(ORDER LIST: 571 U.S.)

MONDAY, NOVEMBER 18, 2013

CERTIORARI -- SUMMARY DISPOSITION

13-5820 OLTEN, DALE S. 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 *Descamps* v. *United States*, 570 U. S. ___ (2013).

ORDERS IN PENDING CASES

13A143 MYNES, RAYMOND V. UNITED STATES

The application for a certificate of appealability addressed to Justice Sotomayor and referred to the Court is denied.

13M53 DORR, KRISTOPHER V. FORD MOTOR CO., ET AL.

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

12-138 BG GROUP PLC V. ARGENTINA

12-315 AIR WISCONSIN AIRLINES CORP. V. HOEPER, WILLIAM L.

12-515 MICHIGAN V. BAY MILLS INDIAN COM., ET AL.

12-820 LOZANO, MANUEL J. V. ALVAREZ, DIANA L.

12-5196 LAW, STEPHEN V. SIEGEL, ALFRED H.

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

12-10459 COBBLE, DANIEL E. V. McLAUGHLIN, WARDEN

12-10919 DARNELL, ELIGAH V. STEPHENS, DIR., TX DCJ

12-11001 KASHFIAN, ANGELA V. ABRAMS, SHIRZAD, ET AL.

13-5416 IN RE JEFFREY R. CROSBY

13-5784 KEMPPAINEN, GORDON K. V. TEXAS

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

13-5926 MARCUSSE, JANET V. FLOURNOY, WARDEN

The motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* is denied. Justice Kagan took no part in the consideration or decision of this motion.

13-6038 WILLIAMS, FRANKLIN L. V. U.S. MARSHALS SERVICE, ET AL.

13-6039 WILLIAMS, FRANKLIN L. V. UNITED STATES

13-6040 WILLIAMS, FRANKLIN L. V. UNITED STATES, ET AL.

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

13-6326 BACH, MARGARET V. LINHART, RICHARD, ET AL.

13-6396 WALLIS, SCOTT V. LEVINE, ALAN, ET AL.

13-6398 MISSUD, PATRICK A. V. CALIFORNIA, ET AL.

13-6580 CRIPPEN, PATRICK L. V. TENNESSEE

13-6840 McCONNEL, JOSEPH E. V. UNITED STATES

13-6867 EDWARDS, ESSIE V. NEW YORK STATE UNIFIED CT. SYS.

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until December 9, 2013, 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 DENIED

12-8965 SESSOMS, JAMES V. UNITED STATES

12-9941 ANDERSON, JOHN T. V. PRIVATE CAPITAL GROUP, ET AL.

12-9976 THURBER, SALLIE V. BANK OF NEW YORK MELLON, ET AL.

12-9981 FINKELSON, GREGORY V. YUEN, RICHARD

12-10006 MISSUD, PATRICK A. V. D.R. HORTON, INC., ET AL.

12-10412 KELMAR, CHERYL V. CORSTORPHINE, KEVIN J., ET AL.

12-10426 ROACH, DEBRA J. V. HAGEL, SEC. OF DEFENSE

12-10884 HARTMAN, DOROTHY M. V. PATENT AND TRADEMARK OFFICE

13-190 SHENOY, B. VITTAL V. CHARLOTTE-MECKLENBURG HOSPITAL

13-319 WATERFIELD, FREDERICK L. V. LABODA, ALANE, ET AL.

13-320 BACARDI INTERNATIONAL LIMITED V. V. SUAREZ & CO., INC.

13-322 MILLER, JOE A. V. TEXAS

13-326 FRANCO, JAVIER R. V. STEPHENS, DIR., TX DCJ

13-329 MOFFETT ENGINEERING V. AINSWORTH, MARY P., ET AL.

13-330 AVIS BUDGET GROUP, INC., ET AL. V. ALASKA RENT-A-CAR, INC.

13-337 TRIPLE A INTERNATIONAL, INC. V. CONGO

13-375 ARTESYN TECHNOLOGIES, ET AL. V. SYNQOR, INC.

13-381 AHMAD, IMTIAZ V. HOLDER, ATT'Y GEN.

13-397 MILLER, NORMAN L. V. HINSHAW & CULBERTSON, ET AL.

13-399 POWELL, HAROLD V. SADDLER, MICHELLE

13-410 TOY, BOBBI-ANNE V. HOLDER, ATT'Y GEN.

13-423 LONG-WIGGINS, PAMELA L. V. FLORIDA

13-450 BENSON, MICHAEL T. V. BALTIMORE EQUITABLE INSURANCE

13-472 GREEN, GERALD, ET UX. V. UNITED STATES

13-473 TOEPFER, DEVON V. UNITED STATES

13-476 DOMINGUE, BARRY L. V. UNITED STATES

13-484 OLSEN, CARL E. V. DEA

13-5109 DESAUTEL, SHAWN L. V. DUPRIS, ANITA B., ET AL.

13-5207 HILL, CORA M. V. HAWKS, JUDGE, ETC., ET AL.

13-5323 ADAMS, RUSSELL V. MONTENAY POWER CORP., ET AL.

13-5351 MORGAN, TOMMY V. UNITED STATES

13-5757 GOLDEN, TERRY L. V. UNITED STATES

13-5789 DECUBAS, TERRI L. V. UNITED STATES

13-5855 GREEN, KELLY A. V. AFL-CIO, ET AL.

13-6058 EDMISTON, STEPHEN R. V. PENNSYLVANIA

13-6256 JOHNSON, KYLE V. COLEMAN, SUPT., FAYETTE, ET AL.

13-6257 MACIAS, ADRIAN V. CALIFORNIA

13-6280 WALKER, ISAAC L. V. STITH, RALPH C.

13-6281 WALTERS, MICHAEL D. V. BUCHANAN, WARDEN

13-6283 McCABE, JAMES I. V. PA DOC, ET AL.

13-6285 MORALES, JOSE L. V. USDC ND CA

13-6289 TORREZ, JORGE A. V. VIRGINIA

13-6292 WHITWORTH, RONALD L. V. LOWERY, TERRY, ET AL.

13-6297 DESILETS, PAUL R. V. TEXAS

13-6302 SCHENCK, RYKER W. V. SUPERIOR COURT OF CA, ET AL.

13-6304 MARVEL, LARRY D. V. DELAWARE

13-6306 WAITHE, ANTONIO L. V. CREWS, SEC., FL DOC, ET AL.

13-6307 WILDER, JAMES G. V. GEORGIA

13-6308 THOMAS, KELLY S. V. ZATECKY, SUPT., PENDLETON

13-6309 YADOW, GLEN D. V. HILTON, CHRIS, ET AL.

13-6316 KEY, ALONZO V. MIANO, PHILLIP, ET AL.

13-6317 JONES, JAMES D. V. STEPHENS, DIR., TX DCJ

13-6320 SIROIS, STEVEN B. V. STEPHENS, DIR., TX DCJ

13-6321 MAYS, TERRY V. CAIN, WARDEN

13-6328 BRISTOW, MACARTHUR V. OKLAHOMA

13-6329 BANH, DAN V. MONTGOMERY, ACTING WARDEN

13-6331 WILLIAMS, OSCAR V. WILLIAMS, WARDEN, ET AL.

13-6333 WALKER, STEPHEN C. V. DAVIS, DEANA

13-6335 REED, GROVER V. FLORIDA

13-6336 RIVERA, CONRAD O. V. BUSBY, WARDEN

13-6337 JEFFERSON, WALTER V. ILLINOIS

13-6338 JEFFREY K. V. BALLARD, WARDEN

13-6339 JOHNSON, KENNETH W. V. BUSBY, WARDEN

13-6342 WILLIAMS, HARVEY L. V. PEREZ, CARLOS,ET AL.

13-6343 TAVERNA, PHILIP J. V. ATLANTIC VAN BURNEN ROAD, ET AL.

13-6350 GU, ALEX V. ABRAHAM, ANEY, ET AL.

13-6351 HINES, KENNIE V. TEXAS

13-6356 HOGAN, KENNETH E. V. TRAMMELL, WARDEN

13-6364 PARKER, FLORENCE R. V. CITIMORTGAGE, INC., ET AL.

13-6367 TOLIVER, SAMUEL R. V. ARTUS, SUPT., WENDE

13-6368 LINDSEY, MICHAEL V. INDIANA

13-6369 SOLIS, DANIEL V. GRIEGO, MARY, ET AL.

13-6375 CASTRO, JESSIE V. KATAVICH, WARDEN

13-6379 SIGMON, BRAD K. V. SOUTH CAROLINA

13-6390 VALENCIA, CIRIACO V. McDONALD, WARDEN

13-6394 BRADSHAW, TERRAINE V. MONTGOMERY, ACTING WARDEN

13-6397 WRIGHT, ALLEN V. BEARDEN, DR., ET AL.

13-6410 MUNGUIA, MICHAEL H. V. CALIFORNIA

13-6446 YOUNG, DANA E. V. KERESTES, SUPT., MAHANOY, ET AL.

13-6449 STANLEY, RICHARD C. V. BANK OF NEW YORK MELLON

13-6451 MILLER, FRANKIE E. V. MINNESOTA

13-6478 COLLINS, ANTHONY K. V. CREWS, SEC., FL DOC, ET AL.

13-6498 CARTER, EDNA D. V. COLVIN, ACTING COMM'R, SOCIAL

13-6510 PHELAN, KENNETH J. V. SHEAHAN, SUPT., FIVE POINTS

13-6516 SIMMONS, CHRISTOPHER I. V. SUPERIOR COURT OF CA, ET AL.

13-6551 RAMOS, RAMON V. CHAPPIUS, SUPT., ELMIRA

13-6590 SIGMON, MICHAEL R. V. HILLEN TIRE, ET AL.

13-6609 DEMPSEY, DOUGLAS V. EAGLETON, WARDEN

13-6611 COWAN, LANDRECUS O. V. SOUTH CAROLINA

13-6648 HARRIS, CHADRICK V. CREWS, SEC., FL DOC

13-6668 MEEK, BRIAN V. BERGH, WARDEN

13-6672 THOMAS, TITO V. CALIFORNIA

13-6696 TRUESDELL, JOSEPH V. NEVADA

13-6701 GABLE, FRANK E. V. OREGON

13-6715 BOETTLIN, MICHAEL V. FISHER, SUPT., SMITHFIELD

13-6726 STRAWDER, WILLIAM V. LaVALLEY, SUPT., CLINTON

13-6728 KACHINA, GARY A. V. ROY, COMM'R, MN DOC

13-6738 WIGGINS, ERIC V. DONLEY, SEC. OF AIR FORCE

13-6742 KIM, PAUL C. V. IRS

13-6750 POTES, PEDRO P. V. CREWS, SEC., FL DOC

13-6760 SEALED APPELLANT V. SEALED APPELLEE 1, ET AL.

13-6774 MAULDIN, BROOKS L. V. HOLDER, ATT'Y GEN., ET AL.

13-6779 ADAMS, GEORGE T. V. McCALL, WARDEN, ET AL.

13-6785 WEEKS, JERRY V. FLORIDA

13-6793 OSTEEN, CHRISTOPHER V. UNITED STATES

13-6797 CALDWELL, LAWRENCE D. V. ROMERO, ANTHONY D., ET AL.

13-6799 BISHOP, RICHARD L. V. UNITED STATES

13-6801 BANKS, DONALD L. V. CREWS, SEC., FL DOC, ET AL.

13-6803 WERBER, GREGORY V. BUNTING, WARDEN

13-6805 CALLEN, JOHN V. UNITED STATES

13-6807 CAPOZZI, DEREK A. V. UNITED STATES

13-6808 RODRIGUEZ-ARANDA, FELIPE V. UNITED STATES

13-6810 SEDA-ARROYO, EDGARDO V. UNITED STATES

13-6811 RIDDELL, MARION E. V. HOBBS, DIR., AR DOC

13-6812 MEJIA-GONZALEZ, ALFONSO V. UNITED STATES

13-6813 JETER, DOMINIC V. UNITED STATES

13-6814 KOMAR, YEVGENY V. UNITED STATES

13-6815 LEE, MARIO A. V. UNITED STATES

13-6825 CREDICO, JUSTIN M. V. 15TH JUDICIAL DISTRICT, ET AL.

13-6826 CREDICO, JUSTIN M. V. PENNSYLVANIA

13-6828 GONZALEZ, PEDRO V. UNITED STATES

13-6829 FRIDIE, LARRY A. V. UNITED STATES

13-6831 GILES, ERIC V. UNITED STATES

13-6835 HOLMES, SCOTT A. V. OHIO

13-6841 ESTRADA, FRANCISCO J. V. UNITED STATES

13-6847 WESTCOTT, LAMARIS F. V. PHELPS, WARDEN, ET AL.

13-6850 VALDES, JORGE V. UNITED STATES

13-6854 NDHLOVU, CHARLES V. UNITED STATES

13-6855 PATTON, MANUEL L. V. UNITED STATES

13-6856 NAVA-ARELLANO, ISRAEL V. UNITED STATES

13-6858 ALLEN, RONNIE V. CAIN, WARDEN

13-6861 COLLINS, RON V. UNITED STATES

13-6864 WILLIAMS, WILLIAM C. V. BICKELL, SUPT., HUNTINGDON

13-6865 NGUYEN, TRUONG V. GLEBE, WARDEN

13-6866 DAVIS, JACK K. V. CALIFORNIA

13-6868 MASON, FREDERICK V. UNITED STATES

13-6875 SPENCE, BENJAMIN R. V. UNITED STATES

13-6877 SMITH, HAKEEM L. V. UNITED STATES

13-6878 WHITE, ROBERT J. V. UNITED STATES

13-6879 VALDEZ, CLEMENTE V. UNITED STATES

13-6880 TROTTER, BRIAN V. UNITED STATES

13-6881 MORAZAN-ALVAREZ, HERMES F. V. UNITED STATES

13-6883 IRONS, WINSTON R. V. UNITED STATES

13-6884 D'ANGELO, EMMA V. SHINSEKI, SEC. OF VA

13-6888 GRAVATT, BRANDON S. V. UNITED STATES

13-6889 SCARNATI, GLORIA E. V. COLVIN, ACTING COMM'R, SOCIAL

13-6891 SANDERSON, MICHAEL V. UNITED STATES

13-6893 DAVIS, JAMILA V. UNITED STATES

13-6898 PIPE-BEGAY, BEVERLY P. V. UNITED STATES

13-6901 WINBUSH, CALVIN V. UNITED STATES

13-6905 MEDINA-VASQUEZ, MARCELINO V. UNITED STATES

13-6906 ORONA, RAUL R. V. UNITED STATES

13-6907 GRISSETTE, CALVIN J. V. WESTBROOKS, WARDEN

13-6911 OMARES, LEONARDO L. V. UNITED STATES

13-6912 DEAN, THOMAS V. UNITED STATES

13-6914 BATCHU, MANI M. V. UNITED STATES

13-6915 ARREOLA-JIMENEZ, EUGENIO V. UNITED STATES

13-6916 THROWER, KENNY V. UNITED STATES

13-6918 CASTELLANO-VEGA, JOHNNY V. UNITED STATES

13-6921 DIGNAM, GAIL R. V. UNITED STATES

13-6923 JACKSON, CLARENCE V. UNITED STATES

13-6928 RAMIREZ, SALVADOR V. UNITED STATES

13-6933 MARTINEZ, AVELINO V. UNITED STATES

13-6934 JONES, RASHEEN V. UNITED STATES

13-6938 BURNS, CLINTON V. UNITED STATES

13-6939 VAUGHN, ANDTRICE L. V. ILLINOIS

13-6941 VALDEZ, ANTONIO V. UNITED STATES

13-6943 HUDGINS, WILLIAM V. UNITED STATES

13-6961 RAWLS, AMAI V. UNITED STATES

13-6962 GEAS, FOTIOS V. UNITED STATES

13-6973 KING, EULET V. UNITED STATES

13-6974 LEWIS, MARTIN V. UNITED STATES

13-6992 SOLIS-SANCHEZ, URIEL V. UNITED STATES

13-6993 RABIU, TAJUDEEN V. UNITED STATES

13-6996 VILLARREAL, DAVID V. UNITED STATES

13-6998 McDUFFIE, TAVARES A. V. CREWS, SEC., FL DOC

13-6999 WILKINSON, STEPHEN V. UNITED STATES

13-7001 WIAND, MELVIN V. UNITED STATES

13-7003 WATSON, ANTHONY V. UNITED STATES

13-7007 GARCIA-SEGURA, RICARDO V. UNITED STATES

13-7008 GONZALES-HINOJOSA, JESUS V. UNITED STATES

13-7010 BARRIOS, WILFREDO V. UNITED STATES

13-7013 CARRIGAN, LAMAR V. UNITED STATES

13-7015 KEGLAR, KEITH V. UNITED STATES

13-7017 LOFFREDI, ROBERT V. UNITED STATES

13-7021 WHITING, JOSEPH V. UNITED STATES

13-7022 TAYLOR, RANDALL K. V. UNITED STATES

13-7026 WEATHERSBY, STEVEN V. UNITED STATES

13-7033 McDANIEL, LaTOYA M. V. UNITED STATES

13-7041 LEWIS, LINDA, ET AL. V. WAXAHACHIE DAILY LIGHT, ET AL.

The petitions for writs of certiorari are denied.

13-79 WINKAL HOLDINGS, LLC, ET AL. V. JPMORGAN CHASE BANK, ET AL.

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

13-204 DZURENDA, COMM'R, CT DOC V. GONZALEZ, ODILIO

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

13-383 ALBRIGHT, THOMAS M., ET AL. V. EXXON MOBIL CORPORATION

13-460 OWUSU-ANSAH, FRANKLIN V. COCA-COLA CO.

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

13-6525 TORRES, RICHARD M. V. CATE, M., ET AL.

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

13-6591 STRUJAN, ELENA V. MERCK AND CO., INC.

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

13-6645 FLEMMING, WOODROW V. KEMP, DEBBIE, 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*).

13-6787 WILLIAMS, JOSEPH V. UNITED STATES

13-6821 CRUZ, ISRAEL V. UNITED STATES

13-6836 GUIBILO, MICHAEL V. UNITED STATES

13-6857 MELENDEZ, JONATHAN V. UNITED STATES

13-6862 PERCEL, SUGENTINO V. UNITED STATES

13-6951 REYES, MAXIMO V. UNITED STATES

13-6953 DISLA, EDWIN V. UNITED STATES

13-7005 QUINTERO-CALLE, CESAR V. UNITED STATES

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

HABEAS CORPUS DENIED

13-7049 IN RE JAMES J. McCORMACK

13-7082 IN RE DAVID AVERY

13-7098 IN RE JEFFERY STRONG

The petitions for writs of habeas corpus are denied.

MANDAMUS DENIED

13-5071 IN RE ANTHONY L. WILLIAMS

13-6354 IN RE HASAN M. O. AHAD BEYAH

13-6496 IN RE DANIELLE BITON

13-6885 IN RE DANIELLE BITON

13-6944 IN RE VICTOR A. BARAKAT

The petitions for writs of mandamus are denied.

13-58 IN RE ELECTRONIC PRIVACY INFORMATION CENTER

13-6371 IN RE SCOTT J. CRAFT

The petitions for writs of mandamus and/or prohibition are denied.

REHEARINGS DENIED

12-964 HAAGENSEN, JANICE S. V. PA STATE POLICE, ET AL.

12-1348 SUN, LINGFEI V. NEW YORK, NY, ET AL.

12-1431 YADAV, RAJESHWAR S., ET UX. V. WEST WINDSOR, NJ, ET AL.

12-9991 GSSIME, SAID V. NASSAU COUNTY COURTHOUSE

12-10146 NESSELRODE, GREGORY P. V. MONTANA

12-10551 FRANKLIN, GARY T. V. KALAMAZOO, MI, ET AL.

12-10622 NDON, UDEME T. V. UNIV. OF WI

12-10718 McLEOD, MICHAEL L. V. JARVIS, WARDEN

12-10774 DEANE, ALICE M. V. MARSHALLS, INC., ET AL.

12-10993 FAMILIA, PHILIP J. V. UNITED STATES

13-241 BLAIR, WALTER L. V. UNITED STATES

13-5267 WHITWORTH, RONALD L. V. STORY, ALTON, ET AL.

13-5344 TURNER, ERIC V. ILLINOIS

13-5394 CARNEGLIA, CHARLES V. UNITED STATES

13-5764 CORZINE, MATTHEW V. DEPT. OF ARMY, ET AL.

The petitions for rehearing are denied.

12-10211 ANDERSEN, KELVIN D. V. YOUNG AND RUBICAM ADVERTISING

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

ATTORNEY DISCIPLINE

D-2731 IN THE MATTER OF STANLEY M. CHESLEY

Stanley M. Chesley, of Cincinnati, Ohio, having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys permitted to the practice of law before this Court. The Rule to Show Cause, issued on June 17, 2013, is discharged.

SUPREME COURT OF THE UNITED STATES

NICOLAS MARTIN, *v.* CARL BLESSING, ET AL.

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

No. 13–169 Decided November 18, 2013

The petition for a writ of certiorari is denied.

THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

Statement of JUSTICE ALITO, respecting the denial of the petition for writ of certiorari.

The petition in this case challenges a highly unusual practice followed by one District Court Judge in assessing the adequacy of counsel in class actions. This judge insists that class counsel "ensure that the lawyers staffed on the case fairly reflect the class composition in terms of relevant race and gender metrics." App. to Pet. for Cert. 35a. The uniqueness of this practice weighs against review by this Court, but the meaning of the Court's denial of the petition should not be misunderstood.

I

In 2008, the Nation's only two providers of satellite digital audio radio services, Sirius Satellite Radio, Inc., and XM Satellite Holdings, Inc., merged to form a new company, Sirius XM Radio, Inc. (Sirius). *Id.,* at 8a–9a. Their subscribers claimed the merger violated antitrust laws and filed several class actions that were joined in a consolidated complaint and assigned to Judge Harold Baer, Jr., of the Southern District of New York. Judge Baer appointed three law firms to serve as interim class counsel. *Ibid.*

In July 2010, class plaintiffs moved to certify a federal antitrust class. *Ibid.* Class certification is governed by

Federal Rule of Civil Procedure 23, which sets out the requirements that a putative class must meet to gain certification. One such requirement is adequate class counsel; subsection (g) orders the district court to consider four particular indicators of adequacy. It provides also that the district court "may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class." Fed. Rule Civ. Proc. 23(g)(1)(B).

Citing that provision, Judge Baer ordered that the three law firms appointed as interim counsel (and subsequently elevated to permanent counsel) "ensure that the lawyers staffed on the case fairly reflect the class composition in terms of relevant race and gender metrics." App. to Pet. for Cert. 35a.

Class certification orders that impose race- and sex-based staffing requirements on law firms appear to be part of Judge Baer's standard practice. In 2007, Judge Baer followed this practice in considering certification of a class of plaintiffs seeking redress under the Employee Retirement Income Security Act. See *In re J. P. Morgan Chase Cash Balance Litigation*, 242 F. R. D. 265, 277 (SDNY 2007).

Three years later, in *Spagnola* v. *Chubb Corp.*, 264 F. R. D. 76 (SDNY 2010), Judge Baer refused to certify a putative class of insurance policyholders in part because of the race and gender of the proposed class counsel. He noted that "proposed . . . counsel . . . ha[d] provided no information—firm resumé, attorney biographies, or otherwise—[regarding the race or gender of the lawyers assigned to the case]." *Id.*, at 95, n. 23.

Judge Baer has repeated this practice in at least three additional class actions apart from the one before the Court today. See *Public Employees' Retirement System of Miss.* v. *Goldman Sachs Group, Inc.*, 280 F. R. D. 130, 142, n. 6 (SDNY 2012); *New Jersey Carpenters Health Fund* v.

Residential Capital, LLC, 2012 WL 4865174, *5, n. 5 (SDNY, Oct. 15, 2012); *In re Gildan Activewear Inc. Securities Litigation*, No. 08 Civ. 5048 (SDNY, Sept. 20, 2010).

Following certification in the present case, Sirius and class counsel reached a settlement that drew objections. Under the deal, Sirius would freeze its prices for five months and pay class counsel $13 million in attorney's fees. *Blessing* v. *Sirius XM Radio Inc.*, 507 Fed. Appx. 1, 3, 4 (CA2 2012). Sirius would pay no cash to class members. *Ibid.* Nicolas Martin, a class member and petitioner here, objected, not only to those terms, but also to Judge Baer's reliance on race and gender in assessing the adequacy of class counsel. Petitioner asked the Second Circuit to set aside the settlement as the tainted product of an invalid certification order. The Second Circuit rejected his challenge to the certification order on standing grounds, concluding that Martin failed to allege injury in fact. Martin now asks this Court to intervene.

II

Based on the materials now before us, I am hard-pressed to see any ground on which Judge Baer's practice can be defended. This Court has often stressed that "[r]acial discrimination has no place in the courtroom, whether the proceeding is civil or criminal." *Edmonson* v. *Leesville Concrete Co.*, 500 U. S. 614, 630 (1991). Court-approved discrimination based on gender is similarly objectionable, and therefore it is doubtful that the practice in question could survive a constitutional challenge.

Before reaching this constitutional question, however, a court would have to consider whether the challenged practice can be reconciled with Rule 23(g), which carefully regulates the appointment of class counsel. The appointment of class counsel is a sensitive matter. Because of the fees that class counsel may receive—witness the present case in which counsel was awarded $13 million for han-

dling a case in which the class members received no compensation—any deviation from the criteria set out in the Rule may give rise to suspicions about favoritism. There are more than 600 district judges, and it would be intolerable if each judge adopted a personalized version of the criteria set out in Rule 23(g).

It is true that Rule 23 allows a district court to consider "any . . . matter pertinent to counsel's ability to fairly and adequately represent the interests of the class," Rule 23(g)(1)(B), but I doubt that this provision can be stretched to justify the practice at issue here. It seems quite farfetched to argue that class counsel cannot fairly and adequately represent a class unless the race and gender of counsel mirror the demographics of the class. Indeed, if the District Court's rule were taken seriously, it would seriously complicate the appointment process and lead to truly bizarre results.

It may be no easy matter to ascertain "the class composition in terms of relevant race and gender metrics." In some cases, only the defendant will possess such information, and where that is so, must the parties engage in discovery on this preliminary point? In other cases, it may be impossible to obtain the relevant information without requesting it from all of the members of the class. For example, in a securities case in which the class consists of everyone who purchased the stock of a particular company during a specified period, how else could the race or gender of the class members be ascertained?

Where the demographics of the class can be ascertained or approximated, faithful application of the District Court's rule would lead to strange results. The racial and ethnic makeup of the plaintiff class in many cases deviates significantly from the racial and ethnic makeup of the general population or of the bar. Suppose, for example, that the class consisted of persons who had undergone a particular type of treatment for prostate cancer. Would it

be proper for a district judge to favor law firms with a high percentage of male attorneys? Or if the class consisted of persons who had undergone treatment for breast cancer, would it be permissible for a court to favor firms with a high percentage of female lawyers? In some cases, the members of a class may be significantly more affluent than the general population. (A class consisting of the purchasers of stock may be an example.) To the extent that affluence correlates with race, would it be proper for a district judge in such a case to favor law firms with relatively low minority representation?

The Second Circuit did not decide whether the District Court's practice is unconstitutional or otherwise unlawful because the court held that Martin lacked standing to challenge the order at issue. Martin did not allege that he actually received inferior representation, and therefore the Second Circuit, invoking the standard used to determine whether a plaintiff has standing under Article III of the Constitution, refused to entertain Martin's objection on the ground that he had suffered no injury in fact. I find this reasoning debatable.

It is not clear that a class member who objects to a feature of a proposed settlement must show that the feature in question would cause the objecting member the sort of harm that is needed to establish Article III standing. Article III demands that the members of the plaintiff class demonstrate that they were injured in fact by the alleged antitrust violations, see *Amchem Products, Inc.* v. *Windsor*, 521 U. S. 591, 613 (1997), but the plaintiff class' satisfaction of this requirement is not challenged. At issue, instead, is Martin's ability to object to the proposed settlement, and Rule 23(e)(5) states without qualification that "[a]ny class member may object" to a proposed settlement requiring court approval. I assume for present purposes that a court need not entertain the objection of a class member who is not aggrieved by a settlement, but it

is by no means clear to me that this is the same as requiring proof of an injury in fact within the meaning of Article III. See *Devlin* v. *Scardelletti*, 536 U. S. 1, 6–7 (2002) (an objecting class member "has an interest in the settlement that creates a 'case or controversy' sufficient to satisfy the constitutional requirements of injury, causation, and redressability").

Whether or not Martin suffered injury in fact in the Article III sense, he unquestionably has a legitimate interest in ensuring that class counsel is appointed in a lawful manner. *Ibid.* The use of any criteria not set out specifically in Rule 23(g) or "pertinent to counsel's ability to fairly and adequately represent the interests of the class" creates a risk of injury that a class member should not have to endure. And class members have a strong and legitimate interest in having *their* attorneys appointed pursuant to a practice that is free of unlawful discrimination. If a district judge had a practice of appointing only attorneys of a particular race or gender, would an appellate court refuse to entertain a class member's objection unless the class member could show that the attorney in question did a poor job?

Unlike the courts of appeals, we are not a court of error correction, and thus I do not disagree with the Court's refusal to review the singular policy at issue here. I stress, however, that the "denial of certiorari does not constitute an expression of any opinion on the merits." *Boumediene* v. *Bush*, 549 U. S. 1328, 1329 (2007) (Stevens and KENNEDY, JJ., statement respecting denial of certiorari). If the challenged appointment practice continues and is not addressed by the Court of Appeals, future review may be warranted.

SUPREME COURT OF THE UNITED STATES

LLOYD RAPELJE *v.* TYRIK McCLELLAN

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

No. 12–1480. Decided November 18, 2013

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

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

The decision of the United States Court of Appeals for the Sixth Circuit in this case was based on a serious misreading of our decision in *Harrington* v. *Richter*, 562 U. S. ___ (2011), and if left uncorrected, it is likely to interfere with the proper handling of a significant number of federal habeas petitions filed by Michigan prisoners. Under *Harrington*, when a state court summarily rejects an appeal without clearly indicating whether the disposition was based on the merits of the claims presented or instead on procedural grounds, a federal habeas court must presume that the decision was on the merits, but the presumption may be overcome under certain circumstances. *Id*., at ___ (slip op., at 9). By contrast, when the state court makes it clear that a summary disposition was on the merits, *Harrington*'s rebuttable presumption has no application. A federal court may not probe beyond the state court's order to inquire whether the court accurately characterized its own decision.

In this case, the Sixth Circuit overlooked that important rule. The panel majority relied on a prior Sixth Circuit decision that had recognized—based on a long line of Michigan Court of Appeals cases—that the form of order used by the Michigan Court of Appeals in the present case

invariably reflects a disposition on the merits. But the panel understood that prior decision nevertheless to allow it to look past the order to determine whether the state appellate court had meant what it said and actually based its disposition on the merits.

This was a fundamental error—and an important one. I would therefore grant the petition for a writ of certiorari.

I

Respondent was convicted of first-degree murder in Michigan state court and was sentenced to life in prison. The Michigan Court of Appeals affirmed his conviction, and the Supreme Court of Michigan denied leave to appeal. Respondent then sought postconviction relief from a Michigan trial court, raising for the first time certain claims that his trial counsel had provided constitutionally ineffective assistance. The trial court held that those claims were procedurally defaulted and that respondent had failed to show cause or prejudice to excuse the default. Respondent requested leave to appeal, and the Michigan Court of Appeals denied his application "for lack of merit in the grounds presented."* App. to Pet. for Cert. 84a.

Respondent then filed a petition for habeas corpus in the United States District Court for the Eastern District of Michigan, and he requested that the court hold an evidentiary hearing on his ineffective-assistance-of-counsel

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*After the Court of Appeals entered its order, the Michigan Supreme Court denied leave to appeal in an order stating that respondent had "failed to meet the burden of establishing entitlement to relief under [Michigan Court Rule] 6.508(D)." *People* v. *McClellan*, 480 Mich. 1006, 742 N. W. 2d 367 (2007). The Sixth Circuit, en banc, has ruled that under Michigan law such orders are ambiguous "because holdings from the Michigan courts indicate that the language used by such summary orders [*i.e.*, orders citing Michigan Court Rule 6.508(D)] can refer to the petitioner's failure to establish entitlement to relief either on the merits or procedurally." *Guilmette* v. *Howes*, 624 F. 3d 286, 289–290 (2010). Neither party argues otherwise before this Court.

claims. A federal evidentiary hearing is permissible for a particular claim only if, among other requirements, the claim was not "adjudicated on the merits by a state court." *Cullen* v. *Pinholster*, 563 U. S. ___, ___ (2011) (slip op., at 12). If it was, a state prisoner is limited to "the record that was before that state court" in seeking federal habeas relief. *Ibid.*

The District Court held that no state court had adjudicated respondent's ineffective-assistance-of-counsel claims on the merits and that therefore an evidentiary hearing on those claims was proper. Based on evidence produced at that hearing, the District Court found cause and prejudice to excuse respondent's failure to raise the claims on direct appeal of his conviction, see *Coleman* v. *Thompson*, 501 U. S. 722, 750 (1991), and decided that respondent's trial counsel had been constitutionally ineffective. As a result, the District Court granted habeas relief.

Petitioner appealed, and a divided panel of the Sixth Circuit affirmed, holding that the Michigan Court of Appeals' decision in the postconviction appeal had not been on the merits. 703 F. 3d 344 (2013). The panel majority based its holding on a recent Sixth Circuit decision, *Werth* v. *Bell*, 692 F. 3d 486 (2012). There, the court considered the meaning of a Michigan Court of Appeals order identical to the one at issue here. Citing Michigan Court of Appeals precedents, the *Werth* panel stated unequivocally that the language in the order signifies a disposition "'on the merits' as a matter of Michigan law." *Id.,* at 494 (quoting *People* v. *Collier*, 2005 WL 1106501, *1 (May 10, 2005) (*per curiam*)). The *Werth* panel then held that the order represented a merits adjudication, although it first noted that no other provision of Michigan law, and nothing about the specific background of the case, gave reason to believe that the disposition had not been on the merits. 692 F. 3d, at 494.

The panel majority in the case now before us interpreted

Werth to mean that it is proper for a federal habeas court to disregard the form of order issued by the Michigan Court of Appeals and apply *Harrington's* rebuttable presumption. Proceeding in this way, the panel majority held that respondent had rebutted that presumption because (1) the last reasoned state-court decision (by the Michigan trial court) had rested solely on respondent's procedural default, see *Ylst* v. *Nunnemaker*, 501 U. S. 797, 803 (1991), and (2) the Michigan Court of Appeals did not have the trial court's record before it when it issued its ruling.

Because the Sixth Circuit determined that no state court had adjudicated respondent's federal claims on the merits, it held that the District Court had not erred in holding an evidentiary hearing on those claims. See 703 F. 3d, at 351 (citing *Cullen*, *supra*). And based on evidence that respondent had presented at the federal hearing, the Sixth Circuit affirmed the District Court's holdings that respondent had demonstrated cause and prejudice to excuse procedural default; that his trial counsel had been ineffective; and that, as a result, he was entitled to habeas relief.

Judge McKeague dissented. He concluded that "[t]he Michigan Court of Appeals' denial of [respondent's] claims 'for lack of merit [in] the grounds presented' was a merits adjudication" and therefore that "the federal district court was limited to considering the record before the Michigan Court of Appeals at the time that court rendered its decision." 703 F. 3d, at 351. He argued that "Michigan courts have 'consistently held that denial of an application 'for lack of merit in the grounds presented' is a decision on the merits of the issues raised.'" *Id.*, at 355 (quoting *Collier*, *supra,* at *1).

II

As noted, the Sixth Circuit has previously acknowledged that the form of order at issue here represents a disposi-

tion "on the merits as a matter of Michigan law." *Werth*, *supra*, at 494 (internal quotation marks omitted). Yet the panel majority in the present case, while purporting to follow that precedent, held that the Michigan Court of Appeals did not adjudicate respondent's ineffective-assistance-of-counsel claims on the merits. That holding cannot be reconciled with *Harrington*. The *Harrington* rebuttable presumption comes into play only when a state court's order is ambiguous. When state courts have adopted a phrase to denote a decision on the merits, federal courts may not deem the courts' use of that language to be anything other than an adjudication on the merits. After all, "federal courts have no authority to impose mandatory opinion-writing standards on state courts." *Johnson* v. *Williams*, 568 U. S. ___, ___ (2013) (slip op., at 9).

Here, petitioner persuasively argues that the form of order used by the Michigan Court of Appeals reflects a merits adjudication under settled Michigan law. For over 30 years, petitioner tells us, that court has "consistently held that denial of an application 'for lack of merit in the grounds presented' is a decision on the merits of the issues raised." Pet. for Cert. 12 (quoting *Collier, supra*, at *1, in turn citing *People* v. *Hayden*, 132 Mich. App. 273, 348 N. W. 2d 672 (1984); *People* v. *Douglas*, 122 Mich. App. 526, 332 N. W. 2d 521 (1983); *People* v. *Wiley*, 112 Mich. App. 344, 315 N. W. 2d 540 (1981)). See also *Attorney General ex rel. Dept. of Treasury* v. *Great Lakes Real Estate Inv. Trust*, 77 Mich. App. 1, 2–4, 257 N. W. 2d 248, 249 (1977). There is no dispute that respondent's ineffective-assistance-of-counsel claims were "issues raised" by him before the Michigan Court of Appeals. See 703 F. 3d, at 350, n. 4. Accordingly, if this interpretation of Michigan law is correct, it is clear that the court's order was a decision on the merits of those claims.

If that order was on the merits, then the District Court

was precluded from holding an evidentiary hearing on respondent's ineffective-assistance-of-counsel claims, see *Cullen*, 563 U. S., at ___ (slip op., at 12–14), and, in turn, the District Court and Sixth Circuit were not permitted to consider evidence presented at the evidentiary hearing in evaluating those claims. Rather, respondent could have prevailed on his claims only if he could have demonstrated an entitlement to relief under §2254(d) on the state-court record.

In sum, the Sixth Circuit has gone astray in its analysis of habeas cases in which the Michigan Court of Appeals denies review using the form of order at issue here. And this error may derail many Michigan habeas cases. I can understand the Court's reluctance to decide what the form of order at issue means under Michigan law. But I would grant the petition and vacate the decision below because the Sixth Circuit made a severe error of federal law. On remand, I would direct the Sixth Circuit to decide whether, as another panel of that court clearly stated, the form of order at issue represents a merits disposition. If so, the *Harrington* presumption has no place in the court's analysis.

For these reasons, I respectfully dissent from the denial of the petition for a writ of certiorari.

SUPREME COURT OF THE UNITED STATES

MARIO DION WOODWARD *v.* ALABAMA

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF ALABAMA

No. 13–5380 Decided November 18, 2013

The petition for a writ of certiorari is denied.

JUSTICE SOTOMAYOR, with whom JUSTICE BREYER joins as to Parts I and II, dissenting from denial of certiorari.

The jury that convicted Mario Dion Woodward of capital murder voted 8 to 4 against imposing the death penalty. But the trial judge overrode the jury's decision and sentenced Woodward to death after hearing new evidence and finding, contrary to the jury's prior determination of the same question, that the aggravating circumstances outweighed the mitigating circumstances. The judge was statutorily entitled to do this under Alabama law, which provides that a jury's decision as to whether a defendant should be executed is merely an "advisory verdict" that the trial judge may override if she disagrees with the jury's conclusion. In the last decade, Alabama has been the only State in which judges have imposed the death penalty in the face of contrary jury verdicts. Since Alabama adopted its current statute, its judges have imposed death sentences on 95 defendants contrary to a jury's verdict.[1] Forty-three of these defendants remain on death row today. Because I harbor deep concerns about whether this practice offends the Sixth and Eighth Amendments, I would grant Woodward's petition for certiorari so that the Court

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[1] A list of these 95 defendants sentenced to death after a jury verdict of life imprisonment is produced in an appendix to this opinion. By contrast, where juries have voted to impose the death penalty, Alabama judges have overridden that verdict in favor of a life sentence only nine times.

could give this issue the close attention that it deserves.

I

A

In Alabama, a defendant convicted of capital murder is entitled to an evidentiary sentencing hearing before a jury. Ala. Code §§13A–5–45, 13A–5–46 (2005). At that hearing, the State must prove beyond a reasonable doubt the existence of at least one aggravating circumstance; otherwise, the defendant cannot be sentenced to death and instead receives a sentence of life imprisonment without parole. §13A–5–45(e),(f). The defendant may present mitigating circumstances, which the State may seek to disprove by a preponderance of the evidence. §13A–5–45(g). If it has found at least one aggravating circumstance, the jury then weighs the aggravating and mitigating evidence and renders its advisory verdict. If it finds that the aggravating circumstances do not outweigh the mitigating circumstances, the jury must return a life-without-parole verdict; if it finds that the aggravating circumstances do outweigh the mitigating circumstances, it must return a death verdict. §13A–5–46(e). A life-without-parole verdict requires a vote of a majority of the jurors, while a death verdict requires a vote of at least 10 jurors. §13A–5–46(f).

After the jury returns its advisory verdict, the trial judge makes her own determination whether the aggravating circumstances outweigh the mitigating circumstances and imposes a sentence accordingly. §13A–5–47. Alabama's statute provides that "[w]hile the jury's recommendation concerning [the] sentence shall be given consideration, it is not binding upon the court." §13A–5–47(e).

B

Woodward was convicted of capital murder for fatally

shooting Keith Houts, a city of Montgomery police officer. By a vote of 8 to 4, the jury determined that the aggravating circumstances shown by the State did not outweigh the mitigating circumstances presented by the defense. It therefore recommended a sentence of life imprisonment without parole.

The trial judge conducted his own sentencing proceeding. At that hearing, the State presented additional evidence concerning the mitigating circumstances presented to the jury. The trial judge, in part on the basis of the new evidence, rejected the jury's finding. Making his own determination that the aggravating circumstances outweighed the mitigating circumstances, the judge imposed the death penalty, thereby overriding the jury's prior advisory verdict of life without parole. The Alabama Court of Criminal Appeals affirmed Woodward's conviction and sentence, 2011 WL 6278294 (Aug. 24, 2012), and the Alabama Supreme Court denied certiorari.

II

This Court has long acknowledged that death is fundamentally different in kind from any other punishment. See *Furman* v. *Georgia*, 408 U. S. 238, 286–291 (1972) (Brennan, J., concurring); *Gregg* v. *Georgia*, 428 U. S. 153, 188 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.). For that reason, we have required States to apply special procedural safeguards to "minimize the risk of wholly arbitrary and capricious action" in imposing the death penalty. *Gregg*, 428 U. S., at 189, 195 (joint opinion of Stewart, Powell, and Stevens, JJ.); see also *Ring* v. *Arizona*, 536 U. S. 584, 614 (2002) (BREYER, J., concurring in judgment) (explaining that without adequate procedural safeguards, "the constitutional prohibition against 'cruel and unusual punishments' would forbid [the] use" of the death penalty). One such safeguard, as determined by the vast majority of States, is that a jury, and not a judge,

should impose any sentence of death.[2]

Of the 32 States that currently authorize capital punishment, 31 require jury participation in the sentencing decision; only Montana leaves the jury with no sentencing role in capital cases. See Mont. Code Ann. §§46–18–301, 46–18–305 (2013). In 27 of those 31 States, plus the federal system, 18 U. S. C. §3593, the jury's decision to impose life imprisonment is final and may not be disturbed by the trial judge under any circumstance. That leaves four States in which the jury has a role in sentencing but is not the final decisionmaker. In Nebraska, the jury is responsible for finding aggravating circumstances, while a three-judge panel determines mitigating circumstances and weighs them against the aggravating circumstances to make the ultimate sentencing decision. See Neb. Rev. Stat. §§29–2520, 29–2521 (2008). Three States—Alabama, Delaware, and Florida—permit the trial judge to override the jury's sentencing decision.

In *Spaziano* v. *Florida*, 468 U. S. 447 (1984), we upheld Florida's judicial-override sentencing statute. And in *Harris* v. *Alabama*, 513 U. S. 504 (1995), we upheld Alabama's similar statute. Eighteen years have passed since we decided *Harris*, and in my view, the time has come for us to reconsider that decision. Cf. *Roper*, 543 U. S., at 555

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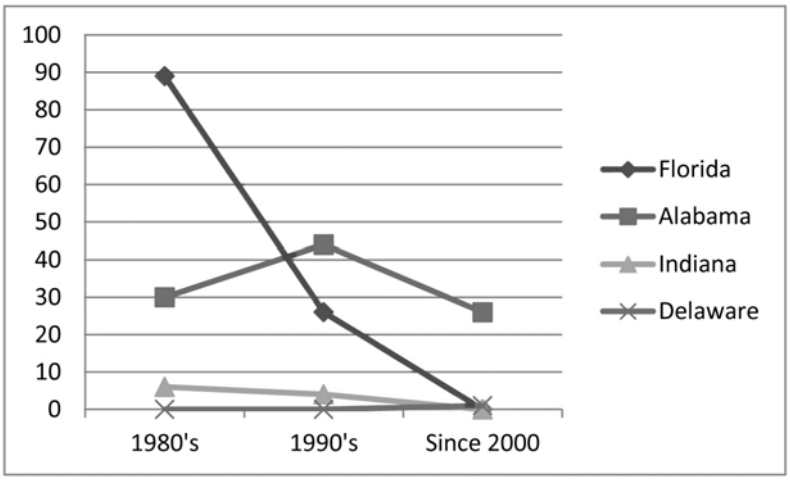
[2] It is perhaps unsurprising that the national consensus has moved towards a capital sentencing scheme in which the jury is responsible for imposing capital punishment. Because "'capital punishment is an expression of society's moral outrage at particularly offensive conduct,'" *Harris* v. *Alabama*, 513 U. S. 504, 518 (1995) (Stevens, J., dissenting), jurors, who "express the conscience of the community on the ultimate question of life or death," *Witherspoon* v. *Illinois*, 391 U. S. 510, 519 (1968), seem best-positioned to decide whether the need for retribution in a particular case mandates imposition of the death penalty. See *Harris*, 513 U. S., at 518 (Stevens, J., dissenting) ("A capital sentence expresses the community's judgment that no lesser sanction will provide an adequate response to the defendant's outrageous affront to humanity").

(reconsidering after 16 years the issue decided in *Stanford* v. *Kentucky*, 492 U. S. 361 (1989)); *Atkins* v. *Virginia*, 536 U. S. 304, 307 (2002) (reconsidering after 13 years the issue decided in *Penry* v. *Lynaugh*, 492 U. S. 302 (1989)).

In the nearly two decades since we decided *Harris*, the practice of judicial overrides has become increasingly rare. In the 1980's, there were 125 life-to-death overrides: 89 in Florida, 30 in Alabama, and 6 in Indiana. In the 1990's, there were 74: 26 in Florida, 44 in Alabama, and 4 in Indiana.[3] Since 2000, by contrast, there have been only 27 life-to-death overrides, 26 of which were by Alabama judges.[4]



As these statistics demonstrate, Alabama has become a clear outlier. Among the four States that permitted judi-

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[3] See Radelet, Overriding Jury Sentencing Recommendations in Florida Capital Cases: An Update and Possible Half-Requiem, 2011 Mich. State L. Rev. 793, 818 (2011) (listing overrides in Indiana); *id.*, at 828 (listing overrides in Florida); *id.*, at 825–827 (listing overrides in Alabama).

[4] The 27th death sentence by judicial override, which occurred in Delaware, was eventually reduced to a life sentence. See n. 5, *infra*.

cial overrides at the time of *Harris*, Alabama now stands as the only one in which judges continue to override jury verdicts of life without parole. One of the four States, Indiana, no longer permits life-to-death judicial overrides at all. See Ind. Code §35–50–2–9(e) (2004). Only one defendant in Delaware has ever been condemned to death by a judicial life-to-death override, and the Delaware Supreme Court overturned his sentence.[5] And no Florida judge has overridden a jury's verdict of a life sentence since 1999.[6] In sum, whereas judges across three States overrode roughly 10 jury verdicts per year in the 1980's and 1990's, a dramatic shift has taken place over the past decade: Judges now override jury verdicts of life in just a single State, and they do so roughly twice a year.

What could explain Alabama judges' distinctive proclivity for imposing death sentences in cases where a jury has already rejected that penalty? There is no evidence that criminal activity is more heinous in Alabama than in other States, or that Alabama juries are particularly lenient in

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[5] One Delaware judge has used the override to impose a death sentence in two cases involving the same defendant. On appeal, the Delaware Supreme Court twice vacated the death sentence, and ultimately ordered the trial court to impose a life sentence. See *Garden* v. *State*, 815 A. 2d 327, 331–333 (2003); *Garden* v. *State*, 844 A. 2d 311, 318 (2004).

[6] Even after this Court upheld Florida's capital sentencing scheme in *Spaziano* v. *Florida*, 468 U. S. 447 (1984), the practice of judicial overrides consistently declined in that State. Since 1972, 166 death sentences have been imposed in Florida following a jury recommendation of life imprisonment. Between 1973 and 1989, an average of eight people was sentenced to death on an override each year. That average number dropped by 50 percent between 1990 and 1994, and by an additional 70 percent from 1995 to 1999. The practice then stopped completely. It has been more than 14 years since the last life-to-death override in Florida; the last person sentenced to death after a jury recommendation of life imprisonment was Jeffrey Weaver, sentenced in August 1999.

weighing aggravating and mitigating circumstances. The only answer that is supported by empirical evidence is one that, in my view, casts a cloud of illegitimacy over the criminal justice system: Alabama judges, who are elected in partisan proceedings, appear to have succumbed to electoral pressures. See Symposium, Politics and the Death Penalty: Can Rational Discourse and Due Process Survive the Perceived Political Pressure? 21 Fordham Urban L. J. 239, 256 (1994) (comments of Bryan Stevenson) (concluding, based on "a mini-multiple regression analysis of how the death penalty is applied and how override is applied, [that] there is a statistically significant correlation between judicial override and election years in most of the counties where these overrides take place"); see also Equal Justice Initiative, The Death Penalty in Alabama: Judge Override, at 16, http://eji.org/files/Override_Report.pdf (as visited on November 15, 2013, and available in Clerk of Court's case file) (hereinafter Override Report) (noting that the proportion of death sentences imposed by override in Alabama is elevated in election years). One Alabama judge, who has overridden jury verdicts to impose the death penalty on six occasions, campaigned by running several advertisements voicing his support for capital punishment. One of these ads boasted that he had "'presided over more than 9,000 cases, including some of the most heinous murder trials in our history,'" and expressly named some of the defendants whom he had sentenced to death, in at least one case over a jury's contrary judgment. Override Report 16. With admirable candor, another judge, who has overridden one jury verdict to impose death, admitted that voter reaction does "'have some impact, especially in high-profile cases.'" Velasco, More Judges Issue Death Despite Jury, Birmingham News, July 17, 2011, p. 11A. "'Let's face it,'" the judge said, "'we're human beings. I'm sure it affects some more than others.'" *Id.*, at 12A. Alabama judges, it

seems, have "ben[t] to political pressures when pronouncing sentence in highly publicized capital cases." *Harris*, 513 U. S., at 520 (Stevens, J., dissenting).

By permitting a single trial judge's view to displace that of a jury representing a cross-section of the community, Alabama's sentencing scheme has led to curious and potentially arbitrary outcomes. For example, Alabama judges frequently override jury life-without-parole verdicts even in cases where the jury was unanimous in that verdict.[7] In many cases, judges have done so without offering a meaningful explanation for the decision to disregard the jury's verdict. In sentencing a defendant with an IQ of 65, for example, one judge concluded that "'[t]he sociological literature suggests Gypsies intentionally test low on standard IQ tests.'"[8] Override Report 20 (quoting Sentencing Order in *State* v. *Neal*, No. 87–520 (Baldwin Cty Cir. Ct., May 17, 1990)). Another judge, who was facing reelection at the time he sentenced a 19-year-old defendant, refused to consider certain mitigating circumstances found by the jury, which had voted to recommend a life-without-parole sentence. He explained his sensitivity to public perception as follows: "'If I had not imposed the

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[7] As recently as May 2011, an Alabama judge overrode a 12-to-0 jury verdict to sentence Courtney Lockhart to death. Lockhart, a former army soldier and Iraq war veteran, was convicted of murdering a college student, Lauren Burk. The jury recommended life imprisonment without the possibility of parole, influenced by mitigating circumstances relating to severe psychological problems Lockhart suffered as a result of his combat in Iraq. (Lockhart spent 16 months in Iraq; 64 of the soldiers in his brigade never made it home, including Lockhart's best friend. The soldiers who survived all exhibited signs of posttraumatic stress disorder and other psychological conditions. Twelve of them have been arrested for murder or attempted murder.). The trial judge nonetheless imposed the death penalty.

[8] After this sentence was reversed on appeal, the State agreed that the defendant was exempt from the death penalty because he is mentally retarded. Override Report 20.

death sentence, I would have sentenced three black people to death and no white people.'" Override Report 20 (quoting Tr. of Sentencing Hearing in *State* v. *Waldrop*, No. 98–162 (Randolph Cty Cir. Ct., July 25, 2000)). These results do not seem to square with our Eighth Amendment jurisprudence, see *Furman*, 408 U. S., at 274 (Brennan, J., concurring) ("In determining whether a punishment comports with human dignity, we are aided by [the principle] that the State must not arbitrarily inflict a severe punishment"); *Gregg*, 428 U. S., at 188 (joint opinion of Stewart, Powell, and Stevens, JJ.) ("*Furman* held that [the death penalty] could not be imposed under sentencing procedures that created a substantial risk that it would be inflicted in an arbitrary and capricious manner"), and they raise important concerns that are worthy of this Court's review.

III

There is a second reason why Alabama's sentencing scheme deserves our review. Since our decisions in *Spaziano* and *Harris*, our Sixth Amendment jurisprudence has developed significantly. Five years after we decided *Harris*, we held in *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000), that the Sixth Amendment does not permit a defendant to be "expose[d] . . . to a penalty exceeding the maximum he would receive if punished according to the facts reflected in the jury verdict alone." *Id.,* at 483 (emphasis deleted). When "a State makes an increase in a defendant's authorized punishment contingent on the finding of fact," we explained, "that fact—no matter how the State labels it—must be found by a jury beyond a reasonable doubt." *Ring*, 536 U. S., at 602 (citing *Apprendi*, 530 U. S., at 482–483); see also *id.*, at 499 (SCALIA, J., concurring) ("[A]ll the facts which must exist in order to subject the defendant to a legally prescribed punishment *must* be found by the jury").

Two years later, we applied the *Apprendi* rule in *Ring* v. *Arizona* to invalidate Arizona's capital sentencing scheme, which permitted the trial judge to determine the presence of aggravating factors required for imposition of the death penalty. 536 U. S., at 609. We made clear that "[c]apital defendants, no less than noncapital defendants, . . . are entitled to a jury determination of any fact on which the legislature conditions an increase in their maximum punishment." *Id.,* at 589. And we overruled our earlier decision in *Walton* v. *Arizona*, 497 U. S. 639 (1990), by holding that the jury—not the judge—must find an aggravating circumstance that is necessary for the imposition of the death penalty. *Ring*, 536 U. S., at 609. "Because Arizona's enumerated aggravating factors operate as 'the functional equivalent of an element of a greater offense,'" we explained, "the Sixth Amendment requires that they be found by a jury." *Ibid.* (quoting *Apprendi*, 530 U. S., at 494, n. 19).

The very principles that animated our decisions in *Apprendi* and *Ring* call into doubt the validity of Alabama's capital sentencing scheme. Alabama permits a defendant to present mitigating circumstances that weigh against imposition of the death penalty. See Ala. Code §§13A–5–51, 13A–5–52. Indeed, we have long held that a defendant has a constitutional right to present mitigating evidence in capital cases. See *Eddings* v. *Oklahoma*, 455 U. S. 104, 110 (1982). And a defendant is eligible for the death penalty in Alabama only upon a specific factual finding that any aggravating factors outweigh the mitigating factors he has presented. See Ala. Code §§13A–5–46(e), 13A–5–47(e). The statutorily required finding that the aggravating factors of a defendant's crime outweigh the mitigating factors is therefore necessary to impose the death penalty. It is clear, then, that this factual finding exposes the defendant to a greater punishment than he would otherwise receive: death, as opposed to life without

parole. Under *Apprendi* and *Ring*, a finding that has such an effect must be made by a jury.

The facts of this case underscore why Alabama's statute might run afoul of *Apprendi* and *Ring*. After the State and Woodward presented evidence at the sentencing hearing, the jury found two aggravating factors, but it determined that the mitigating factors outweighed those aggravating factors, and it voted to recommend a sentence of life imprisonment without the possibility of parole. The judge then heard additional evidence before reweighing the aggravating and mitigating factors to reach the opposite conclusion from the jury. With respect to the first mitigating circumstance—Woodward's relationship with his children—the judge noted that he was "underwhelmed" by Woodward's family situation in light of the additional evidence that only he had heard. App. to Pet. for Cert. 80 (amended sentencing order). Rejecting the conclusion that Woodward had a positive influence on the lives of his young children, the judge opined: "What young child does not adore a parent?" *Ibid.* The judge further reasoned that Woodward's criminal history rendered him a "very poor parenting role model." *Id.,* at 81. Moving to the second mitigating factor—Woodward's traumatic childhood—the judge concluded that the evidence of problems in Woodward's childhood did not "withstand close scrutiny." *Ibid.* He noted that "no documentation of abuse was introduced"; speculated that Woodward's "truncated academic career may well have been the result of his bringing weapons to school, not the result of family issues"; suggested that Woodward's mother did not actually send him to live with his abusive father because no mother would "sen[d] her children to live alone, unprotected with an abusive man"; and found that it "strain[ed] logic to accept the story that [Woodward's] father evicted him." *Ibid.* The judge opined that "[w]hile [Woodward's] childhood was not the stuff of fairytales, his youth appear[ed]

more idyllic than those of others [Woodward] called to testify." *Ibid.* And he concluded that the aggravating factors "far outweigh[ed] the mitigating factors." *Id.,* at 82.[9] In other words, the judge imposed the death penalty on Woodward only because he disagreed with the jury's assessment of the facts.

Under our *Apprendi* jurisprudence, as it has evolved since *Harris* was decided, a sentencing scheme that permits such a result is constitutionally suspect.

* * *

Eighteen years have passed since we last considered Alabama's capital sentencing scheme, and much has changed since then. Today, Alabama stands alone: No other State condemns prisoners to death despite the considered judgment rendered by a cross-section of its citizens that the defendant ought to live. And *Apprendi* and its progeny have made clear the sanctity of the jury's role in our system of criminal justice. Given these developments, we owe the validity of Alabama's system a fresh look. I therefore respectfully dissent from the denial of certiorari.

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[9] In discounting the jury's finding that the mitigating circumstances outweighed the aggravating circumstances, the judge noted that he had access to information that the jury did not hear (referring to the additional factfinding he had conducted after the jury made its findings), and "surmise[d]" that some members of the jury were "daunted by the task [of sentencing]" and fell prey to defense counsel's "powerful, emotional appeal." App. to Pet. for Cert. 82 (amended sentencing order).

APPENDIX
Life-to-Death Overrides in Alabama*

#	Name	County	Year of Sentence	Jury vote (Life-Death)
1	Jones, Arthur	Baldwin	1982	Unknown
2	Lindsey, Michael	Mobile	1982	11–1
3	Murry, Paul	Montgomery	1982	11–1
	Murry, Paul	Montgomery	1988	12–0
4	Acres, Gregory	Montgomery	1983	7–5
5	Harrell, Ed	Jefferson	1983	11–1
6	Neelley, Judy	De Kalb	1983	10–2
7	Crowe, Coy	Jefferson	1984	12–0
8	Freeman, Darryl	Madison	1984	12–0
9	Hays, Henry	Mobile	1984	7–5
10	Turner, Calvin	Etowah	1984	9–3
11	Johnson, Anthony	Morgan	1985	9–3
12	Musgrove, Phillip	Madison	1985	10–2
13	Owens, Charles	Russell	1985	9–3
14	Tarver, Robert	Russell	1985	7–5

*This list includes defendants identified in a July 2011 report by the Equal Justice Initiative, see The Death Penalty in Alabama: Judge Override, at http://eji.org/files/Override_Report.pdf (as visited on November 15, 2013, and available in Clerk of Court's case file), and a 2011 law review article, see Radelet, Overriding Jury Sentencing Recommendations in Florida Capital Cases: An Update and Possible Half-Requiem, 2011 Mich. State L. Rev. 793, as well as defendants we are aware of who have been sentenced to death by judicial override subsequent to the publishing of those reports.

Appendix to opinion of SOTOMAYOR, J.

#	Name	County	Year of Sentence	Jury vote (Life-Death)
15	Thompson, Steven	Madison	1985	10–2
16	Frazier, Richard	Mobile	1986	Unknown
	Frazier, Richard	Mobile	1990	Unknown
17	Hooks, Joseph	Montgomery	1986	7–5
18	Boyd, William	Calhoun	1987	7–5
19	Tarver, Bobby	Mobile	1987	7–5
20	Duncan, Joe	Dallas	1988	10–2
21	McMillian, Walter	Monroe	1988	7–5
22	Wesley, Ronald	Mobile	1988	8–4
23	Coral, Robert	Montgomery	1989	8–4
24	Hadley, J.C.	Baldwin	1989	12–0
25	Jackson, Willie	Coffee	1989	7–5
26	Parker, John	Colbert	1989	10–2
27	Russaw, Henry	Pike	1989	8–4
28	Stephens, Victor	Hale	1989	7–5
29	White, Leroy	Madison	1989	9–3
30	Flowers, Clayton	Baldwin	1990	11–1
31	Harris, Louise	Montgomery	1990	7–5
32	Neal, John	Baldwin	1990	10–2
33	Sockwell, Michael	Montgomery	1990	7–5
34	Tomlin, Phillip	Mobile	1990	12–0
	Tomlin, Phillip	Mobile	1994	12–0
	Tomlin, Phillip	Mobile	1999	12–0

#	Name	County	Year of Sen-tence	Jury vote (Life-Death)
35	Williams, Herbert	Mobile	1990	9–3
36	Beard, David	Marshall	1991	8–4
37	Bush, William	Montgomery	1991	12–0
38	Giles, Arthur	Morgan	1991	Unknown
39	Carr, Patrick	Jefferson	1992	12–0
40	Gentry, Ward	Jefferson	1992	7–5
41	McGahee, Earl	Dallas	1992	10–2
42	Padgett, Larry	Marshall	1992	9–3
43	Rieber, Jeffrey	Madison	1992	7–5
44	Knotts, William	Montgomery	1993	9–3
45	McNair, Willie	Montgomery	1993	8–4
46	Burgess, Alonzo	Jefferson	1994	8–4
47	Burgess, Roy	Morgan	1994	10–2
48	Madison, Vernon	Mobile	1994	8–4
49	Myers, Robin	Morgan	1994	9–3
50	Roberts, David	Marion	1994	7–5
51	Scott, William	Geneva	1994	12–0
52	Barnes, Michael	Mobile	1995	9–3
53	Clark, Andrew	Henry	1995	9–3
54	Gregory, William	Baldwin	1995	10–2
55	Norris, Michael	Jefferson	1995	8–4
56	Ponder, Terry	Cullman	1995	8–4
57	Smith, Ronald	Madison	1995	7–5

Appendix to opinion of SOTOMAYOR, J.

#	Name	County	Year of Sen-tence	Jury vote (Life-Death)
58	Evans, Edward	Macon	1996	12–0,9–3
59	Hyde, James	Marshall	1996	7–5
60	McGowan, James	Conecuh	1996	7–5
61	Smith, Kenneth	Jefferson	1996	11–1
62	Apicella, Andrew	Jefferson	1997	8–4
63	Carroll, Taurus	Jefferson	1998	10–2
64	Dorsey, Ethan	Conecuh	1998	11–1
65	Ferguson, Thomas	Mobile	1998	11–1
66	Jackson, Shonelle	Montgomery	1998	12–0
67	Taylor, Jarrod	Mobile	1998	7–5
68	Wimberly, Shaber	Dale	1998	10–2
	Wimberly, Shaber	Dale	2001	7–5
69	Hodges, Melvin	Lee	1999	8–4
70	Waldrop, Bobby	Randolph	1999	10–2
71	Lee, Jeffrey	Dallas	2000	7–5
72	Martin, George	Mobile	2000	8–4
73	Morrow, John	Baldwin	2002	8–4
74	Moore, Daniel	Morgan	2003	8–4
75	Eatmon, Dionne	Jefferson	2005	9–3
76	Harris, Westley	Crenshaw	2005	7–5
77	Spencer, Kerry	Jefferson	2005	9–3,10–2
78	Yancey, Vernon	Russell	2005	7–5
79	Billups, Kenneth	Jefferson	2006	7–5

#	Name	County	Year of Sentence	Jury vote (Life-Death)
80	Doster, Oscar	Covington	2006	12–0
81	Killingsworth, Jimmy	Bibb	2006	7–5
82	Lane, Thomas	Mobile	2006	8–4
83	Sneed, Ulysses	Morgan	2006	7–5
84	Mitchell, Brandon	Jefferson	2007	10–2
85	Stanley, Anthony	Colbert	2007	8–4
86	Jackson, Demetrius	Jefferson	2008	10–2
87	Spradley, Montez	Jefferson	2008	10–2
88	Woodward, Mario	Montgomery	2008	8–4
89	McMillan, Calvin	Elmore	2009	8–4
90	Scott, Christie	Franklin	2009	7–5
91	Riggs, Jeffery	Jefferson	2010	10–2
92	White, Justin	Jefferson	2010	9–3
93	Lockhart, Courtney	Lee	2011	12–0
94	Shanklin, Clayton	Walker	2012	12–0
95	Henderson, Gregory	Lee	2012	9–3