**(ORDER LIST: 576 U. S.)**

**MONDAY, JUNE 29, 2015**

**CERTIORARI -- SUMMARY DISPOSITIONS**

13-1305 COVENTRY HEALTH CARE V. NEVILS, JODIE

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the Supreme Court of Missouri for further consideration in light of new regulations promulgated by the Office of Personnel Management (OPM). See OPM, *Final Rule, Federal Employees Health Benefits Program; Subrogation and Reimbursement Recovery,* 80 Fed. Reg. 29,203 (May 21, 2015) (5 C.F.R. 890.106).

13-1467 AETNA LIFE INSURANCE COMPANY V. KOBOLD, MATTHEW

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the Court of Appeals of Arizona, Division One, for further consideration in light of new regulations promulgated by the Office of Personnel Management (OPM). See OPM, *Final Rule, Federal Employees Health Benefits Program; Subrogation and Reimbursement Recovery,* 80 Fed. Reg. 29,203 (May 21, 2015) (5 C.F.R. 890.106).

14-35 BERGER, PHIL, ET AL. V. ACLU OF NORTH CAROLINA, ET AL.

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Fourth Circuit for further consideration in light of *Walker* v. *Texas Div., Sons of Confederate Veterans, Inc.*, 576 U. S. ___ (2015).

14-428 THAYER, ROBERT, ET AL. V. WORCESTER, MA

The motion of Homeless Empowerment Project for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the First Circuit for further consideration in light of *Reed* v. *Town of Gilbert*, 576 U. S. ___ (2015).

14-430 KELLY, WARDEN V. McCARLEY, WILLARD

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Sixth Circuit for further consideration in light of *Davis* v. *Ayala*, 576 U. S. ___ (2015).

14-783 WAGNER, FRANK V. GARFIELD HEIGHTS, OH, ET AL.

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Sixth Circuit for further consideration in light of *Reed* v. *Town of Gilbert*, 576 U. S. ___ (2015).

14-983 HOOKS, WARDEN V. LANGFORD, MARK

The motion of respondent for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Sixth Circuit for further consideration in light of *Davis* v. *Ayala*, 576 U. S. ___ (2015).

14-1160 CARDSOFT, LLC V. VERIFONE, INC., ET AL.

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United

States Court of Appeals for the Federal Circuit for further consideration in light of *Teva Pharmaceuticals USA, Inc.* v. *Sandoz, Inc.*, 574 U. S. ___ (2015).

14-1201 CENTRAL RADIO COMPANY, ET AL. V. NORFOLK, VA

The motion of Six Law Professors, et al. for leave to file a brief as *amici curiae* is granted. The motion of Neighborhood Enterprises, Inc., et al. for leave to file a brief as *amici curiae* is granted. The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Fourth Circuit for further consideration in light of *Reed* v. *Town of Gilbert*, 576 U. S. ___ (2015).

**ORDERS IN PENDING CASES**

14M130 BLAND, MICHAEL V. MORTGAGE ELEC. SYSTEMS, ET AL.

14M131 TUBBS, JOE N. V. CAIN, WARDEN

The motions to direct the Clerk to file petitions for writs of certiorari out of time are denied.

14M132 DIXON, LANDRY V. DISTRICT COURT OF LA, ET AL.

14M133 WHITEHEAD, DAVID L. V. WHITE & CASE, ET AL.

The motions for leave to proceed as veterans are denied.

14M134 IN RE JACOB BEN-ARI

The motion for leave to file a petition for a writ of mandamus under seal with redacted copies for the public record is granted.

14M135 SUPPRESSED V. SUPPRESSED

The motion for leave to file a petition for a writ of certiorari under seal is granted.

14M136 PAPAS, PAUL N., ET AL. V. PEOPLES MORTGAGE CO., ET AL.

14M137 TOBIAS, KATHRINA H. V. FEDERAL NATIONAL MORTGAGE

The motions to direct the Clerk to file petitions for writs of certiorari out of time are denied.

14M138 WALKER, KATHRYN V. UNITED STATES

The motion for leave to proceed as a veteran is denied.

143, ORIG. MISSISSIPPI V. TENNESSEE, ET AL.

The motion for leave to file a bill of complaint is granted. The defendants are allowed thirty days within which to file an answer.

14-449 KANSAS V. CARR, JONATHAN D.

14-450 KANSAS V. CARR, REGINALD D.

14-452 KANSAS V. GLEASON, SIDNEY J.

Upon consideration of the joint motion of respondents for scheduling of argument and for divided argument, and of the motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument in Nos. 14-449 and 14-450, the following allocation of oral argument time is adopted.

A total of one hour is allocated for oral argument in No. 14-452, and on Question 1 in Nos. 14-449 and 14-450, to be divided as follows: 30 minutes for petitioner, 20 minutes for respondents Jonathan D. Carr and Sidney J. Gleason, and 10 minutes for respondent Reginald D. Carr.

A total of one hour is allocated for oral argument on Question 2 in Nos. 14-449 and 14-450, to be divided as follows: 20 minutes for petitioner, 10 minutes for the Solicitor General, 20 minutes for respondent Reginald D. Carr, and 10 minutes for respondent Jonathan D. Carr.

14-8608 DAKER, WASEEM V. WARREN, SHERIFF, ET AL.

14-8970 LaCROIX, LORI V. USDC WD KY, ET AL.

14-9019 LAVERGNE, BRANDON S. V. DATELINE NBC, ET AL.

The motions of petitioners for reconsideration of orders denying leave to proceed *in forma pauperis* are denied.

14-9817 MENDEZ, LAWRENCE V. UNITED STATES

14-9981 POOLE, ROBERT L. V. UNITED STATES

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until July 20, 2015, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

**CERTIORARI GRANTED**

14-181 GOBEILLE, ALFRED V. LIBERTY MUTUAL INSURANCE

14-1095 MUSACCHIO, MICHAEL V. UNITED STATES

14-1096 TORRES, JORGE L. V. LYNCH, ATT'Y GEN.

The petitions for writs of certiorari are granted.

14-981 FISHER, ABIGAIL N. V. UNIV. OF TX AT AUSTIN, ET AL.

The petition for a writ of certiorari is granted. Justice Kagan took no part in the consideration or decision of this petition.

**CERTIORARI DENIED**

13-1379 ATHENA COSMETICS, INC. V. ALLERGAN, INC., ET AL.

14-656 RJR PENSION INVESTMENT, ET AL. V. TATUM, RICHARD G.

14-920 LOMITA, CA V. FORTYUNE, ROBIN

14-921 VAUGHN, JAMES C. V. IRS

14-973 NGUYEN, MATTHEW D. V. NORTH DAKOTA

14-1025 ERICKSON, RICHARD V. USPS

14-1058 SAMPATHKUMAR, PADMASHRI V. LYNCH, ATT'Y GEN.

14-1072 MALLO, LIANA C., ET AL. V. IRS

14-1082 RENZI, RICHARD G. V. UNITED STATES

14-1083 SANDLIN, JAMES W. V. UNITED STATES

14-1142 BOUDREAUX, MICHAEL V. SEC

14-1145 WHITESIDE, DEANGELO M. V. UNITED STATES

14-1164 KOBACH, KS SEC. OF STATE, ET AL. V. U.S. ELECTION ASSISTANCE

14-1167 ) ANADARKO PETROLEUM CORPORATION V. UNITED STATES
) 
14-1217 ) BP EXPLORATION & PRODUCTION INC. V. UNITED STATES

14-1176 PINE TOP RECEIVABLES V. BANCO DE SEGUROS

14-1179 STANLEY, MARKUS B. V. UNITED STATES

14-1198 WIDMAR, GEORGE V. SUN CHEMICAL CORPORATION

14-1200 AMEDISYS, INC., ET AL. V. PUBLIC EMPLOYEES' RETIREMENT

14-1216 ENOS, RICHARD, ET AL. V. LYNCH, ATT'Y GEN., ET AL.

14-1225 FALCON EXPRESS INTERNATIONAL V. DHL EXPRESS (USA), INC.

14-1251 SUN LIFE ASSURANCE COMPANY V. GROUP DISABILITY BENEFITS PLAN

14-1265 MINGO, CYNTHIA V. MOBILE, AL

14-1266 PINILLO, HILDA V. HSBC BANK USA

14-1270 WELTON, MARSHALL G. V. ANDERSON, SHANI J., ET AL.

14-1277 JOHNSON, STEPHANIE V. BANK OF AMERICA, ET AL.

14-1281 GEICO GENERAL INSURANCE COMPANY V. GOULD, ELLIOT, ET AL.

14-1285 ANGHEL, MARIA-LUCIA V. NY STATE DEPT. OF HEALTH, ET AL.

14-1290 CLARK, SUZANNE V. CALLAHAN, MARLENE, ET AL.

14-1294 MACKENZIE, GAVIN, ET AL. V. AIR LINE PILOTS ASSN., ET AL.

14-1309 AJAELO, AMBROSE C. V. LOS ANGELES COUNTY, CA

14-1310 EDWARDS, LORI V. LAKE ELSINORE UNIFIED SCH. DIST.

14-1332 BROCKETT, RAMONA V. BROWN, JORDAN A.

14-1348 GLASSON, ROBERT E. V. NEBRASKA

14-1354 SACO, FAROUK, ET UX. V. DEUTSCHE BANK TRUST CO.

14-1356 ASSADINIA, JAMSHID V. PENNSYLVANIA

14-1360 DIX, GERALD V. UNKNOWN TSA AGENT #1, ET AL.

14-1368 CATAHAMA, LLC V. FIRST COMMONWEALTH BANK

14-1370 LAGUETTE, ARTHUR V. US BANK, ET AL.

14-1386 WILBORN, HAROLD L. V. JOHNSON, SEC. OF HOMELAND

14-1387 MEYER, STACEY V. BURWELL, SEC. OF H&HS

14-1392 ULTRAMERCIAL, LLC, ET AL. V. WILDTANGENT, INC.

14-1411 JIMENEZ, CARLOS L. V. UNITED STATES

14-1421 ISAACS, J. D. V. DARTMOUTH HITCHCOCK MED., ET AL.

14-8293 MARRON, TRAVIS J. V. GUARD, SGT. MILLER, ET AL.

14-8526 LARA, JOSE V. UNITED STATES

14-8781 DAWSON, ONDEE W. V. UNITED STATES

14-8916 ROSELLO, ANTONIO V. FLOURNOY, WARDEN

14-8980 GABE, ERIC V. TERRIS, WARDEN

14-9016 MIKE, ADRIAN V. UNITED STATES

14-9041 LOZA, JOSE V. JENKINS, WARDEN

14-9056 MOORE, RICHARD B. V. SOUTH CAROLINA

14-9064 HAYNES, RAY V. UNITED STATES

14-9138 DE LA TORRE-DE LA TORRE, GASTON V. UNITED STATES

14-9148 HOLIDAY, RAPHAEL D. V. STEPHENS, DIR., TX DCJ

14-9154 GARCIA, TOMMY V. UNITED STATES

14-9419 DYE, PAUL A. V. MICHIGAN

14-9432 BROWN, ERRICK V. ILLINOIS

14-9434 BAILEY, RAYMOND V. FORD, WARDEN

14-9436 BLAND, CHESTER L. V. ALABAMA

14-9440 PRICE, JAMES A. V. JONES, SEC., FL DOC, ET AL.

14-9442 LOWRY, ANDRE C. V. WENEROWICZ, SUPT., GRATERFORD

14-9450 BILLARD, THOMAS V. TANNER, WARDEN

14-9452 CONLEY, GLEN L. V. MISSISSIPPI

14-9455 DESPORT, PAUL J. V. PENNSYLVANIA

14-9459 LESTER, STEVE V. HENTHORNE, MICHAEL

14-9463 KEARNEY, RICHARD V. NY DOC, ET AL.

14-9464 SALLEY, ALFONZO B. V. DRAGOVICH, MARTIN, ET AL.

14-9465 EMERSON, JANICE M. V. JAMES F. LINCOLN ARC WELDING

14-9467 McQUEEN, JENNIE V. AEROTEK, ET AL.

14-9473 STEWART, TRACY L. V. McCOMBER, WARDEN

14-9483 SAVINO, COLLEEN K. V. SAVINO, KENNETH D.

14-9484 K. T. V. INDIANA

14-9490 ARCHER, ROBIN L. V. FLORIDA

14-9491 ALLAH, JUSTICE R. V. D'ILIO, ADM'R, NJ, ET AL.

14-9497 SMOTHERS, DEMETRIUS L. V. MARYLAND

14-9509 McCLINTON, EDMOND V. KELLEY, DIR., AR DOC

14-9523 CROSS, FLOYD E. V. FAYRAM, WARDEN

14-9526 GRAHAM, RAYMOND D., ET AL. V. HARRINGTON, WARDEN

14-9566 HAMILTON, FLOYD V. NEGI, SHIVANI, ET AL.

14-9582 GONZALEZ-GUZMAN, SERGIO V. WASHINGTON

14-9598 TALLEY, JAMES E. V. DEPT. OF JUSTICE, ET AL.

14-9628 ULLRICH, STEPHEN V. YORDY, WARDEN

14-9636 BELLAMY, ULYSSES V. PLUMLEY, WARDEN

14-9647 BARRINER, CEDRICK S. V. JONES, SEC., FL DOC, ET AL.

14-9690 MIDGYETT, AARON L. V. DENNEY, WARDEN

14-9706 SALDIVAR, ERIC H. V. LEWIS, WARDEN

14-9733 KING, DANIEL V. WISCONSIN

14-9744 DAWSON, CRAIG T. V. PREMO, SUPT., OR

14-9746 RICHARDSON, LADERICK V. JANDA, WARDEN

14-9749 PENDERGRASS, STEVEN P. V. BARKSDALE, WARDEN

14-9758 EHLER, RICHARD V. ARKANSAS

14-9765 GLENN, EARLY V. DANFORTH, WARDEN

14-9784 DiSALVO, JOHN A. V. NEW YORK

14-9790 WILSON, ROBERT V. KANSAS

14-9802 RICE, LEON J. V. BLANKENSHIP, GREG, ET AL.

14-9862 BOSWELL, DONALD M. V. LOUISIANA ATT'Y DISCIPLINARY BD.

14-9876 WILCOX, KENNETH M. V. UNITED STATES

14-9877 LOPEZ, MARIA L. V. UNITED STATES

14-9881 RICE, MARK D. V. UNITED STATES

14-9882 COPELAND, JERMAINE L. V. JONES, SEC., FL DOC, ET AL.

14-9883 BENSON, MANDEL M. V. UNITED STATES

14-9884 AHMAD, HAKIM I. V. UNITED STATES

14-9905 GARGANO, JOHN V. UNITED STATES

14-9906 HATFIELD, EVERLY K. V. UNITED STATES

14-9907 HATFIELD, REX I. V. UNITED STATES

14-9908 BAKER, MARK W., ET AL. V. UNITED STATES

14-9910 ALEJANDRO-MONTANEZ, JOSUE V. UNITED STATES

14-9919 BARBARY, ANDRE D. V. UNITED STATES

14-9921 THOMPSON, MELVIN B. V. FLORIDA

14-9922 YEM, THEARA V. PEERY, ACTING WARDEN

14-9927 JOHNSON, MICHAEL V. UNITED STATES

14-9928 CAIN, JOHN C. V. UNITED STATES

14-9929 CELESTINE, BERNARD V. UNITED STATES

14-9932 CRAWFORD, ROBERT A. V. PARRIS, WARDEN

14-9947 COX, CLINTON D. V. UNITED STATES

14-9948 SILVER, FRANCINE V. RESCAP BORROWER CLAIMS TRUST

14-9953 ESCOBAR-TORRES, JOSE M. V. UNITED STATES

14-9955 BROWN, ANDREW V. UNITED STATES

14-9957 ESCOBAR-MENDOZA, WALTER E. V. UNITED STATES

14-9958 RIGGS, KELLY P. V. UNITED STATES

14-9963 AGUILERA-ENCHAUTEGUI, JORGE V. UNITED STATES

14-9966 OILER, DAVID C. V. UNITED STATES

14-9968 NICKLESS, DANIEL V. UNITED STATES

14-9969 JONES, WINSTON W. V. UNITED STATES

14-9970 BONILLA, RENE V. GRIFFIN, SUPT., GREEN HAVEN

14-9975 SHEPARD-FRASER, DENISE V. UNITED STATES

14-9976 WULF, RONALD M. V. UNITED STATES

14-9979 WASHINGTON, DEANDRE L. V. UNITED STATES

14-9982 MONTGOMERY, JEAN A. V. BRENNAN, POSTMASTER GEN.

14-9984 CASSIUS, TIMOTHY G. V. UNITED STATES

14-9986 VIAUD, ALFRED L. V. UNITED STATES

14-9987 TAYLOR, KAREN M. V. JAMES, SEC. OF AIR FORCE, ET AL.

14-9990 PRATER, LEON V. UNITED STATES

14-9991 MILLINER, JAMES L. V. UNITED STATES

14-9993 ATWOOD, DAVID G. V. UNITED STATES

14-9999 GARCIA-HERNANDEZ, CESAR V. UNITED STATES

14-10000 PRICE, ANTWAIN G. V. UNITED STATES

14-10002 SANCHEZ-SANCHEZ, JOSE A. V. UNITED STATES

14-10006 PHILLIPS, MAURICE V. UNITED STATES

14-10010 VERRUSIO, FRASER V. UNITED STATES

14-10015 LAWSTON, DANYEL V. UNITED STATES

14-10018 SANCHEZ, BERNARDINO V. UNITED STATES

14-10019 DE LA ROSA, JAIRO R. V. UNITED STATES

14-10022 PAPPAS, MARCOS V. UNITED STATES

14-10023 ORTIZ-MARTINEZ, OSCAR O. V. UNITED STATES

14-10024 MORENO, EULALIO V. UNITED STATES

14-10026 PENA-GARAVITO, RAUL R. V. UNITED STATES

14-10027 MORTON, REGINALD D. V. UNITED STATES

14-10028 MARTINEZ-JIMENEZ, JOSE V. UNITED STATES

14-10030 VASQUEZ-DIAZ, RAMON V. UNITED STATES

14-10032 WALTERS, MICHAEL S. V. UNITED STATES

14-10034 VALDEZ-NOVOA, JESUS V. UNITED STATES

14-10035 TRIPLETT, ROBERT W. V. UNITED STATES

14-10039 BEGLEY, SHANE V. UNITED STATES

14-10040 ALLAN, PETER V. UNITED STATES

14-10043 SHAW, ANTWONE M. V. UNITED STATES

14-10046 LUTCHER, MELVIN V. UNITED STATES

14-10052 MORRIS, JAMES V. UNITED STATES

14-10053 O'NEILL-SERRANO, CARLOS H. V. UNITED STATES

14-10054 DOMINGUEZ-GODINEZ, VICTOR M. V. UNITED STATES

The petitions for writs of certiorari are denied.

14-410 GOOGLE, INC. V. ORACLE AMERICA, INC.

The petition for a writ of certiorari is denied. Justice Alito took no part in the consideration or decision of this petition.

14-1098 WOLFF, MICHAEL G. V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Kagan took no part in the consideration or decision of this petition.

14-9807 SINGLETON, NATHANIEL V. MR. NELSON, ET AL.

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8. As the 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*).

14-9899 ROBINSON, RUFUS V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Kagan took no part in the consideration or decision of this petition.

**HABEAS CORPUS DENIED**

14-10119 IN RE SAMUEL RIVERA

The petition for a writ of habeas corpus is denied.

**MANDAMUS DENIED**

14-9880 IN RE ANDREW COX

The petition for a writ of mandamus is denied.

**REHEARINGS DENIED**

14-1032 MEGGISON, EARL C. V. BAILEY, GERALD

14-8316 McDONALD, R. KIRK V. FOX RUN MEADOWS PUD

14-8365 LEARY, FRANCIS V. STEPHENS, DIR., TX DCJ, ET AL.

14-8480 BELTRAN, JAIME E. V. McDOWELL, ACTING WARDEN

14-8493 IN RE DENISE SESSON

14-8542 REED, STEVEN L. V. JOB COUNCIL OF OZARKS, ET AL.

14-8723 BERG, JEREMIAH S. V. UNITED STATES

14-8844 MILLER, ADDIE M. V. WALT DISNEY COMPANY, ET AL.

14-8846 MILLER, ADDIE M. V. ABC HOLDING CO., ET AL.

14-8908 SEWELL, STARSHA V. HOWARD, JOHN

14-9007 BARBER, KENNETH L. V. UNITED STATES

14-9168 TOLEN, ERIC T. V. NORMAN, WARDEN

14-9213 BURT, MICHAEL V. CIR

14-9295 DE LA CRUZ, LUIS V. QUINTANA, WARDEN

The petitions for rehearing are denied.

**ATTORNEY DISCIPLINE**

D-2828 IN THE MATTER OF DISCIPLINE OF ROBERT A. SCHACHTER

Robert A. Schachter, of Valley Cottage, New York, 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.

D-2829 IN THE MATTER OF DISCIPLINE OF VITO MATTEO EVOLA

Vito Matteo Evola, of Rosemont, Illinois, 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.

D-2830 IN THE MATTER OF DISCIPLINE OF MICHAEL LAWRENCE FLYNN

Michael Lawrence Flynn, of LaGrange Park, Illinois, 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.

D-2831 IN THE MATTER OF DISCIPLINE OF ROBERT S. SEGUIN

Robert S. Seguin, of Milltown, New Jersey, 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.

D-2832 IN THE MATTER OF DISCIPLINE OF RICHARD DAVID FELDMAN

Richard David Feldman, of Whitestone, New York, 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.

D-2833 IN THE MATTER OF DISCIPLINE OF GEOFFREY PARKER DAMON

Geoffrey Parker Damon, of Independence, Kentucky, 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.

D-2834 IN THE MATTER OF DISCIPLINE OF RICKY LAWTON

Ricky Lawton, of Fernley, Nevada, 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.

D-2835 IN THE MATTER OF DISCIPLINE OF JON CHARLES COOPER

Jon Charles Cooper, of Washington, District of Columbia, 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.

D-2836 IN THE MATTER OF DISCIPLINE OF LAWRENCE J. FLEMING

Lawrence J. Fleming, of St. Louis, Missouri, 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.

# SUPREME COURT OF THE UNITED STATES

CARLTON JOYNER, WARDEN *v.*
WILLIAM LEROY BARNES

CARLTON JOYNER, WARDEN *v.*
JASON WAYNE HURST

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

No. 14–395. Decided June 29, 2015

The motions of respondents for leave to proceed *in forma pauperis* are granted. The petition for a writ of certiorari is denied.

JUSTICE THOMAS, with whom JUSTICE ALITO joins, dissenting from the denial of certiorari.

The U. S. Court of Appeals for the Fourth Circuit made the same error in these cases that we have repeatedly summarily reversed this Term. I see no reason why these cases, which involve capital sentences that the State of North Carolina has a strong interest in imposing, should be treated differently. We should be consistent, and use our discretionary review authority to correct this error.

## I

This petition arises from two cases, which involve two separate defendants and trials. I discuss each in turn.

### A

On October 29, 1992, William Leroy Barnes accompanied two other men, Robert Lewis Blakney and Frank Junior Chambers, to the home of B. P. Tutterow and his wife, Ruby, with the intent to rob them. *State* v. *Barnes*, 345 N. C. 184, 200, 481 S. E. 2d 44, 51 (1997). The three targeted the Tutterows because Chambers knew that B. P., a deputy sheriff who worked at a jail where he had been held, often carried a significant amount of cash in his

wallet. In the course of the robbery, Barnes and Chambers shot and killed the Tutterows. They then went to the apartment of some friends, where Barnes and Chambers showed off the guns they had stolen from the Tutterows.

The three men were tried together on two counts of first-degree murder, two counts of robbery with a dangerous weapon, and one count of first-degree burglary. The jury found them guilty on all counts. During the penalty phase of the trial, Chambers' attorney warned the jurors as follows that they would answer for their vote before God:

> "All of us will stand in judgment one day. . . . [D]oes a true believer want to explain to God, yes, I did violate one of your commandments. Yes, I know they are not the ten suggestions. They are the ten commandments. I know it says, Thou shalt not kill, but I did it because the laws of man said I could. You can never justify violating a law of God by saying the laws of man allowed it. If there is a higher God and a higher law, I would say not." App. to Pet. for Cert. 172a.

The jury recommended that Barnes and Chambers be sentenced to death for each murder and that Blakney be sentenced to two mandatory terms of life imprisonment.

After the jury made these recommendations, defense counsel moved to question the jury based on allegations that a juror had called a minister to seek guidance about capital punishment. Defense counsel acknowledged that there was no evidence that the juror had discussed the facts of the case with the minister. The trial court denied his motion.

On direct appeal, the Supreme Court of North Carolina concluded that the trial court did not abuse its discretion in denying that motion. It explained that "[t]he trial court was faced with the mere unsubstantiated allegation that a juror called a minister to ask a question about the death penalty" and that there was "no evidence that the content

of any such possible discussion prejudiced defendants or that the juror gained access to improper or prejudicial matters and considered them with regard to th[e] case." *Id.,* at 228, 481 S. E. 2d, at 68.

After unsuccessfully seeking state collateral review, Barnes pursued federal relief, arguing that the Supreme Court of North Carolina had unreasonably applied clearly established federal law as determined by this Court when it denied relief on his juror misconduct claim, see 28 U. S. C. §2254(d)(1). The U. S. District Court for the Middle District of North Carolina rejected that argument. The Court of Appeals reversed. *Barnes* v. *Joyner*, 751 F. 3d 229 (CA4 2014). Over a dissent, the Court of Appeals concluded that the North Carolina court had unreasonably applied this Court's decision in *Remmer* v. *United States*, 347 U. S. 227 (1954), which held that "'any private communication, contact, or tampering, directly or indirectly, with a juror during a trial about the matter pending before the jury is . . . presumptively prejudicial.'" 751 F. 3d, at 241 (quoting *Remmer*, *supra,* at 229; emphasis deleted)). Although *Remmer* did not provide further guidance as to what constituted "the matter pending before the jury," the panel concluded, based on the Court of Appeals' own precedents, that the death penalty generally was "the matter pending before the jury." 751 F. 3d, at 248. The court remanded the case for the District Court to consider whether Barnes could show actual prejudice from the error under *Brecht* v. *Abrahamson*, 507 U. S. 619 (1993).

B

On June 9, 2002, Jason Wayne Hurst—the second defendant involved in this petition—murdered Daniel Lee Branch after arranging to buy a pump-action shotgun from him. *State* v. *Hurst*, 360 N. C. 181, 184–186, 624 S. E. 2d 309, 314–315 (2006). As Hurst later recounted, "'[he] knew [he] was going to kill [Branch]'" as soon as

they finished scheduling the sale. *Id.,* at 185, 624 S. E. 2d, at 315 (brackets in original). The two men met in a field, where Hurst asked if he could test-fire the gun. As Branch walked into the field to set up some cans and bottles for that purpose, Hurst opened fire. Hurst shot Branch three times. His first shot struck Branch in the ribs or stomach, prompting him to yell, "'[N]o, no, don't shoot.'" *Ibid.* His second shot struck Branch in the side, causing him to fall. Hurst then walked over to Branch and shot him in the head, before taking his keys and driving off in Branch's car.

A jury convicted Hurst of first-degree murder and recommended that he be sentenced to death. The trial court adopted the recommendation. In a later petition for state collateral review, Hurst asserted that his constitutional rights were violated when a juror asked her father where she could look in the Bible for passages about the death penalty. He attached an affidavit from juror Christina Foster, in which she stated that she had "often had lunch with [her] father who worked near the courthouse" during the trial and, before deliberations, had asked him "where [she] could look in the Bible for help and guidance in making [her] decision for between life and death." App. in No. 13–6 (CA4), p. 441. Her father gave her "the section in the Bible where [she] could find 'an eye for an eye.'" *Ibid.*

The state court rejected Hurst's argument. It first noted that the U. S. Court of Appeals for the Fourth Circuit had "determined that the Bible does not constitute an improper external influence in a capital case." *Id.,* at 481–482. It then found that Hurst had "presented no evidence" that Foster's father either "knew what case juror Foster was sitting on" or "deliberately attempted to influence her vote by directing her to a specific passage in the Bible." *Id.,* at 482. The court therefore denied Hurst relief, and the Supreme Court of North Carolina summarily denied a petition for review.

Hurst then filed an application for federal relief, arguing, among other things, that the North Carolina court had unreasonably applied clearly established federal law as determined by this Court in rejecting his juror-influence claim. See §2254(d)(1). As with Barnes' application, the U. S. District Court for the Middle District of North Carolina denied relief, but the Court of Appeals reversed. *Hurst* v. *Joyner*, 757 F. 3d 389, 400 (CA4 2014). Although two judges on the panel expressed their misgivings in a concurrence, *ibid.* (opinion of Shedd, J., joined by Niemeyer, J.), the panel concluded that the earlier "holding in *Barnes* dictate[d] the same result" in Hurst's case, *id.,* at 398. The panel remanded for a further hearing on the matter to determine whether the juror's communication with her father actually prejudiced Hurst under *Brecht*, *supra*, at 637.

## II

This Court should have granted a writ of certiorari to review the decisions below. In recognition of the serious disruption to state interests that occurs when a federal court collaterally reviews a state-court judgment, the Antiterrorism and Effective Death Penalty Act of 1996 imposes strict limits on that review. Among those limits are the prohibitions found in §2254(d), which dictates that a federal court may not grant relief "with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—"

> "(1) 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; or
>
> "(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding."

We have repeatedly explained that the §2254(d) "standard is difficult to meet." *Harrington* v. *Richter*, 562 U. S. 86, 102 (2011). Yet some courts continue to misapply this "part of the basic structure of federal habeas jurisdiction." *Id.,* at 103.

One of the all too common errors that some federal courts make in applying §2254(d) is to look to their own precedents as the source of "clearly established Federal law" for purposes of §2254(d)(1), even though that provision expressly limits that category to Supreme Court precedents. See, *e.g., Glebe* v. *Frost*, 574 U. S. ___, ___ (2014) (*per curiam*) (slip op., at 3); *Lopez* v. *Smith*, 574 U. S. ___, ___ (2014) (*per curiam*) (slip op., at 6); *White* v. *Woodall*, 572 U. S. ___, ___, n. 2 (2014) (slip op., at 4, n. 2).

The Fourth Circuit's decision in *Barnes*—upon which it relied in *Hurst*—committed the same error. That court reasoned that our decision in *Remmer* "created a rebuttable presumption of prejudice applying to communications or contact between a third party and a juror concerning the matter pending before the jury." 751 F. 3d, at 241. But *Remmer* offered no specific guidance on what constituted "the matter pending before the jury." 347 U. S., at 229. Nevertheless, the Court of Appeals turned to its *own* precedents to determine whether the moral and spiritual implications of the death penalty as a general matter constituted "the matter pending before the jury." It cited its earlier decisions in *Stockton* v. *Virginia*, 852 F. 2d 740 (CA4 1988), and *United States* v. *Cheek*, 94 F. 3d 136 (CA4 1996), as setting forth a "'minimal standard'" under which "[a]n unauthorized contact between a third party and a juror concerns the matter pending before the jury when it is 'of such a character as to reasonably draw into question the integrity of the verdict.'" 751 F. 3d, at 248. Neither of those decisions is a precedent of this Court.

*Remmer* was the only proper source of "clearly established Federal law," and it provided no support for the

Court of Appeals' decision. That case involved a third party who "remarked to [a juror] that he could profit by bringing in a verdict favorable to the [defendant]." 347 U. S., at 228. The third-party communication in Barnes' case involved nothing of the sort. Instead, it concerned a juror who asked her minister a question about the death penalty generally and did not discuss the facts of the case. No precedent of this Court holds that such a communication concerns "the matter pending before the jury." Accordingly, the state court reasonably concluded that the juror's question about the death penalty generally—not the case specifically—did not concern the matter pending before the jury. Barnes, therefore, was not entitled to relief under §2254(d)(1).

Despite the obvious error in *Barnes*, that decision has already begun to distort the law of the Fourth Circuit. When presented with Hurst's claim that the North Carolina court violated clearly established federal law as determined by this Court when it denied his *Remmer* claim, §2254(d)(1), the panel deemed itself bound by *Barnes*. Even acknowledging that the affidavits submitted to the state court "did not allege that Juror Foster discussed with her father the facts or evidence that had been presented in the trial, or the status of the jury's deliberations," and that Hurst presented no "evidence that Juror Foster's father expressed any opinion about the case or attempted to influence her vote," the panel concluded that the "holding in *Barnes* dictate[d] the same result in [Hurst's] case." *Hurst*, 757 F. 3d, at 398. That conclusion was just as erroneous as the one in *Barnes* itself.

* * *

I would have granted the writ of certiorari to review these cases. The Court of Appeals deviated from the requirements of federal law, declared two reasonable decisions of state courts "unreasonable," and put the State

to the burden of two wholly unnecessary *Brecht* hearings. It committed an error that we have repeatedly corrected, including multiple times this Term. See *supra,* at 5. Because I see no reason why these cases should be treated differently than the many others that we have reviewed for the same error, I would have granted the petition for a writ of certiorari.

# SUPREME COURT OF THE UNITED STATES

RICHARD GERALD JORDAN *v.* MARSHALL L. FISHER, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS ET AL.

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

No. 14–8035. Decided June 29, 2015

The petition for a writ of certiorari is denied.

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG and JUSTICE KAGAN join, dissenting from the denial of certiorari.

Three times, the same prosecutor sought and obtained a death sentence against petitioner Richard Jordan. And each time, a court vacated that sentence. After Jordan's third successful appeal, the prosecutor entered into a plea agreement whereby Jordan would receive a sentence of life without the possibility of parole. When the Mississippi Supreme Court later invalidated that agreement, Jordan requested that the prosecutor reinstate the life-without-parole deal through a new plea. The prosecutor refused. Jordan was then retried and again sentenced to death.

Jordan applied for federal habeas corpus relief on the ground that the prosecutor's decision to seek the death penalty after having agreed to a lesser sentence was unconstitutionally vindictive. The District Court denied Jordan's petition, and the Court of Appeals for the Fifth Circuit, in a divided decision, denied Jordan's request for a certificate of appealability (COA). Because the Fifth Circuit clearly misapplied our precedents regarding the issuance of a COA, I would grant Jordan's petition and summarily reverse the Fifth Circuit's judgment.

# I

## A

In 1976, Jordan was arrested for the abduction and murder of Edwina Marter. Jackson County Assistant District Attorney Joe Sam Owen led the prosecution. The jury convicted Jordan of capital murder, and, under then-applicable Mississippi law, he automatically received a sentence of death. After Jordan's sentence was imposed, however, the Mississippi Supreme Court held that automatic death sentences violated the Eighth Amendment. See *Jackson* v. *State*, 337 So. 2d 1242, 1251–1253 (1976) (citing *Gregg* v. *Georgia*, 428 U. S. 153 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.)). Jordan was accordingly granted a new trial.

Owen continued to serve as the lead prosecutor at Jordan's second trial. Jordan was again convicted of capital murder and sentenced to death. The Fifth Circuit later determined, however, that the jury had been improperly instructed on the imposition of the death penalty. *Jordan* v. *Watkins*, 681 F. 2d 1067 (1982). The court therefore set aside Jordan's sentence.

Jordan's new sentencing trial was held in 1983. By this point, Owen had left the district attorney's office for private practice. But at the behest of Marter's family, Owen agreed to represent the State as a special prosecutor. A jury once more sentenced Jordan to death, but this Court subsequently vacated the decision upholding that sentence and remanded for reconsideration in light of *Skipper* v. *South Carolina*, 476 U. S. 1 (1986). See *Jordan* v. *Mississippi*, 476 U. S. 1101 (1986).

Rather than pursue yet another sentencing trial, Owen entered into a plea agreement with Jordan: Jordan would be sentenced to life without the possibility of parole in exchange for his promise not to challenge that sentence. In support of the agreement, Owen stipulated to several mitigating circumstances, including Jordan's remorse, his

record of honorable service and disability incurred in the military during the Vietnam War, his good behavior in prison, and his significant contributions to society while incarcerated. 1 Postconviction Record 20–21. The trial court accepted the plea and, in December 1991, Jordan was sentenced to life without parole.

As it turned out, this sentence, too, was defective. At the time the parties reached their plea agreement, Mississippi's sentencing statutes authorized a term of life without parole only for those defendants who—unlike Jordan—had been found to be habitual offenders. Citing this statutory gap, the Mississippi Supreme Court held in an unrelated case that a plea agreement materially identical to Jordan's violated Mississippi public policy. *Lanier* v. *State*, 635 So. 2d 813 (1994). Such agreements, the court explained, were "void *ab initio*," and thus the parties were "placed back in the positions which they occupied prior to entering into the agreement." *Id.,* at 816–817.

Following the decision in *Lanier*, Jordan filed a *pro se* motion with the trial court seeking to remedy his unlawful sentence by changing its term from life without parole to life with the possibility of parole. While the motion was pending, the Mississippi Legislature amended the State's criminal code to permit sentences of life without parole for all capital murder convictions. See 1994 Miss. Laws p. 851 (amending Miss. Code. Ann. §97–3–21). The Mississippi Supreme Court ultimately agreed with Jordan that his sentence was invalid under *Lanier* and remanded the case for resentencing. *Jordan* v. *State*, 697 So. 2d 1190 (1997) (table).

On remand, Jordan asked Owen (reprising his role as special prosecutor) to reinstate their earlier life-without-parole agreement based on the recent amendment to Mississippi law. Jordan, in return, would agree to waive his right to challenge the retroactive application of that amendment to his case. Jordan had good reason to believe

that his request would be granted: Three other Mississippi capital defendants had successfully petitioned to have their plea agreements invalidated under the logic of *Lanier*. Each had committed crimes at least as serious as Jordan's,[1] and each had received a life sentence after their successful appeals. Yet Owen refused to enter into the same agreement he had previously accepted, instead seeking the death penalty at a new sentencing trial. Owen later explained that he had declined to negotiate because he felt Jordan had violated their original agreement by asking the trial court to modify his sentence. See *Jordan* v. *State*, 786 So. 2d 987, 1000 (Miss. 2001).

Jordan filed a motion contending that Owen had sought the death penalty as retaliation for Jordan's exercise of his legal right to seek resentencing under *Lanier*. See *Blackledge* v. *Perry*, 417 U. S. 21, 28–29 (1974) (recognizing the Due Process Clause's prohibition of prosecutorial vindictiveness). The trial court denied the motion, and Jordan received a death sentence.

Jordan continued to pursue his prosecutorial vindictiveness claim on direct appeal to the Mississippi Supreme Court. That court rejected Jordan's argument, noting, among other things, that its previous decision in Jordan's case had left open the possibility that Owen could seek the death penalty. *Jordan* v. *State*, 786 So. 2d, at 1001. Justice Banks dissented, contending that Jordan's allegations were sufficiently troubling to merit an evidentiary hearing. *Id.,* at 1031–1032.

B

After exhausting his postconviction remedies in the state courts, Jordan initiated a federal habeas corpus

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[1] See *Lanier* v. *State*, 635 So. 2d 813, 815 (Miss. 1994) (assaulting, kidnaping, and murdering a police officer); *Stevenson* v. *State*, 674 So. 2d 501, 502 (Miss. 1996) (stabbing to death a prison deputy); *Patterson* v. *State*, 660 So. 2d 966, 967 (Miss. 1995) (kidnaping and murder).

proceeding in the Southern District of Mississippi. The District Court denied relief on each of the claims in Jordan's petition, including his vindictiveness claim. *Jordan* v. *Epps*, 740 F. Supp. 2d 802, 819 (2010). With respect to that claim, the District Court opined that Owen could not have been vindictive because he "did not substitute a different charge for the charge that was originally imposed, nor did he seek a different penalty than that originally sought." *Ibid.* The District Court also declined to issue a COA. App. to Pet. for Cert. 149a.

Jordan renewed his efforts to obtain a COA on his vindictiveness claim in an application to the Fifth Circuit, but the court denied the request. *Jordan* v. *Epps*, 756 F. 3d 395 (2014). The Fifth Circuit held that Jordan had "fail[ed] to prove" actual vindictiveness by Owen because "it is not vindictive for a prosecutor to follow through on a threat made during plea negotiations." *Id.,* at 406 (citing *Bordenkircher* v. *Hayes*, 434 U. S. 357, 363–364 (1978)). The court further held that its decision in *Deloney* v. *Estelle*, 713 F. 2d 1080 (1983), precluded it from applying a presumption of vindictiveness. *Deloney*, the court reasoned, stood for the proposition that there could be no claim for prosecutorial vindictiveness "absent an increase in charges beyond those raised in the original indictment." 756 F. 3d, at 408.

In rejecting Jordan's legal arguments, the Fifth Circuit acknowledged that the Ninth Circuit, sitting en banc, had granted habeas relief to a capital defendant raising a similar vindictiveness claim. See *id.,* at 411, n. 5 (citing *Adamson* v. *Ricketts*, 865 F. 2d 1011 (1988)). "While the Ninth Circuit may have taken a different approach to this question," the Fifth Circuit maintained that it was bound by its contrary precedent. 756 F. 3d, at 411, n. 5.

Judge Dennis filed an opinion dissenting in relevant part. He began by stressing that the court was "not called upon to make a decision on the ultimate merits of Jordan's

prosecutorial vindictiveness claim." *Id.,* at 416 (opinion concurring in part and dissenting in part). Judge Dennis went on to explain why, as he saw it, Jordan had "shown sufficient merit to the prosecutorial vindictiveness claim to warrant his appeal being considered on the merits." *Id.,* at 422.

## II

### A

In contrast to an ordinary civil litigant, a state prisoner who seeks a writ of habeas corpus in federal court holds no automatic right to appeal from an adverse decision by a district court. Under the Antiterrorism and Effective Death Penalty Act of 1996, a would-be habeas appellant must first obtain a COA. 28 U. S. C. §2253(c)(1).

The COA statute permits the issuance of a COA only where a petitioner has made "a substantial showing of the denial of a constitutional right." §2253(c)(2). Our precedents give form to this statutory command, explaining that a petitioner must "sho[w] that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.' " *Slack* v. *McDaniel*, 529 U. S. 473, 484 (2000) (quoting *Barefoot* v. *Estelle*, 463 U. S. 880, 893, n. 4 (1983) (some internal quotation marks omitted)). Satisfying that standard, this Court has stated, "does not require a showing that the appeal will succeed." *Miller-El* v. *Cockrell*, 537 U. S. 322, 337 (2003). Instead, "[a] prisoner seeking a COA must prove something more than the absence of frivolity or the existence of mere good faith on his or her part." *Id.,* at 338 (internal quotation marks omitted).

We have made equally clear that a COA determination is a "threshold inquiry" that "does not require full consideration of the factual or legal bases adduced in support of

the claims." *Id.,* at 336. This insistence on limited review is more than a formality: The statute mandates that, absent a COA, "an appeal may not be taken to the court of appeals." §2253(c)(1). Thus, "until a COA has been issued federal courts of appeals lack jurisdiction to rule on the merits of appeals from habeas petitioners." *Id.,* at 336.

B

Although the Fifth Circuit accurately recited the standard for issuing a COA, its application of that standard in this case contravened our precedents in two significant respects.

To start, the Fifth Circuit was too demanding in assessing whether reasonable jurists could debate the District Court's denial of Jordan's habeas petition. Two judges—first Justice Banks, and later Judge Dennis—found Jordan's vindictiveness claim highly debatable. And the en banc Ninth Circuit, presented with a similar claim in a comparable procedural posture, had granted relief. Those facts alone might be thought to indicate that reasonable minds could differ—*had differed*—on the resolution of Jordan's claim. Cf. Rule 22.3 (CA3 2011) ("[I]f any judge on the panel is of the opinion that the applicant has made the showing required by 28 U. S. C. §2253, the certificate will issue"); *Jones* v. *Basinger*, 635 F. 3d 1030, 1040 (CA7 2011) ("When a state appellate court is divided on the merits of the constitutional question, issuance of a certificate of appealability should ordinarily be routine").

The Fifth Circuit nevertheless rejected Jordan's vindictiveness argument, finding the claim foreclosed by its prior decision in *Deloney*, 713 F. 2d 1080. As Judge Dennis' dissent shows, however, *Deloney* (and the restrictive gloss it placed on this Court's *Blackledge* decision) is susceptible of more than one reasonable interpretation. The defendant there entered into a plea agreement that reduced the charges against him. Later, the defendant not

only backed out of his agreement with prosecutors, he insisted on proceeding to trial, undermining the entire purpose of the earlier plea-bargaining process. 713 F. 2d, at 1081. When that trial resulted in a conviction, the defendant alleged that the prosecutor had no right to try him on the original, pre-plea-bargain charges. *Id.,* at 1085. Unsurprisingly, the Fifth Circuit disagreed; it held that the defendant could not "bootstrap" his earlier efforts to obtain a lesser sentence into a vindictiveness claim. *Ibid.*

Jordan's situation is materially different. No one disputes that Jordan, like Deloney, attempted to alter the terms of his plea agreement. But he did so only because the Mississippi Supreme Court's decision in *Lanier* rendered invalid his life-without-parole sentence. In light of *Lanier*, either Jordan or Owen should have asked to vacate Jordan's invalid sentence; Jordan simply moved first. Moreover, and again in contrast to the defendant in *Deloney*, Jordan never attempted to deprive the State of the benefit of its earlier bargain. Once Mississippi law changed, Jordan was willing to return to the *status quo ante*: He offered to accept the same sentence of life without parole. It was Owen, the prosecutor, who demanded a fourth trial. On these facts, it is far from certain that *Deloney* precludes Jordan from asserting a claim of prosecutorial vindictiveness.

In any event, Jordan's reading of the Fifth Circuit's case law need not be the best one to allow him to obtain further review. "[M]eritorious appeals are a subset of those in which a certificate should issue," *Thomas* v. *United States*, 328 F. 3d 305, 308 (CA7 2003), not the full universe of such cases. "It is consistent with §2253 that a COA will issue in some instances where there is no certainty of ultimate relief." *Miller-El*, 537 U. S., at 337. "Indeed, a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case

received full consideration, that the petitioner will not prevail." *Id.,* at 338. The possibility that Jordan's claim may falter down the stretch should not necessarily bar it from leaving the starting gate.

The Fifth Circuit's second, and more fundamental, mistake was failing to "limit its examination to a threshold inquiry." *Id.,* at 327. "[A] COA ruling is not the occasion for a ruling on the merit of [a] petitioner's claim." *Id.,* at 331. It requires only "an overview of the claims in the habeas petition and a general assessment of their merits." *Id.,* at 336.

Here, the Fifth Circuit engaged in precisely the analysis *Miller-El* and the COA statute forbid: conducting, across more than five full pages of the Federal Reporter, a detailed evaluation of the merits and then concluding that because Jordan had "fail[ed] to prove" his constitutional claim, 756 F. 3d, at 407, a COA was not warranted. But proving his claim was not Jordan's burden. When a court decides whether a COA should issue, "[t]he question is the debatability of the underlying constitutional claim, not the resolution of that debate." *Miller-El*, 537 U. S., at 342. Where, as here, "a court of appeals sidesteps this process by first deciding the merits of an appeal, and then justifying its denial of a COA based on its adjudication of the actual merits, it is in essence deciding an appeal without jurisdiction." *Id.,* at 336–337.[2]

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[2]This is not the first time the Fifth Circuit has denied a COA after engaging in an extensive review of the merits of a habeas petitioner's claims. See*, e.g., Tabler* v. *Stephens*, 588 Fed. Appx. 297 (2014); *Reed* v. *Stephens*, 739 F. 3d 753 (2014); *Foster* v. *Quarterman*, 466 F. 3d 359 (2006); *Ruiz* v. *Quarterman*, 460 F. 3d 638 (2006); *Cardenas* v. *Dretke*, 405 F. 3d 244 (2005). Nor is it the first time the Fifth Circuit has denied a COA over a dissenting opinion. See, *e.g., Tabler*, 588 Fed. Appx. 297; *Jackson* v. *Dretke*, 450 F. 3d 614 (2006). Although I do not intend to imply that a COA was definitely warranted in each of these cases, the pattern they and others like them form is troubling.

* * *

The barrier the COA requirement erects is important, but not insurmountable. In cases where a habeas petitioner makes a threshold showing that his constitutional rights were violated, a COA should issue. I believe Jordan has plainly made that showing. For that reason, I would grant Jordan's petition and summarily reverse the Fifth Circuit's judgment. I respectfully dissent from the denial of certiorari.