(ORDER LIST: 577 U.S.)

MONDAY, DECEMBER 14, 2015

ORDERS IN PENDING CASES

15M63 MAHONEY, ELIZABETH A. V. ESTATE OF McDONNELL, ET AL.

The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied.

15M64 SPEAR, STEVEN A. V. KIRKLAND, AMY, ET AL.

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

15M65 RANZA, LOREDANA V. NIKE, INC., ET AL.

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

14-1209 STURGEON, JOHN V. MASICA, SUE, ET AL.

The motion of Alaska for leave to participate in oral argument as *amicus curiae* and for divided argument is granted. The motion of petitioner to dispense with printing the joint appendix is granted.

15-6002 MOORE, TEDDY V. T-MOBILE USA

The motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* is denied.

15-6490 JOHNSON, NORMAN V. JUST ENERGY

15-6517 PONGO, VERONIQUE K., ET AL. V. BANK OF AMERICA, ET AL.

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until January 4, 2016, 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

15-420 UNITED STATES V. BRYANT, MICHAEL

The motion of respondent for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is granted.

CERTIORARI DENIED

14-10376 WHEELER, ROGER L. V. WHITE, WARDEN

14-9843 JOHNSON, ANTOINE V. UNITED STATES

15-57 HALL, DAVID P. V. NORTH CAROLINA

15-58 LOS ANGELES, CA, ET AL. V. CONTRERAS, ROBERT

15-71 AGNEW, NICKY C. V. TEXAS

15-100 APPLE AMERICAN GROUP, LLC V. SALAZAR, FRANCISCO

15-158 SUN-TIMES MEDIA, LLC V. DAHLSTROM, SCOTT, ET AL.

15-236 CARMAX AUTO SUPERSTORES CA V. ARESO, WAHID

15-266 ROMERO-ESCOBAR, JUAN C. V. LYNCH, ATT'Y GEN.

15-267 SONMEZ, FATIH V. UNITED STATES

15-277 WINGET, LARRY J., ET AL. V. JPMORGAN CHASE BANK, N.A.

15-283 MUJICA, LUIS A., ET AL. V. OCCIDENTAL PETROLEUM, ET AL.

15-287 HAWKINS, DAVID V. SCHWAN'S HOME SERVICE

15-429 PELIZZO, LEO V. MALIBU MEDIA

15-430 AAMODT, NORMAN, ET UX. V. LANDIS & SETZLER, P.C.

15-440 CRUZ, EDMUNDO C. V. CITIMORTGAGE, INC.

15-442 HENSLEY, ROBERT V. HENSLEY, GLORIA

15-443 GROVER, ANUJ, ET AL. V. CHOICE HOTELS

15-453 BONNER, LEON V., ET UX. V. BRIGHTON, MI

15-464 GROEBER, YI J. V. FRIEDMAN AND SCHUMAN

15-472 KALANGE, MARY E. V. SUTER, DOUGLAS J., ET AL.

15-475 TWO SHIELDS, RAMONA, ET AL. V. WILKINSON, SPENCER, ET AL.

15-479 BENNETT, DANTE L. V. MARYLAND

15-506 STANTON, CHARLES V. LASSONDE, HAROLD, ET AL.

15-524 HERBISON, DANIEL J. V. CHASE BANK

15-564 AHLERS, KAREN, ET AL. V. SCOTT, GOV. OF FL, ET AL.

15-596 HANSEN, RANDAL K. V. UNITED STATES

15-609 OCCHIUTO, NICHOLAS V. UNITED STATES

15-621 FERGUSON, BOBBY W. V. UNITED STATES

15-642 OIP TECHNOLOGIES, INC. V. AMAZON.COM, INC.

15-5695 GEORGE, GARY C. V. CALIFORNIA

15-6426 THOMAS, FORREST V. OUTLAW, WARDEN

15-6429 HARRIS, JASON L. V. ARPAIO, SHERIFF, ET AL.

15-6432 MILLER, JAMES L. V. KASHANI, AMIR, ET AL.

15-6435 REED-BEY, MARK A. V. PRAMSTALLER, GEORGE, ET AL.

15-6437 WEHMHOEFER, SCOTT N. V. UNNAMED DEFENDANTS

15-6442 POTTS, DENNIS M. V. BEARD, SEC., CA DOC

15-6443 PETERKA, DANIEL J. V. JONES, SEC., FL DOC

15-6445 SPENCER, RANDY V. JONES, SEC., FL DOC, ET AL.

15-6449 GACHE, PETER D. V. HILL REALTY ASSOCIATES, ET AL.

15-6459) MARSH, VICKI L. V. WYNNE, JOHN L., ET AL.
)
15-6460) FOSTER, KAREN V. WYNNE, JOHN L., ET AL.

15-6462 TURNER, MARCUS L. V. WHITENER, CORR. ADM'R, ALEXANDER

15-6464 BURNS, MARY V. COVENANT BANK

15-6469 PLACIDE, PATRICK V. JONES, SEC., FL DOC

15-6472 SAXON, KEVIN V. LEMPKE, JOHN B.

15-6473 SOTO, ANTONIO V. CALIFORNIA

15-6482 HORTON, CHRISTOPHER J. V. NORTH CAROLINA

15-6484 FURST, JOEL I. V. MALLOY, GOV. OF CT

15-6485 GONZALEZ, MANUEL A. V. HOLLAND, WARDEN

15-6488 HILBERT, MICHAEL V. BEARD, SEC., CA DOC

15-6496 MILLER, DANIEL K. V. OFF. OF CHILDREN & FAMILY

15-6510 CROWDER, BUCK R. V. STEPHENS, DIR., TX DCJ

15-6514 POLONCZYK, KIM A. V. TOYOTA MOTOR CORP., ET AL.

15-6516 MORALES-LOPEZ, LUIS A. V. UNITED STATES

15-6544 RAMOS, HERIBERTO V. MASSACHUSETTS

15-6586 WILSON, ROBERT S. V. COOK, WARDEN

15-6683 JOHNSON, OMAR V. MARYLAND

15-6686 ASTURIAS, RICARDO A. V. CALIFORNIA

15-6730 SILVA, DAVID V. JONES, SEC. FL DOC

15-6760 KATZ, NORMAN V. LEW, SEC. OF TREASURY

15-6769 GELIN, PATRICK V. NEW YORK

15-6805 DAVIS, MICHAEL L. V. DISTRICT OF COLUMBIA

15-6837 WORM, JEREMIAH J. V. PETERSON, SONJA J.

15-6859 HERNANDEZ, DAVID V. JONES, SEC., FL DOC

15-6865 GREGORY, SHANNON L. V. UNITED STATES

15-6866 HARO, MARIO V. UNITED STATES

15-6867 STRUM, ANDRE V. KAUFFMAN, SUPT., SMITHFIELD

15-6882 REESE, ERIC O. V. UNITED STATES

15-6893 MUNOZ-RAMON, JORGE V. UNITED STATES

15-6902 AVILA-GONZALEZ, JUAN C. V. UNITED STATES

15-6920 WIDMER, SEAN J. V. UNITED STATES

15-6997 JOHNSON, LESTER V. JONES, SEC., FL DOC

15-7008 DAWSON, ANDRE D. V. FLORIDA

The petitions for writs of certiorari are denied.

15-469 SCHER, MICHAEL C. V. LAS VEGAS, NV, ET AL.

The petition for a writ of certiorari before judgment is denied.

15-538 ALLVOICE DEVELOPMENTS US, LLC V. MICROSOFT CORP.

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

15-6438 ALLEN, DERRICK V. JONES, SEC., FL DOC

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.

15-6618 SCHMIDT, DANIEL K. V. JONES, SEC., FL DOC

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*).

15-6869 BURKE, ROBERT 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

15-651 IN RE DOUGLAS J. MACNEILL

15-7011 IN RE JUSTIN WELLS

15-7074 IN RE GREGORY L. YOUNG

The petitions for writs of habeas corpus are denied.

MANDAMUS DENIED

15-465 IN RE THEODORE B. GOULD

The petition for a writ of mandamus is denied.

REHEARINGS DENIED

14-9012 DICKERSON, GLORIA D. V. UNITED WAY OF NEW YORK CITY

14-9275 FRAZIER, ROBERT V. WEST VIRGINIA

14-9632 TALLEY, DURWYN V. GORE, CHRISTOPHER L., ET AL.

14-9648 ANDERSON, WALTER G. V. STEPHENS, DIR., TX DCJ

14-9823 SAMPSON, CARL D. V. PATTON, DIR., OK DOC

14-9869 RALSTON, MICHAEL P. V. TEXAS

14-9885 ADAMS, ROGER R. V. DUCART, WARDEN

14-9895 WILLIAMS, LANA K. V. HUHA, REX L., ET AL.

14-9934 CORRALES, GEORGE A. V. CALIFORNIA

14-9961 WATSON, LINDSEY J. V. COLVIN, ACTING COMM'R, SOCIAL

14-10048 WARNER, ADELBERT H. V. UNITED STATES

14-10364 HALL, JEFFREY S. V. TALLIE, JODY, ET AL.

14-10456 HASTINGS, ROBERT E. V. UNITED STATES

15-4 WYTTENBACH, WILLIAM H. V. R. M. P.

15-5016 IN RE DARRELL BURROWS

15-5073 STEWART, WILBERT P. V. STEPHENS, DIR., TX DCJ

15-5216 BRAYBOY, GARY M. V. NAPEL, WARDEN

15-5269 RUBEN, DANNY V. KEITH, WARDEN

15-5354 HICKMAN, JERRIN L. V. OREGON

15-5395 STRAIN, TIMOTHY M. V. USDC MD LA

15-5400 LESTER, ANTHONY D. V. STEPHENS, DIR., TX DCJ

15-5641 ELERI, CHARLES C. V. HARTLEY, WARDEN

15-5662 MORRIS, CAROL J. V. STEPHENS, DIR., TX DCJ

15-5689 HOFFART, SYLVESTER J. V. WIGGINS, SCOTT, ET AL.

15-5703 BOLDS, WILLIE V. CAVAZOS, J., ET AL.

15-6061 IN RE JOHN J. TATAR

15-6160 ANDREWS, SYLVESTER V. UNITED STATES

The petitions for rehearing are denied.

15-292 WALSH, RORY M. V. JONES, JAMES L., ET AL.

15-351 WALSH, RORY M. V. FBI, ET AL.

The petitions for rehearing are denied. Justice Kagan took no part in the consideration or decision of these petitions.

Per Curiam

SUPREME COURT OF THE UNITED STATES

RANDY WHITE, WARDEN *v.* ROGER L. WHEELER

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

No. 14–1372. Decided December 14, 2015

PER CURIAM.

A death sentence imposed by a Kentucky trial court and affirmed by the Kentucky Supreme Court has been overturned, on habeas corpus review, by the Court of Appeals for the Sixth Circuit. During the jury selection process, the state trial court excused a juror after concluding he could not give sufficient assurance of neutrality or impartiality in considering whether the death penalty should be imposed. The Court of Appeals, despite the substantial deference it must accord to state-court rulings in federal habeas proceedings, determined that excusing the juror in the circumstances of this case violated the Sixth and Fourteenth Amendments. That ruling contravenes controlling precedents from this Court, and it is now necessary to reverse the Court of Appeals by this summary disposition.

Warden Randy White is the petitioner here, and the convicted prisoner, Roger Wheeler, is the respondent.

In October 1997, police in Louisville, Kentucky, found the bodies of Nigel Malone and Nairobi Warfield in the apartment the couple shared. Malone had been stabbed nine times. Warfield had been strangled to death and a pair of scissors stuck out from her neck. She was pregnant. DNA taken from blood at the crime scene matched respondent's. Respondent was charged with the murders.

During *voir dire,* Juror 638 gave equivocal and inconsistent answers when questioned about whether he could consider voting to impose the death penalty. In response to the judge's questions about his personal beliefs on the

death penalty, Juror 638 said, "I'm not sure that I have formed an opinion one way or the other. I believe there are arguments on both sides of the—of it." App. to Pet. for Cert. 126a. When asked by the prosecution about his ability to consider all available penalties, Juror 638 noted he had "never been confronted with that situation in a, in a real-life sense of having to make that kind of determination." *Id.*, at 131a. "So it's difficult for me," he explained, "to judge how I would I guess act, uh." *Ibid.* The prosecution sought to clarify Juror 638's answer, asking if the juror meant he was "not absolutely certain whether [he] could realistically consider" the death penalty. *Id.*, at 132a. Juror 638 replied, "I think that would be the most accurate way I could answer your question." *Ibid.* During defense counsel's examination, Juror 638 described himself as "a bit more contemplative on the issue of taking a life and, uh, whether or not we have the right to take that life." *Id.*, at 133a. Later, however, he expressed his belief that he could consider all the penalty options. *Id.*, at 134a.

The prosecution moved to strike Juror 638 for cause based on his inconsistent replies, as illustrated by his statement that he was not absolutely certain he could realistically consider the death penalty. The defense opposed the motion, arguing that Juror 638's answers indicated his ability to consider all the penalty options, despite having some reservations about the death penalty. The judge said that when she was done questioning Juror 638, she wrote in her notes that the juror "'could consider [the] entire range'" of penalties. *Id.*, at 138a. She further stated that she did not "see him as problematic" at the end of her examination. *Ibid.* But she also noted that she did not "hear him say that he couldn't realistically consider the death penalty," and reserved ruling on the motion until she could review Juror 638's testimony. *Ibid.* The next day, after reviewing the relevant testimony, the judge struck Juror 638 for cause. When she announced her

decision to excuse the juror, the trial judge stated, "And when I went back and reviewed [the juror's] entire testimony, [the prosecution] concluded with saying, 'Would it be accurate to say that you couldn't, couldn't consider the entire range?' And his response is—I think was, 'I think that would be pretty accurate.' So, I'm going to sustain that one, too." *Id.*, at 139a–140a.

The case proceeded to trial. Respondent was convicted of both murders and sentenced to death. The Kentucky Supreme Court affirmed the convictions and the sentence. *Wheeler* v. *Commonwealth*, 121 S. W. 3d 173, 189 (2003). In considering respondent's challenges to the trial court's excusal of certain jurors for cause, the Kentucky Supreme Court held that the trial judge "appropriately struck for cause those jurors that could not impose the death penalty. . . . There was no error and the rights of the defendant to a fair trial by a fair and impartial jury . . . under both the federal and state constitutions were not violated." *Id.,* at 179.

After exhausting available state postconviction procedures, respondent sought a writ of habeas corpus under 28 U. S. C. §2254 from the United States District Court for the Western District of Kentucky. He asserted, *inter alia*, that the Kentucky trial court erred in striking Juror 638 during *voir dire* on the ground that the juror could not give assurances that he could consider the death penalty as a sentencing option. The District Court dismissed the petition; but a divided panel of the Court of Appeals for the Sixth Circuit reversed, granting habeas relief as to respondent's sentence. *Wheeler* v. *Simpson*, 779 F. 3d 366, 379 (2015). While acknowledging the deferential standard required on federal habeas review of a state conviction, the Court of Appeals held that allowing the exclusion of Juror 638 was an unreasonable application of *Witherspoon* v. *Illinois*, 391 U. S. 510 (1968), *Wainwright* v. *Witt*, 469 U. S. 412 (1985), and their progeny. 779 F. 3d, at 372–

374.

Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), habeas relief is authorized if the state court's 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). This Court, time and again, has instructed that AEDPA, by setting forth necessary predicates before state-court judgments may be set aside, "erects a formidable barrier to federal habeas relief for prisoners whose claims have been adjudicated in state court." *Burt* v. *Titlow*, 571 U. S. ___, ___ (2013) (slip op., at 6). Under §2254(d)(1), "'a state prisoner must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.'" *White* v. *Woodall*, 572 U. S. ___, ___ (2014) (slip op., at 4) (quoting *Harrington* v. *Richter*, 562 U. S. 86, 103 (2011)).

The Court of Appeals was required to apply this deferential standard to the state court's analysis of respondent's juror exclusion claim. In *Witherspoon*, this Court set forth the rule for juror disqualification in capital cases. *Witherspoon* recognized that the Sixth Amendment's guarantee of an impartial jury confers on capital defendants the right to a jury not "uncommonly willing to condemn a man to die." 391 U. S., at 521. But the Court with equal clarity has acknowledged the State's "strong interest in having jurors who are able to apply capital punishment within the framework state law prescribes." *Uttecht* v. *Brown*, 551 U. S. 1, 9 (2007). To ensure the proper balance between these two interests, only "a juror who is substantially impaired in his or her ability to impose the death penalty under the state-law framework can be excused for cause." *Ibid.* As the Court explained in *Witt*, a

juror may be excused for cause "where the trial judge is left with the definite impression that a prospective juror would be unable to faithfully and impartially apply the law." 469 U. S., at 425–426.

Reviewing courts owe deference to a trial court's ruling on whether to strike a particular juror "regardless of whether the trial court engages in explicit analysis regarding substantial impairment; even the granting of a motion to excuse for cause constitutes an implicit finding of bias." *Uttecht*, 551 U. S., at 7. A trial court's "finding may be upheld even in the absence of clear statements from the juror that he or she is impaired . . . ." *Ibid.* And where, as here, the federal courts review a state-court ruling under the constraints imposed by AEDPA, the federal court must accord an additional and "independent, high standard" of deference. *Id.*, at 10. As a result, federal habeas review of a *Witherspoon-Witt* claim—much like federal habeas review of an ineffective-assistance-of-counsel claim—must be "'"doubly deferential."'" *Burt*, *supra,* at ___ (slip op., at 1) (quoting *Cullen* v. *Pinholster*, 563 U. S. 170, 190 (2011)).

The Court of Appeals held that the Kentucky Supreme Court unreasonably applied *Witherspoon*, *Witt*, and their progeny when it determined that removing Juror 638 for cause was constitutional. 779 F. 3d, at 372–374. The Court of Appeals determined Juror 638 "understood the decisions he would face and engaged with them in a thoughtful, honest, and conscientious manner." *Id.,* at 373. In the Court of Appeals' estimation, the trial judge concluded the juror was not qualified only by "misapprehending a single question and answer exchange" between Juror 638 and the prosecution, *id.,* at 374—the exchange in which Juror 638 stated he was not absolutely certain he could realistically consider the death penalty, *id.*, at 372. According to the Court of Appeals, Juror 638 "agreed *he did not know* to an absolute certainty whether he could realistically consider the death penalty, but the court

proceeded as if *he knew he could not*." *Ibid*. The Court of Appeals further determined that if the trial judge, when reviewing Juror 638's examination, had "properly processed that exchange" between Juror 638 and the prosecution, Juror 638 would not have been excused. *Id.,* at 374.

Both the analysis and the conclusion in the decision under review were incorrect. While the Court of Appeals acknowledged that deference was required under AEDPA, it failed to ask the critical question: Was the Kentucky Supreme Court's decision to affirm the excusal of Juror 638 for cause "'so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement'"? *Woodall*, *supra*, at ___ (slip op., at 4) (quoting *Harrington*, *supra*, at 103).

The Court of Appeals did not properly apply the deference it was required to accord the state-court ruling. A fairminded jurist could readily conclude that the trial judge's exchange with Juror 638 reflected a "diligent and thoughtful *voir dire*"; that she considered with care the juror's testimony; and that she was fair in the exercise of her "broad discretion" in determining whether the juror was qualified to serve in this capital case. *Uttecht*, 551 U. S., at 20. Juror 638's answers during *voir dire* were at least ambiguous as to whether he would be able to give appropriate consideration to imposing the death penalty. And as this Court made clear in *Uttecht*, "when there is ambiguity in the prospective juror's statements," the trial court is "'entitled to resolve it in favor of the State.'" *Id.*, at 7 (quoting *Witt*, *supra*, at 434).

The Court of Appeals erred in its assessment of the trial judge's reformulation of an important part of Juror 638's questioning. 779 F. 3d, at 372. When excusing the juror the day after the *voir dire*, the trial judge said that the prosecution had asked whether the juror "couldn't consider the entire range" of penalties. App. to Pet. for Cert.

139a. The prosecution in fact asked if the juror was "not absolutely certain whether [he] could realistically consider" the entire range of penalties. *Id.*, at 132a. The juror's confirmation that he was "not absolutely certain whether [he] could realistically consider" the death penalty, *ibid.*, was a reasonable basis for the trial judge to conclude that the juror was unable to give that penalty fair consideration. The trial judge's decision to excuse Juror 638 did not violate clearly established federal law by concluding that Juror 638 was not qualified to serve as a member of this capital jury. See *Witt*, *supra*, at 424–426. And similarly, the Kentucky Supreme Court's ruling that there was no error is not beyond any possibility for fairminded disagreement.

The Court of Appeals noted that the deference toward trial courts recognized in *Uttecht* "was largely premised on the trial judge's ability to 'observe the demeanor of'" the juror. 779 F. 3d, at 373 (quoting 551 U. S., at 17). It concluded that deference to the trial court here supported habeas relief, because the trial judge's "initial assessment of [the juror's] answers and demeanor" did not lead her to immediately strike Juror 638 for cause. 779 F. 3d, at 373–374.

The Court of Appeals' conclusion conflicts with the meaning and holding of *Uttecht* and with a common-sense understanding of the jury selection process. Nothing in *Uttecht* limits the trial court to evaluating demeanor alone and not the substance of a juror's response. And the implicit suggestion that a trial judge is entitled to less deference for having deliberated after her initial ruling is wrong. In the ordinary case the conclusion should be quite the opposite. It is true that a trial court's contemporaneous assessment of a juror's demeanor, and its bearing on how to interpret or understand the juror's responses, are entitled to substantial deference; but a trial court ruling is likewise entitled to deference when made after a careful

review of a formal transcript or recording. If the trial judge chooses to reflect and deliberate further, as this trial judge did after the proceedings recessed for the day, that is not to be faulted; it is to be commended.

This is not a case where "the record discloses no basis for a finding of substantial impairment." *Uttecht*, *supra*, at 20. The two federal judges in the majority below might have reached a different conclusion had they been presiding over this *voir dire*. But simple disagreement does not overcome the two layers of deference owed by a federal habeas court in this context.

* * *

The Kentucky Supreme Court was not unreasonable in its application of clearly established federal law when it concluded that the exclusion of Juror 638 did not violate the Sixth Amendment. Given this conclusion, there is no need to consider petitioner's further contention that, if there were an error by the trial court in excluding the juror, it should be subject to harmless-error analysis. And this Court does not review the other rulings of the Court of Appeals that are not addressed in this opinion.

As a final matter, this Court again advises the Court of Appeals that the provisions of AEDPA apply with full force even when reviewing a conviction and sentence imposing the death penalty. See, *e.g., Parker* v. *Matthews*, 567 U. S. ___ (2012) (*per curiam*); *Bobby* v. *Dixon*, 565 U. S. ___ (2011) (*per curiam*); *Bobby* v. *Mitts*, 563 U. S. 395 (2011) (*per curiam*); *Bobby* v. *Van Hook*, 558 U. S. 4 (2009) (*per curiam*).

The petition for certiorari and respondent's motion to proceed *in forma pauperis* are granted. The judgment of the 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.