

(ORDER LIST: 568 U.S.)

TUESDAY, NOVEMBER 13, 2012

CERTIORARI -- SUMMARY DISPOSITION

12-5017 BARBA, ANTONIO V. CALIFORNIA

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 Court of Appeal of California, Second Appellate District, for further consideration in light of *Williams v. Illinois*, 567 U.S. ____ (2012).

ORDERS IN PENDING CASES

12M42 SAMADI, MIKE V. BANK OF AMERICA

12M43 TURNER, GLORIA T. V. THALER, DIR., TX DCJ

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

11-338) DECKER, DOUG, ET AL. V. NORTHWEST ENVTL. DEFENSE CENTER

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11-347) GEORGIA-PACIFIC WEST, ET AL. V. NORTHWEST ENVTL. DEFENSE CENTER

The motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument is granted. Justice Breyer took no part in the consideration or decision of this motion.

11-556 VANCE, MAETTA V. BALL STATE UNIVERSITY, ET AL.

11-1059 GENESIS HEALTHCARE CORP., ET AL. V. SYMCZYK, LAURA

The motions of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument are granted.

11-1231 SEBELIUS, SEC. OF H&HS V. AUBURN REGIONAL MEDICAL, ET AL.

The motion of Court-appointed *amicus curiae* for divided argument is granted.

11-1285 US AIRWAYS, INC. V. McCUTCHEN, JAMES E., ET AL.

The motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument is granted.

11-10473 BOOK, ETHAN V. CT RESOURCES RECOVERY, ET AL.

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

12-6120 SMITH, LATOYA M. V. FLORIDA

The motion of petitioner for leave to proceed *in forma pauperis* is denied. Petitioner is allowed until December 4, 2012, 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.

12-6682 TURPIN, RHONDA J. V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* is denied. Petitioner is allowed until December 4, 2012, 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.

CERTIORARI DENIED

11-1395 FRY, JOSHUA D. V. UNITED STATES

11-9696 LEWELLYN, KRISTA, ET VIR V. SARASOTA COUNTY SCHOOL BOARD

11-10201 LYNN, LAURA J. V. LYNN, TIMOTHY M.

11-10202 JACKSON, MELVIN V. UNITED STATES

11-10220 BAILEY, EDWIN D., ET UX. V. SUHAR, ANDREW W.
11-10354 TAMAYO, EDGAR A. V. THALER, DIR., TX DCJ
11-11155 COX, HOLLY V. HOWERTON, WARDEN
12-81 NIX, JOHN, ET AL. V. HOLDER, ATT'Y GEN., ET AL.
12-212 CLEARVALUE, INC., ET AL. V. PEARL RIVER POLYMERS, ET AL.
12-254 SAWYER, STEVEN R. V. WRIGHT, CLARENCE K., ET AL.
12-282 SLAUGHTER, VIRGINIA D., ET AL. V. MAYOR AND CITY COUNCIL, ET AL.
12-286 TEACHERS INS. & ANNUITY, ET AL. V. CRIIMI MAE SERVICES, ET AL.
12-290 HAFTER, JACOB L. V. STATE BAR OF NV
12-294 THOMAS, WILLIAM W. V. STAUNTON, VA, ET AL.
12-295 ZORBALAS, SPIROS V. MINNEAPOLIS, MN
12-303 XUAN, WEN V. TAI, ON
12-305 ALLEN GROUP PARTNERS V. GOLDEN, JEFFREY I.
12-326 AKERS, RENEE S. V. HINDS COMMUNITY COLLEGE
12-343 FRLUCKAJ, AMIL V. LONG, WARDEN
12-344 GREEN, CARLTON M. V. NASSIF, HELEN G.
12-375 ROCHA, JOSEPH R. V. PETER PAN BUS LINE, INC., ET AL.
12-400 LANGENECKERT, DEBORAH A. V. WEBER, DAVID, ET AL.
12-403 MAPLE, ERIC L. V. HARLOW, SUPT., ALBION, ET AL.
12-415 MOSS, ROBERT, ET AL. V. SPARTANBURG CTY. SCHOOL DIST.
12-440 MARTINEZ, MANUEL V. UNITED STATES
12-449 CONNOLLY, CHRIS V. CIR
12-455 HOSSEINI, AMIR V. UNITED STATES
12-468 R&L CARRIERS, ET AL. V. BENNETT, CLYDE L.
12-472 RENDON, MIGUEL A. V. UNITED STATES
12-5036 KELLEY, JASON R. V. UNITED STATES
12-5093 CHANDIA, ALI A. V. UNITED STATES
12-5234 RAUPP, ANTHONY V. UNITED STATES

12-5264 HERRERA-MONTES, JUAN J. V. UNITED STATES
12-5333 CLAY, CLARENCE V. UNITED STATES
12-5341 CLEMENTS, TESSIE P. V. ALABAMA STATE BAR
12-5380 SMART, ARTHUR L. V. CALIFORNIA
12-5594 LOTCHES, ERNEST V. OREGON, ET AL.
12-5692 MAGANA, JOSE V. UNITED STATES
12-5735 LEMONS, MICHAEL R. V. UNITED STATES
12-5749 HUNT, GREGORY V. THOMAS, COMM'R, AL DOC
12-5883 KENNEDY, CHRISTOPHER V. KEMNA, SUPT., CROSSROADS
12-6105 HOUGHTON, ROBERT V. CAIN, WARDEN
12-6106 CHESTEEN, RANDY G. V. THALER, DIR., TX DCJ
12-6109 HURD, KENYON D. V. TEXAS
12-6110 GLASSER, WAYNE D. V. COLORADO
12-6112 FIELDS, ELLIOTT L. V. CLARKE, DIR., VA DOC, ET AL.
12-6115 HITE, JERAD V. EVANS, WARDEN
12-6116 HOSKINS, DAVID A. V. NORTH CAROLINA
12-6118 GATHER, RAYMOND V. OKARNG, ET AL.
12-6124 JONES, MELVIN V. LOPEZ, RAFAEL
12-6126 GRIFFIN, BRYNN V. McGRADY, SUPT., RETREAT, ET AL.
12-6127 GARCIA, VICTOR V. CALIFORNIA
12-6131 BURKE, ALFRED R. V. McCOLLUM, WARDEN
12-6137 BENSON, RICKY V. LUTTRELL, SHERIFF, ET AL.
12-6143 CAMPBELL, CARMEN E. V. PERLEY, JULES M.
12-6147 HART, OLIVER V. TEXAS
12-6150 HALL, MARSA V. HOKE, FRANK, ET AL.
12-6153 FREEMAN, ANTONIO D. V. CALIFORNIA
12-6154 HERNANDEZ, EDUARDO E. V. EVANS, WARDEN
12-6158 JOHNSON, ERIC E. V. LOPEZ, WARDEN

12-6167 BYRD, ROBERT A. V. THALER, DIR., TX DCJ
12-6189 BANKS, TOMMIE M. V. THALER, DIR., TX DCJ
12-6191 DAVENPORT, CURTIS V. McLAUGHLIN, WARDEN
12-6198 McKINNEY, JAMES V. ILLINOIS
12-6203 SLEDGE, DERRICK L. V. GROUNDS, WARDEN
12-6204 ROBINSON, COREY J. V. SC DOC, ET AL.
12-6206 McDONALD, DEWITT V. BRUNSMAN, WARDEN
12-6211 BELTRAN, CRESENCIO-CRUZ V. FLORIDA
12-6214 ASHFORD, KENNETH V. WENEROWICZ, SUPT., GRATERFORD
12-6215 ANDERSON, LEWIS V. RIVERSIDE, CA, ET AL.
12-6216 JACKSON, LARRY V. RAPELJE, WARDEN
12-6224 TRAMMELL, DAVID C. V. SMART, JAMES H., ET AL.
12-6226 KURTZ, JAMES D. V. UNITED STATES, ET AL.
12-6227 ALVARADO, JESUS D. V. TEXAS
12-6233 JONES, RAFAEL A. V. MO DOC, ET AL.
12-6234 WILLIAMS, CHRISTOPHER G. V. NEVADA
12-6235 WHITMORE, DAVID V. PARKER, WARDEN
12-6240 DAVIS, MICHAEL A. V. McLAUGHLIN, WARDEN
12-6241 VERDUN, VICTOR V. CAIN, WARDEN
12-6242 SADLOWSKI, GLORIA V. MICHALSKY, KIM
12-6244 SADLOWSKI, GLORIA V. TOWN OF MIDDLEFIELD
12-6249 RAMIREZ, CARLOS V. HERNDON, WARDEN
12-6252 RAMIREZ-GARCIA, MARCOS V. SCUTT, WARDEN
12-6259 TREGLIA, DANIEL V. CALIFORNIA
12-6260 BAPTISTA, JOEL V. CLARK, WARDEN
12-6275 HUNTER, CHASE C. V. LESTER KALMANSON AGENCY
12-6288 WHITE, YANCEY L. V. MISSOURI
12-6338 MORRIS, ROBERT C. V. CROSS, ELIZABETH E., ET AL.

12-6363 HERNANDEZ, RICHARD A. V. COLORADO
12-6375 KELLY, ALBERT F. V. TENNESSEE
12-6424 BREWSTER, ANTONIO V. EASTERLING, WARDEN
12-6501 MOORE, JOHN V. WENEROWICZ, SUPT., GRATERFORD
12-6598 WILLIAMS, ROBERT V. SHEAHAN, SUPT., FIVE POINTS
12-6637 SERFASS, SHAWN D. V. UNITED STATES
12-6638 SANTIAGO, JOSE A. V. UNITED STATES
12-6645 SMITH, ROSHAWN V. WISCONSIN
12-6653 BARREN, DAVID V. UNITED STATES
12-6655 BUI, LOC H., ET AL. V. UNITED STATES
12-6659 VILLA-MADRIGAL, JOSE V. UNITED STATES
12-6662 RAMIREZ, WILSON V. UNITED STATES
12-6667 KELLY, A. J. V. UNITED STATES
12-6668 SHERLEY, ANTHONY R. V. UNITED STATES
12-6669 MACK, SONNY L. V. UNITED STATES
12-6674 CARNAHAN, RILEY V. UNITED STATES
12-6686 CHANTHACHACK, BRIAN V. UNITED STATES
12-6690 YOSHIMOTO, DANIEL V. UNITED STATES
12-6699 WESTBROOK, MICHAEL G. V. UNITED STATES
12-6701 WILLIAMS, MAURICE L. V. UNITED STATES
12-6702 TRIPP, DAMION L. V. UNITED STATES
12-6705 BARNES, JOSHUA V. UNITED STATES
12-6707 WILLIAMS, XAVIER V. UNITED STATES
12-6710 CASANOVA, EMMA V. UNITED STATES
12-6711 CRAWLEY, RONALD V. UNITED STATES
12-6718 TAYLOR, RONALD V. UNITED STATES
12-6723 AIDOO, FRANK V. UNITED STATES
12-6725 ADAMS, JEREMY L. V. UNITED STATES

12-6728 JOHNSON, JAMES O. V. UNITED STATES
12-6729 RICHARDS, SHANE A. V. UNITED STATES
12-6730 RAMIREZ-SALAZAR, LUCIANO V. USDC ED CA
12-6734 COOK, MICHAEL W. V. UNITED STATES
12-6735 COTTON, JOHN T. V. UNITED STATES
12-6736 BROWN, REGINALD L. V. UNITED STATES
12-6737 AMSTER, GARY B. V. UNITED STATES
12-6738 ALMEDINA, HECTOR V. UNITED STATES
12-6739 BURKHARDT, STANLEY C. V. UNITED STATES
12-6743 POPE, TRAVIS V. UNITED STATES
12-6744 TURNER, CHARLES V. UNITED STATES
12-6748 KIRBY, ROMAN V. UNITED STATES
12-6750 KNITTEL, WILLIAM K. V. UNITED STATES
12-6751 OSORIO, CANDIDO D. V. UNITED STATES
12-6752 REYES-PEDROZA, GERARDO V. UNITED STATES
12-6753 DODAKIAN, NOEMI V. UNITED STATES
12-6755 DOWNS, BRIAN L. V. UNITED STATES
12-6763 WINFIELD, ROBERT L. V. UNITED STATES
12-6764 THOMAS, TROY V. UNITED STATES
12-6775 HARPER, JYLES L. V. UNITED STATES
12-6779 GONZALEZ, GABRIEL V. UNITED STATES
12-6780 HILL, VINCENT E. V. UNITED STATES
12-6781 GRAFF, ANTHONY J. V. UNITED STATES
12-6783 GLASSGOW, ROBERT V. UNITED STATES
12-6784 GONZALEZ, EZEQUIEL V. UNITED STATES
12-6786 FERRANTI, JACK V. UNITED STATES
12-6788 GONZALEZ-BELLO, LOUIS A. V. UNITED STATES

- 12-6789 McKEIGHAN, JAMES A. V. UNITED STATES
- The petitions for writs of certiorari are denied.
- 12-44 SHAYGAN, ALI 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.
- 12-298 FISHER, ISADORE, ET AL. V. JP MORGAN CHASE & CO., ET AL.
- The petition for a writ of certiorari is denied. Justice Alito and Justice Sotomayor took no part in the consideration or decision of this petition.
- 12-308 THOMAS, COMM'R, AL DOC, ET AL. V. MADISON, VERNON
- The motion of respondent for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is denied.
- 12-460 SPADONI, CHARLES B. 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.
- 12-6135 BOOK, ETHAN V. KIMBERLY PARKS, 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.
- 12-6236 YOUNG, TIMOTHY D. V. MADISON, COUNSELOR, 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*). Justice Sotomayor and Justice Kagan took no part in the consideration or decision of this motion and this petition.

12-6291 SMITH, KENDALL V. VERIZON WASHINGTON, DC, ET AL.

12-6323 LINDSAY, LINDA V. BOEING N.A., INC., ET AL.

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

MANDAMUS DENIED

12-292 IN RE STEVEN R. SAWYER

12-6138 IN RE NATHANIEL PORTER, AKA N. KALONJI OWUSU I

12-6196 IN RE EDWARD SHELL

12-6700 IN RE MICHAEL WILLIAMS

12-6759 IN RE BENNIE A. MACK

The petitions for writs of mandamus are denied.

REHEARINGS DENIED

11-1328 CUNNINGHAM, BENJAMIN V. McCLUSKEY, SEAN, ET AL.

11-10174 COULTER, RONALD V. USDC SC

11-10244 ADKINS, EBRAHIM V. ARMSTRONG, RICK, ET AL.

11-10451 RODRIGUEZ, JERARDO V. PETERS, DIR., OR DOC, ET AL.

11-10776 YANG, NENG POR V. SHAKOPEE, MN, ET AL.

11-10788 YANG, NENG POR V. HANSON, DIANE M., ET AL.

11-10910 BAK, UEON V. DONAHOE, POSTMASTER GEN., ET AL.

12-39 SELGAS, THOMAS D., ET UX. V. HENDERSON COUNTY APPRAISAL DIST.

12-5239 DANG, CHARLIE T. V. SOLAR TURBINES INC.

12-5322 VICKERMAN, RICHARD C. V. BIXLER, JAMES M., ET AL.

12-5482 ABRAM, SCOTT V. GERRY, WARDEN

12-5517 EVANS, TIAYON K. V. UNITED STATES

The petitions for rehearing are denied.

11-10607 RUTLEDGE, EUGENE D. V. OAKLAND, CA, ET AL.

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

12-38 CALDWELL, KEITH R. V. KAGAN, JUSTICE, USSC, ET AL.

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

12-5357 RUTLEDGE, EUGENE D. V. ALLEN, A., ET AL.

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

Statement of SOTOMAYOR, J.

SUPREME COURT OF THE UNITED STATES

No. 12–6760 (12A369)

ANTHONY CARDELL HAYNES *v.* RICK THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION

ON APPLICATION FOR STAY

[November 13, 2012]

Statement of JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, respecting the grant of stay of execution.

In this case, a divided Fifth Circuit panel rejected Anthony Haynes’ application for a certificate of appealability on the ground that this Court’s decision in *Martinez v. Ryan*, 566 U. S. ____ (2012), “does not apply to Texas capital habeas petitioners.” No. 12–70030, 2012 WL 4858204, *2 (Oct. 15, 2012). We recently granted certiorari to address precisely the question whether *Martinez* applies to habeas cases arising from Texas courts. See *Trevino v. Thaler*, 568 U. S. ____ (2012).

The dissent observes that on federal habeas review in this case, the District Court, after first concluding that Haynes had procedurally defaulted his claim that his trial counsel was constitutionally ineffective, ruled in the alternative that the claim failed on the merits. *Post*, at 2–3. But the Court of Appeals has never addressed the District Court’s merits ruling, and has instead relied solely on procedural default. See 2012 WL 4858204, *2; *Haynes v. Quarterman*, 526 F.3d 189, 194–195 (CA5 2008). The only appellate judge to consider the merits of Haynes’ claim would have granted Haynes a certificate of appealability in his current case and stated that it was “difficult to conclude that Hayne[s] has not made a sufficient showing for a *Strickland* [*v. Washington*, 466 U. S. 668 (1984),]

Statement of SOTOMAYOR, J.

violation as to his trial counsel.” 2012 WL 4858204, *4 (Dennis, J., dissenting). Under these circumstances, rather than assume the correctness of the District Court’s unreviewed merits decision, I believe a stay of execution is warranted to allow Haynes to pursue his claim on remand if this Court in *Trevino* rejects the single ground relied upon by the Fifth Circuit for denying Haynes’ application for a certificate of appealability.

SCALIA, J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 12–6760 (12A369)

ANTHONY CARDELL HAYNES *v.* RICK THALER, DI-
RECTOR, TEXAS DEPARTMENT OF CRIMINAL JUS-
TICE, CORRECTIONAL INSTITUTIONS DIVISION

ON APPLICATION FOR STAY

[November 13, 2012]

JUSTICE SCALIA, with whom JUSTICE THOMAS and JUSTICE ALITO join, dissenting from the grant of stay of execution.

I dissent from the Court’s order of October 18, 2012, granting the application of Anthony Haynes for stay of execution of sentence of death. Petitioner Haynes, who had committed a series of armed robberies, was approached by off-duty Houston Police Department Officer Kent Kincaid after a bullet from Haynes’s truck had cracked Kincaid’s windshield. Kincaid, who thought the missile had been a rock, identified himself as a police officer and asked for Haynes’s driving license. Haynes lifted a pistol and shot the officer in the head. Haynes was apprehended and confessed to the killing. He was tried for the capital murder of a peace officer “acting in the lawful discharge of an official duty,” Tex. Penal Code Ann. §19.03(a)(1) (West Cum. Supp. 2012). A Texas jury found him guilty and sentenced him to death.

It has been more than 14 years since Haynes killed Officer Kincaid, 10 years since we denied Haynes’s first petition for certiorari, see *Haynes v. Texas*, 535 U. S. 999 (2002), and six months since we denied his second, see *Haynes v. Thaler*, 566 U. S. ____ (2012). Haynes is now back before us a third time, arguing that he received ineffective assistance from his trial counsel and that his

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procedural default of this claim is excused by our decision seven months ago in *Martinez v. Ryan*, 566 U. S. ____ (2012), which he asserts entitles him to a reopening of his habeas proceedings under Federal Rule of Civil Procedure 60(b)(6).

The Fifth Circuit determined that Haynes did not qualify for relief under *Martinez*, which carved out a “limited” exception to our longstanding rule that attorney error on state collateral review does not constitute cause to excuse procedural default of an ineffective-assistance-of-counsel claim, see *Coleman v. Thompson*, 501 U. S. 722 (1991). According to the Fifth Circuit, Texas inmates fall outside the scope of *Martinez*, which applies only “where the State barred the defendant from raising the claims on direct appeal,” 566 U. S., at ____ (slip op., at 14). See *Ibarra v. Thaler*, 687 F. 3d 222, 225–227 (2012). Haynes points to the practical difficulties in Texas of successfully raising an ineffective-assistance claim on direct appeal or by motion for new trial.

Even if the Fifth Circuit is incorrect and *Martinez* does implicate Texas’s system of postconviction review, a stay is unwarranted here because Haynes presents no plausible claim for relief. His complaint is that his trial counsel was ineffective at sentencing. The absolute most to which he would be entitled under *Martinez* is excuse of his procedural default of this claim, enabling a federal district court to adjudicate the claim on the merits. But that is precisely what the District Court already did on federal habeas review. See *Haynes v. Quarterman*, Civ. No. H–05–3424, 2007 WL 268374 (SD Tex., Jan. 25, 2007). In addition to finding the majority of Haynes’s ineffective-assistance claims procedurally defaulted, the court rejected all of them on the merits. It concluded that Haynes’s argument was “not that counsel’s performance should have been *better*, rather, his argument is that counsel should have investigated and presented evidence at the punishment

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phase in a completely *different manner.*” *Id.*, at *9. It rejected that argument because it concluded that his lawyers’ decisions represented simply “the exercise of [a] strategy” different from what Haynes would now prefer. *Ibid.* It said that even “[i]f the constraints of federal review did not command that Haynes first give the state courts an opportunity to adjudicate his claims of error, this court would still not issue a habeas writ.” *Ibid.* Thus, when the District Court denied Haynes’s Rule 60(b)(6) motion, it correctly concluded that *Martinez* (which would do no more than excuse Haynes’s procedural default) was beside the point, since the court had “already granted Haynes the relief he now requests: The court considered the merits of his barred claims.” *Haynes v. Thaler*, 2012 WL 4739541, *5 (Oct. 3, 2012).

This stay cannot, therefore, be justified even as preserving an opportunity to challenge the sentence under *Martinez*. And because I see no reason to believe that the District Court was wrong about the merits of Haynes’s claims, I also do not consider a stay warranted in order to plumb the record and correct any alleged factbound error of the District Court.

Haynes has already outlived the policeman whom he shot in the head by 14 years. I cannot join the Court’s further postponement of the State’s execution of its lawful judgment.