, but also 'actual damages sustained' as a result of such failure.").

The view prevailing in the Federal Circuits is in sync with an Office of Management and Budget (OMB) interpretation of the Privacy Act published in 1975, the year following the Act's adoption. Congress instructed OMB to "develop guidelines and regulations for the use of agencies in implementing the provisions of [the Privacy Act]." § 6, 88 Stat. 1909. Just over six months after the Act's adoption, OMB promulgated Privacy Act Guidelines. 40 Fed. Reg. 28949 (1975). The Guidelines speak directly to the issue presented in this case. They interpret §§ 552a(g)(1)(C), (D), and (g)(4) to convey:

> "When the court finds that an agency has acted willfully or intentionally in violation of the Act in such a manner as to have an adverse effect upon the individual, the United States will be required to pay
>
> "Actual damages or $1,000, whichever is greater
>
> "Court costs and attorney fees." *Id.*, at 28970.

The Guidelines have been amended several times since 1975, but OMB's published interpretation of § 552a(g)(4) has remained unchanged. See *id.*, at 56741; 44 Fed. Reg. 23138 (1979); 47 Fed. Reg. 21656 (1982); 48 Fed. Reg. 15556 (1983); 49 Fed. Reg. 12338 (1984); 50 Fed. Reg. 52738 (1985); 52 Fed. Reg. 12990 (1987); 54 Fed. Reg. 25821 (1989); 58 Fed. Reg. 36075 (1993); 59 Fed. Reg. 37914 (1994); 61 Fed. Reg. 6435 (1996).[2]

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[2] In briefing this case, the Government noted a communication to the Office of the Solicitor General from an unnamed OMB official conveying that OMB does not now "interpret its Guideline to require the payment of $1000 to plaintiffs who have sustained no actual damages from a violation of the Act." Brief for Respondent 47–48. Such an informal communication cannot override OMB's contemporaneous, long-published construction of § 552a(g)(4); cf. *Bowen* v. *Georgetown Univ. Hospital*, 488 U. S. 204, 212 (1988) ("We have never applied [deference] to agency litigating positions that are wholly unsupported by regulations, rulings, or adminis-

II

The purpose and legislative history of the Privacy Act, as well as similarly designed statutes, are in harmony with the reading of § 552a(g)(4) most federal judges have found sound. Congress sought to afford recovery for "*any* damages" resulting from the "willful or intentional" violation of "any individual's rights under th[e] Act." § 2(b)(6), 88 Stat. 1896 (emphasis added). Privacy Act violations commonly cause fear, anxiety, or other emotional distress—in the Act's parlance, "adverse effects." Harm of this character must, of course, be proved genuine.[3] In cases like Doe's, emotional distress is generally the only harm the claimant suffers, *e. g.*, the identity theft apprehended never materializes.[4]

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trative practice."); *INS* v. *Cardoza-Fonseca*, 480 U. S. 421, 446, n. 30 (1987) ("An agency interpretation of a relevant provision which conflicts with the agency's earlier interpretation is 'entitled to considerably less deference,' than a consistently held agency view." (quoting *Watt* v. *Alaska*, 451 U. S. 259, 273 (1981))).

[3] Circuit Judge Michael, who dissented from the Fourth Circuit's judgment as to petitioner Buck Doe but agreed with his colleagues on this point, noted: "[A]dverse effects must be proven rather than merely presumed . . . ." 306 F. 3d 170, 187 (2002) (opinion concurring in part and dissenting in part). Doe had declared in his affidavit that "no amount of money could compensate [him] for worry and fear of not knowing when someone would use [his] name and Social Security number to establish credit, a new identity, change [his] address, use [his] checking account or even get credit cards." App. 15. Doe's several coplaintiffs, against whom summary judgment was entered and unanimously affirmed on appeal, made no such declaration.

[4] The Court asserts that Doe's reading of § 552a(g)(4)(A) "is at odds with the traditional understanding that tort recovery requires . . . proof of some harm for which damages can reasonably be assessed." *Ante*, at 621. Although that understanding applies to common negligence actions, see W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts 165 (5th ed. 1984) (cited *ante*, at 621), it is not the black letter rule for privacy actions. See 3 Restatement (Second) of Torts § 652H, p. 401 (1976) ("One who has established a cause of action for invasion of his privacy is entitled to recover damages for . . . his mental distress proved to have been suffered if it is of a kind that normally results from such an

It bears emphasis that the Privacy Act does not authorize injunctive relief when suit is maintained under § 552a(g)(1)(C) or (D). Injunctive relief, and attendant counsel fees and costs, are available under the Act in two categories of cases: suits to amend a record, § 552a(g)(2), and suits for access to a record, § 552a(g)(3). But for cases like Doe's, brought under § 552a(g)(1)(C) or (D), see *supra,* at 629, only monetary relief is available. Hence, in the Government's view, if a plaintiff who sues under § 552a(g)(1)(C) or (D) fails to prove actual damages, "he will not be entitled to attorney's fees." Brief for Respondent 39 ("[T]he Privacy Act permits an award only of 'reasonable' attorney's fees. The most critical factor in determining the reasonableness of an attorney fee award is the degree of success obtained. For a plaintiff who enjoys no success in prosecuting his claim, 'the only reasonable fee' is 'no fee at all.'" (quoting *Farrar* v. *Hobby,* 506 U. S. 103, 115 (1992) (citations omitted))).

The Court's reading of § 552a(g)(4) to require proof of "actual damages," however small, in order to gain the $1,000 statutory minimum, ironically, invites claimants to arrange or manufacture such damages. The following colloquy from oral argument is illustrative.

> Court: "Suppose . . . Doe said, 'I'm very concerned about the impact of this on my credit rating, so I'm going to [pay] $10 to a . . . credit reporting company to find out whether there's been any theft of my identity, $10.' Would there then be a claim under this statute for actual damages?"
>
> Counsel for respondent Secretary of Labor Chao: "[T]here would be a question . . . whether that was a reasonable response to the threat, but in theory, an ex-

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invasion . . . ."); *id.,* at 402, Comment *b* ("The plaintiff may also recover damages for emotional distress or personal humiliation that he proves to have been actually suffered by him, if it is of a kind that normally results from such an invasion [of privacy] and it is normal and reasonable in its extent.").

> pense like that could qualify as pecuniary harm and, thus, is actual damages." Tr. of Oral Arg. 43 (internal quotation marks added).

Indeed, the Court itself suggests that "fees associated with running a credit report" or "the charge for a Valium prescription" might suffice to prove "actual damages." *Ante*, at 626, n. 10. I think it dubious to insist on such readily created costs as essential to recovery under § 552a(g)(4). Nevertheless, the Court's examples of what might qualify as "actual damages" indicate that its disagreement with the construction of the Act prevailing in the Circuits, see *supra*, at 631–632, is ethereal.

The Government, although recognizing that "actual damages" may be slender and easy to generate, fears depletion of the federal fisc were the Court to adopt Doe's reading of § 552a(g)(4). Brief for Respondent 22–23, n. 5. Experience does not support those fears. As the Government candidly acknowledged at oral argument: "[W]e have not had a problem with enormous recoveries against the Government up to this point." Tr. of Oral Arg. 35. No doubt mindful that Congress did not endorse massive recoveries, the District Court in this very case denied class-action certification, see App. to Pet. for Cert. 65a, and other courts have similarly refused to certify suits seeking damages under § 552a(g)(4) as class actions. See, *e. g.*, *Schmidt* v. *Department of Veterans Affairs*, 218 F. R. D. 619, 637 (ED Wis. 2003) (denying class certification on ground that each individual would have to prove he "suffered an adverse effect as a result of the [agency]'s failure to comply with [the Act]"); *Lyon* v. *United States*, 94 F. R. D. 69, 76 (WD Okla. 1982) ("In Privacy Act damages actions, questions affecting only individual members greatly outweigh questions of law and fact common to the class."). Furthermore, courts have disallowed the runaway liability that might ensue were they to count every single wrongful disclosure as a discrete basis for a $1,000 award. See, *e. g.*, *Tomasello* v. *Rubin*, 167 F. 3d 612, 618 (CADC 1999) (holding that 4,500 "more-or-less contempora-

neous transmissions of the same record" by facsimile constituted one "act," entitling the plaintiff to a single recovery of $1,000 in damages (internal quotation marks omitted)).

The text of § 552a(g)(4), it is undisputed, accommodates two concerns. Congress sought to give the Privacy Act teeth by deterring violations and providing remedies when violations occur. At the same time, Congress did not want to saddle the Government with disproportionate liability. The Senate bill advanced the former concern; the House bill was more cost conscious. The House bill, as reported by the Committee on Government Operations and passed by the House, provided:

> "In any suit brought under the provisions of subsection (g)(1)(B) or (C) of this section in which the court determines that the agency acted in a manner which was willful, arbitrary, or capricious, the United States shall be liable to the individual in an amount equal to the sum of—
>
> "(A) actual damages sustained by the individual as a result of the refusal or failure; and
>
> "(B) the costs of the action together with reasonable attorney fees as determined by the court." H. R. 16373, 93d Cong., 2d Sess., § 552a(g)(3) (1974), reprinted in Legislative History of the Privacy Act of 1974: Source Book on Privacy, p. 288 (Joint Comm. Print compiled for the Senate and House Committees on Government Operations) (hereinafter Source Book).

The Senate bill, as amended and passed, provided:

> "The United States shall be liable for the actions or omissions of any officer or employee of the Government who violates the provisions of this Act, or any rule, regulation, or order issued thereunder in the same manner and to the same extent as a private individual under like circumstances to any person aggrieved thereby in an amount equal to the sum of—

> "(1) any actual and general damages sustained by any person but in no case shall a person entitled to recovery receive less than the sum of $1,000; and
>
> "(2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court." S. 3418, 93d Cong., 2d Sess., § 303(c) (1974), reprinted in Source Book 371.

The provision for monetary relief ultimately enacted, § 552a(g)(4), represented a compromise between the House and Senate versions. The House bill's culpability standard ("willful, arbitrary, or capricious"), not present in the Senate bill, accounts for § 552a(g)(4)'s imposition of liability only when the agency acts in an "intentional or willful" manner. That culpability requirement affords the Government some insulation against excessive liability.[5] On the other hand, the enacted provision adds to the House allowance of "actual damages" only, the Senate specification that "in no case shall a person entitled to recovery receive less than the sum of $1,000 . . . ." § 552a(g)(4)(A). The $1,000 minimum, as earlier developed, *supra*, at 634, enables individuals to recover

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[5] Petitioner Doe recognizes that "the 'intentional [or] willful' level of culpability a Privacy Act plaintiff must demonstrate is a formidable barrier." Brief for Petitioner 29; Reply Brief 1 ("Congress and commentators agree [the 'intentional or willful' qualification] is a formidable obstacle to recovery under the Act."). In this Court and case, as earlier noted, *supra*, at 627–628, the Government does not challenge the finding that the Department of Labor's violation of the Act was "intentional or willful." Tr. of Oral Arg. 35; see App. to Pet. for Cert. 96a–97a (Characterizing the Department of Labor's actions as "intentional and willful," the Magistrate Judge observed: "The undisputed evidence shows that the Department took little, if any, action to see that it complied with the Privacy Act. . . . Several of the Administrative Law Judges responsible for sending out the multi-captioned hearing notices testified that they had received no training on the Privacy Act."). Because the "intentional or willful" character of the agency's conduct is undisputed here, the Court is not positioned to give that issue the full consideration it would warrant were the issue the subject of dispute.

for genuine, albeit nonpocketbook, harm, and gives persons thus adversely affected an incentive to sue to enforce the Act.[6]

Congress has used language similar to § 552a(g)(4) in other privacy statutes. See 18 U. S. C. § 2707(c);[7] 26 U. S. C. § 6110(j)(2);[8] 26 U. S. C. § 7217(c) (1976 ed., Supp. V).[9] These

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[6] The Court places great weight on Congress' establishment of a Privacy Protection Study Commission, and its charge to the Commission to consider, among many other things, "whether the Federal Government should be liable for general damages incurred by an individual as the result of a willful or intentional violation of [§ 552a(g)(1)(C) or (D)]." *Ante*, at 622 (internal quotation marks omitted). This less than crystalline reference to the Commission, however, left unaltered § 552a(g)(4)(A)'s embracive term "a person entitled to recovery," words the Court must read out of the statute to render its interpretation sensible. See *ante*, at 623–624, n. 8.

[7] Section 2707(c), concerning unauthorized access to electronic communications, provides:

"The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, *but in no case shall a person entitled to recover receive less than the sum of $1,000.* If the violation is willful or intentional, the court may assess punitive damages. In the case of a successful action to enforce liability under this section, the court may assess the costs of the action, together with reasonable attorney fees determined by the court." (Emphasis added.)

[8] Section 6110(j)(2) provides:

"In any suit brought under the provisions of paragraph (1)(A) in which the Court determines that an employee of the Internal Revenue Service intentionally or willfully failed to delete in accordance with subsection (c), or in any suit brought under subparagraph (1)(B) in which the Court determines that an employee intentionally or willfully failed to act in accordance with subsection (g) or (i)(4)(B), the United States shall be liable to the person in an amount equal to the sum of—

"(A) actual damages sustained by the person *but in no case shall a person be entitled to receive less than the sum of $1,000*, and

"(B) the costs of the action together with reasonable attorney's fees as determined by the Court." (Emphasis added.)

[9] Section 7217(c), which was repealed in 1982, provided:

"In any suit brought under the provisions of subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of—

other statutes have been understood to permit recovery of the $1,000 statutory minimum despite the absence of proven actual damages. See H. R. Rep. No. 99–647, p. 74 (1986) ("Damages [under 18 U. S. C. § 2707(c)] include actual damages, any lost profits but in no case less than $1,000."); S. Rep. No. 99–541, p. 43 (1986) ("[D]amages under [18 U. S. C. § 2707(c)] includ[e] the sum of actual damages suffered by the plaintiff and any profits made by the violator as the result of the violation . . . with minimum statutory damages of $1,000 . . . and . . . reasonable attorney's fees and other reasonable litigation costs."); H. R. Conf. Rep. No. 94–1515, p. 475 (1976) (Title 26 U. S. C. § 6110(j)(2) "creates a civil remedy for intentional or willful failure of the IRS to make required deletions or to follow the procedures of this section, including minimum damages of $1,000 plus costs."); S. Rep. No. 94–938, p. 348 (1976) ("Because of the difficulty in establishing in monetary terms the damages sustained by a taxpayer as the result of the invasion of his privacy caused by an unlawful disclosure of his returns or return information, [26 U. S. C. § 7217(c)] provides that these damages would, in no event, be less than liquidated damages of $1,000 for each disclosure."). See also *Johnson* v. *Sawyer*, 120 F. 3d 1307, 1313 (CA5 1997) ("Pursuant to [26 U. S. C.] § 7217, a plaintiff is entitled to his actual damages sustained as a result of an unauthorized disclosure (including punitive damages for willful or grossly negligent disclosures) or to liquidated damages of $1,000 per such disclosure, whichever is greater, as well as the costs of the action."); *Rorex* v. *Traynor*, 771 F. 2d 383, 387–388 (CA8 1985) ("We do not think

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"(1) actual damages sustained by the plaintiff as a result of the unauthorized disclosure of the return or return information and, in the case of a willful disclosure or a disclosure which is the result of gross negligence, punitive damages, *but in no case shall a plaintiff entitled to recovery receive less than the sum of $1,000* with respect to each instance of such unauthorized disclosure; and

"(2) the costs of the action." (Emphasis added.)

that hurt feelings alone constitute actual damages compensable under [26 U. S. C. § 7217(c)]. Accordingly, the jury's award of $30,000 in actual damages must be vacated. The taxpayers are each entitled to the statutory minimum award of $1,000."). As Circuit Judge Michael, dissenting from the Fourth Circuit's disposition of Doe's claim, trenchantly observed: "[T]he remedy of minimum statutory damages is a fairly common feature of federal legislation. . . . In contrast, I am not aware of any statute in which Congress has provide[d] for a statutory minimum to actual damages." 306 F. 3d 170, 195 (2002) (opinion concurring in part and dissenting in part) (internal quotation marks omitted).

* * *

Doe has standing to sue, the Court agrees, based on "allegations that he was 'torn . . . all to pieces' and 'greatly concerned and worried' because of the disclosure of his Social Security number and its potentially 'devastating' consequences." *Ante,* at 617–618 (some internal quotation marks omitted). Standing to sue, but not to succeed, the Court holds, unless Doe also incurred an easily arranged out-of-pocket expense. See *ante*, at 626, n. 10.[10] In my view, Congress gave Privacy Act suitors like Doe not only standing to sue, but the right to a recovery if the fact trier credits their claims of emotional distress brought on by an agency's intentional or willful violation of the Act. For the reasons stated in this dissenting opinion, which track the reasons expressed by Circuit Judge Michael dissenting in part in the Fourth Circuit, I would reverse the judgment of the Court of Appeals.

JUSTICE BREYER, dissenting.

I agree with JUSTICE GINSBURG and join her opinion. I emphasize JUSTICE GINSBURG's view that the statute (as

[10] Cf. *ante,* at 627, n. 12 (suggesting that a nonpecuniary, but somehow heightened "adverse effect" ("demonstrated mental anxiety") might do).

we interpret it) is not likely to produce "massive recoveries" against the Government—recoveries that "Congress did not endorse." *Ante*, at 636 (dissenting opinion). I concede that the statute would lead to monetary recoveries whenever the Government's violation of the Privacy Act of 1974 is "intentional or willful." 5 U. S. C. § 552a(g)(4). But the Government at oral argument pointed out that the phrase

> " 'intentional or willful' has been construed by the lower courts as essentially a term of art, and the prevailing test . . . is . . . akin to the standard that would prevail in a *Bivens* action[:] . . . '[C]ould a reasonable officer in this person's position have believed what he was doing was legal?' " Tr. of Oral Arg. 33–34 (internal quotation marks added).

That is to say, the lower courts have interpreted the phrase restrictively, essentially applying it where the Government's violation of the Act is in bad faith. See, *e. g.*, *Albright* v. *United States*, 732 F. 2d 181, 189 (CADC 1984) (the term means "without grounds for believing [an action] to be lawful, or by flagrantly disregarding others' rights under the Act"); see also, *e. g.*, *Scrimgeour* v. *IRS*, 149 F. 3d 318, 326 (CA4 1998) (same); *Wisdom* v. *Department of Housing and Urban Development*, 713 F. 2d 422, 424–435 (CA8 1983) (same); *Pippinger* v. *Rubin*, 129 F. 3d 519, 530 (CA10 1997) (same); *Hudson* v. *Reno*, 130 F. 3d 1193, 1205 (CA6 1997) (similar), overruled in part on other grounds, *Pollard* v. *E. I. du Pont de Nemours & Co.*, 532 U. S. 843, 848 (2001); *Moskiewicz* v. *Department of Agriculture*, 791 F. 2d 561, 564 (CA7 1986) (similar); *Wilborn* v. *Department of Health and Human Servs.*, 49 F. 3d 597, 602 (CA9 1995) (similar). But cf. *Covert* v. *Harrington*, 876 F. 2d 751, 757 (CA9 1989) (apparently applying a broader standard).

Given this prevailing interpretation, the Government need not fear liability based upon a technical, accidental, or good-faith violation of the statute's detailed provisions. Hence

JUSTICE GINSBURG's interpretation would not risk injury to the public fisc. And I consequently find no support in any of the statute's basic purposes for the majority's restrictive reading of the damages provision.

Syllabus

OLYMPIC AIRWAYS *v.* HUSAIN, INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF HANSON, DECEASED, ET AL.

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

No. 02–1348. Argued November 12, 2003—Decided February 24, 2004

Under Article 17 of the Warsaw Convention (Convention), an air carrier is liable for a passenger's death or bodily injury caused by an "accident" occurring on an international flight. "Accident" refers to an "unexpected or unusual event or happening that is external to the passenger," not to "the passenger's own internal reaction to the usual, normal, and expected operation of the aircraft." *Air France* v. *Saks*, 470 U. S. 392, 405, 406. While Rubina Husain (hereinafter respondent) and her husband, Dr. Hanson, were traveling overseas, she requested that petitioner Olympic Airways provide seats away from the smoking section because Dr. Hanson had asthma and was sensitive to secondhand smoke. After boarding, they discovered that their seats were only three rows in front of the smoking section. A flight attendant refused respondent's three requests to move Dr. Hanson. As the smoking noticeably increased, Dr. Hanson walked toward the front of the plane to get fresher air. He then received medical assistance but died. Respondents filed a wrongful-death suit in state court, which was removed to federal court. The District Court found petitioner liable for Dr. Hanson's death, and the Ninth Circuit affirmed, concluding that, under *Saks*' definition of "accident," the flight attendant's refusal to reseat Dr. Hanson was clearly external to him, and unexpected and unusual in light of industry standards, Olympic policy, and the simple nature of the requested accommodation.

Held: The conduct here constitutes an "accident" under Article 17. Pp. 649–657.

(a) The parties do not dispute *Saks*' definition of "accident," but they disagree about which *event* should be the focus of the "accident" inquiry. The Court's reasoning in *Saks* sheds light on whether the flight attendant's refusal to assist a passenger in a medical crisis is the proper focus of the "accident" inquiry. In *Saks*, the Court focused on "what causes can be considered accidents," 470 U. S., at 404, and did not suggest that only one event could be the "accident." Indeed, the Court recognized that "[a]ny injury is the product of a chain of causes." *Id.*, at 406. Thus, for purposes of the "accident" inquiry, a plaintiff need only prove

Syllabus

that "some link in the chain was an unusual or unexpected event external to the passenger." *Ibid.* Pp. 649–652.

(b) Petitioner does not dispute that the flight attendant's conduct was unusual or unexpected, arguing only that her conduct was irrelevant to the "accident" inquiry. Petitioner argues that ambient cigarette smoke was the relevant injury producing event. Petitioner's focus on the ambient cigarette smoke neglects the reality that multiple interrelated factual events often combine to cause a given injury. Any one of these events or happenings may be a link in the chain of causes and—so long as it is unusual or unexpected—could constitute an "accident" under Article 17. 470 U. S., at 406. The flight attendant's refusal on three separate occasions to move Dr. Hanson was a factual event that the District Court correctly found to be a "link in the chain" of causes leading to his death. Petitioner's argument that the attendant's failure to act cannot constitute an "accident" because only affirmative acts are events or happenings under *Saks* is also unavailing. The rejection of an explicit request for assistance would be an "event" or "happening" under these terms' ordinary and usual definitions, and other provisions of the Convention suggest that there is often no distinction between action and inaction on the ultimate liability issue, see, *e. g.*, Art. 25. Finally, although the Ninth Circuit improperly seemed to approve of a negligence-based approach to the accident inquiry, no party disputes that court's holding that the flight attendant's conduct was "unexpected and unusual," which is the operative language under *Saks* and the correct Article 17 analysis. Pp. 652–657.

316 F. 3d 829, affirmed.

THOMAS, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, KENNEDY, SOUTER, and GINSBURG, JJ., joined. SCALIA, J., filed a dissenting opinion, in which O'CONNOR, J., joined as to Parts I and II, *post*, p. 658. BREYER, J., took no part in the consideration or decision of the case.

Andrew J. Harakas argued the cause for petitioner. With him on the briefs was *Diane Westwood Wilson.*

H. Bartow Farr III argued the cause for respondents. With him on the brief were *Richard G. Taranto, Gerald C. Sterns,* and *Susie Injijian.*

Barbara McDowell argued the cause for the United States as *amicus curiae* urging affirmance. With her on the brief were *Solicitor General Olson, Assistant Attorney General*

Keisler, Deputy Solicitor General Kneedler, Lowell V. Sturgill, Jr., William H. Taft IV, and *Kirk K. Van Tine.**

JUSTICE THOMAS delivered the opinion of the Court.

Article 17 of the Warsaw Convention (Convention)[1] imposes liability on an air carrier for a passenger's death or bodily injury caused by an "accident" that occurred in connection with an international flight. In *Air France* v. *Saks*, 470 U. S. 392 (1985), the Court explained that the term "accident" in the Convention refers to an "unexpected or unusual event or happening that is external to the passenger," and not to "the passenger's own internal reaction to the usual, normal, and expected operation of the aircraft." *Id.*, at 405, 406. The issue we must decide is whether the "accident" condition precedent to air carrier liability under Article 17 is satisfied when the carrier's unusual and unexpected refusal to assist a passenger is a link in a chain of causation resulting in a passenger's pre-existing medical condition being aggravated by exposure to a normal condition in the aircraft cabin. We conclude that it is.

I

The following facts are taken from the District Court's findings, which, being unchallenged by either party, we accept as true. In December 1997, Dr. Abid Hanson and his wife, Rubina Husain (hereinafter respondent), traveled with their children and another family from San Francisco to Athens and Cairo for a family vacation. During a stopover in New York, Dr. Hanson learned for the first time that petitioner allowed its passengers to smoke on international

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**Warren L. Dean, Jr.*, filed a brief for the Air Transport Association of America, Inc., as *amicus curiae* urging reversal.

[1] Convention for the Unification of Certain Rules Relating to International Transportation by Air, Oct. 12, 1929, 49 Stat. 3000, T. S. No. 876 (1934), note following 49 U. S. C. § 40105.

flights. Because Dr. Hanson had suffered from asthma and was sensitive to secondhand smoke, respondent requested and obtained seats away from the smoking section. Dr. Hanson experienced no problems on the flights to Cairo.

For the return flights, Dr. Hanson and respondent arrived early at the Cairo airport in order to request nonsmoking seats. Respondent showed the check-in agent a physician's letter explaining that Dr. Hanson "has [a] history of recurrent anaphylactic reactions," App. 81, and asked the agent to ensure that their seats were in the nonsmoking section. The flight to Athens was uneventful.

After boarding the plane for the flight to San Francisco, Dr. Hanson and respondent discovered that their seats were located only three rows in front of the economy-class smoking section. Respondent advised Maria Leptourgou, a flight attendant for petitioner, that Dr. Hanson could not sit in a smoking area, and said, "'You have to move him.'" 116 F. Supp. 2d 1121, 1125 (ND Cal. 2000). The flight attendant told her to "'have a seat.'" *Ibid.* After all the passengers had boarded but prior to takeoff, respondent again asked Ms. Leptourgou to move Dr. Hanson, explaining that he was "'allergic to smoke.'" *Ibid.* Ms. Leptourgou replied that she could not reseat Dr. Hanson because the plane was "'totally full'" and she was "too busy" to help. *Ibid.*

Shortly after takeoff, passengers in the smoking section began to smoke, and Dr. Hanson was soon surrounded by ambient cigarette smoke. Respondent spoke with Ms. Leptourgou a third time, stating, "'You have to move my husband from here.'" *Id.*, at 1126. Ms. Leptourgou again refused, stating that the plane was full. Ms. Leptourgou told respondent that Dr. Hanson could switch seats with another passenger, but that respondent would have to ask other passengers herself, without the flight crew's assistance. Respondent told Ms. Leptourgou that Dr. Hanson had to move even if the only available seat was in the cockpit or in

business class, but Ms. Leptourgou refused to provide any assistance.[2]

About two hours into the flight, the smoking noticeably increased in the rows behind Dr. Hanson. Dr. Hanson asked respondent for a new inhaler because the one he had been using was empty. Dr. Hanson then moved toward the front of the plane to get some fresher air. While he was leaning against a chair near the galley area, Dr. Hanson gestured to respondent to get his emergency kit. Respondent returned with it and gave him a shot of epinephrine. She then awoke Dr. Umesh Sabharwal, an allergist, with whom Dr. Hanson and respondent had been traveling. Dr. Sabharwal gave Dr. Hanson another shot of epinephrine and began to administer CPR and oxygen. Dr. Hanson died shortly thereafter.[3] *Id.*, at 1128.

Respondents filed a wrongful-death suit in California state court. Petitioner removed the case to federal court, and the District Court found petitioner liable for Dr. Hanson's death. The District Court held that Ms. Leptourgou's refusal to reseat Dr. Hanson constituted an "accident" within the meaning of Article 17. Applying *Saks*' definition of that term, the court reasoned that the flight attendant's conduct was external to Dr. Hanson and, because it was in "blatant disregard of industry standards and airline policies," was not expected or usual. 116 F. Supp. 2d, at 1134.

The Ninth Circuit affirmed. Applying *Saks*' definition of "accident," the Ninth Circuit agreed that the flight attendant's refusal to reseat Dr. Hanson "was clearly external to

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[2] Dr. Hanson and respondent did not know at the time that, despite Ms. Leptourgou's representations, the flight was actually not full. There were 11 unoccupied passenger seats, most of which were in economy class, and 28 "non-revenue passengers," 15 of whom were seated in economy class rows farther away from the smoking section than Dr. Hanson's seat. 116 F. Supp. 2d, at 1126.

[3] For religious reasons, no autopsy was performed to determine the cause of death.

Dr. Hanson, and it was unexpected and unusual in light of industry standards, Olympic policy, and the simple nature of Dr. Hanson's requested accommodation." 316 F. 3d 829, 837 (2002). We granted certiorari, 538 U. S. 1056 (2003), and now affirm.

II

A

We begin with the language of Article 17 of the Convention, which provides:[4]

> "The carrier shall be liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking." 49 Stat. 3018.[5]

In *Saks*, the Court recognized that the text of the Convention does not define the term "accident" and that the context in which it is used is not "illuminating." 470 U. S., at 399.

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[4] The Warsaw Convention's governing text is in French. We cite to the official English translation of the Convention, which was before the Senate when it consented to ratification of the Convention in 1934. See 49 Stat. 3014; *Air France* v. *Saks*, 470 U. S. 392, 397 (1985).

[5] After a plaintiff has established a prima facie case of liability under Article 17 by showing that the injury was caused by an "accident," the air carrier has the opportunity to prove under Article 20 that it took "all necessary measures to avoid the damage or that it was impossible for [the airline] to take such measures." 49 Stat. 3019. Thus, Article 17 creates a presumption of air carrier liability and shifts the burden to the air carrier to prove lack of negligence under Article 20. Lowenfeld & Mendelsohn, The United States and the Warsaw Convention, 80 Harv. L. Rev. 497, 521 (1967). Article 22(1) caps the amount recoverable under Article 17 in the event of death or bodily injury, and Article 25(1) removes the cap if the damage is caused by the "wilful misconduct" of the airline or its agent, acting within the scope of his employment. See 49 Stat. 3019, 3020. Additionally, Article 21 enables an air carrier to avoid or reduce its liability if it can prove the passenger's comparative negligence. See *id.*, at 3019.

The Court nevertheless discerned the meaning of the term "accident" from the Convention's text, structure, and history as well as from the subsequent conduct of the parties to the Convention.

Neither party here contests *Saks*' definition of the term "accident" under Article 17 of the Convention. Rather, the parties differ as to which *event* should be the focus of the "accident" inquiry. The Court's reasoning in *Saks* sheds light on whether the flight attendant's refusal to assist a passenger in a medical crisis is the proper focus of the "accident" inquiry.

In *Saks*, the Court addressed whether a passenger's "'loss of hearing proximately caused by normal operation of the aircraft's pressurization system'" was an "'accident.'" *Id.*, at 395. The Court concluded that it was not, because the injury was her "own internal reaction" to the normal pressurization of the aircraft's cabin. *Id.*, at 406. The Court noted two textual clues to the meaning of the term "accident." First, the Convention distinguishes between liability under Article 17 for death or injuries to passengers caused by an "accident" and liability under Article 18 for destruction or loss of baggage caused by an "occurrence." *Id.*, at 398. The difference in these provisions implies that the meaning of the term "accident" is different from that of "occurrence." *Ibid.* Second, the Court found significant the fact that Article 17 focuses on the "accident which caused" the passenger's injury and not an accident that is the passenger's injury. *Ibid.* The Court explained that it is the cause of the injury—rather than the occurrence of the injury—that must satisfy the definition of "accident." *Id.*, at 399. And recognizing the Court's responsibility to read the treaty in a manner "consistent with the shared expectations of the contracting parties," *ibid.*, the Court also looked to the French legal meaning of the term "accident," which when used to describe the cause of an injury, is usually defined as a "fortuitous, unexpected, unusual, or unintended event," *id.*, at 400.

Accordingly, the Court held in *Saks* that an "accident" under Article 17 is "an unexpected or unusual event or happening that is external to the passenger," and not "the passenger's own internal reaction to the usual, normal, and expected operation of the aircraft." *Id.*, at 405, 406.[6] The Court emphasized that the definition of "accident" "should be flexibly applied after assessment of all the circumstances surrounding a passenger's injuries." *Id.*, at 405. The Court further contemplated that intentional conduct could fall within the "accident" definition under Article 17,[7] an interpretation that comports with another provision of the Convention.[8] As such, *Saks* correctly characterized the

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[6] The term "accident" has at least two plausible yet distinct definitions. On the one hand, as noted in *Saks*, "accident" may be defined as an unintended event. See Webster's New World College Dictionary 8 (4th ed. 1999) ("a happening that is not . . . intended"); see also American Heritage Dictionary 10 (4th ed. 2000) ("[l]ack of intention; chance"); *Saks*, 470 U. S., at 400. On the other hand, as noted in *Saks*, the term "accident" may be defined as an event that is "unusual" or "unexpected," whether the result of intentional action or not. *Ibid.* See Black's Law Dictionary 15 (6th ed. 1990) ("an unusual, fortuitous, unexpected, unforeseen, or unlooked for event, happening or occurrence" and "if happening wholly or partly through human agency, an event which under the circumstances is unusual and unexpected by the person to whom it happens"); see also American Heritage Dictionary, *supra*, at 10 ("[a]n unexpected and undesirable event," "[a]n unforeseen incident"). Although either definition of "accident" is at first glance plausible, neither party contests the definition adopted by the Court in *Saks*, which after careful examination discerned the meaning of "accident" under Article 17 of the Convention as an "unexpected or unusual event or happening that is external to the passenger." 470 U. S., at 405.

[7] The Court cited approvingly several lower court opinions where intentional acts by third parties—namely, torts committed by terrorists—were recognized as "accidents" under a "broa[d]" interpretation of Article 17. *Ibid.* (citing lower court cases).

[8] Specifically, Article 25 removes the cap on air carrier liability when the injury is caused by the air carrier's "wilful misconduct." 49 Stat. 3020. Because there can be no liability for passenger death or bodily injury under the Convention in the absence of an Article 17 "accident," such

term "accident" as encompassing more than unintentional conduct.

The Court focused its analysis on determining "what causes can be considered accidents," and observed that Article 17 "embraces causes of injuries" that are "unexpected or unusual." *Id.*, at 404, 405. The Court did not suggest that only one event could constitute the "accident," recognizing that "[a]ny injury is the product of a chain of causes." *Id.*, at 406. Thus, for purposes of the "accident" inquiry, the Court stated that a plaintiff need only be able to prove that "some link in the chain was an unusual or unexpected event external to the passenger." *Ibid.*

B

Petitioner argues that the "accident" inquiry should focus on the "injury producing event," Reply Brief for Petitioner 4, which, according to petitioner, was the presence of ambient cigarette smoke in the aircraft's cabin. Because petitioner's policies permitted smoking on international flights, petitioner contends that Dr. Hanson's death resulted from his own internal reaction—namely, an asthma attack—to the normal operation of the aircraft. Petitioner also argues that the flight attendant's failure to move Dr. Hanson was inaction, whereas Article 17 requires an action that causes the injury.

We disagree. As an initial matter, we note that petitioner did not challenge in the Court of Appeals the District Court's finding that the flight attendant's conduct in three times refusing to move Dr. Hanson was unusual or unexpected in light of the relevant industry standard or petitioner's own company policy. 116 F. Supp. 2d, at 1133. Petitioner instead argued that the flight attendant's conduct was irrelevant for purposes of the "accident" inquiry and that the only relevant event was the presence of the ambient cigarette

"wilful misconduct" is best read to be included within the realm of conduct that may constitute an "accident" under Article 17.

smoke in the aircraft's cabin. Consequently, we need not dispositively determine whether the flight attendant's conduct qualified as "unusual or unexpected" under *Saks*, but may assume that it was for purposes of this opinion.

Petitioner's focus on the ambient cigarette smoke as the injury producing event is misplaced. We do not doubt that the presence of ambient cigarette smoke in the aircraft's cabin during an international flight might have been "normal" at the time of the flight in question. But petitioner's "injury producing event" inquiry—which looks to "the precise factual 'event' that caused the injury"—neglects the reality that there are often multiple interrelated factual events that combine to cause any given injury. Brief for Petitioner 14. In *Saks*, the Court recognized that any one of these factual events or happenings may be a link in the chain of causes and—so long as it is unusual or unexpected—could constitute an "accident" under Article 17. 470 U. S., at 406. Indeed, the very fact that multiple events will necessarily combine and interrelate to cause any particular injury makes it difficult to define, in any coherent or non-question-begging way, any single event as *the* "injury producing event."

Petitioner's only claim to the contrary here is to say: "Looking to the purely factual description of relevant events, the aggravating event was Dr. Hanson remaining in his assigned non-smoking seat and being exposed to ambient smoke, which allegedly aggravated his pre-existing asthmatic condition leading to his death," Brief for Petitioner 24, and that the "injury producing event" was "not the flight attendant's failure to act or violation of industry standards," Reply Brief for Petitioner 9–10. Petitioner ignores the fact that the flight attendant's refusal on three separate occasions to move Dr. Hanson was also a "factual 'event,'" Brief for Petitioner 14, that the District Court correctly found to be a "'link in the chain'" of causes that led to Dr. Hanson's death, 116 F. Supp. 2d, at 1135. Petitioner's statement that the flight attendant's failure to reseat Dr. Hanson was not the

"injury producing event" is nothing more than a bald assertion, unsupported by any law or argument.

An example illustrates why petitioner's emphasis on the ambient cigarette smoke as the "injury producing event" is misplaced. Suppose that petitioner mistakenly assigns respondent and her husband to seats in the middle of the smoking section, and that respondent and her husband do not notice that they are in the smoking section until after the flight has departed. Suppose further that, as here, the flight attendant refused to assist respondent and her husband despite repeated requests to move. In this hypothetical case, it would appear that, "[l]ooking to the purely factual description of relevant events, the aggravating event was [the passenger] remaining in his assigned . . . seat and being exposed to ambient smoke, which allegedly aggravated his preexisting asthmatic condition leading to his death." Brief for Petitioner 24. To argue otherwise, petitioner would have to suggest that the misassignment to the smoking section was *the* "injury producing event," but this would simply beg the question. The fact is, the exposure to smoke, the misassignment to the smoking section, and the refusal to move the passenger would all be factual events contributing to the death of the passenger. In the instant case, the same can be said: The exposure to the smoke and the refusal to assist the passenger are happenings that both contributed to the passenger's death.

And petitioner's argument that the flight attendant's failure to act cannot constitute an "accident" because only affirmative acts are "event[s] or happening[s]" under *Saks* is unavailing. 470 U. S., at 405. The distinction between action and inaction, as petitioner uses these terms, would perhaps be relevant were this a tort law negligence case. But respondents do not advocate, and petitioner vigorously rejects, that a negligence regime applies under Article 17 of the Convention. The relevant "accident" inquiry under

Saks is whether there is "an unexpected or unusual *event or happening*." *Ibid.* (emphasis added). The rejection of an explicit request for assistance would be an "event" or "happening" under the ordinary and usual definitions of these terms. See American Heritage Dictionary 635 (3d ed. 1992) ("event": "[s]omething that takes place; an occurrence"); Black's Law Dictionary 554–555 (6th ed. 1990) ("event": "Something that happens"); Webster's New International Dictionary 885 (2d ed. 1949) ("event": "The fact of taking place or occurring; occurrence" or "[t]hat which comes, arrives, or happens").[9]

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[9] The dissent cites two cases from our sister signatories England and Australia—*Deep Vein Thrombosis and Air Travel Group Litigation*, [2004] Q. B. 234, and *Qantas Ltd.* v. *Povey*, [2003] VSCA 227, ¶ 17, 2003 WL 23000692, ¶ 17 (Dec. 23, 2003) (Ormiston, J. A.), respectively—and suggests that we should simply defer to their judgment on the matter. But our conclusion is not inconsistent with *Deep Vein Thrombosis and Air Travel Group Litigation*, where the England and Wales Court of Appeal commented on the District Court and Court of Appeals opinions in this case, and agreed that Dr. Hanson's death had resulted from an accident. The English court reasoned: "The refusal of the flight attendant to move Dr. Hanson cannot properly be considered as mere inertia, or a non-event. It was a refusal to provide an alternative seat which formed part of a more complex incident, whereby Dr. Hanson was exposed to smoke in circumstances that can properly be described as unusual and unexpected." [2004] Q. B., at 254, ¶ 50.

To the extent that the precise reasoning used by the courts in *Deep Vein Thrombosis and Air Travel Group Litigation* and *Povey* is inconsistent with our reasoning, we reject the analysis of those cases for the reasons stated in the body of this opinion. In such a circumstance, we are hesitant to "follo[w]" the opinions of intermediate appellate courts of our sister signatories, *post*, at 658 (SCALIA, J., dissenting). This is especially true where there are substantial factual distinctions between these cases, see [2004] Q. B., at 248, ¶ 29 (confronting allegations of a "failure to warn of the risk of [deep-vein thrombosis], or to advise on precautions which would avoid or minimise that risk"); VSCA 227, ¶ 3, 2003 WL 23000692, ¶ 3 (noting plaintiff alleged a failure to provide "any information or warning about the risk of [deep-vein thrombosis] or of any measures to reduce

Moreover, the fallacy of petitioner's position that an "accident" cannot take the form of inaction is illustrated by the following example. Suppose that a passenger on a flight inexplicably collapses and stops breathing and that a medical doctor informs the flight crew that the passenger's life could be saved only if the plane lands within one hour. Suppose further that it is industry standard and airline policy to divert a flight to the nearest airport when a passenger otherwise faces imminent death. If the plane is within 30 minutes of a suitable airport, but the crew chooses to continue its cross-country flight, "[t]he notion that this is not an unusual event is staggering." *McCaskey* v. *Continental Airlines, Inc.*, 159 F. Supp. 2d 562, 574 (SD Tex. 2001).[10]

Confirming this interpretation, other provisions of the Convention suggest that there is often no distinction between action and inaction on the issue of ultimate liability. For example, Article 25 provides that Article 22's liability cap does not apply in the event of "wilful misconduct or . . . such *default* on [the carrier's] part as, in accordance with the law of the court to which the case is submitted, is considered to be equivalent to wilful misconduct." 49 Stat. 3020 (emphasis added).[11] Because liability can be imposed for death

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the risk"), and where the respective courts of last resort—the House of Lords and High Court of Australia—have yet to speak.

[10] We do not suggest—as the dissent erroneously contends—that liability must lie because otherwise "harsh results," *post,* at 664 (opinion of SCALIA, J.), would ensue. This hypothetical merely illustrates that the failure of an airline crew to take certain necessary vital steps could quite naturally and, in routine usage of the language, be an "event or happening."

[11] The Montreal Protocol No. 4 to Amend the Convention for the Unification of Certain Rules relating to International Carriage by Air (1975) amends Article 25 by replacing "wilful misconduct" with the language "done with intent to cause damage or recklessly and with knowledge that damage would probably result," as long as the airline's employee or agent was acting "within the scope of his employment." S. Exec. Rep. No. 105–20, p. 29 (1998). In 1998, the United States gave its advice and

or bodily injury only in the case of an Article 17 "accident" and Article 25 only lifts the caps once liability has been found, these provisions read together tend to show that inaction can give rise to liability. Moreover, Article 20(1) makes clear that the "due care" defense is unavailable when a carrier has *failed* to take "all necessary measures to avoid the damage." *Id.*, at 3019. These provisions suggest that an air carrier's inaction can be the basis for liability.

Finally, petitioner contends that the Ninth Circuit improperly created a negligence-based "accident" standard under Article 17 by focusing on the flight crew's negligence as the "accident." The Ninth Circuit stated: "The failure to act in the face of a known, serious risk satisfies the meaning of 'accident' within Article 17 so long as reasonable alternatives exist that would substantially minimize the risk and implementing these alternatives would not unreasonably interfere with the normal, expected operation of the airplane." 316 F. 3d, at 837. Admittedly, this language does seem to approve of a negligence-based approach. However, no party disputes the Ninth Circuit's holding that the flight attendant's conduct was "unexpected and unusual," *ibid.*, which is the operative language under *Saks* and the correct Article 17 analysis.

For the foregoing reasons, we conclude that the conduct here constitutes an "accident" under Article 17 of the Warsaw Convention. Accordingly, the judgment of the Court of Appeals is affirmed.

It is so ordered.

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

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consent to ratification of the protocol, and it entered into force in the United States on March 4, 1999. See *El Al Israel Airlines, Ltd.* v. *Tsui Yuan Tseng*, 525 U. S. 155, 174, n. 14 (1999). Because the facts here took place in 1997–1998, Montreal Protocol No. 4 does not apply.

JUSTICE SCALIA, with whom JUSTICE O'CONNOR joins as to Parts I and II, dissenting.

When we interpret a treaty, we accord the judgments of our sister signatories "'considerable weight.'" *Air France* v. *Saks*, 470 U. S. 392, 404 (1985). True to that canon, our previous Warsaw Convention opinions have carefully considered foreign case law. See, *e. g.*, *El Al Israel Airlines, Ltd.* v. *Tsui Yuan Tseng*, 525 U. S. 155, 173–174 (1999); *Eastern Airlines, Inc.* v. *Floyd*, 499 U. S. 530, 550–551 (1991); *Saks*, *supra*, at 404. Today's decision stands out for its failure to give any serious consideration to how the courts of our treaty partners have resolved the legal issues before us.

This sudden insularity is striking, since the Court in recent years has canvassed the prevailing law in other nations (at least Western European nations) to determine the meaning of an American Constitution that those nations had no part in framing and that those nations' courts have no role in enforcing. See *Atkins* v. *Virginia*, 536 U. S. 304, 316–317, n. 21 (2002) (whether the Eighth Amendment prohibits execution of the mentally retarded); *Lawrence* v. *Texas*, 539 U. S. 558, 576–577 (2003) (whether the Fourteenth Amendment prohibits the criminalization of homosexual conduct). One would have thought that foreign courts' interpretations of a treaty that their governments adopted jointly with ours, and that they have an actual role in applying, would be (to put it mildly) all the more relevant.

The Court's new abstemiousness with regard to foreign fare is not without consequence: Within the past year, appellate courts in both England and Australia have rendered decisions squarely at odds with today's holding. Because the Court offers no convincing explanation why these cases should not be followed, I respectfully dissent.

I

The Court holds that an airline's mere inaction can constitute an "accident" within the meaning of the Warsaw Con-

vention. *Ante,* at 654–657. It derives this principle from our definition of "accident" in *Saks* as "an unexpected or unusual event or happening that is external to the passenger." 470 U. S., at 405. The Court says this definition encompasses failures to act like the flight attendant's refusal to reseat Hanson in the face of a request for assistance.

That is far from clear. The word "accident" is used in two distinct senses. One refers to something that is unintentional, not "on purpose"—as in, "the hundred typing monkeys' verbatim reproduction of War and Peace was an accident." The other refers to an unusual and unexpected event, intentional or not: One may say he has been involved in a "train accident," for example, whether or not the derailment was intentionally caused. As the Court notes, *ante*, at 651, n. 6, *Saks* adopted the latter definition rather than the former. That distinction is crucial because, while there is no doubt that inaction can be an accident in the former sense ("I accidentally left the stove on"), whether it can be so in the latter sense is questionable.

Two of our sister signatories have concluded that it cannot. In *Deep Vein Thrombosis and Air Travel Group Litigation*, [2004] Q. B. 234, England's Court of Appeal, in an opinion by the Master of the Rolls that relied heavily on *Abramson* v. *Japan Airlines Co.*, 739 F. 2d 130 (CA3 1984), and analyzed more than a half-dozen other non-English decisions, held as follows:

> "A critical issue in this appeal is whether a failure to act, or an omission, can constitute an accident for the purposes of article 17. Often a failure to act results in an accident, or forms part of a series of acts and omissions which together constitute an accident. In such circumstances it may not be easy to distinguish between acts and omissions. I cannot see, however, how inaction itself can ever properly be described as an accident. It is not an event; it is a non-event. Inaction is the antith-

> esis of an accident." [2004] Q. B., at 247, ¶ 25 (Lord Phillips, M. R.).

Six months later, the appellate division of the Supreme Court of Victoria, Australia, in an opinion that likewise gave extensive consideration to American and other foreign decisions, agreed:

> "The allegations in substance do no more than state a failure to do something, and this cannot be characterised as an event or happening, whatever be the concomitant background to that failure to warn or advise. That is not to say that a failure to take a specific required step in the course of flying an aircraft, or in picking up or setting down passengers, cannot lead to an event or happening of the requisite unusual or unexpected kind and thus be an accident for the purpose of the article. A failure by a pilot to use some device in the expected and correct manner, such as a failure to let down the landing wheels or a chance omission to adjust the level of pressurisation, may lead, as has been held, to an accident contemplated by Article 17, but I would venture to suggest that it is not the failure to take the step which is properly to be characterised as an accident but rather its immediate and disastrous consequence whether that be the dangerous landing on the belly of the aircraft or an immediate unexpected and dangerous drop in pressurisation." *Qantas Ltd.* v. *Povey,* [2003] VSCA 227, ¶ 17, 2003 WL 23000692 (Dec. 23, 2003) (Ormiston, J. A.).

We can, and should, look to decisions of other signatories when we interpret treaty provisions. Foreign constructions are evidence of the original shared understanding of the contracting parties. Moreover, it is reasonable to impute to the parties an intent that their respective courts strive to interpret the treaty consistently. (The Warsaw Convention's preamble specifically acknowledges "the advantage of regulating *in a uniform manner* the conditions of . . . the liability

of the carrier." 49 Stat. 3014 (emphasis added).) Finally, even if we disagree, we surely owe the conclusions reached by appellate courts of other signatories the courtesy of respectful consideration.

The Court nonetheless dismisses *Deep Vein Thrombosis* and *Povey* in a footnote responding to this dissent. *Ante*, at 655–656, n. 9. As to the former, it claims (choosing its words carefully) that the "*conclusion*" it reaches is "not inconsistent" with that case. *Ante*, at 655, n. 9 (emphasis added). The reader should not think this to be a contention that the Master of the Rolls' opinion might be read to agree with today's holding that inaction can constitute an "accident." (To repeat the conclusion of that opinion: "Inaction is the antithesis of an accident." [2004] Q. B., at 247, ¶ 25.) What it refers to is the fact that the Master of the Rolls distinguished the Court of Appeals' judgment below (announced in an opinion that assumed inaction was involved, but did not at all discuss the action-inaction distinction) on the ground that action *was* involved—namely, "insistence that [Hanson] remain seated in the area exposed to smoke." *Id.*, ¶ 50.[1] As I explain below, see Part II, *infra*, that theory does not quite work because,

[1] The Court quotes only part of the relevant discussion. Here is what the Master of the Rolls said about our case in full:

"I have no difficulty with the result in this case but, with respect, I question the reasoning of the judge in both events. *The refusal of the flight attendant to move Dr. Hanson cannot properly be considered as mere inertia, or a non-event.* It was a refusal to provide an alternative seat which formed part of a more complex incident, whereby Dr. Hanson was exposed to smoke in circumstances that can properly be described as unusual and unexpected. The existence of the non-smoking zone provided the opportunity for Dr. Hanson, if suitably placed within it, to avoid exposure to the smoke that threatened his health and, as it proved, his life. The direct cause of his death was the unnecessary exposure to the smoke. *The refusal of the attendant to move him could be described as insistence that he remain seated in the area exposed to smoke.* The exposure to smoke in these circumstances could, in my view, properly be described as an unusual or unexpected event." *Deep Vein Thrombosis and Air Travel Group Litigation*, [2004] Q. B. 234, 254, ¶ 50 (emphasis added).

in fact, the flight attendant did *not* insist that Hanson remain seated. But we can ignore this detail for the time being. The point is that the English court thought Husain could recover, not because the action-inaction distinction was irrelevant, but because, even though action was indispensable, it had in fact occurred.

The Court charts our course in exactly the opposite direction, spending three pages explaining why the action-inaction distinction *is* irrelevant. See *ante*, at 654–657. If the Court agrees with the Master of the Rolls that this case involves action, why does it needlessly place us in conflict with the courts of other signatories by deciding the then-irrelevant issue of whether inaction can constitute an accident? It would suffice to hold that our case involves action and end the analysis there. Whether inaction can constitute an accident under the Warsaw Convention is a significant issue on which international consensus is important; whether Husain can recover for her husband's death in this one case is not. As they stand, however, the core holdings of this case and *Deep Vein Thrombosis*—their *rationes decidendi*—are not only *not* "not inconsistent"; they are *completely opposite*.[2]

[2] To the extent the Court implies that *Deep Vein Thrombosis* and *Povey* merit only slight consideration because they were not decided by courts of last resort, see *ante*, at 655–656, n. 9, I note that our prior Warsaw Convention cases have looked to decisions of intermediate appellate foreign courts as well as supreme courts. See *Air France* v. *Saks*, 470 U. S. 392, 404 (1985). Moreover, *Deep Vein Thrombosis* was no ordinary decision. It was authored by the Master of the Rolls, the chief judge of England's civil appellate court—a position thought by many to be even more influential than that of a Law Lord. See, *e. g.*, Smith, Bailey & Gunn on the Modern English Legal System 250 (4th ed. 2002); Denning: A Life of Law, BBC News (Mar. 5, 1999), http://news.bbc.co.uk/1/hi/uk/290996.stm (as visited Jan. 20, 2004, and available in Clerk of Court's case file).

That there are "substantial factual distinctions" between the cases, *ante*, at 655, n. 9, is surely beside the point. A legal rule may arise in different contexts, but the differences are relevant only if the logic of the rule makes them so. *Deep Vein Thrombosis* and *Povey* hold in no uncertain

I would follow the holdings of *Deep Vein Thrombosis* and *Povey*, since the Court's analysis today is no more convincing than theirs. Merely pointing to dictionaries that define "'event'" as an "'occurrence'" or "'[s]omething that happens,'" *ante*, at 655, hardly resolves the problem; it only reformulates one question (whether "accident" includes nonevents) into an equivalent one (whether "accident" includes nonoccurrences and nonhappenings).

Equally unavailing is the reliance, *ante*, at 656–657, on Article 25 of the Warsaw Convention (which lifts liability caps for injury caused by a "default" of the airline equivalent to willful misconduct) and Article 20 (which precludes the airline's due-care defense if it fails to take "all necessary measures" to avoid the injury). The Court's analytical error in invoking these provisions is to assume that the inaction these provisions contemplate is the accident itself. The treaty imposes no such requirement. If a pilot negligently forgets to lower the landing gear, causing the plane to crash and killing all passengers on board, then recovery is presumptively available (because the crash that caused the deaths is an accident), and the due-care defense is inapplicable (because the pilot's negligent omission also caused the deaths), even though the omission is not the accident. Similarly, if a flight attendant fails to prevent the boarding of an individual whom she knows to be a terrorist, and who later shoots a passenger, the damages cap might be lifted even though the accident (the shooting) and the default (the failure to prevent boarding) do not coincide. Without the invented restriction that the Article 20 or 25 default be the accident itself, the Court's argument based on those provisions loses all force.

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terms that inaction cannot be an accident; not that inaction *consisting of failure to warn of deep vein thrombosis* cannot be an accident. Maintaining a coherent international body of treaty law requires us to give deference to the *legal rules* our treaty partners adopt. It is not enough to avoid inconsistent decisions on factually identical cases.

As for the Court's hypothetical of the crew that refuses to divert after a passenger collapses, *ante*, at 656: This would be more persuasive as a *reductio ad absurdum* if the Eleventh Circuit had not already ruled out Article 17 liability in substantially these very circumstances. See *Krys* v. *Lufthansa German Airlines*, 119 F. 3d 1515, 1517–1522, 1527–1528 (1997). A legal construction is not fallacious merely because it has harsh results. The Convention denies a remedy, even when outrageous conduct and grievous injury have occurred, unless there has been an "accident." Whatever that term means, it certainly does not equate to "outrageous conduct that causes grievous injury." It is a mistake to assume that the Convention must provide relief whenever traditional tort law would do so. To the contrary, a principal object of the Convention was to promote the growth of the fledgling airline industry by limiting the circumstances under which passengers could sue. See *Tseng*, 525 U. S., at 170–171. Unless there has been an accident, there is no liability, whether the claim is trivial, cf. *Lee* v. *American Airlines Inc.*, 355 F. 3d 386, 387 (CA5 2004) (suit for "loss of a 'refreshing, memorable vacation' "), or cries out for redress.

Were we confronting the issue in the first instance, perhaps the Court could persuade me to its view. But courts in two other countries have already rejected it, and their reasoning is no less compelling than the Court's. I would follow *Deep Vein Thrombosis* and *Povey* and hold that mere inaction cannot be an "accident" under Article 17.

II

Respondents argue that, even if the Convention distinguishes action from inaction, this case involves sufficient elements of action to support recovery. That argument is not implausible; as noted earlier, the court in *Deep Vein Thrombosis* suggested that "[t]he refusal of the attendant to move [Hanson] could be described as insistence that he remain seated in the area exposed to smoke." [2004] Q. B., at 254,

¶ 50. I cannot agree with this analysis, however, because it miscomprehends the facts of this case.

Preliminarily, I must note that this was not the rationale of the District Court. That court consistently referred to the relevant "accident" not as the flight attendant's insistence that Hanson remain seated, but as her "failure" or "refusal" to reseat him. See 116 F. Supp. 2d 1121, 1131–1135 (ND Cal. 2000). Its findings of fact were infected by its erroneous legal assumption that Article 17 makes no distinction between action and inaction. The only question is whether we can nonetheless affirm on the ground that, since there *was* action in any event, this error was harmless.

It was not. True, in response to the *first* request, the flight attendant insisted that Husain and her husband " 'have a seat.' " *Id.*, at 1125. This insistence might still have been implicit in her response to the second request. But these responses were both given while the plane was still on the ground, preparing to take off. The flight attendant's response to Husain's *third* request—made once the plane was in the air and other passengers had started smoking—was quite different. She did *not* insist that Husain and her husband remain seated; on the contrary, she invited them to walk around the cabin in search of someone willing to switch.

That the flight attendant explicitly refused Husain's pleas for help after the third request, rather than simply ignoring them, does not transform her inaction into action. The refusal acknowledged her inaction, but it was the inaction, not the acknowledgment, that caused Hanson's death. Unlike the previous responses, the third was a mere refusal to assist, and so cannot be the basis for liability under Article 17.

The District Court's failure to make the distinction between the flight attendant's pretakeoff responses and her in-flight response undermines its decision in two respects. First, the court's findings as to airline and industry policy did not distinguish between reseating a passenger while in flight and reseating a passenger while still on the ground

preparing to take off. In fact, some of the evidence on this point specifically related *only* to in-flight behavior. See *id.*, at 1132 (testimony of a chief cabin attendant that the flight attendant should have reseated Hanson immediately after Husain's *third* request); *ibid.* (testimony of a company official that its policy is to move passengers "who become ill *during* flights" (emphasis added)). To establish that it is company policy to reseat an asthmatic does *not* establish that it is company policy to do so before takeoff, while the attendants are busy securing the plane for departure and before anyone has started smoking. In other words, there may have been nothing unusual about the initial insistence that Hanson stay seated, and for that reason no "accident." We do not know the policy in this more specific regard. The District Court made no findings because it applied an erroneous legal standard that did not require it to distinguish among the three requests.

But even if the flight attendant's insistence that Hanson remain seated before takeoff *was* unusual or unexpected, and hence an accident, it was not a *compensable cause* of Hanson's death. It was perhaps a but-for cause (had the flight attendant allowed him to move before takeoff, he might have lived, just as he might have lived if he had taken a different flight); but it was not a *proximate* cause, which is surely a predicate for recovery. Any early insistence that Hanson remain seated became moot once the attendant later told Husain and her husband they were free to move about.

There is, however, one complication, which I think requires us to remand this case to the District Court: Although the flight attendant, once the plane was aloft, invited Husain to find another passenger willing to switch seats, she did not invite Husain to find an *empty* seat, but to the contrary affirmatively represented that the plane was full. If such a misrepresentation is unusual and unexpected; and (the more difficult question) if it can reasonably be said that it caused Hanson's death—*i. e.*, that Husain would have searched for

and found an empty seat, although unwilling to ask another passenger to move—then a cause of action might lie. I would remand so that the District Court could consider in the first instance whether the flight attendant's misrepresentation about the plane's being full, independent of any failure to reseat, was an accident that caused Hanson's death.

* * *

Tragic though Dr. Hanson's death may have been, it does not justify the Court's putting us in needless conflict with other signatories to the Warsaw Convention. I respectfully dissent.

Syllabus

BANKS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION

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

No. 02–8286. Argued December 8, 2003—Decided February 24, 2004

After police found a gun-shot corpse near Texarkana, Texas, Deputy Sheriff Willie Huff learned that the decedent had been seen with petitioner Banks three days earlier. When a paid informant told Deputy Huff that Banks was driving to Dallas to fetch a weapon, Deputy Huff followed Banks to a residence there. On the return trip, police stopped Banks's vehicle, found a handgun, and arrested the car's occupants. Returning to the Dallas residence, Deputy Huff encountered Charles Cook and recovered a second gun, which Cook said Banks had left at the residence several days earlier. On testing, the second gun proved to be the murder weapon. Prior to Banks's trial, the State advised defense counsel that, without necessity of motions, the State would provide Banks with all discovery to which he was entitled. Nevertheless, the State withheld evidence that would have allowed Banks to discredit two essential prosecution witnesses. At the trial's guilt phase, Cook testified, *inter alia*, that Banks admitted "kill[ing a] white boy." On cross-examination, Cook thrice denied talking to anyone about his testimony. In fact, Deputy Huff and prosecutors intensively coached Cook about his testimony during at least one pretrial session. The prosecution allowed Cook's misstatements to stand uncorrected. After Banks's capital murder conviction, the penalty-phase jury found that Banks would probably commit criminal acts of violence that would constitute a continuing threat to society. One of the State's two penalty-phase witnesses, Robert Farr, testified that Banks had retrieved a gun from Dallas in order to commit robberies. According to Farr, Banks had said he would "take care of it" if trouble arose during those crimes. Two defense witnesses impeached Farr, but were, in turn, impeached. Banks testified, among other things, that, although he had traveled to Dallas to obtain a gun, he had no intent to participate in the robberies, which Farr alone planned to commit. In summation, the prosecution suggested that Banks had not traveled to Dallas only to supply Farr with a weapon. Stressing Farr's testimony that Banks said he would "take care" of trouble arising during the robberies, the prosecution urged the jury to find Farr credible. Farr's admission that he used narcotics, the prose-

cution suggested, indicated that he had been open and honest in every way. The State did not disclose that Farr was the paid informant who told Deputy Huff about the Dallas trip. The judge sentenced Banks to death.

Through Banks's direct appeal, the State continued to hold secret Farr's and Cook's links to the police. In a 1992 state-court postconviction motion, Banks alleged for the first time that the prosecution knowingly failed to turn over exculpatory evidence that would have revealed Farr as a police informant and Banks's arrest as a "set-up." Banks also alleged that during the trial's guilt phase, the State deliberately withheld information of a deal prosecutors made with Cook, which would have been critical to the jury's assessment of Cook's credibility. Banks asserted that the State's actions violated *Brady* v. *Maryland*, 373 U. S. 83, 87, which held that the prosecution's suppression of evidence requested by and favorable to an accused violates due process where the evidence is material to either guilt or punishment, irrespective of the prosecution's good or bad faith. The State denied Banks's allegations, and the state postconviction court rejected his claims.

In 1996, Banks filed the instant federal habeas petition, alleging, as relevant, that the State had withheld material exculpatory evidence revealing Farr to be a police informant and Banks' arrest as a "set-up." Banks further alleged that the State had concealed Cook's incentive to testify in a manner favorable to the prosecution. Banks attached affidavits from Farr and Cook to a February 1999 motion seeking discovery and an evidentiary hearing. Farr's declaration stated that he had agreed to help Deputy Huff with the murder investigation out of fear Huff would arrest him on drug charges; that Huff had paid him $200; and that Farr had "set [Banks] up" by convincing him to drive to Dallas to retrieve Banks's gun. Cook recalled that he had participated in practice sessions before the Banks trial at which prosecutors told him he must either testify as they wanted or spend the rest of his life in prison. In response to the Magistrate Judge's disclosure order in the federal habeas proceeding, the prosecution gave Banks a transcript of a September 1980 pretrial interrogation of Cook by police and prosecutors. This transcript provided compelling evidence that Cook's testimony had been tutored, but did not bear on whether Cook had a deal with the prosecution. At the federal evidentiary hearing Huff acknowledged, for the first time, that Farr was an informant paid for his involvement in Banks's case. A Banks trial prosecutor testified, however, that no deal had been offered to gain Cook's testimony. The Magistrate Judge recommended a writ of habeas corpus with respect to Banks's death sentence based on, *inter alia*, the State's failure to disclose Farr's informant status. The judge did not recommend disturbing the guilt-phase ver-

dict, concluding in this regard that Banks had not properly pleaded a *Brady* claim based on the September 1980 Cook interrogation transcript. The District Court adopted the Magistrate Judge's report and rejected Banks's argument that the Cook transcript claim be treated as if raised in the pleadings, under Federal Rule of Civil Procedure 15(b).

The Fifth Circuit reversed to the extent the District Court had granted relief on Banks's Farr *Brady* claim. The Court of Appeals recognized that, prior to federal habeas proceedings, the prosecution had suppressed Farr's informant status and his part in the Dallas trip. The Fifth Circuit nonetheless concluded that Banks did not act diligently to develop the facts underpinning his Farr *Brady* claim when he pursued his 1992 state-court postconviction application. That lack of diligence, the Court of Appeals held, rendered the evidence uncovered in the federal habeas proceeding procedurally barred. In any event, the Fifth Circuit ruled, Farr's status as an informant was not "material" for *Brady* purposes. That was so, in the Fifth Circuit's judgment, because Banks had impeached Farr at trial by bringing out that he had been an unreliable police informant in Arkansas, and because much of Farr's testimony was corroborated by other witnesses, including Banks himself, who had acknowledged his willingness to get a gun for Farr's use in robberies. The Fifth Circuit also denied a certificate of appealability on Banks's Cook *Brady* claim. In accord with the District Court, the Court of Appeals rejected Banks's assertion that, because his Cook *Brady* claim had been aired by implied consent, Rule 15(b) required it to be treated as if raised in the pleadings.

Held: The Fifth Circuit erred in dismissing Banks's Farr *Brady* claim and denying him a certificate of appealability on his Cook *Brady* claim. When police or prosecutors conceal significant exculpatory or impeaching material in the State's possession, it is ordinarily incumbent on the State to set the record straight. Pp. 689–706.

(a) Both of Banks's *Brady* claims arose under the regime in place prior to the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). P. 689.

(b) Banks's Farr *Brady* claim, as it trains on his death sentence, is not barred. All three elements of a *Brady* claim are satisfied as to the suppression of Farr's informant status and its bearing on the reliability of the jury's verdict regarding punishment. Because Banks has also demonstrated cause and prejudice, he is not precluded from gaining federal habeas relief by his failure to produce evidence in anterior state-court proceedings. Pp. 690–703.

(1) Pre-AEDPA habeas law required Banks to exhaust available state-court remedies in order to pursue federal-court relief. See, *e. g.*,

Rose v. *Lundy*, 455 U. S. 509. Banks satisfied this requirement by alleging in his 1992 state-court habeas application that the prosecution knowingly failed to turn over exculpatory evidence about Farr. Banks, however, failed to produce evidence in state postconviction court establishing that Farr had served as Deputy Sheriff Huff's informant. In the federal habeas forum, Banks must show that he was not thereby barred from producing evidence to substantiate his Farr *Brady* claim. Banks would be entitled to a federal-court evidentiary hearing if he could show both cause for his failure to develop facts in state court, and actual prejudice resulting from that failure. *Keeney* v. *Tamayo-Reyes*, 504 U. S. 1, 11. A *Brady* prosecutorial misconduct claim has three essential elements. *Strickler* v. *Greene*, 527 U. S. 263, 281–282. Beyond debate, the first such element—that the evidence at issue be favorable to the accused as exculpatory or impeaching—is satisfied here. Farr's paid informant status plainly qualifies as evidence advantageous to Banks. Cause and prejudice in this case parallel the second and third of the three *Brady* components. Corresponding to the second *Brady* element—that the State suppressed the evidence at issue—a petitioner shows cause when the reason for the failure to develop facts in state-court proceedings was the State's suppression of the relevant evidence. Coincident with the third *Brady* component—that prejudice ensued—prejudice within the compass of the "cause and prejudice" requirement exists when suppressed evidence is "material" for *Brady* purposes. *Ibid.* Thus, if Banks succeeds in demonstrating cause and prejudice, he will also succeed in establishing the essential elements of his Farr *Brady* claim. Pp. 690–691.

(2) Banks has shown cause for failing to present evidence in state court capable of substantiating his Farr *Brady* claim. As *Strickler* instructs, 527 U. S., at 289, three inquiries underlie the "cause" determination: (1) whether the prosecution withheld exculpatory evidence; (2) whether the petitioner reasonably relied on the prosecution's open file policy as fulfilling the prosecution's duty to disclose such evidence; and (3) whether the State confirmed the petitioner's reliance on that policy by asserting during the state habeas proceedings that the petitioner had already received everything known to the government. This case is congruent with *Strickler* in all three respects. First, the State knew of, but kept back, Farr's arrangement with Deputy Huff. Cf. *Kyles* v. *Whitley*, 514 U. S. 419, 437. Second, the State asserted, on the eve of trial, that it would disclose all *Brady* material. Banks cannot be faulted for relying on that representation. See *Strickler*, 527 U. S., at 283–284. Third, in its answer to Banks's 1992 state habeas application, the State denied Banks's assertions that Farr was a police informant and Banks's arrest a "set-up." The State thereby confirmed

Banks's reliance on the prosecution's representation that it had disclosed all *Brady* material. In this regard, Banks's case is stronger than was the *Strickler* petitioner's: Each time Farr misrepresented his dealings with police, the prosecution allowed that testimony to stand uncorrected. Cf. *Giglio* v. *United States*, 405 U. S. 150, 153. Banks appropriately assumed police would not engage in improper litigation conduct to obtain a conviction. None of the State's arguments for distinguishing *Strickler* on the "cause" issue accounts adequately for the State's concealment and misrepresentation of Farr's link to Huff. In light of those misrepresentations, Banks did not lack appropriate diligence in pursuing the Farr *Brady* claim in state court. Nor is Banks at fault for failing to move, in the 1992 state-court postconviction proceedings, for investigative assistance so that he could inquire into Farr's police connections, for state law entitled him to no such aid. Further, *Roviaro* v. *United States*, 353 U. S. 53, which concerned the Government's obligation to reveal the identity of an informant it does not call as a witness, does not support the State's position. Pp. 692–698.

(3) The State's suppression of Farr's informant status is "material" for *Brady* purposes. The materiality standard for *Brady* claims is met when "the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." *Kyles*, 514 U. S., at 435. Farr was paid for a critical role in the scenario that led to Banks's indictment. Farr's declaration, presented to the federal habeas court, asserts that Farr, not Banks, initiated the proposal to obtain a gun to facilitate robberies. Had Farr not instigated, upon Deputy Huff's request, the Dallas excursion to fetch Banks's gun, the prosecution would have had slim, if any, evidence that Banks planned to continue committing violent acts. Farr's admission of his instigating role, moreover, would have dampened the prosecution's zeal in urging the jury to consider Banks's acquisition of a gun to commit robbery or his "planned violence." Because Banks had no criminal record, Farr's testimony about Banks's propensity to violence was crucial to the prosecution. Without that testimony, the State could not have underscored to the jury that Banks would use the gun fetched in Dallas to "take care" of trouble arising during robberies. The stress placed by the prosecution on this part of Farr's testimony, uncorroborated by any other witness, belies the State's suggestion that Farr's testimony was adequately corroborated. The prosecution's penalty-phase summation, moreover, left no doubt about the importance the State attached to Farr's testimony. In contrast to *Strickler*, where the Court found "cause," 527 U. S., at 289, but no "prejudice," *id.*, at 292–296, the existence of "prejudice" in this case is marked. Farr's trial testimony was the centerpiece of the Banks prosecution's penalty-phase case. That

testimony was cast in large doubt by the declaration Banks ultimately obtained from Farr and introduced in the federal habeas proceeding. Had jurors known of Farr's continuing interest in obtaining Deputy Huff's favor and his receipt of funds to set Banks up, they might well have distrusted Farr's testimony, and, insofar as it was uncorroborated, disregarded it. The jury, moreover, did not benefit from customary, truth-promoting precautions that generally accompany informant testimony. Such testimony poses serious credibility questions. This Court, therefore, has long allowed defendants broad latitude to cross-examine informants and has counseled the use of careful instructions on submission of the credibility issue to the jury. See, *e. g.*, *On Lee* v. *United States*, 343 U. S. 747, 757. The State's argument that Farr's informant status was rendered cumulative by his impeachment at trial is contradicted by the record. Neither witness called to impeach Farr gave evidence directly relevant to Farr's part in Banks's prosecution. The impeaching witnesses, moreover, were themselves impeached, as the prosecution stressed on summation. Further, the prosecution turned to its advantage remaining impeachment evidence by suggesting that Farr's admission of drug use demonstrated his openness and honesty. Pp. 698–703.

(c) The lower courts wrongly denied Banks a certificate of appealability with regard to his *Brady* claim resting on the prosecution's suppression of the September 1980 Cook interrogation transcript. The Court of Appeals rejected Banks's contention that Rule 15(b) required the claim to be treated as having been raised in the pleadings because the transcript substantiating the claim had been aired at an evidentiary hearing before the Magistrate Judge. The Fifth Circuit apparently relied on the debatable view that Rule 15(b) is inapplicable in habeas proceedings. This Court has twice assumed that Rule's application in such proceedings. *Harris* v. *Nelson*, 394 U. S. 286, 294, n. 5; *Withrow* v. *Williams*, 507 U. S. 680, 696, and n. 7. The *Withrow* District Court had granted habeas on a claim neither pleaded, considered at "an evidentiary hearing," nor "even argu[ed]" by the parties. *Id.*, at 695. This Court held that there had been no trial of the claim by implied consent; and manifestly, the respondent warden was prejudiced by the lack of opportunity to present evidence bearing on the claim's resolution. *Id.*, at 696. Here, in contrast, the issue of the undisclosed Cook interrogation transcript was aired at a hearing before the Magistrate Judge, and the transcript was admitted into evidence without objection. The Fifth Circuit's view that an evidentiary hearing should not be aligned with a trial for Rule 15(b) purposes is not well grounded. Nor does this Court agree with the Court of Appeals that applying Rule 15(b) in habeas proceedings would undermine the State's exhaustion and procedural de-

fault defenses. *Ibid.* Under pre-AEDPA law, no inconsistency arose between Rule 15(b) and those defenses. Doubtless, that is why this Court's pre-AEDPA cases assumed Rule 15(b)'s application in habeas proceedings. See, *e. g., ibid.* While AEDPA forbids a finding that exhaustion has been waived absent an express waiver by the State, 28 U. S. C. § 2254(b)(3), pre-AEDPA law allowed waiver of both defenses—exhaustion and procedural default—based on the State's litigation conduct, see, *e. g., Gray* v. *Netherland*, 518 U. S. 152, 166. To obtain a certificate of appealability, a prisoner must demonstrate that reasonable jurists could disagree with the district court's resolution of his constitutional claims or that the issues presented warrant encouragement to proceed further. *Miller-El* v. *Cockrell*, 537 U. S. 322, 327. This case fits that description as to the application of Rule 15(b). Pp. 703–706.

48 Fed. Appx. 104, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O'CONNOR, KENNEDY, SOUTER, and BREYER, JJ., joined, and in which SCALIA and THOMAS, JJ., joined as to Part III. THOMAS, J., filed an opinion concurring in part and dissenting in part, in which SCALIA, J., joined, *post,* p. 706.

George H. Kendall argued the cause for petitioner. With him on the briefs were *Elaine R. Jones*, *Janai S. Nelson*, *Miriam Gohara*, and *Clifton L. Holmes.*

Gena Bunn, Assistant Attorney General of Texas, argued the cause for respondent. With her on the brief were *Greg Abbott*, Attorney General, *Barry R. McBee*, First Assistant Attorney General, *Jay Kimbrough*, Deputy Attorney General, and *Edward L. Marshall* and *Katherine D. Hayes*, Assistant Attorneys General.*

JUSTICE GINSBURG delivered the opinion of the Court.

Petitioner Delma Banks, Jr., was convicted of capital murder and sentenced to death. Prior to trial, the State advised

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*Briefs of *amici curiae* urging reversal were filed for William G. Broaddus et al. by *William F. Sheehan;* and for John J. Gibbons et al. by *Peter Buscemi* and *Brooke Clagett.*

A. P. Carlton, Jr., Lynn R. Coleman, and *Matthew W. S. Estes* filed a brief for the American Bar Association as *amicus curiae.*

Banks's attorney there would be no need to litigate discovery issues, representing: "[W]e will, without the necessity of motions[,] provide you with all discovery to which you are entitled." App. 361, n. 1; App. to Pet. for Cert. A4 (both sources' internal quotation marks omitted). Despite that undertaking, the State withheld evidence that would have allowed Banks to discredit two essential prosecution witnesses. The State did not disclose that one of those witnesses was a paid police informant, nor did it disclose a pretrial transcript revealing that the other witness' trial testimony had been intensively coached by prosecutors and law enforcement officers.

Furthermore, the prosecution raised no red flag when the informant testified, untruthfully, that he never gave the police any statement and, indeed, had not talked to any police officer about the case until a few days before the trial. Instead of correcting the informant's false statements, the prosecutor told the jury that the witness "ha[d] been open and honest with you in every way," App. 140, and that his testimony was of the "utmost significance," *id.*, at 146. Similarly, the prosecution allowed the other key witness to convey, untruthfully, that his testimony was entirely unrehearsed. Through direct appeal and state collateral review proceedings, the State continued to hold secret the key witnesses' links to the police and allowed their false statements to stand uncorrected.

Ultimately, through discovery and an evidentiary hearing authorized in a federal habeas corpus proceeding, the long-suppressed evidence came to light. The District Court granted Banks relief from the death penalty, but the Court of Appeals reversed. In the latter court's judgment, Banks had documented his claims of prosecutorial misconduct too late and in the wrong forum; therefore he did not qualify for federal-court relief. We reverse that judgment. When police or prosecutors conceal significant exculpatory or im-

peaching material in the State's possession, it is ordinarily incumbent on the State to set the record straight.

I

On April 14, 1980, police found the corpse of 16-year-old Richard Whitehead in Pocket Park, east of Nash, Texas, a town in the vicinity of Texarkana. *Id.*, at 8, 141.[1] A preliminary autopsy revealed that Whitehead had been shot three times. *Id.*, at 10. Bowie County Deputy Sheriff Willie Huff, lead investigator of the death, learned from two witnesses that Whitehead had been in the company of petitioner, 21-year-old Delma Banks, Jr., late on the evening of April 11. *Id.*, at 11–15, 144; *Banks* v. *State*, 643 S. W. 2d 129, 131 (Tex. Crim. App. 1982) (en banc), cert. denied, 464 U. S. 904 (1983). On April 23, Huff received a call from a confidential informant reporting that "Banks was coming to Dallas to meet an individual and get a weapon." App. 15. That evening, Huff and other officers followed Banks to South Dallas, where Banks visited a residence. *Ibid.;* Brief for Petitioner 3. Police stopped Banks's vehicle en route from Dallas, found a handgun in the car, and arrested the car's occupants. App. 16. Returning to the Dallas residence Banks had visited, Huff encountered and interviewed Charles Cook and recovered a second gun, a weapon Cook said Banks had left with him several days earlier. *Ibid.* Tests later identified the second gun as the Whitehead murder weapon. *Id.*, at 17.

In a May 21, 1980, pretrial hearing, Banks's counsel sought information from Huff concerning the confidential informant who told Huff that Banks would be driving to Dallas. *Id.*, at 21. Huff was unresponsive. *Ibid.* Any information that might reveal the identity of the informant, the prosecu-

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[1] Although a police officer testified Whitehead's body was found on April 14, App. 8, the Texas Court of Criminal Appeals stated the body was discovered on April 15. *Banks* v. *State*, 643 S. W. 2d 129, 131 (1982) (en banc).

tion urged, was privileged. *Id.*, at 23. The trial court sustained the State's objection. *Id.*, at 24. Several weeks later, in a July 7, 1980, letter, the prosecution advised Banks's counsel that "[the State] will, without necessity of motions provide you with all discovery to which you are entitled." *Id.*, at 361, n. 1; App. to Pet. for Cert. A4 (both sources' internal quotation marks omitted).

The guilt phase of Banks's trial spanned two days in September 1980. See Brief for Petitioner 2; App. to Pet. for Cert. C3. Witnesses testified to seeing Banks and Whitehead together on April 11 in Whitehead's green Mustang, and to hearing gunshots in Pocket Park at 4 a.m. on April 12. *Banks* v. *State*, 643 S. W. 2d, at 131. Charles Cook testified that Banks arrived in Dallas in a green Mustang at about 8:15 a.m. on April 12, and stayed with Cook until April 14. App. 42–43, 47–53. Cook gave the following account of Banks's visit. On the morning of his arrival, Banks had blood on his leg and told Cook "he [had] got into it on the highway with a white boy." *Id.*, at 44. That night, Banks confessed to having "kill[ed] the white boy for the hell of it and take[n] his car and come to Dallas." *Id.*, at 48. During their ensuing conversation, Cook first noticed that "[Banks] had a pistol." *Id.*, at 49. Two days later, Banks left Dallas by bus. *Id.*, at 52–53. The next day, Cook abandoned the Mustang in West Dallas and sold Banks's gun to a neighbor. *Id.*, at 54. Cook further testified that, shortly before the police arrived at his residence to question him, Banks had revisited him and requested the gun. *Id.*, at 57.

On cross-examination, Cook three times represented that he had not talked to anyone about his testimony. *Id.*, at 59. In fact, however, Cook had at least one "pretrial practice sessio[n]" at which Huff and prosecutors intensively coached Cook for his appearance on the stand at Banks's trial. *Id.*, at 325, ¶ 10, 381–390; Joint Lodging Material 1–36 (transcript of pretrial preparatory session). The prosecution allowed Cook's misstatements to stand uncorrected. In its guilt-

phase summation, the prosecution told the jury "Cook brought you absolute truth." App. 84.

In addition to Cook, Robert Farr was a key witness for the prosecution. Corroborating parts of Cook's account, Farr testified to traveling to Dallas with Banks to retrieve Banks's gun. *Id.*, at 34–35. On cross-examination, defense counsel asked Farr whether he had "ever taken any money from some police officers," or "give[n] any police officers a statement." *Id.*, at 37–38. Farr answered no to both questions; he asserted emphatically that police officers had not promised him anything and that he had "talked to no one about this [case]" until a few days before trial. *Ibid.* These answers were untrue, but the State did not correct them. Farr was the paid informant who told Deputy Sheriff Huff that Banks would travel to Dallas in search of a gun. *Id.*, at 329; App. to Pet. for Cert. A4, A9. In a 1999 affidavit, Farr explained:

> "I assumed that if I did not help [Huff] with his investigation of Delma that he would have me arrested for drug charges. That's why I agreed to help [Huff]. I was afraid that if I didn't help him, I would be arrested. . . .
>
> "Willie Huff asked me to help him find Delma's gun. I told [Huff] that he would have to pay me money right away for my help on the case. I think altogether he gave me about $200.00 for helping him. He paid me some of the money before I set Delma up. He paid me the rest after Delma was arrested and charged with murder. . . .
>
> "In order to help Willie Huff, I had to set Delma up. I told Delma that I wanted to rob a pharmacy to get drugs and that I needed his gun to do it. I did not really plan to commit a robbery but I told Delma this so that he would give me his gun. . . . I convinced Delma to drive to Dallas with me to get the gun." App. 442–443, ¶¶ 6–8.

The defense presented no evidence. App. to Pet. for Cert. A6. Banks was convicted of murder committed in the course of a robbery, in violation of Tex. Penal Code Ann. § 19.03(a)(2) (1974). See App. to Pet. for Cert. C3.[2]

The penalty phase ran its course the next day. *Ibid.* Governed by the Texas statutory capital murder scheme applicable in 1980, the jury decided Banks's sentence by answering three "special issues." App. 142–143.[3] "If the jury unanimously answer[ed] 'yes' to each issue submitted, the trial court [would be obliged to] sentence the defendant to death." *Penry* v. *Lynaugh*, 492 U. S. 302, 310 (1989) (construing Texas' sentencing scheme); Tex. Code Crim. Proc. Ann., Arts. 37.071(c)–(e) (Vernon Supp. 1980). The critical question at the penalty phase in Banks's case was: "Do you find from the evidence beyond a reasonable doubt that there is a probability that the defendant, Delma Banks, Jr., would commit criminal acts of violence that would constitute a continuing threat to society?" App. 143 (internal quotation marks omitted).

On this question, the State offered two witnesses, Vetrano Jefferson and Robert Farr. *Id.*, at 104–113. Jefferson testified that, in early April 1980, Banks had struck him across

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[2] "A person commits an offense if he commits murder . . . and . . . the person intentionally commits the murder in the course of committing or attempting to commit kidnapping, burglary, robbery, aggravated rape, or arson." Tex. Penal Code Ann. § 19.03(a)(2) (1974).

[3] As set forth in Texas law, the three special issues were:

"(1) whether the conduct of the defendant that caused the death of the deceased was committed deliberately and with the reasonable expectation that the death of the deceased or another would result;

"(2) whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society; and

"(3) if raised by the evidence, whether the conduct of the defendant in killing the deceased was unreasonable in response to the provocation, if any, by the deceased." Tex. Code Crim. Proc. Ann., Arts. 37.071(b)(1)–(3) (Vernon Supp. 1980).

the face with a gun and threatened to kill him. *Id.*, at 104–106. Farr's testimony focused once more on the trip to Dallas to fetch Banks's gun. The gun was needed, Farr asserted, because "[w]e [Farr and Banks] were going to pull some robberies." *Id.*, at 108. According to Farr, Banks "said he would take care of it" if "there was any trouble during these burglaries." *Id.*, at 109. When the prosecution asked: "How did [Banks] say he would take care of it?" Farr responded: "[Banks] didn't go into any specifics, but he said it would be taken care of." *Ibid.*

On cross-examination, defense counsel twice asked whether Farr had told Deputy Sheriff Huff of the Dallas trip. *Ibid.* The State remained silent as Farr twice perjuriously testified: "No, I did not." *Ibid.* Banks's counsel also inquired whether Farr had previously attempted to obtain prescription drugs by fraud, and, "up tight over that," would "testify to anything anybody want[ed] to hear." *Id.*, at 110. Farr first responded: "Can you prove it?" *Ibid.* Instructed by the court to answer defense counsel's questions, Farr again said: "No, I did not . . . ." *Ibid.*

Two defense witnesses impeached Farr, but were, in turn, impeached themselves. James Kelley testified to Farr's attempts to obtain drugs by fraud; the prosecution impeached Kelley by eliciting his close relationship to Banks's girlfriend. *Id.*, at 124–129. Later, Kelley admitted to being drunk while on the stand. App. to Pet. for Cert. A13. Former Arkansas police officer Gary Owen testified that Farr, as a police informant in Arkansas, had given false information; the prosecution impeached Owen by bringing out his pending application for employment by defense counsel's private investigator. App. 129–131.

Banks's parents and acquaintances testified that Banks was a "respectful, churchgoing young man." App. to Pet. for Cert. A7; App. 137–139. Thereafter, Banks took the stand. He affirmed that he had "never before been con-

victed of a felony." *Id.*, at 134.[4] Banks admitted striking Vetrano Jefferson in April 1980, and traveling to Dallas to obtain a gun in late April 1980. *Id.*, at 134–136. He denied, however, any intent to participate in robberies, asserting that Farr alone had planned to commit them. *Id.*, at 136–137. The prosecution suggested on cross-examination that Banks had been willing "to supply [Farr] the means and possible death weapon in an armed robbery case." *Id.*, at 137. Banks conceded as much. *Ibid.*

During summation, the prosecution intimated that Banks had not been wholly truthful in this regard, suggesting that "a man doesn't travel two hundred miles, or whatever the distance is from here [Texarkana] to Dallas, Texas, to supply a person with a weapon." *Id.*, at 143. The State homed in on Farr's testimony that Banks said he would "take care" of any trouble arising during the robbery:

> "[Farr] said, 'Man, you know, what i[f] there's trouble?' And [Banks] says, 'Don't worry about it. I'll take care of it.' I think that speaks for itself, and I think you know what that means. . . . I submit to you beyond a reasonable doubt that the State has again met its burden of proof, and that the answer to question number two [propensity to commit violent criminal acts] should also be yes." *Id.*, at 140, 144. See also *id.*, at 146–147.

Urging Farr's credibility, the prosecution called the jury's attention to Farr's admission, at trial, that he used narcotics. *Id.*, at 36, 140. Just as Farr had been truthful about his drug use, the prosecution suggested, he was also "open and honest with [the jury] in every way" in his penalty-phase testimony. *Id.*, at 140. Farr's testimony, the prosecution emphasized, was "of the utmost significance" because it

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[4] Banks, in fact, had no criminal record at all. App. 255, ¶ 115; App. to Pet. for Cert. C23. He also "had no history of violence or alcohol abuse and seemed to possess a self-control that would suggest no particular risk of future violence." *Ibid.*

showed "[Banks] is a danger to friends and strangers, alike." *Id.*, at 146. Banks's effort to impeach Farr was ineffective, the prosecution further urged, because defense witness "Kelley kn[ew] nothing about the murder," and defense witness Owen "wish[ed] to please his future employers." *Id.*, at 148.

The jury answered yes to the three special issues, and the judge sentenced Banks to death. The Texas Court of Criminal Appeals denied Banks's direct appeal. 643 S. W. 2d, at 135. Banks's first two state postconviction motions raised issues not implicated here; both were denied. *Ex parte Banks*, No. 13568–01 (Tex. Crim. App. 1984); *Ex parte Banks*, 769 S. W. 2d 539, 540 (Tex. Crim. App. 1989).

Banks's third state postconviction motion, filed January 13, 1992, presented questions later advanced in federal court and reiterated in the petition now before us. App. 150. Banks alleged "upon information and belief" that "the prosecution knowingly failed to turn over exculpatory evidence as required by [*Brady* v. *Maryland*, 373 U. S. 83 (1963)]";[5] the withheld evidence, Banks asserted, "would have revealed Robert Farr as a police informant and Mr. Banks' arrest as a set-up." App. 180, ¶ 114 (internal quotation marks omitted). In support of this third state-court postconviction plea, Banks attached an unsigned affidavit from his girlfriend, Farr's sister-in-law Demetra Jefferson, which stated that Farr "was well-connected to law enforcement people," and consequently managed to stay out of "trouble" for illegally obtaining prescription drugs. *Id.*, at 195, ¶ 7. Banks alleged as well that during the guilt phase of his trial, the State deliberately withheld information "critical to the jury's assessment of Cook's credibility," including the "generous

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[5] *Brady* v. *Maryland*, 373 U. S. 83, 87 (1963), held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution."

'deal' [Cook had] cut with the prosecutors." *Id.*, at 152, ¶ 2, 180, ¶ 114.[6]

The State's reply to Banks's pleading, filed October 6, 1992, "denie[d] each and every allegation of fact made by [Banks], except those supported by official court records and those specifically admitted." *Id.*, at 234; Tr. of Oral Arg. 32. "[N]othing was kept secret from the defense," the State represented. App. 234. While the reply specifically asserted that the State had made "no deal with Cook," *ibid.*, the State said nothing specific about Farr. Affidavits from Deputy Sheriff Huff and prosecutors accompanied the reply. *Id.*, at 241–243. The affiants denied any "deal, secret or otherwise, with Charles Cook," but they, too, like the State's pleading they supported, remained silent about Farr. *Ibid.*

In February and July 1993 orders, the state postconviction court rejected Banks's claims. App. to Pet. for Cert. E1–E9, G1–G7. The court found that "there was no agreement between the State and the witness Charles Cook," but made no findings concerning Farr. *Id.*, at G2. In a January 10, 1996, one-page *per curiam* order, the Texas Court of Criminal Appeals upheld the lower court's disposition of Banks's motion. *Id.*, at D1.

On March 7, 1996, Banks filed the instant petition for a writ of habeas corpus in the United States District Court for the Eastern District of Texas. App. 248. He alleged multiple violations of his federal constitutional rights. App. to Pet. for Cert. C5–C7. Relevant here, Banks reasserted that the State had withheld material exculpatory evi-

[6] Banks also alleged ineffective assistance of counsel at both the guilt and penalty phases; insufficient evidence on the second penalty-phase special issue (Banks's propensity to commit violent criminal acts); and the exclusion of minority jurors in violation of *Swain* v. *Alabama*, 380 U. S. 202 (1965). App. to Pet. for Cert. C5–C7. Banks filed two further state postconviction motions; both were denied. Brief for Respondent 6–7, nn. 6 and 7 (citing *Ex parte Banks*, No. 13568–03 (Tex. Crim. App. 1993) *(per curiam)*, and *Ex parte Banks*, No. 13568–06 (Tex. Crim. App.), cert. denied, 538 U. S. 990 (2003)).

dence "reveal[ing] Robert Farr as a police informant and Mr. Banks' arrest as a set-up." App. 260, ¶ 152 (internal quotation marks omitted). Banks also asserted that the State had concealed "Cook's enormous incentive to testify in a manner favorable to the [prosecution]." *Id.*, at 260, ¶ 153; App. to Pet. for Cert. C6–C7.[7] In June 1998, Banks moved for discovery and an evidentiary hearing to gain information from the State on the roles played and trial testimony provided by Farr and Cook. App. 262–266, 282–283, 286. The superintending Magistrate Judge allowed limited discovery regarding Cook, but found insufficient justification for inquiries concerning Farr. *Id.*, at 294–295.

Banks renewed his discovery and evidentiary hearing requests in February 1999. *Id.*, at 2, 300–331. This time, he proffered affidavits from both Farr and Cook to back up his claims that, as to each of these two key witnesses, the prosecution had wrongly withheld crucial exculpatory and impeaching evidence. *Id.*, at 322–331. Farr's affidavit affirmed that Farr had "set Delma up" by proposing the drive to Dallas and informing Deputy Sheriff Huff of the trip. *Id.*, at 329, ¶ 8, 442–443, ¶ 8; *supra*, at 678. Accounting for his unavailability earlier, Farr stated that less than a year after the Banks trial, he had left Texarkana, first for Oklahoma, then for California, because his police-informant work endangered his life. App. 330–331, 444; Pet. for Cert. 27, n. 12. Cook recalled that in preparation for his Banks trial testimony, he had participated in "three or four . . . practice sessions" at which prosecutors told him to testify "as they wanted [him] to, and that [he] would spend the rest of [his] life in prison if [he] did not." App. 325, ¶¶ 10–11.

On March 4, 1999, the Magistrate Judge issued an order establishing issues for an evidentiary hearing, *id.*, at 340, 346, at which she would consider Banks's claims that the State had withheld "crucial exculpatory and impeaching evi-

[7] We hereinafter refer to these claims as the Farr *Brady* and Cook *Brady* claims respectively. See *supra*, at 682, n. 5.

dence" concerning "two of the [S]tate's essential witnesses, Charles Cook and Robert Farr," *id.*, at 340, 345 (internal quotation marks omitted). In anticipation of the hearing, the Magistrate Judge ordered disclosure of the Bowie County District Attorney's files. Brief for Petitioner 37–38; Tr. of June 7–8, 1999, Federal Evidentiary Hearing (ED Tex.), p. 30 (hereinafter Federal Evidentiary Hearing).

One item lodged in the District Attorney's files, turned over to Banks pursuant to the Magistrate Judge's disclosure order, was a 74-page transcript of a Cook interrogation. App. to Pet. for Cert. A10. The interrogation, conducted by Bowie County law enforcement officials and prosecutors, occurred in September 1980, shortly before the Banks trial. *Ibid.* The transcript revealed that the State's representatives had closely rehearsed Cook's testimony. In particular, the officials told Cook how to reconcile his testimony with affidavits to which he had earlier subscribed recounting Banks's visits to Dallas. See, *e. g.*, Joint Lodging Material 24 ("Your [April 1980] statement is obviously screwed up."); *id.*, at 26 ("[T]he way this statement should read is that . . . ."); *id.*, at 32 ("[L]et me tell you how this is going to work."); *id.*, at 36 ("That's not in your [earlier] statement."). Although the transcript did not bear on Banks's claim that the prosecution had a deal with Cook, it provided compelling evidence that Cook's testimony had been tutored by Banks's prosecutors. Without objection at the hearing, the Magistrate Judge admitted the September 1980 transcript into evidence. Brief for Petitioner 39; Federal Evidentiary Hearing 75–76.

Testifying at the evidentiary hearing, Deputy Sheriff Huff acknowledged, for the first time, that Farr was an informant and that he had been paid $200 for his involvement in the case. App. to Pet. for Cert. C43. As to Cook, a Banks trial prosecutor testified, in line with the State's consistent position, that no deal had been offered to gain Cook's trial testimony. *Id.*, at C45; Federal Evidentiary Hearing 52–53.

Defense counsel questioned the prosecutor about the September 1980 transcript, calling attention to discrepancies between the transcript and Cook's statements at trial. *Id.*, at 65–68. In a posthearing brief and again in proposed findings of fact and conclusions of law, Banks emphasized the suppression of the September 1980 transcript, noting the prosecution's obligation to disclose material, exculpatory evidence, and the assurance in this case that Banks would receive "all [the] discovery to which [Banks was] entitled." App. 360–361, and n. 1, 378–379 (internal quotation marks omitted); *supra*, at 677.

In a May 11, 2000, report and recommendation, the Magistrate Judge recommended a writ of habeas corpus with respect to Banks's death sentence, but not his conviction. App. to Pet. for Cert. C54. "[T]he State's failure to disclose Farr's informant status, coupled with trial counsel's dismal performance during the punishment phase," the Magistrate Judge concluded, "undermined the reliability of the jury's verdict regarding punishment." *Id.*, at C44. Finding no convincing evidence of a deal between the State and Cook, however, she recommended that the guilt-phase verdict remain undisturbed. *Id.*, at C46.

Banks moved to alter or amend the Magistrate Judge's report on the ground that it left unresolved a fully aired question, *i. e.*, whether Banks's rights were violated by the State's failure to disclose to the defense the prosecution's eve-of-trial interrogation of Cook. App. 398. That interrogation, Banks observed, could not be reconciled with Cook's insistence at trial that he had talked to no one about his testimony. *Id.*, at 400, n. 17; see *supra*, at 677.

The District Court adopted the Magistrate Judge's report and denied Banks's motion to amend the report. App. to Pet. for Cert. B6; App. 421–424. Concerning the Cook *Brady* transcript-suppression claim, the District Court recognized that Banks had filed his federal petition in 1996, three years before he became aware of the September 1980

transcript. App. 422–423. When the transcript surfaced in response to the Magistrate Judge's 1999 disclosure order, Banks raised that newly discovered, long withheld document in his proposed findings of fact and conclusions of law and, again, in his objections to the Magistrate Judge's report. *Id.*, at 423. The District Court concluded, however, that Banks had not properly pleaded a *Brady* claim predicated on the withheld Cook rehearsal transcript. App. 422. When that *Brady* claim came to light, the District Court reasoned, Banks should have moved to amend or supplement his 1996 federal habeas petition specifically to include the 1999 discovery as a basis for relief. App. 423. Banks urged that a *Brady* claim based on the September 1980 transcript had been aired by implied consent; under Federal Rule of Civil Procedure 15(b), he contended, the claim should have been treated as if raised in the pleadings. App. 433.[8] Banks sought, and the District Court denied, a certificate of appealability on this question. *Id.*, at 433, 436.

In an August 20, 2003, unpublished *per curiam* opinion, the Court of Appeals for the Fifth Circuit reversed the judgment of the District Court to the extent that it granted relief on the Farr *Brady* claim and denied a certificate of appealability on the Cook *Brady* claim. App. to Pet. for Cert. A2, judgt. order reported at 48 Fed. Appx. 104 (2002).[9] The

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[8] Federal Rule of Civil Procedure 15(b) provides: "When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time . . . ." Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts provides that the Federal Rules of Civil Procedure apply "to the extent that they are not inconsistent with [habeas] rules."

[9] The Fifth Circuit noted correctly that under *Lindh* v. *Murphy*, 521 U. S. 320, 336–337 (1997), the standards of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 110 Stat. 1214, do not apply to Banks's petition. See App. to Pet. for Cert. A14–A15.

Court of Appeals observed that in his 1992 state-court post-conviction application, Banks had not endeavored to develop the facts underpinning the Farr *Brady* claim. App. to Pet. for Cert. A19–A20. For that reason, the court held, the evidentiary proceeding ordered by the Magistrate Judge was unwarranted. *Ibid.* The Court of Appeals expressed no doubt that the prosecution had suppressed, prior to the federal habeas proceeding, Farr's informant status and his part in the fateful trip to Dallas. But Banks was not appropriately diligent in pursuing his state-court application, the Court of Appeals maintained. In the Fifth Circuit's view, Banks should have at that time attempted to locate Farr and question him; similarly, he should have asked to interview Deputy Sheriff Huff and other officers involved in investigating the crime. *Id.*, at A19, A22. If such efforts had proved unavailing, the Court of Appeals suggested, Banks might have applied to the state court for assistance. *Id.*, at A19. Banks's lack of diligence in pursuing his 1992 state-court plea, the Court of Appeals concluded, rendered the evidence uncovered in the federal habeas proceeding procedurally barred. *Id.*, at A22–A23.

In any event, the Fifth Circuit further concluded, Farr's status as an informant was not "materia[l]" for *Brady* purposes. App. to Pet. for Cert. A32–A33. Banks had impeached Farr at trial by bringing out that he had been a police informant in Arkansas, and an unreliable one at that. *Id.*, at A28, A32–A33; *supra*, at 680. Moreover, the Court of Appeals said, other witnesses had corroborated much of Farr's testimony against Banks. App. to Pet. for Cert. A32. Notably, Banks himself had acknowledged his willingness to get a gun for Farr's use in robberies. *Ibid.* In addition, the Fifth Circuit observed, the Magistrate Judge had relied on the cumulative effect of *Brady* error and the ineffectiveness of Banks's counsel at the penalty phase. App. to Pet. for Cert. A44. Banks himself, however, had not urged that position; he had argued *Brady* and ineffective assistance of

counsel discretely, not cumulatively. App. to Pet. for Cert. A46–A47. Finally, in accord with the District Court, the Court of Appeals apparently regarded Rule 15(b) as inapplicable in habeas proceedings. App. to Pet. for Cert. A51–A52. The Fifth Circuit accordingly denied a certificate of appealability on the Cook *Brady* transcript-suppression claim. App. to Pet. for Cert. A52, A78.

With an execution date set for March 12, 2003, Banks applied to this Court for a writ of certiorari, presenting four issues: the tenability of his Farr *Brady* claim; a penalty-phase ineffective-assistance-of-counsel claim; the question whether, as to the Cook *Brady* transcript-suppression claim, a certificate of appealability was wrongly denied; and a claim of improper exclusion of minority jurors in violation of *Swain* v. *Alabama*, 380 U. S. 202 (1965). Pet. for Cert. 23–24. We stayed Banks's execution on March 12, 2003, 538 U. S. 917, and, on April 21, 2003, granted his petition on all questions other than his *Swain* claim. 538 U. S. 977. We now reverse the Court of Appeals' judgment dismissing Banks's Farr *Brady* claim and that Court's denial of a certificate of appealability on his Cook *Brady* claim.[10]

II

We note, initially, that Banks's *Brady* claims arose under the regime in place prior to the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 110 Stat. 1214. Turning to the tenability of those claims, we consider first Banks's Farr *Brady* claim as it trains on his death sentence, see App. to Pet. for Cert. B6 (District Court granted habeas solely with respect to the capital sentence), and next, Banks's Cook *Brady* claim.

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[10] Our disposition of the Farr *Brady* claim, and our conclusion that a writ of habeas corpus should issue with respect to the death sentence, render it unnecessary to address Banks's claim of ineffective assistance of counsel at the penalty phase; any relief he could obtain on that claim would be cumulative.

A

To pursue habeas corpus relief in federal court, Banks first had to exhaust "the remedies available in the courts of the State." 28 U. S. C. § 2254(b) (1994 ed.); see *Rose* v. *Lundy*, 455 U. S. 509, 520 (1982). Banks alleged in his January 1992 state-court application for a writ of habeas corpus that the prosecution knowingly failed to turn over exculpatory evidence involving Farr in violation of Banks's due process rights. App. 180. Banks thus satisfied the exhaustion requirement as to the legal ground for his Farr *Brady* claim.[11]

In state postconviction court, however, Banks failed to produce evidence establishing that Farr had served as a police informant in this case. As support for his Farr *Brady* claim, Banks appended to his state-court application only Demetra Jefferson's hardly probative statement that Farr "was well-connected to law enforcement people." App. 195, ¶ 7; see *supra*, at 682. In the federal habeas forum, therefore, it was incumbent on Banks to show that he was not barred, by reason of the anterior state proceedings, from producing evidence to substantiate his Farr *Brady* claim. Banks "[would be] entitled to an evidentiary hearing [in federal court] if he [could] show cause for his failure to develop the

[11] Banks's federal habeas petition, the Court of Appeals said, stated a claim, only under *Brady*, that material exculpatory or impeachment evidence had been suppressed, not a claim under *Napue* v. *Illinois*, 360 U. S. 264 (1959), and *Giglio* v. *United States*, 405 U. S. 150 (1972), that the prosecution had failed to correct Farr's false testimony. App. to Pet. for Cert. A29–A32; App. 259–260. In its view, the Court of Appeals explained, a *Brady* claim is distinct from a *Giglio* claim, App. to Pet. for Cert. A30; thus the two did not fit under one umbrella. But cf. *United States* v. *Bagley*, 473 U. S. 667, 679–680, n. 8 (1985); *United States* v. *Agurs*, 427 U. S. 97, 103–104 (1976). On brief, the parties debate the issue. Brief for Petitioner 23–25; Brief for Respondent 21–22, n. 21. Because we conclude that Banks qualifies for relief under *Brady*, we need not decide whether a *Giglio* claim, to warrant adjudication, must be separately pleaded.

facts in state-court proceedings and actual prejudice resulting from that failure." *Keeney* v. *Tamayo-Reyes*, 504 U. S. 1, 11 (1992).

Brady, we reiterate, held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U. S., at 87. We set out in *Strickler* v. *Greene*, 527 U. S. 263, 281–282 (1999), the three components or essential elements of a *Brady* prosecutorial misconduct claim: "The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." 527 U. S., at 281–282. "[C]ause and prejudice" in this case "parallel two of the three components of the alleged *Brady* violation itself." *Id.*, at 282. Corresponding to the second *Brady* component (evidence suppressed by the State), a petitioner shows "cause" when the reason for his failure to develop facts in state-court proceedings was the State's suppression of the relevant evidence; coincident with the third *Brady* component (prejudice), prejudice within the compass of the "cause and prejudice" requirement exists when the suppressed evidence is "material" for *Brady* purposes. 527 U. S., at 282. As to the first *Brady* component (evidence favorable to the accused), beyond genuine debate, the suppressed evidence relevant here, Farr's paid informant status, qualifies as evidence advantageous to Banks. See App. to Pet. for Cert. A26 (Court of Appeals' recognition that "Farr's being a paid informant would certainly be favorable to Banks in attacking Farr's testimony"). Thus, if Banks succeeds in demonstrating "cause and prejudice," he will at the same time succeed in establishing the elements of his Farr *Brady* death penalty due process claim.

B

Our determination as to "cause" for Banks's failure to develop the facts in state-court proceedings is informed by *Strickler*.[12] In that case, Virginia prosecutors told the petitioner, prior to trial, that "the prosecutor's files were open to the petitioner's counsel," thus "there was no need for a formal *[Brady]* motion." 527 U. S., at 276, n. 14 (quoting App. in *Strickler* v. *Greene*, O. T. 1998, No. 98–5864, pp. 212–213 (brackets in original)). The prosecution file given to the *Strickler* petitioner, however, did not include several documents prepared by an "importan[t]" prosecution witness, recounting the witness' initial difficulty recalling the events to which she testified at the petitioner's trial. 527 U. S., at 273–275, 290. Those absent-from-the-file documents could have been used to impeach the witness. *Id.*, at 273. In state-court postconviction proceedings, the *Strickler* petitioner had unsuccessfully urged ineffective assistance of trial counsel based on counsel's failure to move, pretrial, for *Brady* material. Answering that plea, the State asserted that a *Brady* motion would have been superfluous, for the prosecution had maintained an open file policy pursuant to which it had disclosed all *Brady* material. 527 U. S., at 276, n. 14, 278.

This Court determined that in the federal habeas proceedings, the *Strickler* petitioner had shown cause for his failure to raise a *Brady* claim in state court. 527 U. S., at 289. Three factors accounted for that determination:

> "(a) the prosecution withheld exculpatory evidence; (b) petitioner reasonably relied on the prosecution's open file policy as fulfilling the prosecution's duty to disclose such evidence; and (c) the [State] confirmed petitioner's reliance on the open file policy by asserting during state

[12] Surprisingly, the Court of Appeals' *per curiam* opinion did not refer to *Strickler* v. *Greene*, 527 U. S. 263 (1999), the controlling precedent on the issue of "cause." App. to Pet. for Cert. A15–A33.

habeas proceedings that petitioner had already received everything known to the government." *Ibid.* (internal quotation marks omitted).[13]

This case is congruent with *Strickler* in all three respects. First, the State knew of, but kept back, Farr's arrangement with Deputy Sheriff Huff. App. to Pet. for Cert. C43; Tr. of Oral Arg. 33; cf. *Kyles* v. *Whitley*, 514 U. S. 419, 437 (1995) (prosecutors are responsible for "any favorable evidence known to the others acting on the government's behalf in the case, including the police"). Second, the State asserted, on the eve of trial, that it would disclose all *Brady* material. App. 361, n. 1; see *supra*, at 677. As *Strickler* instructs, Banks cannot be faulted for relying on that representation. See 527 U. S., at 283–284 (an "open file policy" is one factor that "explain[s] why trial counsel did not advance [a *Brady*] claim").

Third, in his January 1992 state habeas application, Banks asserted that Farr was a police informant and Banks's arrest, "a set-up." App. 180, ¶ 114 (internal quotation marks omitted). In its answer, the State denied Banks's assertion. *Id.*, at 234; see *supra*, at 683. The State thereby "confirmed" Banks's reliance on the prosecution's representation that it had fully disclosed all relevant information its file contained. 527 U. S., at 289; see *id.*, at 284 (state habeas counsel, as well as trial counsel, could reasonably rely on the State's representations). In short, because the State persisted in hiding Farr's informant status and misleadingly represented that it had complied in full with its *Brady* disclosure obligations, Banks had cause for failing to investigate, in state postconviction proceedings, Farr's connections to Deputy Sheriff Huff.

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[13] We left open the question "whether any one or two of these factors would be sufficient to constitute cause." *Strickler*, 527 U. S., at 289. We need not decide that question today.

On the question of "cause," moreover, Banks's case is stronger than was the petitioner's in *Strickler* in a notable respect. As a prosecution witness in the guilt and penalty phases of Banks's trial, Farr repeatedly misrepresented his dealings with police; each time Farr responded untruthfully, the prosecution allowed his testimony to stand uncorrected. See *supra*, at 678–680. Farr denied taking money from or being promised anything by police officers, App. 37; he twice denied speaking with police officers, *id.*, at 38, and twice denied informing Deputy Sheriff Huff about Banks's trip to Dallas, *id.*, at 109. It has long been established that the prosecution's "deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice." *Giglio* v. *United States*, 405 U. S. 150, 153 (1972) (quoting *Mooney* v. *Holohan*, 294 U. S. 103, 112 (1935) *(per curiam)* (internal quotation marks omitted)). If it was reasonable for Banks to rely on the prosecution's full disclosure representation, it was also appropriate for Banks to assume that his prosecutors would not stoop to improper litigation conduct to advance prospects for gaining a conviction. See *Berger* v. *United States*, 295 U. S. 78, 88 (1935); *Strickler*, 527 U. S., at 284.[14]

The State presents three main arguments for distinguishing *Strickler* on the issue of "cause," two of them endorsed

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[14] In addition, Banks could have expected disclosure of Farr's informant status as a matter of state law if Farr in fact acted in that capacity. Under Texas law applicable at the time of Banks's trial, the State had an obligation to disclose the identity of an informant when "the informant . . . was present at the time of the offense or arrest . . . [or] was otherwise shown to be a material witness to the transaction . . . ." *Kemner* v. *State*, 589 S. W. 2d 403, 408 (Tex. Crim. App. 1979) (quoting *Carmouche* v. *State*, 540 S. W. 2d 701, 703 (Tex. Crim. App. 1976)); cf. Tex. Rule Evid. 508(c)(1) (2003) ("No privilege exists [for the identity of an informer] . . . if the informer appears as a witness for the public entity."). Farr was present when Banks was arrested. App. 443, ¶ 10. Further, as the prosecution noted in its penalty-phase summation, Farr's testimony was not only material, but "of the utmost significance." *Id.*, at 146.

by the Court of Appeals. Brief for Respondent 15–20; App. to Pet. for Cert. A19, A22–A23; see *supra*, at 687–688. We conclude that none of these arguments accounts adequately for the State's concealment and misrepresentation regarding Farr's link to Deputy Sheriff Huff. The State first suggests that Banks's failure, during state postconviction proceedings, to "attempt to locate Farr and ascertain his true status," or to "interview the investigating officers, such as Deputy Huff, to ascertain Farr's status," undermines a finding of cause; the Fifth Circuit agreed. App. to Pet. for Cert. A22; Brief for Respondent 18–20. In the State's view, "[t]he question [of cause] revolves around Banks's conduct," particularly his lack of appropriate diligence in pursuing the Farr *Brady* claim before resorting to federal court. Brief for Respondent 14.[15]

We rejected a similar argument in *Strickler*. There, the State contended that examination of a witness' trial testimony, alongside a letter the witness published in a local newspaper, should have alerted the petitioner to the existence of undisclosed interviews of the witness by the police. 527 U. S., at 284, and n. 26. We found this contention insubstantial. In light of the State's open file policy, we noted, "it is especially unlikely that counsel would have suspected that additional impeaching evidence was being withheld." *Id.*, at 285. Our decisions lend no support to the notion that defendants must scavenge for hints of undisclosed *Brady* material when the prosecution represents that all such material has been disclosed. As we observed in *Strickler*, defense counsel has no "procedural obligation to assert constitutional error on the basis of mere suspicion that some prosecutorial

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[15] The Court of Appeals also stated that, because "the State did not respond" to Banks's "Farr-was-an-informant contention" in its answer to the January 1992 state habeas application, Banks should have "further investigate[d]." App. to Pet. for Cert. A22. The Fifth Circuit's error in this regard is apparent. As earlier recounted, see *supra*, at 683, the State's answer indeed did deny Banks's allegation.

misstep may have occurred." 527 U. S., at 286–287. The "cause" inquiry, we have also observed, turns on events or circumstances "external to the defense." *Amadeo* v. *Zant*, 486 U. S. 214, 222 (1988) (quoting *Murray* v. *Carrier*, 477 U. S. 478, 488 (1986)).

The State here nevertheless urges, in effect, that "the prosecution can lie and conceal and the prisoner still has the burden to . . . discover the evidence," Tr. of Oral Arg. 35, so long as the "potential existence" of a prosecutorial misconduct claim might have been detected, *id.*, at 36. A rule thus declaring "prosecutor may hide, defendant must seek," is not tenable in a system constitutionally bound to accord defendants due process. "Ordinarily, we presume that public officials have properly discharged their official duties." *Bracy* v. *Gramley*, 520 U. S. 899, 909 (1997) (quoting *United States* v. *Chemical Foundation, Inc.*, 272 U. S. 1, 14–15 (1926) (internal quotation marks omitted)). We have several times underscored the "special role played by the American prosecutor in the search for truth in criminal trials." *Strickler*, 527 U. S., at 281; accord *Kyles*, 514 U. S., at 439–440; *United States* v. *Bagley*, 473 U. S. 667, 675, n. 6 (1985); *Berger*, 295 U. S., at 88. See also *Olmstead* v. *United States*, 277 U. S. 438, 484 (1928) (Brandeis, J., dissenting). Courts, litigants, and juries properly anticipate that "obligations [to refrain from improper methods to secure a conviction] . . . plainly rest[ing] upon the prosecuting attorney, will be faithfully observed." *Berger*, 295 U. S., at 88. Prosecutors' dishonest conduct or unwarranted concealment should attract no judicial approbation. See *Kyles*, 514 U. S., at 440 ("The prudence of the careful prosecutor should not . . . be discouraged.").

The State's second argument is a variant of the first. Specifically, the State argues, and the Court of Appeals accepted, that Banks cannot show cause because in the 1992 state-court postconviction proceedings, he failed to move for investigative assistance enabling him to inquire into Farr's

police connections, connections he then alleged, but failed to prove. Brief for Respondent 15–16; App. to Pet. for Cert. A19; see 1977 Tex. Gen. Laws ch. 789, § 2(d) (as amended) (instructing postconviction court to "designat[e] the issues of fact to be resolved," and giving the court discretion to "order affidavits, depositions, interrogatories, and hearings"). Armed in 1992 only with Demetra Jefferson's declaration that Farr was "well-connected to law enforcement people," App. 195, ¶ 7; see *supra*, at 682, Banks had little to proffer in support of a request for assistance from the state postconviction court. We assign no overriding significance to Banks's failure to invoke state-court assistance to which he had no clear entitlement. Cf. *Strickler*, 527 U. S., at 286 ("Proper respect for state procedures counsels against a requirement that all possible claims be raised in state collateral proceedings, even when no known facts support them.").[16]

Finally, relying on *Roviaro* v. *United States*, 353 U. S. 53 (1957), the State asserts that "disclosure [of an informant's identity] is not automatic," and, "[c]onsequently, it was Banks's duty to move for disclosure of otherwise privileged material." Brief for Respondent 17–18, n. 15. We need not linger over this argument. The issue of evidentiary law in *Roviaro* was whether (or when) the Government is obliged to reveal the identity of an undercover informer the Government does *not* call as a trial witness. 353 U. S., at 55–56. The Court there stated that no privilege obtains "[w]here the disclosure of an informer's identity, or of the contents of his communication, is relevant and helpful to the defense of an accused." *Id.*, at 60–61. Accordingly, even though the informer in *Roviaro* did not testify, we held that disclosure

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[16] Furthermore, rather than conceding the need for factual development of the Farr *Brady* claim in state postconviction court, the State asserted that Banks's prosecutorial misconduct claims were meritless and procedurally barred in that tribunal. App. 234, 240. Having taken that position in 1992, the State can hardly fault Banks now for failing earlier to request assistance the State certainly would have opposed.

of his identity was necessary because he could have "ampli-f[ied] or contradict[ed] the testimony of government witnesses." *Id.*, at 64.

Here, the State elected to call Farr as a witness. Indeed, he was a key witness at both guilt and punishment phases of Banks's capital trial. Farr's status as a paid informant was unquestionably "relevant"; similarly beyond doubt, disclosure of Farr's status would have been "helpful to [Banks's] defense." *Id.*, at 60–61. Nothing in *Roviaro*, or any other decision of this Court, suggests that the State can examine an informant at trial, withholding acknowledgment of his informant status in the hope that defendant will not catch on, so will make no disclosure motion.

In summary, Banks's prosecutors represented at trial and in state postconviction proceedings that the State had held nothing back. Moreover, in state postconviction court, the State's pleading denied that Farr was an informant. App. 234; *supra*, at 683. It was not incumbent on Banks to prove these representations false; rather, Banks was entitled to treat the prosecutor's submissions as truthful. Accordingly, Banks has shown cause for failing to present evidence in state court capable of substantiating his Farr *Brady* claim.

C

Unless suppressed evidence is "material for *Brady* purposes, [its] suppression [does] not give rise to sufficient prejudice to overcome [a] procedural default." *Strickler*, 527 U. S., at 282 (internal quotation marks omitted). Our touchstone on materiality is *Kyles* v. *Whitley*, 514 U. S. 419 (1995). *Kyles* instructed that the materiality standard for *Brady* claims is met when "the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." 514 U. S., at 435. See also *id.*, at 434–435 ("A defendant need not demonstrate that after discounting the inculpatory evidence in light of the undisclosed evidence, there would not have been enough left

to convict."); accord *Strickler*, 527 U. S., at 290. In short, Banks must show a "reasonable probability of a different result." *Kyles*, 514 U. S., at 434 (internal quotation marks omitted) (citing *Bagley*, 473 U. S., at 678).

As the State acknowledged at oral argument, Farr was "paid for a critical role in the scenario that led to the indictment." Tr. of Oral Arg. 34. Farr's declaration, presented to the federal habeas court, asserts that Farr, not Banks, initiated the proposal to obtain a gun to facilitate the commission of robberies. See App. 442–443, ¶¶ 7–8; *supra*, at 678. Had Farr not instigated, upon Deputy Sheriff Huff's request, the Dallas excursion to fetch Banks's gun, the prosecution would have had slim, if any, evidence that Banks planned to "continue" committing violent acts. App. 147.[17] Farr's admission of his instigating role, moreover, would have dampened the prosecution's zeal in urging the jury to bear in mind Banks's "planning and acquisition of a gun to commit robbery," or Banks's "planned violence." *Ibid.;* see Tr. of Oral Arg. 50.[18]

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[17] It bears reiteration here that Banks had no criminal record, *id.*, at 255, ¶ 115, "no history of violence or alcohol abuse," nothing indicative of "[any] particular risk of future violence," App. to Pet. for Cert. C23.

It also appears that the remaining prosecution witness in the penalty phase, Vetrano Jefferson, had omitted crucial details from his 1980 testimony. In his September 1980 testimony, Vetrano Jefferson said that Banks had struck him with a pistol in early April 1980. App. 104–105; *supra*, at 679–680. In the federal habeas proceeding, Vetrano Jefferson elaborated that he, not Banks, had initiated that incident by making "disrespectful comments" about Demetra Jefferson, Banks's girlfriend. App. 337, ¶ 4. Vetrano Jefferson recounted that he "grew angry" when Banks objected to the comments, and only then did a fight ensue, in the course of which Banks struck Vetrano Jefferson. *Ibid.*

[18] On brief and at oral argument, the State suggests that "the damaging evidence was Banks's willing abetment of Farr's commission of a violent crime, *not* Banks's own intent to commit such an act." Brief for Respondent 25 (emphasis in original); Tr. of Oral Arg. 50. See also *post*, at 707–708 (THOMAS, J., concurring in part and dissenting in part). In the penalty-phase summation, however, the prosecution highlighted Banks's propen-

Because Banks had no criminal record, Farr's testimony about Banks's propensity to commit violent acts was crucial to the prosecution. Without that testimony, the State could not have underscored, as it did three times in the penalty phase, that Banks would use the gun fetched in Dallas to "take care" of trouble arising during the robberies. App. 140, 144, 146–147; see *supra*, at 681. The stress placed by the prosecution on this part of Farr's testimony, uncorroborated by any other witness, belies the State's suggestion that "Farr's testimony was adequately corroborated." Brief for Respondent 22–25. The prosecution's penalty-phase summation, moreover, left no doubt about the importance the State attached to Farr's testimony. What Farr told the jury, the prosecution urged, was "of the utmost significance" to show "[Banks] is a danger to friends and strangers, alike." App. 146.

In *Strickler*, 527 U. S., at 289, although the Court found "cause" for the petitioner's procedural default of a *Brady* claim, it found the requisite "prejudice" absent, 527 U. S., at 292–296. Regarding "prejudice," the contrast between *Strickler* and Banks's case is marked. The witness whose impeachment was at issue in *Strickler* gave testimony that was in the main cumulative, *id.*, at 292, and hardly significant

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sity to commit violent criminal acts, see App. 140, 144, 146–147, not his facilitation of others' criminal acts, see *id.*, at 141 ("[Banks] says, 'I thought I would give [the gun] to them so they could do the robberies.' I don't believe you [the jury] believe that."); *id.*, at 143 ("a man doesn't travel two hundred miles . . . to supply [another] person with a weapon"). The special issue the prosecution addressed focused on what acts Banks would commit, not what harms he might facilitate: "Do you find from the evidence beyond a reasonable doubt that there is a probability that the defendant, Delma Banks, Jr., would *commit* criminal acts of violence that would constitute a continuing threat to society?" *Ibid.* (internal quotation marks omitted and emphasis added). It is therefore unsurprising that the prosecution did not rest on Banks's facilitation of others' criminal acts in urging the jury to answer the second special issue (propensity to commit violent criminal acts) in the affirmative.

to one of the "two predicates for capital murder: [armed] robbery," *id.*, at 294. Other evidence in the record, the Court found, provided strong support for the conviction even if the witness' testimony had been excluded entirely: Unlike the Banks prosecution, in *Strickler*, "considerable forensic and other physical evidence link[ed] [the defendant] to the crime" and supported the capital murder conviction. *Id.*, at 293. Most tellingly, the witness' testimony in *Strickler* "did not relate to [the petitioner's] eligibility for the death sentence"; it "was not relied upon by the prosecution at all during its closing argument at the penalty phase." *Id.*, at 295. In contrast, Farr's testimony was the centerpiece of Banks's prosecution's penalty-phase case.

Farr's trial testimony, critical at the penalty phase, was cast in large doubt by the declaration Banks ultimately obtained from Farr and introduced in the federal habeas proceeding. See *supra*, at 678, 684. In the guilt phase of Banks's trial, Farr had acknowledged his narcotics use. App. 36. In the penalty phase, Banks's counsel asked Farr if, "drawn up tight over" previous drug-related activity, he would "testify to anything anybody want[ed] to hear"; Farr denied this. *Id.*, at 110; *supra*, at 680. Farr's declaration supporting Banks's federal habeas petition, however, vividly contradicts that denial: "I assumed that if I did not help [Huff] . . . he would have me arrested for drug charges." App. 442, ¶ 6. Had jurors known of Farr's continuing interest in obtaining Deputy Sheriff Huff's favor, in addition to his receipt of funds to "set [Banks] up," *id.*, at 442, ¶ 7, they might well have distrusted Farr's testimony, and, insofar as it was uncorroborated, disregarded it.

The jury, moreover, did not benefit from customary, truth-promoting precautions that generally accompany the testimony of informants. This Court has long recognized the "serious questions of credibility" informers pose. *On Lee* v. *United States*, 343 U. S. 747, 757 (1952). See also Trott, Words of Warning for Prosecutors Using Criminals as Wit-

nesses, 47 Hastings L. J. 1381, 1385 (1996) ("Jurors suspect [informants'] motives from the moment they hear about them in a case, and they frequently disregard their testimony altogether as highly untrustworthy and unreliable . . . ."). We have therefore allowed defendants "broad latitude to probe [informants'] credibility by cross-examination" and have counseled submission of the credibility issue to the jury "with careful instructions." *On Lee*, 343 U. S., at 757; accord *Hoffa* v. *United States*, 385 U. S. 293, 311–312 (1966). See also 1A K. O'Malley, J. Grenig, & W. Lee, Federal Jury Practice and Instructions, Criminal § 15.02 (5th ed. 2000) (jury instructions from the First, Fifth, Sixth, Seventh, Eighth, Ninth, and Eleventh Circuits on special caution appropriate in assessing informant testimony).

The State argues that "Farr was heavily impeached [at trial]," rendering his informant status "merely cumulative." Tr. of Oral Arg. 49; see Brief for Respondent 26–28; *post*, at 709, n. 3. The record suggests otherwise. Neither witness called to impeach Farr gave evidence directly relevant to Farr's part in Banks's trial. App. 124–133; *id.*, at 129 (prosecutor noted that Kelley lacked "personal knowledge with regard to this case on trial"). The impeaching witnesses, Kelley and Owen, moreover, were themselves impeached, as the prosecution stressed on summation. See *id.*, at 141, 148; *supra*, at 680, 682. Further, the prosecution turned to its advantage remaining impeachment evidence concerning Farr's drug use. On summation, the prosecution suggested that Farr's admission "that he used dope, that he shot," demonstrated that Farr had been "open and honest with [the jury] in every way." App. 140; *supra*, at 681.

At least as to the penalty phase, in sum, one can hardly be confident that Banks received a fair trial, given the jury's ignorance of Farr's true role in the investigation and trial of the case. See *Kyles*, 514 U. S., at 434 ("The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in

its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence."). On the record before us, one could not plausibly deny the existence of the requisite "reasonable probability of a different result" had the suppressed information been disclosed to the defense. *Ibid.* (internal quotation marks omitted) (citing *Bagley*, 473 U. S., at 678); *Strickler*, 527 U. S., at 290. Accordingly, as to the suppression of Farr's informant status and its bearing on "the reliability of the jury's verdict regarding punishment," App. to Pet. for Cert. C44; *supra*, at 686, all three elements of a *Brady* claim are satisfied.

III

Both the District Court and the Court of Appeals denied Banks a certificate of appealability with regard to his Cook *Brady* claim, which rested on the prosecution's suppression of the September 1980 Cook interrogation transcript. App. 422–423; App. to Pet. for Cert. A52, A78; *supra*, at 687, 689. See also Joint Lodging Material 1–36. The District Court and the Fifth Circuit concluded that Banks had not properly pleaded this claim because he had not sought leave to amend his petition, but had stated the claim only in other submissions, *i. e.*, in his proposed findings of fact and conclusions of law, and, again, in his objections to the Magistrate Judge's report. App. 422–423, 432–433; App. to Pet. for Cert. A51–A52; *supra*, at 687, 689. Banks contended, unsuccessfully, that evidence substantiating the Cook *Brady* claim had been aired before the Magistrate Judge; therefore the claim should have been treated as if raised in the pleadings, as Federal Rule of Civil Procedure 15(b) instructs. See App. to Pet. for Cert. A51–A52; *supra*, at 687, n. 8 (setting out text of Rule 15(b)). The Fifth Circuit stated its position on this point somewhat obliquely, but appears to have viewed Rule 15(b) as inapplicable in habeas proceedings; the State now concedes, however, that the question whether Rule 15(b) extends to habeas proceedings is one "jurists of reason would

find . . . debatable." Compare App. to Pet. for Cert. A52 (quoting *Slack* v. *McDaniel*, 529 U. S. 473, 484 (2000)), with Tr. of Oral Arg. 45–46. We conclude that a certificate of appealability should have issued.

We have twice before referenced Rule 15(b)'s application in federal habeas proceedings. In *Harris* v. *Nelson*, 394 U. S. 286, 294, n. 5 (1969), we noted that Rule 15(b)'s use in habeas proceedings is "noncontroversial." In *Withrow* v. *Williams*, 507 U. S. 680, 696, and n. 7 (1993), we similarly assumed Rule 15(b)'s application to habeas petitions. There, however, the District Court had granted a writ of habeas corpus on a claim neither pleaded, considered at "an evidentiary hearing," nor "even argu[ed]" by the parties. *Id.*, at 695. Given those circumstances, we held that there had been no trial of the claim by implied consent; the respondent warden, we observed, "was manifestly prejudiced by the District Court's failure to afford her an opportunity to present evidence bearing on th[e] claim's resolution." *Id.*, at 696. Here, in contrast, the issue of the undisclosed Cook interrogation transcript was indeed aired before the Magistrate Judge, and the transcript itself was admitted into evidence without objection. See *supra*, at 685.[19]

The Court of Appeals found no authority for equating "an evidentiary hearing . . . with a trial" for Rule 15(b) purposes. App. to Pet. for Cert. A52. We see no reason why an evidentiary hearing should not qualify so long as the respondent gave "any sort of consent" and had a full and fair "opportu-

[19] See Federal Evidentiary Hearing 56–73. Examining one of Banks's prosecutors, counsel for Banks twice asked if Cook had been "instructed . . . on how to testify." *Id.*, at 56. See also *id.*, at 63–64 ("Texarkana law enforcement did not instruct Mr. Cook how to testify in this case. Is that your testimony today?"). To show that Cook had been coached, Banks's counsel called attention to discrepancies between portions of the September 1980 transcript and Cook's trial testimony. *Id.*, at 65–68. Concluding his examination, Banks's counsel emphasized the prosecution's duty to disclose the September 1980 transcript once Cook, while on the stand, stated that he had not been coached. *Id.*, at 73–74; App. 59; *supra*, at 677.

nity to present evidence bearing on th[e] claim's resolution." *Withrow*, 507 U. S., at 696. Nor do we find convincing the Fifth Circuit's view that applying Rule 15(b) in habeas proceedings would undermine the State's exhaustion and procedural default defenses. *Ibid.* Under pre-AEDPA law, there was no inconsistency between Rule 15(b) and those defenses. That is doubtless why this Court's pre-AEDPA cases assumed Rule 15(b)'s application in habeas proceedings. See *ibid.; Harris*, 394 U. S., at 294, n. 5.[20] We note in this regard that, while AEDPA forbids a finding that exhaustion has been waived unless the State expressly waives the requirement, 28 U. S. C. § 2254(b)(3), under pre-AEDPA law, exhaustion and procedural default defenses could be waived based on the State's litigation conduct. See *Gray* v. *Netherland*, 518 U. S. 152, 166 (1996) (failure to raise procedural default in federal habeas court means the defense is lost); *Granberry* v. *Greer*, 481 U. S. 129, 135 (1987) ("if a full trial has been held in the district court and it is evident that a miscarriage of justice has occurred, it may . . . be appropriate for the court of appeals to hold that the nonexhaustion defense has been waived").

To obtain a certificate of appealability, a prisoner must "demonstrat[e] that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El* v. *Cockrell*, 537 U. S. 322, 327 (2003). At least as to the application of Rule 15(b), this case surely fits that description. A certificate of appealability, therefore, should have issued.

* * *

For the reasons stated, the judgment of the United States Court of Appeals for the Fifth Circuit is reversed, and the

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[20] Banks's case provides no occasion to consider Rule 15(b)'s application under the AEDPA regime.

case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE THOMAS, with whom JUSTICE SCALIA joins, concurring in part and dissenting in part.

I join Part III of the Court's opinion, and respectfully dissent from Part II, which holds that Banks' claim under *Brady* v. *Maryland*, 373 U. S. 83 (1963), relating to the nondisclosure of evidence that Farr accepted money from a police officer during the course of the investigation, warrants habeas relief. Although I find it to be a very close question, I cannot conclude that the nondisclosure of Farr's informant status was prejudicial under *Kyles* v. *Whitley*, 514 U. S. 419 (1995), and *Brady*.[1]

To demonstrate prejudice, Banks must show that "the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." *Kyles*, *supra*, at 435. The undisclosed material consisted of evidence that "Willie Huff asked [Farr] to help him find [Banks'] gun," and that Huff "gave [Farr] about $200.00 for helping him." App. 442 (Farr Declaration). Banks contends that if Farr's receipt of $200 from Huff had been revealed to the defense, there would have been a "reasonable probability," *Kyles*, *supra*, at 434, that the jury would not have found "beyond a reasonable doubt that there

[1] I do not address the possible application of the standard enunciated in *Giglio* v. *United States*, 405 U. S. 150 (1972), since I agree with the Court of Appeals that the issue was not properly raised below, and since addressing this issue would go beyond the question on which certiorari was granted. See Brief for Petitioner (i) (stating the question presented as whether "the Fifth Circuit commit[ted] legal error in rejecting Banks' *Brady* claim—that the prosecution suppressed material witness impeachment evidence that prejudiced him in the penalty phase of his trial—on the grounds that: . . . the suppressed evidence was immaterial to Banks' death sentence").

[was] a probability that the defendant, Delma Banks, Jr., would commit criminal acts of violence that would constitute a continuing threat to society." App. 143 (the second special issue presented to the jury) (internal quotation marks omitted).

I do not believe that there is a reasonable probability that the jury would have altered its finding. The jury was presented with the facts of a horrible crime. Banks, after meeting the victim, Richard Whitehead, a 16-year-old boy who had the misfortune of owning a car that Banks wanted, decided "to kill the person for the hell of it" and take his car. *Banks* v. *State*, 643 S. W. 2d 129, 131 (Tex. Crim. App. 1982) (en banc), cert. denied, 464 U. S. 904 (1983). Banks proceeded to shoot Whitehead three times, twice in the head and once in the upper back. Banks fired one of the shots only 18 to 24 inches away from Whitehead. The jury was thus presented with evidence showing that Banks, apparently on a whim, executed Whitehead simply to get his car.

The jury was also presented with evidence, in the form of Banks' own testimony, that he was willing to abet another individual in obtaining a gun, with the full knowledge that this gun would aid future armed robberies. The colloquy between a prosecuting attorney and Banks makes it clear what Banks thought he was doing:

> "Q: You were going to supply him [Farr] your gun so he could do armed robberies?
>
> "A: No, not supply him my gun. A gun.
>
> "Q: In other words you didn't care if it was yours or whose, but you were going to be the man who got the gun to do armed robberies. Is that correct?
>
> "A: He was going to do it.
>
> "Q: I understand, but you were going to supply him the means and possible death weapon in an armed robbery case. Is that correct?
>
> "A: Yes." App. 137 (cross-examination of Banks).

Accordingly, the jury was also presented with Banks' willingness to assist others in committing deadly crimes. Indeed, the prosecution referenced this very fact at one point during its closing argument in its attempt to convince the jury that Banks posed a threat to commit violent acts in the future:

> "The testimony of Vetrano Jefferson and Robert Farr is of the utmost significance. Vetrano brought before you the scar on his face, put there by Delma Banks. . . . He also corroborates or supports the testimony of Robert Farr. You don't have to believe just Robert in order to find that Delma went to Dallas to get a pistol so that *somebody could do some robberies.* Marcus Jefferson told you that, too." *Id.*, at 146 (emphasis added).[2]

The jury also heard testimony that Banks had violently pistol-whipped and threatened to kill his brother-in-law one week before the murder. Banks now claims that this evidence should be discounted because his trial counsel failed to uncover that the brother-in-law was "responsible for the fight." Brief for Petitioner 33. But even if it is appropriate to mix-and-match the prejudice analysis of the *Brady* claim and the claim under *Strickland* v. *Washington*, 466 U. S. 668 (1984) (rather than to evaluate them independently, as distinct potential constitutional violations), Banks' response was vastly disproportional to his brother-in-law's actions.

In sum, the jury knew that Banks had murdered a 16-year-old on a whim, had violently attacked and threatened a relative shortly before the murder, and was willing to assist another individual in committing armed robberies by providing the "means and possible death weapon" for these robberies. App. 137. Even if the jury were to discredit entirely

[2] Admittedly, the prosecution used more of its closing argument trying to convince the jury to believe Farr's testimony that Banks himself was planning more robberies. See *ante*, at 699–700, n. 18. This fact is one of the reasons I find the materiality question to be a close one.

Farr's testimony that Banks was planning more robberies,[3] in all likelihood the jury still would have found "beyond a reasonable doubt" that there "[was] a probability that [Banks] would commit criminal acts of violence that would constitute a continuing threat to society." *Id.*, at 143 (internal quotation marks omitted). The randomness and wantonness of the murder would perhaps, standing alone, mandate such a finding. Accordingly, I cannot find that the nondisclosure of the evidence was prejudicial.

Because Banks cannot show prejudice, I do not resolve whether he has cause to excuse his failure to present his Farr *Brady* evidence in state court, *Keeney* v. *Tamayo-Reyes*, 504 U. S. 1, 11–12 (1992). But there are reasons to doubt the Court's conclusion that Banks can show cause. For instance, the Court concludes that "[t]his case is congruent with *Strickler* [v. *Greene*, 527 U. S. 263 (1999)]," *ante*, at 693, relying in part on the State's general denial of all of Banks' factual allegations contained in his January 1992 state habeas application. But, in the relevant state postconviction proceeding in *Strickler*, the State alleged that the petitioner had already received "'*everything* known to the government,'" a statement that federal habeas proceedings established was clearly not true. 527 U. S., at 289 (emphasis added). In the instant case, the particular allegation raised in Banks' state habeas application and denied by the State was that "the

[3] It is quite possible that the jury already discredited this aspect of Farr's testimony. The jury knew, from the testimony of witnesses James Kelley and Officer Gary Owen, that Farr was generally dishonest, as it heard how he had lied about getting into an altercation with a doctor over false prescriptions, and had lied about his status as an informant for an Arkansas officer in other cases. The Court suggests that the witnesses providing this information were themselves "impeached." *Ante*, at 702. At best, though, they were only slightly impeached. The prosecution merely intimated that Owen was slanting his testimony in the hopes of being hired by the defense counsel's private investigator, App. 131, and that Kelley was doing the same as he was a "friend of [Banks'] family," *id.*, at 141.

prosecution *knowingly* failed to turn over exculpatory evidence *as required by Brady v. Maryland*, 373 U. S. 83 (1963)." App. 180 (emphasis added). The State, then, could have been denying only that the prosecution *knowingly* failed to turn over the evidence (there is, incidentally, very little evidence in the record tending to show that any prosecutor had actual knowledge of Huff's payment to Farr). Or, the State could have been denying only that it had failed to turn over evidence *in violation of Brady*, *i. e.*, that any evidence the prosecution did not turn over was not material (a position advanced by the State throughout the federal habeas process), see *Strickler*, *supra*, at 281 ("[S]trictly speaking, there is never a real '*Brady* violation' unless the nondisclosure was so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict"). Either way, *Strickler* does not clearly control, and the Court's reliance on it is less than compelling.

Because of the Court's disposition of Banks' Farr *Brady* claim, it does not address his claim of ineffective assistance of counsel, concluding that "any relief he could obtain on that claim would be cumulative." *Ante*, at 689, n. 10. As I would affirm the Court of Appeals on the Farr *Brady* claim, I briefly discuss this ineffective-assistance claim. Although I find the Farr *Brady* claim a close call, I do not find this to be so as to the ineffective-assistance claim. Banks comes nowhere close to satisfying the prejudice prong of *Strickland* v. *Washington*, *supra*. The conclusory and uncorroborated claims of some level of physical abuse, the allegations that a bad skin condition negatively affected his childhood development, the evidence that he was a slow learner and possessed a willingness to please others, and the claim that Banks' brother-in-law was responsible for his own pistol-whipping and receipt of a death threat, are so unpersuasive that there is no reasonable probability that the jury would have come to the opposite conclusion with respect to the fu-

ture dangerousness special issue, even if presented with this evidence.

I therefore conclude that the Court of Appeals did not err when it denied relief to Banks based on his Farr *Brady* claim and his *Strickland* claim. I would reverse the Court of Appeals only insofar as it did not grant a certificate of appealability on the Cook *Brady* claim.

Syllabus

LOCKE, GOVERNOR OF WASHINGTON, ET AL. *v.* DAVEY

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

No. 02–1315. Argued December 2, 2003—Decided February 25, 2004

Washington State established its Promise Scholarship Program to assist academically gifted students with postsecondary education expenses. In accordance with the State Constitution, students may not use such a scholarship to pursue a devotional theology degree. Respondent Davey was awarded a Promise Scholarship and chose to attend Northwest College, a private, church-affiliated institution that is eligible under the program. When he enrolled, Davey chose a double major in pastoral ministries and business management/administration. It is undisputed that the pastoral ministries degree is devotional. After learning that he could not use his scholarship to pursue that degree, Davey brought this action under 42 U. S. C. § 1983 for an injunction and damages, arguing that the denial of his scholarship violated, *inter alia*, the First Amendment's Free Exercise and Establishment Clauses. The District Court rejected Davey's constitutional claims and granted the State summary judgment. The Ninth Circuit reversed, concluding that, because the State had singled out religion for unfavorable treatment, its exclusion of theology majors had to be narrowly tailored to achieve a compelling state interest under *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah*, 508 U. S. 520. Finding that the State's antiestablishment concerns were not compelling, the court declared the program unconstitutional.

Held: Washington's exclusion of the pursuit of a devotional theology degree from its otherwise-inclusive scholarship aid program does not violate the Free Exercise Clause. This case involves the "play in the joints" between the Establishment and Free Exercise Clauses. *Walz* v. *Tax Comm'n of City of New York*, 397 U. S. 664, 669. That is, it concerns state action that is permitted by the former but not required by the latter. The Court rejects Davey's contention that, under *Lukumi*, *supra*, the program is presumptively unconstitutional because it is not facially neutral with respect to religion. To accept this claim would extend the *Lukumi* line of cases well beyond not only their facts but their reasoning. Here, the State's disfavor of religion (if it can be called that) is of a far milder kind than in *Lukumi*, where the ordinance criminalized the ritualistic animal sacrifices of the Santeria religion. Washington's program imposes neither criminal nor civil sanctions on

any type of religious service or rite. It neither denies to ministers the right to participate in community political affairs, see *McDaniel* v. *Paty*, 435 U. S. 618, nor requires students to choose between their religious beliefs and receiving a government benefit, see, *e. g.*, *Hobbie* v. *Unemployment Appeals Comm'n of Fla.*, 480 U. S. 136. The State has merely chosen not to fund a distinct category of instruction. Even though the differently worded Washington Constitution draws a more stringent line than does the Federal Constitution, the interest it seeks to further is scarcely novel. In fact, there are few areas in which a State's antiestablishment interests come more into play. Since this country's founding, there have been popular uprisings against procuring taxpayer funds to support church leaders, which was one of the hallmarks of an "established" religion. Most States that sought to avoid such an establishment around the time of the founding placed in their constitutions formal prohibitions against using tax funds to support the ministry. That early state constitutions saw no problem in explicitly excluding *only* the ministry from receiving state dollars reinforces the conclusion that religious instruction is of a different ilk from other professions. Moreover, the entirety of the Promise Scholarship Program goes a long way toward including religion in its benefits, since it permits students to attend pervasively religious schools so long as they are accredited, and students are still eligible to take devotional theology courses under the program's current guidelines. Nothing in the Washington Constitution's history or text or in the program's operation suggests animus toward religion. Given the historic and substantial state interest at issue, it cannot be concluded that the denial of funding for vocational religious instruction alone is inherently constitutionally suspect. Without a presumption of unconstitutionality, Davey's claim must fail. The State's interest in not funding the pursuit of devotional degrees is substantial, and the exclusion of such funding places a relatively minor burden on Promise Scholars. If any room exists between the two Religion Clauses, it must be here. Pp. 718–725.

299 F. 3d 748, reversed.

REHNQUIST, C. J., delivered the opinion of the Court, in which STEVENS, O'CONNOR, KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. SCALIA, J., filed a dissenting opinion, in which THOMAS, J., joined, *post*, p. 726. THOMAS, J., filed a dissenting opinion, *post*, p. 734.

Narda Pierce, Solicitor General of Washington, argued the cause for petitioners. With her on the briefs were *Christine O. Gregoire*, Attorney General, *William Berggren Collins*,

Senior Assistant Attorney General, and *Michael J. Shinn*, Assistant Attorney General.

Jay Alan Sekulow argued the cause for respondent. With him on the brief were *Stuart J. Roth*, *Colby M. May*, *James M. Henderson, Sr.*, *Walter M. Weber*, *David A. Cortman*, *Alan E. Sears*, and *Benjamin W. Bull*.

Solicitor General Olson argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Assistant Attorney General Acosta*, *Deputy Solicitor General Clement*, *Gregory G. Garre*, *David K. Flynn*, and *Eric W. Treene*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Vermont et al. by *William H. Sorrell*, Attorney General of Vermont, and *Timothy B. Tomasi*, Chief Assistant Attorney General, by *Anabelle Rodríguez*, Secretary of Justice of Puerto Rico, and by the Attorneys General for their respective jurisdictions as follows: *Thomas F. Reilly* of Massachusetts, *Jeremiah W. (Jay) Nixon* of Missouri, *Hardy Myers* of Oregon, *Lawrence E. Long* of South Dakota, and *Clyde Lemons, Jr.*, of the Northern Mariana Islands; for the American Civil Liberties Union et al. by *Aaron H. Caplan*, *Steven R. Shapiro*, *Julie E. Sternberg*, *Ayesha N. Khan*, *Elliot M. Mincberg*, and *Susan L. Sommer;* for the American Jewish Congress et al. by *Marc D. Stern*, *K. Hollyn Hollman*, *Jeffrey Sinensky*, *Kara Stein*, and *David Strom;* for the Anti-Defamation League et al. by *David Lash*, *Steven M. Freeman*, *Steven C. Sheinberg*, *Martin E. Karlinsky*, *Erwin Chemerinsky*, and *Frederick M. Lawrence;* for the National Education Association by *Robert H. Chanin*, *Andrew D. Roth*, and *Laurence Gold;* and for the National School Boards Association et al. by *David H. Remes* and *Julie Underwood*.

Briefs of *amici curiae* urging affirmance were filed for the State of Alabama by *William H. Pryor, Jr.*, Attorney General of Alabama, *Nathan A. Forrester*, Solicitor General, and *Margaret L. Fleming*, Assistant Attorney General; for the State of Florida et al. by *Charles J. Crist, Jr.*, Attorney General of Florida, *Christopher M. Kise*, Solicitor General, *Raquel A. Rodriguez*, and *Daniel Woodring;* for the State of Texas et al. by *Greg Abbott*, Attorney General of Texas, *Barry R. McBee*, First Assistant Attorney General, *Edward D. Burbach*, Deputy Attorney General, *Rafael Edward Cruz*, Solicitor General, *Joseph D. Hughes* and *Cassandra Robertson*, Assistant Solicitors General, *Mike Moore*, Attorney General of Mississippi, and *Mark L. Shurtleff*, Attorney General of Utah; for the Associa-

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

The State of Washington established the Promise Scholarship Program to assist academically gifted students with postsecondary education expenses. In accordance with the State Constitution, students may not use the scholarship at an institution where they are pursuing a degree in devotional theology. We hold that such an exclusion from an otherwise inclusive aid program does not violate the Free Exercise Clause of the First Amendment.

The Washington State Legislature found that "[s]tudents who work hard . . . and successfully complete high school with high academic marks may not have the financial ability to attend college because they cannot obtain financial aid or the financial aid is insufficient." Wash. Rev. Code Ann. §28B.119.005 (West Supp. 2004). In 1999, to assist these high-achieving students, the legislature created the

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tion of Southern Baptist Colleges and Schools et al. by *Carter G. Phillips*, *Gene C. Schaerr*, and *Nicholas P. Miller;* for the Becket Fund for Religious Liberty et al. by *Kevin J. Hasson*, *Roman P. Storzer*, and *Anthony R. Picarello, Jr.;* for the Black Alliance for Educational Options by *Samuel Estreicher* and *Brett M. Schuman;* for the Council for Christian Colleges & Universities et al. by *Gregory S. Baylor* and *Thomas C. Berg;* for the Fairness Foundation by *Kenneth W. Starr*, *Robert R. Gasaway*, and *Ashley C. Parrish;* for the Institute for Justice et al. by *Richard D. Komer*, *Clint Bolick*, and *William H. Mellor;* for the Landmark Legal Foundation by *Richard P. Hutchison* and *Michael J. O'Neill;* for Liberty Counsel by *Mathew D. Staver* and *Rena M. Lindevaldsen;* for the National Jewish Commission on Law and Public Affairs by *Nathan Lewin*, *Dennis Rapps*, *David Zwiebel*, *Richard B. Stone*, and *Nathan J. Diament;* for the National Legal Foundation by *Barry C. Hodge;* for the Solidarity Center for Law and Justice, P. C., by *James P. Kelly III;* and for Teresa M. Becker by *Richard Thompson.*

Briefs of *amici curiae* were filed for the Common Good Legal Defense Fund et al. by *John G. Stepanovich* and *Keith A. Fournier;* for the United States Conference of Catholic Bishops et al. by *Mark E. Chopko* and *Jeffrey Hunter Moon;* and for Robert S. Alley et al. by *Steven K. Green.*

Promise Scholarship Program, which provides a scholarship, renewable for one year, to eligible students for postsecondary education expenses. Students may spend their funds on any education-related expense, including room and board. The scholarships are funded through the State's general fund, and their amount varies each year depending on the annual appropriation, which is evenly prorated among the eligible students. Wash. Admin. Code § 250–80–050(2) (2003). The scholarship was worth $1,125 for academic year 1999–2000 and $1,542 for 2000–2001.

To be eligible for the scholarship, a student must meet academic, income, and enrollment requirements. A student must graduate from a Washington public or private high school and either graduate in the top 15% of his graduating class, or attain on the first attempt a cumulative score of 1,200 or better on the Scholastic Assessment Test I or a score of 27 or better on the American College Test. §§ 250–80–020(12)(a) to (d). The student's family income must be less than 135% of the State's median. § 250–80–020(12)(e). Finally, the student must enroll "at least half time in an eligible postsecondary institution in the state of Washington," and may not pursue a degree in theology at that institution while receiving the scholarship. §§ 250–80–020(12)(f) to (g); see also Wash. Rev. Code Ann. § 28B.10.814 (West 1997) ("No aid shall be awarded to any student who is pursuing a degree in theology"). Private institutions, including those religiously affiliated, qualify as "'[e]ligible postsecondary institution[s]'" if they are accredited by a nationally recognized accrediting body. See Wash. Admin. Code § 250–80–020(13). A "degree in theology" is not defined in the statute, but, as both parties concede, the statute simply codifies the State's constitutional prohibition on providing funds to students to pursue degrees that are "devotional in nature or designed to induce religious faith." Brief for Petitioners 6; Brief for Respondent 8; see also Wash. Const., Art. I, § 11.

A student who applies for the scholarship and meets the academic and income requirements is notified that he is eligible for the scholarship if he meets the enrollment requirements. *E. g.*, App. 95. Once the student enrolls at an eligible institution, the institution must certify that the student is enrolled at least half time and that the student is not pursuing a degree in devotional theology. The institution, rather than the State, determines whether the student's major is devotional. *Id.*, at 126, 131. If the student meets the enrollment requirements, the scholarship funds are sent to the institution for distribution to the student to pay for tuition or other educational expenses. See Wash. Admin. Code § 250–80–060.

Respondent, Joshua Davey, was awarded a Promise Scholarship, and chose to attend Northwest College. Northwest is a private, Christian college affiliated with the Assemblies of God denomination, and is an eligible institution under the Promise Scholarship Program. Davey had "planned for many years to attend a Bible college and to prepare [himself] through that college training for a lifetime of ministry, specifically as a church pastor." App. 40. To that end, when he enrolled in Northwest College, he decided to pursue a double major in pastoral ministries and business management/administration. *Id.*, at 43. There is no dispute that the pastoral ministries degree is devotional and therefore excluded under the Promise Scholarship Program.

At the beginning of the 1999–2000 academic year, Davey met with Northwest's director of financial aid. He learned for the first time at this meeting that he could not use his scholarship to pursue a devotional theology degree. He was informed that to receive the funds appropriated for his use, he must certify in writing that he was not pursuing such a degree at Northwest.[1] He refused to sign the form and did not receive any scholarship funds.

[1] The State does not require students to certify anything or sign any forms. App. 86, 89.

Davey then brought an action under Rev. Stat. § 1979, 42 U. S. C. § 1983, against various state officials (hereinafter State) in the District Court for the Western District of Washington to enjoin the State from refusing to award the scholarship solely because a student is pursuing a devotional theology degree, and for damages. He argued the denial of his scholarship based on his decision to pursue a theology degree violated, *inter alia*, the Free Exercise, Establishment, and Free Speech Clauses of the First Amendment, as incorporated by the Fourteenth Amendment, and the Equal Protection Clause of the Fourteenth Amendment. After the District Court denied Davey's request for a preliminary injunction, the parties filed cross-motions for summary judgment. The District Court rejected Davey's constitutional claims and granted summary judgment in favor of the State.

A divided panel of the United States Court of Appeals for the Ninth Circuit reversed. 299 F. 3d 748 (2002). The court concluded that the State had singled out religion for unfavorable treatment and thus under our decision in *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah*, 508 U. S. 520 (1993), the State's exclusion of theology majors must be narrowly tailored to achieve a compelling state interest. 299 F. 3d, at 757–758. Finding that the State's own antiestablishment concerns were not compelling, the court declared Washington's Promise Scholarship Program unconstitutional. *Id.*, at 760. We granted certiorari, 538 U. S. 1031 (2003), and now reverse.

The Religion Clauses of the First Amendment provide: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." These two Clauses, the Establishment Clause and the Free Exercise Clause, are frequently in tension. See *Norwood* v. *Harrison*, 413 U. S. 455, 469 (1973) (citing *Tilton* v. *Richardson*, 403 U. S. 672, 677 (1971)). Yet we have long said that "there is room for play in the joints" between them. *Walz* v. *Tax Comm'n of City of New York*, 397 U. S. 664, 669 (1970). In

other words, there are some state actions permitted by the Establishment Clause but not required by the Free Exercise Clause.

This case involves that "play in the joints" described above. Under our Establishment Clause precedent, the link between government funds and religious training is broken by the independent and private choice of recipients. See *Zelman* v. *Simmons-Harris*, 536 U. S. 639, 652 (2002); *Zobrest* v. *Catalina Foothills School Dist.*, 509 U. S. 1, 13–14 (1993); *Witters* v. *Washington Dept. of Servs. for Blind*, 474 U. S. 481, 487 (1986); *Mueller* v. *Allen*, 463 U. S. 388, 399–400 (1983). As such, there is no doubt that the State could, consistent with the Federal Constitution, permit Promise Scholars to pursue a degree in devotional theology, see *Witters*, *supra*, at 489, and the State does not contend otherwise. The question before us, however, is whether Washington, pursuant to its own constitution,[2] which has been authoritatively interpreted as prohibiting even indirectly funding religious instruction that will prepare students for the ministry, see *Witters* v. *State Comm'n for the Blind*, 112 Wash. 2d 363, 369–370, 771 P. 2d 1119, 1122 (1989) (en banc); cf. *Witters* v. *State Comm'n for the Blind*, 102 Wash. 2d 624, 629, 689 P. 2d 53, 56 (1984) (en banc) ("It is not the role of the State to pay for the religious education of future ministers"), rev'd, 474 U. S. 481 (1986), can deny them such funding without violating the Free Exercise Clause.

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[2] The relevant provision of the Washington Constitution, Art. I, § 11, states:

"Religious Freedom. Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment."

Davey urges us to answer that question in the negative. He contends that under the rule we enunciated in *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah*, *supra*, the program is presumptively unconstitutional because it is not facially neutral with respect to religion.[3] We reject his claim of presumptive unconstitutionality, however; to do otherwise would extend the *Lukumi* line of cases well beyond not only their facts but their reasoning. In *Lukumi*, the city of Hialeah made it a crime to engage in certain kinds of animal slaughter. We found that the law sought to suppress ritualistic animal sacrifices of the Santeria religion. 508 U. S., at 535. In the present case, the State's disfavor of religion (if it can be called that) is of a far milder kind. It imposes neither criminal nor civil sanctions on any type of religious service or rite. It does not deny to ministers the right to participate in the political affairs of the community. See *McDaniel* v. *Paty*, 435 U. S. 618 (1978). And it does not require students to choose between their religious beliefs and

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[3] Davey, relying on *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819 (1995), contends that the Promise Scholarship Program is an unconstitutional viewpoint restriction on speech. But the Promise Scholarship Program is not a forum for speech. The purpose of the Promise Scholarship Program is to assist students from low- and middle-income families with the cost of postsecondary education, not to "'encourage a diversity of views from private speakers.'" *United States* v. *American Library Assn., Inc.*, 539 U. S. 194, 206 (2003) (plurality opinion) (quoting *Rosenberger*, *supra*, at 834). Our cases dealing with speech forums are simply inapplicable. See *American Library Assn.*, *supra; Cornelius* v. *NAACP Legal Defense & Ed. Fund, Inc.*, 473 U. S. 788, 805 (1985).

Davey also argues that the Equal Protection Clause protects against discrimination on the basis of religion. Because we hold, *infra*, at 725, that the program is not a violation of the Free Exercise Clause, however, we apply rational-basis scrutiny to his equal protection claims. *Johnson* v. *Robison*, 415 U. S. 361, 375, n. 14 (1974); see also *McDaniel* v. *Paty*, 435 U. S. 618 (1978) (reviewing religious discrimination claim under the Free Exercise Clause). For the reasons stated herein, the program passes such review.

receiving a government benefit.[4] See *ibid.*; *Hobbie* v. *Unemployment Appeals Comm'n of Fla.*, 480 U. S. 136 (1987); *Thomas* v. *Review Bd. of Indiana Employment Security Div.*, 450 U. S. 707 (1981); *Sherbert* v. *Verner*, 374 U. S. 398 (1963). The State has merely chosen not to fund a distinct category of instruction.

JUSTICE SCALIA argues, however, that generally available benefits are part of the "baseline against which burdens on religion are measured." *Post*, at 726 (dissenting opinion). Because the Promise Scholarship Program funds training for all secular professions, JUSTICE SCALIA contends the State must also fund training for religious professions. See *post*, at 726–727. But training for religious professions and training for secular professions are not fungible. Training someone to lead a congregation is an essentially religious endeavor. Indeed, majoring in devotional theology is akin to a religious calling as well as an academic pursuit. See *Calvary Bible Presbyterian Church* v. *Board of Regents*, 72 Wash. 2d 912, 919, 436 P. 2d 189, 193 (1967) (en banc) (holding public funds may not be expended for "that category of instruction that resembles worship and manifests a devotion to religion and religious principles in thought, feeling, belief, and conduct"); App. 40 (Davey stating his "religious beliefs [were] the only reason for [him] to seek a college degree"). And the subject of religion is one in which both the United States and state constitutions embody distinct views—in favor of free exercise, but opposed to establishment—that find no counterpart with respect to other callings or professions. That a State would deal differently with religious education for the ministry than with education for other callings is a product of these views, not evidence of hostility toward religion.

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[4] Promise Scholars may still use their scholarship to pursue a secular degree at a different institution from where they are studying devotional theology.

Even though the differently worded Washington Constitution draws a more stringent line than that drawn by the United States Constitution, the interest it seeks to further is scarcely novel. In fact, we can think of few areas in which a State's antiestablishment interests come more into play.[5] Since the founding of our country, there have been popular uprisings against procuring taxpayer funds to support church leaders, which was one of the hallmarks of an "established" religion.[6] See R. Butts, The American Tradition in Religion and Education 15–17, 19–20, 26–37 (1950); F. Lambert, The Founding Fathers and the Place of Religion in America 188 (2003) ("In defending their religious liberty against overreaching clergy, Americans in all regions found that Radical Whig ideas best framed their argument that state-supported clergy undermined liberty of conscience and should be opposed"); see also J. Madison, Memorial and Remonstrance Against Religious Assessments, reprinted in *Everson* v. *Board of Ed. of Ewing*, 330 U. S. 1, 65, 68 (1947)

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[5] JUSTICE SCALIA notes that the State's "philosophical preference" to protect individual conscience is potentially without limit, see *post*, at 730; however, the only interest at issue here is the State's interest in not funding the religious training of clergy. Nothing in our opinion suggests that the State may justify any interest that its "philosophical preference" commands.

[6] Perhaps the most famous example of public backlash is the defeat of "A Bill Establishing A Provision for Teachers of the Christian Religion" in the Virginia Legislature. The bill sought to assess a tax for "Christian teachers," reprinted in *Everson* v. *Board of Ed. of Ewing*, 330 U. S. 1, 72, 74 (1947) (supplemental appendix to dissent of Rutledge, J.); see also *Rosenberger*, *supra*, at 853 (THOMAS, J., concurring) (purpose of the bill was to support "clergy in the performance of their function of teaching religion"), and was rejected after a public outcry. In its stead, the "Virginia Bill for Religious Liberty," which was originally written by Thomas Jefferson, was enacted. This bill guaranteed "that no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever." A Bill for Establishing Religious Freedom, reprinted in 2 Papers of Thomas Jefferson 546 (J. Boyd ed. 1950).

(appendix to dissent of Rutledge, J.) (noting the dangers to civil liberties from supporting clergy with public funds).

Most States that sought to avoid an establishment of religion around the time of the founding placed in their constitutions formal prohibitions against using tax funds to support the ministry. *E. g.*, Ga. Const., Art. IV, § 5 (1789), reprinted in 2 Federal and State Constitutions, Colonial Charters, and Other Organic Laws 789 (F. Thorpe ed. 1909) (reprinted 1993) ("All persons shall have the free exercise of religion, without being obliged to contribute to the support of any religious profession but their own"); Pa. Const., Art. II (1776), in 5 *id.*, at 3082 ("[N]o man ought or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any ministry, contrary to, or against, his own free will and consent"); N. J. Const., Art. XVIII (1776), in *id.*, at 2597 (similar); Del. Const., Art. I, § 1 (1792), in 1 *id.*, at 568 (similar); Ky. Const., Art. XII, § 3 (1792), in 3 *id.*, at 1274 (similar); Vt. Const., Ch. I, Art. 3 (1793), in 6 *id.*, at 3762 (similar); Tenn. Const., Art. XI, § 3 (1796), in *id.*, at 3422 (similar); Ohio Const., Art. VIII, § 3 (1802), in 5 *id.*, at 2910 (similar). The plain text of these constitutional provisions prohibited *any* tax dollars from supporting the clergy. We have found nothing to indicate, as JUSTICE SCALIA contends, *post*, at 728, n. 1, that these provisions would not have applied so long as the State equally supported other professions or if the amount at stake was *de minimis*. That early state constitutions saw no problem in explicitly excluding *only* the ministry from receiving state dollars reinforces our conclusion that religious instruction is of a different ilk.[7]

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[7] The *amici* contend that Washington's Constitution was born of religious bigotry because it contains a so-called "Blaine Amendment," which has been linked with anti-Catholicism. See Brief for United States as *Amicus Curiae* 23, n. 5; Brief for Becket Fund for Religious Liberty et al. as *Amici Curiae;* see also *Mitchell* v. *Helms*, 530 U. S. 793, 828 (2000) (plurality opinion). As the State notes and Davey does not dispute,

Far from evincing the hostility toward religion which was manifest in *Lukumi*, we believe that the entirety of the Promise Scholarship Program goes a long way toward including religion in its benefits.[8] The program permits students to attend pervasively religious schools, so long as they are accredited. As Northwest advertises, its "concept of education is distinctly Christian in the evangelical sense." App. 168. It prepares *all* of its students, "through instruction, through modeling, [and] through [its] classes, to use . . . the Bible as their guide, as the truth," no matter their chosen

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however, the provision in question is not a Blaine Amendment. Tr. of Oral Arg. 5; see Reply Brief for Petitioners 6–7. The enabling Act of 1889, which authorized the drafting of the Washington Constitution, required the state constitution to include a provision "for the establishment and maintenance of systems of public schools, which shall be . . . free from sectarian control." Act of Feb. 22, 1889, ch. 180, § 4, ¶ Fourth, 25 Stat. 676. This provision was included in Article IX, § 4, of the Washington Constitution ("All schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence"), and is not at issue in this case. Neither Davey nor *amici* have established a credible connection between the Blaine Amendment and Article I, § 11, the relevant constitutional provision. Accordingly, the Blaine Amendment's history is simply not before us.

[8] Washington has also been solicitous in ensuring that its constitution is not hostile toward religion, see *State ex rel. Gallwey* v. *Grimm*, 146 Wash. 2d 445, 470, 48 P. 3d 274, 286 (2002) (en banc) ("[I]t was never the intention that our constitution should be construed in any manner indicating any hostility toward religion" (internal quotation marks omitted)), and at least in some respects, its constitution provides greater protection of religious liberties than the Free Exercise Clause, see *First Covenant Church of Seattle* v. *Seattle*, 120 Wash. 2d 203, 223–229, 840 P. 2d 174, 186–188 (1992) (en banc) (rejecting standard in *Employment Div., Dept. of Human Resources of Ore.* v. *Smith*, 494 U. S. 872 (1990), in favor of more protective rule); *Munns* v. *Martin*, 131 Wash. 2d 192, 201, 930 P. 2d 318, 322 (1997) (en banc) (holding a city ordinance that imposed controls on demolition of historic structures inapplicable to the Catholic Church's plan to demolish an old school building and build a new pastoral center because the facilities are intimately associated with the church's religious mission). We have found nothing in Washington's overall approach that indicates it "single[s] out" anyone "for special burdens on the basis of . . . religious calling," as JUSTICE SCALIA contends, *post*, at 731.

profession. *Id.*, at 169. And under the Promise Scholarship Program's current guidelines, students are still eligible to take devotional theology courses.[9] Davey notes all students at Northwest are required to take at least four devotional courses, "Exploring the Bible," "Principles of Spiritual Development," "Evangelism in the Christian Life," and "Christian Doctrine," Brief for Respondent 11, n. 5; see also App. 151, and some students may have additional religious requirements as part of their majors. Brief for Respondent 11, n. 5; see also App. 150–151.

In short, we find neither in the history or text of Article I, § 11, of the Washington Constitution, nor in the operation of the Promise Scholarship Program, anything that suggests animus toward religion.[10] Given the historic and substantial state interest at issue, we therefore cannot conclude that the denial of funding for vocational religious instruction alone is inherently constitutionally suspect.

Without a presumption of unconstitutionality, Davey's claim must fail. The State's interest in not funding the pursuit of devotional degrees is substantial and the exclusion of such funding places a relatively minor burden on Promise Scholars. If any room exists between the two Religion Clauses, it must be here. We need not venture further into this difficult area in order to uphold the Promise Scholarship Program as currently operated by the State of Washington.

The judgment of the Court of Appeals is therefore

Reversed.

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[9] The State notes that it is an open question whether the Washington Constitution prohibits nontheology majors from taking devotional theology courses. At this point, however, the Program guidelines only exclude students who are pursuing a theology degree. Wash. Admin. Code § 250–80–020(12)(g) (2003).

[10] Although we have sometimes characterized the Establishment Clause as prohibiting the State from "disapprov[ing] of a particular religion or of religion in general," *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah*, 508 U. S. 520, 532 (1993) (citing cases), for the reasons noted *supra*, the State has not impermissibly done so here.

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, dissenting.

In *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah*, 508 U. S. 520 (1993), the majority opinion held that "[a] law burdening religious practice that is not neutral . . . must undergo the most rigorous of scrutiny," *id.*, at 546, and that "the minimum requirement of neutrality is that a law not discriminate on its face," *id.*, at 533. The concurrence of two Justices stated that "[w]hen a law discriminates against religion as such, . . . it automatically will fail strict scrutiny." *Id.*, at 579 (Blackmun, J., joined by O'CONNOR, J., concurring in judgment). And the concurrence of a third Justice endorsed the "noncontroversial principle" that "formal neutrality" is a "necessary conditio[n] for free-exercise constitutionality." *Id.*, at 563 (SOUTER, J., concurring in part and concurring in judgment). These opinions are irreconcilable with today's decision, which sustains a public benefits program that facially discriminates against religion.

I

We articulated the principle that governs this case more than 50 years ago in *Everson* v. *Board of Ed. of Ewing*, 330 U. S. 1 (1947):

> "New Jersey cannot hamper its citizens in the free exercise of their own religion. Consequently, it cannot exclude individual Catholics, Lutherans, Mohammedans, Baptists, Jews, Methodists, Non-believers, Presbyterians, or the members of any other faith, because of their faith, or lack of it, from receiving the benefits of public welfare legislation." *Id.*, at 16 (emphasis deleted).

When the State makes a public benefit generally available, that benefit becomes part of the baseline against which burdens on religion are measured; and when the State withholds

that benefit from some individuals solely on the basis of religion, it violates the Free Exercise Clause no less than if it had imposed a special tax.

That is precisely what the State of Washington has done here. It has created a generally available public benefit, whose receipt is conditioned only on academic performance, income, and attendance at an accredited school. It has then carved out a solitary course of study for exclusion: theology. Wash. Rev. Code Ann. §28B.119.010(8) (West Supp. 2004); Wash. Admin. Code §250–80–020(12)(g) (2003). No field of study but religion is singled out for disfavor in this fashion. Davey is not asking for a special benefit to which others are not entitled. Cf. *Lyng* v. *Northwest Indian Cemetery Protective Assn.*, 485 U. S. 439, 453 (1988). He seeks only *equal* treatment—the right to direct his scholarship to his chosen course of study, a right every other Promise Scholar enjoys.

The Court's reference to historical "popular uprisings against procuring taxpayer funds to support church leaders," *ante*, at 722, is therefore quite misplaced. That history involved not the inclusion of religious ministers in public benefits programs like the one at issue here, but laws that singled them out for financial aid. For example, the Virginia bill at which Madison's Remonstrance was directed provided: "[F]or the support of Christian teachers . . . [a] sum payable for tax on the property within this Commonwealth, is hereby assessed . . . ." A Bill Establishing a Provision for Teachers of the Christian Religion (1784), reprinted in *Everson*, *supra*, at 72. Laws supporting the clergy in other States operated in a similar fashion. See S. Cobb, The Rise of Religious Liberty in America 131, 169, 270, 295, 304, 386 (1902). One can concede the Framers' hostility to funding the clergy *specifically*, but that says nothing about whether the clergy had to be excluded from benefits the State made available to all. No one would seriously contend, for example, that the Fram-

ers would have barred ministers from using public roads on their way to church.[1]

The Court does not dispute that the Free Exercise Clause places some constraints on public benefits programs, but finds none here, based on a principle of "'play in the joints.'" *Ante*, at 719. I use the term "principle" loosely, for that is not so much a legal principle as a refusal to apply *any* principle when faced with competing constitutional directives. There is nothing anomalous about constitutional commands that abut. A municipality hiring public contractors may not discriminate *against* blacks or *in favor of* them; it cannot discriminate a little bit each way and then plead "play in the joints" when haled into court. If the Religion Clauses demand neutrality, we must enforce them, in hard cases as well as easy ones.

Even if "play in the joints" were a valid legal principle, surely it would apply only when it was a close call whether complying with one of the Religion Clauses would violate the other. But that is not the case here. It is not just that "the State could, consistent with the Federal Constitution, permit Promise Scholars to pursue a degree in devotional

[1] Equally misplaced is the Court's reliance on founding-era state constitutional provisions that prohibited the use of tax funds to support the ministry. *Ante*, at 723. There is no doubt what these provisions were directed against: measures of the sort discussed earlier in text, singling out the clergy for public support. See *supra*, at 727. The Court offers no historical support for the proposition that they were meant to exclude clergymen from general benefits available to all citizens. In choosing to interpret them in that fashion, the Court needlessly gives them a meaning that not only is contrary to our Religion Clause jurisprudence, but has no logical stopping point short of the absurd. No State with such a constitutional provision has, so far as I know, ever prohibited the hiring of public employees who use their salary to conduct ministries, or excluded ministers from generally available disability or unemployment benefits. Since the Court cannot identify any instance in which these provisions were applied in such a discriminatory fashion, its appeal to their "plain text," *ante*, at 723, adds nothing whatever to the "plain text" of Washington's own Constitution.

theology." *Ibid.* The establishment question *would not even be close*, as is evident from the fact that this Court's decision in *Witters* v. *Washington Dept. of Servs. for Blind*, 474 U. S. 481 (1986), was unanimous. Perhaps some formally neutral public benefits programs are so gerrymandered and devoid of plausible secular purpose that they might raise specters of state aid to religion, but an even-handed Promise Scholarship Program is not among them.

In any case, the State already has all the play in the joints it needs. There are any number of ways it could respect both its unusually sensitive concern for the conscience of its taxpayers *and* the Federal Free Exercise Clause. It could make the scholarships redeemable only at public universities (where it sets the curriculum), or only for select courses of study. Either option would replace a program that facially discriminates against religion with one that just happens not to subsidize it. The State could also simply abandon the scholarship program altogether. If that seems a dear price to pay for freedom of conscience, it is only because the State has defined that freedom so broadly that it would be offended by a program with such an incidental, indirect religious effect.

What is the nature of the State's asserted interest here? It cannot be protecting the pocketbooks of its citizens; given the tiny fraction of Promise Scholars who would pursue theology degrees, the amount of any citizen's tax bill at stake is *de minimis*. It cannot be preventing mistaken appearance of endorsement; where a State merely declines to penalize students for selecting a religious major, "[n]o reasonable observer is likely to draw . . . an inference that the State itself is endorsing a religious practice or belief." *Id.*, at 493 (O'CONNOR, J., concurring in part and concurring in judgment). Nor can Washington's exclusion be defended as a means of assuring that the State will neither favor nor disfavor Davey in his religious calling. Davey will throughout his life contribute to the public fisc through sales taxes on

personal purchases, property taxes on his home, and so on; and nothing in the Court's opinion turns on whether Davey winds up a net winner or loser in the State's tax-and-spend scheme.

No, the interest to which the Court defers is not fear of a conceivable Establishment Clause violation, budget constraints, avoidance of endorsement, or substantive neutrality—none of these. It is a pure philosophical preference: the State's opinion that it would violate taxpayers' freedom of conscience *not* to discriminate against candidates for the ministry. This sort of protection of "freedom of conscience" has no logical limit and can justify the singling out of religion for exclusion from public programs in virtually any context. The Court never says whether it deems this interest compelling (the opinion is devoid of any mention of standard of review) but, self-evidently, it is not.[2]

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[2] The Court argues that those pursuing theology majors are not comparable to other Promise Scholars because "training for religious professions and training for secular professions are not fungible." *Ante*, at 721. That may well be, but all it proves is that the State has a *rational basis* for treating religion differently. If that is all the Court requires, its holding is contrary not only to precedent, see *supra*, at 726, but to common sense. If religious discrimination required only a rational basis, the Free Exercise Clause would impose no constraints other than those the Constitution already imposes on all government action. The question is not whether theology majors are different, but whether the differences are substantial enough to justify a discriminatory financial penalty that the State inflicts on no other major. Plainly they are not.

Equally unpersuasive is the Court's argument that the State may discriminate against theology majors in distributing public benefits because the Establishment Clause and its state counterparts are themselves discriminatory. See *ante*, at 721, 723. The Court's premise is true at some level of abstraction—the Establishment Clause discriminates against religion by singling it out as the one thing a State may not establish. All this proves is that a State has a compelling interest in not committing *actual* Establishment Clause violations. Cf. *Widmar* v. *Vincent*, 454 U. S. 263, 271 (1981). We have never inferred from this principle that a State has a constitutionally sufficient interest in discriminating against religion in whatever other context it pleases, so long as it claims some connection, however attenuated, to establishment concerns.

II

The Court makes no serious attempt to defend the program's neutrality, and instead identifies two features thought to render its discrimination less offensive. The first is the lightness of Davey's burden. The Court offers no authority for approving facial discrimination against religion simply because its material consequences are not severe. I might understand such a test if we were still in the business of reviewing facially neutral laws that merely happen to burden some individual's religious exercise, but we are not. See *Employment Div., Dept. of Human Resources of Ore.* v. *Smith*, 494 U. S. 872, 885 (1990). Discrimination *on the face of a statute* is something else. The indignity of being singled out for special burdens on the basis of one's religious calling is so profound that the concrete harm produced can never be dismissed as insubstantial. The Court has not required proof of "substantial" concrete harm with other forms of discrimination, see, *e. g.*, *Brown* v. *Board of Education*, 347 U. S. 483, 493–495 (1954); cf. *Craig* v. *Boren*, 429 U. S. 190 (1976), and it should not do so here.

Even if there were some threshold quantum-of-harm requirement, surely Davey has satisfied it. The First Amendment, after all, guarantees *free* exercise of religion, and when the State exacts a financial penalty of almost $3,000 for religious exercise—whether by tax or by forfeiture of an otherwise available benefit—religious practice is anything *but* free. The Court's only response is that "Promise Scholars may still use their scholarship to pursue a secular degree at a different institution from where they are studying devotional theology." *Ante*, at 721, n. 4. But part of what makes a Promise Scholarship attractive is that the recipient can apply it to his *preferred* course of study at his *preferred* accredited institution. That is part of the "benefit" the State confers. The Court distinguishes our precedents only by swapping the benefit to which Davey was actually entitled (a scholarship for his chosen course of study) with another, less valuable one (a scholarship for any course of study *but* his chosen

one). On such reasoning, any facially discriminatory benefits program can be redeemed simply by redefining what it guarantees.

The other reason the Court thinks this particular facial discrimination less offensive is that the scholarship program was not motivated by animus toward religion. The Court does not explain why the legislature's motive matters, and I fail to see why it should. If a State deprives a citizen of trial by jury or passes an *ex post facto* law, we do not pause to investigate whether it was actually trying to accomplish the evil the Constitution prohibits. It is sufficient that the citizen's rights have been infringed. "[It does not] matter that a legislature consists entirely of the purehearted, if the law it enacts in fact singles out a religious practice for special burdens." *Lukumi*, 508 U. S., at 559 (SCALIA, J., concurring in part and concurring in judgment).

The Court has not approached other forms of discrimination this way. When we declared racial segregation unconstitutional, we did not ask whether the State had originally adopted the regime, not out of "animus" against blacks, but because of a well-meaning but misguided belief that the races would be better off apart. It was sufficient to note the current effect of segregation on racial minorities. See *Brown*, *supra*, at 493–495. Similarly, the Court does not excuse statutes that facially discriminate against women just because they are the vestigial product of a well-intentioned view of women's appropriate social role. See, *e. g.*, *United States* v. *Virginia*, 518 U. S. 515, 549–551 (1996); *Adkins* v. *Children's Hospital of D. C.*, 261 U. S. 525, 552–553 (1923). We do sometimes look to legislative intent to smoke out more subtle instances of discrimination, but we do so as a *supplement* to the core guarantee of facially equal treatment, not as a replacement for it. See *Hunt* v. *Cromartie*, 526 U. S. 541, 546 (1999).

There is no need to rely on analogies, however, because we have rejected the Court's methodology in this very con-

text. In *McDaniel* v. *Paty*, 435 U. S. 618 (1978), we considered a Tennessee statute that disqualified clergy from participation in the state constitutional convention. That statute, like the one here, was based upon a state constitutional provision—a clause in the 1796 Tennessee Constitution that disqualified clergy from sitting in the legislature. *Id.*, at 621, and n. 1 (plurality opinion). The State defended the statute as an attempt to be faithful to its constitutional separation of church and state, and we accepted that claimed benevolent purpose as bona fide. See *id.*, at 628. Nonetheless, because it did not justify facial discrimination against religion, we invalidated the restriction. *Id.*, at 629.[3]

It may be that Washington's original purpose in excluding the clergy from public benefits was benign, and the same might be true of its purpose in maintaining the exclusion today. But those singled out for disfavor can be forgiven for suspecting more invidious forces at work. Let there be no doubt: This case is about discrimination against a religious minority. Most citizens of this country identify themselves as professing some religious belief, but the State's policy poses no obstacle to practitioners of only a tepid, civic version of faith. Those the statutory exclusion actually affects—those whose belief in their religion is so strong that they dedicate their study and their lives to its ministry—are a far narrower set. One need not delve too far into modern popular culture to perceive a trendy disdain for deep religious conviction. In an era when the Court is so quick to come to the aid of other disfavored groups, see, *e. g.*, *Romer* v. *Evans*, 517 U. S. 620, 635 (1996), its indifference in this case, which involves a form of discrimination to which the Constitution actually speaks, is exceptional.

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[3] *McDaniel* had no opinion for the Court, but nothing in the separate opinions suggests disagreement over the issues relevant here. Cf. 435 U. S., at 636, n. 9 (Brennan, J., concurring in judgment) (noting dispute over statute's purpose but deeming it irrelevant).

* * *

Today's holding is limited to training the clergy, but its logic is readily extendible, and there are plenty of directions to go. What next? Will we deny priests and nuns their prescription-drug benefits on the ground that taxpayers' freedom of conscience forbids medicating the clergy at public expense? This may seem fanciful, but recall that France has proposed banning religious attire from schools, invoking interests in secularism no less benign than those the Court embraces today. See Sciolino, Chirac Backs Law to Keep Signs of Faith Out of School, N. Y. Times, Dec. 18, 2003, p. A17, col. 1. When the public's freedom of conscience is invoked to justify denial of equal treatment, benevolent motives shade into indifference and ultimately into repression. Having accepted the justification in this case, the Court is less well equipped to fend it off in the future. I respectfully dissent.

JUSTICE THOMAS, dissenting.

Because the parties agree that a "degree in theology" means a degree that is "devotional in nature or designed to induce religious faith," Brief for Petitioners 6; Brief for Respondent 8, I assume that this is so for purposes of deciding this case. With this understanding, I join JUSTICE SCALIA's dissenting opinion. I write separately to note that, in my view, the study of theology does not necessarily implicate religious devotion or faith. The contested statute denies Promise Scholarships to students who pursue "a degree in theology." See Wash. Admin. Code §250–80–020(12)(g) (2003) (defining an "'[e]ligible student,'" in part, as one who "[i]s not pursuing a degree in theology"); Wash. Rev. Code Ann. §28B.10.814 (West 1997) ("No aid shall be awarded to any student who is pursuing a degree in theology"). But the statute itself does not define "theology." And the usual definition of the term "theology" is not limited to devotional studies. "Theology" is defined as "[t]he study of the nature

of God and religious truth" and the "rational inquiry into religious questions." American Heritage Dictionary 1794 (4th ed. 2000). See also Webster's Ninth New Collegiate Dictionary 1223 (1991) ("the study of religious faith, practice, and experience" and "the study of God and his relation to the world"). These definitions include the study of theology from a secular perspective as well as from a religious one.

Assuming that the State denies Promise Scholarships only to students who pursue a degree in devotional theology, I believe that JUSTICE SCALIA's application of our precedents is correct. Because neither party contests the validity of these precedents, I join JUSTICE SCALIA's dissent.

Syllabus

UNITED STATES POSTAL SERVICE *v.* FLAMINGO INDUSTRIES (USA) LTD. ET AL.

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

No. 02–1290. Argued December 1, 2003—Decided February 25, 2004

After their contract to make mail sacks for the United States Postal Service was terminated, respondents brought this suit alleging, *inter alia*, that the Postal Service had sought to suppress competition and create a monopoly in mail sack production. The District Court dismissed the antitrust claims, concluding that the Postal Service is not subject to liability under federal antitrust law. The Ninth Circuit reversed, holding that the Postal Service can be liable but that it has a limited immunity from antitrust liability for conduct undertaken at Congress' command.

Held: The Postal Service is not subject to antitrust liability. In both form and function, it is not a separate antitrust person from the United States but is part of the Government, and so is not controlled by the antitrust laws. Pp. 739–748.

(a) The waiver of immunity from suit provided by the Postal Reorganization Act (PRA)—which gives the Postal Service the power "to sue and be sued in its official name," 39 U. S. C. § 401—does not suffice by its own terms to subject the Postal Service to liability under the Sherman Act. The two-step analysis of *FDIC* v. *Meyer*, 510 U. S. 471, 484, applies here. *Meyer*'s first step is met because the PRA's sue-and-be-sued clause effects a waiver of sovereign immunity for actions against the Postal Service. However, *Meyer*'s second step for finding liability—whether the Sherman Act's substantive prohibitions apply to the Postal Service—is not satisfied. The Sherman Act imposes liability on any "person," defined "to include corporations and associations existing under or authorized by the laws of . . . the United States." 15 U. S. C. § 7. In holding that the United States is not a person authorized to bring a treble-damages claim for its own alleged antitrust injury under the Sherman Act, *United States* v. *Cooper Corp.*, 312 U. S. 600, 606–607, this Court observed that, if the definition of "person" included the United States, the Government would be exposed to liability as an antitrust defendant, a result Congress could not have intended, *id.*, at 607, 609. Although the antitrust statutes were later amended to allow the United States to bring antitrust suits, see 15 U. S. C. § 15a, Congress did not thereby change the statutory definition of "person." So, *Cooper*'s

conclusion that the United States is not an antitrust "person," in particular not a person who can be an antitrust defendant, was unaltered by Congress' action; indeed, the means Congress used to amend the antitrust law implicitly ratified *Cooper*'s conclusion that the United States is not a proper antitrust defendant. Pp. 739–746.

(b) For purposes of the antitrust laws, the Postal Service is not a separate person from the United States. The PRA's designation of the Postal Service as an "independent establishment of the executive branch of the Government of the United States," 39 U. S. C. § 201, is not consistent with the idea that the Postal Service is an entity existing outside the Government. Indeed, the designation indicates just the contrary. The PRA gives the Postal Service a high degree of independence from other Government offices, but it remains part of the Government. The Sherman Act defines "person" to include corporations, 15 U. S. C. § 7, and had Congress chosen to create the Postal Service as a federal corporation, the Court would have to ask whether the Sherman Act's definition extends to the federal entity under this part of the definitional text. Congress, however, declined to create the Postal Service as a Government corporation, opting instead for an independent establishment. The choice of words likely was more informed than unconsidered, because Congress debated proposals to make the Postal Service a Government corporation before it enacted the PRA. Although the PRA refers explicitly to various federal statutes and specifies that the Postal Service is exempt from some and subject to others, 39 U. S. C. §§ 409–410, it makes no mention of the Sherman Act or the antitrust laws. This silence leads to no helpful inference one way or the other on the question at issue. However, the other considerations the Court has discussed lead to the conclusion that, absent an express congressional statement that the Postal Service can be sued for antitrust violations despite its status as an independent establishment of the Government, the PRA does not subject the Postal Service to antitrust liability. This conclusion is consistent with the nationwide, public responsibilities of the Postal Service, which has different goals from private corporations, the most important being that it does not seek profits, § 3621. It also has broader obligations, including the provision of universal mail delivery and free mail delivery to certain classes of persons, §§ 3201–3405, and, most recently, increased public responsibilities related to national security. Finally, the Postal Service has many powers more characteristic of Government than of private enterprise, including its state-conferred monopoly on mail delivery, § 601 *et seq.*, and the powers of eminent domain and to conclude international postal agreements, §§ 401, 407. On the other hand, but in ways still relevant to the antitrust laws' nonapplicability, the Postal Service's powers are more

limited than those of private businesses, since it lacks the power unilaterally to set prices or to close a post office, § 404. Its public characteristics and responsibilities indicate it should be treated under the antitrust laws as part of the Government, not a market participant separate from it. The fact that the Postal Service operates some nonpostal lines of business beyond the scope of its mail monopoly and universal service obligation does not alter this conclusion. Pp. 746–748.

302 F. 3d 985, reversed.

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

Deputy Solicitor General Kneedler argued the cause for petitioner. With him on the briefs were *Solicitor General Olson*, *Assistant Attorney General Keisler*, *Lisa S. Blatt*, and *Mark B. Stern.*

Harold J. Krent argued the cause for respondents. With him on the brief were *Angela Wah* and *George P. Eshoo.**

JUSTICE KENNEDY delivered the opinion of the Court.

This case requires us to consider whether the United States Postal Service is subject to liability under the federal antitrust laws.

Flamingo Industries (USA) Ltd., a private corporation, and its owner and principal officer are the respondents here. Flamingo had been making mail sacks for the Postal Service, but then its contract was terminated. The respondents sued in United States District Court alleging that the Postal Service had sought to suppress competition and create a monopoly in mail sack production. (They also brought claims against the Postal Service under federal procurement law and state law, but those claims are not before us.) The Dis-

*Briefs of *amici curiae* urging affirmance were filed for the American Trucking Associations, Inc., by *Drew S. Days III*, *Beth S. Brinkmann*, *Seth M. Galanter*, *Paul T. Friedman*, and *Robert Digges, Jr.;* for PostalWatch, Inc., by *William S. Stancil;* and for the Washington Legal Foundation et al. by *Alan Charles Raul*, *Daniel J. Popeo*, and *Paul D. Kamenar.*

Nicholas M. Fobe filed a brief for the Center for the Advancement of Capitalism as *amicus curiae.*

trict Court dismissed the antitrust claims, concluding that the Postal Service is not subject to liability under federal antitrust law. The Court of Appeals reversed. It held that the Postal Service can be liable but that it has a limited immunity from antitrust liability for conduct undertaken at the command of Congress. 302 F. 3d 985, 993 (CA9 2002). We granted certiorari to consider the question whether the United States Postal Service is a "person" amenable to suit under the controlling antitrust statute. 538 U. S. 1056 (2003). We hold it is not subject to antitrust liability, and we reverse.

After the Revolution, both the Articles of Confederation and the Constitution explicitly empowered the National Government to provide and regulate postal services. Article of Confederation IX; U. S. Const., Art. I, § 8. The importance of the enterprise was prefigured by the Continental Congress' appointment of Benjamin Franklin to be the first Postmaster General, on July 26, 1775. G. Cullinan, The United States Postal Service 26 (1973) (hereinafter Cullinan). From those beginnings, the Postal Service has become "the nation's oldest and largest public business." J. Tierney, Postal Reorganization: Managing the Public's Business vii (1981) (hereinafter Tierney).

During its history since Postmaster Franklin, the postal organization has been reorganized or restructured at various times. In the immediate period after ratification of the Constitution, it was called the General Post Office and was subordinate to the Treasury Department. Cullinan 35–36. In 1825, its name changed from the General Post Office to the Post Office Department, an alteration accomplished by somewhat informal means when Postmaster Joseph McLean simply changed the title on official letterhead. McLean also began the practice of reporting directly to the President rather than to the Secretary of the Treasury. *Id.*, at 50–51. (McLean was a popular Postmaster who served from 1823 until 1829, when the incoming President Andrew Jackson

solved his worries about McLean's independence in matters of postal governance, especially patronage, by appointing him to this Court. *Id.*, at 52.) In 1829, President Jackson acknowledged the enhanced status of the Postmaster General by making him a member of the Cabinet, though it was not until 1872 that Congress formally recognized the Post Office Department as an executive department of the Federal Government. *Id.*, at 36. A more complete account of the origins and mission of the postal system is set forth in *Postal Service* v. *Council of Greenburgh Civic Assns.*, 453 U. S. 114, 120–126 (1981).

Major change came with the Postal Reorganization Act of 1970 (PRA), 39 U. S. C. § 101 *et seq.* It was adopted to increase the efficiency of the Postal Service and reduce political influences on its operations. Tierney 1–26; Cullinan 5–10. The PRA renames the Post Office Department the United States Postal Service and removes it from the Cabinet to make it "an independent establishment of the executive branch of the Government of the United States." 39 U. S. C. § 201. Superintendence over the new Postal Service is the responsibility of a Board of Governors, consisting of 11 members. § 202. Nine governors are appointed by the President with the advice and consent of the Senate and are removable only for cause. *Ibid.* The other two governors are the Postmaster General, who also serves as the chief executive officer of the Postal Service, and who is appointed by the other nine, and the Deputy Postmaster General, who is appointed by the other nine together with the Postmaster General. *Ibid.*

The PRA creates a second independent establishment, the Postal Rate Commission, to make recommendations on postal rate changes. § 3601. The Commission advises the Board of Governors on rates for all postal services, including both letter carriage and parcel delivery. § 3621. Rates are set by the Board of Governors based on the recommendations of the Commission, and those decisions are in certain

circumstances subject to judicial review. §§ 3625, 3628. In making rate recommendations the Commission must consider factors including making each class of mail bear the costs attributable to it, and the effect of rate increases on the mail-using public and on competitors in the parcel delivery business. § 3622(b).

Under the PRA, the Postal Service retains its monopoly over the carriage of letters, and the power to authorize postal inspectors to search for, seize, and forfeit mail matter transported in violation of the monopoly. See §§ 601–606. It also retains the obligation to provide universal service to all parts of the country. §§ 101, 403. The Postal Service has the power of eminent domain, the power to make postal regulations, and the power to enter international postal agreements subject to the supervision of the Secretary of State. §§ 401, 407. It has, in addition, powers to contract, to acquire property, and to settle claims. § 401. As this brief summary indicates, the Postal Service has significant governmental powers, consistent with its status as an independent establishment of the Executive Branch. It was exempted from many, though not all, statutes governing federal agencies, and specifically subjected to some others. §§ 409–410. With respect to antitrust liability, however, the PRA neither exempts the Postal Service nor subjects it to liability by express mention. It is silent on the point.

The PRA waives the immunity of the Postal Service from suit by giving it the power "to sue and be sued in its official name." § 401. The first question we address is whether that waiver suffices by its own terms to subject the Postal Service to liability under the Sherman Act, ch. 647, 26 Stat. 209, as amended, 15 U. S. C. § 1 *et seq.* We begin with a discussion of our precedents bearing on the inquiry.

This Court has held that when Congress passes enabling legislation allowing an agency or other entity of the Federal Government to be sued the waiver should be given a liberal—that is to say, expansive—construction. *Federal*

Housing Administration v. *Burr,* 309 U. S. 242 (1940). In support of its holding in *Burr* the Court, in a passage often cited in later cases involving the waiver of sovereign immunity, wrote as follows:

> "[I]t must be presumed that when Congress launched a governmental agency into the commercial world and endowed it with authority to 'sue or be sued,' that agency is not less amenable to judicial process than a private enterprise under like circumstances would be." *Id.*, at 245.

This general proposition was cited in the first two cases in which the Court considered the extent of the waiver effected by the sue-and-be-sued clause of the PRA. In *Franchise Tax Bd. of Cal.* v. *Postal Service,* 467 U. S. 512 (1984), the underlying dispute concerned the obligation of the Postal Service to withhold unpaid state taxes from the wages of its employees. A unanimous Court held that the Postal Service was required to respond to an order to withhold the amounts, even though the process was a state administrative tax levy, not an order issued by a state court. *Id.*, at 525. The sue-and-be-sued clause, the Court held, must be given broad effect, and the Postal Service was required to respond to the administrative order even though it had not been issued by a judicial body. *Id.*, at 519–521.

The second case in which the Court considered the scope of the waiver effected by the PRA's sue-and-be-sued clause was *Loeffler* v. *Frank,* 486 U. S. 549 (1988). After the Postal Service had been found liable for damages from employment discrimination in an action brought under Title VII of the Civil Rights Act of 1964, the question arose whether it was subject as well to prejudgment interest. *Id.*, at 551. The Court allowed the interest, and in the course of its decision asserted, or repeated, formulations which indicate that the sue-and-be-sued clause effects a broad waiver of immunity.

Id., at 554–555. The Court also relied, however, upon the provisions of Title VII itself which, by specific amendment, extended the coverage under the Civil Rights Act to federal employees. *Id.*, at 558–561.

After *Loeffler*, this Court decided *FDIC* v. *Meyer*, 510 U. S. 471, 484 (1994). In *Meyer*, the question was whether the Federal Savings and Loan Insurance Corporation (FSLIC), an agency of the United States, could be held liable in a so-called "*Bivens* action." See *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388 (1971). A federal statute provided for a waiver of sovereign immunity in suits against the FSLIC, but the Court explained that the interpretation of the waiver statute was just the initial part of a two-part inquiry. Even though sovereign immunity had been waived, there was the further, separate question whether the agency was subject to the substantive liability recognized in *Bivens*. *Meyer*, *supra*, at 483. The *Loeffler* Court had not set forth the two-step analysis in the explicit terms *Meyer* used, but it did, as we have said, consult the statute as the source of the liability upon which the obligation to pay prejudgment interest depended.

The two-step analysis in *Meyer* applies here. We ask first whether there is a waiver of sovereign immunity for actions against the Postal Service. If there is, we ask the second question, which is whether the substantive prohibitions of the Sherman Act apply to an independent establishment of the Executive Branch of the United States.

When the Court of Appeals considered the instant case, it cited *Meyer* and seemed at the outset to follow *Meyer*'s two-step analysis. In our view, however, the ensuing discussion in the Court of Appeals' opinion was not consistent with the *Meyer* framework; for, having found that the Postal Service's immunity from suit is waived to the extent provided by the statutory sue-and-be-sued clause, the Court of Appeals relied on the same waiver to conclude that the Sherman

Act applies to the Postal Service. This conflated the two steps and resulted in an erroneous conclusion. See *Meyer*, *supra*, at 484.

As to the first step, as an "independent establishment of the executive branch of the Government of the United States," 39 U. S. C. § 201, the Postal Service is part of the Government and that status indicates immunity unless there is a waiver. The sue-and-be-sued clause waives immunity, and makes the Postal Service amenable to suit, as well as to the incidents of judicial process. § 401. See *Meyer*, *supra*, at 482; *Loeffler*, *supra*, at 565; *Franchise Tax Bd.*, *supra*, at 525. While Congress waived the immunity of the Postal Service, Congress did not strip it of its governmental status. The distinction is important. An absence of immunity does not result in liability if the substantive law in question is not intended to reach the federal entity. So we proceed to *Meyer*'s second step to determine if the substantive antitrust liability defined by the statute extends to the Postal Service. Under *Meyer*'s second step, we must look to the statute.

Some years before *Meyer* was decided, the Court of Appeals for the District of Columbia Circuit recognized the two distinct inquiries required when the question is whether the Government, or an entity it owns, is named as a defendant in a suit under the antitrust laws. *Sea-Land Serv., Inc.* v. *Alaska R. Co.*, 659 F. 2d 243, 245 (1981) (R. Ginsburg, J.). That is the correct approach. Upon examining the Sherman Act, our decisions interpreting it, and the statutes that create and organize the Postal Service, we conclude that the Postal Service is not subject to antitrust liability.

The Sherman Act imposes liability on any "person." It defines the word. It provides that "'person' . . . shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States [or of States or foreign governments]." 15 U. S. C. § 7. It follows then, that corporate or governmental status in most instances is not a bar to the imposition of liability on an en-

tity as a "person" under the Act. The federal prohibition, for instance, binds state governmental bodies. See *Georgia* v. *Evans*, 316 U. S. 159 (1942); see also *Pfizer Inc.* v. *Government of India*, 434 U. S. 308 (1978).

It is otherwise, however, when liability is pursued against the Federal Government. The Court made this proposition clear in *United States* v. *Cooper Corp.*, 312 U. S. 600, 614 (1941). The question in *Cooper* was whether, under the Sherman Act, the United States was a person who could bring a treble-damages claim for its own alleged antitrust injury. The Court held the United States could not sue for antitrust damages because it is not a person under the antitrust statute. *Id.*, at 606–607. Important to the present case is an explicit reason given by the *Cooper* Court for reaching its decision. The Court observed that if the definition of "person" included the United States, then the Government would be exposed to liability as an antitrust defendant, a result Congress could not have intended. *Id.*, at 607, 609.

After *Cooper*, Congress amended the antitrust statutes to allow the United States to bring antitrust suits. For our purposes, the means by which it did so is instructive. Congress did not change the definition of "person" in the statute, but added a new section allowing the United States to sue. See 15 U. S. C. § 15a. So, *Cooper*'s conclusion that the United States is not an antitrust "person," in particular not a person who can be an antitrust defendant, was unaltered by Congress' action; indeed, the means Congress used to amend the antitrust law implicitly ratified *Cooper*'s conclusion that the United States is not a proper antitrust defendant. See 312 U. S., at 609; *Sea-Land, supra,* at 245 ("Although Congress was well aware of the view the Court indicated in *Cooper Corp.*, that Congress had not described the United States as a 'person' for Sherman Act purposes, Congress addressed only the direct holding in that case—the ruling that the United States was not authorized to proceed

as a Sherman Act treble damage action plaintiff" (footnote omitted)).

The remaining question, then, is whether for purposes of the antitrust laws the Postal Service is a person separate from the United States itself. It is not. The statutory designation of the Postal Service as an "independent establishment of the executive branch of the Government of the United States" is not consistent with the idea that it is an entity existing outside the Government. The statutory instruction that the Postal Service is an establishment "of the executive branch of the Government of the United States" indicates just the contrary. The PRA gives the Postal Service a high degree of independence from other offices of the Government, but it remains part of the Government. The Sherman Act defines "person" to include corporations, and had the Congress chosen to create the Postal Service as a federal corporation, we would have to ask whether the Sherman Act's definition extends to the federal entity under this part of the definitional text. Congress, however, declined to create the Postal Service as a Government corporation, opting instead for an independent establishment. The choice of words likely was more informed than unconsidered, because Congress debated proposals to make the Postal Service a Government corporation before it enacted the PRA. See H. R. Rep. No. 91–1104, p. 6 (1970).

As we have noted, the PRA refers in explicit terms to various federal statutes and specifies that the Postal Service is exempt from some and subject to others. 39 U. S. C. §§ 409–410. It makes no mention of the Sherman Act or the antitrust laws, however. The silence leads to no helpful inference one way or the other on the issue before us; but the other considerations we have discussed lead us to say that absent an express statement from Congress that the Postal Service can be sued for antitrust violations despite its status as an independent establishment of the Government of the

United States, the PRA does not subject the Postal Service to antitrust liability.

Our conclusion is consistent with the nationwide, public responsibilities of the Postal Service. The Postal Service has different goals, obligations, and powers from private corporations. Its goals are not those of private enterprise. The most important difference is that it does not seek profits, but only to break even, 39 U. S. C. § 3621, which is consistent with its public character. It also has broader obligations, including the provision of universal mail delivery, the provision of free mail delivery to certain classes of persons, §§ 3201–3405, and, most recently, increased public responsibilities related to national security. Finally, the Postal Service has many powers more characteristic of Government than of private enterprise, including its state-conferred monopoly on mail delivery, the power of eminent domain, and the power to conclude international postal agreements.

On the other hand, but in ways still relevant to the nonapplicability of the antitrust laws to the Postal Service, its powers are more limited than those of private businesses. It lacks the prototypical means of engaging in anticompetitive behavior: the power to set prices. This is true both as a matter of mechanics, because pricing decisions are made with the participation of the separate Postal Rate Commission, and as a matter of substance, because price decisions are governed by principles other than profitability. See *supra,* at 740–741. Similarly, before it can close a post office, it must provide written reasons, and its decision is subject to reversal by the Commission for arbitrariness, abuse of discretion, failure to follow procedures, or lack of evidence. § 404. The Postal Service's public characteristics and responsibilities indicate it should be treated under the antitrust laws as part of the Government of the United States, not a market participant separate from it.

The Postal Service does operate nonpostal lines of business, for which it is free to set prices independent of the

Commission, and in which it may seek profits to offset losses in the postal business. § 403(a). The great majority of the organization's business, however, consists of postal services. See Revenue, Pieces, and Weight by Classes of Mail and Special Services for Government Fiscal Year 2003, available at http://www.usps.com/financials/_pdf/GFY03.pdf (as visited Jan. 23, 2004, and available in Clerk of Court's case file). Further, the Postal Service's predecessor, the Post Office Department, had nonpostal lines of business, such as money orders and postal savings accounts. Cullinan 84–85, 107. As a Cabinet agency, the old Post Office Department was not subject to the antitrust laws. The new Postal Service's lines of business beyond the scope of its mail monopoly and universal service obligation do not show it is separate from the Government under the antitrust laws.

* * *

The Postal Service, in both form and function, is not a separate antitrust person from the United States. It is part of the Government of the United States and so is not controlled by the antitrust laws. The judgment of the Court of Appeals is reversed.

It is so ordered.

Syllabus

MUHAMMAD, AKA MEASE *v.* CLOSE

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

No. 02–9065. Argued December 1, 2003—Decided February 25, 2004

Under federal law, challenges to the validity of confinement or its duration are the province of habeas corpus, but requests for relief turning on confinement circumstances may be raised under 42 U. S. C. § 1983. Where a prisoner's § 1983 action would implicitly question the conviction's validity or sentence's duration, the litigant must first achieve favorable termination of his available state, or federal habeas, opportunities to challenge the underlying conviction or sentence. *Heck* v. *Humphrey*, 512 U. S. 477. *Heck* has been applied in a § 1983 challenge to a prison's administrative action that could affect a prisoner's credits toward release based on good time served, *Edwards* v. *Balisok*, 520 U. S. 641, but is not implicated by a challenge that threatens no consequence for a prisoner's conviction or his sentence's duration. Here, prison rules required prehearing detention when petitioner Muhammad, an inmate, was charged with "threatening behavior" in the aftermath of a confrontation with respondent Close, a prison official. Muhammad was acquitted of threatening behavior at a hearing six days later, but was found guilty of insolence, for which prehearing detention would not have been mandatory. He then filed this § 1983 action, alleging that Close had charged him with threatening behavior (subjecting him to prehearing lockup) in retaliation for prior lawsuits and grievance proceedings against Close. His amended complaint did not challenge his insolence conviction, or the hearing, and did not seek to expunge the misconduct finding, seeking only damages for alleged physical, mental, and emotional injuries sustained during his prehearing detention. Accepting the Magistrate Judge's recommendation, the District Court granted Close summary judgment on the ground that Muhammad had failed to present sufficient evidence of retaliation to raise a material fact as to that element. In affirming, the Sixth Circuit found the action barred by *Heck* because Muhammad had sought expungement of the misconduct charge from the prison record when he could seek such relief only after satisfying *Heck*'s favorable termination requirement.

Held: The Sixth Circuit's decision was flawed as a matter of fact and as a matter of law. In making the erroneous factual finding that Muhammad had sought to expunge the misconduct charge from his prison record, the court simply overlooked his amended complaint that sought no such

relief. This error was compounded by the court's mistaken view that *Heck* applies categorically to all suits challenging prison disciplinary proceedings. The administrative determinations here do not raise any implication about the conviction's validity and do not necessarily affect the duration of time to be served. The effect of disciplinary proceedings on good-time credits is a matter of state law or regulation, and in this case, the Magistrate Judge expressly found or assumed that no such credits were eliminated by the challenged prehearing action. Because Muhammad raised no claim on which habeas relief could have been granted, *Heck*'s favorable termination requirement does not apply. Having previously failed to challenge the Magistrate Judge's decision that good-time credits were not affected by the allegedly retaliatory overcharge of threatening behavior and consequential prehearing detention, Close has waived the 11th-hour contention that *Heck* is squarely on point.

47 Fed. Appx. 738, reversed and remanded.

Corinne Beckwith, by appointment of the Court, 539 U. S. 925, argued the cause for petitioner. With her on the brief were *James W. Klein*, *Samia Fam*, and *Giovanna Shay*.

Thomas L. Casey, Solicitor General of Michigan, argued the cause for respondent. With him on the briefs were *Michael A. Cox*, Attorney General, and *Linda M. Olivieri* and *Kevin Himebaugh**

PER CURIAM.

I

Federal law opens two main avenues to relief on complaints related to imprisonment: a petition for habeas corpus, 28 U. S. C. § 2254, and a complaint under the Civil Rights Act of 1871, Rev. Stat. § 1979, as amended, 42 U. S. C. § 1983. Challenges to the validity of any confinement or to particulars affecting its duration are the province of habeas corpus, *Preiser* v. *Rodriguez*, 411 U. S. 475, 500 (1973); requests for relief turning on circumstances of confinement may be presented in a § 1983 action. Some cases are hybrids, with a

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**Alphonse A. Gerhardstein* filed a brief for the Prison Reform Advocacy Center as *amicus curiae* urging reversal.

prisoner seeking relief unavailable in habeas, notably damages, but on allegations that not only support a claim for recompense, but imply the invalidity either of an underlying conviction or of a particular ground for denying release short of serving the maximum term of confinement. In *Heck* v. *Humphrey*, 512 U. S. 477 (1994), we held that where success in a prisoner's § 1983 damages action would implicitly question the validity of conviction or duration of sentence, the litigant must first achieve favorable termination of his available state, or federal habeas, opportunities to challenge the underlying conviction or sentence. Accordingly, in *Edwards* v. *Balisok*, 520 U. S. 641 (1997), we applied *Heck* in the circumstances of a § 1983 action claiming damages and equitable relief for a procedural defect in a prison's administrative process, where the administrative action taken against the plaintiff could affect credits toward release based on good time served. In each instance, conditioning the right to bring a § 1983 action on a favorable result in state litigation or federal habeas served the practical objective of preserving limitations on the availability of habeas remedies. Federal petitions for habeas corpus may be granted only after other avenues of relief have been exhausted. 28 U. S. C. § 2254(b)(1)(A). See *Rose* v. *Lundy*, 455 U. S. 509 (1982). Prisoners suing under § 1983, in contrast, generally face a substantially lower gate, even with the requirement of the Prison Litigation Reform Act of 1995 that administrative opportunities be exhausted first. 42 U. S. C. § 1997e(a).

Heck's requirement to resort to state litigation and federal habeas before § 1983 is not, however, implicated by a prisoner's challenge that threatens no consequence for his conviction or the duration of his sentence.[1] There is no need to

[1] The assumption is that the incarceration that matters under *Heck* is the incarceration ordered by the original judgment of conviction, not special disciplinary confinement for infraction of prison rules. This Court has never followed the speculation in *Preiser* v. *Rodriguez*, 411 U. S. 475, 499 (1973), that such a prisoner subject to "additional and unconstitutional

preserve the habeas exhaustion rule and no impediment under *Heck* in such a case, of which this is an example.[2]

II

A

This suit grew out of a confrontation between petitioner, Muhammad, an inmate, and the respondent Michigan prison official, Close. App. 70. According to his amended complaint, Muhammad was eating breakfast when he saw Close "staring at him through the hallway window." *Id.*, at 71. Eventually Muhammad stared back, provoking Close to assume "a fighting stance" and "com[e] into the dining area at a fast pace with his face contorted." *Ibid.* Muhammad stood up and faced him, and when the two were within a foot of one another, Close asked, "whats *[sic]* up," all the while "staring angerly *[sic]*." In the aftermath of the confrontation, Muhammad was handcuffed, taken to a detention cell, and charged with violating the prison rule prohibiting "Threatening Behavior." (Emphasis deleted.)[3] Under the rules, special detention was required prior to a hearing on the charge, which occurred six days later. Muhammad was acquitted of threatening behavior, but found guilty of the lesser infraction of insolence, for which prehearing detention would not have been mandatory.[4] *Ibid.* Muhammad was

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restraints" might have a habeas claim independent of § 1983, and the contention is not raised by the State here.

[2] Members of the Court have expressed the view that unavailability of habeas for other reasons may also dispense with the *Heck* requirement. See *Heck* v. *Humphrey*, 512 U. S. 477, 491 (1994) (SOUTER, J., concurring in judgment); *Spencer* v. *Kemna*, 523 U. S. 1, 21–22 (1998) (GINSBURG, J., concurring). This case is no occasion to settle the issue.

[3] The Michigan Department of Corrections Policy Directive, No. 03.03.105 (June 6, 1994) (Directive), defines "Threatening Behavior" as "Words, actions or other behavior which expresses a[n] intent to injure or physically abuse another person." App. 40 (emphasis deleted).

[4] The Directive defines "Insolence" as "Words, actions, or other behavior which is intended to harass, or cause alarm in an employee." *Id.*, at 44 (emphasis deleted).

required to serve an additional 7 days of detention and deprived of privileges for 30 days as penalties for insolence. *Ibid.*

Muhammad then brought this § 1983 action, alleging that Close had charged him with threatening behavior (and subjected him to mandatory prehearing lockup) in retaliation for prior lawsuits and grievance proceedings against Close. *Id.*, at 72. He amended his original complaint after obtaining counsel, and neither in his amended complaint nor at any subsequent juncture did Muhammad challenge his conviction for insolence, or the subsequent disciplinary action. See Brief for Petitioner 42. The amended complaint sought no expungement of the misconduct finding, and in fact Muhammad conceded that the insolence determination was justified. The only relief sought was $10,000 in compensatory and punitive damages "for the physical, mental and emotional injuries sustained" during the six days of prehearing detention mandated by the charge of threatening behavior attributable to Close's retaliatory motive. App. 72.

Following discovery, the Magistrate Judge recommended summary judgment for Close on the ground that Muhammad had failed to come forward with sufficient evidence of retaliation to raise a genuine issue of material fact as to that element. *Id.*, at 63. The District Court adopted the recommendation. *Id.*, at 70.

B

Muhammad then appealed to the United States Court of Appeals for the Sixth Circuit, which, by an opinion designated not for publication, affirmed the summary judgment for Close, though not on the basis recommended by the Magistrate Judge and adopted by the District Court. 47 Fed. Appx. 738 (2002). Instead of considering the conclusion that Muhammad had produced inadequate evidence of retaliation, a ground that would have been dispositive if sustained, the Court of Appeals held the action barred by *Heck* because Muhammad had sought, among other relief, the expunge-

ment of the misconduct charge from the prison record. Relying upon Circuit precedent, see *Huey* v. *Stine*, 230 F. 3d 226 (2000), the Court of Appeals held that an action under § 1983 to expunge his misconduct charge and for other relief occasioned by the misconduct proceedings could be brought only after satisfying *Heck*'s favorable termination requirement. The Circuit thus maintained a split on the applicability of *Heck* to prison disciplinary proceedings in the absence of any implication going to the fact or duration of underlying sentence, four Circuits having taken the contrary view. See *Leamer* v. *Fauver*, 288 F. 3d 532, 542–544 (CA3 2002); *DeWalt* v. *Carter*, 224 F. 3d 607, 613 (CA7 2000); *Jenkins* v. *Haubert*, 179 F. 3d 19, 27 (CA2 1999); *Brown* v. *Plaut*, 131 F. 3d 163, 167–169 (CADC 1997). We granted certiorari to resolve the conflict, 539 U. S. 925 (2003), and now reverse.

III

The decision of the Court of Appeals was flawed as a matter of fact and as a matter of law. Its factual error was the assumption that Muhammad sought to expunge the misconduct charge from his prison record. The court simply overlooked the amended complaint that sought no such relief.

The factual error was compounded by following the mistaken view expressed in Circuit precedent that *Heck* applies categorically to all suits challenging prison disciplinary proceedings. But these administrative determinations do not as such raise any implication about the validity of the underlying conviction, and although they may affect the duration of time to be served (by bearing on the award or revocation of good-time credits) that is not necessarily so. The effect of disciplinary proceedings on good-time credits is a matter of state law or regulation, and in this case, the Magistrate Judge expressly found or assumed that no good-time credits were eliminated by the prehearing action Muhammad called in question. His § 1983 suit challenging this action could not therefore be construed as seeking a judgment at odds with

his conviction or with the State's calculation of time to be served in accordance with the underlying sentence. That is, he raised no claim on which habeas relief could have been granted on any recognized theory, with the consequence that *Heck*'s favorable termination requirement was inapplicable.

IV

Close tries to salvage the appellate court's judgment by arguing for the first time here that *Heck* is squarely on point because, if the § 1983 suit succeeded, Muhammad would be entitled to restoration of some good-time credits with the result of less time to be spent in prison. Brief for Respondent 17–18. But this eleventh-hour contention was waived. The Magistrate Judge's report stated that good-time credits were not affected by the allegedly retaliatory overcharge of threatening behavior and the consequential prehearing detention Muhammad complained of, and Close had every opportunity to challenge the Magistrate Judge's position in the District Court and in the Court of Appeals. Having failed to raise the claim when its legal and factual premises could have been litigated, Close cannot raise it now. See *Auer* v. *Robbins*, 519 U. S. 452, 464 (1997).

The judgment of the Court of Appeals, accordingly, is reversed, and the case is remanded for consideration of summary judgment on the ground adopted by the District Court, and for any further proceedings consistent with this opinion.

It is so ordered.

Reporter's Note

The next page is purposely numbered 801. The numbers between 755 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 6, 2003, THROUGH MARCH 1, 2004

OCTOBER 6, 2003

Certiorari Granted—Vacated and Remanded

No. 02–1553. PHILIP MORRIS USA INC. *v.* WILLIAMS, PERSONAL REPRESENTATIVE OF THE ESTATE OF WILLIAMS, DECEASED. Ct. App. Ore. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *State Farm Mut. Automobile Ins. Co.* v. *Campbell*, 538 U. S. 408 (2003). Reported below: 182 Ore. App. 44, 48 P. 3d 824.

No. 02–1748. CHRYSLER CORP. *v.* CLARK. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *State Farm Mut. Automobile Ins. Co.* v. *Campbell*, 538 U. S. 408 (2003). Reported below: 310 F. 3d 461.

No. 02–1752. HUGHES ELECTRONICS CORP., INC., ET AL. *v.* GARCIA ET AL. Ct. App. Cal., 2d App. Dist. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Green Tree Financial Corp.* v. *Bazzle*, 539 U. S. 444 (2003).

No. 02–11173. GRANT *v.* OKLAHOMA. Ct. Crim. App. Okla. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Wiggins* v. *Smith*, 539 U. S. 510 (2003). Reported below: 58 P. 3d 783.

No. 03–54. WIEN & MALKIN LLP ET AL. *v.* HELMSLEY-SPEAR, INC. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Citizens Bank* v. *Alafabco, Inc.*, 539 U. S. 52 (2003) *(per curiam)*. Reported below: 300 App. Div. 2d 32, 751 N. Y. S. 2d 21.

Certiorari Dismissed

No. 02–10724. MILLER *v.* MCCAUGHTRY, 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.

No. 02–10838. TILLI *v.* REHNQUIST, CHIEF JUSTICE OF THE UNITED STATES, 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: 60 Fed. Appx. 828.

No. 02–10847. VUKADINOVICH *v.* BOARD OF SCHOOL TRUSTEES OF NORTH NEWTON SCHOOL CORP. 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. 02–11356. SIVAK *v.* JOHNSON 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. 03–5028. GUNNELL *v.* TAFT, GOVERNOR 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. Reported below: 52 Fed. Appx. 248.

No. 03–5030. GOLDWATER *v.* ARPAIO. 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. 03–5118. MAGEE *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. 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. 03–5216. GOLDWATER *v.* KATZ, JUDGE, SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY. 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. 03–5385. NABELEK *v.* BRADFORD ET AL. Ct. App. Tex., 14th Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 03–5630. OKORO *v.* SCIBANA, WARDEN. 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. Reported below: 63 Fed. Appx. 182.

No. 03–6099. MATHISON *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.

No. 02–11034. SWINT *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. 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. 02–11190. JARRETT *v.* LOS ANGELES COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 03–5051. GREEN *v.* WATKINS, WARDEN. Sup. Ct. Colo. 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. 03–5164. GREEN *v.* NADEAU ET AL. Ct. App. Colo. 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. 03–5457. MCSHEFFREY *v.* LAPPIN, DIRECTOR, FEDERAL BUREAU OF PRISONS, 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. 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. 03–5940. ELDRIDGE *v.* UNITED STATES. 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. Reported below: 822 A. 2d 1112.

Miscellaneous Orders

No. 02M96. MCCORKLE *v.* UNITED STATES. Renewed motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 02M109. ARGUELLES *v.* UTAH; and

No. 03M21. SMITH *v.* MISSOURI. Motions for leave to proceed *in forma pauperis* without affidavits of indigency executed by petitioners granted.

No. 03M1. M. K. B. *v.* WARDEN ET AL. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 03M2. CHAMBERS *v.* ASHCROFT, ATTORNEY GENERAL, ET AL.;

No. 03M3. ESTEP *v.* PEACE ET AL.;
No. 03M4. FREER-HEETER *v.* STATE BAR OF TEXAS;
No. 03M5. GOODSON *v.* ROWLEY, SUPERINTENDENT, NORTHEAST CORRECTIONAL CENTER;
No. 03M6. PHILLIPS *v.* YARBOROUGH, WARDEN;
No. 03M8. HESS *v.* JOHNSON, SECRETARY OF NAVY;
No. 03M9. RENTERIA *v.* DEPARTMENT OF HOMELAND SECURITY;
No. 03M11. PINCKNEY *v.* ALLARD, SUPERINTENDENT, FRANKLIN CORRECTIONAL FACILITY;
No. 03M12. JACKSON *v.* PHOENIX POLICE DEPARTMENT ET AL.;
No. 03M14. LAROCCO *v.* SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY;
No. 03M15. MOORE *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.;
No. 03M16. JOHNSON *v.* NINO;
No. 03M17. BROWN *v.* UNITED STATES;
No. 03M19. PORTNOY *v.* CLAIRSON INTERNATIONAL CORP.; and
No. 03M20. JOHNSON *v.* FIRST FEDERAL SAVINGS & LOAN. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 03M7. GUINN *v.* MCGUIRE. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. 03M10. AMERICAN FOREST & PAPER ASSN. ET AL. *v.* LEAGUE OF WILDERNESS DEFENDERS/BLUE MOUNTAIN BIODIVERSITY PROJECT ET AL. Motion for leave to intervene to file petition for writ of certiorari denied.

No. 03M13. NAKAHARA *v.* CALIFORNIA; and
No. 03M18. BAILEY *v.* UNITED STATES. Motions for leave to proceed *in forma pauperis* without affidavits of indigency executed by petitioners denied.

No. 129, Orig. VIRGINIA *v.* MARYLAND. Motion of plaintiff for judicial notice denied. [For earlier order herein, see, *e. g.*, 538 U. S. 997.]

No. 99–927. ROSS ET AL. *v.* ALASKA ET AL., 528 U. S. 1155. Motion of petitioners for costs and attorney's fees denied. JUSTICE BREYER took no part in the consideration or decision of this motion.

No. 02–428. DASTAR CORP. *v.* TWENTIETH CENTURY FOX FILM CORP. ET AL., 539 U. S. 23. Motion of petitioner for attorney's fees denied without prejudice to filing in the United States Court of Appeals for the Ninth Circuit. JUSTICE BREYER took no part in the consideration or decision of this motion.

No. 02–626. SOUTH FLORIDA WATER MANAGEMENT DISTRICT *v.* MICCOSUKEE TRIBE OF INDIANS ET AL. C. A. 11th Cir. [Certiorari granted, 539 U. S. 957.] Motion of National Hydropower Association for leave to file a brief as *amicus curiae* granted.

No. 02–811. GROH *v.* RAMIREZ ET AL. C. A. 9th Cir. [Certiorari granted, 537 U. S. 1231.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 02–857. HOUSEHOLD CREDIT SERVICES, INC., ET AL. *v.* PFENNIG. C. A. 6th Cir. [Certiorari granted, 539 U. S. 957.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 02–954. OFFICE OF INDEPENDENT COUNSEL *v.* FAVISH ET AL. C. A. 9th Cir. [Certiorari granted, 538 U. S. 1012.] Motion of Reporters Committee for Freedom of the Press et al. for leave to participate in oral argument as *amici curiae* and for divided argument denied.

No. 02–964. BALDWIN *v.* REESE. C. A. 9th Cir. [Certiorari granted, 538 U. S. 1056.] Motion of respondent for appointment of counsel granted, and Dennis N. Balske, Esq., of Portland, Ore., is appointed to serve as counsel for respondent in this case.

No. 02–1019. ARIZONA *v.* GANT. Ct. App. Ariz. [Certiorari granted, 538 U. S. 976.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 02–1080. GENERAL DYNAMICS LAND SYSTEMS, INC. *v.* CLINE ET AL. C. A. 6th Cir. [Certiorari granted, 538 U. S. 976.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 02–1205. JONES ET AL., ON BEHALF OF HERSELF AND A CLASS OF OTHERS SIMILARLY SITUATED *v.* R. R. DONNELLEY & SONS CO. C. A. 7th Cir. [Certiorari granted, 538 U. S. 1030.]

Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 02–1315. LOCKE, GOVERNOR OF WASHINGTON, ET AL. *v.* DAVEY. C. A. 9th Cir. [Certiorari granted, 538 U. S. 1031.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 02–1348. OLYMPIC AIRWAYS *v.* HUSAIN, INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF HANSON, DECEASED, ET AL. C. A. 9th Cir. [Certiorari granted, 538 U. S. 1056.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. JUSTICE BREYER took no part in the consideration or decision of this motion.

No. 02–1646. HIGBEE CO., DBA DILLARD DEPARTMENT STORES, INC. *v.* CHAPMAN. C. A. 6th Cir.;

No. 02–1672. JACKSON *v.* BIRMINGHAM BOARD OF EDUCATION. C. A. 11th Cir.; and

No. 02–1865. 3M CO., FKA MINNESOTA MINING & MANUFACTURING CO. *v.* LEPAGE'S INC. ET AL. C. A. 3d Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 02–6683. CASTRO *v.* UNITED STATES. C. A. 11th Cir. [Certiorari granted, 537 U. S. 1170.] Motion of petitioner for appointment of counsel granted, and Michael G. Frick, Esq., of Brunswick, Ga., is appointed to serve as counsel for petitioner in this case.

No. 02–9410. CRAWFORD *v.* WASHINGTON. Sup. Ct. Wash. [Certiorari granted, 539 U. S. 914.] Motion of petitioner for appointment of counsel granted, and Jeffrey L. Fisher, Esq., of Seattle, Wash., is appointed to serve as counsel for petitioner in this case.

No. 02–9872. IN RE MORRISON. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [538 U. S. 1030] denied.

No. 02–9889. IN RE MORRISON. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [538 U. S. 1030] denied.

No. 02–9903. STRABLE *v.* STRABLE. Ct. App. S. C. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [539 U. S. 913] denied.

No. 02–9936. ELDRIDGE *v.* DISTRICT OF COLUMBIA ET AL. C. A. D. C. Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [539 U. S. 913] denied.

No. 02–9945. BROOKS *v.* AJIBADE ET AL. C. A. 11th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [538 U. S. 1054] denied.

No. 02–9957. SHELTON *v.* EIKERMAN. C. A. 8th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [539 U. S. 913] denied.

No. 02–10471. HARRIS *v.* SAN BERNARDINO COUNTY DEPARTMENT OF CHILDREN'S SERVICES. Ct. App. Cal., 4th App. Dist.;
No. 02–10663. ROWE *v.* UNION PLANTERS BANK OF SOUTHEAST MISSOURI ET AL. C. A. 8th Cir.; and
No. 03–5252. GAINES *v.* POMONA COLLEGE. C. A. 9th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until October 27, 2003, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 02–11062. WASHINGTON *v.* STATE STREET BANK & TRUST CO. ET AL. C. A. 1st Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until October 27, 2003, 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 BREYER took no part in the consideration or decision of this motion.

No. 02–1789. IN RE SIMMONS;
No. 02–10760. IN RE COOPER;
No. 02–11141. IN RE RODGERS;
No. 02–11155. IN RE HAMIDULLAH;
No. 02–11363. IN RE CHARLES;
No. 03–34. IN RE PUNCHARD;
No. 03–5026. IN RE HUBBARD;
No. 03–5146. IN RE GALLEGO;

No. 03–5152. IN RE TIBBS;
No. 03–5214. IN RE BANKSTON;
No. 03–5309. IN RE SEXTON;
No. 03–5371. IN RE GORMAN;
No. 03–5378. IN RE ZUNIGA-HERNANDEZ;
No. 03–5468. IN RE BUSH;
No. 03–5482. IN RE RIEMER;
No. 03–5602. IN RE MCQUIDDY;
No. 03–5696. IN RE BROWN;
No. 03–5857. IN RE POWELL;
No. 03–5926. IN RE COBBIN;
No. 03–6018. IN RE AMBORT;
No. 03–6025. IN RE SMITH;
No. 03–6093. IN RE ABDUL-MATEEN, AKA BENNETT; and
No. 03–6156. IN RE CRUZ. Petitions for writs of habeas corpus denied.

No. 02–11159. IN RE FERENC. 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.

No. 03–5043. IN RE PHELPS. 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.

No. 03–5743. IN RE PHELPS. 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.

No. 03–5887. IN RE GRAVES. 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.

No. 02–1729. IN RE BARCLAY ET AL.;
No. 02–1816. IN RE JARMUTH;
No. 02–10496. IN RE MORALES;
No. 02–10498. IN RE KINGSBERRY;
No. 02–10542. IN RE GARDELLA;
No. 02–10589. IN RE BIERS;
No. 02–10659. IN RE SEDGWICK;
No. 02–10841. IN RE ACEVEDO;
No. 02–10963. IN RE ROBBINS;
No. 02–10986. IN RE TOWNSEND;

No. 02–11021. IN RE WILLIAMS;
No. 02–11238. IN RE WALKER;
No. 02–11267. IN RE WILLIAMS;
No. 02–11271. IN RE NELSON;
No. 03–64. IN RE DYE;
No. 03–105. IN RE FLORET, L. L. C., ET AL.;
No. 03–5016. IN RE GREGG;
No. 03–5121. IN RE MITCHELL;
No. 03–5128. IN RE BROADWAY; and
No. 03–5418. IN RE AMAKER. Petitions for writs of mandamus denied.

No. 02–1774. IN RE RIGGS ET AL. Motion of petitioners to strike all respondent's responses and for Rule 11 sanctions denied. Petition for writ of mandamus and/or prohibition denied.

No. 02–10672. IN RE DUDLEY;
No. 03–5069. IN RE CRAWFORD; and
No. 03–5504. IN RE PAGE. Petitions for writs of mandamus and/or prohibition denied.

Certiorari Denied

No. 02–901. BLACKMAN *v.* CITY OF DALLAS, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 33 Fed. Appx. 704.

No. 02–1094. TEXAS *v.* JACKSON. Ct. App. Tex., 11th Dist. Certiorari denied. Reported below: 75 S. W. 3d 653.

No. 02–1223. VICTORIA COUNTY, TEXAS *v.* PYLE. C. A. 5th Cir. Certiorari denied. Reported below: 302 F. 3d 567.

No. 02–1309. STANFIELD *v.* CITY OF FLORENCE, ALABAMA. C. A. 11th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 932.

No. 02–1424. WOODFORD, WARDEN *v.* DOUGLAS. C. A. 9th Cir. Certiorari denied. Reported below: 316 F. 3d 1079.

No. 02–1466. FAVREAU ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 317 F. 3d 1346.

No. 02–1486. ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. *v.* WYATT. C. A. 9th Cir. Certiorari denied. Reported below: 315 F. 3d 1108.

No. 02–1489. HOLLINS *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 6th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 533.

No. 02–1498. B. WILLIS, C. P. A., INC. *v.* SURFACE TRANSPORTATION BOARD ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 51 Fed. Appx. 321.

No. 02–1501. MILLER WASTE MILLS, INC. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 315 F. 3d 951.

No. 02–1504. KWOK *v.* NEW YORK CITY TRANSIT AUTHORITY ET AL. C. A. 2d Cir. Certiorari denied.

No. 02–1511. BOOKER *v.* CITY OF ST. LOUIS, MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 309 F. 3d 464.

No. 02–1513. STEWART ET UX. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 274 F. 3d 1053 and 307 F. 3d 446.

No. 02–1521. AT&T CORP. *v.* TING, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 319 F. 3d 1126.

No. 02–1522. BEEM ET AL. *v.* MCKUNE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 317 F. 3d 1175.

No. 02–1523. SANFORD, GOVERNOR OF SOUTH CAROLINA, ET AL. *v.* THOMPSON, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 311 F. 3d 316.

No. 02–1524. WEINSTOCK *v.* COLUMBIA UNIVERSITY. C. A. 2d Cir. Certiorari denied. Reported below: 224 F. 3d 33.

No. 02–1529. GOMEZ-CHAVEZ *v.* PERRYMAN, DISTRICT DIRECTOR, BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 308 F. 3d 796.

No. 02–1537. LEEPER ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 928.

No. 02–1540. LOUQUE *v.* ALLSTATE INSURANCE CO. C. A. 5th Cir. Certiorari denied. Reported below: 314 F. 3d 776.

No. 02–1543. UNISYS CORP. *v.* PENNSYLVANIA BOARD OF FINANCE AND REVENUE. Sup. Ct. Pa. Certiorari denied. Reported below: 571 Pa. 139, 812 A. 2d 448.

No. 02–1546. RUBICON INC. ET AL. *v.* WILLIAMS (two judgments). Ct. App. La., 1st Cir. Certiorari denied. Reported below: 808 So. 2d 852 (first judgment); 754 So. 2d 1081 (second judgment).

No. 02–1547. RAMSEY, DBA TIIN-MA LOGGING CO. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 302 F. 3d 1074.

No. 02–1566. LARIVEE *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 656 N. W. 2d 226.

No. 02–1576. NIGRO *v.* FEDERAL LABOR RELATIONS AUTHORITY. C. A. 4th Cir. Certiorari denied.

No. 02–1581. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 50 Fed. Appx. 113.

No. 02–1583. CLABBERS *v.* GULFSTREAM AEROSPACE CORP. C. A. 11th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 669.

No. 02–1584. CARROLL COUNTY, ILLINOIS, ET AL. *v.* PAYTON ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 308 F. 3d 673.

No. 02–1590. MOUNTAIN STATES LEGAL FOUNDATION ET AL. *v.* BUSH, PRESIDENT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 306 F. 3d 1132.

No. 02–1594. COLBERT *v.* CALIFORNIA DEPARTMENT OF MENTAL HEALTH ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 525.

No. 02–1595. RUTTER *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 93 S. W. 3d 714.

No. 02–1604. GENERAL MOTORS CORP. *v.* LAUX ET AL. C. A. 7th Cir. Certiorari denied.

No. 02–1605. General Motors Corp. *v.* Black et al. C. A. 7th Cir. Certiorari denied.

No. 02–1607. Petitt, District Attorney of Washington County, Pennsylvania *v.* Brilla. C. A. 3d Cir. Certiorari denied. Reported below: 57 Fed. Appx. 947.

No. 02–1608. Ruggiero *v.* Federal Communications Commission et al. C. A. D. C. Cir. Certiorari denied. Reported below: 317 F. 3d 239.

No. 02–1610. Jacoby, Superintendent of Bethel School District, et al. *v.* Prince, a Minor, By and Through Her Parents, Prince et ux. C. A. 9th Cir. Certiorari denied. Reported below: 303 F. 3d 1074.

No. 02–1611. Ruppenthal *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 331 Ill. App. 3d 916, 771 N. E. 2d 1002.

No. 02–1613. Holbrook *v.* Allied Van Lines, Inc. C. A. 11th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 933.

No. 02–1615. Washington *v.* Yarborough, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 52 Fed. Appx. 405.

No. 02–1616. Wilkins *v.* Disciplinary Commission of the Supreme Court of Indiana. Sup. Ct. Ind. Certiorari denied. Reported below: 777 N. E. 2d 714.

No. 02–1617. Branch *v.* Sony Music Entertainment, Inc. C. A. 2d Cir. Certiorari denied. Reported below: 34 Fed. Appx. 23.

No. 02–1619. Lautermilch *v.* Findlay City Schools. C. A. 6th Cir. Certiorari denied. Reported below: 314 F. 3d 271.

No. 02–1620. Independent Insurance Agents and Brokers of America, Inc., et al. *v.* Hawke, Comptroller of the Currency, et al. C. A. 4th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 392.

No. 02–1623. Tulare County, California, et al. *v.* Bush, President of the United States, et al. C. A. D. C. Cir. Certiorari denied. Reported below: 306 F. 3d 1138.

No. 02–1626. COURTNEY ET AL. *v.* SMITH ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 297 F. 3d 455.

No. 02–1629. CLARK COUNTY, NEVADA, ET AL. *v.* HERNANDEZ MIRANDA. C. A. 9th Cir. Certiorari denied. Reported below: 319 F. 3d 465.

No. 02–1631. PORTALES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 52 Fed. Appx. 290.

No. 02–1633. SOLIMAN *v.* PHILIP MORRIS, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 311 F. 3d 966.

No. 02–1634. BARRY *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 333 Ill. App. 3d 1220, —— N. E. 2d ——.

No. 02–1635. RMS TECHNOLOGY, INC. *v.* TELEDYNE INDUSTRIES, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 853.

No. 02–1637. BAZOR *v.* BOOMTOWN BELLE CASINO ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 313 F. 3d 300.

No. 02–1638. GALLO-LOEKS *v.* U S WEST COMMUNICATIONS, INC. C. A. 10th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 846.

No. 02–1640. HACEESA ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 309 F. 3d 722.

No. 02–1642. THOMAS JEFFERSON UNIVERSITY HOSPITAL ET AL. *v.* BYNUM ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 806 A. 2d 455.

No. 02–1643. EBECK *v.* HEDRICK, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 02–1644. CLEVELAND & CLEVELAND, P. C., ET AL. *v.* BBL GROUP, INC. C. A. 11th Cir. Certiorari denied. Reported below: 52 Fed. Appx. 490.

No. 02–1645. QUICK TECHNOLOGIES, INC. *v.* SAGE GROUP, PLC, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 313 F. 3d 338.

No. 02–1647. GOWESKY *v.* SINGING RIVER HOSPITAL SYSTEM, DBA OCEAN SPRINGS HOSPITAL. C. A. 5th Cir. Certiorari denied. Reported below: 321 F. 3d 503.

No. 02–1648. KEITH *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 595.

No. 02–1651. DAVID *v.* HALL, SUPERINTENDENT, OLD COLONY CORRECTIONAL CENTER. C. A. 1st Cir. Certiorari denied. Reported below: 318 F. 3d 343.

No. 02–1653. ANOLIK ET AL. *v.* PHILIPPINE AIRLINES, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 808.

No. 02–1655. ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. *v.* MAYWEATHERS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 314 F. 3d 1062.

No. 02–1658. SHOOK *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 313 Mont. 347, 67 P. 3d 863.

No. 02–1660. LEWIS *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied. Reported below: 88 S. W. 3d 383.

No. 02–1663. MURRAY, EXECUTRIX OF THE ESTATE OF MURRAY, DECEASED, ET AL. *v.* CONNETQUOT CENTRAL SCHOOL DISTRICT OF ISLIP ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 54 Fed. Appx. 18.

No. 02–1665. GAMBONE ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 314 F. 3d 163.

No. 02–1666. FELD *v.* PROFESSIONAL CONDUCT COMMITTEE OF THE SUPREME COURT OF NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied. Reported below: 149 N. H. 19, 815 A. 2d 383.

No. 02–1668. VAN SYOC *v.* HOUSING AUTHORITY AND URBAN REDEVELOPMENT AGENCY OF THE CITY OF ATLANTIC CITY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 51 Fed. Appx. 82.

No. 02–1670. MANN *v.* UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT. C. A. 7th Cir. Certiorari denied. Reported below: 311 F. 3d 788.

No. 02–1671. THOMAS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 854 So. 2d 1216.

No. 02–1679. BARKER *v.* MANCOR CAROLINA, INC. C. A. 4th Cir. Certiorari denied. Reported below: 52 Fed. Appx. 621.

No. 02–1681. CAMPBELL *v.* JOHN HANCOCK FINANCIAL SERVICES, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 918.

No. 02–1685. ZISK ET AL. *v.* ZISK. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 02–1686. MCCARTHY *v.* SUPREME COURT OF CALIFORNIA ET AL. Sup. Ct. Cal. Certiorari denied.

No. 02–1687. MILLER ET UX. *v.* SILVER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 315 F. 3d 417.

No. 02–1688. SINGLETON *v.* CANNON, SHERIFF, CHARLESTON COUNTY, SOUTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 151.

No. 02–1690. LESLIE *v.* ICA CONSTRUCTION CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 808.

No. 02–1691. JAMES *v.* HERBERT, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 57 Fed. Appx. 894.

No. 02–1694. WILLINGHAM *v.* LOUGHNAN ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 321 F. 3d 1299.

No. 02–1695. CADDELL, INDIVIDUALLY AND AS INDEPENDENT EXECUTOR OF THE ESTATE OF CADDELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 918.

No. 02–1696. KHAN *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 837 So. 2d 623.

No. 02–1697. SCHLUTER *v.* MINNESOTA. Ct. App. Minn. Certiorari denied. Reported below: 653 N. W. 2d 787.

No. 02–1698. KOVALCHICK ET UX. *v.* R/S FINANCIAL CORP. Super. Ct. Pa. Certiorari denied.

No. 02–1699. KOZ *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 56 Fed. Appx. 474.

No. 02–1700. MCAFEE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 223.

No. 02–1704. LEYVAS *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 194.

No. 02–1705. SILBER ET AL. *v.* SILBER. Ct. App. N. Y. Certiorari denied. Reported below: 99 N. Y. 2d 395, 786 N. E. 2d 1263.

No. 02–1707. BURKHART *v.* QUILICI. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 02–1708. SPETH *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 02–1709. LASSONDE *v.* PLEASANTON UNIFIED SCHOOL DISTRICT. C. A. 9th Cir. Certiorari denied. Reported below: 320 F. 3d 979.

No. 02–1710. CITY OF CHICAGO, ILLINOIS *v.* WEINBERG. C. A. 7th Cir. Certiorari denied. Reported below: 310 F. 3d 1029.

No. 02–1712. THURGOOD *v.* BURTON, JUDGE, THIRD JUDICIAL DISTRICT COURT OF UTAH, SALT LAKE COUNTY, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 460.

No. 02–1713. MIDWEST GAS SERVICES, INC., ET AL. *v.* INDIANA GAS CO., INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 317 F. 3d 703.

No. 02–1715. PEGASUS ET AL., DBA SALSA DAVE'S *v.* RENO NEWSPAPERS, INC., DBA RENO GAZETTE-JOURNAL. Sup. Ct. Nev. Certiorari denied. Reported below: 118 Nev. 706, 57 P. 3d 82.

No. 02–1716. GRIFFIN *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 292 App. Div. 2d 395, 738 N. Y. S. 2d 601.

No. 02–1717. HERNANDEZ *v.* CRAWFORD BUILDING MATERIAL CO., DBA CRAWFORD'S DISCOUNT CARPET HOME AND FLOOR CENTER; and MALVEAU ET AL. *v.* EAST BATON ROUGE PARISH SCHOOL

BOARD ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 321 F. 3d 528 (first judgment); 320 F. 3d 570 (second judgment).

No. 02–1718. REVELL *v.* HOFFMAN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 309 F. 3d 1228.

No. 02–1719. O'DELL ET AL. *v.* ARIZONA. Ct. App. Ariz. Certiorari denied. Reported below: 202 Ariz. 453, 46 P. 3d 1074.

No. 02–1720. AUTO STIEGLER, INC. *v.* LITTLE. Sup. Ct. Cal. Certiorari denied. Reported below: 29 Cal. 4th 1064, 63 P. 3d 979.

No. 02–1721. CRYNS *v.* ILLINOIS EX REL. HEWSON, ACTING DIRECTOR, ILLINOIS DEPARTMENT OF PROFESSIONAL REGULATION. Sup. Ct. Ill. Certiorari denied. Reported below: 203 Ill. 2d 264, 786 N. E. 2d 139.

No. 02–1722. UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL–CIO–CLC, LOCAL 1445 *v.* POLAND SPRING CORP. C. A. 1st Cir. Certiorari denied. Reported below: 314 F. 3d 29.

No. 02–1724. SECURITIES AMERICA, INC. *v.* ROGERS ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 850 So. 2d 1252.

No. 02–1725. LANE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 323 F. 3d 568.

No. 02–1726. KINCAID *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 778 N. E. 2d 789.

No. 02–1728. BELL ET UX. *v.* IRWIN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 321 F. 3d 637.

No. 02–1730. BAY HARBOUR ASSOCIATES, L. P., ET AL. *v.* LEUCADIA NATIONAL CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 56 Fed. Appx. 21.

No. 02–1731. SODEXHO MARRIOTT SERVICES, INC. *v.* MCREYNOLDS. C. A. D. C. Cir. Certiorari denied.

No. 02–1735. CALIFORNIA TROUT, INC. *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 313 F. 3d 1131.

No. 02–1736. MEYER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 02–1737. SPERO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 331 F. 3d 57.

No. 02–1739. YOUNG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 900.

No. 02–1741. MCKNIGHT *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 352 S. C. 635, 576 S. E. 2d 168.

No. 02–1742. JENNINGS *v.* MICHIGAN. Cir. Ct. Kalamazoo County, Mich. Certiorari denied.

No. 02–1743. CARPENTER *v.* CHILDREN AND YOUTH SERVICES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 64 Fed. Appx. 850.

No. 02–1744. YOUNG ET AL. *v.* CITY OF JACKSONVILLE, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 922.

No. 02–1745. TRAVELERS INSURANCE CO. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 303 F. 3d 1373 and 319 F. 3d 1380.

No. 02–1746. SANDWICH CHEF OF TEXAS, INC., DBA WALL STREET DELI *v.* RELIANCE NATIONAL INDEMNITY INSURANCE CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 319 F. 3d 205.

No. 02–1749. HI-HEALTH SUPERMART CORP. *v.* LANSDALE. C. A. 9th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 268.

No. 02–1750. HYDE ET AL. *v.* INTERNATIONAL PAPER CO. C. A. 11th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 922.

No. 02–1751. ARENAS-MORALES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 310 F. 3d 1217.

No. 02–1754. BATTEN ET AL. *v.* GOMEZ ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 324 F. 3d 288.

No. 02–1757. BOND *v.* BLUM ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 317 F. 3d 385.

No. 02–1758. ASHLEY CREEK PHOSPHATE CO. *v.* CHEVRON U. S. A. INC. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 315 F. 3d 1245.

No. 02–1759. BUNCOMBE COUNTY, NORTH CAROLINA, BOARD OF EDUCATION *v.* ROBERTS. Ct. App. N. C. Certiorari denied. Reported below: 150 N. C. App. 86, 563 S. E. 2d 37.

No. 02–1760. PRICER ET AL. *v.* BUTLER ET UX. Sup. Ct. Va. Certiorari denied.

No. 02–1761. BROSNAHAN BUILDERS, INC., ET AL. *v.* HARLEYSVILLE MUTUAL INSURANCE CO. C. A. 3d Cir. Certiorari denied.

No. 02–1763. SCALLEN ET AL. *v.* REGENTS OF THE UNIVERSITY OF NEW MEXICO. C. A. Fed. Cir. Certiorari denied. Reported below: 321 F. 3d 1111.

No. 02–1764. SOB, INC., DBA "SUGAR DADDY'S," ET AL. *v.* COUNTY OF BENTON, MINNESOTA, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 317 F. 3d 856.

No. 02–1767. MIMS *v.* CRIST, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–1768. SCHOFIELD *v.* UTAH. Sup. Ct. Utah. Certiorari denied. Reported below: 63 P. 3d 667.

No. 02–1769. JONES *v.* PORT TERMINAL RAILROAD ASSN. Ct. App. Tex., 4th Dist. Certiorari denied. Reported below: 82 S. W. 3d 126.

No. 02–1770. TABLE MOUNTAIN RANCHERIA *v.* AMERICAN VANTAGE COS. Ct. App. Cal., 5th App. Dist. Certiorari denied. Reported below: 103 Cal. App. 4th 590, 126 Cal. Rptr. 2d 849.

No. 02–1771. AVERY *v.* SUPERIOR BANK, FSB. C. A. 4th Cir. Certiorari denied. Reported below: 53 Fed. Appx. 309.

No. 02–1773. SUK YOON KIM ET AL. *v.* ISHIKAWAJIMA HARIMA HEAVY INDUSTRIES, LTD., ET AL.;

No. 02–1776. TENNEY ET AL. *v.* MITSUI & CO., LTD., ET AL.;

No. 02–1778. MA ET AL. *v.* KAJIMA CORP. ET AL.; and

No. 02–1784. SALDAJENO ET AL. *v.* ISHIHARA SANGYO KAISHA, LTD., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 324 F. 3d 692.

No. 02–1775. BARTON *v.* COLORADO. Ct. App. Colo. Certiorari denied. Reported below: 58 P. 3d 1075.

No. 02–1777. COHEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 287.

No. 02–1780. DIXON *v.* PRINCIPI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 53 Fed. Appx. 934.

No. 02–1781. JOSEPH *v.* SALT LAKE CITY CIVIL SERVICE COMMISSION ET AL. Ct. App. Utah. Certiorari denied. Reported below: 53 P. 3d 11.

No. 02–1782. MILLER ET AL. *v.* MCMILLIN. Sup. Ct. Miss. Certiorari denied. Reported below: 838 So. 2d 226.

No. 02–1783. MAHER ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 314 F. 3d 600.

No. 02–1785. JORDAN *v.* UNITED STATES; and
No. 03–19. WOODWARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 316 F. 3d 1215.

No. 02–1786. ROBINSON *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 266.

No. 02–1787. BIERENBAUM *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 301 App. Div. 2d 119, 748 N. Y. S. 2d 563.

No. 02–1788. TURNER *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 180.

No. 02–1790. NWANGWA *v.* FEDERAL EXPRESS CORP. C. A. 7th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 814.

No. 02–1792. JONES ET AL. *v.* BUFFALO TOWNSHIP. Sup. Ct. Pa. Certiorari denied. Reported below: 571 Pa. 637, 813 A. 2d 659.

No. 02–1793. PECOR *v.* WALLS, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 723.

No. 02–1795. VOORHAAR, SHERIFF, ST. MARY'S COUNTY, MARYLAND, ET AL. *v.* ROSSIGNOL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 316 F. 3d 516.

No. 02–1797. INDIAN CREEK CORP. ET AL. *v.* IOWA EX REL. IOWA DEPARTMENT OF NATURAL RESOURCES. Dist. Ct. Iowa, Jasper County. Certiorari denied.

No. 02–1798. SHEPPARD *v.* BEERMAN, JUSTICE, SUPREME COURT OF NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 317 F. 3d 351.

No. 02–1799. PERRY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 835.

No. 02–1800. INTERNATIONAL MEDICAL GROUP, INC. *v.* AMERICAN ARBITRATION ASSN., INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 312 F. 3d 833.

No. 02–1801. LONG *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 324 F. 3d 475.

No. 02–1803. CARPENTER *v.* PENNELL SCHOOL DISTRICT ELEMENTARY UNIT. C. A. 3d Cir. Certiorari denied.

No. 02–1804. MEADE *v.* MILLER, SUCCESSOR PERSONAL REPRESENTATIVE OF THE ESTATE OF MEADE, DECEASED, ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 145 Md. App. 721.

No. 02–1805. HANYOK *v.* HANYOK. Sup. Ct. Va. Certiorari denied.

No. 02–1806. RAM ET UX. *v.* COOPER. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 02–1807. DORIS DAY ANIMAL LEAGUE ET AL. *v.* VENEMAN, SECRETARY OF AGRICULTURE, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 315 F. 3d 297.

No. 02–1808. FRIEDMAN ET AL., TRUSTEES UNDER THE WILL OF MEISEL ET UX. *v.* SALOMON/SMITH BARNEY, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 313 F. 3d 796.

No. 02–1810. FACE, VIRGINIA COMMISSIONER OF FINANCIAL INSTITUTIONS, ET AL. *v.* NATIONAL HOME EQUITY MORTGAGE ASSN. C. A. 4th Cir. Certiorari denied. Reported below: 322 F. 3d 802.

No. 02–1811. GREEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 324 F. 3d 375.

No. 02–1812. ANGINO ET AL. *v.* VAN WAGNER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 53 Fed. Appx. 655.

No. 02–1813. FLANAGAN ET AL. *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 316 F. 3d 728.

No. 02–1815. GASSER *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 74 Conn. App. 527, 812 A. 2d 188.

No. 02–1817. MAYER *v.* NEXTEL WEST CORP., DBA NEXTEL COMMUNICATIONS. C. A. 8th Cir. Certiorari denied. Reported below: 318 F. 3d 803.

No. 02–1818. KANOFSKY ET AL. *v.* UNIVERSITY OF MEDICINE AND DENTISTRY OF NEW JERSEY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 50 Fed. Appx. 546.

No. 02–1819. GOVERNMENT OF THE VIRGIN ISLANDS ET AL. *v.* BLUEBEARD'S CASTLE, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 321 F. 3d 394.

No. 02–1820. WOLPOFF & ABRAMSON, L. L. P., ET AL. *v.* MILLER. C. A. 2d Cir. Certiorari denied. Reported below: 321 F. 3d 292.

No. 02–1821. VARNER *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 02–1823. CROWLEY, WARDEN, ET AL. *v.* BROWN. C. A. 6th Cir. Certiorari denied. Reported below: 312 F. 3d 782.

No. 02–1825. MITCHELL *v.* CITY OF HOUSTON, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 211.

No. 02–1827. BARAVORDEH *v.* SCHELL. Super. Ct. Pa. Certiorari denied. Reported below: 806 A. 2d 474.

No. 02–1828. PLUMEY-CRUZ ET UX. *v.* WESTINGHOUSE ELECTRONIC CORP. ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 51 Fed. Appx. 892.

No. 02–1830. SCHAFLER *v.* SUMMER. Sup. Ct. N. Y., Erie County. Certiorari denied.

No. 02–1831. SOMMER ET UX. *v.* DAVIS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 317 F. 3d 686.

No. 02–1832. MCMAHON *v.* ALBANY UNIFIED SCHOOL DISTRICT ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 104 Cal. App. 4th 1275, 129 Cal. Rptr. 2d 184.

No. 02–1833. JARDINE *v.* BROTHER RECORDS, INC. C. A. 9th Cir. Certiorari denied. Reported below: 318 F. 3d 900.

No. 02–1834. MCCRADY *v.* TOWN OF WARDENSVILLE, WEST VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 682.

No. 02–1835. GEORGE WASHINGTON UNIVERSITY *v.* DISTRICT OF COLUMBIA ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 318 F. 3d 203.

No. 02–1836. GONSA *v.* DONNELLY, SUPERINTENDENT, WENDE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 51 Fed. Appx. 902.

No. 02–1837. GRAYSON *v.* SNOW, SECRETARY OF THE TREASURY. C. A. 7th Cir. Certiorari denied. Reported below: 308 F. 3d 808.

No. 02–1838. SCOTT ET AL. *v.* SCHOOL BOARD OF ALACHUA COUNTY, FLORIDA. Certiorari denied. C. A. 11th Cir. Reported below: 324 F. 3d 1246.

No. 02–1839. BOWERSOCK *v.* BOWERSOCK. Ct. App. Ohio, Allen County. Certiorari denied.

No. 02–1840. MURR *v.* THOMS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 572.

No. 02–1841. ZIDELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 323 F. 3d 412.

No. 02–1842. CITICORP VENTURE CAPITAL, LTD. *v.* COMMITTEE OF CREDITORS HOLDING UNSECURED CLAIMS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 323 F. 3d 228.

No. 02–1844. FRAISER *v.* HOWERTON, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 713.

No. 02–1846. ANDERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 326 F. 3d 1319.

No. 02–1848. KOTTSCHADE *v.* CITY OF ROCHESTER, MINNESOTA. C. A. 8th Cir. Certiorari denied. Reported below: 319 F. 3d 1038.

No. 02–1849. JUDICIAL WATCH, INC. *v.* ROSSOTTI ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 317 F. 3d 401.

No. 02–1850. COTTER ET AL. *v.* CITY OF BOSTON, MASSACHUSETTS, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 323 F. 3d 160.

No. 02–1851. MITRANO *v.* KELLY. Sup. Ct. Vt. Certiorari denied. Reported below: 175 Vt. 639, 824 A. 2d 609.

No. 02–1852. OLANDER *v.* STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 317 F. 3d 807.

No. 02–1853. KENNEDY ET AL. *v.* HUGHES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 734.

No. 02–1854. KANESHIRO, SURVIVING SPOUSE OF KANESHIRO *v.* HOLMES & NARVER, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 79.

No. 02–1855. KINSEY, JUDGE *v.* FLORIDA JUDICIAL QUALIFICATIONS COMMISSION. Sup. Ct. Fla. Certiorari denied. Reported below: 842 So. 2d 77.

No. 02–1857. JONES ET AL. *v.* LIBERTY BANK OF COLLINSVILLE, ALABAMA, ET AL. Ct. Civ. App. Ala. Certiorari denied. Reported below: 876 So. 2d 529.

No. 02–1858. SANDOZ, DBA SANDOZ MAINTENANCE SERVICE, ET AL. *v.* BOCANEGRA ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 320 F. 3d 581.

No. 02–1859. BOCA INVESTERINGS PARTNERSHIP ET AL. *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 314 F. 3d 625.

No. 02–1860. TROHA ET AL. *v.* TEAMSTERS NATIONAL AUTOMOBILE TRANSPORTERS INDUSTRY NEGOTIATING COMMITTEE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 328 F. 3d 325.

No. 02–1861. HIEN AN DAO *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 779.

No. 02–1862. COUSIN *v.* BERRY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 325 F. 3d 627.

No. 02–1863. WILKES *v.* WYOMING DEPARTMENT OF EMPLOYMENT, FAIR LABOR STANDARDS DIVISION. C. A. 10th Cir. Certiorari denied. Reported below: 314 F. 3d 501.

No. 02–1866. SHWAYDER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 312 F. 3d 1109 and 320 F. 3d 889.

No. 02–1868. INGERSON *v.* TWENTIETH CENTURY FOX FILM CORP. ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 02–1869. HOUSE *v.* COPLEY PRESS, INC., ET AL. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 333 Ill. App. 3d 1226, —— N. E. 2d ——.

No. 02–8849. ESPARZA *v.* MITCHELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 310 F. 3d 414.

No. 02–9037. GONZALEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 311 F. 3d 440.

No. 02–9087. ROBINSON *v.* JOHNSON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 313 F. 3d 128.

No. 02–9438. SELVERA *v.* FRIO COUNTY, TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 02–9447. RAMOS ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 47 Fed. Appx. 471.

No. 02–9481. TUCKER *v.* OHIO. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 02–9505. GRAVES *v.* WORKERS' COMPENSATION APPEALS BOARD ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 02–9581. MCMAHON *v.* REBOUND CARE, DBA OPEN ARM CARE. C. A. 6th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 187.

No. 02–9756. TORRES *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 102 Cal. App. 4th 1053, 126 Cal. Rptr. 2d 92.

No. 02–9859. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 313 F. 3d 1300.

No. 02–9868. MOORE *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 716.

No. 02–9890. MILLER *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 572 Pa. 623, 819 A. 2d 504.

No. 02–9952. HINES *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 210.

No. 02–9963. BIERS *v.* UTAH ET AL. Sup. Ct. Utah. Certiorari denied.

No. 02–10049. TORRES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 318 F. 3d 1058.

No. 02–10095. SEVERINO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 316 F. 3d 939.

No. 02–10096. RENDON-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 212.

No. 02–10108. HOLLEMAN *v.* COTTON, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied. Reported below: 301 F. 3d 737.

No. 02–10163. TOLLIVER *v.* CAMBRA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–10174. CARBINE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 807 A. 2d 605.

No. 02–10208. COLEMAN *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 837 So. 2d 966.

No. 02–10222. BADGETT *v.* HILL, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 684.

No. 02–10237. GALLOWAY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 02–10278. TRAVAGLIA *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 792 A. 2d 1261.

No. 02–10296. HENDERSON *v.* BUDGE, WARDEN, ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 118 Nev. 1109, 106 P. 3d 1227.

No. 02–10319. SUAREZ *v.* UNITED STATES; and
No. 02–10547. SUAREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 313 F. 3d 1287.

No. 02–10385. LOUVIERE *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 833 So. 2d 885.

No. 02–10391. REID *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 91 S. W. 3d 247.

No. 02–10395. FIELDS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 597.

No. 02–10434. KASEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 469.

No. 02–10455. ATES, AKA BATES *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 834 So. 2d 174.

No. 02–10457. COOK *v.* GALAZA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–10459. DAVIS *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 850 So. 2d 1136.

No. 02–10462. MASADA *v.* HAMMOND ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 53 Fed. Appx. 263.

No. 02–10469. THOMPSON *v.* GUILFOYLE ET AL. C. A. 10th Cir. Certiorari denied.

No. 02–10470. THOMPSON *v.* GUILFOYLE ET AL. C. A. 10th Cir. Certiorari denied.

No. 02–10476. DELGADO *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 02–10477. CATE *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–10482. MUNSON *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 02–10486. THOMAS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 02–10487. SINGH *v.* HAMLET, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–10488. REYES *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–10490. EDWARDS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–10493. CRUZ *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD. C. A. 3d Cir. Certiorari denied.

No. 02–10494. THOMAS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 319 F. 3d 640.

No. 02–10495. COLLINS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 835 So. 2d 265.

No. 02–10499. MCBURROWS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 779 A. 2d 509.

No. 02–10500. PHILLIPS *v.* JOHNSON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–10511. HAUGHTON *v.* GALLEY, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 53 Fed. Appx. 264.

No. 02–10517. HALE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 02–10520. MARSHALL *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–10521. PERKINS *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 851 So. 2d 453.

No. 02–10526. JAQUEZ *v.* OKLAHOMA. C. A. 10th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 308.

No. 02–10528. BUTLER *v.* BOWEN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 712.

No. 02–10530. NEAL *v.* ROE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 293.

No. 02–10532. BRITT *v.* DUNCAN, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 58 Fed. Appx. 523.

No. 02–10533. STEVENS *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 770 N. E. 2d 739.

No. 02–10535. RAMIREZ-ALANIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 121.

No. 02–10536. STRASSINI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 550.

No. 02–10543. HAMRICK *v.* ARABIAN HORSE EXPRESS ET AL. Ct. App. Kan. Certiorari denied. Reported below: 30 Kan. App. 2d xviii, 58 P. 3d 758.

No. 02–10546. ANDREWS *v.* BACA, SHERIFF, LOS ANGELES COUNTY, CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 02–10549. OSTEEN *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–10550. BROWN *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–10555. POLONCZYK *v.* POLONCZYK ET AL. C. A. 7th Cir. Certiorari denied.

No. 02–10556. NEESE *v.* JUVENILE DEPARTMENT OF MARION COUNTY, OREGON. Ct. App. Ore. Certiorari denied.

No. 02–10558. ARCENEAUX *v.* LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 818 So. 2d 318.

No. 02–10559. ARROYO-MALDONADO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 319 F. 3d 12.

No. 02–10560. STRINGER *v.* MCDANIELS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 416.

No. 02–10562. RODRIGUEZ *v.* SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–10564. PRESIDENT *v.* KAYLO, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 02–10568. MOORE *v.* BECK, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 02–10574. MARTIN *v.* BAGLEY ET AL. Ct. App. Neb. Certiorari denied.

No. 02–10575. SEGADE *v.* LAMARQUE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 485.

No. 02–10578. TAUBMAN *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 02–10580. WILCOX *v.* LEWIS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 47 Fed. Appx. 714.

No. 02–10584. TUCKER *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–10585. ROBLOW *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 02–10586. SMITH *v.* LEWIS, SUPERINTENDENT, HALES CREEK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–10600. PARRADO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–10601. TIRADO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 313 F. 3d 437.

No. 02–10605. SINGLETON *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 319 F. 3d 1018.

No. 02–10607. WERNER, AKA THOMAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 317 F. 3d 1168.

No. 02–10610. GONZALEZ *v.* SPECTOR. C. A. 9th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 997.

No. 02–10611. HUTCH *v.* PARSONS ET AL. Int. Ct. App. Haw. Certiorari denied. Reported below: 101 Haw. 45, 61 P. 3d 556.

No. 02–10612. HILL *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 773 N. E. 2d 336 and 777 N. E. 2d 795.

No. 02–10617. SCHNEIDERMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 Fed. Appx. 485.

No. 02–10619. SMITH *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 02–10620. SALAHUDDIN *v.* MEAD ET AL. C. A. 2d Cir. Certiorari denied.

No. 02–10623. GREEN *v.* CASTRO, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 484.

No. 02–10627. OLIVER *v.* BARSTOW, TRUSTEE, ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–10630. COLE *v.* NEW MEXICO ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 825.

No. 02–10632. PENCAK *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 331 Ill. App. 3d 1142, —— N. E. 2d ——.

No. 02–10634. HUNG THANH LE *v.* MULLIN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 311 F. 3d 1002.

No. 02–10635. NORCROSS *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 816 A. 2d 757.

No. 02–10637. SHERKAT *v.* CIRCUIT COURT OF CLAY COUNTY, MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied.

No. 02–10638. JASKOT *v.* PRINCIPI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 58 Fed. Appx. 839.

No. 02–10640. KYSOR *v.* PRICE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE. C. A. 3d Cir. Certiorari denied. Reported below: 58 Fed. Appx. 540.

No. 02–10641. MARSHALL *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 570 Pa. 545, 810 A. 2d 1211.

No. 02–10644. BECKER *v.* OHIO. C. A. 6th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 711.

No. 02–10646. PARNELL *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 02–10648. APONTE *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–10651. BALLARD *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 206 Ill. 2d 151, 794 N. E. 2d 788.

No. 02–10652. WRIGHT *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 834 So. 2d 974.

No. 02–10658. SEDGWICK *v.* UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT. C. A. 11th Cir. Certiorari denied.

No. 02–10661. OWEN *v.* SUPREME COURT OF SOUTH DAKOTA. Sup. Ct. S. D. Certiorari denied.

No. 02–10665. PADILLA *v.* CAREY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–10666. MCCALL *v.* DAVIS, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied.

No. 02–10668. BRODIS *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 02–10670. D. D., A CHILD UNDER EIGHTEEN *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 02–10673. CROWELL *v.* SOLLIE, SHERIFF, LAUDERDALE COUNTY, MISSISSIPPI, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 121.

No. 02–10674. BARRETT *v.* ASHCROFT, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied.

No. 02–10678. HOLLAND *v.* DONNELLY, SUPERINTENDENT, WENDE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 324 F. 3d 99.

No. 02–10684. ANGEL *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–10691. RADILLO *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 02–10692. RAY *v.* PATE. C. A. 11th Cir. Certiorari denied.

No. 02–10693. MCCLENTON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 333 Ill. App. 3d 1210, —— N. E. 2d ——.

No. 02–10694. PHILLIPS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 53 Fed. Appx. 712.

No. 02–10695. ERVIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 631.

No. 02–10696. DIAZ *v.* PARKE, SUPERINTENDENT, PUTNAMVILLE CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 02–10700. NAVARRO *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 02–10707. HORN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 02–10708. HEADLEY *v.* SPITZER, ATTORNEY GENERAL OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 02–10711. TERRELL *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 276 Ga. 34, 572 S. E. 2d 595.

No. 02–10712. WASHINGTON *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS. C. A. 1st Cir. Certiorari denied.

No. 02–10715. HARDY *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 838 So. 2d 1150.

No. 02–10716. LUNA HERNANDEZ *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS. C. A. 5th Cir. Certiorari denied.

No. 02–10719. HIEU VAN HUYNH *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–10720. GOODEN *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–10721. FANCHER *v.* SIRMONS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 804.

No. 02–10725. WESTENBERG *v.* CNF TRANSPORTATION, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 765.

No. 02–10726. THOMPSON *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 53 Fed. Appx. 459.

No. 02–10732. BENSON *v.* OKLAHOMA ET AL. Ct. Crim. App. Okla. Certiorari denied.

No. 02–10735. BRALEY *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 276 Ga. 47, 572 S. E. 2d 583.

No. 02–10740. RHIGER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 315 F. 3d 1283.

No. 02–10744. WILSON *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 149 Md. App. 738.

No. 02–10748. CASTILLE *v.* TELETECH CUSTOMER CARE MANAGEMENT (CO), INC. C. A. 10th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 895.

No. 02–10751. RAMOS-SANTIAGO *v.* VASQUEZ, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–10752. MORKE *v.* MCKINSTRY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 53 Fed. Appx. 231.

No. 02–10753. WALKER *v.* KYLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 56 Fed. Appx. 577.

No. 02–10755. JEFFERSON *v.* MYLES ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 891.

No. 02–10756. WILLIAMSON *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–10757. YOUNG *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied.

No. 02–10758. DOVE *v.* NORTH CAROLINA STATE EMPLOYEES CREDIT UNION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 171.

No. 02–10761. CLAY *v.* WEBER, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 02–10762. CROPSEY *v.* FEI INC. Ct. App. Mich. Certiorari denied.

No. 02–10763. SHERIDAN *v.* MORGANTHAU ET AL. C. A. 2d Cir. Certiorari denied.

No. 02–10766. OCHOA *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 02–10768. NICKERSON *v.* ALASKA ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–10769. CRUZ-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 918.

No. 02–10771. MALDONADO *v.* ARCHULETA ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 524.

No. 02–10775. AMBERS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–10778. MONTFORD *v.* MIAMI-DADE COUNTY, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 317.

No. 02–10779. LANGSTON *v.* WETHERINGTON, COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–10786. STRUCK *v.* BUREAU OF ALCOHOL, TOBACCO AND FIREARMS. C. A. 7th Cir. Certiorari denied.

No. 02–10789. NICHOLS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–10790. MORENO *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 922.

No. 02–10792. JOHNSON *v.* GREINER, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 56 Fed. Appx. 38.

No. 02–10794. DEDEAUX *v.* KELLY, SUPERINTENDENT, CENTRAL MISSISSIPPI CORRECTIONAL FACILITY. C. A. 5th Cir. Certiorari denied.

No. 02–10795. BROWN, AKA WILLIAMS *v.* ROE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–10796. BARNES *v.* GIAMBRUNO, SUPERINTENDENT, WYOMING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–10798. ASKEW *v.* MATRISCIANO, ACTING WARDEN. C. A. 7th Cir. Certiorari denied.

No. 02–10800. BANES *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–10801. THOMAS *v.* UNITED STATES; and
No. 02–10886. AS-SADIQ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 952.

No. 02–10803. DAVIS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 02–10804. PERMENTER *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 876 So. 2d 1193.

No. 02–10806. LEE *v.* ADAMS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 279.

No. 02–10808. MAYNE *v.* HALL. C. A. 1st Cir. Certiorari denied.

No. 02–10809. SANDERS *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 89 S. W. 3d 380.

No. 02–10810. ROSE *v.* GREINER, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–10811. STEINER *v.* FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 02–10814. MCCULLEY *v.* ROWLEY, SUPERINTENDENT, NORTHEAST CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 02–10816. STOREY *v.* UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT. C. A. 6th Cir. Certiorari denied.

No. 02–10817. SHABAZZ *v.* ROSE ET AL. Ct. App. Tenn. Certiorari denied.

No. 02–10818. HOOPER *v.* MULLIN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 314 F. 3d 1162.

No. 02–10819. ZINN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 321 F. 3d 1084.

No. 02–10820. TONDRE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 127.

No. 02–10824. HARRIS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 02–10826. SHERRILL *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 02–10829. GAINES *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 9th Cir. Certiorari denied. Reported below: 36 Fed. Appx. 640.

No. 02–10830. HORTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 321 F. 3d 476.

No. 02–10832. BEARD *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 118 Nev. 1083, 106 P. 3d 1204.

No. 02–10833. ROLES *v.* TOWNSEND. Ct. App. Idaho. Certiorari denied. Reported below: 138 Idaho 412, 64 P. 3d 338.

No. 02–10834. YOCKEL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 320 F. 3d 818.

No. 02–10837. WORLEY *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 152 N. C. App. 719, 568 S. E. 2d 337.

No. 02–10839. ALLEY *v.* BELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 307 F. 3d 380.

No. 02–10840. ELLIS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 313 F. 3d 636.

No. 02–10842. CANTY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 835 So. 2d 265.

No. 02–10844. THIELE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 314 F. 3d 399.

No. 02–10846. THOMASON *v.* MYERS, WARDEN. Ct. Crim. App. Tenn. Certiorari denied.

No. 02–10848. BRUNO *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 838 So. 2d 485.

No. 02–10849. EILEEN D. *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–10850. MEYERS *v.* COLORADO DEPARTMENT OF HUMAN SERVICES, DIVISION OF VOCATIONAL REHABILITATION, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 831.

No. 02–10853. PARKER *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 02–10854. NEALE *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 918.

No. 02–10855. MCFARLAND *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–10856. ELIAS SEPULVEDA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 900.

No. 02–10858. FRENCH *v.* ARKANSAS. C. A. 8th Cir. Certiorari denied. Reported below: 52 Fed. Appx. 313.

No. 02–10859. HART *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 795.

No. 02–10862. RAMIREZ-VELASQUEZ *v.* UNITED STATES; and VELA-TORRES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 322 F. 3d 868 (first judgment); 61 Fed. Appx. 919 (second judgment).

No. 02–10863. STROPE *v.* MCKUNE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 219.

No. 02–10868. MCDONALD *v.* MCDANIEL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–10872. GREY BEAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 400.

No. 02–10873. MARTINEZ-VERA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 160.

No. 02–10874. LUNDAHL *v.* HARDING, JUDGE, DISTRICT COURT OF UTAH, UTAH COUNTY. Ct. App. Utah. Certiorari denied.

No. 02–10875. JUAREZ *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 305.

No. 02–10876. JOHNSON *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 61 P. 3d 1234.

No. 02–10878. LEWIS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 596.

No. 02–10879. STANFORD *v.* CITY OF COSTA MESA, CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 02–10880. RELIFORD *v.* SOUTH CAROLINA. Ct. Common Pleas of Aiken County, S. C. Certiorari denied.

No. 02–10881. JON *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–10882. KEMP *v.* SANDOVAL, ATTORNEY GENERAL OF NEVADA. C. A. 9th Cir. Certiorari denied.

No. 02–10884. BAKSH *v.* SHEARIN, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 64 Fed. Appx. 348.

No. 02–10887. ALEXANDER *v.* YARBOROUGH, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 512.

No. 02–10888. BOND *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 50 Fed. Appx. 123.

No. 02–10890. LENOIR *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 318 F. 3d 725.

No. 02–10892. MORETTI *v.* CICCONE, SHERIFF, BERGEN COUNTY, NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 64 Fed. Appx. 349.

No. 02–10893. MOORE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 182.

No. 02–10896. RITCHIE *v.* ROGERS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 313 F. 3d 948.

No. 02–10897. RIVERA-ROJANA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 726.

No. 02–10898. SEPULVADO *v.* CAIN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 595.

No. 02–10899. MCGILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 50 Fed. Appx. 602.

No. 02–10901. JONES *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 151 N. C. App. 317, 566 S. E. 2d 112.

No. 02–10902. LOPEZ-LOPEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–10903. JAMES *v.* BOYETTE, CORRECTIONAL ADMINISTRATOR I, NASH CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 673.

No. 02–10904. MCNEIL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 320 F. 3d 1034.

No. 02–10905. MILLER *v.* NORTHRIDGE FAMILY PRACTICE MEDICAL GROUP ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 02–10906. ORTIZ *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 02–10909. NELSON *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–10910. PETTY *v.* ENDICOTT, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 02–10912. BALDWIN *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 02–10914. ADAMS *v.* GARCIA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–10915. BROWN *v.* JAMROG, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–10916. BANKS *v.* BOOKER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–10917. BIEBER *v.* WISCONSIN DEPARTMENT OF CORRECTIONS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 714.

No. 02–10918. AUGUSTIN *v.* HAWAII. Sup. Ct. Haw. Certiorari denied. Reported below: 101 Haw. 127, 63 P. 3d 1097.

No. 02–10919. WILSON *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 155 N. C. App. 89, 574 S. E. 2d 93.

No. 02–10922. DULANEY *v.* YARBOROUGH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–10924. COLE *v.* HOPKINS, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 742.

No. 02–10925. PAYNE *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–10926. MCKNIGHT *v.* LENSING, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 02–10927. SCOTT *v.* DAVIS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 690.

No. 02–10928. CORTINAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 716.

No. 02–10929. MYRON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 02–10930. SMITH *v.* BUSHEY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 64 Fed. Appx. 851.

No. 02–10931. SAVAGE *v.* DISTRICT OF COLUMBIA. C. A. D. C. Cir. Certiorari denied.

No. 02–10932. CONNER *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 591.

No. 02–10933. HARRIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–10935. GIVENS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 923.

No. 02–10936. FURNISH *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 95 S. W. 3d 34.

No. 02–10937. HARGETT, AKA FOSTER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 58 Fed. Appx. 942.

No. 02–10938. FRAZIER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 383.

No. 02–10939. HUSS *v.* IOWA. Sup. Ct. Iowa. Certiorari denied. Reported below: 657 N. W. 2d 447.

No. 02–10940. GIPSON *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 203 Ill. 2d 298, 786 N. E. 2d 540.

No. 02–10941. WHITE HORSE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 316 F. 3d 769.

No. 02–10942. MCCLAIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 154.

No. 02–10943. MCCOY *v.* TEXAS. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 02–10944. ACENCIO-CAMPOS *v.* UNITED STATES; BARRAZA-CHAVARRIA *v.* UNITED STATES; CACERES-RIVAS *v.* UNITED STATES; DE LA FUENTE-DE LA FUENTA *v.* UNITED STATES; FLORES BURCIAGA, AKA FLORES-BURCIAGA *v.* UNITED STATES; LAZO *v.* UNITED STATES; MARTINEZ-HERNANDEZ *v.* UNITED STATES; and OLVERO-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 922 (second through eighth judgments) and 923 (first judgment).

No. 02–10945. ACOSTA-ESQUIVEL, AKA HUERTA *v.* UNITED STATES (Reported below: 61 Fed. Appx. 923); CARO-GRIMALDO *v.*

UNITED STATES (61 Fed. Appx. 922); CERDA-MONTES *v.* UNITED STATES (61 Fed. Appx. 923); CHAVEZ-ROMERO *v.* UNITED STATES (61 Fed. Appx. 923); HERNANDEZ-ROMERO *v.* UNITED STATES (61 Fed. Appx. 923); HERRERA-PINA *v.* UNITED STATES (61 Fed. Appx. 923); MARTINEZ-SOLIS *v.* UNITED STATES (61 Fed. Appx. 923); REVULTA-ESPINOZA *v.* UNITED STATES (61 Fed. Appx. 922); RODRIGUEZ-CARRANZA, AKA GONZALES *v.* UNITED STATES (61 Fed. Appx. 922); and RODRIGUEZ-MARTINEZ *v.* UNITED STATES (61 Fed. Appx. 923). C. A. 5th Cir. Certiorari denied.

No. 02–10946. CRUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 525.

No. 02–10948. HALL *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 02–10949. POWELL, AKA MUHAMMAD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–10950. NUNN *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–10951. NIMMONS *v.* CAMPBELL ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–10952. CHRISTIAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 80 Fed. Appx. 288.

No. 02–10953. SPERLING *v.* ZENK, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 55 Fed. Appx. 105.

No. 02–10954. ROMERO-LOPEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 319 F. 3d 12.

No. 02–10955. STRZELCZYK *v.* COLLERAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT WAYMART, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–10956. CLINTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–10957. RATCLIFF *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–10958. BOROUGHS *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 777 N. E. 2d 1229.

No. 02–10960. SMITH *v.* OZMINT, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 436.

No. 02–10961. SKORNIAK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–10962. SANDERS *v.* BERTRAND, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 623.

No. 02–10964. BORICHA, AKA BORECHA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 02–10965. ALVAREZ-MENDOZA *v.* UNITED STATES; and MARTINEZ-SANCHEZ, AKA MARIN, AKA MARIN-OLIVAREZ, AKA CASTANEDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 922 (first judgment) and 923 (second judgment).

No. 02–10966. BLACKMON, AKA DENSON *v.* BOWERSOX, SUPERINTENDENT, SOUTH CENTRAL CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 985.

No. 02–10967. CARTER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 109.

No. 02–10968. ECKARD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 802.

No. 02–10969. CATES *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 154 N. C. App. 737, 573 S. E. 2d 208.

No. 02–10970. KIPP, AKA PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 120.

No. 02–10971. COOK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 713.

No. 02–10972. EVANS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 838 So. 2d 1090.

No. 02–10973. WALTERS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 309 F. 3d 589.

No. 02–10975. COSCO *v.* ORTEGA, INTERIM DIRECTOR, WYOMING DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Wyo. Certiorari denied. Reported below: 66 P. 3d 702.

No. 02–10976. MILANO *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Mecklenburg County, N. C. Certiorari denied.

No. 02–10978. ZILISCH *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 331 Ill. App. 3d 1142, —— N. E. 2d ——.

No. 02–10980. PUYA-PACHECO *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 2d Cir. Certiorari denied.

No. 02–10981. PRESCOD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 526.

No. 02–10982. BAILEY *v.* GONZALEZ, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–10983. AYALA-CARRILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 557.

No. 02–10984. BENJAMIN *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–10985. WOOD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–10987. RAMIREZ *v.* MGM GRAND, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 52 Fed. Appx. 408.

No. 02–10988. SAVAGE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 821.

No. 02–10989. SHOUMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 668.

No. 02–10990. WOOLSTENHULME *v.* LEMASTER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 388.

No. 02–10991. SANCHEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 68 Fed. Appx. 283.

No. 02–10992. MEI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 315 F. 3d 788.

No. 02–10993. CONDE JIMENEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 323 F. 3d 320.

No. 02–10994. LATORRE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 557.

No. 02–10995. LOOKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 594.

No. 02–10996. MARQUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 741.

No. 02–10997. MANN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 315 F. 3d 1054.

No. 02–10998. ZAMBRANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 755.

No. 02–10999. WILLIAMS *v.* BOWLEN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 600.

No. 02–11000. TAYLOR *v.* WILLIAMS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 247.

No. 02–11001. WERBER *v.* LAPPIN, DIRECTOR, FEDERAL BUREAU OF PRISONS, ET AL. C. A. 2d Cir. Certiorari denied.

No. 02–11002. BLACKERBY *v.* ARIZONA DEPARTMENT OF CORRECTIONS. Ct. App. Ariz. Certiorari denied.

No. 02–11003. BEN-SHIMON *v.* DODRILL, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 64 Fed. Appx. 850.

No. 02–11004. BROWN *v.* SEARS AUTOMOTIVE CENTER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 427.

No. 02–11005. BOLES *v.* NEET, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 52 Fed. Appx. 104.

No. 02–11006. AKERS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 02–11007. BOONE *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied.

No. 02–11008. TWEEDY *v.* ABBOTT, ATTORNEY GENERAL OF TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 242.

No. 02–11009. TALLINI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 691.

No. 02–11010. TORRES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 743.

No. 02–11012. SANDERS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 332 Ill. App. 3d 1138, —— N. E. 2d ——.

No. 02–11013. PETERSON *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 02–11014. DAWSON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 56 Fed. Appx. 520.

No. 02–11015. TAYLOR *v.* TENNESSEE DEPARTMENT OF CORRECTION ET AL. Sup. Ct. Tenn. Certiorari denied.

No. 02–11016. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 02–11017. ALLEN *v.* REESE, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 52 Fed. Appx. 7.

No. 02–11018. ACEVEDO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 02–11019. WALKER *v.* PEGUESE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 207.

No. 02–11020. PITTS, AKA SANDERS, ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 322 F. 3d 449.

No. 02–11022. LEWIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 16.

No. 02–11023. LISTERMAN *v.* DEPARTMENT OF JUSTICE. C. A. Fed. Cir. Certiorari denied. Reported below: 58 Fed. Appx. 474.

No. 02–11024. TATE *v.* CAMBRA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–11026. WALKER *v.* SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTION FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 02–11027. VERA *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 02–11028. COOK *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 438 Mass. 766, 784 N. E. 2d 608.

No. 02–11029. CRUZ *v.* UNITED STATES; and
No. 03–5382. HERNANDEZ VILLA, AKA AGUIRRE CORREA, AKA VILLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 557.

No. 02–11030. JACKSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 02–11031. SHAYESTEH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 916.

No. 02–11032. RUSSELL *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–11033. QUIROZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 61.

No. 02–11035. TYSON *v.* EL PASO COUNTY DEPARTMENT OF HUMAN SERVICES. Ct. App. Colo. Certiorari denied.

No. 02–11036. CALDWELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–11037. CRAIG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 02–11038. SPIDLE *v.* GAMMON, SUPERINTENDENT, MOBERLY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 02–11039. RICHARDSON *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–11040. REID *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 571 Pa. 1, 811 A. 2d 530.

No. 02–11041. BROWN *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 02–11042. BRINKLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 921.

No. 02–11043. QUASHIE *v.* IMMIGRATION AND NATURALIZATION SERVICE ET AL. C. A. 4th Cir. Certiorari denied.

No. 02–11044. WHITTINGTON *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 147 Md. App. 496, 809 A. 2d 721.

No. 02–11045. JACKSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 726.

No. 02–11046. NORMAN *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–11047. MARTELL, AKA CARTER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 797.

No. 02–11048. KING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 219.

No. 02–11049. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 902.

No. 02–11050. BIRCH *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied.

No. 02–11051. BROWN *v.* UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT. C. A. 4th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 705.

No. 02–11052. BARTLETT *v.* HARVIEL, JUDGE, ALAMANCE COUNTY DISTRICT COURT, NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 269.

No. 02–11053. COLVIN *v.* TAYLOR. C. A. 8th Cir. Certiorari denied. Reported below: 324 F. 3d 583.

No. 02–11054. DANIELS *v.* LEE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 316 F. 3d 477.

No. 02–11055. WEATHERALL *v.* REID, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 297.

No. 02–11056. VILLARREAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 119.

No. 02–11057. WILKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 959.

No. 02–11059. RICHARDSON *v.* HINSLEY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 02–11060. MALDONADO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 02–11061. VANDI *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 416.

No. 02–11063. COLETTA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 59 Fed. Appx. 492.

No. 02–11064. MASON *v.* MEYERS, SUPERINTENDENT, ROCKVIEW STATE CORRECTIONAL INSTITUTION. C. A. 3d Cir. Certiorari denied.

No. 02–11065. MARTINEZ-ESTRADA *v.* SNYDER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 53 Fed. Appx. 319.

No. 02–11066. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 316 F. 3d 818.

No. 02–11067. ADELMAN *v.* LANE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–11068. AYALA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 313 F. 3d 1068.

No. 02–11069. CLOUD *v.* COMMUNITY WORKS ET AL. C. A. 1st Cir. Certiorari denied.

No. 02–11070. ZAWADZKI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 324 F. 3d 35.

No. 02–11071. SANDERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 765.

No. 02–11072. Roe *v.* Baker, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 316 F. 3d 557.

No. 02–11073. Schlaen *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 300 F. 3d 1313.

No. 02–11074. Ruiz *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 416.

No. 02–11075. Nunes *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 357.

No. 02–11076. Myers *v.* Johnson, Acting Secretary of the Navy. C. A. 11th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 836.

No. 02–11077. Nesby *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 02–11078. Pauley *v.* Cain, Warden. C. A. 5th Cir. Certiorari denied.

No. 02–11079. Norris *v.* Hooks, Warden, et al. C. A. 11th Cir. Certiorari denied.

No. 02–11080. King *v.* Crosby, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 02–11081. Lambert *v.* Crosby, Secretary, Florida Department of Corrections. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 846 So. 2d 511.

No. 02–11082. Luna-Madellaga *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 315 F. 3d 1224.

No. 02–11083. Quintana-Quintana *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 104.

No. 02–11084. Romero-Castro *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 336.

No. 02–11085. Simmons *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 557.

No. 02–11086. Phong Doan *v.* Immigration and Naturalization Service. C. A. 9th Cir. Certiorari denied. Reported below: 311 F. 3d 1160.

No. 02–11087. Cox *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 324 F. 3d 77.

No. 02–11088. Moore *v.* Johnson et al. C. A. 6th Cir. Certiorari denied. Reported below: 322 F. 3d 895.

No. 02–11089. Morrison *v.* Dretke, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 02–11090. Pakalinsky *v.* Vaughn, Superintendent, State Correctional Institution at Graterford, et al. C. A. 3d Cir. Certiorari denied.

No. 02–11091. Odion *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 02–11092. Haufler *v.* Dretke, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 02–11093. Hunt, aka Scott *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 210.

No. 02–11094. Holmes *v.* Supreme Court of California et al. C. A. 9th Cir. Certiorari denied.

No. 02–11095. Javier Gutierrez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 332.

No. 02–11096. Perez Gomez *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 921.

No. 02–11097. Heras-Montoya *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 242.

No. 02–11100. Smiler *v.* California. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 02–11101. Williams *v.* Saunders, Warden, et al. C. A. 3d Cir. Certiorari denied.

No. 02–11102. Beas-Nunez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 342.

No. 02–11103. Ballard *v.* Fahey, Chairperson, Virginia Parole Board. C. A. 4th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 465.

No. 02–11104. BOYD *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 928.

No. 02–11106. ALANIZ-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 557.

No. 02–11107. ANDERSON *v.* FLEMING, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–11108. BURGENER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 29 Cal. 4th 833, 62 P. 3d 1.

No. 02–11109. MCCARRIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 54 Fed. Appx. 90.

No. 02–11110. SEDGWICK *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 02–11111. WINBORN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 742.

No. 02–11112. WILSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–11113. HENRY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 844.

No. 02–11114. WORTHY *v.* UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT. C. A. 6th Cir. Certiorari denied.

No. 02–11115. TORRES *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 333 Ill. App. 3d 1213, —— N. E. 2d ——.

No. 02–11116. HARRISON *v.* DALLAS AREA RAPID TRANSIT ET AL. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 02–11117. HIBBERD *v.* WALKER, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 7th Cir. Certiorari denied.

No. 02–11118. HILLS *v.* CALIFORNIA DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 995.

No. 02–11119. FLANAGAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 435.

No. 02–11120. FULTZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 493.

No. 02–11121. LOVETT *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 02–11123. NEDRICK *v.* DUNCAN, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–11124. ONTIVEROS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 02–11125. HERNANDEZ-SORTO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 609.

No. 02–11126. FUENTES-RIVERA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 323 F. 3d 869.

No. 02–11127. GAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 933.

No. 02–11128. RUIZ IBARDO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 900.

No. 02–11129. HENDRICKS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 319 F. 3d 993.

No. 02–11130. GUTIERREZ-ESTRADA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 416.

No. 02–11131. JONES, EXECUTOR OF THE ESTATE OF SMITH *v.* LOCAL 705, INTERNATIONAL BROTHERHOOD OF TEAMSTERS PENSION FUND. C. A. 7th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 873.

No. 02–11132. CRAWFORD *v.* JACKSON. C. A. D. C. Cir. Certiorari denied. Reported below: 323 F. 3d 123.

No. 02–11134. ROSARIO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 02–11135. WINFIELD *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 417.

No. 02–11136. RICHARDSON *v.* PARKE, SUPERINTENDENT, PUTNAMVILLE CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 02–11137. RODRIGUEZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 02–11138. ROJAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 59 Fed. Appx. 412.

No. 02–11139. SUDDERTH *v.* COURT OF CRIMINAL APPEALS OF TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 02–11140. RIDLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 02–11142. SHAW *v.* CONNECTICUT GENERAL LIFE INSURANCE CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 121.

No. 02–11143. PIGGIE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 316 F. 3d 789.

No. 02–11144. NUCKLES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 113.

No. 02–11145. LEWIS *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 02–11147. CRUZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 61 Fed. Appx. 732.

No. 02–11148. CADEN, AKA KIMBLE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 322 F. 3d 274.

No. 02–11149. CRAWFORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 575.

No. 02–11150. O'SULLIVAN *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 02–11151. WALKER *v.* LAMARQUE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–11152. SHEFFIELD *v.* COURT OF CRIMINAL APPEALS OF TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 02–11153. BARNOTT *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 837 So. 2d 965.

No. 02–11154. HOLMES *v.* GARRAGHTY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–11156. HALL *v.* LAMARQUE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–11157. HUTCHINSON *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 571 Pa. 45, 811 A. 2d 556.

No. 02–11158. HARMS *v.* INTERNAL REVENUE SERVICE. C. A. 10th Cir. Certiorari denied. Reported below: 321 F. 3d 1001.

No. 02–11160. GONZALEZ-GARIBAY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–11161. HIDALGO *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 640.

No. 02–11162. GOETH *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 113.

No. 02–11163. FOY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 134.

No. 02–11164. LOCKHART *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 315 F. 3d 637.

No. 02–11165. LACKING *v.* MISSISSIPPI. C. A. 5th Cir. Certiorari denied.

No. 02–11166. LEE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 315 F. 3d 206.

No. 02–11167. PIERS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 321 F. 3d 1231.

No. 02–11168. SMITH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 324 F. 3d 922.

No. 02–11170. EARLE *v.* IMMIGRATION AND NATURALIZATION SERVICE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 50 Fed. Appx. 393.

No. 02–11171. ERDHEIM *v.* YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 298 App. Div. 2d 552, 748 N. Y. S. 2d 673.

No. 02–11172. Di Nardo et al. *v.* Crow, Judge, Circuit Court for Palm Beach County, Florida. C. A. 11th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 743.

No. 02–11174. Bennett *v.* Oregon. C. A. 9th Cir. Certiorari denied.

No. 02–11175. Larson *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 416.

No. 02–11176. Ibrahim *v.* Ibrahim et al. C. A. 3d Cir. Certiorari denied. Reported below: 43 Fed. Appx. 522.

No. 02–11177. Barber *v.* Vazquez, Warden. C. A. 11th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 589.

No. 02–11178. Alex *v.* Stalder, Secretary, Louisiana Department of Public Safety and Corrections, et al. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 253.

No. 02–11179. Ayon-Encinas *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 743.

No. 02–11180. Bailey *v.* Giurbino, Warden. C. A. 9th Cir. Certiorari denied.

No. 02–11181. Elliott *v.* Drug Enforcement Administration. C. A. D. C. Cir. Certiorari denied. Reported below: 55 Fed. Appx. 574.

No. 02–11182. Duarte *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 327 F. 3d 206.

No. 02–11183. Cox *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 324 F. 3d 77 and 59 Fed. Appx. 437.

No. 02–11184. Cornejo *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 344.

No. 02–11185. Bowman *v.* Virginia. Ct. App. Va. Certiorari denied.

No. 02–11186. Miller *v.* Dragovich, Superintendent, Muncy State Correctional Institution, et al. C. A. 3d Cir. Certiorari denied. Reported below: 311 F. 3d 574.

No. 02–11187. NAVARRO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 338.

No. 02–11189. JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 416.

No. 02–11191. JORDAN *v.* BOARD OF REVIEW. Super. Ct. N. J., App. Div. Certiorari denied.

No. 02–11192. RIOS-BARBOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 746.

No. 02–11193. PALMER *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 986.

No. 02–11194. SEPULVEDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 760.

No. 02–11195. WALL *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 02–11196. VILLAFANA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 484.

No. 02–11197. TREADWAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 328 F. 3d 878.

No. 02–11198. WRIGHT *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 607.

No. 02–11199. WACHTMEISTER *v.* SWIESZ ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 59 Fed. Appx. 428.

No. 02–11200. FRANKLIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 323 F. 3d 1298.

No. 02–11201. AMBRIZ GUERRERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 769.

No. 02–11202. WARNER *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 02–11203. BOYD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 866.

No. 02–11204. BAER *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 91.

No. 02–11205. HAMRICK *v.* DAY, KETTERER, RALEY, WRIGHT & RYBOLT LTD. Ct. App. Ohio, Stark County. Certiorari denied.

No. 02–11206. YNIRIO *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 842 So. 2d 848.

No. 02–11207. VERDUZCO *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 02–11208. MONTELONGO-PERRET *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 417.

No. 02–11209. MULLINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 742.

No. 02–11210. OWENS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 02–11211. MCQUEEN *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 02–11212. DIAZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 795.

No. 02–11213. DIECKMANN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 417.

No. 02–11214. CANTU *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 917.

No. 02–11215. CHAVEZ *v.* NEW MEXICO. Sup. Ct. N. M. Certiorari denied.

No. 02–11216. CARDENAS-LOPEZ, AKA HUERTA-DELGADO *v.* UNITED STATES; FLORES-SOLANO *v.* UNITED STATES; HERNANDEZ-GARCIA *v.* UNITED STATES; LUNAR-CASTILLO *v.* UNITED STATES; and MENDOZA-DIAZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 02–11217. ELLIOTT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 322 F. 3d 710.

No. 02–11218. MACK *v.* HOLT, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 577.

No. 02–11219. MABRY *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–11220. JONES *v.* BLAINE ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–11221. JONES *v.* BERBARY, SUPERINTENDENT, COLLINS CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–11222. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 771.

No. 02–11223. WILLIAMS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 362.

No. 02–11224. REYES *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 819 A. 2d 305.

No. 02–11225. SAAVEDRA-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 258.

No. 02–11226. BURNS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 02–11227. BANDA-VASQUEZ, AKA BANDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 417.

No. 02–11228. BUCHANAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 289.

No. 02–11229. AYERS *v.* BRUSNAHAN. Ct. App. Ohio, Lorain County. Certiorari denied.

No. 02–11230. BROADNAX *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 907.

No. 02–11231. BERAS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 02–11233. BARNETT *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 103 S. W. 3d 765.

No. 02–11234. PALMA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 02–11235. WILDER *v.* UNITED STATES; and
No. 03–6121. HALEY, AKA SCOTT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 455.

No. 02–11236. WHEATLAND *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 194.

No. 02–11237. PETERSON *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 02–11239. YORK *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 02–11240. O'BRYAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 891.

No. 02–11241. WILSON *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 02–11242. TURNER *v.* HARRELL. Ct. Civ. App. Ala. Certiorari denied. Reported below: 878 So. 2d 346.

No. 02–11243. VALDOVINOS *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–11244. WASHINGTON *v.* WOLFENBARGER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–11245. JONES *v.* MCCAUGHTRY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 02–11246. JACKSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 53 Fed. Appx. 698.

No. 02–11247. BURKE *v.* RHODE ISLAND. Sup. Ct. R. I. Certiorari denied. Reported below: 811 A. 2d 1158.

No. 02–11248. BROWN *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 207.

No. 02–11249. BLANKENSHIP *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 114.

No. 02–11250. BASSO *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 02–11251. BUTCHER *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 96 S. W. 3d 3.

No. 02–11252. ANDREWS *v.* LEWIS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 183.

No. 02–11253. BAILEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 161.

No. 02–11254. BONO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 321 F. 3d 1270.

No. 02–11256. RICHARDSON *v.* YARBOROUGH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–11257. REGAN *v.* HOWES, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 02–11258. SPENCER *v.* SNYDER, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–11259. MORALES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 02–11260. SHU GUO KAN *v.* TEXAS. C. A. 5th Cir. Certiorari denied.

No. 02–11261. LANZILOTTI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 58 Fed. Appx. 890.

No. 02–11262. MEJIAS-NEGRON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 02–11263. LEWIS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–11264. PARKER *v.* PETTIFORD, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 796.

No. 02–11265. KULAS *v.* MIRANDA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 431.

No. 02–11266. PENUELA-RAMIREZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 02–11268. KEITH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 60 Fed. Appx. 347.

No. 02–11269. ROLLINS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 333 Ill. App. 3d 1212, —— N. E. 2d ——.

No. 02–11270. ALVARADO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 02–11272. FLORES *v.* GRAYSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 02–11273. ALICEA-CARDOZA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 02–11274. BANKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 659.

No. 02–11275. BRADEN *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 98 Ohio St. 3d 354, 785 N. E. 2d 439.

No. 02–11276. TAYLOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 429.

No. 02–11277. WALKER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 842 So. 2d 848.

No. 02–11278. DIXON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 690.

No. 02–11279. DONCHEVICH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 950.

No. 02–11280. GODFREY *v.* BEIGHTLER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 431.

No. 02–11282. JONES *v.* BOEING CO. C. A. 8th Cir. Certiorari denied.

No. 02–11283. WILLE *v.* PALMATEER, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 02–11284. MULLIGAN *v.* MORGAN, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 02–11285. GREGGS, AKA GRIFFITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 433.

No. 02–11286. TABOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 742.

No. 02–11287. DODDS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 742.

No. 02–11288. ALONZO-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 748.

No. 02–11289. BURRELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 37.

No. 02–11290. FLYNN *v.* HOGAN, JUDGE, CIRCUIT COURT OF ILLINOIS, COOK COUNTY, ET AL. C. A. 7th Cir. Certiorari denied.

No. 02–11292. GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 341.

No. 02–11293. GLENN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 571.

No. 02–11294. JARAKI *v.* FRANKLIN COUNTY CHILDREN SERVICES. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 02–11295. MARTIN *v.* JOHNSON, SUPERINTENDENT, PITTSBURGH STATE CORRECTIONAL INSTITUTION, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–11296. GONZALES SAENZ *v.* GALAZA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–11297. TURNER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 324 F. 3d 456.

No. 02–11298. CAVANAGH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 835.

No. 02–11299. DUBOIS *v.* NEW JERSEY ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–11300. DAVILA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 60 Fed. Appx. 936.

No. 02–11301. PORRAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 417.

No. 02–11302. MORRISON *v.* ARIZONA. Ct. App. Ariz. Certiorari denied. Reported below: 203 Ariz. 489, 56 P. 3d 63.

No. 02–11303. BURNES *v.* GREENE COUNTY JUVENILE OFFICE. Ct. App. Mo., Southern Dist. Certiorari denied.

No. 02–11304. BEARD *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 847 So. 2d 464.

No. 02–11305. DOTSON *v.* TOLLIVER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 152.

No. 02–11306. PEREZ-SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 930.

No. 02–11307. SARVEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 59 Fed. Appx. 505.

No. 02–11308. RUIZ-GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 196.

No. 02–11310. MOTTON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 02–11312. PAREDES *v.* SPOMER, JUDGE, CIRCUIT COURT OF ILLINOIS, ALEXANDER COUNTY. Sup. Ct. Ill. Certiorari denied.

No. 02–11313. HALL *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 02–11314. PAGE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 508.

No. 02–11315. MILLS *v.* ENERGY TRANSPORTATION CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 46 Fed. Appx. 44.

No. 02–11316. PANIAGUA-ORTIZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 949.

No. 02–11317. MONTES-GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 217.

No. 02–11318. LYNCH *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 841 So. 2d 362.

No. 02–11319. MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 418.

No. 02–11320. MARACALIN *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 63 Fed. Appx. 494.

No. 02–11321. CHAVEZ-QUINTERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 675.

No. 02–11322. COOMBS *v.* PENNSYLVANIA ET AL. Sup. Ct. Pa. Certiorari denied.

No. 02–11323. DAVIS *v.* LAVAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–11324. JOHNSON *v.* METROPOLITAN DETENTION CENTER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 550.

No. 02–11325. MARQUEZ *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 665.

No. 02–11326. SHAW *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 02–11327. ABERNATHY *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 143.

No. 02–11328. JAMES *v.* WALKER, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 02–11329. SEADE-MAIREENA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 715.

No. 02–11330. NOBLE *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 02–11331. OCHOA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 717.

No. 02–11332. RODRIGUEZ-SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 951.

No. 02–11333. LEE *v.* FISCHER, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 50 Fed. Appx. 497.

No. 02–11334. JOYCE *v.* EASLEY, GOVERNOR OF NORTH CAROLINA. C. A. 4th Cir. Certiorari denied.

No. 02–11335. ALVARADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 675.

No. 02–11336. BUSANET *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 572 Pa. 535, 817 A. 2d 1060.

No. 02–11337. BANKS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Va. Certiorari denied.

No. 02–11338. BANKS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–11339. ALCARAZ-TORRES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 52 Fed. Appx. 381.

No. 02–11340. YOUNG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 980.

No. 02–11341. WOLVIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 667.

No. 02–11342. CUNDIFF *v.* NEVADA. Sup. Ct. Nev. Certiorari denied.

No. 02–11343. DEWBRE *v.* HALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–11344. STEWART *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 821 A. 2d 362.

No. 02–11345. MARTIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 24 Fed. Appx. 504.

No. 02–11346. RHODES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 869.

No. 02–11347. CUMMINGS *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 188.

No. 02–11348. EAST *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–11349. COOPER *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 02–11350. COWARD *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 208.

No. 02–11351. MORGAN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 333 Ill. App. 3d 1210, —— N. E. 2d ——.

No. 02–11352. POLLARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 53 Fed. Appx. 705.

No. 02–11353. WEMARK *v.* MATHES, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 322 F. 3d 1018.

No. 02–11354. SANDERS *v.* BOOKER, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 02–11355. SMITH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 02–11357. SMITH *v.* GALES ET AL. App. Ct. Ill., 5th Dist. Certiorari denied.

No. 02–11358. O'NEIL *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–11359. PURDIE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 101.

No. 02–11360. WARD *v.* BEELER, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 887.

No. 02–11361. WRIGHT *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 841 So. 2d 787.

No. 02–11362. DUDLEY *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS. C. A. 5th Cir. Certiorari denied.

No. 02–11364. LAGAITE *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–11366. WILSON, AKA KELSEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 714.

No. 02–11367. TOLIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 617.

No. 02–11368. TIMMONS *v.* SHORT. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 717.

No. 02–11369. WILSON *v.* CENTRAL INTELLIGENCE AGENCY. C. A. D. C. Cir. Certiorari denied.

No. 02–11370. WILSON *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS; and WILSON *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 02–11371. UMANZOR *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 803 A. 2d 983.

No. 02–11372. VENABLE *v.* HENDRICKS, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 02–11373. WILLIAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 589.

No. 02–11374. COPE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 312 F. 3d 757.

No. 02–11375. MEDINA-OLVERA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 652.

No. 02–11376. NEIGHBORS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–11377. PARADISE *v.* MARTIN, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 02–11378. RODRIGUEZ MORALES *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–11379. REED *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 02–11380. REYES *v.* DICARLO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 02–11381. RUTLEDGE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 02–11382. AHMED *v.* SMITH, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 02–11383. STURGES *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 02–11384. SCOTT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 216.

No. 02–11385. QUINN *v.* DEPARTMENT OF THE INTERIOR. C. A. Fed. Cir. Certiorari denied. Reported below: 41 Fed. Appx. 418.

No. 02–11386. CORMIER *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–1. WASHOE COUNTY, NEVADA, ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 319 F. 3d 1320.

No. 03–2. OXFORD ASSET MANAGEMENT, LTD., ET AL. *v.* JAHARIS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 297 F. 3d 1182.

No. 03–3. LCT TRANSPORTATION SERVICES, INC., AKA LESTER COGGINS TRUCKING, INC. *v.* BARRAGAN ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 713.

No. 03–4. SMITH *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 332 Ill. App. 3d 1138, —— N. E. 2d ——.

No. 03–5. DETROIT, DETROIT, L. L. C. *v.* LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA INDIANS ET AL. C. A. 6th Cir. Certiorari denied.

No. 03–6. EFROSMAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 62 Fed. Appx. 24.

No. 03–8. JACOBSON *v.* SOLID WASTE AGENCY OF NORTHWEST NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 264 Neb. 961, 653 N. W. 2d 482.

No. 03–9. CABRERA *v.* HINSLEY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 324 F. 3d 527.

No. 03–10. LUIGINO'S, INC. *v.* PETERSON ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 317 F. 3d 909.

No. 03–11. RATCLIFF *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 55 Fed. Appx. 942.

No. 03–12. NATIONAL FIRE INSURANCE COMPANY OF HARTFORD *v.* FORTUNE CONSTRUCTION CO. C. A. 11th Cir. Certiorari denied. Reported below: 320 F. 3d 1260.

No. 03–14. BENITEZ-RUIZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 42.

No. 03–17. J. W., A MINOR *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 204 Ill. 2d 50, 787 N. E. 2d 747.

No. 03–18. HORIEN *v.* CITY OF ROCKFORD, ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied.

No. 03–21. WINDLE *v.* CITY OF MARION, INDIANA, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 321 F. 3d 658.

No. 03–23. WATNIK *v.* KNIESLEY. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 03–24. SIMO ET AL. *v.* UNION OF NEEDLETRADES, INDUSTRIAL & TEXTILE EMPLOYEES, SOUTHWEST DISTRICT COUNCIL, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 322 F. 3d 602 (first judgment); 56 Fed. Appx. 768 (second judgment).

No. 03–25. MUNIZ RIVERA ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 326 F. 3d 8.

No. 03–26. RODWELL *v.* PEPE. C. A. 1st Cir. Certiorari denied. Reported below: 324 F. 3d 66.

No. 03–27. TATARIAN *v.* SWEENEY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 475.

No. 03–28. ARNOLD *v.* RAYONIER, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 671.

No. 03–29. FRENCH *v.* BATOR & BERLIN, P. C. Ct. App. Mich. Certiorari denied.

No. 03–30. GRINE ET AL. *v.* COOMBS ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–31. MCNEILL *v.* TOWN OF PARADISE VALLEY, ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 44 Fed. Appx. 871.

No. 03–32. NEAL ET AL. *v.* BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 736.

No. 03–33. MONTGOMERY ET AL. *v.* CLAYTON HOMES, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 508.

No. 03–35. BURR *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 4th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 150.

No. 03–36. GOLDEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 62 Fed. Appx. 435.

No. 03–37. INFINEON TECHNOLOGIES AG ET AL. *v.* RAMBUS, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 318 F. 3d 1081.

No. 03–38. DEVEGTER ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 321 F. 3d 1024.

No. 03–39. EVENSON *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 204 Ariz. 484, 65 P. 3d 433.

No. 03–42. LAND *v.* TEXAS. Sup. Ct. Tex. Certiorari denied.

No. 03–43. SAGAR *v.* SAGAR. App. Ct. Mass. Certiorari denied. Reported below: 57 Mass. App. 71, 781 N. E. 2d 54.

No. 03–45. SKINNER *v.* DORMIRE, SUPERINTENDENT, MISSOURI STATE PENITENTIARY. C. A. 8th Cir. Certiorari denied.

No. 03–47. GILLIS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP, ET AL. *v.* HOLLAWELL; and PENNSYLVANIA BOARD OF PROBATION AND PAROLE *v.* MICKENS-THOMAS. C. A. 3d Cir. Certiorari denied. Reported below: 65 Fed. Appx. 809 (first judgment); 321 F. 3d 374 (second judgment).

No. 03–49. ROSS *v.* TEXAS. Ct. App. Tex, 9th Dist. Certiorari denied.

No. 03–50. RUBIN *v.* CITY OF SANTA MONICA, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 308 F. 3d 1008.

No. 03–53. WASHBURN ET AL. *v.* SOPER LAW FIRM. C. A. 8th Cir. Certiorari denied. Reported below: 319 F. 3d 338.

No. 03–55. FARFALLA *v.* MUTUAL OF OMAHA INSURANCE CO. C. A. 8th Cir. Certiorari denied. Reported below: 324 F. 3d 971.

No. 03–56. FELDMAN *v.* ALLSTATE INSURANCE CO. C. A. 9th Cir. Certiorari denied. Reported below: 322 F. 3d 660.

No. 03–57. GILCHRIST *v.* KARMAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 59.

No. 03–58. PEIA *v.* UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF CONNECTICUT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 62 Fed. Appx. 394.

No. 03–60. LEBRETON *v.* PENDLETON MEMORIAL HOSPITAL ET AL. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 829 So. 2d 673.

No. 03–61. TORTORELLI *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 149 Wash. 2d 82, 66 P. 3d 606.

No. 03–62. FALOTTI *v.* ORACLE CORP. C. A. 9th Cir. Certiorari denied. Reported below: 319 F. 3d 1106.

No. 03–63. EISENSTEIN *v.* ZAMPINO ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–65. UNITED STATES EX REL. COSTNER ET AL. *v.* URS CONSULTANTS, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 317 F. 3d 883.

No. 03–67. OBADELE ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 61 Fed. Appx. 705.

No. 03–68. GIESBERG *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–70. SHALLER *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 58 Fed. Appx. 464.

No. 03–71. STEPHAN ET AL. *v.* REFCO, INC. C. A. 7th Cir. Certiorari denied. Reported below: 325 F. 3d 874.

No. 03–72. SHARPE ET AL. *v.* CURETON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 319 F. 3d 259.

No. 03–75. KING *v.* CITY OF BAINBRIDGE, GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 276 Ga. 484, 577 S. E. 2d 772.

No. 03–76. DAILIDE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 316 F. 3d 611.

No. 03–77. URANTIA FOUNDATION *v.* MICHAEL FOUNDATION, INC. C. A. 10th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 538.

No. 03–79. GONZALEZ-GONZALEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 49 Fed. Appx. 322.

No. 03–80. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 98 PENSION FUND *v.* FOLEY. C. A. 3d Cir. Certiorari denied. Reported below: 80 Fed. Appx. 285.

No. 03–81. MASSEY *v.* BANK OF EDMONSON COUNTY AND DIRECTORS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 604.

No. 03–84. BUTCHER *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari denied.

No. 03–85. BROOKS ET AL. *v.* BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 334 Ill. App. 3d 472, 778 N. E. 2d 173.

No. 03–87. LYNCH *v.* TRENDWEST RESORTS, INC. C. A. 9th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 44.

No. 03–88. BOOKRUM *v.* BOOKRUM ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 464.

No. 03–92. HAYS *v.* HOFFMAN ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 325 F. 3d 982.

No. 03–93. ADKINS *v.* WEST VIRGINIA. Cir. Ct. Jackson County, W. Va. Certiorari denied.

No. 03–94. CHRISTENBERRY ET AL. *v.* ALLEN. C. A. 11th Cir. Certiorari denied. Reported below: 327 F. 3d 1290.

No. 03–96. STERLING *v.* ROE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 54.

No. 03–97. GREEN *v.* AMERICA ONLINE, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 318 F. 3d 465.

No. 03–98. MARTINEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 657.

No. 03–99. RENDALL *v.* SEDITA ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 62 Fed. Appx. 396.

No. 03–100. MORRISON ET VIR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 321 F. 3d 578.

No. 03–104. ROSS *v.* UNIVERSITY OF SOUTH CAROLINA. Ct. App. S. C. Certiorari denied.

No. 03–106. FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA ET AL. *v.* NEMARIAM ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 315 F. 3d 390.

No. 03–108. MOE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 326 F. 3d 1065.

No. 03–110. COLSTAD *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 260 Wis. 2d 406, 659 N. W. 2d 394.

No. 03–112. SCHLENK *v.* FORD MOTOR CREDIT CO. C. A. 6th Cir. Certiorari denied. Reported below: 308 F. 3d 619.

No. 03–113. PRESTIGE FORD *v.* DEALER COMPUTER SERVICES, INC., FKA FORD DEALER COMPUTER SERVICES, INC. C. A. 5th Cir. Certiorari denied. Reported below: 324 F. 3d 391.

No. 03–117. BROWN ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 329 F. 3d 664.

No. 03–118. MOLNAR *v.* PRATT & WHITNEY. C. A. 2d Cir. Certiorari denied. Reported below: 63 Fed. Appx. 528.

No. 03–119. ELLMAN *v.* WOODSTOCK SCHOOL DISTRICT #200. C. A. 7th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 885.

No. 03–120. CHRISTIE *v.* FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 64 Fed. Appx. 850.

No. 03–121. CM TAX EQUALIZATION FOUNDATION, INC., ET AL. *v.* COLUMBUS-MUSCOGEE COUNTY CONSOLIDATED GOVERNMENT ET AL. Sup. Ct. Ga. Certiorari denied. Reported below: 276 Ga. 332, 579 S. E. 2d 200.

No. 03–122. DING, INDIVIDUALLY AND AS NEXT FRIEND OF DING ET AL., MINORS *v.* ENGLER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 33.

No. 03–125. KREITENBERG *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 03–126. MORGAN BUILDINGS & SPAS, INC. *v.* BECHT. Sup. Ct. La. Certiorari denied. Reported below: 843 So. 2d 1109.

No. 03–129. PUERTO RICO ET AL. *v.* FRESENIUS MEDICAL CARE CARDIOVASCULAR CENTER CORP. C. A. 1st Cir. Certiorari denied. Reported below: 322 F. 3d 56.

No. 03–131. LITTLE *v.* MISSISSIPPI DEPARTMENT OF HUMAN SERVICES. Sup. Ct. Miss. Certiorari denied.

No. 03–133. FERRO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 321 F. 3d 756.

No. 03–134. OZANTE *v.* PRAGER ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 03–135. MOYER *v.* HITACHI DATA SYSTEMS, INC. C. A. 9th Cir. Certiorari denied.

No. 03–137. WOOD *v.* KESLER. C. A. 11th Cir. Certiorari denied. Reported below: 323 F. 3d 872.

No. 03–138. MARTICIUC ET AL. *v.* CITY OF HOUSTON, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 330 F. 3d 298.

No. 03–140. FORTE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 508.

No. 03–141. IMAGELINE, INC., ET AL. *v.* XOOM INC. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 323 F. 3d 279.

No. 03–143. IGT, AKA IGT-NORTH AMERICA *v.* COLLINS MUSIC CO., INC. Sup. Ct. S. C. Certiorari denied.

No. 03–144. GEREMIA ET UX. *v.* COLORADO BELLE CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 646.

No. 03–148. MOSS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 323 F. 3d 445.

No. 03–149. BLANDO, INDIVIDUALLY AND AS REPRESENTATIVE AND ADMINISTRATOR OF THE ESTATE OF BLANDO, DECEASED, AND AS NEXT FRIEND FOR BLANDO, A MINOR CHILD, ET AL. *v.* CITY OF HOUSTON, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 716.

No. 03–150. SMITH *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 670.

No. 03–152. ERRICO *v.* HARRISON, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 669.

No. 03–153. DISCOVERY HOUSE, INC. *v.* CONSOLIDATED CITY OF INDIANAPOLIS, INDIANA, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 319 F. 3d 277.

No. 03–154. FEDERATION OF ADVERTISING INDUSTRY REPRESENTATIVES, INC. *v.* CITY OF CHICAGO, ILLINOIS. C. A. 7th Cir. Certiorari denied. Reported below: 326 F. 3d 924.

No. 03–155. MESSICK *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 276 Ga. 528, 580 S. E. 2d 213.

No. 03–156. LACHMAN *v.* WIETMARSCHEN ET AL. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 03–158. APOLLO RESOURCES, INC., DBA APOLLO SERVICES, INC. *v.* QBE INTERNATIONAL INSURANCE, LTD. C. A. 5th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 418.

No. 03–161. LOZANO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 50 Fed. Appx. 139.

No. 03–166. APACHE BOHAI CORP., LDC *v.* TEXACO CHINA, B. V. C. A. 5th Cir. Certiorari denied. Reported below: 330 F. 3d 307.

No. 03–168. MURPHY *v.* OHIO DEPARTMENT OF REHABILITATION AND CORRECTION. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 03–172. BETHEA *v.* UNITED STATES PAROLE COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 56 Fed. Appx. 514.

No. 03–175. COLIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 831.

No. 03–177. ELLISON *v.* SANDIA NATIONAL LABORATORIES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 203.

No. 03–179. JACKSON *v.* STATE BOARD OF PARDONS AND PAROLES, DEPARTMENT OF OFFENDER REHABILITATION OF THE STATE OF GEORGIA. C. A. 11th Cir. Certiorari denied. Reported below: 331 F. 3d 790.

No. 03–180. CRUTCHFIELD ET AL. *v.* UNITED STATES ARMY CORPS OF ENGINEERS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 325 F. 3d 211.

No. 03–181. PHILLIPS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 58 M. J. 217.

No. 03–186. KU *v.* TENNESSEE. C. A. 6th Cir. Certiorari denied. Reported below: 322 F. 3d 431.

No. 03–190. PATEL ET UX. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 479.

No. 03–193. MORGAN *v.* FEDERAL HOME LOAN MORTGAGE CORPORATION. C. A. D. C. Cir. Certiorari denied. Reported below: 328 F. 3d 647.

No. 03–198. MEADE *v.* DECISIONS OF THE ORPHANS' COURT FOR ANNE ARUNDEL COUNTY ET AL. Cir. Ct. Anne Arundel County, Md. Certiorari denied.

No. 03–202. ZILKA *v.* CONNECTICUT GENERAL LIFE INSURANCE CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 828.

No. 03–205. GAINES *v.* WHITE RIVER ENVIRONMENTAL PARTNERSHIP ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 37.

No. 03–206. HURDLE *v.* VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY. C. A. 4th Cir. Certiorari denied. Reported below: 53 Fed. Appx. 256.

No. 03–212. HARRISON *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–216. SMITH ET UX. *v.* CHEVRON U. S. A. INC. Sup. Ct. Miss. Certiorari denied. Reported below: 844 So. 2d 1145.

No. 03–219. AVON PRODUCTS, INC. *v.* BYRNE. C. A. 7th Cir. Certiorari denied. Reported below: 328 F. 3d 379.

No. 03–231. WARREN *v.* UNITED STATES; and
No. 03–5839. CRAWFORD *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 329 F. 3d 131.

No. 03–240. RAMIREZ ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 324 F. 3d 1225.

No. 03–242. SURANA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–252. PAYTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 328 F. 3d 910.

No. 03–259. HENDERSHOT ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 324 F. 3d 894.

No. 03–270. ALABAMA-COUSHATTA TRIBE OF TEXAS *v.* TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 525.

No. 03–276. LOMBARDO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 589.

No. 03–299. ZAVALIDROGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 53 Fed. Appx. 411.

No. 03–302. BOWMAN *v.* ROBINSON, ADMINISTRATOR, ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION. Sup. Ct. Ill. Certiorari denied.

No. 03–5001. GOFF *v.* BUTLER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–5002. HILL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 564.

No. 03–5003. HOBEREK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 944.

No. 03–5004. FISHER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 814 A. 2d 964.

No. 03–5005. FERQUERON *v.* CURTIS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 188.

No. 03–5006. IGLESIAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–5007. FAVA *v.* STICKMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–5008. GARMON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–5009. HARVEY *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 573 Pa. 664, 820 A. 2d 703.

No. 03–5010. GIBSON *v.* REESE, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 793.

No. 03–5011. GARZA *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5012. GOSSARD *v.* JONES. C. A. 4th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 165.

No. 03–5013. GREENE *v.* MCCALEB, ASSISTANT SECRETARY, DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS. C. A. 9th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 445.

No. 03–5014. HEARN *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5015. FERRINGTON *v.* LOUISIANA DEPARTMENT OF CORRECTIONS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 315 F. 3d 529.

No. 03–5017. HALL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–5018. HERNANDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 883.

No. 03–5019. HARRISON *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5020. GODFREY *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 03–5021. FEBO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–5022. FOWLER *v.* BRADLEY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 183.

No. 03–5023. HOLLAND *v.* CURTIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–5024. HOBBS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 214.

No. 03–5025. FLUKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–5027. FERCH *v.* FEDERAL MEDICAL CENTER ET AL. C. A. 8th Cir. Certiorari denied.

No. 03–5029. GARCIA *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 837.

No. 03–5031. MEDINA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 667.

No. 03–5032. HARRIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 324 F. 3d 602.

No. 03–5033. HAWTHORNE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 316 F. 3d 1140.

No. 03–5034. ESTRADA-GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 747.

No. 03–5035. HARDIMAN *v.* GALAZA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 708.

No. 03–5036. FORTENBERRY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 318 F. 3d 845.

No. 03–5037. HAYES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 993.

No. 03–5038. FIGUEROA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 52 Fed. Appx. 404.

No. 03–5039. HOGAN *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 03–5040. HARVEY *v.* PRATT, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 03–5041. HARVEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 445.

No. 03–5042. ROSS *v.* HALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5044. BURNSIDE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 845 So. 2d 887.

No. 03–5045. BARKER *v.* WEST VIRGINIA. Cir. Ct. Braxton County, W. Va. Certiorari denied.

No. 03–5046. HERRERO *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5047. THOMAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 715.

No. 03–5048. TUCKERSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 03–5049. HINES *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 300 App. Div. 2d 1036, 752 N. Y. S. 2d 480.

No. 03–5050. FOUNTANO *v.* YARBOROUGH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5052. GUMBS *v.* KELLY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 03–5053. FRANKLIN *v.* NELSON ET AL. C. A. 6th Cir. Certiorari denied.

No. 03–5054. GUERRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–5055. HARDIN *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 03–5056. HYLAND *v.* STEVENS, ASSOCIATE JUSTICE, SUPREME COURT OF THE UNITED STATES, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 770.

No. 03–5057. GIBSON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 03–5058. HALL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 743.

No. 03–5059. HESS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5060. HENRY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–5061. GRAHAM *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 03–5062. HOLSTON *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 03–5063. HAMPTON *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 03–5064. GRIGSBY *v.* SMALL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–5065. GARCIA *v.* GROZA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 52 Fed. Appx. 393.

No. 03–5066. O'NEAL *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 143.

No. 03–5067. KENNETH C., A JUVENILE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 891.

No. 03–5068. COLE *v.* LAIRD, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 03–5070. MITCHELL *v.* AOL TIME WARNER INC. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 53 Fed. Appx. 455.

No. 03–5071. PEACE *v.* HALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 107.

No. 03–5072. PARKINSON *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 03–5073. PILKEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 744.

No. 03–5074. MARES *v.* MCGINNIS, SUPERINTENDENT, SOUTHPORT CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 03–5075. ROSALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–5076. JAMES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 03–5077. BARTLETT *v.* SNEDEKER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 03–5078. BUTLER *v.* LAVAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–5079. BENITEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 413.

No. 03–5080. CASTRO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 53 Fed. Appx. 447.

No. 03–5081. CHAVARIA-ANGEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 323 F. 3d 1172.

No. 03–5082. GILLIAM *v.* DUNCAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5083. MCLENNON, AKA POTTINGER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 447.

No. 03–5084. POUNDERS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 329 Ill. App. 3d 1233, —— N. E. 2d ——.

No. 03–5085. WYATT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 350.

No. 03–5087. HODGE *v.* BROWNLEE, ACTING SECRETARY OF THE ARMY. C. A. D. C. Cir. Certiorari denied.

No. 03–5088. ZENO *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 03–5089. STACKPOLE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 64 Fed. Appx. 842.

No. 03–5090. JOHNSON *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5092. GERA *v.* HASSENFELD ET AL. C. A. 1st Cir. Certiorari denied.

No. 03–5093. FARRAR *v.* BELLEQUE, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 03–5094. DAVIS *v.* BOCK, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–5095. CONTRERAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 698.

No. 03–5096. ENGLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 476.

No. 03–5097. CRISP *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 324 F. 3d 261.

No. 03–5098. DILLARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 771.

No. 03–5099. MOORE *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 03–5100. MCPHETERS *v.* MAILE ET AL. Sup. Ct. Idaho. Certiorari denied. Reported below: 138 Idaho 391, 64 P. 3d 317.

No. 03–5101. PETITE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 715.

No. 03–5102. MORGAN *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 842 So. 2d 130.

No. 03–5104. LAYNE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 324 F. 3d 464.

No. 03–5105. LOPEZ-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 58 Fed Appx. 341.

No. 03–5106. JAMES *v.* JONES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–5107. DREHER *v.* PINCHAK, ADMINISTRATOR, EAST JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 61 Fed. Appx. 800.

No. 03–5108. DEPEW *v.* ANDERSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 311 F. 3d 742.

No. 03–5109. COOPER *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 258 Ga. App. 825, 575 S. E. 2d 691.

No. 03–5110. RAMSEY *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 03–5111. DIAZ-DIAZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 327 F. 3d 410.

No. 03–5112. CRESPO *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 203 Ill. 2d 335, 788 N. E. 2d 1117.

No. 03–5113. BROWN *v.* LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 812 So. 2d 152.

No. 03–5114. ASHE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 446.

No. 03–5115. KENNEY *v.* FANELLO, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 53 Fed. Appx. 226.

No. 03–5116. KIPLINGER *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5117. JOHNS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 324 F. 3d 94.

No. 03–5119. MINOR *v.* MICHIGAN. Cir. Ct. Wayne County, Mich. Certiorari denied.

No. 03–5120. MITCHELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 902.

No. 03–5123. BROOKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 903.

No. 03–5124. BUCHANAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 03–5125. BISHOP *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 59 Fed. Appx. 398.

No. 03–5126. BLACKWELL *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 325 Ill. App. 3d 354, 757 N. E. 2d 589.

No. 03–5127. BURLEIGH *v.* UTAH BOARD OF PARDONS AND PAROLE. C. A. 10th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 683.

No. 03–5129. MEDINA DELEON *v.* DUNCAN, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 03–5130. MILLER *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–5131. ROBERTS *v.* UNITED STATES; and
No. 03–5597. MINCEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 757.

No. 03–5132. ROSARIO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 61 Fed. Appx. 714.

No. 03–5133. PHELPS *v.* KNIGHT, SUPERINTENDENT, MIAMI CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 22.

No. 03–5134. GUTIERREZ *v.* YARBOROUGH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5135. RESPER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 793 A. 2d 450.

No. 03–5136. SHERKAT *v.* DISTRICT COURT OF KANSAS, JOHNSON COUNTY. C. A. 10th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 262.

No. 03–5137. HENDERSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 329 Ill. App. 3d 810, 768 N. E. 2d 222.

No. 03–5139. BICKHAM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 509.

No. 03–5140. BATES *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 822 A. 2d 1129.

No. 03–5141. BENNAFIELD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 448.

No. 03–5142. ANTOINE *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 335 Ill. App. 3d 562, 781 N. E. 2d 444.

No. 03–5143. HARRINGTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 715.

No. 03–5144. JONES *v.* LAMARQUE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5145. WILLIAMS ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 847.

No. 03–5147. PLACENCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–5148. WILSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 24 Fed. Appx. 710.

No. 03–5149. AGHOLOR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 509.

No. 03–5150. BROWN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 311 F. 3d 875.

No. 03–5151. WYNN *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 03–5153. VARDAS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 03–5154. THOMAS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5155. VIANA *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 57 Mass. App. 1106, 782 N. E. 2d 48.

No. 03–5156. WEBSTER *v.* ORTIZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5157. BROWN *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 238 Wis. 2d 447, 617 N. W. 2d 907.

No. 03–5158. HENRY *v.* LEVARITY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 584.

No. 03–5159. BASSETT *v.* BASSETT. Ct. App. Ohio, Trumbull County. Certiorari denied.

No. 03–5160. GRIM *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 841 So. 2d 455.

No. 03–5161. GRAHAM *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 846 So. 2d 516.

No. 03–5162. MCCORMICK *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 31 Kan. App. 2d xxxv, 60 P. 3d 942.

No. 03–5163. MUHAMMAD *v.* YOUNG, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 53 Fed. Appx. 320.

No. 03–5166. BERGNE *v.* CANDELARIA. C. A. 9th Cir. Certiorari denied.

No. 03–5167. ARMSTRONG *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 809 A. 2d 951.

No. 03–5169. ARMENDARIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 510.

No. 03–5170. CARABALLO-GONZALEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 324 F. 3d 52.

No. 03–5171. DOSSEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 528.

No. 03–5172. ESTRADA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 509.

No. 03–5173. CALDWELL *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 03–5174. H. C. *v.* LEWIS ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–5175. WEEMS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 322 F. 3d 18.

No. 03–5176. BLOCH *v.* HOOD, INDIVIDUALLY, AND IN HIS OFFICIAL CAPACITY AS REGIONAL COUNSEL FOR SOUTH CENTRAL REGION OF THE BUREAU OF PRISONS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 510.

No. 03–5177. WOODS, AKA SPENCER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 03–5178. RODRIGUEZ *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 03–5179. SMITH *v.* BOWERSOX, SUPERINTENDENT, SOUTH CENTRAL CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 311 F. 3d 915.

No. 03–5180. VERA *v.* UTAH DEPARTMENT OF HUMAN SERVICES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 228.

No. 03–5181. BURKS *v.* CAREY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5182. VARDAS *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS. C. A. 5th Cir. Certiorari denied.

No. 03–5184. LOTT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 523.

No. 03–5185. JACKSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 03–5186. KENNEDY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 715.

No. 03–5187. KELLY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 823.

No. 03–5188. PRITCHETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 327 F. 3d 1183.

No. 03–5189. MILLER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 80 Fed. Appx. 289.

No. 03–5190. MILLER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 03–5191. GRAHAM *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 323 F. 3d 603.

No. 03–5192. HUDGINS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 326 Ill. App. 3d 1153, 811 N. E. 2d 787.

No. 03–5193. HOLM *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 326 F. 3d 872.

No. 03–5194. HILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 322 F. 3d 301.

No. 03–5195. MOLINA-GUERRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 509.

No. 03–5196. NELLOM *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–5197. PANNELL *v.* DAVIS, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 634.

No. 03–5198. RICHARDSON *v.* VIRGINIA ET AL. C. A. 4th Cir. Certiorari denied.

No. 03–5199. REID *v.* SIMMONS ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 47 Fed. Appx. 5.

No. 03–5200. REED *v.* HILL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 383.

No. 03–5201. SIERRA *v.* GARCIA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5202. REDIC *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5203. ROSS *v.* FULLER. Sup. Ct. Va. Certiorari denied.

No. 03–5204. NORVILLE ET UX. *v.* DELL CORP. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 860.

No. 03–5205. CHHIN *v.* MAYLE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5206. CROWLEY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 318 F. 3d 401.

No. 03–5207. CORREA, AKA ALVAREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 712.

No. 03–5208. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 76.

No. 03–5209. CONAHAN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 844 So. 2d 629.

No. 03–5210. BUGGS *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 840 So. 2d 1099.

No. 03–5211. GANN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 792.

No. 03–5212. PEGG *v.* HAVILAND, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–5213. ALAIMALO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 313 F. 3d 1188.

No. 03–5215. MURPHY *v.* MCCURLEY ET AL. C. A. 8th Cir. Certiorari denied.

No. 03–5217. HERNANDEZ *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 416.

No. 03–5218. FORWARD *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5219. HILL *v.* YARBOROUGH, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–5220. BEATRICE *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 832 So. 2d 972.

No. 03–5221. MUNOZ-LOPERA, AKA FLORES, AKA GUZMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 846.

No. 03–5222. JIMENEZ *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5223. MACKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 315 F. 3d 399.

No. 03–5225. BURGESS *v.* DAVIS. C. A. 5th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 919.

No. 03–5226. AGYEMAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 63 Fed. Appx. 544.

No. 03–5227. FULLER *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 03–5228. JERRERA-BENAVIDES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 61 Fed. Appx. 750.

No. 03–5229. BRADLEY *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–5230. KANDEKORE *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 300 App. Div. 2d 318, 750 N. Y. S. 2d 776.

No. 03–5231. LORITZ *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 1.

No. 03–5233. CRIEGHTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 844.

No. 03–5234. SWAN *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 820 A. 2d 342.

No. 03–5235. ROGERS *v.* HOWES, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 450.

No. 03–5236. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 669.

No. 03–5237. RICHMOND *v.* SMALL. C. A. 9th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 373.

No. 03–5238. SIGMOND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 654.

No. 03–5239. MADDEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 642.

No. 03–5240. BATTLE *v.* PRYOR, ATTORNEY GENERAL OF ALABAMA. C. A. 11th Cir. Certiorari denied.

No. 03–5241. WHITFIELD *v.* FISCHER, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 03–5242. SUMNER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 325 F. 3d 884.

No. 03–5243. ROBINSON *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied.

No. 03–5244. BUSH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 317.

No. 03–5245. JOHNSON *v.* TEPPER. C. A. 5th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 509.

No. 03–5246. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 325 F. 3d 205.

No. 03–5247. BARFIELD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 532.

No. 03–5248. SMITH *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–5249. HAWTHONE *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 03–5250. HAMPTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 706.

No. 03–5251. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 588.

No. 03–5253. PEACOCK *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 324 Ill. App. 3d 749, 756 N. E. 2d 261.

No. 03–5255. BROOKS *v.* MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 160.

No. 03–5256. DUCKWORTH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 545.

No. 03–5257. BEACHEM *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 336 Ill. App. 3d 688, 784 N. E. 2d 285.

No. 03–5258. SHAW *v.* LAMARQUE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5259. SANDOVAL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 03–5260. WILLIAMS *v.* MCGRATH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5261. TIAN *v.* CHINA HEALTHWAYS, INC. C. A. 9th Cir. Certiorari denied.

No. 03–5262. ALVARENGA-SILVA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 324 F. 3d 884.

No. 03–5263. ZIMMERMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 71 Fed. Appx. 897.

No. 03–5264. URBINA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 509.

No. 03–5265. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 509.

No. 03–5266. WALKER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 324 F. 3d 1032.

No. 03–5267. MOTEN *v.* HINKLE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 97.

No. 03–5268. ALEXANDER *v.* COOK, ASSISTANT WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 247.

No. 03–5269. BRENNAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 326 F. 3d 176.

No. 03–5270. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–5271. ESKRIDGE *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 03–5272. PAYNE *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 336 Ill. App. 3d 154, 783 N. E. 2d 130.

No. 03–5273. ESSEM *v.* SIOUX FALLS HUMAN RELATIONS COMMISSION ET AL. Sup. Ct. S. D. Certiorari denied. Reported below: 660 N. W. 2d 646.

No. 03–5274. THOMPSON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 93 S. W. 3d 16.

No. 03–5275. DONKERS *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied.

No. 03–5276. DAVIS *v.* RUSSELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–5277. THORNTON *v.* HOLDEN, GOVERNOR OF MISSOURI. C. A. 8th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 654.

No. 03–5278. WASHINGTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 318 F. 3d 845.

No. 03–5279. RISER *v.* WSYX–TV ET AL. C. A. 6th Cir. Certiorari denied.

No. 03–5281. RUHBAYAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 325 F. 3d 197.

No. 03–5282. MYER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 80 Fed. Appx. 289.

No. 03–5283. MUNN *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 848 So. 2d 312.

No. 03–5284. ELDER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 795.

No. 03–5285. MIGUEL *v.* WALL, DIRECTOR, RHODE ISLAND DEPARTMENT OF CORRECTIONS. C. A. 1st Cir. Certiorari denied.

No. 03–5287. WILLIAMS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5288. BLACKHURST *v.* ANTRIM, COMMISSIONER, ALASKA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 103.

No. 03–5289. EDWARDS *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 03–5290. DOWDY *v.* CASTERLINE, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 121.

No. 03–5291. CLAUSEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 328 F. 3d 708.

No. 03–5292. HUTCHINS *v.* CRAWFORD, DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–5294. SAWYER *v.* HOLDER, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 326 F. 3d 1363.

No. 03–5295. GOHRING *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5296. GORDON *v.* CONLEY, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 156.

No. 03–5298. ELLIS *v.* MULLIN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 858.

No. 03–5299. EVANS *v.* HERRERA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5300. DIAZ *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5301. CHARLTON *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 03–5302. STEWART *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 03–5303. REYNA-TAPIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 328 F. 3d 1114.

No. 03–5305. SIMPSON-BEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 34 Fed. Appx. 387.

No. 03–5306. ROBINSON *v.* HOOKS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 65 Fed. Appx. 874.

No. 03–5307. ROWELL *v.* GRIEGAS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–5308. SMITH *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 693.

No. 03–5310. SILVA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 03–5311. SCATES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 215.

No. 03–5312. SEPULVEDA *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 03–5313. SANTIAGO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 43 Fed. Appx. 473.

No. 03–5314. FLORES-ESCOBEDO, AKA DOMINGUEZ MARTINEZ *v.* UNITED STATES; VILORIO-ALVAREZ *v.* UNITED STATES; RODRIGUEZ-HERNANDEZ *v.* UNITED STATES; AGUILAR-ALVAREZ, AKA VALENCIA-RIOS *v.* UNITED STATES; DIMAS-CORREA *v.* UNITED STATES; SAENZ-BORDON *v.* UNITED STATES; MONJARAZ-REYES *v.* UNITED STATES; ARCHER *v.* UNITED STATES; and GARZA-CEBALLOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 523 (ninth judgment); 67 Fed. Appx. 243 (second judgment), 244 (first judgment), 245 (sixth and seventh judgments), and 246 (third, fourth, fifth, and eighth judgments).

No. 03–5315. GULLATT *v.* BURT, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 42 Fed. Appx. 764.

No. 03–5316. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 516.

No. 03–5317. DUTCHER *v.* MOORE, SUPERINTENDENT, MONROE CORRECTIONAL COMPLEX. C. A. 9th Cir. Certiorari denied.

No. 03–5318. LAMBERT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 844.

No. 03–5319. KRIEG *v.* FRIEDMAN. Sup. Ct. Nev. Certiorari denied.

No. 03–5320. WILSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 417.

No. 03–5321. MCCLEOD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 844.

No. 03–5322. PHAN *v.* FINN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5324. GUTIERREZ-ALEMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 246.

No. 03–5325. HUNT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 835.

No. 03–5326. FERGUSON *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 876 So. 2d 1197.

No. 03–5327. ALCALDE-AGUILERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 737.

No. 03–5328. BAILEY *v.* UNITED STATES; SMITH *v.* UNITED STATES; WILLIAMS *v.* UNITED STATES; and VELASQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 243 (first judgment), 245 (third judgment), and 246 (second and fourth judgments).

No. 03–5329. THOMAS *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 60 Fed. Appx. 279.

No. 03–5330. ENAZEH *v.* ASHCROFT, ATTORNEY GENERAL. C. A. 6th Cir. Certiorari denied.

No. 03–5331. RHODES *v.* CALDERON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 380.

No. 03–5332. SALLIE *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 276 Ga. 506, 578 S. E. 2d 444.

No. 03–5333. ROTH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 524.

No. 03–5334. RIVERA *v.* DUNCAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 353.

No. 03–5335. CASANOVA *v.* HOBBS, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 589.

No. 03–5336. DI NARDO *v.* PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 846.

No. 03–5337. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 846.

No. 03–5338. JACKSON *v.* WALKER, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 03–5339. O'CONNOR *v.* NORTHSHORE INTERNATIONAL INSURANCE SERVICES, INC. C. A. 1st Cir. Certiorari denied. Reported below: 61 Fed. Appx. 722.

No. 03–5340. OSBOURNE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 326 F. 3d 274.

No. 03–5341. PICASO-MENDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 367.

No. 03–5342. PULLIAM *v.* HUBBARD, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–5343. MITCHELL, AKA ALI *v.* WILSON, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 03–5344. SINCLAIR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 499.

No. 03–5345. RODRIGUEZ-DUBERNEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 326 F. 3d 613.

No. 03–5346. STANTON *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 176 N. J. 75, 820 A. 2d 637.

No. 03–5347. SMITH *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5348. WYNNE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 03–5349. KWOK CHING YU *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 54 Fed. Appx. 332.

No. 03–5350. MOORE *v.* MJ KORTSCH MOVING & STORAGE ET AL. C. A. 7th Cir. Certiorari denied.

No. 03–5351. KEEBY *v.* INDIANA. Ct. App. Ind. Certiorari denied.

No. 03–5352. LYNN *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5353. MISHRA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 52 Fed. Appx. 189.

No. 03–5354. MCKENNA *v.* CRIST, ATTORNEY GENERAL OF FLORIDA (two judgments). C. A. 11th Cir. Certiorari denied.

No. 03–5355. BATTLE *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5356. WILLIAMS *v.* STEGALL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–5357. BURKS *v.* HALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5358. MCWHORTER *v.* MCWHORTER. Sup. Ct. Ark. Certiorari denied. Reported below: 351 Ark. 622, 97 S. W. 3d 408.

No. 03–5359. NUNEZ-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 456.

No. 03–5360. WHITE *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 374 Md. 232, 821 A. 2d 459.

No. 03–5361. SEGUNDO CALLEJA *v.* HOLDER, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 844.

No. 03–5362. ANDERSON *v.* HAMLET, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 482.

No. 03–5363. PICKETT *v.* HENDRICKS, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–5364. ORIANWO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–5365. GAZAWAY *v.* YARBOROUGH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5366. HITZIG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 83.

No. 03–5367. GRIX *v.* FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 821 So. 2d 315.

No. 03–5368. HINCAPIE *v.* FISCHER, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 56 Fed. Appx. 61.

No. 03–5369. FAUST *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–5370. BARNES *v.* BUSH, PRESIDENT OF THE UNITED STATES, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 240.

No. 03–5373. LYNN *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5374. GEITZ *v.* GAMMON, SUPERINTENDENT, MOBERLY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 03–5375. SPINDLE *v.* BROWNLEE, ACTING SECRETARY OF THE ARMY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 55 Fed. Appx. 105.

No. 03–5376. ALLAH, AKA MEYERS *v.* MONTGOMERY, DEPUTY DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 196.

No. 03–5377. WALLACE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 326 F. 3d 881.

No. 03–5379. THOMAS *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5380. BURNETT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 482.

No. 03–5381. STEVENSON *v.* SUGGS ET AL. Sup. Ct. Haw. Certiorari denied. Reported below: 101 Haw. 234, 65 P. 3d 181.

No. 03–5384. PERRY *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5386. CRENSHAW *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 03–5387. CANADY *v.* UNIFIED GOVERNMENT OF WYANDOTTE COUNTY, KANSAS CITY, KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 30 Kan. App. 2d xliv, 58 P. 3d 757.

No. 03–5388. DOCKERY *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 03–5389. CARAWAY *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5390. CRANDALL *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 03–5391. MOORE *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 662 N. W. 2d 263.

No. 03–5392. MARTIN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 129.

No. 03–5393. DEFRANCO *v.* WOLFE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION. C. A. 3d Cir. Certiorari denied.

No. 03–5394. BRUNO *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5395. MERELUS *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 03–5396. MPOUNAS *v.* GERLINSKI, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 80 Fed. Appx. 287.

No. 03–5397. ACKLES *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 860 So. 2d 912.

No. 03–5398. McCoy *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 03–5399. Hicks *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 703.

No. 03–5400. Hoover *v.* Lamarque, Warden. C. A. 9th Cir. Certiorari denied.

No. 03–5401. Haywood *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 03–5402. Gerstner *v.* Garcia, Warden. C. A. 9th Cir. Certiorari denied.

No. 03–5403. Hargrove *v.* Texas. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 03–5404. Flowers *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 54 Fed. Appx. 5.

No. 03–5406. Panek et al. *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 325 F. 3d 93.

No. 03–5407. Browne *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 318 F. 3d 261.

No. 03–5408. Collins *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 414.

No. 03–5409. Sang Xuan Dang *v.* Dretke, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 03–5410. Ellis *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 326 F. 3d 593.

No. 03–5411. Day *v.* Salvation Army. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 03–5413. Santana *v.* Humphrey, Warden. Super. Ct. Mitchell County, Ga. Certiorari denied.

No. 03–5414. Bogovich *v.* Battalino et al. C. A. 9th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 868.

No. 03–5416. Potwin *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 03–5417. MENDEZ *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 03–5419. BYNUM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 327 F. 3d 986.

No. 03–5420. THOMPSON *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5421. WEEKLY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 597.

No. 03–5422. THOMAS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 03–5423. LYONS *v.* LEE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 316 F. 3d 528.

No. 03–5425. SUNDSBOE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 509.

No. 03–5426. SANCHEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 247.

No. 03–5427. DAVIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 03–5428. DETOMASO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 610.

No. 03–5430. MURPHY *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 330 F. 3d 353.

No. 03–5432. JARA *v.* GALAZA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5435. COPELAND *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 771.

No. 03–5437. CERDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 244.

No. 03–5438. DAVIS, AKA PARKER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 327 F. 3d 760.

No. 03–5439. CUEVAS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 317 F. 3d 751.

No. 03–5440. AXTELL *v.* BUDGE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–5441. DIAZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 328 F. 3d 96.

No. 03–5442. ESCOBAR-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 491.

No. 03–5443. SUGGS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 818.

No. 03–5444. SANTILLAN-VILLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 242.

No. 03–5445. SEGOVIA-VELAZQUEZ *v.* UNITED STATES; and CHAVEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 243 (second judgment) and 246 (first judgment).

No. 03–5446. DE JESUS RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 246.

No. 03–5447. MORRIS *v.* ORTIZ, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 319 F. 3d 1254.

No. 03–5448. PELHAM *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 176 N. J. 448, 824 A. 2d 1082.

No. 03–5449. NEWMAN *v.* ALEXANDER ET AL. C. A. 4th Cir. Certiorari denied.

No. 03–5450. ROBINSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 68 Fed. Appx. 279.

No. 03–5451. RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 323.

No. 03–5452. LOPEZ-PEREZ *v.* UNITED STATES; TORRES-CORDERO *v.* UNITED STATES; and MESA-DELUNA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 247.

No. 03–5453. LLEWLYN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–5454. LOU *v.* FILION, SUPERINTENDENT, COXSACKIE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 03–5455. SUVANNUNT *v.* THOMPSON, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 7th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 233.

No. 03–5456. BRUNT *v.* MCADORY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 59.

No. 03–5460. O'NEILL *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 851 So. 2d 163.

No. 03–5461. MITCHELL *v.* LAMARQUE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5462. LAWRENCE *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 319 F. 3d 93.

No. 03–5463. KNOX, AKA KNOX-EL *v.* GILLIS, JUDGE, ET AL. C. A. 6th Cir. Certiorari denied.

No. 03–5464. JACKSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 839.

No. 03–5465. AGUIRRE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 03–5466. CRONE *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 324 F. 3d 833.

No. 03–5467. CHAPMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 619.

No. 03–5469. BURNSED *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 847 So. 2d 465.

No. 03–5470. MCLESTER *v.* SUTTON, CORRECTIONAL ADMINISTRATOR I, PASQUOTANK CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 460.

No. 03–5471. ARROWOOD *v.* MCGRATH, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–5473. DARDEN *v.* UNITED PARCEL SERVICE, INC. C. A. 11th Cir. Certiorari denied.

No. 03–5474. SCALES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 977.

No. 03–5475. SPENCE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 581.

No. 03–5476. SONOWO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 63 Fed. Appx. 63.

No. 03–5477. SIMMONS *v.* DUNCAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5478. SHABAZZ *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 417.

No. 03–5479. SIMMONS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 03–5480. SPEAR *v.* ANDRASCHKO. C. A. 10th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 165.

No. 03–5481. SWAINSON *v.* LAVAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS. C. A. 3d Cir. Certiorari denied.

No. 03–5483. MULDROW *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 149 Md. App. 732.

No. 03–5484. AMENTO *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 833 So. 2d 144.

No. 03–5485. BROWN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 03–5486. PARKER *v.* BAILEY ET AL. C. A. 5th Cir. Certiorari denied.

No. 03–5487. EMBRY *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 03–5488. DOSS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–5489. CARDWELL *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 03–5490. WADE *v.* ROBINSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 327 F. 3d 328.

No. 03–5491. TSALICKIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–5492. UHLICH *v.* ARCHBOLD. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 03–5493. MOORE *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied.

No. 03–5494. PINSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 321 F. 3d 558.

No. 03–5495. MYRICK *v.* NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM. C. A. 2d Cir. Certiorari denied. Reported below: 56 Fed. Appx. 70.

No. 03–5496. OMUNA *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–5497. SMOTHERMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 326 F. 3d 988.

No. 03–5498. ROSALES *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 03–5499. READO *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 03–5500. BAKER *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5501. WILLIAMS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 64 Fed. Appx. 304.

No. 03–5502. ZEMBA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 59 Fed. Appx. 459.

No. 03–5503. THOMAS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5505. ROBINSON *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 03–5506. TAGALONI *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–5507. WARREN *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5508. CARBONELL *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 03–5509. ROBY *v.* ROBY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 172.

No. 03–5511. JINGLES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 82.

No. 03–5512. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 826.

No. 03–5513. LANKFORD *v.* ADMINISTRATOR OF PRISONS, DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 811.

No. 03–5514. SARAH *v.* GERTH ET AL. C. A. 6th Cir. Certiorari denied.

No. 03–5515. WARD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 716.

No. 03–5516. TERRELL *v.* AMERICAN DRUG STORES, DBA OSCO DRUG. C. A. 7th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 76.

No. 03–5517. BARTLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 547.

No. 03–5518. BARNETT, AKA CLAGETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 643.

No. 03–5519. BLACKBURN *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 840 So. 2d 1092.

No. 03–5520. NEWPORT *v.* GALAZA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5521. NOAH *v.* MANCARI'S CHRYSLER PLYMOUTH JEEP EAGLE, INC. C. A. 7th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 708.

No. 03–5522. VARGAS NAVARRO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 246.

No. 03–5524. WATERS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5525. WRIGHT *v.* DUNCAN, SUPERINTENDENT GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 03–5526. WALLACE *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5527. HUBLEY *v.* KELCHNER, SUPERINTENDENT, CAMP HILL CORRECTIONAL INSTITUTION, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 57 Fed. Appx. 927.

No. 03–5529. HOOKER *v.* AMERICAN AIRLINES, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 465.

No. 03–5530. FANIEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 525.

No. 03–5532. GUTIERREZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 936.

No. 03–5533. HARMS *v.* SNOW, SECRETARY OF THE TREASURY. C. A. 8th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 720.

No. 03–5535. IBARRA LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 455.

No. 03–5536. GUZMAN-MALERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 434.

No. 03–5537. WILLIAMS *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 791 N. E. 2d 193.

No. 03–5538. MCCLELLAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 425.

No. 03–5539. DESHIELDS *v.* FILBERT, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 623.

No. 03–5540. ESTRADA-MACHADO *v.* UNITED STATES; and QUINTERO-JASSO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 244.

No. 03–5541. CARBALLO-BALDERAS *v.* UNITED STATES; and SANCHEZ-CORTEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 245.

No. 03–5542. CARNEIRO *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 76 Conn. App. 425, 820 A. 2d 1053.

No. 03–5543. DITMAN *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 03–5545. HERNANDEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 327 F. 3d 1110.

No. 03–5546. HAMILTON *v.* ALASKA. Ct. App. Alaska. Certiorari denied. Reported below: 59 P. 3d 760.

No. 03–5547. GALLEGOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 526.

No. 03–5548. MEHRA *v.* GUARANTY BANK. C. A. 7th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 975.

No. 03–5549. RAMIREZ-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 246.

No. 03–5550. JACKSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 839.

No. 03–5551. MALDONADO-VALLES *v.* UNITED STATES; and NAJERA-ARELLANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 244 (second judgment) and 251 (first judgment).

No. 03–5552. LEONOS-MARQUES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 323 F. 3d 679.

No. 03–5553. ANDRADE-REYES *v.* UNITED STATES; GALVAN-DUARTE *v.* UNITED STATES; and BENAVIDEZ-DIAZ, AKA RAMIREZ-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 246 (first judgment) and 253 (third judgment); 69 Fed. Appx. 657 (second judgment).

No. 03–5555. WARD-O'NEILL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 329 F. 3d 253.

No. 03–5556. ANDERSON *v.* MULLINS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 327 F. 3d 1148.

No. 03–5557. GAMEZ-TOVAR *v.* UNITED STATES; and ARIAS-ORTEGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 246.

No. 03–5558. HANEY *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 275 Kan. ix, 67 P. 3d 155.

No. 03–5559. SHELTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 325 F. 3d 553.

No. 03–5560. LOPEZ-GAITAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 244.

No. 03–5561. ALARCON-LECHUGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 244.

No. 03–5562. BLAQUIERE ET AL. *v.* SHOWA DENKO K. K. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 424.

No. 03–5563. THANG DOAN, AKA AM NGOC CHAU *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 900.

No. 03–5564. SPEARMAN *v.* ROSSBACH. C. A. 6th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 70.

No. 03–5566. GONZALES *v.* UNITED STATES (Reported below: 66 Fed. Appx. 526); RODRIGUEZ-LUIS *v.* UNITED STATES (67 Fed. Appx. 243); RIASCOS *v.* UNITED STATES (67 Fed. Appx. 245); HINOJOSA *v.* UNITED STATES (67 Fed. Appx. 247); OROZCO *v.* UNITED STATES (67 Fed. Appx. 253); PARDO-RODRIGUEZ *v.* UNITED STATES (67 Fed. Appx. 244); GONZALEZ ABAZAN *v.* UNITED STATES (73 Fed. Appx. 79); YANEZ-BENAVIDES, AKA RAMIREZ-MONTOYA *v.* UNITED STATES (67 Fed. Appx. 244); NAJERA-GUERRA *v.* UNITED STATES (67 Fed. Appx. 245); DIEGUEZ-GARCIA *v.* UNITED STATES (67 Fed. Appx. 245); HERNANDEZ *v.* UNITED STATES (67 Fed. Appx. 246); ROMO *v.* UNITED STATES (67 Fed. Appx. 246); STEWART *v.* UNITED STATES (66 Fed. Appx. 525); MENDOZA-OCHOA, AKA CLARO-ALFARO *v.* UNITED STATES (67 Fed. Appx. 246); SANCHEZ-PEREZ *v.* UNITED STATES (67 Fed. Appx. 247); and MARTIN *v.* UNITED STATES (67 Fed. Appx. 252). C. A. 5th Cir. Certiorari denied.

No. 03–5568. MARTINES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 03–5569. JEFFERSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 439.

No. 03–5570. LANNERT *v.* JONES, SUPERINTENDENT, CHILLICOTHE CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 321 F. 3d 747.

No. 03–5571. KEYS *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5572. OKONKWO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 69 Fed. Appx. 57.

No. 03–5573. ANDERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 245.

No. 03–5574. POWELL *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 902.

No. 03–5575. ENSLIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 327 F. 3d 788.

No. 03–5577. LOPEZ-MORENO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 247.

No. 03–5578. JAQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 245.

No. 03–5579. BUTTI *v.* GOORD, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 2d Cir. Certiorari denied.

No. 03–5580. RUIZ-ECHEVERRIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 03–5581. SANCHEZ-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 319 F. 3d 677.

No. 03–5582. RODARTE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 463.

No. 03–5583. ROBINSON *v.* RANEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–5584. AGUILAR-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 367.

No. 03–5586. TAYLOR *v.* HILL, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 620.

No. 03–5588. DESALVO *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 417.

No. 03–5589. COOK *v.* ARKANSAS STATE POLICE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 968.

No. 03–5590. DOANE *v.* GRIGAS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–5591. CRADDOCK *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5592. COLEMAN *v.* ROLLINS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–5593. DAVIS *v.* BELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–5595. BRENNAN *v.* WALL, DIRECTOR, RHODE ISLAND DEPARTMENT OF CORRECTIONS. Sup. Ct. R. I. Certiorari denied.

No. 03–5596. ROSS *v.* MARION COUNTY, INDIANA, ET AL. C. A. 7th Cir. Certiorari denied.

No. 03–5598. MCCOY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 247.

No. 03–5599. BRASWELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 783.

No. 03–5600. ROGERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 03–5601. SERS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 509.

No. 03–5603. MCGRATH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 508.

No. 03–5604. CHAVEZ-CALDERON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 244.

No. 03–5605. DAVIS *v.* DEPARTMENT OF THE NAVY. C. A. 9th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 363.

No. 03–5606. ETHERIDGE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 714.

No. 03–5607. BARNES *v.* MORRISON, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 03–5608. BISHOP *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 03–5610. BARTLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–5611. BRANTLEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 451.

No. 03–5613. LINCOLN *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 6th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 93.

No. 03–5617. JOKINEN *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 11th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 684.

No. 03–5620. LUGO *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 845 So. 2d 74.

No. 03–5624. REDDICK *v.* JONES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–5625. SALLIE *v.* THIEL. C. A. 7th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 662.

No. 03–5626. AMBO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 416.

No. 03–5627. SCHAEFER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–5628. MCCONICO *v.* HOOKS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 03–5631. MONAHAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 245.

No. 03–5632. THOMAS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 748 A. 2d 931.

No. 03–5633. DAVIS, AKA NIGERIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 248.

No. 03–5634. BAUTISTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 355.

No. 03–5635. PRICE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 329 F. 3d 903.

No. 03–5636. MORRIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 327 F. 3d 760.

No. 03–5637. KING *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 325 F. 3d 110.

No. 03–5638. JENKINS *v.* HUFFMAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–5639. ALTAMIRANO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 865.

No. 03–5640. PHILLIPS *v.* KYLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–5641. BURT *v.* HEMINGWAY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 230.

No. 03–5642. EDWARDS *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 03–5644. FRANCHEK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 855.

No. 03–5647. RIDDLE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 248.

No. 03–5648. SHAKUR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 659.

No. 03–5649. SMITH *v.* GLOVER, SHERIFF, DUVAL COUNTY, FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 842 So. 2d 846.

No. 03–5654. MERRITT *v.* BLAINE, DISTRICT ATTORNEY, COUNTY OF PHILADELPHIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 326 F. 3d 157.

No. 03–5656. PARRIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 863.

No. 03–5657. COLE, AKA MAYO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 696.

No. 03–5661. LUNA-MARADIAGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 354.

No. 03–5662. PULLIAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 720.

No. 03–5663. PETTIFORD *v.* NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 144.

No. 03–5664. OSHUNLETI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 530.

No. 03–5666. WYNTER *v.* KOLLUS. C. A. 9th Cir. Certiorari denied.

No. 03–5667. THURSTON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 03–5670. RIVERA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 327 F. 3d 612.

No. 03–5671. ROMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 588.

No. 03–5672. RASHWAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 328 F. 3d 160.

No. 03–5674. JACQUEZ-BELTRAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 326 F. 3d 661.

No. 03–5675. CHALLONER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 222.

No. 03–5676. DE LA PAZ *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 204 Ill. 2d 426, 791 N. E. 2d 489.

No. 03–5677. KILLIAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 441.

No. 03–5678. JOHNSON *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–5681. WITHAM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 247.

No. 03–5684. SAMMARCO *v.* MINNESOTA. C. A. 8th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 651.

No. 03–5685. LAWSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 380.

No. 03–5687. ALLEN *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 03–5688. ALLEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 744.

No. 03–5691. EVANS *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 439 Mass. 184, 786 N. E. 2d 375.

No. 03–5694. CLARY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 03–5695. WARD *v.* FLORIDA BOARD OF EDUCATION. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 822 So. 2d 518.

No. 03–5697. ARNOLD *v.* KYLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON. C. A. 3d Cir. Certiorari denied.

No. 03–5698. ALEX *v.* STALDER, SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 80.

No. 03–5699. GOSSAGE *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 112 Wash. App. 412, 49 P. 3d 927.

No. 03–5702. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–5704. WALKER *v.* MIAMI-DADE COUNTY, FLORIDA. Dist. Ct. App. Fla, 3d Dist. Certiorari denied. Reported below: 837 So. 2d 1049.

No. 03–5705. ALVAREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 901.

No. 03–5706. BROWN *v.* ASHCROFT, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied.

No. 03–5707. PETERSEN *v.* UTAH BOARD OF PARDONS AND PAROLE. C. A. 10th Cir. Certiorari denied.

No. 03–5716. ZUNIGA-MENDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 353.

No. 03–5721. SOSA *v.* WILLIAMS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 612.

No. 03–5724. ROGERS *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 66 Fed. Appx. 879.

No. 03–5727. RICE *v.* O'NEILL, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–5730. SHARK *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 60 Fed. Appx. 333.

No. 03–5731. FERGUSON *v.* PALMATEER, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 321 F. 3d 820.

No. 03–5733. HILL *v.* DOC'S TRANSFER & WAREHOUSE, INC. C. A. 11th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 670.

No. 03–5735. FLORES-CARMONA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 356.

No. 03–5737. HENSLEY *v.* KINGSTON, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 03–5738. HARDY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 230.

No. 03–5739. FREEMAN *v.* MATHES, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 317 F. 3d 898.

No. 03–5740. FALLIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 588.

No. 03–5741. HALL *v.* HEAD, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 310 F. 3d 683.

No. 03–5742. GARCIA-SALAZAR *v.* UNITED STATES; GARCIA HERNANDEZ *v.* UNITED STATES; HERNANDEZ-ENRIQUEZ, AKA GUZMAN-BUSTAMANTE *v.* UNITED STATES; ROBLEDO-ARECHAR *v.* UNITED STATES; VALENZUELA-DE LA CRUZ, AKA QUINTANA-DE LA CRUZ, AKA QUINTANA-VALENZUELA *v.* UNITED STATES; HERNANDEZ-ALVAREZ, AKA TORRES-SANCHEZ *v.* UNITED STATES; MARTINEZ-GARZA, AKA MARTINEZ-MARTINEZ *v.* UNITED STATES; TISCARENO-REYES, AKA SANCHEZ-REYES *v.* UNITED STATES; and REYNA-ROMO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 244 (first through eighth judgments) and 247 (ninth judgment).

No. 03–5745. ALAPIZCO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 03–5746. VARA *v.* PLILER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–5748. DAVIS ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 329 F. 3d 1250.

No. 03–5749. MUNOZ-MUNOZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 134.

No. 03–5750. MODROWSKI *v.* MOTE, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 322 F. 3d 965.

No. 03–5751. MATUS-LEVA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 311 F. 3d 1214.

No. 03–5753. DUGAN *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 318.

No. 03–5756. TIBBS *v.* UNITED STATES POSTAL SERVICE. C. A. 2d Cir. Certiorari denied.

No. 03–5757. PERRY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 509.

No. 03–5758. MENDOZA-REYES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 331 F. 3d 1119.

No. 03–5761. CAIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 03–5762. CHANDLER *v.* CASE WESTERN RESERVE UNIVERSITY. C. A. 6th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 683.

No. 03–5764. DUNN *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 03–5765. CAMPBELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 03–5768. DINKINS *v.* PALMER ET AL. Ct. App. Mich. Certiorari denied.

No. 03–5769. DERROW *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–5771. COLEMAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 318 F. 3d 754.

No. 03–5773. CHINN *v.* POTTER, POSTMASTER GENERAL, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 48 Fed. Appx. 40.

No. 03–5774. AKI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 96.

No. 03–5779. CRUTHIRD *v.* HALL. C. A. 1st Cir. Certiorari denied.

No. 03–5783. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–5784. LUCZAK *v.* MOTE, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied.

No. 03–5785. ARTEAGA-BONILLA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 393.

No. 03–5788. ANDREWS *v.* ELKINS. C. A. 4th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 498.

No. 03–5792. CRUTHIRD *v.* MASSACHUSETTS ET AL. App. Ct. Mass. Certiorari denied. Reported below: 57 Mass. App. 1112, 784 N. E. 2d 674.

No. 03–5794. CUNNINGHAM *v.* NEVADA. Sup. Ct. Nev. Certiorari denied.

No. 03–5796. DESHIELDS *v.* FILBERT, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 508.

No. 03–5798. BEAHRINGER *v.* BRILEY, WARDEN, ET AL. Sup. Ct. Ill. Certiorari denied. Reported below: 204 Ill. 2d 363, 789 N. E. 2d 1216.

No. 03–5800. VARGAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 652.

No. 03–5802. INOCENCIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 328 F. 3d 1207.

No. 03–5803. KNIGHT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 870.

No. 03–5804. LaBonte *v.* Texas. Ct. App. Tex., 9th Dist. Certiorari denied. Reported below: 99 S. W. 3d 801.

No. 03–5805. Lopez-Martinez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 83.

No. 03–5806. Perez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 635.

No. 03–5807. Olvera *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 610.

No. 03–5808. Montes-Rodriguez *v.* Merit Systems Protection Board. C. A. Fed. Cir. Certiorari denied. Reported below: 65 Fed. Appx. 306.

No. 03–5809. Butts *v.* Hurley, Warden. C. A. 6th Cir. Certiorari denied.

No. 03–5810. Meacham *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 529.

No. 03–5811. Perez-Perez, aka Zarate-Valazquez *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 337 F. 3d 990.

No. 03–5812. Munoz-Reya *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 83.

No. 03–5813. Page *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 529.

No. 03–5814. Burgess *v.* Oregon. Ct. App. Ore. Certiorari denied.

No. 03–5815. Lee *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 425.

No. 03–5817. Tepp *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 251.

No. 03–5818. Perez-Garcia, aka Perez-Perez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 83.

No. 03–5820. Talavera-Mercado, aka Quintanilla-Mercado *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 83.

No. 03–5822. SHORTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 328 F. 3d 167.

No. 03–5823. SIMMS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 823 A. 2d 538.

No. 03–5824. RIVERA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 584.

No. 03–5827. NEWTON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 327 F. 3d 17.

No. 03–5828. MURRAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 688.

No. 03–5832. BULLOCK *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 154 N. C. App. 234, 574 S. E. 2d 17.

No. 03–5833. VITUG *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. 5th Cir. Certiorari denied.

No. 03–5834. LYDON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 03–5836. KEYS *v.* HENDRICKS, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–5837. CASTRO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 324 F. 3d 1225.

No. 03–5838. ELROD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–5840. STILLS *v.* CAREY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5844. WILLIAMS *v.* SMITH, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 03–5850. HOPPER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 619.

No. 03–5851. SELLERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 499.

No. 03–5853. LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 252.

No. 03–5854. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 655.

No. 03–5855. BENNETT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 03–5858. WHITE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 832.

No. 03–5859. WALKER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 03–5861. MANNING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 320.

No. 03–5863. MORALES-SOSA *v.* MILES, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 252.

No. 03–5864. WILKERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 191.

No. 03–5865. TERRY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 657.

No. 03–5866. GONZALEZ-ALVAREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 03–5867. FLANAGAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 962.

No. 03–5868. GIRARD *v.* HENDRICKSON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–5872. FALKIEWICZ *v.* CITY OF WESTLAND, MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 582.

No. 03–5878. DE LOS SANTOS-MORA *v.* BROOKS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 701.

No. 03–5879. GARCIA *v.* ROMINE, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 65 Fed. Appx. 873.

No. 03–5880. FULLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 47 Fed. Appx. 246.

No. 03–5881. GRAHAM *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 315 F. 3d 777.

No. 03–5885. HOLTZ *v.* STRAUB, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–5886. GOODMAN *v.* SMITH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 36.

No. 03–5888. HUSSMANN *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 67 Fed. Appx. 667.

No. 03–5892. HARRISON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 03–5893. HUGHLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–5895. DARBY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–5896. WASHINGTON *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–5897. STOKES ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 352.

No. 03–5901. RIVERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–5902. CREWS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 03–5904. CHAPMAN *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied.

No. 03–5906. DIXON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 793.

No. 03–5907. MCCULLON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 588.

No. 03–5908. BUGH *v.* BRADSHAW, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 329 F. 3d 496.

No. 03–5909. NOE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 508.

No. 03–5910. POSADAS-MENDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 252.

No. 03–5912. TAYLOR *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 822 A. 2d 1052.

No. 03–5916. ABEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 919.

No. 03–5917. COLES *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 808 A. 2d 485.

No. 03–5918. RICHARDSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 733.

No. 03–5919. SALLIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 39 Fed. Appx. 386.

No. 03–5922. DAUGHERTY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 243.

No. 03–5923. COMBS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 274.

No. 03–5924. CAMPITI *v.* MATESANZ, SUPERINTENDENT, BAY STATE CORRECTIONAL CENTER. C. A. 1st Cir. Certiorari denied. Reported below: 333 F. 3d 317.

No. 03–5927. DURANT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 990.

No. 03–5930. LEMON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 335 F. 3d 1095.

No. 03–5932. ARROYO-VILLAFANA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 657.

No. 03–5933. MENDOZA-GALLARDO *v.* UNITED STATES; ACEVEDO-MENDOZA *v.* UNITED STATES; GUTIERREZ-MORENO *v.* UNITED STATES; ROJAS-TORRES *v.* UNITED STATES; VILLASENOR, AKA VILLA-ARREOLA *v.* UNITED STATES; ALFARO, AKA ABENBDANO-BRILLA *v.* UNITED STATES; LOPEZ-HUITRON *v.* UNITED STATES; and SALGADO-OCAMPOS *v.* UNITED STATES.

C. A. 9th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 747 (fourth judgment); 71 Fed. Appx. 675 (sixth judgment).

No. 03–5934. WILLIAMS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 65 Fed. Appx. 819.

No. 03–5935. SPEENER *v.* SMITH, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 03–5936. STANLEY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 794 A. 2d 53.

No. 03–5937. CORNETT, AKA DEAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–5938. CORREA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 03–5939. DEMORY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 740.

No. 03–5941. CARRILLO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 918.

No. 03–5944. NUNEZ-OZUNA, AKA SANCHEZ-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 83.

No. 03–5946. JENKINS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 333 F. 3d 151.

No. 03–5949. MUNOZ-PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 83.

No. 03–5950. BUSOT-ALFONSO ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 68 Fed. Appx. 315.

No. 03–5955. WILLIAMS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 69 Fed. Appx. 494.

No. 03–5957. POLLARD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 326 F. 3d 397.

No. 03–5958. MIRTH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 364.

No. 03–5959. PUGA-LIMON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 82.

No. 03–5960. ZEBROSKI *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 822 A. 2d 1038.

No. 03–5961. BORREGO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 797.

No. 03–5962. SAUCEDO-DIAZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 83.

No. 03–5964. BANGS *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 03–5971. DUNKINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–5972. CLARK *v.* VARNER, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–5976. YOUSEF *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 327 F. 3d 56.

No. 03–5978. LESSING *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 712.

No. 03–5979. ESPERANZA BARRAGAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 340.

No. 03–5987. GRAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 52 Fed. Appx. 650.

No. 03–5988. GEORGY *v.* SNOW, SECRETARY OF THE TREASURY. C. A. 2d Cir. Certiorari denied.

No. 03–5989. HICKS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 694.

No. 03–5991. GOMEZ-JUAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 252.

No. 03–5992. GRICE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 146.

No. 03–5993. AGUILAR FERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 369.

No. 03–5995. FIMBRES-GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 369.

No. 03–5998. SMITH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 201.

No. 03–6000. RICHESON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 338 F. 3d 653.

No. 03–6001. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 51 Fed. Appx. 415.

No. 03–6009. J. O. R. *v.* DISTRICT OF COLUMBIA. Ct. App. D. C. Certiorari denied. Reported below: 820 A. 2d 546.

No. 03–6010. PACE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 615.

No. 03–6014. DOWDY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 03–6016. DEAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–6020. LAWLER *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 276 Ga. 229, 576 S. E. 2d 841.

No. 03–6022. LOWERY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 879.

No. 03–6026. BLAHOWSKI ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 324 F. 3d 592.

No. 03–6027. PATTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–6032. SALINAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 381.

No. 03–6033. JACKSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 149.

No. 03–6037. PEREZ-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 441.

No. 03–6041. VASQUEZ-RUBIO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 68 Fed. Appx. 235.

No. 03–6042. PRICE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 243.

No. 03–6043. DARAGJATI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 989.

No. 03–6045. MARTINEZ-TORRES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 03–6046. MANCIA-PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 331 F. 3d 464.

No. 03–6048. SMILEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 451.

No. 03–6049. SHEPPARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 588.

No. 03–6050. ESCOBAR DE JESUS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 03–6051. ROSALES-CEJA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 384.

No. 03–6053. COLE *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 03–6058. PARKER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 358.

No. 03–6061. NGUYEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–6062. LYCKMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–6064. KENNEY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 03–6065. DEJARNETTE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 284.

No. 03–6067. PRATHER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 912.

No. 03–6070. RIVERA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 65 Fed. Appx. 867.

No. 03–6071. QUINONES-PORTOCARRERO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–6072. STEIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 03–6078. WORDLY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–6080. RUIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–6081. TAMA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 991.

No. 03–6086. DANIELSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 03–6087. CAMERON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 20.

No. 03–6090. CIRINEO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 60 Fed. Appx. 342.

No. 03–6094. SCOTT *v.* CHESNEY, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT RETREAT, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–6098. WADE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 03–6100. KING *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 03–6102. NEAL *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 821 A. 2d 362.

No. 03–6105. ANDERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 444.

No. 03–6106. BROWER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 336 F. 3d 274.

No. 03–6108. VALME *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 742.

No. 03–6109. VAZQUEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 03–6111. CLARK *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 03–6117. GOMEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 85.

No. 03–6122. FRANKLIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 499.

No. 03–6126. BONNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 463.

No. 03–6127. MEDINA-DILONE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 02–1215. PRODUCER COALITION *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL.; and

No. 02–1265. EXXONMOBIL GAS MARKETING CO., A DIVISION OF EXXON MOBIL CORP. *v.* FEDERAL ENERGY REGULATORY COMMISSION. C. A. D. C. Cir. Joint motion of petitioners to defer consideration of petitions for writs of certiorari denied. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this motion and these petitions. Reported below: 297 F. 3d 1071.

No. 02–1448. POOLE, WARDEN *v.* DYAS. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 317 F. 3d 934.

No. 02–1474. ALABAMA POWER CO. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. 11th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 311 F. 3d 1357.

No. 02–1569. AT&T CORP. ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 307 F. 3d 1374.

No. 02–1579. TEXAS *v.* THOMPSON. Ct. Crim. App. Tex. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 108 S. W. 3d 269.

No. 02–1662. LOEWENSTEIN ET AL. *v.* CITY OF LAFAYETTE, CALIFORNIA. Ct. App. Cal., 1st App. Dist. Motion of Pacific Legal Foundation for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 103 Cal. App. 4th 718, 127 Cal. Rptr. 2d 79.

No. 02–1677. VOLKSWAGEN OF AMERICA, INC., ET AL. *v.* TRULL ET AL. C. A. 1st Cir. Motion of Product Liability Advisory Council, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. JUSTICE SOUTER took no part in the consideration or decision of this motion and this petition. Reported below: 320 F. 3d 1.

No. 02–1680. CIGNA CORP. ET AL. *v.* LEODORI. Sup. Ct. N. J. Motion of Equal Employment Advisory Council for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 175 N. J. 293, 814 A. 2d 1098.

No. 02–1692. MOORE ET AL. *v.* HANNON FOOD SERVICE, INC., ET AL. C. A. 5th Cir. Motion of petitioners to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 317 F. 3d 489.

No. 02–1711. CINCINNATI SMSA LIMITED PARTNERSHIP *v.* PUBLIC UTILITIES COMMISSION OF OHIO. Sup. Ct. Ohio. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 98 Ohio St. 3d 282, 781 N. E. 2d 1012.

No. 02–1723. ANDERSON, WARDEN *v.* DEPEW. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 311 F. 3d 742.

No. 02–1732. COLORADO *v.* WOLDT ET AL. Sup. Ct. Colo. Motions of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 64 P. 3d 256.

No. 02–1765. ALLEN *v.* HOWMEDICA LEIBINGER, INC., ET AL. C. A. Fed. Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 54 Fed. Appx. 697.

No. 02–1772. BLANKS, WARDEN, ET AL. *v.* BENNETT. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma*

pauperis granted. Certiorari denied. Reported below: 322 F. 3d 573.

No. 02–1779. SEINFELD *v.* BARTZ ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 322 F. 3d 693.

No. 02–1796. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied.

No. 02–1814. GARDNER *v.* UNITED STATES. C. A. 9th Cir. Motion of Paragon Foundation for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 51 Fed. Appx. 263.

No. 02–1847. INTERNATIONAL BUSINESS MACHINES CORP. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 58 Fed. Appx. 851.

No. 02–1867. FLORIDA *v.* MOODY. Sup. Ct. Fla. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 842 So. 2d 754.

No. 02–11058. SPEARS *v.* UNITED STATES; and

No. 02–11105. VAN BRANCH, AKA MACELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of these petitions. Reported below: 60 Fed. Appx. 671.

No. 02–11169. PERRY *v.* MORRISON, WARDEN. C. A. 6th Cir. Certiorari before judgment denied.

No. 02–11232. BROWN *v.* HAMLET, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 03–66. KISKA CONSTRUCTION CORPORATION-USA ET AL. *v.* WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY. C. A. D. C. Cir. Motion of General Contractors Assocation of New York, Inc., for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 321 F. 3d 1151.

No. 03–78. AGELOFF *v.* UNITED STATES. C. A. 2d Cir. Motion of petitioner to defer consideration of petition for writ of

certiorari denied. Certiorari denied. Reported below: 326 F. 3d 323.

No. 03–90. URANGA *v.* FEDERATED PUBLICATIONS, INC., DBA THE IDAHO STATESMAN. Sup. Ct. Idaho. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 138 Idaho 550, 67 P. 3d 29.

No. 03–102. PENTAGEN TECHNOLOGIES INTERNATIONAL LTD. ET AL. *v.* CACI INTERNATIONAL INC. ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 63 Fed. Appx. 548.

No. 03–142. BASS *v.* E. I. DU PONT DE NEMOURS & CO. C. A. 4th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 324 F. 3d 761.

No. 03–145. HAMRICK *v.* BUSH, PRESIDENT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Certiorari before judgment denied.

No. 03–157. OBABUEKI *v.* CHOICEPOINT, INC., ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 319 F. 3d 87.

No. 03–239. SPENCER ET AL. *v.* GONZALEZ. C. A. 9th Cir. Motion of California State Association of Counties for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 336 F. 3d 832.

No. 03–255. KENT *v.* BANK OF AMERICA, N. A., ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 03–300. SAN DIEGO ASSOCIATION OF REALTORS ET AL. *v.* FREEMAN ET AL. C. A. 9th Cir. Motions of National Association of Realtors and David J. Teece et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 322 F. 3d 1133.

No. 03–5405. HOLLIS-ARRINGTON *v.* CENDANT MORTGAGE CORP., DBA PHH MORTGAGE, ET AL. C. A. 9th Cir. Certiorari

denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 03–5415. KRAVCHUK *v.* UNITED STATES. C. A. 10th Cir. Motion of National Association of Criminal Defense Lawyers for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 335 F. 3d 1147.

No. 03–5587. MORGAN *v.* TENNESSEE DEPARTMENT OF CORRECTION ET AL. C. A. 6th Cir. Certiorari before judgment denied.

No. 03–5679. MEYER *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Cumberland County, N. C. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied.

No. 03–6059. MCKENNA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 327 F. 3d 830.

Rehearing Denied

No. 02–1565. SWARTZ *v.* PATENT AND TRADEMARK OFFICE, BOARD OF PATENT APPEALS AND INTERFERENCES, 539 U. S. 916;

No. 02–9500. NELMS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, 538 U. S. 1038;

No. 02–9578. IN RE RIVAS, 538 U. S. 1030;

No. 02–9687. HAILEY *v.* TEXAS, 538 U. S. 1060;

No. 02–9708. CADOGAN *v.* LAVIGNE, WARDEN, ET AL., 538 U. S. 1060;

No. 02–10190. PANKOV *v.* PRECISION INTERCONNECT, A DIVISION OF LUDLOW CO., LP, 539 U. S. 931;

No. 02–10290. WIEDERHOLD *v.* UNITED STATES (two judgments), 538 U. S. 1065;

No. 02–10426. MOORE ET AL. *v.* JOHNSON, GOVERNOR OF NEW MEXICO, ET AL., 539 U. S. 963;

No. 02–10461. HARVEY *v.* WARD, WARDEN, 539 U. S. 948;

No. 02–10507. VINNIE *v.* MALONEY, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTION, 539 U. S. 964;

No. 02–10576. LAIR *v.* HORN ET AL., 539 U. S. 965; and

No. 02–10765. WILLIAMSON *v.* UNITED STATES, 539 U. S. 951. Petitions for rehearing denied.

No. 02–7951. RADIVOJEVIC *v.* DALEY, MAYOR OF THE CITY OF CHICAGO, ILLINOIS, ET AL., 537 U. S. 1201. Motion of petitioner for leave to file petition for rehearing denied.

OCTOBER 9, 2003

Miscellaneous Order

No. 03–6821 (03A308). NELSON *v.* CAMPBELL, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, granted pending disposition of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for writ of certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court.

OCTOBER 10, 2003

Dismissal Under Rule 46

No. 02–1628. CONTINENTAL COMMON CORP. ET AL. *v.* KELLY INVESTMENT, INC. C. A. 5th Cir. Certiorari dismissed under this Court's Rule 46.2. Reported below: 315 F. 3d 494.

OCTOBER 14, 2003

Certiorari Dismissed

No. 03–5629. MOORE *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. 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. 03–5786. SAFOUANE ET UX. *v.* WASHINGTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES. Ct. App. Wash. Motion of petitioners for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioners have repeatedly abused this Court's process, the Clerk is directed

not to accept any further petitions in noncriminal matters from petitioners unless the docketing 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. 03–5787. ZIEGLER *v.* MICHIGAN 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. Reported below: 59 Fed. Appx. 622.

No. 03–5915. SEDGWICK *v.* BANKATLANTIC 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: 76 Fed. Appx. 285.

Miscellaneous Orders

No. 03M22. SEPULVEDA *v.* UNITED STATES;
No. 03M23. EASTON *v.* UNITED STATES;
No. 03M24. JENNINGS *v.* OREGON DRIVER AND MOTOR VEHICLE SERVICES; and
No. 03M25. AUTREY *v.* PASCAGOULA POLICE DEPARTMENT. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 02–271. DOW CHEMICAL CO. ET AL. *v.* STEPHENSON ET AL., 539 U. S. 111. Motion of respondents Joe Isaacson and Phyllis Lisa Isaacson to retax costs granted. JUSTICE STEVENS took no part in the consideration or decision of this motion.

No. 02–834. JERICOL MINING INC. ET AL. *v.* NAPIER ET AL., 538 U. S. 906. Motion of respondent Eugene Napier for attorney's fee denied without prejudice to filing in the United States Court of Appeals for the Sixth Circuit.

No. 03–371. REPUBLICAN CAUCUS OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES *v.* VIETH ET AL. C. A. 3d Cir. Motion of petitioner to expedite consideration of petition for writ of certiorari denied.

No. 03–5846. IN RE ANDERSON;
No. 03–6327. IN RE BENSON;
No. 03–6336. IN RE JORDAN;

No. 03–6337. IN RE JORDAN;
No. 03–6339. IN RE JOHNSON;
No. 03–6354. IN RE JOHNSON;
No. 03–6415. IN RE VANEGA;
No. 03–6448. IN RE CULLUM; and
No. 03–6451. IN RE SINCLAIR. Petitions for writs of habeas corpus denied.

No. 03–6362. IN RE ALTSCHUL. 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. 03–301. IN RE RODRIGUEZ ET AL.;
No. 03–5791. IN RE NELSON; and
No. 03–5890. IN RE GLOVER. Petitions for writs of mandamus denied.

No. 03–5780. IN RE MOSTAGHIM; and
No. 03–5849. IN RE GRAHAM. Petitions for writs of mandamus and/or prohibition denied.

No. 03–223. IN RE KARLHEIM. Petition for writ of prohibition denied.

Certiorari Granted

No. 02–1689. GRUPO DATAFLUX *v.* ATLAS GLOBAL GROUP, L. P., ET AL. C. A. 5th Cir. Certiorari granted. Reported below: 312 F. 3d 168.

No. 03–44. SABRI *v.* UNITED STATES. C. A. 8th Cir. Certiorari granted. Reported below: 326 F. 3d 937.

No. 03–218. ASHCROFT, ATTORNEY GENERAL *v.* AMERICAN CIVIL LIBERTIES UNION ET AL. C. A. 3d Cir. Certiorari granted. Reported below: 322 F. 3d 240.

No. 02–1609. CITY OF LITTLETON, COLORADO *v.* Z. J. GIFTS D–4, L. L. C., DBA CHRISTAL'S. C. A. 10th Cir. Certiorari granted limited to the following question: "Whether the require-

ment of prompt judicial review imposed by *FW/PBS, Inc.* v. *Dallas*, 493 U. S. 215 (1990), entails a prompt judicial determination or a prompt commencement of judicial proceedings." Reported below: 311 F. 3d 1220.

No. 02–1624. ELK GROVE UNIFIED SCHOOL DISTRICT ET AL. *v.* NEWDOW ET AL. C. A. 9th Cir. Motions of Pacific Legal Foundation et al. and Rutherford Institute for leave to file briefs as *amici curiae* granted. Certiorari granted limited to the following questions: "1. Whether respondent has standing to challenge as unconstitutional a public school district policy that requires teachers to lead willing students in reciting the Pledge of Allegiance. 2. Whether a public school district policy that requires teachers to lead willing students in reciting the Pledge of Allegiance, which includes the words "under God," violates the Establishment Clause of the First Amendment, as applicable through the Fourteenth Amendment." The Solicitor General is invited to file a brief in this case on behalf of the United States. JUSTICE SCALIA took no part in the consideration or decision of these motions and this petition. Reported below: 328 F. 3d 466.

No. 02–1794. UNITED STATES *v.* FLORES-MONTANO. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted.

No. 02–1824. DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION *v.* HALEY. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 306 F. 3d 257.

No. 02–10038. TENNARD *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted and consolidated with No. 02–11309, *Smith* v. *Dretke, Director, Texas Department of Criminal Justice, Correctional Institutions Division* [certiorari granted, 539 U. S. 986], and a total of one hour allotted for oral argument in these cases. Reported below: 317 F. 3d 476.

Certiorari Denied

No. 02–1762. AGUILAR ESPINOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 921.

No. 02–1791. BIDDLE STREET BISTRO, INC. *v.* TLJ CO., L. L. C., ET AL. C. A. 8th Cir. Certiorari denied.

No. 02–1829. CNA HOLDINGS, INC., FKA HOECHST CELANESE CORP. *v.* DELAWARE DIRECTOR OF REVENUE. Sup. Ct. Del. Certiorari denied. Reported below: 818 A. 2d 953.

No. 02–10523. MORENO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 02–10689. DOLISON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 59 Fed. Appx. 442.

No. 02–10974. WEST *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 321 F. 3d 649.

No. 02–11133. SHORT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 183.

No. 03–16. KRILICH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 53 Fed. Appx. 788.

No. 03–20. FLORIDA MUNICIPAL POWER AGENCY *v.* FEDERAL ENERGY REGULATORY COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 315 F. 3d 362.

No. 03–40. WALTERS, DIRECTOR, WHITE HOUSE OFFICE OF NATIONAL DRUG CONTROL POLICY, ET AL. *v.* CONANT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 309 F. 3d 629.

No. 03–52. AMERICAN AIRLINES, INC., ET AL. *v.* GEDDES. C. A. 11th Cir. Certiorari denied. Reported below: 321 F. 3d 1349.

No. 03–74. PAW PAW'S CAMPER CITY, INC. *v.* JIMENEZ; and No. 03–195. JIMENEZ *v.* PAW PAW'S CAMPER CITY, INC. C. A. 5th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 417.

No. 03–82. WOOD ET UX., INDIVIDUALLY, AND AS THE NATURAL PARENTS OF WOOD BORMAN, A MINOR *v.* UNIVERSITY OF UTAH MEDICAL CENTER. Sup. Ct. Utah. Certiorari denied. Reported below: 67 P. 3d 436.

No. 03–86. ESTATE OF ATKINSON, DECEASED, ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 11th Cir. Certiorari denied. Reported below: 309 F. 3d 1290.

No. 03–91. DiGrado *v.* Ashcroft, Attorney General. C. A. 2d Cir. Certiorari denied. Reported below: 67 Fed. Appx. 634.

No. 03–130. Campbell et al., on Behalf of Themselves and All Others Similarly Situated *v.* Hilton Head No. 1 Public Service District et al. Sup. Ct. S. C. Certiorari denied. Reported below: 354 S. C. 190, 580 S. E. 2d 137.

No. 03–162. Bull Moose Tube Co. et al. *v.* Emmenegger et al. C. A. 8th Cir. Certiorari denied. Reported below: 324 F. 3d 616.

No. 03–164. Townsend *v.* Federal Bureau of Prisons et al. C. A. 7th Cir. Certiorari denied.

No. 03–171. Sterling Holding Co., LLC, et al. *v.* Levy. C. A. 3d Cir. Certiorari denied. Reported below: 314 F. 3d 106.

No. 03–174. Doe et ux., Individually and on Behalf of Their Minor Children, D. M. et al. *v.* Reiger et al. C. A. 11th Cir. Certiorari denied. Reported below: 329 F. 3d 1286.

No. 03–178. Carpenter *v.* Pennsylvania et al. C. A. 3d Cir. Certiorari denied. Reported below: 65 Fed. Appx. 873.

No. 03–183. Shotts *v.* Rasmussen et al. C. A. 11th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 922.

No. 03–185. West American Insurance Co. *v.* Jackson et al. C. A. 6th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 46.

No. 03–187. Aurora National Life Assurance Co. et al. *v.* Sierra National Insurance Holdings, Inc., et al. C. A. 9th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 6.

No. 03–191. Boston University *v.* University of Medicine and Dentistry of New Jersey. Sup. Ct. N. J. Certiorari denied. Reported below: 176 N. J. 141, 820 A. 2d 1230.

No. 03–194. Tidwell *v.* BellSouth Telecommunications, Inc. C. A. 11th Cir. Certiorari denied. Reported below: 46 Fed. Appx. 618.

No. 03–196. MOSKAL *v.* DELPHI AUTOMOTIVE SYSTEMS, INC. C. A. 6th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 547.

No. 03–204. FLYNT, DBA HUSTLER CASINO AND NORMANDIE CASINO, A PARTNERSHIP *v.* CALIFORNIA GAMBLING CONTROL COMMISSION ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 104 Cal. App. 4th 1125, 129 Cal. Rptr. 2d 167.

No. 03–207. GEE *v.* RAFFERTY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 465.

No. 03–208. GOSPEL MISSIONS OF AMERICA ET AL. *v.* CITY OF LOS ANGELES, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 328 F. 3d 548.

No. 03–209. FLORET, L. L. C., ET AL. *v.* SENDECKY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 315 F. 3d 904.

No. 03–210. FOLEY *v.* BERG. Ct. App. Md. Certiorari denied. Reported below: 373 Md. 627, 820 A. 2d 587.

No. 03–211. FRANDSEN *v.* DEPARTMENT OF ENVIRONMENTAL PROTECTION. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 829 So. 2d 267.

No. 03–213. MORA HOTEL CORP. N. V. ET AL. *v.* CIBC MELLON TRUST CO., AS TRUSTEE OF CHRYSLER CANADA, LTD.'S BENEFITS PLAN AND OTHERS, ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 100 N. Y. 2d 215, 792 N. E. 2d 155.

No. 03–214. APAO *v.* ARM FINANCIAL CORP. C. A. 9th Cir. Certiorari denied. Reported below: 324 F. 3d 1091.

No. 03–215. BRIDGEPORT MUSIC, INC., ET AL. *v.* STILL N THE WATER PUBLISHING ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 327 F. 3d 472.

No. 03–217. SMITH *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–222. OKLAHOMA CITY, OKLAHOMA *v.* SMITH. C. A. 10th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 122.

No. 03–232. BAY OCEAN MANAGEMENT, INC. *v.* STEEL COILS, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 331 F. 3d 422.

No. 03–233. J. D. FIELDS & CO., INC. *v.* DUFRESNE. C. A. 5th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 525.

No. 03–237. KURTZ *v.* AYERS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–275. LAVERY *v.* CITY OF LAGUNA BEACH, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 23.

No. 03–289. BELGARD ET AL. *v.* DEPARTMENT OF AGRICULTURE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 324 F. 3d 328.

No. 03–291. KRILICH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 53 Fed. Appx. 787.

No. 03–295. ALCOHOL FOUNDATION, INC. *v.* UNITED STATES EX REL. ALCOHOL FOUNDATION, INC. C. A. 2d Cir. Certiorari denied. Reported below: 53 Fed. Appx. 153.

No. 03–296. ELBERY *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 57 Mass. App. 1112, 784 N. E. 2d 673.

No. 03–303. THOMPSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 958.

No. 03–316. RANEY *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied.

No. 03–318. AUSTIN ET AL. *v.* DILL, DILL, CARR, STONBRAKER & HUTCHINGS, P. C., ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 866 So. 2d 519.

No. 03–320. BARON *v.* DEPARTMENT OF THE INTERIOR. C. A. Fed. Cir. Certiorari denied. Reported below: 65 Fed. Appx. 721.

No. 03–323. HURN *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 58 M. J. 199.

No. 03–324. GOLDBLATT *v.* A&W INDUSTRIES, INC. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 03–328. MELKA MARINE, INC. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 57 Fed. Appx. 872.

No. 03–344. ULLMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 55 Fed. Appx. 105.

No. 03–346. LOUISIANA, THROUGH THE DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT *v.* WINGFIELD ET AL. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 835 So. 2d 785.

No. 03–5122. N. S. H. *v.* FLORIDA DEPARTMENT OF CHILDREN AND FAMILY SERVICES. Sup. Ct. Fla. Certiorari denied. Reported below: 843 So. 2d 898.

No. 03–5323. HYDE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 03–5612. ERDMAN *v.* ROBINSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–5614. KEENAN *v.* DANIEL. C. A. 6th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 180.

No. 03–5615. BROWN *v.* WORKMAN, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 217.

No. 03–5616. BENNETT *v.* MIDFIRST BANK ET AL. Ct. App. D. C. Certiorari denied. Reported below: 821 A. 2d 363.

No. 03–5618. KELLER *v.* TREFZ ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 44.

No. 03–5621. KORMONDY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 845 So. 2d 41.

No. 03–5622. SCHAEFER *v.* STOVALL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–5623. ROBERTS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5643. KNIGHT EL *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 710.

No. 03–5645. BARRAZA *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 330 F. 3d 349.

No. 03–5646. HUBBARD *v.* CAMPBELL, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 317 F. 3d 1245.

No. 03–5651. HARDY *v.* HARDY. Sup. Ct. Colo. Certiorari denied.

No. 03–5652. RUDOLPH *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 03–5653. BOGOVICH *v.* CAREY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–5655. MUHAMMAD *v.* MILLER. C. A. 9th Cir. Certiorari denied.

No. 03–5659. BOUFFORD *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 413.

No. 03–5660. LEE-BEY *v.* STRAUB, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–5665. WINFIELD *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 03–5668. TAYLOR *v.* MCMASTER, ATTORNEY GENERAL OF SOUTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 983.

No. 03–5669. ANDREWS *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY. C. A. 9th Cir. Certiorari denied.

No. 03–5673. PARKER *v.* PITCHER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–5680. ALSTON *v.* FLORIDA INSURANCE GUARANTY ASSN. Sup. Ct. Fla. Certiorari denied. Reported below: 842 So. 2d 842.

No. 03–5682. WILSON *v.* LOUISIANA. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 833 So. 2d 560.

No. 03–5683. SHARWELL *v.* PROGRESSIVE INSURANCE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 283.

No. 03–5686. BLACKMER *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 779 N. E. 2d 1266.

No. 03–5689. BEATON *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 03–5690. COCKERHAM *v.* BARNES ET AL. C. A. 5th Cir. Certiorari denied.

No. 03–5692. DELUNA *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 03–5693. EARL *v.* HATCHER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–5701. JONES *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 29 Cal. 4th 1229, 64 P. 3d 762.

No. 03–5703. TAYLOR *v.* IOWA. Sup. Ct. Iowa. Certiorari denied. Reported below: 667 N. W. 2d 56.

No. 03–5708. LAWRENCE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 846 So. 2d 440.

No. 03–5711. VOTTA *v.* GNAZZO ET AL. App. Ct. Mass. Certiorari denied. Reported below: 57 Mass. App. 1114, 785 N. E. 2d 427.

No. 03–5713. WEBB *v.* HARRIS, SHERIFF, PAULDING COUNTY, GEORGIA. C. A. 11th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 846.

No. 03–5714. THOMPSON *v.* MCMURRAY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 585.

No. 03–5715. ZUCKERMAN *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 03–5717. TAYLOR *v.* BOOT ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 125.

No. 03–5719. WILLIAMS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 1.

No. 03–5720. WALKER *v.* JACKSON, SUPERINTENDENT, BROWN CREEK CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 589.

No. 03–5722. SWANN *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5723. SEEGARS *v.* WARD, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 188.

No. 03–5725. RUDD *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 30 Kan. App. 2d xxxix, 57 P. 3d 831.

No. 03–5726. RINCON *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5728. WHITEHEAD *v.* BUSH, GOVERNOR OF FLORIDA, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 912.

No. 03–5732. HILLCOAT *v.* HATCHER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5734. GREEN *v.* BROWNWOOD REGIONAL MEDICAL CENTER. C. A. 5th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 121.

No. 03–5736. GEIDEL *v.* BLAINE ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–5744. BROWN *v.* RAMSEY, SHERIFF, KANE COUNTY, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied.

No. 03–5754. ERWIN *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Guilford County, N. C. Certiorari denied.

No. 03–5755. WARICK *v.* PARKER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 53 Fed. Appx. 326.

No. 03–5760. WINN *v.* LANDMARK COMMUNICATIONS, INC. Sup. Ct. Va. Certiorari denied.

No. 03–5763. CADY *v.* CITY OF CHICAGO, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 61.

No. 03–5766. DUC CANH PHAN *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5767. NAVARRO DIAZ *v.* HALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5770. CLARK *v.* DAVIS, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied.

No. 03–5772. DANIEL *v.* SANDOVAL, ATTORNEY GENERAL OF NEVADA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–5775. COLE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 03–5776. CLEMONS *v.* MCADORY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 657.

No. 03–5777. COCHELL *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5778. EVANS *v.* PLILER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5782. BYNUM *v.* ATLANTA MEDICAL RESEARCH ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–5789. RAWLS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5790. SMITH *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 03–5793. CRUZ *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5795. CARTWRIGHT *v.* PERSONS. Sup. Ct. Ala. Certiorari denied. Reported below: 883 So. 2d 270.

No. 03–5797. BEVERS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5799. MILLER *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–5801. LYNCH *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 98 Ohio St. 3d 514, 787 N. E. 2d 1185.

No. 03–5819. WICKLINE *v.* MITCHELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 319 F. 3d 813.

No. 03–5821. SHAVER *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5826. STILL *v.* MCLEMORE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–5829. GILMORE *v.* AT&T CORP. C. A. 8th Cir. Certiorari denied. Reported below: 319 F. 3d 1042.

No. 03–5830. MCMANUS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 67.

No. 03–5831. PAYTON *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5835. HUNG LAM *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 376.

No. 03–5842. GOMEZ GUTIERREZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 29 Cal. 4th 1196, 63 P. 3d 1000.

No. 03–5843. HELMS *v.* CONROY, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 142.

No. 03–5845. TELLINGHUISEN *v.* ROEHRICH, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 03–5847. ANDERSON *v.* RANEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–5848. LYNN *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5852. SUGGS *v.* HUSKEY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 1.

No. 03–5856. MUNOZ *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5860. ANDERSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 841 So. 2d 390.

No. 03–5862. HENRY *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 327 F. 3d 429.

No. 03–5869. GRINKER *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 03–5870. GILBERT *v.* YARBOROUGH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5871. FISH *v.* RIVSTVEDT ET AL. C. A. 8th Cir. Certiorari denied.

No. 03–5874. CRAWFORD *v.* HEAD, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 311 F. 3d 1288.

No. 03–5875. COLEMAN *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–5876. ECKELS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION (two judgments). C. A. 5th Cir. Certiorari denied.

No. 03–5877. EYRICH *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–5882. HOPKINS ET UX. *v.* NORTHBROOK MOBILE HOME COMMUNITY CORP. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 333 Ill. App. 3d 1233, —— N. E. 2d ——.

No. 03–5883. THOMASON *v.* HEAD, WARDEN. Sup. Ct. Ga. Certiorari denied. Reported below: 276 Ga. 434, 578 So. 2d 426.

No. 03–5884. HOLIFIELD *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 847 So. 2d 866.

No. 03–5889. ZUMETA *v.* MANN. C. A. 11th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 319.

No. 03–5891. GARDNER *v.* PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE. Sup. Ct. Pa. Certiorari denied. Reported below: 573 Pa. 825, 825 A. 2d 640.

No. 03–5894. FREEMAN *v.* SIKORSKY AIRCRAFT CORP. C. A. 2d Cir. Certiorari denied.

No. 03–5898. MOORE *v.* T&G PROPERTIES ET AL. C. A. 7th Cir. Certiorari denied.

No. 03–5899. PRUITT *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 846 So. 2d 271.

No. 03–5900. MILLER *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 03–5903. EVANS *v.* SCRIBNER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–5905. DAVIS *v.* NEW YORK CITY BOARD OF EDUCATION. C. A. 2d Cir. Certiorari denied.

No. 03–5911. MORALES *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 03–5913. WILLIAMS *v.* PRINCIPI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 64 Fed. Appx. 210.

No. 03–5914. REINIER *v.* STITT ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 692.

No. 03–5920. LOA *v.* LUNA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5952. TREPAL *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 846 So. 2d 405.

No. 03–5953. ANDERSON *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 508.

No. 03–5954. WEBB *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 03–5965. SMITH *v.* HORN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 65 Fed. Appx. 874.

No. 03–5967. CARTER *v.* OHIO. Ct. App. Ohio, Stark County. Certiorari denied.

No. 03–5981. THORNTON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 03–6003. WALLACE *v.* PLILER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6005. TAI *v.* HAWAII. Int. Ct. App. Haw. Certiorari denied. Reported below: 101 Haw. 436, 70 P. 3d 662.

No. 03–6006. DAVIS *v.* KELLY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 316 F. 3d 125.

No. 03–6017. BADGETT *v.* FEDERAL EXPRESS CORP. C. A. 4th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 149.

No. 03–6031. BRADFORD *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 275 Kan. ix, 69 P. 3d 632.

No. 03–6040. THYMES *v.* FEDERAL BUREAU OF INVESTIGATION ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–6054. CAMPOS *v.* PORTUONDO, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 320 F. 3d 185.

No. 03–6055. NEWSOME *v.* ENTERGY NEW ORLEANS, INC., ET AL. C. A. 5th Cir. Certiorari denied.

No. 03–6063. JONES *v.* JOHNSON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–6073. MACEWAN *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 860 So. 2d 899.

No. 03–6084. SMITH *v.* REID, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 03–6088. COLEMAN *v.* HARRISON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 65.

No. 03–6104. ROBBIO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 989.

No. 03–6113. CENTENO *v.* CITY OF DALLAS, TEXAS. C. A. 5th Cir. Certiorari denied.

No. 03–6116. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–6131. FINE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–6133. LEONIDES GUANIPA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 990.

No. 03–6135. HINTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 03–6136. GARCIA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 80 Fed. Appx. 289.

No. 03–6145. FERNANDEZ-CASTILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 324 F. 3d 1114.

No. 03–6147. SMITH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 79.

No. 03–6150. MATHIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–6151. KRAVITZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–6152. LOPEZ-RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 368.

No. 03–6154. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–6157. TEKLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 329 F. 3d 1108.

No. 03–6159. SPARKS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 440.

No. 03–6160. PHERIGO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 327 F. 3d 690.

No. 03–6162. RICE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 490.

No. 03–6163. SANTOS-CARBAJAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 173.

No. 03–6164. LEWIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 757.

No. 03–6167. WASHINGTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–6169. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 659.

No. 03–6177. BOOS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 329 F. 3d 907.

No. 03–6178. COLEMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 68 Fed. Appx. 300.

No. 03–6180. ETIMANI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 328 F. 3d 493.

No. 03–6182. CORREIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 177.

No. 03–6190. SMALLS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 03–6194. SHARP *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 440.

No. 03–6195. JOHNSON *v.* UNITED STATES; and

No. 03–6214. FIELDS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 325 F. 3d 286.

No. 03–6196. BURCIAGA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 812.

No. 03–6198. AMELING *v.* UNITED STATES; and
No. 03–6225. BROWN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 328 F. 3d 443.

No. 03–6199. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 392.

No. 03–6202. MOHSENZADEH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 334.

No. 03–6203. WILSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 78.

No. 03–6208. MCNUTT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 731.

No. 03–6210. PINEDA-GUILLEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 440.

No. 03–6212. GARCIA-HERNANDEZ *v.* UNITED STATES; and ALFARO-LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 441.

No. 03–6213. GAMINO-GUTIERREZ, AKA PEREZ, AKA ALFARO CUELLAR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 764.

No. 03–6219. WILLIAMS *v.* LARSEN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 939.

No. 03–6220. PICKENS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 657.

No. 03–6221. HOLLINGSWORTH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 178.

No. 03–6222. GUERRA-GARCIA ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 336 F. 3d 19.

No. 03–6223. WEITERS *v.* MUGAN, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 738.

No. 03–6235. BOND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 03–6238. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 201.

No. 03–6240. CARSTARPHEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 65 Fed. Appx. 424.

No. 03–6242. PAUL *v.* REESE, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 03–6243. ZUNIGA-GUEVARA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 82.

No. 03–6244. JOHNSON, AKA MITCHELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 326 F. 3d 1018.

No. 03–6248. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 440.

No. 03–6252. DADI *v.* HUGHES, JUDGE, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 242.

No. 03–6259. BARKER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 69 Fed. Appx. 497.

No. 02–1574. UNITED STATES *v.* NEWDOW ET AL. C. A. 9th Cir. Motion of Sandra L. Banning for leave to file a brief as *amicus curiae* granted. Certiorari denied. JUSTICE SCALIA took no part in the consideration or decision of this motion and this petition. Reported below: 328 F. 3d 466.

No. 03–7. NEWDOW *v.* UNITED STATES CONGRESS ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE SCALIA took no part in the consideration or decision of this petition. Reported below: 328 F. 3d 466.

No. 03–15. ARIZONA *v.* PANDELI, AKA FLORIAN. Sup. Ct. Ariz. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 204 Ariz. 569, 65 P. 3d 950.

No. 03–59. BAXTER INTERNATIONAL, INC. *v.* ABBOTT LABORATORIES. C. A. 7th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 315 F. 3d 829.

No. 03–73. CARLSON ET AL., INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED *v.* ALASKA COMMERCIAL FISHERIES ENTRY COMMISSION. Sup. Ct. Alaska. Motion of Tangier Sound Waterman's Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 65 P. 3d 851.

No. 03–249. DUNCAN, WARDEN *v.* BRADLEY. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 315 F. 3d 1091.

No. 03–5841. HOLLIS-ARRINGTON *v.* CENDANT MORTGAGE CORP. ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 61 Fed. Appx. 463.

Rehearing Denied

No. 02–10412. TURNER *v.* KAPTURE, WARDEN, ET AL., 539 U. S. 933. Petition for rehearing denied.

No. 02–9073. LATTIMORE *v.* MALONEY, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTION, 538 U. S. 966. Motion of petitioner for leave to file petition for rehearing denied.

OCTOBER 20, 2003

Certiorari Granted—Reversed. (See No. 02–1597, *ante*, p. 1.)

Vacated and Remanded After Certiorari Granted

No. 02–1019. ARIZONA *v.* GANT. Ct. App. Ariz. [Certiorari granted, 538 U. S. 976.] Judgment vacated, and case remanded for reconsideration in light of *State* v. *Dean*, 206 Ariz. 158, 76 P. 3d 429 (2003).

Certiorari Dismissed

No. 03–6002. ROWELL *v.* 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. 03–6281. PEREZ *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. 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: 66 Fed. Appx. 509.

Miscellaneous Orders

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 $3,351.04 for the period April 1 through July 31, 2003, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 539 U. S. 924.]

No. 126, Orig. KANSAS *v.* NEBRASKA ET AL. Final Report of the Special Master received and ordered filed. [For earlier order herein, see, *e. g.*, 538 U. S. 1055.]

No. 02–458. RAYMOND B. YATES, M. D., P. C. PROFIT SHARING PLAN ET AL. *v.* HENDON, TRUSTEE. C. A. 6th Cir. [Certiorari granted, 539 U. S. 957.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 02–1348. OLYMPIC AIRWAYS *v.* HUSAIN, INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF HANSON, DECEASED, ET AL. C. A. 9th Cir. [Certiorari granted, 538 U. S. 1056.] Motion of Air Transport Association of America, Inc., for leave to file a reply to brief as *amicus curiae* of the United States denied. JUSTICE BREYER took no part in the consideration or decision of this motion.

No. 02–9410. CRAWFORD *v.* WASHINGTON. Sup. Ct. Wash. [Certiorari granted, 539 U. S. 914.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 03–5994. TARANTINO *v.* BOARD OF REVIEW, NEW JERSEY DEPARTMENT OF LABOR. Super. Ct. N. J., App. Div. Motion of

petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until November 10, 2003, 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. 03–6555. IN RE DANIELS;
No. 03–6563. IN RE TAYLOR;
No. 03–6570. IN RE ANTOINE; and
No. 03–6616. IN RE HAYES. Petitions for writs of habeas corpus denied.

No. 03–173. IN RE TOTO; and
No. 03–5969. IN RE DARBY. Petitions for writs of mandamus denied.

Certiorari Granted

No. 02–1632. BLAKELY *v.* WASHINGTON. Ct. App. Wash. Certiorari granted. Reported below: 111 Wash. App. 851, 47 P. 3d 149.

No. 03–5554. HIIBEL *v.* SIXTH JUDICIAL DISTRICT COURT OF NEVADA, HUMBOLDT COUNTY, ET AL. Sup. Ct. Nev. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 118 Nev. 868, 59 P. 3d 1201.

Certiorari Denied

No. 02–1568. WATSON *v.* PARKER. C. A. 10th Cir. Certiorari denied. Reported below: 313 F. 3d 1267.

No. 02–1822. ANDERSEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 317 F. 3d 1235.

No. 02–11281. WASHINGTON *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 324 F. 3d 1263.

No. 03–89. SHEFFIELD ET AL. *v.* ACEVES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 326 F. 3d 1042.

No. 03–176. COOPER ET AL. *v.* BOYCE ET AL. Ct. App. N. C. Certiorari denied. Reported below: 153 N. C. App. 25, 568 S. E. 2d 893.

No. 03–220. MAY *v.* GMC MANSFIELD METAL FABRICATING ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 171.

No. 03–224. MOORE *v.* LOCAL UNION NO. 58, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 581.

No. 03–234. MAHURKAR *v.* NIRO, SCAVONE, HALLER & NIRO ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 62 Fed. Appx. 962.

No. 03–235. MANIATTY *v.* UNUMPROVIDENT CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 62 Fed. Appx. 413.

No. 03–236. AKERS *v.* BISHOP ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 952.

No. 03–238. CAIN, WARDEN, ET AL. *v.* WILKERSON. C. A. 5th Cir. Certiorari denied. Reported below: 329 F. 3d 431.

No. 03–243. SWEAT *v.* GEORGIA DEPARTMENT OF HUMAN SERVICES. Sup. Ct. Ga. Certiorari denied. Reported below: 276 Ga. 627, 580 S. E. 2d 206.

No. 03–244. DAIWA SECURITIES AMERICA INC. *v.* KAYNE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 329 F. 3d 297.

No. 03–245. DEROLPH ET AL. *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 99 Ohio St. 3d 97, 789 N. E. 2d 195.

No. 03–246. BORDERS *v.* DISTRICT OF COLUMBIA OFFICE OF BAR COUNSEL. Ct. App. D. C. Certiorari denied. Reported below: 797 A. 2d 716.

No. 03–247. SARDAGNA ET AL. *v.* SOUTHERN CALIFORNIA, ARIZONA, COLORADO, AND SOUTHERN NEVADA GLAZIERS ARCHITECTURAL METAL AND GLASS WORKERS PENSION TRUST ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 114.

No. 03–250. AMERICA WEST HOLDINGS CORP. ET AL. *v.* EMPLOYER-TEAMSTERS JOINT COUNCIL NO. 84 PENSION TRUST FUND, ON BEHALF OF ITSELF AND ALL OTHERS SIMILARLY SITUATED. C. A. 9th Cir. Certiorari denied. Reported below: 320 F. 3d 920.

No. 03–251. CIGNA Property & Casualty *v.* Ruiz et al. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 834 So. 2d 234.

No. 03–256. Line *v.* Alonso. Sup. Ct. La. Certiorari denied. Reported below: 846 So. 2d 745.

No. 03–257. Fidelity Exploration & Production Co. *v.* Northern Plains Resource Council, Inc. C. A. 9th Cir. Certiorari denied. Reported below: 325 F. 3d 1155.

No. 03–262. Grillot *v.* Arkansas. Sup. Ct. Ark. Certiorari denied. Reported below: 353 Ark. 294, 107 S. W. 3d 136.

No. 03–263. Gerosa et al. *v.* Savasta & Co., Inc. C. A. 2d Cir. Certiorari denied. Reported below: 329 F. 3d 317.

No. 03–264. Geremia *v.* Las Vegas Metropolitan Police Department et al. C. A. 9th Cir. Certiorari denied. Reported below: 45 Fed. Appx. 825.

No. 03–265. Frakes et ux. *v.* Garies et al. Sup. Ct. Ala. Certiorari denied. Reported below: 883 So. 2d 276.

No. 03–266. Helton, dba B&H Video *v.* Hunt et al. C. A. 4th Cir. Certiorari denied. Reported below: 330 F. 3d 242.

No. 03–267. Hickel *v.* Kent County Concealed Weapon Licensing Board. Ct. App. Mich. Certiorari denied.

No. 03–280. Delvoye *v.* Lee. C. A. 3d Cir. Certiorari denied. Reported below: 329 F. 3d 330.

No. 03–282. Padberg et al. *v.* McGrath-McKechnie et al. C. A. 2d Cir. Certiorari denied. Reported below: 60 Fed. Appx. 861.

No. 03–293. LCT Transportation Services, Inc., aka Lester Coggins Trucking, Inc. *v.* Barragan et al. C. A. 11th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 715.

No. 03–315. Rapoport *v.* Florida Bar. Sup. Ct. Fla. Certiorari denied. Reported below: 845 So. 2d 874.

No. 03–365. Kavali *v.* Texas. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 03–368. PRESSLEY *v.* BENNETT, SUPERINTENDENT, ELMIRA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 03–372. CLARK *v.* MURPHY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 331 F. 3d 1062.

No. 03–382. UNITED STATES EX REL. GARST *v.* LOCKHEED MARTIN CORP. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 328 F. 3d 374.

No. 03–384. HELLER *v.* RAILROAD RETIREMENT BOARD. C. A. 2d Cir. Certiorari denied. Reported below: 63 Fed. Appx. 541.

No. 03–389. HUDDY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 903.

No. 03–398. KHOROZIAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 333 F. 3d 498.

No. 03–410. WILSON *v.* TYSON FOODS, INC. C. A. 11th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 387.

No. 03–415. NELSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 03–5412. WALDROP *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 859 So. 2d 1181.

No. 03–5431. KELLY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 361.

No. 03–5433. MARQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 242.

No. 03–5531. HOPKINS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 325 F. 3d 579.

No. 03–5873. DARKS *v.* MULLIN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 327 F. 3d 1001.

No. 03–5921. DAWKINS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 03–5925. CASTRO *v.* HORNUNG, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–5928. BISHOP *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 849 So. 2d 1088.

No. 03–5931. MACARENA *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 588.

No. 03–5942. COE *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5947. LEWIS *v.* UGLY DUCKLING CAR SALES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 537.

No. 03–5948. JACKSON *v.* BURTON, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 03–5951. WINKFIELD *v.* BAGLEY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 578.

No. 03–5956. WILLIAMS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 03–5963. MOORE *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied.

No. 03–5966. MARTIN *v.* WILLIAMS. Ct. App. Neb. Certiorari denied.

No. 03–5968. COLEMAN *v.* ROLLINS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–5970. CARRANZA *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 03–5973. COFFELT *v.* TENNESSEE. C. A. 6th Cir. Certiorari denied.

No. 03–5975. PRUITT *v.* MUSGROVE, GOVERNOR OF MISSISSIPPI, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 417.

No. 03–5977. KRAUSE *v.* EBNER ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 03–5980. WHITE *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 03–5982. YOUNG *v.* QUESTA RESOURCES, INC. Sup. Ct. N. D. Certiorari denied. Reported below: 658 N. W. 2d 756.

No. 03–5984. YOUNGBLOOD *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5985. WATSON *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 985.

No. 03–5986. WILLIAMS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–5990. HARLOW *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 70 P. 3d 179.

No. 03–5996. HODGES *v.* SPRINT SPECTRUM L. P. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 345.

No. 03–5997. HOWZE *v.* BUTLER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–5999. RILEY *v.* MEYERS, SUPERINTENDENT, ROCKVIEW STATE CORRECTIONAL INSTITUTION. C. A. 3d Cir. Certiorari denied.

No. 03–6004. WRIGHT *v.* CAUDILL ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 799.

No. 03–6007. BLANCHE *v.* CAREY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6008. BANUELOS *v.* HALL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–6011. TAYLOR *v.* WILSON, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 03–6012. DEVLIN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 03–6013. CUNNINGHAM *v.* NEVADA. Sup. Ct. Nev. Certiorari denied.

No. 03–6015. DOVE *v.* CITY OF KINSTON, NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 101.

No. 03–6021. KRAMER *v.* UNIVERSITY OF PITTSBURGH ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 804 A. 2d 68.

No. 03–6023. WALLACE-STEPTER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 03–6024. ESTEVEZ *v.* GARCIA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–6034. COLLIER *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–6069. SMITH *v.* HOFBAUER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 312 F. 3d 809.

No. 03–6075. MCDEID *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 8th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 587.

No. 03–6076. LEITNER *v.* HENDRICKS, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–6092. WRIGHT *v.* STICKMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–6096. WALTERS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 357 N. C. 68, 588 S. E. 2d 344.

No. 03–6103. VANN *v.* DONNELLY, SUPERINTENDENT, WENDE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 03–6112. CROSS-BEY *v.* GAMMON, SUPERINTENDENT, MOBERLY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 322 F. 3d 1012.

No. 03–6120. GILLESPIE *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 573 Pa. 100, 821 A. 2d 1221.

No. 03–6129. HETTLER *v.* DODY. Sup. Ct. Colo. Certiorari denied.

No. 03–6137. NELSON *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–6161. LINDSAY *v.* PIZZA HUT OF AMERICA, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 648.

No. 03–6174. NGUYEN *v.* ILLINOIS DEPARTMENT OF CENTRAL MANAGEMENT SERVICES ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 126.

No. 03–6176. BRYANT *v.* RUSHTON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 166.

No. 03–6181. ENGRO *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 276 Kan. ix, 73 P. 3d 148.

No. 03–6187. LEPAGE *v.* IDAHO. Ct. App. Idaho. Certiorari denied. Reported below: 138 Idaho 803, 69 P. 3d 1064.

No. 03–6189. KEFALOS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 248.

No. 03–6201. RODRIGUEZ *v.* LOUISIANA. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 839 So. 2d 106.

No. 03–6204. IRBY *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 276 Kan. ix, 73 P. 3d 148.

No. 03–6209. MURCHISON *v.* UNITED STATES; and
No. 03–6320. IRVING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 480.

No. 03–6211. HUDSON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 265 Va. 505, 578 S. E. 2d 781.

No. 03–6216. SHELVY *v.* POTTER, POSTMASTER GENERAL. C. A. 7th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 273.

No. 03–6234. MESTER *v.* LEWIS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–6236. THRASH *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied.

No. 03–6255. EVANS *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 439 Mass. 184, 786 N. E. 2d 375.

No. 03–6256. LEWIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 435.

No. 03–6257. JEFFERY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 137.

No. 03–6261. JOSEPH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 333 F. 3d 587.

No. 03–6262. MARTINEZ *v.* ORTIZ, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 330 F. 3d 1259.

No. 03–6266. RADCLIFF *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 331 F. 3d 1153.

No. 03–6267. ROBERTS *v.* CALLAHAN, COMMANDER, FORT SILL REGIONAL CORRECTIONAL FACILITY. C. A. 10th Cir. Certiorari denied. Reported below: 321 F. 3d 994.

No. 03–6271. PEREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 284.

No. 03–6272. STINES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 313 F. 3d 912.

No. 03–6275. KING *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 03–6282. PEREZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 495.

No. 03–6284. SCHREANE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 331 F. 3d 548.

No. 03–6285. BROWN *v.* HENDRICKS, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–6288. BOYD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 312.

No. 03–6292. DUQUESNE *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 03–6294. MENDENHALL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 565.

No. 03–6295. CLARK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 74 Fed. Appx. 561.

No. 03–6307. SACCOCCIA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 42 Fed. Appx. 476.

No. 03–6313. GUILLORY *v.* YARBOROUGH, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 329 F. 3d 1015.

No. 03–6315. HERNANDEZ-GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 68.

No. 03–6316. MURRAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 600.

No. 03–6317. GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 378.

No. 03–6318. HERNANDEZ-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 82.

No. 03–6321. CALDERON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 54 Fed. Appx. 22.

No. 03–6325. RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 525.

No. 03–6326. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 605.

No. 03–6333. THOMAS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 327 F. 3d 253.

No. 03–6335. JOHNSON, AKA MILLNER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 66 Fed. Appx. 320.

No. 03–6344. SOSA-FUENTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 442.

No. 03–6347. ROGERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 186.

No. 03–6348. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 197.

No. 03–6351. ESPINOSA-HERRERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 366.

No. 03–6353. CAZACO, AKA NELSON, AKA NISBETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 456.

No. 03–6355. AGUILAR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 03–6358. KHAN-BEY, AKA GLOVER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 64 Fed. Appx. 851.

No. 03–6361. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 386.

No. 03–6365. BROWN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 330 F. 3d 1073.

No. 03–6369. PAZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 03–6370. WALKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 630.

No. 03–6371. SCOTT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 317.

No. 03–6373. MORALES-VEGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 921.

No. 03–6378. LONEDOG *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 543.

No. 03–6379. BRATCHER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–6386. BRUZON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 741.

No. 03–6391. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 804.

No. 03–6393. STOVALL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 337 F. 3d 570.

No. 03–6394. SANFILIPPO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 388.

No. 03–6399. TERRAZAS-ESCOBEDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 779.

No. 03–6402. MACKEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–6405. BAUTISTA-RAMOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 449.

No. 03–6408. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 658.

No. 03–6409. ESPINOZA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 555.

No. 03–6412. RIVERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 03–6413. MCCLUNG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 180.

No. 03–6414. MONTEVERDI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 587.

No. 03–6416. PURCHESS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 03–6417. DIAZ-VILLASENOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 791.

No. 03–6420. ZUNIGA-PEREZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 906.

No. 03–6425. MILLER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 03–6427. TRUPEI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–6430. DYER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 325 F. 3d 464.

No. 03–6431. JONES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 332 F. 3d 1294.

No. 03–6432. BENJAMIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 212.

No. 03–6440. STEWART *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–6442. SWINTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 333 F. 3d 481.

No. 03–6447. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–6454. LYLES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 71 Fed. Appx. 110.

No. 03–6455. JAMES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 21 Fed. Appx. 150.

No. 03–6457. PEREZ-VELASQUEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 890.

No. 03–6459. RIVERA-RELLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 322 F. 3d 670.

No. 03–6460. QUARLES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 330 F. 3d 650.

No. 03–6461. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 743.

No. 03–169. MULLIN *v.* ELLIS. C. A. 10th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 326 F. 3d 1122.

No. 03–390. IOWA CONFERENCE OF THE UNITED METHODIST CHURCH ET AL. *v.* KLIEBENSTEIN ET VIR. Sup. Ct. Iowa. Motions of Professor Carl H. Esbeck et al., GuideOne Insurance Co.,

and Southern Baptist Convention for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 663 N. W. 2d 404.

Rehearing Denied

No. 02–7491. PALMER *v.* ENGLAND, SECRETARY OF THE NAVY, 537 U. S. 1131. Motion of petitioner for leave to file petition for rehearing denied.

OCTOBER 23, 2003

Certiorari Denied

No. 03–6728 (03A324). SMITH *v.* MISSOURI. Sup. Ct. Mo. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. Reported below: 100 S. W. 3d 805.

NOVEMBER 3, 2003

Certiorari Granted—Reversed and Remanded. (See No. 02–1369, *ante*, p. 12.)

Certiorari Dismissed

No. 03–6019. ROWELL *v.* HATCHER, WARDEN. Sup. Ct. Nev. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 03–6138. PARKER *v.* OKLAHOMA. Ct. Crim. App. Okla. 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. 03–6226. MASON *v.* SUPERIOR COURT OF CALIFORNIA, SISKIYOU COUNTY. Ct. App. Cal., 3d App. Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 03–6395. WINKE *v.* OLD REPUBLIC SURETY CO. 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. 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. 03–6689. PERRY *v.* MORRISON, WARDEN. 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. Reported below: 75 Fed. Appx. 409.

Miscellaneous Orders

No. 03A202. TAYLOR *v.* BOOKER, WARDEN. Application for a certificate of appealability, addressed to JUSTICE O'CONNOR, and referred to the Court, denied.

No. D–2331. IN RE DISBARMENT OF STEVENS. Disbarment entered. [For earlier order herein, see 536 U. S. 975.]

No. D–2355. IN RE DISCIPLINE OF PIRRO. Albert J. Pirro, Jr., of White Plains, N. Y., 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–2356. IN RE DISCIPLINE OF FREIHOFER. William Walter Freihofer, Jr., of Longport, N. J., 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. 03M26. BRANHAM *v.* WARD, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS, ET AL.; and

No. 03M28. SHELTON *v.* WHALEN ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 03M27. SEAL X *v.* DANIELS, WARDEN. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 02–94. OVERTON, DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS, ET AL. *v.* BAZZETTA ET AL., 539 U. S. 126. Motion of respondents to retax costs denied.

No. 02–857. HOUSEHOLD CREDIT SERVICES, INC., ET AL. *v.* PFENNIG. C. A. 6th Cir. [Certiorari granted, 539 U. S. 957.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 02–1371. MISSOURI *v.* SEIBERT. Sup. Ct. Mo. [Certiorari granted, 538 U. S. 1031.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 03–107. UNITED STATES *v.* LARA. C. A. 8th Cir. [Certiorari granted, 539 U. S. 987.] Motion of respondent for appointment of counsel granted. Alexander F. Reichert, Esq., of Grand Forks, N. D., is appointed to serve as counsel for respondent in this case.

No. 03–6319. HOLLIDAY *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until November 24, 2003, 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. 03–6688. IN RE DOMAN;
No. 03–6762. IN RE GALLOWAY; and
No. 03–6851. IN RE BEACHUM. Petitions for writs of habeas corpus denied.

No. 03–258. IN RE MOORE, CHIEF JUSTICE, SUPREME COURT OF ALABAMA. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 03–101. NORTON, SECRETARY OF THE INTERIOR, ET AL. *v.* SOUTHERN UTAH WILDERNESS ALLIANCE ET AL. C. A. 10th Cir. Certiorari granted. Reported below: 301 F. 3d 1217.

No. 03–5165. THORNTON *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 325 F. 3d 189.

No. 02–1845. AETNA HEALTH INC., FKA AETNA U. S. HEALTHCARE INC. ET AL. *v.* DAVILA; and

No. 03–83. CIGNA HEALTHCARE OF TEXAS, INC., DBA CIGNA CORP. *v.* CALAD ET AL. C. A. 5th Cir. Motion of American Association of Health Care Plans, Inc., et al. for leave to file a brief as *amici curiae* granted. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 307 F. 3d 298.

Certiorari Denied

No. 02–1856. APPLIED COS., INC. *v.* RUMSFELD, SECRETARY OF DEFENSE. C. A. Fed. Cir. Certiorari denied. Reported below: 325 F. 3d 1328.

No. 02–10947. COLWELL *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 118 Nev. 807, 59 P. 3d 463.

No. 03–22. TROUT ET AL. *v.* JOHNSON, ACTING SECRETARY OF THE NAVY, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 317 F. 3d 286.

No. 03–48. BILTMORE FOREST BROADCASTING FM, INC. *v.* FEDERAL COMMUNICATIONS COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 321 F. 3d 155.

No. 03–103. WATTS *v.* BROWNLEE, ACTING SECRETARY OF THE ARMY, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 685.

No. 03–111. TENNESSEE ET AL. *v.* DEPARTMENT OF TRANSPORTATION, RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 326 F. 3d 729.

No. 03–114. SOUTH CAROLINA MEDICAL ASSN. ET AL. *v.* THOMPSON, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 327 F. 3d 346.

No. 03–116. COCHRAN, INDIVIDUALLY AND IN HIS CAPACITY AS THE CHIEF OF POLICE OF THE CITY OF EDMOND, OKLAHOMA *v.* BARNTHOUSE ET AL. Sup. Ct. Okla. Certiorari denied. Reported below: 73 P. 3d 840.

No. 03–124. MOBA, B. V., ET AL. *v.* DIAMOND AUTOMATION, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 325 F. 3d 1306.

No. 03–127. TAYLOR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 58.

No. 03–132. BAKAL *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 650.

No. 03–139. HERNANDEZ *v.* BOROUGH OF PALISADES PARK POLICE DEPARTMENT ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 58 Fed. Appx. 909.

No. 03–146. LOTZ ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 322 F. 3d 1328.

No. 03–159. MCQUEEN *v.* SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT, FKA SOUTH CAROLINA COASTAL COUNCIL. Sup. Ct. S. C. Certiorari denied. Reported below: 354 S. C. 142, 580 S. E. 2d 116.

No. 03–163. CITY OF SAN ANTONIO, TEXAS *v.* ENCORE VIDEOS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 330 F. 3d 288.

No. 03–182. SHALER AREA EDUCATION ASSN. *v.* EMORY ET AL.; and

No. 03–188. OTTO ET AL. *v.* PENNSYLVANIA STATE EDUCATION ASSOCIATION-NEA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 330 F. 3d 125.

No. 03–192. VILLAGE OF ISLANDIA ET AL. *v.* ELECTRICAL INSPECTORS, INC. C. A. 2d Cir. Certiorari denied. Reported below: 320 F. 3d 110.

No. 03–225. WOOD *v.* GREEN, CLERK, CIRCUIT COURT OF FLORIDA, LEE COUNTY. C. A. 11th Cir. Certiorari denied. Reported below: 323 F. 3d 1309.

No. 03–260. FOTTA *v.* TRUSTEES OF THE UNITED MINE WORKERS OF AMERICA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 319 F. 3d 612.

No. 03–268. SYSLO *v.* SYSLO. Ct. App. Ohio, Lucas County. Certiorari denied.

No. 03–273. GROSS *v.* IRTZ, ADMINISTRATOR OF THE ESTATE OF GROSS. Cir. Ct. Fayette County, Ky. Certiorari denied.

No. 03–278. EPLUS GROUP, INC. *v.* CARESOUTH HOME HEALTH SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 651.

No. 03–281. CONSUMERS UNION OF UNITED STATES, INC. *v.* SUZUKI MOTOR CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 330 F. 3d 1110.

No. 03–285. RANEY *v.* GATEWAY COMPUTER CO. Sup. Ct. Va. Certiorari denied.

No. 03–292. LEROHL ET AL. *v.* FRIENDS OF MINNESOTA SINFONIA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 322 F. 3d 486.

No. 03–294. SANDERS ET AL. *v.* FIRST AMERICAN TITLE INSURANCE CO. ET AL.; and

No. 03–5619. RICHARDSON *v.* FIRST AMERICAN TITLE INSURANCE CO. ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–297. LUSARDI *v.* 40235 WASHINGTON STREET CORP. C. A. 9th Cir. Certiorari denied. Reported below: 329 F. 3d 1076.

No. 03–305. JARBOE ET UX. *v.* READ ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 817 A. 2d 1190.

No. 03–306. ALEXANDER *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 204 Ill. 2d 472, 791 N. E. 2d 506.

No. 03–307. LONG ET AL. *v.* CROSS REPORTING SERVICE, INC., ET AL. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 103 S. W. 3d 249.

No. 03–308. KIEFFER *v.* KIEFFER ET AL. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 103 S. W. 3d 164.

No. 03–314. SATAVA ET AL. *v.* LOWRY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 323 F. 3d 805.

No. 03–319. UNION CARBIDE CORP. *v.* RECHT ET AL. Sup. Ct. App. W. Va. Certiorari denied.

No. 03–321. TRAVERS *v.* JONES, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS CHIEF EXECUTIVE OFFICER OF DEKALB COUNTY, GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 323 F. 3d 1294.

No. 03–322. HERRNREITER *v.* CHICAGO HOUSING AUTHORITY. C. A. 7th Cir. Certiorari denied. Reported below: 315 F. 3d 742.

No. 03–325. GAL ET AL., AS EXECUTORS OF THE ESTATE OF LAZARE, ET AL. *v.* PLASKETT, TRUSTEE, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 326 F. 3d 201.

No. 03–329. CHERRY *v.* ZUCKER. Super. Ct. Pa. Certiorari denied. Reported below: 817 A. 2d 1172.

No. 03–333. LI YU, ADMINISTRATOR OF THE ESTATE OF WEI WU *v.* TEXAS DEPARTMENT OF TRANSPORTATION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 526.

No. 03–335. SYL, INC. *v.* COMPTROLLER OF THE TREASURY. Ct. App. Md. Certiorari denied. Reported below: 375 Md. 78, 825 A. 2d 399.

No. 03–345. NYGREN ET AL. *v.* MINNEAPOLIS PUBLIC SCHOOLS, SPECIAL SCHOOL DISTRICT NO. 1, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 323 F. 3d 630.

No. 03–347. CORNELIUS *v.* UNITED PARCEL SERVICE, INC. C. A. 11th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 989.

No. 03–350. CASCELLA *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 03–351. REGGIE B. ET AL. *v.* BUSH, GOVERNOR OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 329 F. 3d 1255.

No. 03–354. APNA GHAR, INC. *v.* JOHNSON. C. A. 7th Cir. Certiorari denied. Reported below: 330 F. 3d 999.

No. 03–397. MOORE *v.* EXXONMOBIL CORP., FKA MOBIL OIL CORP. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 253.

No. 03–400. California *v.* Collins. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 03–402. United States *v.* Banks et al. C. A. Fed. Cir. Certiorari denied. Reported below: 314 F. 3d 1304.

No. 03–405. Sipple *v.* Counsel for Discipline of the Nebraska Supreme Court. Sup. Ct. Neb. Certiorari denied. Reported below: 265 Neb. 890, 660 N. W. 2d 502.

No. 03–414. Littlejohn *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 321 F. 3d 915.

No. 03–417. Allison et al. *v.* Snyder et al. C. A. 7th Cir. Certiorari denied. Reported below: 332 F. 3d 1076.

No. 03–420. J. V. D. B. & Associates, Inc. *v.* Horkey. C. A. 7th Cir. Certiorari denied. Reported below: 333 F. 3d 769.

No. 03–426. Lellan *v.* Vaughn, Warden. C. A. 9th Cir. Certiorari denied.

No. 03–434. White *v.* Ault, Warden. C. A. 8th Cir. Certiorari denied.

No. 03–458. Whittaker *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 67 Fed. Appx. 697.

No. 03–459. Cano *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 289 F. 3d 1354.

No. 03–461. Ysleta del Sur Pueblo et al. *v.* Texas. C. A. 5th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 659.

No. 03–494. Hamilton et al. *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 334 F. 3d 170.

No. 03–511. Robinson *v.* United States. C. A. Armed Forces. Certiorari denied. Reported below: 58 M. J. 429.

No. 03–513. Young *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 332 F. 3d 893.

No. 03–5091. Roberson *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 836.

No. 03–5138. HAYWOOD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 324 F. 3d 514.

No. 03–5510. SELLS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 121 S. W. 3d 748.

No. 03–5523. MORA ZARAGOZA *v.* BACA, SHERIFF, LOS ANGELES COUNTY, CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 03–5528. GALE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 314 F. 3d 1.

No. 03–5544. HODGES *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 856 So. 2d 936.

No. 03–5576. MANZO-LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 246.

No. 03–5609. WILLINGHAM *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 918.

No. 03–5658. CUEVAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 248.

No. 03–6035. MARTIN *v.* LAMARQUE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6036. JOHNSON *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 103 S. W. 3d 687.

No. 03–6038. PAULING *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 149 Wash. 2d 381, 69 P. 3d 331.

No. 03–6039. WILSON *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–6052. TRIMBLE ET UX. *v.* SILVERN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 239.

No. 03–6056. SCHAPIRO *v.* SCHAPIRO. Super. Ct. Pa. Certiorari denied.

No. 03–6057. MUNOZ *v.* KAYLO, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 03–6060. MOORE *v.* NIXON, ATTORNEY GENERAL OF MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied.

No. 03–6066. DAVIS *v.* JOHNSON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH. C. A. 3d Cir. Certiorari denied.

No. 03–6068. SOKOLSKY *v.* BACA, SHERIFF, LOS ANGELES COUNTY, CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 03–6074. JACKSON *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 582.

No. 03–6077. PHILLIPS *v.* PLILER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6079. RAYMER *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 99 Ohio St. 3d 1465, 791 N. E. 2d 982.

No. 03–6082. ALLAH *v.* STICKMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 65 Fed. Appx. 873.

No. 03–6083. SMITH *v.* BOWLEN, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–6085. SMITH *v.* GARCIA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6089. DEEM *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 03–6091. BUCKNER *v.* MORGAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–6095. ACKLES *v.* FIELDING, JUDGE, CIRCUIT COURT OF TALLADEGA COUNTY, ALABAMA. Sup. Ct. Ala. Certiorari denied.

No. 03–6097. WEATHERSPOON *v.* CURTIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–6101. WILLIAMS *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6107. BEIERLE *v.* REED, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 917.

No. 03–6110. WELLS *v.* LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 838 So. 2d 941.

No. 03–6114. HASELDEN *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 357 N. C. 1, 577 S. E. 2d 594.

No. 03–6115. GARCIA *v.* PELICAN BAY STATE PRISON. C. A. 9th Cir. Certiorari denied.

No. 03–6118. LURIA *v.* LURIA ET AL. C. A. 2d Cir. Certiorari denied.

No. 03–6128. BENNETT, AKA ABDUL-MATEEN *v.* MCBRIDE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 850.

No. 03–6132. FORSETH *v.* FARMON, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 53 Fed. Appx. 434.

No. 03–6139. HAWKINS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 03–6140. GALVEZ *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–6141. ALCOCER *v.* CAREY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 753.

No. 03–6142. HUFF *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 03–6143. HORTON *v.* ELO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–6144. GREEN *v.* CHESTER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 53 Fed. Appx. 266.

No. 03–6146. HAWTHORNE *v.* CAIN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 03–6149. SAVIDGE *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 03–6158. MASSENBURG *v.* CASON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–6165. SANDERS *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. (two judgments). Sup. Ct. Fla. Certiorari denied. Reported below: 847 So. 2d 978.

No. 03–6166. SCRUGGS *v.* HURLEY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 944.

No. 03–6168. WAWA ET AL. *v.* ASHCROFT, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 150.

No. 03–6170. QUILLAR *v.* BRINKMAN. C. A. 9th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 361.

No. 03–6171. LEONARD *v.* VIRGINIA. Ct. App. Va. Certiorari denied. Reported below: 39 Va. App. 134, 571 S. E. 2d 306.

No. 03–6173. PORTER *v.* KEARNEY HOUSE ET AL. Ct. App. Ore. Certiorari denied. Reported below: 187 Ore. App. 503, 68 P. 3d 274.

No. 03–6175. PHELPS *v.* HELLING, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–6184. WILLIAMS *v.* SUPERIOR COURT OF CALIFORNIA, STANISLAUS COUNTY. C. A. 9th Cir. Certiorari denied. Reported below: 37 Fed. Appx. 328.

No. 03–6185. JENKINS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–6186. AMRHEIN-MACON *v.* MACON, ADMINISTRATOR OF THE ESTATE OF MACON, DECEASED. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 03–6188. THOMAS *v.* CITY OF CLEVELAND, OHIO, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 652.

No. 03–6191. SALLEE *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 785 N. E. 2d 645.

No. 03–6192. SMITH *v.* WEST VIRGINIA. Cir. Ct. Fayette County, W. Va. Certiorari denied.

No. 03–6193. SALMERON SALVATIERRA *v.* ASHCROFT, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 770.

No. 03–6197. RADIVOJEVIC *v.* BUILDING GROUP WITH MANAGING AGENTS ET AL. C. A. 7th Cir. Certiorari denied.

No. 03–6205. WHEATON *v.* BACA, SHERIFF, LOS ANGELES COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–6206. GRIFFIN *v.* RUBY TUESDAY, INC. C. A. 11th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 509.

No. 03–6207. HILL *v.* UNITED STATES SUPREME COURT. C. A. 6th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 352.

No. 03–6215. WHITE *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6224. KEENEY *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 424.

No. 03–6227. CERVANTES-ASCENCIO *v.* IMMIGRATION AND NATURALIZATION SERVICE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 326 F. 3d 83.

No. 03–6228. CHALK *v.* WALSH, SUPERINTENDENT, SULLIVAN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 311 F. 3d 525.

No. 03–6230. DONALDSON *v.* CENTRAL MICHIGAN UNIVERSITY ET AL. C. A. 6th Cir. Certiorari denied.

No. 03–6231. QUEEN *v.* HALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6241. MURPHY *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied. Reported below: 100 S. W. 3d 317.

No. 03–6249. JORDAN *v.* UNITED STATES; and

No. 03–6250. JORDAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 488.

No. 03–6278. TOLBERT *v.* YARBOROUGH, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 184.

No. 03–6279. THOMPSON *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6290. SPOHN *v.* BANKS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6303. ROWSEY *v.* LEE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 327 F. 3d 335.

No. 03–6323. DENNEY *v.* NELSON, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 03–6331. WINSETT *v.* PRINCIPI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 65 Fed. Appx. 301.

No. 03–6334. LANDAVERDE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 03–6342. MCFADDEN *v.* BURTT, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 785.

No. 03–6349. BRAVO *v.* HENDRICKS, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–6359. NARY *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6372. ANDERSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 03–6382. ELLIOTT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 332 F. 3d 753.

No. 03–6392. RAMIREZ *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 156 N. C. App. 249, 576 S. E. 2d 714.

No. 03–6396. WIMS *v.* CHEVRON U. S. A. INC. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 03–6398. AJAYI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 67 Fed. Appx. 63.

No. 03–6400. LITTLES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 03–6410. TWILLIE *v.* WOLFE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–6418. COOLEY ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 804.

No. 03–6421. MCCREADY *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 03–6424. WARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 539.

No. 03–6429. CARTER *v.* THOMAS. Sup. Ct. Fla. Certiorari denied. Reported below: 848 So. 2d 1153.

No. 03–6437. ROSS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–6441. SANTIAGO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 64 Fed. Appx. 281.

No. 03–6450. SCRIVENS *v.* HOBBS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–6453. ROBERTSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–6456. MAYNIE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 333 Fed. Appx. 876.

No. 03–6465. CUMMINGS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 822.

No. 03–6469. HERNANDEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 333 F. 3d 1168.

No. 03–6470. JEPPESON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 333 F. 3d 1180.

No. 03–6474. JACKUBOWSKI *v.* UNITED STATES; and BRANDON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 959 (first judgment).

No. 03–6477. MEDRANO-NUNEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 81.

No. 03–6478. MORALES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 328 F. 3d 1202.

No. 03–6482. SMITH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 856.

No. 03–6483. GONZALEZ-RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 299.

No. 03–6485. HOOK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 134.

No. 03–6486. GARCIA-BENITEZ *v.* UNITED STATES; AVALOS-CARDENAS *v.* UNITED STATES; MARTINEZ-MENDOZA *v.* UNITED STATES; RAMIREZ-CONTRERAS *v.* UNITED STATES; ROSAS *v.* UNITED STATES; and LOPEZ-LANDIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 03–6489. GRAHAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 488.

No. 03–6490. ISANG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 442.

No. 03–6492. GRAY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 332 F. 3d 491.

No. 03–6493. GRANT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 388.

No. 03–6494. ISMOIL, AKA ISMAIL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 327 F. 3d 56.

No. 03–6495. HARRIS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 03–6498. LUKER *v.* CITY OF DECATUR, ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied.

No. 03–6501. ALI *v.* WILLIAMSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 486.

No. 03–6504. STAFFORD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–6505. STAMPER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 648.

No. 03–6506. WALTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 591.

No. 03–6507. WALES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 575.

No. 03–6512. COLEMAN *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 276 Kan. ix, 73 P. 3d 148.

No. 03–6514. COOK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 03–6515. CARBE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 440.

No. 03–6524. BURTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–6525. WEBB *v.* WHITE, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 80 Fed. Appx. 289.

No. 03–6528. BURROWS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 82 Fed. Appx. 215.

No. 03–6532. EDWARDS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 172.

No. 03–6533. KLIMAVICIUS-VILORIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 03–6535. PEREZ-MACIAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 335 F. 3d 421.

No. 03–6537. STEVENSON *v.* DODRILL, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 80 Fed. Appx. 288.

No. 03–6542. PUHER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 844.

No. 03–6545. MING WAN LEUNG *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 03–6548. WINESTOCK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 340 F. 3d 200.

No. 03–6552. LEON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 333 F. 3d 944.

No. 03–6554. CRISCIONE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 700.

No. 03–6556. COPE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 312 F. 3d 757.

No. 03–6559. LOPEZ-GALDAMEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 68 Fed. Appx. 248.

No. 03–6561. ORTIZ-LOPEZ *v.* UNITED STATES; and ELLIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 81.

No. 03–6573. HERBERT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 808.

No. 03–6574. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 919.

No. 03–6576. FARRUGIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 03–6577. GULLETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 554.

No. 03–6578. FLAKE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 856.

No. 03–6579. FREEZE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 432.

No. 03–6582. HENDRICKSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 883.

No. 03–6583. GULLETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 81.

No. 03–6584. GREEN *v.* UNITED STATES; and HUNT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 81.

No. 03–6586. DUENEZ GUTIERREZ *v.* UNITED STATES (Reported below: 73 Fed. Appx. 82); DE LA CRUZ-RODRIGUEZ *v.* UNITED STATES (73 Fed. Appx. 81); SALAZAR-GONZALEZ *v.* UNITED STATES (73 Fed. Appx. 81); AMAYA-SALAZAR *v.* UNITED STATES (73 Fed. Appx. 81); CANO-RAMIREZ *v.* UNITED STATES (73 Fed. Appx. 81); GUTIERREZ-PANDY, AKA CAYATANO *v.* UNITED STATES (73 Fed. Appx. 82); MARTINEZ-MONTEROSA *v.* UNITED STATES (73 Fed. Appx. 81); LEON-SANCHEZ, AKA REINA-DELEON *v.* UNITED STATES (73 Fed. Appx. 82); BRIONES-MALDONADO *v.* UNITED STATES (73 Fed. Appx. 82); SANCHEZ-LANDA, AKA SANCHEZ-SANCHEZ *v.* UNITED STATES (73 Fed. Appx. 81); ESQUIVEL-JUAREZ *v.* UNITED STATES (73 Fed. Appx. 82); CANTU-PEDROZA *v.* UNITED STATES (73 Fed. Appx. 81); CRAWFORD-AYUSO *v.* UNITED STATES (73 Fed. Appx. 81); HURTADO-DAMIAN *v.* UNITED STATES (73 Fed. Appx. 82); CORDERO-MERCADO *v.* UNITED STATES (73 Fed. Appx. 82); ROSA-JUAREZ *v.* UNITED STATES (73 Fed. Appx. 81); LOPEZ-RAMIREZ *v.* UNITED STATES (73 Fed. Appx. 82); HERRERA-TRUCHE *v.* UNITED STATES (73 Fed. Appx. 83); REGINO-VILLANUEVA, AKA REGINO *v.* UNITED STATES (73 Fed. Appx. 81); and GUZMAN-LARA *v.* UNITED STATES (73 Fed. Appx. 82). C. A. 5th Cir. Certiorari denied.

No. 03–6587. BINFORD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 03–6589. RODRIGUEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 03–6590. RASHID *v.* UNITED STATES PAROLE COMMISSION ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 65 Fed. Appx. 874.

No. 03–6592. MARTINEZ-GONZALEZ, AKA GONZALEZ-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 83.

No. 03–6595. MULLENS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–6599. GAMMONS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 03–6602. GRIMES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–6603. GREENWOOD, AKA GRIMES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 921.

No. 03–6606. GARCIA *v.* SCIBANA, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 03–6608. ANDIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 333 F. 3d 886.

No. 03–6613. RUDISILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 454.

No. 03–6626. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–6627. PINEIRO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 69 Fed. Appx. 536.

No. 03–6630. WASHINGTON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 73 Fed. Appx. 501.

No. 03–6635. STEWART *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 213.

No. 03–6636. MARBERRY *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 262 Wis. 2d 720, 665 N. W. 2d 155.

No. 03–6639. LACKEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 334 F. 3d 1224.

No. 03–6641. NEWELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 284.

No. 03–6642. NABORS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–6643. RIDGLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–6644. SCHAEFER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–6651. RISDAL *v.* MATHES, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 340 F. 3d 508.

No. 03–6652. RICHARDSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 283.

No. 03–6655. VALENCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 20.

No. 03–6659. BLEDSOE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 370.

No. 03–6662. LEWIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 748.

No. 03–6664. SKORNIAK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 03–6669. TRUPEI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–6670. THOMAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 712.

No. 03–6671. VARGAS-CASTILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 329 F. 3d 715.

No. 03–6672. ARELLANO-LUJANO *v.* UNITED STATES; GUZMAN-LUNA *v.* UNITED STATES; MELENDEZ *v.* UNITED STATES; and ROSALES, AKA ROMAN-RAMIREZ, AKA QUIROZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 82 (second judgment) and 83 (first, third, and fourth judgments).

No. 03–6685. CAZEAU *v.* ROMINE, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 80 Fed. Appx. 284.

No. 03–6686. CRUMPTON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 239.

No. 03–6687. CURTIS ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 324 F. 3d 501.

No. 03–6690. BASS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 325 F. 3d 847.

No. 03–6691. VASILIADES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 03–6692. TAYLOR *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 70.

No. 03–6693. WILSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 193.

No. 03–6694. THOMAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–6699. MILLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 430.

No. 03–6701. TAWALBEH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 465.

No. 03–6715. OVERBEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 441.

No. 03–6719. RIGSBY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 03–6726. SHAW *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 65 Fed. Appx. 851.

No. 03–6756. HERNANDEZ-DUQUE *v.* UNITED STATES (Reported below: 73 Fed. Appx. 83); BARRIOS-RICARTE *v.* UNITED STATES (73 Fed. Appx. 81); HERNANDEZ *v.* UNITED STATES (73 Fed. Appx. 81); IBARGUEN-CHELEDO *v.* UNITED STATES (73 Fed. Appx. 81); GARCIA-HERNANDEZ, AKA TREVINO-GUZMAN *v.* UNITED STATES (73 Fed. Appx. 81); CONSTANTINO-PEREZ *v.* UNITED STATES (73 Fed. Appx. 81); ESPARZA-MACIAS *v.* UNITED STATES (73 Fed. Appx. 81); CRUZ-HERNANDEZ *v.* UNITED STATES (73 Fed. Appx. 82); MAYA-SANCHEZ *v.* UNITED STATES (73 Fed. Appx. 82); ALCANTARA-GARCIA *v.* UNITED STATES (73 Fed. Appx. 81); VILLARREAL-GAYTAN *v.* UNITED STATES (73 Fed. Appx. 81); ISLAS-SAUCEDO *v.* UNITED STATES (73 Fed. Appx. 81); MACIAS-LOPEZ *v.* UNITED STATES (73 Fed. Appx. 82); RIOS *v.* UNITED STATES (73 Fed. Appx. 82); PEREZ-MARTINEZ *v.* UNITED STATES (73 Fed. Appx. 81); MUNOZ-PARADA *v.* UNITED STATES (73 Fed. Appx. 81); MENJIVAR-HERRERA *v.* UNITED STATES (73 Fed. Appx. 81); OCHOA *v.* UNITED STATES (73 Fed. Appx. 81); MARINERO-BONILLA *v.* UNITED STATES (73 Fed. Appx. 83); ASTORGA-

RAMIREZ, AKA RUIZ RAMIREZ *v.* UNITED STATES (73 Fed. Appx. 691); and ARMANDO MARTINEZ *v.* UNITED STATES (73 Fed. Appx. 81). C. A. 5th Cir. Certiorari denied.

No. 03–6769. ACOSTA CUNA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 162.

No. 03–6771. VILLA-CARMONA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 610.

No. 02–11291. HARRIS *v.* MORGAN, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 56 Fed. Appx. 817.

No. 03–200. ARIZONA *v.* TUCKER. Sup. Ct. Ariz. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 205 Ariz. 157, 68 P. 3d 110.

No. 03–286. ARIZONA *v.* PHILLIPS. Sup. Ct. Ariz. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 205 Ariz. 145, 67 P. 3d 1228.

No. 03–403. COLOMBINI *v.* MEMBERS OF THE BOARD OF DIRECTORS OF EMPIRE COLLEGE ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 61 Fed. Appx. 387.

No. 03–468. MOORE, CHIEF JUSTICE, SUPREME COURT OF ALABAMA *v.* GLASSROTH ET AL. C. A. 11th Cir. Motions of Thomas More Law Center, National Clergy Counsel et al., and Coral Ridge Ministries et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 335 F. 3d 1282.

No. 03–6125. HOLLIS-ARRINGTON *v.* CENDANT MORTGAGE CORP. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 61 Fed. Appx. 462.

No. 03–6134. HAYDEN *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied.

No. 03–6183. LEE *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER

took no part in the consideration or decision of this petition. Reported below: 63 Fed. Appx. 291.

Rehearing Denied

No. 02–8425. IN RE DIXON, 538 U. S. 921;

No. 02–9538. SEARS *v.* FLORIDA, 538 U. S. 1039; and

No. 02–10518. HACKNEY *v.* TURNER, SUPERINTENDENT, SOUTH MISSISSIPPI CORRECTIONAL FACILITY, 539 U. S. 949. Petitions for rehearing denied.

NOVEMBER 4, 2003

Miscellaneous Order

No. 03A390. BROWN *v.* HEAD, WARDEN. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied.

Certiorari Denied

No. 03–7224 (03A373). BROWN *v.* HEAD, WARDEN. Super. Ct. Butts County, Ga. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied.

NOVEMBER 6, 2003

Dismissal Under Rule 46

No. 03–327. LINCOLNSHIRE MANAGEMENT, INC., ET AL. *v.* OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF CYBERGENICS CORP., ON BEHALF OF CYBERGENICS CORP., DEBTOR IN POSSESSION. C. A. 3d Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 330 F. 3d 548.

Miscellaneous Order

No. 03–7330 (03A397). IN RE KEEL. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

Certiorari Denied

No. 03–7225 (03A375). KEEL *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Edgecombe County, N. C. Application

for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied.

No. 03–7338 (03A400). KEEL *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Edgecombe County, N. C. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied.

NOVEMBER 7, 2003

Dismissal Under Rule 46

No. 03–330. CHINERY, EXECUTRIX OF THE ESTATE OF CHINERY, ET AL. *v.* OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF CYBERGENICS CORP. C. A. 3d Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 330 F. 3d 548.

NOVEMBER 10, 2003

Miscellaneous Orders

No. 03A287. LAMKINS ET AL. *v.* LAMBERT ET AL. C. A. 11th Cir. Application for stay, addressed to JUSTICE GINSBURG and referred to the Court, denied.

No. 03A292. BOWMAN *v.* ROBINSON, ADMINISTRATOR, ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION. Sup. Ct. Ill. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. 02–1668. VAN SYOC *v.* HOUSING AUTHORITY AND URBAN REDEVELOPMENT AGENCY OF THE CITY OF ATLANTIC CITY ET AL., *ante*, p. 815. Motion of respondents for damages denied.

No. 03–6260. WILLIAMS *v.* AFC ENTERPRISES, INC., ET AL. Ct. App. La., 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until December 1, 2003, 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. 03–6913. IN RE BEASLEY;
No. 03–6936. IN RE LEWIS;
No. 03–6951. IN RE WHITAKER; and
No. 03–6972. IN RE BRUCE. Petitions for writs of habeas corpus denied.

No. 03–6218. IN RE PEARSON; and

No. 03–6818. IN RE CASIANO. Petitions for writs of mandamus denied.

Certiorari Granted

No. 03–334. RASUL ET AL. *v.* BUSH, PRESIDENT OF THE UNITED STATES, ET AL.; and

No. 03–343. AL ODAH ET AL. *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari granted limited to the following question: "Whether the United States courts lack jurisdiction to consider challenges to the legality of the detention of foreign nationals captured abroad in connection with hostilities and incarcerated at the Guantanamo Bay Naval Base, Cuba." Cases consolidated, and a total of one hour alloted for oral argument. Reported below: 321 F. 3d 1134.

No. 02–572. INTEL CORP. *v.* ADVANCED MICRO DEVICES, INC. C. A. 9th Cir. Certiorari granted. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 292 F. 3d 664.

Certiorari Denied

No. 02–1843. SHEPARD *v.* CAVALIERI, AS PLENARY GUARDIAN OF THE ESTATE OF CAVALIERI, A DISABLED PERSON. C. A. 7th Cir. Certiorari denied. Reported below: 321 F. 3d 616.

No. 03–46. GLOBAL RELIEF FOUNDATION, INC. *v.* SNOW, SECRETARY OF THE TREASURY. C. A. 7th Cir. Certiorari denied. Reported below: 315 F. 3d 748.

No. 03–136. ANDREWS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 330 F. 3d 1305.

No. 03–203. UNITED PHOSPHORUS, LTD., ET AL. *v.* ANGUS CHEMICAL CO. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 322 F. 3d 942.

No. 03–331. EIE GUAM CORP. *v.* LONG TERM CREDIT BANK OF JAPAN, LTD., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 322 F. 3d 635.

No. 03–332. DODGE, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF DODGE, ET AL. *v.* COTTER CORP.

C. A. 10th Cir. Certiorari denied. Reported below: 328 F. 3d 1212.

No. 03–336. SANCHEZ *v.* WARD, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied.

No. 03–338. MESE *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 824 So. 2d 908.

No. 03–340. SCHMIDT *v.* OTTAWA MEDICAL CENTER. C. A. 7th Cir. Certiorari denied. Reported below: 322 F. 3d 461.

No. 03–348. JOHNSON *v.* CAMBRIDGE INDUSTRIES, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 325 F. 3d 892.

No. 03–352. YEE *v.* SHIAWASSEE COUNTY BOARD OF COMMISSIONERS ET AL. Ct. App. Mich. Certiorari denied. Reported below: 251 Mich. App. 379, 651 N. W. 2d 756.

No. 03–353. SAUER, INDIVIDUALLY, AND AS THE ADMINISTRATOR OF THE ESTATE OF SAUER *v.* ADVOCAT, INC., ET AL. Sup. Ct. Ark. Certiorari denied. Reported below: 353 Ark. 29, 111 S. W. 3d 346.

No. 03–355. SPANGENBERG ET AL. *v.* CITY OF SAN JOSE, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 192.

No. 03–356. ADAMS, WARDEN *v.* LANCASTER. C. A. 6th Cir. Certiorari denied. Reported below: 324 F. 3d 423.

No. 03–360. MAJOR ET AL. *v.* ELLER MEDIA CO. C. A. 11th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 822.

No. 03–361. NEIBAUR ET AL. *v.* ELLIOTT ET UX. Sup. Ct. Idaho. Certiorari denied. Reported below: 138 Idaho 774, 69 P. 3d 1035.

No. 03–363. MCGEE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 105 S. W. 3d 609.

No. 03–367. TURNER *v.* HOUMA MUNICIPAL FIRE AND POLICE CIVIL SERVICE BOARD ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 441.

No. 03–378. FAGERMAN ET UX. *v.* MICHIGAN DEPARTMENT OF TRANSPORTATION. Ct. App. Mich. Certiorari denied.

No. 03–386. HARRISON *v.* KLEM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–393. PUBLIC SERVICE MUTUAL INSURANCE CO. *v.* PECK. C. A. 2d Cir. Certiorari denied. Reported below: 326 F. 3d 330.

No. 03–408. DADDARIO, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF DADDARIO *v.* CAPE COD COMMISSION. App. Ct. Mass. Certiorari denied. Reported below: 56 Mass. App. 764, 780 N. E. 2d 124.

No. 03–413. UNTALAN *v.* KAPIOLANI MEDICAL CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 781.

No. 03–424. EDWARDS *v.* WILKINSON ET AL. C. A. D. C. Cir. Certiorari denied.

No. 03–428. PRATT ET AL. *v.* CITY OF HOUSTON, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 525.

No. 03–451. SCHAFLER *v.* SPEAR. C. A. 9th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 138.

No. 03–476. BENTON *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 03–499. SMITH *v.* BARROW. C. A. 5th Cir. Certiorari denied. Reported below: 332 F. 3d 844.

No. 03–516. PUESCHEL *v.* DEPARTMENT OF TRANSPORTATION. C. A. Fed. Cir. Certiorari denied.

No. 03–519. PLUNK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 461.

No. 03–527. JARRELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 622.

No. 03–540. MOORE *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 6th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 625.

No. 03–5280. JENNINGS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 323 F. 3d 263.

No. 03–5293. SUNDAR *v.* IMMIGRATION AND NATURALIZATION SERVICE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 328 F. 3d 1320.

No. 03–5459. BETHEL *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 275 Kan. 456, 66 P. 3d 840.

No. 03–5729. WATTS *v.* FEDERAL EXPRESS CORP. (two judgments). C. A. 6th Cir. Certiorari denied. Reported below: 52 Fed. Appx. 819 (first judgment); 53 Fed. Appx. 333 (second judgment).

No. 03–5752. LIGHTBOURNE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 841 So. 2d 431.

No. 03–6155. KRAUSE *v.* GEORGE, CHIEF JUSTICE, SUPREME COURT OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 367.

No. 03–6229. CUSHION *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 835.

No. 03–6233. ROBINSON *v.* STEGALL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 111.

No. 03–6237. SIMPSON *v.* BLUECROSS BLUESHIELD OF ILLINOIS. C. A. 7th Cir. Certiorari denied.

No. 03–6239. ESPARAZA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 03–6246. MAGEE *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied. Reported below: 107 Cal. App. 4th 188, 131 Cal. Rptr. 2d 834.

No. 03–6247. JACKSON *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 258 Ga. App. 806, 575 S. E. 2d 713.

No. 03–6251. CUYLER *v.* GEORGIA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 588.

No. 03–6253. CARLISLE *v.* HERBERT, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 03–6254. CASTILLO *v.* MANTELLO, SUPERINTENDENT, COXSAKIE CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 03–6258. SHIVER *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 276 Ga. 624, 581 S. E. 2d 254.

No. 03–6263. JIMMERSON *v.* HAMLET, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6264. KNECHT *v.* WEBER, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 03–6265. JONES *v.* HEARN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 80.

No. 03–6269. MORRIS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 876 So. 2d 1184.

No. 03–6274. RODRIGUEZ *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 03–6276. WADE *v.* KYLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON. C. A. 3d Cir. Certiorari denied.

No. 03–6277. ANDERSON *v.* CAREY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6280. VARGAS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–6289. BARTH *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–6291. DUKE *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 03–6301. THOMAS *v.* KYLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–6305. PENDLETON *v.* NASHVILLE METROPOLITAN POLICE DEPARTMENT. Ct. App. Tenn. Certiorari denied.

No. 03–6332. WILTON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 03–6343. ZALDIVAR PENA *v.* SHANNON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FRACKVILLE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–6352. DRAKES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 330 F. 3d 600.

No. 03–6364. LARKIN *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6367. MEYER *v.* MUGAN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 699.

No. 03–6368. JASON R. *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 03–6385. TRAN *v.* ZONING BOARD OF APPEALS OF PROVINCETOWN ET AL. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 439 Mass. 1005, 786 N. E. 2d 842.

No. 03–6389. WILEY *v.* MCKEE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–6419. PEREZ *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–6422. PRIETO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 30 Cal. 4th 226, 66 P. 3d 1123.

No. 03–6436. PINEYRO *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 10.

No. 03–6443. PATTERSON *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 658.

No. 03–6463. ALEXANDER *v.* CASTRO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6464. ADCOCK *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–6467. SPOTTED EAGLE *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 316 Mont. 370, 71 P. 3d 1239.

No. 03–6472. YOUNG *v.* DEPARTMENT OF JUSTICE. C. A. 9th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 988.

No. 03–6517. MORALES *v.* AYERS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6523. NICHOLS *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, ET AL. C. A. 8th Cir. Certiorari denied.

No. 03–6526. WILLIAMS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 968.

No. 03–6538. WRAY *v.* LACEY ET AL. C. A. 8th Cir. Certiorari denied.

No. 03–6560. ANDERSON *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 58 Mass. App. 117, 787 N. E. 2d 1136.

No. 03–6564. MILLER *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 03–6605. FLOWERS *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–6611. REED *v.* REID, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 03–6614. HORTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 254.

No. 03–6615. FAIRCLOTH *v.* HARKLEROAD, SUPERINTENDENT, MARION CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 493.

No. 03–6618. HETTLER *v.* PETTERS ET AL. C. A. 8th Cir. Certiorari denied.

No. 03–6625. WATSON *v.* JOB CORP. ET AL. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 840 So. 2d 367.

No. 03–6628. PLCH *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied. Reported below: 149 N. H. 608, 826 A. 2d 534.

No. 03–6633. LAVALLEE *v.* PARCHUE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 284.

No. 03–6637. LEE *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 207 Ill. 2d 1, 796 N. E. 2d 1021.

No. 03–6654. YANCEY *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS. C. A. 3d Cir. Certiorari denied.

No. 03–6668. CONTRARAS-FLORES, AKA ACEVES-FLORES *v.* UNITED STATES; and PALACIOS-SANTOYO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 82 (first judgment) and 83 (second judgment).

No. 03–6675. BARTON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 03–6677. CHARLESTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 951.

No. 03–6702. TRAVIS W. *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 107 Cal. App. 4th 368, 132 Cal. Rptr. 2d 135.

No. 03–6704. PARKER *v.* SUTTON, CORRECTIONAL ADMINISTRATOR I, PASQUOTANK CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 2.

No. 03–6707. THOMAS *v.* CASTRO, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 399.

No. 03–6712. CARTER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 559.

No. 03–6713. COINER *v.* UNITED STATES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 582.

No. 03–6721. RASHID *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 53 Fed. Appx. 227.

No. 03–6722. LEGG *v.* OLIVAREZ ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 923.

No. 03–6733. ALEXANDER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 435.

No. 03–6735. McCorkle *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 296 F. 3d 1284.

No. 03–6739. Estrada-Estrada *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 161.

No. 03–6741. Exson *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 328 F. 3d 456.

No. 03–6746. Brown *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 99.

No. 03–6749. Johnson *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 335 F. 3d 589.

No. 03–6753. McCullough *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 03–6754. Zambrella *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 327 F. 3d 634.

No. 03–6755. Hettler *v.* Stoebner. C. A. 8th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 653.

No. 03–6757. Gasanova et al. *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 332 F. 3d 297.

No. 03–6763. Casey *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 242.

No. 03–6764. Deberry *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 80.

No. 03–6766. Cruz-Dominguez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 1000.

No. 03–6767. Amaya-Caraveo *v.* United States; Orozco-Hernandez, aka Orozco, aka Hernandez, aka Sanchez *v.* United States; Jaimes-Arzate, aka Arzate Jaimes, aka Jaimes, aka James, aka Hernandez *v.* United States; Godines-Melendez *v.* United States; and Huerta-Martinez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 82 (first, second, and fourth judgments) and 83 (third and fifth judgments).

No. 03–6775. Ponce-Ponce, aka Aguilar-Dominguez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 700.

No. 03–6781. KUPAZA *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 264 Wis. 2d 892, 664 N. W. 2d 126.

No. 03–6802. EVANS, AKA TAYLOR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 229.

No. 03–6813. ESTRADA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 59 Fed. Appx. 372.

No. 03–6815. CARR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 478.

No. 03–6817. AZANON-RODAS *v.* UNITED STATES (Reported below: 73 Fed. Appx. 83); MERCADO-VARGAS, AKA BERRONES VARGAS, AKA PEREZ *v.* UNITED STATES (73 Fed. Appx. 82); MOLINA-RODRIGUEZ *v.* UNITED STATES (73 Fed. Appx. 83); NUNEZ-VILLA *v.* UNITED STATES (73 Fed. Appx. 83); ORTIZ-RAMIREZ *v.* UNITED STATES (73 Fed. Appx. 83); PACHECO-HERRERA *v.* UNITED STATES (73 Fed. Appx. 83); RAMIREZ-BOVADILLA, AKA CORREA-ESQUIVEL *v.* UNITED STATES (73 Fed. Appx. 83); SEGURA-CARRERA *v.* UNITED STATES (73 Fed. Appx. 83); CISNEROS-PEREZ *v.* UNITED STATES (73 Fed. Appx. 83); GUARDIOLA-SALAS *v.* UNITED STATES (73 Fed. Appx. 83); JARAMILLO-CERVANTES *v.* UNITED STATES (73 Fed. Appx. 82); MALDONADO-LOPEZ *v.* UNITED STATES (73 Fed. Appx. 82); MARTINEZ-SEGOVIA *v.* UNITED STATES (73 Fed. Appx. 83); and TORRES-VASQUEZ *v.* UNITED STATES (73 Fed. Appx. 83). C. A. 5th Cir. Certiorari denied.

No. 03–6819. CHAPMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 512.

No. 03–128. UNITED TECHNOLOGIES CORP., PRATT & WHITNEY *v.* RUMSFELD, SECRETARY OF DEFENSE. C. A. Fed. Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 315 F. 3d 1361.

No. 03–160. ADVOCAT, INC., ET AL. *v.* SAUER, INDIVIDUALLY, AND AS ADMINISTRATOR OF THE ESTATE OF SAUER. Sup. Ct. Ark. Motions of Arkansas Insurance Department et al. and American Health Care Association et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 353 Ark. 29, 111 S. W. 3d 346.

No. 03–189. LERNER ET AL. *v.* FLEET BANK ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE BREYER took no part in the

consideration or decision of this petition. Reported below: 318 F. 3d 113.

No. 03–199. PIKE ET AL. *v.* LUCENT TECHNOLOGIES. C. A. 11th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 64 Fed. Appx. 742.

No. 03–362. WOODFORD, WARDEN *v.* BITTAKER. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 331 F. 3d 715.

Rehearing Denied

No. 02–10659. IN RE SEDGWICK, *ante*, p. 809;
No. 02–10763. SHERIDAN *v.* MORGANTHAU ET AL., *ante*, p. 836;
No. 02–10898. SEPULVADO *v.* CAIN, WARDEN, ET AL., *ante*, p. 842;
No. 02–10930. SMITH *v.* BUSHEY ET AL., *ante*, p. 843;
No. 02–10931. SAVAGE *v.* DISTRICT OF COLUMBIA, *ante*, p. 843;
No. 02–11110. SEDGWICK *v.* UNITED STATES, *ante*, p. 855; and
No. 03–5592. COLEMAN *v.* ROLLINS, WARDEN, ET AL., *ante*, p. 918. Petitions for rehearing denied.

NOVEMBER 17, 2003

Affirmed on Appeal

No. 03–411. PARKER ET AL. *v.* OHIO ET AL. Affirmed on appeal from D. C. S. D. Ohio. Reported below: 263 F. Supp. 2d 1100.

Certiorari Granted—Vacated and Remanded

No. 03–6200. WALKER *v.* TRUE, WARDEN. 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 *Wiggins* v. *Smith*, 539 U. S. 510 (2003). Reported below: 67 Fed. Appx. 758.

Certiorari Dismissed

No. 03–6273. ROBINSON *v.* JOHNSON, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, 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. 03–6423. TRICE *v.* SMITH, WARDEN. 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.

Miscellaneous Orders

No. 03M13. NAKAHARA *v.* CALIFORNIA. Motion for reconsideration of order denying leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner [*ante*, p. 805] denied.

No. 03M29. WOODS *v.* UNITED STATES. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 132, Orig. ALABAMA ET AL. *v.* NORTH CAROLINA. It is ordered that Bradford R. Clark, Esq., of Washington, D. C., be appointed as Special Master in this case with authority to fix the time and conditions for the filing of additional pleadings and to direct subsequent proceedings, and with authority to summon witnesses, issue subpoenas, and take such evidence as may be introduced and such as he may deem it necessary to call for. The Special Master is directed to submit such reports as he may deem appropriate.

The compensation of the Special Master, the allowances to him, the compensation paid to his legal, technical, stenographic, and clerical assistants, the cost of printing his reports, and all other proper expenses, including travel expenses, shall be charged against and be borne by the parties in such proportion as the Court may hereafter direct. [For earlier order herein, see 539 U. S. 925.]

No. 02–1016. TILL ET UX. *v.* SCS CREDIT CORP. C. A. 7th Cir. [Certiorari granted, 539 U. S. 925.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of the Solicitor General to permit David B. Salmons to present oral argument *pro hac vice* granted.

No. 02–1205. JONES ET AL., ON BEHALF OF HERSELF AND A CLASS OF OTHERS SIMILARLY SITUATED *v.* R. R. DONNELLEY & SONS CO. C. A. 7th Cir. [Certiorari granted, 538 U. S. 1030.] Motion of respondent and Alabama for leave to allow Alabama to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 02–1238. NIXON, ATTORNEY GENERAL OF MISSOURI *v.* MISSOURI MUNICIPAL LEAGUE ET AL.;

No. 02–1386. FEDERAL COMMUNICATIONS COMMISSION ET AL. *v.* MISSOURI MUNICIPAL LEAGUE ET AL.; and

No. 02–1405. SOUTHWESTERN BELL TELEPHONE, L. P., FKA SOUTHWESTERN BELL TELEPHONE CO. *v.* MISSOURI MUNICIPAL LEAGUE ET AL. C. A. 8th Cir. [Certiorari granted, 539 U. S. 941.] Motion of the Solicitor General for divided argument granted.

No. 02–1580. VIETH ET AL. *v.* JUBELIRER, PRESIDENT OF THE PENNSYLVANIA SENATE, ET AL. D. C. M. D. Pa. [Probable jurisdiction noted, 539 U. S. 957.] Motion of appellees Cortes and Accurti for divided argument granted.

No. 02–1794. UNITED STATES *v.* FLORES-MONTANO. C. A. 9th Cir. [Certiorari granted, *ante*, p. 945.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 03–5630. OKORO *v.* SCIBANA, WARDEN. C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 802] denied.

No. 03–5915. SEDGWICK *v.* BANKATLANTIC 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. 03–6099. MATHISON *v.* UNITED STATES. C. A. 8th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 802] denied.

No. 03–6383. REIMANN *v.* RESEARCH TRIANGLE INSTITUTE ET AL. Ct. App. N. C. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until December 8, 2003, 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. 03–6822. IN RE NELSON;

No. 03–7018. IN RE GRAY; and

No. 03–7145. IN RE EVANS. Petitions for writs of habeas corpus denied.

No. 03–7027. IN RE GRAVES. 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.

No. 03–473. In re Owen et ux.; and

No. 03–6919. In re Paris. Petitions for writs of mandamus denied.

Certiorari Denied

No. 03–227. Vakharia *v.* Little Company of Mary Hospital & Health Care Centers et al. C. A. 7th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 122.

No. 03–229. Otis Elevator Co. *v.* Mack et al. C. A. 2d Cir. Certiorari denied. Reported below: 326 F. 3d 116.

No. 03–230. Moise et al. *v.* Bulger, Interim District Director, Florida Bureau of Citizenship and Immigration Services, et al. C. A. 11th Cir. Certiorari denied. Reported below: 321 F. 3d 1336.

No. 03–253. Old Person *v.* Brown, Secretary of State for the State of Montana, et al. C. A. 9th Cir. Certiorari denied. Reported below: 312 F. 3d 1036.

No. 03–369. Morters *v.* Barr et al. Ct. App. Wis. Certiorari denied. Reported below: 263 Wis. 2d 433, 662 N. W. 2d 679.

No. 03–370. Sibley *v.* Spears, Director, Miami-Dade County Department of Corrections and Rehabilitation et al. Sup. Ct. Fla. Certiorari denied. Reported below: 846 So. 2d 1149.

No. 03–371. Republican Caucus of the Pennsylvania House of Representatives *v.* Vieth et al. C. A. 3d Cir. Certiorari denied. Reported below: 67 Fed. Appx. 95.

No. 03–375. Illinois *v.* Bowman. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 335 Ill. App. 3d 1142, 782 N. E. 2d 333.

No. 03–376. Putz *v.* Nebraska. Sup. Ct. Neb. Certiorari denied. Reported below: 266 Neb. 37, 662 N. W. 2d 606.

No. 03–379. Ellis *v.* Heldman, Judge, Chancery Court of Tennessee, 21st Judicial District, et al. C. A. 6th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 742.

No. 03–380. Davila *v.* Delta Air Lines, Inc. C. A. 11th Cir. Certiorari denied. Reported below: 326 F. 3d 1183.

No. 03–383. HOOHULI ET AL. *v.* LINGLE, GOVERNOR OF HAWAII, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 324 F. 3d 1078.

No. 03–387. FISHER *v.* BOUCHARD, SHERIFF, OAKLAND COUNTY, MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 03–392. PATAKI, GOVERNOR OF NEW YORK, ET AL. *v.* SARATOGA COUNTY CHAMBER OF COMMERCE, INC., ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 100 N. Y. 2d 801, 798 N. E. 2d 1047.

No. 03–394. AMBASE CORP. *v.* CITY INVESTING COMPANY LIQUIDATING TRUST ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 326 F. 3d 63.

No. 03–395. SADLOWSKI *v.* BENOIT. C. A. 1st Cir. Certiorari denied. Reported below: 62 Fed. Appx. 3.

No. 03–399. KENTUCKY *v.* MCMANUS ET AL. Sup. Ct. Ky. Certiorari denied. Reported below: 107 S. W. 3d 175.

No. 03–401. TIDWELL *v.* LAW OFFICES OF CLAY RAGSDALE. Ct. Civ. App. Ala. Certiorari denied. Reported below: 876 So. 2d 532.

No. 03–404. JARRETT *v.* TOWN OF YARMOUTH, MASSACHUSETTS, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 331 F. 3d 140.

No. 03–406. CAFFEY *v.* ALABAMA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 922.

No. 03–422. REID *v.* CAPITAL ONE FINANCIAL CORP. C. A. 11th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 386.

No. 03–430. NYAGA ET AL. *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 323 F. 3d 906.

No. 03–449. RICHARDSON CONSTRUCTION, INC., ET AL. *v.* TRUSTEES OF THE CONSTRUCTION INDUSTRY AND LABORERS HEALTH AND WELFARE TRUST ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 333 F. 3d 923.

No. 03–456. BROZO *v.* ORACLE CORP. C. A. 8th Cir. Certiorari denied. Reported below: 324 F. 3d 661.

No. 03–471. OHIO *v.* JONES. Ct. App. Ohio, Summit County. Certiorari denied.

No. 03–483. LONGVIEW INDEPENDENT SCHOOL DISTRICT *v.* COGGIN. C. A. 5th Cir. Certiorari denied. Reported below: 337 F. 3d 459.

No. 03–486. HENRICKSON *v.* POTTER, POSTMASTER GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 327 F. 3d 444.

No. 03–522. JONES, WARDEN *v.* FRENCH. C. A. 6th Cir. Certiorari denied. Reported below: 332 F. 3d 430.

No. 03–530. WENDT *v.* REHNQUIST, CHIEF JUSTICE OF THE UNITED STATES, ET AL. C. A. 7th Cir. Certiorari denied.

No. 03–545. SCOTT *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 03–572. KOZIS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 03–584. CORDO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 324 F. 3d 223.

No. 03–591. WASHBURN *v.* OFFICE OF THE COMPTROLLER OF THE CURRENCY. C. A. D. C. Cir. Certiorari denied. Reported below: 62 Fed. Appx. 357.

No. 03–600. MANDACINA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 328 F. 3d 995.

No. 03–5434. LEAL-RIVERA *v.* UNITED STATES; BATALLA-SANCHEZ *v.* UNITED STATES; GALVAN-SANCHEZ *v.* UNITED STATES; REYES-BAUTISTA *v.* UNITED STATES; ESPINOZA-HERNANDEZ *v.* UNITED STATES; BELALCAZAR-SOLARTE *v.* UNITED STATES; MORALES-HERNANDEZ *v.* UNITED STATES; and ROSTRO-MORALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 245 (third and fifth judgments) and 246 (first and sixth judgments); 73 Fed. Appx. 81 (second and eighth judgments) and 82 (fourth and seventh judgments).

No. 03–5534. HIGUERA-CECENA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 478.

No. 03–5585. WEST *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 100 N. Y. 2d 23, 789 N. E. 2d 615.

No. 03–5825. SUAREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 690.

No. 03–5929. JACKSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 327 F. 3d 273.

No. 03–5945. WOLFE *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 265 Va. 193, 576 S. E. 2d 471.

No. 03–5974. MCDONALD *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 823 A. 2d 537.

No. 03–6286. BARNES *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–6287. PARRA SOTO *v.* WHITE, COMMISSIONER, TENNESSEE DEPARTMENT OF CORRECTION, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 86.

No. 03–6293. MADURA ET UX. *v.* FULL SPECTRUM LENDING, INC., ET AL. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 848 So. 2d 319.

No. 03–6296. BAPTISTO *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–6297. DEAN *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 03–6298. BRIGNAC *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 03–6299. THURSTON *v.* FLORIDA (two judgments). Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 847 So. 2d 1053 (first judgment); 848 So. 2d 336 (second judgment).

No. 03–6300. YOUNG *v.* KLEM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY. C. A. 3d Cir. Certiorari denied.

No. 03–6306. MUNIZ *v.* TRUJILLO, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 03–6308. STOUTMILES *v.* JAMROG, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–6309. WASHINGTON *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 03–6310. PARKER *v.* MILLER, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 03–6311. HAYES *v.* POLOTSKY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 412.

No. 03–6312. FOOTE *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 03–6314. HAMBRICK *v.* STATE FARM FIRE AND CASUALTY INSURANCE. Sup. Ct. Ga. Certiorari denied.

No. 03–6322. COX *v.* BAYER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 58.

No. 03–6328. BROMWELL *v.* DORMIRE, SUPERINTENDENT, MISSOURI STATE PENITENTIARY. Sup. Ct. Mo. Certiorari denied.

No. 03–6329. AFFLIC *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 275 App. Div. 2d 647, 713 N. Y. S. 2d 326.

No. 03–6330. KEELEN *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 523.

No. 03–6338. LEWIS *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 03–6340. WALTERS *v.* TUGLE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 709.

No. 03–6341. TREUL *v.* BUTLER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6345. SEELEY *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 782 N. E. 2d 1052.

No. 03–6346. SHIPP *v.* YARBOROUGH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6350. NOSER *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 99 Ohio St. 3d 126, 789 N. E. 2d 222.

No. 03–6356. HADDAD *v.* HIGGINS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 62.

No. 03–6360. KIMBROUGH *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 03–6366. MURRIETA *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 195.

No. 03–6374. OTWORTH *v.* VILLAGE OF LAKEWOOD CLUB, MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 785.

No. 03–6375. OTWORTH *v.* VANDERPLOEG ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 163.

No. 03–6377. SURVILLA *v.* HOLIDAY INN ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 99 N. Y. 2d 651, 790 N. E. 2d 278.

No. 03–6380. DAVIS *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 99 Ohio St. 3d 142, 789 N. E. 2d 235.

No. 03–6381. CEPEDA *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 03–6384. BEN YOWEL *v.* WASHINGTON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 988.

No. 03–6387. FINCH *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 205 Ariz. 170, 68 P. 3d 123.

No. 03–6388. PEARLMAN *v.* VIGIL-GIRON, SECRETARY OF STATE OF NEW MEXICO. C. A. 10th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 11.

No. 03–6390. RICE *v.* CHAMPION, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 416.

No. 03–6397. BARNES *v.* VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 74.

No. 03–6401. JACKSON *v.* WORKMAN, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 03–6403. LAURSON *v.* COLORADO. Ct. App. Colo. Certiorari denied. Reported below: 70 P. 3d 564.

No. 03–6404. BONE *v.* CAMPBELL, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–6407. NADASDY *v.* DOMJAN. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 03–6411. TAYLOR *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 03–6428. WILSON *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–6435. JAW-SHI WANG *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 998.

No. 03–6502. SCHEIDT *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 03–6553. DENT *v.* MCDANIEL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6572. HEARN *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 79.

No. 03–6593. CHORNEY *v.* REPUBLIC CREDIT CORP. I. C. A. 1st Cir. Certiorari denied.

No. 03–6634. BRAMMER *v.* GARCIA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6640. NANJI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 428.

No. 03–6674. MATHIS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 03–6698. PAUL *v.* DEPARTMENT OF THE NAVY. C. A. 3d Cir. Certiorari denied. Reported below: 64 Fed. Appx. 349.

No. 03–6714. ELLIOTT *v.* SUTER, CLERK, SUPREME COURT OF THE UNITED STATES, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 80 Fed. Appx. 285.

No. 03–6717. RINCON *v.* LOCKYER, ATTORNEY GENERAL OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–6720. BROWN *v.* METTS, SHERIFF, LEXINGTON COUNTY, SOUTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 496.

No. 03–6736. WHITE *v.* UNITED STATES ET AL. C. A. 10th Cir. Certiorari denied.

No. 03–6738. WHITE *v.* CITY OF MURRAY, UTAH, ET AL. C. A. 10th Cir. Certiorari denied.

No. 03–6740. DARNELL *v.* JOHNSON, SECRETARY OF THE NAVY. C. A. 11th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 920.

No. 03–6742. DEORIO *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 03–6787. MORRIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 03–6793. PENA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 03–6795. SALGADO-PENA *v.* FLEMING, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 79.

No. 03–6797. SPENCER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 723.

No. 03–6804. SANDUSKY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 706.

No. 03–6806. MUHAMMED *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 59 Fed. Appx. 480.

No. 03–6829. GOSS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 283.

No. 03–6832. MARSHALL ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 332 F. 3d 254.

No. 03–6833. HERRING ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 57.

No. 03–6835. ZAKARIA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 517.

No. 03–6837. TURNER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 794.

No. 03–6839. CHARLES *v.* WILLIAMSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 642.

No. 03–6840. ESPINOZA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 599.

No. 03–6841. ENIGWE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 70 Fed. Appx. 634.

No. 03–6845. KING *v.* NASH, WARDEN. C. A. 2d Cir. Certiorari denied. Reported below: 68 Fed. Appx. 267.

No. 03–6847. LUCAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 68 Fed. Appx. 265.

No. 03–6852. CRUEL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 262.

No. 03–6853. ROGERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 03–6854. REGALADO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 334 F. 3d 520.

No. 03–6860. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 197.

No. 03–6865. ARELLANO-RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 119.

No. 03–6866. MORALES-FRANCO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 189.

No. 03–6868. VILAN-POLIER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 283.

No. 03–6869. WOODS, AKA BARNES *v.* UNITED STATES; and No. 03–6963. GARCIA, AKA BENNETT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 335 F. 3d 993.

No. 03–6870. CARBIN *v.* JOHNSON, SECRETARY OF THE NAVY, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 522.

No. 03–6872. CASILLAS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 03–6874. PENDERGRASS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 779.

No. 03–6877. RAMOS-QUIROZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 673.

No. 03–6878. SHADWELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 344.

No. 03–6881. DRUMMOND *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 69 Fed. Appx. 580.

No. 03–6885. LECLAIR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 338 F. 3d 882.

No. 03–6886. MARTINEZ-SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 864.

No. 03–6893. PATTERSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 03–6897. MILLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 557.

No. 03–6898. MUNOZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 331 F. 3d 151.

No. 03–6899. MICKELSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 03–6903. CHALMERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 688.

No. 03–6906. ZATER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 732.

No. 03–6910. ROBINSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 553.

No. 03–6911. STONE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 563.

No. 03–6914. RINGOLD ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 335 F. 3d 1168.

No. 03–6917. LEWIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 108.

No. 03–6918. MADERA-MADERA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 333 F. 3d 1228.

No. 03–6922. WORSTELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 495.

No. 03–6927. REID *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–6928. ABBOTT, AKA KING *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 03–6929. JEMISON, AKA MATHIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 204.

No. 03–6938. REYNOLDS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–6940. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 506.

No. 03–6941. SUGGS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 03–6946. BARBER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 748.

No. 03–6947. RICHARDS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 03–6952. VIGIL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 334 F. 3d 1215.

No. 03–6955. GONZALEZ-LOPEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 335 F. 3d 793.

No. 03–6961. GRAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 52 Fed. Appx. 962.

No. 03–6962. FLORES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 196.

No. 03–6965. GARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 212.

No. 03–6967. NIEVES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 505.

No. 03–6968. POLANCO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 75 Fed. Appx. 873.

No. 03–6974. SEXTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 393.

No. 03–6975. SLATE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 756.

No. 03–6992. EVANS-GARCIA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 322 F. 3d 110.

No. 02–1673. CONCRETE WORKS OF COLORADO, INC. *v.* CITY AND COUNTY OF DENVER, COLORADO. C. A. 10th Cir. Certiorari denied. Reported below: 321 F. 3d 950.

JUSTICE SCALIA, with whom THE CHIEF JUSTICE joins, dissenting.

I dissent from denial of the petition for writ of certiorari. In this challenge to Denver's use of racial preferences in public contracting, the Tenth Circuit, overturning the findings of the District Court, held that Denver had demonstrated a compelling interest in remedying racial discrimination in the Denver construction industry. The decision rests on an inference of racial discrimination from evidence that patently does not measure up to the standards set forth in *Richmond* v. *J. A. Croson Co.*, 488 U. S. 469 (1989). Coming on the heels of our decision last Term in *Grutter* v. *Bollinger*, 539 U. S. 306 (2003), the Court's decision to let this plain disregard of *Croson* stand invites speculation that that case has effectively been overruled.

I

Denver's use of racial preferences began a generation ago, in 1977. In 1989, after this Court invalidated the city of Richmond's 30% racial set-aside program for public contracting because the city had "failed to demonstrate a compelling interest in apportioning public contracting opportunities on the basis of race," *Croson*, *supra*, at 505, Denver commissioned a study to assess the appropriateness of its program. The study was completed in June 1990, and a few months later Denver continued its system of racial preferences by passing City Ordinance No. 513, which established the scheme at issue in the present case.

Under the 1990 Ordinance, Denver's City Council sets annual goals for the participation of minority business enterprises (MBEs) and woman-owned business enterprises in city contracting. The Mayor's Office of Contract Compliance director then sets contract-specific goals for each covered contract. A prime contractor whose bid does not meet the goals will be disqualified, unless the prime contractor can show that it made a "good-faith effort" to do so—which requires satisfaction of 10 specific steps prescribed in the Ordinance.

To qualify as an MBE under the 1990 Ordinance, a firm must pass four threshold requirements, a 51% minority-ownership test, and a minority-control test. One of the threshold requirements is that the firm certify either (1) that it has been a victim of past discrimination or (2) that it was in the city construction industry before June 1, 1990 (subsequently changed to Mar. 31, 1996)—in which latter case it is presumed to have been a victim of discrimination.

II

The last-mentioned presumption, if it is to be a true indication of past victimhood, must rest upon evidence not merely that there was *some* racial discrimination in the Denver construction industry prior to 1990 (or 1996), but that racial discrimination was so pervasive that it is reasonable to assume that it affected *all* minority-owned and controlled firms. Absent such evidence of pervasive discrimination, Denver's seeming limitation of the set-asides to victims of racial discrimination is a sham, and the only function of the preferences is to channel a fixed percentage of city contracting dollars to firms identified by race.

The Tenth Circuit found that Denver's evidence established that "discrimination was persistent in the local construction industry and that Denver was, at least, an indirect participant in that discrimination." 321 F. 3d 950, 990 (2003). This conclusion contrasted sharply with the District Court's conclusion that "what can be said about the statistical studies presented in evidence in this case is that the methodology was not designed to answer the relevant questions, the collection of data was flawed, important variables were not accounted for in the analyses and the conclusions were based on unreasonable assumptions." 86 F. Supp. 2d 1042, 1071 (Colo. 2000). The District Court and the Tenth Circuit derived such divergent conclusions from the same evidence because they analyzed that evidence with differing levels of scrutiny and skepticism about the city's justifications. The first stage of the Tenth Circuit's analysis was a determination that "the district court's framework imposed a greater burden on Denver than that required by applicable law." 321 F. 3d, at 974. In the second stage, the court filled the resulting gap by reweighing the evidence on its own, leading it to find "that Denver has demonstrated that a strong basis in evidence supported its conclusion that remedial action was necessary to remedy racial discrimination in the Denver construction industry." *Id.*, at 992. The Tenth Circuit departed from the principles enunciated by this Court at both stages.

A

Our Equal Protection Clause jurisprudence establishes that "whenever the government treats any person unequally because of his or her race, that person has suffered an injury that falls squarely within the language and spirit of the Constitution's guarantee of equal protection." *Adarand Constructors, Inc.* v. *Peña*, 515 U. S. 200, 229–230 (1995). It follows that a proper plaintiff challenging governmental use of racial preferences can state a prima facie case simply by pointing to this practice and showing that he or she was treated "unequally because of his or her race." *Ibid.* Thereupon, the burden of sustaining the constitutionality of the use of racial preferences passes to the government, which must establish that it is remedying "identified discrimination" and that it "had a 'strong basis in evidence' to conclude that remedial action was necessary." *Shaw* v. *Hunt*, 517 U. S. 899, 909–910 (1996) (internal quotation marks omitted).

The Tenth Circuit interpreted the "strong basis in evidence" requirement in a miserly manner and ignored *Croson*'s requirement that the government *prove* that it is remedying identified discrimination. The District Court "believed Denver was required to *prove* the existence of discrimination." 321 F. 3d, at 970. According to the Tenth Circuit, however, the District Court should only have asked "whether Denver had demonstrated strong evidence from which an inference of past or present discrimination *could* be drawn." *Ibid.* (emphasis added). Instead of asking this easier question, the Tenth Circuit explained, the District Court was apparently misled by the plaintiff's "erroneous and unsupported statement . . . that Denver had the 'burden of establishing by a preponderance that not only were there inferences of discrimination, but in fact that the inferences were correct.' Denver, however, bore no such burden." *Ibid.*

The District Court was correct, and the Tenth Circuit mistaken. "While the States and their subdivisions may take remedial action when they possess evidence that their own spending practices are exacerbating a pattern of prior discrimination, *they must identify that discrimination,* public or private, *with some specificity* before they may use race-conscious relief." *Croson*, 488 U. S., at 504 (emphasis added). Quite obviously, "discrimination . . . identif[ied] with some specificity" is discrimination *that has been shown to have existed.* It is inconsistent with *Croson* to permit racial preferences as a remedy for mere "might-have-been" racial discrimination, established by nothing more than evidence "from which an inference of past or present discrimination *could* be drawn."

While holding Denver only to a watered-down "you don't need to *prove* discrimination" standard, the Tenth Circuit simultaneously heightened the showing that the plaintiff contractor was required to make. According to the panel, "[o]nce Denver meets its burden, [the plaintiff] must introduce credible, particularized evidence to rebut [Denver's] initial showing of the existence of a compelling interest." 321 F. 3d, at 959 (internal quotation marks omitted). This is quite a daunting task, given how little Denver was required to show. Since Denver had to establish nothing more than the possibility of prior discrimination (evidence "from which an inference of past or present discrimination *could* be drawn"), the injured contractor was required to rebut

the *possibility* of discrimination in the Denver construction industry.

With regard to the burden of proof, then, the Tenth Circuit got it exactly backwards. It is not enough for a discriminating governmental entity to identify statistical disparities, *assume* (because it is a *possible* inference from the evidence) that these disparities were in fact caused by racial discrimination, implement racial preferences in public contracting on the basis of that assumption, and then require an injured contractor to demonstrate that the assumption of discrimination was *in*correct. Rather, when the injured contractor has established the government's use of racial preferences (a point conceded here), these preferences are presumed unconstitutional, and it then becomes the *government's* burden to prove that it is acting on the basis of a compelling interest in remedying racial discrimination. To be crystal clear: Denver *cannot* meet its burden without proving that there was pervasive racial discrimination in the Denver construction industry.

B

The Tenth Circuit's analysis also rests upon at least two serious errors that infect the statistical evidence submitted by the city. *Croson* requires the discriminating municipality to show a "significant statistical disparity" between the number of contractors hired and "the number of *qualified* minority contractors *willing* and *able*" to do the jobs. 488 U. S., at 509 (emphasis added). The statistical studies submitted by Denver did not meet this requirement because they did not measure the *availability* of minority firms—neither by use of actual bidding data nor by adjusting the raw data showing the total number of minority firms by means of some variable that would serve as a workable proxy for qualification, willingness, and ability. Instead, the city's studies *assumed* that minority firms were on average as qualified, willing, and able as others.

In opposing certiorari, Denver argues that the use of actual contract bidding data should not be required (as the plaintiff's expert suggested) because a study based on such data would be difficult to carry out, converting *Croson* scrutiny into scrutiny that is "'strict in theory, but fatal in fact.'" *Adarand Constructors*, *supra*, at 237. This argument should be rejected. The scrutiny required by *Croson should* be fatal in fact when the statistical analysis put forward by the governmental entity de-

fending intentional racial discrimination simply does not support its claim that the purpose and effect of its action was to compensate the victims of prior discrimination. If Denver found the use of contract bidding data too onerous, then it should have employed some other measure to make the statistical analysis valid—which obviously requires, as *Croson* said, that comparison be made, not with *all* minority firms, but with those that are qualified, willing, and able to undertake city contracts.

Secondly, even if it had been proper to assume that all minority firms were just as qualified, willing, and able to enter city contracts as other firms, it would still not have been proper to assume that *all* these minority firms had chances of obtaining city contracts equivalent to the chances of the nonminority firms that obtained them. Firms that are large and more experienced in performing big jobs will have more success in obtaining government contracts, and the uncontroverted evidence showed that MBEs were, on average, smaller and less experienced than their nonpreferred counterparts. In such circumstances, the government should have been required to produce a regression analysis controlling for these factors if it wished to rely on statistical disparities. See, *e. g.*, *Engineering Contractors Assn. of South Fla., Inc.* v. *Metropolitan Dade Cty.*, 122 F. 3d 895, 917 (CA11 1997) (after regression analysis to control for firm size was conducted, "most of the unfavorable disparities became statistically insignificant").

The Tenth Circuit accepted the city's contention that there was no need to control for size and experience because those are not race-neutral variables. MBEs, the court said, "are generally smaller and less experienced *because* of industry discrimination." 321 F. 3d, at 981. The argument fails because it rests on nothing but speculation. Little is known about the relationship between minority ownership and size-and-experience in the Denver construction industry; one of the defects of the city's disparity studies is precisely that they did not address those variables.

Denver did introduce studies identifying racial disparities in business formation rates and in access to capital. But if disparities in those more general areas sufficed to render size and experience impermissible explanations of racial disparities in construction contracting, they would similarly invalidate those explanations (and permit racial preferences) in every field of enterprise. *Croson* spoke specifically to this point, pointing out that reliance

upon such general societal discrimination "'has no logical stopping point.' . . . 'Relief' for such . . . ill-defined wrong[s] could extend until the percentage of public contracts awarded to MBE's . . . mirrored the percentage of minorities in the population as a whole." 488 U. S., at 498 (quoting *Wygant* v. *Jackson Bd. of Ed.*, 476 U. S. 267, 275 (1986)). Discrimination in access to capital can be remedied directly—for example, by "prohibit[ing] discrimination in the provision of credit . . . by local suppliers and banks," 488 U. S., at 510—but does not give rise to a compelling state interest to discriminate by race in construction contracting. No more so than does the existence of other larger social forces, such as disparities in education, that may similarly have some indirect effect on construction contracting.

III

Apart from the questions this case raises about faithful application of *Croson*, the case is worthy of the Court's review because it presents a clear Circuit split on the standard of appellate review for the "strong basis in evidence" requirement. The genesis of this requirement is *Wygant*, *supra*, at 277, an affirmative-action-in-employment case in which the Court stated that "the trial court must make a factual determination that the employer had a strong basis in evidence for its conclusion that remedial action was necessary." *Croson* carried the "strong basis in evidence" standard over to the use of racial classifications in public contracting. See 488 U. S., at 510.

The Tenth Circuit and three other Courts of Appeals view the question whether a governmental unit has demonstrated a "strong basis in evidence" sufficient to support its use of racial classifications as a question of law to be reviewed *de novo*. See *Rothe Development Corp.* v. *United States Dept. of Defense*, 262 F. 3d 1306, 1322–1323 (CA Fed. 2001); *Majeske* v. *Chicago*, 218 F. 3d 816, 820 (CA7 2000); *Contractors Assn. of Eastern Pa., Inc.* v. *Philadelphia*, 91 F. 3d 586, 596 (CA3 1996); *Concrete Works of Colo., Inc.* v. *City and County of Denver*, 36 F. 3d 1513, 1522 (CA10 1994). The Eleventh Circuit, in contrast, draws on the "factual determination" language in *Wygant* to interpret the "strong basis in evidence" question as one of fact, whose disposition is to be reviewed for clear error. See *Engineering Contractors Assn. of South Fla., Inc.*, *supra*, at 903.

The Court should resolve this significant and unsettled question. Any doubts about the question's practical importance dissolve when one considers the manner in which the Tenth Circuit's application of *de novo* review in this case permitted it to rule as it did notwithstanding the factual determinations made by the District Court after trial.

* * *

One of the primary functions of the requirement that governmental entities identify discrimination with specificity before using racial preferences is to implement the demand of the Equal Protection Clause "that the deviation from the norm of equal treatment of all racial and ethnic groups [be] a temporary matter." *Croson*, *supra*, at 510. Governmental use of racial preferences must be "limited in time" because "racial classifications, however compelling their goals, are potentially so dangerous that they may be employed no more broadly than the interest demands." *Grutter*, 539 U. S., at 342. Yet Denver has been using racial preferences in public contracting for a generation, and there is no indication that this will be anything other than business as usual for the foreseeable future.

Perhaps more than for any other reason, denial of certiorari in this case is important because of what it signals about this Court's ongoing commitment to exacting judicial review of race-conscious policies. If the evidence relied upon by governmental units to justify their use of racial classifications can be as inconclusive as Denver's evidence in this case, our former insistence upon a "strong basis in evidence" has been abandoned, to be replaced by what amounts to an "apparent-good-faith" requirement—that is, in the words of the Tenth Circuit, the existence of "evidence from which an inference of past or present discrimination *could* be drawn." 321 F. 3d, at 970 (emphasis added). Some language in our recent racial-preferences-in-law-school-admissions case suggests a new willingness to rely upon good faith. See, *e. g.*, *Grutter*, *supra*, at 343 ("We take the Law School at its word that it would 'like nothing better than to find a race-neutral admissions formula' and will terminate its race-conscious admissions program as soon as practicable"). We should grant certiorari to make clear that we stand by *Croson*'s insistence that "[r]acial classifications are suspect," that "simple legislative assurances of good

intention cannot suffice," and that the courts will employ "searching judicial inquiry into the justification for such race-based measures . . . to 'smoke out' illegitimate uses of race." 488 U. S., at 500, 493.

No. 03–248. ARIZONA *v.* FINCH. Sup. Ct. Ariz. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 205 Ariz. 170, 68 P. 3d 123.

No. 03–342. ARGUELLO ET AL. *v.* CONOCO, INC. C. A. 5th Cir. Motions of National Association for the Advancement of Colored People and Lawyers' Committee for Civil Rights Under Law et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 330 F. 3d 355.

No. 03–5781. TORRES *v.* MULLIN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 317 F. 3d 1145.

Opinion of JUSTICE STEVENS respecting the denial of the petition for certiorari.

My dissent from the hastily crafted opinion in *Breard* v. *Greene*, 523 U. S. 371 (1998) *(per curiam)*, rested on procedural grounds: The Court's departure from its normal rules governing the processing of certiorari petitions deprived us of the briefing and argument necessary for the careful consideration of important issues. *Id.*, at 379–380. I am now persuaded that my dissent should have been directed at the merits of the Court's holding.

In *Breard* the Court refused to stay the imminent execution of a citizen of Paraguay. Breard's federal habeas corpus application alleged that the Virginia authorities failed to advise Breard of his right under Article 36 of the Vienna Convention on Consular Relations, Apr. 24, 1963, [1970] 21 U. S. T. 77, 100–101, T. I. A. S. No. 6820 (hereinafter Vienna Convention or Convention), to have the Paraguayan Consulate notified of his arrest and trial. This Court held that Breard procedurally defaulted his claim by failing to raise it in the Virginia state courts. 523 U. S., at 375–376. The opinion did not discuss the possibility that Breard may have failed to assert the treaty claim because he knew nothing about the treaty until after the state proceedings were concluded. It surely is reasonable to presume that most foreign nationals are unaware of the provisions of the Vienna Convention (as are, it seems, many local prosecutors). That is precisely why the

Convention places the notice obligation on the governmental authorities.

There is obvious tension between the holding in *Breard* and the purpose of Article 36 of the Vienna Convention. In its authoritative interpretation of Article 36 in the *LaGrand Case (F. R. G.* v. *U. S.)*, 2001 I. C. J. No. 104, ¶¶ 90–91 (Judgment of June 27), http://212.153.43.18/icjwww/idocket/igus/igusjudgment/igus_ijudgment_20010625.htm (as visited Oct. 24, 2003, and available in Clerk of Court's case file),* the International Court of Justice (ICJ) explained:

> "The problem arises when the procedural default rule does not allow the detained individual to challenge a conviction and sentence by claiming, in reliance on Article 36, paragraph 1, of the Convention, that the competent national authorities failed to comply with their obligation to provide the requisite consular information 'without delay,' thus preventing the person from seeking and obtaining consular assistance from the sending State.
>
> ". . . Under these circumstances, the procedural default rule had the effect of preventing 'full effect [from being] given to the purposes for which the rights accorded under this article are intended,' and thus violated paragraph 2 of Article 36."

Applying the procedural default rule to Article 36 claims is not only in direct violation of the Vienna Convention, but it is also manifestly unfair. The ICJ's decision in *LaGrand* underscores that a foreign national who is presumptively ignorant of his right to notification should not be deemed to have waived the Article 36 protections simply because he failed to assert that right in a state criminal proceeding.

Article VI, cl. 2, of our Constitution provides that the "Laws of the United States," expressly including "all Treaties made . . . under the Authority of the United States, shall be the supreme Law of the Land." The Court was unfaithful to that command when it held that Congress may not require county employees to check the background of prospective handgun purchasers, *Printz*

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*The United States has consented to the compulsory jurisdiction of the International Court of Justice over Convention-related disputes. Optional Protocol Concerning the Compulsory Settlement of Disputes, Apr. 24, 1963, Art. I, [1970] 21 U. S. T. 326, T. I. A. S. No. 6820.

v. *United States*, 521 U. S. 898 (1997), that Congress may not exercise its Article I powers to abrogate a State's common-law immunity from suit, *Seminole Tribe of Fla.* v. *Florida*, 517 U. S. 44 (1996), and that a State may not be required to provide its citizens with a remedy for its violation of their federal rights, *Alden* v. *Maine*, 527 U. S. 706 (1999). The Court is equally unfaithful to that command when it permits state courts to disregard the Nation's treaty obligations.

JUSTICE BREYER, dissenting.

Article 36 of the Vienna Convention on Consular Relations (hereinafter Vienna Convention or Convention) requires United States authorities (1) to tell an arrested foreign national, without delay, that he may have his nation's consul informed of the arrest, and (2) to tell the consul about the arrest (if the foreign national so desires). Apr. 24, 1963, Art. 36, ¶ 1(b), [1970] 21 U. S. T. 77, 101, T. I. A. S. No. 6820. This case raises important questions concerning the relation between, on the one hand, the domestic law of the United States, and, on the other, decisions of the International Court of Justice (ICJ) interpreting the Convention. See *LaGrand Case (F. R. G.* v. *U. S.)*, 2001 I. C. J. No. 104 (Judgment of June 27) (hereinafter *LaGrand*), http://212.153.43.18/icjwww/idocket/igus/igusjudgment/igus_ijudgment_20010625.htm (all Internet materials as visited Oct. 24, 2003, and available in Clerk of Court's case file); *Case Concerning Avena and other Mexican Nationals (Mex.* v. *U. S.)*, 2003 I. C. J. No. 128 (Order of Feb. 5) (Order in a case, concerning petitioner Osbaldo Torres, scheduled for hearing at the ICJ in December 2003) (hereinafter Provisional Measures Order), http://212.153.43.18/icjwww/idocket/imus/imusorder/imus_iorder_20030205.PDF.

I

This case arises in the following circumstances: In July 1993, law enforcement authorities in Oklahoma arrested Osbaldo Torres, a Mexican national, and charged him with murder. An Oklahoma court convicted him and sentenced him to death. The Oklahoma Court of Criminal Appeals affirmed his conviction and sentence and denied his various claims for postconviction relief. See *Torres* v. *State*, 962 P. 2d 3 (1998); *Torres* v. *State*, No. PC–98–213 (Okla. Crim. App., Aug. 4, 1998) (unpublished order); *Torres* v. *State*, 58 P. 3d 214 (Okla. Crim. App. 2002).

In 1999, Torres filed a petition for habeas corpus in Federal District Court. He claimed, among other things, that the arresting authorities had failed to notify him of his Vienna Convention rights—and similarly had failed to notify Mexican consular officials of his arrest. The Federal District Court rejected this claim on the grounds that (1) Torres had not raised this claim in his state-court proceedings, thereby procedurally defaulting the claim under state law, and (2) Torres did not show that the Convention violation had prejudiced him. *Torres* v. *Gibson*, No. CIV–99–155–R (WD Okla., Aug. 23, 2000), p. 73 (unpublished memorandum opinion and order); cf. *Breard* v. *Greene*, 523 U. S. 371, 377 (1998) *(per curiam)*. The District Court and the Court of Appeals for the Tenth Circuit refused to issue a certificate of appealability. *Torres* v. *Gibson*, No. CIV–99–155–R (WD Okla., Oct. 6, 2000); *Torres* v. *Gibson*, No. 00–6334 (CA10, Apr. 26, 2001) (unpublished order); 317 F. 3d 1145, 1148, n. 1 (CA10 2003) (case below). Torres petitions for certiorari, seeking our review of the Court of Appeals' determination.

Torres argues that the Tenth Circuit's determination conflicts with ICJ decisions, which, he says, authoritatively interpret the Convention. He asks us to grant certiorari in light of the conflict. Mexico has filed an *amicus curiae* brief in support of the petition. Mexico points out that it has brought a case before the ICJ in which it claims, among other things, that the United States, in convicting and sentencing Torres, has violated the Convention, which, in its view, must apply as part of our domestic law. Mexico asks us to defer consideration of this case until the ICJ decides that dispute.

II

Torres and Mexico are aware that this Court, in *Breard*, 523 U. S., at 375–376, held that the Vienna Convention itself permits both state and federal courts to apply ordinary "procedural default" rules in a case such as this one, thereby effectively barring a defendant from raising in federal court a Convention-violation claim that he failed to assert in the state courts in a timely fashion. The Court also said that a defendant claiming a violation would not likely prevail unless he also showed that "the violation had an effect on the trial." *Id.*, at 377. But, say Torres and Mexico, the ICJ, in its subsequent *LaGrand* decision, interpreted the Convention to the contrary. They add that this later ICJ decision authoritatively interprets the Convention, which in

turn has become part of domestic law, and for that reason binds the Court.

For one thing, Article VI of the Constitution specifies that (along with the Constitution and federal laws) "all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land."

For another, lower courts have held that the Convention is self-executing, at least in the sense that its provisions automatically become part of the law of the United States without additional congressional legislation. *E. g.*, *United States* v. *Torres-Del Muro*, 58 F. Supp. 2d 931, 932 (CD Ill. 1999) (noting that "the treaty is 'self-executing' in the sense that there is no need for enabling legislation for the Convention to have the force of law"). Indeed, the United States itself has taken that position. See S. Exec. Rep. No. 91–9, App. p. 5 (1969) (statement of State Department Deputy Legal Adviser J. Edward Lyerly) (testifying at a Senate hearing prior to ratification that the treaty is "entirely self-executive and does not require any implementing or complementing legislation").

Moreover, the ICJ in *LaGrand* held or stated the following: First, the Convention "creates individual rights." And the "'laws and regulations'" of the United States, including the rules of criminal law and procedure, "'must enable full effect to be given to the purposes for which'" those "'rights'" of the arrested foreign national "'are intended.'" 2001 I. C. J. No. 104, ¶¶ 77, 86–89 (rejecting the United States' arguments to the contrary); Vienna Convention, Art. 36, ¶ 2.

Second, the Convention prohibits the United States from implementing a State's "'procedural default' rule" if that rule prevents "the detained individual" from challenging "a conviction and sentence by claiming . . . that the competent national authorities failed to comply with their obligation to provide the requisite consular information 'without delay.'" *LaGrand*, *supra*, ¶ 90. The courts of the United States, in relying upon such a rule in the *LaGrand* case, violated the Convention. ¶¶ 90–91; see also ¶ 60 (stating that the United States may not rely upon defendants' failure to raise their Convention claim until the federal habeas proceeding, "as it was the United States itself which had failed to carry out its obligation under the Convention to inform" them).

Third, it "is immaterial for the purposes of the present case *[i. e., LaGrand]* whether" the defendants, had they been informed

of their Convention rights, "would have sought consular assistance," whether the foreign nation "would have rendered such assistance," or even "whether a different verdict would have been rendered." ¶ 74. Rather, it was "sufficient that the Convention conferred these rights," and that a nation and its nationals "were in effect prevented by the breach of the United States from exercising [these rights], had they so chosen." *Ibid.* In addition, "an apology is not sufficient . . . where foreign nationals have not been advised without delay of their rights . . . and have been . . . sentenced to severe penalties." ¶ 123.

Finally, Article I of the Convention's Optional Protocol Concerning the Compulsory Settlement of Disputes, which the United States has signed, says that "[d]isputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice." 21 U. S. T., at 326, T. I. A. S. No. 6820.

Torres and Mexico argue (1) that, in light of this last mentioned Protocol, the ICJ's interpretation of the Convention is authoritative, including its determination that the Convention creates "individual rights"; (2) that, since the Convention is self-executing, the ICJ's interpretation is part of the law of the United States; and (3) that, given the ICJ's holdings in *LaGrand*, Torres can enforce his Vienna Convention rights by demanding an appropriate remedy, state-law procedural bars or lack of prejudice notwithstanding.

III

Torres and Mexico go on to point out that Mexico has asked the ICJ to determine whether the United States has violated the Convention in its treatment of Torres and certain other similarly situated criminal defendants. See *Case Concerning Avena and other Mexican Nationals (Mex.* v. *U. S.)*, 2003 I. C. J. No. 128 (Application of Jan. 9), http://212.153.43.18/icjwww/idocket/imus/imusorder/imus_iapplication_20030109.PDF. They note that the ICJ, in a preliminary order in Mexico's case, wrote that the International "Court, Unanimously, . . . *Indicates* the following provisional measures: *(a)* The United States of America shall take all measures necessary to ensure that . . . Mr. Osvaldo Torres Aguilera *[sic]* [is] not executed pending final judgment in these proceedings." Provisional Measures Order ¶ 59 (emphasis in original). The ICJ held in *LaGrand* that such an order has "binding effect" and "create[s] a legal obligation for

the United States." 2001 I. C. J. No. 104, ¶¶ 109–110. Mexico and Torres contend that, since the Convention is self-executing, it has become part of domestic law and one that, for that reason and for reasons of comity, we should honor. And since Oklahoma might set an execution date within 60 days of our denying certiorari, prior to a final decision by the ICJ, they ask us to defer consideration of Torres' petition.

IV

On the basis of the briefs so far filed in this case, Torres' and Mexico's arguments seem substantial. Cf. *ante*, p. 1035 (opinion of STEVENS, J.); *Breard*, 523 U. S., at 380–381 (BREYER, J., dissenting). If so, there is a realistic possibility that this is a case we should hear. I note, however, that the United States has not filed a brief directly addressing the issues Torres has raised in this case, nor has any group of individuals expert in the subject of international law. The United States has filed a brief in opposition in the related cases *Ortiz* v. *United States*, No. 02–11188, and *Sinisterra* v. *United States*, No. 03–5286, now pending before the Court [REPORTER'S NOTE: See *post*, p. 1073], in which it argues, *inter alia*, that "the ICJ does not exercise any judicial power of the United States, which is vested exclusively by the Constitution in the United States federal courts." Brief in Opposition 18. While this is undeniably correct as a general matter, it fails to address the question whether the ICJ has been granted the authority, by means of treaties to which the United States is a party, to interpret the rights conferred by the Vienna Convention. The answer to Lord Ellenborough's famous rhetorical question, "Can the Island of Tobago pass a law to bind the rights of the whole world?" may well be yes, where the world has conferred such binding authority through treaty. See *Buchanan* v. *Rucker*, 9 East 192, 103 Eng. Rep. 546 (K. B. 1808). It is this kind of authority that Torres and Mexico argue the United States has granted to the ICJ when it comes to interpreting the rights and obligations set forth in the Vienna Convention.

Given the international implications of the issues raised, I believe further information, analysis, and consideration are necessary. Depending on how the ICJ decides Mexico's related case against the United States, and subject to further briefing in light of that decision, I may well vote to grant certiorari in this case. Consequently I would defer consideration of this petition.

Rehearing Denied

No. 02–1564. RANEY *v.* RANEY, 539 U. S. 959;

No. 02–10658. SEDGWICK *v.* UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, *ante*, p. 833;

No. 02–11350. COWARD *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, *ante*, p. 870;

No. 03–5307. ROWELL *v.* GRIEGAS, WARDEN, ET AL., *ante*, p. 901;

No. 03–5388. DOCKERY *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, *ante*, p. 906;

No. 03–5394. BRUNO *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 906;

No. 03–6016. DEAN *v.* UNITED STATES, *ante*, p. 934; and

No. 03–6053. COLE *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, *ante*, p. 935. Petitions for rehearing denied.

NOVEMBER 28, 2003

Dismissal Under Rule 46

No. 03–6976. SLATER *v.* UNITED STATES. C. A. 4th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 70 Fed. Appx. 107.

DECEMBER 1, 2003

Miscellaneous Orders

No. 03M30. CHAPPARO *v.* LINDSEY, WARDEN;

No. 03M31. DUQUE *v.* YARBOROUGH, WARDEN; and

No. 03M33. BAOSHENG ZHOU *v.* PACIFIC MEDICAL CLINICS. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 03M32. FERES *v.* UNITED STATES. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 03M34. VASQUEZ-HERNANDEZ *v.* OREGON. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner denied.

No. 126, Orig. KANSAS *v.* NEBRASKA ET AL. Motion of the Special Master for allowance of fees and disbursements granted, and the Special Master is awarded a total of $30,327.21 for the period April 16 through October 20, 2003, to be paid equally by the parties. Vincent McKusick, Esq., of Portland, Me., the Special Master in this case is hereby discharged with the thanks of the Court. [For earlier order herein, see, *e. g.*, *ante*, p. 964.]

No. 128, Orig. ALASKA *v.* UNITED STATES. Motion of the Special Master for allowance of fees and reimbursement granted, and the Special Master is awarded a total of $154,275.25 for the period April 17 through October 16, 2003, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 538 U. S. 1055.]

No. 02–1196. SECURITIES AND EXCHANGE COMMISSION *v.* EDWARDS. C. A. 11th Cir. [Certiorari granted, 538 U. S. 976.] Motion of Financial World Companies Inc. for leave to file a brief as *amicus curiae* denied.

No. 02–1624. ELK GROVE UNIFIED SCHOOL DISTRICT ET AL. *v.* NEWDOW ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 945.] Motion of respondent Michael A. Newdow for representation *pro se*, or (in the alternative) *pro hac vice* granted. Motion of Americans United for Separation of Church and State for leave to participate in oral argument as *amicus curiae* and for additional time to present argument denied. JUSTICE SCALIA took no part in the consideration or decision of these motions.

No. 02–1667. TENNESSEE *v.* LANE ET AL. C. A. 6th Cir. [Certiorari granted, 539 U. S. 941.] Motion of Richard Stevens for leave to file a brief as *amicus curiae* denied.

No. 02–1684. YARBOROUGH, WARDEN *v.* ALVARADO. C. A. 9th Cir. [Certiorari granted, 539 U. S. 986.] Motion of respondent for appointment of counsel granted, and Tara K. Allen, Esq., of Malibu, Cal., is appointed to serve as counsel for respondent in this case.

No. 02–1794. UNITED STATES *v.* FLORES-MONTANO. C. A. 9th Cir. [Certiorari granted, *ante*, p. 945.] Motion of respondent for appointment of counsel granted, and Steven F. Hubachek, Esq., of San Diego, Cal., is appointed to serve as counsel for respondent in this case.

No. 02–1824. DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION *v.* HALEY. C. A. 5th Cir. [Certiorari granted, *ante*, p. 945.] Motion of respondent for appointment of counsel granted, and Eric M. Albritton, Esq., of Longview, Tex., is appointed to serve as counsel for respondent in this case.

No. 02–9065. MUHAMMAD, AKA MEASE *v.* CLOSE. C. A. 6th Cir. [Certiorari granted, 539 U. S. 925.] Motion of respondent for leave to file a surreply brief granted.

No. 02–11034. SWINT *v.* UNITED STATES. C. A. 3d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 803] denied.

No. 02–11356. SIVAK *v.* JOHNSON ET AL. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 802] denied.

No. 03–5385. NABELEK *v.* BRADFORD ET AL. Ct. App. Tex., 14th Dist. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 802] denied.

No. 03–5940. ELDRIDGE *v.* UNITED STATES. Ct. App. D. C. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 804] denied.

No. 03–6002. ROWELL *v.* NEVADA. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 963] denied.

No. 02–11062. WASHINGTON *v.* STATE STREET BANK & TRUST CO. ET AL. C. A. 1st Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 808] denied. JUSTICE BREYER took no part in the consideration or decision of this motion.

No. 03–107. UNITED STATES *v.* LARA. C. A. 8th Cir. [Certiorari granted, 539 U. S. 987.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 03–6944. HANSON-HODGE *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until December 22, 2003, 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. 03–7155. IN RE BRUNO. Petition for writ of habeas corpus denied.

No. 03–7170. IN RE HAZEL ET AL. Motion of petitioner Bobby E. Hazel for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed as to petitioner Hazel. See this Court's Rule 39.8. Petition for writ of habeas corpus denied as to petitioner Ronald Mitchell.

No. 03–6546. IN RE BECK; and
No. 03–6607. IN RE TOWNSEND. Petitions for writs of mandamus denied.

No. 03–6557. IN RE DUMONT. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 02–891. CENTRAL LABORERS' PENSION FUND *v.* HEINZ ET AL. C. A. 7th Cir. Certiorari granted. Reported below: 303 F. 3d 802.

No. 03–339. SOSA *v.* ALVAREZ-MACHAIN ET AL.; and
No. 03–485. UNITED STATES *v.* ALVAREZ-MACHAIN ET AL. C. A. 9th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 331 F. 3d 604.

No. 03–526. SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS *v.* SUMMERLIN. C. A. 9th Cir. Certiorari granted limited to Questions 1 and 2 presented by the petition. Reported below: 341 F. 3d 1082.

No. 03–6539. JOHNSON *v.* CALIFORNIA. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to the following question: "Whether to establish a prima facie case under *Batson* v. *Kentucky*, 476 U. S. 79 (1986), the objector must show that it is more likely than not the other party's peremptory challenges, if unexplained, were based on impermissible group bias?" Reported below: 30 Cal. 4th 1302, 71 P. 3d 270.

No. 03–95. PENNSYLVANIA STATE POLICE *v.* SUDERS. C. A. 3d Cir. Motion of Chamber of Commerce of the United States for leave to file a brief as *amicus curiae* granted. Certiorari granted. Reported below: 325 F. 3d 432.

No. 03–6821. NELSON *v.* CAMPBELL, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Motion of Alabama Physicians, Laurie Dill, et al. for leave to file a brief as *amici curiae* granted. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to the following question: "Whether a complaint brought under 42 U. S. C. § 1983 by a death-sentenced state prisoner, who seeks to stay his execution in order to pursue a challenge to the procedures for carrying out the execution, is properly recharacterized as a habeas corpus petition under 28 U. S. C. § 2254?" Reported below: 347 F. 3d 910.

Certiorari Denied

No. 03–51. SILVEIRA ET AL. *v.* LOCKYER, ATTORNEY GENERAL OF CALIFONIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 312 F. 3d 1052.

No. 03–115. DANZELL *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 918.

No. 03–226. WHALEN *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 03–228. JONES *v.* KEANE, SUPERINTENDENT, WOODBOURNE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 329 F. 3d 290.

No. 03–254. CORE CONCEPTS OF FLORIDA, INC. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 327 F. 3d 1331.

No. 03–277. BROOKENS *v.* FEDERAL LABOR RELATIONS AUTHORITY. C. A. D. C. Cir. Certiorari denied.

No. 03–283. SHELL PETROLEUM INC. ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 319 F. 3d 1334.

No. 03–288. Bronx Legal Services et al. *v.* Legal Services Corporation et al. C. A. 2d Cir. Certiorari denied. Reported below: 64 Fed. Appx. 310.

No. 03–290. Norfolk Shipbuilding & Drydock Corp. *v.* Campbell et al. C. A. 4th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 568.

No. 03–298. Lewis *v.* Peterson, Warden. C. A. 7th Cir. Certiorari denied. Reported below: 329 F. 3d 934.

No. 03–304. Wilson *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 765.

No. 03–309. Blackburn *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 190.

No. 03–311. Minor *v.* Kmart Corp. C. A. 5th Cir. Certiorari denied. Reported below: 332 F. 3d 796.

No. 03–313. Strata Heights International Corp. et al. *v.* Petroleo Brasileiro, S. A.; and

No. 03–481. Petroleo Brasileiro, S. A. *v.* Strata Heights International Corp. et al. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 247.

No. 03–317. Vidtape, Inc., et al. *v.* Chao, Secretary of Labor. C. A. 2d Cir. Certiorari denied. Reported below: 66 Fed. Appx. 261.

No. 03–416. Ostrander, Trustee in Bankruptcy *v.* City of Springfield, Massachusetts. C. A. 1st Cir. Certiorari denied. Reported below: 329 F. 3d 204.

No. 03–421. Sudarsky *v.* City of New York, New York, et al. C. A. 2d Cir. Certiorari denied. Reported below: 24 Fed. Appx. 28.

No. 03–423. Schafler *v.* Newsome. C. A. 9th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 138.

No. 03–425. Keen *v.* Weaver, Independent Executrix of the Estates of Weaver et al. Sup. Ct. Tex. Certiorari denied. Reported below: 121 S. W. 3d 721.

No. 03–429. O'Connor *v.* Predick et al. Ct. App. Wis. Certiorari denied. Reported below: 260 Wis. 2d 323, 660 N. W. 2d 1.

No. 03–435. LEONARD *v.* UNIVERSITY OF DELAWARE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 80 Fed. Appx. 286.

No. 03–436. ELDRIDGE *v.* GIBSON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 332 F. 3d 1019.

No. 03–438. VAN ALSTINE *v.* CITY OF PALM DESERT, CALIFORNIA, ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 03–443. ALLERGAN, INC., ET AL. *v.* ALCON LABORATORIES, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 324 F. 3d 1322.

No. 03–446. LIPIN *v.* NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, ET AL. C. A. 2d Cir. Certiorari denied.

No. 03–448. HILAIRE *v.* JEFF BRYAN REMODELING, INC. Sup. Ct. N. H. Certiorari denied.

No. 03–450. RODRIGUEZ *v.* TEXAS. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 03–452. NWOKE *v.* BENNEWITZ. C. A. 7th Cir. Certiorari denied.

No. 03–453. VIPPERMAN *v.* CONCHA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 660.

No. 03–455. RAHMAN *v.* CITTERIO U. S. A. CORP. C. A. 3d Cir. Certiorari denied. Reported below: 57 Fed. Appx. 516.

No. 03–457. ALAMEDA FILMS, S. A., ET AL. *v.* AUTHORS RIGHTS RESTORATION CORP., INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 331 F. 3d 472.

No. 03–460. LAUDUMIEY ET AL. *v.* LOUISIANA ATTORNEY DISCIPLINARY BOARD. Sup. Ct. La. Certiorari denied. Reported below: 849 So. 2d 515.

No. 03–462. LEMPERT *v.* REPUBLIC OF KAZAKHSTAN, MINISTRY OF JUSTICE. C. A. D. C. Cir. Certiorari denied. Reported below: 62 Fed. Appx. 355.

No. 03–463. BEELER *v.* ROUNSAVALL ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 328 F. 3d 813.

No. 03–465. SABATE S. A. ET AL. *v.* CHATEAU DES CHARMES WINES LTD. C. A. 9th Cir. Certiorari denied. Reported below: 328 F. 3d 528.

No. 03–467. EDWARDS, AKA KING, ET AL. *v.* GERALD ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 836.

No. 03–469. BARTH *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 76 Fed. Appx. 944.

No. 03–470. MERRITT *v.* MERRITT. Sup. Ct. Okla. Certiorari denied. Reported below: 73 P. 3d 878.

No. 03–474. KAPLAN *v.* CITY OF NORTH LAS VEGAS, NEVADA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 323 F. 3d 1226.

No. 03–477. SAVAGE *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 876 So. 2d 1185.

No. 03–479. DIONISIO *v.* VISION PROPERTIES OF FAIRLAWN I, LLC, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 80 Fed. Appx. 285.

No. 03–480. POUILLON *v.* MICHIGAN. Cir. Ct. Shiawassee County, Mich. Certiorari denied.

No. 03–482. VICTOR C. ET UX. *v.* SAN MATEO COUNTY HUMAN SERVICES AGENCY. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 03–484. CAMPUS COMMUNICATIONS, INC. *v.* EARNHARDT ET AL. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 821 So. 2d 388.

No. 03–491. HALTOM ET AL. *v.* MIDVALE CITY CORP. Sup. Ct. Utah. Certiorari denied. Reported below: 73 P. 3d 334.

No. 03–493. ANNIS ET AL. *v.* OKLAHOMA LAW ENFORCEMENT RETIREMENT BOARD ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 903.

No. 03–496. ROGERS *v.* HORSESHOE ENTERTAINMENT. C. A. 5th Cir. Certiorari denied. Reported below: 337 F. 3d 429.

No. 03–497. REID *v.* HOLMES, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 323 F. 3d 187.

No. 03–498. AMELKIN ET AL. *v.* MCCLURE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 330 F. 3d 822.

No. 03–508. ANDERSON *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 353 Ark. 384, 108 S. W. 3d 592.

No. 03–514. MOYER *v.* SMURFIT-STONE CONTAINER CORP. C. A. 4th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 68.

No. 03–521. KHATTAK *v.* ASHCROFT, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 332 F. 3d 250.

No. 03–528. CHANDLER *v.* ROCHE, SECRETARY OF THE AIR FORCE, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 320 F. 3d 828.

No. 03–548. RUETH DEVELOPMENT CO. ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 335 F. 3d 598.

No. 03–553. FORUM STEAKHOUSE OF FLORIDA, INC. *v.* STROOCK STROOCK & LAVAN, LLP. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 820 So. 2d 378.

No. 03–568. EGGERT *v.* REMINGTON ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–578. GAINES *v.* WHITE RIVER ENVIRONMENTAL PARTNERSHIP ET AL. C. A. 7th Cir. Certiorari denied.

No. 03–581. NEAVES ET AL. *v.* CITY OF SAN DIEGO, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 428.

No. 03–599. ST. LOUIS UNIVERSITY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 336 F. 3d 294.

No. 03–602. UPCHURCH *v.* BRUCE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 333 F. 3d 1158.

No. 03–614. SUTTON *v.* UNITED STATES;
No. 03–7013. FLEMING *v.* UNITED STATES; and

No. 03–7139. BROWN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 337 F. 3d 792.

No. 03–620. ARMALY, AKA MILLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 318.

No. 03–628. MANGANO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 03–639. SINGH *v.* POTTER, POSTMASTER GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 433.

No. 03–650. DEVLIN ET AL. *v.* SCARDELLETTI ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 472.

No. 03–655. WHEELER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 296.

No. 03–5436. EDMOND *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 243.

No. 03–5567. MCCLURE *v.* BELLEQUE, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 323 F. 3d 1233.

No. 03–5759. THOMPSON *v.* BELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 315 F. 3d 566.

No. 03–6044. CANALES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 98 S. W. 3d 690.

No. 03–6047. NUTH *v.* CALIFORNIA; and
No. 03–6658. MENH *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 03–6130. IVY *v.* PONTESSO. C. A. 9th Cir. Certiorari denied. Reported below: 328 F. 3d 1057.

No. 03–6148. QUINONES ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 313 F. 3d 49.

No. 03–6268. COX *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 30 Cal. 4th 916, 70 P. 3d 277.

No. 03–6426. WASHINGTON *v.* MCGINNIS. C. A. 6th Cir. Certiorari denied. Reported below: 53 Fed. Appx. 355.

No. 03–6433. MOORE *v.* OHIO. Ct. App. Ohio, Lucas County. Certiorari denied.

No. 03–6434. PHILLIPS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 183.

No. 03–6438. SUTTON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 845 So. 2d 893.

No. 03–6439. SCHWINDLER *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 876 So. 2d 1189.

No. 03–6445. JACKSON *v.* CADDO CORRECTIONAL CENTER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 253.

No. 03–6446. LINDSEY *v.* BENJAMIN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 967.

No. 03–6449. COLLINS *v.* PLILER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 479.

No. 03–6466. CRUZ *v.* TEXAS. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 03–6468. TURNER *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 452.

No. 03–6471. MALLORY *v.* OHIO UNIVERSITY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 634.

No. 03–6473. KEENAN *v.* WOODFORD, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 101.

No. 03–6475. PANETTI *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 78.

No. 03–6476. MCALLISTER *v.* SMALL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 947.

No. 03–6484. GREGORY-BEY *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied. Reported below: 332 F. 3d 1036.

No. 03–6487. GHADERI *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 03–6491. THORN *v.* FOYTIK ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 61.

No. 03–6496. GRAVES *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 03–6497. ALFORD *v.* MISSISSIPPI (two judgments). Sup. Ct. Miss. Certiorari denied.

No. 03–6499. METZENBAUM *v.* CITY OF MAYFIELD HEIGHTS, OHIO, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 354.

No. 03–6500. MCWILLIAMS *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied.

No. 03–6503. ROOSE *v.* SUPREME COURT OF COLORADO. Sup. Ct. Colo. Certiorari denied. Reported below: 69 P. 3d 43.

No. 03–6508. BALLARD *v.* PRICE, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 03–6509. ACRES *v.* MITCHEM, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–6510. CONNER *v.* WOLFE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION. C. A. 3d Cir. Certiorari denied.

No. 03–6513. CASTILLO *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–6516. RIVERA *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 03–6518. THOMAS *v.* SMITH, SUPERINTENDENT, PULASKI CORRECTIONAL UNIT. C. A. 6th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 576.

No. 03–6519. WILLIAMS *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 99 Ohio St. 3d 179, 790 N. E. 2d 299.

No. 03–6520. McCaa *v.* Cain, Warden. C. A. 5th Cir. Certiorari denied.

No. 03–6521. Mendoza *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 03–6522. Belcher *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 851 So. 2d 678.

No. 03–6527. Brumfield *v.* Dretke, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 03–6529. Dubuc *v.* Oklahoma et al. C. A. 10th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 201.

No. 03–6530. Diaz *v.* Bann et al. C. A. 4th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 159.

No. 03–6531. Ellis *v.* Jarvis, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 100.

No. 03–6534. Martinez *v.* Galaza, Warden. C. A. 9th Cir. Certiorari denied.

No. 03–6540. Kinney *v.* Jamrog, Warden. C. A. 6th Cir. Certiorari denied.

No. 03–6541. McPherson *v.* Lavan, Superintendent, State Correctional Institution at Dallas, et al. C. A. 3d Cir. Certiorari denied.

No. 03–6547. Walker *v.* TigerDirect, Inc. C. A. 11th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 387.

No. 03–6549. Brooks *v.* Money, Warden. C. A. 6th Cir. Certiorari denied.

No. 03–6550. Patterson *v.* Jenkins, Chairman, Virginia Parole Board, et al. C. A. 4th Cir. Certiorari denied.

No. 03–6562. Andrus *v.* Florida. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 848 So. 2d 315.

No. 03–6565. Barnes *v.* Dretke, Director, Texas Department of Criminal Justice, Correctional Institutions Divi-

SION. C. A. 5th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 524.

No. 03–6566. LARA *v.* PENNSYLVANIA. Commw. Ct. Pa. Certiorari denied. Reported below: 823 A. 2d 1026.

No. 03–6567. BRETON *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 264 Conn. 327, 824 A. 2d 778.

No. 03–6568. WANG *v.* HAWAII MEDICAL SERVICE ASSN. Sup. Ct. Haw. Certiorari denied.

No. 03–6569. WRIGHT *v.* SACCHET, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 140.

No. 03–6571. HANG *v.* MORGAN, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 366.

No. 03–6575. HOLLIDAY *v.* ELLIOTT, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–6581. HURLEY *v.* COURT OF APPEALS OF ARIZONA, DIVISION ONE. Sup. Ct. Ariz. Certiorari denied.

No. 03–6585. GARONE *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 03–6588. RONDEAU *v.* RONDEAU ET AL. Sup. Ct. N. H. Certiorari denied.

No. 03–6591. SHERKAT *v.* VANO ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 242.

No. 03–6594. SIAS *v.* YARBOROUGH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6598. FOSTER *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 03–6600. GARCIA *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–6601. GILLESPIE *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied.

No. 03–6604. HINKLE *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 523.

No. 03–6609. SESSIONS *v.* FREEMAN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 67 Fed. Appx. 69.

No. 03–6610. SOTO *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6617. GAINES *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–6619. FRATICELLI *v.* GILLIS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP. C. A. 3d Cir. Certiorari denied.

No. 03–6620. GREEN *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–6621. WALKER *v.* NEW YORK CITY TRANSIT AUTHORITY. C. A. 2d Cir. Certiorari denied. Reported below: 67 Fed. Appx. 76.

No. 03–6622. MEHDIPOUR *v.* OKLAHOMA COURT OF CIVIL APPEALS, DIVISION NUMBER ONE, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 203.

No. 03–6623. JAMESON *v.* TEXAS. Ct. App. Tex., 12th Dist. Certiorari denied.

No. 03–6624. RAWLS *v.* ZAMORA. Ct. App. Cal., 6th App. Dist. Certiorari denied. Reported below: 107 Cal. App. 4th 1110, 132 Cal. Rptr. 2d 675.

No. 03–6629. WARD *v.* HEAD, WARDEN. Super. Ct. Butts County, Ga. Certiorari denied.

No. 03–6631. CLEARY *v.* MULLIN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 243.

No. 03–6632. CHARPENTIER *v.* ORTCO CONTRACTORS, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 332 F. 3d 283.

No. 03–6638. KENNEDY *v.* VIRGINIA STATE BAR. Sup. Ct. Va. Certiorari denied.

No. 03–6645. REYNOLDS *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 882.

No. 03–6646. STRICKLAND *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–6647. ALLEN *v.* EIGHTH JUDICIAL DISTRICT COURT OF NEVADA, CLARK COUNTY. C. A. 9th Cir. Certiorari denied.

No. 03–6648. JEMISON *v.* ROBINSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–6650. STALLWORTH *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 868 So. 2d 1128.

No. 03–6656. RAMIREZ *v.* CAREY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6657. NATHAN *v.* SMITH ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 58.

No. 03–6663. RAINEY *v.* RUSHTON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 757.

No. 03–6665. SMITH *v.* SEIFERT, WARDEN. Sup. Ct. App. W. Va. Certiorari denied.

No. 03–6666. SHIVELY *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 03–6673. KARLS *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 03–6678. MCCOY *v.* COTTON, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 03–6679. FARLEY *v.* SANDOVAL, ATTORNEY GENERAL OF NEVADA. C. A. 9th Cir. Certiorari denied.

No. 03–6682. COFFELT *v.* WHITE, COMMISSIONER, TENNESSEE DEPARTMENT OF CORRECTION, ET AL. Ct. App. Tenn. Certiorari denied.

No. 03–6683. CAMPOSANO *v.* GIRDICH, SUPERINTENDENT, UPSTATE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 03–6684. CARINES *v.* JAMROG, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–6695. JACKSON, AKA JACKSON-EL *v.* HAMLIN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 131.

No. 03–6697. CAMPBELL *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 03–6700. SUMBRY *v.* DAVIS, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied.

No. 03–6703. WALKER *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 03–6706. OWENS *v.* JONES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–6708. WHEELER *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–6709. ROBLES *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–6710. SAMSON *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6711. CORDERO DE ANDA *v.* BACA, SHERIFF, LOS ANGELES COUNTY, CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 03–6716. MOODY *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 77 Conn. App. 197, 822 A. 2d 990.

No. 03–6718. AYALA *v.* BECK, SECRETARY, NORTH CAROLINA DEPARTMENT OF CORRECTION. C. A. 4th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 639.

No. 03–6723. KILLINGSWORTH *v.* MULLIN, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 03–6727. MARINO S. *v.* ANGEL GUARDIAN CHILDREN & FAMILY SERVICES, INC., ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 100 N. Y. 2d 361, 795 N. E. 2d 21.

No. 03–6729. LIVINGSTON *v.* ZIMMER. Ct. App. D. C. Certiorari denied. Reported below: 825 A. 2d 334.

No. 03–6730. SPELLS *v.* DUNCAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6732. PHILLIPS *v.* FORD MOTOR CO. C. A. 6th Cir. Certiorari denied.

No. 03–6748. LEACH *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 70 Fed. Appx. 566.

No. 03–6752. TALBURT *v.* WOLFE, SUPERINTENDENT, ALBION STATE CORRECTIONAL INSTITUTION. C. A. 3d Cir. Certiorari denied.

No. 03–6765. DUNCAN *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 741.

No. 03–6772. JOHNSON *v.* SHANNON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FRACKVILLE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–6782. LYNCH *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 439 Mass. 532, 789 N. E. 2d 1052.

No. 03–6783. LOMHOLT *v.* IOWA. C. A. 8th Cir. Certiorari denied. Reported below: 327 F. 3d 748.

No. 03–6807. MUSGRAVE *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 117 Wash. App. 470, 68 P. 3d 1078.

No. 03–6808. SWAIN *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 03–6810. CAUSEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–6814. DAVIS *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 634.

No. 03–6824. ARNOLD *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 03–6828. HUNT *v.* MALONEY, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTION, ET AL. C. A. 1st Cir. Certiorari denied.

No. 03–6834. JONES *v.* HAYNES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 730.

No. 03–6843. COOLEY *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 03–6846. LOOPER *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied. Reported below: 118 S. W. 3d 386.

No. 03–6850. METZENBAUM *v.* NUGENT, JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO. C. A. 6th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 729.

No. 03–6861. STEFFY *v.* DEPARTMENT OF THE ARMY. C. A. Fed. Cir. Certiorari denied. Reported below: 68 Fed. Appx. 975.

No. 03–6867. WELCH *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 195.

No. 03–6873. DAVIS *v.* HOLT, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–6879. PARMAR *v.* BRITTEN, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 03–6901. CURTISS *v.* MOUNT PLEASANT CORRECTIONAL FACILITY. C. A. 8th Cir. Certiorari denied. Reported below: 338 F. 3d 851.

No. 03–6926. ADAMS *v.* BARTOW. C. A. 7th Cir. Certiorari denied. Reported below: 330 F. 3d 957.

No. 03–6933. DRAKES *v.* PERRY, ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION. C. A. D. C. Cir. Certiorari denied.

No. 03–6934. O'CONNOR *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION; and
No. 03–7187. O'CONNOR *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 1st Cir. Certiorari denied.

No. 03–6935. O'CONNOR *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 1st Cir. Certiorari denied.

No. 03–6937. BUIE *v.* WALLS, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 341 F. 3d 623.

No. 03–6950. WALKER *v.* DORMIRE, SUPERINTENDENT, MISSOURI STATE PENITENTIARY. C. A. 8th Cir. Certiorari denied.

No. 03–6959. HUFF *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 03–6964. HALL *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 156 N. C. App. 427, 577 S. E. 2d 717.

No. 03–6983. DEAGUEROS-CORTES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 662.

No. 03–6985. CHRISTIE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 82 Fed. Appx. 214.

No. 03–6986. CARPENTER ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 342 F. 3d 812.

No. 03–6989. JUSTIN D., A JUVENILE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 900.

No. 03–6993. COLEMAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 329 F. 3d 77.

No. 03–6998. APEL *v.* UNITED STATES ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–7000. MORENO-CISNEROS *v.* UNITED STATES; and MURILLO-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 319 F. 3d 456 (first judgment); 55 Fed. Appx. 473 (second judgment).

No. 03–7001. PRINCE, AKA ASHOUR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 943.

No. 03–7002. MOSES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 58 Fed. Appx. 549.

No. 03–7004. REYNOSO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 336 F. 3d 46.

No. 03–7005. STRONG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 198.

No. 03–7007. ROMERO-LEWIS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 03–7009. GERACI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 74 Fed. Appx. 241.

No. 03–7011. GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 323 F. 3d 1161.

No. 03–7012. HUTMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 339 F. 3d 773.

No. 03–7019. GROAT *v.* MCBRIDE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 506.

No. 03–7021. HINOJOSA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–7022. HOPKINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–7024. HARRIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 920.

No. 03–7026. HARPER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–7030. PLEASANTS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 238.

No. 03–7031. OCAMPO *v.* UNITED STATES; and
No. 03–7051. QUINONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 504.

No. 03–7033. MENDEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 489.

No. 03–7034. WALKER *v.* ASHCROFT, ATTORNEY GENERAL. C. A. 6th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 29.

No. 03–7037. GEORGE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 494.

No. 03–7040. HADDEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 99.

No. 03–7041. GOVAN *v.* BENNETT, SUPERINTENDENT, ELMIRA CORRECTIONAL FACILITY. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied.

No. 03–7046. ALMARAZ-RAMIREZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 513.

No. 03–7047. BERRY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 61 Fed. Appx. 797.

No. 03–7049. ROSEBY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 823 A. 2d 537.

No. 03–7058. FREEMAN *v.* LAMANNA, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 80 Fed. Appx. 285.

No. 03–7064. LOMOW *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 370.

No. 03–7068. GARCIA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 781.

No. 03–7072. GARCIA GARCIA, AKA GARCIA-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–7074. HUMPHREY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 690.

No. 03–7076. AKINOLA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 66 Fed. Appx. 314.

No. 03–7081. RUIZ SOLORIO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 337 F. 3d 580.

No. 03–7082. SORIA-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–7084. WILLIAMS, AKA CONRAD, AKA CONNOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 141.

No. 03–7090. SHIVAEE *v.* CUBE. Sup. Ct. Va. Certiorari denied.

No. 03–7093. LOPEZ-FLOREZ *v.* UNITED STATES; and CHAVEZ-VASQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 230 (second judgment) and 236 (first judgment).

No. 03–7095. TOVAR *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 818 A. 2d 202.

No. 03–7099. GILMORE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 03–7100. GILLINGS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 588.

No. 03–7101. FOWLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–7102. GIBSON *v.* MINETA, SECRETARY OF TRANSPORTATION. C. A. 9th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 354.

No. 03–7104. BEJARANO GUILLEN, AKA BEJARAAO GUILLEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 253.

No. 03–7106. GONZALEZ, AKA ROMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–7107. HOWARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 582.

No. 03–7108. GREEN *v.* HEMINGWAY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 255.

No. 03–7111. AYERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 400.

No. 03–7114. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 823.

No. 03–7115. DOUGLAS ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 195.

No. 03–7116. EDWARDS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 587.

No. 03–7121. MEYER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 03–7123. JEFFERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 03–7125. WILLIAMS *v.* PUGH, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 55 Fed. Appx. 106.

No. 03–7126. WAYNE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 03–7133. TORRES-CASTRO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 552.

No. 03–7137. NISSENBAUM, AKA NISSEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 412.

No. 03–7141. ZATER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 159.

No. 03–7142. BABB *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 761.

No. 03–7146. CUEVAS-VILLELAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 710.

No. 03–7148. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 200.

No. 03–7152. WEBB *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 70 Fed. Appx. 2.

No. 03–7153. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 823.

No. 03–7158. WIMBUSH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 337 F. 3d 947.

No. 03–7159. PRICE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 745.

No. 03–7162. TALBOTT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 03–7166. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 789.

No. 03–7167. HINOJOSA GONZALEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 918.

No. 03–7168. FORD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 342.

No. 03–7169. HENDERSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 337 F. 3d 914.

No. 03–7171. FORREST *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 200.

No. 03–7172. GLADHART ET UX. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 784.

No. 03–7174. RHEA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 79 Fed. Appx. 52.

No. 03–7175. STATEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 438.

No. 03–7178. STOCKTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 200.

No. 03–7182. HUGHES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–7184. WILCOXSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 505.

No. 03–7189. BRUCKNER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 03–7190. TARANTOLA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 332 F. 3d 498.

No. 03–7191. TAYLOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 338 F. 3d 1280.

No. 03–7192. WASHINGTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 897.

No. 03–7193. VENETUCCI *v.* LEBLANC, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 03–7197. CONTRERAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 35 Fed. Appx. 856.

No. 03–7202. CARRANZA-MALDONADO *v.* UNITED STATES; and VASQUEZ-CAMPOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 955 (first judgment); 72 Fed. Appx. 576 (second judgment).

No. 03–7203. CABE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 542.

No. 03–7206. JETT ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 155 and 70 Fed. Appx. 717.

No. 03–7208. BYRAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 586.

No. 03–7209. MOUNKASSA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–7210. DARR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–7213. QUALLS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 823 A. 2d 537.

No. 03–7214. WILSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 120.

No. 03–7219. WHITE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 222.

No. 03–7222. JUAREZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 337 F. 3d 580.

No. 03–7228. PRIETO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–7235. CASTILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–7242. ESTRADA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–7244. CASTRO-GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 688.

No. 03–7245. DUNNE *v.* OLSON, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 939.

No. 03–7247. COLEMAN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 822 A. 2d 1112.

No. 03–7253. SNEED *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 904.

No. 03–7268. LAND *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 963.

No. 03–7269. SEAL X *v.* DANIELS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–7278. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 49 Fed. Appx. 432.

No. 02–1318. ZAPATA HERMANOS SUCESORES, S. A. *v.* HEARTHSIDE BAKING CO., INC., DBA MAURICE LENELL COOKY CO. C. A. 7th Cir. Motion of International Association of Contract and Commercial Managers et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 313 F. 3d 385.

No. 03–165. GENERAL MOTORS CORP. *v.* UNITED STATES ET AL. C. A. Fed. Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 316 F. 3d 1366.

No. 03–261. FAWCETT *v.* MCROBERTS ET UX. C. A. 4th Cir. Motion of Scottish Ministers for leave to file a brief as *amicus curiae* granted. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 326 F. 3d 491.

No. 03–272. DOW CHEMICAL CO. *v.* AES CORP.; and

No. 03–432. AES CORP. *v.* DOW CHEMICAL CO. C. A. 3d Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of these petitions. Reported below: 325 F. 3d 174.

No. 03–427. WOODFORD, WARDEN *v.* ROHAN EX REL. GATES. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 334 F. 3d 803.

No. 03–440. CRIST, ATTORNEY GENERAL OF FLORIDA *v.* HART. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 323 F. 3d 884.

Rehearing Denied

No. 02–901. BLACKMAN *v.* CITY OF DALLAS, TEXAS, *ante*, p. 810;

No. 02–1576. NIGRO *v.* FEDERAL LABOR RELATIONS AUTHORITY, *ante*, p. 812;

No. 02–1613. HOLBROOK *v.* ALLIED VAN LINES, INC., *ante*, p. 813;

No. 02–1648. KEITH *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 815;

No. 02–1679. BARKER *v.* MANCOR CAROLINA, INC., *ante*, p. 816;

No. 02–1739. YOUNG *v.* UNITED STATES, *ante*, p. 819;

No. 02–1760. PRICER ET AL. *v.* BUTLER ET UX., *ante*, p. 820;

No. 02–1774. IN RE RIGGS ET AL., *ante*, p. 810;

No. 02–1786. ROBINSON *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY, *ante*, p. 821;

No. 02–1797. INDIAN CREEK CORP. ET AL. *v.* IOWA EX REL. IOWA DEPARTMENT OF NATURAL RESOURCES, *ante*, p. 822;

No. 02–1804. MEADE *v.* MILLER, SUCCESSOR PERSONAL REPRESENTATIVE OF THE ESTATE OF MEADE, DECEASED, ET AL., *ante*, p. 822;

No. 02–1839. BOWERSOCK *v.* BOWERSOCK, *ante*, p. 824;

No. 02–9438. SELVERA *v.* FRIO COUNTY, TEXAS, *ante*, p. 826;

No. 02–9868. MOORE *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 827;

No. 02–10499. MCBURROWS *v.* PENNSYLVANIA, *ante*, p. 829;

No. 02–10600. PARRADO *v.* UNITED STATES, *ante*, p. 832;

No. 02–10735. BRALEY *v.* GEORGIA, *ante*, p. 835;

No. 02–10778. MONTFORD *v.* MIAMI-DADE COUNTY, FLORIDA, ET AL., *ante*, p. 837;

No. 02–10916. BANKS *v.* BOOKER, WARDEN, *ante*, p. 843;

No. 02–11024. TATE *v.* CAMBRA, WARDEN, *ante*, p. 849;

No. 02–11114. WORTHY *v.* UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, *ante*, p. 855;

No. 02–11202. WARNER *v.* CALIFORNIA, *ante*, p. 860;

No. 03–60. LEBRETON *v.* PENDLETON MEMORIAL HOSPITAL ET AL., *ante*, p. 875;

No. 03–70. SHALLER *v.* UNITED STATES, *ante*, p. 876;

No. 03–100. MORRISON ET VIR *v.* UNITED STATES, *ante*, p. 877;

No. 03–113. PRESTIGE FORD *v.* DEALER COMPUTER SERVICES, INC., FKA FORD DEALER COMPUTER SERVICES, INC., *ante*, p. 878;

No. 03–120. CHRISTIE *v.* FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION ET AL., *ante*, p. 878;

No. 03–198. MEADE *v.* DECISIONS OF THE ORPHANS' COURT FOR ANNE ARUNDEL COUNTY ET AL., *ante*, p. 881;

No. 03–202. ZILKA *v.* CONNECTICUT GENERAL LIFE INSURANCE CO. ET AL., *ante*, p. 881;

No. 03–206. HURDLE *v.* VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, *ante*, p. 881;

No. 03–302. BOWMAN *v.* ROBINSON, ADMINISTRATOR, ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION, *ante*, p. 882;

No. 03–5007. FAVA *v.* STICKMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL., *ante*, p. 882;

No. 03–5087. HODGE *v.* BROWNLEE, ACTING SECRETARY OF THE ARMY, *ante*, p. 887;

No. 03–5116. KIPLINGER *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 889;

No. 03–5246. JOHNSON *v.* UNITED STATES, *ante*, p. 897;

No. 03–5290. DOWDY *v.* CASTERLINE, WARDEN, *ante*, p. 900;

No. 03–5335. CASANOVA *v.* HOBBS, WARDEN, *ante*, p. 902;

No. 03–5342. PULLIAM *v.* HUBBARD, WARDEN, ET AL., *ante*, p. 903;

No. 03–5374. GEITZ *v.* GAMMON, SUPERINTENDENT, MOBERLY CORRECTIONAL CENTER, *ante*, p. 905;

No. 03–5407. BROWNE *v.* UNITED STATES, *ante*, p. 907;

No. 03–5473. DARDEN *v.* UNITED PARCEL SERVICE, INC., *ante*, p. 911;

No. 03–5499. READO *v.* CAIN, WARDEN, *ante*, p. 912;

No. 03–5527. HUBLEY *v.* KELCHNER, SUPERINTENDENT, CAMP HILL CORRECTIONAL INSTITUTION, ET AL., *ante*, p. 914;

No. 03–5642. EDWARDS *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, *ante*, p. 921;

No. 03–5651. HARDY *v.* HARDY, *ante*, p. 951;

No. 03–5673. PARKER *v.* PITCHER, WARDEN, *ante*, p. 951;

No. 03–5724. ROGERS *v.* OFFICE OF PERSONNEL MANAGEMENT, *ante*, p. 923;

No. 03–5741. HALL *v.* HEAD, WARDEN, *ante*, p. 924;

No. 03–5808. MONTES-RODRIGUEZ *v.* MERIT SYSTEMS PROTECTION BOARD, *ante*, p. 927;

No. 03–5849. IN RE GRAHAM, *ante*, p. 944;

No. 03–5935. SPEENER *v.* SMITH, WARDEN, *ante*, p. 932;

No. 03–5965. SMITH *v.* HORN ET AL., *ante*, p. 958;

No. 03–5988. GEORGY *v.* SNOW, SECRETARY OF THE TREASURY, *ante*, p. 933; and

No. 03–6048. SMILEY *v.* UNITED STATES, *ante*, p. 935. Petitions for rehearing denied.

No. 02–10712. WASHINGTON *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS, *ante*, p. 835. Petition for rehearing denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

DECEMBER 4, 2003

Dismissal Under Rule 46

No. 03–707. PLANO INDEPENDENT SCHOOL DISTRICT ET AL. *v.* CHIU ET AL. C. A. 5th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 339 F. 3d 273.

DECEMBER 8, 2003

Dismissal Under Rule 46

No. 03–6734. ARGUELLES *v.* UTAH. Sup. Ct. Utah. Certiorari dismissed under this Court's Rule 46. Reported below: 63 P. 3d 731.

Certiorari Dismissed

No. 03–6737. WHITE *v.* CITY OF MURRAY, UTAH, 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.

No. 03–6820. SHORES *v.* BECK, SECRETARY, NORTH CAROLINA DEPARTMENT OF CORRECTION. 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: 62 Fed. Appx. 59.

Miscellaneous Orders

No. 03M35. ANKERMAN *v.* CONNECTICUT STATEWIDE GRIEVANCE COMMITTEE. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 105, Orig. KANSAS *v.* COLORADO. Fourth Report of the Special Master is received and ordered filed. Exceptions to the Report, with supporting briefs, may be filed within 45 days. Replies, if any, with supporting briefs, may be filed within 30 days. [For earlier decision herein, see, *e. g.*, 537 U. S. 1230.]

No. 02–626. SOUTH FLORIDA WATER MANAGEMENT DISTRICT *v.* MICCOSUKEE TRIBE OF INDIANS ET AL. C. A. 11th Cir. [Certiorari granted, 539 U. S. 957.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 02–1667. TENNESSEE *v.* LANE ET AL. C. A. 6th Cir. [Certiorari granted, 539 U. S. 941.] Motion of the Solicitor General for divided argument granted. Motion of Alabama et al. for leave to participate in oral argument as *amici curiae* and for divided argument denied.

No. 03–218. ASHCROFT, ATTORNEY GENERAL *v.* AMERICAN CIVIL LIBERTIES UNION ET AL. C. A. 3d Cir. [Certiorari granted, *ante*, p. 944.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 03–7413. IN RE CRUEL. Petition for writ of habeas corpus denied.

No. 03–6788. IN RE ODOMS; and

No. 03–6844. IN RE CROSBY. Petitions for writs of mandamus denied.

Certiorari Granted

No. 03–167. UNITED STATES *v.* DOMINGUEZ BENITEZ. C. A. 9th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 310 F. 3d 1221.

Certiorari Denied

No. 02–10024. SARGENT *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 319 F. 3d 4.

No. 02–11188. ORTIZ *v.* UNITED STATES; and
No. 03–5286. SINISTERRA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 315 F. 3d 873.

No. 03–170. MARQUEZ *v.* GUTIERREZ. C. A. 9th Cir. Certiorari denied. Reported below: 322 F. 3d 689.

No. 03–197. KING *v.* RUMSFELD, SECRETARY OF DEFENSE. C. A. 4th Cir. Certiorari denied. Reported below: 328 F. 3d 145.

No. 03–326. RARITAN COMPUTER, INC. *v.* APEX, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 325 F. 3d 1364.

No. 03–337. ROSSI *v.* TROY STATE UNIVERSITY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 743.

No. 03–349. THWEATT *v.* ELECTRONIC DATA SYSTEMS CORP. C. A. 11th Cir. Certiorari denied.

No. 03–364. TAYLOR, AS EXECUTOR OF THE ESTATE OF TAYLOR, ET AL. *v.* LOBATO ET AL. Sup. Ct. Colo. Certiorari denied. Reported below: 70 P. 3d 1152.

No. 03–478. SINGH *v.* PRUDENTIAL HEALTH CARE PLAN, INC. C. A. 4th Cir. Certiorari denied. Reported below: 335 F. 3d 278.

No. 03–487. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 98 PENSION FUND *v.* CARNEY. C. A. 3d Cir. Certiorari denied. Reported below: 66 Fed. Appx. 381.

No. 03–488. IGT, AKA IGT-NORTH AMERICA *v.* COLLINS MUSIC CO., INC. Sup. Ct. S. C. Certiorari denied.

No. 03–489. HELFRICH ET AL. *v.* CARLE CLINIC ASSN., P. C. C. A. 7th Cir. Certiorari denied. Reported below: 328 F. 3d 915.

No. 03–490. HERSCHAFT *v.* BLOOMBERG, MAYOR OF THE CITY OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 70 Fed. Appx. 26.

No. 03–492. KLEVEN, TRUSTEE, ET AL. *v.* HOUSEHOLD BANK F. S. B. C. A. 7th Cir. Certiorari denied. Reported below: 334 F. 3d 638.

No. 03–495. LEBER ET AL. *v.* UNIVERSAL MUSIC & VIDEO DISTRIBUTION, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 332 F. 3d 452.

No. 03–502. TOWER INSURANCE CO. *v.* TRINITY EVANGELICAL CHURCH AND SCHOOL-FREISTADT. Sup. Ct. Wis. Certiorari denied. Reported below: 261 Wis. 2d 333, 661 N. W. 2d 789.

No. 03–504. LAFACE RECORDS ET AL. *v.* PARKS. C. A. 6th Cir. Certiorari denied. Reported below: 329 F. 3d 437.

No. 03–505. BRASS *v.* LOS ANGELES COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 328 F. 3d 1192.

No. 03–506. SPIERER ET UX. *v.* FEDERATED DEPARTMENT STORES, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 328 F. 3d 829.

No. 03–512. AVERY *v.* HPCS, INC. Ct. App. D. C. Certiorari denied. Reported below: 818 A. 2d 175.

No. 03–523. SAVASTA & CO., INC. *v.* GEROSA ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 329 F. 3d 317.

No. 03–524. SKIPPER ET AL. *v.* GIANT FOOD INC. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 393.

No. 03–532. ROBINSON ET AL. *v.* FAKESPACE LABS, INC. C. A. Fed. Cir. Certiorari denied.

No. 03–535. INDU CRAFT, INC. *v.* BANK OF INDIA ET AL.; and No. 03–541. TRENDI SPORTSWEAR, INC. *v.* BANK OF INDIA ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 64 Fed. Appx. 827.

No. 03–539. WESTERN WIRELESS CORP. *v.* SOUTH DAKOTA DEPARTMENT OF REVENUE. Sup. Ct. S. D. Certiorari denied. Reported below: 665 N. W. 2d 73.

No. 03–543. CAPUTO *v.* SEALED AIR CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 60 Fed. Appx. 822.

No. 03–558. STROUP *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 11th Cir. Certiorari denied. Reported below: 327 F. 3d 1258.

No. 03–567. LEZAJIC *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 505.

No. 03–570. SANGHVI ET AL. *v.* CITY OF CLAREMONT, CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 328 F. 3d 532.

No. 03–579. FLORIDA *v.* DIAZ. Sup. Ct. Fla. Certiorari denied. Reported below: 850 So. 2d 435.

No. 03–593. ST. JULIEN *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 849 So. 2d 533.

No. 03–606. BAFFERT *v.* CALIFORNIA HORSE RACING BOARD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 332 F. 3d 613.

No. 03–608. DAVIS ET AL. *v.* JUDY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 989.

No. 03–610. ABE *v.* MICHIGAN STATE UNIVERSITY. Ct. App. Mich. Certiorari denied.

No. 03–613. STOOKSBURY ET AL. *v.* ROHM & HAAS CO. C. A. 6th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 444.

No. 03–621. SCOTT ET UX. *v.* LOLA CRANE RENTAL CO. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 337 F. 3d 939.

No. 03–626. BOISE CASCADE CORP. *v.* OREGON BOARD OF FORESTRY. Ct. App. Ore. Certiorari denied. Reported below: 186 Ore. App. 291, 63 P. 3d 598.

No. 03–5103. LANGFORD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 314 F. 3d 892.

No. 03–5718. WYMAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 62 Fed. Appx. 364.

No. 03–5747. DAVIS *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 814 So. 2d 1040.

No. 03–5816. LONG *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 328 F. 3d 655.

No. 03–6029. COLLINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 321 F. 3d 691.

No. 03–6217. SNOW *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 30 Cal. 4th 43, 65 P. 3d 749.

No. 03–6481. SALINAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 80.

No. 03–6511. ESPINOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 483.

No. 03–6543. STEPTOE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 81.

No. 03–6544. LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 79.

No. 03–6558. ANCIRA *v.* UNITED STATES; ASTORGA-RAMIREZ *v.* UNITED STATES; GREEN *v.* UNITED STATES; LOPEZ-LARA *v.* UNITED STATES; DE SAN JUAN MARTINEZ *v.* UNITED STATES; MEDRANO *v.* UNITED STATES; RAMKISHUN *v.* UNITED STATES; RIOS-RAMIREZ *v.* UNITED STATES; and SANABRIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 79 (eighth judgment), 81 (first, second, fourth, seventh, and ninth judgments), and 82 (third, fifth, and sixth judgments).

No. 03–6597. FRANKLIN *v.* UNITED STATES;
No. 03–7112. EDWARDS *v.* UNITED STATES; and
No. 03–7120. BURNES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 844.

No. 03–6653. ZIMMERMAN *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 658.

No. 03–6681. GREENBERG *v.* CITY OF ST. PAUL, MINNESOTA, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 664.

No. 03–6743. EVANS *v.* GARCIA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6745. HENDRICKS *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD. C. A. 3d Cir. Certiorari denied.

No. 03–6750. SINGLETON *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–6751. THOMAS *v.* TEXAS DEPARTMENT OF CRIMINAL JUSTICE. C. A. 5th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 750.

No. 03–6758. HARRIS *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6759. HOMICK *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–6760. GONZALEZ *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6761. GREENE *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 03–6768. ESCOBAR-APANTENCO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 306.

No. 03–6770. WOODARD *v.* SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 03–6773. DAVENPORT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–6774. MORRISETTE *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 264 Va. 386, 569 S. E. 2d 47.

No. 03–6776. ORR *v.* SONNEN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6777. HOSTY ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS. C. A. 7th Cir. Certiorari denied.

No. 03–6778. JAMES *v.* WILSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–6779. TURNER *v.* KLEM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 80 Fed. Appx. 288.

No. 03–6780. JOHNSON *v.* KUGLER ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–6785. JONES *v.* SOUTHWEST FIDUCIARY, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 64 Fed. Appx. 348.

No. 03–6786. PEARSON *v.* SAAR, SECRETARY, MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 504.

No. 03–6789. BRACKENS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 03–6790. PEARSON *v.* SAAR, SECRETARY, MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 505.

No. 03–6791. PETERSON *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 853 So. 2d 429.

No. 03–6792. ANAYA *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6794. PAYTON *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 845 So. 2d 713.

No. 03–6796. SEPEDA *v.* REX, DISTRICT JUDGE, 109TH DISTRICT OF TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 215.

No. 03–6799. SULLIVAN *v.* STRAUB, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–6800. WILLIAMS *v.* MIR MITCHELL & CO., L. L. P. C. A. 5th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 659.

No. 03–6803. BANKS *v.* OHIO ET AL. C. A. 6th Cir. Certiorari denied.

No. 03–6805. BERGERON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 78.

No. 03–6809. SCIBLE *v.* COOKMAN, JUDGE, CIRCUIT COURT OF PENDLETON COUNTY, WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 03–6811. ESPINAL *v.* CAREY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6812. CASEY *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 205 Ariz. 359, 71 P. 3d 351.

No. 03–6816. DI NARDO *v.* CIRCUIT COURT OF FLORIDA, PALM BEACH COUNTY, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 509.

No. 03–6823. PARR *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–6825. BOCANEGRA *v.* MCGRATH, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 110.

No. 03–6826. SALAZAR *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–6830. FLORES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 172.

No. 03–6838. DIAZ *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–6842. EVANS *v.* FRANKLIN COUNTY COURT OF COMMON PLEAS OF OHIO, DIVISION OF DOMESTIC RELATIONS. C. A. 6th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 586.

No. 03–6848. TUPPER *v.* TUPPER. Ct. App. Ariz. Certiorari denied.

No. 03–6849. PORTER *v.* WELSH ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 612.

No. 03–6857. BELLE *v.* FLORIDA BAR. Sup. Ct. Fla. Certiorari denied. Reported below: 831 So. 2d 673.

No. 03–6864. PINEDA *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 361.

No. 03–6882. COWART *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 783 N. E. 2d 1283.

No. 03–6887. VERISSIMO *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 1st Cir. Certiorari denied. Reported below: 71 Fed. Appx. 859.

No. 03–6888. MARIN-MARTINEZ *v.* UNITED STATES;
No. 03–6902. CUERO *v.* UNITED STATES;
No. 03–6905. ZUNIGA SANTANA *v.* UNITED STATES; and
No. 03–7091. VALENCIA MICHILENO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 504.

No. 03–6889. MADDELA *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 125.

No. 03–6915. MEDINA *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 03–6932. EL *v.* VIRGINIA DEPARTMENT OF SOCIAL SERVICES, DIVISION OF CHILD SUPPORT ENFORCEMENT. Sup. Ct. Va. Certiorari denied.

No. 03–6942. SNOW *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 03–6954. HENSLEY *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 6th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 330.

No. 03–6956. GREGORY *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied.

No. 03–6966. BURNS *v.* PHILLIPS, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 03–6970. GONZALEZ *v.* VARNER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–6980. GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 666.

No. 03–6990. KLEMP *v.* PRUNTY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 397.

No. 03–6991. LAMAR *v.* GRAVES, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 326 F. 3d 983.

No. 03–6995. BADILLO-LEIJA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 771.

No. 03–7008. HAILE *v.* MORAN ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 03–7014. HARRIS *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 572 Pa. 489, 817 A. 2d 1033.

No. 03–7023. FLOOD *v.* STICKMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–7029. CABALLERO *v.* MEYERS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–7036. GREEN *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–7057. GWIN *v.* HARRIS ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–7110. DELGADO NUNEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 953.

No. 03–7122. SMITH *v.* MCGRAW, ATTORNEY GENERAL OF WEST VIRGINIA, ET AL. Cir. Ct. Kanawha County, W. Va. Certiorari denied.

No. 03–7136. SAROURT NOM *v.* SPENCER, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT NORFOLK, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 337 F. 3d 112.

No. 03–7150. ARRIAGA-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–7163. WILKINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 508.

No. 03–7164. GALLOWAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 78 Fed. Appx. 252.

No. 03–7188. WASHINGTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 340 F. 3d 222.

No. 03–7207. ALEXANDER *v.* UNITED STATES; and
No. 03–7343. ALEXANDER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 78.

No. 03–7216. DIAZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–7226. MORAGA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 223.

No. 03–7232. WINSETT *v.* PRINCIPI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 341 F. 3d 1329.

No. 03–7234. DADI *v.* HARO, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 79.

No. 03–7254. SALDANA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 679.

No. 03–7261. MUSSAYEK, AKA MUSSAYEL, AKA MUSSYEV *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 338 F. 3d 245.

No. 03–7263. MCCAULEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 571.

No. 03–7264. QUINONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 319.

No. 03–7265. TAYLOR *v.* CIRCUIT COURT OF VIRGINIA, PAGE COUNTY. Sup. Ct. Va. Certiorari denied.

No. 03–7266. VARGAS *v.* ABBOTT, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 23.

No. 03–7267. WOMACK *v.* COMMISSIONER OF DEPARTMENT OF MEDICAL ASSISTANCE SERVICES OF VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 847.

No. 03–7273. OMUNA *v.* INTERNAL REVENUE SERVICE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 505.

No. 03–7284. REDDITT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 87 Fed. Appx. 440.

No. 03–7285. KIMLER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 335 F. 3d 1132.

No. 03–7286. KANDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 78 Fed. Appx. 944.

No. 03–7287. MARTIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 333 F. 3d 819.

No. 03–7289. COOPER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 502.

No. 03–7290. CRUZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 821.

No. 03–7291. DUVAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 242.

No. 03–7292. CHAMORRO-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 786.

No. 03–7294. SWIFT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 70.

No. 03–7295. BANCROFT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 68 Fed. Appx. 312.

No. 03–7298. POWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 223.

No. 03–7302. ROBLES BETANCOURT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–7303. BONDURANT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 Fed. Appx. 490.

No. 03–7311. TREVINO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 330.

No. 03–7312. UMEZURIKE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–7316. ALLEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 486.

No. 03–7317. AJENIFUJA, AKA ABAYOMI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 846.

No. 03–7318. JEFFERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–7319. MAYNARD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 03–7323. HENDRICKSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 609.

No. 03–7325. GARNER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 338 F. 3d 78.

No. 03–7327. GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 509.

No. 03–7328. ANDERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 339 F. 3d 720.

No. 03–7329. LOVE *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 03–7332. KAMINSKI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 339 F. 3d 84.

No. 03–7333. MCQUINN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 250.

No. 03–7341. GREESON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 432.

No. 03–7342. HORNE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 65 Fed. Appx. 816.

No. 03–7347. CLINTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 338 F. 3d 483.

No. 03–7350. LANGFORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 282.

No. 03–7353. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 522.

No. 03–7354. MCKENZIE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 724.

No. 03–7359. ARENAS-ORTIZ, AKA CARRERO GOPAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 339 F. 3d 1066.

No. 03–7360. PRATT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 222.

No. 03–7362. CHRISTOPHER *v.* SISNEROS, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 342 F. 3d 378.

No. 03–7363. SIMMONS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 91 Fed. Appx. 657.

No. 03–7367. CASTILLO-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 362.

No. 03–7369. VENTRE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 338 F. 3d 1047.

No. 03–7379. LAMERE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 258.

No. 03–7383. PEREZ-BOLLANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 408.

No. 03–7385. PATTERSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 339 F. 3d 400.

No. 03–7392. WHETHERS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 71 Fed. Appx. 144.

No. 03–7393. TIGNOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 74 Fed. Appx. 295.

No. 03–7397. KIRBY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 847.

No. 03–6827. ORBE *v.* TRUE, WARDEN. C. A. 4th Cir. Motion of Association of the Bar of the City of New York et al. for leave to file a brief as *amici curiae* granted. Certiorari denied.

No. 03–7280. METCALF *v.* UNITED STATES. C. A. 6th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied.

Rehearing Denied

No. 02–10661. OWEN *v.* SUPREME COURT OF SOUTH DAKOTA, *ante*, p. 833;

No. 02–10748. CASTILLE *v.* TELETECH CUSTOMER CARE MANAGEMENT (CO), INC., *ante*, p. 836;

No. 02–10757. YOUNG *v.* ILLINOIS, *ante*, p. 836;

No. 02–10786. STRUCK *v.* BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, *ante*, p. 837;

No. 02–10839. ALLEY *v.* BELL, WARDEN, *ante*, p. 839;

No. 02–10856. ELIAS SEPULVEDA *v.* UNITED STATES, *ante*, p. 840;

No. 02–10951. NIMMONS *v.* CAMPBELL ET AL., *ante*, p. 845;

No. 02–11038. SPIDLE *v.* GAMMON, SUPERINTENDENT, MOBERLY CORRECTIONAL CENTER, *ante*, p. 850;

No. 02–11090. PAKALINSKY *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL., *ante*, p. 854;

No. 02–11156. HALL *v.* LAMARQUE, WARDEN, *ante*, p. 858;

No. 02–11381. RUTLEDGE *v.* UNITED STATES, *ante*, p. 872;

No. 03–16. KRILICH *v.* UNITED STATES, *ante*, p. 946;

No. 03–122. DING, INDIVIDUALLY AND AS NEXT FRIEND OF DING ET AL., MINORS *v.* ENGLER ET AL., *ante*, p. 878;

No. 03–5026. IN RE HUBBARD, *ante*, p. 808;

No. 03–5092. GERA *v.* HASSENFELD ET AL., *ante*, p. 887;

No. 03–5106. JAMES *v.* JONES, WARDEN, *ante*, p. 888;

No. 03–5332. SALLIE *v.* GEORGIA, *ante*, p. 902;

No. 03–5390. CRANDALL *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER, ET AL., *ante*, p. 906;

No. 03–5829. GILMORE *v.* AT&T CORP., *ante*, p. 955;

No. 03–5874. CRAWFORD *v.* HEAD, WARDEN, *ante*, p. 956;

No. 03–5889. ZUMETA *v.* MANN, *ante*, p. 957;

No. 03–5956. WILLIAMS *v.* TEXAS, *ante*, p. 969;

No. 03–6055. NEWSOME *v.* ENTERGY NEW ORLEANS, INC., ET AL., *ante*, p. 959; and

No. 03–6088. COLEMAN *v.* HARRISON, WARDEN, ET AL., *ante*, p. 959. Petitions for rehearing denied.

No. 02–11369. WILSON *v.* CENTRAL INTELLIGENCE AGENCY, *ante*, p. 871. Motion of petitioner for leave to file petition for rehearing denied.

DECEMBER 9, 2003

Certiorari Denied

No. 03–7127 (03A448). VICKERS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITU-

TIONS 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.

DECEMBER 15, 2003

Miscellaneous Orders

No. 03A497. ZIMMERMAN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. The temporary stay entered by JUSTICE SCALIA is vacated.

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

Applicant has filed an action pursuant to Rev. Stat. § 1979, 42 U. S. C. § 1983, in the United States District Court for the Southern District of Texas in which he alleges that Texas plans to put him to death by using a cruel and unusual method of execution. Applicant contends that the Texas Legislature has recently outlawed the use of the method for animal euthanasia because it is so excruciatingly painful. Relying on Circuit precedent, the Court of Appeals for the Fifth Circuit affirmed the dismissal of the action on the procedural ground that § 1983 is not an appropriate vehicle for challenges to the method of execution; applicant should have proceeded by applying for a writ of habeas corpus. See *Martinez* v. *Texas Court of Criminal Appeals*, 292 F. 3d 417, cert. denied, 535 U. S. 1091 (2002). The order did not question the merits of the underlying claim. Other Courts of Appeals disagree with the procedural ground of the decision, and we have granted certiorari to review that precise procedural issue in another case. *Nelson* v. *Campbell*, *ante*, p. 1046. I would postpone review of this case until *Nelson* has been decided and stay applicant's execution until that time. Accordingly, I respectfully dissent from the order vacating the stay of execution.

No. 02–626. SOUTH FLORIDA WATER MANAGEMENT DISTRICT *v.* MICCOSUKEE TRIBE OF INDIANS ET AL. C. A. 11th Cir. [Certiorari granted, 539 U. S. 957.] Motion of respondent Friends of Everglades, Inc., for divided argument denied.

No. 02–1343. ENGINE MANUFACTURERS ASSN. ET AL. *v.* SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT ET AL.

C. A. 9th Cir. [Certiorari granted, 539 U. S. 914.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 03–388. BATES ET AL. *v.* DOW AGROSCIENCES LLC. C. A. 5th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 03–6019. ROWELL *v.* HATCHER, WARDEN. Sup. Ct. Nev. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 978] denied.

No. 03–6863. IN RE SHELTON. Petition for writ of mandamus denied.

Certiorari Granted

No. 03–358. DEPARTMENT OF TRANSPORTATION ET AL. *v.* PUBLIC CITIZEN ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 316 F. 3d 1002.

No. 03–475. CHENEY, VICE PRESIDENT OF THE UNITED STATES, ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA ET AL. C. A. D. C. Cir. Certiorari granted. Reported below: 334 F. 3d 1096.

No. 03–724. F. HOFFMANN-LA ROCHE LTD ET AL. *v.* EMPAGRAN S. A. ET AL. C. A. D. C. Cir. Motion of Chamber of Commerce of the United States for leave to file a brief as *amicus curiae* granted. Certiorari granted. JUSTICE O'CONNOR took no part in the consideration or decision of this motion and this petition. Reported below: 315 F. 3d 338.

Certiorari Denied

No. 03–310. TWISDALE *v.* SNOW, SECRETARY OF THE TREASURY. C. A. 7th Cir. Certiorari denied. Reported below: 325 F. 3d 950.

No. 03–312. MAHER TERMINALS, INC. *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, DEPARTMENT OF LABOR, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 330 F. 3d 162.

No. 03–359. AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL–CIO, ET AL. *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 330 F. 3d 513.

No. 03–381. WILLIAMS ET AL. *v.* HANSEN, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS POLICE CHIEF. C. A. 4th Cir. Certiorari denied. Reported below: 326 F. 3d 569.

No. 03–385. GAUDET ET UX. *v.* SHEET METAL WORKERS' NATIONAL PENSION FUND ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 441.

No. 03–391. GALESI ET AL. *v.* OLCOTT. C. A. 10th Cir. Certiorari denied. Reported below: 327 F. 3d 1115.

No. 03–536. ENTERPRISE RENT-A-CAR CO. *v.* ADVANTAGE RENT-A-CAR, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 330 F. 3d 1333.

No. 03–537. SCHAFLER *v.* FAIRWAY PARK CONDOMINIUM ASSN. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 920.

No. 03–538. MID AMERICA TITLE CO. *v.* TRANSNATION TITLE INSURANCE CO. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 332 F. 3d 494.

No. 03–544. BROOKS-POWERS, AS THE SURVIVING SPOUSE AND ADMINISTRATRIX OF THE ESTATE OF HER DECEASED HUSBAND, POWERS *v.* METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY. Ct. App. Ga. Certiorari denied. Reported below: 260 Ga. App. 390, 579 S. E. 2d 802.

No. 03–550. MARTONE *v.* NEISWANGER ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 69 Fed. Appx. 476.

No. 03–554. HUNT HEALTH SYSTEMS, LTD., ET AL. *v.* WECHSLER, ADMINISTRATIVE TRUSTEE OF THE TOWERS FINANCIAL CORPORATION ADMINISTRATIVE TRUST, ET AL. C. A. 2d Cir. Certiorari denied.

No. 03–555. MYERS *v.* CITY OF NORTH MIAMI, FLORIDA, ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 834 So. 2d 352.

No. 03–556. STOLL *v.* WESTERN & SOUTHERN LIFE INSURANCE CO. C. A. 6th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 986.

No. 03–566. CROWN CORK & SEAL CO. (DELAWARE), INC. *v.* COMPTROLLER OF THE TREASURY OF MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 375 Md. 78, 825 A. 2d 399.

No. 03–582. LAL *v.* GE CAPITAL MORTGAGE SERVICES. Super. Ct. Pa. Certiorari denied. Reported below: 808 A. 2d 255.

No. 03–586. CANAAN *v.* BARTEE ET AL. Sup. Ct. Kan. Certiorari denied. Reported below: 276 Kan. 116, 72 P. 3d 911.

No. 03–588. YEAGER *v.* GENERAL MOTORS CORP. C. A. 6th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 335.

No. 03–597. PASCOAG RESERVOIR & DAM, LLC *v.* RHODE ISLAND ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 337 F. 3d 87.

No. 03–629. MAYS *v.* CITY OF TAMPA, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 991.

No. 03–631. ROBINSON *v.* TURNER. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 03–648. CITY OF SANTA ANA, CALIFORNIA, ET AL. *v.* VIEHMEYER. C. A. 9th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 470.

No. 03–657. ELLIOT *v.* FORTIS BENEFITS INSURANCE CO. C. A. 9th Cir. Certiorari denied. Reported below: 337 F. 3d 1138.

No. 03–665. HAWKINS *v.* EVANS, SECRETARY OF COMMERCE. C. A. 9th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 159.

No. 03–703. MARTINEZ-PELAEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 982.

No. 03–5297. PRINCE-OYIBO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 320 F. 3d 494.

No. 03–5594. CURRY *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–6725. SHARWELL *v.* KAISER PERMANENTE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 834.

No. 03–6836. WILLIAMS *v.* TIBBALS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–6855. WANSING *v.* HINES, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 341 F. 3d 1207.

No. 03–6856. THOMPSON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 03–6858. KUHN *v.* MILWAUKEE COUNTY, WISCONSIN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 148.

No. 03–6859. LIGON ET UX. *v.* CHICAGO TITLE INSURANCE CO. C. A. 11th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 319.

No. 03–6871. DUKES *v.* WHITE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–6875. NELSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 850 So. 2d 514.

No. 03–6880. EDMOND *v.* NIGHTHAWK SYSTEMS, INC., DBA PRENTICE-HALL CORPORATION SYSTEM, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 553.

No. 03–6895. MADSEN *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 264 Wis. 2d 893, 664 N. W. 2d 127.

No. 03–6912. RUBENZER *v.* SMITH, WARDEN. Sup. Ct. Wis. Certiorari denied.

No. 03–6999. PARSAD *v.* FISCHER, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 337 F. 3d 175.

No. 03–7020. GEFFKEN *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–7035. HOWARD *v.* HCHD/BEN TAUB HOSPITAL. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 344.

No. 03–7038. GARNIER *v.* MILLER-STOUT ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–7066. MIKOTA *v.* MOORE. C. A. 9th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 515.

No. 03–7109. AZIYZ, AKA BROWN *v.* CHATMAN, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 505.

No. 03–7124. MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 476.

No. 03–7135. MORAN-SANDOVAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 102.

No. 03–7143. BERNUTH *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–7149. KNADE *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 03–7154. MOORE *v.* KINGSTON, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 03–7198. CHALK *v.* DORMIRE, SUPERINTENDENT, MISSOURI STATE PENITENTIARY. C. A. 8th Cir. Certiorari denied.

No. 03–7231. POOLE *v.* BRILEY, WARDEN. App. Ct. Ill., 3d Dist. Certiorari denied.

No. 03–7255. SAUNDERS *v.* MARTINEZ, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–7274. BUTLER *v.* RUMSFELD, SECRETARY OF DEFENSE. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 324.

No. 03–7299. OKPALA *v.* JORDAN, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–7334. PEARSON *v.* MESSITTE, JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND. C. A. D. C. Cir. Certiorari denied.

No. 03–7365. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 343 F. 3d 423.

No. 03–7372. MONZON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 68 Fed. Appx. 237.

No. 03–7377. MENDEZ-LOPEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 338 F. 3d 1153.

No. 03–7381. LYKES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 543.

No. 03–7384. MITCHELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 670.

No. 03–7387. SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 864.

No. 03–7389. RORIE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 139.

No. 03–7390. RUBIO-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 151.

No. 03–7395. MURPHY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 03–7403. CHEN KEUNG, AKA LAU HE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 79 Fed. Appx. 469.

No. 03–7405. KELLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 82 Fed. Appx. 213.

No. 03–7408. AHERN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 68 Fed. Appx. 209.

No. 03–7410. REED *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 03–7412. PUZEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 549.

No. 03–7417. ROWLAND *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 341 F. 3d 774.

No. 03–7419. RICH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 336 F. 3d 293.

No. 03–7420. KAMERUD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 326 F. 3d 1008.

No. 03–7421. ADAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 878.

No. 03–7427. MCCOY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 410.

No. 03–7429. PRINCE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 03–7431. EMRY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 829 A. 2d 970.

No. 03–7433. LOGAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 333 F. 3d 876.

No. 03–7435. CRUZ-ALCALA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 338 F. 3d 1194.

No. 03–7437. MOON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 03–7438. BEAR STOPS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 339 F. 3d 777.

No. 03–7441. FOSTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 82 Fed. Appx. 221.

No. 03–7442. GONZALEZ, AKA CASTANEDA *v.* UNITED STATES; MILLS *v.* UNITED STATES; KELING *v.* UNITED STATES; JIMENEZ *v.* UNITED STATES; GARZA-GONZALEZ *v.* UNITED STATES; and OLIVA-LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 399 (second judgment), 405 (fourth judgment), and 411 (fifth judgment); 72 Fed. Appx. 952 (first judgment) and 976 (sixth judgment); 73 Fed. Appx. 685 (third judgment).

No. 03–7443. FRAZIER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 340 F. 3d 5.

No. 03–7446. GOODRICH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 667.

No. 03–7447. GALINDO-ARMENDARIZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 245.

No. 03–7448. GREEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 599.

No. 03–7452. CETERA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 734.

No. 03–7454. WEST-BEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 118.

No. 03–7455. WATTLETON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 87 Fed. Appx. 712.

No. 03–7457. CARDENAS-RAMIREZ, AKA CARDENAS-GOMEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 719.

No. 03–7458. JAHNER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 665.

No. 03–7463. FRANKLIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–7464. MINGO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 340 F. 3d 112.

No. 03–7467. PORTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 277.

No. 03–7469. GUZMAN *v.* SHEARIN, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 65 Fed. Appx. 873.

No. 03–7471. GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–7472. GRAHAM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 741.

No. 03–7475. FASHEWE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 03–7476. GUTZMORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–7477. GUTIERREZ-GAMBOA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–7485. ZAVALA-MONTOYA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 358.

No. 03–7492. CHEELY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 277.

No. 03–7493. MARQUEZ-RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 294.

No. 03–7494. MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 702.

No. 03–7496. MARTINEZ-CARRILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 959.

No. 03–7498. MILLER, AKA BUCK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 74 Fed. Appx. 258.

No. 03–7499. MANION, AKA PETERS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 339 F. 3d 1153.

No. 03–7500. ORTEGA, AKA LUGUIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 71 Fed. Appx. 92.

No. 03–7504. MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 764.

No. 03–574. CONSOLIDATED RAIL CORPORATION *v.* RICHARDS. C. A. 6th Cir. Motion of Association of American Railroads for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 330 F. 3d 428.

No. 03–7776 (03A490). ZIMMERMAN *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.

Rehearing Denied

No. 02–1019. ARIZONA *v.* GANT, *ante*, p. 963;

No. 02–10820. TONDRE *v.* UNITED STATES, *ante*, p. 839;

No. 02–10850. MEYERS *v.* COLORADO DEPARTMENT OF HUMAN SERVICES, DIVISION OF VOCATIONAL REHABILITATION, ET AL., *ante*, p. 840;

No. 02–10984. BENJAMIN *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 847;

No. 02–11021. IN RE WILLIAMS, *ante*, p. 810;

No. 02–11050. BIRCH *v.* ILLINOIS, *ante*, p. 851;

No. 02–11323. DAVIS *v.* LAVAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL., *ante,* p. 868;

No. 02–11330. NOBLE *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, *ante,* p. 868;

No. 02–11385. QUINN *v.* DEPARTMENT OF THE INTERIOR, *ante,* p. 872;

No. 03–267. HICKEL *v.* KENT COUNTY CONCEALED WEAPON LICENSING BOARD, *ante,* p. 967;

No. 03–382. UNITED STATES EX REL. GARST *v.* LOCKHEED MARTIN CORP. ET AL., *ante,* p. 968;

No. 03–5066. O'NEAL *v.* UNITED STATES ET AL., *ante,* p. 886;

No. 03–5094. DAVIS *v.* BOCK, WARDEN, *ante,* p. 888;

No. 03–5358. MCWHORTER *v.* MCWHORTER, *ante,* p. 904;

No. 03–5367. GRIX *v.* FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION, *ante,* p. 905;

No. 03–5504. IN RE PAGE, *ante,* p. 810;

No. 03–5925. CASTRO *v.* HORNUNG, WARDEN, ET AL., *ante,* p. 969; and

No. 03–6207. HILL *v.* UNITED STATES SUPREME COURT, *ante,* p. 990. Petitions for rehearing denied.

DECEMBER 17, 2003

Dismissal Under Rule 46

No. 03–6383. REIMANN *v.* RESEARCH TRIANGLE INSTITUTE ET AL. Ct. App. N. C. Certiorari dismissed under this Court's Rule 46. Reported below: 156 N. C. App. 697, 578 S. E. 2d 2.

DECEMBER 18, 2003

Miscellaneous Order

No. 03A513. JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. *v.* REID. Application to vacate stay of execution of sentence of death entered by the United States Court of Appeals for the Fourth Circuit on December 17, 2003, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied.

Certiorari Denied

No. 03–7899. REID *v.* TRUE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 349 F. 3d 788.

DECEMBER 23, 2003

Dismissal Under Rule 46

No. 03–7324. FARESE *v.* UNITED STATES. C. A. 11th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 71 Fed. Appx. 821.

JANUARY 5, 2004

Dismissals Under Rule 46

No. 03–680. UTAH *v.* ARGUELLES. Sup. Ct. Utah. Certiorari dismissed under this Court's Rule 46. Reported below: 63 P. 3d 731.

No. 03–766. KYOCERA CORP. *v.* PRUDENTIAL-BACHE TRADE SERVICES, INC., ET AL. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 341 F. 3d 987.

JANUARY 6, 2004

Miscellaneous Order

No. 03A563. NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTIONS *v.* ROBERTS. Application to vacate stay of execution of sentence of death entered by the United States District Court for the Eastern District of Arkansas on January 6, 2004, presented to JUSTICE THOMAS, and by him referred to the Court, denied.

JANUARY 8, 2004

Miscellaneous Order

No. 03A576. BECK, SECRETARY, NORTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. *v.* ROWSEY ET AL. Application to vacate stay of execution of sentence of death entered by the United States District Court for the Eastern District of North Carolina on January 7, 2004, presented to THE CHIEF JUSTICE, and by him referred to the Court, granted. JUSTICE STEVENS, JUSTICE SOUTER, JUSTICE GINSBURG, and JUSTICE BREYER would deny the application to vacate stay of execution.

JANUARY 9, 2004

Miscellaneous Orders

No. 02–1541. IOWA *v.* TOVAR. Sup. Ct. Iowa. [Certiorari granted, 539 U. S. 987.] Motion of the Solicitor General for leave

to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 02–1809. HIBBS, DIRECTOR, ARIZONA DEPARTMENT OF REVENUE *v.* WINN ET AL. C. A. 9th Cir. [Certiorari granted, 539 U. S. 986.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 03–107. UNITED STATES *v.* LARA. C. A. 8th Cir. [Certiorari granted, 539 U. S. 987.] Motion of National Congress of American Indians et al. for leave to participate in oral argument as *amici curiae* and for divided argument denied.

Certiorari Granted

No. 02–1028. NORFOLK SOUTHERN RAILWAY CO. *v.* JAMES N. KIRBY, PTY LTD., DBA KIRBY ENGINEERING, ET AL. C. A. 11th Cir. Certiorari granted. Reported below: 300 F. 3d 1300.

No. 02–1192. COOPER INDUSTRIES, INC. *v.* AVIALL SERVICES, INC. C. A. 5th Cir. Certiorari granted. Reported below: 312 F. 3d 677.

No. 03–409. KP PERMANENT MAKE-UP, INC. *v.* LASTING IMPRESSION I, INC., ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 328 F. 3d 1061.

No. 03–221. PLILER, WARDEN *v.* FORD. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 330 F. 3d 1086.

No. 03–6696. HAMDI ET AL. *v.* RUMSFELD, SECRETARY OF DEFENSE, ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 316 F. 3d 450.

JANUARY 12, 2004

Affirmed on Appeal

No. 03–594. RODRIGUEZ ET AL. *v.* BEXAR COUNTY, TEXAS, ET AL. Affirmed on appeal from D. C. W. D. Tex.

Certiorari Dismissed

No. 03–6908. RICHARDS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Motion of peti-

tioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 60 Fed. Appx. 481.

No. 03–6909. SWEED *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 03–7117. NABELEK *v.* COURT OF CRIMINAL APPEALS OF TEXAS. Ct. Crim. App. Tex. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 03–7118. NABELEK *v.* COURT OF CRIMINAL APPEALS OF TEXAS. Ct. Crim. App. Tex. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 03–7199. NABELEK *v.* COURT OF CRIMINAL APPEALS OF TEXAS. Ct. Crim. App. Tex. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 03–7402. WOODFIN *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: 66 Fed. Appx. 501.

Miscellaneous Orders

No. 03A393. SIBLEY *v.* SIBLEY. Dist. Ct. App. Fla., 3d Dist. Application for stay, addressed to JUSTICE O'CONNOR and referred to the Court, denied.

No. D–2357. IN RE DISCIPLINE OF WIGHTMAN-CERVANTES. Robert R. Wightman-Cervantes, of Dallas, Tex., 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–2358. IN RE DISCIPLINE OF BLACKWELL. Charles W. Blackwell, of Rock Hill, S. C., 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. 03M36. HITES *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION; and

No. 03M38. ARIZPE *v.* MINETA, SECRETARY OF TRANSPORTATION, ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 105, Orig. KANSAS *v.* COLORADO. Motion of the Special Master for interim fees and expenses granted, and the Special Master is awarded a total of $127,458.35 for the period January 18 through November 20, 2003, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, *ante,* p. 1072.]

No. 129, Orig. VIRGINIA *v.* MARYLAND. Ralph I. Lancaster, Jr., Esq., of Portland, Me., the Special Master in this case, is hereby discharged with the thanks of the Court. [For earlier decision herein, see, *e. g.*, *ante,* p. 56.]

No. 02–1609. CITY OF LITTLETON, COLORADO *v.* Z. J. GIFTS D–4, L. L. C., DBA CHRISTAL'S. C. A. 10th Cir. [Certiorari granted, *ante,* p. 944.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 02–1624. ELK GROVE UNIFIED SCHOOL DISTRICT ET AL. *v.* NEWDOW ET AL. C. A. 9th Cir. [Certiorari granted, *ante,* p. 945.] Motions of Ron Paul et al., Sandra Banning, American Civil Rights Union, and American Jewish Congress for leave to file briefs as *amici curiae* granted. JUSTICE SCALIA took no part in the consideration or decision of these motions.

No. 03–13. REPUBLIC OF AUSTRIA ET AL. *v.* ALTMANN. C. A. 9th Cir. [Certiorari granted, 539 U. S. 987.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 03–641. REGAL CINEMAS, INC., ET AL. *v.* STEWMON ET AL. C. A. 9th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 03–5165. THORNTON *v.* UNITED STATES. C. A. 4th Cir. [Certiorari granted, *ante*, p. 980.] Motion of Shashank S. Upadhye for leave to file a brief as *amicus curiae* granted.

No. 03–6138. PARKER *v.* OKLAHOMA. Ct. Crim. App. Okla. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 978] denied.

No. 03–6423. TRICE *v.* SMITH, WARDEN. C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1014] denied.

No. 03–6539. JOHNSON *v.* CALIFORNIA. Sup. Ct. Cal. [Certiorari granted, *ante*, p. 1045.] Motion of petitioner for appointment of counsel granted. Stephen B. Bedrick, Esq., of Oakland, Cal., is appointed to serve as counsel for petitioner in this case.

No. 03–6821. NELSON *v.* CAMPBELL, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. [Certiorari granted, *ante*, p. 1046.] Motion of petitioner for appointment of counsel granted. Michael K. McIntyre, Esq., of Atlanta, Ga., is appointed to serve as counsel for petitioner in this case.

No. 03–6904. DICKERSON ET AL. *v.* SNOW, SECRETARY OF THE TREASURY, ET AL. C. A. 5th Cir.;

No. 03–6945. KAFELE *v.* LERNER SAMPSON & ROTHFUSS, L. P. A., ET AL. C. A. 6th Cir.; and

No. 03–7594. KRIMSKY *v.* UNITED STATES. C. A. 6th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until February 2, 2004, 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. 03–788. IN RE ALEXANDER ET AL.;
No. 03–7617. IN RE FLOYD;
No. 03–7741. IN RE AYRHART;
No. 03–7756. IN RE WILLIAMS;
No. 03–7803. IN RE SCHEIDLY;
No. 03–7822. IN RE RAHEMAN;
No. 03–7843. IN RE BROCKWELL;
No. 03–7854. IN RE GOODEN;
No. 03–7873. IN RE GENTRY;

No. 03–7902. IN RE FELIX;
No. 03–7964. IN RE BYRD; and
No. 03–7986. IN RE GREEN. Petitions for writs of habeas corpus denied.

No. 03–7016. IN RE VON FLOWERS; and
No. 03–7080. IN RE KING. Petitions for writs of mandamus denied.

No. 03–727. IN RE SMITH. Petition for writ of mandamus and/or prohibition denied.

No. 03–7531. IN RE BONTKOWSKI. Petition for writ of mandamus and/or prohibition denied. JUSTICE STEVENS took no part in the consideration or decision of this petition.

Certiorari Denied

No. 02–1416. ROADWAY EXPRESS, INC. *v.* FISKE. Ct. Sp. App. Md. Certiorari denied. Reported below: 148 Md. App. 716.

No. 02–11098. HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 322 F. 3d 592.

No. 02–11365. TAYLOR *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 838 So. 2d 729.

No. 03–269. WETTERGREEN *v.* ASHCROFT, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied.

No. 03–341. ALLSTATE INSURANCE CO. *v.* NOAH ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 322 F. 3d 1086.

No. 03–396. SHUSTER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 67 Fed. Appx. 645.

No. 03–433. ALCAN ALUMINUM CORP. *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 315 F. 3d 179.

No. 03–437. EISEN *v.* BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–439. HAAS *v.* DEPARTMENT OF VETERANS AFFAIRS. C. A. 9th Cir. Certiorari denied.

No. 03–441. S. G., as Guardian ad Litem of A. G., a Minor, et al. *v.* Sayreville Board of Education et al. C. A. 3d Cir. Certiorari denied. Reported below: 333 F. 3d 417.

No. 03–442. California Public Utilities Commission et al. *v.* Union Pacific Railroad Co. et al. C. A. 9th Cir. Certiorari denied. Reported below: 346 F. 3d 851.

No. 03–444. Paladino et al. *v.* Philadelphia Housing Authority. C. A. 3d Cir. Certiorari denied. Reported below: 65 Fed. Appx. 385.

No. 03–445. Perdomo-Padilla *v.* Ashcroft, Attorney General. C. A. 9th Cir. Certiorari denied. Reported below: 333 F. 3d 964.

No. 03–454. Rosell *v.* Wood, Chairman, Federal Energy Regulatory Commission. C. A. D. C. Cir. Certiorari denied. Reported below: 63 Fed. Appx. 519.

No. 03–472. Center for National Security Studies et al. *v.* Department of Justice. C. A. D. C. Cir. Certiorari denied. Reported below: 331 F. 3d 918.

No. 03–501. Stanford Hospital and Clinics *v.* National Labor Relations Board et al. C. A. D. C. Cir. Certiorari denied. Reported below: 325 F. 3d 334.

No. 03–503. Attorney E *v.* Third Party Movants for Protective Order. Sup. Ct. Colo. Certiorari denied. Reported below: 78 P. 3d 300.

No. 03–507. Fax.com, Inc. *v.* Missouri ex rel. Nixon, Attorney General of Missouri, et al. C. A. 8th Cir. Certiorari denied. Reported below: 323 F. 3d 649.

No. 03–509. Environmental Protection Agency *v.* Sierra Club et al. C. A. D. C. Cir. Certiorari denied. Reported below: 322 F. 3d 718.

No. 03–529. American Electric Power Co., Inc., et al. *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 326 F. 3d 737.

No. 03–542. Arana *v.* Ochsner Health Plan, Inc. C. A. 5th Cir. Certiorari denied. Reported below: 338 F. 3d 433.

No. 03–546. THOSTESON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 331 F. 3d 1294.

No. 03–547. UNITED STATES *v.* ROBINSON ET UX. C. A. Fed. Cir. Certiorari denied. Reported below: 335 F. 3d 1365.

No. 03–549. TOP RANK, INC. *v.* FLORIDA STATE BOXING COMMISSION ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 837 So. 2d 496.

No. 03–557. ST. LOUIS UNIVERSITY *v.* AMERICAN CYANAMID CO. C. A. 4th Cir. Certiorari denied. Reported below: 336 F. 3d 307.

No. 03–560. RONDOUT ELECTRIC, INC. *v.* NEW YORK DEPARTMENT OF LABOR ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 335 F. 3d 162.

No. 03–561. UNITED STATES EX REL. KINNEY *v.* STOLTZ ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 327 F. 3d 671.

No. 03–563. WANER *v.* FORD MOTOR CO. C. A. Fed. Cir. Certiorari denied. Reported below: 331 F. 3d 851.

No. 03–564. WARE *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 847 So. 2d 476.

No. 03–565. KODAK RETIREMENT INCOME PLAN ET AL. *v.* BURKE. C. A. 2d Cir. Certiorari denied. Reported below: 336 F. 3d 103.

No. 03–569. ALLIANT ENERGY CORP. *v.* BRIDGE, COMMISSIONER, PUBLIC SERVICE COMMISSION OF WISCONSIN, ET AL.; and No. 03–717. BRIDGE, COMMISSIONER, PUBLIC SERVICE COMMISSION OF WISCONSIN, ET AL. *v.* ALLIANT ENERGY CORP. C. A. 7th Cir. Certiorari denied. Reported below: 330 F. 3d 904.

No. 03–571. SOUTH COAST CAB CO., INC. *v.* CITY OF ANAHEIM, CALIFORNIA, ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 03–573. ESSEF CORP. ET AL. *v.* SILIVANCH ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 333 F. 3d 355.

No. 03–576. PASLEY *v.* ROBINSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 532.

No. 03–577. FRANK ET AL. *v.* FOREST COUNTY, WISCONSIN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 336 F. 3d 570.

No. 03–587. BRYANT *v.* AIKEN REGIONAL MEDICAL CENTERS, INC. C. A. 4th Cir. Certiorari denied. Reported below: 333 F. 3d 536.

No. 03–589. YARACS *v.* SUMMIT ACADEMY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 66 Fed. Appx. 417.

No. 03–592. SCHULTZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 333 F. 3d 393.

No. 03–601. VAN SUSTEREN *v.* SHELLEY, CALIFORNIA SECRETARY OF STATE. C. A. 9th Cir. Certiorari denied. Reported below: 331 F. 3d 1024.

No. 03–607. SIPPLE *v.* OFFICE OF THE CHIEF DISCIPLINARY COUNSEL, SUPREME COURT OF MISSOURI. Sup. Ct. Mo. Certiorari denied.

No. 03–609. MEMS ET AL. *v.* CITY OF ST. PAUL-DEPARTMENT OF FIRE AND SAFETY SERVICES. C. A. 8th Cir. Certiorari denied. Reported below: 327 F. 3d 771.

No. 03–611. GOLDMEIER ET UX. *v.* ALLSTATE INSURANCE CO. C. A. 6th Cir. Certiorari denied. Reported below: 337 F. 3d 629.

No. 03–612. INTERNATIONAL BANCORP, LLC, ET AL. *v.* SOCIETE DES BAINS DE MER ET DU CERCLE DES ETRANGERS A MONACO. C. A. 4th Cir. Certiorari denied. Reported below: 329 F. 3d 359.

No. 03–615. MCFARLANE ET AL. *v.* TWIST. Sup. Ct. Mo. Certiorari denied. Reported below: 110 S. W. 3d 363.

No. 03–616. MIX *v.* ROBINSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 952.

No. 03–618. WEST *v.* EVERGREEN HIGHLANDS ASSN. Sup. Ct. Colo. Certiorari denied. Reported below: 73 P. 3d 1.

No. 03–619. WRIGHT *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 276 Ga. 454, 579 S. E. 2d 214.

No. 03–625. TERRIBLE HERBST, INC. *v.* UNION OIL COMPANY OF CALIFORNIA, DBA UNOCAL. C. A. 9th Cir. Certiorari denied. Reported below: 331 F. 3d 735.

No. 03–630. MANNING *v.* CHEVRON CHEMICAL CO., LLC. C. A. 5th Cir. Certiorari denied. Reported below: 332 F. 3d 874.

No. 03–635. MANDERS *v.* LEE, INDIVIDUALLY AND AS AN EMPLOYEE OF THE CITY OF HOMERVILLE, GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 338 F. 3d 1304.

No. 03–640. VICKROY ET AL. *v.* WISCONSIN DEPARTMENT OF TRANSPORTATION ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 172.

No. 03–643. LANGMAN *v.* LAUB ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 328 F. 3d 68.

No. 03–644. L. PERRIGO CO. ET AL. *v.* MCNEIL-PPC, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 337 F. 3d 1362.

No. 03–646. MAJORS *v.* STATE BAR OF GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 276 Ga. 878, 583 S. E. 2d 864.

No. 03–647. SCHUSTER *v.* SILVERMAN. C. A. 8th Cir. Certiorari denied. Reported below: 338 F. 3d 886.

No. 03–652. MCNEIL ET AL. *v.* LEGISLATIVE APPORTIONMENT COMMISSION OF THE STATE OF NEW JERSEY ET AL. Sup. Ct. N. J. Certiorari denied. Reported below: 177 N. J. 364, 828 A. 2d 840.

No. 03–653. EXTRUSIONS DIVISION, INC. *v.* SILVER CREEK DRAIN DISTRICT. Sup. Ct. Mich. Certiorari denied. Reported below: 468 Mich. 367, 660 N. W. 2d 436.

No. 03–654. DUKES *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 664 N. W. 2d 804.

No. 03–658. DEEP *v.* RECORDING INDUSTRY ASSN. OF AMERICA, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 334 F. 3d 643.

No. 03–661. HOFFMANN-PUGH *v.* KEENAN. C. A. 10th Cir. Certiorari denied. Reported below: 338 F. 3d 1136.

No. 03–662. UNITED STATES EX REL. GOLDEN *v.* ARKANSAS STATE GAME AND FISH COMMISSION ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 333 F. 3d 867.

No. 03–663. GARDNER *v.* GARDNER. Ct. App. N. M. Certiorari denied.

No. 03–664. FUZY *v.* S & B ENGINEERS & CONSTRUCTORS, LTD. C. A. 5th Cir. Certiorari denied. Reported below: 332 F. 3d 301.

No. 03–666. OMNIPOINT COMMUNICATIONS ENTERPRISES, L. P. *v.* ZONING HEARING BOARD OF EASTTOWN TOWNSHIP, PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 331 F. 3d 386.

No. 03–670. BRIGGS *v.* MISSISSIPPI. C. A. 5th Cir. Certiorari denied. Reported below: 331 F. 3d 499.

No. 03–671. THOMPSON ET VIR, INDIVIDUALLY AND ON BEHALF OF THEIR MINOR CHILDREN, THOMPSON ET AL. *v.* MARY GREELEY MEDICAL CENTER ET AL. Ct. App. Iowa. Certiorari denied. Reported below: 666 N. W. 2d 620.

No. 03–672. BARTON *v.* DISTRICT OF COLUMBIA. Ct. App. D. C. Certiorari denied. Reported below: 817 A. 2d 834.

No. 03–673. SAUCEDA *v.* CITY OF DEL RIO, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 356.

No. 03–675. PATTERSON ET AL. *v.* MOBIL OIL CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 335 F. 3d 476.

No. 03–676. PETERSON *v.* CITY OF DETROIT, MICHIGAN. C. A. 6th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 601.

No. 03–678. AYRES *v.* CITY OF BEAUMONT, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 440.

No. 03–679. BURGE *v.* STRAIN, SHERIFF, ST. TAMMANY PARISH, LOUISIANA. C. A. 5th Cir. Certiorari denied. Reported below: 336 F. 3d 363.

No. 03–681. ROTHMAN *v.* CLARKE ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 03–682. SIBLEY *v.* SIBLEY. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 833 So. 2d 847.

No. 03–683. SAVARD ET AL. *v.* RHODE ISLAND ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 338 F. 3d 23.

No. 03–684. SOUDAVAR *v.* ISLAMIC REPUBLIC OF IRAN ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 66 Fed. Appx. 207.

No. 03–685. SOUDAVAR *v.* ISLAMIC REPUBLIC OF IRAN ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 67 Fed. Appx. 618.

No. 03–686. REPUBLIC OF HONDURAS ET AL. *v.* PHILIP MORRIS COS., INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 341 F. 3d 1253.

No. 03–688. WRIGHT *v.* WAGNER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 403.

No. 03–689. PRIMM *v.* COUNTRY COS. Ct. App. Wash. Certiorari denied.

No. 03–690. BERTOLI *v.* OBERFELDER. C. A. 9th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 408.

No. 03–692. VALENTINE-STAATS *v.* ELLIOTT ET UX. Ct. App. D. C. Certiorari denied. Reported below: 819 A. 2d 968.

No. 03–694. FOREST LABORATORIES, INC., ET AL. *v.* ABBOTT LABORATORIES. C. A. Fed. Cir. Certiorari denied. Reported below: 339 F. 3d 1324.

No. 03–696. HOLZWARTH *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 03–697. CARPENTER *v.* ISRAEL. C. A. 2d Cir. Certiorari denied. Reported below: 67 Fed. Appx. 56.

No. 03–698. BRAY *v.* FLORIDA PUBLIC EMPLOYEES RELATIONS COMMISSION ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 852 So. 2d 233.

No. 03–700. BARTH *v.* PUBLIC SERVICE ELECTRIC & GAS CO. Super. Ct. N. J., App. Div. Certiorari denied.

No. 03–702. Silver Sage Partners, Ltd., et al. *v.* City of Desert Hot Springs, California. C. A. 9th Cir. Certiorari denied. Reported below: 339 F. 3d 782.

No. 03–705. City of Las Vegas, Nevada, et al. *v.* American Civil Liberties Union of Nevada et al. C. A. 9th Cir. Certiorari denied. Reported below: 333 F. 3d 1092.

No. 03–709. CIGNA HealthCare of California, Inc. *v.* Balaban-Zilke, Individually and as Successor in Interest to Zilke. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 03–711. Webb et al. *v.* Goord, Individually and as Commissioner, New York Department of Correctional Services, et al. C. A. 2d Cir. Certiorari denied. Reported below: 340 F. 3d 105.

No. 03–713. Schwartz *v.* American Express Travel Related Services Co. Inc. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 441.

No. 03–714. Escandon De Auerbach et vir *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 506.

No. 03–719. Moody *v.* Brownlee, Acting Secretary of the Army. C. A. 5th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 235.

No. 03–720. Crump *v.* National Railroad Passenger Corporation et al. C. A. D. C. Cir. Certiorari denied.

No. 03–721. Rupert et ux. *v.* Commissioner of Internal Revenue. C. A. 5th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 212.

No. 03–722. Weiss *v.* Berkett, as Successor Interim Trustee of the Trusts Under the Will of Pollak, Deceased, et al. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 835 So. 2d 283.

No. 03–723. Schwegmann Giant Super Markets, Inc., et al. *v.* Musmeci et al. C. A. 5th Cir. Certiorari denied. Reported below: 332 F. 3d 339.

No. 03–726. Carter, a Minor, by Her Parents and Next Friends, Carter et ux. *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 333 F. 3d 791.

No. 03–728. Divilly *v.* Port Authority of Allegheny County, Pennsylvania. Commw. Ct. Pa. Certiorari denied. Reported below: 810 A. 2d 755.

No. 03–729. Religious Technology Center *v.* Liebreich, Individually and as Personal Representative of the Estate of McPherson. C. A. 5th Cir. Certiorari denied. Reported below: 339 F. 3d 369.

No. 03–734. Coyle et al. *v.* Electronics for Imaging, Inc. C. A. Fed. Cir. Certiorari denied. Reported below: 340 F. 3d 1344.

No. 03–744. Charles F. G. *v.* Wisconsin. Ct. App. Wis. Certiorari denied. Reported below: 267 Wis. 2d 278, 670 N. W. 2d 557.

No. 03–746. Fullwood *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 342 F. 3d 409.

No. 03–748. Regency Outdoor Advertising, Inc. *v.* Riverside County, California. C. A. 9th Cir. Certiorari denied. Reported below: 337 F. 3d 1111.

No. 03–752. Sonneberg *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 03–755. Robinson et al. *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 327 F. 3d 554.

No. 03–758. Culliton *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 328 F. 3d 1074.

No. 03–767. Mignot *v.* Massie, Warden. C. A. 10th Cir. Certiorari denied.

No. 03–773. Garcia *v.* Horphag Research Ltd. C. A. 9th Cir. Certiorari denied. Reported below: 337 F. 3d 1036.

No. 03–787. Bell et al. *v.* City of Dallas, Texas. C. A. 5th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 82.

No. 03–797. CASCELLA *v.* CANAVERAL PORT AUTHORITY. C. A. 11th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 284.

No. 03–805. MICHELS *v.* COMMISSION ON JUDICIAL CONDUCT OF THE STATE OF WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 150 Wash. 2d 159, 75 P. 3d 950.

No. 03–6119. HESTER *v.* GERMANY, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 821.

No. 03–6123. HILL *v.* UNITED STATES; and
No. 03–6153. KUENSTLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 325 F. 3d 1015.

No. 03–6124. GONZALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 327 F. 3d 416.

No. 03–6172. ABBOTT *v.* RISING, TREASURER OF MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 468 Mich. 143, 660 N. W. 2d 714.

No. 03–6232. NAPIER *v.* PRESLICKA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 314 F. 3d 528.

No. 03–6260. WILLIAMS *v.* AFC ENTERPRISES, INC., ET AL. Ct. App. La., 3d Cir. Certiorari denied.

No. 03–6319. HOLLIDAY *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 774.

No. 03–6376. PENNINGTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 328 F. 3d 215.

No. 03–6406. HOANG NGUYEN *v.* ASHCROFT, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 03–6444. PERKINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 81.

No. 03–6488. FLOYD *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 850 So. 2d 383.

No. 03–6580. HINES *v.* WOODFORD, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6612. BOURNES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 339 F. 3d 396.

No. 03–6667. STOREY *v.* HUTCHISON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 56 Fed. Appx. 228.

No. 03–6676. BONURA *v.* SEARS, ROEBUCK & CO. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 62 Fed. Appx. 399.

No. 03–6680. HARRISON *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 869 So. 2d 509.

No. 03–6731. BROWN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 328 F. 3d 352.

No. 03–6744. GREEN *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 248.

No. 03–6883. LOPEZ-MORALES *v.* CRAWFORD ET AL. Ct. App. Ga. Certiorari denied.

No. 03–6884. KNUCKLES *v.* BRIGANO, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 830.

No. 03–6890. MANOR *v.* TEXAS SUPREME COURT JUSTICES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 520.

No. 03–6891. MULHOLLAND *v.* SNOHOMISH COUNTY, WASHINGTON. C. A. 9th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 75.

No. 03–6892. ORTIZ *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 03–6894. BARTLETT *v.* MOORE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 462.

No. 03–6896. JOHNSON *v.* REICHERT, SHERIFF, KING COUNTY, WASHINGTON, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–6900. DUQUE *v.* YARBOROUGH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6907. MATTHEWS *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–6916. PAYNE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 03–6920. PIGGIE *v.* COTTON, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied. Reported below: 342 F. 3d 660.

No. 03–6921. WING *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 03–6923. WOOD *v.* PLILER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6925. MIRANDA *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–6931. EL *v.* VIRGINIA DEPARTMENT OF SOCIAL SERVICES, DIVISION OF CHILD SUPPORT ENFORCEMENT, ET AL. Sup. Ct. Va. Certiorari denied.

No. 03–6939. SOSA *v.* WEST ET AL. C. A. 5th Cir. Certiorari denied.

No. 03–6943. WILLIAMS *v.* JONES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–6948. THOMPSON *v.* CURRAN, ATTORNEY GENERAL OF MARYLAND. C. A. 4th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 514.

No. 03–6949. BEASLEY *v.* ANDERSON, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 242.

No. 03–6953. HAREL *v.* NIXON ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 03–6957. FRANKLIN *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 809 A. 2d 956.

No. 03–6960. HAMBRICK *v.* HOFFMAN. Ct. App. Ga. Certiorari denied.

No. 03–6969. INGRANDO *v.* EGL, INC./BURGER KING, AKA EGL, INC. C. A. 11th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 318.

No. 03–6971. HARLEY *v.* MCMASTER, ATTORNEY GENERAL OF SOUTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 55 Fed. Appx. 220.

No. 03–6973. ADAMS *v.* SCHRIRO ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 997.

No. 03–6977. BOMAR *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 573 Pa. 426, 826 A. 2d 831.

No. 03–6978. FELIX *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 03–6981. COCKERHAM *v.* COCKERHAM ET AL. C. A. 5th Cir. Certiorari denied.

No. 03–6984. DURRANCE *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 861 So. 2d 26.

No. 03–6987. DORSETT *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 03–6988. MARIAN *v.* CALIFORNIA ET AL. (two judgments). Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 03–6994. CAREY *v.* MYERS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 74 Fed. Appx. 445.

No. 03–6996. HIEU PHAM *v.* LINDSEY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–6997. BACK *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–7003. PRINCE *v.* CURTIS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 78 Fed. Appx. 440.

No. 03–7006. SHIFFER *v.* VARNER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–7015. FENLON *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 03–7017. FEASTER *v.* POPPELL, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 913.

No. 03–7025. GUTIERREZ *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–7028. MOORE *v.* TURNER. C. A. 5th Cir. Certiorari denied.

No. 03–7039. HERNANDEZ *v.* BURROW ET AL. C. A. 7th Cir. Certiorari denied.

No. 03–7042. FEGAN *v.* YARBOROUGH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–7043. GARIBAY *v.* AYERS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–7045. NELSON *v.* LEE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 232.

No. 03–7048. ROGERS *v.* COLORADO. Ct. App. Colo. Certiorari denied. Reported below: 68 P. 3d 486.

No. 03–7050. RODRIGUEZ *v.* MILLER, SUPERINTENDENT, EASTERN NEW YORK CORRECTIONAL FACILITY AND ANNEX. C. A. 2d Cir. Certiorari denied.

No. 03–7052. RIVERS *v.* PENNSYLVANIA. C. A. 3d Cir. Certiorari denied.

No. 03–7053. CLARK *v.* OHIO. Ct. App. Ohio, Pike County. Certiorari denied.

No. 03–7054. DOWNS *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 03–7055. CLAIBORNE *v.* HENDERSON ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–7056. GASTON *v.* EARLY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 756.

No. 03–7059. HOLLEY *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 03–7060. WALLER *v.* BOWLEN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–7061. WALTERS *v.* GUILFOYLE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 939.

No. 03–7062. MAURY *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 30 Cal. 4th 342, 68 P. 3d 1.

No. 03–7063. LOPEZ *v.* SCRIBNER, WARDEN, ET AL.; and LOPEZ *v.* CALDERON, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 63 (first judgment); 73 Fed. Appx. 302 (second judgment).

No. 03–7067. HOGUE *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 976.

No. 03–7069. HALE *v.* LAMARQUE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–7070. BRADHAM *v.* MICHAEL, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 03–7071. GREER *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–7073. HALL *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–7075. GARNETT *v.* PAYNE ET AL. Ct. App. Ga. Certiorari denied.

No. 03–7077. GOSHA *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 03–7078. HARBIN *v.* MICHIGAN. Cir. Ct. Ottawa County, Mich. Certiorari denied.

No. 03–7079. FAIRCLOUGH *v.* LAMBDIN, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 03–7083. BROWN *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 337 F. 3d 546.

No. 03–7085. WILLIAMS *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 03–7086. McGriff *v.* Florida Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 338 F. 3d 1231.

No. 03–7087. Young *v.* Garcia, Warden. C. A. 9th Cir. Certiorari denied.

No. 03–7088. Williams *v.* Maryland State Board of Education. Ct. Sp. App. Md. Certiorari denied.

No. 03–7089. Bethea *v.* Pennsylvania. Sup. Ct. Pa. Certiorari denied. Reported below: 828 A. 2d 1066.

No. 03–7092. Walker *v.* Colorado. Ct. App. Colo. Certiorari denied.

No. 03–7094. Brooks *v.* Nix, Chairman, Georgia Board of Pardons and Paroles, et al. C. A. 11th Cir. Certiorari denied.

No. 03–7096. Bernard *v.* Louisiana. Ct. App. La., 1st Cir. Certiorari denied.

No. 03–7097. Smith *v.* Charleston Metro Drug Unit et al. Cir. Ct. Kanawha County, W. Va. Certiorari denied.

No. 03–7098. Alford *v.* Jackson, Warden. C. A. 6th Cir. Certiorari denied.

No. 03–7103. Fuller *v.* Laidlaw, Inc., et al. Ct. App. Mich. Certiorari denied.

No. 03–7105. Grinstead *v.* Woody. Ct. App. Ind. Certiorari denied.

No. 03–7113. Dean *v.* Hockaday, Warden. Sup. Ct. Ill. Certiorari denied.

No. 03–7119. Banda Ortega *v.* California. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 03–7128. Richardson *v.* First American Title Insurance Co. et al. C. A. 9th Cir. Certiorari denied.

No. 03–7129. Beaudry *v.* Corrections Corporation of America et al. C. A. 10th Cir. Certiorari denied. Reported below: 331 F. 3d 1164.

No. 03–7130. BUTLER *v.* MADISON COUNTY JAIL ET AL. Ct. App. Tenn. Certiorari denied. Reported below: 109 S. W. 3d 360.

No. 03–7131. BAGBY *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 03–7138. TAYLOR *v.* CIRCUIT COURT OF VIRGINIA, PAGE COUNTY. Sup. Ct. Va. Certiorari denied.

No. 03–7144. MESSINA *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 03–7147. CROMARTIE *v.* SMITH ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 847.

No. 03–7151. MILTON *v.* CALDERON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–7157. CHAMBERS *v.* HABITAT CO. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 711.

No. 03–7160. MONEY *v.* WARD, CHAIRMAN, PENNSYLVANIA BOARD OF PROBATION AND PAROLE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–7161. MORRIS *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–7165. FISHER *v.* CAMBRA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 520.

No. 03–7173. GUZMAN, AKA ALVAREZ-GARCIA *v.* DUNCAN, SUPERINTENDENT, GREEN MEADOW CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 74 Fed. Appx. 76.

No. 03–7176. RODRIGUEZ *v.* ALEXANDER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–7177. ROTHWELL *v.* HUBBARD, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 394.

No. 03–7179. GOLDBLUM *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 815 A. 2d 1126.

No. 03–7180. FANA *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 855 So. 2d 59.

No. 03–7181. HARRINGTON *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied.

No. 03–7183. HERNDON *v.* RAY, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 03–7185. WILSON *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 03–7186. ABDO, DBA AMERICAN TAX PLANNING CO. *v.* INTERNAL REVENUE SERVICE. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 163.

No. 03–7194. WILLIAMS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–7195. KAILING *v.* HENDRICKSON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–7196. SCHAFER *v.* QUINT ASSOCIATES, INC. Ct. App. Ind. Certiorari denied. Reported below: 783 N. E. 2d 1287.

No. 03–7200. JAMISON *v.* FARWELL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–7201. CHANG *v.* PHILLIPS, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 03–7204. PALERMO *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 80.

No. 03–7205. OMUNA *v.* IMMIGRATION AND NATURALIZATION SERVICE ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–7211. SMITH *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–7212. ROCHELL *v.* SULLIVAN ET AL. Cir. Ct. Miss., Winston County. Certiorari denied.

No. 03–7215. DONATO *v.* MCCARTHY. Sup. Ct. N. H. Certiorari denied.

No. 03–7217. CARBIN *v.* MISSISSIPPI ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 229.

No. 03–7218. WELLS *v.* OHIO ADULT PAROLE AUTHORITY. C. A. 6th Cir. Certiorari denied.

No. 03–7220. JOHANS *v.* SOLOMON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–7221. MARSHALL *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 276 Ga. 854, 583 S. E. 2d 884.

No. 03–7230. BLAKE *v.* BACA, SHERIFF, LOS ANGELES COUNTY, CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 585.

No. 03–7233. EPHRAIM *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 460.

No. 03–7236. CONTRERAS CASTRO *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 03–7237. CALHOUN *v.* TEXAS. Ct. App. Tex., 10th Dist. Certiorari denied.

No. 03–7238. CRUZ *v.* UNNAMED DEFENDANTS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 59 Fed. Appx. 606.

No. 03–7239. EDMON *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–7240. ELEY *v.* TAYLOR, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 491.

No. 03–7241. CARTER *v.* NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 744.

No. 03–7243. DAWSON *v.* WILLIAMS ET AL. C. A. 10th Cir. Certiorari denied.

No. 03–7246. ELLINGTON *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 359.

No. 03–7248. DANIEL *v.* SOUTHWEST AIRLINES CO. C. A. 11th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 283.

No. 03–7250. SPARROW *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–7251. ROACH *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 809.

No. 03–7252. RICE *v.* COLORADO. Sup. Ct. Colo. Certiorari denied.

No. 03–7256. SHEA *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 03–7257. SWAFFORD *v.* RUNNELS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–7258. CLARK *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 577.

No. 03–7259. DAVIS *v.* COLORADO. Sup. Ct. Colo. Certiorari denied.

No. 03–7260. JUAREZ *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–7270. PRUITT *v.* MCADORY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 337 F. 3d 921.

No. 03–7272. POMALES *v.* MOORE, ADMINISTRATOR, EAST JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–7275. WOODS *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–7277. ROBLES *v.* CLARKE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 483.

No. 03–7279. MILLER *v.* TYSON FOODS, INC. C. A. 11th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 387.

No. 03–7281. LOTT *v.* STEGALL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 801.

No. 03–7282. YATES *v.* STRAIN, SHERIFF, ST. TAMMANY PARISH, LOUISIANA. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 19.

No. 03–7283. JOHNSON *v.* PEP BOYS-MANNY, MOE & JACK, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 697.

No. 03–7293. SIMPSON *v.* LAFLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–7297. APODACA *v.* COLORADO. Dist. Ct. Colo., Denver County. Certiorari denied.

No. 03–7300. BROWN *v.* MAHONEY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 722.

No. 03–7301. PARADA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 03–7306. COOPER *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–7307. ZHU *v.* COUNTRYWIDE REALTY CO., INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 840.

No. 03–7308. WERNER *v.* RHODE ISLAND. Sup. Ct. R. I. Certiorari denied. Reported below: 831 A. 2d 183.

No. 03–7309. PENDLETON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 03–7310. NORSWORTHY *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–7314. AMAKER *v.* GOORD, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES, ET AL. C. A. 2d Cir. Certiorari denied.

No. 03–7315. MONCURE *v.* WARNER, GOVERNOR OF VIRGINIA, ET AL. Sup. Ct. Va. Certiorari denied.

No. 03–7320. DERIAN *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 03–7321. CARTER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 30 Cal. 4th 1166, 70 P. 3d 981.

No. 03–7322. EVANS *v.* SUPREME COURT OF OHIO ET AL. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 03–7326. GUNDERSON *v.* FABIAN, COMMISSIONER, MINNESOTA DEPARTMENT OF CORRECTIONS. C. A. 8th Cir. Certiorari denied. Reported below: 339 F. 3d 639.

No. 03–7336. ARNOLD *v.* WEST VIRGINIA. Cir. Ct. Roane County, W. Va. Certiorari denied.

No. 03–7337. MAJETTE *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 788.

No. 03–7340. WHITEHEAD *v.* SWYGERT ET AL. Ct. App. D. C. Certiorari denied. Reported below: 830 A. 2d 415.

No. 03–7344. SIAS *v.* ZENITH INSURANCE CO. Ct. App. Tex., 8th Dist. Certiorari denied.

No. 03–7345. STRINGER *v.* HERBERT. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 341.

No. 03–7346. SCOTT *v.* FEDERAL EXPRESS CORP. C. A. 8th Cir. Certiorari denied. Reported below: 54 Fed. Appx. 455.

No. 03–7348. COPELAND *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 837 So. 2d 1067.

No. 03–7349. DUMONT *v.* SCOTTSDALE INSURANCE CO. ET AL. App. Ct. Conn. Certiorari denied. Reported below: 77 Conn. App. 857, 825 A. 2d 227.

No. 03–7351. BLUE-SKY *v.* HENRY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–7352. CHUA-ZULUETA *v.* ASHCROFT, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 03–7357. LOVE *v.* DAVIS, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied.

No. 03–7358. WITHROW *v.* HEATON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 252.

No. 03–7366. CLARK *v.* BULLARD, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 03–7368. CARTER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 03–7378. MARIAN *v.* VENTURA COUNTY, CALIFORNIA, ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 03–7382. LUTZ *v.* WOLFE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 67 Fed. Appx. 151.

No. 03–7386. MCCOY *v.* COTTON, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied. Reported below: 79 Fed. Appx. 222.

No. 03–7394. PRICE *v.* WADSWORTH, SUPERINTENDENT, HYDE CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 471.

No. 03–7396. BOGAN *v.* MISSISSIPPI. C. A. 5th Cir. Certiorari denied.

No. 03–7398. JEFFERSON *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 508.

No. 03–7400. VANN *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 817 A. 2d 1185.

No. 03–7406. MCDONALD *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 507.

No. 03–7414. PATTERSON *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 507.

No. 03–7415. POSEY *v.* MILLION, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–7432. LOVE *v.* POTTER, POSTMASTER GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 538.

No. 03–7436. SEVIER *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 03–7444. GREEN *v.* QWEST CORP. C. A. 10th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 250.

No. 03–7451. BOWMAN *v.* YARBOROUGH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–7453. SOTO *v.* BURGE, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 03–7456. VASQUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 03–7459. LAMAS-GALAVIZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 720.

No. 03–7462. WERTH *v.* MUDDY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 269.

No. 03–7473. GEFFKEN *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied.

No. 03–7479. HOUSE *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 329 Ill. App. 3d 1229, —— N. E. 2d ——.

No. 03–7486. TRICE *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 75 Fed. Appx. 786.

No. 03–7487. WORKMAN *v.* WATKINS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 03–7491. COLLIER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 676.

No. 03–7495. CHRISTIAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 342 F. 3d 744.

No. 03–7503. PORTILLO *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–7507. RIGGS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 347 F. 3d 17.

No. 03–7509. ROBBINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 03–7514. PANTON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 03–7515. SPEIGHT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 75 Fed. Appx. 802.

No. 03–7516. SMITH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 330 F. 3d 1209.

No. 03–7517. SMITH *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 99 Ohio St. 3d 140, 789 N. E. 2d 234.

No. 03–7518. AGUIAR *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 529.

No. 03–7519. MARINO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–7520. BELFOURE *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 99 Ohio St. 3d 141, 789 N. E. 2d 234.

No. 03–7521. TAFOYA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 675.

No. 03–7522. WELLS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 82 Fed. Appx. 215.

No. 03–7523. TATE *v.* UNITED STATES; and
No. 03–7530. BAKER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 339 F. 3d 400.

No. 03–7527. KELCH *v.* STARKS ET UX. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 03–7528. JONES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 401.

No. 03–7529. ALAMIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 459.

No. 03–7532. ATKINSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 201 F. 3d 61 and 313 F. 3d 40.

No. 03–7534. WELSAND *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 03–7535. TAYLOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 193.

No. 03–7536. WALKER *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 73 Fed. Appx. 412.

No. 03–7539. CHILDS *v.* WILEY, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 388.

No. 03–7540. BECHTEL *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 03–7541. MARTIN *v.* CHATMAN, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 03–7543. UPSHAW ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 66 Fed. Appx. 269.

No. 03–7544. TALBOTT *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–7545. JAW-SHI WANG *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 624.

No. 03–7547. LAMAS-GALAVIZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 720.

No. 03–7548. PENA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 367.

No. 03–7549. BENTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 74 Fed. Appx. 583.

No. 03–7550. SIMPSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 337 F. 3d 905.

No. 03–7552. DILLEHAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 03–7553. CARTER *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 03–7554. De Deus-Oliveira *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 03–7555. Christensen *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 159.

No. 03–7558. Benoit *v.* Benoit. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 03–7560. Urdin *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 504.

No. 03–7561. Booker *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 03–7562. Acosta-Tapia *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 885.

No. 03–7563. Apodaca *v.* Snodgrass, Warden, et al. C. A. 10th Cir. Certiorari denied.

No. 03–7565. Veysey *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 334 F. 3d 600.

No. 03–7569. Mason *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 03–7571. Baker *v.* United States. C. A. 10th Cir. Certiorari denied.

No. 03–7572. Hall et al. *v.* Hanscom Air Force Base et al. C. A. 1st Cir. Certiorari denied. Reported below: 71 Fed. Appx. 78.

No. 03–7576. Robinson *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 724.

No. 03–7578. Roberts *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 77 Fed. Appx. 561.

No. 03–7579. Robles-Salas *v.* United States; Leonides-Jaimes *v.* United States; and Becerra-Rodriguez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 409 (first judgment); 72 Fed. Appx. 235 (third judgment) and 958 (second judgment).

No. 03–7581. WILLARD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 437.

No. 03–7585. HOFFMAN-PORTILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 372.

No. 03–7587. CHIGOZIE IWOUHA *v.* UNITED STATES (Reported below: 71 Fed. Appx. 384); DE LA CERDA-GUERRERO *v.* UNITED STATES (72 Fed. Appx. 957); SANDOVAL-LANDEROS *v.* UNITED STATES (71 Fed. Appx. 437); CASTRO-RIVERA, AKA RIVERA-CASTRO *v.* UNITED STATES (72 Fed. Appx. 971); DE LA CRUZ-CAMACHO *v.* UNITED STATES (72 Fed. Appx. 962); MARTINEZ-GRACIAS, AKA MARTINEZ *v.* UNITED STATES (74 Fed. Appx. 357); HERNANDEZ-CORTEZ *v.* UNITED STATES (73 Fed. Appx. 75); RUIZ *v.* UNITED STATES (71 Fed. Appx. 397); CERVANTES-SARMIENTO *v.* UNITED STATES (72 Fed. Appx. 955); RIVAS-MENDOZA *v.* UNITED STATES (72 Fed. Appx. 961); SANCHEZ-GALLARZO *v.* UNITED STATES (72 Fed. Appx. 960); VILLALOBOS-REYES *v.* UNITED STATES (72 Fed. Appx. 954); GUERRERO-ALMANZA *v.* UNITED STATES (73 Fed. Appx. 686); SAUCEDO-PEREZ *v.* UNITED STATES (71 Fed. Appx. 412); ALEJANDRO-GONZALEZ *v.* UNITED STATES (72 Fed. Appx. 199); RAMOS-RUBIO *v.* UNITED STATES (71 Fed. Appx. 411); GUZMAN-MENDEZ, AKA MANSERO GUZMAN *v.* UNITED STATES (72 Fed. Appx. 231); SOLORENZO-TORRES *v.* UNITED STATES (71 Fed. Appx. 410); MEJIA-FERNANDEZ, AKA FERNANDEZ *v.* UNITED STATES (73 Fed. Appx. 688); AGUILAR-SOLIS *v.* UNITED STATES (73 Fed. Appx. 697); MALDONADO MARTINEZ *v.* UNITED STATES (73 Fed. Appx. 693); RODRIGUEZ RODRIGUEZ *v.* UNITED STATES (71 Fed. Appx. 403); JAIMES-ARANDA, AKA SANCHEZ-ARANDA *v.* UNITED STATES (72 Fed. Appx. 989); MIRANDA-LOPEZ *v.* UNITED STATES (72 Fed. Appx. 210); DELEON-FUENTES, AKA HUMBERTO DELEON *v.* UNITED STATES (73 Fed. Appx. 687); PADRON-RIVERA, AKA MARTINEZ *v.* UNITED STATES (72 Fed. Appx. 218); ENRIQUEZ-LINO, AKA VILLARREAL-SAENZ *v.* UNITED STATES (72 Fed. Appx. 217); and MEJIA-MEJIA *v.* UNITED STATES (72 Fed. Appx. 216). C. A. 5th Cir. Certiorari denied.

No. 03–7588. PEREZ-ACOSTA *v.* UNITED STATES; PASCASIO-MANUEL *v.* UNITED STATES; GARCIA-PENA *v.* UNITED STATES; MARTINEZ-LUEVANO *v.* UNITED STATES; ATAYDE-PALOMINO *v.* UNITED STATES; ESCOBEDO-GUERRERO *v.* UNITED STATES; PEDRAZA-ESTRADA *v.* UNITED STATES; and ALVA-CARVAJAL *v.*

UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 432 (fifth judgment); 72 Fed. Appx. 220 (fourth judgment), 226 (second judgment), 227 (first judgment), 973 (third judgment), 979 (eighth judgment), 988 (seventh judgment), and 996 (sixth judgment).

No. 03–7589. MILES *v.* STAINER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 81 Fed. Appx. 87.

No. 03–7592. LUCERO-RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 390.

No. 03–7593. LANGENDORF *v.* KOPP. C. A. 9th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 401.

No. 03–7595. LUNA-NINO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 414.

No. 03–7596. CRUZ-OSORNIO *v.* UNITED STATES; ARGUETA-MALAGON *v.* UNITED STATES; and ARREOLA-SALAZAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 292 (first and third judgments) and 294 (second judgment).

No. 03–7597. CHERESPOSY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 340 F. 3d 1148.

No. 03–7598. CONTRERAS-MONTOYA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 438.

No. 03–7599. CASTANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 303.

No. 03–7600. CRUZ-SANCHEZ *v.* UNITED STATES; GOMEZ-NOGESE *v.* UNITED STATES; PERAZA-GARCIA *v.* UNITED STATES; MORALES-FRANCO *v.* UNITED STATES; TORRES-VILLEGAS, AKA GUTIERREZ-RAMIREZ, AKA GARCIA-RAMIREZ *v.* UNITED STATES; and VELAZQUEZ-CAMPOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 426 (third judgment) and 432 (sixth judgment); 72 Fed. Appx. 213 (fifth judgment), 980 (second judgment), and 981 (fourth judgment); 74 Fed. Appx. 358 (first judgment).

No. 03–7601. BURNETT *v.* HILL, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 03–7602. BENITEZ-FARIAS *v.* UNITED STATES; MARTINEZ-VENTURA *v.* UNITED STATES; GONZALEZ-MURO *v.* UNITED STATES; MAGALLON-BARAJAS *v.* UNITED STATES; MADRIGAL-JIMENEZ *v.* UNITED STATES; and MONROY-CASTILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 03–7603. DE LEON-VICTORINO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 419.

No. 03–7605. ARROYO-JAIMES, AKA ARROYO *v.* UNITED STATES; GORROSTIETA-JIMENEZ, AKA GOROSTIETA-JIMENES *v.* UNITED STATES; and RAMIREZ-VARGAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 424 (first judgment); 72 Fed. Appx. 986 (second judgment) and 987 (third judgment).

No. 03–7606. BROWN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 74 Fed. Appx. 611.

No. 03–7610. NISHNIANIDZE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 342 F. 3d 6.

No. 03–7611. AYUB-SAPIEN, AKA AYUB-ZAPIEN *v.* UNITED STATES (Reported below: 72 Fed. Appx. 219); CASARES-MELENDEZ, AKA CASARES, AKA MELENDEZ CASARES *v.* UNITED STATES (71 Fed. Appx. 428); GUTIERREZ-RUIZ *v.* UNITED STATES (72 Fed. Appx. 984); HERRERA-RODRIGUEZ *v.* UNITED STATES (72 Fed. Appx. 995); JIMENEZ-DIAZ *v.* UNITED STATES (71 Fed. Appx. 433); LOREDO-OLVERA, AKA RUBIO, AKA ESPARZA *v.* UNITED STATES (73 Fed. Appx. 694); LUEVANO-GOMEZ *v.* UNITED STATES (73 Fed. Appx. 72); PENAGOS-MENDEZ, AKA CAMPOS-NIETO *v.* UNITED STATES (72 Fed. Appx. 991); REYNA-VIDAL *v.* UNITED STATES (71 Fed. Appx. 418); TERAN, AKA LOPEZ-BURGOS *v.* UNITED STATES (71 Fed. Appx. 430); VEGA-ARVIZU *v.* UNITED STATES (72 Fed. Appx. 982); VENEGAS-RODRIGUEZ, AKA VENEGAS-ORTEGA, AKA RODRIGUEZ-VENEGAS *v.* UNITED STATES (72 Fed. Appx. 225); and ZUNIGA-MEJIA, AKA MEJIA ZUNIGA, AKA MEJIA-ZUNIGA *v.* UNITED STATES (73 Fed. Appx. 74). C. A. 5th Cir. Certiorari denied.

No. 03–7612. SARTORI *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 155 N. C. App. 776, 574 S. E. 2d 501.

No. 03–7613. SANTANA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 194.

No. 03–7614. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–7615. REECE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–7616. ROBINSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 845.

No. 03–7618. BRYANT *v.* WOLFE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–7620. MALLETT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 334 F. 3d 491.

No. 03–7621. JACOBS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 48 Fed. Appx. 739.

No. 03–7623. MANUELITO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 340 F. 3d 1148.

No. 03–7624. JARBOH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 82 Fed. Appx. 213.

No. 03–7625. ARREGUIN-JIMENEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 60 Fed. Appx. 895.

No. 03–7627. KENDRICK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 03–7628. MEYER *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Cumberland County, N. C. Certiorari denied.

No. 03–7629. NAVARRO-GUTIERREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 74 Fed. Appx. 362.

No. 03–7630. MITCHELL, AKA SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 82 Fed. Appx. 222.

No. 03–7631. MORA-GARIBAY *v.* UNITED STATES; VASQUEZ-DE LA VEGA *v.* UNITED STATES; and AGUILAR-JUAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 72

Fed. Appx. 234 (third judgment), 952 (second judgment), and 963 (first judgment).

No. 03–7634. SANCHEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 336 F. 3d 739.

No. 03–7635. SELLERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 598.

No. 03–7636. ROSENBORO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 493.

No. 03–7639. JAMES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 337 F. 3d 387.

No. 03–7640. BAILEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–7641. TAPIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 65.

No. 03–7642. THOMAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 365.

No. 03–7643. THOMPSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 335 F. 3d 782.

No. 03–7645. BENNETT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 03–7647. KENNETH A. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 03–7649. LAWRENCE-BEY *v.* WATTS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 472.

No. 03–7650. ABORDO *v.* HAWAII. C. A. 9th Cir. Certiorari denied.

No. 03–7651. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 340 F. 3d 646.

No. 03–7652. TILLIS *v.* UNITED STATES; FLORES-BARRERA *v.* UNITED STATES; and PENA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 400 (first judgment); 72 Fed. Appx. 232 (third judgment) and 965 (second judgment).

No. 03–7653. CARROLL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 03–7654. BURTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 334 F. 3d 514.

No. 03–7656. SIMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 03–7657. MOLINA-JIMENEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 744.

No. 03–7659. BARROCA *v.* BENOV, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–7660. MELTON *v.* FLORIDA DEPARTMENT OF CORRECTIONS ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–7661. MITCHELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 707.

No. 03–7662. HOGAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 03–7663. FOSTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 82 Fed. Appx. 221.

No. 03–7664. HOLLAND *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 76 Fed. Appx. 452.

No. 03–7665. NEVITT *v.* FITCH, JUDGE, DISTRICT COURT OF NEW MEXICO, CATRON COUNTY. C. A. 10th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 180.

No. 03–7666. HUEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 03–7667. NEWBORN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 557.

No. 03–7668. PEREZ *v.* LEBLANC, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 03–7670. PAGE *v.* LEE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 337 F. 3d 411.

No. 03–7674. WILLIAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 74 Fed. Appx. 760.

No. 03–7677. FERES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 139.

No. 03–7678. CAMPBELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 78 Fed. Appx. 891.

No. 03–7680. ESPOSITO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 85 Fed. Appx. 193.

No. 03–7681. CARMICHAEL ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 343 F. 3d 756.

No. 03–7685. MEANS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 509.

No. 03–7687. BARNETT *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 151 Md. App. 724.

No. 03–7689. THOMAS *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 2d Cir. Certiorari denied.

No. 03–7690. WELLS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 03–7691. BLAGAICH *v.* DEPARTMENT OF TRANSPORTATION. C. A. Fed. Cir. Certiorari denied. Reported below: 63 Fed. Appx. 476.

No. 03–7696. MEDINA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 73 Fed. Appx. 464.

No. 03–7697. JIMENEZ-VARGAS, AKA HERNANDEZ, AKA DELGADO *v.* UNITED STATES; DURAN HERNANDEZ *v.* UNITED STATES; ACUNA-CHAVEZ *v.* UNITED STATES; MARTINEZ-RAZO *v.* UNITED STATES; ALVARADO-DELGADO *v.* UNITED STATES; and HERNANDEZ-GAINZAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 74 Fed. Appx. 402 (sixth judgment); 77 Fed. Appx. 262 (third judgment) and 272 (fifth judgment); 78 Fed. Appx. 404 (first judgment) and 926 (second judgment); 79 Fed. Appx. 625 (fourth judgment).

No. 03–7698. TERRY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–7699. SHUMATE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 329 F. 3d 1026 and 341 F. 3d 852.

No. 03–7701. REED *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–7702. RIVAS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 03–7706. JONES *v.* UNITED STATES ET AL. C. A. 7th Cir. Certiorari denied.

No. 03–7711. CEDANO-ARELLANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 332 F. 3d 568.

No. 03–7713. DESALME *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 74 Fed. Appx. 382.

No. 03–7714. DAVIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 336 F. 3d 920.

No. 03–7715. TEAGUE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 522.

No. 03–7723. JOSHUA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 137.

No. 03–7727. ABRAHAM-FLORES, AKA GARCIA-LIMON *v.* UNITED STATES; DUQUE-CONTRERAS, AKA DUGUE-CONTRERAS *v.* UNITED STATES; GALLARDO-AGUIRRE *v.* UNITED STATES; NICOLAS-RODRIGUEZ, AKA MICOLAS-RODRIGUEZ *v.* UNITED STATES; RIVERA-ALVARADO *v.* UNITED STATES; ROSALES-VILLALOBOS, AKA ROSALES, AKA ROSALES-RILLALOBOS *v.* UNITED STATES; ROMERO-LUNA, AKA CARDENAS-GUTIERREZ, AKA HERNANDEZ-ROMERO *v.* UNITED STATES; SALAZAR-HERNANDEZ *v.* UNITED STATES; and TINOCO-GARCIA, AKA WILSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 417 (fifth judgment); 72 Fed. Appx. 193 (first judgment), 212 (third judgment), 224 (ninth judgment), 228 (eighth judgment), 974 (sixth judgment), 985 (seventh judgment), and 993 (fourth judgment); 73 Fed. Appx. 689 (second judgment).

No. 03–7731. SANFORD *v.* PRINCIPI, SECRETARY OF VETERANS AFFAIRS. C. A. 4th Cir. Certiorari denied. Reported below: 60 Fed. Appx. 473.

No. 03–7736. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 78 Fed. Appx. 844.

No. 03–7740. BRYSON *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 79 Fed. Appx. 607.

No. 03–7743. STRINGER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–7744. STEELE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 478.

No. 03–7745. ROBERTS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–7746. SIMS *v.* SLADE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–7747. BONDURANT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–7750. BAILEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–7755. DAVIS *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 71 Fed. Appx. 57.

No. 03–7761. COBB *v.* MORRISON, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 402.

No. 03–7763. COLLINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–7765. JEAN-JACQUES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 387.

No. 03–7766. ASENSIO-BOYADZHYAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 580.

No. 03–7771. VALENZUELA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 75 Fed. Appx. 70.

No. 03–7772. TABOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 74 Fed. Appx. 262.

No. 03–7777. WASHINGTON *v.* UNITED STATES NAVAL TRAINING CENTER ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 922.

No. 03–7779. PATTERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 727.

No. 03–7783. KEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 485.

No. 03–7784. ABORNO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 03–7785. RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 307.

No. 03–7789. ESQUIVEL-GUTIERREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 990.

No. 03–7791. DE LA TORRE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 923.

No. 03–7795. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 03–7799. MCGHGHY *v.* COMPTON, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 03–7801. ROBINSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 662.

No. 03–7804. SAMUELS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 74 Fed. Appx. 262.

No. 03–7805. RAYNER *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 739.

No. 03–7811. STOTTS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 03–7812. FERRARA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 334 F. 3d 774.

No. 03–7813. HERRERA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 82 Fed. Appx. 218.

No. 03–7814. GARY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 341 F. 3d 829.

No. 03–7816. GUTIERREZ-GARRIDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 231.

No. 03–7819. IRIZARRY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 341 F. 3d 273.

No. 03–7820. FLORENCE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 74 Fed. Appx. 404.

No. 03–7823. RIOJAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 657.

No. 03–7827. ARNULFO-SANCHEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 35.

No. 03–7828. GERONIMO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 330 F. 3d 67.

No. 03–7834. GODINES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–7838. CURETON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 74 Fed. Appx. 285.

No. 03–7840. BUITRON *v.* UNITED STATES PAROLE COMMISSION. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 759.

No. 03–7874. MEDINA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 343 F. 3d 23.

No. 03–7886. CASTANEDA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 252.

No. 03–7889. AGUILAR PAULINO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 35.

No. 03–7898. SLATER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 919.

No. 02–1267. CHARTER COMMUNICATIONS, INC., ET AL. *v.* SANTA CRUZ COUNTY, CALIFORNIA. C. A. 9th Cir. Motion of National Cable & Telecommunications Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 304 F. 3d 927.

No. 02–1649. MARYLAND *v.* WALLACE. Ct. App. Md. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 372 Md. 137, 812 A. 2d 291.

No. 03–147. PRODUCER COALITION *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL.; and

No. 03–431. SHELL OFFSHORE INC. ET AL. *v.* FEDERAL ENERGY REGULATORY COMMISSION. C. A. D. C. Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of these petitions. Reported below: 331 F. 3d 1011.

No. 03–274. LYNN *v.* REINSTEIN, JUDGE, SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY, ET AL. Sup. Ct. Ariz. Motion of Washington Legal Foundation et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 205 Ariz. 186, 68 P. 3d 412.

No. 03–366. NEW ORLEANS STEVEDORES & SIGNAL MUTUAL ADMINISTRATION, LTD. *v.* IBOS, SURVIVING SPOUSE OF IBOS, ET AL. C. A. 5th Cir. Motions of Longshore Claims Association and National Association of Waterfront Employers for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 317 F. 3d 480.

No. 03–419. J. P. MORGAN CHASE & CO. ET AL. *v.* RETIREMENT SYSTEMS OF ALABAMA ET AL. C. A. 11th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 03–464. CARSON CITY, NEVADA *v.* WEBB. C. A. 9th Cir. Motion of Cooke & Story Ltd. for leave to intervene denied. Motion of Nevada Public Agency Insurance Pool for leave to file a brief as *amicus curiae* granted. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 330 F. 3d 1158.

No. 03–515. ARIZONA *v.* JONES. Sup. Ct. Ariz. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 205 Ariz. 445, 72 P. 3d 1264.

No. 03–518. ARIZONA *v.* CANEZ. Sup. Ct. Ariz. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 205 Ariz. 620, 74 P. 3d 932.

No. 03–531. YARDARM RESTAURANT, INC. *v.* CITY OF POMPANO BEACH, FLORIDA. Dist. Ct. App. Fla., 4th Dist. Motions of National Association of Home Builders, Pacific Legal Foundation, Sugar Cane Growers Cooperative of Florida, Broward County

League of Cities, Inc., and Dale Ledbetter for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 834 So. 2d 861.

No. 03–603. WORLDCOM, INC. *v.* WISCONSIN BELL, INC., DBA AMERITECH WISCONSIN; and

No. 03–656. BIE, COMMISSIONER, PUBLIC SERVICE COMMISSION OF WISCONSIN, ET AL. *v.* WISCONSIN BELL, INC., DBA AMERITECH WISCONSIN, ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of these petitions. Reported below: 340 F. 3d 441.

No. 03–638. LIBERTY MUTUAL INSURANCE CO. *v.* CALDWELL TRUCKING PRP GROUP. Sup. Ct. N. J. Motion of Complex Insurance Claims Litigation Association et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 176 N. J. 25, 819 A. 2d 410.

No. 03–667. BRICKLAYERS AND ALLIED CRAFTWORKERS LOCAL 1 ET AL. *v.* J & J CONSTRUCTION CO. Sup. Ct. Mich. Motion of Public Citizen et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 468 Mich. 722, 664 N. W. 2d 728.

No. 03–669. O'HARA *v.* NEW YORK. C. A. 2d Cir. Motion of Justice Card Alliance, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied.

No. 03–6930. EL *v.* LUCENT TECHNOLOGIES. C. A. 4th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 67 Fed. Appx. 228.

No. 03–7032. OPONG-MENSAH *v.* JACKSON ET AL. Ct. App. Cal., 3d App. Dist. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied.

No. 03–7796. 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: 78 Fed. Appx. 618.

Rehearing Denied

No. 02–1369. MITCHELL, WARDEN *v.* ESPARZA, *ante*, p. 12;

No. 02–10556. NEESE *v.* JUVENILE DEPARTMENT OF MARION COUNTY, OREGON, *ante,* p. 831;

No. 02–10694. PHILLIPS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, *ante,* p. 834;

No. 02–10829. GAINES *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *ante,* p. 839;

No. 02–11000. TAYLOR *v.* WILLIAMS ET AL., *ante,* p. 848;

No. 02–11013. PETERSON *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante,* p. 849;

No. 02–11068. AYALA *v.* UNITED STATES, *ante,* p. 852;

No. 02–11116. HARRISON *v.* DALLAS AREA RAPID TRANSIT ET AL., *ante,* p. 855;

No. 02–11159. IN RE FERENC, *ante,* p. 809;

No. 02–11174. BENNETT *v.* OREGON, *ante,* p. 859;

No. 02–11282. JONES *v.* BOEING CO., *ante,* p. 865;

No. 02–11338. BANKS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante,* p. 869;

No. 03–190. PATEL ET UX. *v.* UNITED STATES, *ante,* p. 881;

No. 03–316. RANEY *v.* UNITED STATES ET AL., *ante,* p. 949;

No. 03–363. MCGEE *v.* TEXAS, *ante,* p. 1004;

No. 03–384. HELLER *v.* RAILROAD RETIREMENT BOARD, *ante,* p. 968;

No. 03–5135. RESPER *v.* UNITED STATES, *ante,* p. 890;

No. 03–5212. PEGG *v.* HAVILAND, WARDEN, *ante,* p. 895;

No. 03–5277. THORNTON *v.* HOLDEN, GOVERNOR OF MISSOURI, *ante,* p. 899;

No. 03–5306. ROBINSON *v.* HOOKS ET AL., *ante,* p. 900;

No. 03–5310. SILVA *v.* UNITED STATES, *ante,* p. 901;

No. 03–5375. SPINDLE *v.* BROWNLEE, ACTING SECRETARY OF THE ARMY, ET AL., *ante,* p. 905;

No. 03–5455. SUVANNUNT *v.* THOMPSON, SECRETARY OF HEALTH AND HUMAN SERVICES, *ante,* p. 910;

No. 03–5481. SWAINSON *v.* LAVAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, *ante,* p. 911;

No. 03–5489. CARDWELL *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY, *ante,* p. 912;

No. 03–5496. OMUNA *v.* ASHCROFT, ATTORNEY GENERAL, ET AL., *ante,* p. 912;

No. 03–5500. BAKER *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 912;

No. 03–5507. WARREN *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 913;

No. 03–5625. SALLIE *v.* THIEL, *ante*, p. 920;

No. 03–5713. WEBB *v.* HARRIS, SHERIFF, PAULDING COUNTY, GEORGIA, *ante*, p. 952;

No. 03–5717. TAYLOR *v.* BOOT ET AL., *ante*, p. 953;

No. 03–5728. WHITEHEAD *v.* BUSH, GOVERNOR OF FLORIDA, ET AL., *ante*, p. 953;

No. 03–5734. GREEN *v.* BROWNWOOD REGIONAL MEDICAL CENTER, *ante*, p. 953;

No. 03–5773. CHINN *v.* POTTER, POSTMASTER GENERAL, ET AL., *ante*, p. 926;

No. 03–5777. COCHELL *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 954;

No. 03–5789. RAWLS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 954;

No. 03–5798. BEAHRINGER *v.* BRILEY, WARDEN, ET AL., *ante*, p. 926;

No. 03–5843. HELMS *v.* CONROY, WARDEN, ET AL., *ante*, p. 956;

No. 03–5868. GIRARD *v.* HENDRICKSON, WARDEN, ET AL., *ante*, p. 929;

No. 03–5877. EYRICH *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 957;

No. 03–5929. JACKSON *v.* UNITED STATES, *ante*, p. 1019;

No. 03–5945. WOLFE *v.* VIRGINIA, *ante*, p. 1019;

No. 03–5985. WATSON *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, *ante*, p. 970;

No. 03–5997. HOWZE *v.* BUTLER, WARDEN, *ante*, p. 970;

No. 03–6008. BANUELOS *v.* HALL, WARDEN, ET AL., *ante*, p. 970;

No. 03–6039. WILSON *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 986;

No. 03–6118. LURIA *v.* LURIA ET AL., *ante*, p. 988;

No. 03–6173. PORTER *v.* KEARNEY HOUSE ET AL., *ante*, p. 989;

No. 03–6186. AMRHEIN-MACON *v.* MACON, ADMINISTRATOR OF THE ESTATE OF MACON, DECEASED, *ante*, p. 989;

No. 03–6188. THOMAS *v.* CITY OF CLEVELAND, OHIO, ET AL., *ante*, p. 989;

No. 03–6206. GRIFFIN *v.* RUBY TUESDAY, INC., *ante*, p. 990;

No. 03–6264. KNECHT *v.* WEBER, WARDEN, ET AL., *ante*, p. 1007;

No. 03–6328. BROMWELL *v.* DORMIRE, SUPERINTENDENT, MISSOURI STATE PENITENTIARY, *ante*, p. 1020;

No. 03–6331. WINSETT *v.* PRINCIPI, SECRETARY OF VETERANS AFFAIRS, *ante*, p. 991;

No. 03–6340. WALTERS *v.* TUGLE ET AL., *ante*, p. 1020;

No. 03–6377. SURVILLA *v.* HOLIDAY INN ET AL., *ante*, p. 1021;

No. 03–6385. TRAN *v.* ZONING BOARD OF APPEALS OF PROVINCETOWN ET AL., *ante*, p. 1008;

No. 03–6388. PEARLMAN *v.* VIGIL-GIRON, SECRETARY OF STATE OF NEW MEXICO, *ante*, p. 1021;

No. 03–6408. JACKSON *v.* UNITED STATES, *ante*, p. 976;

No. 03–6436. PINEYRO *v.* CAIN, WARDEN, *ante*, p. 1008;

No. 03–6448. IN RE CULLUM, *ante*, p. 944;

No. 03–6519. WILLIAMS *v.* OHIO, *ante*, p. 1053;

No. 03–6526. WILLIAMS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, *ante*, p. 1009;

No. 03–6563. IN RE TAYLOR, *ante*, p. 965;

No. 03–6606. GARCIA *v.* SCIBANA, WARDEN, *ante*, p. 997;

No. 03–6713. COINER *v.* UNITED STATES ET AL., *ante*, p. 1010;

No. 03–6835. ZAKARIA *v.* UNITED STATES, *ante*, p. 1024;

No. 03–6851. IN RE BEACHUM, *ante*, p. 980;

No. 03–6927. REID *v.* UNITED STATES, *ante*, p. 1026; and

No. 03–7155. IN RE BRUNO, *ante*, p. 1045. Petitions for rehearing denied.

No. 02–11272. FLORES *v.* GRAYSON, WARDEN, *ante*, p. 865;

No. 02–11358. O'NEIL *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 870;

No. 02–11377. PARADISE *v.* MARTIN, WARDEN, *ante*, p. 871; and

No. 03–5760. WINN *v.* LANDMARK COMMUNICATIONS, INC., *ante*, p. 954. Motions for leave to file petitions for rehearing denied.

JANUARY 13, 2004

Miscellaneous Orders

No. 03A584. WARD, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS, ET AL. *v.* DARKS. Application to vacate stay of execution of sentence of death entered by the United States Court of Appeals for the Tenth Circuit on January 9, 2004, presented to JUSTICE BREYER, and by him referred to the Court, granted. JUSTICE STEVENS, JUSTICE SOUTER, JUSTICE GINSBURG, and JUSTICE BREYER would deny the application to vacate the stay of execution.

No. 03A590. WILLIAMS ET AL. *v.* TAFT ET AL. Application for stay of execution of sentence of death, presented to JUSTICE STEVENS, and by him referred to the Court, denied. JUSTICE STEVENS, JUSTICE SOUTER, JUSTICE GINSBURG, and JUSTICE BREYER would grant the application for stay of execution.

No. 03–8260 (03A582). IN RE DARKS. Application for stay of execution of sentence of death, presented to JUSTICE BREYER, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

JANUARY 14, 2004

Miscellaneous Orders

No. 03A594 (03–8378). BRUCE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. JUSTICE STEVENS, JUSTICE SOUTER, JUSTICE GINSBURG, and JUSTICE BREYER would grant the application for stay of execution.

No. 03–8387 (03A598). IN RE BRUCE. 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. 03–7356 (03A554). BRUCE *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. Application for stay of execution of sentence of

death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 74 Fed. Appx. 326.

JANUARY 16, 2004

Miscellaneous Order

No. 03A581. JACKSON ET AL. *v.* PERRY ET AL. Application for stay or injunction pending appeal, presented to JUSTICE SCALIA, and by him referred to the Court, denied.

Certiorari Granted

No. 03–7434. BENITEZ *v.* MATA, INTERIM FIELD OFFICE DIRECTOR, MIAMI, IMMIGRATION AND CUSTOMS ENFORCEMENT. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, February 25, 2004. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 26, 2004. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, April 19, 2004. This Court's Rule 29.2 does not apply. Reported below: 337 F. 3d 1289.

JANUARY 20, 2004

Certiorari Granted—Vacated and Remanded

No. 02–1423. BELLSOUTH CORP. ET AL. *v.* COVAD COMMUNICATIONS CO. ET AL. C. A. 11th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Verizon Communications Inc.* v. *Law Offices of Curtis V. Trinko, LLP*, *ante*, p. 398. Reported below: 299 F. 3d 1272.

No. 03–241. QWEST CORP. *v.* METRONET SERVICES CORP. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Verizon Communications Inc.* v. *Law Offices of Curtis V. Trinko, LLP*, *ante*, p. 398. Reported below: 329 F. 3d 986.

Certiorari Dismissed

No. 03–7483. GOLDWATER *v.* BALLINGER, JUDGE, SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY. 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. 03–7564. WHITE *v.* MACK ET AL. Ct. App. Ohio, Allen County. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. D–2356. IN RE DISBARMENT OF FREIHOFER. Disbarment entered. [For earlier order herein, see *ante*, p. 979.]

No. 03M37. VILLARREAL *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION;

No. 03M39. PINTO *v.* COMMISSIONER OF INTERNAL REVENUE;

No. 03M40. PERRY *v.* FLORIDA; and

No. 03M41. JOHNSON *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 03–7484. IN RE GEFFKEN. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 03–407. KOWALSKI, JUDGE, 26TH JUDICIAL CIRCUIT COURT OF MICHIGAN, ET AL. *v.* TESMER ET AL. C. A. 6th Cir. Certiorari granted. Reported below: 333 F. 3d 683.

No. 03–377. KOONS BUICK PONTIAC GMC, INC. *v.* NIGH. C. A. 4th Cir. Motions of American Bankers Association et al. and Virginia Automobile Dealers Association et al. for leave to file briefs as *amici curiae* granted. Certiorari granted. Reported below: 319 F. 3d 119.

Certiorari Denied

No. 03–271. CAVALIER TELEPHONE, LLC *v.* VERIZON VIRGINIA, INC. C. A. 4th Cir. Certiorari denied. Reported below: 330 F. 3d 176.

No. 03–412. POLLUX HOLDING, LTD. *v.* CHASE MANHATTAN BANK. C. A. 2d Cir. Certiorari denied. Reported below: 329 F. 3d 64.

No. 03–552. APPLEGATE ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 70 Fed. Appx. 582.

No. 03–562. MACHARIA ET AL. *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 334 F. 3d 61.

No. 03–575. PATTI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 337 F. 3d 1317.

No. 03–659. YAMAMOTO ET AL. *v.* BANK OF NEW YORK ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 329 F. 3d 1167.

No. 03–677. HAWKINS ET AL. *v.* AID ASSOCIATION FOR LUTHERANS. C. A. 7th Cir. Certiorari denied. Reported below: 338 F. 3d 801.

No. 03–693. SCOTTSDALE UNIFIED SCHOOL DISTRICT, NO. 48, ET AL. *v.* HILLS. C. A. 9th Cir. Certiorari denied. Reported below: 329 F. 3d 1044.

No. 03–695. GOODYEAR TIRE & RUBBER CO. *v.* MALEK. C. A. 4th Cir. Certiorari denied.

No. 03–704. KAWASAKI MOTORS CORP., U. S. A. *v.* BOB SCHULTZ MOTORS, INC. C. A. 8th Cir. Certiorari denied. Reported below: 334 F. 3d 721.

No. 03–712. LLOYD ET UX. *v.* CONNOR, TEXAS SECRETARY OF STATE, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 441.

No. 03–715. GAIN ET AL. *v.* WASHINGTON ET AL. (two judgments). Sup. Ct. Wash. Certiorari denied. Reported below: 146 Wash. 2d 370, 46 P. 3d 789 (first judgment).

No. 03–716. WHITSON *v.* CITY OF GULF SHORES, ALABAMA. C. A. 11th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 823.

No. 03–718. TUCKER *v.* FEARN ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 333 F. 3d 1216.

No. 03–735. ENGLISH *v.* VAZQUEZ, JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO. C. A. 10th Cir. Certiorari denied. Reported below: 344 F. 3d 1036.

No. 03–747. FINDLAY *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 82 Fed. Appx. 214.

No. 03–753. SKYWALKER COMMUNICATIONS OF INDIANA, INC. *v.* SKYWALKER COMMUNICATIONS, INC. C. A. 7th Cir. Certiorari denied. Reported below: 333 F. 3d 829.

No. 03–791. KLEIN *v.* POTTER, POSTMASTER GENERAL. C. A. 7th Cir. Certiorari denied. Reported below: 43 Fed. Appx. 960.

No. 03–815. SPRINGWELL NAVIGATION CORP. *v.* CHASE MANHATTAN BANK. C. A. 2d Cir. Certiorari denied. Reported below: 329 F. 3d 64.

No. 03–822. PAQUETTE *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 440 Mass. 121, 795 N. E. 2d 521.

No. 03–823. PREOBRAZHENSKAYA *v.* MERCY HALL INFIRMARY. C. A. 3d Cir. Certiorari denied. Reported below: 71 Fed. Appx. 936.

No. 03–830. BUSH *v.* ZEELAND BOARD OF EDUCATION ET AL. C. A. 6th Cir. Certiorari denied.

No. 03–5383. FORD *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 570 Pa. 378, 809 A. 2d 325.

No. 03–6179. DIEMER *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 57 Mass. App. 677, 785 N. E. 2d 1237.

No. 03–6357. PRICE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 459.

No. 03–6784. JONES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 332 F. 3d 688.

No. 03–6876. OVERSTREET *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 783 N. E. 2d 1140.

No. 03–7370. OATNEY *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 335 Ore. 276, 66 P. 3d 475.

No. 03–7371. OBERSON *v.* BUREAU OF FERRY AVIATION AND TRANSPORTATION ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 303 App. Div. 2d 795, 756 N. Y. S. 2d 333.

No. 03–7373. BAUGHN *v.* FLORIDA DEPARTMENT OF CORRECTIONS ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–7374. MARTEL *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 489.

No. 03–7375. ARDOIN *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–7376. NAVARETTE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 30 Cal. 4th 458, 66 P. 3d 1182.

No. 03–7388. MONTELONGO SOLIS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 342 F. 3d 392.

No. 03–7391. ROBINSON *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 03–7401. WALLS *v.* PIERSON, WARDEN. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 331 Ill. App. 3d 1143, —— N. E. 2d ——.

No. 03–7404. A. L. *v.* E. H. Super. Ct. N. J., App. Div. Certiorari denied.

No. 03–7407. PARKER *v.* MICHIGAN DEPARTMENT OF CORRECTIONS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 922.

No. 03–7409. ROBERTS *v.* CARTER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 337 F. 3d 609.

No. 03–7411. ADUSUMILLI *v.* DISCOVER FINANCIAL SERVICES INC. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 721.

No. 03–7416. PITTMAN *v.* JONES, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–7418. SIMMONS *v.* BRAXTON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 239.

No. 03–7422. WOJNICZ *v.* DAVIS, CLERK, SUPREME COURT OF MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 80 Fed. Appx. 382.

No. 03–7423. WILLIAMS *v.* GEORGIA ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–7424. SANDERS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 03–7426. HENDROCK *v.* GILBERT. C. A. 6th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 573.

No. 03–7428. PHILLIPS *v.* MITCHEM, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–7439. SUTTLE *v.* BERTRAND, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 03–7440. SCHMIDT *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–7445. FORTENBERRY *v.* TEXAS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 924.

No. 03–7449. HALL *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 03–7450. HENRY *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 03–7460. JOHNSON *v.* CALDERON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–7461. WILCOX *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 03–7465. HUNTER *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 72.

No. 03–7466. HERRERA *v.* SUBLETT ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–7468. HAWKINS *v.* CORNELL, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 53 Fed. Appx. 679.

No. 03–7470. GAINES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 03–7474. GRAY *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–7478. FENLON *v.* MOSKOWITZ ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 242.

No. 03–7480. HOAGLIN *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 03–7481. FALONI *v.* BLUM, YUMKAS, MAILMAN, GUTMAN & DENICK, P. A., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 501.

No. 03–7482. CRUZ HINOJOSA *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–7488. THOMPSON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 03–7489. VILLAMAR *v.* HICKMAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–7497. PACE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 854 So. 2d 167.

No. 03–7501. BELL *v.* OZMINT, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 332 F. 3d 229.

No. 03–7505. BROWN *v.* BURT, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 939.

No. 03–7508. SULLIVAN *v.* SOUTH CAROLINA DEPARTMENT OF CORRECTIONS. Sup. Ct. S. C. Certiorari denied. Reported below: 355 S. C. 437, 586 S. E. 2d 124.

No. 03–7511. SCHAETZLE *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 343 F. 3d 440.

No. 03–7512. AHMED *v.* SARGUS, JUDGE, COURT OF COMMON PLEAS OF OHIO, BELMONT COUNTY, ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 99 Ohio St. 3d 1431, 789 N. E. 2d 1114.

No. 03–7513. MISKIN *v.* WAGNER. Sup. Ct. N. D. Certiorari denied. Reported below: 660 N. W. 2d 593.

No. 03–7524. BLACKBURN *v.* LAMARQUE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–7525. NEAL *v.* CASTRO, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–7526. MORELAND *v.* LAZAROFF, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–7533. LUCZAK *v.* MOTE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 03–7537. ARANDA *v.* PRASIFKA, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 357.

No. 03–7538. BONHAM *v.* PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–7559. ABUEL *v.* LOCAL 921, UNEMPLOYMENT OFFICE, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 80 Fed. Appx. 284.

No. 03–7568. PARKER *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Sampson County, N. C. Certiorari denied.

No. 03–7574. REED *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 266 Neb. 641, 668 N. W. 2d 245.

No. 03–7619. ALLEN *v.* ST. CABRINI NURSING HOME INC. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 64 Fed. Appx. 836.

No. 03–7637. ROGERS *v.* BOWERSOX, SUPERINTENDENT, SOUTH CENTRAL CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 03–7658. BROOKS *v.* HOLLAND, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–7712. COLLINS *v.* MEYERS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW. C. A. 3d Cir. Certiorari denied. Reported below: 77 Fed. Appx. 563.

No. 03–7759. DIXON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 03–7800. PAJOOH *v.* BOBCOCK ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 297.

No. 03–7841. PEREZ-LOPEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 85 Fed. Appx. 192.

No. 03–7844. CLARK *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 335 F. 3d 1303.

No. 03–7845. WINTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 82 Fed. Appx. 218.

No. 03–7851. VILLANUEVA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 79 Fed. Appx. 590.

No. 03–7852. EVANS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 03–7857. GILLIAM *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 315 F. 3d 614.

No. 03–7861. FIELDS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 825 A. 2d 335.

No. 03–7864. HENSON *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 4th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 408.

No. 03–7872. HOFF *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–7876. NASIRUDDIN, AKA CROOKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 822.

No. 03–7877. JACKSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 121.

No. 03–7885. WALSH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 03–7887. MORENO-MORILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 334 F. 3d 819.

No. 03–7888. MENDOZA-MEDINA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 346 F. 3d 121.

No. 03–7896. SEMSAK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 336 F. 3d 1123.

No. 03–7904. GOODSON *v.* SMITH, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 730.

No. 03–7905. HATHEWAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–7910. HUNT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 257.

No. 03–7915. HERNANDEZ-ARRENDONDO, AKA ARREDONDO-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 765.

No. 03–7916. GIBSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 717.

No. 03–7921. HENRY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–7922. HARRIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–7923. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 264.

No. 03–7924. FENNELL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 911.

No. 03–7928. PEALOCK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 82 Fed. Appx. 217.

No. 03–7929. MULLIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 82 Fed. Appx. 218.

No. 03–7933. MAZYCK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 345 F. 3d 59.

No. 03–7934. JESSEN *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 71 Fed. Appx. 52.

No. 03–7939. OGUAJU *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 03–7942. CRAWFORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 116.

No. 03–7943. CURTIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 344 F. 3d 1057.

No. 03–7944. DIAZ-BURGOS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 75 Fed. Appx. 34.

No. 03–7948. HENDERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 311.

No. 03–7953. GUERRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 394.

No. 03–7955. HALL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 88 Fed. Appx. 386.

No. 03–7956. HATCHES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 188.

No. 03–7962. WILLIAMS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 81 Fed. Appx. 749.

No. 03–7963. TENNILLE *v.* DAVIS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 136.

No. 03–7967. BROWN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 03–7970. MASKO *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF WEST VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 259.

No. 03–7977. GONZALEZ-VALENTIN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 03–7980. KING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 222.

No. 03–7983. SEMPRIT-NATER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 03–447. SMITH, WARDEN *v.* MCKENZIE. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 326 F. 3d 721.

No. 03–771. CAGNA, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF CAGNA *v.* WEIRTON STEEL CORPORATION RETIREMENT PLAN-PLAN 001 ET AL. C. A. 3d Cir. Motion of Women's Institute for a Secure Retirement for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 68 Fed. Appx. 344.

No. 03–7556. ESPARZA *v.* LOCKYER, ATTORNEY GENERAL OF CALIFORNIA. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

Rehearing Denied

No. 03–572. KOZIS *v.* VIRGINIA, *ante,* p. 1018;

No. 03–5759. THOMPSON *v.* BELL, WARDEN, *ante,* p. 1051;

No. 03–6359. NARY *v.* LEWIS, WARDEN, *ante,* p. 991; and

No. 03–6616. IN RE HAYES, *ante,* p. 965. Petitions for rehearing denied.

No. 03–285. RANEY *v.* GATEWAY COMPUTER CO., *ante,* p. 983. Motion of petitioner for leave to proceed further herein *in forma pauperis* granted. Petition for rehearing denied.

JANUARY 21, 2004

Dismissal Under Rule 46

No. 03–623. MCCLURE, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS CHAIRMAN OF THE ATLANTA-FULTON COUNTY PUBLIC LIBRARY BOARD OF TRUSTEES, ET AL. *v.* BOGLE ET AL. Certiorari dismissed under this Court's Rule 46. Reported below: 332 F. 3d 1347.

Miscellaneous Order

No. 03A606 (03–8453). ZIMMERMAN *v.* JOHNSON, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. JUSTICE STEVENS, JUSTICE SOUTER, JUSTICE GINSBURG, and JUSTICE BREYER would grant the application for stay of execution.

JANUARY 23, 2004

Miscellaneous Order

No. 03–1027. RUMSFELD *v.* PADILLA ET AL. C. A. 2d Cir. Motion of the Solicitor General to expedite consideration of petition for writ of certiorari granted. A response to petition for writ of certiorari is to be filed with the Clerk and served upon the Solicitor General on or before 3 p.m., Wednesday, February 4, 2004.

JANUARY 26, 2004

Miscellaneous Orders

No. 03M42. MCCORD *v.* UNITED STATES;

No. 03M43. PRINCE *v.* HICKMAN, WARDEN; and

No. 03M44. FORNEY *v.* FORNEY ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. D–2355. IN RE DISBARMENT OF PIRRO. Disbarment entered. [For earlier order herein, see *ante*, p. 979.]

No. 02–1603. BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. *v.* BANKS. C. A. 3d Cir. [Certiorari granted, 539 U. S. 987.] Motion of petitioners for divided argument denied.

No. 02–1624. ELK GROVE UNIFIED SCHOOL DISTRICT ET AL. *v.* NEWDOW ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 945.] Motion of respondent Michael A. Newdow to add parties denied. JUSTICE SCALIA took no part in the consideration or decision of this motion.

No. 02–1684. YARBOROUGH, WARDEN *v.* ALVARADO. C. A. 9th Cir. [Certiorari granted, 539 U. S. 986.] Motion of the Solicitor

General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 03–107. UNITED STATES *v.* LARA. C. A. 8th Cir. [Certiorari granted, 539 U. S. 987.] Motion of respondent to strike portions of the *amici curiae* brief on behalf of Eighteen American Indian Tribes, Lac Courte Oreilles Tribe, et al. denied.

No. 03–339. SOSA *v.* ALVAREZ-MACHAIN ET AL.; and

No. 03–485. UNITED STATES *v.* ALVAREZ-MACHAIN ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1045.] Motion of petitioners to dispense with printing the joint appendix granted.

No. 03–779. ANDRX PHARMACEUTICALS, INC. *v.* KROGER CO. ET AL. C. A. 6th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 03–8158. IN RE BERRIAN. Petition for writ of habeas corpus denied.

No. 03–7655. IN RE SALTMAN. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 03–633. ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER *v.* SIMMONS. Sup. Ct. Mo. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 112 S. W. 3d 397.

Certiorari Denied

No. 03–585. CROWN EQUIPMENT CORP., FKA CROWN CONTROLS CORP. *v.* MCEUIN. C. A. 9th Cir. Certiorari denied. Reported below: 328 F. 3d 1028.

No. 03–598. NEW JERSEY *v.* GARRON. Sup. Ct. N. J. Certiorari denied. Reported below: 177 N. J. 147, 827 A. 2d 243.

No. 03–604. CIRCUIT CITY STORES, INC. *v.* INGLE. C. A. 9th Cir. Certiorari denied. Reported below: 328 F. 3d 1165.

No. 03–605. CIRCUIT CITY STORES, INC. *v.* MANTOR. C. A. 9th Cir. Certiorari denied. Reported below: 335 F. 3d 1101.

No. 03–632. DUBOIS ET UX. *v.* WEST GATE VILLAGE ASSN. Super. Ct. N. H., Hillsborough County, Southern Dist. Certiorari denied.

No. 03–651. GRAVANO *v.* ARIZONA. Ct. App. Ariz. Certiorari denied. Reported below: 204 Ariz. 106, 60 P. 3d 246.

No. 03–687. R. J. REYNOLDS TOBACCO CO. *v.* KENYON, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF KENYON. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 856 So. 2d 998.

No. 03–730. SHARPE *v.* ROMAN CATHOLIC DIOCESE OF DALLAS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 380.

No. 03–736. GOVERNMENT OF THE VIRGIN ISLANDS *v.* RIVERA. C. A. 3d Cir. Certiorari denied. Reported below: 333 F. 3d 143.

No. 03–742. FRUGE ET AL., INDIVIDUALLY AND ON BEHALF OF FRUGE ET AL. *v.* ANADARKO PETROLEUM CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 337 F. 3d 558.

No. 03–743. FINKELSTEIN *v.* CITY OF TUCSON, ARIZONA, ET AL. Ct. App. Ariz. Certiorari denied.

No. 03–745. HOLCOMB, FKA FORD *v.* FORD. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 856 So. 2d 992.

No. 03–749. SIEMON-NETTO ET AL. *v.* ROSE ET AL. C. A. 2d Cir. Certiorari denied.

No. 03–754. MAJORS *v.* HARDWICK ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 388.

No. 03–757. MCKEEL ET AL. *v.* COLORADO. C. A. 10th Cir. Certiorari denied. Reported below: 74 Fed. Appx. 11.

No. 03–760. JOHNSON *v.* COURT OF APPEAL OF CALIFORNIA, SIXTH APPELLATE DISTRICT, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 377.

No. 03–780. JONES ET AL. *v.* ALCOA INC. C. A. 5th Cir. Certiorari denied. Reported below: 339 F. 3d 359.

No. 03–789. PEPPERS *v.* DEPARTMENT OF THE ARMY ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 571.

No. 03–793. CARR *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 24 Fed. Appx. 99.

No. 03–794. MITCHELL *v.* SHAIN. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 03–796. EISEN *v.* BUSH, PRESIDENT OF THE UNITED STATES, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 85 Fed. Appx. 870.

No. 03–798. KAUFMAN *v.* FASS ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 302 App. Div. 2d 497, 756 N. Y. S. 2d 247.

No. 03–809. HECHT, BY HIS CO-GUARDIAN, HECHT *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 2d Cir. Certiorari denied. Reported below: 68 Fed. Appx. 244.

No. 03–825. DELGADO *v.* GARCIA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–833. KAISER *v.* ARIZONA. Ct. App. Ariz. Certiorari denied. Reported below: 204 Ariz. 514, 65 P. 3d 463.

No. 03–854. LUSTER *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 03–864. PROFESSIONAL MANAGEMENT ASSOCIATES, INC. EMPLOYEES' PROFIT SHARING PLAN *v.* KPMG, LLP. C. A. 8th Cir. Certiorari denied. Reported below: 335 F. 3d 800.

No. 03–873. HOSKINS ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 281 F. 3d 1278.

No. 03–884. M. Y. J. P. *v.* NEW JERSEY DIVISION OF YOUTH AND FAMILY SERVICES. Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 360 N. J. Super. 426, 823 A. 2d 817.

No. 03–890. BROWNING *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 535.

No. 03–899. BETHURUM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 343 F. 3d 712.

No. 03–924. HUBBARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 658.

No. 03–6479. KENNEY *v.* MENDEZ, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 80 Fed. Appx. 286.

No. 03–6862. SMITH *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 30 Cal. 4th 581, 68 P. 3d 302.

No. 03–6979. HENDERSON *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 333 F. 3d 592.

No. 03–6982. CLARK *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–7010. HOOD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 342 F. 3d 861.

No. 03–7065. PENNEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 82 Fed. Appx. 214.

No. 03–7134. BROWN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 333 F. 3d 850.

No. 03–7542. LONG *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 74 P. 3d 105.

No. 03–7546. BELTON *v.* MOORE, SUPERINTENDENT, WESTERN MISSOURI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 03–7551. BLANDINO *v.* LONG, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–7557. EARTHMAN *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 03–7566. ROCHESTER *v.* SOUTH CAROLINA DEPARTMENT OF CORRECTIONS ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–7570. JOHNSON *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 855 So. 2d 341.

No. 03–7573. DUGAS *v.* JONES, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 03–7575. SCOTT *v.* PRYOR, ATTORNEY GENERAL OF ALABAMA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–7577. SIMPSON *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 03–7580. THOMAS *v.* HAMLET, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 14.

No. 03–7582. TAYLOR *v.* STICKMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–7584. HENNIS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 03–7590. MCCORMICK *v.* BRAVERMAN. Sup. Ct. Mich. Certiorari denied. Reported below: 468 Mich. 858, 657 N. W. 2d 118.

No. 03–7607. RUSSELL *v.* GARRARD ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 838.

No. 03–7608. WHITESIDE *v.* BEIGHTLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–7609. WILSON *v.* HOWES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–7632. LAWRENCE *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 869 So. 2d 353.

No. 03–7633. SANFORD *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–7638. LOERA *v.* ROCHA. C. A. 9th Cir. Certiorari denied.

No. 03–7644. TERRY *v.* PALMATEER, SUPERINTENDENT, COFFEE CREEK CORRECTIONAL FACILITY. C. A. 9th Cir. Certiorari denied. Reported below: 74 Fed. Appx. 753.

No. 03–7646. BARNES *v.* ELO, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 339 F. 3d 496.

No. 03–7648. BENIGNO *v.* SMS FINANCIAL IV, L. L. C. Sup. Ct. Cal. Certiorari denied.

No. 03–7704. BELDEN *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 73 P. 3d 1041.

No. 03–7753. ZIMMER *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 729.

No. 03–7768. YOUNG *v.* VALLEY HONEY CO., LLC. Sup. Ct. N. D. Certiorari denied. Reported below: 666 N. W. 2d 453.

No. 03–7774. RUIZ *v.* GARCIA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 964.

No. 03–7794. SMITH *v.* LUCERO, WARDEN. Dist. Ct. N. M., Bernalillo County. Certiorari denied.

No. 03–7808. JOSHUA *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 500.

No. 03–7809. SANCHEZ *v.* GARCIA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–7810. HALE *v.* BURNS INTERNATIONAL SECURITY SERVICES CORP. C. A. 5th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 100.

No. 03–7821. SETZLER *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–7831. FLEMING *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 331 Ill. App. 3d 1128, —— N. E. 2d ——.

No. 03–7842. LAZOR *v.* YARBOROUGH, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 430.

No. 03–7847. WATSON *v.* OHIO. Ct. App. Ohio, Summit County. Certiorari denied.

No. 03–7853. DUBOSE *v.* MYERS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–7866. FREEMAN *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 296 App. Div. 2d 466, 744 N. Y. S. 2d 719.

No. 03–7868. GREEN *v.* GIRDICH, SUPERINTENDENT, UPSTATE CORRECTIONAL FACILITY. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 304 App. Div. 2d 1010, 760 N. Y. S. 2d 238.

No. 03–7880. BECK *v.* HALL ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–7913. GLASS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 808.

No. 03–7941. JONES *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 828 A. 2d 169.

No. 03–7957. BIRCH *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 333 Ill. App. 3d 1221, —— N. E. 2d ——.

No. 03–7958. CHENG KOY SAECHAO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 1000.

No. 03–7959. REAUME *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 338 F. 3d 577.

No. 03–7971. SHEVI *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 345 F. 3d 675.

No. 03–7972. JUAREZ *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 03–7974. DAVIS *v.* MCKUNE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 03–7982. LANGSTON *v.* BRAXTON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 78 Fed. Appx. 258.

No. 03–7984. RUSSELL *v.* BOWLEN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–7987. LEFTENANT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 341 F. 3d 338.

No. 03–7994. BAILEY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 831 A. 2d 973.

No. 03–7996. MUHAMMAD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 45.

No. 03–7998. NICHOLS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 339 F. 3d 660.

No. 03–8000. KING *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 345 F. 3d 149.

No. 03–8002. HARDIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 371.

No. 03–8005. WILLIAMS, AKA RICHARDSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 344 F. 3d 365.

No. 03–8009. CRAWFORD *v.* PEARSON, WARDEN, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 03–8010. ORTIZ-MIRANDA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 03–8012. ABDI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 342 F. 3d 313.

No. 03–8017. VILLA RAMIREZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 342 F. 3d 1210.

No. 03–8020. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 82 Fed. Appx. 824.

No. 03–8021. LOUIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 63 Fed. Appx. 29.

No. 03–8022. PARISE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 311 F. 3d 146.

No. 03–8024. PARRIS *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA. C. A. 10th Cir. Certiorari denied.

No. 03–8025. MINTZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 77 Fed. Appx. 115.

No. 03–8037. MARTINEZ-GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 832.

No. 03–8040. MOLINA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 03–8044. VAZQUEZ-GARCIA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 340 F. 3d 632.

No. 03–8050. MENDEZ-VILLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 346 F. 3d 568.

No. 03–8053. MANN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 207.

No. 03–8057. RODRIGUEZ-VARGAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 248.

No. 03–8058. ROSS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 338 F. 3d 1054.

No. 03–8059. RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 758.

No. 03–8062. JOSEPH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 76 Fed. Appx. 422.

No. 03–8069. CAPOZZI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 347 F. 3d 327.

No. 03–8070. CARDENAS *v.* UNITED STATES (Reported below: 76 Fed. Appx. 562); PALMA-GUILLEN *v.* UNITED STATES (75 Fed. Appx. 940); REYES-JAIMEZ *v.* UNITED STATES (78 Fed. Appx. 397); MONTUFAR-GOICOCHEA *v.* UNITED STATES (78 Fed. Appx. 436); GARCIA-GUZMAN *v.* UNITED STATES (79 Fed. Appx. 627); ESPINAL *v.* UNITED STATES (79 Fed. Appx. 631); FLORES-DAMIAN *v.* UNITED STATES (79 Fed. Appx. 616); DE JESUS PERDOMO-MARTINEZ *v.* UNITED STATES (79 Fed. Appx. 621); DUARTE-MARTINEZ *v.* UNITED STATES (79 Fed. Appx. 622); OYEVIDES-JIMENEZ *v.* UNITED STATES (79 Fed. Appx. 623); and REYES-RODRIGUEZ *v.* UNITED STATES (79 Fed. Appx. 624). C. A. 5th Cir. Certiorari denied.

No. 03–8071. CARTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 294.

No. 03–8072. VEGA *v.* UNITED STATES; and BARGAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 80 Fed. Appx. 912 (second judgment).

No. 03–8073. VALENTINE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 314.

No. 03–8074. THOMAS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 85 Fed. Appx. 282.

No. 03–8083. SCHAFFNER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 03–8088. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 342 F. 3d 350.

No. 03–8089. TIMMONS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 85 Fed. Appx. 193.

No. 03–8099. VEGA-REY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 749.

No. 03–8103. OCEGUERRA-AGUIRRE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 473.

No. 03–8105. PENA-ORDONEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 942.

No. 03–8106. MAIBEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 81 Fed. Appx. 666.

No. 03–8109. MOHAMMAD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 78 Fed. Appx. 42.

No. 03–8110. MERCADO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 349 F. 3d 708.

No. 03–8112. CORTEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 246.

Rehearing Denied

No. 02–11004. BROWN *v.* SEARS AUTOMOTIVE CENTER ET AL., *ante*, p. 848;

No. 03–349. THWEATT *v.* ELECTRONIC DATA SYSTEMS CORP., *ante*, p. 1073;

No. 03–421. SUDARSKY *v.* CITY OF NEW YORK, NEW YORK, ET AL., *ante*, p. 1047;

No. 03–506. SPIERER ET UX. *v.* FEDERATED DEPARTMENT STORES, INC., ET AL., *ante*, p. 1074;

No. 03–570. SANGHVI ET AL. *v.* CITY OF CLAREMONT, CALIFORNIA, *ante,* p. 1075;

No. 03–578. GAINES *v.* WHITE RIVER ENVIRONMENTAL PARTNERSHIP ET AL., *ante,* p. 1050;

No. 03–5619. RICHARDSON *v.* FIRST AMERICAN TITLE INSURANCE CO. ET AL., *ante,* p. 983;

No. 03–6314. HAMBRICK *v.* STATE FARM FIRE AND CASUALTY INSURANCE, *ante,* p. 1020;

No. 03–6356. HADDAD *v.* HIGGINS ET AL., *ante,* p. 1021;

No. 03–6491. THORN *v.* FOYTIK ET AL., *ante,* p. 1053;

No. 03–6557. IN RE DUMONT, *ante,* p. 1045;

No. 03–6568. WANG *v.* HAWAII MEDICAL SERVICE ASSN., *ante,* p. 1055;

No. 03–6611. REED *v.* REID, WARDEN, ET AL., *ante,* p. 1009;

No. 03–6629. WARD *v.* HEAD, WARDEN, *ante,* p. 1056;

No. 03–6684. CARINES *v.* JAMROG, WARDEN, *ante,* p. 1058;

No. 03–6698. PAUL *v.* DEPARTMENT OF THE NAVY, *ante,* p. 1023;

No. 03–6709. ROBLES *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante,* p. 1058;

No. 03–6719. RIGSBY *v.* UNITED STATES, *ante,* p. 999;

No. 03–6726. SHAW *v.* UNITED STATES, *ante,* p. 999;

No. 03–6774. MORRISETTE *v.* VIRGINIA, *ante,* p. 1077;

No. 03–6848. TUPPER *v.* TUPPER, *ante,* p. 1079;

No. 03–6855. WANSING *v.* HINES, WARDEN, *ante,* p. 1091;

No. 03–6873. DAVIS *v.* HOLT, WARDEN, ET AL., *ante,* p. 1060;

No. 03–6903. CHALMERS *v.* UNITED STATES, *ante,* p. 1025;

No. 03–7203. CABE *v.* UNITED STATES, *ante,* p. 1067; and

No. 03–7342. HORNE *v.* UNITED STATES, *ante,* p. 1084. Petitions for rehearing denied.

JANUARY 28, 2004

Miscellaneous Order

No. 03A633 (03–8578). VICKERS *v.* JOHNSON, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. JUSTICE STEVENS, JUSTICE SOUTER, JUSTICE GINSBURG, and JUSTICE BREYER would grant the application for stay of execution.

FEBRUARY 2, 2004

Miscellaneous Orders

No. 03A650 (03–8664). ROE *v.* TAFT, GOVERNOR OF OHIO, ET AL. Application for stay of execution of sentence of death, presented to JUSTICE STEVENS, and by him referred to the Court, denied. JUSTICE STEVENS, JUSTICE SOUTER, JUSTICE GINSBURG, and JUSTICE BREYER would grant the application for stay of execution.

No. 03–8672 (03A652). IN RE ROE. Application for stay of execution of sentence of death, presented to JUSTICE STEVENS, and by him referred to the Court, denied. Petition for writ of mandamus and/or prohibition denied.

FEBRUARY 4, 2004

Miscellaneous Order

No. 03A663 (03–8745). ROBINSON *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. JUSTICE STEVENS, JUSTICE SOUTER, JUSTICE GINSBURG, and JUSTICE BREYER would grant the application for stay of execution.

Certiorari Denied

No. 03–8673 (03A653). ROBINSON *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied. Reported below: 865 So. 2d 1259.

No. 03–8721 (03A666). ROBINSON *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied.

FEBRUARY 5, 2004

Miscellaneous Order

No. 03A637. BUSH, PRESIDENT OF THE UNITED STATES, ET AL. *v.* GHEREBI. Application for stay of proceedings before the United States Court of Appeals for the Ninth Circuit in case No. 03–55785, presented to JUSTICE O'CONNOR, and by her re-

ferred to the Court, granted pending the filing and disposition of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for writ of certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court.

FEBRUARY 9, 2004

Miscellaneous Order

No. 03A687. WOODFORD, WARDEN *v.* COOPER. Application to vacate stay of execution of sentence of death entered by the United States Court of Appeals for the Ninth Circuit on February 9, 2004, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied.

Certiorari Denied

No. 03–8513 (03A630). COOPER *v.* CALIFORNIA. Sup. Ct. Cal. Application for stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution.

No. 03–8773 (03A673). COOPER *v.* CALIFORNIA. Sup. Ct. Cal. Application for stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. Certiorari denied.

FEBRUARY 11, 2004

Certiorari Denied

No. 03–7735 (03A662). LAGRONE *v.* DRETKE, 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 and JUSTICE GINSBURG would grant the application for stay of execution.

FEBRUARY 12, 2004

Miscellaneous Orders

No. 03A698. HOPKINS *v.* TEXAS. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied.

No. 03–8878 (03A699). IN RE HOPKINS. 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. 03–8874 (03A697). HOPKINS *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.

FEBRUARY 13, 2004

Dismissal Under Rule 46

No. 03–812. FUNG WING LEE ET AL. *v.* BMCY, INC., ET AL. C. A. 5th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 73 Fed. Appx. 771.

FEBRUARY 17, 2004

Miscellaneous Orders

No. 03A693. GHEREBI *v.* BUSH, PRESIDENT OF THE UNITED STATES, ET AL. Application for an order that applicant be permitted a visit from counsel and/or be provided information about his case, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied.

No. 03–8910 (03A708). IN RE WILLINGHAM. 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.

FEBRUARY 20, 2004

Certiorari Granted

No. 03–1027. RUMSFELD, SECRETARY OF DEFENSE *v.* PADILLA ET AL. C. A. 2d Cir. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 17, 2004. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, April 12, 2004. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel

on or before 3 p.m., Wednesday, April 21, 2004. Reported below: 352 F. 3d 695.

FEBRUARY 23, 2004

Certiorari Granted—Reversed and Remanded. (See No. 03–374, *ante,* p. 544.)

Certiorari Dismissed

No. 03–7818. GAINES *v.* DISTRICT COURT OF TEXAS, DALLAS COUNTY. Ct. App. Tex., 5th Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 03–8018. SIEGEL *v.* CRESCENT POTOMAC PROPERTIES, LLC, ET AL. Sup. Ct. Va. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 03A463. COLVIN *v.* CURTIS, WARDEN. C. A. 6th Cir. Application for stay, addressed to JUSTICE GINSBURG and referred to the Court, denied.

No. 03A542. WHEELER ET AL. *v.* UNITED STATES. C. A. 5th Cir. Application for stay, addressed to JUSTICE THOMAS and referred to the Court, denied.

No. 03M45. WILLIAMS *v.* CAREY, WARDEN;
No. 03M46. MILSTEIN *v.* COOLEY ET AL.; and
No. 03M47. WORTHY *v.* SCOGGIN. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 02–1624. ELK GROVE UNIFIED SCHOOL DISTRICT ET AL. *v.* NEWDOW ET AL. C. A. 9th Cir. [Certiorari granted, *ante,* p. 945.] Motion of the Solicitor General for divided argument granted. Motions of Pacific Justice Institute and Institute in Basic Life Principles, Faith and Action, et al. for leave to participate in oral argument as *amici curiae* and for divided argument denied. JUSTICE SCALIA took no part in the consideration or decision of these motions.

No. 02–1632. BLAKELY *v.* WASHINGTON. Ct. App. Wash. [Certiorari granted, *ante,* p. 965.] Motion of the Solicitor General

for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 02–1824. DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION *v.* HALEY. C. A. 5th Cir. [Certiorari granted, *ante,* p. 945.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 02–1845. AETNA HEALTH INC., FKA AETNA U. S. HEALTHCARE INC. ET AL. *v.* DAVILA; and

No. 03–83. CIGNA HEALTHCARE OF TEXAS, INC., DBA CIGNA CORP. *v.* CALAD ET AL. C. A. 5th Cir. [Certiorari granted, *ante,* p. 981.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of Texas et al. for leave to participate in oral argument as *amici curiae* and for divided argument granted.

No. 03–5554. HIIBEL *v.* SIXTH JUDICIAL DISTRICT COURT OF NEVADA, HUMBOLDT COUNTY, ET AL. Sup. Ct. Nev. [Certiorari granted, *ante,* p. 965.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 03–167. UNITED STATES *v.* DOMINGUEZ BENITEZ. C. A. 9th Cir. [Certiorari granted, *ante,* p. 1072.] Motion of respondent for appointment of counsel granted. Myra D. Mossman, Esq., of Santa Barbara, Cal., is appointed to serve as counsel for respondent in this case.

No. 03–334. RASUL ET AL. *v.* BUSH, PRESIDENT OF THE UNITED STATES, ET AL.; and

No. 03–343. AL ODAH ET AL. *v.* UNITED STATES ET AL. C. A. D. C. Cir. [Certiorari granted, *ante,* p. 1003.] Motion of Hungarian Jews and Bougainvilleans for leave to file a brief as *amicus curiae* granted.

No. 03–855. CITY OF SHERRILL, NEW YORK *v.* ONEIDA INDIAN NATION OF NEW YORK 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.

No. 03–6909. SWEED *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVI-

SION. C. A. 5th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1100] denied.

No. 03–7402. WOODFIN *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. 1100] denied.

No. 03–7694. PACHECO-MEDINA *v.* OREGON. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until March 15, 2004, 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. 03–8263. IN RE DECKER;
No. 03–8281. IN RE COOPER;
No. 03–8347. IN RE WILLIAMS;
No. 03–8392. IN RE WILLIE;
No. 03–8403. IN RE QUEEN;
No. 03–8411. IN RE MONTOYA;
No. 03–8495. IN RE PARKER;
No. 03–8497. IN RE MOFFETT; and
No. 03–8710. IN RE WASKO. Petitions for writs of habeas corpus denied.

No. 03–839. IN RE GENTILUOMO;
No. 03–842. IN RE LEAL;
No. 03–7897. IN RE SHAW; and
No. 03–8409. IN RE KORNAFEL. Petitions for writs of mandamus denied.

No. 03–7709. IN RE O'BRYANT. Petition for writ of mandamus and/or prohibition denied.

No. 03–7705. IN RE ALLEN. Petition for writ of prohibition denied.

Certiorari Granted

No. 03–583. LEOCAL *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. 11th Cir. Certiorari granted.

No. 03–674. JAMA *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 8th Cir. Certiorari granted. Reported below: 329 F. 3d 630.

No. 03–814. STEWART *v.* DUTRA CONSTRUCTION CO. C. A. 1st Cir. Motions of University of San Francisco Maritime Law Journal and Maritime Trades Department, AFL–CIO, for leave to file briefs as *amici curiae* granted. Certiorari granted. Reported below: 343 F. 3d 10.

Certiorari Denied

No. 03–418. MARTINEZ *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 333 F. 3d 1295.

No. 03–510. BARBER *v.* TEXAS DEPARTMENT OF TRANSPORTATION ET AL. Sup. Ct. Tex. Certiorari denied. Reported below: 111 S. W. 3d 86.

No. 03–580. PYLES, TRUSTEE OF THE PYLES TRUST *v.* CLARK COUNTY, NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 119 Nev. 329, 72 P. 3d 954.

No. 03–595. SINGER ET AL. *v.* CITY OF WACO, TEXAS; and
No. 03–765. CITY OF WACO, TEXAS *v.* SINGER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 324 F. 3d 813.

No. 03–617. SCOLLON PRODUCTIONS, INC. *v.* OCHELTREE; and
No. 03–782. OCHELTREE *v.* SCOLLON PRODUCTIONS, INC. C. A. 4th Cir. Certiorari denied. Reported below: 335 F. 3d 325.

No. 03–622. MCNAB *v.* UNITED STATES; and
No. 03–627. BLANDFORD ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 331 F. 3d 1228.

No. 03–634. EDWARDS *v.* BANK OF NEW YORK ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 445.

No. 03–645. KNOCK *v.* UNITED STATES; and
No. 03–1017. MADRID *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 821.

No. 03–668. BLAKE *v.* ROSERO. Sup. Ct. N. C. Certiorari denied. Reported below: 357 N. C. 193, 581 S. E. 2d 41.

No. 03–706. OSLER INSTITUTE, INC. *v.* FORDE. C. A. 7th Cir. Certiorari denied. Reported below: 333 F. 3d 832.

No. 03–708. MORIARTY *v.* BRADT ET UX. Sup. Ct. N. J. Certiorari denied. Reported below: 177 N. J. 84, 827 A. 2d 203.

No. 03–731. JEFFERSON *v.* CITY OF OMAHA POLICE DEPARTMENT ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 335 F. 3d 804.

No. 03–733. ENCINITAS COUNTRY DAY SCHOOL, INC., ET AL. *v.* CALIFORNIA COASTAL COMMISSION ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 108 Cal. App. 4th 575, 133 Cal. Rptr. 2d 551.

No. 03–751. ROES ET AL. *v.* UNITED STATES ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 337 F. 3d 802.

No. 03–759. DORTON *v.* PALMER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–763. VIDEO PIPELINE, INC. *v.* BUENA VISTA HOME ENTERTAINMENT, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 342 F. 3d 191.

No. 03–764. TURLEY ET AL. *v.* EDDY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 934.

No. 03–769. ELJACK *v.* ALABAMA DEPARTMENT OF INDUSTRIAL RELATIONS ET AL. Ct. Civ. App. Ala. Certiorari denied. Reported below: 885 So. 2d 860.

No. 03–776. FRANCHISE TAX BOARD OF CALIFORNIA *v.* FARMER BROS. CO. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 108 Cal. App. 4th 976, 134 Cal. Rptr. 2d 390.

No. 03–783. FAIRMOUNT PROPERTIES, INC. *v.* ZONING BOARD OF ADJUSTMENT OF THE CITY OF PHILADELPHIA ET AL. Commw. Ct. Pa. Certiorari denied. Reported below: 816 A. 2d 1271.

No. 03–785. BENNETT, INDIVIDUALLY AND AS INTERIM GENERAL GUARDIAN OF DALENKO, AN INCOMPETENT *v.* WAKE COUNTY DEPARTMENT OF HUMAN SERVICES ET AL. Ct. App. N. C. Certiorari denied. Reported below: 157 N. C. App. 49, 578 S. E. 2d 599.

No. 03–792. KENNEDY *v.* KENNEDY. Ct. App. Tex., 3d Dist. Certiorari denied. Reported below: 125 S. W. 3d 14.

No. 03–795. COMMUNITY ACTION PROJECT OF TULSA COUNTY, OKLAHOMA *v.* DUBBS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 336 F. 3d 1194.

No. 03–799. NEVADA *v.* TABBADA. Sup. Ct. Nev. Certiorari denied.

No. 03–800. SHERMAN *v.* SHERMAN. Ct. Sp. App. Md. Certiorari denied. Reported below: 150 Md. App. 710.

No. 03–802. ROBINSON *v.* BLACK. C. A. 7th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 174.

No. 03–803. MCNISH *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied.

No. 03–804. COYOTE VALLEY BAND OF POMO INDIANS *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 331 F. 3d 1094.

No. 03–806. MARIANA ET AL. *v.* PAPPERT, ATTORNEY GENERAL OF PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 338 F. 3d 189.

No. 03–807. SIGAFUS ET UX. *v.* ST. LOUIS POST-DISPATCH, L. L. C., ET AL. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 109 S. W. 3d 174.

No. 03–808. GARRISON *v.* CASSENS TRANSPORT CO. C. A. 6th Cir. Certiorari denied. Reported below: 334 F. 3d 528.

No. 03–810. PINKSTON *v.* OFFICE OF DISCIPLINARY COUNSEL OF LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 852 So. 2d 966.

No. 03–811. MINIEL *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 339 F. 3d 331.

No. 03–813. SMITH ET AL. *v.* BOARD OF TRUSTEES OF LOUISIANA STATE EMPLOYEES' RETIREMENT SYSTEM. Sup. Ct. La. Certiorari denied. Reported below: 851 So. 2d 1100.

No. 03–817. TOCKES *v.* AIR-LAND TRANSPORT SERVICE, INC. C. A. 7th Cir. Certiorari denied. Reported below: 343 F. 3d 895.

No. 03–818. GALLAGHER, AKA FREEMAN *v.* MASSAD. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 829 So. 2d 1003.

No. 03–819. INFOUSA, INC., ET AL. *v.* SCHOCH. C. A. 8th Cir. Certiorari denied. Reported below: 341 F. 3d 785.

No. 03–820. GARZA ET AL. *v.* GRAY & BECKER, P. C. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 03–826. READ *v.* BT ALEX BROWN, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 112.

No. 03–827. SINGLE MOMS, INC., ET AL. *v.* MONTANA POWER CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 331 F. 3d 743.

No. 03–832. WHITE *v.* AMERICAN HABILITATION SERVICES, INC. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 252.

No. 03–834. CITIZENS COAL COUNCIL ET AL. *v.* NORTON, SECRETARY OF THE INTERIOR, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 330 F. 3d 478.

No. 03–835. EDGEWOOD VILLAGE, INC., ET AL. *v.* HOUSING AUTHORITY OF THE CITY OF NEW HAVEN, CONNECTICUT, ET AL. Sup. Ct. Conn. Certiorari denied. Reported below: 265 Conn. 280, 828 A. 2d 52.

No. 03–837. DERRINGER *v.* CHAPEL ET UX. (two judgments). Ct. App. N. M. Certiorari denied.

No. 03–840. COWAN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 03–843. LEAL *v.* UNIVERSITY OF TEXAS ET AL. C. A. 5th Cir. Certiorari denied.

No. 03–844. KANSAS DEPARTMENT OF HUMAN RESOURCES *v.* CRUMPACKER. C. A. 10th Cir. Certiorari denied. Reported below: 338 F. 3d 1163.

No. 03–845. MOORE *v.* CAMPBELL, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 344 F. 3d 1313.

No. 03–846. DUSTIN *v.* RAMIREZ-PALMER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 80 Fed. Appx. 542.

No. 03–848. LAN LAN WANG *v.* DANIELS, SECRETARY OF STATE OF NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 305 App. Div. 2d 186, 757 N. Y. S. 2d 857.

No. 03–851. STOVALL ET UX. *v.* CITY OF STREETSBORO, OHIO. Ct. App. Ohio, Portage County. Certiorari denied.

No. 03–852. AUTODISC, INC., ET AL. *v.* JINKERSON. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 03–856. PHONOMETRICS, INC. *v.* HYATT CORP. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 75 Fed. Appx. 764.

No. 03–857. VANKE, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, ET AL. *v.* BACA. C. A. 9th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 948.

No. 03–859. ABN AMRO MORTGAGE GROUP, INC. *v.* WEIZEORICK ET UX. C. A. 7th Cir. Certiorari denied. Reported below: 337 F. 3d 827.

No. 03–861. BLACK *v.* DELTA AIR LINES, INC., ET AL. Sup. Ct. Tex. Certiorari denied. Reported below: 116 S. W. 3d 745.

No. 03–865. BURTON *v.* CONNECTICUT YANKEE ATOMIC POWER CO. C. A. 2d Cir. Certiorari denied. Reported below: 68 Fed. Appx. 249.

No. 03–868. JAFFE *v.* VIRGINIA PHOTOTHERAPY, L. L. C. Sup. Ct. Va. Certiorari denied.

No. 03–869. ACCUSCAN, INC. *v.* XEROX CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 76 Fed. Appx. 290.

No. 03–874. GEISSAL, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF GEISSAL *v.* MOORE MEDICAL CORP. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 338 F. 3d 926.

No. 03–875. ELJACK *v.* SECURITY ENGINEERS, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 990.

No. 03–876. JOHNSON *v.* FRANCHISE TAX BOARD OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 494.

No. 03–880. PIEPER *v.* AMERICAN ARBITRATION ASSN. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 336 F. 3d 458.

No. 03–881. ALLEN *v.* CITY OF POCAHONTAS, ARKANSAS, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 340 F. 3d 551.

No. 03–885. STINSON *v.* BUTLER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 858.

No. 03–889. MCBRIDE *v.* GALLEGOS. C. A. 10th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 786.

No. 03–893. LATNER *v.* DELTA-HA, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 448.

No. 03–894. KUZMA *v.* PRINCIPI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 341 F. 3d 1327.

No. 03–896. DICK *v.* TOWLES. C. A. 7th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 965.

No. 03–900. PIERCE *v.* CITY OF EVERGREEN, ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 880 So. 2d 503.

No. 03–901. ONYX ACCEPTANCE CORP. *v.* LAMPLEY. C. A. 7th Cir. Certiorari denied. Reported below: 340 F. 3d 478.

No. 03–902. BABIN *v.* DARCE. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 854 So. 2d 403.

No. 03–904. AIRTRAN AIRWAYS, INC. *v.* BRANCHE. C. A. 11th Cir. Certiorari denied. Reported below: 342 F. 3d 1248.

No. 03–905. RUTCH *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 797 A. 2d 1025.

No. 03–906. O'BRIEN *v.* CITY OF HACKENSACK, NEW JERSEY. C. A. 3d Cir. Certiorari denied. Reported below: 80 Fed. Appx. 287.

No. 03–908. JOOS *v.* JOOS (MONTE). Ct. App. Utah. Certiorari denied.

No. 03–912. KNOX *v.* SMITH. C. A. 7th Cir. Certiorari denied. Reported below: 342 F. 3d 651.

No. 03–914. DELAWARE & HUDSON RAILWAY CO., INC., DBA CP RAIL SYSTEM *v.* MIX. C. A. 2d Cir. Certiorari denied. Reported below: 345 F. 3d 82.

No. 03–916. DEKALB GENETICS CORP. *v.* BAYER CROPSCIENCE, S. A. C. A. Fed. Cir. Certiorari denied. Reported below: 345 F. 3d 1366.

No. 03–922. HERLING *v.* POTTER, POSTMASTER GENERAL. C. A. 7th Cir. Certiorari denied.

No. 03–926. GALDIKAS ET AL. *v.* FAGAN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 342 F. 3d 684.

No. 03–927. RAMON *v.* LOCKHEED MARTIN CORP. C. A. 9th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 487.

No. 03–930. ROBERTS *v.* ARD. Ct. App. Ariz. Certiorari denied.

No. 03–936. MELZER *v.* BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 336 F. 3d 185.

No. 03–937. NEW ENGLAND HEALTH CARE EMPLOYEES PENSION FUND *v.* ERNST & YOUNG, LLP. C. A. 6th Cir. Certiorari denied. Reported below: 336 F. 3d 495.

No. 03–940. DAVIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 957.

No. 03–945. NOGUERAS-CARTAGENA ET AL. *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 75 Fed. Appx. 795.

No. 03–946. BOMBARDIER, INC., ET AL. *v.* SIMMONS, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 73 Fed. Appx. 421.

No. 03–947. MOTLEY *v.* VIRGINIA STATE BAR. Sup. Ct. Va. Certiorari denied.

No. 03–958. DEERING PRECISION INSTRUMENTS, L. L. C. *v.* VECTOR DISTRIBUTION SYSTEMS, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 347 F. 3d 1314.

No. 03–961. YARCHESKI *v.* REINER ET AL. Sup. Ct. S. D. Certiorari denied. Reported below: 669 N. W. 2d 487.

No. 03–976. SULLIVAN ET AL. *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 916.

No. 03–978. EDMONDSON *v.* SHEARER LUMBER PRODUCTS. Sup. Ct. Idaho. Certiorari denied. Reported below: 139 Idaho 172, 75 P. 3d 733.

No. 03–979. CROSBY *v.* NEW YORK STATE DEPARTMENT OF LABOR. C. A. 2d Cir. Certiorari denied. Reported below: 75 Fed. Appx. 865.

No. 03–980. MCKEE *v.* UNITED STATES; and
No. 03–981. MCKEE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 339 F. 3d 1295.

No. 03–987. KIDNEIGH ET UX. *v.* UNUM LIFE INSURANCE COMPANY OF AMERICA. C. A. 10th Cir. Certiorari denied. Reported below: 345 F. 3d 1182.

No. 03–989. GILL ET UX. *v.* GUARDIANSHIP OF GILL. App. Ct. Mass. Certiorari denied. Reported below: 58 Mass. App. 1111, 792 N. E. 2d 718.

No. 03–990. FAULK ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 339 F. 3d 1295.

No. 03–993. FOLLUM *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 645.

No. 03–996. HAGGAR CLOTHING CO. *v.* PALASOTA. C. A. 5th Cir. Certiorari denied. Reported below: 342 F. 3d 569.

No. 03–998. WALSH *v.* NORTON, SECRETARY OF THE INTERIOR. C. A. 11th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 414.

No. 03–1000. BERAS, AKA SILVESTRE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 313 F. 3d 803.

No. 03–1016. GRECO *v.* BERNBACK. C. A. 3d Cir. Certiorari denied. Reported below: 69 Fed. Appx. 98.

No. 03–1024. JARRETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 338 F. 3d 339.

No. 03–6458. MODENA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 03–6596. MOSLEY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 03–6649. ALLEN *v.* LOUISIANA. Ct. App. La., 2d Cir. Certiorari denied. Reported below: 828 So. 2d 622.

No. 03–6801. TOLIVER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 330 F. 3d 607.

No. 03–6904. DICKERSON ET AL. *v.* SNOW, SECRETARY OF THE TREASURY, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 84.

No. 03–6924. ALLEN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 108 S. W. 3d 281.

No. 03–7227. MCCLINTON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 817 A. 2d 844.

No. 03–7249. DARDEN-BEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 03–7262. PERRY, AKA MOFFIT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 335 F. 3d 316.

No. 03–7271. MCCREA *v.* CALIFORNIA; and
No. 03–7788. BATTS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 30 Cal. 4th 660, 68 P. 3d 357.

No. 03–7288. JEFFERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 507.

No. 03–7296. ALLEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 387.

No. 03–7304. DOPP *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 915.

No. 03–7313. WILSON *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 983.

No. 03–7331. LAPSLEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 334 F. 3d 762.

No. 03–7335. BRYSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 98.

No. 03–7430. BAEZA-CASTILLO, AKA LOPEZ, AKA LOPEZ-CASTILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 170.

No. 03–7490. EDWARDS *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 116 S. W. 3d 511.

No. 03–7567. COTTON *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 343 F. 3d 746.

No. 03–7583. FOREMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 468.

No. 03–7594. KRIMSKY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 826.

No. 03–7669. PAGEL *v.* UTAH STATE PRISON ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 259.

No. 03–7671. THOMPSON *v.* OKLAHOMA ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 78 Fed. Appx. 39.

No. 03–7672. WALLACE *v.* WALLER, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 03–7673. VELASQUEZ *v.* CALDERON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 962.

No. 03–7675. MCDONALD *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–7676. NEWMAN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 03–7679. COLVIN *v.* CURTIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–7683. LIGON *v.* BERRY, SHERIFF, LUMPKIN COUNTY, GEORGIA, ET AL. Ct. App. Ga. Certiorari denied. Reported below: 261 Ga. App. 435, 582 S. E. 2d 504.

No. 03–7684. LEWIS *v.* ROBINSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 914.

No. 03–7688. MONTOYA *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–7693. NEVITT *v.* CHAPEL ET UX. (two judgments). Ct. App. N. M. Certiorari denied.

No. 03–7700. STUMPF *v.* ALASKA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 78 Fed. Appx. 19.

No. 03–7703. SUTTLES *v.* SOUTHEASTERN HEALTH FACILITIES, DBA MOUNTAIN VIEW MANOR, ET AL. Ct. App. N. C. Certiorari denied. Reported below: 157 N. C. App. 143, 578 S. E. 2d 326.

No. 03–7707. WRIGHT *v.* HAVILAND, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–7708. WHITFIELD *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 324 F. 3d 1009 and 343 F. 3d 950.

No. 03–7710. ORMISTON *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–7716. BURNES *v.* AT&T CORP. ET AL. C. A. 6th Cir. Certiorari denied.

No. 03–7717. WILKES *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–7718. WALLACE *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 851 So. 2d 216.

No. 03–7720. KING *v.* TOWN OF WAYNESVILLE, NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 138.

No. 03–7721. BROWN *v.* CAREY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–7722. BROWN *v.* DONALD, COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–7724. JACKSON *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 876 So. 2d 1193.

No. 03–7725. REED *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied.

No. 03–7729. MERCHANT *v.* BERGE, WARDEN. Ct. App. Wis. Certiorari denied.

No. 03–7730. REYES *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–7733. STEELE *v.* COTTEY, SHERIFF, MARION COUNTY, INDIANA, ET AL. C. A. 7th Cir. Certiorari denied.

No. 03–7734. STROMILE *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 74 Fed. Appx. 364.

No. 03–7737. TEIXEIRA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 03–7738. MITCHELL *v.* CAREY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–7739. JANOSSY ET UX. *v.* GENERAL MOTORS ACCEPTANCE CORP. C. A. 9th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 344.

No. 03–7742. BALDAUF *v.* HYATT ET AL. Ct. App. Colo. Certiorari denied.

No. 03–7749. DAVIS *v.* FINN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 88.

No. 03–7752. TAYLOR *v.* AUBURN UNIVERSITY PUBLIC SAFETY ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–7754. PATTERSON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 03–7757. WEBB *v.* SLOAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 657.

No. 03–7758. ZABLAH *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–7762. COOPER *v.* PEGUESS, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 650.

No. 03–7764. BRAXTON *v.* SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 119.

No. 03–7767. TAYLOR *v.* SMITH. C. A. 4th Cir. Certiorari denied. Reported below: 74 Fed. Appx. 279.

No. 03–7769. WEST *v.* KEESHAN, JUDGE, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 121.

No. 03–7770. SINCLAIR *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 831 So. 2d 193.

No. 03–7773. WILLIAMS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 31 Cal. 4th 757, 74 P. 3d 779.

No. 03–7775. RENFRO *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 03–7778. HILL *v.* GWINNETT COUNTY TRAFFIC COURT. C. A. 11th Cir. Certiorari denied.

No. 03–7780. MCSWINE *v.* CLARKE, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 8th Cir. Certiorari denied.

No. 03–7781. BURGE *v.* GOURLEY, DIRECTOR, CALIFORNIA DEPARTMENT OF MOTOR VEHICLES. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 03–7786. RODRIGUEZ *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 106 S. W. 3d 224.

No. 03–7787. RODRIGUEZ *v.* HENDRICKS, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–7790. CLARK *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 851 So. 2d 1055.

No. 03–7792. DIAZ MALDONADO *v.* MCCULLOUGH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HOUTZDALE. C. A. 3d Cir. Certiorari denied.

No. 03–7798. HEATH *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 193.

No. 03–7802. JOHNSON *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–7806. SHEPARD *v.* UNIBORING ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 333.

No. 03–7807. JOHNSTON *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–7815. GOLDBERG *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 95 S. W. 3d 345.

No. 03–7817. HICKS *v.* YARBOROUGH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–7824. SPOTTSVILLE *v.* GEORGIA. C. A. 11th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 821.

No. 03–7825. RANKIN *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–7826. RINALDO *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 835.

No. 03–7829. FITTS *v.* BIRKETT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–7830. FLYNN *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 03–7832. FITTS *v.* ABRAMAJTYS, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 112.

No. 03–7833. HELMS *v.* STRUBIN. Ct. Sp. App. Md. Certiorari denied. Reported below: 149 Md. App. 728.

No. 03–7835. GONZALEZ *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–7836. HARDEN *v.* MURRELL, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 03–7837. GADLIN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 03–7839. MILLER *v.* WEBB, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 74 Fed. Appx. 480.

No. 03–7846. ZANDERS *v.* ANDERSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–7848. CABELLO *v.* TEXAS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 315.

No. 03–7849. AHMADY *v.* BRINCEFIELD, HARTNETT, TOMPKINS & CLARK, P. C. Sup. Ct. Va. Certiorari denied.

No. 03–7850. WANZER *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–7855. GREENE *v.* MCGRAW, CLERK, CIRCUIT COURT OF VIRGINIA, ROANOKE COUNTY, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 715.

No. 03–7856. HALL *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 03–7858. GUAJARDO *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 03–7859. GIBSON ET AL. *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 355 S. C. 429, 586 S. E. 2d 119.

No. 03–7860. HAMPTON *v.* HENDRICKS, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–7862. HAMILTON *v.* CASTRO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–7863. GRAY *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 03–7865. GARRETT *v.* BOWERSOX, SUPERINTENDENT, SOUTH CENTRAL CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 03–7867. FULTCHER *v.* HATCHER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 386.

No. 03–7869. FOGGY *v.* SANDOVAL, ATTORNEY GENERAL OF NEVADA. C. A. 9th Cir. Certiorari denied.

No. 03–7870. HINOJOSA *v.* ENDICOTT, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 03–7871. HAWTHORNE *v.* BRILEY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 03–7875. NEGRON *v.* HENDRICKS, SUPERINTENDENT, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–7878. KELLY *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 795 So. 2d 135.

No. 03–7879. AROCHE *v.* FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 03–7881. SINGLETON *v.* CARTER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 74 Fed. Appx. 536.

No. 03–7882. TOSCANO *v.* MCGRATH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–7890. RIDDICK *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 150.

No. 03–7891. RODRIGUEZ ET AL. *v.* NEW YORK CITY COMMISSION ON HUMAN RIGHTS ET AL. C. A. 2d Cir. Certiorari denied.

No. 03–7893. SEARCY *v.* JAIMET, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 332 F. 3d 1081.

No. 03–7900. NELSON *v.* JOHNSON, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. C. A. 5th Cir. Certiorari denied.

No. 03–7901. COLE *v.* BENEFIT COORDINATORS CORP. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 85 Fed. Appx. 869.

No. 03–7903. FLYNN *v.* MORGAN, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 03–7906. IVORY *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 03–7907. HUNT *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 919.

No. 03–7908. GOXEM *v.* HOWES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–7909. GONZALES *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 03–7911. INZUNZA *v.* SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 03–7912. SHABAZZ *v.* MARILLO ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 65 Fed. Appx. 874.

No. 03–7914. HOFFMAN *v.* JONES, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 53 Fed. Appx. 342.

No. 03–7917. GUERRA *v.* ADAMS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–7918. IBARRA *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–7919. GOODMAN *v.* ABRAHAM ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 761.

No. 03–7920. HAWKINS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 03–7925. WELCH *v.* PHELPS ET AL.; and WELCH *v.* EICHELBERGER ET AL. C. A. 2d Cir. Certiorari denied.

No. 03–7926. YOUNG *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 277.

No. 03–7927. BEYER *v.* CORMIER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 903.

No. 03–7930. MILLER *v.* HENRY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–7931. MUSHENSKY *v.* SHANNON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FRACKVILLE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–7932. PARKER *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 114 Wash. App. 1070.

No. 03–7935. BROWN *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 357 N. C. 382, 584 S. E. 2d 278.

No. 03–7936. JURICH *v.* MCLEMORE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–7937. ALLMAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 336 F. 3d 555.

No. 03–7938. NAVARRO *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–7940. NOSEK *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–7946. HESS *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 03–7947. GURULE *v.* BRAVO, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 03–7950. HOLLAND *v.* JONES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–7951. GREEN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 266 Va. 81, 580 S. E. 2d 834.

No. 03–7952. FERRELLI *v.* RIVER MANOR HEALTH CARE CENTER. C. A. 2d Cir. Certiorari denied. Reported below: 323 F. 3d 196.

No. 03–7954. HERNANDEZ *v.* MCDANIEL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–7960. SHERMAN *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–7961. PARROTT *v.* IDAHO. Sup. Ct. Idaho. Certiorari denied.

No. 03–7965. MURILLO *v.* HAMLET, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–7966. BROWN *v.* SMITH, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–7968. NASIRICHAMPANG *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 03–7969. MUNIZ *v.* SOARES, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 03–7973. LOYAL *v.* HENDRICKS, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–7976. GRAY *v.* CLARKE, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 8th Cir. Certiorari denied.

No. 03–7978. LOUIE *v.* POPPELL, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 03–7979. KAULICK *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–7981. LAMAR *v.* PERDUE ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–7985. STAFFORD *v.* SPARKMAN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 03–7988. MILLER *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 03–7989. CONWAY *v.* CALIFORNIA TRUST DEEDS, INC. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 03–7990. RUNELS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–7991. MARTIN *v.* NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES ET AL. Sup. Ct. Neb. Certiorari denied. Reported below: 267 Neb. 33, 671 N. W. 2d 613.

No. 03–7993. BARTON *v.* PLILER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 108.

No. 03–8001. BROOKS *v.* LUOMA, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–8003. HIGHSMITH *v.* GOORD, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 2d Cir. Certiorari denied.

No. 03–8004. HINES *v.* CRISCI ET AL. C. A. 2d Cir. Certiorari denied.

No. 03–8006. BILLS *v.* BIRKETT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–8007. ENGLISH *v.* BENNETT, SUPERINTENDENT, ELMIRA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 03–8008. CORNELIUS *v.* SZCZECKO ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 506.

No. 03–8011. OLDS *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied.

No. 03–8013. WILLIAMS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–8014. THOMLEY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 03–8015. VIVONE *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 03–8016. TAYLOR *v.* MCGRATH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–8019. SEVENCAN *v.* HERBERT, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 342 F. 3d 69.

No. 03–8026. ANDRADE *v.* ASHCROFT, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied.

No. 03–8027. THOMPSON *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–8028. WAINWRIGHT *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 03–8030. MENDOZA *v.* CALDERON, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 203.

No. 03–8031. MORGAN *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 03–8032. ROBERSON *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 4th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 134.

No. 03–8033. TAYLOR *v.* ALABAMA ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–8034. THORNTON *v.* OKLAHOMA. C. A. 10th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 442.

No. 03–8035. KIMBROUGH *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 03–8036. JONES *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 03–8038. DILDAY *v.* ESTATE OF HACKATHORN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 686.

No. 03–8039. HOWARD *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 853 So. 2d 781.

No. 03–8041. PAULINKONIS *v.* MOORE, SUPERINTENDENT, MONROE CORRECTIONAL COMPLEX. C. A. 9th Cir. Certiorari denied. Reported below: 82 Fed. Appx. 514.

No. 03–8042. ANGO *v.* ASHCROFT, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 126.

No. 03–8043. ZUERN *v.* TATE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 336 F. 3d 478.

No. 03–8045. MOSS *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied.

No. 03–8047. BONAPARTE *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 854 So. 2d 203.

No. 03–8052. PUCKETT *v.* IDAHO. Sup. Ct. Idaho. Certiorari denied.

No. 03–8054. KOTILA *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 114 S. W. 3d 226.

No. 03–8056. BURNETT *v.* SCOVILLE ET AL. C. A. 6th Cir. Certiorari denied.

No. 03–8060. ROGERS-WRIGHT *v.* SMALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–8061. REARDON *v.* HENDRICKS, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 82 Fed. Appx. 273.

No. 03–8063. JOSEPH *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–8064. BURNETT *v.* BOARD OF HEALTH OF MICHIGAN ET AL. C. A. 6th Cir. Certiorari denied.

No. 03–8077. SARNOWSKI *v.* BAYER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–8079. STORY *v.* SCOTT, WARDEN. C. A. 3d Cir. Certiorari denied.

No. 03–8084. SHAW *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 159 N. C. App. 230, 582 S. E. 2d 727.

No. 03–8085. ABRAMS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 03–8086. CARLSON *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied.

No. 03–8087. JACKSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 333 Ill. App. 3d 1208, —— N. E. 2d ——.

No. 03–8091. KACZMAREK *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 207 Ill. 2d 288, 798 N. E. 2d 713.

No. 03–8097. WHITE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 75 Fed. Appx. 894.

No. 03–8108. JENKINS *v.* TRUSTEES OF SANDHILLS COMMUNITY COLLEGE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 80 Fed. Appx. 819.

No. 03–8113. FLEMING *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 61 Fed. Appx. 899.

No. 03–8114. KEENE *v.* CRANK, ATTORNEY GENERAL OF WYOMING, ET AL. C. A. 10th Cir. Certiorari denied.

No. 03–8115. JACKSON *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON. C. A. 9th Cir. Certiorari denied.

No. 03–8117. MCCALL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 03–8118. MCLAMB *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 500.

No. 03–8119. SOTELO-MENDOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 567.

No. 03–8120. SANTOS-PRADOS *v.* UNITED STATES; and

No. 03–8182. ALPHONSE-RIOS, AKA ARHOSE, AKA ALHONSE, AKA RIOS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 77 Fed. Appx. 62.

No. 03–8121. SANDERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 341 F. 3d 720.

No. 03–8122. RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 572.

No. 03–8123. SANCHEZ-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 03–8125. PINDELL *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 336 F. 3d 1049.

No. 03–8126. MILNER *v.* WOLFE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 85 Fed. Appx. 872.

No. 03–8127. LEAR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 03–8129. LEWIS *v.* PINCHAK ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 348 F. 3d 355.

No. 03–8130. MCDONALD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 336 F. 3d 734.

No. 03–8133. KENDRA *v.* PRINCIPI, SECRETARY OF VETERANS AFFAIRS. C. A. 7th Cir. Certiorari denied.

No. 03–8134. JONES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 03–8135. JONES *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 321 Ill. App. 3d 515, 747 N. E. 2d 1074.

No. 03–8136. DICKS, AKA HALL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 338 F. 3d 1256.

No. 03–8142. SLATER *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 03–8143. SALAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 484.

No. 03–8144. BETTS *v.* MCGRATH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–8146. RAMEY *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 327 Ill. App. 3d 1125, 815 N. E. 2d 1003.

No. 03–8148. COLLINS, AKA TURNER *v.* UNITED STATES;
No. 03–8218. CHARLES *v.* UNITED STATES; and
No. 03–8237. BARRETT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 201 F. 3d 61 and 313 F. 3d 40.

No. 03–8149. AYBAR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 03–8157. RIVERO-PROENZA *v.* LAPPIN, DIRECTOR, FEDERAL BUREAU OF PRISONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–8159. HARRIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 344 F. 3d 803.

No. 03–8160. HAMILTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 519.

No. 03–8161. FOURIE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–8162. GWIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 78 Fed. Appx. 556.

No. 03–8163. IBARRA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 345 F. 3d 711.

No. 03–8164. GUZMAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 03–8166. HORNBACK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 739.

No. 03–8167. FRANKLIN *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 03–8169. DELOACH *v.* HAMLET, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 74 Fed. Appx. 696.

No. 03–8171. COLON ET AL. *v.* UNITED STATES; and
No. 03–8197. COLON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 338 F. 3d 809.

No. 03–8173. CELESTINE *v.* DISTRICT COURT OF LOUISIANA, 27TH JUDICIAL DISTRICT, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 232.

No. 03–8174. LOGAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 205.

No. 03–8175. LACHANCE *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 58 Mass. App. 1111, 792 N. E. 2d 718.

No. 03–8177. PARTRIDGE *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 03–8178. BOYNES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 65 Fed. Appx. 869.

No. 03–8179. BELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 762.

No. 03–8183. BRUNETTI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 03–8184. ALVIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–8185. VESEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 338 F. 3d 913.

No. 03–8186. MCCARRON *v.* BRITISH TELECOM, DBA YELLOW BOOK USA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 80 Fed. Appx. 287.

No. 03–8190. BAUMGARTEN ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 787.

No. 03–8192. ROSENBERGER *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied.

No. 03–8193. GARCIA TORRES ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 341 F. 3d 61.

No. 03–8201. MCDAVIS *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 03–8202. PADILLA *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 331 Ill. App. 3d 1131, —— N. E. 2d ——.

No. 03–8203. WILSON *v.* TURNER ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–8206. ADAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 64 Fed. Appx. 417.

No. 03–8210. SHETTY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 842.

No. 03–8216. BROOKS *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 31 Kan. App. 2d xxix, 67 P. 3d 180.

No. 03–8217. AKRIDGE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 346 F. 3d 618.

No. 03–8219. CHERNEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 193.

No. 03–8220. CLAPP *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 279.

No. 03–8223. CALDWELL *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 860 So. 2d 976.

No. 03–8224. DIAZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–8229. PYEATT *v.* GALLEGOS, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 03–8233. BOTTOMLEY *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 03–8236. BESS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 88 Fed. Appx. 386.

No. 03–8239. ECHOLS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 233.

No. 03–8241. CURRY *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–8248. BECKFORD, AKA DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 540.

No. 03–8249. THOMPSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 227.

No. 03–8250. TORRES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 508.

No. 03–8252. WHITELAW *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 03–8254. ISHMAEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 343 F. 3d 741.

No. 03–8258. SALVATIERRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 236.

No. 03–8264. CASH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 661.

No. 03–8265. DELLATORRE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 03–8271. DUQUE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 85 Fed. Appx. 727.

No. 03–8272. EDMONSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 246.

No. 03–8278. CHAVARRIA-CABRERA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 03–8283. DUNLAP *v.* MICHIGAN. Cir. Ct. Wayne County, Mich. Certiorari denied.

No. 03–8284. ESTRADA *v.* ALVARADO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 345.

No. 03–8287. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–8294. CANEDO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 03–8305. IRORERE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 231.

No. 03–8306. GARDNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 504.

No. 03–8307. FOWLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 74 Fed. Appx. 262.

No. 03–8308. GARCIA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 60 Fed. Appx. 364.

No. 03–8310. FREEMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 959.

No. 03–8311. GOMEZ-AGUILAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 638.

No. 03–8312. BELK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 346 F. 3d 305.

No. 03–8315. WALL *v.* SHEARIN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 654.

No. 03–8319. FELICE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 552.

No. 03–8320. HINES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 66 Fed. Appx. 257.

No. 03–8321. HOLLAND *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 75 Fed. Appx. 878.

No. 03–8322. ATAYDE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 918.

No. 03–8324. ROBINSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 52 Fed. Appx. 566.

No. 03–8325. DEFTERIOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 343 F. 3d 1020.

No. 03–8327. DANIEL *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 78 P. 3d 205.

No. 03–8328. RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–8330. SINGLETON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 254.

No. 03–8333. ALBERTO R., A JUVENILE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 356.

No. 03–8340. MCNAIR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 79 Fed. Appx. 726.

No. 03–8341. MELTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 672.

No. 03–8343. LAWRENCE *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 821 A. 2d 134.

No. 03–8344. LUNA-FLORES *v.* UNITED STATES; MORA-NEPITA *v.* UNITED STATES; GUDINO-MARTINEZ *v.* UNITED STATES; ESQUIVAL-ZAMORA *v.* UNITED STATES; and ROMERO-GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 03–8349. WHITFIELD *v.* UNITED STATES POSTAL SERVICE. C. A. 9th Cir. Certiorari denied.

No. 03–8352. PHELPS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 79 Fed. Appx. 799.

No. 03–8353. MORALES-SANTAMARIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 746.

No. 03–8354. KEMP *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 276 Kan. ix, 78 P. 3d 473.

No. 03–8356. WILLIAMS ET AL. *v.* TAFT ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 359 F. 3d 811.

No. 03–8358. BOUTWELL *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 861 So. 2d 25.

No. 03–8360. SANTANA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 342 F. 3d 60.

No. 03–8369. LOVE *v.* MENIFEE, WARDEN. C. A. 2d Cir. Certiorari denied. Reported below: 333 F. 3d 69.

No. 03–8370. JENNINGS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 507.

No. 03–8373. JOYCE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 176.

No. 03–8374. BISHOP *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 338 F. 3d 623.

No. 03–8378. BRUCE *v.* JOHNSON, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. C. A. 5th Cir. Certiorari denied.

No. 03–8385. VILLAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 03–8388. ALONSO-MALDONADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 78 Fed. Appx. 633.

No. 03–8389. MALONE *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 03–8394. SMITH *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 329 Ill. App. 3d 1234, —— N. E. 2d ——.

No. 03–8395. SANTOS *v.* DODRILL, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 85 Fed. Appx. 874.

No. 03–8399. CAMPBELL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 03–8400. CHAPPELLE, AKA JESSUP *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 75 Fed. Appx. 75.

No. 03–8401. SCHREIBER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 423.

No. 03–8404. RAYMER *v.* BARRON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 82 Fed. Appx. 431.

No. 03–8405. SOLARIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 03–8410. GOMEZ LOCKETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 386.

No. 03–8413. CALVIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 03–8414. TORREALBA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 339 F. 3d 1238.

No. 03–8420. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 348 F. 3d 78.

No. 03–8424. MENOKEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 683.

No. 03–8426. SAUCIER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 78 Fed. Appx. 952.

No. 03–8430. THOMAS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 57 Fed. Appx. 689.

No. 03–8435. BEST *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 03–8437. BUCHANAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 82 Fed. Appx. 222.

No. 03–8438. STEWART *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 67 Fed. Appx. 220.

No. 03–8439. LAWSON *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–8440. ZUNO-ARCE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 339 F. 3d 886.

No. 03–8442. THOMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 673.

No. 03–8445. MORRIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 78 Fed. Appx. 342.

No. 03–8450. RIDDICK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 03–8451. SAYLOR *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 117 S. W. 3d 239.

No. 03–8453. ZIMMERMAN *v.* JOHNSON, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 83 Fed. Appx. 592.

No. 03–8454. TREVINO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 78 Fed. Appx. 940.

No. 03–8455. THAM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–8456. TORRES-ORTIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 78 Fed. Appx. 402.

No. 03–8466. JONES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 80 Fed. Appx. 592.

No. 03–8469. NEWTON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 72 Fed. Appx. 855.

No. 03–8472. SYPOLT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 346 F. 3d 838.

No. 03–8478. MARTINEZ-MATA *v.* UNITED STATES (Reported below: 78 Fed. Appx. 435); CAMACHO-RAMOS *v.* UNITED STATES (79 Fed. Appx. 59); RODRIGUEZ-GOMEZ, AKA GOMEZ *v.* UNITED STATES (79 Fed. Appx. 634); RAMOS LOPEZ *v.* UNITED STATES (78 Fed. Appx. 405); ALTAMIRANO-LOPEZ *v.* UNITED STATES (78 Fed. Appx. 410); ZELAYA-ULLOA *v.* UNITED STATES (78 Fed. Appx. 411); MEZA-LOPEZ *v.* UNITED STATES (79 Fed. Appx. 627); GOMEZ-RAMIREZ, AKA GOMEZ-RHEA *v.* UNITED STATES (78 Fed. Appx. 411); SUPINIO CARRILLO *v.* UNITED STATES (78 Fed. Appx. 412); ANTUNES-ORTIZ *v.* UNITED STATES (79 Fed. Appx. 630); VALLE-SALAZAR *v.* UNITED STATES (78 Fed. Appx. 413); MOLINA-MARTINEZ *v.* UNITED STATES (78 Fed. Appx. 414); ESPINO-REYES *v.* UNITED STATES (79 Fed. Appx. 615); LOPEZ-DELEON *v.* UNITED STATES (78 Fed. Appx. 415); CORTEZ-LOPEZ *v.* UNITED STATES (79 Fed. Appx. 617); MARTINEZ-SAUCEDA *v.* UNITED STATES (79 Fed. Appx. 619); MARTINEZ-ARRATIA *v.* UNITED STATES (78 Fed. Appx. 416); MENDOZA-CHAVIRA *v.* UNITED STATES (79 Fed. Appx. 620); OCHOA-HERNANDEZ *v.* UNITED STATES (78 Fed. Appx. 417); FUENTES *v.* UNITED STATES (79 Fed. Appx. 30); CANALES-CRUZ *v.* UNITED STATES (78 Fed. Appx. 419); SANDOVAL-GUEL, AKA MARTINEZ-GUEL *v.* UNITED STATES (79 Fed. Appx. 83); and PERALA-SALAZAR *v.* UNITED STATES (79 Fed. Appx. 84). C. A. 5th Cir. Certiorari denied.

No. 03–8479. SALVADOR CASTILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 97.

No. 03–8480. CAMACHO-ARIZA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 87 Fed. Appx. 715.

No. 03–8481. CALL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 268.

No. 03–8482. CHALLENGER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 79 Fed. Appx. 86.

No. 03–8484. BROOKS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 69 Fed. Appx. 658.

No. 03–8487. POINDEXTER *v.* NASH, WARDEN. C. A. 2d Cir. Certiorari denied. Reported below: 333 F. 3d 372.

No. 03–8490. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 82 Fed. Appx. 950.

No. 03–8491. ALLEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 79 Fed. Appx. 745.

No. 03–8493. RIVERA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 347 F. 3d 850.

No. 03–8494. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 78 Fed. Appx. 228.

No. 03–8501. JEFFERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 03–8503. BONILLA-MONTENEGRO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 331 F. 3d 1047.

No. 03–8506. MARKEVITZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 919.

No. 03–8512. DICKERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–8515. VELASCO-MEDINA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 305 F. 3d 839.

No. 03–8516. DREIZLER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 78 Fed. Appx. 734.

No. 03–8523. JOHNSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 347 F. 3d 412.

No. 03–8529. FORBES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 78 Fed. Appx. 164.

No. 03–8530. GIBBS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 77 Fed. Appx. 107.

No. 03–8538. HARRIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 85 Fed. Appx. 192.

No. 03–8539. MARIN-GARCIA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 85 Fed. Appx. 871.

No. 03–8546. CUELLAR *v.* UNITED STATES; GUAJARDO *v.* UNITED STATES; and SALINAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 78 Fed. Appx. 437 (first judgment); 79 Fed. Appx. 31 (second judgment) and 618 (third judgment).

No. 03–8548. GALARZA-COLLAZO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 79 Fed. Appx. 67.

No. 03–8549. GAMEZ-DE LA CRUZ *v.* UNITED STATES; HERNANDEZ-RIOJAS *v.* UNITED STATES; GONZALEZ-RIOS *v.* UNITED STATES; RODRIGUEZ-SALAZAR *v.* UNITED STATES; TORRES-RODRIGUEZ *v.* UNITED STATES; and VILLAREAL-SANTOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 78 Fed. Appx. 925 (first judgment); 79 Fed. Appx. 21 (second judgment), 39 (third judgment), 68 (fourth judgment), 77 (fifth judgment), and 87 (sixth judgment).

No. 03–8550. CABRERA-PINEDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 79 Fed. Appx. 20.

No. 03–8551. CABANAS-ROMERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 79 Fed. Appx. 34.

No. 03–8553. RAMIREZ-LABRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 78 Fed. Appx. 401.

No. 03–8554. RODRIGUEZ-QUINTANA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 79 Fed. Appx. 58.

No. 03–8555. AGUILAR-SOTO, AKA AGUILAR *v.* UNITED STATES (Reported below: 79 Fed. Appx. 70); ALFARO-CORDOVA *v.* UNITED STATES (79 Fed. Appx. 69); ANDRADE-ACOSTA, AKA CASTRO-ANDRADE *v.* UNITED STATES (79 Fed. Appx. 18); CERVANTES-NAVA, AKA NAVA CERVANTES, AKA CERVANTES-NOVA *v.* UNITED STATES (79 Fed. Appx. 17); DAVILA-BARRAZA, AKA DAVILA-VARRASA, AKA ALDREDO BARRASA, AKA GALVAN, AKA VALLASA *v.* UNITED STATES (79 Fed. Appx. 75); GERONIMO-PINEDA, AKA LOPEZ *v.* UNITED STATES (78 Fed. Appx. 425); GONZALEZ-PALOMO, AKA GONZALES, AKA PALOMA *v.* UNITED STATES (79 Fed. Appx. 40); GUAJARDO-LOPEZ *v.* UNITED STATES (79 Fed. Appx. 35); HAY-

LOCK *v.* UNITED STATES (79 Fed. Appx. 37); JARDINES-MENDOZA, AKA PACHECO-MENDOZA *v.* UNITED STATES (79 Fed. Appx. 80); JIMENEZ-VISOSO *v.* UNITED STATES (79 Fed. Appx. 29); JIRON-MALDONADO, AKA DIXON-DUBLON *v.* UNITED STATES (79 Fed. Appx. 33); LOPEZ-GARCIA, AKA LOPEZ *v.* UNITED STATES (79 Fed. Appx. 43); LOPEZ-QUEZADA *v.* UNITED STATES (79 Fed. Appx. 41); NAVA-HERNANDEZ *v.* UNITED STATES (78 Fed. Appx. 424); OYUELA-FLORES *v.* UNITED STATES (79 Fed. Appx. 44); SANCHEZ-DELEON, AKA RIOS SANCHEZ *v.* UNITED STATES (78 Fed. Appx. 423); SANCHEZ-NAVARRO, AKA CASTILLO-DELGADO *v.* UNITED STATES (79 Fed. Appx. 28); SANTOS-CASTRO, AKA SANTOS-RUIZ *v.* UNITED STATES (79 Fed. Appx. 27); SAUCEDO-ROSALES *v.* UNITED STATES (79 Fed. Appx. 36); and VELOZ *v.* UNITED STATES (79 Fed. Appx. 45). C. A. 5th Cir. Certiorari denied.

No. 03–8556. RIVERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 79 Fed. Appx. 628.

No. 03–8559. BERGIE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 79 Fed. Appx. 319.

No. 03–8560. AMADOR-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 79 Fed. Appx. 50.

No. 03–8561. BAILEY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 797 A. 2d 698.

No. 03–8565. MERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 75 Fed. Appx. 344.

No. 03–8573. ANDERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 88 Fed. Appx. 380.

No. 03–8578. VICKERS *v.* JOHNSON, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. (two judgments). C. A. 5th Cir. Certiorari denied. Reported below: 83 Fed. Appx. 592 (first judgment).

No. 03–8664. ROE *v.* TAFT, GOVERNOR OF OHIO, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 359 F. 3d 820.

No. 03–642. ALLEN ET AL. *v.* PACHECO. Sup. Ct. Colo. Motions of American Association of Health Plans-Health Insurance Association of America et al., Civil Justice Association of Califor-

nia and California Chamber of Commerce, and Reinsurance Association of America for leave to file briefs as *amici curiae* granted. Motion of CIGNA HealthCare of California, Inc., for leave to file a brief as *amicus curiae* denied. Certiorari denied. Reported below: 71 P. 3d 375.

No. 03–801. REED, SECRETARY OF STATE OF WASHINGTON *v.* DEMOCRATIC PARTY OF WASHINGTON ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 343 F. 3d 1198.

No. 03–828. BIANCHI, FORMERLY DBA M. BIANCHI OF CALIFORNIA *v.* RYLAARSDAM ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 334 F. 3d 895.

No. 03–877. KUHLMANN, SUPERINTENDENT, SULLIVAN CORRECTIONAL FACILITY *v.* BOHAN. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 66 Fed. Appx. 277.

No. 03–886. SMITH *v.* BANK OF AMERICA MORTGAGE, FSB. Ct. Sp. App. Md. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 151 Md. App. 734.

No. 03–963. MEDTRONIC VASCULAR, INC. *v.* CORDIS CORP. C. A. Fed. Cir. Motion of Public Knowledge for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 339 F. 3d 1352.

No. 03–966. LEWIS *v.* BANK OF AMERICA, N. A., ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 343 F. 3d 540.

No. 03–6747. M. K. B. *v.* WARDEN ET AL. Motion of Reporters Committee for Freedom of the Press et al. for leave to intervene denied. Motion of respondents for leave to file a brief in opposition under seal granted. Motion of petitioner for leave to file a reply brief under seal with redacted copies for the public record granted. Certiorari denied.

Rehearing Denied

No. 02–9971. More *v.* Department of Labor, Administrative Review Board, 538 U. S. 1063;

No. 02–10457. Cook *v.* Galaza, Warden, *ante,* p. 828;

No. 02–10526. Jaquez *v.* Oklahoma, *ante,* p. 830;

No. 02–11176. Ibrahim *v.* Ibrahim et al., *ante,* p. 859;

No. 03–81. Massey *v.* Bank of Edmonson County and Directors et al., *ante,* p. 876;

No. 03–550. Martone *v.* Neiswanger et al., *ante,* p. 1089;

No. 03–610. Abe *v.* Michigan State University, *ante,* p. 1075;

No. 03–5012. Gossard *v.* Jones, *ante,* p. 883;

No. 03–5197. Pannell *v.* Davis, Superintendent, Indiana State Prison, *ante,* p. 894;

No. 03–5286. Sinisterra *v.* United States, *ante,* p. 1073;

No. 03–5308. Smith *v.* Johnson, Director, Virginia Department of Corrections, *ante,* p. 901;

No. 03–5729. Watts *v.* Federal Express Corp. (two judgments), *ante,* p. 1006;

No. 03–5755. Warick *v.* Parker, Warden, *ante,* p. 954;

No. 03–5799. Miller *v.* McDaniel, Warden, et al., *ante,* p. 955;

No. 03–6132. Forseth *v.* Farmon, Warden, et al., *ante,* p. 988;

No. 03–6234. Mester *v.* Lewis, Warden, et al., *ante,* p. 973;

No. 03–6354. In re Johnson, *ante,* p. 944;

No. 03–6499. Metzenbaum *v.* City of Mayfield Heights, Ohio, et al., *ante,* p. 1053;

No. 03–6500. McWilliams *v.* Epps, Commissioner, Mississippi Department of Corrections, *ante,* p. 1053;

No. 03–6508. Ballard *v.* Price, Warden, *ante,* p. 1053;

No. 03–6550. Patterson *v.* Jenkins, Chairman, Virginia Parole Board, et al., *ante,* p. 1054;

No. 03–6566. Lara *v.* Pennsylvania, *ante,* p. 1055;

No. 03–6625. Watson *v.* Job Corp. et al., *ante,* p. 1009;

No. 03–6645. Reynolds *v.* Smith, Warden, *ante,* p. 1057;

No. 03–6678. McCoy *v.* Cotton, Superintendent, Pendleton Correctional Facility, *ante,* p. 1057;

No. 03–6729. Livingston *v.* Zimmer, *ante,* p. 1059;

No. 03–6733. Alexander *v.* United States, *ante,* p. 1010;

No. 03–6740. Darnell *v.* Johnson, Secretary of the Navy, *ante,* p. 1023;

No. 03–6745. HENDRICKS *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, *ante*, p. 1076;

No. 03–6785. JONES *v.* SOUTHWEST FIDUCIARY, INC., ET AL., *ante*, p. 1078;

No. 03–6787. MORRIS *v.* UNITED STATES, *ante*, p. 1023;

No. 03–6828. HUNT *v.* MALONEY, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTION, ET AL., *ante*, p. 1060;

No. 03–6846. LOOPER *v.* TENNESSEE, *ante*, p. 1060;

No. 03–6857. BELLE *v.* FLORIDA BAR, *ante*, p. 1079;

No. 03–6858. KUHN *v.* MILWAUKEE COUNTY, WISCONSIN, ET AL., *ante*, p. 1091;

No. 03–6859. LIGON ET UX. *v.* CHICAGO TITLE INSURANCE CO., *ante*, p. 1091;

No. 03–6864. PINEDA *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY, *ante*, p. 1079;

No. 03–6913. IN RE BEASLEY, *ante*, p. 1002;

No. 03–6919. IN RE PARIS, *ante*, p. 1016;

No. 03–6934. O'CONNOR *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *ante*, p. 1061;

No. 03–6935. O'CONNOR *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *ante*, p. 1061;

No. 03–6959. HUFF *v.* VIRGINIA, *ante*, p. 1061;

No. 03–6991. LAMAR *v.* GRAVES, WARDEN, *ante*, p. 1080;

No. 03–7007. ROMERO-LEWIS *v.* UNITED STATES, *ante*, p. 1062;

No. 03–7040. HADDEN *v.* UNITED STATES, *ante*, p. 1063;

No. 03–7090. SHIVAEE *v.* CUBE, *ante*, p. 1064;

No. 03–7120. BURNES *v.* UNITED STATES, *ante*, p. 1076;

No. 03–7187. O'CONNOR *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *ante*, p. 1061;

No. 03–7190. TARANTOLA *v.* UNITED STATES, *ante*, p. 1066;

No. 03–7278. BROWN *v.* UNITED STATES, *ante*, p. 1068;

No. 03–7280. METCALF *v.* UNITED STATES, *ante*, p. 1085;

No. 03–7303. BONDURANT *v.* UNITED STATES, *ante*, p. 1083;

No. 03–7340. WHITEHEAD *v.* SWYGERT ET AL., *ante*, p. 1124;

No. 03–7398. JEFFERSON *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, *ante*, p. 1125;

No. 03–7429. PRINCE *v.* UNITED STATES, *ante*, p. 1094; and

No. 03–7433. LOGAN *v.* UNITED STATES, *ante*, p. 1094. Petitions for rehearing denied.

February 26, 2004

Miscellaneous Order

No. 03A729. Cox, Georgia Secretary of State *v.* Larios et al. D. C. N. D. Ga. Application for stay of judgment pending disposition of the appeal, presented to Justice Kennedy, and by him referred to the Court, denied.

Certiorari Denied

No. 03–9049 (03A733). Hung Le *v.* Oklahoma. Ct. Crim. App. Okla. Application for stay of execution of sentence of death, presented to Justice Breyer, and by him referred to the Court, denied. Certiorari denied.

March 1, 2004

Certiorari Granted—Vacated and Remanded

No. 02–10703. Forish *v.* Massachusetts. App. Ct. Mass. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Groh* v. *Ramirez*, *ante*, p. 551. Reported below: 56 Mass. App. 1114, 779 N. E. 2d 1005.

Miscellaneous Orders

No. 03A744. Woodford, Warden *v.* Cooper. Application to stay the mandate of the United States Court of Appeals for the Ninth Circuit pending the filing and disposition of the petition for writ of certiorari, presented to Justice O'Connor, and by her referred to the Court, denied.

No. 03M48. Resendiz *v.* Texas. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. 8, Orig. Arizona *v.* California et al. Memorandum Opinion and Order on Motions for Summary Judgment and Motion in Limine received and ordered filed. [For earlier decision herein, see, *e. g.*, 531 U. S. 1.]

No. 03–221. Pliler, Warden *v.* Ford. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1099.] Motion of respondent for appointment of counsel granted. Lisa M. Bassis, Esq., of Los Angeles, Cal., is appointed to serve as counsel for respondent in this case.

No. 03–475. CHENEY, VICE PRESIDENT OF THE UNITED STATES, ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA ET AL. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 1088.] In accordance with its historic practice, the Court refers the motion to recuse in this case to JUSTICE SCALIA.

No. 03–7564. WHITE *v.* MACK ET AL. Ct. App. Ohio, Allen County. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1148] denied.

No. 03–8342. DARBY *v.* DEPARTMENT OF DEFENSE ET AL. C. A. 9th Cir.; and

No. 03–8346. IN RE COOPER. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until March 22, 2004, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 03–8736. IN RE SANDOVAL; and

No. 03–8790. IN RE RUSH. Petitions for writs of habeas corpus denied.

No. 03–975. IN RE LYONS;

No. 03–8359. IN RE SIMMONS; and

No. 03–8593. IN RE BULLOCK. Petitions for writs of mandamus denied.

Certiorari Granted

No. 03–636. JOHNSON *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 321 F. 3d 791.

No. 03–931. FLORIDA *v.* NIXON. Sup. Ct. Fla. Certiorari granted. Reported below: 857 So. 2d 172.

No. 03–878. CRAWFORD, INTERIM FIELD OFFICE DIRECTOR, PORTLAND, IMMIGRATION AND CUSTOMS ENFORCEMENT, ET AL. *v.* SUAREZ MARTINEZ. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, case consolidated with No. 03–7434, *Benitez* v. *Mata, Interim Field Office Director, Miami, Immigration and Customs Enforcement* [certiorari granted, *ante*, p. 1147], and a total of one hour allotted for oral argument.

Certiorari Denied

No. 02–1433. HARRIS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 313 F. 3d 238.

No. 02–1678. SMALL ET AL. *v.* NONNETTE. C. A. 9th Cir. Certiorari denied. Reported below: 316 F. 3d 872.

No. 02–1802. NICHOLS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 03–373. HELLER *v.* ALEJO. C. A. 7th Cir. Certiorari denied. Reported below: 328 F. 3d 930.

No. 03–551. YOUNG *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 817 A. 2d 1187.

No. 03–624. AZDELL ET AL. *v.* JAMES, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT, ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 319 F. 3d 1368.

No. 03–740. ASHCROFT, ATTORNEY GENERAL, ET AL. *v.* SENECA-CAYUGA TRIBE OF OKLAHOMA ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 327 F. 3d 1019.

No. 03–761. RANCHO VIEJO, LLC *v.* NORTON, SECRETARY OF THE INTERIOR, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 323 F. 3d 1062.

No. 03–768. HSIEN PENG *v.* MEI CHIN PENG HU ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 335 F. 3d 970.

No. 03–770. CAREY, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF CAREY *v.* KNOX COUNTY, TENNESSEE, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 70 Fed. Appx. 291.

No. 03–772. AMERICAN GENERAL FINANCE, INC., ET AL. *v.* ASHBY, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ASHBY. Sup. Ct. Ala. Certiorari denied. Reported below: 873 So. 2d 168.

No. 03–775. HOLY LAND FOUNDATION FOR RELIEF AND DEVELOPMENT *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 333 F. 3d 156.

No. 03–777. FLINT *v.* ABB INC., FKA ABB POWER T&D CO., INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 337 F. 3d 1326.

No. 03–790. SAFETY NATIONAL CASUALTY CORP. *v.* DOW CORNING CORP. C. A. 8th Cir. Certiorari denied. Reported below: 335 F. 3d 742.

No. 03–913. LEHMAN *v.* KORNBLAU ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 66 Fed. Appx. 253.

No. 03–917. CLEVELAND, DBA LONE STAR VIDEOTRONICS, ET AL. *v.* VIACOM INC. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 736.

No. 03–919. CHAPPELL ET AL. *v.* RICH ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 340 F. 3d 1279.

No. 03–921. KOUKIOS *v.* MICHAEL GANSON, L. P. A., ET AL. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 03–925. GIRARD ET UX. *v.* CITY OF KEY WEST, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 275 F. 3d 1087.

No. 03–928. IN RE SURRICK. C. A. 3d Cir. Certiorari denied. Reported below: 338 F. 3d 224.

No. 03–942. DAHLQUIST *v.* VUKICH. Ct. App. Wash. Certiorari denied. Reported below: 114 Wash. App. 1064.

No. 03–951. BINNS *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–962. MORTON *v.* HEWITT ET UX. C. A. 3d Cir. Certiorari denied. Reported below: 78 Fed. Appx. 793.

No. 03–969. BROCKMAN *v.* WYOMING DEPARTMENT OF FAMILY SERVICES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 342 F. 3d 1159.

No. 03–973. PUFFER-HEFTY SCHOOL DISTRICT NO. 69 ET AL. *v.* DU PAGE REGIONAL BOARD OF SCHOOL TRUSTEES OF DU PAGE COUNTY, ILLINOIS, ET AL. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 339 Ill. App. 3d 194, 789 N. E. 2d 800.

No. 03–988. JORDAN *v.* CARRIE DUMAS LONG TERM CARE FACILITY. C. A. 8th Cir. Certiorari denied.

No. 03–1005. GARDNER *v.* OFFICE OF DISCIPLINARY COUNSEL. Sup. Ct. Ohio. Certiorari denied. Reported below: 99 Ohio St. 3d 416, 793 N. E. 2d 425.

No. 03–1010. MAGNUSSEN *v.* DAHLQUIST ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 505.

No. 03–1012. SHARON S. *v.* SUPERIOR COURT OF CALIFORNIA, SAN DIEGO COUNTY, ET AL. Sup. Ct. Cal. Certiorari denied. Reported below: 31 Cal. 4th 417, 73 P. 3d 554.

No. 03–1035. KELSO *v.* UNITED STATES DEFENSE INTELLIGENCE AGENCY. C. A. 9th Cir. Certiorari denied. Reported below: 58 Fed. Appx. 766.

No. 03–1045. BANDISODE *v.* DEGEORGE-SMITH ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 66 Fed. Appx. 846.

No. 03–1053. SHENKAN *v.* POTTER, POSTMASTER GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 71 Fed. Appx. 893.

No. 03–1061. BLOUNT *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 64 Fed. Appx. 229.

No. 03–1070. LAM *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 03–1092. POLISHAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 336 F. 3d 234.

No. 03–1096. SCHROEDER *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 414.

No. 03–1098. SOH *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 115 Wash. App. 290, 62 P. 3d 900.

No. 03–1118. CHASE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 340 F. 3d 978.

No. 03–6363. BAILEY *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–6705. TYSON *v.* CAMPBELL, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 03–6945. KAFELE *v.* LERNER SAMPSON & ROTHFUSS, L. P. A., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 62 Fed. Appx. 584.

No. 03–7156. PEREZ *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 201.

No. 03–7229. ANTOINE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 318 F. 3d 919 and 59 Fed. Appx. 178.

No. 03–7355. WATKINS ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 339 F. 3d 167.

No. 03–7622. LONG *v.* KENTUCKY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 80 Fed. Appx. 410.

No. 03–8048. BOYKINS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 300 App. Div. 2d 1153, 751 N. Y. S. 2d 430.

No. 03–8066. BROOKS *v.* JOHNSON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 64 Fed. Appx. 850.

No. 03–8068. CARTER *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 114 S. W. 3d 895.

No. 03–8076. BARNES *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 854 So. 2d 659.

No. 03–8078. ANDERS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 03–8080. SHARP *v.* CARY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–8081. RUIZ *v.* WALSH, SUPERINTENDENT, SULLIVAN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 80 Fed. Appx. 690.

No. 03–8082. SIMMONS *v.* EARLY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–8090. WALCOTT *v.* CAREY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–8092. JEFFERSON *v.* ROCKETT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 697.

No. 03–8093. COOPER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 856 So. 2d 969.

No. 03–8094. WILSON *v.* MORGAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–8095. MCDANIEL *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 03–8100. MCWILLIAMS *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 74 Fed. Appx. 345.

No. 03–8101. PARKER *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 331 F. 3d 764.

No. 03–8102. MCNEIL *v.* CASTRO, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 81 Fed. Appx. 901.

No. 03–8104. PRICE *v.* BRIGANO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 03–8107. LEE *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 03–8116. LAMPKINS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 333 Ill. App. 3d 1209, —— N. E. 2d ——.

No. 03–8128. JOHNSON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 03–8132. JOHNSON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 03–8137. KEELEN *v.* DEMAR ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 349.

No. 03–8151. GUTIERREZ *v.* IMMIGRATION AND NATURALIZATION SERVICE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 326.

No. 03–8170. CHANDLER *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 858 So. 2d 330.

No. 03–8181. ARLEDGE *v.* GLENN ET AL. C. A. 9th Cir. Certiorari denied.

No. 03–8204. WALKER *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 331 Ill. App. 3d 335, 772 N. E. 2d 758.

No. 03–8213. MATTIS *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 80 Fed. Appx. 154.

No. 03–8222. ELMER *v.* BURT, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 522.

No. 03–8226. MORGAN *v.* PRINCIPI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 76 Fed. Appx. 939.

No. 03–8228. MEREGINI *v.* FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 03–8230. LERMA *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–8234. BELL *v.* CITY OF BATON ROUGE, LOUISIANA, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 743.

No. 03–8247. DORTCH *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 03–8255. BROWN *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 100 Ohio St. 3d 51, 796 N. E. 2d 506.

No. 03–8261. DOYLE *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 329 Ill. App. 3d 1228, —— N. E. 2d ——.

No. 03–8276. CARTER *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 03–8277. EDWARDS *v.* FISCHER, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 03–8279. CARSON *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 333 Ill. App. 3d 1234, —— N. E. 2d ——.

No. 03–8286. DAVIS *v.* JOHNSON, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 65 Fed. Appx. 505.

No. 03–8297. SMITH *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 03–8326. CUYUGAN *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 03–8345. JONES *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 03–8362. SAMUELSON *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 03–8375. MOORE *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 324 Ill. App. 3d 1135, 805 N. E. 2d 754.

No. 03–8397. COOPER *v.* JOHNSON, REGIONAL DIRECTOR, GEORGIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 03–8416. WINSTON *v.* WINTERS, WARDEN. App. Ct. Ill., 2d Dist. Certiorari denied.

No. 03–8422. KELLETT *v.* CITY OF WEBSTER GROVES, MISSOURI. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 111 S. W. 3d 459.

No. 03–8425. MILLER *v.* ST. LOUIS COUNTY, MISSOURI. C. A. 8th Cir. Certiorari denied.

No. 03–8429. WEBB *v.* MCGRATH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 03–8441. VARNER *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 207 Ill. 2d 425, 800 N. E. 2d 794.

No. 03–8457. WARD ET VIR *v.* BATON ROUGE NEONATAL ASSOCIATES, INC. C. A. 5th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 573.

No. 03–8463. RANGEL *v.* UNITED STATES; and
No. 03–8656. HILL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 78 Fed. Appx. 393.

No. 03–8464. ORTLOFF *v.* UNITED STATES ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 335 F. 3d 652.

No. 03–8465. SMITH *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied.

No. 03–8474. SCHWINDLER *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 261 Ga. App. 30, 581 S. E. 2d 619.

No. 03–8483. CHAMBERLAIN *v.* ZWECKER, CIVIL COMMITMENT REFERRAL COORDINATOR, MINNESOTA DEPARTMENT OF CORRECTIONS, ET AL. Ct. App. Minn. Certiorari denied.

No. 03–8488. LUNA *v.* ROCHE, SECRETARY OF THE AIR FORCE. C. A. 5th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 366.

No. 03–8504. BRYANT *v.* IDAHO. C. A. 9th Cir. Certiorari denied. Reported below: 79 Fed. Appx. 257.

No. 03–8524. MARTINEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 78 Fed. Appx. 679.

No. 03–8526. WOEHL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 78 Fed. Appx. 422.

No. 03–8531. GREEN *v.* GRANOFF ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 03–8537. ISSE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 342 F. 3d 313.

No. 03–8541. SUA *v.* HAWAII; LESTER *v.* HAWAII; and CONKLIN *v.* HAWAII. Sup. Ct. Haw. Certiorari denied. Reported below: 102 Haw. 527, 78 P. 3d 340 (third judgment).

No. 03–8562. WILLIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 623.

No. 03–8563. LYCKMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–8564. JACKSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 41 Fed. Appx. 848.

No. 03–8572. JOHNS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 68 Fed. Appx. 29.

No. 03–8576. PERDOMO *v.* BENOV, WARDEN. C. A. 1st Cir. Certiorari denied.

No. 03–8580. WHITE *v.* BARRON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 83 Fed. Appx. 113.

No. 03–8582. THOMAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 507.

No. 03–8583. BOWMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 348 F. 3d 408.

No. 03–8586. ADDO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 73 Fed. Appx. 450.

No. 03–8590. MACK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 343 F. 3d 929.

No. 03–8592. BROWN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 03–8594. BRADLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 79 Fed. Appx. 335.

No. 03–8598. VASQUEZ-CRUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 79 Fed. Appx. 51.

No. 03–8600. SWEENEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 76 Fed. Appx. 654.

No. 03–8603. STRAIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 78 Fed. Appx. 975.

No. 03–8604. SANDERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 341 F. 3d 809.

No. 03–8605. OWENS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 72 Fed. Appx. 200.

No. 03–8606. MOORE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 246.

No. 03–8610. WILLIAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 342 F. 3d 697.

No. 03–8611. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 87 Fed. Appx. 711.

No. 03–8614. CRAWFORD-GRAHAM *v.* PRINCIPI, SECRETARY OF VETERANS AFFAIRS. C. A. 8th Cir. Certiorari denied. Reported below: 79 Fed. Appx. 240.

No. 03–8620. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 79 Fed. Appx. 654.

No. 03–8621. WELCH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 80 Fed. Appx. 7.

No. 03–8624. ORTIZ-MONROY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 83 Fed. Appx. 194.

No. 03–8626. AULL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 721.

No. 03–8630. GRANT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 349 F. 3d 192.

No. 03–8632. FRANKLIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 90 Fed. Appx. 387.

No. 03–8637. HOLMES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 78 Fed. Appx. 318.

No. 03–8647. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 79 Fed. Appx. 671.

No. 03–8648. MARTINEZ-GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 77 Fed. Appx. 393.

No. 03–8649. GRAVES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 63 Fed. Appx. 769.

No. 03–8654. HUNTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 87 Fed. Appx. 713.

No. 03–8660. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 87 Fed. Appx. 713.

No. 03–8663. REYES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 349 F. 3d 219.

No. 03–8666. WARREN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 76 Fed. Appx. 432.

No. 03–8668. ROGERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 80 Fed. Appx. 828.

No. 03–8671. RUTKOWSKI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 86 Fed. Appx. 227.

No. 03–8674. BOYD *v.* UNITED STATES (two judgments). C. A. 8th Cir. Certiorari denied.

No. 03–8678. HAWKINS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 78 Fed. Appx. 171.

No. 03–8679. HEBRON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 837 A. 2d 910.

No. 03–8680. DAFNEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 79 Fed. Appx. 655.

No. 03–8684. MORALES GARZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 71 Fed. Appx. 740.

No. 03–8693. GARNES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 03–8695. HELI-MEJIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 03–8696. VINASCO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 84 Fed. Appx. 139.

No. 03–8699. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 03–8702. PHIPPS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 714.

No. 03–8705. LAWRENCE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 349 F. 3d 724.

No. 03–8707. DEL VALLE, AKA LOZANO, AKA BARRERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 78 Fed. Appx. 992.

No. 03–8713. MATIAS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 03–8715. PEREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 88 Fed. Appx. 380.

No. 03–8717. MAGALLON CEJA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 73 Fed. Appx. 921.

No. 03–8732. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 88 Fed. Appx. 382.

No. 03–762. UNITED STATES *v.* SANTEE SIOUX TRIBE OF NEBRASKA. C. A. 8th Cir. Motion of Choctaw Nation of Oklahoma for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 324 F. 3d 607.

No. 03–778. ANTI-DEFAMATION LEAGUE ET AL. *v.* QUIGLEY ET UX. C. A. 10th Cir. Motion of American Jewish Committee et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 327 F. 3d 1044.

No. 03–781. SHELTON *v.* UNITED STATES. C. A. 5th Cir. Motion of Louisiana Association of Criminal Defense Lawyers for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 337 F. 3d 529.

No. 03–8638. HASSEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 81 Fed. Appx. 191.

No. 03–8745. ROBINSON *v.* CROSBY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari before judgment denied.

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No. 02–8202. KOVACHEVICH *v.* NEW YORK CITY HOUSING AUTHORITY, 537 U. S. 1212;

No. 03–224. MOORE *v.* LOCAL UNION NO. 58, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, ET AL., *ante*, p. 966;

No. 03–709. CIGNA HEALTHCARE OF CALIFORNIA, INC. *v.* BALABAN-ZILKE, INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO ZILKE, *ante*, p. 1110;

No. 03–752. SONNEBERG *v.* UNITED STATES, *ante*, p. 1111;

No. 03–6341. TREUL *v.* BUTLER, WARDEN, *ante*, p. 1020;

No. 03–6607. IN RE TOWNSEND, *ante*, p. 1045;

No. 03–6617. GAINES *v.* DRETKE, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1056;

No. 03–6667. STOREY *v.* HUTCHISON ET AL., *ante*, p. 1113;

No. 03–6714. ELLIOTT *v.* SUTER, CLERK, SUPREME COURT OF THE UNITED STATES, ET AL., *ante*, p. 1023;

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No. 03–7038. GARNIER *v.* MILLER-STOUT ET AL., *ante*, p. 1092;

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No. 03–7563. APODACA *v.* SNODGRASS, WARDEN, ET AL., *ante*, p. 1129;

No. 03–7576. ROBINSON *v.* UNITED STATES, *ante*, p. 1129;

No. 03–7777. WASHINGTON *v.* UNITED STATES NAVAL TRAINING CENTER ET AL., *ante*, p. 1138; and

No. 03–8009. CRAWFORD *v.* PEARSON, WARDEN, ET AL., *ante*, p. 1167. Petitions for rehearing denied.

No. 02–10566. OGUAGHA *v.* CRAVENER, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE, 539 U. S. 964. Motion of petitioner for leave to file petition for rehearing denied.

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CONSTITUTIONAL LAW.

I. Due Process.

Dismissal of criminal charges—Evidence destroyed according to normal police procedures.—Arizona v. *Youngblood,* 488 U. S. 51, forecloses Appellate Court of Illinois' holding here that Due Process Clause required dismissal of criminal charges because police, acting in good faith and according to normal procedures, destroyed evidence that respondent had requested more than 10 years earlier in a discovery motion. Illinois v. Fisher, p. 544.

II. Freedom of Religion.

Free exercise of religion—State scholarship aid program exclusion.—Washington State's exclusion of pursuit of a devotional theology degree from its otherwise-inclusive scholarship aid program does not violate Free Exercise Clause. Locke v. Davey, p. 712.

III. Freedom of Speech.

Bipartisan Campaign Reform Act of 2002—"Soft money" donations—Electioneering communications.—Because principal, complementary features of Titles I and II of BCRA—Congress' effort to plug "soft-money" loophole in Federal Election Campaign Act of 1971, and its regulation of electioneering communications—must be upheld in main, three-judge District Court's judgment is affirmed in part and reversed in part insofar as it upheld parts of those Titles but struck down others; District Court's judgment is also affirmed with respect to miscellaneous BCRA Titles III and IV provisions, but reversed with respect to BCRA Title V. McConnell v. Federal Election Comm'n, p. 93.

IV. Right to Counsel.

1. *Effective assistance—Closing argument.*—Ninth Circuit erred in finding that defense counsel's performance at closing argument in Gentry's California criminal trial deprived Gentry of his right to effective assistance of counsel. Yarborough v. Gentry, p. 1.

2. *Uncounseled inculpatory statements made during arrest—Suppression of subsequent jailhouse statements.*—Eighth Circuit erred in holding that absence of an "interrogation" at petitioner's home foreclosed his claim that his subsequent jailhouse statements should have been suppressed as fruits of his uncounseled inculpatory home statements. Fellers v. United States, p. 519.

CONSTITUTIONAL LAW—Continued.

V. Searches and Seizures.

1. *Automobile search—Probable cause for passenger's arrest.*—Because police had probable cause to arrest front-seat passenger in a car that had cocaine behind its back-seat armrest, arrest did not contravene Fourth and Fourteenth Amendments. Maryland v. Pringle, p. 366.

2. *Execution of warrant—Forcible entry—Knock and announce rule.*—Where officers executing a warrant to search Banks' apartment for cocaine knocked and announced their authority, their 15-to-20-second wait before forcible entry satisfied Fourth Amendment and 18 U. S. C. § 3109. United States v. Banks, p. 31.

3. *Highway checkpoints—Traffic accident investigations.*—A police checkpoint stop set up to obtain information from motorists about a recent accident does not violate Fourth Amendment. Illinois v. Lidster, p. 419.

4. *Invalid warrant—Qualified immunity.*—Because petitioner officer's warrant was plainly invalid, his search of respondents' ranch was unreasonable under Fourth Amendment; petitioner is not entitled to qualified immunity from damages suit given that a Magistrate Judge found probable cause for search, because it would be clear to a reasonable officer that his conduct was unlawful. Groh v. Ramirez, p. 551.

VI. States' Immunity from Suit.

Federal consent decree—Enforcement action.—Eleventh Amendment does not bar enforcement of a federal consent decree entered into by state officials. Frew v. Hawkins, p. 431.

CREDITORS AND DEBTORS. See **Bankruptcy,** 1.

CRIMINAL LAW. See **Constitutional Law,** I; IV; V, 1, 2, 4.

DAMAGES. See **Privacy Act of 1974.**

DEATH PENALTY. See **Habeas Corpus,** 1.

DEBTORS AND CREDITORS. See **Bankruptcy,** 1.

DEBTORS' ATTORNEYS. See **Bankruptcy,** 2.

DISABILITY BENEFITS. See **Social Security.**

DISABLED PERSONS. See **Americans with Disabilities Act of 1990; Social Security.**

DISCRIMINATION BASED ON AGE. See **Age Discrimination in Employment Act of 1967.**

DISPARATE-IMPACT ANALYSIS. See **Americans with Disabilities Act of 1990.**

DISPARATE-TREATMENT ANALYSIS. See **Americans with Disabilities Act of 1990.**

DRUGS. See **Constitutional Law,** V, 2.

DUE PROCESS. See **Constitutional Law,** I.

EFFECTIVE ASSISTANCE OF COUNSEL. See **Constitutional Law,** IV, 1.

EIGHTH AMENDMENT. See **Habeas Corpus,** 1.

ELECTIONEERING COMMUNICATIONS. See **Constitutional Law,** III.

ELEVENTH AMENDMENT. See **Constitutional Law,** VI.

EMPLOYER AND EMPLOYEES. See **Age Discrimination in Employment Act of 1967.**

EMPLOYMENT DISCRIMINATION. See **Age Discrimination in Employment Act of 1967; Americans with Disabilities Act of 1990.**

EVIDENCE DESTRUCTION. See **Constitutional Law,** I.

EXCULPATORY EVIDENCE. See **Habeas Corpus,** 3.

EXHAUSTION OF HABEAS OPPORTUNITIES. See **Civil Rights Act of 1871.**

FEDERAL COURTS. See **Habeas Corpus,** 2.

FEDERAL ELECTION CAMPAIGN ACT OF 1971. See **Constitutional Law,** III.

FEDERAL-STATE RELATIONS. See **Clean Air Act; Constitutional Law,** VI.

FIFTH AMENDMENT. See **Constitutional Law,** I.

FIRST AMENDMENT. See **Constitutional Law,** II; III.

FORCIBLE ENTRY. See **Constitutional Law,** V, 2.

FOURTEENTH AMENDMENT. See **Constitutional Law,** I; V, 1.

FOURTH AMENDMENT. See **Constitutional Law,** V.

FREEDOM OF RELIGION. See **Constitutional Law,** II.

FREEDOM OF SPEECH. See **Constitutional Law,** III.

FREE EXERCISE OF RELIGION. See **Constitutional Law,** II.

HABEAS CORPUS. See also **Civil Rights Act of 1871; Constitutional Law,** IV, 1.

1. *Death eligible defendants—Harmless-error review.*—Sixth Circuit ignored 28 U. S. C. § 2254(d)(1)'s limits on federal habeas review when it concluded that, because Eighth Amendment requires a State to narrow class of death eligible defendants, Ohio Court of Appeals had improperly subjected respondent's claims to harmless-error review. Mitchell v. Esparza, p. 12.

2. *Federal prisoner—Second or successive petition—Pro se litigant.*—A federal court cannot recharacterize a *pro se* litigant's motion as a request for habeas relief for purposes of applying 28 U. S. C. § 2255's "second or successive" provision unless it first informs litigant of its intent to recharacterize, warns litigant that this recharacterization means that any subsequent § 2255 motion will be subject to restrictions on "second or successive" motions, and provides litigant an opportunity to withdraw motion or amend it to contain all of his § 2255 claims. Castro v. United States, p. 375.

3. *State prisoner—Certificate of appealability—Concealment of exculpatory evidence.*—Fifth Circuit erred in dismissing one of petitioner's *Brady* v. *Maryland*, 373 U. S. 83, claims and in denying him a certificate of appealability as to the others; when police or prosecutors conceal significant exculpatory or impeaching material in State's possession, it is ordinarily incumbent on State to set record straight. Banks v. Dretke, p. 668.

HARMLESS-ERROR REVIEW. See **Habeas Corpus,** 1.

HIGHWAY CHECKPOINTS. See **Constitutional Law,** V, 3.

IMMUNITY FROM SUIT. See **Constitutional Law,** V, 4; VI.

IMPEACHMENT EVIDENCE. See **Habeas Corpus,** 3.

INCULPATORY STATEMENTS. See **Constitutional Law,** IV, 2.

INEFFECTIVE ASSISTANCE OF COUNSEL. See **Constitutional Law,** IV, 1.

INVALID SEARCH WARRANTS. See **Constitutional Law,** V, 2, 4.

INVESTMENT SCHEMES. See **Securities Law.**

JAILHOUSE STATEMENTS. See **Constitutional Law,** IV, 2.

KNOCK AND ANNOUNCE RULE. See **Constitutional Law,** V, 2.

LIMITATIONS PERIODS. See **Bankruptcy,** 1.

MARYLAND. See **Constitutional Law,** V, 1; **Riparian Rights.**

MINIMUM STATUTORY DAMAGES. See **Privacy Act of 1974.**

OHIO. See **Habeas Corpus,** 1.

OLDER EMPLOYEES AND YOUNGER EMPLOYEES. See **Age Discrimination in Employment Act of 1967.**

PASSENGERS AND AIR CARRIERS. See **Warsaw Convention.**

PERSONS WITH DISABILITIES. See **Americans with Disabilities Act of 1990; Social Security.**

POLICE PROCEDURES. See **Constitutional Law,** I.

POLLUTION. See **Clean Air Act.**

POTOMAC RIVER. See **Riparian Rights.**

PRISON DISCIPLINE. See **Civil Rights Act of 1871.**

PRIVACY ACT OF 1974.

Damages—Minimum statutory award—Proof required.—Plaintiffs adversely affected by a federal agency's violation of Act must prove some actual damages to qualify for a minimum statutory award of $1,000. Doe v. Chao, p. 614.

PROBABLE CAUSE. See **Constitutional Law,** V, 1.

***PRO SE* LITIGANTS.** See **Habeas Corpus,** 2.

QUALIFIED IMMUNITY. See **Constitutional Law,** V, 4.

RATES OF RETURN. See **Securities Law.**

RIGHT TO COUNSEL. See **Constitutional Law,** IV.

RIPARIAN RIGHTS.

Potomac River—Water withdrawal and waterway construction—Improvements appurtenant to Virginia shore.—Virginia has sovereign authority, free from regulation by Maryland, to build improvements appurtenant to her shore of Potomac River and to withdraw water from River; Virginia did not lose her sovereign riparian rights by acquiescing in Maryland's regulation of her water withdrawal and waterway construction activities. Virginia v. Maryland, p. 56.

SCHOLARSHIP PROGRAMS. See **Constitutional Law,** II.

SEARCHES AND SEIZURES. See **Constitutional Law,** V.

SEARCH WARRANTS. See **Constitutional Law,** V, 2, 4.

SECOND OR SUCCESSIVE HABEAS PETITIONS. See **Habeas Corpus,** 2.

SECURITIES ACT OF 1933. See **Securities Law.**

SECURITIES EXCHANGE ACT OF 1934. See **Securities Law.**

SECURITIES LAW.

Investment scheme—Fixed rate of return.—An investment scheme promising a fixed rate of return can be an "investment contract" and thus a "security" subject to Securities Act of 1933, Securities Exchange Act of 1934, and SEC Rule 10b–5. SEC v. Edwards, p. 389.

SHERMAN ACT. See **Antitrust.**

SIXTH AMENDMENT. See **Constitutional Law,** IV.

SOCIAL SECURITY.

Disability benefits—Ability to do previous work.—Social Security Administration's determination that it can find a claimant not disabled—and thereby ineligible for disability insurance benefits and Supplemental Security Income—where she is physically and mentally able to do her previous work, without investigating whether that work exists in significant numbers in national economy, is a reasonable interpretation of 42 U. S. C. § 423(d)(2)(A) that is entitled to deference under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837. Barnhart v. Thomas, p. 20.

"SOFT-MONEY" DONATIONS. See **Constitutional Law,** III.

STATES' IMMUNITY FROM SUIT. See **Constitutional Law,** VI.

STATUTORY DAMAGES. See **Privacy Act of 1974.**

SUPPLEMENTAL SECURITY INCOME. See **Social Security.**

SUPPRESSION OF JAILHOUSE STATEMENTS. See **Constitutional Law,** IV, 2.

TELECOMMUNICATIONS ACT OF 1996. See **Antitrust,** 2.

TELEPHONE SERVICE. See **Antitrust,** 2.

TRAFFIC ACCIDENT INVESTIGATIONS. See **Constitutional Law,** V, 3.

UNIVERSITIES AND COLLEGES. See **Constitutional Law,** II.

VIRGINIA. See **Riparian Rights.**

WARSAW CONVENTION.

Air carrier liability—Accident requirement—Refusal to move asthmatic passenger away from smokers.—"Accident" condition precedent to air carrier liability under Art. 17 of Warsaw Convention is satisfied when carrier's unusual and unexpected refusal to assist a passenger—here, to move decedent asthmatic away from smokers—is a link in a chain of causa-

WARSAW CONVENTION—Continued.
tion resulting in passenger's pre-existing medical condition being aggravated by exposure to a normal condition in aircraft cabin. Olympic Airways v. Husain, p. 644.

WASHINGTON STATE. See **Constitutional Law,** II.

WATER RIGHTS. See **Riparian Rights.**

WORDS AND PHRASES.
"The best available control technology." Clean Air Act, 42 U. S. C. § 7479(3). Alaska Dept. of Environmental Conservation v. EPA, p. 461.

YOUNGER EMPLOYEES AND OLDER EMPLOYEES. See **Age Discrimination in Employment Act of 1967.**