

(ORDER LIST: 562 U.S.)

MONDAY, NOVEMBER 29, 2010

CERTIORARI -- SUMMARY DISPOSITIONS

09-466 UNITED STATES V. WILLIAMS, LEON

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 Second Circuit for further consideration in light of *Abbott v. United States*, 562 U.S. \_\_\_\_ (2010). Justice Sotomayor and Justice Kagan took no part in the consideration or decision of this motion and this petition.

09-1497 UNITED STATES V. ALMANY, LEE

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 *Abbott v. United States*, 562 U.S. \_\_\_\_ (2010). Justice Kagan took no part in the consideration or decision of this motion and this petition.

09-11567 OWENS, CHRISTOPHER D. V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Eleventh Circuit for further consideration in light of *Johnson v. United States*, 559 U.S. \_\_\_\_

(2010).

10-323 UNITED STATES V. HUCKABEE, JOSHUA

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 Second Circuit for further consideration in light of *Abbott v. United States*, 562 U.S. \_\_\_\_ (2010). Justice Kagan took no part in the consideration or decision of this petition.

10-5019 JACKSON, LONNIE J. V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Eighth Circuit for further consideration in light of *Carr v. United States*, 560 U.S. \_\_\_\_ (2010).

10-5539 MANDEVILLE, DAVID E. V. SMEAL, PAUL K.

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Third Circuit for further consideration in light of *Pennsylvania v. Mandeville*, No. 72 EDA 2010 (Pa Super. Ct. Aug. 3, 2010).

#### ORDERS IN PENDING CASES

10M47 WASHINGTON, CHRISTOPHER E. V. EQUIFAX INFORMATION SERVICES LLC

10M48 WINDING, JAMES C. V. KING, SUPT., SOUTH MS

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

09-10596 MONACELLI, KATHALINA V. NEW YORK STATE BANKING DEPT.  
09-10819 HA, HUNG V. BURR, KENNETH M., ET AL.  
09-10836 FRANKLIN, BOBBY L. V. BWD PROPERTIES, ET AL.  
09-11126 DOE, J. V. DUNCAN, RICHARD L., ET AL.  
09-11223 JANNEH, DOUDOU B. V. REGAL ENTERTAINMENT GROUP  
10-5171 IN RE JIMMY HARRIS  
10-5365 GRANDOIT, GERARD D. V. GILSON, BENJAMIN J., ET AL.  
10-5817 JACOBS, CHRIS V. HUIBREGTSE, WARDEN  
10-5946 ROBINSON, BARBARA V. HOLDER, ATT'Y GEN.  
10-6316 IN RE LaVERN BERRYHILL  
10-6386 IN RE FRANK WATTS, II

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

10-6576 WHITE, KARL E. V. GREEN, G. MICHAEL, ET AL.  
10-6652 HAYDEN, CHRISTOPHER, ET UX. V. D'AMICO, ANTHONY E., ET AL.  
10-6837 MADDEN, MARCIA L. V. UNITED STATES, ET AL.  
10-6870 KELLNER, MATTHEW B. V. CALIFORNIA

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until December 20, 2010, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

10-7114 REDZIC, MUSTAFA V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* is denied. Petitioner is allowed until December 20, 2010, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court. Justice Kagan took no part in the

consideration or decision of this motion.

10-7240 BILLIAN, LARRY V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* is denied. Petitioner is allowed until December 20, 2010, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

**CERTIORARI GRANTED**

10-235 CSX TRANSPORTATION, INC. V. McBRIDE, ROBERT

The motion of the Association of American Railroads for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is granted.

10-238 ) AZ FREE ENTERPRISE, ET AL. V. BENNETT, KEN, ET AL.

10-239 ) McCOMISH, JOHN, ET AL. V. BENNETT, KEN, ET AL.

The petitions for writs of certiorari are granted. The cases are consolidated and a total of one hour is allotted for oral argument.

10-290 MICROSOFT CORP. V. I4I LIMITED PARTNERSHIP, ET AL.

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

**CERTIORARI DENIED**

09-1445 VILLA, JOSEFINA V. UNITED STATES

09-1470 CHEESEMAN, JAMES L. V. UNITED STATES

09-1486 FISHER, TAMARA J., ET AL. V. McCRARY CRESCENT CITY, ET AL.

09-1576 BANNISTER, JAMES V. ILLINOIS

09-10654 DREW, LANCE B. V. UNITED STATES

09-10667 McDONEL, ROBERT V. UNITED STATES

09-11114 ) PIERRE, ELEX V. UNITED STATES  
 )  
 09-11542 ) LOUIS, EXUIS V. UNITED STATES  
 )  
 10-5520 ) LOUISUIS, JIMMY V. UNITED STATES  
  
 09-11166 SCOTT, JEROME, ET AL. V. UNITED STATES  
  
 09-11220 PICKETT, ANTONNIO V. UNITED STATES  
  
 09-11268 WILLIAMS, DENNIS V. UNITED STATES  
  
 09-11362 BERROA, HARRY V. UNITED STATES  
  
 09-11501 LEGETTE, ALBERT V. UNITED STATES  
  
 09-11527 ELLIS, ARDEANA V. SMITHKLINE BEECHAM CORP.  
  
 09-11572 SEE, LAVANG V. CALIFORNIA  
  
 10-18 SMITH, WEBSTER M. V. UNITED STATES  
  
 10-86 JOHNSON, JUDY, ET AL. V. ESTATE OF TERRY GEE  
  
 10-180 COOK COUNTY, IL V. THOMAS, MARLITA  
  
 10-229 FOX, SUSAN M. V. TRAVERSE CITY SCHOOL BOARD  
  
 10-257 NORTH COUNTY COMM. CORP. V. CALIFORNIA CATALOG & TECHNOLOGY  
  
 10-268 IAC/INTERACTIVECORP, ET AL. V. COSMETIC IDEAS, INC.  
  
 10-274 LOYA, GILLIAN B., ET AL. V. STARWOOD HOTELS, ET AL.  
  
 10-276 BRUNER, ROBERT C., ET AL. V. HARTSFIELD, BERT, ET AL.  
  
 10-278 EDUCATIONAL MEDIA CO., ET AL. V. SWECKER, SUSAN R., ET AL.  
  
 10-279 CARPENTER TECHNOLOGY CORP. V. AGERE SYSTEMS, INC., ET AL.  
  
 10-281 LANNING, JEROME K., ET AL. V. PILCHER, PATRICK, ET AL.  
  
 10-284 COLTON, CA V. AMERICAN PROMOTIONAL EVENTS  
  
 10-364 RANDOLPH, TINA M. V. DIMENSION FILMS, ET AL.  
  
 10-373 MANNING, KIM I. V. AM. REPUBLIC INS. CO.  
  
 10-375 PEREZ, BERNICE V. WELLS FARGO BANK MN  
  
 10-378 EDWARDS, CELESTER C. V. ALABAMA  
  
 10-379 COLUMBIA VENTURE, LLC V. DEWBERRY & DAVIS, LLC, ET AL.  
  
 10-386 DUNN, JAMES V. LOUISIANA

10-392 JUNKERT, DODIE V. MASSEY, ROGER W.  
10-394 ATWELL, GEOFFREY W. V. WALSH, SUPT., DALLAS, ET AL.  
10-395 MIKKILINENI, M. R. V. HOUSTON, TX, ET AL.  
10-396 BD. OF DIRECTORS, ETC., ET AL. V. UNITED STATES, ET AL.  
10-399 SMITH, GLENN V. McNEIL, SEC., FL DOC  
10-403 WRIGHT, KATHLEEN R. V. BROWN, JOY  
10-406 ROOT, LOUISE V. FAIRFAX COUNTY, VA, ET AL.  
10-408 GLACIER ELEC. COOPERATIVE V. ESTATE OF SHERBURNE, ET AL.  
10-410 McCORMICK, ROGER, ET AL. V. BECHTOL, DAVID, ET AL.  
10-411 WINDSOR, WILLIAM M. V. MAID OF THE MIST CORP., ET AL.  
10-414 JOHNSON, NELDON V. JOHNSON, INA M.  
10-415 BRYANT, ANNE, ET AL. V. MEDIA RIGHT PRODUCTIONS, ET AL.  
10-417 LACKEY, WELDON V. DEPT. OF AGRICULTURE, ET AL.  
10-421 DEUTSCHER TENNIS BUND, ET AL. V. ATP TOUR, INC., ET AL.  
10-424 BLOME, SHIRLEY R. V. MONTANA  
10-427 MILLER, RODNEY V. MONUMENTAL LIFE INSURANCE CO.  
10-430 WERNER, SHANNA, ET AL. V. PEAK ALARM CO., INC., ET AL.  
10-437 GOODY'S FAMILY CLOTHING, ET AL. V. MOUNTAINEER PROPERTY CO.  
10-456 TONEY, RONALD D. V. SWIFT TRANSPORTATION CO., INC.  
10-462 AGUADA, PR V. ACEVEDO-ORAMA, MARITZA, ET AL.  
10-464 TEXAS DISPOSAL SYSTEMS LANDFILL V. EPA, ET AL.  
10-466 COWELL, PAMELA D. V. GOOD SAMARITAN COMMUNITY HEALTH  
10-473 GRUNDSTEIN, ROBERT V. SUPREME COURT OF OH  
10-478 RANA, SHER J. V. TOYOTA MOTOR CREDIT CORP.  
10-485 DAVIS, PAUL J. V. CA BD. OF CHIROPRACTIC EXAMINERS  
10-498 NOREN, THERESA V. JEFFERSON PILOT FINANCIAL, ET AL.  
10-513 BLUNT, CHARLES V. NORTH DAKOTA  
10-532 NERAD, MICHAEL T. V. UNITED STATES

10-554 STINN, BRADLEY V. UNITED STATES  
10-555 PERSON, CHAD H. V. UNITED STATES  
10-5002 FOSTER, ANTHONY V. UNITED STATES  
10-5003 HERNANDEZ, GILBERTO D. V. THALER, DIR., TX DCJ  
10-5078 GAMBOA-VICTORIA, JAIRO V. UNITED STATES  
10-5106 REDD, GARFIELD V. UNITED STATES  
10-5130 PROPST, JOSEPH M. V. UNITED STATES  
10-5135 WOOTEN, ROBERT V. CALIFORNIA, ET AL.  
10-5149 NOBARI, MICHAEL, ET AL. V. UNITED STATES  
10-5229 ALEXANDER, CHRISTOPHER L. V. UNITED STATES  
10-5240 SEIGFRIED, FRANK A. V. GREER, WARDEN  
10-5569 SHULMAN, BORIS V. BLUECROSS BLUESHIELD OF SC  
10-5590 WILLIAMS, COLLIE L. V. UNITED STATES  
10-5632 DEAN, CHRISTOPHER C. V. UNITED STATES  
10-5744 FORREST, JAMES L. V. DISTRICT COURT OF NV, ET AL.  
10-5782 GORHAM, KEVIN V. UNITED STATES  
10-5864 PHAKNIKONE, SOUKSAKHONE V. UNITED STATES  
10-5926 BOYCE, ANTOINE V. UNITED STATES  
10-5929 BUCKNER, JOHNNY R. V. JONES, JAY, ET AL.  
10-6010 WALKER, JAMES R. V. NEVADA  
10-6042 BOYD, WILLIAM G. V. ALLEN, COMM'R, AL DOC  
10-6043 BELL, FREDERICK V. EPPS, COMM'R, MS DOC  
10-6060 DUNBAR, JOHN P. V. HAWAII  
10-6215 McCRAY, ELIZABETH V. CHRYSLER LLC  
10-6244 BOYD, SHABAKA K. V. UNITED STATES  
10-6517 HANSEN, BILLY F. V. FLORIDA  
10-6519 HARMON, DEVIN V. MARSHAL, MARTIN, ET AL.  
10-6522 FULLER, RODNEY L. V. KELLY, WARDEN

10-6529 IRVIN, ROBERT T. V. TENNESSEE, ET AL.

10-6552 BROOKS, JOE L. V. SMITH, MAYOR, ET AL.

10-6555 STEWART, ARTEMIA V. WOLFENBARGER, WARDEN

10-6556 WEBB, DAVID V. ONIZUKA, JOANNE S., ET AL.

10-6558 WHITLOW, CHARLES V. ROANOKE, VA

10-6559 WHITE, EUGENIA B. V. FAIRFAX COUNTY, VA

10-6563 DORSEY, BRIAN J. V. MISSOURI

10-6567 LEWIS, ANTHONY E. V. VAIL, SEC., WA DOC, ET AL.

10-6568 LEWIS, ANTHONY E. V. KING COUNTY, WA

10-6570 MULDER, RONALD J. V. WILLIAMS, WARDEN

10-6577 RAVER, MICHAEL V. BRUNSMAN, WARDEN

10-6583 MEDINA, FRANCISCO J. V. SCRIBNER, WARDEN

10-6585 JEFFRIES, ALLEN L. V. HEDGPETH, WARDEN

10-6587 BOWLES, GARY R. V. McNEIL, SEC., FL DOC, ET AL.

10-6590 MEEKS, DANNY R. V. TN DOC, ET AL.

10-6600 STRONG, YOLONDA T. V. NEW YORK CITY DEPT. OF ED.

10-6601 MCKINLEY, RANDY T. V. OREGON

10-6605 GUZMAN-SOTO, JOSE F. V. JOHNSON, DIR., VA DOC

10-6609 WERDLOW, JAMES V. CARUSO, PATRICIA, ET AL.

10-6612 BRYANT, CLARENCE G. V. FAYRAM, WARDEN

10-6617 JONES, ISAAC V. TX DCJ, ET AL.

10-6624 DE MOSS, JAMES V. COTHRO, CHARLES, ET AL.

10-6626 BROADUS, CORDELL D. V. PENNSYLVANIA

10-6627 BLAKELY, JAMES G. V. TATARSKY, DAVID M., ET AL.

10-6644 LIN, HAIYAN V. REED, TOINETTE

10-6657 THARPE, KEITH L. V. UPTON, WARDEN

10-6660 AYALA, JORGE V. CALIFORNIA

10-6663 PARKS, XAVIER A. V. FLORIDA



10-6670 OPREA, LUCIAN V. JOHNSON, DIR., VA DOC  
10-6672 INIGUEZ, FRANCISCO V. CALIFORNIA  
10-6673 GRIGGS, STEVEN M. V. MISSOURI, ET AL.  
10-6674 FULLER, RICHARD B. V. BAZZLE, WARDEN  
10-6677 HICKINGBOTTOM, MICHAEL V. FINNAN, SUPT., WABASH VALLEY  
10-6678 FRIEND, MELVIN V. VIRGINIA  
10-6680 HUMPHREY, JOSEPH V. WARREN, WARDEN  
10-6681 GRIFFIN, APRIL, ET AL. V. MILWAUKEE COUNTY, WI, ET AL.  
10-6685 GIPSON, LEROY V. CAIN, WARDEN  
10-6688 WALLS, WILLIAM V. DOSCH, BRIAN B.  
10-6696 LAIRD, RICHARD R. V. PENNSYLVANIA  
10-6698 LEE, WARREN V. V. WYATT, SHANE, ET AL.  
10-6702 BROWN, RYAN A. V. PARKING AUTHORITY OF JERSEY CITY  
10-6703 BRIGGS, BERNIE F. V. ADAMS, WARDEN  
10-6709 WHITTED, ANSON V. NEW YORK  
10-6710 TORREZ, JOSE V. McKEE, WARDEN  
10-6712 TAYLOR, CURTIS LEON V. HINKLE, WARDEN  
10-6713 TAMEZ, AMADO V. TEXAS  
10-6715 WARNER, GARY W. V. TEXAS  
10-6716 BAKER, CHARLES R. V. LIADACKER, D., ET AL.  
10-6720 KAGUYUTAN, MATTHEW V. ROZUM, SUPT., SOMERSET, ET AL.  
10-6727 ADDO, ALI V. HOLDER, ATT'Y GEN.  
10-6730 CHAPMAN, MARVIN V. WAL-MART CORPORATION  
10-6731 CROUCH, DOUGLAS L. V. ALABAMA  
10-6732 K. R. J. V. WAYNE COUNTY JUVENILE OFFICE  
10-6736 LANDRY, TERRY E. V. THALER, DIR., TX DCJ  
10-6745 BAKER, ROBERT E. V. CALIFORNIA  
10-6748 APONTE, ROBERTO V. McNEIL, SEC., FL DOC, ET AL.

10-6766 TIMMONS, LATROY V. RYAN, DIR., AZ DOC, ET AL.  
10-6767 BONANNO, LOUIS V. THOMAS, GERALD, ET AL.  
10-6768 LAU, CHARLES M. V. FLORIDA  
10-6775 WRIGHT, MICHAEL D. V. STINE, SUPT., NEW CASTLE  
10-6782 ROGERS, JOHN J. V. VIRGINIA  
10-6786 NASH, MICHAEL V. LEE, SUPT., GREEN HAVEN  
10-6794 CHERY, MARIE R. V. HOLDER, ATT'Y GEN.  
10-6801 CAROSELLI, DINO V. NEW YORK  
10-6816 MOTHERSHED, GEORGE L. V. OKLAHOMA, EX REL. OK BAR ASS'N  
10-6818 MALLARD, JAMES V. POTENZA, CHRISTOPHER, ET AL.  
10-6819 KOENIG, LaVERNE V. NORTH DAKOTA  
10-6842 BLACKWOOD, LYNFORD V. McNEIL, SEC., FL DOC  
10-6845 MONTGOMERY, RUSSELL V. BODISON, WARDEN  
10-6871 KELLNER, GEORGE S. V. CALIFORNIA  
10-6891 BOYD, HAROLD V. HAYNES, SUPT., WARREN  
10-6893 ASBURY, WILLIE J. V. USDC D SC  
10-6914 FLOWERS, DAVID V. LEE, SUPT., GREEN HAVEN  
10-6916 FREEMAN, UEL J. V. STEELE, WARDEN  
10-6918 GORDON, DeLAUREN V. HOFBAUER, WARDEN  
10-6921 THOMAS, LARRY V. SCRIBNER, WARDEN, ET AL.  
10-6962 JAMES, TERRY R. V. FIESTA FOOD MART, INC.  
10-6968 TYSON, CHARLES V. SOUTH CAROLINA  
10-6975 LaBRAKE, DANIEL V. STOWITZKY, PAUL, ET AL.  
10-6976 PARKS, ANGELO V. LUDWICK, WARDEN  
10-6979 D. J. G., III V. WASHINGTON CTY. CHILDREN & YOUTH  
10-6990 RESENDIZ, JOSE E. V. CALIFORNIA  
10-6992 TICE, CARL H. V. HOBBS, DIR., AR DOC  
10-7006 MILLER, JAMES L. V. SMITH, WARDEN

10-7025 JACKSON, NATHANIEL V. WORKMAN, WARDEN, ET AL.  
10-7036 PIPES, JAMES F. V. BALLARD, WARDEN  
10-7047 MONTOYA, DAVID C. V. HARTLEY, WARDEN, ET AL.  
10-7050 RAMIREZ-RODRIGUEZ, MIGUEL A. V. UNITED STATES  
10-7059 CESARIO, EDELMIRO V. NEW YORK  
10-7063 SANAVIA-ARELLANO, RUBEN V. UNITED STATES  
10-7065 ROMERO, RONALD A. V. WYOMING  
10-7080 PENALOZA-BANOS, PIOQUINTO V. UNITED STATES  
10-7084 SANJURJO-NUNEZ, VICTOR V. UNITED STATES  
10-7096 SPARKMAN, CHARLES E. V. UNITED STATES  
10-7100 ENCARNACION-MONTERO, MIGUEL V. UNITED STATES  
10-7101 DANIELS, BRIAN V. EAGLETON, WARDEN  
10-7102 MAYNARD, LAWRENCE V. UNITED STATES  
10-7108 ARTIC, ROBERT L. V. WISCONSIN  
10-7110 SANCHEZ-CHAPARRO, PAULINO V. UNITED STATES  
10-7115 RAMIREZ, DEAN V. UNITED STATES  
10-7116 STUTTS, RODERICK V. UNITED STATES  
10-7119 DOUGLAS, EFREM R. V. UNITED STATES  
10-7120 DUKES, MARCUS D. V. UNITED STATES  
10-7123 PEREZ-GODINEZ, PEDRO V. UNITED STATES  
10-7124 MOLINA-URIOSTEGUI, RIGOBERTO V. UNITED STATES  
10-7125 McCARTY, JONATHAN V. UNITED STATES  
10-7126 MACIEL-ALCALA, ALBERTO V. UNITED STATES  
10-7127 LOPEZ, REINALDO V. UNITED STATES  
10-7130 BOYD, DANTE R. V. UNITED STATES  
10-7138 CLARK, DINK V. CASTILLO, WARDEN  
10-7143 CARTER, CURTIS V. UNITED STATES  
10-7145 GAINES, JOHNATHAN V. MIDDLEBROOKS, WARDEN

10-7152 HILL, DAVID E. V. UNITED STATES  
10-7159 TOVAR, ANTONIO V. UNITED STATES  
10-7160 TOME, JOSEPH V. UNITED STATES  
10-7167 RODRIGUEZ, JAIME V. UNITED STATES  
10-7168 RIVAS-CHAVARRIA, JOSE F. V. UNITED STATES  
10-7170 MORGUTIA, RICARDO V. UNITED STATES  
10-7171 MORRISON, RICHARD V. UNITED STATES  
10-7172 CARACAPPA, STEPHEN V. UNITED STATES  
10-7182 RESTREPO, JIMMY A. V. UNITED STATES  
10-7196 ROSS, GLADGER V. UNITED STATES  
10-7199 MEDLEY, JOSEPH V. UNITED STATES  
10-7202 WALKER, CLINT V. UNITED STATES  
10-7203 RICO-CARRILLO, JOSE V. UNITED STATES  
10-7204 SAGOES, ANTHONY V. UNITED STATES  
10-7206 HERNANDEZ-OREGEL, ALBERTO V. UNITED STATES  
10-7207 GONZALES, MARIO V. UNITED STATES  
10-7209 JACKSON, PAUL L. V. UNITED STATES  
10-7212 HOLMES, ERIC V. UNITED STATES  
10-7214 BUNCH, ROBIN A. V. UNITED STATES  
10-7215 YOUNG, LARRY A. V. UNITED STATES  
10-7216 CALDWELL, PHILLIP E. V. UNITED STATES  
10-7219 CARBAJAL-MORENO, JUAN M. V. UNITED STATES  
10-7226 AGUILAR-MORENO, DANIEL V. UNITED STATES  
10-7229 ROEL-VILLAGOMEZ, ROLANDO V. UNITED STATES  
10-7234 BOWIE-MYLES, STEVE V. UNITED STATES  
10-7235 ERBO, JOSE V. UNITED STATES  
10-7238 SINGH, MARTIN R. V. UNITED STATES  
10-7244 NGUYEN, VAN P. V. UNITED STATES

10-7245 NANCE, MICHAEL E. V. UNITED STATES  
10-7248 MARSHALL, JEROME E. V. UNITED STATES  
10-7249 ALLEN, KAREN V. UNITED STATES  
10-7250 BALLEZA, HECTOR G. V. UNITED STATES  
10-7255 CHISOLM, ELIJAH J. V. UNITED STATES  
10-7256 DURITY, KWADJO A. V. UNITED STATES  
10-7263 BRANDFORD, DAVID V. UNITED STATES  
10-7265 RAMOS-ROMERO, JOSE A. V. UNITED STATES  
10-7276 CISNEROS-GUTIERREZ, ALFREDO V. UNITED STATES  
10-7277 CALLIHAN, ERIC W. V. UNITED STATES  
10-7278 LARSEN, DAVID M. V. UNITED STATES  
10-7281 RASHID, AMIN A. V. UNITED STATES  
10-7289 SELLERS, LARRY V. UNITED STATES  
10-7294 LONGS, JOHNNIE J. V. UNITED STATES  
10-7296 VALENCIA-TRUJILLO, JOAQUIN M. V. UNITED STATES  
10-7298 ZEPETA, HALEODORA V. UNITED STATES  
10-7299 WALDRON, OTIS V. UNITED STATES  
10-7310 BERNARD, JONATHAN T. V. UNITED STATES  
10-7317 ALVARADO-FLORES, RAMIRO V. UNITED STATES

The petitions for writs of certiorari are denied.

08-9560 McSWAIN, MONTRELL V. UNITED STATES  
09-5248 LEE, ALFONZO T. V. UNITED STATES  
09-5844 LONDON, TARRY C. V. UNITED STATES  
09-5949 PULIDO, ROBERTO E. V. UNITED STATES  
09-6865 MARQUEZ-HUAZO, GRACIANO V. UNITED STATES  
09-7127 VARGAS, CHRISTOPHER J. V. UNITED STATES  
09-7131 ACOSTA, MATTHEW A. V. UNITED STATES  
09-7433 GARTON, GREGORY A. V. UNITED STATES

09-7984 WILSON, KALEEL V. UNITED STATES  
09-8536 SEGARRA, FRANKIE V. UNITED STATES  
09-8561 SCHNEDLER, CRYSTAL J. V. UNITED STATES  
09-8567 SQUIREWELL, KELZIN V. UNITED STATES  
09-8869 MATLOCK, LAWRENCE V. UNITED STATES  
09-8888 TATE, KEVIN L. V. UNITED STATES  
09-8919 AYALA, JAVIER V. UNITED STATES  
09-9029 CEDENO, RYAN V. UNITED STATES  
09-9115 HAYNES, DAREK V. UNITED STATES  
09-9754 DANIELS, VERNON V. UNITED STATES  
09-9839 EDGECOMB, KEVARIS C. V. UNITED STATES  
09-10178 ROBERTSON, JUSTIN L. V. UNITED STATES  
09-10189 CORDERO, MARCO A. V. UNITED STATES  
09-10205 MITTEN, TERAENCE S. V. UNITED STATES  
09-10261 BASLEY, EDWARD V. UNITED STATES

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

10-156 SCROGGY, WARDEN V. GALL, EUGENE

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

10-196 ) FRIENDS OF EVERGLADES, ET AL. V. S. FL WATER MANAGEMENT, ET AL.  
) )  
10-252 ) MICCOSUKEE TRIBE OF INDIANS V. S. FL WATER MANAGEMENT, ET AL.

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

- 10-244 TRAVELERS INDEMNITY CO., ET AL. V. CHUBB INDEMNITY INS. CO.  
The motion of Brady C. Williamson for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is denied. Justice Sotomayor took no part in the consideration or decision of this motion and this petition.
- 10-288 HALL, WARDEN V. WARD, JAMES R.  
The motion of respondent for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is denied.
- 10-300 TIFFANY (NJ) INC., ET AL. V. EBAY INC.  
The petition for a writ of certiorari is denied. Justice Sotomayor took no part in the consideration or decision of this petition.
- 10-389 GUEVARA, JOSE V. PERU, ET AL.
- 10-416 MONTEJO, JESSE J. V. LOUISIANA  
The petitions for writs of certiorari are denied. Justice Kagan took no part in the consideration or decision of these petitions.
- 10-446 KERCHNER, CHARLES, ET AL. V. OBAMA, PRESIDENT OF U.S., ET AL.  
The motion of Western Center for Journalism for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is denied.
- 10-560 SCHULZ, ROBERT L. V. FEDERAL RESERVE SYSTEM, ET AL.  
The petition for a writ of certiorari is denied. Justice Sotomayor took no part in the consideration or decision of this petition.
- 10-5328 TILLMAN, CHITUNDA V. NEW LINE CINEMA, ET AL.  
The petition for a writ of certiorari is denied. The Chief

Justice took no part in the consideration or decision of this petition.

10-5571 JONES, KENWAYNE V. UNITED STATES

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

10-6548 BERRYHILL, LAVERN V. EVANS, EDWARD, 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.

10-6591 MINNFEE, BARRY D. V. TEXAS

10-6676 FERQUERON, GREGORY A. V. STRAUB, WARDEN, ET AL.

The motions of petitioners for leave to proceed *in forma pauperis* are denied, and the petitions for writs of certiorari are dismissed. See Rule 39.8. As the 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 petitions are submitted in compliance with Rule 33.1. See *Martin v. District of Columbia Court of Appeals*, 506 U.S. 1 (1992) (*per curiam*).

10-6699 MILLER, ERNEST V. CALIFORNIA

10-6739 MILLER, ERNEST V. CALIFORNIA

The motions of petitioner for leave to proceed *in forma pauperis* are denied, and the petitions for writs of certiorari are dismissed. See Rule 39.8.

10-7129 BALLARD, ZACHARY V. UNITED STATES

The petition for a writ of certiorari is denied. Justice



Sotomayor took no part in the consideration or decision of this petition.

10-7163 DEWAR, DONAHUE V. UNITED STATES

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

10-7175 BANKOFF, MICHAEL V. UNITED STATES

10-7231 NOWELL, FREDERICK B. V. UNITED STATES

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

10-7268 SHEPHERD, DARNELL V. UNITED STATES

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

#### **HABEAS CORPUS DENIED**

10-6450 IN RE REGINALD WILKINSON

10-7290 IN RE HAROLD CAGE

10-7313 IN RE JAMES T. WRIGHT, JR.

The petitions for writs of habeas corpus are denied.

#### **MANDAMUS DENIED**

10-7189 IN RE DONABEL MARTINEZ-HERRERA

The petition for a writ of mandamus is denied.

10-245 IN RE THE TRAVELERS INDEMNITY COMPANY, ET AL.

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

10-6704 IN RE HUBERT WARREN

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of mandamus 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*).

10-7112 IN RE LESTER J. RUSTON

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

**PROHIBITION DENIED**

10-6849 IN RE DANNY MCGLEACHIE

The petition for a writ of prohibition is denied.

**REHEARINGS DENIED**

09-1332 SAIN, CHARLES J. V. SNYDER, CAROLYN M., ET AL.

09-1464 VENEZIA, SUZANNE V. WILLIAM PENN SCHOOL DISTRICT

09-1506 JONES, RANDALL M. V. ANHEUSER BUSCH

09-1558 YOUNG, LORENE V. CARGILL

09-1566 WALSH-FAUCHER, PATRICK V. CIR

09-1579 SPEAR, NAPOLEON V. GENERAL MOTORS CORP.

09-8375 SCHULTZ, PETER J. V. HALPIN, FRANCIS, ET AL.

09-9986 JAIYEOLA, GANIYU V. CARRIER CORPORATION

09-10533 IN RE JON COX

09-10544 YSAIS, CHRISTOPHER V. NEW MEXICO, ET AL.

09-10601 DAVIS, THOMAS V. BOOKER, WARDEN  
09-10615 BAKER, DARRYL K. V. KENTUCKY  
09-10683 DaCOSTA, GEORGE A. V. UNION LOCAL 306, ET AL.  
09-10724 IN RE JEFFRIE A. DANIEL  
09-10742 JOHNSON, ALAN W. V. LIVINGSTON, BRAD, ET AL.  
09-10778 STUDLI, SHERRY V. CRIMONE, CHARLES A., ET AL.  
09-10817 FORD, RAYMOND A. V. JOHNSON, DIR., VA DOC  
09-10893 DENNIS, SHEILA V. AVENTURA, FL, ET AL.  
09-10950 ADIR, YIGAL V. LOS ANGELES, CA, ET AL.  
09-10959 DUTCH, RODNEY V. BALICKI, ADM'R, SOUTH WOODS  
09-10982 DOUGLAS, LEON V. MICHIGAN  
09-11016 MEHRA, NILIMA V. CONTINENTAL CASUALTY CO., ET AL.  
09-11021 HONESTO, GRACE M. V. CALIFORNIA, ET AL.  
09-11089 WILLIAMS, THELMA V. C/O CROUCH, ET AL.  
09-11092 AVANT, CALVIN V. LOS ANGELES CENTRAL, ET AL.  
09-11111 MONIZ, HOWARD A. V. McKEE, WARDEN  
09-11137 McKINNEY, WILLIAM C. V. SOUTH CAROLINA  
09-11145 BLAKELY, RALPH H. V. SNIVELY, HERB, ET AL.  
09-11164 PEARSON, VERONICA R. V. BRACE, DANNY, ET AL.  
09-11182 ANDERSON, MERVIN G. V. CASTILLO, WARDEN  
09-11198 JACKSON, LEONARD V. RUSSO, SUPT., SOUZA-BARANOWSKI  
09-11225 YSAIS, CHRISTOPHER V. RICHARDSON, BILL, ET AL.  
09-11251 APPUKKUTTA, NARAYANAN V. NEW YORK  
09-11256 DILLON, ROSEMARY V. SAN FRANCISCO VETERANS ADMIN.  
09-11288 FULTON, KENDRICK J. V. UNITED STATES  
09-11306 JOHNSON, JESSIE V. OBAMA, PRESIDENT OF U.S.  
09-11336 BASSO, SUZANNE M. V. THALER, DIR., TX DCJ  
09-11371 BREWER, WILLIAM A. V. VIRGINIA

09-11377 WILLIAMS, THELMA V. WHITE, WARDEN, ET AL.  
09-11387 WOODARD, ELTON G. V. THALER, DIR., TX DCJ  
09-11430 WALKER, DERRICK K. V. JARRIEL, WARDEN  
09-11526 CHASE, WARREN V. MAYNARD, SEC., MD DOC, ET AL.  
10-25 MACON, MARY H. V. OHIO DEPT. OF JOB & FAMILY SERV.  
10-32 CEMINCHUK, BARRY V. OBAMA, PRESIDENT OF U.S.  
10-65 HARPER, BRIAN K. V. UNITED STATES  
10-112 VADDE, SUBBAMMA V. V. BANK OF AMERICA  
10-138 MADEJA, VICTOR V. PENNSYLVANIA  
10-139 CHRISTMAN, GRAZYNA H. V. UTICA NAT. INS. GROUP, INC.  
10-197 BAUER, CHRISTA V. HOLDER, ATT'Y GEN.  
10-307 MELENDREZ, JOSE V. BIERY, JUDGE, USDC WD TX, ET AL.  
10-5089 VANNAUSDLE, MARK V. PIERCE COUNTY DEPT. OF ASSIGNED  
10-5116 CADY, RONALD W. V. THALER, DIR., TX DCJ  
10-5126 LARSON, ROBERT V. UNITED STATES  
10-5170 CALDERON-LOPEZ, RICARDO J. V. UNITED STATES  
10-5173 KIM, CYRUS Y. V. UNITED STATES  
10-5233 AHMADZAI, HARES A. V. UNITED STATES  
10-5252 IN RE JOHNNY R. GAFFNEY  
10-5265 GRAHAM, CHARLES C. V. MISSOURI  
10-5389 MACKENZIE, SCOTT J. V. THALER, DIR., TX DCJ  
10-5441 LANE-EL, JOHN R. V. SEVIER, SUPT., MIAMI  
10-5462 TEAGUE, JOE V. NC DEPT. OF TRANSPORTATION  
10-5561 BEY, MESSIAH A. V. I.B.E.W. LOCAL UNION #3, ET AL.  
10-5594 TURNER, MATTIE V. EDMONDS, BOBBIE  
10-5637 BUENROSTRO, ANNA M. V. DEPT. OF JUSTICE  
10-5643 CALDERON, MARIA V. EVERGREEN OWNERS, INC., ET AL.  
10-5667 RUHBAYAN, RAJUL V. UNITED STATES

10-5780 COHEN, SOLOMON B. V. HUNT, WARDEN  
10-5791 GEORGIEVA, VASILA V. BARNES & NOBLE  
10-5796 COOK, ROBERT C. V. MI DOC  
10-5847 ROWELL, RICHARD V. MARTINO, RUBEN A., ET AL.  
10-5880 COSTA, BERNARDO V. MISSOURI  
10-5901 WILLIAMS, THELMA V. FREE, L., ET AL.  
10-6003 DAVIS, KARRIECE Q. V. UNITED STATES

The petitions for rehearing are denied.

09-1433 SCHAGHTICOKE TRIBAL NATION V. SALAZAR, SEC. OF INTERIOR  
09-10706 SAMUEL, ALEXANDER V. BELLEVUE HOSPITAL CENTER  
09-10738 DICKERSON, GLORIA D. V. UNITED WAY OF NEW YORK CITY

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

10-80 WEISS, THOMAS V. ASSICURAZIONI GENERALI, ET AL.

The petition for rehearing is denied. Justice Sotomayor and Justice Kagan took no part in the consideration or decision of this petition.

10-5349 SPENCER, RUBY V. UNITED PARCEL SERVICE

The petition for rehearing is denied. Justice Sotomayor took no part in the consideration or decision of this petition.

Statement of SOTOMAYOR, J.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

## SUPREME COURT OF THE UNITED STATES

RICHARD CAMERON GAMACHE *v.* CALIFORNIA

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

No. 10–5196. Decided November 29, 2010

The petition for a writ of certiorari is denied.

Statement of JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG, JUSTICE BREYER, and JUSTICE KAGAN join, respecting the denial of the petition for writ of certiorari.

After a jury convicted Richard Gamache of first-degree murder and sentenced him to death, Gamache’s counsel and the trial court learned that during deliberations, court personnel inadvertently gave the jury a videotape that had not been admitted into evidence. During its deliberations, the jury watched the video twice in full and a third time in part before reaching its verdict. The video showed a police interview of Gamache and his codefendants on the day of the murder in which Gamache confessed to the crime in graphic terms. The video showed Gamache explaining, for example, that given the opportunity, he would have shot police officers. 48 Cal. 4th 347, 402, 227 P. 3d 342, 390 (2010) (quoting Gamache on the video as stating, “If I figured, if I had any idea I was about to be arrested, I’d have started shooting. . . . See, I figure if I’m going to die, . . . I’m going to take one or two with me”).

On appeal, the California Supreme Court held that the jury’s access to the tape was indisputably error, citing our opinion in *Turner v. Louisiana*, 379 U. S. 466 (1965). 48 Cal. 4th, at 396, 227 P. 3d, at 386 (“The requirement that a jury’s verdict “must be based upon the evidence devel-

Statement of SOTOMAYOR, J.

oped at the trial” goes to the fundamental integrity of all that is embraced in the constitutional concept of trial by jury” (quoting *Turner*, 379 U. S., at 472)); see also *id.*, at 472–473 (“In the constitutional sense, trial by jury in a criminal case necessarily implies at the very least that the ‘evidence developed’ against a defendant shall come from the witness stand in a public courtroom where there is full judicial protection of the defendant’s right of confrontation, of cross-examination, and of counsel”). The California Supreme Court found that the error was trial error and not the result of any juror misconduct. Accordingly, it did not apply a presumption of prejudice, 48 Cal. 4th, at 399, 227 P. 3d, at 388, and proceeded to conduct a harmless-error analysis.

Under our decision in *Chapman v. California*, 386 U. S. 18, 24 (1967), the prosecution must carry the burden of showing that a constitutional trial error is harmless beyond a reasonable doubt. See also *Deck v. Missouri*, 544 U. S. 622, 635 (2005) (“[W]here a court, without adequate justification, orders the defendant to wear shackles that will be seen by the jury . . . [t]he State must prove ‘beyond a reasonable doubt that the [shackling] error complained of did not contribute to the verdict obtained’” (quoting *Chapman*, 386 U. S., at 24)); *United States v. Dominguez Benitez*, 542 U. S. 74, 81, n. 7 (2004) (“When the Government has the burden of addressing prejudice, as in excusing preserved error as harmless on direct review of the criminal conviction, it is not enough to negate an effect on the outcome of the case” (citing *Chapman*, 386 U. S., at 24)); *Arizona v. Fulminante*, 499 U. S. 279, 295–296 (1991) (“The Court has the power to review the record *de novo* in order to determine an error’s harmlessness. In so doing, it must be determined whether the State has met its burden of demonstrating that the” error “did not contribute to [defendant’s] conviction” (citations omitted)).

The California Supreme Court, however, stated, “[I]n

## Statement of SOTOMAYOR, J.

the absence of misconduct, the burden remains with the *defendant* to demonstrate prejudice under the usual standard for ordinary trial error.” 48 Cal. 4th, at 397, 227 P. 3d, at 387 (emphasis added). It is not clear what the court intended in allocating the burden to the defendant to demonstrate prejudice, but if it meant to convey that the defendant bore the burden of persuasion, that would contravene *Chapman*. See 386 U. S., at 24 (noting that the “original common-law harmless-error rule put the burden on the beneficiary of the error either to prove that there was no injury or to suffer a reversal of his erroneously obtained judgment”); cf. *O’Neal v. McAninch*, 513 U. S. 432, 438–439 (1995) (describing *Chapman* as “placing the risk of doubt” about harmless-ness on the State).

However, it appears from the court’s recitation of the evidence and its analysis that the court found that the error at issue was harmless, regardless of the burden allocation. See 48 Cal. 4th, at 399, 227 P. 3d, at 388 (“[T]here is no reasonable possibility the outcome would have been different absent the error”). I therefore do not disagree with the denial of certiorari.

I nonetheless write respecting the denial of certiorari because the allocation of the burden of proving harmless-ness can be outcome determinative in some cases. See *Fulminante*, 499 U. S., at 296 (“Five of us are of the view that the State has not carried its burden and accordingly affirm the judgment of the court below reversing respondent’s conviction”); see, e.g., *State v. Ball*, 2004 SD 9, 675 N. W. 2d 192 (holding that the State had not met its burden of showing that prosecutor’s improper references in closing argument to defendant’s silence were harmless beyond a reasonable doubt); *State v. Jorgensen*, 2008 WI 60, 310 Wis. 2d 138, 754 N. W. 2d 77 (holding that the State had not met its burden of showing that Confrontation Clause violation was harmless beyond a reasonable doubt). With all that is at stake in capital cases, cf. *Kyles*



Statement of SOTOMAYOR, J.

v. *Whitley*, 514 U. S. 419, 422 (1995) (“[O]ur duty to search for constitutional error with painstaking care is never more exacting than it is in a capital case” (quoting *Burger v. Kemp*, 483 U. S. 776, 785 (1987))), in future cases the California courts should take care to ensure that their burden allocation conforms to the commands of *Chapman*. In this case, however, because it seems that the burden allocation would not have altered the court’s prejudice analysis, I do not disagree with the denial of certiorari.

ALITO, J., dissenting

**SUPREME COURT OF THE UNITED STATES**

WHITNEY HARPER *v.* MAVERICK RECORDING  
COMPANY ET AL.

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

No. 10–94. Decided November 29, 2010

The petition for a writ of certiorari is denied.

JUSTICE ALITO, dissenting from denial of certiorari.

I would grant the petition to consider the question whether 17 U. S. C. §402(d) applies when a person is found to have engaged in copyright infringement by downloading digital music files. Under §504(c)(1), an infringer is ordinarily liable for statutory damages of “not less than \$750 or more than \$30,000” per work infringed. In a case involving an “innocent infringer,” however, the minimum statutory damages that must be awarded are reduced. Specifically, if the infringer proves that he or she “was not aware and had no reason to believe that his or her acts constituted an infringement,” then the minimum statutory damages per violation are \$200. §504(c)(2).

In this case, a 16-year-old was found to have infringed respondents’ copyrights by downloading digital music files. The District Court held that there were genuine issues of fact on whether she qualified as an innocent infringer, but the Court of Appeals reversed, concluding that another provision, §402(d) foreclosed the innocent-infringer defense as a matter of law. Section 402(d) provides, with an exception not relevant here, that if a prescribed notice of copyright “appears on the published *phonorecord* or *phonorecords* to which a defendant . . . had access, then no weight shall be given to . . . a defendant’s interposition of a defense based on innocent infringement in mitigation of actual or statutory damages.” (Emphasis added.) The

ALITO, J., dissenting

term “phonorecords” is defined as including only “material objects.”<sup>1</sup>

There is a strong argument that §402(d) does not apply in a case involving the downloading of digital music files. This provision was adopted in 1988, well before digital music files became available on the Internet. See Berne Convention Implementation Act, §7, 102 Stat. 2857. The theory of §402(d) appears to be that a person who copies music from a material object bearing the prescribed copyright notice is deemed to have “reason to believe that his or her acts constituted an infringement,” §504(c)(2). But a person who downloads a digital music file generally does not see any material object bearing a copyright notice, and accordingly there is force to the argument that §402(d) does not apply. In such a case, the question would simply be whether the infringer “was . . . aware and had . . . reason to believe,” §504(c)(2), that the downloading was illegal.

The Court of Appeals in the present case adopted a very different interpretation of §402(d). The court held that the innocent infringer defense was “foreclose[d] . . . as a matter of law” because (1) respondents “provided proper notice on each of the published phonorecords from which the audio files were taken” before they were made available on a file-sharing network and (2) petitioner relied solely on §504(c)(2) and did not dispute her “access” to the phonorecords under §402(d). 598 F. 3d 193, 198–199 (CA5 2010). Under this interpretation, it is not necessary that the

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<sup>1</sup>Specifically, 17 U. S. C. §101 provides:

“Phonorecords’ are material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term ‘phonorecords’ includes the material object in which the sounds are first fixed.”

ALITO, J., dissenting

infringer actually see a material object with the copyright notice. It is enough that the infringer could have ascertained that the work was copyrighted.<sup>2</sup> The Fifth Circuit did not specify what sort of inquiry a person who downloads digital music files is required to make in order to preserve the §402(d) defense, but it may be that the court had in mind such things as research on the Internet or a visit to a local store in search of a compact disc containing the songs in question. In any event, the Court of Appeals rejected petitioner’s argument that her youth and lack of legal sophistication were relevant considerations—a conclusion that would not necessarily be correct if the determinative question were simply whether petitioner had “reason to believe” that her actions were illegal. Although “reason to believe” is an objective standard, it is by no means clear that certain objective characteristics of the infringer—such as age—may not be taken into account.

The Fifth Circuit’s decision may or may not set out a sensible rule for the post-“phonorecord” age, but it is at least questionable whether the decision correctly interprets §402(d). Although there are now no conflicting Circuit decisions, I would grant review in this case because not many cases presenting this issue are likely to reach the Courts of Appeals. The Court has decided not to grant review at this time, but if a conflict in the Circuits develops in the future, the question presented, in my judgment, is important enough to warrant review.

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<sup>2</sup>In *BMG Music v. Gonzalez*, 430 F. 3d 888 (2005), the Seventh Circuit adopted a similar interpretation of §402(d).