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CASES ADJUDGED

IN

THE SUPREME COURT

AT

OCTOBER TERM, 1997

BEGINNING OF TERM

OCTOBER 6, 1997, THROUGH MARCH 2, 1998

FRANK D. WAGNER

REPORTER OF DECISIONS

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Errata

493 U. S. 168, line 6: "Hoffman-La Roche Inc." should be "Hoffmann-La Roche Inc."

520 U. S. 1185, line 17: "102 F. 3d 551" should be "112 F. 3d 787".

JUSTICES

OF THE

SUPREME COURT

DURING THE TIME OF THESE REPORTS*

WILLIAM H. REHNQUIST, Chief Justice.
JOHN PAUL STEVENS, Associate Justice.
SANDRA DAY O'CONNOR, Associate Justice.
ANTONIN SCALIA, Associate Justice.
ANTHONY M. KENNEDY, Associate Justice.
DAVID H. SOUTER, Associate Justice.
CLARENCE THOMAS, Associate Justice.
RUTH BADER GINSBURG, Associate Justice.
STEPHEN BREYER, Associate Justice.

RETIRED

LEWIS F. POWELL, Jr., Associate Justice.
WILLIAM J. BRENNAN, Jr., Associate Justice.[1]
BYRON R. WHITE, Associate Justice.
HARRY A. BLACKMUN, Associate Justice.

OFFICERS OF THE COURT

JANET RENO, Attorney General.
SETH P. WAXMAN, Solicitor General.[2]
WILLIAM K. SUTER, Clerk.
FRANK D. WAGNER, Reporter of Decisions.
DALE E. BOSLEY, Marshal.
SHELLEY L. DOWLING, Librarian.

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*For notes, see p. IV.

NOTES

[1] Justice Brennan, who retired effective July 20, 1990 (498 U. S. VII), died on July 24, 1997. See *post,* p. VII.

[2] The Honorable Seth P. Waxman, of the District of Columbia, was nominated by President Clinton on September 9, 1997, to be Solicitor General; the nomination was confirmed by the Senate on November 7, 1997; he was commissioned and took the oath of office on November 13, 1997. He was presented to the Court as Acting Solicitor General on October 6, 1997. See *post,* p. IX.

SUPREME COURT OF THE UNITED STATES

Allotment of Justices

It is ordered that the following allotment be made of the Chief Justice and Associate Justices of this Court among the circuits, pursuant to Title 28, United States Code, Section 42, and that such allotment be entered of record, effective September 30, 1994, viz.:

For the District of Columbia Circuit, William H. Rehnquist, Chief Justice.

For the First Circuit, David H. Souter, Associate Justice.

For the Second Circuit, Ruth Bader Ginsburg, Associate Justice.

For the Third Circuit, David H. Souter, Associate Justice.

For the Fourth Circuit, William H. Rehnquist, Chief Justice.

For the Fifth Circuit, Antonin Scalia, Associate Justice.

For the Sixth Circuit, John Paul Stevens, Associate Justice.

For the Seventh Circuit, John Paul Stevens, Associate Justice.

For the Eighth Circuit, Clarence Thomas, Associate Justice.

For the Ninth Circuit, Sandra Day O'Connor, Associate Justice.

For the Tenth Circuit, Stephen Breyer, Associate Justice.

For the Eleventh Circuit, Anthony M. Kennedy, Associate Justice.

For the Federal Circuit, William H. Rehnquist, Chief Justice.

September 30, 1994.

(For next previous allotment, and modifications, see 502 U. S., p. vi, 509 U. S., p. v, and 512 U. S., p. v.)

DEATH OF JUSTICE BRENNAN

Supreme Court of the United States

MONDAY, OCTOBER 6, 1997

Present: Chief Justice Rehnquist, Justice Stevens, Justice O'Connor, Justice Scalia, Justice Kennedy, Justice Souter, Justice Thomas, Justice Ginsburg, and Justice Breyer.

The Chief Justice said:

As we open this morning, I note with sadness that our friend and colleague, William Joseph Brennan, Jr., a retired Justice of this Court, died on July 24, 1997, at Arlington, Virginia.

Born in Newark, New Jersey, on April 25, 1906, William Brennan was the second of eight children born to Irish parents who emigrated to the United States in 1890. An outstanding student from an early age, he was an honor student of the Wharton School of the University of Pennsylvania and graduated high in his class at Harvard Law School.

Justice Brennan joined a prominent New Jersey law firm where he specialized in labor law. He was an Army officer during World War II and served on the staff of the Undersecretary of War. Following a brief return to private practice after the war, he began his judicial career. He moved rapidly from the state trial bench to the New Jersey Supreme Court. President Eisenhower nominated him to this Court in 1956.

Justice Brennan authored many landmark opinions while on the bench of this Court. He became a champion of an expansive view of constitutional protection of individual

rights. Following his retirement in 1990 after 33 years on this bench, Justice Brennan often frequented the building and continued a warm relationship with his former colleagues.

The members of this Court will greatly miss Justice Brennan's wit and his friendly, buoyant spirit, and I speak for them in expressing our profound sympathy to Mrs. Brennan, to his daughter and two sons, and to all those whose lives were touched by this remarkable man. The recess the Court takes this month will be in his memory. At an appropriate time, the traditional memorial observance of the Court and the Bar of this Court will be held in this Courtroom.

PRESENTATION OF THE ACTING SOLICITOR GENERAL

SUPREME COURT OF THE UNITED STATES

MONDAY, OCTOBER 6, 1997

Present: CHIEF JUSTICE REHNQUIST, JUSTICE STEVENS, JUSTICE O'CONNOR, JUSTICE SCALIA, JUSTICE KENNEDY, JUSTICE SOUTER, JUSTICE THOMAS, JUSTICE GINSBURG, and JUSTICE BREYER.

THE CHIEF JUSTICE said:

I have the honor to announce, on behalf of the Court, that the October 1996 Term of the Supreme Court of the United States is now closed, and the October 1997 Term is now convened. The Court now recognizes the Attorney General, Janet Reno.

The Attorney General said:

MR. CHIEF JUSTICE, and may it please the Court. I have the honor to present to the Court the Acting Solicitor General, Seth P. Waxman of the District of Columbia.

THE CHIEF JUSTICE said:

Mr. Acting Solicitor General, the Court welcomes you to the performance of the important office that you have assumed, to represent the government of the United States before this Court. We wish you well in your office.

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CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 1997

BROWN *v.* WILLIAMS ET AL.

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

No. 97–5370. Decided October 20, 1997

Pro se petitioner seeks leave to proceed *in forma pauperis* so that he may file a petition for a writ of certiorari to the Sixth Circuit. Since 1994, when this Court invoked its Rule 39.8 to deny him *in forma pauperis* status, *Brown* v. *Brown*, 513 U. S. 1040, he has filed eight petitions, each of which has been denied without recorded dissent.

Held: Petitioner's motion to proceed *in forma pauperis* is denied. For the reasons discussed in *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1, he is also barred from filing any further certiorari petitions in noncriminal matters unless he first pays the required docketing fee and submits his petition in compliance with Rule 33.1.

Motion denied.

PER CURIAM.

Pro se petitioner Carson Lynn Brown seeks leave to proceed *in forma pauperis* in order that he may file a petition for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit, which dismissed his appeal after he failed to pay the required filing fee.

We deny petitioner leave to proceed *in forma pauperis.* He is allowed until November 10, 1997, within which to pay the docketing fee required by this Court's Rule 38(a) and to submit his petition in compliance with Rule 33.1. For the

reasons discussed below, we also direct the Clerk of the Court not to accept any further petitions for certiorari in noncriminal matters from petitioner unless he first pays the docketing fee required by Rule 38(a) and submits his petition in compliance with Rule 33.1.

Petitioner has a history of abusing this Court's certiorari process. In 1994, we invoked Rule 39.8 to deny petitioner *in forma pauperis* status. *Brown* v. *Brown*, 513 U. S. 1040 (1994). Undeterred by this action, petitioner has continued filing frivolous petitions with this Court. To date, petitioner has filed eight petitions over the last eight years, each of which has been denied without recorded dissent. In the instant petition, Brown alleges that certain prison officials conspired to violate his constitutional rights by, *inter alia*, denying him access to the courts and sabotaging his laundry, and that the District Judge below was biased against him as an "African Jew." These claims are patently frivolous.

We enter this order barring prospective *in forma pauperis* filings by petitioner for the reasons discussed in *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. Because petitioner has limited his abuse of the certiorari process to noncriminal cases, we limit our sanction accordingly.

It is so ordered.

JUSTICE STEVENS, dissenting.

For reasons previously stated, see *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1, 4 (1992), and cases cited, I respectfully dissent.

Syllabus

STATE OIL CO. *v.* KHAN ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 96–871. Argued October 7, 1997—Decided November 4, 1997

Respondents' agreement to lease and operate a gas station obligated them to buy gasoline from petitioner State Oil Company at a price equal to a suggested retail price set by State Oil, less a specified profit margin; required them to rebate any excess to State Oil if they charged customers more than the suggested price; and provided that any decrease due to sales below the suggested price would reduce their margin. After they fell behind in their lease payments and State Oil commenced eviction proceedings, respondents brought this suit in federal court, alleging in part that, by preventing them from raising or lowering retail gas prices, State Oil had violated §1 of the Sherman Act. The District Court entered summary judgment for State Oil on this claim, but the Seventh Circuit reversed on the basis of *Albrecht* v. *Herald Co.*, 390 U. S. 145, 152–154, in which this Court held that vertical maximum price fixing is a *per se* antitrust violation. Although the Court of Appeals characterized *Albrecht* as "unsound when decided" and "inconsistent with later decisions," it felt constrained to follow that decision.

Held: Albrecht is overruled. Pp. 10–22.

(a) Although most antitrust claims are analyzed under a "rule of reason," under which the court reviews a number of relevant factors, see, *e. g.*, *Arizona* v. *Maricopa County Medical Soc.*, 457 U. S. 332, 342–343, some types of restraints on trade have such predictable and pernicious anticompetitive effect, and such limited potential for procompetitive benefit, that they are deemed unlawful *per se*, see, *e. g.*, *Northern Pacific R. Co.* v. *United States*, 356 U. S. 1, 5. A review of this Court's pertinent decisions is relevant in assessing the continuing validity of the *Albrecht per se* rule. See, *e. g.*, *Kiefer-Stewart Co.* v. *Joseph E. Seagram & Sons, Inc.*, 340 U. S. 211, 213 (maximum resale price fixing illegal *per se*); *United States* v. *Arnold, Schwinn & Co.*, 388 U. S. 365, 379–380 (vertical nonprice restrictions illegal *per se*); *Continental T. V., Inc.* v. *GTE Sylvania Inc.*, 433 U. S. 36, 47–49, 58–59 (overruling *Schwinn*). A number of this Court's later decisions have hinted that *Albrecht*'s analytical underpinnings were substantially weakened by *GTE Sylvania*—see, *e. g.*, *Maricopa County*, *supra*, at 348, n. 18; *324 Liquor Corp.* v. *Duffy*, 479 U. S. 335, 341–342; *Atlantic Richfield Co.* v. *USA Petroleum Co.*, 495 U. S. 328, 335, n. 5, 343, n. 13—and there is a consid-

erable body of scholarship discussing the procompetitive effects of vertical maximum price fixing. Pp. 10–15.

(b) Informed by the foregoing decisions and scholarship, and guided by the general view that the antitrust laws' primary purpose is to protect interbrand competition, see, *e. g.*, *Business Electronics Corp.* v. *Sharp Electronics Corp.*, 485 U. S. 717, 726, and that condemnation of practices resulting in lower consumer prices is disfavored, *Matsushita Elec. Industrial Co.* v. *Zenith Radio Corp.*, 475 U. S. 574, 594, this Court finds it difficult to maintain that vertically imposed maximum prices could harm consumers or competition to the extent necessary to justify their *per se* invalidation. *Albrecht*'s theoretical justifications for its *per se* rule—that vertical maximum price fixing could interfere with dealer freedom, restrict dealers' ability to offer consumers essential or desired services, channel distribution through large or specially advantaged dealers, or disguise minimum price fixing schemes—have been abundantly criticized and can be appropriately recognized and punished under the rule of reason. Not only are they less serious than the *Albrecht* Court imagined, but other courts and antitrust scholars have noted that the *per se* rule could in fact exacerbate problems related to the unrestrained exercise of market power by monopolist-dealers. For these reasons, and because *Albrecht* is irrelevant to ongoing Sherman Act enforcement, see *Copperweld Corp.* v. *Independence Tube Corp.*, 467 U. S. 752, 777, and n. 25, and there are apparently no cases in which enforcement efforts have been directed solely against the conduct condemned in *Albrecht*, there is insufficient economic justification for the *per se* rule. Respondents' arguments in favor of the rule—that its elimination should require persuasive, expert testimony establishing that it has distorted the market, and that its retention is compelled by *Toolson* v. *New York Yankees, Inc.*, 346 U. S. 356, and *Flood* v. *Kuhn*, 407 U. S. 258—are unavailing. Pp. 15–19.

(c) *Albrecht* does not deserve continuing respect under the doctrine of *stare decisis*. *Stare decisis* is not an inexorable command, particularly in the area of antitrust law, where there is a competing interest in recognizing and adapting to changed circumstances and the lessons of accumulated experience. See, *e. g.*, *National Soc. of Professional Engineers* v. *United States*, 435 U. S. 679, 688. Accordingly, this Court has reconsidered its decisions construing the Sherman Act where, as here, the theoretical underpinnings of those decisions are called into serious question. See, *e. g.*, *GTE Sylvania*, *supra*. Because *Albrecht* has been widely criticized since its inception, and the views underlying it have been eroded by this Court's precedent, there is not much of that decision to salvage. See, *e. g.*, *Neal* v. *United States*, 516 U. S. 284, 295. In

Syllabus

overruling *Albrecht*, the Court does not hold that all vertical maximum price fixing is *per se* lawful, but simply that it should be evaluated under the rule of reason, which can effectively identify those situations in which it amounts to anticompetitive conduct. The question whether respondents are entitled to recover damages in light of this Court's overruling of *Albrecht* should be reviewed by the Court of Appeals in the first instance. Pp. 20–22.

93 F. 3d 1358, vacated and remanded.

O'Connor, J., delivered the opinion for a unanimous Court.

John Baumgartner argued the cause for petitioner. With him on the briefs was *Paul Kalinich.*

Acting Assistant Attorney General Klein argued the cause for the United States et al. as *amici curiae* urging reversal. With him on the brief were *Acting Solicitor General Dellinger*, *Deputy Solicitor General Wallace*, *Deputy Assistant Attorney General Melamed*, *Edward C. DuMont*, *Catherine G. O'Sullivan*, and *David Seidman.*

Anthony S. DiVincenzo argued the cause and filed a brief for respondents.

Pamela Jones Harbour, Deputy Attorney General of New York, argued the cause for the state parties as *amici curiae* urging affirmance. With her on the brief were *Dennis C. Vacco*, Attorney General of New York, *Barbara Gott Billet*, Solicitor General, and *Stephen D. Houck*, *Robert L. Hubbard*, *Darrell M. Joseph*, and *John A. Ioannou*, Assistant Attorneys General, *Bruce M. Botelho*, Attorney General of Alaska, and *Daveed A. Schwartz*, Assistant Attorney General, *Grant Woods*, Attorney General of Arizona, *Winston Bryant*, Attorney General of Arkansas, and *J. Jordan Abbott*, Assistant Attorney General, *Richard Blumenthal*, Attorney General of Connecticut, *M. Jane Brady*, Attorney General of Delaware, *Robert A. Butterworth*, Attorney General of Florida, and *Patricia A. Conners*, Assistant Attorney General, *Calvin E. Halloway, Sr.*, Attorney General of Guam, *Margery S. Bronster*, Attorney General of Hawaii, *Alan G. Lance*, Attorney

Counsel

General of Idaho, and *Brett T. DeLange*, Deputy Attorney General, *Jim Ryan*, Attorney General of Illinois, and *Barbara Preiner*, Solicitor General, *Thomas J. Miller*, Attorney General of Iowa, and *Elizabeth M. Osenbaugh*, Solicitor General, *Carla J. Stovall*, Attorney General of Kansas, and *John W. Campbell*, Deputy Attorney General, *J. Joseph Curran, Jr.*, Attorney General of Maryland, and *Ellen S. Cooper*, Assistant Attorney General, *Frank J. Kelley*, Attorney General of Michigan, and *Fredrick H. Hoffecker*, *Hubert H. Humphrey III*, Attorney General of Minnesota, *Mike Moore*, Attorney General of Mississippi, and *James F. Steel*, Deputy Attorney General, *Joseph P. Mazurek*, Attorney General of Montana, *Frankie Sue Del Papa*, Attorney General of Nevada, *Steven M. Houran*, Acting Attorney General of New Hampshire, and *Walter L. Maroney*, Senior Assistant Attorney General, *Peter Verniero*, Attorney General of New Jersey, and *Laurel A. Price*, Deputy Attorney General, *Tom Udall*, Attorney General of New Mexico, and *Susan G. White*, Assistant Attorney General, *Michael F. Easley*, Attorney General of North Carolina, and *K. D. Sturgis*, Assistant Attorney General, *Heidi Heitkamp*, Attorney General of North Dakota, and *Laurie J. Loveland*, Solicitor General, *D. Michael Fisher*, Attorney General of Pennsylvania, and *James A. Donahue III*, Acting Chief Deputy Attorney General, *Jeffrey B. Pine*, Attorney General of Rhode Island, *Mark Barnett*, Attorney General of South Dakota, *John Knox Walkup*, Attorney General of Tennessee, *Michael E. Moore*, Solicitor General, and *Dennis Garvey*, Interim Deputy Attorney General, *Dan Morales*, Attorney General of Texas, *Jorge Vega*, First Assistant Attorney General, and *Laquita A. Hamilton*, Deputy Attorney General, *James S. Gilmore III*, Attorney General of Virginia, and *Frank Seales, Jr.*, Senior Assistant Attorney General, *Christine O. Gregoire*, Attorney General of Washington, and *Jon P. Ferguson*, *Darrell V. McGraw, Jr.*, Attorney General of West Virginia, *James E. Doyle*, Attorney General of Wisconsin,

and *Kevin J. O'Connor*, Assistant Attorney General, and *William U. Hill*, Attorney General of Wyoming.*

JUSTICE O'CONNOR delivered the opinion of the Court.

Under § 1 of the Sherman Act, 26 Stat. 209, as amended, 15 U. S. C. § 1, "[e]very contract, combination . . . , or conspiracy, in restraint of trade" is illegal. In *Albrecht* v. *Herald Co.*, 390 U. S. 145 (1968), this Court held that vertical maximum price fixing is a *per se* violation of that statute. In this case, we are asked to reconsider that decision in light of subsequent decisions of this Court. We conclude that *Albrecht* should be overruled.

I

Respondents, Barkat U. Khan and his corporation, entered into an agreement with petitioner, State Oil Company, to lease and operate a gas station and convenience store owned

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*Briefs of *amici curiae* urging reversal were filed for the American Automobile Manufacturers Association et al. by *Stephen M. Shapiro, Roy T. Englert, Jr., Donald M. Falk, Phillip D. Brady,* and *Charles H. Lockwood II;* for the American Petroleum Institute by *Edwin M. Zimmerman, Robert A. Long, Jr., G. William Frick, Harry M. Ng,* and *Douglas W. Morris;* for the Business Roundtable by *Thomas B. Leary* and *Robert C. Weinbaum;* and for the Newspaper Association of America et al. by *William T. Lifland, Patricia Farren, David S. J. Brown, Rene P. Milam, Peter C. Gould, Andrew Merdek, William T. Garcia, Cristina L. Mendoza,* and *George Freeman.*

Briefs of *amici curiae* were filed for the Association of the Bar of the City of New York by *Richard M. Steuer;* for the Coalition for Fair Consumer Pricing by *Steven B. Feirman, Barry M. Heller, H. Bret Lowell, Philip F. Zeidman,* and *Stanley J. Adelman;* for the Minnesota Service Station and Convenience Store Association et al. by *Gary E. Persian* and *Paul E. Slater;* for the National Association of Manufacturers by *Mark L. Davidson, Jan S. Amundson,* and *Quentin Riegel;* for the National Automobile Dealers Association by *Paul R. Norman;* for the National Beer Wholesalers Association, Inc., by *Ernest Gellhorn, Donald I. Baker,* and *W. Todd Miller;* and for the Service Station Dealers of America by *Peter H. Gunst.*

by State Oil. The agreement provided that respondents would obtain the station's gasoline supply from State Oil at a price equal to a suggested retail price set by State Oil, less a margin of 3.25 cents per gallon. Under the agreement, respondents could charge any amount for gasoline sold to the station's customers, but if the price charged was higher than State Oil's suggested retail price, the excess was to be rebated to State Oil. Respondents could sell gasoline for less than State Oil's suggested retail price, but any such decrease would reduce their 3.25 cents-per-gallon margin.

About a year after respondents began operating the gas station, they fell behind in lease payments. State Oil then gave notice of its intent to terminate the agreement and commenced a state court proceeding to evict respondents. At State Oil's request, the state court appointed a receiver to operate the gas station. The receiver operated the station for several months without being subject to the price restraints in respondents' agreement with State Oil. According to respondents, the receiver obtained an overall profit margin in excess of 3.25 cents per gallon by lowering the price of regular-grade gasoline and raising the price of premium grades.

Respondents sued State Oil in the United States District Court for the Northern District of Illinois, alleging in part that State Oil had engaged in price fixing in violation of § 1 of the Sherman Act by preventing respondents from raising or lowering retail gas prices. According to the complaint, but for the agreement with State Oil, respondents could have charged different prices based on the grades of gasoline, in the same way that the receiver had, thereby achieving increased sales and profits. State Oil responded that the agreement did not actually prevent respondents from setting gasoline prices, and that, in substance, respondents did not allege a violation of antitrust laws by their claim that State Oil's suggested retail price was not optimal.

The District Court found that the allegations in the complaint did not state a *per se* violation of the Sherman Act because they did not establish the sort of "manifestly anticompetitive implications or pernicious effect on competition" that would justify *per se* prohibition of State Oil's conduct. App. 43–44. Subsequently, in ruling on cross-motions for summary judgment, the District Court concluded that respondents had failed to demonstrate antitrust injury or harm to competition. App. to Pet. for Cert. 37a. The District Court held that respondents had not shown that a difference in gasoline pricing would have increased the station's sales; nor had they shown that State Oil had market power or that its pricing provisions affected competition in a relevant market. *Id.*, at 37a, 40a. Accordingly, the District Court entered summary judgment for State Oil on respondents' Sherman Act claim. *Id.*, at 40a.

The Court of Appeals for the Seventh Circuit reversed. 93 F. 3d 1358 (1996). The court first noted that the agreement between respondents and State Oil did indeed fix maximum gasoline prices by making it "worthless" for respondents to exceed the suggested retail prices. *Id.*, at 1360. After reviewing legal and economic aspects of price fixing, the court concluded that State Oil's pricing scheme was a *per se* antitrust violation under *Albrecht* v. *Herald Co.*, *supra.* Although the Court of Appeals characterized *Albrecht* as "unsound when decided" and "inconsistent with later decisions" of this Court, it felt constrained to follow that decision. 93 F. 3d, at 1363. In light of *Albrecht* and *Atlantic Richfield Co.* v. *USA Petroleum Co.*, 495 U. S. 328 (1990) *(ARCO)*, the court found that respondents could have suffered antitrust injury from not being able to adjust gasoline prices.

We granted certiorari to consider two questions, whether State Oil's conduct constitutes a *per se* violation of the Sherman Act and whether respondents are entitled to recover damages based on that conduct. 519 U. S. 1107 (1997).

II

A

Although the Sherman Act, by its terms, prohibits every agreement "in restraint of trade," this Court has long recognized that Congress intended to outlaw only unreasonable restraints. See, *e. g.*, *Arizona* v. *Maricopa County Medical Soc.*, 457 U. S. 332, 342–343 (1982) (citing *United States* v. *Joint Traffic Assn.*, 171 U. S. 505 (1898)). As a consequence, most antitrust claims are analyzed under a "rule of reason," according to which the finder of fact must decide whether the questioned practice imposes an unreasonable restraint on competition, taking into account a variety of factors, including specific information about the relevant business, its condition before and after the restraint was imposed, and the restraint's history, nature, and effect. 457 U. S., at 343, and n. 13 (citing *Board of Trade of Chicago* v. *United States*, 246 U. S. 231, 238 (1918)).

Some types of restraints, however, have such predictable and pernicious anticompetitive effect, and such limited potential for procompetitive benefit, that they are deemed unlawful *per se*. *Northern Pacific R. Co.* v. *United States*, 356 U. S. 1, 5 (1958). *Per se* treatment is appropriate "[o]nce experience with a particular kind of restraint enables the Court to predict with confidence that the rule of reason will condemn it." *Maricopa County*, *supra*, at 344; see also *Broadcast Music, Inc.* v. *Columbia Broadcasting System, Inc.*, 441 U. S. 1, 19, n. 33 (1979). Thus, we have expressed reluctance to adopt *per se* rules with regard to "restraints imposed in the context of business relationships where the economic impact of certain practices is not immediately obvious." *FTC* v. *Indiana Federation of Dentists*, 476 U. S. 447, 458–459 (1986).

A review of this Court's decisions leading up to and beyond *Albrecht* is relevant to our assessment of the continuing validity of the *per se* rule established in *Albrecht*. Beginning

with *Dr. Miles Medical Co.* v. *John D. Park & Sons Co.*, 220 U. S. 373 (1911), the Court recognized the illegality of agreements under which manufacturers or suppliers set the minimum resale prices to be charged by their distributors. By 1940, the Court broadly declared all business combinations "formed for the purpose and with the effect of raising, depressing, fixing, pegging, or stabilizing the price of a commodity in interstate or foreign commerce" illegal *per se*. *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 223 (1940). Accordingly, the Court condemned an agreement between two affiliated liquor distillers to limit the maximum price charged by retailers in *Kiefer-Stewart Co.* v. *Joseph E. Seagram & Sons, Inc.*, 340 U. S. 211 (1951), noting that agreements to fix maximum prices, "no less than those to fix minimum prices, cripple the freedom of traders and thereby restrain their ability to sell in accordance with their own judgment." *Id.*, at 213.

In subsequent cases, the Court's attention turned to arrangements through which suppliers imposed restrictions on dealers with respect to matters other than resale price. In *White Motor Co.* v. *United States*, 372 U. S. 253 (1963), the Court considered the validity of a manufacturer's assignment of exclusive territories to its distributors and dealers. The Court determined that too little was known about the competitive impact of such vertical limitations to warrant treating them as *per se* unlawful. *Id.*, at 263. Four years later, in *United States* v. *Arnold, Schwinn & Co.*, 388 U. S. 365 (1967), the Court reconsidered the status of exclusive dealer territories and held that, upon the transfer of title to goods to a distributor, a supplier's imposition of territorial restrictions on the distributor was "so obviously destructive of competition" as to constitute a *per se* violation of the Sherman Act. *Id.*, at 379. In *Schwinn*, the Court acknowledged that some vertical restrictions, such as the conferral of territorial rights or franchises, could have procompetitive benefits by allowing smaller enterprises to compete, and that

such restrictions might avert vertical integration in the distribution process. *Id.*, at 379–380. The Court drew the line, however, at permitting manufacturers to control product marketing once dominion over the goods had passed to dealers. *Id.*, at 380.

Albrecht, decided the following Term, involved a newspaper publisher who had granted exclusive territories to independent carriers subject to their adherence to a maximum price on resale of the newspapers to the public. Influenced by its decisions in *Socony-Vacuum*, *Kiefer-Stewart*, and *Schwinn*, the Court concluded that it was *per se* unlawful for the publisher to fix the maximum resale price of its newspapers. 390 U. S., at 152–154. The Court acknowledged that "[m]aximum and minimum price fixing may have different consequences in many situations," but nonetheless condemned maximum price fixing for "substituting the perhaps erroneous judgment of a seller for the forces of the competitive market." *Id.*, at 152.

Albrecht was animated in part by the fear that vertical maximum price fixing could allow suppliers to discriminate against certain dealers, restrict the services that dealers could afford to offer customers, or disguise minimum price fixing schemes. *Id.*, at 152–153. The Court rejected the notion (both on the record of that case and in the abstract) that, because the newspaper publisher "granted exclusive territories, a price ceiling was necessary to protect the public from price gouging by dealers who had monopoly power in their own territories." *Id.*, at 153.

In a vigorous dissent, Justice Harlan asserted that the majority had erred in equating the effects of maximum and minimum price fixing. *Id.*, at 156–168. Justice Harlan pointed out that, because the majority was establishing a *per se* rule, the proper inquiry was "not whether dictation of maximum prices is *ever* illegal, but whether it is *always* illegal." *Id.*, at 165–166. He also faulted the majority for conclusively listing "certain unfortunate consequences that maximum

price dictation might have in other cases," even as it rejected evidence that the publisher's practice of fixing maximum prices counteracted potentially anticompetitive actions by its distributors. *Id.*, at 165. Justice Stewart also dissented, asserting that the publisher's maximum price fixing scheme should be properly viewed as promoting competition, because it protected consumers from dealers such as Albrecht, who, as "the only person who could sell for home delivery the city's only daily morning newspaper," was "a monopolist within his own territory." *Id.*, at 168.

Nine years later, in *Continental T. V., Inc.* v. *GTE Sylvania Inc.*, 433 U. S. 36 (1977), the Court overruled *Schwinn*, thereby rejecting application of a *per se* rule in the context of vertical nonprice restrictions. The Court acknowledged the principle of *stare decisis*, but explained that the need for clarification in the law justified reconsideration of *Schwinn:*

> "Since its announcement, *Schwinn* has been the subject of continuing controversy and confusion, both in the scholarly journals and in the federal courts. The great weight of scholarly opinion has been critical of the decision, and a number of the federal courts confronted with analogous vertical restrictions have sought to limit its reach. In our view, the experience of the past 10 years should be brought to bear on this subject of considerable commercial importance." 433 U. S., at 47–49 (footnotes omitted).

The Court considered the historical context of *Schwinn*, noting that *Schwinn*'s *per se* rule against vertical nonprice restrictions came only four years after the Court had refused to endorse a similar rule in *White Motor Co.*, and that the decision neither explained the "sudden change in position," nor referred to the accepted requirements for *per se* violations set forth in *Northern Pacific R. Co.* 433 U. S., at 51–52. The Court then reviewed scholarly works supporting the economic utility of vertical nonprice restraints. See *id.*,

at 54–57 (citing, *e. g.,* Posner, Antitrust Policy and the Supreme Court: An Analysis of the Restricted Distribution, Horizontal Merger and Potential Competition Decisions, 75 Colum. L. Rev. 282 (1975); Preston, Restrictive Distribution Arrangements: Economic Analysis and Public Policy Standards, 30 Law & Contemp. Prob. 506 (1965)). The Court concluded that, because "departure from the rule-of-reason standard must be based upon demonstrable economic effect rather than—as in *Schwinn*—upon formalistic line drawing," the appropriate course would be "to return to the rule of reason that governed vertical restrictions prior to *Schwinn.*" *GTE Sylvania*, *supra*, at 58–59.

In *GTE Sylvania*, the Court declined to comment on *Albrecht*'s *per se* treatment of vertical maximum price restrictions, noting that the issue "involve[d] significantly different questions of analysis and policy." 433 U. S., at 51, n. 18. Subsequent decisions of the Court, however, have hinted that the analytical underpinnings of *Albrecht* were substantially weakened by *GTE Sylvania.* We noted in *Maricopa County* that vertical restraints are generally more defensible than horizontal restraints. See 457 U. S., at 348, n. 18. And we explained in *324 Liquor Corp.* v. *Duffy*, 479 U. S. 335, 341–342 (1987), that decisions such as *GTE Sylvania* "recognize the possibility that a vertical restraint imposed by a *single* manufacturer or wholesaler may stimulate interbrand competition even as it reduces intrabrand competition."

Most recently, in *ARCO*, 495 U. S. 328 (1990), although *Albrecht*'s continuing validity was not squarely before the Court, some disfavor with that decision was signaled by our statement that we would "assume, *arguendo,* that *Albrecht* correctly held that vertical, maximum price fixing is subject to the *per se* rule." 495 U. S., at 335, n. 5. More significantly, we specifically acknowledged that vertical maximum price fixing "may have procompetitive interbrand effects," and pointed out that, in the wake of *GTE Sylvania*, "[t]he

procompetitive potential of a vertical maximum price restraint is more evident . . . than it was when *Albrecht* was decided, because exclusive territorial arrangements and other nonprice restrictions were unlawful *per se* in 1968." 495 U. S., at 343, n. 13 (citing several commentators identifying procompetitive effects of vertical maximum price fixing, including, *e. g.*, P. Areeda & H. Hovenkamp, Antitrust Law ¶ 340.30b, p. 378, n. 24 (1988 Supp.); Blair & Harrison, Rethinking Antitrust Injury, 42 Vand. L. Rev. 1539, 1553 (1989); Easterbrook, Maximum Price Fixing, 48 U. Chi. L. Rev. 886, 887–890 (1981)) (hereinafter Easterbrook).

B

Thus, our reconsideration of *Albrecht*'s continuing validity is informed by several of our decisions, as well as a considerable body of scholarship discussing the effects of vertical restraints. Our analysis is also guided by our general view that the primary purpose of the antitrust laws is to protect interbrand competition. See, *e. g.*, *Business Electronics Corp.* v. *Sharp Electronics Corp.*, 485 U. S. 717, 726 (1988). "Low prices," we have explained, "benefit consumers regardless of how those prices are set, and so long as they are above predatory levels, they do not threaten competition." *ARCO*, *supra*, at 340. Our interpretation of the Sherman Act also incorporates the notion that condemnation of practices resulting in lower prices to consumers is "especially costly" because "cutting prices in order to increase business often is the very essence of competition." *Matsushita Elec. Industrial Co.* v. *Zenith Radio Corp.*, 475 U. S. 574, 594 (1986).

So informed, we find it difficult to maintain that vertically imposed maximum prices could harm consumers or competition to the extent necessary to justify their *per se* invalidation. As Chief Judge Posner wrote for the Court of Appeals in this case:

> "As for maximum resale price fixing, unless the supplier is a monopsonist he cannot squeeze his dealers' margins

> below a competitive level; the attempt to do so would just drive the dealers into the arms of a competing supplier. A supplier might, however, fix a maximum resale price in order to prevent his dealers from exploiting a monopoly position. . . . [S]uppose that State Oil, perhaps to encourage . . . dealer services . . . has spaced its dealers sufficiently far apart to limit competition among them (or even given each of them an exclusive territory); and suppose further that Union 76 is a sufficiently distinctive and popular brand to give the dealers in it at least a modicum of monopoly power. Then State Oil might want to place a ceiling on the dealers' resale prices in order to prevent them from exploiting that monopoly power fully. It would do this not out of disinterested malice, but in its commercial self-interest. The higher the price at which gasoline is resold, the smaller the volume sold, and so the lower the profit to the supplier if the higher profit per gallon at the higher price is being snared by the dealer." 93 F. 3d, at 1362.

See also R. Bork, The Antitrust Paradox 281–282 (1978) ("There could, of course, be no anticonsumer effect from [the type of price fixing considered in *Albrecht*], and one suspects that the paper has a legitimate interest in keeping subscriber prices down in order to increase circulation and maximize revenues from advertising").

We recognize that the *Albrecht* decision presented a number of theoretical justifications for a *per se* rule against vertical maximum price fixing. But criticism of those premises abounds. The *Albrecht* decision was grounded in the fear that maximum price fixing by suppliers could interfere with dealer freedom. 390 U. S., at 152. In response, as one commentator has pointed out, "the ban on maximum resale price limitations declared in *Albrecht* in the name of 'dealer freedom' has actually prompted many suppliers to integrate forward into distribution, thus eliminating the very independent trader for whom *Albrecht* professed solicitude."

8 P. Areeda, Antitrust Law ¶ 1635, p. 395 (1989) (hereinafter Areeda). For example, integration in the newspaper industry since *Albrecht* has given rise to litigation between independent distributors and publishers. See P. Areeda & H. Hovenkamp, *supra*, ¶ 729.7, pp. 599–614 (1996 Supp.).

The *Albrecht* Court also expressed the concern that maximum prices may be set too low for dealers to offer consumers essential or desired services. 390 U. S., at 152–153. But such conduct, by driving away customers, would seem likely to harm manufacturers as well as dealers and consumers, making it unlikely that a supplier would set such a price as a matter of business judgment. See, *e. g.*, Lopatka, Stephen Breyer and Modern Antitrust: A Snug Fit, 40 Antitrust Bull. 1, 60 (1995); Blair & Lang, *Albrecht* After *ARCO:* Maximum Resale Price Fixing Moves Toward the Rule of Reason, 44 Vand. L. Rev. 1007, 1034 (1991). In addition, *Albrecht* noted that vertical maximum price fixing could effectively channel distribution through large or specially advantaged dealers. 390 U. S., at 153. It is unclear, however, that a supplier would profit from limiting its market by excluding potential dealers. See, *e. g.*, Easterbrook 905–908. Further, although vertical maximum price fixing might limit the viability of inefficient dealers, that consequence is not necessarily harmful to competition and consumers. See, *e. g.*, *id.*, at 907; Lopatka, *supra*, at 60.

Finally, *Albrecht* reflected the Court's fear that maximum price fixing could be used to disguise arrangements to fix minimum prices, 390 U. S., at 153, which remain illegal *per se*. Although we have acknowledged the possibility that maximum pricing might mask minimum pricing, see *Maricopa County*, 457 U. S., at 348, we believe that such conduct—as with the other concerns articulated in *Albrecht*—can be appropriately recognized and punished under the rule of reason. See, *e. g.*, Easterbrook 901–904; see also Pitofsky, In Defense of Discounters: The No-Frills Case for a *Per Se*

Rule Against Vertical Price Fixing, 71 Geo. L. J. 1487, 1490, n. 17 (1983).

Not only are the potential injuries cited in *Albrecht* less serious than the Court imagined, the *per se* rule established therein could in fact exacerbate problems related to the unrestrained exercise of market power by monopolist-dealers. Indeed, both courts and antitrust scholars have noted that *Albrecht*'s rule may actually harm consumers and manufacturers. See, *e. g.*, *Caribe BMW, Inc.* v. *Bayerische Motoren Werke Aktiengesellschaft*, 19 F. 3d 745, 753 (CA1 1994) (Breyer, C. J.); Areeda ¶ 1636a, at 395; G. Mathewson & R. Winter, Competition Policy and Vertical Exchange 13–14 (1985). Other commentators have also explained that *Albrecht*'s *per se* rule has even more potential for deleterious effect on competition after our decision in *GTE Sylvania*, because, now that vertical nonprice restrictions are not unlawful *per se*, the likelihood of dealer monopoly power is increased. See, *e. g.*, Easterbrook 890, n. 20; see also *ARCO*, 495 U. S., at 343, n. 13. We do not intend to suggest that dealers generally possess sufficient market power to exploit a monopoly situation. Such retail market power may in fact be uncommon. See, *e. g.*, *Business Electronics*, 485 U. S., at 727, n. 2; *GTE Sylvania*, 433 U. S., at 54. Nor do we hold that a ban on vertical maximum price fixing inevitably has anticompetitive consequences in the exclusive dealer context.

After reconsidering *Albrecht*'s rationale and the substantial criticism the decision has received, however, we conclude that there is insufficient economic justification for *per se* invalidation of vertical maximum price fixing. That is so not only because it is difficult to accept the assumptions underlying *Albrecht*, but also because *Albrecht* has little or no relevance to ongoing enforcement of the Sherman Act. See *Copperweld Corp.* v. *Independence Tube Corp.*, 467 U. S. 752, 777, and n. 25 (1984). Moreover, neither the parties nor any

of the *amici curiae* have called our attention to any cases in which enforcement efforts have been directed solely against the conduct encompassed by *Albrecht*'s *per se* rule.

Respondents argue that reconsideration of *Albrecht* should require "persuasive, expert testimony establishing that the *per se* rule has distorted the market." Brief for Respondents 7. Their reasoning ignores the fact that *Albrecht* itself relied solely upon hypothetical effects of vertical maximum price fixing. Further, *Albrecht*'s dire predictions have not been borne out, even though manufacturers and suppliers appear to have fashioned schemes to get around the *per se* rule against vertical maximum price fixing. In these circumstances, it is the retention of the rule of *Albrecht*, and not, as respondents would have it, the rule's elimination, that lacks adequate justification. See, *e. g.*, *GTE Sylvania*, *supra*, at 58–59.

Respondents' reliance on *Toolson* v. *New York Yankees, Inc.*, 346 U. S. 356 (1953) *(per curiam)*, and *Flood* v. *Kuhn*, 407 U. S. 258 (1972), is similarly misplaced, because those decisions are clearly inapposite, having to do with the antitrust exemption for professional baseball, which this Court has described as "an aberration . . . rest[ing] on a recognition and an acceptance of baseball's unique characteristics and needs," *id.*, at 282. In the context of this case, we infer little meaning from the fact that Congress has not reacted legislatively to *Albrecht*. In any event, the history of various legislative proposals regarding price fixing seems neither clearly to support nor to denounce the *per se* rule of *Albrecht*. Respondents are of course free to seek legislative protection from gasoline suppliers of the sort embodied in the Petroleum Marketing Practices Act, 92 Stat. 322, 15 U. S. C. § 2801 *et seq.* For the reasons we have noted, however, the remedy for respondents' dispute with State Oil should not come in the form of a *per se* rule affecting the conduct of the entire marketplace.

C

Despite what Chief Judge Posner aptly described as *Albrecht*'s "infirmities, [and] its increasingly wobbly, moth-eaten foundations," 93 F. 3d, at 1363, there remains the question whether *Albrecht* deserves continuing respect under the doctrine of *stare decisis.* The Court of Appeals was correct in applying that principle despite disagreement with *Albrecht,* for it is this Court's prerogative alone to overrule one of its precedents.

We approach the reconsideration of decisions of this Court with the utmost caution. *Stare decisis* reflects "a policy judgment that 'in most matters it is more important that the applicable rule of law be settled than that it be settled right.'" *Agostini* v. *Felton,* 521 U. S. 203, 235 (1997) (quoting *Burnet* v. *Coronado Oil & Gas Co.,* 285 U. S. 393, 406 (1932) (Brandeis, J., dissenting)). It "is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne* v. *Tennessee,* 501 U. S. 808, 827 (1991). This Court has expressed its reluctance to overrule decisions involving statutory interpretation, see, *e. g., Illinois Brick Co.* v. *Illinois,* 431 U. S. 720, 736 (1977), and has acknowledged that *stare decisis* concerns are at their acme in cases involving property and contract rights, see, *e. g., Payne,* 501 U. S., at 828. Both of those concerns are arguably relevant in this case.

But "*[s]tare decisis* is not an inexorable command." *Ibid.* In the area of antitrust law, there is a competing interest, well represented in this Court's decisions, in recognizing and adapting to changed circumstances and the lessons of accumulated experience. Thus, the general presumption that legislative changes should be left to Congress has less force with respect to the Sherman Act in light of the accepted view that Congress "expected the courts to give shape to the statute's broad mandate by drawing on common-law tra-

dition." *National Soc. of Professional Engineers* v. *United States,* 435 U. S. 679, 688 (1978). As we have explained, the term "restraint of trade," as used in § 1, also "invokes the common law itself, and not merely the static content that the common law had assigned to the term in 1890." *Business Electronics,* 485 U. S., at 732; see also *GTE Sylvania,* 433 U. S., at 53, n. 21; *McNally* v. *United States,* 483 U. S. 350, 372–373 (1987) (STEVENS, J., dissenting). Accordingly, this Court has reconsidered its decisions construing the Sherman Act when the theoretical underpinnings of those decisions are called into serious question. See, *e. g., Copperweld Corp., supra,* at 777; *GTE Sylvania, supra,* at 47–49; cf. *Tigner* v. *Texas,* 310 U. S. 141, 147 (1940).

Although we do not "lightly assume that the economic realities underlying earlier decisions have changed, or that earlier judicial perceptions of those realities were in error," we have noted that "different sorts of agreements" may amount to restraints of trade "in varying times and circumstances," and "[i]t would make no sense to create out of the single term 'restraint of trade' a chronologically schizoid statute, in which a 'rule of reason' evolves with new circumstances and new wisdom, but a line of *per se* illegality remains forever fixed where it was." *Business Electronics, supra,* at 731–732. Just as *Schwinn* was "the subject of continuing controversy and confusion" under the "great weight" of scholarly criticism, *GTE Sylvania, supra,* at 47–48, *Albrecht* has been widely criticized since its inception. With the views underlying *Albrecht* eroded by this Court's precedent, there is not much of that decision to salvage. See, *e. g., Neal* v. *United States,* 516 U. S. 284, 295 (1996); *Patterson* v. *McLean Credit Union,* 491 U. S. 164, 173 (1989); *Rodriguez de Quijas* v. *Shearson/American Express, Inc.,* 490 U. S. 477, 480–481 (1989).

Although the rule of *Albrecht* has been in effect for some time, the inquiry we must undertake requires considering "'the effect of the antitrust laws upon vertical distributional

restraints in the American economy today.'" *GTE Sylvania, supra,* at 53, n. 21 (quoting *Schwinn,* 388 U. S., at 392 (Stewart, J., concurring in part and dissenting in part)). As the Court noted in *ARCO,* 495 U. S., at 336, n. 6, there has not been another case since *Albrecht* in which this Court has "confronted an unadulterated vertical, maximum-price-fixing arrangement." Now that we confront *Albrecht* directly, we find its conceptual foundations gravely weakened.

In overruling *Albrecht,* we of course do not hold that all vertical maximum price fixing is *per se* lawful. Instead, vertical maximum price fixing, like the majority of commercial arrangements subject to the antitrust laws, should be evaluated under the rule of reason. In our view, rule-of-reason analysis will effectively identify those situations in which vertical maximum price fixing amounts to anticompetitive conduct.

There remains the question whether respondents are entitled to recover damages based on State Oil's conduct. Although the Court of Appeals noted that "the district judge was right to conclude that if the rule of reason is applicable, Khan loses," 93 F. 3d, at 1362, its consideration of this case was necessarily premised on *Albrecht*'s *per se* rule. Under the circumstances, the matter should be reviewed by the Court of Appeals in the first instance. We therefore vacate the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

BATES *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 96–7185. Argued October 7, 1997—Decided November 4, 1997

James and Laurenda Jackson owned and operated Education America, Inc., a for-profit consulting and management firm for technical and vocational schools. In 1986, the Jacksons acquired the Acme Institute of Technology, a not-for-profit technical school, and appointed petitioner Bates, then vice president of Education America, to serve as Acme's treasurer. In 1987, James Jackson, as Acme's president, signed a program participation agreement with the Department of Education that authorized the school to receive student loan checks through the Title IV Guaranteed Student Loan (GSL) program. See 20 U. S. C. § 1070 *et seq.* Acme's participation hinged upon both its continued accreditation by an approved accrediting association and Jackson's promise to comply with all applicable statutes and regulations. Under the GSL program, banks and other private institutions lent money to Acme students for tuition and other educational expenses. The Federal Government administered the program and guaranteed payment if a student borrower defaulted. Acme would receive a loan check directly from the lender, endorse the check, and credit the amount of the check against the student's tuition debt. If a GSL student withdrew from Acme before the term ended, the governing regulations required the school to return to the lender, within a specified time, a portion of the loan proceeds. The lender would then deduct the refund from the amount that the student owed. If Acme did not repay the lender, the student—and if she defaulted, the Government—would remain liable for the full amount of the loan. In late 1987, pursuant to decisions made by the Jacksons and Bates, Acme initiated a pattern and practice of not making GSL refunds. Bates gave priority to the payment of a management fee to Education America and salaries to the Jacksons, and instructed other Acme employees not to make the required GSL refunds. Bates, as Education America's vice president, wrote a letter that stated the unmade refunds were solely the responsibility and decision of the corporate office. By March 1989, Acme's refund liability had grown to approximately $85,000. Acme subsequently lost its accreditation, and, in 1990, the Department of Education notified the school that Acme was no longer eligible to participate in the GSL program. A few months later, Acme ceased operations. In 1994, Bates was indicted on twelve counts of "knowingly

and willfully misapply[ing]" federally insured student loan funds, in violation of 20 U. S. C. § 1097(a) (1988 ed.) and 18 U. S. C. § 2. Agreeing with Bates that conviction under § 1097(a) for willful misapplication required an allegation of the defendant's "intent to injure or defraud the United States," the District Court dismissed the indictment because it lacked such an allegation. The Seventh Circuit vacated the judgment and reinstated the prosecution, concluding that § 1097(a) required the Government to prove only that Bates knowingly and willfully misapplied Title IV funds.

Held: Specific intent to injure or defraud someone, whether the United States or another, is not an element of the misapplication of funds proscribed by § 1097(a). The text of § 1097(a) does not include an "intent to defraud" requirement, and this Court ordinarily resists reading words into a statute that do not appear on its face. In contrast, 20 U. S. C. § 1097(d), enacted at the same time as § 1097(a), has an "intent to defraud" requirement. It is generally presumed that Congress acts intentionally and purposely where it includes particular language in one section of a statute but omits it in another. See *Russello* v. *United States*, 464 U. S. 16, 23. Despite the contrasting language of §§ 1097(a) and (d), Bates relies on decisions interpreting 18 U. S. C. § 656, which proscribes willful misapplication of bank funds. An "intent to defraud" element, originally included in the text of § 656, was dropped from the text during a technical revision of the criminal code. In view of that history, courts have continued to hold that an "intent to defraud" is an element of the offense described in § 656. Assuming, without deciding, that § 656 is correctly read to retain an "intent to defraud" element, § 1097(a) never contained such a requirement, one present from the start and still contained in § 1097(d). Neither text nor history warrants adoption of Bates's construction of § 1097(a). Nor does § 1097(a) set a trap for the unwary. As construed by the Seventh Circuit, § 1097(a) catches only the transgressor who intentionally exercises unauthorized dominion over federally insured student loan funds for his own benefit or for the benefit of a third party. So read, the measure does not render felonious innocent maladministration of a business enterprise or a merely unwise use of funds. Furthermore, a 1992 amendment adding "fails to refund" to § 1097(a)'s text does not demonstrate that the deliberate failure to return GSL funds, without an intent to defraud, became an offense within § 1097(a)'s compass only under the statute's current text. The added words simply foreclose any argument that § 1097(a) does not reach the failure to make refunds. Cf. *Commissioner* v. *Estate of Sternberger*, 348 U. S. 187, 194. Finally, as nothing in the text, structure, or history of § 1097(a) warrants importation of an "intent to de-

fraud" requirement into the misapplication proscription, the rule of lenity does not come into play in this case. See *United States* v. *Wells*, 519 U. S. 482, 499. Pp. 29–33.

96 F. 3d 964, affirmed.

GINSBURG, J., delivered the opinion for a unanimous Court.

C. Richard Oren, by appointment of the Court, 520 U. S. 1114, argued the cause and filed briefs for petitioner.

Lisa Schiavo Blatt argued the cause for the United States. With her on the brief were *Acting Solicitor General Dellinger*, *Acting Assistant Attorney General Keeney*, *Deputy Solicitor General Dreeben*, and *Daniel S. Goodman.**

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns the meaning of § 490(a) (Pub. L. 99–498), 100 Stat. 1491, as added, 20 U. S. C. § 1097(a) (1988 ed.), which declared it a felony "knowingly and willfully" to misapply student loan funds insured under Title IV of the Higher Education Act of 1965. The United States acknowledges that § 1097(a) demanded allegation and proof of the defendant's intentional conversion of loan funds to his own use or the use of a third party. The question presented is whether § 1097(a) demanded, in addition, allegation and proof that the defendant specifically intended to injure or defraud someone—either the United States as loan guarantor, as the District Court read the measure, or another. We hold, in accord with the Court of Appeals, that specific intent to injure or defraud someone, whether the United States or another, is not an element of the misapplication of funds proscribed by § 1097(a).

I

The indictment in this case, App. 2–12, alleged the following facts. James and Laurenda Jackson owned and operated

**Lisa B. Kemler* filed a brief for the National Association of Criminal Defense Lawyers as *amicus curiae* urging reversal.

Education America, Inc., a for-profit consulting and management firm for technical and vocational schools. In December 1986, the Jacksons acquired the Acme Institute of Technology, a not-for-profit technical school located in South Bend, Indiana, which offered associate degree programs in electronic engineering, and tool, die, and plastics mold design. After the acquisition, the Jacksons appointed Bates—then the vice president of Education America—to serve as treasurer of Acme's board of trustees.

On April 30, 1987, James Jackson, as president of Acme, signed a program participation agreement with the Department of Education that authorized the school to receive student loan checks through the Title IV federal Guaranteed Student Loan (GSL) program. See 20 U. S. C. § 1070 *et seq.* (1988 ed.).[1] Acme's participation hinged upon both its continued accreditation by an approved accrediting association and Jackson's promise to comply with all applicable statutes and regulations.

Under the GSL program, banks and other private institutions lent money to Acme students for tuition and other educational expenses. The Federal Government administered the program and guaranteed payment if a student borrower defaulted. Acme would receive a loan check directly from the lender, endorse the check, and credit the amount of the check against the student's tuition debt. If a GSL student withdrew from Acme before the term ended, the governing regulations, 34 CFR §§ 668.22 and 682.606 (1990), required Acme to return to the lender a portion of the loan proceeds, based upon how late in the term the student

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[1] In 1992, Congress amended the GSL program and renamed it the Federal Family Education Loan Program. Higher Education Amendments of 1992, Pub. L. 102–325, § 411(a)(1), 106 Stat. 510. Because the indictment in this case concerns only pre-1992 conduct, we refer to the program as the GSL program.

withdrew and how much the student had paid at that point.[2] Refunds to the lender, the applicable regulation, § 682.607, instructed, were to be made within a specified period (30 or 60 days) following the student's withdrawal. The lender would then deduct the refund from the amount that the student owed. If Acme did not refund the loans to the lender, the student—and if she defaulted, the Government—would remain liable for the full amount of the loan.

Around the end of 1987, pursuant to decisions made by the Jacksons and Bates, Acme initiated a pattern and practice of not making GSL refunds. On April 14, 1988, James Jackson sent a letter to Acme's director ordering him, effective the following month, to "tally [Acme's] receipts for the preceding month and remit a management fee of 10% of [the] total receipts to Education America, Inc." App. 4. The letter also told the director to pay the Jacksons a monthly salary. The letter further stated: "If the above creates a cash shortfall in your school, money will be loaned back to you to cover the shortfall." See *ibid.* Bates, serving as Acme's chief financial officer, permitted these fee and salary payments to take priority over the GSL refunds, and specifically instructed other Acme employees not to make the required GSL refunds. In late 1988 or early 1989, Education America officials ordered Acme to stop using a special bank account that segregated the unearned student-loaned tuition from the general account. Acme's former owners had used this special account to ensure that funds were always available for timely refunds to lenders.

By October 1988, Acme had amassed roughly $55,000 in unmade GSL refunds. Acme's financial aid director sent James Jackson a letter in January 1989 to draw Jackson's attention to the gravity of the unmade refunds, which then

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[2] The Department of Education since has consolidated the requirements of §§ 668.22 and 682.606 into the current § 668.22. See 59 Fed. Reg. 61211 (1994).

totaled $68,000. By March 1989, Acme's refund liability had grown to approximately $85,000. In a letter dated March 13, 1989, Bates, as Education America's vice president, released Acme's financial aid director from all responsibility concerning GSL refunds, as she had requested. The letter stated that unmade refunds were "solely the responsibility and decision of the corporate office." See *id.*, at 5.

In April 1989, the National Association of Trade and Technical Schools, a national accrediting association, conducted an on-site audit of Acme to determine whether it should continue to accredit the school. A month later, the Association reported to the Department of Education that Acme had "inadequately demonstrated its ability to make appropriate and timely refunds," and had "loaned substantial amounts of money to [James Jackson,] the chief trustee." The report also noted evidence that management fees had been "upstream[ed]" to Education America. See *ibid.* Acme subsequently lost its accreditation, and the Department of Education notified the school on April 7, 1990, that effective March 8, 1990, Acme was no longer eligible to participate in the GSL program. On June 5, 1990, Acme ceased operations. During Bates's tenure as Acme's chief financial officer, the school amassed $139,649 in unmade refunds, not including interest and certain special allowances.

On September 8, 1994, a federal grand jury indicted Bates on twelve counts of "knowingly and willfully misapply[ing]," *id.*, at 11, federally insured student loan funds between January 15, 1990, and June 15, 1990, in violation of 20 U. S. C. § 1097(a) (1988 ed.) and 18 U. S. C. § 2 (1988 ed.). On February 7, 1995, Bates filed a motion to dismiss the indictment. He argued, and the District Court agreed, that conviction under § 1097(a) for willful misapplication required an allegation of the defendant's "intent to injure or defraud the United States." 96 F. 3d 964, 967 (CA7 1996). Because the indictment lacked such an allegation, the District Court dismissed it.

On appeal, the Seventh Circuit vacated the District Court's judgment and reinstated the prosecution. 96 F. 3d 964 (1996). The Court of Appeals concluded that § 1097(a) required the Government to prove only that "the defendant misapplied—i. e., converted—Title IV funds and that he did so knowingly and willfully." *Id.*, at 970. The Seventh Circuit's decision conflicts with the Eleventh Circuit's decision in *United States* v. *Kammer*, 1 F. 3d 1161, 1165–1166 (1993), which held that § 1097(a) requires the Government to allege and prove that the defendant had an "intent to defraud" the United States. We granted certiorari to resolve this conflict, 519 U. S. 1108 (1997), and now affirm the Seventh Circuit's judgment.

II

Our inquiry begins with the text of 20 U. S. C. § 1097(a) (1988 ed.). At the time of the offenses charged in the indictment, the measure provided in relevant part: "Any person who knowingly and willfully embezzles, misapplies, steals, or obtains by fraud, false statement, or forgery any funds, assets, or property provided or insured under this subchapter . . . shall be fined not more than $10,000 or imprisoned for not more than 5 years, or both."[3]

The text of § 1097(a) does not include an "intent to defraud" state of mind requirement, and we ordinarily resist reading words or elements into a statute that do not appear on its face. In contrast, § 1097(d), enacted at the same time as § 1097(a), makes it a felony "knowingly and willfully" to "destro[y] or concea[l] any record relating to the provision of assistance under [Title IV] *with intent to defraud the United States*" (emphasis added). As this Court has reiterated: "'[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intention-

[3] Higher Education Amendments of 1986, Pub. L. 99–498, § 490(a), 100 Stat. 1491.

ally and purposely in the disparate inclusion or exclusion.'" *Russello* v. *United States*, 464 U. S. 16, 23 (1983) (quoting *United States* v. *Wong Kim Bo*, 472 F. 2d 720, 722 (CA5 1972)).

Despite the contrasting language of §§ 1097(a) and (d), Bates urges that an "intent to defraud" is an essential, albeit unexpressed, element of the offenses charged against him. For this argument, Bates relies primarily upon the District Court's reasoning in this case. The District Court, like the Eleventh Circuit in *United States* v. *Kammer*, 1 F. 3d, at 1165, looked to decisions interpreting 18 U. S. C. § 656, which proscribes willful misapplication of bank funds. The Courts of Appeals unanimously agree that § 656 requires the Government to prove that the defendant acted with an intent to "injure or defraud" the bank or "deceive" a bank officer,[4] even though the statute, on its face, contains no such element.[5] In another case involving a different defendant named Bates, the Seventh Circuit explained why § 656 included an "intent to injure or defraud" element:

> "The current statutory language does not expressly require any proof of [fraudulent or injurious] intent.

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[4] *United States* v. *Whitlock*, 663 F. 2d 1094, 1102 (CADC 1980); *United States* v. *Wester*, 90 F. 3d 592, 595 (CA1 1996); *United States* v. *Castiglia*, 894 F. 2d 533, 537 (CA2), cert. denied, 497 U. S. 1004 (1990); *United States* v. *Thomas*, 610 F. 2d 1166, 1174 (CA3 1979); *United States* v. *Duncan*, 598 F. 2d 839, 858 (CA4), cert. denied, 444 U. S. 871 (1979); *United States* v. *McCord*, 33 F. 3d 1434, 1448 (CA5 1994), cert. denied *sub nom. Haley* v. *United States*, 515 U. S. 1132 (1995); *United States* v. *Woods*, 877 F. 2d 477, 479 (CA6 1989); *United States* v. *Crabtree*, 979 F. 2d 1261, 1266 (CA7 1992), cert. denied, 510 U. S. 878 (1993); *United States* v. *Ness*, 665 F. 2d 248, 249 (CA8 1981); *United States* v. *Wolfswinkel*, 44 F. 3d 782, 786 (CA9 1995); *United States* v. *Evans*, 42 F. 3d 586, 589 (CA10 1994); *United States* v. *Morales*, 978 F. 2d 650, 652 (CA11 1992).

[5] Section 656 currently provides that any person "connected in any capacity with any Federal Reserve bank" or a related organization commits a felony if she "embezzles, abstracts, purloins or willfully misapplies any of the moneys, funds or credits" of the bank or related organization.

> Originally the statute did require proof of intent to 'injure or defraud' the bank or 'deceive' a bank officer but these words were inadvertently dropped in the course of a technical revision of the criminal code. To avoid making every unauthorized loan by a bank officer a willful misapplication of bank funds, courts . . . read the missing words back into the section." *United States* v. *Bates*, 852 F. 2d 212, 215 (1988).

Assuming, without deciding, that the Seventh Circuit's reading of § 656 is correct, § 1097(a) never contained, as § 656 did, an "intent to defraud" requirement, a requirement present from the start and still contained in § 1097(d). In short, there is here neither text nor history warranting the construction of § 1097(a) that Bates urges us to adopt.[6]

Nor does § 1097(a) set a "trap for the unwary," as the Seventh Circuit suggested § 656 would if read to render felonious "every unauthorized loan by a bank officer." See *Bates*, 852 F. 2d, at 215. Under the Seventh Circuit's construction, § 1097(a) catches only the transgressor who intentionally exercises unauthorized dominion over federally insured student loan funds for his own benefit or for the benefit of a third party. "[I]nnocent . . . maladministration of a business enterprise" or a use of funds that is simply "unwise," see Brief for Petitioner 5, does not fit within that construction.[7]

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[6] *Ratzlaf* v. *United States*, 510 U. S. 135 (1994), does not bear on our decision today. *Ratzlaf* decided only, in the particular statutory context of currency structuring, that knowledge of illegality was an element of 31 U. S. C. § 5322(a) as that provision was then framed. *Ratzlaf* did not involve the question presented here regarding § 1097(a), which is whether, *in addition* to a knowledge requirement, the Government must allege and prove an "intent to injure or defraud."

[7] The Seventh Circuit's "working definition" of § 1097(a) reads:

"[W]illful misapplication under § 1097(a) requires the government to allege and prove that the defendant consciously, voluntarily, and intentionally exercised unauthorized control or dominion over federally provided or guaranteed Title IV funds that interfered with the rights of the funds' true owner(s), for the use and benefit of the defendant or a third person,

Bates also relies on a 1992 amendment to § 1097(a), which added "fails to refund" to the provision's text.[8] This change, Bates argues, establishes that the deliberate failure to return GSL funds, without an intent to defraud, was not previously an offense within § 1097(a)'s compass, but became one only under the statute's current text. Congress' 1992 amendment hardly means that § 1097(a) did not previously cover the conduct in question. Cf. *Commissioner* v. *Estate of Sternberger*, 348 U. S. 187, 194 (1955) ("Subsequent amendments have clarified and not changed th[e earlier] principle."). The three added words—"fails to refund"—simply foreclose any argument that § 1097(a) does not reach the failure to make refunds; those words do not make the argument a persuasive one. See H. R. Conf. Rep. No. 102–630, p. 513 (1992) ("[F]ailure to pay refunds does constitute criminal misapplication under current law. Language is added in this bill merely as a clarification.").

Bates finally urges that, to the extent § 1097(a) is ambiguous, the rule of lenity supports interpretation of the provision to include fraudulent intent as an essential element of the offense of knowing and willful misapplication of funds. As we have explained, however, nothing in the text, struc-

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while knowing that such an exercise of control or dominion over the funds was a violation of the law." 96 F. 3d, at 970.

The Government argues that the Seventh Circuit erred in reading § 1097(a) to require proof that a defendant knew his misapplication violated *the law*. Brief for United States 21–22. However, the Government did not challenge by cross-petition any part of the Seventh Circuit's decision, so the question whether the defendant must know his conduct was a violation of the law is not before us.

[8] As amended in 1992, § 1097(a) reads in relevant part:

"Any person who knowingly and willfully embezzles, misapplies, steals, obtains by fraud, false statement, or forgery, or fails to refund any funds, assets, or property provided or insured under this subchapter . . . shall be fined not more than $20,000 or imprisoned not more than 5 years, or both." Higher Education Amendments of 1992, Pub. L. 102–325, § 495, 106 Stat. 631.

ture, or history of § 1097(a) warrants importation of an "intent to defraud" requirement into the misapplication proscription. The rule of lenity, therefore, does not come into play. See *United States* v. *Wells*, 519 U. S. 482, 499 (1997). The Government need not charge or prove that Bates aimed to injure or defraud anyone, nor is it a defense that Bates hoped the Jacksons, the students, or someone else would pay the amount due the lenders so that the federal fisc would suffer no loss.

* * *

For the reasons stated, the judgment of the Court of Appeals for the Seventh Circuit is

Affirmed.

Syllabus

CITY OF MONROE ET AL. *v.* UNITED STATES

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA

No. 97–122. Decided November 17, 1997

Before 1966, the city charter of Monroe, Georgia, did not specify whether a mayoral candidate needed a plurality or a majority vote to win election. In practice, the city used plurality voting until 1966 and majority voting thereafter. In 1966, Georgia's General Assembly amended Monroe's charter to require majority voting, but the change was never submitted for preclearance under § 5 of the Voting Rights Act of 1965. In 1968, the State passed the current Municipal Election Code, § 34A–1407(a) of which contains a rule mandating deference to those municipal charters that provide for plurality voting and a default rule requiring a city whose charter has no plurality-vote provision to use majority voting. Section 34A–1407(a) was precleared by the United States Attorney General. When Monroe submitted its 1990 charter for preclearance, it did not ask to have the charter's majority-vote provision precleared. Nonetheless, the Attorney General objected to the provision and sued Monroe and city officials to enjoin majority voting and require a return to plurality voting. In granting the Government summary judgment, the three-judge District Court rejected Monroe's claim that preclearance of the 1968 state code encompassed Monroe's adoption of a majority system.

Held: Monroe may implement § 34A–1407(a)'s precleared default rule. The section's deference rule does not apply here because Monroe's charter does not have and has not had a plurality-vote provision. Thus, the District Court erred in basing its contrary conclusion on *City of Rome* v. *United States*, 446 U. S. 156, 169–170, n. 6, which concerned only the deference rule. In contrast, this case is controlled by the default rule. It therefore satisfies all of *City of Rome*'s preclearance requirements: Georgia submitted the default rule to the Attorney General in an unambiguous and recordable manner and gave the Attorney General adequate opportunity to determine the purpose of the rule's electoral changes and whether such changes would adversely affect minority voting.

962 F. Supp. 1501, reversed.

PER CURIAM.

The United States claims the city of Monroe, Georgia, did not seek preclearance for majority voting in mayoral elections, as required by § 5 of the Voting Rights Act of 1965, 79 Stat. 439, as amended, 42 U. S. C. § 1973c. The Government seeks to enjoin majority voting and to require Monroe to return to the plurality system it had once used. A three-judge District Court for the Middle District of Georgia agreed with the Government and granted summary judgment. 962 F. Supp. 1501 (1997). The District Court rejected Monroe's claim that the Attorney General's preclearance of a 1968 statewide law encompassed Monroe's adoption of a majority system. On Monroe's motion, this Court stayed enforcement of the judgment. 521 U. S. 1138 (1997). The case is now on appeal, and the judgment must be reversed.

I

The parties agree upon the facts. Until 1966, Monroe's city charter did not specify whether a candidate needed a plurality or a majority vote to win a mayoral election. In practice, the city used plurality voting in its elections until 1966 and majority voting thereafter.

In 1966, the General Assembly of Georgia amended the city's charter to require majority voting in mayoral elections. 1966 Ga. Laws 2459. Because Monroe is a jurisdiction covered by § 5 of the Voting Rights Act, the change had to be precleared. Georgia or Monroe could have sought preclearance by submitting the change to the Attorney General or seeking a declaratory judgment from the United States District Court for the District of Columbia. Neither did, so the 1966 charter amendment was not precleared.

In 1968, the General Assembly passed a comprehensive Municipal Election Code (1968 code), which is still in force today. The statute applies to Monroe and all other municipalities in Georgia. Section 34A–1407(a) of the 1968 code

has two sentences. The first sentence sets forth a rule of deference to municipal charters:

> "If the municipal charter . . . provides that a candidate may be nominated or elected by a plurality . . . , such provision shall prevail."

The second sentence lays down a state-law default rule for all other cities:

> "Otherwise, no candidate shall be . . . elected . . . [without] a majority of the votes cast . . . ." Georgia Municipal Election Code, § 34A–1407(a) (1968 code section or § 34A–1407(a)), 1968 Ga. Laws 977, as amended, Ga. Code Ann. § 21–3–407(a) (1993).

Georgia submitted the 1968 code to the Attorney General for preclearance. Its cover letter stated: "'In view of the variety of laws which heretofore existed, no effort will be made herein to set forth the prior laws superseded by the Municipal Election Code.'" 962 F. Supp., at 1505. The letter then listed the majority-vote provision as a significant change, noting: "'Whether the majority or plurality rule is in effect in the municipal election will depend upon how the municipality's charter is written at present or may be written in [the] future . . . .'" *Ibid.* The Attorney General objected to other provisions of the 1968 code but did not object to § 34A–1407(a), so it was, and is, precleared. The United States does not dispute this conclusion, nor does it claim Georgia's submission was misleading, ambiguous, or otherwise defective.

In 1971, the General Assembly passed a comprehensive revision of Monroe's charter. 1971 Ga. Laws 3227. The 1971 charter made explicit provision for majority voting. Neither Georgia nor Monroe sought to preclear the revisions to the charter.

In 1990, the General Assembly once again amended Monroe's charter and carried forward the majority-vote requirement. This time, Monroe sent the 1990 charter to the Attor-

ney General for preclearance, but the cover letter did not mention the majority-vote provision. The Attorney General objected to it nevertheless, interpreting the submission as effecting a change from plurality to majority voting. The Government filed suit against Monroe and city officials in 1994 and prevailed in the District Court.

II

The 1968 code must be the centerpiece of this case, for it defers where city charters are specific and provides a default rule where they are not. If a city charter requires plurality voting, the deference rule in the first sentence of the 1968 code section allows the municipal charter provision to take effect. Monroe, however, does not have and has not had a plurality-vote provision in its charter. The first sentence simply does not apply here because no charter provision triggers its rule of deference to municipal law. Thus, the second sentence's default rule of state law governs, requiring Monroe to use majority voting. Since the Attorney General precleared the default rule, Monroe may implement it.

The District Court reached a contrary conclusion, relying on a single footnote in *City of Rome* v. *United States*, 446 U. S. 156, 169–170, n. 6 (1980). As the District Court put it: "The *[Rome]* Court's rationale focused squarely on the notion that [Georgia's] submission of the 1968 Statewide Code did not put before the Attorney General the propriety of changes in the voting practices of individual cities." 962 F. Supp., at 1513.

The court's reliance on the footnote was misplaced. Unlike this case, which concerns the default rule in the second sentence of the 1968 code section, the *City of Rome* footnote concerned the deference rule in the first sentence. Rome's pre-1966 charter had an explicit requirement of plurality voting. When the General Assembly amended Rome's charter to provide for majority voting, no one sought to preclear this or other changes. "Rome [later] argue[d] that the Attorney

General, in preclearing the 1968 Code, [had] thereby approved by reference the City's 1966 Charter amendments." *City of Rome* v. *United States*, 472 F. Supp. 221, 233 (DC 1979), aff'd, 446 U. S. 156 (1980); see also 472 F. Supp., at 233 ("Rome argues that its Charter, having been amended in 1966 to provide for majority voting, did not provide for plurality voting in 1968, and that therefore the 1968 Code mandated majority voting").

This Court rejected Rome's claim because the submission of the 1968 code did not submit Rome's 1966 charter for preclearance "in an unambiguous and recordable manner." 446 U. S., at 170, n. 6 (internal quotation marks omitted). Georgia's submission of the 1968 code "informed the Attorney General only of [Georgia's] *decision to defer to local charters* and ordinances regarding majority voting" should a city choose to include a voting provision in its charter as permitted by the deference rule. *Ibid.* (internal quotation marks omitted; emphasis added). Georgia's submission of the 1968 code did not give the Attorney General "an adequate opportunity to determine the purpose of [Rome's 1966] electoral changes and whether they will adversely affect minority voting." *Id.*, at 169, n. 6.

Indeed, Georgia's submission of the 1968 code did not even arguably constitute a request for preclearance of the 1966 change to Rome's charter. Given that the unprecleared charter amendment was a nullity as a matter of federal law, the 1968 code did not change the law in Rome. Rather, it deferred to the plurality-vote requirement in the pre-1966 charter. In this case, however, the 1968 code is what changed the law in Monroe. Accordingly, unless the Attorney General's preclearance of the code was a nullity, there has been no violation of the Voting Rights Act.

In short, *City of Rome* rejected Rome's effort to use the submission of the 1968 code to validate the 1966 municipal electoral changes. *City of Rome*, in discussing the "decision to defer to local charters," recognized that the case arose

under the rule of deference to municipal law. This rule of deference would not have been interpreted to effect a change in the law, and so it did not put the Attorney General on notice of Rome's shift to majority voting. Because municipal law was dispositive under the first sentence of the 1968 code section, *City of Rome* said nothing about the state-law default rule of majority voting in the second sentence.

The instant case, in contrast, is controlled by the default rule of state law set forth in the second sentence. Monroe's pre-1966 charter, unlike Rome's, did not require plurality voting and so could not trigger the rule of deference to municipal law in the first sentence. Thus Monroe, unlike Rome, does not need to breathe life into its invalid 1966 charter to circumvent the rule of deference. After one disregards Monroe's invalid 1966 and 1971 charters, the state-law default rule mandates majority voting.

Cases, such as this one, arising under the default rule satisfy all of the preclearance requirements in *City of Rome*. The Government does not dispute that Georgia submitted the state-law default rule to the Attorney General in an "unambiguous and recordable manner." The submission, furthermore, gave the Attorney General "an adequate opportunity to determine the purpose of the [default-rule] electoral changes and whether they will adversely affect minority voting." In consequence, by preclearing the 1968 code the Attorney General approved the state-law default rule. The controlling default rule having been precleared, Monroe may conduct elections under its auspices.

Because the 1968 code disposes of the case on this undisputed factual record, the Court need not address appellants' other contentions. The judgment of the District Court is

Reversed.

JUSTICE SCALIA, concurring in the judgment.

Although I agree with the result reached by the Court, my reasoning is somewhat different. Like JUSTICE BREYER, I

believe that without knowledge of the contents of city charters the Attorney General could no more have known the precise practical effect of the second sentence of the Georgia statute than he could have known the precise practical effect of the first, see *post*, at 47–48. But there is, nonetheless, a critical difference between the two sentences. As far as appears, the first sentence (giving effect to plurality voting provisions contained in municipal charters) does not effect any change in voting. To think it did, one would have to suppose that prior to the statute various municipalities were ignoring their charters, which is most unlikely. So the first sentence did not inform the Attorney General "in some unambiguous and recordable manner" that a change was afoot, see *City of Rome* v. *United States*, 446 U. S. 156, 169, n. 6 (1980) (internal quotation marks omitted).

The second sentence, however, sets forth a default rule of majority voting for all municipalities that have not treated the matter in their charters. To think that this effects a change, one need only believe that some municipalities have no charter provision on point, and that a subset of those have adopted a practice of plurality voting. Such a belief is not only reasonable; it is virtually essential unless one is to consider the statute pointless. As to the second sentence, therefore, the Attorney General ought to have known that he was approving a switch to majority voting in some municipalities. If that seemed to him possibly troublesome, I think the burden was upon him to inquire further, and not upon the State, every time it enacts a statewide statute affecting voting, to submit a city-by-city breakdown of the consequences. *City of Rome* need not and should not be extended that far.

JUSTICE SOUTER, with whom JUSTICE BREYER joins, dissenting.

In 1968 the Georgia Legislature enacted a Municipal Election Code with the following provisions governing the alternatives of plurality and majority voting:

> "If the municipal charter . . . provides that a candidate may be nominated or elected by a plurality of the votes cast . . . , such provision shall prevail. Otherwise, no candidate shall be . . . elected to public office in any election unless such candidate shall have received a majority of the votes cast . . . ." Georgia Municipal Election Code, § 34A–1407(a), 1968 Ga. Laws 977, as amended, Ga. Code Ann. § 21–3–407(a) (1993).

These provisions were applicable in ways that would result in no changes in election practices in communities whose charters (so far as otherwise enforceable) provided that a plurality would suffice, whose charters provided that a majority was required, or whose charters were silent but whose practices had been to require a majority. The first sentence quoted from the code (deferring to plurality provisions) would confirm the practice in the first class of municipalities, while the second sentence (a default provision requiring a majority in all other cases) would confirm the practices in the second and third classes. The new code would, however, require a change in the practice in any community whose municipal charter (so far as otherwise enforceable) was silent on the plurality-majority issue, but in which the practice had been to accept a plurality as sufficient.

The 1968 code was submitted to the Attorney General of the United States for preclearance under § 5 of the Voting Rights Act, 42 U. S. C. § 1973c (since the entire State of Georgia was, and remains, subject to § 5), and the Attorney General approved the provisions in question. In two instances we have been presented with a question whether application of the default provision to effect a change in practice to majority voting was precleared by virtue of the blanket preclearance of the default provision. In the first case, *City of Rome* v. *United States*, 446 U. S. 156 (1980), we answered no; in the second case, this one, the answer should be the same.

In Rome's case, the charter provision that was valid and enforceable when the 1968 code was precleared provided expressly for plurality voting. Therefore, the code's deference

provision applied and the plurality rule remained the rule under the code. Rome argued, however, that the default provision should be applied so as effectively to validate an unprecleared 1966 municipal charter change to an express majority requirement. This Court rejected the argument in these words:

> "We also reject the appellants' argument that the majority vote, runoff election, and numbered posts provisions of the city's charter have already been precleared by the Attorney General because in 1968 the State of Georgia submitted, and the Attorney General precleared, a comprehensive Municipal Election Code that is now Title 34A of the Code of Georgia. Both the relevant regulation, 28 CFR § 51.10 (1979), and the decisions of this Court require that the jurisdiction 'in some unambiguous and recordable manner submit any legislation or regulation in question directly to the Attorney General with a request for his consideration pursuant to the Act,' *Allen* v. *State Board of Elections*, 393 U. S. 544, 571 (1969), and that the Attorney General be afforded an adequate opportunity to determine the purpose of the electoral changes and whether they will adversely affect minority voting in that jurisdiction, see *United States* v. *Board of Commissioners of Sheffield, Ala.*, 435 U. S. 110, 137–138 (1978). Under this standard, the State's 1968 submission cannot be viewed as a submission of the city's 1966 electoral changes, for, as the District Court noted, the State's submission informed the Attorney General only of 'its decision to defer to local charters and ordinances regarding majority voting, runoff elections, and numbered posts,' and 'did not . . . submit in an "unambiguous and recordable manner" all municipal charter provisions, as written in 1968 or as amended thereafter, regarding these issues.' 472 F. Supp. 221, 233 (DC 1979)." 446 U. S., at 169–170, n. 6.

Since the Attorney General had never been shown Rome's 1966 municipal charter change (much less precleared it), he had never had an "adequate opportunity" to determine the purpose and effect of the proposed "electoral chang[e]" from plurality to majority, not in 1966 (because preclearance had not been sought) and not in 1968 (because he was not apprised of the purported 1966 change necessary to produce a majority vote requirement under the 1968 code).

Monroe now claims the benefit of the 1968 code's default provision, in circumstances just like Rome's, with one distinction. Monroe, too, obtained a 1966 charter change purporting to enact a majority requirement, for which Monroe, too, failed to seek preclearance. But Monroe could arguably enforce a majority requirement even if the 1966 unprecleared charter amendment were ignored, simply by applying the code's default provision to the circumstances that preceded the unprecleared 1966 amendment: before that amendment, although Monroe's charter was silent on the plurality-majority issue, the municipal practice (perfectly valid for purposes of § 5) was to accept a plurality as sufficient. Thus, the unprecleared 1966 charter change could be ignored in Monroe's case (as it was in Rome's) and the default provision of the 1968 code would make Monroe a majority vote municipality.

As a predicate for applying the 1968 code to effect majority voting requirements, however, this distinction between Rome's unprecleared 1966 change and Monroe's valid pre-1966 silent charter is not entitled to make any difference. The object of the preclearance requirement is, at a minimum, to apprise the Attorney General of any change in voting practice. Section 5 requires preclearance not only in the case of a change of a voting "standard" that was not in place when the Voting Rights Act took effect, but also of a change in a "practice" or "procedure." 42 U. S. C. § 1973c. The point of the preclearance procedure is to determine whether the change proposed reflects either a "purpose" or will have

the "effect" of forbidden abridgment of voting rights. *Ibid.* A new practice and a new effect could result not only from applying the code's default provision to an invalid (because unprecleared) charter revision, but also from applying it to a perfectly valid charter provision and practice. In either case, on the sensible reasoning of *City of Rome*, there can be no preclearance of a new practice unless the Attorney General is unambiguously put on notice of it. See 446 U. S., at 169–170, n. 6. Thus, Monroe is in no different position from Rome. Neither Rome nor the State ever disclosed the 1966 charter change on which the default provision might operate to provide a new majority vote requirement; neither Monroe nor the State ever disclosed the pre-1966 charter silence on which the default provision might operate to provide a new majority vote requirement. Alternative analyses, leading to the conclusion that the Attorney General's preclearance of the relevant section of the 1968 code also precleared its undisclosed effects, are not only at odds with the unambiguous language of § 5 of the Voting Rights Act, but imply that the Attorney General was quite the cavalier when he approved the default provision in 1968. Since no particular charter provisions were submitted to him along with the 1968 code, *City of Rome*, *supra*, he was not on notice of any particular effect that might result from application of the default provision. It is therefore unreasonable to suppose that his approval of the code was meant to preclear its undisclosed applications even as to otherwise valid charter provisions and municipal practices.*

*My analysis entails a modest but nonetheless discernible scope for the Attorney General's preclearance of the 1968 deferral and default provisions. The preclearance may have left the provisions enforceable insofar as they would result in ratification of prior, valid municipal practices (assuming that preclearance was necessary as to such applications); in any case, the preclearance amounted to findings that the default provision did not as such represent an intent to affect minority voting adversely, and that some applications of the provision would presumably be possible without adverse effects.

JUSTICE BREYER, with whom JUSTICE SOUTER joins, dissenting.

City of Rome v. *United States*, 446 U. S. 156 (1980), focused upon a change in Rome, Georgia's, method of electing city officials—a change from "first-past-the-post" (plurality wins) to "run-off" (majority needed to win). The change took place in 1966. The change was of a kind that could have made it more difficult for newly enfranchised black voters to elect a mayor (*e. g.*, where the black population of a town amounted, say, to 35% of all voters). The change had not been precleared, though § 5 of the Voting Rights Act of 1965, as amended, 42 U. S. C. § 1973c, required preclearance. In 1968, however, Georgia had precleared a different change in its law. Georgia had submitted, and the Attorney General had precleared, a comprehensive Municipal Election Code that provided, in relevant part:

> "If the municipal charter . . . provides that a candidate may be nominated or elected by a plurality of the votes cast . . . , such provision shall prevail. Otherwise, no candidate shall be . . . elected to public office in any election unless such candidate shall have received a majority of the votes cast . . . ." Georgia Municipal Election Code, § 34A–1407(a), 1968 Ga. Laws 977, as amended, Ga. Code Ann. § 21–3–407(a) (1993).

Rome argued that the Attorney General's preclearance of this 1968 change in effect precleared the plurality-to-majority change that Rome had made two years earlier. The Court rejected Rome's argument.

The case before us now involves another Georgia city, the city of Monroe. Monroe, like Rome, made a change in its system for electing city officials—a change from "first-past-the-post" (plurality wins) to "run-off" (majority needed to win). Monroe, like Rome, made the change in 1966. And, Monroe's change, like Rome's change, was not precleared. Monroe, like Rome, argues that the Attorney General's pre-

clearance of Georgia's 1968 change in effect precleared its change to a majority system. Monroe acknowledges that this Court, in *City of Rome*, *supra*, rejected Rome's similar claim. But it asks us to note probable jurisdiction in part to "address the impact of the Attorney General's preclearance of the 1968 Municipal Elections Code as it relates to the majority vote requirement." Juris. Statement 17. In my view, the circumstances here are virtually identical to those at issue in *City of Rome*, and this Court's rejection of Rome's argument there requires us to reject Monroe's similar argument here.

I rest this conclusion upon what the parties argued before the Court in *City of Rome* and what the Court wrote. Rome, like Monroe, claimed that, in preclearing the 1968 statewide statute, the Attorney General had precleared its local majority system. The reply, by the United States, in *City of Rome,* included the following argument:

> "In its 1968 submission, the State did not 'submit' the changes as they applied to the City of Rome. There was no explanation of how, or even whether, the City's procedures were changed. In order to 'submit' a new procedure, the change must be clearly explained to the Attorney General, 28 C.F.R. 51.10; he cannot reasonably be held to be put on notice of the election procedures for every municipality when an act with statewide effect is submitted. As this Court [has] held, preclearance cannot occur until the particular change has been submitted to the Attorney General and he has been afforded an opportunity to assess its purpose and its effect on minority voting in *that* jurisdiction." Brief for Appellees in *City of Rome* v. *United States*, O. T. 1979, No. 78–1840, pp. 69–70 (citation omitted).

This Court, accepting the argument of the United States, wrote:

> "Both the relevant regulation, 28 CFR § 51.10 (1979), and the decisions of this Court require that the jurisdiction 'in some unambiguous and recordable manner submit any legislation or regulation in question directly to the Attorney General with a request for his consideration pursuant to the Act,' and that the Attorney General be afforded an adequate opportunity to determine the purpose of the electoral changes and whether they will adversely affect minority voting in that jurisdiction. Under this standard, the State's 1968 [preclearance] submission cannot be viewed as a submission of the city's 1966 electoral changes, for, as the District Court noted, the State's submission informed the Attorney General only of 'its decision to defer to local charters and ordinances regarding majority voting, . . .' and 'did not . . . submit in an "unambiguous and recordable manner" all municipal charter provisions, as written in 1968 or as amended thereafter, regarding th[is] issu[e].'" *City of Rome* v. *United States*, *supra*, at 169–170, n. 6 (citations omitted).

It seems to me that this statement disposes of the case before us. The statement points out that Georgia's 1968 submission did not describe the effect of its 1968 changes, town by town, in each of Georgia's more than 500 towns and cities. The statement specifically says that Georgia's simple "submission" of its 1968 comprehensive municipal code did not preclear Rome's "1966 electoral chang[e]" because Georgia did not also "submit" the relevant "municipal charter provisions, as written in 1968 or as amended thereafter." Georgia did not submit Monroe's charter to the Attorney General in 1968 any more than it submitted Rome's; nor is there any reason to believe that the Attorney General knew the details of Monroe's circumstances any more than he knew the details of Rome's. Hence, as the District Court concluded in this case, the 1968 preclearance did not preclear Monroe's earlier 1966 change. *City of Rome*, *supra*.

The majority's decision to the contrary rests upon one factual difference between Rome and Monroe. The difference consists of the fact that Rome's original pre-1966 "first-past-the-post" plurality system was written into Rome's city charter. But Monroe's original pre-1966 "first-past-the-post" plurality system was a matter of practice. Its pre-1966 city charter was silent. This difference means that, had a court set aside the 1966 changes in each city, and were no other change to have taken place, then Rome would have been left with a city charter that prescribed a plurality rule, while Monroe would have been left with a silent city charter and a plurality practice. The precleared 1968 state law, if left free to operate on these different circumstances, would have left Rome with a plurality rule (for its pre-1966 city charter contained that rule), but would have changed Monroe's plurality practice to a majority practice (for its pre-1966 city charter was silent).

This complex difference, in my view, is irrelevant. The Attorney General, in 1968, was no more likely to have known about Monroe's change from "plurality-practice" to "majority-charter" than to have known about Rome's change from "plurality-charter" to "majority-charter." Nor is there any reason to believe the Attorney General, in 1968, would have wanted to approve previously unprecleared changes of the former, but not of the latter, variety. There is no more reason to believe that the Attorney General, had he known about Monroe's 1966 change, would have approved the application of the 1968 law to Monroe, than to believe that the Attorney General, had he known about Rome's change, would have approved the application of the 1968 law to Rome. Indeed, if Monroe's black population in 1966 was as high as it is today (37% of the electorate), Monroe's change to a majority vote system could have been precisely the sort of discriminatory change at which the Voting Rights Act was directed.

The majority, and JUSTICE SCALIA, make a further argument resting upon a distinction between the first and second sentences of the 1968 code that the Attorney General precleared. The majority says, for example, that *City of Rome* "said nothing about the state-law default rule of majority voting in the second sentence," *ante*, at 39; and JUSTICE SCALIA refers to a "second sentence . . . default rule of majority voting for all municipalities that have not treated the matter in their charters," *ante*, at 40. The majority then finds that the Attorney General precleared the second-sentence default rule as applied to Monroe, apparently because it believes that "[t]he Government does not dispute that Georgia submitted the state-law default rule to the Attorney General in an 'unambiguous and recordable manner,'" *ante*, at 39. JUSTICE SCALIA reaches the same conclusion, not because of the Government's position, but because, in his view, the "burden was upon" the Attorney General to seek more information about the "city-by-city" effects of the statute at the time it was submitted. *Ante*, at 40.

A glance at the Georgia statute, *supra*, at 45, will make clear, however, just how finely the majority has had to parse the statute in its effort to escape the binding effect of precedent. That is because *City of Rome* (involving a city with a "majority" charter) and this case *both* concern the statute's *second* sentence. See Brief for Appellants in *City of Rome* v. *United States*, O. T. 1979, No. 78–1840, p. 90; *City of Rome* v. *United States*, 472 F. Supp. 221, 233 (DC 1979) ("Rome argues that . . . the 1968 Code *mandated* majority voting") (emphasis added). And nowhere does either the statute's second sentence or *City of Rome* explicitly make the default/deference distinction that the majority finds critical.

More importantly, there is no reason to think the distinction is critical in respect to the matter here at issue. The Government has not conceded, silently or otherwise, that the Attorney General's preclearance of a statutory "default rule" somehow precleared the application of some such rule to

Monroe. To the contrary, the Government's argument, which concerns *all* applications of the "majority" language in the 1968 code's second sentence, is that:

> "[P]reclearance of the majority vote provision incorporated in the State of Georgia's 1968 Municipal Election Code did not also preclear the prior or subsequent adoption and implementation of a majority vote requirement by any particular municipality within the State." Motion to Affirm 11.

That argument rather clearly says that the Attorney General, in effect, precleared the Georgia statute on its face, not as applied to each of Georgia's several hundred municipalities. That is the very argument that the Government made, and the Court accepted, in *City of Rome*.

JUSTICE SCALIA does not take the majority's view of the Government's argument. Rather, he says that, in any event, the Attorney General's initial preclearance of the second sentence simultaneously precleared that sentence's application because the State's submission was detailed enough to impose upon the Attorney General the "burden" of seeking detailed city-by-city information. *Ante*, at 40. In my view, however, precedent compels a contrary conclusion. In respect to the relevant point—whether the Attorney General cleared the statute on its face or also as applied—one cannot distinguish the issue before us from the (in this respect) identical issue in *City of Rome*. And that conclusion is consistent with well-established legal principle. See *Clark* v. *Roemer*, 500 U. S. 646, 656 (1991) ("[A]ny ambiguity in the scope of a preclearance request must be resolved against the submitting authority"); *McCain* v. *Lybrand*, 465 U. S. 236, 257 (1984) (same); 28 CFR §§ 51.26(d), 51.27(c) (1997) (requiring preclearance submissions to explain changes clearly and in detail).

In a nutshell, *City of Rome* turns on the practical fact that the Attorney General, in preclearing the 1968 Georgia

statute, would not have intended to preclear earlier, potentially unlawful, local changes of which he had not specifically been told. Rome was one such city. Monroe was another. The District Court consequently concluded that the Attorney General's preclearance of the 1968 statute did not preclear Monroe's earlier change, any more than it did Rome's. I agree with the District Court and would affirm its judgment.

Syllabus

SALINAS *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 96–738. Argued October 8, 1997—Decided December 2, 1997

This federal prosecution arose from a scheme in which a Texas county sheriff accepted money, and his deputy, petitioner Salinas, accepted two watches and a truck, in exchange for permitting women to make so-called "contact visits" to one Beltran, a federal prisoner housed in the county jail pursuant to an agreement with the Federal Government. Salinas was charged with one count of violating the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U. S. C. § 1962(c), one count of conspiracy to violate RICO, § 1962(d), and two counts of bribery, § 666(a)(1)(B). The jury convicted him on all but the substantive RICO count, and the Fifth Circuit affirmed.

Held:

1. Section 666(a)(1)(B) does not require the Government to prove the bribe in question had a demonstrated effect upon federal funds. The enactment's plain language is expansive and unqualified, both as to the bribes forbidden and the entities covered, demonstrating by its reference to "any" business or transaction, § 666(a)(1)(B), that it is not confined to transactions affecting federal funds; by its application to all cases in which an "organization, government, or agency" receives a specified amount of federal benefits, § 666(b), that it reaches the scheme involved here; and by its prohibition on accepting "anything of value," § 666(a)(1)(B), that it encompasses the transfers of personal property to petitioner in exchange for his favorable treatment of Beltran. Given the statute's plain and unambiguous meaning, petitioner is not aided by the legislative history, see, *e. g.*, *United States* v. *Albertini*, 472 U. S. 675, 680, or by the plain-statement rule set forth in *Gregory* v. *Ashcroft*, 501 U. S. 452, 460–461, and *McNally* v. *United States*, 483 U. S. 350, 360, see, *e. g.*, *Seminole Tribe of Fla.* v. *Florida*, 517 U. S. 44, 57, n. 9. Moreover, the construction he seeks cannot stand when viewed in light of the pre-§ 666 statutory framework—which limited federal bribery prohibitions to "public official[s]," defined as "officer[s] or employee[s] or person[s] acting for or on behalf of the United States, or any branch thereof," and which was interpreted by some lower courts not to include state and local officials—and the expansion prescribed by § 666(a)(1)(B), which was designed to extend coverage to bribes offered to state and local officials employed by agencies receiving federal funds. Under this

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Court's construction, § 666(a)(1)(B) is constitutional as applied in this case. Its application to petitioner did not extend federal power beyond its proper bounds, since the preferential treatment accorded Beltran was a threat to the integrity and proper operation of the federal program under which the jail was managed. See *Westfall* v. *United States*, 274 U. S. 256, 259. Pp. 55–61.

2. To be convicted of conspiracy to violate RICO under § 1962(d), the conspirator need not himself have committed or agreed to commit the two or more predicate acts, such as bribery, requisite for a substantive RICO offense under § 1962(c). Section 1962(d)—which forbids "any person to conspire to violate" § 1962(c)—is even more comprehensive than the general conspiracy provision applicable to federal crimes, § 371, since it contains no requirement of an overt or specific act to effect the conspiracy's object. Presuming Congress intended the "to conspire" phrase to have its ordinary meaning under the criminal law, see *Morissette* v. *United States*, 342 U. S. 246, 263, well-established principles and contemporary understanding demonstrate that, although a conspirator must intend to further an endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense, it suffices that he adopt the goal of furthering or facilitating the criminal endeavor, and he need not agree to undertake all of the acts necessary for the crime's completion. Salinas' contrary interpretation of § 1962(c) violates the foregoing principles and is refuted by *Bannon* v. *United States*, 156 U. S. 464, 469. Its acceptance, moreover, is not required by the rule of lenity, see *United States* v. *Shabani*, 513 U. S. 10, 17. Even if Salinas did not accept or agree to accept two bribes, there was ample evidence that the sheriff committed at least two predicate acts when he accepted numerous bribes and that Salinas knew about and agreed to facilitate the scheme, and this is sufficient to support Salinas' conviction under § 1962(d). Pp. 61–66.

89 F. 3d 1185, affirmed.

KENNEDY, J., delivered the opinion for a unanimous Court.

Francisco J. Enriquez argued the cause for petitioner. With him on the brief was *Rolando Cantu*. *Gerald H. Goldstein* and *Cynthia Hujar Orr* filed a brief for Brigido Marmolejo, Jr., as respondent under this Court's Rule 12.6, in support of petitioner.

Paul R. Q. Wolfson argued the cause for the United States. With him on the brief were *Acting Solicitor General Dellinger*, *Acting Assistant Attorney General Keeney*,

Deputy Solicitor General Dreeben, Joel M. Gershowitz, and *Richard A. Friedman.**

JUSTICE KENNEDY delivered the opinion of the Court.

The case before us presents two questions: First, is the federal bribery statute codified at 18 U. S. C. § 666 limited to cases in which the bribe has a demonstrated effect upon federal funds? Second, does the conspiracy prohibition contained in the Racketeer Influenced and Corrupt Organizations Act (RICO) apply only when the conspirator agrees to commit two of the predicate acts RICO forbids? Ruling against the petitioner on both issues, we affirm the judgment of the Court of Appeals for the Fifth Circuit.

I

This federal prosecution arose from a bribery scheme operated by Brigido Marmolejo, the Sheriff of Hidalgo County, Texas, and petitioner Mario Salinas, one of his principal deputies. In 1984, the United States Marshals Service and Hidalgo County entered into agreements under which the county would take custody of federal prisoners. In exchange, the Federal Government agreed to make a grant to the county for improving its jail and also agreed to pay the county a specific amount per day for each federal prisoner housed. Based on the estimated number of federal prisoners to be maintained, payments to the county were projected to be $915,785 per year. The record before us does not disclose the precise amounts paid. It is uncontested, however, that in each of the two periods relevant in this case the program resulted in federal payments to the county well in excess of the $10,000 amount necessary for coverage under 18 U. S. C. § 666. (We denied certiorari on the question whether the moneys paid to the county were "benefits" under a "Fed-

Joshua L. Dratel, Richard A. Greenberg, and *Lisa Kemler* filed a brief for the National Association of Criminal Defense Lawyers as *amicus curiae* urging reversal.

eral program" under § 666(b), and we assume for purposes of this opinion that the payments fit those definitions.)

Homero Beltran-Aguirre was one of the federal prisoners housed in the jail under the arrangement negotiated between the Marshals Service and the county. He was incarcerated there for two intervals, first for 10 months and then for 5 months. During both custody periods, Beltran paid Marmolejo a series of bribes in exchange for so-called "contact visits" in which he remained alone with his wife or, on other occasions, his girlfriend. Beltran paid Marmolejo a fixed rate of $6,000 per month and $1,000 for each contact visit, which occurred twice a week. Petitioner Salinas was the chief deputy responsible for managing the jail and supervising custody of the prisoners. When Marmolejo was not available, Salinas arranged for the contact visits and on occasion stood watch outside the room where the visits took place. In return for his assistance with the scheme, Salinas received from Beltran a pair of designer watches and a pickup truck.

Salinas and Marmolejo were indicted and tried together, but only Salinas' convictions are before us. Salinas was charged with one count of violating RICO, 18 U. S. C. § 1962(c), one count of conspiracy to violate RICO, § 1962(d), and two counts of bribery in violation of § 666(a)(1)(B). The jury acquitted Salinas on the substantive RICO count, but convicted him on the RICO conspiracy count and the bribery counts. A divided panel of the Court of Appeals for the Fifth Circuit affirmed, *United States* v. *Marmolejo*, 89 F. 3d 1185 (1996), and we granted certiorari, 519 U. S. 1148 (1997). To resolve the case, we consider first the bribery scheme, then the conspiracy.

II

Salinas contends the Government must prove the bribe in some way affected federal funds, for instance by diverting or misappropriating them, before the bribe violates

§ 666(a)(1)(B). The relevant statutory provisions are as follows:

> "(a) Whoever, if the circumstance described in subsection (b) of this section exists—
>
> "(1) being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof—
>
> . . . . .
>
> "(B) corruptly . . . accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving any thing of value of $5,000 or more; or
>
> . . . . .
>
> "shall be fined under this title, imprisoned not more than 10 years, or both.
>
> "(b) The circumstance referred to in subsection (a) of this section is that the organization, government, or agency receives, in any one year period, benefits in excess of $10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance.
>
> . . . . .
>
> "(d) As used in this section—
>
> . . . . .
>
> "(5) the term 'in any one-year period' means a continuous period that commences no earlier than twelve months before the commission of the offense or that ends no later than twelve months after the commission of the offense. Such period may include time both before and after the commission of the offense." 18 U. S. C. § 666.

The enactment's expansive, unqualified language, both as to the bribes forbidden and the entities covered, does not support the interpretation that federal funds must be af-

fected to violate § 666(a)(1)(B). Subject to the $5,000 threshold for the business or transaction in question, the statute forbids acceptance of a bribe by a covered official who intends "to be influenced or rewarded in connection with any business, transaction, or series of transactions of [the defined] organization, government or agency." § 666(a)(1)(B). The prohibition is not confined to a business or transaction which affects federal funds. The word "any," which prefaces the business or transaction clause, undercuts the attempt to impose this narrowing construction. See *United States* v. *James*, 478 U. S. 597, 604–605, and n. 5 (1986); *Trainmen* v. *Baltimore & Ohio R. Co.*, 331 U. S. 519, 529 (1947).

Furthermore, the broad definition of the "circumstances" to which the statute applies provides no textual basis for limiting the reach of the bribery prohibition. The statute applies to all cases in which an "organization, government, or agency" receives the statutory amount of benefits under a federal program. § 666(b). The language reaches the scheme alleged, and proved, here.

Neither does the statute limit the type of bribe offered. It prohibits accepting or agreeing to accept "anything of value." § 666(a)(1)(B). The phrase encompasses all transfers of personal property or other valuable consideration in exchange for the influence or reward. It includes, then, the personal property given to Salinas in exchange for the favorable treatment Beltran secured for himself. The statute's plain language fails to provide any basis for limiting § 666(a)(1)(B) to bribes affecting federal funds.

Salinas attempts to circumscribe the statutory text by pointing to its legislative history. "Courts in applying criminal laws generally must follow the plain and unambiguous meaning of the statutory language. '[O]nly the most extraordinary showing of contrary intentions' in the legislative history will justify a departure from that language." *United States* v. *Albertini*, 472 U. S. 675, 680 (1985) (citations

omitted) (quoting *Garcia* v. *United States*, 469 U. S. 70, 75 (1984)); see also *Ardestani* v. *INS*, 502 U. S. 129, 135 (1991) (courts may deviate from the plain language of a statute only in "'rare and exceptional circumstances'").

The construction Salinas seeks cannot stand when viewed in light of the statutory framework in existence before § 666 was enacted and the expanded coverage prescribed by the new statute. Before § 666 was enacted, the federal criminal code contained a single, general bribery provision codified at 18 U. S. C. § 201. Section 201 by its terms applied only to "public official[s]," which the statute defined as "officer[s] or employee[s] or person[s] acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch." § 201(a). The Courts of Appeals divided over whether state and local employees could be considered "public officials" under § 201(a). Compare *United States* v. *Del Toro*, 513 F. 2d 656, 661–662 (CA2), cert. denied, 423 U. S. 826 (1975), with *United States* v. *Mosley*, 659 F. 2d 812, 814–816 (CA7 1981), and *United States* v. *Hinton*, 683 F. 2d 195, 197–200 (CA7 1982), aff'd *sub nom. Dixson* v. *United States*, 465 U. S. 482 (1984). Without awaiting this Court's resolution of the issue in *Dixson*, Congress enacted § 666 and made it clear that federal law applies to bribes of the kind offered to the state and local officials in *Del Toro*, as well as those at issue in *Mosley* and *Hinton*.

As this chronology and the statutory language demonstrate, § 666(a)(1)(B) was designed to extend federal bribery prohibitions to bribes offered to state and local officials employed by agencies receiving federal funds. It would be incongruous to restrict § 666 in the manner Salinas suggests. The facts and reasoning of *Del Toro* give particular instruction in this respect. In that case, the Second Circuit held that a city employee was not a "public official" under § 201(a) even though federal funds would eventually cover 100% of

the costs and 80% of the salaries of the program he administered. 513 F. 2d, at 662. Because the program had not yet entered a formal request for federal funding, the Second Circuit reasoned, "[t]here were no existing committed federal funds for the purpose." *Ibid.* The enactment of § 666 forecloses this type of limitation. Acceptance of Salinas' suggestion that a bribe must affect federal funds before it falls within § 666(a)(1)(B) would run contrary to the statutory expansion that redressed the negative effects of the Second Circuit's narrow construction of § 201 in *Del Toro.* We need not consider whether the statute requires some other kind of connection between a bribe and the expenditure of federal funds, for in this case the bribe was related to the housing of a prisoner in facilities paid for in significant part by federal funds themselves. And that relationship is close enough to satisfy whatever connection the statute might require.

Salinas argues in addition that our decisions in *Gregory* v. *Ashcroft*, 501 U. S. 452 (1991), and *McNally* v. *United States*, 483 U. S. 350 (1987), require a plain statement of congressional intent before § 666(a)(1)(B) can be construed to apply to bribes having no effect on federal funds. In so arguing, however, Salinas makes too much of *Gregory* and *McNally.* In each of those cases, we confronted a statute susceptible of two plausible interpretations, one of which would have altered the existing balance of federal and state powers. We concluded that, absent a clear indication of Congress' intent to change the balance, the proper course was to adopt a construction which maintains the existing balance. *Gregory*, *supra*, at 460–461; see also *McNally*, *supra*, at 360.

"No rule of construction, however, requires that a penal statute be strained and distorted in order to exclude conduct clearly intended to be within its scope . . . ." *United States* v. *Raynor*, 302 U. S. 540, 552 (1938). As we held in *Albertini*, *supra*, at 680:

> "Statutes should be construed to avoid constitutional questions, but this interpretative canon is not a license

> for the judiciary to rewrite language enacted by the legislature. *Heckler* v. *Mathews*, 465 U. S. 728, 741–742 (1984). Any other conclusion, while purporting to be an exercise in judicial restraint, would trench upon the legislative powers vested in Congress by Art. I, § 1, of the Constitution. *United States* v. *Locke*, 471 U. S. 84, 95–96 (1985)."

These principles apply to the rules of statutory construction we have followed to give proper respect to the federal-state balance. As we observed in applying an analogous maxim in *Seminole Tribe of Fla.* v. *Florida*, 517 U. S. 44 (1996), "[w]e cannot press statutory construction to the point of disingenuous evasion even to avoid a constitutional question." *Id.*, at 57, n. 9 (internal quotation marks omitted). *Gregory* itself held as much when it noted the principle it articulated did not apply when a statute was unambiguous. See 501 U. S., at 467. A statute can be unambiguous without addressing every interpretive theory offered by a party. It need only be "plain to anyone reading the Act" that the statute encompasses the conduct at issue. *Ibid.* Compare *United States* v. *Bass*, 404 U. S. 336, 349–350 (1971) (relying on Congress' failure to make a clear statement of its intention to alter the federal-state balance to construe an ambiguous firearm-possession statute to apply only to firearms affecting commerce), with *United States* v. *Lopez*, 514 U. S. 549, 561–562 (1995) (refusing to apply *Bass* to read a similar limitation into an unambiguous firearm-possession statute).

The plain-statement requirement articulated in *Gregory* and *McNally* does not warrant a departure from the statute's terms. The text of § 666(a)(1)(B) is unambiguous on the point under consideration here, and it does not require the Government to prove federal funds were involved in the bribery transaction.

Furthermore, there is no serious doubt about the constitutionality of § 666(a)(1)(B) as applied to the facts of this case. Beltran was without question a prisoner held in a jail

managed pursuant to a series of agreements with the Federal Government. The preferential treatment accorded to him was a threat to the integrity and proper operation of the federal program. Whatever might be said about § 666(a)(1)(B)'s application in other cases, the application of § 666(a)(1)(B) to Salinas did not extend federal power beyond its proper bounds. See *Westfall* v. *United States*, 274 U. S. 256, 259 (1927).

In so holding, we do not address § 666(a)(1)(B)'s applicability to intangible benefits such as contact visits, because that question is not fairly included within the questions on which we granted certiorari. See *Yee* v. *Escondido*, 503 U. S. 519, 533 (1992). Nor do we review the Court of Appeals' determination that the transactions at issue "involv[ed] any thing of value of $5,000 or more," since Salinas does not offer any cognizable challenge to that aspect of the Court of Appeals' decision. We simply decide that, as a matter of statutory construction, § 666(a)(1)(B) does not require the Government to prove the bribe in question had any particular influence on federal funds and that under this construction the statute is constitutional as applied in this case.

III

Salinas directs his second challenge to his conviction for conspiracy to violate RICO. There could be no conspiracy offense, he says, unless he himself committed or agreed to commit the two predicate acts requisite for a substantive RICO offense under § 1962(c). Salinas identifies a conflict among the Courts of Appeals on the point. Decisions of the First, Second, and Tenth Circuits require that, under the RICO conspiracy provision, the defendant must himself commit or agree to commit two or more predicate acts. See *United States* v. *Sanders*, 929 F. 2d 1466, 1473 (CA10), cert. denied, 502 U. S. 846 (1991); *United States* v. *Ruggiero*, 726 F. 2d 913, 921 (CA2), cert. denied *sub nom. Rabito* v. *United States*, 469 U. S. 831 (1984); *United States* v. *Winter*, 663 F. 2d

1120, 1136 (CA1), cert. denied, 460 U. S. 1011 (1983). Eight other Courts of Appeals, including the Fifth Circuit in this case, take a contrary view. See *United States* v. *Pryba*, 900 F. 2d 748, 760 (CA4), cert. denied, 498 U. S. 924 (1990); *United States* v. *Kragness*, 830 F. 2d 842, 860 (CA8 1987); *United States* v. *Neapolitan*, 791 F. 2d 489, 494–500 (CA7), cert. denied, 479 U. S. 940 (1986); *United States* v. *Joseph*, 781 F. 2d 549, 554 (CA6 1986); *United States* v. *Adams*, 759 F. 2d 1099, 1115–1116 (CA3), cert. denied, 474 U. S. 971 (1985); *United States* v. *Tille*, 729 F. 2d 615, 619 (CA9), cert. denied, 469 U. S. 845 (1984); *United States* v. *Carter*, 721 F. 2d 1514, 1529–1531 (CA11), cert. denied *sub nom. Morris* v. *United States*, 469 U. S. 819 (1984).

Before turning to RICO's conspiracy provision, we note the substantive RICO offense, which was the goal of the conspiracy alleged in the indictment. It provides:

> "It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." 18 U. S. C. § 1962(c).

The elements predominant in a subsection (c) violation are: (1) the conduct (2) of an enterprise (3) through a pattern of racketeering activity. See *Sedima, S. P. R. L.* v. *Imrex Co.*, 473 U. S. 479, 496 (1985). "Pattern of racketeering activity" is a defined term and requires at least two acts of "racketeering activity," the so-called predicate acts central to our discussion. 18 U. S. C. § 1961(5). "Racketeering activity," in turn, is defined to include "any act . . . involving . . . bribery . . . which is chargeable under State law and punishable by imprisonment for more than one year." § 1961(1)(A). The Government's theory was that Salinas himself committed a substantive § 1962(c) RICO violation by conducting the en-

terprise's affairs through a pattern of racketeering activity that included acceptance of two or more bribes, felonies punishable in Texas by more than one year in prison. See Tex. Penal Code Ann. § 36.02(a)(1) (1994). The jury acquitted on the substantive count. Salinas was convicted of conspiracy, however, and he challenges the conviction because the jury was not instructed that he must have committed or agreed to commit two predicate acts himself. His interpretation of the conspiracy statute is wrong.

The RICO conspiracy statute, simple in formulation, provides:

> "It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section." 18 U. S. C. § 1962(d).

There is no requirement of some overt act or specific act in the statute before us, unlike the general conspiracy provision applicable to federal crimes, which requires that at least one of the conspirators have committed an "act to effect the object of the conspiracy." § 371. The RICO conspiracy provision, then, is even more comprehensive than the general conspiracy offense in § 371.

In interpreting the provisions of § 1962(d), we adhere to a general rule: When Congress uses well-settled terminology of criminal law, its words are presumed to have their ordinary meaning and definition. See *Morissette* v. *United States*, 342 U. S. 246, 263 (1952). The relevant statutory phrase in § 1962(d) is "to conspire." We presume Congress intended to use the term in its conventional sense, and certain well-established principles follow.

A conspiracy may exist even if a conspirator does not agree to commit or facilitate each and every part of the substantive offense. See *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 253–254 (1940). The partners in the criminal plan must agree to pursue the same criminal objective and may divide up the work, yet each is responsible for the

acts of each other. See *Pinkerton* v. *United States*, 328 U. S. 640, 646 (1946) ("And so long as the partnership in crime continues, the partners act for each other in carrying it forward"). If conspirators have a plan which calls for some conspirators to perpetrate the crime and others to provide support, the supporters are as guilty as the perpetrators. As Justice Holmes observed: "[P]lainly a person may conspire for the commission of a crime by a third person." *United States* v. *Holte*, 236 U. S. 140, 144 (1915). A person, moreover, may be liable for conspiracy even though he was incapable of committing the substantive offense. *United States* v. *Rabinowich*, 238 U. S. 78, 86 (1915).

The point Salinas tries to make is in opposition to these principles, and is refuted by *Bannon* v. *United States*, 156 U. S. 464 (1895). There the defendants were charged with conspiring to violate the general conspiracy statute, *id.*, at 464, which requires proof of an overt act. See *supra*, at 63. One defendant objected to the indictment because it did not allege he had committed an overt act. See *Bannon*, *supra*, at 468. We rejected the argument because it would erode the common-law principle that, so long as they share a common purpose, conspirators are liable for the acts of their coconspirators. We observed in *Bannon:* "To require an overt act to be proven against every member of the conspiracy, or a distinct act connecting him with the combination to be alleged, would not only be an innovation upon established principles, but would render most prosecutions for the offence nugatory." 156 U. S., at 469. The RICO conspiracy statute, § 1962(d), broadened conspiracy coverage by omitting the requirement of an overt act; it did not, at the same time, work the radical change of requiring the Government to prove each conspirator agreed that he would be the one to commit two predicate acts.

Our recitation of conspiracy law comports with contemporary understanding. When Congress passed RICO in 1970, see Pub. L. 91–452, § 901(a), 84 Stat. 941, the American Law

Institute's Model Penal Code permitted a person to be convicted of conspiracy so long as he "agrees with such other person or persons that they or one or more of them will engage in conduct that constitutes such crime." Model Penal Code § 5.03(1)(a) (1962). As the drafters emphasized, "so long as the purpose of the agreement is to facilitate commission of a crime, the actor need not agree 'to commit' the crime." American Law Institute, Model Penal Code, Tent. Draft No. 10, p. 117 (1960). The Model Penal Code still uses this formulation. See Model Penal Code § 5.03(1)(a), 10 U. L. A. 501 (1974).

A conspirator must intend to further an endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense, but it suffices that he adopt the goal of furthering or facilitating the criminal endeavor. He may do so in any number of ways short of agreeing to undertake all of the acts necessary for the crime's completion. One can be a conspirator by agreeing to facilitate only some of the acts leading to the substantive offense. It is elementary that a conspiracy may exist and be punished whether or not the substantive crime ensues, for the conspiracy is a distinct evil, dangerous to the public, and so punishable in itself. See *Callanan* v. *United States*, 364 U. S. 587, 594 (1961).

It makes no difference that the substantive offense under § 1962(c) requires two or more predicate acts. The interplay between subsections (c) and (d) does not permit us to excuse from the reach of the conspiracy provision an actor who does not himself commit or agree to commit the two or more predicate acts requisite to the underlying offense. True, though an "enterprise" under § 1962(c) can exist with only one actor to conduct it, in most instances it will be conducted by more than one person or entity; and this in turn may make it somewhat difficult to determine just where the enterprise ends and the conspiracy begins, or, on the other hand, whether the two crimes are coincident in their factual circumstances. In some cases the connection the defendant had to the al-

leged enterprise or to the conspiracy to further it may be tenuous enough so that his own commission of two predicate acts may become an important part of the Government's case. Perhaps these were the considerations leading some of the Circuits to require in conspiracy cases that each conspirator himself commit or agree to commit two or more predicate acts. Nevertheless, that proposition cannot be sustained as a definition of the conspiracy offense, for it is contrary to the principles we have discussed.

In the case before us, even if Salinas did not accept or agree to accept two bribes, there was ample evidence that he conspired to violate subsection (c). The evidence showed that Marmolejo committed at least two acts of racketeering activity when he accepted numerous bribes and that Salinas knew about and agreed to facilitate the scheme. This is sufficient to support a conviction under § 1962(d).

As a final matter, Salinas says his statutory interpretation is required by the rule of lenity. The rule does not apply when a statute is unambiguous or when invoked to engraft an illogical requirement to its text. See *United States* v. *Shabani*, 513 U. S. 10, 17 (1994).

The judgment of the Court of Appeals is

Affirmed.

Syllabus

FOSTER, GOVERNOR OF LOUISIANA, ET AL. *v.* LOVE ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 96–670. Argued October 6, 1997—Decided December 2, 1997

The Elections Clause of the Constitution, Art. I, § 4, cl. 1, invests the States with responsibility for the mechanics of congressional elections, see *Storer* v. *Brown*, 415 U. S. 724, 730, but grants Congress "the power to override state regulations" by establishing uniform rules for federal elections, *U. S. Term Limits, Inc.* v. *Thornton*, 514 U. S. 779, 832–833. One such congressional rule sets the date of the biennial election for the offices of United States Senator, 2 U. S. C. § 1, and Representative, § 7, and mandates holding all congressional and Presidential elections on a single November day, 2 U. S. C. §§ 1, 7; 3 U. S. C. § 1. Since 1978, Louisiana has held in October of a federal election year an "open primary" for congressional offices, in which all candidates, regardless of party, appear on the same ballot and all voters are entitled to vote. If a candidate for a given office receives a majority at the open primary, the candidate "is elected" and no further act is done on federal election day to fill that office. Since this system went into effect, over 80% of the State's contested congressional elections have ended as a matter of law with the open primary. Respondents, Louisiana voters, challenged this primary as a violation of federal law. Finding no conflict between the state and federal statutes, the District Court granted summary judgment to petitioners, the State's Governor and secretary of state. The Fifth Circuit reversed.

Held: Louisiana's statute conflicts with federal law to the extent that it is applied to select a congressional candidate in October. Pp. 71–74.

(a) The issue here is a narrow one turning entirely on the meaning of the state and federal statutes. There is no colorable argument that § 7 goes beyond the ample limits of the Elections Clause's grant of authority to Congress. In speaking of "the election" of a Senator or Representative, the federal statutes plainly refer to the combined actions of voters and officials meant to make the final selection of an officeholder; and by establishing "the day" on which these actions must take place, the statutes simply regulate the time of the election, a matter on which the Constitution explicitly gives Congress the final say. Pp. 71–72.

(b) A contested selection of candidates for a congressional office that is concluded as a matter of law before the federal election day, with no

act in law or in fact to take place on the date chosen by Congress, clearly violates § 7. Louisiana's claim that its system concerns only the manner, not the time, of an election is at odds with the State's statute, which addresses timing quite as obviously as § 7 does. A federal election takes place in Louisiana before federal election day whenever a candidate gets a majority in the open primary. Pp. 72–73.

(c) This Court's judgment is buttressed by the fact that Louisiana's open primary has tended to foster both evils identified by Congress as reasons for passing the federal statute: the distortion of the voting process when the results of an early federal election in one State can influence later voting in other States, and the burden on citizens forced to turn out on two different election days to make final selections of federal officers in Presidential election years. Pp. 73–74.

90 F. 3d 1026, affirmed.

SOUTER, J., delivered the opinion for a unanimous Court with respect to Parts I, II, and IV, and the opinion of the Court with respect to Part III, in which REHNQUIST, C. J., and STEVENS, O'CONNOR, GINSBURG, and BREYER, JJ., joined.

Richard P. Ieyoub, Attorney General of Louisiana, argued the cause for petitioners. With him on the briefs were *Roy A. Mongrue, Jr.*, and *Angie Rogers Laplace*, Assistant Attorneys General.

M. Miller Baker argued the cause for respondents. With him on the brief were *John W. Perry, Jr.*, *Daniel J. Balhoff*, *Thomas E. Balhoff*, *Judith R. Atkinson*, and *Brian M. Tauscher.*

JUSTICE SOUTER delivered the opinion of the Court.*

Under 2 U. S. C. §§ 1 and 7, the Tuesday after the first Monday in November in an even-numbered year "is established" as the date for federal congressional elections. Louisiana's "open primary" statute provides an opportunity to fill the offices of United States Senator and Representative during the previous month, without any action to be taken on

*JUSTICE SCALIA, JUSTICE KENNEDY, and JUSTICE THOMAS join all but Part III of this opinion.

federal election day. The issue before us is whether such an ostensible election runs afoul of the federal statute. We hold that it does.

I

The Elections Clause of the Constitution, Art. I, § 4, cl. 1, provides that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations." The Clause is a default provision; it invests the States with responsibility for the mechanics of congressional elections, see *Storer* v. *Brown*, 415 U. S. 724, 730 (1974), but only so far as Congress declines to pre-empt state legislative choices, see *Roudebush* v. *Hartke*, 405 U. S. 15, 24 (1972) ("Unless Congress acts, Art. I, § 4, empowers the States to regulate"). Thus it is well settled that the Elections Clause grants Congress "the power to override state regulations" by establishing uniform rules for federal elections, binding on the States. *U. S. Term Limits, Inc.* v. *Thornton*, 514 U. S. 779, 832–833 (1995). "[T]he regulations made by Congress are paramount to those made by the State legislature; and if they conflict therewith, the latter, so far as the conflict extends, ceases to be operative." *Ex parte Siebold*, 100 U. S. 371, 384 (1880).

One congressional rule adopted under the Elections Clause (and its counterpart for the Executive Branch, Art. II, § 1, cl. 3) sets the date of the biennial election for federal offices. See 2 U. S. C. §§ 1, 7; 3 U. S. C. § 1. Title 2 U. S. C. § 7 was originally enacted in 1872, and now provides that "[t]he Tuesday next after the 1st Monday in November, in every even numbered year, is established as the day for the election, in each of the States and Territories of the United States, of Representatives and Delegates to the Congress commencing on the 3d day of January next thereafter." This provision, along with 2 U. S. C. § 1 (setting the same

rule for electing Senators under the Seventeenth Amendment) and 3 U. S. C. § 1 (doing the same for selecting Presidential electors), mandates holding all elections for Congress and the Presidency on a single day throughout the Union.

In 1975, Louisiana adopted a new statutory scheme for electing United States Senators and Representatives. In October of a federal election year, the State holds what is popularly known as an "open primary" for congressional offices, La. Rev. Stat. Ann. § 18:402(B)(1) (West Supp. 1997), in which all candidates, regardless of party, appear on the same ballot, and all voters, with like disregard of party, are entitled to vote, § 18:401(B) (West 1979). If no candidate for a given office receives a majority, the State holds a run-off (dubbed a "general election") between the top two vote-getters the following month on federal election day. § 18:481 (West 1979). But if one such candidate does get a majority in October, that candidate "is elected," § 18:511(A) (West Supp. 1997), and no further act is done on federal election day to fill the office in question. Since this system went into effect in 1978, over 80% of the contested congressional elections in Louisiana have ended as a matter of law with the open primary.[1]

Respondents are Louisiana voters who sued petitioners, the State's Governor and secretary of state, challenging the open primary as a violation of federal law. The District Court granted summary judgment to petitioners, finding no conflict between the state and federal statutes, whereas a divided panel of the Fifth Circuit reversed, concluding that Louisiana's system squarely "conflicts with the federal statutes that establish a uniform federal election day." 90 F. 3d 1026, 1031 (1996). We granted certiorari, 520 U. S. 1114 (1997), and now affirm.

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[1] A run-off election has been held on federal election day in only 9 of the 57 contested elections for United States Representative and in only 1 of the 6 contested elections for United States Senator. See 90 F. 3d 1026, 1030 (CA5 1996).

II

The Fifth Circuit's conception of the issue here as a narrow one turning entirely on the meaning of the state and federal statutes is exactly right. For all of petitioners' invocations of state sovereignty, there is no colorable argument that § 7 goes beyond the ample limits of the Elections Clause's grant of authority to Congress.[2] When the federal statutes speak of "the election" of a Senator or Representative, they plainly refer to the combined actions of voters and officials meant to make a final selection of an officeholder (subject only to the possibility of a later run-off, see 2 U. S. C. § 8).[3] See N. Webster, An American Dictionary of the English Language 433 (C. Goodrich & N. Porter eds. 1869) (defining "election" as "[t]he act of choosing a person to fill an office"). By establishing a particular day as "the day" on which these actions must take place, the statutes simply regulate the time of the

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[2] The Clause gives Congress "comprehensive" authority to regulate the details of elections, including the power to impose "the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved." *Smiley* v. *Holm*, 285 U. S. 355, 366 (1932). Congressional authority extends not only to general elections, but also to any "primary election which involves a necessary step in the choice of candidates for election as representatives in Congress." *United States* v. *Classic*, 313 U. S. 299, 320 (1941).

[3] Title 2 U. S. C. § 8, which was enacted along with § 7, provides that a State may hold a congressional election on a day other than the uniform federal election day when such an election is necessitated "by a failure to elect at the time prescribed by law." The only explanation of this provision offered in the legislative history is Senator Allen G. Thurman's statement that "there can be no failure to elect except in those States in which a majority of all the votes is necessary to elect a member." Cong. Globe, 42d Cong., 2d Sess., 677 (1872). In those States, if no candidate receives a majority vote on federal election day, there has been a failure to elect and a subsequent run-off election is required. See *Public Citizen, Inc.* v. *Miller*, 813 F. Supp. 821 (ND Ga.), aff'd, 992 F. 2d 1548 (CA11 1993) (upholding under § 8 a run-off election that was held after federal election day, because in the initial election on federal election day no candidate received the majority vote that was as required by Georgia law).

election, a matter on which the Constitution explicitly gives Congress the final say.

While true that there is room for argument about just what may constitute the final act of selection within the meaning of the law, our decision does not turn on any nicety in isolating precisely what acts a State must cause to be done on federal election day (and not before it) in order to satisfy the statute. Without paring the term "election" in § 7 down to the definitional bone, it is enough to resolve this case to say that a contested selection of candidates for a congressional office that is concluded as a matter of law before the federal election day, with no act in law or in fact to take place on the date chosen by Congress, clearly violates § 7.[4]

Petitioners try to save the Louisiana system by arguing that, because Louisiana law provides for a "general election" on federal election day in those unusual instances when one is needed, the open primary system concerns only the "manner" of electing federal officials, not the "time" at which the elections will take place. Petitioners say that "[a]lthough Congress is authorized by the Constitution to alter or change the time, place and manner the States have chosen to conduct federal elections[,] in enacting 2 U. S. C. §§ 1 and 7, Congress sought only to alter the time in which elections were conducted, not their manner. Conversely, the open elections system [changed only the manner by which Louisiana chooses its federal officers; it] did not change the timing of the general election for Congress." Brief for Petitioners 21.

Even if the distinction mattered here, the State's attempt to draw this time-manner line is merely wordplay, and wordplay just as much at odds with the Louisiana statute as that law is at odds with § 7. The State's provision for an October election addresses timing quite as obviously as § 7 does.

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[4] This case thus does not present the question whether a State must always employ the conventional mechanics of an election. We hold today only that if an election does take place, it may not be consummated prior to federal election day.

State law straightforwardly provides that "[a] candidate who receives a majority of the votes cast for an office in a primary election is elected." La. Rev. Stat. Ann. § 18:511(A) (West Supp. 1997). Because the candidate said to be "elected" has been selected by the voters from among all eligible office-seekers, there is no reason to suspect that the Louisiana Legislature intended some eccentric meaning for the phrase "is elected." After a declaration that a candidate received a majority in the open primary, state law requires no further act by anyone to seal the election; the election has already occurred. Thus, contrary to petitioners' imaginative characterization of the state statute, the open primary does purport to affect the timing of federal elections: a federal election takes place prior to federal election day whenever a candidate gets a majority in the open primary. As the attorney general of Louisiana conceded at oral argument, "Louisiana's system certainly allows for the election of a candidate in October, as opposed to actually electing on Federal Election Day." Tr. of Oral Arg. 6.

III

While the conclusion that Louisiana's open primary system conflicts with 2 U. S. C. § 7 does not depend on discerning the intent behind the federal statute, our judgment is buttressed by an appreciation of Congress's object "to remedy more than one evil arising from the election of members of Congress occurring at different times in the different States." *Ex parte Yarbrough*, 110 U. S. 651, 661 (1884). As the sponsor of the original bill put it, Congress was concerned both with the distortion of the voting process threatened when the results of an early federal election in one State can influence later voting in other States, and with the burden on citizens forced to turn out on two different election days to make final selections of federal officers in Presidential election years:

> "Unless we do fix some time at which, as a rule, Representatives shall be elected, it will be in the power of each State to fix upon a different day, and we may have a canvass going on all over the Union at different times. It gives some States undue advantage. . . . I can remember, in 1840, when the news from Pennsylvania and other States that held their elections prior to the presidential election settled the presidential election as effectually as it was afterward done . . . . I agree . . . that Indiana, Ohio, and Pennsylvania, by voting in October, have an influence. But what I contend is that that is an undue advantage, that it is a wrong, and that it is a wrong also to the people of those States, that once in four years they shall be put to the trouble of having a double election." Cong. Globe, 42d Cong., 2d Sess., 141 (1871) (remarks of Rep. Butler).

See also *Busbee* v. *Smith*, 549 F. Supp. 494, 524 (DC 1982) (recounting the purposes of § 7), aff'd, 459 U. S. 1166 (1983). The Louisiana open primary has tended to foster both evils, having had the effect of conclusively electing more than 80% of the State's Senators and Representatives before the election day elsewhere, and, in Presidential election years, having forced voters to turn out for two potentially conclusive federal elections.

IV

When Louisiana's statute is applied to select from among congressional candidates in October, it conflicts with federal law and to that extent is void. The judgment below is affirmed.

It is so ordered.

Syllabus

JEFFERSON, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF JEFFERSON, DECEASED, ET AL. *v.* CITY OF TARRANT, ALABAMA

CERTIORARI TO THE SUPREME COURT OF ALABAMA

No. 96–957. Argued November 4, 1997—Decided December 9, 1997

Petitioners commenced this action in Alabama state court to recover damages for the death of their decedent, Alberta Jefferson, an African-American woman who perished in a fire at her home in respondent city of Tarrant (City). They alleged that City firefighters failed to rescue Ms. Jefferson promptly after arriving on the scene and to revive her upon carrying her from her house. These omissions, they charged, resulted from the selective denial of fire protection to disfavored minorities and proximately caused Ms. Jefferson's death. The City maintains that the firefighters responded to the alarm call as quickly as possible and that Ms. Jefferson was already dead when they arrived. Petitioners asserted state-law wrongful-death and outrage claims. They also asserted claims under 42 U. S. C. § 1983 that Ms. Jefferson's death resulted from (1) the deliberate indifference of the City and its agents, in violation of the Fourteenth Amendment's Due Process Clause, and (2) a practice of invidious racial discrimination, in violation of that Amendment's Equal Protection Clause. In its motion for judgment on the pleadings on the § 1983 claims, the City argued that, under *Robertson* v. *Wegmann*, 436 U. S. 584, 588–590, the survival remedy provided by Alabama's Wrongful Death Act governed petitioners' potential recovery on the constitutional tort claims. The Alabama Supreme Court has interpreted the state Act as providing a punitive damages remedy only, but this Court has ruled that § 1983 plaintiffs may not recover punitive damages against a municipality, see *Newport* v. *Fact Concerts, Inc.*, 453 U. S. 247. Accordingly, the City argued that it could not be held liable for damages under § 1983. The trial court denied the City's motion in part and ruled that petitioners could recover compensatory damages against the City under § 1983. It certified the damages question for immediate review. The Alabama Supreme Court reversed on interlocutory appeal, holding that the state Act, including its allowance of punitive damages only, governed petitioners' potential recovery on their § 1983 claims. The court remanded "for further proceedings consistent with [its] opinion." After this Court granted certiorari to resolve whether the state Act governed the § 1983 claims, the City asserted for

the first time, in its brief on the merits, that the Court lacks jurisdiction to review the Alabama Supreme Court's interlocutory order.

Held: Because the Alabama Supreme Court has not yet rendered a final judgment, this Court lacks jurisdiction to review that court's decision on petitioners' § 1983 claims. Pp. 80–84.

(a) Congress has long vested in this Court authority to review federal-question decisions made by state courts, see Judiciary Act of 1789, § 25, but has limited that power to cases in which the State's judgment is "final," see 28 U. S. C. § 1257(a). This finality rule is firm, not a technicality to be easily scorned. *Radio Station WOW, Inc.* v. *Johnson*, 326 U. S. 120, 124. A state-court decision is not final unless and until it has effectively determined the entire litigation. *Market Street R. Co.* v. *Railroad Comm'n of Cal.*, 324 U. S. 548, 551. The decision below does not qualify as a "final judgment" within § 1257(a)'s meaning. The Alabama Supreme Court decided the federal-law issue on an interlocutory certification from the trial court, then remanded the cause for further proceedings on petitioners' remaining state-law claims. Absent settlement or further dispositive motions, the proceedings on remand will include a trial on the merits of the state-law claims. In a virtually identical case, this Court has dismissed certiorari for want of jurisdiction. *O'Dell* v. *Espinoza*, 456 U. S. 430 *(per curiam)*. Pp. 80–82.

(b) This case does not come within the narrow circumstances in which the Court has found finality despite the promise of further state-court proceedings. See *Cox Broadcasting Corp.* v. *Cohn*, 420 U. S. 469. It does not involve a federal issue, finally decided by the State's highest court, that will survive and require decision regardless of the outcome of future state-court proceedings. *Id.*, at 480. Resolution of the state-law claims could effectively moot the federal-law question. If the City establishes, as a matter of fact, that its firefighters could have done nothing more to save Ms. Jefferson's life, any § 1983 claim will necessarily fail, however incorrect the Alabama Supreme Court's ruling. Nor is this an instance where the federal claim has been finally decided, with further proceedings on the merits in the state courts to come, but in which later review of the federal issue cannot be had whatever the ultimate outcome of the case. *Id.*, at 481. If the decision under review ultimately makes a difference to petitioners—in particular, if they prevail on their state claims but recover less than they might have under federal law, or if their state claims fail for reasons that do not also dispose of their federal claims—they will be free to seek this Court's review once the state-court litigation comes to an end. Even if the Alabama Supreme Court adheres to its interlocutory ruling as "law of the case," that determination will in no way limit this Court's ability to

review the issue on final judgment. See, *e. g.*, *Hathorn* v. *Lovorn*, 457 U. S. 255, 261–262. The Court confines *Pennsylvania* v. *Ritchie*, 480 U. S. 39, 49, n. 7, to the exceptional circumstances there presented, and rejects any construction of *Ritchie* that would expand the exceptions stated in *Cox Broadcasting Corp.* Pp. 82–84.

Certiorari dismissed for want of jurisdiction. Reported below: 682 So. 2d 29.

GINSBURG, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, KENNEDY, SOUTER, THOMAS, and BREYER, JJ., joined. STEVENS, J., filed a dissenting opinion, *post*, p. 84.

Dennis G. Pantazis argued the cause for petitioners. With him on the briefs was *Brian M. Clark*.

John G. Roberts, Jr., argued the cause for respondent. With him on the brief were *Gregory G. Garre*, *Wayne Morse*, and *John W. Clark, Jr.*

JUSTICE GINSBURG delivered the opinion of the Court.

This case, still *sub judice* in Alabama, was brought to this Court too soon. We granted certiorari to consider whether the Alabama Wrongful Death Act, Ala. Code § 6–5–410 (1993), governs recovery when a decedent's estate claims, under 42 U. S. C. § 1983, that the death in question resulted from a deprivation of federal rights. We do not decide that issue, however, because we conclude that we lack jurisdiction at the current stage of the proceedings. Congress has limited our review of state-court decisions to "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had." 28 U. S. C. § 1257(a). The decision we confront does not qualify as a "final judgment" within the meaning of § 1257(a). The Alabama Supreme Court decided the federal-law issue on an interlocutory certification from the trial court, then remanded the cause for further proceedings on petitioners' remaining state-law claims. The outcome of those further proceedings could moot the federal question we agreed to decide. If the federal question does not become moot, petitioners will be free

to seek our review when the state-court proceedings reach an end. We accordingly dismiss the writ for want of a final judgment.

I

Petitioners commenced this action against the city of Tarrant, Alabama (City), to recover damages for the death of Alberta Jefferson. Ms. Jefferson, an African-American woman, died in a fire at her Tarrant City home on December 4, 1993. Petitioners' complaint, App. 1–11, alleges that the City firefighters did not attempt to rescue Ms. Jefferson promptly after they arrived on the scene, nor did they try to revive her when they carried her from her house. The complaint further alleges that these omissions resulted from "the selective denial of fire protection to disfavored minorities," *id.*, at 6, and proximately caused Ms. Jefferson's death. The City, however, maintains that the Tarrant Fire Department responded to the alarm call as quickly as possible and that Ms. Jefferson had already died by the time the firefighters arrived.

Petitioners Melvin, Leon, and Benjamin Jefferson, as administrator and survivors of Alberta Jefferson, filed their complaint against Tarrant City in an Alabama Circuit Court on June 21, 1994. The Jeffersons asserted two claims under state law: one for wrongful death, and the other for the common-law tort of outrage. They also asserted two claims under 42 U. S. C. § 1983: one alleging that Alberta Jefferson's death resulted from the deliberate indifference of the City and its agents, in violation of the Due Process Clause of the Fourteenth Amendment, and the other alleging that Ms. Jefferson's death resulted from a practice of invidious racial discrimination, in violation of the Fourteenth Amendment's Equal Protection Clause.

In June 1995, the City moved for judgment on the pleadings on the § 1983 claims and for summary judgment on all claims. In its motion for judgment on the pleadings, the

City argued that the survival remedy provided by the Alabama Wrongful Death Act governed the Jeffersons' potential recovery for the City's alleged constitutional torts.[1] For this argument, the City relied on *Robertson* v. *Wegmann*, 436 U. S. 584, 588–590 (1978). In that case, we held that 42 U. S. C. § 1988(a) requires the application of state-law survival remedies in § 1983 actions unless those remedies are "'inconsistent with the Constitution and laws of the United States.'" The Alabama Supreme Court had interpreted the State's Wrongful Death Act as providing a punitive damages remedy only. See, *e. g.*, *Geohagen* v. *General Motors Corp.*, 279 So. 2d 436, 438–439 (1973). But § 1983 plaintiffs may not recover punitive damages against a municipality. See *Newport* v. *Fact Concerts, Inc.*, 453 U. S. 247 (1981). Hence, according to respondent, petitioners could obtain no damages against the City under § 1983.

The Alabama trial court denied the summary judgment motion in its entirety, and it denied in part the motion for judgment on the pleadings. As to the latter motion, the court ruled that, notwithstanding the punitive-damages-only limitation in the state Wrongful Death Act, the Jeffersons could recover compensatory damages upon proof that the City violated Alberta Jefferson's constitutional rights. The trial court certified the damages question for immediate review, and the Alabama Supreme Court granted the City per-

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[1] The Alabama Wrongful Death Act provides, in relevant part:

"A personal representative may commence an action and recover such damages as the jury may assess in a court of competent jurisdiction within the State of Alabama, and not elsewhere, for the wrongful act, omission, or negligence of any person, persons, or corporation, his or their servants or agents, whereby the death of his testator or intestate was caused, provided the testator or intestate could have commenced an action for such wrongful act, omission, or negligence if it had not caused death." Ala. Code § 6–5–410(a) (1993).

mission to appeal from the denial of its motion for judgment on the pleadings.[2]

On the interlocutory appeal, the Alabama Supreme Court reversed. 682 So. 2d 29 (1996). Relying on its earlier opinion in *Carter* v. *Birmingham*, 444 So. 2d 373 (1983), the court held that the state Act, including its allowance of punitive damages only, governed petitioners' potential recovery on their § 1983 claims. The court remanded "for further proceedings consistent with [its] opinion." 682 So. 2d, at 31. Dissenting Justices Houston and Cook would have affirmed the trial court's ruling.

We granted certiorari to resolve the following question: "Whether, when a decedent's death is alleged to have resulted from a deprivation of federal rights occurring in Alabama, the Alabama Wrongful Death Act, Ala. Code § 6–5–410 (1993), governs the recovery by the representative of the decedent's estate under 42 U. S. C. § 1983?" 520 U. S. 1154 (1997). In its brief on the merits, respondent for the first time raised a nonwaivable impediment: The City asserted that we lack jurisdiction to review the interlocutory order of the Alabama Supreme Court. We agree, and we now dismiss the writ of certiorari as improvidently granted.

II

From the earliest days of our judiciary, Congress has vested in this Court authority to review federal-question decisions made by state courts. For just as long, Congress has limited that power to cases in which the State's judgment is final. See Judiciary Act of 1789, § 25, 1 Stat. 85. The cur-

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[2] The courts invoked Alabama Rule of Appellate Procedure 5(a), which allows a party to petition the Alabama Supreme Court for an appeal from an interlocutory order where the trial judge certifies that the order "involves a controlling question of law as to which there is substantial ground for difference of opinion, that an immediate appeal from the order would materially advance the ultimate termination of the litigation and that the appeal would avoid protracted and expensive litigation."

rent statute regulating our jurisdiction to review state-court decisions provides:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States." 28 U. S. C. § 1257(a).

This provision establishes a firm final judgment rule. To be reviewable by this Court, a state-court judgment must be final "in two senses: it must be subject to no further review or correction in any other state tribunal; it must also be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein. It must be the final word of a final court." *Market Street R. Co.* v. *Railroad Comm'n of Cal.*, 324 U. S. 548, 551 (1945). As we have recognized, the finality rule "is not one of those technicalities to be easily scorned. It is an important factor in the smooth working of our federal system." *Radio Station WOW, Inc.* v. *Johnson*, 326 U. S. 120, 124 (1945).

The Alabama Supreme Court's decision was not a "final judgment." It was avowedly interlocutory. Far from terminating the litigation, the court answered a single certified question that affected only two of the four counts in petitioners' complaint. The court then remanded the case for further proceedings. Absent settlement or further dispositive motions, the proceedings on remand will include a trial on the merits of the state-law claims. In the relevant respect, this case is identical to *O'Dell* v. *Espinoza*, 456 U. S. 430

(1982) *(per curiam)*, where we dismissed the writ of certiorari for want of jurisdiction. See *ibid.* ("Because the Colorado Supreme Court remanded this case for trial, its decision is not final 'as an effective determination of the litigation.'" (citation omitted)).

Petitioners contend that this case comes within the "limited set of situations in which we have found finality as to the federal issue despite the ordering of further proceedings in the lower state courts." *Ibid.* We do not agree. This is not a case in which "the federal issue, finally decided by the highest court in the State, will survive and require decision regardless of the outcome of future state-court proceedings." *Cox Broadcasting Corp.* v. *Cohn*, 420 U. S. 469, 480 (1975). Resolution of the state-law claims could effectively moot the federal-law question raised here. Most notably, the City maintains that its fire department responded promptly to the call reporting that Ms. Jefferson's residence was in flames, but that Ms. Jefferson was already dead when they arrived. On the City's view of the facts, its personnel could have done nothing more to save Ms. Jefferson's life. See App. 45–47. If the City prevails on this account of the facts, then any § 1983 claim will necessarily fail, however incorrect the Alabama Supreme Court's ruling, for the City will have established that its actions did not cause Ms. Jefferson's death.

Nor is this an instance "where the federal claim has been finally decided, with further proceedings on the merits in the state courts to come, but in which later review of the federal issue cannot be had, whatever the ultimate outcome of the case." *Cox Broadcasting Corp.* v. *Cohn*, 420 U. S., at 481. If the Alabama Supreme Court's decision on the federal claim ultimately makes a difference to the Jeffersons—in particular, if they prevail on their state claims but recover less than they might have under federal law, or if their state claims fail for reasons that do not also dispose of their federal claims—they will be free to seek our review once the state-

court litigation comes to an end. Even if the Alabama Supreme Court adheres to its interlocutory ruling as "law of the case," that determination will in no way limit our ability to review the issue on final judgment. See, *e. g.*, *Hathorn* v. *Lovorn*, 457 U. S. 255, 261–262 (1982); see also R. Fallon, D. Meltzer, & D. Shapiro, Hart and Wechsler's The Federal Courts and the Federal System 642 (4th ed. 1996) ("If a state court judgment is not final for purposes of Supreme Court review, the federal questions it determines will (if not mooted) be open in the Supreme Court on later review of the final judgment, whether or not under state law the initial adjudication is the law of the case on the second state review."); R. Stern, E. Gressman, S. Shapiro, & K. Geller, Supreme Court Practice 104–105 (7th ed. 1993) (citing cases).

We acknowledge that one of our prior decisions might be read to support the view that parties in the Jeffersons' situation need not present their federal questions to the state courts a second time before obtaining review in this Court. See *Pennsylvania* v. *Ritchie*, 480 U. S. 39, 49, n. 7 (1987) (declining to require the petitioner "to raise a fruitless Sixth Amendment claim in the trial court, the Superior Court, and the Pennsylvania Supreme Court still another time before we regrant certiorari on the question that is now before us"). In *Ritchie*, we permitted immediate review of a Pennsylvania Supreme Court ruling that required the Commonwealth's Children and Youth Services (CYS) to disclose to a criminal defendant the contents of a child protective service file regarding a key witness. The Court asserted jurisdiction in that case because of the "unusual" situation presented: We doubted whether there would be any subsequent opportunity to raise the federal questions, see *ibid.*, and we were reluctant to put the CYS in the bind of either disclosing a confidential file or being held in contempt, see *id.*, at 49. *Ritchie* is an extraordinary case and we confine it to the precise circumstances the Court there confronted. We now clarify that *Ritchie* does not augur expansion of the excep-

tions stated in *Cox Broadcasting Corp.*, and we reject any construction of *Ritchie* that would contradict this opinion.

This case fits within no exceptional category. It presents the typical situation in which the state courts have resolved some but not all of petitioners' claims. Our jurisdiction therefore founders on the rule that a state-court decision is not final unless and until it has effectively determined the entire litigation. Because the Alabama Supreme Court has not yet rendered a final judgment, we lack jurisdiction to review its decision on the Jeffersons' § 1983 claims.

* * *

For the reasons stated, the writ of certiorari is dismissed for want of jurisdiction.

It is so ordered.

JUSTICE STEVENS, dissenting.

In my opinion, the jurisdictional holding in *Pennsylvania* v. *Ritchie*, 480 U. S. 39 (1987), represented such a departure from our settled construction of the term "final judgment" in 28 U. S. C. § 1257(a) that it should be promptly overruled, see *id.*, at 72–78 (STEVENS, J., dissenting). Unless and until at least four other Members of the Court share that view, however, I believe its holding governs cases such as this.

In *Ritchie*, the Court held that a judgment of the Pennsylvania Supreme Court resolving a federal question was final even though the federal question could have been relitigated in the state court if the appeals had been dismissed, and even though it could have been raised in a second appeal to this Court after the conclusion of further proceedings in the state courts. The fact that law-of-the-case principles would have made it futile to relitigate the federal issue in the state courts provided a sufficient basis for this Court's decision to accept jurisdiction. Precisely the same situation obtains in

this case.[1] Either the fact that further litigation of a federal issue in the state system would be futile provides a legitimate basis for treating the judgment of the State's highest court as final—as the Court held in *Ritchie*—or it is sufficient to defeat jurisdiction, as the Court concludes today. I do not believe the Court can have it both ways.

Since *Ritchie* is still the law, I believe it requires us to take jurisdiction and to reach the merits. The federal issue is not difficult to resolve. Under 42 U. S. C. § 1988, the Alabama Wrongful Death Act permits the survival of petitioners' § 1983 claims. Our decisions in cases such as *Smith* v. *Wade*, 461 U. S. 30 (1983), *Newport* v. *Fact Concerts, Inc.*, 453 U. S. 247 (1981), and *Carey* v. *Piphus*, 435 U. S. 247 (1978), make it perfectly clear that the measure of damages in an action brought under 42 U. S. C. § 1983 is governed by federal law. Cf. *Sullivan* v. *Little Hunting Park, Inc.*, 396 U. S. 229, 239–240 (1969) (holding that, in a case arising

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[1] Indeed, the Court's response to my dissent in *Ritchie* applies directly to the facts of this case:

"But as JUSTICE STEVENS' dissent recognizes, the Pennsylvania courts already have considered and resolved this issue in their earlier proceedings; if the Commonwealth were to raise it again in a new set of appeals, the courts below would simply reject the claim under the law-of-the-case doctrine. Law-of-the-case principles are not a bar to this Court's jurisdiction, of course, and thus JUSTICE STEVENS' dissent apparently would require the Commonwealth to raise a fruitless Sixth Amendment claim in the trial court, the Superior Court, and the Pennsylvania Supreme Court still another time before we regrant certiorari on the question that is now before us.

"The goals of finality would be frustrated, rather than furthered, by these wasteful and time-consuming procedures. Based on the unusual facts of this case, the justifications for the finality doctrine—efficiency, judicial restraint, and federalism, see *Radio Station WOW, Inc.* v. *Johnson*, 326 U. S. 120, 124 (1945); *post*, at 72—would be ill served by another round of litigation on an issue that has been authoritatively decided by the highest state court." *Pennsylvania* v. *Ritchie*, 480 U. S. 39, 49, n. 7 (1987).

under 42 U. S. C. § 1982, § 1988 provides "that both federal and state rules on damages may be utilized, whichever better serves the policies expressed in the federal statutes. . . . The rule of damages, whether drawn from federal or state sources, is a federal rule responsive to the need whenever a federal right is impaired"). Thus, the fact that the Alabama survival statute also purports to limit recovery to punitive damages in an action against a municipality is of no consequence. As a matter of federal law we have already decided that compensatory damages may be recovered in such a case, *Monell* v. *New York City Dept. of Social Servs.*, 436 U. S. 658 (1978); *Owen* v. *Independence*, 445 U. S. 622 (1980), and that punitive damages may not, *Newport*, *supra*. As long as state law allows the survival of petitioners' § 1983 action—as it undoubtedly does here—additional state-law limitations on the particular measure of damages are irrelevant.[2]

Accordingly, even though my preference would be to overrule *Ritchie* and to dismiss the appeal, my vote is to reverse the judgment of the Alabama Supreme Court.

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[2] *Robertson* v. *Wegmann*, 436 U. S. 584 (1978), is not to the contrary. In *Robertson*, the applicable state law provided for a survivorship claim but allowed only certain parties to bring such a claim. This Court allowed the § 1983 action to abate pursuant to state law because the plaintiff was not an appropriate party to bring the suit. That holding does not bear on the question whether a state limitation on the measure of damages applies to a § 1983 claim.

Syllabus

TREST *v.* CAIN, WARDEN

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 96–7901. Argued November 10, 1997—Decided December 9, 1997

In upholding the District Court's refusal to issue a writ of habeas corpus vacating petitioner Trest's Louisiana prison sentence, the Fifth Circuit stated its belief that a state court would refuse to consider Trest's federal claims as untimely, and that this "procedural default" was an adequate and independent state ground for denying him relief. In his petition for certiorari, Trest pointed out that the Fifth Circuit had raised and decided the "procedural default" question *sua sponte*, and that language in the court's opinion suggested that it had thought that, once it had noticed the possibility of a procedural default, it was required to raise the matter on its own.

Held: A court of appeals is not "required" to raise the issue of procedural default *sua sponte*. Pp. 89–92.

(a) In the habeas context, procedural default is normally a "defense" that the State is "obligated to raise" and "preserv[e]" if it is not to "lose the right to assert the defense thereafter." *Gray* v. *Netherland*, 518 U. S. 152, 166. This Court is unaware of any precedent stating that a habeas court must raise such a matter where the State itself does not do so. Pp. 89–90.

(b) This is not an appropriate case in which to examine whether the law nonetheless permitted the Fifth Circuit to raise the procedural default *sua sponte*. First, its opinion contains language suggesting it believed that, despite Louisiana's failure to raise the matter, Circuit precedent required, not simply permitted, it to consider a potential procedural default. Second, Trest made clear in his certiorari petition that he intended to limit the question to mandatory consideration, and Louisiana in its response did not object, suggest alternate wording, or ask this Court to consider the question in any broader context. Third, the broader question cannot be easily answered in the context of this case, for this Court is uncertain about matters which arguably are relevant to the question whether the law permitted the Fifth Circuit to raise a procedural default *sua sponte:* questions about the exhaustion of Trest's federal claims in state court and about the relevant procedural rules to be applied. The parties might have considered these questions, and the Fifth Circuit might have determined their relevance or their answers,

had that court not decided the procedural default question without giving the parties an opportunity for argument. Pp. 90–92.

94 F. 3d 1005, vacated and remanded.

BREYER, J., delivered the opinion for a unanimous Court.

Rebecca L. Hudsmith argued the cause and filed briefs for petitioner.

Kathleen E. Petersen, Assistant Attorney General of Louisiana, argued the cause for respondent. With her on the brief were *Richard P. Ieyoub*, Attorney General, and *Mary Ellen Hunley*, Assistant Attorney General.*

JUSTICE BREYER delivered the opinion of the Court.

The petitioner in this case, Richard Trest, seeks a writ of habeas corpus, which would vacate a long sentence that he is serving in a Louisiana prison for armed robbery. The District Court refused to issue the writ. Trest appealed to the Court of Appeals for the Fifth Circuit, which ruled against him on the ground of "procedural default." *Trest* v. *Whitley*, 94 F. 3d 1005, 1007 (1996). The Fifth Circuit believed that Trest had failed to raise his federal claims on time in state court, that a state court would now refuse to consider his claims for that reason, and that this state procedural reason amounted to an adequate and independent state ground for denying Trest relief. Hence, in the absence of special circumstances, a federal habeas court could not reach the merits of Trest's federal claims. *Id.*, at 1007–1009; see

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**Edward M. Chikofsky* and *Barbara E. Bergman* filed a brief for the National Association of Criminal Defense Lawyers as *amicus curiae* urging reversal.

A brief of *amici curiae* urging affirmance was filed for the State of Mississippi et al. by *Mike Moore*, Attorney General of Mississippi, *Marvin L. White, Jr.*, Assistant Attorney General, and *Jeffrey A. Klingfuss*, Special Assistant Attorney General, *Robert A. Butterworth*, Attorney General of Florida, *Joseph P. Mazurek*, Attorney General of Montana, and *Frankie Sue Del Papa*, Attorney General of Nevada.

generally *Coleman* v. *Thompson*, 501 U. S. 722 (1991); *Rose* v. *Lundy*, 455 U. S. 509 (1982).

In his petition for certiorari to this Court, Trest pointed out that the Court of Appeals had raised and decided the question of "procedural default" *sua sponte*. The parties themselves had neither raised nor argued the matter. And language in the Court of Appeals' opinion suggested that the court had thought that, once it had noticed the possibility of a procedural default, it was required to raise the matter on its own. Trest consequently asked us to decide whether a court of appeals, reviewing a district court's habeas corpus decision, "*is required* to raise . . . *sua sponte*" a petitioner's potential procedural default. Pet. for Cert. i (emphasis added). We agreed to do so.

Precedent makes clear that the answer to the question presented is "no." A court of appeals is not "required" to raise the issue of procedural default *sua sponte*. It is not as if the presence of a procedural default deprived the federal court of jurisdiction, for this Court has made clear that in the habeas context, a procedural default, that is, a critical failure to comply with state procedural law, is not a jurisdictional matter. See *Lambrix* v. *Singletary*, 520 U. S. 518, 522–523 (1997); *Coleman*, 501 U. S., at 730–731. Rather, "[i]n the habeas context, the application of the independent and adequate state ground doctrine," of which a procedural default is typically an instance, "is grounded in concerns of comity and federalism." *Id.*, at 730 (contrasting habeas proceeding with this Court's direct review of a state court judgment). Thus, procedural default is normally a "defense" that the State is "obligated to raise" and "preserv[e]" if it is not to "lose the right to assert the defense thereafter." *Gray* v. *Netherland*, 518 U. S. 152, 166 (1996); see *Jenkins* v. *Anderson*, 447 U. S. 231, 234, n. 1 (1980). We are not aware of any precedent stating that a habeas court *must* raise such a matter where the State itself does not do so. And Louisiana concedes as much, for it says in its brief that "the Fifth

Circuit clearly was not 'required' to *sua sponte* invoke procedural default." Brief for Respondent 16–17.

Louisiana, however, would like us to go beyond the question presented and hold that the law permitted (though it did not require) the Fifth Circuit to raise the procedural default *sua sponte*. Cf. *Granberry* v. *Greer*, 481 U. S. 129, 133–134 (1987) (appellate court may raise *sua sponte* petitioner's failure to exhaust state remedies). We recognize some uncertainty in the lower courts as to whether, or just when, a habeas court *may* consider a procedural default that the State at some point has waived, or failed to raise. Compare *Esslinger* v. *Davis*, 44 F. 3d 1515, 1525–1528 (CA11 1995) (*sua sponte* invocation of procedural default serves no important federal interest), with *Hardiman* v. *Reynolds*, 971 F. 2d 500, 502–505 (CA10 1992) (comity and scarce judicial resources may justify court raising state procedural default *sua sponte*); see also J. Liebman & R. Hertz, 2 Federal Habeas Corpus Practice and Procedure § 26.2, pp. 814–817 (1994) (citing cases). Nonetheless, we do not believe this is an appropriate case in which to examine that question for several reasons. First, the Fifth Circuit's opinion contains language suggesting the court believed that, despite Louisiana's failure to raise the matter, Circuit precedent required the court (and did not simply permit the court) to consider a potential procedural default. See, *e. g.*, 94 F. 3d, at 1007 ("[T]his court's decision in *Sones* v. *Hargett* . . . precludes us from reviewing the merits of Trest's habeas challenge").

Second, the language of the question presented in Trest's petition for certiorari, as well as the arguments made in his petition, made clear that Trest intended to limit the question in the way we have described. Yet Louisiana in its response did not object or suggest alternate wording. Nor did Louisiana ask us to consider the question in any broader context.

Third, we cannot now easily answer the broader question in the context of this case, for we are uncertain about mat-

ters which arguably are relevant to the question whether the law permitted the Fifth Circuit to raise a procedural default *sua sponte*. The parties disagree, for example, about whether or not Trest has fully, or partially, exhausted his current federal claims by raising them in state court. Cf. *Rose* v. *Lundy*, *supra*, at 518–520. They disagree about whether Louisiana has waived any "nonexhaustion" defense. Cf. *Granberry* v. *Greer*, *supra*. They consequently disagree about whether this is, or is not, the kind of case in which a federal court might rely upon the existence of a state "procedural bar" despite the failure of any state court to assert one. See *Coleman* v. *Thompson*, *supra*, at 735, n.

The parties also seem to disagree about which State's procedural rules are relevant. Trest's federal claims focus upon the 35-year sentence of imprisonment that the Louisiana court imposed (under a Louisiana "habitual offender" law) in light of his earlier convictions in Mississippi for burglary. Trest argued that those earlier convictions were constitutionally invalid because they rested upon a guilty plea which he says the Mississippi court accepted without having first told him about his rights to appeal, to trial by jury, to confront witnesses, and not to incriminate himself. Cf. *Boykin* v. *Alabama*, 395 U. S. 238, 242–244 (1969); *State* v. *Robicheaux*, 412 So. 2d 1313, 1316–1317 (La. 1982). The Fifth Circuit did not reach the merits of Trest's claims because it believed that the Mississippi courts would have barred any challenge to his Mississippi convictions as a challenge that, under state law, came too late in the day. See Miss. Code Ann. § 99–39–5(2) (1994). Trest, and *amici* supporting him, state that the relevant procedural law (for the purposes of the "procedural default" doctrine) is that of Louisiana, rather than that of Mississippi, for it is Louisiana, not Mississippi, which holds Trest in custody. And it is not clear whether Mississippi's procedural law would create a "default" that would bar federal courts from considering whether Louisi-

ana, not Mississippi, could (or could not) use Mississippi convictions to enhance a sentence for a subsequent Louisiana crime.

We note that the parties might have considered these questions, and the Court of Appeals might have determined their relevance or their answers, had that court not decided the procedural default question without giving the parties an opportunity for argument. We do not say that a court must always ask for further briefing when it disposes of a case on a basis not previously argued. But often, as here, that somewhat longer (and often fairer) way 'round is the shortest way home. Regardless, we have answered the question presented, we vacate the judgment of the Court of Appeals, and we remand the case for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

HUDSON ET AL. *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 96–976. Argued October 8, 1997—Decided December 10, 1997

The Office of the Comptroller of the Currency (OCC) imposed monetary penalties and occupational debarment on petitioners for violating 12 U. S. C. §§ 84(a)(1) and 375b by causing two banks in which they were officials to make certain loans in a manner that unlawfully allowed petitioner Hudson to receive the loans' benefit. When the Government later criminally indicted petitioners for essentially the same conduct, they moved to dismiss under the Double Jeopardy Clause of the Fifth Amendment. The District Court ultimately dismissed the indictments, but the Court of Appeals reversed, relying on *United States* v. *Halper*, 490 U. S. 435, 448–449.

Held: The Double Jeopardy Clause is not a bar to petitioners' later criminal prosecution because the OCC administrative proceedings were civil, not criminal. Pp. 98–105.

(a) The Clause protects only against the imposition of multiple *criminal* punishments for the same offense. See, *e. g.*, *Helvering* v. *Mitchell*, 303 U. S. 391, 399. *Halper* deviated from this Court's longstanding double jeopardy doctrine in two key respects. First, it bypassed the traditional threshold question whether the legislature intended the particular successive punishment to be "civil" or "criminal" in nature, see, *e. g.*, *United States* v. *Ward*, 448 U. S. 242, 248, focusing instead on whether the sanction was so grossly disproportionate to the harm caused as to constitute "punishment." The Court thereby elevated to dispositive status one of the factors listed in *Kennedy* v. *Mendoza-Martinez*, 372 U. S. 144, 168–169, for determining whether a statute intended to be civil was so punitive as to transform it into a criminal penalty, even though *Kennedy* itself emphasized that no one factor should be considered controlling, *id.*, at 169. Second, *Halper* "assess[ed] the character of the actual sanctions imposed," 490 U. S., at 447, rather than, as *Kennedy* demanded, evaluating the "statute on its face" to determine whether it provided for what amounted to a criminal sanction, 372 U. S., at 169. Such deviations were ill considered. *Halper*'s test has proved unworkable, creating confusion by attempting to distinguish between "punitive" and "nonpunitive" penalties. Moreover, some of the ills at which it was directed are addressed by other constitutional provisions.

Syllabus

Thus, this Court largely disavows *Halper*'s method of analysis and reaffirms the previous rule exemplified in *Ward.* Pp. 98–103.

(b) Applying traditional principles to the facts, it is clear that petitioners' criminal prosecution would not violate double jeopardy. The money penalties statutes' express designation of their sanctions as "civil," see §§ 93(b)(1) and 504(a), and the fact that the authority to issue debarment orders is conferred upon the "appropriate Federal banking agenc[ies]," see §§ 1818(e)(1)–(3), establish that Congress intended these sanctions to be civil in nature. Moreover, there is little evidence—much less the "clearest proof" this Court requires, see *Ward*, *supra*, at 249—to suggest that the sanctions were so punitive in form and effect as to render them criminal despite Congress' contrary intent, see *United States* v. *Ursery*, 518 U. S. 267, 290. Neither sanction has historically been viewed as punishment, *Helvering*, *supra*, at 399, and n. 2, 400, and neither involves an affirmative disability or restraint, see *Flemming* v. *Nestor*, 363 U. S. 603, 617. Neither comes into play "only" on a finding of scienter, *Kennedy*, 372 U. S., at 168, since penalties may be assessed under §§ 93(b) and 504, and debarment imposed under § 1818(e)(1)(C)(ii), without regard to the violator's willfulness. That the conduct for which OCC sanctions are imposed may also be criminal, see *ibid.*, is insufficient to render the sanctions criminally punitive, *Ursery*, *supra*, at 292, particularly in the double jeopardy context, see *United States* v. *Dixon*, 509 U. S. 688, 704. Finally, although the imposition of both sanctions will deter others from emulating petitioners' conduct, see *Kennedy*, *supra*, at 168, the mere presence of this traditional goal of criminal punishment is insufficient to render a sanction criminal, as deterrence "may serve civil as well as criminal goals," *e. g.*, *Ursery*, *supra*, at 292. Pp. 103–105.

92 F. 3d 1026, affirmed.

REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, and THOMAS, JJ., joined. SCALIA, J., filed a concurring opinion, in which THOMAS, J., joined, *post*, p. 106. STEVENS, J., *post*, p. 106, and SOUTER, J., *post*, p. 112, filed opinions concurring in the judgment. BREYER, J., filed an opinion concurring in the judgment, in which GINSBURG, J., joined, *post*, p. 115.

Bernard J. Rothbaum argued the cause for petitioners. With him on the briefs were *Jack L. Neville, Jr.*, *Lawrence S. Robbins*, *C. Merle Gile*, *James A. Rolfe*, and *Lynn Pringle.*

Deputy Solicitor General Dreeben argued the cause for the United States. With him on the briefs were *Acting*

Solicitor General Dellinger, Acting Assistant Attorney General Keeney, and *Paul R. Q. Wolfson.**

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

The Government administratively imposed monetary penalties and occupational debarment on petitioners for violation of federal banking statutes, and later criminally indicted them for essentially the same conduct. We hold that the

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*Briefs of *amicus curiae* urging reversal were filed for the National Association of Criminal Defense Lawyers by *Arthur F. Mathews* and *Lisa Kemler;* and for the Washington Legal Foundation by *Daniel J. Popeo.*

A brief of *amici curiae* urging affirmance was filed for 48 States and Territories by *Betty D. Montgomery,* Attorney General of Ohio, *Jeffrey S. Sutton,* State Solicitor, and *David M. Gormley,* Assistant Attorney General, *Jan Graham,* Attorney General of Utah, *Carol Clawson,* Solicitor General, and *Marian Decker,* Assistant Attorney General, *John M. Bailey,* Chief States Attorney of Connecticut, *Jo Anne Robinson,* Interim Corporation Counsel of the District of Columbia, and by the Attorneys General for their respective jurisdictions as follows: *Bill Pryor* of Alabama, *Bruce M. Botelho* of Alaska, *Toetagata A. Mialo* of American Samoa, *Grant Woods* of Arizona, *Winston Bryant* of Arkansas, *Daniel E. Lungren* of California, *Gale A. Norton* of Colorado, *M. Jane Brady* of Delaware, *Robert A. Butterworth* of Florida, *Michael J. Bowers* of Georgia, *Margery S. Bronster* of Hawaii, *Alan G. Lance* of Idaho, *James E. Ryan* of Illinois, *Jeffrey A. Modisett* of Indiana, *Thomas J. Miller* of Iowa, *Carla J. Stovall* of Kansas, *Richard P. Ieyoub* of Louisiana, *J. Joseph Curran, Jr.,* of Maryland, *Frank J. Kelley* of Michigan, *Hubert H. Humphrey III* of Minnesota, *Michael C. Moore* of Mississippi, *Joseph P. Mazurek* of Montana, *Don Stenberg* of Nebraska, *Frankie Sue Del Papa* of Nevada, *Philip T. McLaughlin* of New Hampshire, *Peter Verniero* of New Jersey, *Tom Udall* of New Mexico, *Dennis C. Vacco* of New York, *Michael F. Easley* of North Carolina, *Robert B. Dunlap II* of the Northern Mariana Islands, *W. A. Drew Edmondson* of Oklahoma, *Hardy Myers* of Oregon, *D. Michael Fisher* of Pennsylvania, *Jose Fuentes-Agostini* of Puerto Rico, *Jeffrey B. Pine* of Rhode Island, *Charles M. Condon* of South Carolina, *Mark W. Barnett* of South Dakota, *John Knox Walkup* of Tennessee, *Dan Morales* of Texas, *William H. Sorrell* of Vermont, *Julio A. Brady* of the Virgin Islands, *Richard Cullen* of Virginia, *Christine O. Gregoire* of Washington, and *William U. Hill* of Wyoming.

Double Jeopardy Clause of the Fifth Amendment is not a bar to the later criminal prosecution because the administrative proceedings were civil, not criminal. Our reasons for so holding in large part disavow the method of analysis used in *United States* v. *Halper*, 490 U. S. 435, 448 (1989), and reaffirm the previously established rule exemplified in *United States* v. *Ward*, 448 U. S. 242, 248–249 (1980).

During the early and mid-1980's, petitioner John Hudson was the chairman and controlling shareholder of the First National Bank of Tipton (Tipton) and the First National Bank of Hammon (Hammon).[1] During the same period, petitioner Jack Rackley was president of Tipton and a member of the board of directors of Hammon, and petitioner Larry Baresel was a member of the board of directors of both Tipton and Hammon.

An examination of Tipton and Hammon led the Office of the Comptroller of the Currency (OCC) to conclude that petitioners had used their bank positions to arrange a series of loans to third parties in violation of various federal banking statutes and regulations. According to the OCC, those loans, while nominally made to third parties, were in reality made to Hudson in order to enable him to redeem bank stock that he had pledged as collateral on defaulted loans.

On February 13, 1989, OCC issued a "Notice of Assessment of Civil Money Penalty." The notice alleged that petitioners had violated 12 U. S. C. §§ 84(a)(1) and 375b (1982 ed.) and 12 CFR §§ 31.2(b) and 215.4(b) (1986) by causing the banks with which they were associated to make loans to nominee borrowers in a manner that unlawfully allowed Hudson to receive the benefit of the loans. App. to Pet. for Cert. 89a. The notice also alleged that the illegal loans resulted in losses to Tipton and Hammon of almost $900,000 and contributed to the failure of those banks. *Id.*, at 97a. However, the notice contained no allegation of any harm to the Govern-

[1] Tipton and Hammon are two very small towns in western Oklahoma.

ment as a result of petitioners' conduct. "After taking into account the size of the financial resources and the good faith of [petitioners], the gravity of the violations, the history of previous violations and other matters as justice may require, as required by 12 U. S. C. §§ 93(b)(2) and 504(b)," OCC assessed penalties of $100,000 against Hudson and $50,000 each against Rackley and Baresel. *Id.*, at 89a. On August 31, 1989, OCC also issued a "Notice of Intention to Prohibit Further Participation" against each petitioner. *Id.*, at 99a. These notices, which were premised on the identical allegations that formed the basis for the previous notices, informed petitioners that OCC intended to bar them from further participation in the conduct of "any insured depository institution." *Id.*, at 100a.

In October 1989, petitioners resolved the OCC proceedings against them by each entering into a "Stipulation and Consent Order." These consent orders provided that Hudson, Baresel, and Rackley would pay assessments of $16,500, $15,000, and $12,500 respectively. *Id.*, at 130a, 140a, 135a. In addition, each petitioner agreed not to "participate in any manner" in the affairs of any banking institution without the written authorization of the OCC and all other relevant regulatory agencies.[2] *Id.*, at 131a, 141a, 136a.

In August 1992, petitioners were indicted in the Western District of Oklahoma in a 22-count indictment on charges of conspiracy, 18 U. S. C. § 371, misapplication of bank funds, §§ 656 and 2, and making false bank entries, § 1005.[3] The violations charged in the indictment rested on the same lend-

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[2] The consent orders also contained language providing that they did not constitute "a waiver of any right, power, or authority of any other representatives of the United States, or agencies thereof, to bring other actions deemed appropriate." App. to Pet. for Cert. 133a, 143a, 138a. The Court of Appeals ultimately held that this provision was not a waiver of petitioners' double jeopardy claim. 14 F. 3d 536, 539 (CA10 1994).

[3] Only petitioner Rackley was indicted for making false bank entries in violation of 18 U. S. C. § 1005.

ing transactions that formed the basis for the prior administrative actions brought by OCC. Petitioners moved to dismiss the indictment on double jeopardy grounds, but the District Court denied the motions. The Court of Appeals affirmed the District Court's holding on the nonparticipation sanction issue, but vacated and remanded to the District Court on the money sanction issue. 14 F. 3d 536 (CA10 1994). The District Court on remand granted petitioners' motion to dismiss the indictments. This time the Government appealed, and the Court of Appeals reversed. 92 F. 3d 1026 (1996). That court held, following *Halper*, that the actual fines imposed by the Government were not so grossly disproportional to the proved damages to the Government as to render the sanctions "punishment" for double jeopardy purposes. We granted certiorari, 520 U. S. 1165 (1997), because of concerns about the wide variety of novel double jeopardy claims spawned in the wake of *Halper*.[4] We now affirm, but for different reasons.

The Double Jeopardy Clause provides that no "person [shall] be subject for the same offence to be twice put in jeopardy of life or limb." We have long recognized that the Double Jeopardy Clause does not prohibit the imposition of

[4] *E. g., Zukas* v. *Hinson*, 1997 WL 623648 (CA11, Oct. 21, 1997) (challenge to FAA revocation of a commercial pilot's license as violative of double jeopardy); *E. B.* v. *Verniero*, 119 F. 3d 1077 (CA3 1997) (challenge to "Megan's Law" as violative of double jeopardy); *Jones* v. *Securities & Exchange Comm'n*, 115 F. 3d 1173 (CA4 1997) (challenge to SEC debarment proceeding as violative of double jeopardy); *United States* v. *Rice*, 109 F. 3d 151 (CA3 1997) (challenge to criminal drug prosecution following general military discharge for same conduct as violative of double jeopardy); *United States* v. *Hatfield*, 108 F. 3d 67 (CA4 1997) (challenge to criminal fraud prosecution as foreclosed by previous debarment from Government contracting); *Taylor* v. *Cisneros*, 102 F. 3d 1334 (CA3 1996) (challenge to eviction from federally subsidized housing based on guilty plea to possession of drug paraphernalia as violative of double jeopardy); *United States* v. *Galan*, 82 F. 3d 639 (CA5) (challenge to prosecution for prison escape following prison disciplinary proceeding as violative of double jeopardy), cert. denied, 519 U. S. 867 (1996).

all additional sanctions that could, "'in common parlance,'" be described as punishment. *United States ex rel. Marcus* v. *Hess*, 317 U. S. 537, 549 (1943) (quoting *Moore* v. *Illinois*, 14 How. 13, 19 (1852)). The Clause protects only against the imposition of multiple *criminal* punishments for the same offense, *Helvering* v. *Mitchell*, 303 U. S. 391, 399 (1938); see also *Hess*, *supra*, at 548–549 ("Only" "criminal punishment" "subject[s] the defendant to 'jeopardy' within the constitutional meaning"); *Breed* v. *Jones*, 421 U. S. 519, 528 (1975) ("In the constitutional sense, jeopardy describes the risk that is traditionally associated with a criminal prosecution"), and then only when such occurs in successive proceedings, see *Missouri* v. *Hunter*, 459 U. S. 359, 366 (1983).

Whether a particular punishment is criminal or civil is, at least initially, a matter of statutory construction. *Helvering*, *supra*, at 399. A court must first ask whether the legislature, "in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other." *Ward*, 448 U. S., at 248. Even in those cases where the legislature "has indicated an intention to establish a civil penalty, we have inquired further whether the statutory scheme was so punitive either in purpose or effect," *id.*, at 248–249, as to "transfor[m] what was clearly intended as a civil remedy into a criminal penalty," *Rex Trailer Co.* v. *United States*, 350 U. S. 148, 154 (1956).

In making this latter determination, the factors listed in *Kennedy* v. *Mendoza-Martinez*, 372 U. S. 144, 168–169 (1963), provide useful guideposts, including: (1) "[w]hether the sanction involves an affirmative disability or restraint"; (2) "whether it has historically been regarded as a punishment"; (3) "whether it comes into play only on a finding of *scienter*"; (4) "whether its operation will promote the traditional aims of punishment—retribution and deterrence"; (5) "whether the behavior to which it applies is already a crime"; (6) "whether an alternative purpose to which it may rationally be connected is assignable for it"; and (7) "whether it appears

excessive in relation to the alternative purpose assigned." It is important to note, however, that "these factors must be considered in relation to the statute on its face," *id.*, at 169, and "only the clearest proof" will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty, *Ward*, *supra*, at 249 (internal quotation marks omitted).

Our opinion in *United States* v. *Halper* marked the first time we applied the Double Jeopardy Clause to a sanction without first determining that it was criminal in nature. In that case, Irwin Halper was convicted of, *inter alia*, violating the criminal false claims statute, 18 U. S. C. § 287, based on his submission of 65 inflated Medicare claims each of which overcharged the Government by $9. He was sentenced to two years' imprisonment and fined $5,000. The Government then brought an action against Halper under the civil False Claims Act, 31 U. S. C. §§ 3729–3731 (1982 ed., Supp. II). The remedial provisions of the False Claims Act provided that a violation of the Act rendered one "liable to the United States Government for a civil penalty of $2,000, an amount equal to 2 times the amount of damages the Government sustains because of the act of that person, and costs of the civil action." *Id.*, § 3729. Given Halper's 65 separate violations of the Act, he appeared to be liable for a penalty of $130,000, despite the fact he actually defrauded the Government of less than $600. However, the District Court concluded that a penalty of this magnitude would violate the Double Jeopardy Clause in light of Halper's previous criminal conviction. While explicitly recognizing that the statutory damages provision of the Act "was not itself a criminal punishment," the District Court nonetheless concluded that application of the full penalty to Halper would constitute a second "punishment" in violation of the Double Jeopardy Clause. 490 U. S., at 438–439.

On direct appeal, this Court affirmed. As the *Halper* Court saw it, the imposition of "punishment" of any kind was

subject to double jeopardy constraints, and whether a sanction constituted "punishment" depended primarily on whether it served the traditional "goals of punishment," namely, "retribution and deterrence." *Id.*, at 448. Any sanction that was so "overwhelmingly disproportionate" to the injury caused that it could not "fairly be said *solely* to serve [the] remedial purpose" of compensating the Government for its loss, was thought to be explainable only as "serving either retributive or deterrent purposes." See *id.*, at 448–449 (emphasis added).

The analysis applied by the *Halper* Court deviated from our traditional double jeopardy doctrine in two key respects. First, the *Halper* Court bypassed the threshold question: whether the successive punishment at issue is a "criminal" punishment. Instead, it focused on whether the sanction, regardless of whether it was civil or criminal, was so grossly disproportionate to the harm caused as to constitute "punishment." In so doing, the Court elevated a single *Kennedy* factor—whether the sanction appeared excessive in relation to its nonpunitive purposes—to dispositive status. But as we emphasized in *Kennedy* itself, no one factor should be considered controlling as they "may often point in differing directions." 372 U. S., at 169. The second significant departure in *Halper* was the Court's decision to "asses[s] the character of the actual sanctions imposed," 490 U. S., at 447, rather than, as *Kennedy* demanded, evaluating the "statute on its face" to determine whether it provided for what amounted to a criminal sanction, 372 U. S., at 169.

We believe that *Halper*'s deviation from longstanding double jeopardy principles was ill considered.[5] As subsequent

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[5] In his concurrence, JUSTICE STEVENS criticizes us for reexamining our *Halper* opinion rather than deciding the case on what he believes is the narrower *Blockburger* grounds. But the question upon which we granted certiorari in this case is "whether imposition upon petitioners of monetary fines as *in personam* civil penalties by the Department of the Treasury, together with other sanctions, is 'punishment' for purposes of the Double

cases have demonstrated, *Halper*'s test for determining whether a particular sanction is "punitive," and thus subject to the strictures of the Double Jeopardy Clause, has proved unworkable. We have since recognized that all civil penalties have some deterrent effect. See *Department of Revenue of Mont.* v. *Kurth Ranch*, 511 U. S. 767, 777, n. 14 (1994); *United States* v. *Ursery*, 518 U. S. 267, 284–285, n. 2 (1996).[6] If a sanction must be "solely" remedial (*i. e.*, entirely nondeterrent) to avoid implicating the Double Jeopardy Clause, then no civil penalties are beyond the scope of the Clause. Under *Halper*'s method of analysis, a court must also look at the "sanction actually imposed" to determine whether the Double Jeopardy Clause is implicated. Thus, it will not be possible to determine whether the Double Jeopardy Clause is violated until a defendant has proceeded through a trial to judgment. But in those cases where the civil proceeding follows the criminal proceeding, this approach flies in the face of the notion that the Double Jeopardy Clause forbids the government from even "*attempting* a second time to punish criminally." *Helvering*, 303 U. S., at 399 (emphasis added).

Finally, it should be noted that some of the ills at which *Halper* was directed are addressed by other constitutional

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Jeopardy Clause." Pet. for Cert. i. It is this question, and not the *Blockburger* issue, upon which there is a conflict among the Courts of Appeals. Indeed, the Court of Appeals for the Tenth Circuit in this case did not even pass upon the *Blockburger* question, finding it unnecessary to do so. 92 F. 3d, at 1028, n. 3.

[6] In *Kurth Ranch*, we held that the presence of a deterrent purpose or effect is not dispositive of the double jeopardy question. 511 U. S., at 781. Rather, we applied a *Kennedy*-like test, see 511 U. S., at 780–783, before concluding that Montana's dangerous drug tax was "the functional equivalent of a successive criminal prosecution," *id.*, at 784. Similarly, in *Ursery*, we rejected the notion that civil *in rem* forfeitures violate the Double Jeopardy Clause. 518 U. S., at 270–271. We upheld such forfeitures, relying on the historical support for the notion that such forfeitures are civil and thus do not implicate double jeopardy. *Id.*, at 292.

provisions. The Due Process and Equal Protection Clauses already protect individuals from sanctions which are downright irrational. *Williamson* v. *Lee Optical of Okla., Inc.*, 348 U. S. 483 (1955). The Eighth Amendment protects against excessive civil fines, including forfeitures. *Alexander* v. *United States*, 509 U. S. 544 (1993); *Austin* v. *United States*, 509 U. S. 602 (1993). The additional protection afforded by extending double jeopardy protections to proceedings heretofore thought to be civil is more than offset by the confusion created by attempting to distinguish between "punitive" and "nonpunitive" penalties.

Applying traditional double jeopardy principles to the facts of this case, it is clear that the criminal prosecution of these petitioners would not violate the Double Jeopardy Clause. It is evident that Congress intended the OCC money penalties and debarment sanctions imposed for violations of 12 U. S. C. §§ 84 and 375b to be civil in nature. As for the money penalties, both §§ 93(b)(1) and 504(a), which authorize the imposition of monetary penalties for violations of §§ 84 and 375b respectively, expressly provide that such penalties are "civil." While the provision authorizing debarment contains no language explicitly denominating the sanction as civil, we think it significant that the authority to issue debarment orders is conferred upon the "appropriate Federal banking agenc[ies]." §§ 1818(e)(1)–(3). That such authority was conferred upon administrative agencies is prima facie evidence that Congress intended to provide for a civil sanction. See *Helvering*, *supra*, at 402; *United States* v. *Spector*, 343 U. S. 169, 178 (1952) (Jackson, J., dissenting) ("Administrative determinations of liability to deportation have been sustained as constitutional only by considering them to be exclusively civil in nature, with no criminal consequences or connotations"); *Wong Wing* v. *United States*, 163 U. S. 228, 235 (1896) (holding that quintessential criminal punishments may be imposed only "by a judicial trial").

Turning to the second stage of the *Ward* test, we find that there is little evidence, much less the clearest proof that we require, suggesting that either OCC money penalties or debarment sanctions are "so punitive in form and effect as to render them criminal despite Congress' intent to the contrary." *Ursery*, *supra*, at 290. First, neither money penalties nor debarment has historically been viewed as punishment. We have long recognized that "revocation of a privilege voluntarily granted," such as a debarment, "is characteristically free of the punitive criminal element." *Helvering*, 303 U. S., at 399, and n. 2. Similarly, "the payment of fixed or variable sums of money [is a] sanction which ha[s] been recognized as enforcible by civil proceedings since the original revenue law of 1789." *Id.*, at 400.

Second, the sanctions imposed do not involve an "affirmative disability or restraint," as that term is normally understood. While petitioners have been prohibited from further participating in the banking industry, this is "certainly nothing approaching the 'infamous punishment' of imprisonment." *Flemming* v. *Nestor*, 363 U. S. 603, 617 (1960). Third, neither sanction comes into play "only" on a finding of scienter. The provisions under which the money penalties were imposed, 12 U. S. C. §§ 93(b) and 504, allow for the assessment of a penalty against any person "who violates" any of the underlying banking statutes, without regard to the violator's state of mind. "Good faith" is considered by OCC in determining the amount of the penalty to be imposed, § 93(b)(2), but a penalty can be imposed even in the absence of bad faith. The fact that petitioners' "good faith" was considered in determining the amount of the penalty to be imposed in this case is irrelevant, as we look only to "the statute on its face" to determine whether a penalty is criminal in nature. *Kennedy*, 372 U. S., at 169. Similarly, while debarment may be imposed for a "willful" disregard "for the safety or soundness of [an] insured depository institution,"

willfulness is not a prerequisite to debarment; it is sufficient that the disregard for the safety and soundness of the institution was "continuing." § 1818(e)(1)(C)(ii).

Fourth, the conduct for which OCC sanctions are imposed may also be criminal (and in this case formed the basis for petitioners' indictments). This fact is insufficient to render the money penalties and debarment sanctions criminally punitive, *Ursery*, 518 U. S., at 292, particularly in the double jeopardy context, see *United States* v. *Dixon*, 509 U. S. 688, 704 (1993) (rejecting "same-conduct" test for double jeopardy purposes).

Finally, we recognize that the imposition of both money penalties and debarment sanctions will deter others from emulating petitioners' conduct, a traditional goal of criminal punishment. But the mere presence of this purpose is insufficient to render a sanction criminal, as deterrence "may serve civil as well as criminal goals." *Ursery*, *supra*, at 292; see also *Bennis* v. *Michigan*, 516 U. S. 442, 452 (1996) ("[F]orfeiture . . . serves a deterrent purpose distinct from any punitive purpose"). For example, the sanctions at issue here, while intended to deter future wrongdoing, also serve to promote the stability of the banking industry. To hold that the mere presence of a deterrent purpose renders such sanctions "criminal" for double jeopardy purposes would severely undermine the Government's ability to engage in effective regulation of institutions such as banks.

In sum, there simply is very little showing, to say nothing of the "clearest proof " required by *Ward*, that OCC money penalties and debarment sanctions are criminal. The Double Jeopardy Clause is therefore no obstacle to their trial on the pending indictments, and it may proceed.

The judgment of the Court of Appeals for the Tenth Circuit is accordingly

Affirmed.

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, concurring.

I wholly agree with the Court's conclusion that *Halper*'s test for whether a sanction is "punitive" was ill considered and unworkable. *Ante*, at 101–102. Indeed, it was the absurdity of trying to force the *Halper* analysis upon the Montana tax scheme at issue in *Department of Revenue of Mont.* v. *Kurth Ranch*, 511 U. S. 767 (1994), that prompted me to focus on the prior question whether the Double Jeopardy Clause even contains a multiple-punishments prong. See *id.*, at 802–803. That evaluation led me to the conclusion that the Double Jeopardy Clause prohibits successive prosecution, not successive punishment, and that we should therefore "put the *Halper* genie back in the bottle." *Id.*, at 803–805. Today's opinion uses a somewhat different bottle than I would, returning the law to its state immediately prior to *Halper*—which acknowledged a constitutional prohibition of multiple punishments but required successive criminal prosecutions. So long as that requirement is maintained, our multiple-punishments jurisprudence essentially duplicates what I believe to be the correct double jeopardy law, and will be as harmless in the future as it was pre-*Halper*. Accordingly, I am pleased to concur.

JUSTICE STEVENS, concurring in the judgment.

The maxim that "hard cases make bad law" may also apply to easy cases. As I shall explain, this case could easily be decided by the straightforward application of well-established precedent. Neither such a disposition, nor anything in the opinion of the Court of Appeals, would require a reexamination of the central holding in *United States* v. *Halper*, 490 U. S. 435 (1989), or of the language used in that unanimous opinion. Any proper concern about the danger that that opinion might be interpreted too expansively would be more appropriately addressed in a case that was either incorrectly decided or that at least raised a close or difficult

question. In my judgment it is most unwise to use this case as a vehicle for the substitution of a rather open-ended attempt to define the concept of punishment for the portions of the opinion in *Halper* that trouble the Court. Accordingly, while I have no hesitation about concurring in the Court's judgment, I do not join its opinion.

I

As is evident from the first sentence of the Court's opinion, this is an extremely easy case. It has been settled since the decision in *Blockburger* v. *United States*, 284 U. S. 299 (1932), that the Double Jeopardy Clause is not implicated simply because a criminal charge involves "essentially the same conduct" for which a defendant has previously been punished. See, *e. g.*, *United States* v. *Dixon*, 509 U. S. 688, 696, 704 (1993); *Rutledge* v. *United States*, 517 U. S. 292, 297 (1996). Unless a second proceeding involves the "same offense" as the first, there is no double jeopardy. The two proceedings at issue here involved different offenses that were not even arguably the same under *Blockburger*.

Under *Blockburger*'s "same-elements" test, two provisions are not the "same offense" if each contains an element not included in the other. *Dixon*, 509 U. S., at 696. The penalties imposed on the petitioners in 1989 were based on violations of 12 U. S. C. §§ 84(a)(1) and 375b (1982 ed.) and 12 CFR §§ 31.2(b) and 215.4(b) (1986). Each of these provisions required proof that extensions of credit exceeding certain limits were made,[1] but did not require proof of an intent to defraud or the making of any false entries in bank records. The 1992 indictment charged violations of 18 U. S. C. §§ 371, 656, and 1005 and alleged a conspiracy to willfully misapply

[1] Title 12 U. S. C. § 84(a)(1) prohibits total loans and extensions of credit by a national banking association to any one borrower from exceeding 15 percent of the bank's unimpaired capital and surplus. Title 12 U. S. C. § 375b and 12 CFR §§ 31.2(b) and 215.4(b) (1986) impose similar lending limits on loans to bank officers and other insiders.

bank funds and to make false banking entries, as well as the making of such entries; none of those charges required proof that any lending limit had been exceeded.

Thus, I think it would be difficult to find a case raising a double jeopardy claim that would be any easier to decide than this one.[2]

II

The Court not only ignores the most obvious and straightforward basis for affirming the judgment of the Court of Appeals; it also has nothing to say about that court's explanation of why the reasoning in our opinion in *United States* v. *Halper* supported a rejection of petitioners' double jeopardy claim. Instead of granting certiorari to consider a possible error in the Court of Appeals' reasoning or its judgment, the Court candidly acknowledges that it was motivated by "concerns about the wide variety of novel double jeopardy claims spawned in the wake of *Halper*." *Ante*, at 98.

The Court's opinion seriously exaggerates the significance of those concerns. Its list of cases illustrating the problem cites seven cases decided in the last two years. *Ante*, at 98, n. 4. In every one of those cases, however, the Court of Appeals *rejected* the double jeopardy claim. The only ruling by any court favorable to any of these "novel" claims was a preliminary injunction entered by a District Court postponing implementation of New Jersey's novel, controversial

[2] Petitioners challenge this conclusion by relying on dicta from *Kansas* v. *Hendricks*, 521 U. S. 346, 370 (1997). There, after rejecting a double jeopardy challenge to Kansas' Sexually Violent Predator Act, the Court added: "The *Blockburger* test, however, simply does not apply outside of the successive prosecution context." *Ibid.* This statement, pure dictum, was unsupported by any authority and contradicts the earlier ruling in *United States* v. *Dixon*, 509 U. S. 688, 704–705 (1993), that the *Blockburger* analysis applies to claims of successive punishment as well as successive prosecution. See also 509 U. S., at 745–746 (SOUTER, J., concurring in judgment in part and dissenting in part) (explaining why the *Blockburger* test applies in the multiple punishments context). I cannot imagine a good reason why *Blockburger* should not apply here.

"Megan's Law." *E. B.* v. *Poritz*, 914 F. Supp. 85 (NJ 1996), rev'd, *E. B.* v. *Verniero*, 119 F. 3d 1077 (CA3 1997). Thus, the cases cited by the Court surely do not indicate any need to revisit *Halper*.

The Court also claims that two practical flaws in the *Halper* opinion warrant a prompt adjustment in our double jeopardy jurisprudence. First, the Court asserts that *Halper*'s test is unworkable because it permits only successive sanctions that are "solely" remedial. *Ante*, at 102. Though portions of *Halper* were consistent with such a reading, the express statement of its holding was much narrower.[3] Of greater importance, the Court has since clarified this very point:

> "Whether a particular sanction 'cannot fairly be said *solely* to serve a remedial purpose' is an inquiry radically different from that we have traditionally employed in order to determine whether, as a categorical matter, a civil sanction is subject to the Double Jeopardy Clause. Yet nowhere in *Halper* does the Court purport to make such a sweeping change in the law, instead emphasizing repeatedly the narrow scope of its decision." *United States* v. *Ursery*, 518 U. S. 267, 285, n. 2 (1996).

Having just recently emphasized *Halper*'s narrow rule in *Ursery*, it is quite odd for the Court now to suggest that its overbreadth has created some sort of judicial emergency.

Second, the Court expresses the concern that when a civil proceeding follows a criminal punishment, *Halper* would require a court to wait until judgment is imposed in the successive proceeding before deciding whether the latter sanction violates double jeopardy. *Ante*, at 102. That concern is

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[3] "We . . . hold that under the Double Jeopardy Clause a defendant who already has been punished in a criminal prosecution may not be subjected to an additional civil sanction to the extent that the second sanction may not fairly be characterized as remedial, but only as a deterrent or retribution." *United States* v. *Halper*, 490 U. S. 435, 448–449 (1989).

wholly absent in this case, however, because the criminal indictment followed administrative sanctions. There can be no doubt that any fine or sentence imposed on the criminal counts would be "punishment." If the indictment charged the same offense for which punishment had already been imposed, the prosecution itself would be barred by the Double Jeopardy Clause no matter how minor the criminal sanction sought in the second proceeding.

Thus, the concerns that the Court identifies merely emphasize the accuracy of the comment in *Halper* itself that it announced "a rule for the rare case . . . where a fixed-penalty provision subjects a prolific but small-gauge offender to a sanction overwhelmingly disproportionate to the damages he has caused." 490 U. S., at 449.

III

Despite my disagreement with the Court's decision to use this case as a rather lame excuse for writing a gratuitous essay about punishment, I do agree with its reaffirmation of the central holding of *Halper* and *Department of Revenue of Mont.* v. *Kurth Ranch*, 511 U. S. 767 (1994). Both of those cases held that sanctions imposed in civil proceedings constituted "punishment" barred by the Double Jeopardy Clause.[4] Those holdings reconfirmed the settled proposition that the Government cannot use the "civil" label to escape entirely the Double Jeopardy Clause's command, as we have recognized for at least six decades. See *United States* v. *La Franca*, 282 U. S. 568, 574–575 (1931); *Helvering* v. *Mitchell*, 303 U. S. 391, 398–399 (1938). That proposition is extremely

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[4] Other recent double jeopardy decisions have also recognized that double jeopardy protection is not limited to multiple prosecutions. See *United States* v. *Ursery*, 518 U. S. 267, 273 (1996); *Kansas* v. *Hendricks*, 521 U. S., at 369. Otherwise, it would have been totally unnecessary to determine whether the civil forfeitures in *Ursery* and the involuntary civil commitment in *Hendricks* imposed "punishment" for double jeopardy purposes, for neither sanction was implemented via criminal proceedings.

important because the States and the Federal Government have an enormous array of civil administrative sanctions at their disposal that are capable of being used to punish persons repeatedly for the same offense, violating the bedrock double jeopardy principle of finality. "The underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity . . . ." *Green* v. *United States*, 355 U. S. 184, 187 (1957). However the Court chooses to recalibrate the meaning of punishment for double jeopardy purposes, our doctrine still limits multiple sanctions of the rare sort contemplated by *Halper*.

IV

Today, as it did in *Halper* itself, the Court relies on the sort of multifactor approach to the definition of punishment that we used in *Kennedy* v. *Mendoza-Martinez*, 372 U. S. 144, 168–169 (1963), to identify situations in which a civil sanction is punitive. Whether the Court's reformulation of *Halper*'s test will actually affect the outcome of any cases remains to be seen. Perhaps it will not, since the Court recommends consideration of whether a sanction's "'operation will promote the traditional aims of punishment—retribution and deterrence,'" and "'whether it appears excessive in relation to the alternative [nonpunitive] purpose assigned.'" *Ante*, at 99–100 (quoting *Kennedy*, 372 U. S., at 168–169). Those factors look awfully similar to the reasoning in *Halper*, and while we are told that they are never by themselves dispositive, *ante*, at 101, they should be capable of tipping the balance in extreme cases. The danger in changing approaches midstream, rather than refining our established approach on an incremental basis, is that the Government and lower

courts may be unduly influenced by the Court's new attitude, rather than its specific prescribed test.

It is, of course, entirely appropriate for the Court to perform a lawmaking function as a necessary incident to its Article III responsibility for the decision of "Cases" and "Controversies." In my judgment, however, a desire to reshape the law does not provide a legitimate basis for issuing what amounts to little more than an advisory opinion that, at best, will have the precedential value of pure dictum and may in time unduly restrict the protections of the Double Jeopardy Clause. "It is not the habit of the Court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case." *Burton* v. *United States*, 196 U. S. 283, 295 (1905); see also *Ashwander* v. *TVA*, 297 U. S. 288, 345–348 (1936) (Brandeis, J., concurring). Accordingly, while I concur in the judgment of affirmance, I do not join the Court's opinion.

JUSTICE SOUTER, concurring in the judgment.

I concur in the Court's judgment and with much of its opinion. As the Court notes, *ante*, at 102, we have already recognized that *Halper*'s statements of standards for identifying what is criminally punitive under the Fifth Amendment needed revision, *United States* v. *Ursery*, 518 U. S. 267, 284–285, n. 2 (1996), and there is obvious sense in employing common criteria to point up the criminal nature of a statute for purposes of both the Fifth and Sixth Amendments. See *United States* v. *One Assortment of 89 Firearms*, 465 U. S. 354, 362–366 (1984); *United States* v. *Ward*, 448 U. S. 242, 248–249 (1980); *Kennedy* v. *Mendoza-Martinez*, 372 U. S. 144, 168–169 (1963); see also *Ward*, *supra*, at 254 ("[I]t would be quite anomalous to hold that [the statute] created a criminal penalty for the purposes of the Self-Incrimination Clause but a civil penalty for all other purposes").

Applying the Court's *Kennedy-Ward* criteria leads me directly to the conclusion of JUSTICE STEVENS's opinion con-

curring in the judgment. The fifth criterion calls for a court to determine whether "the behavior to which [the penalty] applies is already a crime." *Kennedy* v. *Mendoza-Martinez*, *supra*, at 168–169. The efficient starting point for identifying constitutionally relevant "behavior," when considering an objection to a successive prosecution, is simply to apply the same-elements test as originally stated in *Blockburger* v. *United States*, 284 U. S. 299 (1932). See *United States* v. *Dixon*, 509 U. S. 688 (1993). When application of *Blockburger* under *Kennedy-Ward* shows that a successive prosecution is permissible even on the assumption that each penalty is criminal, the issue is necessarily settled. Such is the case here, as JUSTICE STEVENS explains. See *ante*, at 107 (opinion concurring in judgment). Applying the *Kennedy-Ward* criteria, therefore, I would stop just where JUSTICE STEVENS stops.

My acceptance of the *Kennedy-Ward* analytical scheme is subject to caveats, however. As the Court points out, under *Ward*, once it is understood that a legislature intended a penalty to be treated as civil in character, that penalty may be held criminal for Fifth Amendment purposes (and, for like reasons, under the Sixth Amendment) only on the "clearest proof" of its essentially criminal proportions. While there are good and historically grounded reasons for using that phrase to impose a substantial burden on anyone claiming that an apparently civil penalty is in truth criminal, what may be clear enough to be "clearest" is necessarily dependent on context, as indicated by the cases relied on as authority for adopting the standard in *Ward*. *Flemming* v. *Nestor*, 363 U. S. 603 (1960), used the quoted language to describe the burden of persuasion necessary to demonstrate a criminal and punitive purpose unsupported by "objective manifestations" of legislative intent. *Id.*, at 617. *Rex Trailer Co.* v. *United States*, 350 U. S. 148, 154 (1956), cited as secondary authority, required a defendant to show that a "measure of recovery" was "unreasonable or excessive" before "what was

clearly intended as a civil remedy [would be treated as] a criminal penalty." *One Lot Emerald Cut Stones* v. *United States*, 409 U. S. 232, 237 (1972) *(per curiam)*, cited *Rex Trailer* for that standard and relied on the case as exemplifying a provision for liquidated damages as distinct from criminal penalty. I read the requisite "clearest proof" of criminal character, then, to be a function of the strength of the countervailing indications of civil nature (including the presumption of constitutionality enjoyed by an ostensibly civil statute making no provision for the safeguards guaranteed to criminal defendants. See *Flemming*, *supra*, at 617).

I add the further caution, to be wary of reading the "clearest proof" requirement as a guarantee that such a demonstration is likely to be as rare in the future as it has been in the past. See *United States* v. *Halper*, 490 U. S. 435, 449 (1989) ("What we announce now is a rule for the rare case"). We have noted elsewhere the expanding use of ostensibly civil forfeitures and penalties under the exigencies of the current drug problems, see *Ursery*, *supra*, at 300 (STEVENS, J., concurring in judgment in part and dissenting in part) ("In recent years, both Congress and the state legislatures have armed their law enforcement authorities with new powers to forfeit property that vastly exceed their traditional tools"); *United States* v. *James Daniel Good Real Property*, 510 U. S. 43, 81–82 (1993) (THOMAS, J., concurring in part and dissenting in part), a development doubtless spurred by the increasingly inviting prospect of its profit to the Government. See *id.*, at 56, n. 2 (opinion of the Court) (describing the Government's financial stake in drug forfeiture); see also *id.*, at 56 (citing *Harmelin* v. *Michigan*, 501 U. S. 957, 979, n. 9 (1991) (opinion of SCALIA, J.) for the proposition that "it makes sense to scrutinize governmental action more closely when the State stands to benefit"). Hence, on the infrequency of "clearest proof," history may not be repetitive.

JUSTICE BREYER, with whom JUSTICE GINSBURG joins, concurring in the judgment.

I agree with the majority and with JUSTICE SOUTER that *United States* v. *Halper*, 490 U. S. 435 (1989), does not provide proper guidance for distinguishing between criminal and noncriminal sanctions and proceedings. I also agree that *United States* v. *Ward*, 448 U. S. 242, 248 (1980), and *Kennedy* v. *Mendoza-Martinez*, 372 U. S. 144, 168–169 (1963), set forth the proper approach.

I do not join the Court's opinion, however, because I disagree with its reasoning in two respects. First, unlike the Court I would not say that "'only the clearest proof'" will "transform" into a criminal punishment what a legislature calls a "civil remedy." *Ante*, at 100. I understand that the Court has taken this language from earlier cases. See *Ward*, *supra*, at 249. But the limitation that the language suggests is not consistent with what the Court has actually done. Rather, in fact if not in theory, the Court has simply applied factors of the *Kennedy* variety to the matter at hand. In *Department of Revenue of Mont.* v. *Kurth Ranch*, 511 U. S. 767 (1994), for example, the Court held that the collection of a state tax imposed on the possession and storage of drugs was "the functional equivalent of a successive criminal prosecution" because, among other things, the tax was "remarkably high"; it had "an obvious deterrent purpose"; it was "conditioned on the commission of a crime"; it was "exacted only after the taxpayer ha[d] been arrested for the precise conduct that gives rise to the tax obligation"; its alternative function of raising revenue could be equally well served by increasing the fine imposed on the activity; and it departed radically from "normal revenue laws" by taxing contraband goods perhaps destroyed before the tax was imposed. *Id.*, at 781–784. This reasoning tracks the nonexclusive list of factors set forth in *Kennedy*, and it is, I believe, the proper approach. The "clearest proof" language

is consequently misleading, and I would consign it to the same legal limbo where *Halper* now rests.

Second, I would not decide now that a court should evaluate a statute only "'on its face,'" *ante*, at 100 (quoting *Kennedy*, *supra*, at 169), rather than "assessing the character of the actual sanctions imposed," *Halper*, *supra*, at 447; *ante*, at 101. *Halper* involved an ordinary civil-fine statute that as normally applied would not have created any "double jeopardy" problem. It was not the statute itself, but rather the disproportionate relation between fine and conduct as the statute was applied in the individual case that led this Court, unanimously, to find that the "civil penalty" was, in those circumstances, a second "punishment" that constituted double jeopardy. See 490 U. S., at 439, 452 (finding that $130,000 penalty was "sufficiently disproportionate" to $585 loss plus approximately $16,000 in Government expenses caused by Halper's fraud to constitute a second punishment in violation of double jeopardy). Of course, the Court in *Halper* might have reached the same result through application of the constitutional prohibition of "excessive fines." See *ante*, at 103; *Alexander* v. *United States*, 509 U. S. 544, 558–559 (1993); *Halper*, *supra*, at 449 (emphasizing that *Halper* was "the rare case" in which there was an "overwhelmingly disproportionate" fine). But that is not what the Court there said. And nothing in the majority's opinion today explains *why* we should abandon this aspect of *Halper*'s holding. Indeed, in context, the language of *Kennedy* that suggests that the Court should consider the statute on its face does not suggest that there may not be further analysis of a penalty as it is applied in a particular case. See 372 U. S., at 169. Most of the lower court confusion and criticism of *Halper* appears to have focused on the problem of characterizing—by examining the face of the statute—the purposes of a civil penalty as punishment, not on the application of double jeopardy analysis to the penalties that are imposed in particular cases. It seems to me quite possible that

a statute that provides for a punishment that normally is civil in nature could nonetheless amount to a criminal punishment as applied in special circumstances. And I would not now hold to the contrary.

That said, an analysis of the *Kennedy* factors still leads me to the conclusion that the statutory penalty in this case is not on its face a criminal penalty. Nor, in my view, does the application of the statute to the petitioners in this case amount to criminal punishment. I therefore concur in the judgment.

Syllabus

KALINA *v.* FLETCHER

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 96–792. Argued October 7, 1997—Decided December 10, 1997

Following customary practice, petitioner prosecuting attorney commenced criminal proceedings by filing three documents in Washington state court: (1) an unsworn information charging respondent with burglary; (2) an unsworn motion for an arrest warrant; and (3) a "Certification for Determination of Probable Cause," in which she summarized the evidence supporting the charge and swore to the truth of the alleged facts "[u]nder penalty of perjury." Based on the certification, the trial court found probable cause, and respondent was arrested and spent a day in jail. Later, however, the charges against him were dismissed on the prosecutor's motion. Focusing on two inaccurate factual statements in petitioner's certification, respondent sued her for damages under 42 U. S. C. § 1983, alleging that she had violated his constitutional right to be free from unreasonable seizures. The Federal District Court denied her motion for summary judgment, holding that she was not entitled to absolute prosecutorial immunity and that whether qualified immunity would apply was a question of fact. The Ninth Circuit affirmed.

Held: Section 1983 may create a damages remedy against a prosecutor for making false statements of fact in an affidavit supporting an application for an arrest warrant, since such conduct is not protected by the doctrine of absolute prosecutorial immunity. Pp. 123–131.

(a) *Imbler* v. *Pachtman*, 424 U. S. 409, 410, 430–431, and subsequent cases recognize that a criminal prosecutor is fully protected by absolute immunity when performing the traditional functions of an advocate, see, *e. g.*, *Buckley* v. *Fitzsimmons*, 509 U. S. 259, 273, but is protected only by qualified immunity when he is not acting as an advocate, as where he functions as a complaining witness in presenting a judge with a complaint and supporting affidavit to establish probable cause for an arrest, see *Malley* v. *Briggs*, 475 U. S. 335, 340–341. Under these cases, petitioner's activities in connection with the preparation and filing of the information against respondent and the motion for an arrest warrant clearly are protected by absolute immunity as part of the advocate's function. Indeed, except for her act in personally attesting to the truth of the averments in the certification, the preparation and filing of that third document was protected as well. Pp. 123–129.

Syllabus

(b) However, petitioner was acting as a complaining witness rather than a lawyer when she executed the certification "[u]nder penalty of perjury," and, insofar as she did so, § 1983 may provide a remedy for respondent. Since the Fourth Amendment requirement that arrest warrants be based "upon probable cause, supported by Oath or affirmation" may not be satisfied by the mere filing of an unsworn information signed by the prosecutor, see, *e. g.*, *Gerstein* v. *Pugh*, 420 U. S. 103, 117, and since most Washington prosecutions are commenced by information, state law requires that an arrest warrant be supported by either an affidavit "or sworn testimony establishing the grounds for issuing the warrant." Petitioner's certification was designed to satisfy those requirements, but neither federal nor state law made it necessary for the prosecutor to make that certification. Petitioner's argument that such execution was just one incident in a presentation that, viewed as a whole, was the work of an advocate is unavailing. Although the exercise of an advocate's professional judgment informed petitioner's other actions, that judgment could not affect the truth or falsity of the factual statements contained in the certification. Testifying about facts is the function of the witness, not of the lawyer. No matter how brief or succinct it may be, the evidentiary component of an application for an arrest warrant is a distinct and essential predicate for a finding of probable cause. Even when the person who makes the constitutionally required "Oath or affirmation" is a lawyer, the only function that she performs is that of a witness. Petitioner's final argument, that denying her absolute immunity will have a "chilling effect" on prosecutors in the administration of justice, is not supported by evidence and is unpersuasive. Pp. 129–131.

93 F. 3d 653, affirmed.

STEVENS, J., delivered the opinion for a unanimous Court. SCALIA, J., filed a concurring opinion, in which THOMAS, J., joined, *post*, p. 131.

Norm Maleng argued the cause for petitioner. With him on the briefs were *Michael C. Duggan* and *John W. Cobb*.

Patricia A. Millett argued the cause for the United States as *amicus curiae* urging reversal. With her on the brief were *Acting Solicitor General Dellinger*, *Assistant Attorney General Hunger*, *Deputy Solicitor General Waxman*, *Deputy Assistant Attorney General Preston*, *Barbara L. Herwig*, and *Peter R. Maier*.

Timothy K. Ford argued the cause for respondent. With him on the brief were *Robert S. Mahler* and *Daniel Hoyt Smith.**

JUSTICE STEVENS delivered the opinion of the Court.

The question presented is whether 42 U. S. C. § 1983 creates a damages remedy against a prosecutor for making false statements of fact in an affidavit supporting an application for an arrest warrant, or whether, as she contends, such conduct is protected by "the doctrine of absolute prosecutorial immunity."

I

Petitioner is a deputy prosecuting attorney for King County, Washington. Following customary practice, on December 14, 1992, she commenced a criminal proceeding

*Briefs of *amici curiae* urging reversal were filed for the State of Maryland et al. by *J. Joseph Curran, Jr.*, Attorney General of Maryland, and *Andrew H. Baida* and *John B. Howard, Jr.*, Assistant Attorneys General, and by the Attorneys General for their respective jurisdictions as follows: *William H. Pryor, Jr.*, of Alabama; *Bruce M. Botelho* of Alaska, *Grant Woods* of Arizona, *Daniel E. Lungren* of California, *Robert A. Butterworth* of Florida, *Calvin E. Holloway, Sr.*, of Guam, *Margery S. Bronster* of Hawaii, *James E. Ryan* of Illinois, *Thomas J. Miller* of Iowa, *Carla J. Stovall* of Kansas, *Richard P. Ieyoub* of Louisiana, *Scott Harshbarger* of Massachusetts, *Frank J. Kelley* of Michigan, *Mike Moore* of Mississippi, *Joseph P. Mazurek* of Montana, *Frankie Sue Del Papa* of Nevada, *Steven M. Houran* of New Hampshire, *Dennis C. Vacco* of New York, *Heidi Heitkamp* of North Dakota, *W. A. Drew Edmondson* of Oklahoma, *Hardy Myers* of Oregon, *D. Michael Fisher* of Pennsylvania, *Mark Barnett* of South Dakota, *J. Wallace Malley, Jr.*, of Vermont, *Julio A. Brady* of the Virgin Islands, *Christine O. Gregoire* of Washington, *Darrell V. McGraw, Jr.*, of West Virginia, *James E. Doyle* of Wisconsin, and *William U. Hill* of Wyoming; for the Thirty-Nine Counties of the State of Washington by *Russell D. Hauge, Pamela Beth Loginsky, David Bruneau, Arthur Curtis, Allen C. Nielson, David Skeen, Norm Maleng, Jeremy Randolf, John Ladenburg, James Sweetser, James L. Nagle, David S. McEachran, James Kaufman,* and *Jeffrey C. Sullivan;* for the National Association of Counties et al. by *Richard Ruda* and *James I. Crowley;* and for the National District Attorneys' Association et al. by *Gil Garcetti* and *Roderick W. Leonard.*

against respondent by filing three documents in the King County Superior Court. Two of those documents—an information charging respondent with burglary and a motion for an arrest warrant—were unsworn pleadings. The burglary charge was based on an alleged theft of computer equipment from a school.

Washington Criminal Rules require that an arrest warrant be supported by an affidavit or "sworn testimony establishing the grounds for issuing the warrant."[1] To satisfy that requirement, petitioner supported her motion with a third document—a "Certification for Determination of Probable Cause"—that summarized the evidence supporting the charge. She personally vouched for the truth of the facts set forth in the certification under penalty of perjury.[2] Based on petitioner's certification, the trial court found probable cause and ordered that an arrest warrant be issued.

Petitioner's certification contained two inaccurate factual statements. After noting that respondent's fingerprints had been found on a glass partition in the school, petitioner stated that respondent had "never been associated with the school in any manner and did not have permission to enter the school or to take any property."[3] In fact, he had installed partitions on the premises and was authorized to enter the school. She also stated that an employee of an electronics store had identified respondent "from a photo montage" as the person who had asked for an appraisal of a computer stolen from the school.[4] In fact, the employee did not identify respondent.[5]

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[1] Washington Criminal Rule 2.2(a); see Wash. Rev. Code § 9A.72.085 (1994) (providing, *inter alia*, that a certification made under penalty of perjury is the equivalent of an affidavit). Accord, King County Local Criminal Rule 2.2.

[2] App. 20.

[3] *Id.*, at 19–20.

[4] *Id.*, at 20.

[5] *Id.*, at 5.

Respondent was arrested and spent a day in jail. About a month later, the charges against him were dismissed on the prosecutor's motion.

II

Respondent brought this action under Rev. Stat. § 1979, as amended, 42 U. S. C. § 1983, seeking damages from petitioner based on her alleged violation of his constitutional right to be free from unreasonable seizures. In determining immunity, we accept the allegations of respondent's complaint as true. See *Buckley* v. *Fitzsimmons*, 509 U. S. 259, 261 (1993). Respondent's complaint focuses on the false statements made by petitioner in the certification.[6] Petitioner moved for summary judgment on the ground that the three documents that she filed to commence the criminal proceedings and to procure the arrest warrant were protected by "the doctrine of absolute prosecutorial immunity."[7] The District Court denied the motion, holding that she was not entitled to absolute immunity and that whether qualified immunity would apply was a question of fact.[8] The Court of Appeals for the Ninth Circuit affirmed.

The Ninth Circuit first noted that under our decision in *Malley* v. *Briggs*, 475 U. S. 335 (1986), "a *police officer* who secures an arrest warrant without probable cause cannot assert an absolute immunity defense," and then observed that petitioner's "actions in writing, signing and filing the declaration for an arrest warrant" were "virtually identical to the police officer's actions in *Malley*." 93 F. 3d 653, 655–656 (1996). Relying on the functional approach endorsed in *Buckley* v. *Fitzsimmons*, the Court of Appeals concluded that "it would be 'incongruous' to expose police to potential liability while protecting prosecutors for the same act." 93 F. 3d, at 656.

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[6] *Id.*, at 5–6.
[7] *Id.*, at 10.
[8] *Id.*, at 21.

The Court of Appeals acknowledged that the Sixth Circuit had reached a different result in *Joseph* v. *Patterson*, 795 F. 2d 549, 555 (1986), cert. denied, 481 U. S. 1023 (1987), a case that predated our decision in *Buckley*. Because we have never squarely addressed the question whether a prosecutor may be held liable for conduct in obtaining an arrest warrant, we granted certiorari to resolve the conflict. 519 U. S. 1148 (1997). We now affirm.

III

Section 1983 is a codification of § 1 of the Civil Rights Act of 1871.[9] The text of the statute purports to create a damages remedy against every state official for the violation of any person's federal constitutional or statutory rights.[10] The coverage of the statute is thus broader than the preexisting common law of torts. We have nevertheless recognized that Congress intended the statute to be construed in the light of common-law principles that were well settled at the time of its enactment. See *Tenney* v. *Brandhove*, 341 U. S. 367 (1951); *Briscoe* v. *LaHue*, 460 U. S. 325, 330 (1983). Thus, we have examined common-law doctrine when identifying both the elements of the cause of action and the defenses available to state actors.

In *Imbler* v. *Pachtman*, 424 U. S. 409 (1976), we held that a former prisoner whose conviction had been set aside in collateral proceedings could not maintain a § 1983 action against the prosecutor who had litigated the charges against him. Relying in part on common-law precedent, and per-

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[9] See *Briscoe* v. *LaHue*, 460 U. S. 325, 337 (1983).

[10] Title 42 U. S. C. § 1983 provides:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . ."

haps even more importantly on the policy considerations underlying that precedent, we concluded that "a state prosecuting attorney who acted within the scope of his duties in initiating and pursuing a criminal prosecution" was not amenable to suit under § 1983. *Id.*, at 410.

Liberally construed, Imbler's complaint included not only a charge that the prosecution had been wrongfully commenced, but also a charge that false testimony had been offered as well as a charge that exculpatory evidence had been suppressed. His constitutional claims were thus broader than any specific common-law antecedent. Nevertheless, relying on common-law decisions providing prosecutors with absolute immunity from tort actions based on claims that the decision to prosecute was malicious and unsupported by probable cause,[11] as well as from actions for defamation based on statements made during trial,[12] we concluded that

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[11] See 424 U. S., at 421–422. The cases that the Court cited were decided after 1871 and granted a broader immunity to public prosecutors than had been available in malicious prosecution actions against private persons who brought prosecutions at early common law. See *Savile* v. *Roberts*, 1 Ld. Raym. 374, 91 Eng. Rep. 1147 (K. B. 1699); *Hill* v. *Miles*, 9 N. H. 9 (1837); M. Bigelow, Leading Cases on the Law of Torts 193–204 (1875). However, these early cases were decided before the office of public prosecutor in its modern form was common. See Langbein, The Origins of Public Prosecution at Common Law, 17 Am. J. Legal Hist. 313, 316 (1973); Kress, Progress and Prosecution, 423 Annals Am. Acad. Pol. & Soc. Sci. 99, 100–102 (1976); *White* v. *Frank*, 855 F. 2d 956, 962 (CA2 1988) (noting that "the availability of the malicious prosecution action has been curtailed with the growth of the office of the public prosecutor"). Thus, the Court in *Imbler* drew guidance both from the first American cases addressing the availability of malicious prosecution actions against public prosecutors, and perhaps more importantly, from the policy considerations underlying the firmly established common-law rules providing absolute immunity for judges and jurors. See 424 U. S., at 423, n. 20 (discussing similarity in some functions performed by judges, jurors, and prosecutors); *Bradley* v. *Fisher*, 13 Wall. 335, 347 (1872); *Yates* v. *Lansing*, 5 Johns. 282 (N. Y. 1810) (Kent, C. J.); Note, Civil Liability of a District Attorney for Quasi-Judicial Acts, 73 U. Pa. L. Rev. 300, 303, n. 13 (1925).

[12] See 424 U. S., at 439–440 (White, J., concurring in judgment).

the statute should be construed to provide an analogous defense against the claims asserted by Imbler. The policy considerations that justified the common-law decisions affording absolute immunity to prosecutors when performing traditional functions applied equally to statutory claims based on the conduct of the same functions.

Those considerations included both the interest in protecting the prosecutor from harassing litigation that would divert his time and attention from his official duties and the interest in enabling him to exercise independent judgment when "deciding which suits to bring and in conducting them in court." *Id.*, at 424. The former interest would lend support to an immunity from all litigation against the occupant of the office whereas the latter is applicable only when the official is performing functions that require the exercise of prosecutorial discretion. Our later cases have made it clear that it is the interest in protecting the proper functioning of the office, rather than the interest in protecting its occupant, that is of primary importance.

In *Imbler*, we did not attempt to define the outer limits of the prosecutor's absolute immunity, but we did recognize that our rationale would not encompass some of his official activities. Thus, while we concluded that Pachtman's "activities were intimately associated with the judicial phase of the criminal process, and thus were functions to which the reasons for absolute immunity apply with full force," *id.*, at 430, we put to one side "those aspects of the prosecutor's responsibility that cast him in the role of an administrator or investigative officer rather than that of advocate," *id.*, at 430–431.

Subsequent cases have confirmed the importance to the judicial process of protecting the prosecutor when serving as an advocate in judicial proceedings. Thus, in *Burns* v. *Reed*, 500 U. S. 478 (1991), after noting the consensus among the Courts of Appeals concerning prosecutorial conduct before grand juries, *id.*, at 490, n. 6, we held that the prosecutor's

appearance in court in support of an application for a search warrant and the presentation of evidence at that hearing were protected by absolute immunity, *id.*, at 492. And in *Buckley*, we categorically stated that "acts undertaken by a prosecutor in preparing for the initiation of judicial proceedings or for trial, and which occur in the course of his role as an advocate for the State, are entitled to the protections of absolute immunity." 509 U. S., at 273.

In both of those cases, however, we found the defense unavailable when the prosecutor was performing a different function. In *Burns*, the provision of legal advice to the police during their pretrial investigation of the facts was protected only by qualified, rather than absolute, immunity. 500 U. S., at 492–496. Similarly, in *Buckley*, the prosecutor was not acting as an advocate either when he held a press conference, 509 U. S., at 276–278, or when he allegedly fabricated evidence concerning an unsolved crime. With reference to the latter holding, we explained:

> "There is a difference between the advocate's role in evaluating evidence and interviewing witnesses as he prepares for trial, on the one hand, and the detective's role in searching for the clues and corroboration that might give him probable cause to recommend that a suspect be arrested, on the other hand. When a prosecutor performs the investigative functions normally performed by a detective or police officer, it is 'neither appropriate nor justifiable that, for the same act, immunity should protect the one and not the other.' *Hampton* v. *Chicago*, 484 F. 2d 602, 608 (CA7 1973) (internal quotation marks omitted), cert. denied, 415 U. S. 917 (1974). Thus, if a prosecutor plans and executes a raid on a suspected weapons cache, he 'has no greater claim to complete immunity than activities of police officers allegedly acting under his direction.' 484 F. 2d, at 608–609." *Id.*, at 273–274.

These cases make it clear that the absolute immunity that protects the prosecutor's role as an advocate is not grounded in any special "esteem for those who perform these functions, and certainly not from a desire to shield abuses of office, but because any lesser degree of immunity could impair the judicial process itself." *Malley*, 475 U. S., at 342. Thus, in determining immunity, we examine "the nature of the function performed, not the identity of the actor who performed it." *Forrester* v. *White*, 484 U. S. 219, 229 (1988).[13] This point is perhaps best illustrated by the determination that the senior law enforcement official in the Nation—the Attorney General of the United States—is protected only by qualified, rather than absolute, immunity when engaged in the performance of national defense functions rather than prosecutorial functions. *Mitchell* v. *Forsyth*, 472 U. S. 511 (1985).

In *Malley* we considered, and rejected, two theories on which immunity might have been accorded to a police officer who had caused an unconstitutional arrest by presenting a judge with a complaint and supporting affidavit that failed to establish probable cause. His first argument, that his function was comparable to that of a complaining witness, actually militated against his claim because such witnesses were subject to suit at common law.[14]

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[13] Examining the nature of the function performed is not a recent innovation. In *Ex parte Virginia*, 100 U. S. 339, 348 (1880), we stated "[w]hether the act done by [a judge] was judicial or not is to be determined by its character, and not by the character of the agent." See also *Bradley* v. *Fisher*, 13 Wall., at 347 (examining "the character of the act" performed by a judge).

[14] We noted that:

"[C]omplaining witnesses were not absolutely immune at common law. In 1871, the generally accepted rule was that one who procured the issuance of an arrest warrant by submitting a complaint could be held liable if the complaint was made maliciously and without probable cause. Given malice and the lack of probable cause, the complainant enjoyed no immu-

His second argument rested on the similarity between his conduct and the functions often performed by prosecutors. As we explained:

> "As an alternative ground for claiming absolute immunity, petitioner draws an analogy between an officer requesting a warrant and a prosecutor who asks a grand jury to indict a suspect. Like the prosecutor, petitioner argues, the officer must exercise a discretionary judgment based on the evidence before him, and like the prosecutor, the officer may not exercise his best judgment if the threat of retaliatory lawsuits hangs over him. Thus, petitioner urges us to read § 1983 as giving the officer the same absolute immunity enjoyed by the prosecutor. Cf. *Imbler* v. *Pachtman*, 424 U. S. 409 (1976).
>
> . . . . .
>
> ". . . We intend no disrespect to the officer applying for a warrant by observing that his action, while a vital part of the administration of criminal justice, is further removed from the judicial phase of criminal proceedings than the act of a prosecutor in seeking an indictment. Furthermore, petitioner's analogy, while it has some force, does not take account of the fact that the prosecutor's act in seeking an indictment is but the first step in the process of seeking a conviction. Exposing the prosecutor to liability for the initial phase of his prosecutorial work could interfere with his exercise of independent judgment at every phase of his work, since the prosecutor might come to see later decisions in terms of their effect on his potential liability. Thus, we shield the prosecutor seeking an indictment because any lesser immunity could impair the performance of a central actor in the judicial process." 475 U. S., at 341–343.

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nity. The common law thus affords no support for petitioner." *Malley* v. *Briggs*, 475 U. S. 335, 340–341 (1986) (footnote omitted).

These cases make it quite clear that petitioner's activities in connection with the preparation and filing of two of the three charging documents—the information and the motion for an arrest warrant—are protected by absolute immunity. Indeed, except for her act in personally attesting to the truth of the averments in the certification, it seems equally clear that the preparation and filing of the third document in the package was part of the advocate's function as well. The critical question, however, is whether she was acting as a complaining witness rather than a lawyer when she executed the certification "[u]nder penalty of perjury." We now turn to that question.

IV

The Fourth Amendment requires that arrest warrants be based "upon probable cause, supported by Oath or affirmation"—a requirement that may be satisfied by an indictment returned by a grand jury, but not by the mere filing of criminal charges in an unsworn information signed by the prosecutor. *Gerstein* v. *Pugh*, 420 U. S. 103, 117 (1975); see also *Coolidge* v. *New Hampshire*, 403 U. S. 443 (1971). Accordingly, since most prosecutions in Washington are commenced by information, Washington law requires, in compliance with the constitutional command, that an arrest warrant be supported by either an affidavit "or sworn testimony establishing the grounds for issuing the warrant."[15] The "Certification for Determination of Probable Cause" executed by petitioner was designed to satisfy those requirements.

Although the law required that document to be sworn or certified under penalty of perjury, neither federal nor state law made it necessary for the prosecutor to make that certification. In doing so, petitioner performed an act that any

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[15] Washington Criminal Rule 2.2(a) (1995) provides:

"A warrant of arrest must be supported by an affidavit, . . . or sworn testimony establishing the grounds for issuing the warrant. . . . The court must determine there is probable cause . . . before issuing the warrant. "

competent witness might have performed. Even if she may have been following a practice that was routinely employed by her colleagues and predecessors in King County, Washington, that practice is surely not prevalent in other parts of the country and is not even mandated by law in King County. Neither petitioner nor *amici* argue that prosecutors routinely follow the King County practice.[16] Indeed, tradition, as well as the ethics of our profession, generally instruct counsel to avoid the risks associated with participating as both advocate and witness in the same proceeding.[17]

Nevertheless, petitioner argues that the execution of the certificate was just one incident in a presentation that, viewed as a whole, was the work of an advocate and was integral to the initiation of the prosecution. That characterization is appropriate for her drafting of the certification, her determination that the evidence was sufficiently strong to justify a probable-cause finding, her decision to file charges, and her presentation of the information and the motion to the court. Each of those matters involved the exercise of professional judgment; indeed, even the selection of the particular facts to include in the certification to provide the evidentiary support for the finding of probable cause required the exercise of the judgment of the advocate. But that judgment could not affect the truth or falsity of the factual statements themselves. Testifying about facts is the function of the witness, not of the lawyer. No matter how

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[16] *Amicus Curiae* United States points out that federal prosecutors typically do not personally attest to the facts in an affidavit filed in support of an application for an arrest warrant, but "[i]nstead a law enforcement agent ordinarily attests to those facts." Brief 7. *Amici Curiae* Thirty-Nine Counties of the State of Washington state that local court rules in only two counties in Washington require the prosecutor to file an additional document beyond an information. Brief 2.

[17] See, *e. g.*, Washington Rule of Professional Conduct 3.7 (1995) ("A lawyer shall not act as advocate at a trial in which the lawyer . . . is likely to be a necessary witness," unless four narrow exceptions apply); ABA Model Rules of Professional Conduct 3.7 (1992).

brief or succinct it may be, the evidentiary component of an application for an arrest warrant is a distinct and essential predicate for a finding of probable cause. Even when the person who makes the constitutionally required "Oath or affirmation" is a lawyer, the only function that she performs in giving sworn testimony is that of a witness.

Finally, petitioner argues that denying her absolute immunity will have a "chilling effect" on prosecutors in the administration of justice.[18] We are not persuaded.

It may well be true that prosecutors in King County may abandon the practice of routinely attesting to the facts recited in a "Certification for Determination of Probable Cause" and pattern their procedures after those employed in other parts of the Nation. Petitioner presents no evidence that the administration of justice is harmed where the King County practice is not followed. In other respects, however, her argument addresses concerns that are not affected by our decision because we merely hold that § 1983 may provide a remedy for respondent insofar as petitioner performed the function of a complaining witness. We do not depart from our prior cases that have recognized that the prosecutor is fully protected by absolute immunity when performing the traditional functions of an advocate. See *Imbler*, 424 U. S., at 431; *Buckley*, 509 U. S., at 273.

Accordingly, the judgment of the Court of Appeals for the Ninth Circuit is

Affirmed.

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, concurring.

I agree that Ms. Kalina performed essentially the same "function" in the criminal process as the police officers in *Malley* v. *Briggs*, 475 U. S. 335 (1986), and so I join the opinion of the Court. I write separately because it would be a

[18] Brief for Petitioner 25.

shame if our opinions did not reflect the awareness that our "functional" approach to 42 U. S. C. § 1983 immunity questions has produced some curious inversions of the common law as it existed in 1871, when § 1983 was enacted. A conscientious prosecutor reading our cases should now conclude that there is absolute immunity for the decision to seek an arrest warrant after filing an information, but only qualified immunity for testimony as a witness in support of that warrant. The common-law rule was, in a sense, exactly opposite.

There was, of course, no such thing as absolute prosecutorial immunity when § 1983 was enacted. (Indeed, as the Court points out, *ante,* at 124, n. 11, there generally was no such thing as the modern public prosecutor.) The common law recognized a "judicial" immunity, which protected judges, jurors and grand jurors, members of courts-martial, private arbitrators, and various assessors and commissioners. That immunity was absolute, but it extended only to individuals who were charged with resolving disputes between other parties or authoritatively adjudicating private rights. When public officials made discretionary policy decisions that did not involve actual adjudication, they were protected by "quasi-judicial" immunity, which could be defeated by a showing of malice, and hence was more akin to what we now call "qualified," rather than absolute, immunity. I continue to believe that "prosecutorial functions, had they existed in their modern form in 1871, would have been considered quasi-judicial." *Burns* v. *Reed,* 500 U. S. 478, 500 (1991) (SCALIA, J., concurring in judgment in part and dissenting in part).

That conclusion accords with the common law's treatment of *private* prosecutors, who once commonly performed the "function" now delegated to public officials like petitioner. A private citizen who initiated or procured a criminal prosecution could (and can still) be sued for the tort of malicious prosecution—but only if he acted maliciously and without

probable cause, and the prosecution ultimately terminated in the defendant's favor. Thus, although these private prosecutors (sometimes called "complaining witnesses"), since they were not public servants, were not entitled to quasi-judicial immunity, there was a kind of qualified immunity built into the elements of the tort.

The common law also recognized an absolute immunity for statements made in the course of a judicial proceeding and relevant to the matter being tried. That immunity protected both witnesses and attorneys, and could not be defeated even by an allegation that the statement was maliciously false. See, *e. g.*, F. Hilliard, Law of Torts 319 (1866). It was, however, an immunity only against slander and libel actions.

At common law, therefore, Kalina would have been protected by something resembling qualified immunity if she were sued for malicious prosecution. The tortious act in such a case would have been her decision to bring criminal charges against Fletcher, and liability would attach only if Fletcher could prove that the prosecution was malicious, without probable cause, and ultimately unsuccessful. Kalina's false statements as a witness in support of the warrant application would not have been an independent actionable tort (although they might have been *evidence* of malice or initiation in the malicious prosecution suit), because of the absolute privilege protecting such testimony from suits for defamation.

The Court's long road to what is, superficially at least, the opposite result in today's opinion, began with *Imbler* v. *Pachtman*, 424 U. S. 409 (1976), which granted prosecutors absolute immunity for the "function" of initiating a criminal prosecution. Then, in *Briscoe* v. *LaHue*, 460 U. S. 325 (1983), the Court extended a similar absolute immunity to the "function" of serving as a witness. And in *Malley* v. *Briggs*, *supra*, it recognized the additional "functional category" of "complaining witness." Since this category was

entitled to only qualified immunity, the Court overturned a directed verdict in favor of a police officer who had caused the plaintiff to be arrested by presenting a judge with a complaint and an affidavit supporting probable cause. The Court said:

> "[C]omplaining witnesses were not absolutely immune at common law. In 1871, the generally accepted rule was that one who procured the issuance of an arrest warrant by submitting a complaint could be held liable if the complaint was made maliciously and without probable cause. Given malice and the lack of probable cause, the complainant enjoyed no immunity." *Id.*, at 340–341.

That statement is correct, but it implies a distinction between "witnesses" (absolutely immune) and "complaining witnesses" (at best qualifiedly immune) which has little foundation in the common law of 1871. That law did not recognize two kinds of witness; it recognized two different torts. "In this sense, then, *Malley*'s discussion of complaining witnesses is a feint. The Court was not awaking to a different type of witness . . . so much as recognizing a different cause of action—the action for malicious prosecution." Comment, Police Witness Immunity Under § 1983, 56 U. Chi. L. Rev. 1433, 1454 (1989). By the time *Malley* was decided, however, the Court's methodology forced it to express its conclusion in terms of whether the particular "function" at issue would have been entitled to immunity at common law. See, *e. g.*, *Briscoe*, *supra*, at 342 ("[O]ur cases clearly indicate that immunity analysis rests on functional categories"). By inventing "a new functional category: the complaining witness, who (in the Court's specially-tailored history) was liable at common law and so is liable under § 1983," Comment, *supra*, at 1454, *Malley* moved the Court's immunity jurisprudence much closer to the results the common law would have achieved.

But no analytical approach based upon "functional analysis" can faithfully replicate the common law, as is demonstrated in the Court's opinion today. By describing the subset of actors in the criminal process who are subject to suit as "complaining *witnesses*," the Court implies that testifying is the critical event. But a "complaining witness" could be sued for malicious prosecution whether or not he ever provided factual testimony, so long as he had a role in initiating or procuring the prosecution; in that sense, the "witness" in "complaining witness" is misleading. As applied to the police officers in *Malley*, that confusion was more or less harmless. Here, however, *Imbler* and *Malley* collide to produce a rule that stands the common law on its head: Kalina is absolutely immune from any suit challenging her decision to prosecute or seek an arrest warrant, but can be sued if she changes "functional categories" by providing personal testimony to the Court.

Imbler's principle of absolute prosecutorial immunity, and the "functional categories" approach to immunity questions imposed by cases like *Briscoe*, make faithful adherence to the common law embodied in § 1983 very difficult. But both *Imbler* and the "functional" approach are so deeply embedded in our § 1983 jurisprudence that, for reasons of *stare decisis*, I would not abandon them now. Given those concessions, *Malley*'s distortion of the term "complaining witness" may take us as close to the right answer as we are likely to get. Because Kalina's conduct clearly places her in that functional category, I agree with the Court that she is not entitled to absolute immunity under our precedents.

Syllabus

GENERAL ELECTRIC CO. ET AL. *v.* JOINER ET UX.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 96–188. Argued October 14, 1997—Decided December 15, 1997

After he was diagnosed with small-cell lung cancer, respondent Joiner and his wife (hereinafter jointly respondent) sued in Georgia state court, alleging, *inter alia*, that his disease was "promoted" by his workplace exposure to chemical "PCB's" and derivative "furans" and "dioxins" that were manufactured by, or present in materials manufactured by, petitioners. Petitioners removed the case to federal court and moved for summary judgment. Joiner responded with the depositions of expert witnesses, who testified that PCB's, furans, and dioxins can promote cancer, and opined that Joiner's exposure to those chemicals was likely responsible for his cancer. The District Court ruled that there was a genuine issue of material fact as to whether Joiner had been exposed to PCB's, but granted summary judgment for petitioners because (1) there was no genuine issue as to whether he had been exposed to furans and dioxins, and (2) his experts' testimony had failed to show that there was a link between exposure to PCB's and small-cell lung cancer and was therefore inadmissible because it did not rise above "subjective belief or unsupported speculation." In reversing, the Eleventh Circuit applied "a particularly stringent standard of review" to hold that the District Court had erred in excluding the expert testimony.

Held:

1. Abuse of discretion—the standard ordinarily applicable to review of evidentiary rulings—is the proper standard by which to review a district court's decision to admit or exclude expert scientific evidence. Contrary to the Eleventh Circuit's suggestion, *Daubert* v. *Merrell Dow Pharmaceuticals, Inc.*, 509 U. S. 579, did not somehow alter this general rule in the context of a district court's decision to exclude scientific evidence. *Daubert* did not address the appellate review standard for evidentiary rulings at all, but did indicate that, while the Federal Rules of Evidence allow district courts to admit a somewhat broader range of scientific testimony than did pre-existing law, they leave in place the trial judge's "gatekeeper" role of screening such evidence to ensure that it is not only relevant, but reliable. *Id.*, at 589. A court of appeals applying "abuse-of-discretion" review to such rulings may not categorically distinguish between rulings allowing expert testimony and rulings which disallow it. Compare *Beech Aircraft Corp.* v. *Rainey*, 488 U. S.

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153, 172, with *United States* v. *Abel*, 469 U. S. 45, 54. This Court rejects Joiner's argument that because the granting of summary judgment in this case was "outcome determinative," it should have been subjected to a more searching standard of review. On a summary judgment motion, disputed issues of fact are resolved against the moving party—here, petitioners. But the question of admissibility of expert testimony is not such an issue of fact, and is reviewable under the abuse-of-discretion standard. In applying an overly "stringent" standard, the Eleventh Circuit failed to give the trial court the deference that is the hallmark of abuse-of-discretion review. Pp. 141–143.

2. A proper application of the correct standard of review indicates that the District Court did not err in excluding the expert testimony at issue. The animal studies cited by respondent's experts were so dissimilar to the facts presented here—*i. e.*, the studies involved infant mice that developed alveologenic adenomas after highly concentrated, massive doses of PCB's were injected directly into their peritoneums or stomachs, whereas Joiner was an adult human whose small-cell carcinomas allegedly resulted from exposure on a much smaller scale—that it was not an abuse of discretion for the District Court to have rejected the experts' reliance on those studies. Nor did the court abuse its discretion in concluding that the four epidemiological studies on which Joiner relied were not a sufficient basis for the experts' opinions, since the authors of two of those studies ultimately were unwilling to suggest a link between increases in lung cancer and PCB exposure among the workers they examined, the third study involved exposure to a particular type of mineral oil not necessarily relevant here, and the fourth involved exposure to numerous potential carcinogens in addition to PCB's. Nothing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert. Pp. 143–147.

3. These conclusions, however, do not dispose of the entire case. The Eleventh Circuit reversed the District Court's conclusion that Joiner had not been exposed to furans and dioxins. Because petitioners did not challenge that determination in their certiorari petition, the question whether exposure to furans and dioxins contributed to Joiner's cancer is still open. P. 147.

78 F. 3d 524, reversed and remanded.

Rehnquist, C. J., delivered the opinion for a unanimous Court with respect to Parts I and II, and the opinion of the Court with respect to Part III, in which O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsburg, and Breyer, JJ., joined. Breyer, J., filed a concurring opinion,

post, p. 147. STEVENS, J., filed an opinion concurring in part and dissenting in part, *post*, p. 150.

Steven R. Kuney argued the cause for petitioners. With him on the briefs were *John G. Kester*, *David H. Flint*, *Alexander J. Simmons, Jr.*, *Henry W. Ewalt*, and *Gerard H. Davidson, Jr.*

Deputy Solicitor General Wallace argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Acting Solicitor General Dellinger*, *Assistant Attorney General Hunger*, *Edward C. DuMont*, and *John P. Schnitker*.

Michael H. Gottesman argued the cause for respondents. With him on the brief were *Kenneth J. Chesebro*, *David L. Shapiro*, and *Michael J. Warshauer*.*

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

We granted certiorari in this case to determine what standard an appellate court should apply in reviewing a trial

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*Briefs of *amici curiae* urging reversal were filed for the Chamber of Commerce of the United States by *Thomas S. Martin*, *Stephen A. Bokat*, and *Robin S. Conrad;* for the American Medical Association by *Jack R. Bierig*, *Carter G. Phillips*, *Kirk B. Johnson*, and *Michael L. Ile;* for the Chemical Manufacturers Association by *Bert Black*, *David J. Schenck*, and *Donald D. Evans;* for Dow Chemical Company by *John E. Muench* and *Robert M. Dow, Jr.;* for the Pharmaceutical Research and Manufacturers of America by *Bruce N. Kuhlik;* for the Washington Legal Foundation by *Arvin Maskin*, *Gerald A. Stein*, *Daniel J. Popeo*, and *Paul D. Kamenar;* and for Bruce Ames et al. by *Martin S. Kaufman* and *Douglas Foster*.

Briefs of *amici curiae* urging affirmance were filed for the Trial Lawyers for Public Justice by *Steven E. Fineman* and *Arthur H. Bryant;* for the Association of Trial Lawyers of America by *Jeffrey Robert White;* for Ardith Cavallo by *William A. Beeton, Jr.;* and for Peter Orris, M. D., et al. by *Gerson H. Smoger*.

Briefs of *amici curiae* were filed for the New England Journal of Medicine et al. by *Margaret S. Woodruff* and *Arlin M. Adams;* and for the Product Liability Advisory Council, Inc., et al. by *Mary A. Wells*, *Jan S. Amundson*, and *Quentin Riegel*.

court's decision to admit or exclude expert testimony under *Daubert* v. *Merrell Dow Pharmaceuticals, Inc.*, 509 U. S. 579 (1993). We hold that abuse of discretion is the appropriate standard. We apply this standard and conclude that the District Court in this case did not abuse its discretion when it excluded certain proffered expert testimony.

I

Respondent Robert Joiner began work as an electrician in the Water & Light Department of Thomasville, Georgia (City), in 1973. This job required him to work with and around the City's electrical transformers, which used a mineral-oil-based dielectric fluid as a coolant. Joiner often had to stick his hands and arms into the fluid to make repairs. The fluid would sometimes splash onto him, occasionally getting into his eyes and mouth. In 1983 the City discovered that the fluid in some of the transformers was contaminated with polychlorinated biphenyls (PCB's). PCB's are widely considered to be hazardous to human health. Congress, with limited exceptions, banned the production and sale of PCB's in 1978. See 90 Stat. 2020, 15 U. S. C. § 2605(e)(2)(A).

Joiner was diagnosed with small-cell lung cancer in 1991. He[1] sued petitioners in Georgia state court the following year. Petitioner Monsanto manufactured PCB's from 1935 to 1977; petitioners General Electric and Westinghouse Electric manufactured transformers and dielectric fluid. In his complaint Joiner linked his development of cancer to his exposure to PCB's and their derivatives, polychlorinated dibenzofurans (furans) and polychlorinated dibenzodioxins (dioxins). Joiner had been a smoker for approximately eight years, his parents had both been smokers, and there was a history of lung cancer in his family. He was thus perhaps already at a heightened risk of developing lung cancer eventually. The suit alleged that his exposure to PCB's "pro-

[1] Joiner's wife was also a plaintiff in the suit and is a respondent here. For convenience, we refer to respondent in the singular.

moted" his cancer; had it not been for his exposure to these substances, his cancer would not have developed for many years, if at all.

Petitioners removed the case to federal court. Once there, they moved for summary judgment. They contended that (1) there was no evidence that Joiner suffered significant exposure to PCB's, furans, or dioxins, and (2) there was no admissible scientific evidence that PCB's promoted Joiner's cancer. Joiner responded that there were numerous disputed factual issues that required resolution by a jury. He relied largely on the testimony of expert witnesses. In depositions, his experts had testified that PCB's alone can promote cancer and that furans and dioxins can also promote cancer. They opined that since Joiner had been exposed to PCB's, furans, and dioxins, such exposure was likely responsible for Joiner's cancer.

The District Court ruled that there was a genuine issue of material fact as to whether Joiner had been exposed to PCB's. But it nevertheless granted summary judgment for petitioners because (1) there was no genuine issue as to whether Joiner had been exposed to furans and dioxins, and (2) the testimony of Joiner's experts had failed to show that there was a link between exposure to PCB's and small-cell lung cancer. The court believed that the testimony of respondent's experts to the contrary did not rise above "subjective belief or unsupported speculation." 864 F. Supp. 1310, 1326 (ND Ga. 1994). Their testimony was therefore inadmissible.

The Court of Appeals for the Eleventh Circuit reversed. 78 F. 3d 524 (1996). It held that "[b]ecause the Federal Rules of Evidence governing expert testimony display a preference for admissibility, we apply a particularly stringent standard of review to the trial judge's exclusion of expert testimony." *Id.*, at 529. Applying that standard, the Court of Appeals held that the District Court had erred in excluding the testimony of Joiner's expert witnesses. The

District Court had made two fundamental errors. First, it excluded the experts' testimony because it "drew different conclusions from the research than did each of the experts." The Court of Appeals opined that a district court should limit its role to determining the "legal reliability of proffered expert testimony, leaving the jury to decide the correctness of competing expert opinions." *Id.*, at 533. Second, the District Court had held that there was no genuine issue of material fact as to whether Joiner had been exposed to furans and dioxins. This was also incorrect, said the Court of Appeals, because testimony in the record supported the proposition that there had been such exposure.

We granted petitioners' petition for a writ of certiorari, 520 U. S. 1114 (1997), and we now reverse.

II

Petitioners challenge the standard applied by the Court of Appeals in reviewing the District Court's decision to exclude respondent's experts' proffered testimony. They argue that that court should have applied traditional "abuse of discretion" review. Respondent agrees that abuse of discretion is the correct standard of review. He contends, however, that the Court of Appeals applied an abuse-of-discretion standard in this case. As he reads it, the phrase "particularly stringent" announced no new standard of review. It was simply an acknowledgment that an appellate court can and will devote more resources to analyzing district court decisions that are dispositive of the entire litigation. All evidentiary decisions are reviewed under an abuse-of-discretion standard. He argues, however, that it is perfectly reasonable for appellate courts to give particular attention to those decisions that are outcome determinative.

We have held that abuse of discretion is the proper standard of review of a district court's evidentiary rulings. *Old Chief* v. *United States*, 519 U. S. 172, 174, n. 1 (1997); *United States* v. *Abel*, 469 U. S. 45, 54 (1984). Indeed, our cases on

the subject go back as far as *Spring Co.* v. *Edgar*, 99 U. S. 645, 658 (1879), where we said that "[c]ases arise where it is very much a matter of discretion with the court whether to receive or exclude the evidence; but the appellate court will not reverse in such a case, unless the ruling is manifestly erroneous." The Court of Appeals suggested that *Daubert* somehow altered this general rule in the context of a district court's decision to exclude scientific evidence. But *Daubert* did not address the standard of appellate review for evidentiary rulings at all. It did hold that the "austere" *Frye* standard of "general acceptance" had not been carried over into the Federal Rules of Evidence. But the opinion also said:

> "That the *Frye* test was displaced by the Rules of Evidence does not mean, however, that the Rules themselves place no limits on the admissibility of purportedly scientific evidence. Nor is the trial judge disabled from screening such evidence. To the contrary, under the Rules the trial judge must ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable." 509 U. S., at 589 (footnote omitted).

Thus, while the Federal Rules of Evidence allow district courts to admit a somewhat broader range of scientific testimony than would have been admissible under *Frye*, they leave in place the "gatekeeper" role of the trial judge in screening such evidence. A court of appeals applying "abuse-of-discretion" review to such rulings may not categorically distinguish between rulings allowing expert testimony and rulings disallowing it. Compare *Beech Aircraft Corp.* v. *Rainey*, 488 U. S. 153, 172 (1988) (applying abuse-of-discretion review to a lower court's decision to exclude evidence), with *United States* v. *Abel*, *supra*, at 54 (applying abuse-of-discretion review to a lower court's decision to admit evidence). We likewise reject respondent's argument that because the granting of summary judgment in this case

was "outcome determinative," it should have been subjected to a more searching standard of review. On a motion for summary judgment, disputed issues of fact are resolved against the moving party—here, petitioners. But the question of admissibility of expert testimony is not such an issue of fact, and is reviewable under the abuse-of-discretion standard.

We hold that the Court of Appeals erred in its review of the exclusion of Joiner's experts' testimony. In applying an overly "stringent" review to that ruling, it failed to give the trial court the deference that is the hallmark of abuse-of-discretion review. See, *e. g.*, *Koon* v. *United States*, 518 U. S. 81, 98–99 (1996).

III

We believe that a proper application of the correct standard of review here indicates that the District Court did not abuse its discretion. Joiner's theory of liability was that his exposure to PCB's and their derivatives "promoted" his development of small-cell lung cancer. In support of that theory he proffered the deposition testimony of expert witnesses. Dr. Arnold Schecter testified that he believed it "more likely than not that Mr. Joiner's lung cancer was causally linked to cigarette smoking and PCB exposure." App. 107. Dr. Daniel Teitelbaum testified that Joiner's "lung cancer was caused by or contributed to in a significant degree by the materials with which he worked." *Id.*, at 140.

Petitioners contended that the statements of Joiner's experts regarding causation were nothing more than speculation. Petitioners criticized the testimony of the experts in that it was "not supported by epidemiological studies . . . [and was] based exclusively on isolated studies of laboratory animals." 3 Record, Doc. No. 46 (Defendants' Joint Memorandum in Support of Summary Judgment 3). Joiner responded by claiming that his experts had identified "relevant animal studies which support their opinions." 4 Record, Doc. No. 53 (Plaintiffs' Brief in Opposition to Defendants'

Motion for Summary Judgment 47). He also directed the court's attention to four epidemiological studies[2] on which his experts had relied.

The District Court agreed with petitioners that the animal studies on which respondent's experts relied did not support his contention that exposure to PCB's had contributed to his cancer. The studies involved infant mice that had developed cancer after being exposed to PCB's. The infant mice in the studies had had massive doses of PCB's injected directly into their peritoneums[3] or stomachs. Joiner was an adult human being whose alleged exposure to PCB's was far less than the exposure in the animal studies. The PCB's were injected into the mice in a highly concentrated form. The fluid with which Joiner had come into contact generally had a much smaller PCB concentration of between 0-to-500 parts per million. The cancer that these mice developed was alveolegenic adenomas; Joiner had developed small-cell carcinomas. No study demonstrated that adult mice developed cancer after being exposed to PCB's. One of the experts admitted that no study had demonstrated that PCB's lead to cancer in any other species.

Respondent failed to reply to this criticism. Rather than explaining how and why the experts could have extrapolated their opinions from these seemingly far-removed animal studies, respondent chose "to proceed as if the only issue [was] whether animal studies can ever be a proper foundation for an expert's opinion." 864 F. Supp., at 1324. Of course, whether animal studies can ever be a proper foundation for an expert's opinion was not the issue. The issue was whether *these* experts' opinions were sufficiently supported by the animal studies on which they purported to rely. The studies were so dissimilar to the facts presented in this liti-

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[2] Epidemiological studies examine the pattern of disease in human populations.

[3] The peritoneum is the lining of the abdominal cavity.

gation that it was not an abuse of discretion for the District Court to have rejected the experts' reliance on them.

The District Court also concluded that the four epidemiological studies on which respondent relied were not a sufficient basis for the experts' opinions. The first such study involved workers at an Italian capacitor[4] plant who had been exposed to PCB's. Bertazzi, Riboldi, Pesatori, Radice, & Zocchetti, Cancer Mortality of Capacitor Manufacturing Workers, 11 American Journal of Industrial Medicine 165 (1987). The authors noted that lung cancer deaths among ex-employees at the plant were higher than might have been expected, but concluded that "there were apparently no grounds for associating lung cancer deaths (although increased above expectations) and exposure in the plant." *Id.*, at 172. Given that Bertazzi et al. were unwilling to say that PCB exposure had caused cancer among the workers they examined, their study did not support the experts' conclusion that Joiner's exposure to PCB's caused his cancer.

The second study followed employees who had worked at Monsanto's PCB production plant. J. Zack & D. Musch, Mortality of PCB Workers at the Monsanto Plant in Sauget, Illinois (Dec. 14, 1979) (unpublished report), 3 Record, Doc. No. 11. The authors of this study found that the incidence of lung cancer deaths among these workers was somewhat higher than would ordinarily be expected. The increase, however, was not statistically significant and the authors of the study did not suggest a link between the increase in lung cancer deaths and the exposure to PCB's.

The third and fourth studies were likewise of no help. The third involved workers at a Norwegian cable manufacturing company who had been exposed to mineral oil. Ronneberg, Andersen, & Skyberg, Mortality and Incidence of Cancer Among Oil Exposed Workers in a Norwegian Cable Manufacturing Company, 45 British Journal of Indus-

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[4] A capacitor is an electrical component that stores an electric charge.

trial Medicine 595 (1988). A statistically significant increase in lung cancer deaths had been observed in these workers. The study, however, (1) made no mention of PCB's and (2) was expressly limited to the type of mineral oil involved in that study, and thus did not support these experts' opinions. The fourth and final study involved a PCB-exposed group in Japan that had seen a statistically significant increase in lung cancer deaths. Kuratsune, Nakamura, Ikeda, & Hirohata, Analysis of Deaths Seen Among Patients with Yusho—A Preliminary Report, 16 Chemosphere, Nos. 8/9, p. 2085 (1987). The subjects of this study, however, had been exposed to numerous potential carcinogens, including toxic rice oil that they had ingested.

Respondent points to *Daubert*'s language that the "focus, of course, must be solely on principles and methodology, not on the conclusions that they generate." 509 U. S., at 595. He claims that because the District Court's disagreement was with the conclusion that the experts drew from the studies, the District Court committed legal error and was properly reversed by the Court of Appeals. But conclusions and methodology are not entirely distinct from one another. Trained experts commonly extrapolate from existing data. But nothing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert. A court may conclude that there is simply too great an analytical gap between the data and the opinion proffered. See *Turpin* v. *Merrell Dow Pharmaceuticals, Inc.*, 959 F. 2d 1349, 1360 (CA6), cert. denied, 506 U. S. 826 (1992). That is what the District Court did here, and we hold that it did not abuse its discretion in so doing.

We hold, therefore, that abuse of discretion is the proper standard by which to review a district court's decision to admit or exclude scientific evidence. We further hold that, because it was within the District Court's discretion to conclude that the studies upon which the experts relied were not

sufficient, whether individually or in combination, to support their conclusions that Joiner's exposure to PCB's contributed to his cancer, the District Court did not abuse its discretion in excluding their testimony. These conclusions, however, do not dispose of this entire case.

Respondent's original contention was that his exposure to PCB's, furans, and dioxins contributed to his cancer. The District Court ruled that there was a genuine issue of material fact as to whether Joiner had been exposed to PCB's, but concluded that there was no genuine issue as to whether he had been exposed to furans and dioxins. The District Court accordingly never explicitly considered if there was admissible evidence on the question whether Joiner's alleged exposure to furans and dioxins contributed to his cancer. The Court of Appeals reversed the District Court's conclusion that there had been no exposure to furans and dioxins. Petitioners did not challenge this determination in their petition to this Court. Whether Joiner was exposed to furans and dioxins, and whether if there was such exposure, the opinions of Joiner's experts would then be admissible, remain open questions. We accordingly reverse the judgment of the Court of Appeals and remand this case for proceedings consistent with this opinion.

It is so ordered.

JUSTICE BREYER, concurring.

The Court's opinion, which I join, emphasizes *Daubert*'s statement that a trial judge, acting as "gatekeeper," must "'ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable.'" *Ante*, at 142 (quoting *Daubert* v. *Merrell Dow Pharmaceuticals, Inc.*, 509 U. S. 579, 589 (1993)). This requirement will sometimes ask judges to make subtle and sophisticated determinations about scientific methodology and its relation to the conclusions an expert witness seeks to offer—particularly when a case arises in an area where the science itself is tentative or

uncertain, or where testimony about general risk levels in human beings or animals is offered to prove individual causation. Yet, as *amici* have pointed out, judges are not scientists and do not have the scientific training that can facilitate the making of such decisions. See, *e. g.*, Brief for Trial Lawyers for Public Justice as *Amicus Curiae* 15; Brief for New England Journal of Medicine et al. as *Amici Curiae* 2 ("Judges . . . are generally not trained scientists").

Of course, neither the difficulty of the task nor any comparative lack of expertise can excuse the judge from exercising the "gatekeeper" duties that the Federal Rules of Evidence impose—determining, for example, whether particular expert testimony is reliable and "will assist the trier of fact," Fed. Rule Evid. 702, or whether the "probative value" of testimony is substantially outweighed by risks of prejudice, confusion or waste of time, Fed. Rule Evid. 403. To the contrary, when law and science intersect, those duties often must be exercised with special care.

Today's toxic tort case provides an example. The plaintiff in today's case says that a chemical substance caused, or promoted, his lung cancer. His concern, and that of others, about the causes of cancer is understandable, for cancer kills over one in five Americans. See U. S. Dept. of Health and Human Services, National Center for Health Statistics, Health, United States 1996–97 and Injury Chartbook 117 (1997) (23.3% of all deaths in 1995). Moreover, scientific evidence implicates some chemicals as potential causes of some cancers. See, *e. g.*, U. S. Dept. of Health and Human Services, Public Health Service, National Toxicology Program, 1 Seventh Annual Report on Carcinogens, pp. v–vi (1994). Yet modern life, including good health as well as economic well-being, depends upon the use of artificial or manufactured substances, such as chemicals. And it may, therefore, prove particularly important to see that judges fulfill their *Daubert* gatekeeping function, so that they help assure that the powerful engine of tort liability, which can generate

strong financial incentives to reduce, or to eliminate, production, points toward the right substances and does not destroy the wrong ones. It is, thus, essential in this science-related area that the courts administer the Federal Rules of Evidence in order to achieve the "end[s]" that the Rules themselves set forth, not only so that proceedings may be "justly determined," but also so "that the truth may be ascertained." Fed. Rule Evid. 102.

I therefore want specially to note that, as cases presenting significant science-related issues have increased in number, see Judicial Conference of the United States, Report of the Federal Courts Study Committee 97 (Apr. 2, 1990) ("Economic, statistical, technological, and natural and social scientific data are becoming increasingly important in both routine and complex litigation"), judges have increasingly found in the Rules of Evidence and Civil Procedure ways to help them overcome the inherent difficulty of making determinations about complicated scientific, or otherwise technical, evidence. Among these techniques are an increased use of Rule 16's pretrial conference authority to narrow the scientific issues in dispute, pretrial hearings where potential experts are subject to examination by the court, and the appointment of special masters and specially trained law clerks. See J. Cecil & T. Willging, Court-Appointed Experts: Defining the Role of Experts Appointed Under Federal Rule of Evidence 706, pp. 83–88 (1993); J. Weinstein, Individual Justice in Mass Tort Litigation 107–110 (1995); cf. Kaysen, In Memoriam: Charles E. Wyzanski, Jr., 100 Harv. L. Rev. 713, 713–715 (1987) (discussing a judge's use of an economist as a law clerk in *United States* v. *United Shoe Machinery Corp.*, 110 F. Supp. 295 (Mass. 1953), aff'd, 347 U. S. 521 (1954)).

In the present case, the New England Journal of Medicine has filed an *amici* brief "in support of neither petitioners nor respondents" in which the Journal writes:

> "[A] judge could better fulfill this gatekeeper function if he or she had help from scientists. Judges should be

> strongly encouraged to make greater use of their inherent authority . . . to appoint experts . . . . Reputable experts could be recommended to courts by established scientific organizations, such as the National Academy of Sciences or the American Association for the Advancement of Science." Brief, *supra*, at 18–19.

Cf. Fed. Rule Evid. 706 (court may "on its own motion or on the motion of any party" appoint an expert to serve on behalf of the court, and this expert may be selected as "agreed upon by the parties" or chosen by the court); see also Weinstein, *supra*, at 116 (a court should sometimes "go beyond the experts proffered by the parties" and "utilize its powers to appoint independent experts under Rule 706 of the Federal Rules of Evidence"). Given this kind of offer of cooperative effort, from the scientific to the legal community, and given the various Rules-authorized methods for facilitating the courts' task, it seems to me that *Daubert*'s gatekeeping requirement will not prove inordinately difficult to implement, and that it will help secure the basic objectives of the Federal Rules of Evidence, which are, to repeat, the ascertainment of truth and the just determination of proceedings. Fed. Rule Evid. 102.

JUSTICE STEVENS, concurring in part and dissenting in part.

The question that we granted certiorari to decide is whether the Court of Appeals applied the correct standard of review. That question is fully answered in Parts I and II of the Court's opinion. Part III answers the quite different question whether the District Court properly held that the testimony of plaintiff's expert witnesses was inadmissible. Because I am not sure that the parties have adequately briefed that question, or that the Court has adequately explained why the Court of Appeals' disposition was erroneous, I do not join Part III. Moreover, because a proper answer to that question requires a study of the record that can be

performed more efficiently by the Court of Appeals than by the nine Members of this Court, I would remand the case to that court for application of the proper standard of review.

One aspect of the record will illustrate my concern. As the Court of Appeals pointed out, Joiner's experts relied on "the studies of at least thirteen different researchers, and referred to several reports of the World Health Organization that address the question of whether PCBs cause cancer." 78 F. 3d 524, 533 (CA11 1996). Only one of those studies is in the record, and only six of them were discussed in the District Court opinion. Whether a fair appraisal of either the methodology or the conclusions of Joiner's experts can be made on the basis of such an incomplete record is a question that I do not feel prepared to answer.

It does seem clear, however, that the Court has not adequately explained why its holding is consistent with Federal Rule of Evidence 702,[1] as interpreted in *Daubert* v. *Merrell Dow Pharmaceuticals, Inc.*, 509 U. S. 579 (1993).[2] In general, scientific testimony that is both relevant and reliable must be admitted and testimony that is irrelevant or unreliable must be excluded. *Id.*, at 597. In this case, the District Court relied on both grounds for exclusion.

The relevance ruling was straightforward. The District Court correctly reasoned that an expert opinion that expo-

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[1] Rule 702 states: "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."

[2] The specific question on which the Court granted certiorari in *Daubert* was whether the rule of *Frye* v. *United States*, 54 App. D. C. 46, 293 F. 1013 (1923), remained valid after the enactment of the Federal Rules of Evidence, but the Court went beyond that issue and set forth alternative requirements for admissibility in place of the *Frye* test. Even though the *Daubert* test was announced in dicta, see 509 U. S., at 598–601 (REHNQUIST, C. J., concurring in part and dissenting in part), we should not simply ignore its analysis in reviewing the District Court's rulings.

sure to PCB's, "furans" and "dioxins" together may cause lung cancer would be irrelevant unless the plaintiff had been exposed to those substances. Having already found that there was no evidence of exposure to furans and dioxins, 864 F. Supp. 1310, 1318–1319 (ND Ga. 1994), it necessarily followed that this expert opinion testimony was inadmissible. Correctly applying *Daubert*, the District Court explained that the experts' testimony "manifestly does not fit the facts of this case, and is therefore inadmissible." 864 F. Supp., at 1322. Of course, if the evidence raised a genuine issue of fact on the question of Joiner's exposure to furans and dioxins—as the Court of Appeals held that it did—then this basis for the ruling on admissibility was erroneous, but not because the District Judge either abused her discretion or misapplied the law.[3]

The reliability ruling was more complex and arguably is not faithful to the statement in *Daubert* that "[t]he focus, of course, must be solely on principles and methodology, not on the conclusions that they generate." 509 U. S., at 595. Joiner's experts used a "weight of the evidence" methodology to assess whether Joiner's exposure to transformer fluids promoted his lung cancer.[4] They did not suggest that any

[3] Petitioners do not challenge the Court of Appeals' straightforward review of the District Court's summary judgment ruling on exposure to furans and dioxins. As today's opinion indicates, *ante*, at 147, it remains an open question on remand whether the District Court should admit expert testimony that PCB's, furans, and dioxins *together* promoted Joiner's cancer.

[4] Dr. Daniel Teitelbaum elaborated on that approach in his deposition testimony: "[A]s a toxicologist when I look at a study, I am going to require that that study meet the general criteria for methodology and statistical analysis, but that when all of that data is collected and you ask me as a patient, 'Doctor, have I got a risk of getting cancer from this?' That those studies don't answer the question, that I have to put them all together in my mind and look at them in relation to everything I know about the substance and everything I know about the exposure and come to a conclusion. I think when I say, 'To a reasonable medical probability as a medical toxicologist, this substance was a contributing cause,' . . . to his cancer,

one study provided adequate support for their conclusions, but instead relied on all the studies taken together (along with their interviews of Joiner and their review of his medical records). The District Court, however, examined the studies one by one and concluded that none was sufficient to show a link between PCB's and lung cancer. 864 F. Supp., at 1324–1326. The focus of the opinion was on the separate studies and the conclusions of the experts, not on the experts' methodology. *Id.*, at 1322 ("Defendants . . . persuade the court that Plaintiffs' expert testimony would not be admissible . . . by attacking the conclusions that Plaintiffs' experts draw from the studies they cite").

Unlike the District Court, the Court of Appeals expressly decided that a "weight of the evidence" methodology was scientifically acceptable.[5] To this extent, the Court of Appeals' opinion is persuasive. It is not intrinsically "unscientific" for experienced professionals to arrive at a conclusion by weighing all available scientific evidence—this is not the sort of "junk science" with which *Daubert* was concerned.[6] After all, as Joiner points out, the Environmental Protection Agency (EPA) uses the same methodology to assess risks, albeit using a somewhat different threshold than that required in a trial. Brief for Respondents 40–41 (quoting

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that that is a valid conclusion based on the totality of the evidence presented to me. And I think that that is an appropriate thing for a toxicologist to do, and it has been the basis of diagnosis for several hundred years, anyway." Supp. App. to Brief for Respondents 19.

[5] The court explained: "Opinions of any kind are derived from individual pieces of evidence, each of which by itself might not be conclusive, but when viewed in their entirety are the building blocks of a perfectly reasonable conclusion, one reliable enough to be submitted to a jury along with the tests and criticisms cross-examination and contrary evidence would supply." 78 F. 3d 524, 532 (CA11 1996).

[6] An example of "junk science" that should be excluded under *Daubert* as too unreliable would be the testimony of a phrenologist who would purport to prove a defendant's future dangerousness based on the contours of the defendant's skull.

EPA, Guidelines for Carcinogen Risk Assessment, 51 Fed. Reg. 33992, 33996 (1986)). Petitioners' own experts used the same scientific approach as well.[7] And using this methodology, it would seem that an expert could reasonably have concluded that the study of workers at an Italian capacitor plant, coupled with data from Monsanto's study and other studies, raises an inference that PCB's promote lung cancer.[8]

The Court of Appeals' discussion of admissibility is faithful to the dictum in *Daubert* that the reliability inquiry must focus on methodology, not conclusions. Thus, even though I fully agree with both the District Court's and this Court's explanation of why each of the studies on which the experts relied was by itself unpersuasive, a critical question remains unanswered: When qualified experts have reached relevant conclusions on the basis of an acceptable methodology, why are their opinions inadmissible?

Daubert quite clearly forbids trial judges to assess the validity or strength of an expert's scientific conclusions, which is a matter for the jury.[9] Because I am persuaded

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[7] See, *e. g.*, Deposition of Dr. William Charles Bailey, Supp. App. to Brief for Respondents 56 ("I've just reviewed a lot of literature and come to some conclusions . . .").

[8] The Italian capacitor plant study found that workers exposed to PCB's had a higher-than-expected rate of lung cancer death, though "'the numbers were small [and] the value of the risk estimate was not statistically significant.'" 864 F. Supp. 1310, 1324 (ND Ga. 1994). The Monsanto study also found a correlation between PCB exposure and lung cancer death, but the results were not statistically significant. *Id.*, at 1325. Moreover, it should be noted that under Georgia law, which applies in this diversity suit, Joiner need only show that his exposure to PCB's "'promoted'" his lung cancer, not that it was the sole cause of his cancer. Brief for Respondents 7, n. 16 (quoting Brief for Appellants in No. 94–9131 (CA11), pp. 7–10).

[9] The Court stated in *Daubert:* "Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence. . . . Additionally, in the event the trial court concludes that the scintilla of evidence presented supporting a position is insufficient to

that the difference between methodology and conclusions is just as categorical as the distinction between means and ends, I do not think the statement that "conclusions and methodology are not entirely distinct from one another," *ante*, at 146, either is accurate or helps us answer the difficult admissibility question presented by this record.

In any event, it bears emphasis that the Court has not held that it would have been an abuse of discretion to admit the expert testimony. The very point of today's holding is that the abuse-of-discretion standard of review applies whether the district judge has excluded or admitted evidence. *Ante*, at 142. And nothing in either *Daubert* or the Federal Rules of Evidence requires a district judge to reject an expert's conclusions and keep them from the jury when they fit the facts of the case and are based on reliable scientific methodology.

Accordingly, while I join Parts I and II of the Court's opinion, I do not concur in the judgment or in Part III of its opinion.

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allow a reasonable juror to conclude that the position more likely than not is true, the court remains free to direct a judgment, Fed. Rule Civ. Proc. 50(a), and likewise to grant summary judgment, Fed. Rule Civ. Proc. 56. . . . These conventional devices, rather than wholesale exclusion under an uncompromising 'general acceptance' test, are the appropriate safeguards where the basis of scientific testimony meets the standards of Rule 702." 509 U. S., at 596.

Syllabus

CITY OF CHICAGO ET AL. *v.* INTERNATIONAL COLLEGE OF SURGEONS ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 96–910. Argued October 14, 1997—Decided December 15, 1997

Following the preliminary determination of Chicago's Historical and Architectural Landmarks Commission (Commission) that two of respondent ICS' buildings qualified for protection under the city's Landmarks Ordinance, the city enacted a Designation Ordinance creating a landmark district that included the buildings. ICS then applied to the Commission for permits to allow demolition of all but the facades of the buildings. The Commission denied ICS' permit applications. ICS then filed actions in state court under the Illinois Administrative Review Law for judicial review of the Commission's decisions, alleging, among other things, that the two ordinances and the manner in which the Commission conducted its proceedings violated the Federal and State Constitutions, and seeking on-the-record review of the Commission's decisions. Petitioners (collectively the City) removed the suits to Federal District Court on the basis of federal question jurisdiction. The District Court consolidated the cases, exercised supplemental jurisdiction over the state law claims, and granted summary judgment for the City, ruling that the ordinances and the Commission's proceedings were consistent with the Federal and State Constitutions and that the Commission's findings were supported by the evidence and were not arbitrary and capricious. The Seventh Circuit reversed and remanded to state court, ruling that a federal district court lacks jurisdiction of a case containing state law claims for on-the-record review of local administrative action.

Held: A case containing claims that local administrative action violates federal law, but also containing state law claims for on-the-record review of the administrative findings, can be removed to federal district court. Pp. 163–174.

(a) The District Court properly exercised federal question jurisdiction over ICS' federal claims, and properly recognized that it could thus also exercise supplemental jurisdiction over ICS' state law claims. Defendants generally may remove "any civil action brought in a State court of which the [federal] district courts . . . have original jurisdiction." 28 U. S. C. § 1441(a). The district courts' original jurisdiction

encompasses cases "arising under the Constitution, laws, or treaties of the United States," § 1331, and an action satisfies this requirement when the plaintiff's well-pleaded complaint raises issues of federal law, *Metropolitan Life Ins. Co.* v. *Taylor*, 481 U. S. 58, 63. ICS' state court complaints raised a number of such issues in the form of various federal constitutional challenges to the Landmarks and Designation Ordinances, and to the manner in which the Commission conducted its proceedings. Once the case was removed, ICS' state law claims were properly before the District Court under the supplemental jurisdiction statute. That statute provides, "in any civil action of which the district courts have original jurisdiction, the[y] shall have supplemental jurisdiction over all other claims that . . . form part of the same case or controversy." § 1367(a). Here, ICS' state law claims are legal "claims" in the sense that that term is generally used to denote a judicially cognizable cause of action, and they and the federal claims derive from a common nucleus of operative fact, see *Mine Workers* v. *Gibbs*, 383 U. S. 715, 725. Pp. 163–166.

(b) ICS' argument that the District Court lacked jurisdiction because its complaints contained state law claims requiring deferential, on-the-record review of the Commission's decisions stems from the erroneous premise that those claims must be "civil actions" within the federal courts' "original jurisdiction" under § 1441(a) for removal purposes. Because this is a federal question case, the District Court's original jurisdiction derives not from ICS' state law claims, but from its federal claims, which satisfy § 1441(a)'s requirements. Having thus established federal jurisdiction, the relevant inquiry respecting the accompanying state claims is whether they fall within a district court's supplemental jurisdiction, and that inquiry turns on whether they satisfy § 1367(a)'s requirements. ICS' proposed approach would effectively read the supplemental jurisdiction statute out of the books: The whole point of supplemental jurisdiction is to allow the district courts to exercise pendent jurisdiction over claims as to which original jurisdiction is lacking. Pp. 166–168.

(c) This Court also disagrees with ICS' reasoning to the extent ICS means to suggest that a claim involving deferential review of a local administrative decision can never be "so related to claims . . . within . . . original jurisdiction that [it] form[s] part of the same case or controversy" for purposes of supplemental jurisdiction under § 1367(a). While Congress could establish an exception to supplemental jurisdiction for such claims, the statute, as written, bears no such construction, as it confers jurisdiction without reference to the nature of review. Nor do *Chicago, R. I. & P. R. Co.* v. *Stude*, 346 U. S. 574, 581, and *Horton* v.

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Liberty Mut. Ins. Co., 367 U. S. 348, 354–355, require that an equivalent exception be read into the statute. To the extent that these cases might be read to establish limits on the scope of federal jurisdiction, they address only whether a cause of action for judicial review of a state administrative decision is within the district courts' original jurisdiction under the diversity statute, § 1332, not whether it is a claim within the district courts' pendent jurisdiction in federal question cases. Even assuming, *arguendo*, that the decisions are relevant to the latter question, both indicate that federal jurisdiction generally encompasses judicial review of state administrative decisions. See *Stude*, *supra*, at 578–579; *Horton*, *supra*, at 352. Pp. 168–172.

(d) That § 1367(a) authorizes district courts to exercise supplemental jurisdiction over state law claims for on-the-record review of administrative decisions does not mean that the jurisdiction *must* be exercised in all cases. The district courts can decline to exercise pendent jurisdiction over such claims in the interests of judicial economy, convenience, fairness, and comity. See *Carnegie-Mellon Univ.* v. *Cohill*, 484 U. S. 343, 357; *Gibbs*, *supra*, at 726–727. The supplemental jurisdiction statute enumerates situations in which district courts can refuse to exercise supplemental jurisdiction, § 1367(c), taking into account such factors as the circumstances of the particular case, the nature of the state law claims, the character of the governing state law, and the relationship between the state and federal claims. District courts also may be obligated not to decide state law claims (or to stay their adjudication) where one of the abstention doctrines applies. See, *e. g.*, *Quackenbush* v. *Allstate Ins. Co.*, 517 U. S. 706, 716. Pp. 172–174.

(e) ICS' contentions that abstention principles required the District Court to decline to exercise supplemental jurisdiction, and that the court should have done so under § 1367(c), are left for the Seventh Circuit to address in the first instance. P. 174.

91 F. 3d 981, reversed and remanded.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and SCALIA, KENNEDY, SOUTER, THOMAS, and BREYER, JJ., joined. GINSBURG, J., filed a dissenting opinion, in which STEVENS, J., joined, *post*, p. 175.

Benna Ruth Solomon argued the cause for petitioners. With her on the briefs were *Lawrence Rosenthal* and *Anne Berleman Kearney.*

Richard J. Brennan argued the cause for respondents. With him on the brief were *Kimball R. Anderson* and *Thomas C. Cronin.**

JUSTICE O'CONNOR delivered the opinion of the Court.

The city of Chicago, like municipalities throughout the country, has an ordinance that provides for the designation and protection of historical landmarks. Chicago Municipal Code, Art. XVII, §§2–120–580 through 2–120–920 (1990). The city's Landmarks Ordinance is administered by the Commission on Chicago Historical and Architectural Landmarks (Chicago Landmarks Commission or Commission). Pursuant to the Illinois Administrative Review Law, Ill. Comp. Stat., ch. 735, §§5/3–103, 5/3–104 (Supp. 1997), judicial review of final decisions of a municipal landmarks commission lies in state circuit court. In this case, we are asked to consider whether a lawsuit filed in the Circuit Court of Cook County seeking judicial review of decisions of the Chicago Landmarks Commission may be removed to federal district court, where the case contains both federal constitutional and state administrative challenges to the Commission's decisions.

I

Respondents International College of Surgeons and the United States Section of the International College of Surgeons (jointly ICS) own two properties on North Lake Shore Drive in the city of Chicago. In July 1988, the Chicago Landmarks Commission made a preliminary determination that seven buildings on Lake Shore Drive, including two

*Briefs of *amici curiae* urging reversal were filed for the State of Indiana by *Jeffrey A. Modisett,* Attorney General, and *Geoffrey Slaughter* and *Anthony Scott Chinn,* Deputy Attorneys General; for Defenders of Property Rights by *Nancie G. Marzulla;* and for the National Trust for Historic Preservation et al. by *Paul M. Smith, Elizabeth S. Merritt, Laura S. Nelson,* and *Edith M. Shine.*

mansions on ICS' properties, qualified for designation as a landmark district under the city's Landmarks Ordinance. In June 1989, the city council enacted an ordinance (the Designation Ordinance) designating the landmark district.

In February 1989, after the Commission's preliminary determination, ICS executed a contract for the sale and redevelopment of its properties. The contract called for the developer, whose interest has since been acquired by respondent Robin Construction Company, to demolish all but the facades of the two mansions and to construct a high-rise condominium tower. In October 1990, ICS applied to the Landmarks Commission for the necessary permits to allow demolition of a designated landmark. The Commission denied the permit applications, finding that the proposed demolition would "adversely affect and destroy significant historical and architectural features of the [landmark] district." App. 49. ICS then reapplied for the permits under a provision of the Landmarks Ordinance allowing for exceptions in cases of economic hardship. The Commission again denied the applications, finding that ICS did not qualify for the hardship exception.

Following each of the Commission's decisions, ICS filed actions for judicial review in the Circuit Court of Cook County pursuant to the Illinois Administrative Review Law. Both of ICS' complaints raised a number of federal constitutional claims, including that the Landmarks and Designation Ordinances, both on their face and as applied, violate the Due Process and Equal Protection Clauses and effect a taking of property without just compensation under the Fifth and Fourteenth Amendments, and that the manner in which the Commission conducted its administrative proceedings violated ICS' rights to due process and equal protection. The complaints also sought relief under the Illinois Constitution as well as administrative review of the Commission's decisions denying the permits.

The defendants (collectively City), who are petitioners in this Court, removed both lawsuits to the District Court for the Northern District of Illinois on the basis of federal question jurisdiction. The District Court consolidated the cases. After dismissing some of the constitutional claims and exercising supplemental jurisdiction over the state law claims, the court granted summary judgment in favor of the City, ruling that the Landmarks and Designation Ordinances and the Commission's proceedings were consistent with the Federal and State Constitutions, and that the Commission's findings were supported by the evidence in the record and were not arbitrary and capricious.[1]

The Court of Appeals for the Seventh Circuit reversed and remanded the case to state court, concluding that the District Court was without jurisdiction. 91 F. 3d 981 (1996). The Seventh Circuit began its analysis by construing this Court's decisions in *Chicago, R. I. & P. R. Co.* v. *Stude*, 346 U. S. 574 (1954), and *Horton* v. *Liberty Mut. Ins. Co.*, 367 U. S. 348 (1961), which it read to suggest that "the character of the state judicial action" is significant when assessing whether proceedings to review state and local administrative decisions can be removed to federal court. 91 F. 3d, at 988. The court reasoned that, while *Stude* and *Horton* establish that proceedings to conduct *de novo* review of state agency action are subject to removal, the propriety of removing proceedings involving deferential review is still an open question. Relying on decisions from other Courts of Appeals that interpret the scope of a district court's diversity jurisdiction, the court determined that deferential review of state agency action was an appellate function that was "inconsist-

[1] The District Court also dismissed a third action filed by ICS, which is not in issue here. That action sought review of ICS' unsuccessful efforts to obtain approval for its proposed development under the Lake Michigan and Chicago Lakefront Protection Ordinance, Chicago Municipal Code, ch. 194B (1973), which, in addition to the Designation Ordinance, restricts modification of ICS' properties.

ent with the character of a court of original jurisdiction." 91 F. 3d, at 990 (citing *Fairfax County Redevelopment & Housing Authority* v. *W. M. Schlosser Co.*, 64 F. 3d 155 (CA4 1995), and *Armistead* v. *C & M Transport, Inc.*, 49 F. 3d 43 (CA1 1995)). Accordingly, the court concluded, a proceeding to review state administrative action under a deferential standard is not a "civil action" within a district court's "original jurisdiction" under the removal statute, 28 U. S. C. § 1441(a), and so cannot be removed. 91 F. 3d, at 990.

The court then applied those principles to this case. The court began by observing that, under the Illinois Administrative Review Law, judicial review of local administrative decisions is deferential and not *de novo*, because the reviewing court must accept the agency's findings of fact as presumptively correct and cannot hear new evidence. *Id.*, at 991–992 (discussing Ill. Comp. Stat., ch. 735, § 5/3–110 (Supp. 1997)).[2] Of the various claims raised in ICS' complaints, the court explained, the as-applied constitutional challenges and the claims requesting administrative review of the Commission's decisions are bound by the administrative record, but the facial constitutional challenges are independent of the record and so would be removable to federal court if brought alone. The court then addressed whether, "when the state action involves both claims that, if brought alone, would be removable to federal court [and] issues that clearly are grounded in the administrative record, removal of the entire state action to the district court is possible." 91 F. 3d, at 993. The court ruled that, because some of the claims involve deferen-

[2] Section 5/3–110 provides: "Every action to review any final administrative decision shall be heard and determined by the court with all convenient speed. The hearing and determination shall extend to all questions of law and fact presented by the entire record before the court. No new or additional evidence in support of or in opposition to any finding, order, determination or decision of the administrative agency shall be heard by the court. The findings and conclusions of the administrative agency on questions of fact shall be held to be prima facie true and correct."

tial review, "the case removed to the district court cannot be termed a 'civil action . . . of which the district courts . . . have original jurisdiction' within the meaning of" the removal statute. *Id.*, at 994 (quoting 28 U. S. C. § 1441(a)).

We granted certiorari to address whether a case containing claims that local administrative action violates federal law, but also containing state law claims for on-the-record review of the administrative findings, is within the jurisdiction of federal district courts. 520 U. S. 1164 (1997). Because neither the jurisdictional statutes nor our prior decisions suggest that federal jurisdiction is lacking in these circumstances, we now reverse.

II

A

We have reviewed on several occasions the circumstances in which cases filed initially in state court may be removed to federal court. See, *e. g.*, *Caterpillar Inc.* v. *Williams*, 482 U. S. 386, 391–392 (1987); *Metropolitan Life Ins. Co.* v. *Taylor*, 481 U. S. 58, 63 (1987); *Franchise Tax Bd. of Cal.* v. *Construction Laborers Vacation Trust for Southern Cal.*, 463 U. S. 1, 7–12 (1983). As a general matter, defendants may remove to the appropriate federal district court "any civil action brought in a State court of which the district courts of the United States have original jurisdiction." 28 U. S. C. § 1441(a). The propriety of removal thus depends on whether the case originally could have been filed in federal court. *Caterpillar Inc.*, *supra*, at 392; *Franchise Tax Bd.*, *supra*, at 8. The district courts have original jurisdiction under the federal question statute over cases "arising under the Constitution, laws, or treaties of the United States." § 1331. "It is long settled law that a cause of action arises under federal law only when the plaintiff's well-pleaded complaint raises issues of federal law." *Metropolitan Life Ins. Co.*, *supra*, at 63.

In this case, there can be no question that ICS' state court complaints raised a number of issues of federal law in the form of various federal constitutional challenges to the Landmarks and Designation Ordinances, and to the manner in which the Commission conducted the administrative proceedings. It is true, as ICS asserts, that the federal constitutional claims were raised by way of a cause of action created by state law, namely, the Illinois Administrative Review Law. See *Howard* v. *Lawton*, 22 Ill. 2d 331, 333, 175 N. E. 2d 556, 557 (1961) (constitutional claims may be raised in a complaint for administrative review). As we have explained, however, "[e]ven though state law creates [a party's] causes of action, its case might still 'arise under' the laws of the United States if a well-pleaded complaint established that its right to relief under state law requires resolution of a substantial question of federal law." *Franchise Tax Bd.*, 463 U. S., at 13; see also *id.*, at 27–28 (case arises under federal law when "federal law creates the cause of action or . . . the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law"); *Gully* v. *First Nat. Bank in Meridian*, 299 U. S. 109, 112 (1936) (federal question exists when a "right or immunity created by the Constitution or laws of the United States [is] an element, and an essential one, of the plaintiff's cause of action"). ICS' federal constitutional claims, which turn exclusively on federal law, unquestionably fit within this rule. Accordingly, ICS errs in relying on the established principle that a plaintiff, as master of the complaint, can "choose to have the cause heard in state court." *Caterpillar Inc.*, 482 U. S., at 398–399. By raising several claims that arise under federal law, ICS subjected itself to the possibility that the City would remove the case to the federal courts. See *ibid.*

As for ICS' accompanying state law claims, this Court has long adhered to principles of pendent and ancillary jurisdiction by which the federal courts' original jurisdiction over federal questions carries with it jurisdiction over state law

claims that "derive from a common nucleus of operative fact," such that "the relationship between [the federal] claim and the state claim permits the conclusion that the entire action before the court comprises but one constitutional 'case.'" *Mine Workers* v. *Gibbs*, 383 U. S. 715, 725 (1966); see *Hurn* v. *Oursler*, 289 U. S. 238 (1933); *Siler* v. *Louisville & Nashville R. Co.*, 213 U. S. 175 (1909). Congress has codified those principles in the supplemental jurisdiction statute, which combines the doctrines of pendent and ancillary jurisdiction under a common heading. 28 U. S. C. § 1367. The statute provides, "in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." § 1367(a). That provision applies with equal force to cases removed to federal court as to cases initially filed there; a removed case is necessarily one "of which the district courts . . . have original jurisdiction." See § 1441(a); *Carnegie-Mellon Univ.* v. *Cohill*, 484 U. S. 343, 350–351 (1988) (discussing pendent claims removed to federal court).

Here, once the case was removed, the District Court had original jurisdiction over ICS' claims arising under federal law, and thus could exercise supplemental jurisdiction over the accompanying state law claims so long as those claims constitute "other claims that . . . form part of the same case or controversy." § 1367(a). We think it clear that they do. The claims for review of the Commission's decisions are legal "claims," in the sense that that term is generally used in this context to denote a judicially cognizable cause of action. And the state and federal claims "derive from a common nucleus of operative fact," *Gibbs*, *supra*, at 725, namely, ICS' unsuccessful efforts to obtain demolition permits from the Chicago Landmarks Commission. That is all the statute requires to establish supplemental jurisdiction (barring an

express statutory exception, see § 1367(a)). ICS seemed to recognize as much in the amended complaint it filed in the District Court following removal, stating that the nonfederal claims "are subject to this Court's pendent jurisdiction." App. 143. We conclude, in short, that the District Court properly exercised federal question jurisdiction over the federal claims in ICS' complaints, and properly recognized that it could thus also exercise supplemental jurisdiction over ICS' state law claims.

B

ICS, urging us to adopt the reasoning of the Court of Appeals, argues that the District Court was without jurisdiction over its actions because they contain state law claims that require on-the-record review of the Landmarks Commission's decisions. A claim that calls for deferential judicial review of a state administrative determination, ICS asserts, does not constitute a "civil action . . . of which the district courts of the United States have original jurisdiction" under 28 U. S. C. § 1441(a).

That reasoning starts with an erroneous premise. Because this is a federal question case, the relevant inquiry is not, as ICS submits, whether its state claims for on-the-record review of the Commission's decisions are "civil actions" within the "original jurisdiction" of a district court: The District Court's original jurisdiction derives from ICS' federal claims, not its state law claims. Those federal claims suffice to make the actions "civil actions" within the "original jurisdiction" of the district courts for purposes of removal. § 1441(a). The Court of Appeals, in fact, acknowledged that ICS' federal claims, "if brought alone, would be removable to federal court." 91 F. 3d, at 993. Nothing in the jurisdictional statutes suggests that the presence of related state law claims somehow alters the fact that ICS' complaints, by virtue of their federal claims, were "civil actions" within the federal courts' "original jurisdiction."

Having thus established federal jurisdiction, the relevant inquiry respecting the accompanying state claims is whether they fall within a district court's supplemental jurisdiction, not its original jurisdiction. And that inquiry turns, as we have discussed, on whether the state law claims "are so related to [the federal] claims . . . that they form part of the same case or controversy." § 1367(a); see *Gibbs*, *supra*, at 725, n. 12 (distinguishing between "the issue whether a claim for relief qualifies as a case 'arising under . . . the Laws of the United States' and the issue whether federal and state claims constitute one 'case' for pendent jurisdiction purposes"). ICS' proposed approach—that we first determine whether its state claims constitute "civil actions" within a district court's "original jurisdiction"—would effectively read the supplemental jurisdiction statute out of the books: The whole point of supplemental jurisdiction is to allow the district courts to exercise pendent jurisdiction over claims as to which original jurisdiction is lacking.

The dissent attributes a different line of argument to ICS. *Post*, at 186–187. That argument, roughly speaking, is that federal jurisdiction would lie over ICS' federal claims if they had been brought under 42 U. S. C. § 1983, because review would then range beyond the administrative record; but ICS deliberately confined review of its claims to the administrative record by raising them under the Illinois Administrative Review Law, thereby assuring itself a state forum. See Brief for Respondents 21–26. The essential premise of ICS' argument is that its actions arise solely under state law and so are not within the district courts' federal question jurisdiction, and that § 1367(a)—which presupposes a "civil action of which the district courts have original jurisdiction"—is thus inapplicable. *Id.*, at 15–21.

That reasoning is incorrect because ICS in fact raised claims not bound by the administrative record (its facial constitutional claims), see *supra*, at 162, and because, as we have explained, see *supra*, at 164, the facial and as-applied federal

constitutional claims raised by ICS "arise under" federal law for purposes of federal question jurisdiction. See *New Orleans Public Service, Inc.* v. *Council of City of New Orleans*, 491 U. S. 350, 372 (1989) ("[A] facial challenge to an allegedly unconstitutional . . . zoning ordinance" is a claim "which we would assuredly not require to be brought in state courts"). ICS submits, however, that although its complaints contain *some* claims that arise under federal law, its actions nonetheless do not fall within the district courts' original jurisdiction over federal questions. Brief for Respondents 20–21, 26. Understandably, ICS does not rest this proposition on the notion that its federal claims are so insubstantial as not to establish federal jurisdiction. See, *e. g.*, *Merrell Dow Pharmaceuticals Inc.* v. *Thompson*, 478 U. S. 804, 817 (1986); *Duke Power Co.* v. *Carolina Environmental Study Group, Inc.*, 438 U. S. 59, 70–71 (1978); *Gibbs*, 383 U. S., at 725. It follows, then, that ICS' view that the district courts lack jurisdiction even over the *federal* claims in its actions stems from the mistaken idea—embraced by the court below, see 91 F. 3d, at 993–994, and n. 14—that the other, nonfederal claims somehow take the complaints in their entirety (including the federal claims) out of the federal courts' jurisdiction. ICS' rationale thus ultimately devolves into the erroneous argument we ascribe to it: that its state law claims for on-the-record review of the Commission's decisions must be "civil actions" within the district courts' "original jurisdiction" in order for its complaints to be removable to federal court.

C

To the extent that ICS means to suggest not only that a claim involving deferential review of a local administrative decision is not a "civil action" in the "original jurisdiction" of the district courts, but also that such a claim can never constitute a claim "so related to claims . . . within such original jurisdiction that [it] form[s] part of the same case or controversy" for purposes of supplemental jurisdiction, we dis-

agree with its reasoning. There is nothing in the text of § 1367(a) that indicates an exception to supplemental jurisdiction for claims that require on-the-record review of a state or local administrative determination. Instead, the statute generally confers supplemental jurisdiction over "all other claims" in the same case or controversy as a federal question, without reference to the nature of review. Congress could of course establish an exception to supplemental jurisdiction for claims requiring deferential review of state administrative decisions, but the statute, as written, bears no such construction.

Nor do our decisions in *Chicago, R. I. & P. R. Co.* v. *Stude*, 346 U. S. 574 (1954), and *Horton* v. *Liberty Mut. Ins. Co.*, 367 U. S. 348 (1961), on which ICS principally relies, require that we read an equivalent exception into the statute. Both *Stude* and *Horton*—to the extent that either might be read to establish limits on the scope of federal jurisdiction—address only whether a cause of action for judicial review of a state administrative decision is within the district courts' original jurisdiction under the diversity statute, 28 U. S. C. § 1332, not whether it is a claim within the district courts' pendent jurisdiction in federal question cases. Even assuming, *arguendo*, that the decisions are relevant to the latter question, both *Stude* and *Horton* indicate that federal jurisdiction generally encompasses judicial review of state administrative decisions.

In *Stude*, for instance, a railroad company challenging the amount of a condemnation assessment attempted to establish federal jurisdiction by two separate routes. First, the railroad filed a complaint seeking review of the amount of the assessment in federal court on the basis of diversity jurisdiction, and second, it filed an appeal from the assessment in state court and then undertook to remove that case to federal court. As to the action filed directly in federal court, this Court upheld its dismissal, finding that state eminent domain proceedings were still pending and that the com-

plaint thus improperly attempted to "separate the question of damages and try it apart from the substantive right from which the claim for damages arose." 346 U. S., at 582. ICS emphasizes the Court's observation in this interlocutory context that a district court "does not sit to review on appeal action taken administratively or judicially in a state proceeding." *Id.*, at 581. By that remark, however, the Court did not suggest that jurisdiction turned on whether judicial review of the administrative determination was deferential or *de novo.* The decision, in fact, makes no reference to the standard of review.

Moreover, reading the Court's statement broadly to suggest that federal courts can never review local administrative decisions would conflict with the Court's treatment of the second action in the case: the railroad's attempt to remove its state court appeal to federal court. With respect to that action, the Court held that removal was improper in the particular circumstances because the railroad was the plaintiff in state court. But the Court observed that, as a general matter, a state court action for judicial review of an administrative condemnation proceeding is "in its nature a civil action and subject to removal by the defendant to the United States District Court." *Id.*, at 578–579; see *County of Allegheny* v. *Frank Mashuda Co.*, 360 U. S. 185, 195 (1959) ("Although holding that the respondent could not remove a state condemnation case to the Federal District Court on diversity grounds because he was the plaintiff in the state proceeding, the Court [in *Stude*] clearly recognized that the defendant in such a proceeding could remove in accordance with § 1441 and obtain a federal adjudication of the issues involved"). If anything, then, *Stude* indicates that the jurisdiction of federal district courts encompasses ICS' claims for review of the Landmarks Commission's decisions.

Horton is to the same effect, holding that a District Court had jurisdiction under the diversity statute to review a state

workers' compensation award. 367 U. S., at 352. The bulk of the opinion addresses the central issue in the case, whether the suit satisfied the amount-in-controversy threshold for diversity jurisdiction. See *id.*, at 352–354; *id.*, at 355–363 (Clark, J., dissenting). But the plaintiff also alleged, based on *Stude*, that diversity jurisdiction was lacking because the action was an appeal from a state administrative order, to which the Court simply responded that, "[a]side from many other relevant distinctions which need not be pointed out," the suit in fact was a "trial *de novo*" and not an appellate proceeding. 367 U. S., at 354–355. The Court did not purport to hold that the *de novo* standard was a precondition to federal jurisdiction.

Any negative inference that might be drawn from that aspect of *Horton*, even assuming that the decision speaks to the scope of supplemental (and not diversity) jurisdiction, would be insufficient to trump the absence of indication in § 1367(a) that the nature of review bears on whether a claim is within a district court's supplemental jurisdiction. After all, district courts routinely conduct deferential review pursuant to their original jurisdiction over federal questions, including on-the-record review of federal administrative action. See *Califano* v. *Sanders*, 430 U. S. 99, 105–107 (1977). Nothing in § 1367(a) suggests that district courts are without supplemental jurisdiction over claims seeking precisely the same brand of review of local administrative determinations. Cf. *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty.* v. *Rowley*, 458 U. S. 176, 206 (1982) (interpreting Individuals with Disabilities Education Act, 20 U. S. C. § 1415(e), which contemplates deferential review of state administrative action).

The dissent disagrees with our conclusion that 28 U. S. C. § 1367(a) encompasses state law claims for on-the-record review of local administrative action, but it is unclear exactly why, for the dissent never directly challenges our application

of that statute to ICS' claims. In fact, the dissent only makes passing reference to the terms of § 1367(a), which, in our view, resolve the case. In this light, the dissent's candid misgivings about attempting to square its position with the text of the jurisdictional statutes, see *post,* at 176, 183–184, are understandable. And the failure to come to grips with the text of § 1367(a) explains the dissent's repeated assumption, *post,* at 175, 177, 182, 185–186, that the jurisdictional analysis of diversity cases would be no different. But to decide that state law claims for on-the-record review of a local agency's decision fall within the district courts' "supplemental" jurisdiction under § 1367(a), does not answer the question, nor do we, whether those same claims, if brought alone, would substantiate the district courts' "original" jurisdiction over diversity cases under § 1332. Ultimately, the dissent never addresses this case as it is presented: a case containing federal questions within the meaning of § 1331 and supplemental state law claims within the meaning of § 1367(a).

III

Of course, to say that the terms of § 1367(a) authorize the district courts to exercise supplemental jurisdiction over state law claims for on-the-record review of administrative decisions does not mean that the jurisdiction *must* be exercised in all cases. Our decisions have established that pendent jurisdiction "is a doctrine of discretion, not of plaintiff's right," *Gibbs,* 383 U. S., at 726, and that district courts can decline to exercise jurisdiction over pendent claims for a number of valid reasons, *id.,* at 726–727. See also *Cohill,* 484 U. S., at 350 ("As articulated by *Gibbs,* the doctrine of pendent jurisdiction thus is a doctrine of flexibility, designed to allow courts to deal with cases involving pendent claims in the manner that most sensibly accommodates a range of concerns and values"). Accordingly, we have indicated that "district courts [should] deal with cases involving pendent claims in the manner that best serves the principles of econ-

omy, convenience, fairness, and comity which underlie the pendent jurisdiction doctrine." *Id.*, at 357.

The supplemental jurisdiction statute codifies these principles. After establishing that supplemental jurisdiction encompasses "other claims" in the same case or controversy as a claim within the district courts' original jurisdiction, § 1367(a), the statute confirms the discretionary nature of supplemental jurisdiction by enumerating the circumstances in which district courts can refuse its exercise:

> "(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—
>
> "(1) the claim raises a novel or complex issue of State law,
>
> "(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
>
> "(3) the district court has dismissed all claims over which it has original jurisdiction, or
>
> "(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction." 28 U. S. C. § 1367(c).

Depending on a host of factors, then—including the circumstances of the particular case, the nature of the state law claims, the character of the governing state law, and the relationship between the state and federal claims—district courts may decline to exercise jurisdiction over supplemental state law claims. The statute thereby reflects the understanding that, when deciding whether to exercise supplemental jurisdiction, "a federal court should consider and weigh in each case, and at every stage of the litigation, the values of judicial economy, convenience, fairness, and comity." *Cohill*, *supra*, at 350. In this case, the District Court decided that those interests would be best served by exercising jurisdiction over ICS' state law claims. App. to Pet. for Cert. 45a–46a.

In addition to their discretion under § 1367(c), district courts may be obligated not to decide state law claims (or to stay their adjudication) where one of the abstention doctrines articulated by this Court applies. Those doctrines embody the general notion that "federal courts may decline to exercise their jurisdiction, in otherwise exceptional circumstances, where denying a federal forum would clearly serve an important countervailing interest, for example where abstention is warranted by considerations of proper constitutional adjudication, regard for federal-state relations, or wise judicial administration." *Quackenbush* v. *Allstate Ins. Co.*, 517 U. S. 706, 716 (1996) (citations and internal quotation marks omitted). We have recently outlined the various abstention principles, see *ibid.*, and need not elaborate them here except to note that there may be situations in which a district court should abstain from reviewing local administrative determinations even if the jurisdictional prerequisites are otherwise satisfied.

IV

The District Court properly recognized that it could exercise supplemental jurisdiction over ICS' state law claims, including the claims for on-the-record administrative review of the Landmarks Commission's decisions. ICS contends that abstention principles required the District Court to decline to exercise supplemental jurisdiction, and also alludes to its contention below that the District Court should have refused to exercise supplemental jurisdiction under 28 U. S. C. § 1367(c). We express no view on those matters, but think it the preferable course to allow the Court of Appeals to address them in the first instance. Accordingly, we reverse the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE GINSBURG, with whom JUSTICE STEVENS joins, dissenting.

This now-federal case originated as an appeal in state court from a municipal agency's denials of demolition permits. The review that state law provides is classically appellate in character—on the agency's record, not *de novo*. Nevertheless, the Court decides today that this standard brand of appellate review can be shifted from the appropriate state tribunal to a federal court of first instance at the option of either party—plaintiff originally or defendant by removal. The Court approves this enlargement of district court authority explicitly in federal-question cases, and by inescapable implication in diversity cases, satisfied that "neither the jurisdictional statutes nor our prior decisions suggest that federal jurisdiction is lacking." *Ante*, at 163.

The Court's authorization of cross-system appeals qualifies as a watershed decision. After today, litigants asserting federal-question or diversity jurisdiction may routinely lodge in federal courts direct appeals from the actions of all manner of local (county and municipal) agencies, boards, and commissions. Exercising this cross-system appellate authority, federal courts may now directly superintend local agencies by affirming, reversing, or modifying their administrative rulings.

The Court relies on the statutory words found in both 28 U. S. C. §§ 1331 and 1332: "The district courts shall have original jurisdiction of all civil actions . . . ." Then, as its linchpin, the Court emphasizes the 1990 codification and expansion, in § 1367, of what previously had been known as "ancillary jurisdiction" and "pendent jurisdiction." Specifically, the Court stresses the broad authorization in § 1367(a) for district court exercise of "supplemental jurisdiction" over claims "so related" to a "civil action of which the district courts have original jurisdiction" as to "form part of the same [Article III] case or controversy." See *ante*, at 164–

169, 171–174.[1] The bare words of §§ 1331, 1332, and 1367(a) permit the Court's construction. For the reasons advanced in this opinion, however, I do not construe these prescriptions, on allocation of judicial business to federal courts of first instance, to embrace the category of appellate business at issue here.

The Court's expansive reading, in my judgment, takes us far from anything Congress conceivably could have meant. Cf. *Lynch* v. *Overholser*, 369 U. S. 705, 710 (1962) ("The decisions of this Court have repeatedly warned against the dangers of an approach to statutory construction which confines itself to the bare words of a statute, for 'literalness may strangle meaning.' ") (citations omitted). Cross-system appeals, if they are to be introduced into our federal system, should stem from the National Legislature's considered and explicit decision. In accord with the views of the large majority of federal judges who have considered the question, I would hold the cross-system appeal unauthorized by Congress, and affirm the Seventh Circuit's judgment.

I

Until now it has been taken almost for granted that federal courts of first instance lack authority under §§ 1331 and 1332 to displace state courts as forums for on-the-record review of state and local agency actions. In *Chicago, R. I. & P. R. Co.* v. *Stude*, 346 U. S. 574 (1954), we recalled the historic understanding: A federal district court "does not sit to review on appeal action taken administratively or judicially in

[1] The Court assumes, although § 1367 does not expressly so provide, that the section covers cases originating in a state court and removed to a federal court. *Ante*, at 165. Although the point has not been briefed, I do not question that assumption. See Steinman, Supplemental Jurisdiction in § 1441 Removed Cases: An Unsurveyed Frontier of Congress' Handiwork, 35 Ariz. L. Rev. 305, 308–310 (1993) (observing that arguments against application of § 1367 to removed cases "are weak").

a state proceeding." *Id.*, at 581.[2] Cross-system appellate authority is entrusted to this Court, we said in *Rooker* v. *Fidelity Trust Co.*, 263 U. S. 413 (1923), but it is outside the domain of the lower federal courts. Interpreting the statutory predecessors of 28 U. S. C. §§ 1331 and 1257, we held in *Rooker* that a federal district court could not modify a decision of the Indiana Supreme Court, for only this Court could exercise such authority. 263 U. S., at 416.

Today, the Court holds that Congress, by enacting § 1367, has authorized federal district courts to conduct deferential, on-the-record review of local agency decisions whenever a federal question is pended to the agency review action. Dismissing, as irrelevant to jurisdiction, the distinction between *de novo* and deferential review, the Court also provides easy access to federal court whenever the dissatisfied party in a local agency proceeding has the requisite diverse citizenship. The Court does all this despite the overwhelming weight of lower federal court decisions disclaiming cross-system appellate authority, and without even a hint from Congress that so startling a reallocation of power from state courts to federal courts was within the national lawmakers' contemplation.[3]

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[2] The Court in *Stude* also made the following statement: "When the proceeding has reached the stage of a perfected appeal and the jurisdiction of the state district court is invoked, it then becomes in its nature a civil action and subject to removal by the defendant to the United States District Court." *Chicago, R. I. & P. R. Co.* v. *Stude*, 346 U. S., at 578–579. This statement, made on the way to the Court's conclusion that the District Court *lacked* removal jurisdiction, does not carry great weight. It suggests that while the plaintiff in *Stude* could not have filed the action in federal court initially under § 1332, the defendant could have removed the action to federal court pursuant to § 1441(a). That suggestion is incorrect, for "[o]nly state-court actions that originally could have been filed in federal court may be removed to federal court by the defendant." *Caterpillar Inc.* v. *Williams*, 482 U. S. 386, 392 (1987).

[3] The Court's holding can embrace the decisions of state, as opposed to local, agencies, only if the State consents to the district court's jurisdiction. In *Pennhurst State School and Hospital* v. *Halderman*, 465 U. S. 89 (1984),

I catalog first the decisions, in addition to the Seventh Circuit's, that the Court today overrides: *Volkswagen de Puerto Rico, Inc.* v. *Puerto Rico Labor Relations Bd.*, 454 F. 2d 38, 42 (CA1 1972) (permitting a district court to conduct on-the-record review of a decision of the Puerto Rico Labor Relations Board under § 1331 "would place a federal court in an improper posture vis-a-vis a non-federal agency"); *Armistead* v. *C & M Transport, Inc.*, 49 F. 3d 43, 47 (CA1 1995) ("As courts of *original* jurisdiction, federal district courts sitting in diversity jurisdiction do not have appellate power, nor the right to exercise supplementary equitable control over original proceedings in the state's administrative tribunals."); *Frison* v. *Franklin County Bd. of Ed.*, 596 F. 2d 1192, 1194 (CA4 1979) (District Court should have declined pendent jurisdiction over a state-law claim "because it is essentially a petition for judicial review of state administrative action rather than a distinct claim for relief"); *Fairfax County Redevelopment & Housing Auth.* v. *W. M. Schlosser Co.*, 64 F. 3d 155, 158 (CA4 1995) ("Because the district court is 'a court of original jurisdiction,' not 'an appellate tribunal,' and, thus, is without jurisdiction 'to review on appeal action taken administratively or judicially in a state proceeding,' it was without jurisdiction [under § 1332] to conduct such a review of the County Executive's finding.") (citations omitted); *Labiche* v. *Louisiana Patients' Compensation Fund Oversight Bd.*, 69 F. 3d 21, 22 (CA5 1995) ("We have reviewed [28 U. S. C. §§ 1330–1368] and none would authorize appellate review by a United States District Court of any actions

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the Court held it would violate the Eleventh Amendment for a federal court to entertain, without the State's consent, "a claim that state officials violated state law in carrying out their official responsibilities." *Id.*, at 121. The Court further held that "this principle applies as well to state-law claims brought into federal court under pendent jurisdiction." *Ibid.* Notably, the Court commented in *Pennhurst:* "[I]t is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law." *Id.*, at 106.

taken by a state agency."); *Shamrock Motors, Inc.* v. *Ford Motor Co.*, 120 F. 3d 196, 200 (CA9 1997) ("When a state provides for administrative agency review of an appellate nature, rather than administrative review of a de novo nature, federal district courts have neither original jurisdiction nor removal jurisdiction over the review proceedings."); *Trapp* v. *Goetz*, 373 F. 2d 380, 383 (CA10 1966) (Under § 1332, "a United States District Court could not review an appeal action taken either administratively or judicially in a state proceeding."). Indeed, research discloses only a single Court of Appeals decision that has approved a federal district court's exercise of cross-system appellate review. See *Range Oil Supply Co.* v. *Chicago, R. I. & P. R. Co.*, 248 F. 2d 477, 478–479 (CA8 1957) (District Court could exercise removal jurisdiction over an appeal from a state railroad and warehouse commission once that appeal had been perfected in state court). As the Ninth Circuit said in *Shamrock Motors:* "[T]he prospect of a federal court sitting as an appellate court over state administrative proceedings is rather jarring and should not be quickly embraced as a matter of policy." *Shamrock Motors, Inc.* v. *Ford Motor Co.*, 120 F. 3d, at 200.

Until today, federal habeas corpus proceedings were the closest we had come to cross-system appellate review. See 28 U. S. C. §§ 2241–2254.[4] Unlike the jurisdictional reallocation the Court now endorses, habeas corpus jurisdiction does not entail *direct* review of a state or local authority's decision. See *Lambrix* v. *Singletary*, 520 U. S. 518, 523 (1997).

[4] The Court's citation to the Individuals with Disabilities Education Act (IDEA), *ante*, at 171, is unpersuasive for two reasons. First, IDEA has its own jurisdictional provision, so it does not concern §§ 1331, 1332, or 1367. See § 615 of the Individuals with Disabilities Education Act Amendments of 1997, Pub. L. 105–17, 111 Stat. 92, to be codified at 20 U. S. C. § 1415(i)(3)(A); *Zobrest* v. *Catalina Foothills School Dist.*, 509 U. S. 1, 4 (1993). Second, IDEA creates a *federal* regime. While IDEA may require federal courts to defer to state agency decisions, those decisions are made pursuant to *federal* legislation.

Notably, in providing for federal habeas corpus review, Congress has taken great care to avoid interrupting or intruding upon state-court processes. See, *e. g.*, 28 U. S. C. § 2254(b)(1) (1994 ed., Supp. III) (requiring exhaustion of state remedies before filing a federal petition for writ of habeas corpus). The Court's holding in this "Chicago" case, however, permits the federal court to supplant the State's entire scheme for judicial review of local administrative actions.

When a local actor or agency violates a person's federal right, it is indeed true that the aggrieved party may bring an action under 42 U. S. C. § 1983 without first exhausting state remedies. See *Patsy* v. *Board of Regents of Fla.*, 457 U. S. 496, 516 (1982). But such an action involves no disregard, as the cross-system appeal does, of the separateness of state and federal adjudicatory systems. In a § 1983 action, a federal (or state) court inquires whether a person, acting under color of state law, has subjected another "to the deprivation of any rights, privileges, or immunities secured by the Constitution and [federal] laws." The court exercises original, not appellate, jurisdiction; it proceeds independently, not as substantial evidence reviewer on a nonfederal agency's record. As now-Chief Judge Posner explained:

> "[A] suit under 42 U. S. C. § 1983 is not a review proceeding even when . . . it challenges administrative action that has an adjudicative component. Federal courts have no general appellate authority over state courts or state agencies. . . . The case that is in federal court did not begin in the state agency but is an independent as well as an original federal action." *Hameetman* v. *Chicago*, 776 F. 2d 636, 640 (CA7 1985).

II

To reach its landmark result, the Court holds that a district court may perform cross-system appellate review of administrative agency decisions so long as the plaintiff's complaint also contains related federal claims, for "[t]hose federal

claims suffice to make the actions 'civil actions' within the 'original jurisdiction' of the district courts." *Ante*, at 166. Measuring today's disposition against prior decisions concerning proceedings in federal court following a state administrative decision, the Court, *ante*, at 169–171, takes up *Horton* v. *Liberty Mut. Ins. Co.*, 367 U. S. 348 (1961), and *Stude*, see *supra*, at 176–177, and n. 2.

Horton was a workers' compensation case proceeding in federal court on the basis of the parties' diverse citizenship. The contending parties were an injured worker and the insurance company that served as compensation carrier for the worker's employer. At the administrative stage, the Texas Industrial Accident Board made an award of $1,050. Neither side was satisfied. The insurer maintained that the worker was entitled to no compensation, while the worker urged his entitlement to the statutory maximum of $14,035. The insurer brought suit first, filing its complaint in federal court; one week later, the worker filed a state-court suit and sought dismissal of the insurer's federal action on alternative grounds: (1) the matter in controversy did not meet § 1332's monetary amount requirement (then "in excess of $10,000"); (2) the insurer's suit was "nothing more than an appeal from a state administrative order" and federal courts have "no appellate jurisdiction" over such orders, 367 U. S., at 354.

After concluding that the jurisdictional amount requirement was met, the Court turned to the question whether the federal-court proceeding was in fact an "appeal," and therefore barred under *Stude*, which, as the *Horton* Court described it, "held that a United States District Court was without jurisdiction to consider an appeal 'taken administratively or judicially in a state proceeding.'" 367 U. S., at 354 (quoting *Stude*, 346 U. S., at 581). On that matter, the Texas Supreme Court's construction of the State's compensation law left no room for debate. When suit commences, the administrative award is vacated and the court determines liability *de novo*. See 367 U. S., at 355, n. 15. The suit to set

aside an award is thus like any other first instance proceeding—it is "'a suit, not an appeal.'" *Id.*, at 354 (quoting *Booth* v. *Texas Employers' Ins. Assn.*, 132 Tex. 237, 246, 123 S. W. 2d 322, 328 (1938)).

Remarkably, the Court today asserts that neither *Stude* nor *Horton* "suggest[ed] that jurisdiction turned on whether judicial review of the administrative determination was deferential or *de novo*." *Ante*, at 170; see also *ante*, at 171 ("The Court [in *Horton*] did not purport to hold that the *de novo* standard was a precondition to federal jurisdiction."). The Court thus casts aside the critical difference between fresh first instance proceedings not tied to a record made by a tribunal lower in the hierarchy, and on-the-record substantial evidence review, which cannot fairly be described as anything but appellate in character.

If, as the Court reasons today, the distinction between *de novo* and deferential review is inconsequential, then a district court may, indeed must, entertain cross-system, on-the-record appeals from local agency decisions—without regard to the presence or absence of any federal question—whenever the parties meet the diversity-of-citizenship requirement of § 1332. The Court so confirms by noting that, in accord with *Califano* v. *Sanders*, 430 U. S. 99, 105–107 (1977), "district courts routinely conduct deferential review [of federal administrative action] pursuant to their original jurisdiction over federal questions." *Ante*, at 171. Just as routinely, it now appears, district courts must "conduct deferential review [of local administrative action] pursuant to their original jurisdiction over [diversity cases]."

The Court's homogenization of *de novo* proceedings and appellate review rests on a single case, *Califano* v. *Sanders*. In *Sanders*, the Court settled a longstanding division of opinion over whether § 10 of the federal Administrative Procedure Act (APA), 5 U. S. C. §§ 701–704, ranked as an independent grant of subject-matter jurisdiction to federal courts, allowing them to review the actions of federal agencies,

without regard to the amount in controversy. The Court held that the APA "does not afford an implied grant of subject-matter jurisdiction permitting federal judicial review of agency action." 430 U. S., at 107. Nevertheless, the Court explained, district court review of federal administrative action—when Congress had not prescribed another review route or specifically excluded review—would persist. Congress had just dropped the amount-in-controversy requirement from § 1331, thus "fill[ing] the jurisdictional void." *Id.*, at 106. With the amount-in-controversy deleted, the Court indicated in *Sanders*, § 1331 would assure fidelity to the presumption that administrative action is subject to judicial review. See *id.*, at 105–106; *Abbott Laboratories* v. *Gardner*, 387 U. S. 136, 141 (1967) (courts generally hold agency action nonreviewable "only upon a showing of 'clear and convincing evidence' of a contrary legislative intent"); see also *Barlow* v. *Collins*, 397 U. S. 159, 166 (1970) ("[J]udicial review of [federal] administrative action is the rule, and nonreviewability an exception which must be demonstrated.").

Whatever the reason for the rule implicit in *Sanders*—that federal district courts may engage in on-the-record, substantial evidence review of federal agency actions under § 1331—Chicago homes in on the statutory language. See Brief for Petitioners 11, 30, 39. Section 1331 reads: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." If deferential, on-the-record review of a *federal* agency's action qualifies as a "civil action" within a district court's "original jurisdiction," Chicago urges, then deferential, on-the-record review of local agency action must fit the same bill, *i. e.*, such review must qualify as a "civil action" within the district court's "original jurisdiction."

But one of these things is not necessarily like the other. I recognize that the bare and identical words "original jurisdiction" and "civil action" in §§ 1331 and 1332 comport with

Chicago's view and that of the Court. See *supra*, at 175. We would do well, however, to recall in this context a sage and grave warning: "The tendency to assume that a word which appears in two or more legal rules, and so in connection with more than one purpose, has and should have precisely the same scope in all of them, runs all through legal discussions. It has all the tenacity of original sin and must constantly be guarded against." Cook, "Substance" and "Procedure" in the Conflict of Laws, 42 Yale L. J. 333, 337 (1933).

Cases "arising under the Constitution, laws, or treaties of the United States" within the meaning of § 1331 compose a collection smaller than the one fitting within the similarly worded Clause in Article III of the Constitution, "Cases . . . arising under this Constitution, the Laws of the United States, and Treaties made." See, *e.g.*, *Louisville & Nashville R. Co.* v. *Mottley*, 211 U. S. 149, 152 (1908); *Shoshone Mining Co.* v. *Rutter*, 177 U. S. 505, 513 (1900). Diversity of citizenship must be complete to proceed under § 1332, see *Strawbridge* v. *Curtiss*, 3 Cranch 267, 268 (1806), but it may be "minimal" in interpleader cases brought under § 1335, see *State Farm Fire & Casualty Co.* v. *Tashire*, 386 U. S. 523, 530–531 (1967).

Significantly, in assuming that § 1331 ordinarily would be available when a person complains about arbitrary federal administrative action, the Court in *Sanders* never fixed on the words of § 1331, and never even mentioned in relation to that provision the terms "civil action" or "original jurisdiction." The Court simply concluded from the legislative history that Congress meant to fill "an interstitial gap," 430 U. S., at 107, *i. e.*, Congress meant to hold federal agencies accountable by making their actions subject to judicial review.

Statutes like the Illinois Administrative Review Law, Ill. Comp. Stat., ch. 735, §§ 5/3–103, 5/3–104 (Supp. 1997), explicitly provide for state-court judicial review of state and local agency decisions. Unlike the federal picture the Court con-

fronted in *Sanders*, there is no void to fill. The gap to which *Sanders* attended—the absence of any forum for "nonstatutory" review of federal agency decisions unless § 1331 provided one—simply does not exist in a case brought under a state measure like the Illinois Administrative Review Law. I would therefore resist reading *Sanders* out of context to mandate cross-system appellate review of local agency decisions.

III

Just last Term, two Members of today's majority recognized the vital interest States have in developing and elaborating state administrative law, for that law regulates the citizen's contact with state and local government at every turn, for example, in gaining life-sustaining public benefits, obtaining a license, or, as in this case, receiving a permit. Last Term's lead opinion observed:

> "In the States there is an ongoing process by which state courts and state agencies work to elaborate an administrative law designed to reflect the State's own rules and traditions concerning the respective scope of judicial review and administrative discretion. . . . [T]he elaboration of administrative law . . . is one of the primary responsibilities of the state judiciary. Where, as here, the parties invoke federal principles to challenge state administrative action, the courts of the State have a strong interest in integrating those sources of law within their own system for the proper judicial control of state officials." *Idaho* v. *Coeur d'Alene Tribe of Idaho*, 521 U. S. 261, 276 (1997) (principal opinion of KENNEDY, J., joined by REHNQUIST, C. J.).

Today's decision jeopardizes the "strong interest" courts of the State have in controlling the actions of local as well as state agencies. State court superintendence can now be displaced or dislodged in any case against a local agency in

which the parties are of diverse citizenship and in any case in which a Fourteenth Amendment plea can be made.

The Court insists that there is no escape from this erosion of state-court authority. Its explanation is less than compelling. The Court describes as the alternative "ICS' proposed approach." See *ante*, at 167. That approach, according to the Court, would have us determine first "whether [ICS's] state claims constitute 'civil actions' within a district court's 'original jurisdiction.'" *Ibid.* The Court then demolishes the supposed approach by observing that it "would effectively read the supplemental jurisdiction statute out of the books." *Ibid.;* see also *ante*, at 167–169.

I do not find in ICS's brief the approach the Court constructs, then destructs. Instead, the argument I do find, see Brief for Respondents 21–24, runs as follows. Chicago has tried to persuade the Court that ICS's "Complaints for Administrative Review are no different than civil rights actions." *Id.*, at 21. See Notice of Removal for Petitioner in No. 91 C 1587 (ND Ill.), App. 15 ("it appears from the face of plaintiffs' complaint that this is a civil rights complaint"). ICS acknowledged that it might have chosen to bypass on-the-record administrative review in state court, invoking federal jurisdiction under § 1983 instead, without exhausting state remedies. Brief for Respondents 22–24. Had ICS done so, review would have been "plenary in its scope" and would not have been "confined by the administrative record." *Id.*, at 24. But ICS did not take that path. It proceeded under the Illinois Administrative Review Law seeking resolution of both state-law and federal constitutional issues "in the context of on-the-record administrative review." *Id.*, at 22. The distinction between the appellate review it sought and the first instance action it did not bring "is crucial," ICS argued. *Ibid.*

In sum, from start to finish, ICS sought accurately to portray the Seventh Circuit's resistance to "federaliz[ing]," without explicit congressional instruction to do so, "garden-

variety appeals from . . . local administrative decisions," *id.*, at 3, appeals in which the federal issues ultimately raised "are inextricably intertwined with [the State's] administrative review scheme," *id.*, at 4. Not a case in which pendent or supplemental jurisdiction has ever been exercised is touched by the argument ICS in fact made, which trained constantly on the impropriety of cross-system appellate review. Far from urging the Court to "read the supplemental jurisdiction statute out of the books," *ante*, at 167, ICS simply asked the Court not to read into § 1367 more than any other tribunal has conceived to be there. What ICS sought to convey, the Court obscures: "[T]he City fail[ed] to cite a single case in which a federal court specifically assumed pendent or supplemental jurisdiction over an on-the-record state administrative appeal." Brief for Respondents 24, n. 11.

IV

Even if the Court were correct in maintaining that Congress thrust local administrative agency on-the-record review proceedings into federal court at the option of either party, given diversity or an ultimate constitutional argument, the Court's reluctance to "articulat[e] general standards" for the guidance of the lower courts is puzzling. Cf. *Strickland* v. *Washington*, 466 U. S. 668, 698 (1984) (after "articulat[ing] general standards for judging ineffectiveness [of counsel] claims," the Court considered it "useful to apply those standards to the facts of th[e] case in order to illustrate the meaning of the general principles"). ICS, seeking such guidance, did not simply "allud[e] to" the District Court's extraordinary course. Cf. *ante*, at 174. This is a summary of the points ICS made in urging the impropriety of federal-court retention of the case, assuming, *arguendo*, federal-court power to keep it. The permits in question were sought under Chicago's Landmarks Ordinance, a measure "Illinois courts have never had an opportunity to interpret." Brief for Respondents 4. "The issues of Illinois constitu-

tional law raised by [ICS] have never been decided by Illinois appellate courts." *Ibid.* Land-use cases generally, and landmark designations particularly, implicate "local policies" and "local concerns." *Ibid.* Yet all this Court is willing to say is that "the District Court properly exercised federal question jurisdiction over the federal claims in ICS' complaints, and properly recognized that it could thus also exercise supplemental jurisdiction over ICS' state law claims." *Ante,* at 166. The Court's opinion expresses "no [further] view." *Ante,* at 174.

The District Court disposed of ICS's federal equal protection and due process claims in less than 13 pages of its 63-page opinion, App. to Pet. for Cert. 33a–46a, and then devoted over 40 pages more to the state-law claims. *Id.*, at 46a–89a. That court wrote at greatest length on whether the Landmarks Commission's conclusions were "Against the Manifest Weight of the Evidence." *Id.*, at 73a–89a. Finally, the District Court "affirm[ed] the Commission's decisions." *Id.*, at 89a. It would have been in order for this Court to have recalled, in face of the District Court's federal-claims-first approach, the "fundamental rule of judicial restraint" that federal courts "will not reach constitutional questions in advance of the necessity of deciding them." *Three Affiliated Tribes of Fort Berthold Reservation* v. *Wold Engineering, P. C.*, 467 U. S. 138, 157 (1984). As a rule, potentially dispositive state-law challenges, not ultimate constitutional questions, should be cleared first. See, *e. g.*, *Hagans* v. *Lavine*, 415 U. S. 528, 546–547 (1974).

When local official actions are contested on state and federal grounds, and particularly when construction of a state measure or local ordinance is at issue, the state questions stand at the threshold. In this case, for example, had ICS's construction of the Landmarks Ordinance prevailed, no federal constitutional question would have ripened. The Court does note that § 1367(c) "enumerat[es] the circumstances in which district courts can refuse [to] exercise [supplemental

jurisdiction]," *ante*, at 173, but as to that, the Court simply reports: "[T]he District Court decided [judicial economy, convenience, fairness, and comity] would be best served by exercising jurisdiction over ICS' state law claims," *ibid.*[5] The Court also mentions, abstractly, that "district courts may be obligated not to decide state law claims (or to stay their adjudication) where one of the abstention doctrines articulated by this Court applies." *Ante*, at 174.

Section 1367(c), which concerns supplemental jurisdiction, will have no utility in diversity cases where, if jurisdiction exists, it is generally not within the court's discretion to "decline." And lower courts have found our abstention pronouncements "less than pellucid." See R. Fallon, D. Meltzer, & D. Shapiro, Hart and Wechsler's The Federal Courts and the Federal System 1247, 1251 (4th ed. 1996). Which of our "various abstention principles," *ante*, at 174, should the lower federal courts consult when asked to review as an appellate instance, and affirm, modify, or reverse, a local license or permit denial? To dispel confusion and advance comity, should the lower courts endeavor to fashion—and will we eventually declare—a "*Chicago*" abstention doctrine?

Given the state forum to which ICS resorted, and the questions it raised there, see App. 26–35, 76–77, ICS's primary contention is clear: The Commission should have granted, *under state law*, demolition permits or an economic hardship exception. I do not comprehend the Court's reasons for suggesting that the District Court may have acted

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[5] But cf. *Pennhurst State School and Hospital* v. *Halderman*, 465 U. S., at 122, n. 32 ("[A]llowing claims against state officials based on state law to be brought in the federal courts does not necessarily foster the policies of 'judicial economy, convenience and fairness to litigants,' *Mine Workers* v. *Gibbs*, 383 U. S. 715, 726 (1966), on which pendent jurisdiction is founded. For example, when a federal decision on state law is obtained, the federal court's construction often is uncertain and ephemeral. In cases of ongoing oversight of a state program . . . the federal intrusion is likely to be extensive. Duplication of effort, inconvenience, and uncertainty may well result.").

properly in holding on to this case, rather than allowing the state courts to proceed in their normal course.

V

In *Ankenbrandt* v. *Richards*, 504 U. S. 689 (1992), we addressed the question whether civil actions for divorce, alimony, or child custody fall within § 1332 when the parties are of diverse citizenship. Nothing in the text of the Constitution or in the words of § 1332 excluded parties from bringing such "civil actions" in federal court. Historically, however, decrees terminating marriages had been considered wholly within the State's domain. See *Barber* v. *Barber*, 21 How. 582 (1859). That understanding, we noted in *Ankenbrandt*, had prevailed "for nearly a century and a half." 504 U. S., at 694–695. "Given the long passage of time without any expression of congressional dissatisfaction," we reaffirmed the absence of statutory jurisdiction for federal court adjudication of original civil actions for divorce, alimony, and child custody. *Id.*, at 703. The Court explained that its conclusion was also

> "supported by sound policy considerations. . . . [S]tate courts are more eminently suited to work of this type than are federal courts, which lack the close association with state and local government organizations dedicated to handling [the] issues [involved]." *Id.*, at 703–704.[6]

[6] *Ankenbrandt* clarified and illustrated "that the domestic relations exception encompasses only cases involving the issuance of a divorce, alimony, or child custody decree"; claims of a kind traditionally adjudicated in federal courts, for example, tort or contract claims, are not excepted from federal-court jurisdiction simply because they arise in a domestic relations context. *Ankenbrandt* v. *Richards*, 504 U. S., at 704. In enacting the Violence Against Women Act of 1994, 108 Stat. 1916, 42 U. S. C. § 13931 *et seq.*, Congress reinforced *Ankenbrandt* by providing expressly that 28 U. S. C. § 1367 shall not be construed, by reason of a claim arising under the Act, "to confer on the courts of the United States jurisdiction over any State law claim seeking the establishment of a divorce, alimony, equitable distribution of marital property, or child custody decree." 42 U. S. C. § 13981(e)(4).

History and policy tug strongly here as well. There surely has been no "expression of congressional dissatisfaction" with the near-unanimous view of the Circuits that federal courts may not engage in cross-system appellate review, and "the elaboration of [state] administrative law" is a "prim[e] responsibilit[y] of the state judiciary." *Idaho* v. *Coeur d'Alene Tribe of Idaho*, 521 U. S., at 276.

This Court said in *Finley* v. *United States*, 490 U. S. 545, 547–548 (1989):

> "It remains rudimentary law that '[a]s regards all courts of the United States inferior to this tribunal, two things are necessary to create jurisdiction, whether original or appellate. The Constitution must have given to the court the capacity to take it, *and an act of Congress must have supplied it*. . . . To the extent that such action is not taken, the power lies dormant.'" (quoting *Mayor* v. *Cooper*, 6 Wall. 247, 252 (1868)).

As I see it, no Act of Congress adverts to and authorizes any cross-system appeal from state or local administrative agency to lower federal court. I would await express legislative direction before proceeding down that road. Accordingly, I would affirm the Seventh Circuit's judgment.

Syllabus

BAY AREA LAUNDRY AND DRY CLEANING PENSION TRUST FUND *v.* FERBAR CORPORATION OF CALIFORNIA, INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 96–370. Argued November 10, 1997—Decided December 15, 1997

Under the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA or Act), employers who withdraw from underfunded multiemployer pension plans must ordinarily pay "withdrawal liability." 29 U. S. C. § 1381(a). The MPPAA allows employers to discharge that obligation by making a series of periodic payments. §§ 1399(c)(1)(C), (c)(3). The Act directs the plan's trustees to set an installment schedule and demand payment "[a]s soon as practicable" after the employer's withdrawal. § 1399(b)(1). If the employer fails to pay according to the schedule, the plan may, at its option, invoke a statutory acceleration provision. § 1399(c)(5). Plan fiduciaries "adversely affected by the act or omission of any party under" the MPPAA may also sue to collect the unpaid debt, § 1451(a)(1), within the longer of two limitations periods: "6 years after the date on which the cause of action arose," § 1451(f)(1), or "3 years after the earliest date on which the plaintiff acquired or should have acquired actual knowledge of the existence of such cause of action," § 1451(f)(2).

Petitioner Bay Area Laundry and Dry Cleaning Pension Trust Fund (Fund) is a multiemployer plan for laundry workers. Respondents Ferbar Corporation and Stephen Barnes (collectively, Ferbar) owned laundries and contributed to the Fund for several years, but ceased such contributions in March 1985. On December 12, 1986, the Fund's trustees demanded payment of Ferbar's withdrawal liability, which they calculated as $45,570.80. The trustees informed Ferbar that the company could satisfy its obligation by paying $345.50 per month for 240 months, beginning February 1, 1987. Ferbar has never made any payments. On February 9, 1993, the Fund filed this action seeking enforcement of Ferbar's unpaid withdrawal liability. The District Court granted Ferbar summary judgment on statute of limitations grounds. Even if § 1451(f)(1)'s six-year "accrual" rule applied, the District Court reasoned, the trustees filed suit eight days too late, for the six-year period began to run on February 1, 1987, the date Ferbar missed its first payment. The Ninth Circuit affirmed on different reasoning—specifically, that the six-year period began to run on the date Ferbar withdrew from

the Fund, in March 1985. Under this view, the trustees commenced suit nearly two years too late.

Held:

1. The MPPAA's six-year statute of limitations on a pension fund's action to collect unpaid withdrawal liability does not begin to run until the employer fails to make a payment on the schedule set by the fund. A limitations period ordinarily does not begin to run until the plaintiff has a "complete and present cause of action." *Rawlings* v. *Ray*, 312 U. S. 96, 98. A cause of action does not become "complete and present" until the plaintiff can file suit and obtain relief. See *Reiter* v. *Cooper*, 507 U. S. 258, 267. Section 1451(f)(1), which starts the six-year limitations period on "the date on which the cause of action arose," incorporates these general rules. The MPPAA does not give a pension plan any claim for relief against an employer on the date of withdrawal; therefore, that date cannot trigger the statute of limitations. Instead, the plan's interest in receiving withdrawal liability ripens into a cause of action triggering the limitations period only when two events have transpired. First, the trustees must calculate the debt, set a schedule of installments, and demand payment pursuant to § 1399(b)(1). Second, the employer must default on an installment due and payable under the trustees' schedule. Only then has the employer defaulted on an obligation owed the plan under the MPPAA, and only then does the statute of limitations begin to run. The Court rejects diverse arguments invoked by Ferbar and the Ninth Circuit in favor of a date-of-withdrawal rule. Pp. 200–205.

2. A pension fund's action to collect unpaid withdrawal liability is timely as to any installment payments that came due during the six years preceding the suit, but payments that came due prior to that time are lost. Pp. 206–210.

(a) The Fund has waived any right to urge before this Court its entitlement to recover the $345.50 payment missed on February 1, 1987. In the Court of Appeals, and in briefing on the merits and at oral argument here, the Fund argued that its action was timely even as to that first installment. In its petition for certiorari, however, the Fund characterized as "determinative" the question that has divided the Third and Seventh Circuits: whether a plan that sues too late to recover the first payment forfeits the right to recover any of the outstanding withdrawal liability, or whether it may still recover any succeeding payments that came due within six years of the complaint. Having urged the resolution of that question as a reason why the Court should grant certiorari, the Fund is not positioned to revive its claim for Ferbar's

first payment. Cf. *Taylor* v. *Freeland & Kronz*, 503 U. S. 638, 645. Pp. 206–208.

(b) The MPPAA creates an installment obligation. This Court agrees with the Third Circuit that the MPPAA incorporates the limitations rule typically governing installment obligations: A new cause of action, carrying its own limitations period, arises from the date each payment is missed. That is true even though a plan has the option to accelerate and collect the entire debt if the employer defaults. See § 1399(c)(5). Normally, the existence of a permissive acceleration clause does not alter the limitations rules that apply to installment obligations. The Court finds no indication that Congress intended to depart from the norm when it enacted the MPPAA. Unless the employer prepays, the MPPAA requires it, like any other installment debtor, to make payments when due. Like the typical installment creditor, the plan has no right, absent default and acceleration, to sue to collect payments before they fall due, and it has no obligation to accelerate on default. The employer and the plan are thus in the same position as parties to an ordinary installment transaction, and there is no reason to apply a different limitations rule. Accordingly, the Fund may not recover Ferbar's first, time-barred payment, but its action to recover the subsequent installments may proceed. Pp. 208–210.

73 F. 3d 971, reversed and remanded.

GINSBURG, J., delivered the opinion for a unanimous Court.

Marsha S. Berzon argued the cause for petitioner. With her on the briefs was *Scott A. Kronland.*

Edward C. Dumont argued the cause for the United States as *amicus curiae* urging reversal. On the brief were *Acting Solicitor General Dellinger*, *Deputy Solicitor General Kneedler*, *Lisa Schiavo Blatt*, *James J. Keightley*, *Jeffrey B. Cohen*, *Israel Goldowitz*, and *Karen L. Morris.*

William F. Terheyden argued the cause for respondents. With him on the brief was *James P. Baker.**

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*Briefs of *amici curiae* urging reversal were filed for the National Coordinating Committee for Multiemployer Plans et al. by *Gerald M. Feder*, *Diana L. S. Peters*, *Thomas C. Nyhan*, and *James P. Condon;* and for John T. Joyce et al., Trustees of the Bricklayers and Trowel Trades International Pension Fund, by *Ira R. Mitzner* and *Woody N. Peterson.*

JUSTICE GINSBURG delivered the opinion of the Court.

The Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), 94 Stat. 1208, 29 U. S. C. §§ 1381–1461, requires employers who withdraw from underfunded multiemployer pension plans to pay a "withdrawal liability." An employer may discharge that obligation by making a series of periodic payments according to a postwithdrawal schedule set by the pension fund's trustees, or it may prepay the entire debt at any time. We resolve in this case a statute of limitations issue concerning this legislation, specifically: When does the MPPAA's six-year statute of limitations begin to run on a pension fund's action to collect unpaid withdrawal liability?

Dismissing petitioner trust fund's suit as time barred, the Court of Appeals for the Ninth Circuit held that the statute of limitations runs from the date the employer withdraws from the plan. We reject that ruling. A limitations period ordinarily does not begin to run until the plaintiff has a "complete and present cause of action." *Rawlings* v. *Ray*, 312 U. S. 96, 98 (1941). A cause of action does not ripen under the MPPAA until the employer fails to make a payment on the schedule set by the fund. Applying the ordinarily applicable accrual rule, we hold that the statute of limitations does not begin to run on withdrawal liability until a scheduled payment is missed.

Our holding prompts a second question, one that was not reached by the Court of Appeals. Petitioner brought this suit more than six years after respondents missed their first scheduled payment, but within six years of each subsequent missed payment. Respondents contend that petitioner's failure to sue within six years of the first missed payment bars suit for all missed payments. We disagree. The MPPAA imposes on employers an installment obligation. Consistent with general principles governing installment obligations, each missed payment creates a separate cause of action with its own six-year limitations period. Accord-

ingly, petitioner's suit is time barred only as to the first $345.50 payment.

I

A

Congress enacted the MPPAA to protect the financial solvency of multiemployer pension plans. See generally *Milwaukee Brewery Workers' Pension Plan* v. *Jos. Schlitz Brewing Co.*, 513 U. S. 414, 416–417 (1995); *Connolly* v. *Pension Benefit Guaranty Corporation*, 475 U. S. 211, 215–217 (1986); *Pension Benefit Guaranty Corporation* v. *R. A. Gray & Co.*, 467 U. S. 717, 722–724 (1984). The statute requires most employers who withdraw from underfunded multiemployer pension plans to pay "withdrawal liability." 29 U. S. C. § 1381(a). As relevant here, an employer incurs withdrawal liability when it effects a "complete withdrawal" from the plan. "[C]omplete withdrawal" occurs when the employer "permanently ceases to have an obligation to contribute under the plan" or "permanently ceases all covered operations under the plan." § 1383(a).[1]

Three Terms ago, we exhaustively described the MPPAA's complex scheme for calculating withdrawal liability. See *Milwaukee Brewery Workers' Pension Plan*, 513 U. S., at 417–419, 426. In brief, the Act sets the total amount of "withdrawal liability" at a level that roughly matches "the employer's proportionate share of the plan's 'unfunded vested benefits.'" *R. A. Gray & Co.*, 467 U. S., at 725 (quoting 29 U. S. C. § 1381(b)(1)); see § 1391. The employer must, at the least, make a series of periodic payments toward that total liability. §§ 1399(c)(1)(C), (c)(3). Payments are set at a level that approximates the periodic contributions the

[1] An "obligation to contribute" arises from either a collective-bargaining agreement or more general labor-law prescriptions. See 29 U. S. C. § 1392(a). The statute applies special definitions of "complete withdrawal" to particular industries. See, *e. g.*, §§ 1383(b), (c). The statute also imposes liability for "partial withdrawal" in some circumstances. §§ 1385, 1386.

employer had made before withdrawing from the plan. § 1399(c)(1)(C). Interest accrues from the first day of the plan year following withdrawal. See *Milwaukee Brewery Workers' Pension Plan*, 513 U. S., at 421. Payments can run for a period of up to 20 years, 29 U. S. C. § 1399(c)(1)(B), but the employer may prepay the outstanding principal, plus accrued interest, at any time. § 1399(c)(4).

The Act does not call upon the employer to propose the amount of withdrawal liability. Rather, it places the calculation burden on the plan's trustees. The trustees must set an installment schedule and demand payment "[a]s soon as practicable" after the employer's withdrawal. § 1399(b)(1). On receipt of the trustees' schedule and payment demand, the employer may invoke a dispute-resolution procedure that involves reconsideration by the trustees and, ultimately, arbitration. §§ 1399(b)(2), 1401(a)(1). If no party requests arbitration, the installments become "due and owing" on the trustees' schedule. § 1401(b)(1). Even if the employer challenges the trustees' withdrawal liability determination, however, it still must pay according to the trustees' schedule in the interim under the statute's "'pay now, dispute later' collection procedure." *Robbins* v. *Pepsi-Cola Metropolitan Bottling Co.*, 800 F. 2d 641, 642 (CA7 1986) *(per curiam)*.[2]

Should the employer fail to pay according to the schedule, the plan may, at its option, invoke a statutory acceleration provision. § 1399(c)(5). It may also sue to collect the unpaid debt. Plan fiduciaries "adversely affected by the act or omission of any party under" the MPPAA are entitled to "bring an action for appropriate legal or equitable relief, or

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[2] See 29 U. S. C. § 1399(c)(2) ("Withdrawal liability shall be payable in accordance with the schedule set forth by the plan sponsor . . . no later than 60 days after the date of the demand notwithstanding any request for review or appeal of determinations of the amount of such liability or of the schedule."); § 1401(d) (employer must make payments according to the plan's schedule "until the arbitrator issues a final decision with respect to the determination submitted for arbitration").

both." § 1451(a)(1). Suit under § 1451 must be filed within the longer of two limitations periods: "6 years after the date on which the cause of action arose," § 1451(f)(1), or "3 years after the earliest date on which the plaintiff acquired or should have acquired actual knowledge of the existence of such cause of action," § 1451(f)(2). The Act extends the latter period to six years "in the case of fraud or concealment." *Ibid.*

B

Petitioner Bay Area Laundry and Dry Cleaning Pension Trust Fund (Fund) is a multiemployer pension fund for laundry workers in the San Francisco Bay area. Respondents Ferbar Corporation and Stephen Barnes (collectively, Ferbar or the company) owned three laundries in the area until approximately 1990. For several years, Ferbar contributed to the Fund on behalf of employees at all three facilities. In 1983, Ferbar ceased contributions for one of the laundries; the company ceased contributions for the other two facilities in March 1985. Ferbar never resumed participation in the Fund.

On December 12, 1986, after concluding that Ferbar had completely withdrawn from the Fund, the trustees sent a letter to the company demanding payment of its withdrawal liability. The Fund calculated Ferbar's total liability as $45,570.80 and informed the company that it had two options: pay the entire liability as a lump sum within 60 days of receiving the letter, or pay $345.50 per month for 240 months, beginning February 1, 1987. Ferbar asked the trustees to review their decision pursuant to 29 U. S. C. § 1399(b)(2)(B), but received no response explicitly directed to that request. On July 8, 1987, Ferbar filed a notice of initiation of arbitration. Arbitration proceedings have not yet taken place.

Despite the statutory "pay now, dispute later" provisions, Ferbar has made no payments toward its withdrawal liability. On April 14, 1987, the Fund warned Ferbar that the company was delinquent and would be in default if it failed

to cure the delinquency within 60 days. On February 9, 1993, the Fund filed this action in the United States District Court for the Northern District of California. In its complaint, App. 6–12, the Fund sought to recover Ferbar's entire $45,570.80 withdrawal liability. In the alternative, it sought the $25,375.00 that had come due prior to the filing of the suit plus an injunction requiring Ferbar to make each future payment when due. The complaint was filed nearly eight years after Ferbar completely withdrew from the Fund in March 1985, six years and eight days after Ferbar missed its first scheduled payment on February 1, 1987, and less than six years after Ferbar missed the second and succeeding payments.

The District Court granted summary judgment to Ferbar on statute of limitations grounds. App. to Pet. for Cert. 6a–19a. It relied on two alternative rationales. First, the court concluded that 29 U. S. C. § 1451(f)(2)'s three-year "discovery" rule controlled. The Fund's action was therefore time barred, the District Court held, because it was filed well more than three years after the Fund had become aware of Ferbar's delinquency. Second, assuming that § 1451(f)(1)'s six-year "accrual" rule applied, the District Court believed the Fund's action nonetheless time barred. In the court's view, the six-year period began to run on Ferbar's entire $45,570.80 liability on February 1, 1987, the date the company missed its first $345.50 payment. On that view, the action was filed eight days too late.

The Ninth Circuit affirmed, but on different reasoning. 73 F. 3d 971 (1996). The Appeals Court rejected the District Court's conclusion that the Fund was required to sue within three years after learning of the cause of action. Adverting to the express terms of 29 U. S. C. § 1451(f), "which clearly direc[t] courts to apply 'the later of ' the two periods of limitations," 73 F. 3d, at 972, the Ninth Circuit held that the Fund could commence suit up to six years after its cause of action arose. The court also rejected the District Court's

alternative conclusion that the Fund's cause of action accrued on the date of the first missed payment. Relying on its earlier decision in *Board of Trustees* v. *Thibodo*, 34 F. 3d 914 (1994), the Court of Appeals held that "the limitations period begins to run from the date of complete withdrawal—in this case, March 1985." 73 F. 3d, at 973. Under that reading, the action was filed nearly two years too late.

As Judge Trott indicated in his concurring opinion, *ibid.*, the Ninth Circuit's decision conflicts with an earlier decision of the District of Columbia Circuit, *Joyce* v. *Clyde Sandoz Masonry*, 871 F. 2d 1119 (1989). *Joyce* held that the statute of limitations on an action to collect unpaid withdrawal liability runs from the date the employer misses a scheduled payment, not from the date of complete withdrawal. *Id.*, at 1122–1127. The Third and Seventh Circuits have also held that the statute of limitations runs from the failure to make a payment, although they have disagreed as to whether each missed payment carries a separate limitations period or whether the first missed payment triggers the limitations period for the entire withdrawal liability. See *Board of Trustees of District 15 Machinists' Pension Fund* v. *Kahle Engineering Corp.*, 43 F. 3d 852, 857–861 (CA3 1994) (statute of limitations runs from each missed payment); *Central States, Southeast and Southwest Areas Pension Fund* v. *Navco*, 3 F. 3d 167, 172–173 (CA7 1993) (statute of limitations runs from first missed payment). We granted certiorari, 520 U. S. 1209 (1997), to resolve these conflicts.

II

The Court of Appeals held that the statute of limitations on a pension plan's action to recover unpaid withdrawal liability runs from the date the employer withdraws from the plan. On that view, the limitations period commences at a time when the plan could not yet file suit. Such a result is inconsistent with basic limitations principles, and we reject it. A plan cannot maintain an action until the employer

misses a scheduled withdrawal liability payment. The statute of limitations does not begin to run until that time.

A

By its terms, the MPPAA's six-year statute of limitations runs from "the date on which the cause of action arose." 29 U. S. C. § 1451(f)(1). This language, as we comprehend it, incorporates the standard rule that the limitations period commences when the plaintiff has "a complete and present cause of action." *Rawlings* v. *Ray,* 312 U. S., at 98; see also *Clark* v. *Iowa City,* 20 Wall. 583, 589 (1875) ("All statutes of limitation begin to run when the right of action is complete . . . ."). Unless Congress has told us otherwise in the legislation at issue, a cause of action does not become "complete and present" for limitations purposes until the plaintiff can file suit and obtain relief. See *Reiter* v. *Cooper,* 507 U. S. 258, 267 (1993) ("While it is theoretically possible for a statute to create a cause of action that accrues at one time for the purpose of calculating when the statute of limitations begins to run, but at another time for the purpose of bringing suit, we will not infer such an odd result in the absence of any such indication in the statute."). The MPPAA contains no indication that Congress intended to depart from the general rule.

The date of withdrawal cannot start the statute of limitations clock, because the MPPAA affords a plan no basis to obtain relief against an employer on that date. The plan could not sue to undo the withdrawal, for an employer does not violate the MPPAA simply by exiting the plan. The Act takes as a given that employers may withdraw. Instead of prohibiting employers from leaving their plans, Congress imposed a scheme of mandatory payments designed to discourage withdrawals *ex ante* and cushion their impact *ex post.* See *Milwaukee Brewery Workers' Pension Plan,* 513 U. S., at 416–417; *Connolly,* 475 U. S., at 216–217. Under that scheme, withdrawal "merely sets in motion the usual (and

routine) process of calculation, notification, schedule, possible request for review or arbitration, and payment." *Joyce*, 871 F. 2d, at 1124.

Any pension plan suit to collect the employer's withdrawal liability, commenced on the date of withdrawal, would be premature. As we have previously explained, "the statute makes clear that the withdrawing employer owes nothing until its plan demands payment." *Milwaukee Brewery Workers' Pension Plan*, 513 U. S., at 423. Absent a demand, even a willing employer cannot satisfy its payment obligation, for "the withdrawing employer cannot determine, or pay, the amount of its debt until the plan has calculated that amount." *Ibid.* Once the demand is made, the employer's baseline obligation is to make each payment as scheduled, unless it chooses to prepay or the plan properly exercises the acceleration option. See 29 U. S. C. §§ 1399(c)(2), 1401(b)(1). Until the employer fails to honor its obligation, the plan cannot sue.

In sum, we hold that the MPPAA does not give a pension plan any claim for relief against an employer on the date of withdrawal. The plan's interest in receiving withdrawal liability does not ripen into a cause of action triggering the limitations period until two events transpire. First, the trustees must calculate the debt, set a schedule of installments, and demand payment pursuant to § 1399(b)(1). Second, the employer must default on an installment due and payable under the trustees' schedule. Only then has the employer violated an obligation owed the plan under the Act.

B

In reaching our conclusion, we have not overlooked arguments made by Ferbar or invoked by the Ninth Circuit. We set out those arguments here and our reasons for rejecting them.

Maintaining that a cause of action arises on the date of withdrawal, Ferbar relies on language in 29 U. S. C.

§ 1451(a)(1). That provision empowers a "plan fiduciary, employer, plan participant, or beneficiary, who is adversely affected by the act or omission of any party under this subtitle with respect to a multiemployer plan," to "bring an action for appropriate legal or equitable relief, or both." Ferbar asserts that a multiemployer plan is "adversely affected" whenever an employer withdraws. Accordingly, Ferbar urges, the plan's right of action is complete at the time of withdrawal.

Although the payment of withdrawal liability will offset the harmful impact of a participant's exit, we do not doubt that pension plans are adversely affected as a practical matter when an employer withdraws. But Ferbar's argument is off the mark. As the Fund points out, § 1451(a)(1) does not "provide a cause of action in the air for *any* adverse effect on multiemployer pension funds." Reply Brief for Petitioner 2.

Section 1451 prescribes a variety of procedures for the governance of civil actions brought to enforce the MPPAA. See, *e. g.*, 29 U. S. C. § 1451(c) (jurisdiction of federal and state courts), § 1451(d) (venue and service of process), § 1451(e) (costs and expenses). Subsection (a), headed "[p]ersons entitled to maintain actions," answers only a "standing" question—*who* may sue for a violation of the obligations established by the Act's substantive provisions. Subsection (a)(1) extends judicial remedies for violation of the MPPAA to a broad range of plaintiffs—any "plan fiduciary, employer, plan participant, or beneficiary, who is adversely affected." But that provision does not make an "adverse effect" unlawful *per se*, any more than does § 10(a) of the Administrative Procedure Act, which similarly empowers "adversely affected" persons to invoke judicial remedies.[3] We see nothing in § 1451(a)(1) to justify the Court of Appeals'

[3] See 5 U. S. C. § 702 ("A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.").

holding that the statute of limitations begins to run on the date of withdrawal.

In adopting the date-of-withdrawal rule in *Thibodo* and applying it here, the Ninth Circuit did not rely on Ferbar's interpretation of § 1451(a)(1). Instead, the Court of Appeals rested its holding on two grounds, one based on statutory interpretation, the other on policy considerations. As to statutory interpretation, the court reasoned that a missed-payment approach would render § 1451(f)(2)'s three-year discovery rule superfluous, because a pension plan will inevitably learn of the missed payment just around the time it occurs; hence, § 1451(f)(1)'s six-year accrual rule would always provide "the later of" the two limitations periods. See *Thibodo*, 34 F. 3d, at 918.

We find this argument infirm. Section 1451(f)'s twin limitations periods govern much more than withdrawal liability; they apply to any "action under this section." 29 U. S. C. § 1451(f). Such actions can involve "matters far beyond collection of withdrawal liability," including "transfers of plan assets, reorganizations of plans, and benefits after termination of plans," all of which may involve matters not discovered until well after the cause of action accrues. *Joyce*, 871 F. 2d, at 1125. Even if the three-year discovery rule is superfluous in actions to collect unpaid withdrawal liability, it retains vitality in many other cases governed by § 1451.

The Court of Appeals' policy argument fares no better. The court reasoned that a rule pegging the statute to the schedule set by the plan's trustees would "improperly plac[e] the running of the limitations period in the control of the plaintiff." *Thibodo*, 34 F. 3d, at 917. But that is an unavoidable consequence of the scheme Congress adopted. Congress did not set a fixed time during which a pension fund's trustees must calculate the employer's withdrawal liability, although it surely could have done so. Notably, Congress adopted specific time limits to govern a number of

other steps in the assessment and collection process.[4] Congress' adoption of a looser "as soon as practicable" requirement for the initial determination of withdrawal liability bespeaks a deliberate legislative choice to afford some flexibility in gathering the information and performing the complex calculations necessary to make that assessment.

Furthermore, we agree with the D. C. Circuit that "significant incentives . . . will, in the usual case, induce plan sponsors to act promptly to calculate, schedule, and demand payment of withdrawal liability." *Joyce*, 871 F. 2d, at 1126. Pension funds have a financial imperative to act quickly, for the contributions lost when the employer withdraws will not be replaced with withdrawal liability payments until the plan calculates those payments and serves a demand on the employer. And as time passes, the likelihood that the plan will never receive payment increases. If the trustees' delay in calculating withdrawal liability threatens a plan's financial position, that delay could constitute a breach of fiduciary duty actionable at the instance of the plan's beneficiaries. Also, if an employer believes the trustees have failed to comply with their "as soon as practicable" responsibility, the employer may assert that violation as a laches objection at an arbitration contesting the withdrawal liability assessment. See *ibid.* The Ninth Circuit's policy concerns, in short, do not warrant an extraordinary reading of § 1451(f) that would trigger the statute of limitations before a cause of action accrues.

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[4] See 29 U. S. C. § 1399(a) (employer must furnish requested information to the plan sponsor within 30 days); § 1399(b)(2)(A) (employer may seek reconsideration of withdrawal liability assessment within 90 days); § 1399(c)(2) (withdrawal liability shall be payable according to the plan sponsor's schedule, beginning no later than 60 days after the date of the demand); § 1401(a)(1) (either party may request arbitration within the earlier of 60 days after the plan responds to the employer's request for reconsideration or 180 days after the employer sought reconsideration).

III

Although we have rejected the Court of Appeals' conclusion that the limitations period commenced on the date of withdrawal, that holding alone does not resolve the limitations issue in this case. The Fund filed its complaint on February 9, 1993. That date was more than six years after Ferbar missed its first payment (which the Fund had set for February 1, 1987), but within six years of the dates scheduled for the second and succeeding payments. Because suit was instituted more than six years after the due date of the first payment, the District Court alternatively held that the action was time barred in its entirety. See *supra*, at 199.

The District Court's alternative ruling implicates a conflict in the Circuits. The Seventh Circuit has held, in line with the District Court's view here, that the statute of limitations on the entire withdrawal liability begins to run when the employer misses its first scheduled installment. Under the rule advanced by the Seventh Circuit, a plan that sues too late to recover the first payment forfeits the right to recover any of the outstanding withdrawal liability. *Navco*, 3 F. 3d, at 172–173. By contrast, the Third Circuit has held that each missed payment creates a separate cause of action with its own six-year limitations period. Under the rule advanced by the Third Circuit, a plaintiff who does not sue in time to recover the first payment may still recover any succeeding payments that came due within six years of the complaint. *Kahle Engineering Corp.*, 43 F. 3d, at 857–861. We conclude that the Third Circuit's approach is the correct one. The Fund's action is therefore barred only insofar as it seeks to recover Ferbar's first $345.50 installment.

A

In briefing on the merits—but not in its petition for certiorari—the Fund argued that we need not resolve the question that has divided the Third and Seventh Circuits. We can

avoid that issue, the Fund submits, because its action was timely even as to the first payment. The Fund relies on 29 U. S. C. § 1399(c)(2), which provides: "Withdrawal liability shall be payable in accordance with the schedule set forth by the plan sponsor . . . beginning no later than 60 days after the date of the demand . . . ." The Fund reads this provision as extending Ferbar's time to make its first payment until February 10, 1987—60 days after the Fund sent the company a letter demanding the withdrawal liability. Brief for Petitioner 35; see Reply Brief for Petitioner 16. At oral argument, the Fund further suggested that the terms of the December 12, 1986, demand letter, which purported to allow Ferbar 60 days from the letter's receipt to prepay the entire liability, independently warrant the same result. Tr. of Oral Arg. 12, 53. The Fund made both of these arguments in the Court of Appeals. See Brief for Appellant in No. 94–15976 (CA9), p. 11.

We are satisfied, however, that the Fund has waived any right to seek the first payment here. In its petition for certiorari, the Fund did not argue that its action was timely as to that installment. To the contrary, it stated: "On the facts of this case, the difference between the Third and Seventh Circuit positions is determinative," for "[u]nder the Seventh Circuit's *Navco* interpretation of the statute, the suit is barred (as the District Court in this case alternatively held)." Pet. for Cert. 15–16. These representations would be inaccurate if, as the Fund now argues, the action to recover the first installment was in any event timely. Having urged that we grant certiorari to resolve not only the statute of limitations triggering date, but also the ultimately "determinative" question that divided the Third and Seventh Circuits, the Fund is not positioned to revive its claim for the first $345.50 payment. Cf. *Taylor* v. *Freeland & Kronz*, 503 U. S. 638, 645 (1992) (declining to consider argument with-

held from the petition for certiorari and made for the first time in briefing on the merits).

B

A withdrawing employer's basic responsibility under the MPPAA is to make each withdrawal liability payment when due. The Act thus establishes an installment obligation. Just as a pension plan cannot sue to recover *any* withdrawal liability until the employer misses a scheduled payment, so too must the plan generally wait until the employer misses a particular payment before suing to collect *that payment.* As we have explained, a statute of limitations ordinarily does not begin to run until the plaintiff could sue to enforce the obligation at issue. We therefore agree with the Third Circuit that "a new cause of action," carrying its own limitations period, "arises from the date each payment is missed." *Kahle Engineering Corp.*, 43 F. 3d, at 857. That is the standard rule for installment obligations, and nothing in the MPPAA indicates that Congress intended to depart from it.

The general rule applies even though a plan has the option to accelerate and collect the entire debt if the employer defaults. See 29 U. S. C. § 1399(c)(5). For limitations purposes, we cannot assume that a default will or should invariably lead to acceleration, for the statutory acceleration provision is by its terms permissive. See *ibid.* ("In the event of a default, a plan sponsor *may* require immediate payment . . . .") (emphasis added). Trustees confronting a delinquent employer may accelerate if they decide such a course is in the best interests of the plan, but they need not do so to preserve the plan's right to recover future payments. Cf. *Kahle Engineering Corp.*, 43 F. 3d, at 859, and n. 7 (describing reasons why acceleration might not be in the plan's best interests). This, again, is the rule that generally applies to installment obligations. If the creditor refrains from exercising the acceleration option, the limitations pe-

riod on a particular payment runs from the date that payment comes due.[5]

Rejecting the approach we now endorse, the Seventh Circuit regarded the foregoing principles as controlling contractual obligations only. Where "the employer did not assent to a longer period for payment and suit," that court concluded, a pension fund has "only one claim against the employer"—"the amount of withdrawal liability. Although a fund may permit an employer to amortize this sum over 20 years . . . the whole amount is presumptively due at the outset." *Navco*, 3 F. 3d, at 172 (emphasis deleted). The Ninth Circuit appeared to entertain a similar view in this case. See 73 F. 3d, at 973, n. 4 ("Ferbar never agreed to the installment plan proposed by the Fund and made no installment payments. As a result, it appears that no new contract to pay off the withdrawal liability could have been formed.").

We cannot agree that the rule that each missed payment carries its own limitations period turns on the origin—contractual or otherwise—of an installment obligation. Courts have repeatedly applied the rule in actions to collect on installment judgments, even though such obligations obviously

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[5] See *Board of Trustees of Dist. 15 Machinists' Pension Fund* v. *Kahle Engineering Corp.*, 43 F. 3d 852, 857 (CA3 1994) ("'[W]here there is an acceleration clause giving the creditor the right upon certain contingencies to declare the whole sum due, the statute begins to run, only with respect to each instalment, at the time the instalment becomes due, unless the creditor exercises his option to declare the whole indebtedness due, in which case the statute begins to run from the date of the exercise of his option.'") (quoting 51 Am. Jur. 2d, Limitation of Actions § 133 (1970)); see also 4 A. Corbin, Contracts § 951 (1951) ("[T]he creditor is not required to join subsequent instalments in his action for the first instalment, if the acceleration clause is regarded as giving him an option. In such case, the statute does not begin to run against later instalments until each falls due in regular course."). The statute of limitations on an accelerated debt runs from the date the creditor exercises its acceleration option, not earlier. Therefore, we need not consider Ferbar's contention that the Fund's complaint, which sought to recover the entire withdrawal liability, amounted to a decision to accelerate. See Brief for Respondents 39.

are not contractual.[6] Nor can we agree that an installment obligation arises only on the employer's assent. The MPPAA itself creates such an obligation. Unless the employer prepays, the Act requires it, like any other installment debtor, to make payments when due. Like the typical installment creditor, the plan has no right, absent default and acceleration, to sue to collect payments before they are due, and it has no obligation to accelerate on default. The employer and the plan are thus in the same position as parties to an ordinary installment transaction. We see no reason to apply a different limitations rule.

Our holding does not, as the Seventh Circuit believed, "[t]ur[n] six years into twenty-six." *Navco*, 3 F. 3d, at 172. A pension fund's action to collect unpaid withdrawal liability is timely as to any payments that came due during the six years preceding the suit. Payments that came due prior to that time are lost. Applying that rule here, the Fund may not recover Ferbar's first $345.50 payment. But its action to recover the subsequent installments may proceed.

* * *

For the reasons stated, the judgment of the Court of Appeals for the Ninth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

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[6] See *Kuhn* v. *Kuhn*, 273 Ind. 67, 71–72, 402 N. E. 2d 989, 991 (1980) (court-ordered installments on a child support judgment); *Dent* v. *Casaga*, 296 Minn. 292, 297, 208 N. W. 2d 734, 737 (1973) (same); *Roberts* v. *Roberts*, 69 Wash. 2d 863, 866–867, 420 P. 2d 864, 866 (1966) (child support and alimony); cf. *Miller* v. *Miller*, 122 F. 2d 209, 211 (CADC 1941) (suit to collect unpaid alimony timely because filed within limitations period of first missed installment).

Syllabus

FIDELITY FINANCIAL SERVICES, INC. *v.* FINK, TRUSTEE

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 96–1370. Argued November 3, 1997—Decided January 13, 1998

Diane Beasley purchased a new car and gave petitioner, Fidelity Financial Services, Inc., a promissory note for the purchase price, secured by the car. Twenty-one days later, Fidelity mailed the application necessary to perfect its security interest under Missouri law. Beasley later filed for bankruptcy, and the trustee of her bankruptcy estate, respondent Fink, moved to set aside Fidelity's security interest on the ground that the lien was a voidable preference under 11 U. S. C. § 547(b). Section 547(c)(3)(B) prohibits the avoidance of a security interest for a loan used to acquire property if, among other things, the security interest is "perfected on or before 20 days after the debtor receives possession of such property." Fink argued that this "enabling loan" exception was inapposite because Fidelity had not perfected its interest within the 20-day period. Fidelity responded that Missouri law treats a motor vehicle lien as having been "perfected" on the date of its creation (in this case, within the 20-day period), if the creditor files the necessary documents within 30 days after the debtor takes possession. The Bankruptcy Court set aside the lien as a voidable preference, holding that Missouri's relation-back provision could not extend § 547(c)(3)(B)'s 20-day perfection period. The District Court affirmed on substantially the same grounds, as did the Eighth Circuit, holding a transfer to be perfected when the transferee takes the last step required by state law to perfect its security interest.

Held: A transfer of a security interest is "perfected" under § 547(c)(3)(B) on the date that the secured party has completed the steps necessary to perfect its interest, so that a creditor may invoke the enabling loan exception only by satisfying state-law perfection requirements within the 20-day period provided by the federal statute. Section 547(e)(1)(B) provides that "a transfer of . . . property . . . is perfected when a creditor on a simple contract cannot acquire a judicial lien that is superior to the interest of the transferee." This definition implies that a transfer is "perfected" only when the secured party has done all the acts required to perfect its interest, not at the moment as of which state law may retroactively deem that perfection effective. A variety of considerations support this conclusion, including § 546, which raises a negative

implication that Congress did not intend state relation-back provisions or grace periods to control a trustee's power to avoid preferences, and the fact that, under Fidelity's reading, the net effect of the 1994 amendment extending the § 547(c)(3)(B) perfection period from 10 to 20 days would be merely to benefit a class of creditors in only 10 jurisdictions. Indeed, the broader statutory history of the preference provisions persuasively suggests that Congress intended § 547(c)(3)(B) to establish a uniform federal perfection period immune to alteration by state laws permitting relation back. Thus, the statutory text, structure, and history lead to the understanding that a creditor may invoke the enabling loan exception only by acting to perfect its security interest within 20 days after the debtor takes possession of its property. Pp. 214–221.

102 F. 3d 334, affirmed.

SOUTER, J., delivered the opinion for a unanimous Court.

Michael P. Gaughen argued the cause and filed a brief for petitioner.

Richard V. Fink, respondent, *pro se*, argued the cause and filed a brief.*

JUSTICE SOUTER delivered the opinion of the Court.

Although certain transfers made before the filing of a petition in bankruptcy may be avoided as impermissibly preferential, a trustee may not so displace a security interest for a loan used to acquire the encumbered property if, among other things, the security interest is "perfected on or before 20 days after the debtor receives possession of such property." 11 U. S. C. § 547(c)(3)(B). The question in this case is whether a creditor may invoke this "enabling loan" exception if it performs the acts necessary to perfect its security interest more than 20 days after the debtor receives the property, but within a relation-back or grace period provided by the otherwise applicable state law. We answer no and hold that a transfer of a security interest is "perfected" under § 547(c)(3)(B) on the date that the secured party has

**James A. Pardo, Jr.*, filed a brief for the American Automobile Manufacturers Association et al. as *amici curiae* urging reversal.

completed the steps necessary to perfect its interest, so that a creditor may invoke the enabling loan exception only by satisfying state-law perfection requirements within the 20-day period provided by the federal statute.

I

On August 17, 1994, Diane Beasley purchased a 1994 Ford and gave petitioner, Fidelity Financial Services, Inc., a promissory note for the purchase price, secured by the new car. Twenty-one days later, on September 7, 1994, Fidelity mailed the application necessary to perfect its security interest addressed to the Missouri Department of Revenue. See Mo. Rev. Stat. § 301.600(2) (1994).[1]

Two months after that, Beasley sought relief under Chapter 7 of the Bankruptcy Code. After the proceeding had been converted to one under Chapter 13, respondent, Richard V. Fink, the trustee of Beasley's bankruptcy estate, moved to set aside Fidelity's security interest. He argued that the lien was a voidable preference, the enabling loan exception being inapposite because Fidelity had failed to perfect its interest within 20 days after Beasley received the car. Fidelity responded that Missouri law treats a lien on a motor vehicle as having been "perfected" on the date of its creation (in this case, within the 20-day period), if the creditor files the necessary documents within 30 days after the debtor takes possession. Mo. Rev. Stat. § 301.600(2) (1994).

The Bankruptcy Court set aside the lien as a voidable preference, holding that Missouri's relation-back provision

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[1] Whether the mailing was sufficient to perfect the interest is an issue of state law not raised by this case. In speaking below of acts necessary to perfect a security interest under state law, we mean whatever acts must be done to effect perfection under the terms of the applicable state statute, whether those be acts of a creditor or acts of a governmental employee delivering or responding to a creditor's application. As will be seen, the time within which those acts must be done is governed by federal, not state, law, when the issue is the voidability of a preference under the Bankruptcy Code.

could not extend the 20-day perfection period imposed by § 547(c)(3)(B). *In re Beasley*, 183 B. R. 857 (Bkrtcy. Ct. WD Mo. 1995). Fidelity appealed to the United States District Court for the Western District of Missouri, which affirmed on substantially the same grounds, as did the Court of Appeals for the Eighth Circuit, holding a transfer to be perfected "when the transferee takes the last step required by state law to perfect its security interest." 102 F. 3d 334, 335 (1996) *(per curiam)* (internal quotation marks omitted).

We granted certiorari, 520 U. S. 1209 (1997), to resolve a conflict among the Circuits over the question when a transfer is "perfected" under § 547(c)(3)(B).[2] We affirm.

II

Without regard to whether Fidelity's lien is a preference under § 547(b), Fink cannot avoid the lien if it falls within the enabling loan exception of § 547(c)(3), one requirement of which is that the transfer of the interest securing the lien be "perfected on or before 20 days after the debtor receives possession." 11 U. S. C. § 547(c)(3)(B). Perfection turns on the definition provided by § 547(e)(1)(B), that "a transfer of . . . property other than real property is perfected when a creditor on a simple contract cannot acquire a judicial lien that is superior to the interest of the transferee."

Like the Courts of Appeals that have adopted its position, see n. 2, *supra*, Fidelity sees in subsection (c)(3)(B) not only a federal guarantee that a creditor will have 20 days to act, but also a reflection of state law that deems perfection within

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[2] Compare *In re Locklin*, 101 F. 3d 435, 442 (CA5 1996) (holding that § 547(c)(3)(B) perfection period prevails over a longer grace period provided by state law); *In re Walker*, 77 F. 3d 322, 323–324 (CA9 1996) (same); and *In re Hamilton*, 892 F. 2d 1230, 1234–1235 (CA5 1990) (same), with *In re Hesser*, 984 F. 2d 345, 348–349 (CA10 1993) (holding that a transfer is perfected under § 547(c)(3)(B) as of the date that the creditor's lien has priority under state law), and *In re Busenlehner*, 918 F. 2d 928, 930–931 (CA11 1990) (same), cert. denied *sub nom. Moister* v. *General Motors Acceptance Corp.*, 500 U. S. 949 (1991).

a statutory grace or relation-back period to be perfection as of the creation of the underlying security interest. Under Missouri law, for example, a "lien or encumbrance on a motor vehicle . . . is perfected by the delivery [of specified documents] to the director of revenue," Mo. Rev. Stat. § 301.600(2) (1994), but the date of the lien's perfection is "as of the time of its creation if the delivery of the aforesaid to the director of revenue is completed within thirty days thereafter, otherwise as of the time of the delivery." *Ibid.* Thus, Fidelity contends that although it delivered the required documents more than 20 days after Beasley received the car, its lien must be treated as perfected on the day of its creation because it delivered the papers within the 30 days allowed by state law to qualify for the relation-back advantage. If this is sound reasoning, Fidelity's lien was perfected on August 17, 1994, the very day that Beasley drove away in her Ford, and Fidelity may invoke § 547(c)(3)'s enabling loan exception.[3]

The assumption that the term "perfected" as used in subsection (c)(3)(B) and defined in subsection (e)(1)(B) may refer to the relation-back date is not to be made so easily, however. It is quite certain, to begin with, that in the relevant context Congress sometimes used the word "perfection" to mean the legal conclusion that for such purposes as calculating priorities perfection of a lien should be treated as if it had occurred on a particular date, and sometimes used it to refer to the acts necessary to support that conclusion. Section 546(b)(1)(A) speaks of state laws that permit "perfection . . . to be effective . . . before the date of perfection." 11 U. S. C.

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[3] As Fidelity suggested in passing at oral argument, see Tr. of Oral Arg. 22–23, its reading of the term "perfected" in § 547(e)(1)(B) would carry another consequence. If the lien were "perfected" under that provision as of the date of its creation, the transfer would presumably be treated as having taken place on that date, 11 U. S. C. § 547(e)(2)(A), outside the 90-day preference period set forth in § 547(b)(4)(A), and would not have been a voidable preference at all.

§ 546(b)(1)(A). The distinction implicit in speaking of "perfection" antecedent to the "date of perfection" shows that Congress was thinking about the difference between the legal conclusion that may be entailed by applying a relation-back rule and, on the other hand, the acts taken to trigger an application of the rule.

Knowing that Congress understood "perfection" in these two different senses, one can see how Fidelity's construction of § 547(e)(1)(B) is a poor fit with the text. Although Fidelity and two Courts of Appeals have thought this provision means that a transfer is perfected as of whatever date an enabling creditor could claim in a priority fight with a contract creditor armed with a judicial lien, the statute does not speak in such terms. Rather, it says that a transfer is perfected "when" a contract creditor "cannot acquire" a superior lien. "[W]hen" and "cannot acquire" are ostensibly straightforward references to time and action in the real world, not tipoffs (like the terms "as if" and "deemed") that the clock is being turned back in some legal universe. A creditor "can" acquire such a lien at any time until the secured party performs the acts sufficient to perfect its interest. Such a lien would, of course, lose its priority if, during the relation-back period, the secured party performed those acts; such a possibility does not mean that a contract creditor "cannot" acquire such a lien, however, but merely that its superiority may be fleeting. Not until the secured party actually performs the final act that will perfect its interest can other creditors be foreclosed conclusively from obtaining a superior lien. It is only then that they "cannot" acquire such a lien. Thus, the terms of § 547(e)(1)(B) apparently imply that a transfer is "perfected" only when the secured party has done all the acts required to perfect its interest, not at the moment as of which state law may retroactively deem that perfection effective.

A variety of considerations support this conclusion. First, a related provision of the Bankruptcy Code raises a

negative implication to the effect that Congress did not intend state relation-back provisions or grace periods to control a trustee's power to avoid preferences. Section 546 of the Code puts certain limits on the avoidance powers set forth elsewhere, as in the provision of § 546(b)(1)(A) that the "rights and powers of a trustee under sections 544, 545, and 549 of this title are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection." Not only does the series skip from § 545 to § 549, but the omission of § 547 becomes all the more pointed when read against the other subsections of § 546, all of which refer explicitly to powers and proceedings under § 547. See 11 U. S. C. §§ 546(a), (c)–(g). So, it is hard to resist the implication that Congress quite specifically intended a trustee's power to avoid prepetition preferences to prevail over any state rules permitting relation back.

There is further support for this reading in the circumstances of the 1994 amendment to the Bankruptcy Code that extended the perfection period under § 547(c)(3)(B) from 10 to 20 days. See Bankruptcy Reform Act of 1994, § 203(1), Pub. L. 103–394, 108 Stat. 4122. At the time this legislation was passed, most States had some version of Article 9–301(2) of the Uniform Commercial Code, which provides that

> "[i]f the secured party files with respect to a purchase money security interest before or within ten days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing." Uniform Commercial Code § 9–301(2), 3A U. L. A. 10 (1992).

Forty-two States had adopted modifications extending the grace period to 20 days or more after the debtor's first possession of the collateral. See Uniform Commercial Code § 9–301, 3A U. L. A. 10, 14–15 (1992 and Supp. 1997); Cal.

Com. Code Ann. § 9301(2) (West Supp. 1997); R. I. Gen. Laws § 6A–9–301(2) (1992).

Under Fidelity's view of the way § 547(c)(3) acts together with state law, a creditor in any of those States could have perfected its security interest between the 10th and the 20th day and still have complied with the 10-day deadline in the pre-1994 version of the Bankruptcy Code. Indeed, on Fidelity's view, the only States in which antecedent perfection would not have been recognized under the old federal 10-day period would have been States with no relation-back period at all (of which there was none), or States in which relation back went only to the 11th (or a later) day after creation (of which, it is not surprising to learn, there also was none), or States in which the time for acting under the relation-back rule was less than 20 days (of which there were only eight, plus Guam and the District of Columbia). If Congress had shared Fidelity's view of the federal 10-day provision, then the 1994 amendment would have accomplished very little, extending the period only in those few States that lacked a 20-day grace period. And, of course, it is hard to understand why Congress would have wanted to do that. The change would not have brought uniformity to federal bankruptcy practice, for on Fidelity's view a State could have chosen a longer period (and, in the context of motor vehicles, at least some have done so, see, *e. g.*, W. Va. Code § 17A–4A–4(a) (1996) (providing 60-day period)). The net effect of the 1994 amendment would thus have been merely to benefit a class of creditors in only eight States, Guam, and the District of Columbia, jurisdictions which could have looked out for their own creditors if they had chosen to do so. It is not easy to imagine that Congress meant to accomplish nothing more, and nothing uniform, by its effort.

Driven to the last ditch, Fidelity relies on an isolated piece of legislative history. On the floor of the Senate one day in April 1994, during consideration of the Bankruptcy Reform Act of 1993, a bill which was never enacted but which had a

provision identical to the 1994 amendment that extended the § 547(c)(3)(B) perfection period to 20 days, Senators Heflin and Sasser appeared to address the issue now before us.[4] During their colloquy, the Senators agreed that "although there is no statutory language to codify [the Eleventh Circuit's decision in *In re Busenlehner* and the Tenth Circuit's decision in *In re Hesser*], they are consistent with Federal bankruptcy law." 140 Cong. Rec. 8035 (1994) (remarks of Sen. Sasser). Senator Heflin thought it "appropriate at this time for the Senate to state its intent to confirm the interpretations of these circuits." *Ibid.* Fidelity takes this exchange as indicating that in passing the 1994 amendment Congress meant to enact the holdings of the Tenth and Eleventh Circuits that the term "perfected" in § 547(c)(3)(B) may refer to the conclusion provided by a relation-back rule, not only to the creditor's act of filing.

But the colloquy supports no such argument. Senator Heflin began it by describing the enabling loan exception and noting that the proposed amendment would extend the "[f]ederal time period from 10 to 20 days." *Ibid.* Senator Sasser responded that he thought it "advisable to clarify a related issue that has caused unnecessary litigation throughout the country." *Ibid.* Senator Sasser later stated that he was "[c]larifying that 'relation back' statutes are consistent with the Federal law." *Ibid.* These remarks reflect the Senators' understanding that they were not discussing the effect of any legislative proposal before them. Indeed, as we have seen, "perfection" is defined elsewhere and the Senate was not addressing the definition provision. The Senators were simply using the occasion to offer their own views on existing law, a conclusion underscored by Senator Sasser's observation that "there is no statutory language to codify these court cases." *Ibid.*

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[4] We say "appeared" because the colloquy is not free of ambiguity. See 140 Cong. Rec. 8035 (1994). For the sake of argument, we treat it in the light most favorable to Fidelity.

Whatever weight some Members of this Court might accord to floor statements about proposals actually under consideration, remarks that purport to clarify "related" areas of the law can have little persuasive force, and in this case none at all. For the Senators' remarks were not only at odds with the governing text but also with the current of the broader statutory history of the preference provisions, which persuasively suggests that Congress intended § 547(c)(3)(B) to establish a uniform federal perfection period immune to alteration by state laws permitting relation back. The former version of the preference provisions, § 60 of the previous Bankruptcy Act, referred explicitly to state law in determining when a transfer occurred. It first provided a general rule that a transfer of an interest in personal property occurred "when it became so far perfected that no subsequent lien upon such property obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee." 11 U. S. C. § 96(a)(2) (1964 ed.). But it then subjected this general rule to the exceptions that

> "[w]here (A) the applicable law specifies a stated period of time of not more than twenty-one days after the transfer within which recording, delivery, or some other act is required, and compliance therewith is had within such stated period of time; or where (B) the applicable law specifies no such stated period of time or where such stated period of time is more than twenty-one days, and compliance therewith is had within twenty-one days after the transfer, the transfer shall be deemed to be made or suffered at the time of the transfer." § 96(a)(7)(I).

Thus, a transfer was deemed to have occurred on the date of the transaction that gave rise to it, not on the later date of "recording, delivery, or . . . other act," so long as the creditor had complied with state relation-back law within 21 days. But even this former version of the Act, which explicitly

looked to state-law rules to determine the effective date of transfer, did not allow those rules to extend the creditor's opportunity to act beyond the uniform outer time limit that it provided. In light of this history, we see no basis to say that subsequent amendments removing references to state-law options had the counterintuitive effect of deferring to such options even beyond what the old law would have done.

In short, the text, structure, and history of the preference provisions lead to the understanding that a creditor may invoke the enabling loan exception of § 547(c)(3) only by acting to perfect its security interest within 20 days after the debtor takes possession of its property.

* * *

Accordingly, we affirm the judgment of the Court of Appeals for the Eighth Circuit.

It is so ordered.

Syllabus

BAKER ET AL. *v.* GENERAL MOTORS CORP.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 96–653. Argued October 15, 1997—Decided January 13, 1998

For 15 of the years Ronald Elwell worked for respondent General Motors Corporation (GM), he was assigned to a group that studied the performance of GM vehicles. Elwell's studies and research concentrated on vehicular fires, and he frequently aided GM lawyers defending against product liability actions. The Elwell-GM employment relationship soured in 1987, and Elwell agreed to retire after serving as a consultant for two years. Disagreement surfaced again when Elwell's retirement time neared and continued into 1991. That year, plaintiffs in a Georgia product liability action deposed Elwell. The Georgia case involved a GM pickup truck fuel tank that burst into flames just after a collision. Over GM's objection, Elwell testified that the truck's fuel system was inferior to competing products. This testimony differed markedly from testimony Elwell had given as GM's in-house expert witness. A month later, Elwell sued GM in a Michigan County Court, alleging wrongful discharge and other tort and contract claims. GM counterclaimed, contending that Elwell had breached his fiduciary duty to GM. In settlement, GM paid Elwell an undisclosed sum of money, and the parties stipulated to the entry of a permanent injunction barring Elwell from testifying as a witness in any litigation involving GM without GM's consent, but providing that the injunction "shall not operate to *interfere with the jurisdiction of the Court in . . . Georgia* [where the litigation involving the fuel tank was still pending]." (Emphasis added.) In addition, the parties entered into a separate settlement agreement, which provided that GM would not institute contempt or breach-of-contract proceedings against Elwell for giving subpoenaed testimony in another court or tribunal. Thereafter, the Bakers, petitioners here, subpoenaed Elwell to testify in their product liability action against GM, commenced in Missouri state court and removed by GM to federal court, in which the Bakers alleged that a faulty GM fuel pump caused the vehicle fire that killed their mother. GM asserted that the Michigan injunction barred Elwell's testimony. After *in camera* review of the Michigan injunction and the settlement agreement, the District Court allowed the Bakers to depose Elwell and to call him as a witness at trial, stating alternative grounds for its ruling: (1) Michigan's injunction need not be enforced because blocking Elwell's testimony would violate Missouri's

"public policy," which shielded from disclosure only privileged or otherwise confidential information; (2) just as the injunction could be modified in Michigan, so a court elsewhere could modify the decree. Elwell testified for the Bakers at trial, and they were awarded $11.3 million in damages. The Eighth Circuit reversed, ruling, *inter alia*, that Elwell's testimony should not have been admitted. Assuming, *arguendo*, the existence of a public policy exception to the full faith and credit command, the court concluded that the District Court erroneously relied on Missouri's policy favoring disclosure of relevant, nonprivileged information, for Missouri has an "equally strong public policy in favor of full faith and credit." The court also determined that the evidence was insufficient to show that the Michigan court would modify the injunction barring Elwell's testimony.

Held: Elwell may testify in the Missouri action without offense to the national full faith and credit command. Pp. 231–241.

(a) The animating purpose of the Constitution's Full Faith and Credit Clause "was to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin." *Milwaukee County* v. *M. E. White Co.*, 296 U. S. 268, 277. As to judgments, the full faith and credit obligation is exacting. A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land. See, *e. g.*, *Matsushita Elec. Industrial Co.* v. *Epstein*, 516 U. S. 367, 373. A court may be guided by the forum State's "public policy" in determining the *law* applicable to a controversy, see *Nevada* v. *Hall*, 440 U. S. 410, 421–424, but this Court's decisions support no roving "public policy exception" to the full faith and credit due *judgments*, see, *e. g.*, *Estin* v. *Estin*, 334 U. S. 541, 546. In assuming the existence of a ubiquitous "public policy exception" permitting one State to resist recognition of another's judgment, the District Court in the Bakers' action misread this Court's precedent. Further, the Court has never placed equity decrees outside the full faith and credit domain. Equity decrees for the payment of money have long been considered equivalent to judgments at law entitled to nationwide recognition. See, *e. g.*, *Barber* v. *Barber*, 323 U. S. 77. There is no reason why the preclusive effects of an adjudication on parties and those "in privity" with them, *i. e.*, claim preclusion and issue preclusion, should differ depending solely upon the type of relief sought in a civil action. Cf., *e. g.*, *id.*, at 87 (Jackson, J., concurring). Full faith

and credit, however, does not mean that enforcement measures must travel with the sister state judgment as preclusive effects do; such measures remain subject to the evenhanded control of forum law. See *McElmoyle ex rel. Bailey* v. *Cohen*, 13 Pet. 312, 325. Orders commanding action or inaction have been denied enforcement in a sister State when they purported to accomplish an official act within the exclusive province of that other State or interfered with litigation over which the ordering State had no authority. See, *e. g.*, *Fall* v. *Eastin*, 215 U. S. 1. Pp. 231–236.

(b) With these background principles in view, this Court turns to the dimensions of the order GM relies upon to stop Elwell's testimony and asks: What matters did the Michigan injunction legitimately conclude? Although the Michigan order is *claim* preclusive between Elwell and GM, Michigan's judgment cannot reach beyond the Elwell-GM controversy to control proceedings against GM brought in other States, by other parties, asserting claims the merits of which Michigan has not considered. Michigan has no power over those parties, and no basis for commanding them to become intervenors in the Elwell-GM dispute. See *Martin* v. *Wilks*, 490 U. S. 755, 761–763. Most essentially, although Michigan's decree could operate against Elwell to preclude him from *volunteering* his testimony in another jurisdiction, a Michigan court cannot, by entering the injunction to which Elwell and GM stipulated, dictate to a court in another jurisdiction that evidence relevant in the Bakers' case—a controversy to which Michigan is foreign—shall be inadmissible. This conclusion creates no general exception to the full faith and credit command, and surely does not permit a State to refuse to honor a sister state judgment based on the forum's choice of law or policy preferences. This Court simply recognizes, however, that, just as the mechanisms for enforcing a judgment do not travel with the judgment itself for purposes of full faith and credit, and just as one State's judgment cannot automatically transfer title to land in another State, similarly the Michigan decree cannot determine evidentiary issues in a lawsuit brought by parties who were not subject to the jurisdiction of the Michigan court. Cf. *United States* v. *Nixon*, 418 U. S. 683, 710. The language of the consent decree, excluding from its scope the then-pending Georgia action, is informative. If the Michigan order would have interfered with the Georgia court's jurisdiction, Michigan's ban would, in the same way, interfere with the jurisdiction of courts in other States in similar cases. GM recognized the interference potential of the consent decree by agreeing not to institute contempt or breach-of-contract proceedings against Elwell for giving subpoenaed testimony elsewhere. That GM ruled out resort to the court that entered the

injunction is telling, for injunctions are ordinarily enforced by the enjoining court, not by a surrogate tribunal. Pp. 237–241.

86 F. 3d 811, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, SOUTER, and BREYER, JJ., joined. SCALIA, J., filed an opinion concurring in the judgment, *post*, p. 241. KENNEDY, J., filed an opinion concurring in the judgment, in which O'CONNOR and THOMAS, JJ., joined, *post*, p. 243.

Laurence H. Tribe argued the cause for petitioners. With him on the briefs were *Jonathan S. Massey*, *James W. Jeans, Sr.*, *David L. Shapiro*, *Robert L. Langdon*, and *J. Kent Emison*.

Paul T. Cappuccio argued the cause for respondent. With him on the brief were *Kenneth W. Starr*, *Richard A. Cordray*, *Jay P. Lefkowitz*, *Thomas A. Gottschalk*, and *James A. Durkin*.*

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns the authority of one State's court to order that a witness' testimony shall not be heard in any

*Briefs of *amici curiae* urging reversal were filed for the State of Missouri et al. by *Jeremiah W. (Jay) Nixon*, Attorney General of Missouri, and *Karen King Mitchell*, *Richard Blumenthal*, Attorney General of Connecticut, *Thomas J. Miller*, Attorney General of Iowa, *Scott Harshbarger*, Attorney General of Massachusetts, *Mike Moore*, Attorney General of Mississippi, *Christine O. Gregoire*, Attorney General of Washington, and *James E. Doyle*, Attorney General of Wisconsin; for the Association of Trial Lawyers of America by *Jeffrey Robert White*, *Cheryl Flax-Davidson*, and *Howard F. Twiggs;* and for the Center for Auto Safety.

Briefs of *amici curiae* urging affirmance were filed for the National Association of Manufacturers et al. by *Mark B. Helm*, *Kristin A. Linsley*, *Jan S. Amundson*, *Quentin Riegel*, and *Todd S. Brilliant;* and for the Product Liability Advisory Council, Inc., by *Stephen M. Shapiro*, *Andrew L. Frey*, *Kenneth S. Geller*, and *John J. Sullivan*.

A brief of *amici curiae* was filed for the State of Ohio et al. by *Betty D. Montgomery*, Attorney General of Ohio, *Jeffrey S. Sutton*, State Solicitor, and *Elise Porter*, Assistant Attorney General, *Gale A. Norton*, Attorney General of Colorado, *Jan Graham*, Attorney General of Utah, and *Richard Cullen*, Attorney General of Virginia.

court of the United States. In settlement of claims and counterclaims precipitated by the discharge of Ronald Elwell, a former General Motors Corporation (GM) engineering analyst, GM paid Elwell an undisclosed sum of money, and the parties agreed to a permanent injunction. As stipulated by GM and Elwell and entered by a Michigan County Court, the injunction prohibited Elwell from "testifying, without the prior written consent of [GM], . . . as . . . a witness of any kind . . . in any litigation already filed, or to be filed in the future, involving [GM] as an owner, seller, manufacturer and/or designer . . . ." GM separately agreed, however, that if Elwell were ordered to testify by a court or other tribunal, such testimony would not be actionable as a violation of the Michigan court's injunction or the GM-Elwell agreement.

After entry of the stipulated injunction in Michigan, Elwell was subpoenaed to testify in a product liability action commenced in Missouri by plaintiffs who were not involved in the Michigan case. The question presented is whether the national full faith and credit command bars Elwell's testimony in the Missouri case. We hold that Elwell may testify in the Missouri action without offense to the full faith and credit requirement.

I

Two lawsuits, initiated by different parties in different States, gave rise to the full faith and credit issue before us. One suit involved a severed employment relationship, the other, a wrongful-death complaint. We describe each controversy in turn.

A

The Suit Between Elwell and General Motors

Ronald Elwell was a GM employee from 1959 until 1989. For 15 of those years, beginning in 1971, Elwell was assigned to the Engineering Analysis Group, which studied the performance of GM vehicles, most particularly vehicles involved in product liability litigation. Elwell's studies and research concentrated on vehicular fires. He assisted in

improving the performance of GM products by suggesting changes in fuel line designs. During the course of his employment, Elwell frequently aided GM lawyers engaged in defending GM against product liability actions. Beginning in 1987, the Elwell-GM employment relationship soured. GM and Elwell first negotiated an agreement under which Elwell would retire after serving as a GM consultant for two years. When the time came for Elwell to retire, however, disagreement again surfaced and continued into 1991.

In May 1991, plaintiffs in a product liability action pending in Georgia deposed Elwell. The Georgia case involved a GM pickup truck fuel tank that burst into flames just after a collision. During the deposition, and over the objection of counsel for GM, Elwell gave testimony that differed markedly from testimony he had given when serving as an in-house expert witness for GM. Specifically, Elwell had several times defended the safety and crashworthiness of the pickup's fuel system. On deposition in the Georgia action, however, Elwell testified that the GM pickup truck fuel system was inferior in comparison to competing products.

A month later, Elwell sued GM in a Michigan County Court, alleging wrongful discharge and other tort and contract claims. GM counterclaimed, contending that Elwell had breached his fiduciary duty to GM by disclosing privileged and confidential information and misappropriating documents. In response to GM's motion for a preliminary injunction, and after a hearing, the Michigan trial court, on November 22, 1991, enjoined Elwell from

> "consulting or discussing with or disclosing to any person any of General Motors Corporation's trade secrets[,] confidential information or matters of attorney-client work product relating in any manner to the subject matter of any products liability litigation whether already filed or [to be] filed in the future which Ronald Elwell received, had knowledge of, or was entrusted with dur-

> ing his employments with General Motors Corporation." *Elwell* v. *General Motors Corp.*, No. 91–115946NZ (Wayne Cty.) (Order Granting in Part, Denying in Part Injunctive Relief, pp. 1–2), App. 9–10.

In August 1992, GM and Elwell entered into a settlement under which Elwell received an undisclosed sum of money. The parties also stipulated to the entry of a permanent injunction and jointly filed with the Michigan court both the stipulation and the agreed-upon injunction. The proposed permanent injunction contained two proscriptions. The first substantially repeated the terms of the preliminary injunction; the second comprehensively enjoined Elwell from

> "testifying, without the prior written consent of General Motors Corporation, either upon deposition or at trial, as an expert witness, or as a witness of any kind, and from consulting with attorneys or their agents in any litigation already filed, or to be filed in the future, involving General Motors Corporation as an owner, seller, manufacturer and/or designer of the product(s) in issue." Order Dismissing Plaintiff's Complaint and Granting Permanent Injunction (Wayne Cty., Aug. 26, 1992), p. 2, App. 30.

To this encompassing bar, the consent injunction made an exception: "[This provision] shall not operate to *interfere with the jurisdiction of the Court in . . . Georgia* [where the litigation involving the fuel tank was still pending]." *Ibid.* (emphasis added). No other noninterference provision appears in the stipulated decree. On August 26, 1992, with no further hearing, the Michigan court entered the injunction precisely as tendered by the parties.[1]

Although the stipulated injunction contained an exception only for the Georgia action then pending, Elwell and GM included in their separate settlement agreement a more gen-

[1] A judge new to the case, not the judge who conducted a hearing at the preliminary injunction stage, presided at the settlement stage and entered the permanent injunction.

eral limitation. If a court or other tribunal ordered Elwell to testify, his testimony would "in no way" support a GM action for violation of the injunction or the settlement agreement:

> "'It is agreed that [Elwell's] appearance and testimony, if any, at hearings on Motions to quash subpoena or at deposition or trial or other official proceeding, if the Court or other tribunal so orders, will in no way form a basis for an action in violation of the Permanent Injunction or this Agreement.'" Settlement Agreement, p. 10, as quoted in 86 F. 3d 811, 820, n. 11 (CA8 1996).

In the six years since the Elwell-GM settlement, Elwell has testified against GM both in Georgia (pursuant to the exception contained in the injunction) and in several other jurisdictions in which Elwell has been subpoenaed to testify.

B

The Suit Between the Bakers and General Motors

Having described the Elwell-GM employment termination litigation, we next summarize the wrongful-death complaint underlying this case. The decedent, Beverly Garner, was a front-seat passenger in a 1985 Chevrolet S–10 Blazer involved in a February 1990 Missouri highway accident. The Blazer's engine caught fire, and both driver and passenger died. In September 1991, Garner's sons, Kenneth and Steven Baker, commenced a wrongful-death product liability action against GM in a Missouri state court. The Bakers alleged that a faulty fuel pump in the 1985 Blazer caused the engine fire that killed their mother. GM removed the case to federal court on the basis of the parties' diverse citizenship. On the merits, GM asserted that the fuel pump was neither faulty nor the cause of the fire, and that collision impact injuries alone caused Garner's death.

The Bakers sought both to depose Elwell and to call him as a witness at trial. GM objected to Elwell's appearance as a deponent or trial witness on the ground that the Michigan

injunction barred his testimony. In response, the Bakers urged that the Michigan injunction did not override a Missouri subpoena for Elwell's testimony. The Bakers further noted that, under the Elwell-GM settlement agreement, Elwell could testify if a court so ordered, and such testimony would not be actionable as a violation of the Michigan injunction.

After *in camera* review of the Michigan injunction and the settlement agreement, the Federal District Court in Missouri allowed the Bakers to depose Elwell and to call him as a witness at trial. Responding to GM's objection, the District Court stated alternative grounds for its ruling: (1) Michigan's injunction need not be enforced because blocking Elwell's testimony would violate Missouri's "public policy," which shielded from disclosure only privileged or otherwise confidential information; (2) just as the injunction could be modified in Michigan, so a court elsewhere could modify the decree.

At trial, Elwell testified in support of the Bakers' claim that the alleged defect in the fuel pump system contributed to the postcollision fire. In addition, he identified and described a 1973 internal GM memorandum bearing on the risk of fuel-fed engine fires. Following trial, the jury awarded the Bakers $11.3 million in damages, and the District Court entered judgment on the jury's verdict.

The United States Court of Appeals for the Eighth Circuit reversed the District Court's judgment, ruling, *inter alia*, that Elwell's testimony should not have been admitted. 86 F. 3d 811 (1996). Assuming, *arguendo*, the existence of a public policy exception to the full faith and credit command, the Court of Appeals concluded that the District Court erroneously relied on Missouri's policy favoring disclosure of relevant, nonprivileged information, see *id.*, at 818–819, for Missouri has an "equally strong public policy in favor of full faith and credit," *id.*, at 819.

The Eighth Circuit also determined that the evidence was insufficient to show that the Michigan court would modify

the injunction barring Elwell's testimony. See *id.*, at 819–820. The Court of Appeals observed that the Michigan court "has been asked on several occasions to modify the injunction, [but] has yet to do so," and noted that, if the Michigan court did not intend to block Elwell's testimony in cases like the Bakers', "the injunction would . . . have been unnecessary." *Id.*, at 820.

We granted certiorari to decide whether the full faith and credit requirement stops the Bakers, who were not parties to the Michigan proceeding, from obtaining Elwell's testimony in their Missouri wrongful-death action. 520 U. S. 1142 (1997).[2]

II

A

The Constitution's Full Faith and Credit Clause provides:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." Art. IV, § 1.[3]

Pursuant to that Clause, Congress has prescribed:

> "Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or

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[2] In conflict with the Eighth Circuit, many other lower courts have permitted Elwell to testify as to nonprivileged and non-trade-secret matters. See Addendum to Brief for Petitioners (citing cases).

[3] Predating the Constitution, the Articles of Confederation contained a provision of the same order: "Full faith and credit shall be given in each of these States to the records, acts and judicial proceedings of the courts and magistrates of every other State." Articles of Confederation, Art. IV. For a concise history of full faith and credit, see Jackson, Full Faith and Credit—The Lawyer's Clause of the Constitution, 45 Colum. L. Rev. 1 (1945).

> usage in the courts of such State, Territory or Possession from which they are taken." 28 U. S. C. § 1738.[4]

The animating purpose of the full faith and credit command, as this Court explained in *Milwaukee County* v. *M. E. White Co.*, 296 U. S. 268 (1935),

> "was to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin." *Id.*, at 277.

See also *Estin* v. *Estin*, 334 U. S. 541, 546 (1948) (the Full Faith and Credit Clause "substituted a command for the earlier principles of comity and thus basically altered the status of the States as independent sovereigns").

Our precedent differentiates the credit owed to laws (legislative measures and common law) and to judgments. "In numerous cases this Court has held that credit must be given to the judgment of another state although the forum would not be required to entertain the suit on which the judgment was founded." *Milwaukee County*, 296 U. S., at 277. The Full Faith and Credit Clause does not compel "a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate." *Pacific Employers Ins. Co.* v. *Industrial Accident Comm'n*, 306 U. S. 493, 501 (1939); see *Phillips*

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[4] The first Congress enacted the original full faith and credit statute in May 1790. See Act of May 26, 1790, ch. 11, 1 Stat. 122 (codified as amended at 28 U. S. C. § 1738) ("And the said records and judicial proceedings authenticated as aforesaid, shall have such faith and credit given to them in every court within the United States, as they have by law or usage in the courts of the state from whence the said records are or shall be taken."). Although the text of the statute has been revised since then, the command for full faith and credit to judgments has remained constant.

Petroleum Co. v. *Shutts*, 472 U. S. 797, 818–819 (1985). Regarding judgments, however, the full faith and credit obligation is exacting. A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land. For claim and issue preclusion (res judicata) purposes,[5] in other words, the judgment of the rendering State gains nationwide force. See, *e. g.*, *Matsushita Elec. Industrial Co.* v. *Epstein*, 516 U. S. 367, 373 (1996); *Kremer* v. *Chemical Constr. Corp.*, 456 U. S. 461, 485 (1982); see also Reese & Johnson, The Scope of Full Faith and Credit to Judgments, 49 Colum. L. Rev. 153 (1949).

A court may be guided by the forum State's "public policy" in determining the *law* applicable to a controversy. See *Nevada* v. *Hall*, 440 U. S. 410, 421–424 (1979).[6] But our decisions support no roving "public policy exception" to the full faith and credit due *judgments*. See *Estin*, 334 U. S., at 546 (Full Faith and Credit Clause "ordered submission . . . even to hostile policies reflected in the judgment of another State, because the practical operation of the federal system, which the Constitution designed, demanded it."); *Fauntleroy* v. *Lum*, 210 U. S. 230, 237 (1908) (judgment of Missouri court

[5] "Res judicata" is the term traditionally used to describe two discrete effects: (1) what we now call claim preclusion (a valid final adjudication of a claim precludes a second action on that claim or any part of it), see Restatement (Second) of Judgments §§ 17–19 (1982); and (2) issue preclusion, long called "collateral estoppel" (an issue of fact or law, actually litigated and resolved by a valid final judgment, binds the parties in a subsequent action, whether on the same or a different claim), see *id.*, § 27. On use of the plain English terms claim and issue preclusion in lieu of res judicata and collateral estoppel, see *Migra* v. *Warren City School Dist. Bd. of Ed.*, 465 U. S. 75, 77, n. 1 (1984).

[6] See also Paulsen & Sovern, "Public Policy" in the Conflict of Laws, 56 Colum. L. Rev. 969, 980–981 (1956) (noting traditional but dubious use of the term "public policy" to obscure "an assertion of the forum's right to have its [own] law applied to the [controversy] because of the forum's relationship to it").

entitled to full faith and credit in Mississippi even if Missouri judgment rested on a misapprehension of Mississippi law). In assuming the existence of a ubiquitous "public policy exception" permitting one State to resist recognition of another State's judgment, the District Court in the Bakers' wrongful-death action, see *supra*, at 230, misread our precedent. "The full faith and credit clause is one of the provisions incorporated into the Constitution by its framers for the purpose of transforming an aggregation of independent, sovereign States into a nation." *Sherrer* v. *Sherrer*, 334 U. S. 343, 355 (1948). We are "aware of [no] considerations of local policy or law which could rightly be deemed to impair the force and effect which the full faith and credit clause and the Act of Congress require to be given to [a money] judgment outside the state of its rendition." *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, 438 (1943).

The Court has never placed equity decrees outside the full faith and credit domain. Equity decrees for the payment of money have long been considered equivalent to judgments at law entitled to nationwide recognition. See, *e. g.*, *Barber* v. *Barber*, 323 U. S. 77 (1944) (unconditional adjudication of petitioner's right to recover a sum of money is entitled to full faith and credit); see also A. Ehrenzweig, Conflict of Laws § 51, p. 182 (rev. ed. 1962) (describing as "indefensible" the old doctrine that an equity decree, because it does not "merge" the claim into the judgment, does not qualify for recognition). We see no reason why the preclusive effects of an adjudication on parties and those "in privity" with them, *i. e.*, claim preclusion and issue preclusion (res judicata and collateral estoppel),[7] should differ depending solely upon the type of relief sought in a civil action. Cf. *Barber*, 323

[7] See *supra*, at 233, n. 5; 18 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4467, p. 635 (1981) (Although "[a] second state need not directly enforce an injunction entered by another state . . . [it] may often be required to honor the issue preclusion effects of the first judgment.").

U. S., at 87 (Jackson, J., concurring) (Full Faith and Credit Clause and its implementing statute speak not of "judgments" but of "'judicial proceedings' without limitation"); Fed. Rule Civ. Proc. 2 (providing for "one form of action to be known as 'civil action,'" in lieu of discretely labeled actions at law and suits in equity).

Full faith and credit, however, does not mean that States must adopt the practices of other States regarding the time, manner, and mechanisms for enforcing judgments. Enforcement measures do not travel with the sister state judgment as preclusive effects do; such measures remain subject to the evenhanded control of forum law. See *McElmoyle ex rel. Bailey* v. *Cohen*, 13 Pet. 312, 325 (1839) (judgment may be enforced only as "laws [of enforcing forum] may permit"); see also Restatement (Second) of Conflict of Laws § 99 (1969) ("The local law of the forum determines the methods by which a judgment of another state is enforced.").[8]

Orders commanding action or inaction have been denied enforcement in a sister State when they purported to accomplish an official act within the exclusive province of that other State or interfered with litigation over which the ordering State had no authority. Thus, a sister State's decree concerning land ownership in another State has been held ineffective *to transfer title*, see *Fall* v. *Eastin*, 215 U. S. 1 (1909), although such a decree may indeed preclusively adjudicate the rights and obligations running between the *parties* to the foreign litigation, see, *e. g.*, *Robertson* v. *Howard*, 229 U. S. 254, 261 (1913) ("[I]t may not be doubted that a

[8] Congress has provided for the interdistrict registration of federal-court judgments for the recovery of money or property. 28 U. S. C. § 1963 (upon registration, the judgment "shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner"). A similar interstate registration procedure is effective in most States, as a result of widespread adoption of the Revised Uniform Enforcement of Foreign Judgments Act, 13 U. L. A. 149 (1986). See *id.*, at 13 (Supp. 1997) (Table) (listing adoptions in 44 States and the District of Columbia).

court of equity in one State in a proper case could compel a defendant before it to convey property situated in another State."). And antisuit injunctions regarding litigation elsewhere, even if compatible with due process as a direction constraining parties to the decree, see *Cole* v. *Cunningham*, 133 U. S. 107 (1890), in fact have not controlled the second court's actions regarding litigation in that court. See, *e. g.*, *James* v. *Grand Trunk Western R. Co.*, 14 Ill. 2d 356, 372, 152 N. E. 2d 858, 867 (1958); see also E. Scoles & P. Hay, Conflict of Laws § 24.21, p. 981 (2d ed. 1992) (observing that antisuit injunction "does not address, and thus has no preclusive effect on, the merits of the litigation [in the second forum]").[9] Sanctions for violations of an injunction, in any event, are generally administered by the court that issued the injunction. See, *e. g.*, *Stiller* v. *Hardman*, 324 F. 2d 626, 628 (CA2 1963) (nonrendition forum enforces monetary relief portion of a judgment but leaves enforcement of injunctive portion to rendition forum).

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[9] This Court has held it impermissible for a state court to enjoin a party from proceeding in a federal court, see *Donovan* v. *Dallas*, 377 U. S. 408 (1964), but has not yet ruled on the credit due to a state-court injunction barring a party from maintaining litigation in another State, see Ginsburg, Judgments in Search of Full Faith and Credit: The Last-in-Time Rule for Conflicting Judgments, 82 Harv. L. Rev. 798, 823 (1969); see also Reese, Full Faith and Credit to Foreign Equity Decrees, 42 Iowa L. Rev. 183, 198 (1957) (urging that, although this Court "has not yet had occasion to determine [the issue], ... full faith and credit does not require dismissal of an action whose prosecution has been enjoined," for to hold otherwise "would mean in effect that the courts of one state can control what goes on in the courts of another"). State courts that have dealt with the question have, in the main, regarded antisuit injunctions as outside the full faith and credit ambit. See Ginsburg, 82 Harv. L. Rev., at 823, and n. 99; see also *id.*, at 828–829 ("The current state of the law, permitting [an antisuit] injunction to issue but not compelling any deference outside the rendering state, may be the most reasonable compromise between . . . extreme alternatives," *i. e.*, "[a] general rule of respect for antisuit injunctions running between state courts," or "a general rule denying the states authority to issue injunctions directed at proceedings in other states").

B

With these background principles in view, we turn to the dimensions of the order GM relies upon to stop Elwell's testimony. Specifically, we take up the question: What matters did the Michigan injunction legitimately conclude?

As earlier recounted, see *supra*, at 228–229, the parties before the Michigan County Court, Elwell and GM, submitted an agreed-upon injunction, which the presiding judge signed.[10] While no issue was joined, expressly litigated, and determined in the Michigan proceeding,[11] that order is *claim* preclusive between Elwell and GM. Elwell's claim for

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[10] GM emphasizes that a key factor warranting the injunction was Elwell's inability to assure that any testimony he might give would steer clear of knowledge he gained from protected confidential communications. See Brief for Respondent 28–29; see also *id.*, at 32 (contending that Elwell's testimony "is pervasively and uncontrollably leavened with General Motors' privileged information"). Petitioners assert, and GM does not dispute, however, that at no point during Elwell's testimony in the Bakers' wrongful-death action did GM object to any question or answer on the grounds of attorney-client, attorney-work product, or trade secrets privilege. See Brief for Petitioners 9.

[11] In no event, we have observed, can issue preclusion be invoked against one who did not participate in the prior adjudication. See *Blonder-Tongue Laboratories, Inc.* v. *University of Ill. Foundation*, 402 U. S. 313, 329 (1971); *Hansberry* v. *Lee*, 311 U. S. 32, 40 (1940). Thus, JUSTICE KENNEDY emphasizes the obvious in noting that the Michigan judgment has no preclusive effect on the Bakers, for they were not parties to the Michigan litigation. See *post*, at 246–248. Such an observation misses the thrust of GM's argument. GM readily acknowledges "the commonplace rule that a person may not be bound by a judgment *in personam* in a case to which he was not made a party." Brief for Respondent 35. But, GM adds, the Michigan decree does not bind the Bakers; it binds *Elwell* only. Most forcibly, GM insists that the Bakers cannot object to the binding effect GM seeks for the Michigan judgment because the Bakers have no constitutionally protected interest in obtaining the testimony of a particular witness. See *id.*, at 39 ("[T]he only party being 'bound' to the injunction is Elwell, and holding him to his legal obligations does not violate anyone's due process rights."). Given this argument, it is clear that issue preclusion principles, standing alone, cannot resolve the controversy GM presents.

wrongful discharge and his related contract and tort claims have "merged in the judgment," and he cannot sue again to recover more. See *Parklane Hosiery Co.* v. *Shore*, 439 U. S. 322, 326, n. 5 (1979) ("Under the doctrine of res judicata, a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action."); see also Restatement (Second) of Judgments § 17 (1980). Similarly, GM cannot sue Elwell elsewhere on the counterclaim GM asserted in Michigan. See *id.*, § 23, Comment *a*, p. 194 ("A defendant who interposes a counterclaim is, in substance, a plaintiff, as far as the counterclaim is concerned, and the plaintiff is, in substance, a defendant.").

Michigan's judgment, however, cannot reach beyond the Elwell-GM controversy to control proceedings against GM brought in other States, by other parties, asserting claims the merits of which Michigan has not considered. Michigan has no power over those parties, and no basis for commanding them to become intervenors in the Elwell-GM dispute. See *Martin* v. *Wilks*, 490 U. S. 755, 761–763 (1989). Most essentially, Michigan lacks authority to control courts elsewhere by precluding them, in actions brought by strangers to the Michigan litigation, from determining for themselves what witnesses are competent to testify and what evidence is relevant and admissible in their search for the truth. See Restatement (Second) of Conflict of Laws §§ 137–139 (1969 and rev. 1988) (forum's own law governs witness competence and grounds for excluding evidence); cf. *Société Nationale Industrielle Aérospatiale* v. *United States Dist. Court for Southern Dist. of Iowa*, 482 U. S. 522, 544, n. 29 (1987) (foreign "blocking statute" barring disclosure of certain information "do[es] not deprive an American court of the power to order a party subject to its jurisdiction to produce [the information]"); *United States* v. *First Nat. City Bank*, 396 F. 2d 897 (CA2 1968) (New York bank may not refuse to produce records of its German branch, even though doing so might subject the bank to civil liability under German law).

As the District Court recognized, Michigan's decree could operate against Elwell to preclude him from *volunteering* his testimony. See App. to Pet. for Cert. 26a–27a. But a Michigan court cannot, by entering the injunction to which Elwell and GM stipulated, dictate to a court in another jurisdiction that evidence relevant in the Bakers' case—a controversy to which Michigan is foreign—shall be inadmissible. This conclusion creates no general exception to the full faith and credit command, and surely does not permit a State to refuse to honor a sister state judgment based on the forum's choice of law or policy preferences. Rather, we simply recognize that, just as the mechanisms for enforcing a judgment do not travel with the judgment itself for purposes of full faith and credit, see *McElmoyle ex rel. Bailey* v. *Cohen*, 13 Pet. 312 (1839); see also Restatement (Second) of Conflict of Laws § 99, and just as one State's judgment cannot automatically transfer title to land in another State, see *Fall* v. *Eastin*, 215 U. S. 1 (1909), similarly the Michigan decree cannot determine evidentiary issues in a lawsuit brought by parties who were not subject to the jurisdiction of the Michigan court. Cf. *United States* v. *Nixon*, 418 U. S. 683, 710 (1974) ("[E]xceptions to the demand for every man's evidence are not lightly created nor expansively construed, for they are in derogation of the search for truth.").[12]

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[12] JUSTICE KENNEDY inexplicably reads into our decision a sweeping exception to full faith and credit based solely on "the integrity of Missouri's judicial processes." *Post*, at 246. The Michigan judgment is not entitled to full faith and credit, we have endeavored to make plain, because it impermissibly interferes with Missouri's control of litigation *brought by parties who were not before the Michigan court.* Thus, JUSTICE KENNEDY's hypothetical, see *post*, at 245–246, misses the mark. If the Bakers had been parties to the Michigan proceedings and had actually litigated the privileged character of Elwell's testimony, the Bakers would of course be precluded from relitigating that issue in Missouri. See *Cromwell* v. *County of Sac*, 94 U. S. 351, 354 (1877) ("[D]etermination of a question directly involved in one action is conclusive as to that question in a second suit between the same parties . . . ."); see also *supra*, at 233, n. 5.

The language of the consent decree is informative in this regard. Excluding the then-pending Georgia action from the ban on testimony by Elwell without GM's permission, the decree provides that it "shall not operate to *interfere with the jurisdiction* of the Court in . . . Georgia." *Elwell* v. *General Motors Corp.*, No. 91–115946NZ (Wayne Cty.) (Order Dismissing Plaintiff's Complaint and Granting Permanent Injunction, p. 2), App. 30 (emphasis added). But if the Michigan order, extended to the Georgia case, would have "interfer[ed] with the jurisdiction" of the Georgia court, Michigan's ban would, in the same way, "interfere with the jurisdiction" of courts in other States in cases similar to the one pending in Georgia.

In line with its recognition of the interference potential of the consent decree, GM provided in the settlement agreement that, if another court ordered Elwell to testify, his testimony would "in no way" render him vulnerable to suit in Michigan for violation of the injunction or agreement. See 86 F. 3d, at 815, 820, n. 11. The Eighth Circuit regarded this settlement agreement provision as merely a concession by GM that "some courts might fail to extend full faith and credit to the [Michigan] injunction." *Ibid.* As we have explained, however, Michigan's power does not reach into a Missouri courtroom to displace the forum's own determination whether to admit or exclude evidence relevant in the Bakers' wrongful-death case before it. In that light, we see no altruism in GM's agreement not to institute contempt or breach-of-contract proceedings against Elwell in Michigan for giving subpoenaed testimony elsewhere. Rather, we find it telling that GM ruled out resort to the court that entered the injunction, for injunctions are ordinarily enforced by the enjoining court, not by a surrogate tribunal. See *supra*, at 236.

In sum, Michigan has no authority to shield a witness from another jurisdiction's subpoena power in a case involving persons and causes outside Michigan's governance. Recog-

nition, under full faith and credit, is owed to dispositions Michigan has authority to order. But a Michigan decree cannot command obedience elsewhere on a matter the Michigan court lacks authority to resolve. See *Thomas* v. *Washington Gas Light Co.*, 448 U. S. 261, 282–283 (1980) (plurality opinion) ("Full faith and credit must be given to [a] determination that [a State's tribunal] had the authority to make; but by a parity of reasoning, full faith and credit need not be given to determinations that it had no power to make.").

* * *

For the reasons stated, the judgment of the Court of Appeals for the Eighth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE SCALIA, concurring in the judgment.

I agree with the Court that enforcement measures do not travel with sister-state judgments as preclusive effects do. *Ante*, at 235. It has long been established that "the judgment of a state Court cannot be enforced out of the state by an execution issued within it." *McElmoyle ex rel. Bailey* v. *Cohen*, 13 Pet. 312, 325 (1839). To recite that principle is to decide this case.

General Motors asked a District Court in Missouri to *enforce* a Michigan injunction. The Missouri court was no more obliged to enforce the Michigan injunction by preventing Elwell from presenting his testimony than it was obliged to enforce it by holding Elwell in contempt. The Full Faith and Credit Clause "'did not make the judgments of other States domestic judgments to all intents and purposes, but only gave a general validity, faith, and credit to them, *as evidence.* No execution can issue upon such judgments without a new suit in the tribunals of other States.'" *Thompson* v. *Whitman*, 18 Wall. 457, 462–463 (1874) (empha-

sis added) (quoting J. Story, Conflict of Laws § 609 (7th ed. 1872)). A judgment or decree of one State, to be sure, may be grounds for an action (or a defense to one) in another. But the Clause and its implementing statute

> "establish a rule of evidence, rather than of jurisdiction. While they make the record of a judgment, rendered after due notice in one State, conclusive evidence in the courts of another State, or of the United States, of the matter adjudged, they do not affect the jurisdiction, either of the court in which the judgment is rendered, or of the court in which it is offered in evidence. Judgments recovered in one State of the Union, when proved in the courts of another government, whether state or national, within the United States, differ from judgments recovered in a foreign country in no other respect than in not being reexaminable on their merits, nor impeachable for fraud in obtaining them, if rendered by a court having jurisdiction of the cause and of the parties." *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, 291–292 (1888) (citation omitted).

The judgment that General Motors obtained in Michigan "'does not carry with it, into another State, the efficacy of a judgment upon property or persons, to be enforced by execution. To give it the force of a judgment in another State, it must be made a judgment there; and can only be executed in the latter as its laws may permit.'" *Lynde* v. *Lynde*, 181 U. S. 183, 187 (1901) (quoting *McElmoyle*, *supra*, at 325). See, *e. g.*, *Watts* v. *Waddle*, 6 Pet. 389, 392 (1832), a case involving a suit to obtain an equity decree ordering the conveyance of land, duplicating such a decree already issued in another State.

Because neither the Full Faith and Credit Clause nor its implementing statute requires Missouri to execute the injunction issued by the courts of Michigan, I concur in the judgment.

JUSTICE KENNEDY, with whom JUSTICE O'CONNOR and JUSTICE THOMAS join, concurring in the judgment.

I concur in the judgment. In my view the case is controlled by well-settled full faith and credit principles which render the majority's extended analysis unnecessary and, with all due respect, problematic in some degree. This separate opinion explains my approach.

I

The majority, of course, is correct to hold that when a judgment is presented to the courts of a second State it may not be denied enforcement based upon some disagreement with the laws of the State of rendition. Full faith and credit forbids the second State to question a judgment on these grounds. There can be little doubt of this proposition. We have often recognized the second State's obligation to give effect to another State's judgments even when the law underlying those judgments contravenes the public policy of the second State. See, *e. g.*, *Estin* v. *Estin*, 334 U. S. 541, 544–546 (1948); *Sherrer* v. *Sherrer*, 334 U. S. 343, 354–355 (1948); *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, 438 (1943); *Williams* v. *North Carolina*, 317 U. S. 287, 294–295 (1942); *Fauntleroy* v. *Lum*, 210 U. S. 230, 237 (1908).

My concern is that the majority, having stated the principle, proceeds to disregard it by announcing two broad exceptions. First, the majority would allow courts outside the issuing State to decline to enforce those judgments "purport-[ing] to accomplish an official act within the exclusive province of [a sister] State." *Ante*, at 235. Second, the basic rule of full faith and credit is said not to cover injunctions "interfer[ing] with litigation over which the ordering State had no authority." *Ibid.* The exceptions the majority recognizes are neither consistent with its rejection of a public policy exception to full faith and credit nor in accord with established rules implementing the Full Faith and Credit Clause. As employed to resolve this case, furthermore, the

exceptions to full faith and credit have a potential for disrupting judgments, and this ought to give us considerable pause.

Our decisions have been careful not to foreclose all effect for the types of injunctions the majority would place outside the ambit of full faith and credit. These authorities seem to be disregarded by today's holding. For example, the majority chooses to discuss the extent to which courts may compel the conveyance of property in other jurisdictions. That subject has proved to be quite difficult. Some of our cases uphold actions by state courts affecting land outside their territorial reach. *E. g.*, *Robertson* v. *Howard*, 229 U. S. 254, 261 (1913) ("[I]t may not be doubted that a court of equity in one State in a proper case could compel a defendant before it to convey property situated in another State"); see also *Carpenter* v. *Strange*, 141 U. S. 87, 105–106 (1891); *Muller* v. *Dows*, 94 U. S. 444, 449 (1877); *Massie* v. *Watts*, 6 Cranch 148 (1810). See generally 11A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2945, pp. 98–102 (2d ed. 1995); Restatement (Second) of Conflict of Laws § 102, Comment *d* (1969); Reese, Full Faith and Credit to Foreign Equity Decrees, 42 Iowa L. Rev. 183, 199–200 (1957). Nor have we undertaken before today to announce an exception which denies full faith and credit based on the principle that the prior judgment interferes with litigation pending in another jurisdiction. See, *e. g.*, *Cole* v. *Cunningham*, 133 U. S. 107, 116–117 (1890); *Simon* v. *Southern R. Co.*, 236 U. S. 115, 122 (1915); cf. *Baltimore & Ohio R. Co.* v. *Kepner*, 314 U. S. 44, 51–52 (1941); *Donovan* v. *Dallas*, 377 U. S. 408, 415–418 (1964) (Harlan, J., dissenting). See generally Reese, *supra*, at 198 ("[T]he Supreme Court has not yet had occasion to determine whether [the practice of ignoring antisuit injunctions] is consistent with full faith and credit"). As a general matter, there is disagreement among the state courts as to their duty to recognize decrees enjoining proceedings in other courts. See Schopler, Extraterritorial recognition of, and propriety of counterinjunction against, injunction

against actions in courts of other states, 74 A. L. R. 2d 831–834, §§ 3–4 (1960 and Supp. 1986).

Subjects which are at once so fundamental and so delicate as these ought to be addressed only in a case necessarily requiring their discussion, and even then with caution lest we announce rules which will not be sound in later application. See Restatement, *supra*, § 102, Comment *c* ("The Supreme Court of the United States has not had occasion to determine whether full faith and credit requires a State of the United States to enforce a valid judgment of a sister State that orders the doing of an act other than the payment of money or that enjoins the doing of an act"); E. Scoles & P. Hay, Conflict of Laws § 24.9, p. 964 (2d ed. 1992) (noting that interstate recognition of equity decrees other than divorce decrees and decrees ordering payment of money "has been a matter of some uncertainty"). We might be required to hold, if some future case raises the issue, that an otherwise valid judgment cannot intrude upon essential processes of courts outside the issuing State in certain narrow circumstances, but we need not announce or define that principle here. Even if some qualification of full faith and credit were required where the judicial processes of a second State are sought to be controlled in their procedural and institutional aspects, the Court's discussion does not provide sufficient guidance on how this exception should be construed in light of our precedents. The majority's broad review of these matters does not articulate the rationale underlying its conclusions. In the absence of more elaboration, it is unclear what it is about the particular injunction here that renders it undeserving of full faith and credit. The Court's reliance upon unidentified principles to justify omitting certain types of injunctions from the doctrine's application leaves its decision in uneasy tension with its own rejection of a broad public policy exception to full faith and credit.

The following example illustrates the uncertainty surrounding the majority's approach. Suppose the Bakers had anticipated the need for Elwell's testimony in Missouri and

had appeared in a Michigan court to litigate the privileged character of the testimony it sought to elicit. Assume further the law on privilege were the same in both jurisdictions. If Elwell, General Motors (GM), and the Bakers were before the Michigan court and Michigan law gave its own injunction preclusive effect, the Bakers could not relitigate the point, if general principles of issue preclusion control. Perhaps the argument can be made, as the majority appears to say, that the integrity of Missouri's judicial processes demands a rule allowing relitigation of the issue; but, for the reasons given below, we need not confront this interesting question.

In any event, the rule would be an exception. Full faith and credit requires courts to do more than provide for direct enforcement of the judgments issued by other States. It also "requires federal courts to give the same preclusive effect to state court judgments that those judgments would be given in the courts of the State from which the judgments emerged." *Kremer* v. *Chemical Constr. Corp.*, 456 U. S. 461, 466 (1982); accord, *Parsons Steel, Inc.* v. *First Alabama Bank*, 474 U. S. 518, 525 (1986); *Marrese* v. *American Academy of Orthopaedic Surgeons*, 470 U. S. 373, 380–381, 384 (1985); *Migra* v. *Warren City School Dist. Bd. of Ed.*, 465 U. S. 75, 81 (1984); *Haring* v. *Prosise*, 462 U. S. 306, 313 (1983); *Allen* v. *McCurry*, 449 U. S. 90, 96 (1980). Through full faith and credit, "the local doctrines of *res judicata*, speaking generally, become a part of national jurisprudence . . . ." *Riley* v. *New York Trust Co.*, 315 U. S. 343, 349 (1942). And whether or not an injunction is enforceable in another State on its own terms, the courts of a second State are required to honor its issue preclusive effects. See *Parsons Steel, supra;* 18 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4467, p. 635 (1981).

II

In the case before us, of course, the Bakers were neither parties to the earlier litigation nor subject to the jurisdiction

of the Michigan courts. The majority pays scant attention to this circumstance, which becomes critical. The beginning point of full faith and credit analysis requires a determination of the effect the judgment has in the courts of the issuing State. In our most recent full faith and credit cases, we have said that determining the force and effect of a judgment should be the first step in our analysis. *Matsushita Elec. Industrial Co.* v. *Epstein*, 516 U. S. 367, 375 (1996); *Marrese*, *supra*, at 381–382; *Haring*, *supra*, at 314; see also *Kremer*, *supra*, at 466–467. "If the state courts would not give preclusive effect to the prior judgment, 'the courts of the United States can accord it no greater efficacy' under § 1738." *Haring*, *supra*, at 313, n. 6 (quoting *Union & Planters' Bank* v. *Memphis*, 189 U. S. 71, 75 (1903)); accord, *Marrese*, 470 U. S., at 384. A conclusion that the issuing State would not give the prior judgment preclusive effect ends the inquiry, making it unnecessary to determine the existence of any exceptions to full faith and credit. *Id.*, at 383, 386. We cannot decline to inquire into these state-law questions when the inquiry will obviate new extensions or exceptions to full faith and credit. See *Haring*, *supra*, at 314, n. 8.

If we honor the undoubted principle that courts need give a prior judgment no more force or effect that the issuing State gives it, the case before us is resolved. Here the Court of Appeals and both parties in their arguments before our Court seemed to embrace the assumption that Michigan would apply the full force of its judgment to the Bakers. Michigan law does not appear to support the assumption.

The simple fact is that the Bakers were not parties to the Michigan proceedings, and nothing indicates Michigan would make the novel assertion that its earlier injunction binds the Bakers or any other party not then before it or subject to its jurisdiction. For collateral estoppel to apply under Michigan law, "'the same parties must have had a full opportunity to litigate the issue, and there must be mutuality of estoppel.'" *Nummer* v. *Treasury Dept.*, 448 Mich. 534, 542, 533

N. W. 2d 250, 253 (quoting *Storey* v. *Meijer, Inc.*, 431 Mich. 368, 373, n. 3, 429 N. W. 2d 169, 171, n. 3 (1988)), cert. denied, 516 U. S. 964 (1995). "Although there is a trend in modern law to abolish the requirement of mutuality, this Court reaffirmed its commitment to that doctrine in 1971 in [*Howell* v. *Vito's Trucking & Excavating Co.*, 386 Mich. 37, 191 N. W. 2d 313]. Mutuality of estoppel remains the law in this jurisdiction . . . ." *Lichon* v. *American Universal Ins. Co.*, 435 Mich. 408, 427–428, 459 N. W. 2d 288, 298 (1990) (footnote omitted). Since the Bakers were not parties to the Michigan proceedings and had no opportunity to litigate any of the issues presented, it appears that Michigan law would not treat them as bound by the judgment. The majority cites no authority to the contrary.

It makes no difference that the judgment in question is an injunction. The Michigan Supreme Court has twice rejected arguments that injunctions have preclusive effect in later litigation, relying in no small part on the fact that the persons against whom preclusion is asserted were not parties to the earlier litigation. *Bacon* v. *Walden*, 186 Mich. 139, 144, 152 N. W. 1061, 1063 (1915) ("Defendant was not a party to [the prior injunctive] suit and was not as a matter of law affected or bound by the decree rendered in it"); *Detroit* v. *Detroit R. Co.*, 134 Mich. 11, 15, 95 N. W. 992, 993 (1903) ("[T]he fact that defendant was in no way a party to the record is sufficient answer to the contention that the holding of the circuit judge in that [prior injunctive] case is a controlling determination of the present").

The opinion of the Court of Appeals suggests the Michigan court which issued the injunction intended to bind third parties in litigation in other States. 86 F. 3d 811, 820 (CA8 1996). The question, however, is not what a trial court intended in a particular case but the preclusive effect its judgment has under the controlling legal principles of its own State. Full faith and credit measures the effect of a judgment by all the laws of the rendering State, including author-

itative rulings of that State's highest court on questions of issue preclusion and jurisdiction over third parties. See *Kremer*, 456 U. S., at 466; *Matsushita*, *supra*, at 375.

The fact that other Michigan trial courts refused to reconsider the injunction but instead required litigants to return to the trial court which issued it in the first place sheds little light on the substance of issue preclusion law in Michigan. In construing state law, we must determine how the highest court of the State would decide an issue. See *King* v. *Order of United Commercial Travelers of America*, 333 U. S. 153, 160–161 (1948); *Commissioner* v. *Estate of Bosch*, 387 U. S. 456, 464–465 (1967).

In this case, moreover, those Michigan trial courts which declined to modify the injunction did not appear to base their rulings on preclusion law. They relied instead on Michigan Court Rule 2.613(B), which directs parties wishing to modify an injunction to present their arguments to the court which entered it. See Brief for Respondent 10. Rule 2.613(B) is a procedural rule based on comity concerns, not a preclusion rule. It reflects Michigan's determination that, within the State of Michigan itself, respect for the issuing court and judicial resources are best preserved by allowing the issuing court to determine whether the injunction should apply to further proceedings. As a procedural rule, it is not binding on courts of another State by virtue of full faith and credit. See *Sun Oil Co.* v. *Wortman*, 486 U. S. 717, 722 (1988) ("[A] State may apply its own procedural rules to actions litigated in its courts"). The Bakers have never appeared in a Michigan court, and full faith and credit cannot be used to force them to subject themselves to Michigan's jurisdiction. See *Baker* v. *Baker, Eccles & Co.*, 242 U. S. 394, 403 (1917) ("And to assume that a party resident beyond the confines of a State is required to come within its borders and submit his personal controversy to its tribunals upon receiving notice of the suit at the place of his residence is a futile attempt

to extend the authority and control of a State beyond its own territory").

Under Michigan law, the burden of persuasion rests on the party raising preclusion as a defense. See *Detroit* v. *Qualls*, 434 Mich. 340, 357–358, 454 N. W. 2d 374, 383 (1990); *E & G Finance Co.* v. *Simms*, 362 Mich. 592, 596, 107 N. W. 2d 911, 914 (1961). In light of these doctrines and the absence of contrary authority, one cannot conclude that GM has carried its burden of showing that Michigan courts would bind the Bakers to the terms of the earlier injunction prohibiting Elwell from testifying. The result should come as no surprise. It is most unlikely that Michigan would give a judgment preclusive effect against a person who was not a party to the proceeding in which it was entered or who was not otherwise subject to the jurisdiction of the issuing court. See *Kremer*, *supra*, at 480–481 ("We have previously recognized that the judicially created doctrine of collateral estoppel does not apply when the party against whom the earlier decision is asserted did not have a 'full and fair opportunity' to litigate the claim or issue").

Although inconsistent on this point, GM disavows its desire to issue preclude the Bakers, claiming "the only party being 'bound' to the injunction is Elwell." Brief for Respondent 39. This is difficult to accept because in assessing the preclusive reach of a judgment we look to its practical effect. *E. g.*, *Martin* v. *Wilks*, 490 U. S. 755, 765, n. 6 (1989); cf., *e. g.*, *Donovan* v. *Dallas*, 377 U. S., at 413 ("[I]t does not matter that the prohibition here was addressed to the parties rather than to the federal court itself"); *Oklahoma Packing Co.* v. *Oklahoma Gas & Elec. Co.*, 309 U. S. 4, 9 (1940) ("That the injunction was a restraint of the parties and was not formally directed against the state court itself is immaterial"). Despite its disclaimer, GM seeks to alter the course of the suit between it and the Bakers by preventing the Bakers from litigating the admissibility of Elwell's testimony. Furthermore, even were we to accept GM's argument that

the Bakers are essentially irrelevant to this dispute, GM's argument is flawed on its own terms. Elwell, in the present litigation, does not seek to relitigate anything; he is a witness, not a party.

In all events, determining as a threshold matter the extent to which Michigan law gives preclusive effect to the injunction eliminates the need to decide whether full faith and credit applies to equitable decrees as a general matter or the extent to which the general rules of full faith and credit are subject to exceptions. Michigan law would not seek to bind the Bakers to the injunction and that suffices to resolve the case. For these reasons, I concur in the judgment.

Syllabus

ROGERS *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 96–1279. Argued November 5, 1997—Decided January 14, 1998

Petitioner was charged with the knowing possession of an unregistered and unserialized firearm in violation of 26 U. S. C. §§ 5861(d) and (i) as a result of the discovery of a silencer in his truck. A silencer is included within the meaning of "firearm" under § 5845(a)(7). Petitioner repeatedly admitted during his arrest and trial that he knew that the item found in his truck was in fact a silencer. The District Court denied petitioner's request for an instruction that defined the Government's burden of establishing "knowing possession" as proof that he had willfully and consciously possessed an item he knew to be a "firearm." Petitioner was convicted. Under *Staples* v. *United States*, 511 U. S. 600, decided after this case was submitted to the jury, the *mens rea* element of a violation of § 5861(d) requires the Government to prove that the defendant knew that the item he possessed had the characteristics that brought it within the statutory definition of a firearm. The Eleventh Circuit affirmed petitioner's conviction because the omission related to an element admitted by petitioner and, in light of his repeated admissions, the error was harmless beyond a reasonable doubt.

Held: The writ of certiorari is dismissed as improvidently granted.

Reported below: 94 F. 3d 1519.

JUSTICE STEVENS, joined by JUSTICE THOMAS, JUSTICE GINSBURG, and JUSTICE BREYER, concluded that the question on which this Court granted certiorari—whether failure to instruct on an element of an offense is harmless error where, at trial, the defendant admitted that element—is not fairly presented by the record, and that, accordingly, the writ must be dismissed as improvidently granted. The Eleventh Circuit's conclusion that the denial of petitioner's requested instruction effectively omitted an essential element of the § 5861 offenses was unwarranted for two reasons. First, the tendered instruction was ambiguous. It might have been interpreted to require proof that petitioner knew that his silencer was a "firearm" as defined by § 5845(a)(7), not merely that the item possessed certain offending characteristics. Second, and more important, a fair reading of the instructions as actually given did require the jury to find that petitioner knew that he possessed a silencer. The trial judge first explained to the jury that the statute defined "firearm" to include a silencer and then instructed that petitioner could not be found guilty without proof beyond a reasonable doubt that he "know-

ingly possessed a 'firearm,' as defined above." Since the term "firearm" had been "defined above" to include a silencer, that instruction required the jury to determine that petitioner knew that the item he possessed was a silencer. The instruction telling the jury that the Government need not prove that petitioner knew that his gun "was a 'firearm' which the law requires to be registered" is best read as merely explaining that a conviction did not require the jury to find that petitioner knew that the law required registration of the silencer. Under *United States* v. *Freed*, 401 U. S. 601, the Government was entitled to such an instruction. Pp. 256–259.

JUSTICE O'CONNOR concluded that it is sufficient to dismiss the writ that the instructions tendered by the District Court were ambiguous on whether the jury was asked to find, as is required by *Staples* v. *United States*, 511 U. S. 600, that petitioner knew that the item he possessed was a silencer. As a result, it is at least unclear whether the question the Court intended to address in this case is squarely presented. P. 259.

STEVENS, J., announced the decision of the Court and delivered an opinion, in which THOMAS, GINSBURG, and BREYER, JJ., joined. O'CONNOR, J., filed an opinion concurring in the result, in which SCALIA, J., joined, *post*, p. 259. KENNEDY, J., filed a dissenting opinion, in which REHNQUIST, C. J., and SOUTER, J., joined, *post*, p. 260.

Javier H. Rubinstein argued the cause for petitioner. With him on the briefs were *James D. Holzhauer*, *Robert M. Dow, Jr.*, *Gary S. Feinerman*, and *Richard C. Klugh*.

Jonathan E. Nuechterlein argued the cause for the United States. With him on the brief were *Acting Solicitor General Waxman*, *Acting Assistant Attorney General Keeney*, *Deputy Solicitor General Dreeben*, and *Louis M. Fischer*.

JUSTICE STEVENS announced the decision of the Court and delivered an opinion, in which JUSTICE THOMAS, JUSTICE GINSBURG, and JUSTICE BREYER join.

We granted certiorari, 520 U. S. 1239 (1997), to decide whether a district court's failure to instruct the jury on an element of an offense is harmless error where, at trial, the defendant admitted that element. Because we have concluded that the question is not fairly presented by the record, we dismiss the writ as improvidently granted.

I

Petitioner was charged with the knowing possession of an unregistered and unserialized firearm described as "a 9" by 1¾" silencer," App. 6–7, in violation of 26 U. S. C. §§ 5861(d) and (i).[1] Although he claimed that he did not know that the item was in a canvas bag found behind the driver's seat in his pickup truck when he was arrested, he candidly acknowledged that he knew it was a silencer. He repeated this admission during questioning by the police and in his testimony at trial; moreover, it was confirmed by his lawyer during argument to the jury.

Under our decision in *Staples* v. *United States*, 511 U. S. 600 (1994), the *mens rea* element of a violation of § 5861(d) requires the Government to prove that the defendant knew that the item he possessed had the characteristics that brought it within the statutory definition of a firearm.[2] It

[1] Section 5861 provides that "[i]t shall be unlawful for any person . . . (d) to receive or possess a firearm which is not registered to him in the National Firearms Registration and Transfer Record; or . . . (i) to receive or possess a firearm which is not identified by a serial number as required by this chapter." Section 5845(a) provides that "[t]he term 'firearm' means . . . (7) any silencer (as defined in section 921 of title 18, United States Code)."

In a separate count petitioner was charged with the unlawful possession of a machinegun in violation of 18 U. S. C. § 922(*o*). His conviction on that count was reversed on appeal after the Government conceded that the evidence did not establish that petitioner knew that the gun had been modified to act as a fully automatic weapon. 94 F. 3d 1519, 1523 (CA11 1996). Reversal was therefore required under *Staples* v. *United States*, 511 U. S. 600 (1994), which was decided after the trial in this case.

[2] See *id.*, at 602 (Government must prove that defendant "knew the weapon he possessed had the characteristics that brought it within the statutory definition of a machinegun"); *id.*, at 604 ("[Section] 5861(d) requires proof that a defendant knew of the characteristics of his weapon that made it a 'firearm' under the Act"); *id.*, at 609 ("[Section] 5861(d) requires the defendant to know of the features that make his weapon a statutory 'firearm' "); *id.*, at 619 ("Thus, to obtain a conviction, the Government should have been required to prove that petitioner knew of the features of his AR–15 that brought it within the scope of the Act"); *id.*, at

is not, however, necessary to prove that the defendant knew that his possession was unlawful, or that the firearm was unregistered. *United States* v. *Freed*, 401 U. S. 601 (1971); see *Staples*, 511 U. S., at 609. Thus, in this case, petitioner's admission that he knew the item was a silencer constituted evidence sufficient to satisfy the *mens rea* element of the charged offenses. He nevertheless submits that his conviction is unconstitutional because, without an instruction from the trial judge defining that element of the offense, there has been no finding by the jury that each of the elements of the offense has been proved beyond a reasonable doubt. Relying on JUSTICE SCALIA's opinion concurring in the judgment in *Carella* v. *California*, 491 U. S. 263, 267 (1989) *(per curiam)*, petitioner contends that "'"the question is not whether guilt may be spelt out of a record, but whether guilt has been found by a jury according to the procedure and standards appropriate for criminal trials."'" Brief for Petitioner 20–21 (quoting *Carella*, 491 U. S., at 269 (in turn quoting *Bollenbach* v. *United States*, 326 U. S. 607, 614 (1946))).

The Court of Appeals for the Eleventh Circuit rejected petitioner's argument and affirmed his conviction. 94 F. 3d 1519 (1996). The Court of Appeals reasoned that the failure to give an instruction on an element of the offense can be harmless error if the "omission related to an element of the crime that the defendant in any case admitted,"[3] and that in this case petitioner's unequivocal and repeated admissions made it clear that the error was harmless beyond a reasonable doubt. In view of the fact that petitioner's submission relies on the Due Process Clause of the Fifth Amendment

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620 (Congress did not intend "to make outlaws of gun owners who were wholly ignorant of the offending characteristics of their weapons").

[3] 94 F. 3d, at 1526. The court also suggested that an instructional omission could be harmless if "the jury has necessarily found certain other predicate facts that are so closely related to the omitted element that no rational jury could find those facts without also finding the element." *Ibid.*

and the Sixth Amendment right to a jury trial, as interpreted in cases like *In re Winship,* 397 U. S. 358 (1970), and *Sullivan* v. *Louisiana,* 508 U. S. 275 (1993), it is clear that the Court of Appeals decided an important constitutional question. Given our tradition of avoiding the unnecessary or premature adjudication of such questions, see, *e. g.*, *New York City Transit Authority* v. *Beazer,* 440 U. S. 568, 582–583 (1979), we first consider whether the trial judge failed to give the jury an adequate instruction on the *mens rea* element of the offense.

II

Count 2 of the indictment charged that petitioner "knowingly" possessed an unregistered firearm, and Count 3 charged that he "knowingly" possessed a firearm that was not properly identified by a serial number. The trial judge denied petitioner's request for an instruction that defined the Government's burden of establishing " 'knowing possession' " as proof that "the defendant willfully and consciously possessed items which he knew to be 'firearms.' " App. 12. Apparently assuming that our holding in *Staples* required such an instruction, the Court of Appeals concluded that the trial judge's denial "effectively omitted from the instructions an essential element of the crime charged under § 5861(d)." 94 F. 3d, at 1524. For two reasons, we believe this assumption was unwarranted.

First, the tendered instruction was ambiguous. It might have been interpreted to require proof that the defendant knew that his silencer was a "firearm" as defined by the federal statute, not merely that the item possessed certain offending characteristics. Second, and of greater importance, a fair reading of the instructions as actually given did require the jury to find that petitioner knew that he possessed a silencer.

In his objections to the instruction that the trial judge originally proposed as a definition of the § 5861(d) offense

charged in Count 2, petitioner complained of "a third essential element in there, that being knowledge or knowing." App. 78. In response, the trial judge inserted the word "knowingly" between the words "Defendant" and "possessed" in the instruction defining the necessary *mens rea*.[4] In instructing the jury, the judge first explained that the statute defined the term "firearm" to include a silencer. He then instructed the jury that the defendant could not be found guilty without proof beyond a reasonable doubt that "the Defendant knowingly possessed a 'firearm,' as defined above." *Id.*, at 104. Since the term "firearm" had been "defined above" to include a silencer, that instruction required the jury to determine that the defendant knew that the item he possessed was a silencer.[5] A comparable instruction was given on Count 3.[6]

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[4] "THE COURT: You want me to insert knowingly between defendant and possessed in the first element, I don't care.

"MR. SALANTRIE: Sure. That would work.

"THE COURT: Okay." App. 78–79.

[5] JUSTICE KENNEDY argues that our "novel reading of the instruction," *post*, at 261, differs from the interpretation of the trial judge and petitioner's counsel. He is incorrect. First, as we point out, n. 4, *supra*, the judge responded to the defense counsel's objection to the proposed instruction by inserting "knowingly."

Second, the "colloquy," *post*, at 260, between the defense counsel and the trial court concerning the instruction in fact supports our interpretation. A "fair reading of the record," *ibid.*, reveals the following:

The defense counsel begins his objection to the instruction by arguing that the Government must prove that the defendant knew that the law required registration of the silencer. App. 84. After some discussion, the defense counsel, by referencing the holding in *United States* v. *Anderson*, 885 F. 2d 1248 (CA5 1989) (en banc), shifts his argument to contend that the defendant had to have knowledge of the offending characteristics of the firearm. App. 86. The trial judge responds to this objection as follows:

"THE COURT: If you'll just read the last sentence [of the instruction] *you're adequately protected, sir.*

"MR. SALANTRIE: It seems the first sentence and the second sentence are mutually exclusive. *One says it's not required for him to have*

[Footnote 6 is on p. 258]

Petitioner also has called our attention to the instruction which told the jury that it was not necessary for the Government to prove that petitioner knew that the item "was a 'firearm' which the law requires to be registered." *Ibid.* Given the fact that the jurors had previously been told that a conviction requires that they find that petitioner knew the item was a silencer, this instruction is best read as merely explaining that a conviction did not require the jury to find that the defendant knew that the law required registration of the silencer. Under our decision in *Freed*, the Government was entitled to such an instruction.

We assume that the trial judge would have been more explicit in explaining the *mens rea* element of these offenses if *Staples* had been decided prior to submitting the case to the jury. However, in this case, we are satisfied that the instructions as given did inform the jurors that they must find that the defendant knew that the silencer was in fact a si-

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knowledge that it's a firearm. The second says it is. It has firearm in quotes.

. . . . .

"THE COURT: Your client has gotten on the stand and testified that he knew instantly that that silencer was a silencer . . . . We could take that sentence out of there.

"MR. SALANTRIE: He didn't say he knew it should be registered." *Id.*, at 87 (emphasis added).

Thus, the trial judge explicitly interpreted the instruction as satisfying the defense counsel's objection concerning the requirement that the defendant have knowledge of the offending characteristics of the firearm. The defense counsel, whose objection continually shifted between arguing that the defendant must know the offending characteristics of the firearm and that the defendant must know that the law requires the firearm to be registered, also agreed that the instruction "required for him to have knowledge that it's a firearm." *Ibid.* Ultimately, he merely argued that "the first sentence"—pertaining to knowledge of the registration requirement—was inconsistent with the requirement that the jury find that the defendant have knowledge of the offending characteristics of the firearm. *Ibid.*

[6] *Id.*, at 105. In a footnote, the Court of Appeals noted that although the reasoning in *Staples* only involved § 5861(d), it logically applied equally to § 5861(i). 94 F. 3d, at 1524, n. 8.

lencer.[7] We therefore conclude that the record does not fairly present the question that we granted certiorari to address. Accordingly, the writ is dismissed as improvidently granted.

It is so ordered.

Justice O'Connor, with whom Justice Scalia joins, concurring in the result.

As the plurality points out, we granted certiorari to address an important issue of constitutional law, and we ought not to decide the question if it has not been cleanly presented. In my view, it is sufficient to dismiss the writ that the instructions tendered by the District Court were ambiguous on whether the jury was asked to find, as is required by *Staples* v. *United States*, 511 U. S. 600 (1994), that petitioner "knew that the item he possessed was a silencer," *ante*, at 257. As a result, it is at least unclear whether the question we intended to address in this case—whether a district court's failure to instruct the jury on an element of an offense is harmless error where, at trial, the defendant admitted that element—is squarely presented. For that reason, I concur in the dismissal of the writ as improvidently granted. I share the plurality's concern, *ante* this page, n. 7, that trial courts should structure their instructions in cases implicating *Staples* in a way that prevents the possible interpretation identified by Justice Kennedy in his dissent.

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[7] Of course, if the instruction merely required the jury to find that the defendant knowingly possessed a canvas bag, or knowingly possessed a dangerous item that might not have had the characteristics of a silencer, it would not have complied with *Staples*. Our disposition is based on our view that the instruction required the jury to find that the defendant knew that he possessed a device having all the characteristics of a silencer. It would be wise for trial courts to explain the *Staples* requirement more carefully than the instruction used in this case to foreclose any possibility that jurors might interpret the instruction as Justice Kennedy does in his dissent.

JUSTICE KENNEDY, with whom THE CHIEF JUSTICE and JUSTICE SOUTER join, dissenting.

The case was submitted to a jury prior to our decision in *Staples* v. *United States*, 511 U. S. 600 (1994), and there was a colloquy between defense counsel and the trial court about whether the Government was required to show the defendant knew the object was a silencer. See, *e. g.*, App. 84–87. A fair reading of the record indicates that, consistent with then-governing Eleventh Circuit precedent, see 94 F. 3d 1519, 1523, n. 7 (1996), the trial court ruled this knowledge was not a necessary part of the Government's case.

Under the trial court's instructions, the defendant could be found guilty if he "knowingly possessed a 'firearm,' as defined above." App. 104. The word "knowingly" in the instruction modifies the word which follows it, viz., "possessed," rather than the instruction's further reference to the statutory definition of "firearm." Although in other circumstances one might argue the instruction was ambiguous, here the trial court agreed with the defendant's understanding of it. The trial court explained to the jury: "What must be proved beyond a reasonable doubt is that the Defendant knowingly possessed the item as charged, that such item was a 'firearm' as defined above, and that [it] was not then registered to the Defendant in the National Firearms Registration and Transfer Record." *Ibid.* As understood by the trial court, *ibid.*, petitioner's counsel, Brief for Petitioner 2, the Solicitor General, Brief for United States 12, and the Court of Appeals, 94 F. 3d, at 1523, the instruction told the jury it had to find the defendant knew he possessed the device in question but not that he knew it was a silencer.

The plurality proceeds, however, to find not even that the instruction was ambiguous, but that it was a satisfactory implementation of our later announced decision in *Staples*. And, though the Court in the end does nothing more than order the case dismissed, the plurality by its extensive discussion suggests, in effect, that all convictions based on this

form of instruction must be affirmed. This is a substantive point; it was neither briefed nor argued; it is contrary to a commonsense reading of the instruction; and it tends to diminish the force of *Staples* itself.

If the plurality wishes to persist in its interpretation of the instruction, it ought to issue a full opinion addressing the merits of the conviction, rather than mask a substantive determination in its opinion supporting dismissal. As things stand, it brings little credit to us to get rid of the case by a strained and novel reading of the instruction—a reading quite unsupportable on the record—after we granted certiorari and expended the Court's resources to determine a different and important issue of substantive criminal law. The petitioner, whose conviction now stands based on what is for practical purposes an affirmance on a theory no one has suggested until now, will be hard put to understand the plurality's cavalier refusal to address his substantive arguments.

I dissent from the order dismissing the case.

Syllabus

LACHANCE, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT *v.* ERICKSON ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 96–1395. Argued December 2, 1997—Decided January 21, 1998*

Respondents, federal employees subject to adverse actions by their agencies, each made false statements to agency investigators with respect to the misconduct with which they were charged. In each case, the agency additionally charged the false statement as a ground for adverse action, and the action taken against the employee was based in part on the added charge. The Merit Systems Protection Board (Board) upheld that portion of each penalty that was based on the underlying charge, but overturned the false statement portion, ruling, *inter alia*, that the claimed statement could not be considered in setting the appropriate punishment. In separate appeals, the Federal Circuit agreed with the Board that no penalty could be based on a false denial of the underlying claim.

Held: Neither the Fifth Amendment's Due Process Clause nor the Civil Service Reform Act, 5 U. S. C. § 1101 *et seq.*, precludes a federal agency from sanctioning an employee for making false statements to the agency regarding his alleged employment-related misconduct. It is impossible to square the result reached below with the holding in, *e. g.*, *Bryson* v. *United States*, 396 U. S. 64, 72, that a citizen may decline to answer a Government question, or answer it honestly, but cannot with impunity knowingly and willfully answer it with a falsehood. There is no hint of a right to falsely deny charged conduct in § 7513(a), which authorizes an agency to impose the sort of penalties involved here "for such cause as will promote the efficiency of the service," and then accords the employee four carefully delineated procedural rights—advance written notice of the charges, a reasonable time to answer, legal representation, and a specific written decision. Nor can such a right be found in due process, the core of which is the right to notice and a meaningful opportunity to be heard. Even assuming that respondents had a protected property interest in their employment, this Court rejects, both on the basis of precedent and principle, the Federal Circuit's view that a

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*Together with *Lachance, Director, Office of Personnel Management* v. *McManus et al.*, also on certiorari to the same court (see this Court's Rule 12.4).

Syllabus

"meaningful opportunity to be heard" includes a right to make false statements with respect to the charged conduct. It is well established that a criminal defendant's right to testify does not include the right to commit perjury, *e. g.*, *Nix* v. *Whiteside*, 475 U. S. 157, 173, and that punishment may constitutionally be imposed, *e. g.*, *United States* v. *Wong*, 431 U. S. 174, 178, or enhanced, *e. g.*, *United States* v. *Dunnigan*, 507 U. S. 87, 97, because of perjury or the filing of a false affidavit required by statute, *e. g.*, *Dennis* v. *United States*, 384 U. S. 855. The fact that respondents were not under oath is irrelevant, since they were not charged with perjury, but with making false statements during an agency investigation, a charge that does not require sworn statements. Moreover, any claim that employees not allowed to make false statements might be coerced into admitting misconduct, whether they believe that they are guilty or not, in order to avoid the more severe penalty of removal for falsification is entirely frivolous. *United States* v. *Grayson*, 438 U. S. 41, 55. If answering an agency's investigatory question could expose an employee to a criminal prosecution, he may exercise his Fifth Amendment right to remain silent. See, *e. g.*, *Hale* v. *Henkel*, 201 U. S. 43, 67. An agency, in ascertaining the truth or falsity of the charge, might take that failure to respond into consideration, see *Baxter* v. *Palmigiano*, 425 U. S. 308, 318, but there is nothing inherently irrational about such an investigative posture, see *Konigsberg* v. *State Bar of Cal.*, 366 U. S. 36. Pp. 265–268.

89 F. 3d 1575 (first judgment), and 92 F. 3d 1208 (second judgment), reversed.

REHNQUIST, C. J., delivered the opinion for a unanimous Court.

Solicitor General Waxman argued the cause for petitioner. With him on the briefs were *Acting Solicitor General Dellinger*, *Assistant Attorney General Hunger*, *Roy W. McLeese III*, *David M. Cohen*, *Todd M. Hughes*, *Lorraine Lewis*, *Steven E. Abow*, and *Joseph E. McCann.*

Paul E. Marth argued the cause and filed a brief for respondent Erickson. *John R. Koch* filed a brief for respondent Walsh. *Neil C. Bonney* filed a brief for respondent Kye.†

†*Jody M. Litchford*, *James P. Manak*, and *Wayne W. Schmidt* filed a brief for the International Association of Chiefs of Police, Inc., as *amicus curiae* urging reversal.

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

The question presented by this action is whether either the Due Process Clause or the Civil Service Reform Act of 1978 (CSRA), 5 U. S. C. § 1101 *et seq.*, precludes a federal agency from sanctioning an employee for making false statements to the agency regarding alleged employment-related misconduct on the part of the employee. We hold that they do not.

Respondents Walsh, Erickson, Kye, Barrett, Roberts, and McManus are Government employees who were the subject of adverse actions by the various agencies for which they worked. Each employee made false statements to agency investigators with respect to the misconduct with which they were charged. In each case, the agency additionally charged the false statement as a ground for adverse action, and the action taken in each was based in part on the added charge. The employees separately appealed the actions taken against them to the Merit Systems Protection Board (Board). The Board upheld that portion of the penalty based on the underlying charge in each case, but overturned the false statement charge. The Board further held that an employee's false statements could not be used for purposes of impeaching the employee's credibility, nor could they be considered in setting the appropriate punishment for the employee's underlying misconduct. Finally, the Board held that an agency may not charge an employee with failure to report an act of fraud when reporting such fraud would tend to implicate the employee in employment-related misconduct.

The Director of the Office of Personnel Management appealed each of these decisions by the Board to the Court of Appeals for the Federal Circuit. In a consolidated appeal involving the cases of Walsh, Erickson, Kye, Barrett, and Roberts, that court agreed with the Board that no penalty could be based on a false denial of the underlying claim.

King v. *Erickson*, 89 F. 3d 1575 (1996). Citing the Fifth Amendment's Due Process Clause, the court held that "an agency may not charge an employee with falsification or a similar charge on the ground of the employee's denial of another charge or of underlying facts relating to that other charge," nor may "[d]enials of charges and related facts . . . be considered in determining a penalty." *Id.*, at 1585. In a separate unpublished decision, judgt. order reported at 92 F. 3d 1208 (1996), the Court of Appeals affirmed the Board's reversal of the false statement charge against McManus as well as the Board's conclusion that an employee's "false statements . . . may not be considered" even for purposes of impeachment. *McManus* v. *Department of Justice*, 66 MSPR 564, 568 (1995).

We granted certiorari in both cases, 521 U. S. 1117 (1997), and now reverse. In *Bryson* v. *United States*, 396 U. S. 64 (1969), we said: "Our legal system provides methods for challenging the Government's right to ask questions—lying is not one of them. A citizen may decline to answer the question, or answer it honestly, but he cannot with impunity knowingly and willfully answer with a falsehood." *Id.*, at 72 (footnote omitted). We find it impossible to square the result reached by the Court of Appeals in the present case with our holding in *Bryson* and in other cases of similar import.

Title 5 U. S. C. § 7513(a) provides that an agency may impose the sort of penalties involved here "for such cause as will promote the efficiency of the service." It then sets forth four procedural rights accorded to the employee against whom adverse action is proposed. The agency must:

> (1) give the employee "at least 30 days' advance written notice"; (2) allow the employee "a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish . . . evidence in support of the answer"; (3) permit the employee to "be represented by an attorney or other representative"; and (4) provide the employee

> with "a written decision and the specific reasons therefor." 5 U. S. C. § 7513(b).

In these carefully delineated rights there is no hint of any right to "put the government to its proof" by falsely denying the charged conduct. Such a right, then, if it exists at all, must come from the Fifth Amendment of the United States Constitution.

The Fifth Amendment provides that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law . . . ." The Court of Appeals stated that "it is undisputed that the government employees here had a protected property interest in their employment," 89 F. 3d, at 1581, and we assume that to be the case for purposes of our decision.

The core of due process is the right to notice and a meaningful opportunity to be heard. *Cleveland Bd. of Ed.* v. *Loudermill*, 470 U. S. 532, 542 (1985). But we reject, on the basis of both precedent and principle, the view expressed by the Court of Appeals in this action that a "meaningful opportunity to be heard" includes a right to make false statements with respect to the charged conduct.

It is well established that a criminal defendant's right to testify does not include the right to commit perjury. *Nix* v. *Whiteside*, 475 U. S. 157, 173 (1986); *United States* v. *Havens*, 446 U. S. 620, 626 (1980); *United States* v. *Grayson*, 438 U. S. 41, 54 (1978). Indeed, in *United States* v. *Dunnigan*, 507 U. S. 87, 97 (1993), we held that a court could, consistent with the Constitution, enhance a criminal defendant's sentence based on a finding that he perjured himself at trial.

Witnesses appearing before a grand jury under oath are likewise required to testify truthfully, on pain of being prosecuted for perjury. *United States* v. *Wong*, 431 U. S. 174 (1977). There we said that "the predicament of being forced to choose between incriminatory truth and falsehood . . . does not justify perjury." *Id.*, at 178. Similarly, one who files a

false affidavit required by statute may be fined and imprisoned. *Dennis* v. *United States*, 384 U. S. 855 (1966).

The Court of Appeals sought to distinguish these cases on the ground that the defendants in them had been under oath, while here the respondents were not. The fact that respondents were not under oath, of course, negates a charge of perjury, but that is not the charge brought against them. They were charged with making false statements during the course of an agency investigation, a charge that does not require that the statements be made under oath. While the Court of Appeals would apparently permit the imposition of punishment for the former but not the latter, we fail to see how the presence or absence of an oath is material to the due process inquiry.

The Court of Appeals also relied on its fear that if employees were not allowed to make false statements, they might "be coerced into admitting the misconduct, whether they believe that they are guilty or not, in order to avoid the more severe penalty of removal possibly resulting from a falsification charge." App. to Pet. for Cert. 16a–17a. But we rejected a similar claim in *United States* v. *Grayson*, 438 U. S. 41 (1978). There a sentencing judge took into consideration his belief that the defendant had testified falsely at his trial. The defendant argued before us that such a practice would inhibit the exercise of the right to testify truthfully in the proceeding. We described that contention as "entirely frivolous." *Id.*, at 55.

If answering an agency's investigatory question could expose an employee to a criminal prosecution, he may exercise his Fifth Amendment right to remain silent. See *Hale* v. *Henkel*, 201 U. S. 43, 67 (1906); *United States* v. *Ward*, 448 U. S. 242, 248 (1980). It may well be that an agency, in ascertaining the truth or falsity of the charge, would take into consideration the failure of the employee to respond. See *Baxter* v. *Palmigiano*, 425 U. S. 308, 318 (1976) (discussing the "prevailing rule that the Fifth Amendment does not for-

bid adverse inferences against parties to civil actions when they refuse to testify"). But there is nothing inherently irrational about such an investigative posture. See *Konigsberg* v. *State Bar of Cal.*, 366 U. S. 36 (1961).

For these reasons, we hold that a Government agency may take adverse action against an employee because the employee made false statements in response to an underlying charge of misconduct. The judgments of the Court of Appeals are therefore

Reversed.

Syllabus

BUCHANAN *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 96–8400. Argued November 3, 1997—Decided January 21, 1998

Following petitioner Buchanan's conviction of the capital murders of his father, stepmother, and two brothers, the prosecutor sought the death penalty based on Virginia's aggravating factor that the crime was vile. During the sentencing hearing, there were two days of testimony as to Buchanan's troubled family background and mental and emotional problems, and the prosecutor and defense counsel both made extensive arguments on the mitigating evidence and the effect it should be given in sentencing. The trial court instructed the jury, *inter alia*, that if it found beyond a reasonable doubt that Buchanan's conduct was vile, "then you may fix the punishment . . . at death," but "if you believe from all the evidence that . . . death . . . is not justified, then you shall fix the punishment . . . at life imprisonment." The court refused Buchanan's request to give four additional instructions on particular statutory mitigating factors and a general instruction on the concept of mitigating evidence. The jury returned a verdict of death, the trial court imposed that sentence, and the Virginia Supreme Court affirmed. The Federal District Court then denied Buchanan habeas corpus relief, and the Fourth Circuit affirmed.

Held: The absence of instructions on the concept of mitigation and on particular statutorily defined mitigating factors did not violate the Eighth and Fourteenth Amendments. In arguing to the contrary, Buchanan fails to distinguish between the differing constitutional treatment this Court has accorded the two phases of the capital sentencing process: the eligibility phase, in which the jury narrows the class of death-penalty-eligible defendants, and the selection phase here at issue, in which the jury determines whether to impose a death sentence on an eligible defendant. See, *e. g., Tuilaepa* v. *California*, 512 U. S. 967, 971–972. In the selection phase, the state may shape and structure the jury's consideration of mitigating evidence, so long as restrictions on the sentencing determination do not preclude the jury from giving effect to any such evidence. *E. g., Penry* v. *Lynaugh*, 492 U. S. 302, 317–318. The determinative standard is whether there is a reasonable likelihood that the jury has applied its instructions in a way that prevents consideration of constitutionally relevant evidence. *E. g., Boyde* v. *California*, 494 U. S. 370, 380. The instructions here did not violate these con-

stitutional principles. This conclusion is confirmed by the context in which the instructions were given. The court directed the jurors to base their decision on "all the evidence" and to impose a life sentence if they believed the evidence so warranted, there was extensive testimony as to Buchanan's family background and mental and emotional problems, and counsel made detailed arguments on the mitigating evidence. Because the parties in effect *agreed* that there was substantial mitigating evidence and that the jury had to weigh that evidence against Buchanan's conduct in making a discretionary decision on the appropriate penalty, there is not a reasonable likelihood that the jurors understood the instructions to preclude consideration of relevant mitigating evidence. Pp. 275–279.

103 F. 3d 344, affirmed.

REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, SOUTER, and THOMAS, JJ., joined. SCALIA, J., filed a concurring opinion, *post,* p. 279. BREYER, J., filed a dissenting opinion, in which STEVENS and GINSBURG, JJ., joined, *post,* p. 280.

Gerald T. Zerkin, by appointment of the Court, 520 U. S. 1227, argued the cause for petitioner. With him on the brief were *Frank K. Friedman*, *John H. Blume*, and *Mark E. Olive*.

Richard Cullen, Attorney General of Virginia, argued the cause for respondent. With him on the brief were *David E. Anderson*, Chief Deputy Attorney General, and *Katherine P. Baldwin*, Assistant Attorney General.*

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

This case calls on us to decide whether the Eighth Amendment requires that a capital jury be instructed on the concept of mitigating evidence generally, or on particular statutory mitigating factors. We hold it does not.

**Lisa Kemler* filed a brief for the National Association of Criminal Defense Lawyers as *amicus curiae* urging reversal.

Kent S. Scheidegger filed a brief for the Criminal Justice Legal Foundation as *amicus curiae* urging affirmance.

On the afternoon of September 15, 1987, Douglas Buchanan murdered his father, stepmother, and two younger brothers. Buchanan was convicted of the capital murder of more than one person as part of the same act or transaction by a jury in the Circuit Court of Amherst County, Virginia. See Va. Code Ann. § 18.2–31(7) (1996). A separate sentencing hearing was held, in which the prosecutor sought the death penalty on the basis of Virginia's aggravating factor that the crime was vile. See Va. Code Ann. § 19.2–264.3 (1995).

In his opening statement in this proceeding, the prosecutor told the jury that he would be asking for the death penalty based on vileness. He conceded that Buchanan had had a troubled childhood and informed the jury that it would have to balance the things in petitioner's favor against the crimes he had committed. App. 25–27. Defense counsel outlined the mitigating evidence he would present and told the jury that he was asking that petitioner not be executed based on that evidence. *Id.*, at 29. For two days, the jury heard evidence from seven defense witnesses and eight prosecution witnesses. Buchanan's witnesses recounted his mother's early death from breast cancer, his father's subsequent remarriage, and his parents' attempts to prevent him from seeing his maternal relatives. A psychiatrist also testified that Buchanan was under extreme emotional disturbance at the time of the crime, based largely on stress caused by the manner in which the family had dealt with and reacted to his mother's death. Two mental health experts testified for the prosecution. They agreed generally with the factual events of petitioner's life but not with their effect on his commission of the crimes.

In closing argument, the prosecutor told the jury that "even if you find that there was that vileness . . . you do not have to return the death sentence. I will not suggest that to you." *Id.*, at 43. While admitting the existence of mitigating evidence, and agreeing that the jury had to weigh that

evidence against petitioner's conduct, the prosecutor argued that the circumstances warranted the death penalty. *Id.*, at 43–44, 57–58. Defense counsel also explained the concept of mitigation and noted that "practically any factor can be considered in mitigation." He discussed at length petitioner's lack of prior criminal activity, his extreme mental or emotional disturbance at the time of the offense, his significantly impaired capacity to appreciate the criminality of his conduct or to conform his conduct to the law's requirements, and his youth. Counsel argued that these four mitigating factors, recognized in the Virginia Code, mitigated Buchanan's offense. *Id.*, at 59–61, 64–66.

The Commonwealth and Buchanan agreed that the court should instruct the jury with Virginia's pattern capital sentencing instruction.[1] That instruction told the jury that before it could fix the penalty at death, the Commonwealth first must prove beyond a reasonable doubt that the conduct was vile. The instruction next stated that if the jury found that condition met, "then you may fix the punishment of the Defendant at death or if you believe from all the evidence that the death penalty is not justified, then you shall fix the pun-

[1] The complete instruction is as follows:

"You have convicted the defendant of an offense which may be punishable by death. You must decide whether the defendant should be sentenced to death or to life imprisonment.

"Before the penalty can be fixed at death, the Commonwealth must prove beyond a reasonable doubt that his conduct in committing the murders of [his family] was outrageously or wantonly vile, horrible or inhuman, in that it involved torture, depravity of mind or aggravated battery to the above four victims, or to any one of them.

"If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the requirements of the preceding paragraph, then you may fix the punishment of the Defendant at death or if you believe from all the evidence that the death penalty is not justified, then you shall fix the punishment of the Defendant at life imprisonment.

"If the Commonwealth has failed to prove beyond a reasonable doubt the requirements of the second paragraph in this instruction, then you shall fix the punishment of the Defendant at life imprisonment." App. 73.

ishment of the Defendant at life imprisonment." *Id.*, at 73. The instruction then stated that if the jury did not find the condition met, the jury must impose a life sentence. This instruction was given without objection. *Id.*, at 39.

Buchanan requested several additional jury instructions. He proposed four instructions on particular mitigating factors—no significant history of prior criminal activity; extreme mental or emotional disturbance; significantly impaired capacity to appreciate the criminality of his conduct or to conform his conduct to the law's requirements; and his age. These four factors are listed as facts in mitigation of the offense in the Virginia Code.[2] Each of Buchanan's proposed instructions stated that if the jury found the factor to exist, "then that is a fact which mitigates against imposing the death penalty, and you shall consider that fact in deciding whether to impose a sentence of death or life imprisonment." *Id.*, at 75–76.[3] Buchanan also proposed an instruction stating that, "[i]n addition to the mitigating factors specified in other instructions, you shall consider the circumstances surrounding the offense, the history and background of [Buchanan,] and any other facts in mitigation of the offense." *Id.*, at 74. The court refused to give these instructions, relying on Virginia case law holding that it was not proper to

[2] "Evidence which may be admissible, subject to the rules of evidence governing admissibility, may include the circumstances surrounding the offense, the history and background of the defendant, and any other facts in mitigation of the offense. Facts in mitigation may include, but shall not be limited to, the following: (i) The defendant has no significant history of prior criminal activity, (ii) the capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance, . . . (iv) at the time of the commission of the capital felony, the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was significantly impaired, (v) the age of the defendant at the time of the commission of the capital offense . . . ." Va. Code Ann. § 19.2–264.4(B) (1995) (amended, not in relevant part).

[3] The proposed instruction on age simply told the jury that petitioner's age "is a fact which mitigates" that the jury "shall consider." App. 75–76.

give instructions singling out certain mitigating factors to the sentencing jury. *Id.*, at 39–40.

The jury was instructed that once it reached a decision on its two options, imposing a life sentence or imposing the death penalty, the foreman should sign the corresponding verdict form. The death penalty verdict form stated that the jury had unanimously found petitioner's conduct to be vile and that "having considered the evidence in mitigation of the offense," it unanimously fixed his punishment at death. *Id.*, at 77. When the jury returned with a verdict for the death penalty, the court read the verdict form and polled each juror on his agreement with the verdict.

The court, after a statutorily mandated sentencing hearing, see Va. Code Ann. § 19.2–264.5 (1995), subsequently imposed the sentence fixed by the jury. On direct appeal, the Virginia Supreme Court reviewed Buchanan's sentence for proportionality, see Va. Code Ann. §§ 17.110.1–17.110.2 (1996), and affirmed his conviction and death sentence. *Buchanan* v. *Commonwealth*, 238 Va. 389, 384 S. E. 2d 757 (1989), cert. denied *sub nom. Buchanan* v. *Virginia*, 493 U. S. 1063 (1990).

Petitioner then sought federal habeas relief. The District Court denied the petition. The Court of Appeals for the Fourth Circuit affirmed. 103 F. 3d 344 (1996). That court recognized that the Eighth Amendment requires that a capital sentencing jury's discretion be " 'guided and channeled by requiring examination of specific factors that argue in favor of or against imposition of the death penalty' " in order to eliminate arbitrariness and capriciousness. *Id.*, at 347 (quoting *Proffitt* v. *Florida*, 428 U. S. 242, 258 (1976)). However, relying on our decision in *Zant* v. *Stephens*, 462 U. S. 862, 890 (1983), and on its own precedent, the court concluded that the Eighth Amendment does not require States to adopt specific standards for instructing juries on mitigating circumstances. 103 F. 3d, at 347. It therefore held that by allowing the jury to consider all relevant mitigating evidence, Virginia's sentencing procedure satisfied the Eighth

Amendment requirement of individualized sentencing in capital cases. *Id.*, at 347–348. We granted certiorari, 520 U. S. 1196 (1997), and now affirm.

Petitioner contends that the trial court violated his Eighth and Fourteenth Amendment rights to be free from arbitrary and capricious imposition of the death penalty when it failed to provide the jury with express guidance on the concept of mitigation, and to instruct the jury on particular statutorily defined mitigating factors. This lack of guidance, it is argued, renders his sentence constitutionally unacceptable.

Petitioner initially recognizes, as he must, that our cases have distinguished between two different aspects of the capital sentencing process, the eligibility phase and the selection phase. *Tuilaepa* v. *California*, 512 U. S. 967, 971 (1994). In the eligibility phase, the jury narrows the class of defendants eligible for the death penalty, often through consideration of aggravating circumstances. *Ibid.* In the selection phase, the jury determines whether to impose a death sentence on an eligible defendant. *Id.*, at 972. Petitioner concedes that it is only the selection phase that is at stake in his case. He argues, however, that our decisions indicate that the jury at the selection phase must both have discretion to make an individualized determination and have that discretion limited and channeled. See, *e. g.*, *Gregg* v. *Georgia*, 428 U. S. 153, 206–207 (1976). He further argues that the Eighth Amendment therefore requires the court to instruct the jury on its obligation and authority to consider mitigating evidence, and on particular mitigating factors deemed relevant by the State.

No such rule has ever been adopted by this Court. While petitioner appropriately recognizes the distinction between the eligibility and selection phases, he fails to distinguish the differing constitutional treatment we have accorded those two aspects of capital sentencing. It is in regard to the eligibility phase that we have stressed the need for channeling and limiting the jury's discretion to ensure that the death

penalty is a proportionate punishment and therefore not arbitrary or capricious in its imposition. In contrast, in the selection phase, we have emphasized the need for a broad inquiry into all relevant mitigating evidence to allow an individualized determination. *Tuilaepa*, *supra*, at 971–973; *Romano* v. *Oklahoma*, 512 U. S. 1, 6–7 (1994); *McCleskey* v. *Kemp*, 481 U. S. 279, 304–306 (1987); *Stephens*, *supra*, at 878–879.

In the selection phase, our cases have established that the sentencer may not be precluded from considering, and may not refuse to consider, any constitutionally relevant mitigating evidence. *Penry* v. *Lynaugh*, 492 U. S. 302, 317–318 (1989); *Eddings* v. *Oklahoma*, 455 U. S. 104, 113–114 (1982); *Lockett* v. *Ohio*, 438 U. S. 586, 604 (1978). However, the state may shape and structure the jury's consideration of mitigation so long as it does not preclude the jury from giving effect to any relevant mitigating evidence. *Johnson* v. *Texas*, 509 U. S. 350, 362 (1993); *Penry*, *supra*, at 326; *Franklin* v. *Lynaugh*, 487 U. S. 164, 181 (1988). Our consistent concern has been that restrictions on the jury's sentencing determination not preclude the jury from being able to give effect to mitigating evidence. Thus, in *Boyde* v. *California*, 494 U. S. 370 (1990), we held that the standard for determining whether jury instructions satisfy these principles was "whether there is a reasonable likelihood that the jury has applied the challenged instruction in a way that prevents the consideration of constitutionally relevant evidence." *Id.*, at 380; see also *Johnson*, *supra*, at 367–368.

But we have never gone further and held that the state must affirmatively structure in a particular way the manner in which juries consider mitigating evidence. And indeed, our decisions suggest that complete jury discretion is constitutionally permissible. See *Tuilaepa*, *supra*, at 978–979 (noting that at the selection phase, the state is not confined to submitting specific propositional questions to the jury and may indeed allow the jury unbridled discretion); *Stephens*,

supra, at 875 (rejecting the argument that a scheme permitting the jury to exercise "unbridled discretion" in determining whether to impose the death penalty after it has found the defendant eligible is unconstitutional, and noting that accepting that argument would require the Court to overrule *Gregg*, *supra*).

The jury instruction here did not violate these constitutional principles. The instruction did not foreclose the jury's consideration of any mitigating evidence. By directing the jury to base its decision on "all the evidence," the instruction afforded jurors an opportunity to consider mitigating evidence. The instruction informed the jurors that if they found the aggravating factor proved beyond a reasonable doubt then they "may fix" the penalty at death, but directed that if they believed that all the evidence justified a lesser sentence then they "shall" impose a life sentence. The jury was thus allowed to impose a life sentence even if it found the aggravating factor proved. Moreover, in contrast to the Texas special issues scheme in question in *Penry*, *supra*, at 326, the instructions here did not constrain the manner in which the jury was able to give effect to mitigation.[4]

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[4] The dissent relies on an argument regarding the Virginia pattern sentencing instruction that petitioner belatedly attempted to adopt at oral argument. *Post*, at 280–284. This claim was waived, since petitioner expressly agreed to the pattern instruction at trial, the instruction was given without objection, and petitioner never raised this claim previously.

In any event, the dissent's theory does not make sense. The dissent suggests that the disjunctive "or" clauses in the third paragraph may lead the jury to think that it can only impose life imprisonment *if it does not find the aggravator proved.* But this interpretation is at odds with the ordinary meaning of the instruction's language and structure. The instruction presents a simple decisional tree. The second paragraph states that the Commonwealth must prove the aggravator beyond a reasonable doubt. The third and fourth paragraphs give the jury alternative tasks according to whether the Commonwealth succeeds or fails in meeting its burden. The third paragraph states that "if" the aggravator is proved,

Even were we to entertain some doubt as to the clarity of the instructions, the entire context in which the instructions were given expressly informed the jury that it could consider mitigating evidence. In *Boyde*, we considered the validity of an instruction listing 11 factors that the jury was to consider in determining punishment, including a catchall factor allowing consideration of "'[a]ny other circumstance which extenuates the gravity of the crime.'" 494 U. S., at 373–374. We expressly noted that even were the instruction at all unclear, "the context of the proceedings would have led reasonable jurors to believe that evidence of petitioner's background and character could be considered in mitigation." *Id.*, at 383. We found it unlikely that reasonable jurors would believe that the court's instructions transformed four days of defense testimony on the defendant's background and character "'into a virtual charade.'" *Ibid.* (quoting *California* v. *Brown*, 479 U. S. 538, 542 (1987)).

Similarly, here, there were two days of testimony relating to petitioner's family background and mental and emotional problems. It is not likely that the jury would disregard this extensive testimony in making its decision, particularly given the instruction to consider "all the evidence." Further buttressing this conclusion are the extensive arguments of both defense counsel and the prosecutor on the mitigating evidence and the effect it should be given in the sentencing determination. The parties in effect *agreed* that there was substantial mitigating evidence and that the jury had to

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the jury may choose between death and life. The fourth paragraph states that "if" the aggravator is not proved, the jury must impose life. The "if" clauses clearly condition the choices that follow. And since the fourth paragraph tells the jury what to do if the aggravator is *not* proved, the third paragraph clearly involves only the jury's task if the aggravator *is* proved. The fact that counsel and the court agreed to this instruction is strong evidence that the "misconception" envisioned by the dissent could result only from a strained parsing of the language.

weigh that evidence against petitioner's conduct in making a discretionary decision on the appropriate penalty. In this context, "there is not a reasonable likelihood that the jurors in petitioner's case understood the challenged instructions to preclude consideration of relevant mitigating evidence offered by petitioner." *Boyde*, *supra*, at 386; see also *Johnson*, 509 U. S., at 367.

The absence of an instruction on the concept of mitigation and of instructions on particular statutorily defined mitigating factors did not violate the Eighth and Fourteenth Amendments to the United States Constitution. The judgment of the Court of Appeals is

Affirmed.

JUSTICE SCALIA, concurring.

I agree that there is no "reasonable likelihood that the jurors in petitioner's case understood the challenged instructions to preclude consideration of relevant mitigating evidence," *Boyde* v. *California*, 494 U. S. 370, 386 (1990), so I join the opinion of the Court. I continue to adhere to my view that the Eighth Amendment does not, in any event, require that sentencing juries be given discretion to consider mitigating evidence. Petitioner's argument "that the jury at the selection phase must both have discretion to make an individualized determination and have that discretion limited and channeled," *ante*, at 275, perfectly describes the incompatibility between the *Lockett-Eddings* requirement and the holding of *Furman* v. *Georgia*, 408 U. S. 238 (1972) *(per curiam)*, that the sentencer's discretion must be constrained to avoid arbitrary or freakish imposition of the death penalty. See *Walton* v. *Arizona*, 497 U. S. 639, 656 (1990) (SCALIA, J., concurring in part and concurring in judgment). The Court's ongoing attempt to resolve that contradiction by drawing an arbitrary line in the sand between the "eligibility and selection phases" of the sentencing decision is, in my view, incoherent and ultimately doomed to failure.

JUSTICE BREYER, with whom JUSTICE STEVENS and JUSTICE GINSBURG join, dissenting.

The imposition of a penalty of death must be "directly related to the personal culpability of the criminal defendant," and "reflect a reasoned *moral* response to the defendant's background, character, and crime." *California* v. *Brown*, 479 U. S. 538, 545 (1987) (O'CONNOR, J., concurring). Consequently, a judge's instructions during penalty phase proceedings may not preclude the jury "from considering, as a mitigating factor, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." *Lockett* v. *Ohio*, 438 U. S. 586, 604 (1978) (emphasis deleted). The majority recognizes that "the standard for determining whether jury instructions satisfy these principles [is] 'whether there is a reasonable likelihood that the jury has applied the challenged instruction in a way that prevents the consideration of constitutionally relevant evidence.'" *Ante*, at 276 (quoting *Boyde* v. *California*, 494 U. S. 370, 380 (1990)). In my view, the majority misapplies this standard.

The relevant instruction, read in its entirety, indicates that there is a "reasonable likelihood" that the jury understood and "applied the challenged instruction" in a way that prevented it from considering "constitutionally relevant evidence," namely, the extensive evidence that the defendant presented in mitigation. The instruction, which petitioner argued should have been supplemented by additional discussion of mitigation, App. 74–76, read as follows:

> "[1] You have convicted the defendant of an offense which may be punishable by death. You must decide whether the defendant should be sentenced to death or to life imprisonment.
>
> "[2] Before the penalty can be fixed at death, the Commonwealth must prove beyond a reasonable doubt that his conduct in committing the murders of Douglas McArthur Buchanan, Sr., Christopher Donald Buchanan,

> Joel Jerry Buchanan and Geraldine Patterson Buchanan, or any one of them, was outrageously or wantonly vile, horrible or inhuman, in that it involved torture, depravity of mind or aggravated battery to the above four victims, or to any one of them.
>
> "[3] If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the requirements of the preceding paragraph, then you may fix the punishment of the Defendant at death or if you believe from all the evidence that the death penalty is not justified, then you shall fix the punishment of the Defendant at life imprisonment.
>
> "[4] If the Commonwealth has failed to prove beyond a reasonable doubt the requirements of the second paragraph in this instruction, then you shall fix the punishment of the Defendant at life imprisonment.
>
> "[5] In order to return a sentence of death, all twelve jurors must unanimously agree on that sentence." *Id.*, at 73–74.

The majority believes that paragraph 3 contains language telling the jury it may consider defendant's mitigating evidence, specifically the phrase:

> "or if you believe from all the evidence that the death penalty is not justified, then you shall fix the punishment of the Defendant at life imprisonment."

See *ante*, at 277. I believe that these words, read in the context of the entire instruction, do the opposite. In context, they are part of an instruction which seems to say that, if the jury finds the State has proved aggravating circumstances that make the defendant eligible for the death penalty, the jury may "fix the punishment . . . at death," but if the jury finds that the State has not proved aggravating circumstances that make the defendant eligible for the death penalty, then the jury must "fix the punishment . . . at life imprisonment." To say this without more—and there was

no more—is to tell the jury that evidence of mitigating circumstances (concerning, say, the defendant's childhood and his troubled relationships with the victims) is not relevant to their sentencing decision.

The reader might now review the instructions themselves with the following paraphrase in mind: Paragraph 1 tells the jury that it must decide between death or life imprisonment. Paragraph 2 sets forth potential aggravating circumstances of the crime, thereby explaining to the jury what experienced death penalty lawyers would understand as "aggravators" (*i. e.*, the criteria for "death eligibility"). This paragraph says that the jury cannot impose the death penalty unless the Commonwealth proves (beyond a reasonable doubt) that at least one of the murders was "outrageously or wantonly vile, horrible or inhuman, in that it involved torture, depravity of mind or aggravated battery."

Paragraph 3—the key paragraph—repeats that, if the jury finds that the Commonwealth has proved death eligibility, the jury "may fix the punishment . . . at death." It immediately adds in the same sentence "or if you believe from all the evidence that the death penalty is not justified, then you shall fix the punishment . . . at life imprisonment." It is the stringing together of these two phrases, along with the use of the connective "or," that leads to a potential understanding of the paragraph as saying, "If you find the defendant eligible for death, you may impose the death penalty, but if you find (on the basis of 'all the evidence') that the death penalty is not 'justified,' which is to say that the defendant is not eligible for the death penalty, then you must impose life imprisonment." Without any further explanation, the jury might well believe that whether death is, or is not, "justified" turns on the presence or absence of Paragraph 2's aggravating circumstances of the crime—not upon the defendant's mitigating evidence about his upbringing and other factors.

Paragraph 4 makes matters worse. It adds that the Commonwealth's failure to prove the aggravating factors which

make the defendant eligible for the death penalty means that the jury must fix the punishment at life imprisonment. It is the position of the paragraph, coming just after the key phrase "or if you believe from all the evidence that the death penalty is not justified," that suggests reading it as a further explanation of when the death penalty is not "justified." So read, this paragraph reinforces the misconception that paragraph 3 creates.

Were the jury made up of experienced death penalty lawyers, it might understand these instructions differently—in the way that the Court understands them. Lawyers who represent capital defendants are aware of the differences between the "eligibility" phase, with its "aggravators," and the "selection" phase, with its mitigating evidence. Thus, they might read Paragraph 2 as setting forth the "eligibility" criteria, Paragraph 3 as setting forth what happens next should the jury find the defendant death eligible, and Paragraph 4 as setting forth what happens next should the jury find the defendant ineligible for death. Such lawyers might then read Paragraph 3's "or" as connecting the two "selection phase" alternatives—the first (death) if there is insufficient mitigation, and the second (life imprisonment) if there is sufficient mitigation. These lawyers, however, would be parsing the instructions in a highly complicated, technical way that they alone are likely to understand. Theirs is not the meaning that a natural reading of the language suggests, either to lawyers who are not well versed in death penalty litigation, or to jurors who are not lawyers.

A further explanation of the special sense of "not justified"—so that the jury did not read those words as referring to the absence of Paragraph 2's "aggravators"—would have cleared matters up. So would some mention of mitigating evidence anywhere in the instructions. But there was no clarification of "not justified," and the instructions say nothing at all about mitigating evidence. Why then would a lay jury, trying to follow the instructions, not have believed that

its life or death decision depended simply upon the presence or absence of Paragraph 2's "aggravators"? So interpreted, this instruction would clearly violate *Lockett*'s requirement that instructions permit the jury to give effect to mitigating evidence.

The majority cannot find precedent supporting its position. In *Boyde*, the Court found a set of jury instructions constitutionally sufficient, but those instructions explicitly referred to mitigation and told the jury about weighing aggravating against mitigating circumstances. *Boyde*, 494 U. S., at 373–374, and n. 1. In *Johnson* v. *Texas*, 509 U. S. 350 (1993), the Court found a set of jury instructions constitutionally sufficient which concededly did not expressly mention mitigation. But those instructions told the jury to take account of factors (the defendant's future dangerousness) broad enough to cover the mitigating circumstance (youth) that the defendant there had raised. *Id.*, at 354. See also *Franklin* v. *Lynaugh*, 487 U. S. 164, 183–188 (1988) (O'CONNOR, J., concurring in judgment) (same). And in *Penry* v. *Lynaugh*, 492 U. S. 302 (1989), the Court found constitutionally *inadequate* a set of jury instructions similar to those in *Johnson*, but applied in a case involving mitigating evidence (mental retardation) that was *not* encompassed by the factors specifically mentioned in the instructions (the deliberateness of the defendant's actions; the defendant's future dangerousness; and provocation by the deceased).

All the state pattern jury instructions that the parties or *amici* have cited explicitly mention the jury's consideration of mitigating evidence. After this Court decided *Franklin*, *Penry*, and *Johnson*, Texas adopted a pattern instruction that specifically mentions mitigation. 8 M. McCormick, T. Blackwell, & B. Blackwell, Texas Practice §§ 98.18–98.19 (10th ed. 1995); see also Tex. Crim. Proc. Code Ann., Art. 37.071 (Vernon Supp. 1996–1997). Virginia, too, has recently amended its pattern instructions so that, unlike the instruction now before us, they require the jury to consider "any

evidence presented of circumstances which do not justify or excuse the offense but which in fairness or mercy may extenuate or reduce the degree of moral culpability and punishment." Virginia Model Jury Instructions, Criminal, Instruction No. 34.127 (1993 and Supp. 1995).

Finally, unlike the majority, I do not believe that "the entire context in which the instructions were given," *ante*, at 278, can make up for their failings. I concede that the defense presented considerable evidence about the defendant's background. But the *presentation* of evidence does not tell the jury that the evidence presented is relevant and can be taken into account—particularly in the context of an instruction that seems to exclude the evidence from the universe of relevant considerations. Cf. *Hitchcock* v. *Dugger*, 481 U. S. 393, 397–398 (1987); *Penry*, *supra*, at 319 ("[I]t is not enough simply to allow the defendant to present mitigating evidence to the sentencer"). I also realize that the defense attorney told the jury the evidence was relevant, and the prosecution conceded the point. But a jury may well consider such advice from a defense attorney to be advocacy which it should ignore or discount. And the jury here might have lost the significance of the prosecution's concession, for that concession made a brief appearance in lengthy opening and closing arguments, the basic point of which was that the evidence did not sufficiently mitigate the crime but warranted death.

Though statements by counsel can help a jury understand a judge's instructions, they cannot make up for so serious a misinstruction, with such significant consequences as are present here. The jury will look to the judge, not to counsel, for authoritative direction about what it is to do with the evidence that it hears. *Taylor* v. *Kentucky*, 436 U. S. 478, 488–489 (1978); see also *Carter* v. *Kentucky*, 450 U. S. 288, 302, n. 20 (1981). For the reasons I have mentioned, taking the instructions and the context together, the judge's instructions created a "reasonable likelihood" that the jury "applied the challenged instruction in a way that prevents

the consideration of constitutionally relevant evidence." *Boyde*, *supra*, at 380. To uphold the instructions given here is to "risk that the death penalty will be imposed in spite of factors which may call for a less severe penalty." *Lockett*, 438 U. S., at 605. To do so therefore breaks the promise made in *Brown* that the imposition of the punishment of death will "reflect a reasoned moral response to the defendant's background, character, and crime." 479 U. S., at 545 (emphasis deleted).

For these reasons, I dissent.

Syllabus

LUNDING ET UX. *v.* NEW YORK TAX APPEALS TRIBUNAL ET AL.

CERTIORARI TO THE COURT OF APPEALS OF NEW YORK

No. 96–1462. Argued November 5, 1997—Decided January 21, 1998

New York Tax Law § 631(b)(6) effectively denies only nonresident taxpayers a state income tax deduction for alimony paid. Petitioners—a Connecticut couple required to pay higher taxes on their New York income when that State denied their attempted deduction of a pro rata portion of the alimony petitioner husband paid a previous spouse—exhausted their administrative remedies and commenced this action, asserting, among other things, that § 631(b)(6) discriminates against New York nonresidents in violation of the Privileges and Immunities Clause, U. S. Const., Art. IV, § 2. The Appellate Division of the New York Supreme Court agreed and held § 631(b)(6) to be unconstitutional, but the New York Court of Appeals reversed, holding that § 631(b)(6) was adequately justified because New York residents who are subject to taxation on all of their income regardless of source should be entitled to the benefit of full deduction of expenses, while personal expenses of a nonresident taxpayer are more appropriately allocated to the State of residence. The court also noted that § 631(b)(6)'s practical effect did not deny nonresidents all benefit of the alimony deduction, because they could claim the full amount of such payments in computing their hypothetical tax liability "as if" a resident, one of the steps involved in computing nonresident tax under New York law.

Held: In the absence of a substantial reason for the difference in treatment of New York nonresidents, § 631(b)(6) violates the Privileges and Immunities Clause by denying only nonresidents an income tax deduction for alimony payments. Pp. 296–315.

(a) While States have considerable discretion in formulating their income tax laws, that power must be exercised within the limits of the Federal Constitution. When confronted with a challenge under the Privileges and Immunities Clause to a law distinguishing between residents and nonresidents, a State may defend its position by demonstrating that "(i) there is a substantial reason for the difference in treatment; and (ii) the discrimination practiced against nonresidents bears a substantial relationship to the State's objective." *Supreme Court of N. H.* v. *Piper*, 470 U. S. 274, 284. Thus, New York must defend § 631(b)(6) with a substantial justification for its different treatment of nonresidents, including an explanation of how the discrimination relates

to the State's justification. *E. g., Shaffer* v. *Carter*, 252 U. S. 37, 55. Pp. 296–299.

(b) This Court's precedent respecting Privileges and Immunities Clause challenges to nonresident income tax provisions informs the review of the State's justification for § 631(b)(6). *Travis* v. *Yale & Towne Mfg. Co.*, 252 U. S. 60, 80–82, and *Austin* v. *New Hampshire*, 420 U. S. 656, 665, make clear that the Clause prohibits a State from denying nonresidents a general tax exemption provided to residents, and *Shaffer*, *supra*, at 57, and *Travis*, *supra*, at 75–76, establish that States may limit nonresidents' deductions of business expenses and nonbusiness deductions based on the relationship between those expenses and in-state property or income. While the latter decisions provide States considerable leeway in aligning nonresidents' tax burden to their in-state activities, neither those decisions nor *Austin* can be fairly read to hold that the Clause permits States to categorically deny personal deductions to a nonresident taxpayer without a substantial justification for the difference in treatment. Pp. 299–302.

(c) Respondents' attempt to justify § 631(b)(6)'s limitation on nonresidents' deduction of alimony payments by asserting that the State only has jurisdiction over their in-state activities is rejected. The State's contention that, under *Shaffer* and *Travis*, it should not be required to consider expenses "wholly linked to personal activities outside New York" does not suffice. Pp. 302–314.

(i) The New York Court of Appeals' decision upholding § 631(b)(6) does not contain any reasonable explanation or substantial justification for the discriminatory provision. The case on which that decision was based, *Goodwin* v. *State Tax Commission*, 286 App. Div. 694, 146 N. Y. S. 2d 172, aff'd, 1 N. Y. 2d 680, appeal dism'd, 352 U. S. 805, is of questionable relevance here, since it involved a state tax provision that is not analogous to § 631(b)(6), was rendered before New York adopted its present system of nonresident taxation, and was called into doubt in a subsequent decision. Unlike the New York Court of Appeals, this Court takes little comfort in the fact that inclusion of the alimony deduction in a nonresident's federal adjusted gross income reduces the nonresident's "as if" tax liability, because New York effectively takes the alimony deduction back in the "apportionment percentage" used to determine the actual tax owed. In summarizing its holding in the present case, the New York Court of Appeals explained that, because there could be no serious argument that petitioners' alimony deductions were legitimate business expenses, the approximate equality of tax treatment required by the Constitution was satisfied. This Court's precedent, however, should not be read to suggest that tax schemes allowing nonresidents to deduct only their business expenses are *per se* constitu-

tional. Accordingly, further inquiry into the State's justification for § 631(b)(6) in light of its practical effect is required. Pp. 303–306.

(ii) Respondents' arguments to this Court do not supply adequate justification for § 631(b)(6). The State's suggestion that the Court's summary dismissals in *Goodwin* and other cases should be dispositive here is rejected, because such dismissals do not have the same precedential value as do opinions of the Court after briefing and oral argument. Moreover, none of those cases involved the unique problem of the complete denial of deductions for nonresidents' alimony payments. Also unavailing is the State's reliance on a statement by one of its former Tax Commissioners that, because it cannot legally recognize the existence of non-New York source income, the State cannot recognize deductions of a personal nature unconnected with the production of income in New York. There is good reason to question whether that statement actually is a rationale for § 631(b)(6), given evidence that the State currently permits nonresidents what amounts to a pro rata deduction for personal expenses other than alimony and that, before 1987, it allowed them to deduct a pro rata share of alimony payments. Moreover, this Court is not satisfied by the State's argument that it need not consider the impact of disallowing nonresidents a deduction for alimony paid merely because alimony expenses are personal in nature, particularly in light of the inequities that could result when a nonresident with alimony obligations derives nearly all of her income from New York, a scenario that may be "typical," see *Travis*, *supra*, at 80. By requiring nonresidents to pay more tax than similarly situated residents solely on the basis of whether or not the nonresidents are liable for alimony payments, § 631(b)(6) violates the "rule of substantial equality of treatment" required by *Austin*, *supra*, at 665. Pp. 306–311.

(iii) The Court also rejects respondents' claim that § 631(b)(6) is justified by the State's adoption of an "income splitting" regime that creates parity in the tax treatment of the spouses in a dissolved marital relationship by allowing the alimony payer to exclude the payment from income and requiring the recipient to report a corresponding increase in income. Section 631(b)(6) disallows nonresidents' entire alimony expenses without consideration as to whether New York income tax will be paid by the alimony recipients. Respondents' analysis begs the question whether there is a substantial reason for this difference in treatment, and is therefore not appreciably distinct from the State's assertion that no justification is required because § 631(b)(6) does not concern business expenses. Pp. 311–313.

(iv) There is no basis in the record for the assertions of several respondents' state *amici* that § 631(b)(6) would have only a *de minimis* effect on the run-of-the-mill taxpayer or on comity among the States

because States typically give their residents a deduction or credit for income taxes paid to other States, so that the taxpayer would pay roughly the same overall tax. Further, the constitutionality of one State's statutes affecting nonresidents cannot depend upon the statutes of other States. *E. g., Austin, supra,* at 668. Pp. 313–314.

89 N. Y. 2d 283, 675 N. E. 2d 816, reversed and remanded.

O'CONNOR, J., delivered the opinion of the Court, in which STEVENS, SCALIA, SOUTER, THOMAS, and BREYER, JJ., joined. GINSBURG, J., filed a dissenting opinion, in which REHNQUIST, C. J., and KENNEDY, J., joined, *post,* p. 315.

Christopher H. Lunding, pro se, argued the cause for petitioners. With him on the briefs was *John E. Smith.*

Andrew D. Bing, Assistant Attorney General of New York, argued the cause for respondents. With him on the brief for respondent Commissioner of Taxation and Finance were *Dennis C. Vacco,* Attorney General, *Barbara G. Billet,* Solicitor General, and *Peter H. Schiff,* Deputy Solicitor General.*

JUSTICE O'CONNOR delivered the opinion of the Court.

The Privileges and Immunities Clause, U. S. Const., Art. IV, § 2, provides that "[t]he Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." In this case, we consider whether a provision of New York law that effectively denies only nonresident taxpayers an income tax deduction for alimony paid is consistent with that constitutional command. We conclude that because New York has not adequately justified the discrimi-

*A brief of *amici curiae* urging affirmance was filed for the State of Ohio et al. by *Betty D. Montgomery,* Attorney General of Ohio, *Jeffrey S. Sutton,* State Solicitor, and *Robert C. Maier* and *Barton A. Hubbard,* Assistant Attorneys General, and by the Attorneys General for their respective States as follows: *Winston Bryant* of Arkansas, *Daniel E. Lungren* of California, *Margery E. Bronster* of Hawaii, *Alan G. Lance* of Idaho, *James E. Ryan* of Illinois, *Jeremiah W. (Jay) Nixon* of Missouri, *Joseph P. Mazurek* of Montana, *Michael F. Easley* of North Carolina, *Jan Graham* of Utah, *William H. Sorrell* of Vermont, *Darrell V. McGraw* of West Virginia, and *James E. Doyle* of Wisconsin.

natory treatment of nonresidents effected by N. Y. Tax Law § 631(b)(6), the challenged provision violates the Privileges and Immunities Clause.

I

A

New York law requires nonresident individuals to pay tax on net income from New York real property or tangible personalty and net income from employment or business, trade, or professional operations in New York. See N. Y. Tax Law §§ 631(a), (b) (McKinney 1987). Under provisions enacted by the New York Legislature in 1987, the tax on such income is determined according to a method that takes into consideration the relationship between a nonresident taxpayer's New York source income and the taxpayer's total income, as reported to the Federal Government. § 601(e)(1).

Computation of the income tax nonresidents owe New York involves several steps. First, nonresidents must compute their tax liability "as if" they resided in New York. *Ibid.* The starting point for this computation is federal adjusted gross income, which, in accordance with the Internal Revenue Code, 26 U. S. C. § 215, includes a deduction for alimony payments. After various adjustments to federal adjusted gross income, nonresidents derive their "as if" resident taxable income from which "as if" resident tax is computed, using the same tax rates applicable to residents. Once the "as if" resident tax has been computed, nonresidents derive an "apportionment percentage" to be applied to that amount, based on the ratio of New York source income to federal adjusted gross income. N. Y. Tax Law § 601(e)(1). The denominator of the ratio, federal adjusted gross income, includes a deduction for alimony paid, by virtue of 26 U. S. C. § 215, as incorporated into New York law by N. Y. Tax Law § 612(a). The numerator, New York source income, includes the net income from property, employment, or business operations in New York, but, by operation of § 631(b)(6), specifi-

cally disallows any deduction for alimony paid.[1] In the last step of the computation, nonresidents multiply the "as if" resident tax by the apportionment percentage, thereby computing their actual New York income tax liability. There is no upper limit on the apportionment percentage. Thus, in circumstances where a nonresident's New York income, which does not include a deduction for alimony paid, exceeds federal adjusted gross income, which does, the nonresident will be liable for *more than* 100% of the "as if" resident tax.[2]

Section 631(b)(6) was enacted as part of New York's Tax Reform and Reduction Act of 1987. Until then, nonresidents were allowed to claim a pro rata deduction for alimony expenses, pursuant to a New York Court of Appeals decision holding that New York tax law then "reflected a policy decision that nonresidents be allowed the same non-business deductions as residents, but that such deductions be allowed to nonresidents in the proportion of their New York income to income from all sources." *Friedsam* v. *State Tax Comm'n*, 64 N. Y. 2d 76, 81, 473 N. E. 2d 1181, 1184 (1984) (internal quotation marks omitted); see also Memorandum of Governor, L. 1961, ch. 68, N. Y. State Legis. Ann., 1961, p. 398 (describing former N. Y. Tax Law § 635(c)(1), which permitted nonresidents to deduct a pro rata portion of their itemized deductions, then including alimony, as "represent[ing] the fairest and most equitable solution to the problem of many years' standing" respecting the taxation of nonresidents working in New York). Although there is no legislative history explaining the rationale for its enactment,

[1] Section 631(b)(6) provides that "[t]he deduction allowed by section two hundred fifteen of the internal revenue code, relating to alimony, shall not constitute a deduction derived from New York sources."

[2] See, *e. g.*, 1990 IT–203–I, Instructions for Form IT–203, Nonresident and Part-Year Resident Income Tax Return ("To figure your income percentage, divide the amount . . . in the *New York State Amount* column by the amount . . . in the *Federal Amount* column. . . . If the amount . . . in the *New York State Amount* column is more than the amount . . . in the *Federal Amount* column, the income percentage will be more than 100%").

§ 631(b)(6) clearly overruled *Friedsam*'s requirement that New York permit nonresidents a pro rata deduction for alimony payments.

B

In 1990, petitioners Christopher Lunding and his wife, Barbara, were residents of Connecticut. During that year, Christopher Lunding earned substantial income from the practice of law in New York. That year, he also incurred alimony expenses relating to the dissolution of a previous marriage. In accordance with New York law, petitioners filed a New York Nonresident Income Tax Return to report the New York earnings. Petitioners did not comply with the limitation in § 631(b)(6), however, instead deducting a pro rata portion of alimony paid in computing their New York income based on their determination that approximately 48% of Christopher's business income was attributable to New York.

The Audit Division of the New York Department of Taxation and Finance denied that deduction and recomputed petitioners' tax liability. After recalculation without the pro rata alimony deduction, petitioners owed an additional $3,724 in New York income taxes, plus interest. Petitioners appealed the additional assessment to the New York Division of Tax Appeals, asserting that § 631(b)(6) discriminates against New York nonresidents in violation of the Privileges and Immunities, Equal Protection, and Commerce Clauses of the Federal Constitution. After unsuccessful administrative appeals, in which their constitutional arguments were not addressed, petitioners commenced an action before the Appellate Division of the New York Supreme Court, pursuant to N. Y. Tax Law § 2016 (McKinney 1987).

The Appellate Division held that § 631(b)(6) violates the Privileges and Immunities Clause, relying upon its decision in *Friedsam* v. *State Tax Comm'n*, 98 App. Div. 2d 26, 470 N. Y. S. 2d 848 (3d Dept. 1983), which had been affirmed by the New York Court of Appeals, see *supra*, at 292. 218 App.

Div. 2d 268, 639 N. Y. S. 2d 519 (3d Dept. 1996). According to the court's reasoning, "although a disparity in treatment [of nonresidents] is permitted if valid reasons exist, the Privileges and Immunities Clause proscribes such conduct . . . where there is no substantial reason for the discrimination beyond the mere fact that [nonresidents] are citizens of other States." *Id.*, at 270, 639 N. Y. S. 2d, at 520 (internal quotation marks omitted). Thus, despite the intervening enactment of § 631(b)(6), the court concluded that "there exists no substantial reason for the disparate treatment, leaving as '[t]he only criterion . . . whether the payor is a resident or nonresident.'" *Id.*, at 272, 639 N. Y. S. 2d, at 521 (quoting *Friedsam*, *supra*, at 29, 470 N. Y. S. 2d, at 850).

Respondents appealed to the New York Court of Appeals, which reversed the lower court's ruling and upheld the constitutionality of § 631(b)(6). 89 N. Y. 2d 283, 675 N. E. 2d 816 (1996). In its decision, the New York Court of Appeals found that *Shaffer* v. *Carter*, 252 U. S. 37 (1920), and *Travis* v. *Yale & Towne Mfg. Co.*, 252 U. S. 60 (1920), "established that limiting taxation of nonresidents to their in-State income [is] a sufficient justification for similarly limiting their deductions to expenses derived from sources producing that in-State income," and that the constitutionality of a tax law should be determined based on its "'practical effect.'" 89 N. Y. 2d, at 288, 675 N. E. 2d, at 819. The court noted that "the Privileges and Immunities Clause does not mandate absolute equality in tax treatment," and quoted from *Supreme Court of N. H.* v. *Piper*, 470 U. S. 274, 284 (1985), in explaining that the Clause is not violated where "'(i) there is a substantial reason for the difference in treatment; and (ii) the discrimination practiced against nonresidents bears a substantial relationship to the State's objective.'" 89 N. Y. 2d, at 289, 675 N. E. 2d, at 820.

Applying those principles to § 631(b)(6), the court determined that the constitutionality of not allowing nonresidents to deduct personal expenses had been settled by *Goodwin* v.

State Tax Comm'n, 286 App. Div. 694, 146 N. Y. S. 2d 172, aff'd, 1 N. Y. 2d 680, 133 N. E. 2d 711 (1955), appeal dism'd, 352 U. S. 805 (1956), in which a New Jersey resident unsuccessfully challenged New York's denial of tax deductions respecting New Jersey real estate taxes, interest payments, medical expenses, and life insurance premiums. The *Lunding* court adopted two rationales from *Goodwin* in concluding that § 631(b)(6) was adequately justified. First, the court reasoned that because New York residents are subject to the burden of taxation on all of their income regardless of source, they should be entitled to the benefit of full deduction of expenses. Second, the court concluded that where deductions represent personal expenses of a nonresident taxpayer, they are more appropriately allocated to the State of residence. 89 N. Y. 2d, at 289–290, 675 N. E. 2d, at 820.

Based on those justifications for § 631(b)(6), the court distinguished this case from its post-*Goodwin* decision, *Golden* v. *Tully*, 58 N. Y. 2d 1047, 449 N. E. 2d 406 (1983), in which New York's policy of granting a moving expense deduction to residents while denying it to nonresidents was found to violate the Privileges and Immunities Clause because "[n]o other rationale" besides the taxpayer's nonresidence "was . . . proffered to justify the discrepancy in treating residents and nonresidents." According to the court, *Golden* was decided "solely on the narrow ground that the Tax Commission in its answer and bill of particulars had offered only nonresidence as the explanation for the disallowance" of nonresidents' moving expenses. 89 N. Y. 2d, at 290, 675 N. E. 2d, at 821. The court also distinguished *Friedsam*, *supra*, on the ground that § 631(b)(6) was enacted to overrule that decision. 89 N. Y. 2d, at 290, 675 N. E. 2d, at 821.

As to § 631(b)(6)'s practical effect, the court noted that "nonresidents are not denied all benefit of the alimony deduction since they can claim the full amount of such payments in computing the hypothetical tax liability 'as if a resident' under Tax Law § 601(e)." *Id.*, at 291, 675 N. E. 2d, at 821.

The court rejected petitioners' contention that the lack of legislative history explaining § 631(b)(6) was of any importance, finding that "substantial reasons for the disparity in tax treatment are apparent on the face of the statutory scheme." *Ibid.* The court also rejected petitioners' claims that § 631(b)(6) violates the Equal Protection and Commerce Clauses. *Ibid.* Those claims are not before this Court.

Recognizing that the ruling of the New York Court of Appeals in this case creates a clear conflict with the Oregon Supreme Court's decision in *Wood* v. *Department of Revenue*, 305 Ore. 23, 749 P. 2d 1169 (1988), and is in tension with the South Carolina Supreme Court's ruling in *Spencer* v. *South Carolina Tax Comm'n*, 281 S. C. 492, 316 S. E. 2d 386 (1984), aff'd by an equally divided Court, 471 U. S. 82 (1985), we granted certiorari. 520 U. S. 1227 (1997). We conclude that, in the absence of a substantial reason for the difference in treatment of nonresidents, § 631(b)(6) violates the Privileges and Immunities Clause by denying only nonresidents an income tax deduction for alimony payments.

II

A

The object of the Privileges and Immunities Clause is to "strongly . . . constitute the citizens of the United States one people," by "plac[ing] the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned." *Paul* v. *Virginia*, 8 Wall. 168, 180 (1869). One right thereby secured is the right of a citizen of any State to "remove to and carry on business in another without being subjected in property or person to taxes more onerous than the citizens of the latter State are subjected to." *Shaffer*, *supra*, at 56; see also *Toomer* v. *Witsell*, 334 U. S. 385, 396 (1948); *Ward* v. *Maryland*, 12 Wall. 418, 430 (1871).

Of course, nonresidents may "be required to make a ratable contribution in taxes for the support of the govern-

ment." *Shaffer*, 252 U. S., at 53. That duty is one "to pay taxes not more onerous in effect than those imposed under like circumstances upon citizens of the . . . State." *Ibid.;* see also *Ward* v. *Maryland*, *supra*, at 430 (nonresidents should not be "subjected to any higher tax or excise than that exacted by law of . . . permanent residents"). Nonetheless, as a practical matter, the Privileges and Immunities Clause affords no assurance of precise equality in taxation between residents and nonresidents of a particular State. Some differences may be inherent in any taxing scheme, given that, "[l]ike many other constitutional provisions, the privileges and immunities clause is not an absolute," *Toomer*, *supra*, at 396, and that "[a]bsolute equality is impracticable in taxation," *Maxwell* v. *Bugbee*, 250 U. S. 525, 543 (1919).

Because state legislatures must draw some distinctions in light of "local needs," they have considerable discretion in formulating tax policy. *Madden* v. *Kentucky*, 309 U. S. 83, 88 (1940). Thus, "where the question is whether a state taxing law contravenes rights secured by [the Federal Constitution], the decision must depend not upon any mere question of form, construction, or definition, but upon the practical operation and effect of the tax imposed." *Shaffer*, *supra*, at 55; see also *St. Louis Southwestern R. Co.* v. *Arkansas*, 235 U. S. 350, 362 (1914) ("[W]hen the question is whether a tax imposed by a State deprives a party of rights secured by the Federal Constitution, . . . [w]e must regard the substance, rather than the form, and the controlling test is to be found in the operation and effect of the law as applied and enforced by the State"). In short, as this Court has noted in the equal protection context, "inequalities that result not from hostile discrimination, but occasionally and incidentally in the application of a [tax] system that is not arbitrary in its classification, are not sufficient to defeat the law." *Maxwell*, *supra*, at 543.

We have described this balance as "a rule of substantial equality of treatment" for resident and nonresident taxpay-

ers. *Austin* v. *New Hampshire*, 420 U. S. 656, 665 (1975). Where nonresidents are subject to different treatment, there must be "reasonable ground for . . . diversity of treatment." *Travis*, 252 U. S., at 79; see also *Travellers' Ins. Co.* v. *Connecticut*, 185 U. S. 364, 371 (1902) ("It is enough that the State has secured a reasonably fair distribution of burdens"). As explained in *Toomer*, the Privileges and Immunities Clause bars

> "discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other States. But it does not preclude disparity of treatment in the many situations where there are perfectly valid independent reasons for it. Thus the inquiry in each case must be concerned with whether such reasons do exist and whether the degree of discrimination bears a close relationship to them. The inquiry must also, of course, be conducted with due regard for the principle that the States should have considerable leeway in analyzing local evils and in prescribing appropriate cures." 334 U. S., at 396.

Thus, when confronted with a challenge under the Privileges and Immunities Clause to a law distinguishing between residents and nonresidents, a State may defend its position by demonstrating that "(i) there is a substantial reason for the difference in treatment; and (ii) the discrimination practiced against nonresidents bears a substantial relationship to the State's objective." *Piper*, 470 U. S., at 284.

Our concern for the integrity of the Privileges and Immunities Clause is reflected through a "standard of review substantially more rigorous than that applied to state tax distinctions, among, say, forms of business organizations or different trades and professions." *Austin*, *supra*, at 663. Thus, as both the New York Court of Appeals, 89 N. Y. 2d, at 290, 675 N. E. 2d, at 820, and the State, Brief for Respondent

Commissioner of Taxation and Finance 10–11, appropriately acknowledge, the State must defend § 631(b)(6) with a substantial justification for its different treatment of nonresidents, including an explanation of how the discrimination relates to the State's justification.

B

Our review of the State's justification for § 631(b)(6) is informed by this Court's precedent respecting Privileges and Immunities Clause challenges to nonresident income tax provisions. In *Shaffer* v. *Carter*, the Court upheld Oklahoma's denial of deductions for out-of-state losses to nonresidents who were subject to Oklahoma's tax on in-state income. The Court explained:

> "The difference . . . is only such as arises naturally from the extent of the jurisdiction of the State in the two classes of cases, and cannot be regarded as an unfriendly or unreasonable discrimination. As to residents, it may, and does, exert its taxing power over their income from all sources, whether within or without the State, and it accords to them a corresponding privilege of deducting their losses, wherever these accrue. As to nonresidents, the jurisdiction extends only to their property owned within the State and their business, trade, or profession carried on therein, and the tax is only on such income as is derived from those sources. Hence there is no obligation to accord to them a deduction by reason of losses elsewhere incurred." 252 U. S., at 57.

In so holding, the Court emphasized the practical effect of the provision, concluding that "the nonresident was not treated more onerously than the resident in any particular, and in fact was called upon to make no more than his ratable contribution to the support of the state government." *Austin*, *supra*, at 664.

Shaffer involved a challenge to the State's denial of business-related deductions. The record in *Shaffer* dis-

closes that, while Oklahoma law specified that nonresidents were liable for Oklahoma income tax on "the entire net income from all property owned, and of every business, trade or profession carried on in [Oklahoma]," there was no express statutory bar preventing nonresidents from claiming the same nonbusiness exemptions and deductions as were available to resident taxpayers. See Tr. of Record in *Shaffer* v. *Carter*, O. T. 1919, No. 531, pp. 15–18 (Ch. 164, Okla. House Bill No. 599 (1910), §§ 1, 5, 6, 8); see also Brief on Behalf of Appellant in *Shaffer* v. *Carter*, O. T. 1919, No. 531, p. 91 ("In the trial court, . . . the [Oklahoma] Attorney General asserted that the appellant has the same personal exemptions as a resident of Oklahoma").

In *Travis* v. *Yale & Towne Mfg. Co.*, a Connecticut corporation doing business in New York sought to enjoin enforcement of New York's nonresident income tax laws on behalf of its employees, who were residents of Connecticut and New Jersey. In an opinion issued on the same day as *Shaffer*, the Court affirmed *Shaffer*'s holding that a State may limit the deductions of nonresidents to those related to the production of in-state income. See *Travis*, 252 U. S., at 75–76 (describing *Shaffer* as settling that "there is no unconstitutional discrimination against citizens of other States in confining the deduction of expenses, losses, etc., in the case of non-resident taxpayers, to such as are connected with income arising from sources within the taxing State"). The record in *Travis* clarifies that many of the expenses and losses of nonresidents that New York law so limited were business related, such as ordinary and necessary business expenses, depreciation on business assets, and depletion of natural resources, such as oil, gas, and timber. At the time that *Travis* was decided, New York law also allowed nonresidents a pro rata deduction for various nonbusiness expenses, such as interest paid (based on the proportion of New York source income to total income), a deduction for taxes paid (other than income taxes) to the extent those taxes were connected with New York

income, and a deduction for uncompensated losses sustained in New York resulting from limited circumstances, namely, nonbusiness transactions entered into for profit and casualty losses. Both residents and nonresidents were entitled to the same deduction for contributions to charitable organizations organized under the laws of New York. Tr. of Record in *Travis* v. *Yale & Towne Mfg. Co.*, O. T. 1919, No. 548 (State of New York, The A, B, C of the Personal Income Tax Law, pp. 11–12, 14, ¶¶ 42, 44 (1919)). Thus, the statutory provisions disallowing nonresidents' tax deductions at issue in *Travis* essentially mirrored those at issue in *Shaffer* because they tied nonresidents' deductions to their in-state activities.

Another provision of New York's nonresident tax law challenged in *Travis* did not survive scrutiny under the Privileges and Immunities Clause, however. Evincing the same concern with practical effect that animated the *Shaffer* decision, the *Travis* Court struck down a provision that denied only nonresidents an exemption from tax on a certain threshold of income, even though New York law allowed nonresidents a corresponding credit against New York taxes in the event that they paid resident income taxes in some other State providing a similar credit to New York residents. The Court rejected the argument that the rule was "a case of occasional or accidental inequality due to circumstances personal to the taxpayer." 252 U. S., at 80. Nor was denial of the exemption salvaged "upon the theory that non-residents have untaxed income derived from sources in their home States or elsewhere outside of the State of New York, corresponding to the amount upon which residents of that State are exempt from taxation [by New York] under this act," because "[t]he discrimination is not conditioned upon the existence of such untaxed income; and it would be rash to assume that non-residents taxable in New York under this law, as a class, are receiving additional income from outside sources equivalent to the amount of the exemptions that are accorded to citizens of New York and denied to them." *Id.*,

at 81. Finally, the Court rejected as speculative and constitutionally unsound the argument that States adjoining New York could adopt an income tax, "in which event, injustice to their citizens on the part of New York could be avoided by providing similar exemptions similarly conditioned." *Id.*, at 82.

In *Austin*, a more recent decision reviewing a State's taxation of nonresidents, we considered a commuter tax imposed by New Hampshire, the effect of which was to tax only nonresidents working in that State. The Court described its previous decisions, including *Shaffer* and *Travis*, as "establishing a rule of substantial equality of treatment for the citizens of the taxing State and nonresident taxpayers," under which New Hampshire's one-sided tax failed. 420 U. S., at 665.

Travis and *Austin* make clear that the Privileges and Immunities Clause prohibits a State from denying nonresidents a general tax exemption provided to residents, while *Shaffer* and *Travis* establish that States may limit nonresidents' deductions of business expenses and nonbusiness deductions based on the relationship between those expenses and in-state property or income. While the latter decisions provide States a considerable amount of leeway in aligning the tax burden of nonresidents to in-state activities, neither they nor *Austin* can be fairly read as holding that the Privileges and Immunities Clause permits States to categorically deny personal deductions to a nonresident taxpayer, without a substantial justification for the difference in treatment.

III

In this case, New York acknowledges the right of nonresidents to pursue their livelihood on terms of substantial equality with residents. There is no question that the issue presented in this case is likely to affect many individuals, given the fact that it is common for nonresidents to enter

New York City to pursue their livelihood, "it being a matter of common knowledge that from necessity, due to the geographical situation of [New York City], in close proximity to the neighboring States, many thousands of men and women, residents and citizens of those States, go daily from their homes to the city and earn their livelihood there." *Travis*, 252 U. S., at 80. In attempting to justify the discrimination against nonresidents effected by § 631(b)(6), respondents assert that because the State only has jurisdiction over nonresidents' in-state activities, its limitation on nonresidents' deduction of alimony payments is valid. Invoking *Shaffer* and *Travis*, the State maintains that it should not be required to consider expenses "wholly linked to personal activities outside New York." Brief for Respondent Commissioner of Taxation and Finance 24. We must consider whether that assertion suffices to substantially justify the challenged statute.

A

Looking first at the rationale the New York Court of Appeals adopted in upholding § 631(b)(6), we do not find in the court's decision any reasonable explanation or substantial justification for the discriminatory provision. Although the court purported to apply the two-part inquiry derived from *Toomer* and *Piper*, in the end, the justification for § 631(b)(6) was based on rationales borrowed from another case, *Goodwin* v. *State Tax Comm'n*, 286 App. Div. 694, 146 N. Y. S. 2d 172, aff'd, 1 N. Y. 2d 680, 133 N. E. 2d 711 (1955), appeal dism'd, 352 U. S. 805 (1956). There, a New Jersey resident challenged New York's denial of deductions for real estate taxes and mortgage interest on his New Jersey home, and his medical expenses and life insurance premiums. The challenge in that case, however, was to a provision of New York tax law substantially similar to that considered in *Travis*, under which nonresident taxpayers were allowed deductions " 'only if and to the extent that, they are connected

with [taxable] income arising from sources within the state.'" 286 App. Div., at 695, 146 N. Y. S. 2d, at 175 (quoting then N. Y. Tax Law § 360(11)).

There is no analogous provision in § 631(b)(6), which plainly limits nonresidents' deduction of alimony payments, irrespective of whether those payments might somehow relate to New York-source income. Although the *Goodwin* court's rationale concerning New York's disallowance of nonresidents' deduction of life insurance premiums and medical expenses assumed that such expenses, "made by [the taxpayer] in the course of his personal activities, . . . must be regarded as having taken place in . . . the state of his residence," *id.*, at 701, 146 N. Y. S. 2d, at 180, the court also found that those expenses "embodie[d] a governmental policy designed to serve a legitimate social end," *ibid.*, namely, "to encourage [New York] citizens to obtain life insurance protection and . . . to help [New York] citizens bear the burden of an extraordinary illness or accident," *id.*, at 700, 146 N. Y. S. 2d, at 179.

In this case, the New York Court of Appeals similarly described petitioners' alimony expenses as "wholly linked to personal activities outside the State," but did not articulate any policy basis for § 631(b)(6), save a reference in its discussion of petitioners' Equal Protection Clause claim to the State's "policy of taxing only those gains realized and losses incurred by a nonresident in New York, while taxing residents on all income." 89 N. Y. 2d, at 291, 675 N. E. 2d, at 821. Quite possibly, no other policy basis for § 631(b)(6) exists, given that, at the time *Goodwin* was decided, New York appears to have allowed nonresidents a deduction for alimony paid as long as the recipient was a New York resident required to include the alimony in income. See N. Y. Tax Law § 360(17) (1944). And for several years preceding § 631(b)(6)'s enactment, New York law permitted nonresidents to claim a pro rata deduction of alimony paid regardless of the recipient's residence. See *Friedsam*, 64 N. Y. 2d,

at 81–82, 473 N. E. 2d, at 1184 (interpreting N. Y. Tax Law § 635(c)(1) (1961)).

In its reliance on *Goodwin*, the New York Court of Appeals also failed to account for the fact that, through its broad 1987 tax reforms, New York adopted a new system of nonresident taxation that ties the income tax liability of nonresidents to the tax that they would have paid if they were residents. Indeed, a nonresident's "as if" tax liability, which determines both the tax rate and total tax owed, is based on federal adjusted gross income from *all* sources, not just New York sources. In computing their "as if" resident tax liability, nonresidents of New York are permitted to consider every deduction that New York residents are entitled to, both business and personal. It is only in the computation of the apportionment percentage that New York has chosen to isolate a specific deduction of nonresidents, alimony paid, as entirely nondeductible under any circumstances. Further, after *Goodwin* but before this case, the New York Court of Appeals acknowledged, in *Friedsam*, *supra*, that the State's policy and statutes favored parity, on a pro rata basis, in the allowance of personal deductions to residents and nonresidents. Accordingly, in light of the questionable relevance of *Goodwin* to New York's current system of taxing nonresidents, we do not agree with the New York Court of Appeals that "substantial reasons for the disparity in tax treatment are apparent on the face of [§ 631(b)(6)]," 89 N. Y. 2d, at 291, 675 N. E. 2d, at 821.

We also take little comfort in the fact, noted by the New York Court of Appeals, that § 631(b)(6) does not deny nonresidents all benefit of the alimony deduction because that deduction is included in federal adjusted gross income, one of the components in the nonresident's computation of his New York tax liability. See *id.*, at 290–291, 675 N. E. 2d, at 821. That finding seems contrary to the impression of New York's Commissioner of Taxation and Finance as expressed in an advisory opinion, *In re Rosenblatt*, 1989–1990 Transfer

Binder, CCH N. Y. Tax Rep. ¶ 252–998, p. 17,969 (Jan. 18, 1990), in which the Commissioner explained that "[t]he effect of [§ 631(b)(6)'s] allowance of the [alimony] deduction in the . . . denominator and disallowance in the numerator is that Petitioner cannot get the benefit of a proportional deduction of the alimony payments made to his spouse." In any event, respondents have never argued to this Court that § 631(b)(6) effects anything other than a denial of nonresidents' alimony deductions. Though the inclusion of the alimony deduction in a nonresident's federal adjusted gross income reduces the nonresident's "as if" tax liability, New York effectively takes the alimony deduction back in the "apportionment percentage" used to determine the actual tax owed, because the numerator of that percentage does not include any deduction for alimony paid, while the denominator does include such a deduction.

In summarizing its holding, the New York Court of Appeals explained that, because "there can be no serious argument that petitioners' alimony deductions are legitimate business expenses[,] . . . the approximate equality of tax treatment required by the Constitution is satisfied, and greater fine-tuning in this tax scheme is not constitutionally mandated." 89 N. Y. 2d, at 291, 675 N. E. 2d, at 821. This Court's precedent, however, should not be read to suggest that tax schemes allowing nonresidents to deduct only their business expenses are *per se* constitutional, and we must accordingly inquire further into the State's justification for § 631(b)(6) in light of its practical effect.

B

Turning to respondents' arguments to this Court, as an initial matter, we reject the State's suggestion that this Court's summary dismissals in several other cases should be dispositive of the question presented in this case. See Brief for Respondent Commissioner of Taxation and Finance 15–

16, n. 8.[3] Although we have noted that "[o]ur summary dismissals are . . . to be taken as rulings on the merits in the sense that they rejected the specific challenges presented . . . and left undisturbed the judgment appealed from," we have also explained that they do not "have the same precedential value . . . as does an opinion of this Court after briefing and oral argument on the merits." *Washington* v. *Confederated Bands and Tribes of Yakima Nation*, 439 U. S. 463, 477, n. 20 (1979) (citations and internal quotation marks omitted). "It is not at all unusual for the Court to find it appropriate to give full consideration to a question that has been the subject of previous summary action," *ibid.*, particularly where, as here, other courts have arrived at dissimilar outcomes. In any event, none of the cases on which the State relies involved the unique problem presented here, the complete denial of deductions for nonresidents' alimony payments.

In the context of New York's overall scheme of nonresident taxation, § 631(b)(6) is an anomaly. New York tax law

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[3] See *Goodwin* v. *State Tax Comm'n*, 286 App. Div. 694, 146 N. Y. S. 2d 172, aff 'd, 1 N. Y. 2d 680, 133 N. E. 2d 711 (1955) (involving State's denial of deductions not related to in-state activities, including medical expenses and life insurance premiums), appeal dism'd, 352 U. S. 805 (1956); see also *Lung* v. *O'Chesky*, 94 N. M. 802, 617 P. 2d 1317 (1980) (involving State's denial of grocery and medical tax rebates to nonresidents), appeal dism'd, 450 U. S. 961 (1981); *Rubin* v. *Glaser*, 83 N. J. 299, 416 A. 2d 382 (involving State's limitation of homestead tax rebate to principal residences of residents), appeal dism'd, 449 U. S. 977 (1980); *Davis* v. *Franchise Tax Board*, 71 Cal. App. 3d 998, 139 Cal. Rptr. 797 (1977) (involving State's denial of income averaging method of tax computation to nonresidents), appeal dism'd, 434 U. S. 1055 (1978); *Wilson* v. *Department of Revenue*, 267 Ore. 103, 514 P. 2d 1334 (1973) (involving State's limitation of nonresident's deductions to those connected with in-state income), appeal dism'd, 416 U. S. 964 (1974); *Anderson* v. *Tiemann*, 182 Neb. 393, 155 N. W. 2d 322 (1967) (involving State's denial of food sales tax credit to nonresidents), appeal dism'd, 390 U. S. 714 (1968); *Berry* v. *State Tax Comm'n*, 241 Ore. 580, 397 P. 2d 780 (1964) (involving State's limitation of nonresidents' personal deductions to those connected with in-state income), appeal dism'd, 382 U. S. 16 (1965).

currently permits nonresidents to avail themselves of what amounts to a pro rata deduction for other tax-deductible personal expenses besides alimony. Before 1987, New York law also allowed nonresidents to deduct a pro rata share of alimony payments. The New York State Tax Commissioner's advisory opinion in *In re Rosenblatt* indicates that § 631(b)(6) may have been intended to overrule *Friedsam.* See *In re Rosenblatt, supra,* ¶ 252–998, at 17,969 (Section 631(b)(6) "specifically reversed *Friedson [sic]* v. *State Tax Comm'n,* 64 N. Y. 2d 76 (1984), which had allowed an alimony deduction to a nonresident according to the formula for allocation of itemized deductions by the nonresident"). Certainly, as the New York Court of Appeals found, § 631(b)(6) "had the effect of removing [the] impairment" imposed by *Friedsam,* 89 N. Y. 2d, at 290, 675 N. E. 2d, at 821, thereby implying a disavowal of the State's previous policy of substantial equality between residents and nonresidents.

The policy expressed in *Friedsam,* which acknowledged the principles of equality and fairness underlying the Privileges and Immunities Clause, was not merely an "impairment," however. Although the State has considerable freedom to establish and adjust its tax policy respecting nonresidents, the end results must, of course, comply with the Federal Constitution, and any provision imposing disparate taxation upon nonresidents must be appropriately justified. As this Court has explained, where "the power to tax is not unlimited, validity is not established by the mere imposition of a tax." *Mullaney* v. *Anderson,* 342 U. S. 415, 418 (1952).

To justify § 631(b)(6), the State refers to a statement, presented in 1959 by New York's then-Commissioner of Taxation and Finance before a Subcommittee of the House Judiciary Committee. In that statement, the Commissioner explained, "'[s]ince legally we do not and cannot recognize the existence of [non-New York source] income, we have felt that, in general, we cannot recognize . . . other deductions,

which, in the main, are of a personal nature and are unconnected with the production of income in New York.'" Brief for Respondent Commissioner of Taxation and Finance 14 (quoting statement of Hon. Joseph H. Murphy, Taxation of Income of Nonresidents, Hearing on H. J. Res. 33 et al. and H. R. 4174 et al. before Subcommittee No. 2 of the House Committee on the Judiciary, 86th Cong., 1st Sess., 98–99 (1959)). Yet there is good reason to question whether that statement actually is a rationale for § 631(b)(6), given substantial evidence to the contrary, in both the history of the State's treatment of nonresidents' alimony deductions,[4] and its current treatment of other personal deductions.

Moreover, to the extent that the cited testimony suggests that no circumstances exist under which a State's denial of personal deductions to nonresidents could be constrained, we reject its premise. Certainly, as the Court found in *Travis*, 252 U. S., at 79–80, nonresidents must be allowed tax exemptions in parity with residents. And the most that the Court has suggested regarding nonresidents' nonbusiness expenses is that their deduction may be limited to the proportion of those expenses rationally related to in-state income or activities. See *Shaffer*, 252 U. S., at 56–57.

As a practical matter, the Court's interpretation of the Privileges and Immunities Clause in *Travis* and *Shaffer* implies that States may effectively limit nonresidents' deduction of certain personal expenses based on a reason as simple as the fact that those expenses are clearly related to residence in another State. But here, § 631(b)(6) does not incorporate such analysis on its face or, according to the New York Court of Appeals, through legislative history, see 89

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[4] See 1943 N. Y. Laws, ch. 245, § 3 (alimony deductions allowed only when recipient is subject to New York tax); 1944 N. Y. Laws, ch. 333, § 2 (alimony deduction allowed to all residents and to nonresidents only if recipient is subject to New York tax); 1961 N. Y. Laws, ch. 68, § 1 (itemized deductions, including alimony, generally allowed to nonresidents in proportion to New York source income).

N. Y. 2d, at 290–291, 675 N. E. 2d, at 821. Moreover, there are situations in which § 631(b)(6) could operate to require nonresidents to pay significantly more tax than identically situated residents. For example, if a nonresident's earnings were derived primarily from New York sources, the effect of § 631(b)(6) could be to raise the tax apportionment percentage above 100%, thereby requiring that individual to pay *more* tax than an identically situated resident, solely because of the disallowed alimony deduction. Under certain circumstances, the taxpayer could even be liable for New York taxes approaching or even exceeding net income.

There is no doubt that similar circumstances could arise respecting the apportionment for tax purposes of income or expenses based on in-state activities without a violation of the Privileges and Immunities Clause. Such was the case in *Shaffer*, despite the petitioner's attempt to argue that he should be allowed to offset net business income taxed by Oklahoma with business losses incurred in other States. See 252 U. S., at 57. It is one thing, however, for an anomalous situation to arise because an individual has greater profits from business activities or property owned in one particular State than in another. An entirely different situation is presented by a facially inequitable and essentially unsubstantiated taxing scheme that denies only nonresidents a tax deduction for alimony payments, which while surely a personal matter, see *United States* v. *Gilmore*, 372 U. S. 39, 44 (1963), arguably bear some relationship to a taxpayer's overall earnings. Alimony payments also differ from other types of personal deductions, such as mortgage interest and property tax payments, whose situs can be determined based on the location of the underlying property. Thus, unlike the expenses discussed in *Shaffer*, alimony payments cannot be so easily characterized as "losses elsewhere incurred." 252 U. S., at 57. Rather, alimony payments reflect an obligation of some duration that is determined in large measure by an individual's income generally, wherever it is earned. The

alimony obligation may be of a "personal" nature, but it cannot be viewed as geographically fixed in the manner that other expenses, such as business losses, mortgage interest payments, or real estate taxes, might be.

Accordingly, contrary to the dissent's suggestion, *post,* at 321, 326–327, we do not propose that States are required to allow nonresidents a deduction for all manner of personal expenses, such as taxes paid to other States or mortgage interest relating to an out-of-state residence. Nor do we imply that States invariably must provide to nonresidents the same manner of tax credits available to residents. Our precedent allows States to adopt justified and reasonable distinctions between residents and nonresidents in the provision of tax benefits, whether in the form of tax deductions or tax credits. In this case, however, we are not satisfied by the State's argument that it need not consider the impact of disallowing nonresidents a deduction for alimony paid merely because alimony expenses are personal in nature, particularly in light of the inequities that could result when a nonresident with alimony obligations derives nearly all of her income from New York, a scenario that may be "typical," see *Travis, supra,* at 80. By requiring nonresidents to pay more tax than similarly situated residents solely on the basis of whether or not the nonresidents are liable for alimony payments, § 631(b)(6) violates the "rule of substantial equality of treatment" this Court described in *Austin,* 420 U. S., at 665.

C

Respondents also propose that § 631(b)(6) is "consistent with New York's taxation of families generally." Brief for Respondent Commissioner of Taxation and Finance 14–15. It has been suggested that one purpose of New York's 1987 tax law changes was to adopt a regime of "income splitting," under which each spouse in a marital relationship is taxed on an equal share of the total income from the marital unit. *Ibid.* (citing McIntyre & Pomp, State Income Tax Treatment

of Residents and Nonresidents Under the Privileges and Immunities Clause, 13 State Tax Notes 245, 249 (1997)). A similar effect is achieved in the case of marital dissolution by allowing the payer of alimony to exclude the payment from income and requiring the recipient to report a corresponding increase in income. Such treatment accords with provisions adopted in 1942 by the Federal Government as a means of adjusting tax burdens on alimony payers who, without a deduction for alimony paid, could face a tax liability greater than their remaining income after payment of alimony. See Committee Report, Revenue Act of 1942, 1942–2 C. B. 409.

In the federal system, when one resident taxpayer pays alimony to another, the payer's alimony deduction is offset by the alimony income reported by the recipient, leading to parity in the allocation of the overall tax burden. Section 631(b)(6), however, disallows nonresidents' entire alimony expenses with no consideration given to whether New York income tax will be paid by the recipients. Respondents explain that such concerns are simply irrelevant to New York's taxation of nonresidents, because "[e]xtending the benefit of income splitting to nonresidents is inappropriate on tax policy grounds because nonresidents are taxed by New York on only a slice of their income—that derived from New York sources." Brief for Respondent Commissioner of Taxation and Finance 15. Such analysis, however, begs the question whether there is a substantial reason for the difference in treatment, and is therefore not appreciably distinct from the State's assertion that no such justification is required because § 631(b)(6) does not concern business expenses.

Indeed, we fail to see how New York's disregard for the residence of the alimony recipient does anything more than point out potential inequities in the operation of § 631(b)(6). Certainly, the concept of income splitting works when both former spouses are residents of the

same State, because one spouse receives a tax deduction corresponding to the other's reported income, thereby making the state treasury whole (after adjustment for differences in the spouses' respective tax rates). The scheme also results in an equivalent allocation of total tax liability when one spouse is no longer a resident of the same State, because each spouse retains the burden of paying resident income taxes due to his or her own State on their share of the split income. The benefit of income splitting disappears, however, when a State in which neither spouse resides essentially imposes a surtax on the alimony, such as the tax increase New York imposes through § 631(b)(6). And, at the extreme, when a New York resident receives alimony payments from a nonresident New York taxpayer, § 631(b)(6) results in a double-taxation windfall for the State: The recipient pays taxes on the alimony but the nonresident payer is denied any deduction. Although such treatment may accord with the Federal Government's treatment of taxpayers who are nonresident aliens, see 26 U. S. C. §§ 872 and 873, the reasonableness of such a scheme on a national level is a different issue that does not implicate the Privileges and Immunities Clause guarantee that individuals may migrate between States to live and work.

D

Finally, several States, as *amici* for respondents, assert that § 631(b)(6) could not "have any more than a *de minimis* effect on the run-of-the-mill taxpayer or comity among the States," because States imposing an income tax typically provide a deduction or credit to their residents for income taxes paid to other States. Brief for State of Ohio et al. 8. Accordingly, their argument runs, "[a]ll things being equal . . . the taxpayer would pay roughly the same total tax in the two States, the only difference being that [the taxpayer's resident State] would get more and New York less of the revenue." *Ibid.* There is no basis for such an assertion in

the record before us. In fact, in the year in question, Connecticut imposed no income tax on petitioners' earned income. Reply Brief for Petitioners 4, n. 1. "Nor, we may add, can the constitutionality of one State's statutes affecting nonresidents depend upon the present configuration of the statutes of another State." *Austin*, 420 U. S., at 668; see also *Travis*, 252 U. S., at 81–82.

IV

In sum, we find that the State's inability to tax a nonresident's entire income is not sufficient, in and of itself, to justify the discrimination imposed by § 631(b)(6). While States have considerable discretion in formulating their income tax laws, that power must be exercised within the limits of the Federal Constitution. Tax provisions imposing discriminatory treatment on nonresident individuals must be reasonable in effect and based on a substantial justification other than the fact of nonresidence.

Although the Privileges and Immunities Clause does not prevent States from requiring nonresidents to allocate income and deductions based on their in-state activities in the manner described in *Shaffer* and *Travis*, those opinions do not automatically guarantee that a State may disallow nonresident taxpayers every manner of nonbusiness deduction on the assumption that such amounts are inevitably allocable to the State in which the taxpayer resides. Alimony obligations are unlike other expenses that can be related to activities conducted in a particular State or property held there. And as a personal obligation that generally correlates with a taxpayer's total income or wealth, alimony bears some relationship to earnings regardless of their source. Further, the manner in which New York taxes nonresidents, based on an allocation of an "as if" resident tax liability, not only imposes upon nonresidents' income the effect of New York's graduated tax rates but also imports a corresponding element of fairness in allowing nonresidents a pro rata deduc-

tion of other types of personal expenses. It would seem more consistent with that taxing scheme and with notions of fairness for the State to allow nonresidents a pro rata deduction for alimony paid, as well.

Under the circumstances, we find that respondents have not presented a substantial justification for the categorical denial of alimony deductions to nonresidents. The State's failure to provide more than a cursory justification for § 631(b)(6) smacks of an effort to "penaliz[e] the citizens of other States by subjecting them to heavier taxation merely because they are such citizens," *Toomer*, 334 U. S., at 408 (Frankfurter, J., concurring). We thus hold that § 631(b)(6) is an unwarranted denial to the citizens of other States of the privileges and immunities enjoyed by the citizens of New York.

Accordingly, the decision of the New York Court of Appeals is reversed, and the case is remanded for proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE GINSBURG, with whom THE CHIEF JUSTICE and JUSTICE KENNEDY join, dissenting.

New York and other States follow the Federal Government's lead[1] in according an income tax deduction for alimony to resident taxpayers only.[2] That tax practice, I

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[1] See 26 U. S. C. §§ 872–873; McIntyre & Pomp, State Income Tax Treatment of Residents and Nonresidents Under the Privileges and Immunities Clause, 13 State Tax Notes 245, 248–249 (1997).

[2] Four States in addition to New York—Alabama, California, West Virginia, and Wisconsin—expressly limit the alimony deduction to residents. See Ala. Code § 40–18–15(18) (1993); Cal. Rev. and Tax. Code Ann. § 17302 (West 1994); W. Va. Code § 11–21–32(b)(4) (1995); Wis. Stat. § 71.05(6)(a)(12) (1989). Two other States—Illinois and Ohio—restrict nonresidents to specified deductions and adjustments in calculating in-state income, and do not list the alimony deduction as one available to nonresidents. See Ill. Comp. Stat., ch. 35, § 5/301(c)(2)(A) (1996); Ohio Rev. Code Ann. § 5747.20(B)(6) (1994).

conclude, does not offend the nondiscrimination principle embodied in the Privileges and Immunities Clause of Article IV, § 2. I therefore dissent from the Court's opinion.

I

To put this case in proper perspective, it is helpful to recognize not only that alimony payments are "surely a personal matter," *ante,* at 310; in addition, alimony payments are "unlike other . . . personal obligation[s]," *ante,* at 314. Under federal tax law, mirrored in state tax regimes, alimony is included in the recipient's gross income, 26 U. S. C. § 71(a), and the payer is allowed a corresponding deduction, §§ 215(a), 62(a)(10), for payments taxable to the recipient. This scheme "can best be seen as a determination with respect to choice of taxable person rather than as rules relating to the definition of income or expense. In effect, the [alimony payer] is treated as a conduit for gross income that legally belongs to the [alimony recipient] under the divorce decree." M. Chirelstein, Federal Income Taxation ¶ 9.05, p. 230 (8th ed. 1997) (hereinafter Chirelstein); see also B. Bittker & M. McMahon, Federal Income Taxation of Individuals ¶ 36.7, p. 36–18 (2d ed. 1995) ("Unlike most other personal deductions, [the deduction for alimony payments] is best viewed as a method of designating the proper taxpayer for a given amount of income, rather than a tax allowance for particular expenditures. In combination, § 71 [allowing a deduction to the alimony payer] and § 215 [requiring the alimony recipient to include the payment in gross income] treat part of the [payer]'s income as though it were received subject to an offsetting duty to pay it to the payee."). New York applies this scheme to resident alimony payers. But N. Y. Tax Law § 631(b)(6) (McKinney 1987) declares that, in the case of a nonresident with New York source income, the alimony deduction for which federal law provides "shall not constitute a deduction derived from New York sources."

Thus, if petitioner Christopher Lunding and his former spouse were New York residents, his alimony payments would be included in his former spouse's gross income for state as well as federal income tax purposes, and he would receive a deduction for the payments. In other words, New York would tax the income once, but not twice. In fact, however, though Lunding derives a substantial part of his gross income from New York sources, he and his former spouse reside in Connecticut. That means, he urges, that New York may not tax the alimony payments at all. Compared to New York divorced spouses, in short, Lunding seeks a windfall, not an escape from double taxation, but a total exemption from New York's tax for the income in question. This beneficence to nonresidents earning income in New York, he insists, is what the Privileges and Immunities Clause of Article IV, § 2, of the United States Constitution demands.

Explaining why New York must so favor Connecticut residents over New York residents, Lunding invites comparisons with other broken marriages—cases in which one of the former spouses resides in New York and the other resides elsewhere. First, had Lunding's former spouse moved from Connecticut to New York, New York would count the alimony payments as income to her, but would nonetheless deny him, because of his out-of-state residence, any deduction. In such a case, New York would effectively tax the same income twice, first to the payer by giving him no deduction, then to the recipient, by taxing the payments as gross income to her. Of course, that is not Lunding's situation, and one may question his standing to demand that New York take nothing from him in order to offset the State's arguably excessive taxation of others.

More engagingly, Lunding compares his situation to that of a New York resident who pays alimony to a former spouse living in another State. In such a case, New York would permit the New Yorker to deduct the alimony payments,

even though the recipient pays no tax to New York on the income transferred to her. New York's choice, according to Lunding, is to deny the alimony deduction to the New Yorker whose former spouse resides out of state, or else extend the deduction to him. The Court apparently agrees. At least, the Court holds, New York "has not adequately justified" the line it has drawn. *Ante,* at 290.

The Court's condemnation of New York's law seems to me unwarranted. As applied to a universe of former marital partners who, like Lunding and his former spouse, reside in the same State, New York's attribution of income to *someone* (either payer or recipient) is hardly unfair. True, an occasional New York resident will be afforded a deduction though his former spouse, because she resides elsewhere, will not be chased by New York's tax collector. And an occasional New York alimony recipient will be taxed despite the nonresidence of her former spouse. But New York could legitimately assume that in most cases, as in the Lundings' case, payer and recipient will reside in the same State. Moreover, in cases in which the State's system is overly generous (New York payer, nonresident recipient) or insufficiently generous (nonresident payer, New York recipient), there is no systematic discrimination discretely against nonresidents, for the pairs of former spouses in both cases include a resident and a nonresident.

In reviewing state tax classifications, we have previously held it sufficient under the Privileges and Immunities Clause that "the State has secured a reasonably fair distribution of burdens, and that no intentional discrimination has been made against non-residents." *Travellers' Ins. Co.* v. *Connecticut,* 185 U. S. 364, 371 (1902). In *Travellers,* the Court upheld a state tax that was facially discriminatory: Nonresidents who held stock in Connecticut corporations owed tax to the State on the full value of their holdings, while resident stockholders were entitled to a deduction for their proportionate share of the corporation's Connecticut real estate.

But the State's tax system as a whole was not discriminatory, for although residents were entitled to deduct their share of the corporation's Connecticut real estate from their *state* taxes, they were required to pay *municipal* taxes on that property; nonresidents owed no municipal taxes. See *id.*, at 367. Municipal taxes varied across the State, so residents in low-tax municipalities might end up paying lower taxes than nonresidents. Nonetheless, "the mere fact that in a given year the actual workings of the system may result in a larger burden on the non-resident was properly held not to vitiate the system, for a different result might obtain in a succeeding year, the results varying with the calls made in the different localities for local expenses." *Id.*, at 369.

Travellers held that tax classifications survive Privileges and Immunities Clause scrutiny if they provide a rough parity of treatment between residents and nonresidents. See also *Austin* v. *New Hampshire*, 420 U. S. 656, 665 (1975) (Privileges and Immunities Clause precedents "establis[h] a rule of substantial equality of treatment"). That holding accords with the Court's observation in *Baldwin* v. *Fish and Game Comm'n of Mont.*, 436 U. S. 371, 383 (1978), that "[s]ome distinctions between residents and nonresidents merely reflect the fact that this is a Nation composed of individual States, and are permitted; other distinctions are prohibited because they hinder the formation, the purpose, or the development of a single Union of those States." A tax classification that does not systematically discriminate against nonresidents cannot be said to "hinder the formation, the purpose, or the development of a single Union." See McIntyre & Pomp, Post-Marriage Income Splitting through the Deduction for Alimony Payments, 13 State Tax Notes 1631, 1635 (1997) (urging that the Privileges and Immunities Clause does not require New York to forgo the income-splitting objective served by its alimony rules when both payer and recipient are residents of the same State simply because "results may be less than ideal" "when one of the

parties to the alimony transaction is a resident and the other is a nonresident").[3]

I would affirm the judgment of the New York Court of Appeals as consistent with the Court's precedent, and would not cast doubt, as today's decision does, on state tax provisions long considered secure.

II

Viewing this case as one discretely about alimony, I would accept New York's law as a fair adaptation, at the state level, of the current United States system. The Court notes but shies away from this approach, see *ante*, at 311–313, expressing particular concern about double taxation in the "extreme" case not before us—the "New York resident [who] receives alimony payments from a nonresident New York taxpayer," *ante*, at 313.[4] Instead, the Court treats alimony as one among several personal expenses a State makes deductible.

Significantly, the Court's approach conforms to no historic pattern. "Historically, both alimony and child support were treated as personal expenses nondeductible [by the payer]

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[3] Nor does it appear that New York gains "an unfair share of tax revenue" by denying nonresident alimony payers a deduction even when the recipient is a resident. McIntyre & Pomp, Post-Marriage Income Splitting through the Deduction for Alimony Payments, 13 State Tax Notes, at 1635. Alimony payments into and out of a State, it seems reasonable to assume, are approximately in balance; if that is so, then the revenue New York receives under its current regime is roughly equivalent to the revenue it would generate by granting a deduction to nonresident alimony payers with resident recipients and denying the deduction to resident payers with nonresident recipients. See *ibid.*

[4] As already observed, Lunding, who seeks to escape any state tax on the income in question (Connecticut, his State of residence, had no income tax in the year in issue), is hardly a fit representative of the individuals who elicit the Court's concern. See *New York* v. *Ferber*, 458 U. S. 747, 767 (1982) ("[A] person to whom a statute may constitutionally be applied may not challenge that statute on the ground that it may conceivably be applied unconstitutionally to others in situations not before the Court.").

and not includable [in the recipient's income]. Successive [federal] statutory enactments beginning in 1942 allowed a deduction and corresponding inclusion for alimony payments while continuing the nondeductible-excludable treatment for child support payments." H. Ault, Comparative Income Taxation: A Structural Analysis 277 (1997).

Accepting, *arguendo*, the Court's "personal expense deduction" in lieu of "income attribution" categorization of alimony, however, I do not read our precedent to lead in the direction the Court takes. On Lunding's analysis, which the Court essentially embraces, the core principle is that "personal deductions, no matter what they are . . . must be allowed in the proportion that the New York State income bears to total income." Tr. of Oral Arg. 19. That has never been, nor should it be, what the Privileges and Immunities Clause teaches.

A

"[E]arly in this century, the Court enunciated the principle that a State may limit a nonresident's expenses, losses, and other deductions to those incurred in connection with the production of income within the taxing State." 2 J. Hellerstein & W. Hellerstein, State Taxation 20–47 (1992). In two companion cases—*Shaffer* v. *Carter*, 252 U. S. 37 (1920), and *Travis* v. *Yale & Towne Mfg. Co.*, 252 U. S. 60 (1920)—the Court considered, respectively, Oklahoma's and New York's schemes of nonresident income taxation. Both had been challenged as violating the Privileges and Immunities Clause.

Upholding the Oklahoma scheme and declaring the New York scheme impermissibly discriminatory, the Court established at least three principles. First, "just as a State may impose general income taxes upon its own citizens and residents whose persons are subject to its control, it may, as a necessary consequence, levy a duty of like character, and not more onerous in its effect, upon incomes accruing to nonresidents from their property or business within the State,

or their occupations carried on therein." *Shaffer,* 252 U. S., at 52; accord, *Travis*, 252 U. S., at 75.

Second, a State may not deny nonresidents personal *exemptions* when such exemptions are uniformly afforded to residents. See *id.*, at 79–81. Personal exemptions, which are typically granted in a set amount "to all taxpayers, regardless of their income," Hellerstein, Some Reflections on the State Taxation of a Nonresident's Personal Income, 72 Mich. L. Rev. 1309, 1343 (1974) (hereinafter Hellerstein), effectively create a zero tax bracket for the amount of the exemption. See Chirelstein, p. 3. Denial of those exemptions thus amounts to an across-the-board rate increase for nonresidents, a practice impermissible under longstanding constitutional interpretation. See, *e. g.*, *Chalker* v. *Birmingham & Northwestern R. Co.*, 249 U. S. 522, 526–527 (1919); *Ward* v. *Maryland*, 12 Wall. 418, 430 (1871); see also *Austin* v. *New Hampshire*, 420 U. S., at 659 (Privileges and Immunities Clause violated where, "[i]n effect, . . . the State taxe[d] only the incomes of nonresidents working in New Hampshire"). Because New York denied nonresidents the personal exemption provided to all residents, the *Travis* Court held the State's scheme an abridgment of the Privileges and Immunities Clause. 252 U. S., at 79–81.

Finally, *deductions* for specific expenses are treated differently from the blanket exemptions at issue in *Travis:* A State need not afford nonresidents the same deductions it extends to its residents. In *Shaffer*, the Court upheld Oklahoma's rules governing deduction of business losses. Oklahoma residents could deduct such losses wherever incurred, while nonresidents could deduct only losses incurred within the State. The Court explained that the disparate treatment was "only such as arises naturally from the extent of the jurisdiction of the State in the two classes of cases, and cannot be regarded as an unfriendly or unreasonable discrimination." 252 U. S., at 57. A State may tax its residents on "their income from all sources, whether within or without

the State," but it cannot tax nonresidents on their out-of-state activities. *Ibid.* "Hence there is no obligation to accord to [nonresidents] a deduction by reason of losses elsewhere incurred." *Ibid.* The Court stated the principle even more clearly in *Travis*, 252 U. S., at 75–76: "[T]here is no unconstitutional discrimination against citizens of other States in confining the deduction of expenses, losses, etc., in the case of non-resident taxpayers, to such as are connected with income arising from sources within the taxing State . . . ."

B

Shaffer and *Travis* plainly establish that States need not allow nonresidents to deduct out-of-state *business* expenses. The application of those cases to deductions for *personal* expenses, however, is less clear. On the one hand, *Travis*' broad language could be read to suggest that in-state business expenses are the only deductions States must extend to nonresidents. On the other hand, neither *Shaffer* nor *Travis* upheld a scheme denying nonresidents deductions for personal expenses.[5] A leading commentator has concluded that "nothing in either the *Shaffer* or *Travis* opinions indicates whether the Court was addressing itself to personal as well as business deductions." Hellerstein 1347, n. 165.

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[5] The New York law before the Court in *Travis* allowed residents to deduct non-business-related property losses wherever incurred, but allowed nonresidents such deductions only for losses incurred in New York. See Tr. of Record in *Travis* v. *Yale & Towne Mfg. Co.*, O. T. 1919, No. 548 (State of New York, The A, B, C of the Personal Income Tax Law, pp. 12, 14, ¶¶ 42, 44). Although *Travis* held New York's law infirm, the Court rested its decision solely on the ground that denying personal exemptions to nonresidents violated the Privileges and Immunities Clause. See *Travis*, 252 U. S., at 79–82. The Court did not extend its ruling to New York's differential treatment of residents and nonresidents with regard to personal-loss deductions. See *id.*, at 75–76 ("no unconstitutional discrimination" in confining deductions for nonresidents' losses "to such as are connected with income arising from sources within the taxing State").

With rare exception, however, lower courts have applied *Shaffer* and *Travis* with equal force to both personal and business deductions. The New York court's decision in *Goodwin* v. *State Tax Comm'n*, 286 App. Div. 694, 702, 146 N. Y. S. 2d 172, 180 (3d Dept. 1955), aff'd mem., 1 N. Y. 2d 680, 133 N. E. 2d 711, appeal dism'd for want of a substantial federal question, 352 U. S. 805 (1956), exemplifies this approach. *Goodwin* concerned a lawyer who resided in New Jersey and practiced law in New York City. In his New York income tax return, he claimed and was allowed deductions for bar association dues, subscriptions to legal periodicals, entertainment and car expenses, and certain charitable contributions. But he was disallowed deductions for real estate taxes and mortgage interest on his New Jersey home, medical expenses, and life insurance premiums. *Goodwin*, 286 App. Div., at 695, 146 N. Y. S. 2d, at 174. Upholding the disallowances, the appeals court explained that the non-income-producing personal expenses at issue were of a kind properly referred to the law and policy of the State of the taxpayer's residence. That State, if it had an income tax, might well have allowed the deductions, but the New York court did not think judgment in the matter should be shouldered by a sister State. *Id.*, at 701, 146 N. Y. S. 2d, at 180.

Goodwin further reasoned that a State may accord certain deductions "[i]n the exercise of its general governmental power to advance the welfare of its residents." *Ibid.* But it does not inevitably follow that the State must "extend similar aid or encouragement to the residents of other states." *Ibid.* A State need not, in short, underwrite the social policy of the Nation. Cf. *Martinez* v. *Bynum*, 461 U. S. 321, 328 (1983) (State may provide free primary and secondary education to residents without extending the same benefit to nonresidents).

Other lower courts, upholding a variety of personal expense deductions for residents only, have agreed with *Goodwin*'s analysis. Challenges to such rulings, like the appeal

in *Goodwin*, have been disposed of summarily by this Court. See, *e. g.*, *Lung* v. *O'Chesky*, 94 N. M. 802, 617 P. 2d 1317 (1980) (upholding denial to nonresidents of grocery and medical tax rebates allowed residents where rebates served as relief for State's gross receipts and property taxes), appeal dism'd for want of a substantial federal question, 450 U. S. 961 (1981); *Anderson* v. *Tiemann*, 182 Neb. 393, 407–408, 155 N. W. 2d 322, 331–332 (1967) (upholding denial to nonresidents of a deduction allowed residents for sales taxes paid on food purchased for personal use), appeal dism'd for want of a substantial federal question, 390 U. S. 714 (1968); *Berry* v. *State Tax Comm'n*, 241 Ore. 580, 582, 397 P. 2d 780, 782 (1964) (upholding denial to nonresidents of deductions allowed residents for medical expenses, interest on home-state loans, and other personal items; court stated that the legislature could legitimately conclude that "personal deductions are so closely related to the state of residence that they should be allowed only by the state of residence and not by every other state in which some part of a taxpayer's income might be found and taxed"), appeal dism'd for want of a substantial federal question, 382 U. S. 16 (1965). But see *Wood* v. *Department of Revenue*, 305 Ore. 23, 32–33, 749 P. 2d 1169, 1173–1174 (1988) (State may not deny alimony deduction to nonresidents).

C

Goodwin's Privileges and Immunities Clause analysis is a persuasive elaboration of *Shaffer* and *Travis*. Whether *Goodwin*'s exposition is read broadly (as supporting the view that a State need not accord nonresidents deductions for any personal expenses) or more precisely (as holding that a State may deny nonresidents deductions for personal expenditures that are "intimately connected with the state of [the taxpayer's] residence," *Goodwin*, 286 App. Div., at 701, 146 N. Y. S. 2d, at 180), Christopher Lunding is not entitled to the relief he seeks.

Alimony payments (if properly treated as an expense at all) are a personal expense, as the Court acknowledges, see *ante,* at 310–311. They "ste[m] entirely from the marital relationship," *United States* v. *Gilmore,* 372 U. S. 39, 51 (1963), and, like other incidents of marital and family life, are principally connected to the State of residence. Unlike donations to New York-based charities or mortgage and tax payments for second homes in the State, Lunding's alimony payments cannot be said to take place in New York, nor do they inure to New York's benefit. They are payments particularly personal in character, made by one Connecticut resident to another Connecticut resident pursuant to a decree issued by a Connecticut state court. Those payments "must be deemed to take place in" Connecticut, "the state of [Lunding's] residence, the state in which his life is centered." *Goodwin,* 286 App. Div., at 701, 146 N. Y. S. 2d, at 180. New York is not constitutionally compelled to subsidize them.

The majority is therefore wrong to fault the Court of Appeals for insufficient articulation of a "policy basis for § 631(b)(6)." *Ante,* at 304. The Court of Appeals recalled *Goodwin,* characterizing it as the decision that "definitively addressed" the disallowance of personal life expenses. See 89 N. Y. 2d 283, 289, 675 N. E. 2d 816, 820 (1996). The court concluded that alimony payments were no less referable to the law and policy of the taxpayer's residence than "the expenditures for life insurance, out-of-State property taxes and medical treatment at issue in *Goodwin.*" *Id.,* at 291, 675 N. E. 2d, at 821. That policy-based justification for § 631(b)(6) needed no further elaboration.

III

Although Lunding's alimony payments to a Connecticut resident surely do not facilitate his production of income in New York or contribute to New York's riches, the Court relies on this connection: "[A]s a personal obligation that generally correlates with a taxpayer's total income or wealth, ali-

mony bears some relationship to earnings regardless of their source." *Ante*, at 314; see also *ante*, at 310 (alimony payments "arguably bear some relationship to a taxpayer's overall earnings," and are "determined in large measure by an individual's income generally, wherever it is earned"). But all manner of spending similarly relates to an individual's income from all sources. Income generated anywhere will determine, for example, the quality of home one can afford and the character of medical care one can purchase. Under a "correlat[ion] with a taxpayer's total income" approach, *ante*, at 314, it appears, the nonresident must be allowed to deduct his medical expenses and home state real estate taxes, even school district taxes, plus mortgage interest payments, if the State allows residents to deduct such expenses. And as total income also determines eligibility for tax relief aimed at low-income taxpayers, notably earned income tax credits, a State would be required to make such credits available to nonresidents if it grants them to residents.[6]

The Court does not suggest that alimony correlates with a taxpayer's total income more closely than does the run of personal life expenses. Indeed, alimony may be more significantly influenced by other considerations, for example, the length of the marriage, the recipient's earnings, child custody and support arrangements, an antenuptial agreement.[7] In

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[6] New York currently allows low-income nonresident taxpayers to use the State's Earned Income Tax Credit to offset their income tax liability, but does not refund any excess credits to nonresidents as it does to residents. N. Y. Tax Law §§ 606(d)(1)–(d)(2) (McKinney Supp. 1997); see also §§ 606(c)(1)–(c)(2) (residents entitled to a refund of excess credit for certain household and dependent care services; nonresidents may use the credit only to offset tax liability).

[7] Connecticut, where Lunding was divorced, lists as factors relevant to alimony determinations

"the length of the marriage, the causes for the annulment, dissolution of the marriage or legal separation, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate and needs of each of the parties . . . and, in the case of a parent to whom the

short, the Court's "related-to-income" approach directly leads to what Christopher Lunding candidly argued: Any and every personal deduction allowed to residents must be allowed to nonresidents in the proportion that New York income bears to the taxpayer's total income. See Tr. of Oral Arg. 19–20. If that is the law of this case, long-settled provisions and decisions have been overturned, see *supra*, at 324–325, beyond the capacity of any legislature to repair. The Court's "notions of fairness," *ante*, at 315, in my judgment, do not justify today's extraordinary resort to a Privileges and Immunities Clause "the contours of which have [not] been precisely shaped by the process and wear of constant litigation and judicial interpretation." *Baldwin* v. *Fish and Game Comm'n of Mont.*, 436 U. S., at 379.

* * *

For the reasons stated, I do not agree that the Privileges and Immunities Clause of Article IV, § 2, mandates the result Lunding seeks—the insulation of his 1990 alimony payments from any State's tax. Accordingly, I would affirm the judgment of the New York Court of Appeals, and I dissent from this Court's judgment.

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custody of minor children has been awarded, the desirability of such parent's securing employment." Conn. Gen. Stat. § 46b–82 (1995).

Syllabus

SOUTH DAKOTA *v.* YANKTON SIOUX TRIBE ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 96–1581. Argued December 8, 1997—Decided January 26, 1998

The Yankton Sioux Reservation in South Dakota was established pursuant to an 1858 Treaty between the United States and the Yankton Tribe. Congress subsequently retreated from the reservation concept and passed the 1887 Dawes Act, which permitted the Government to allot tracts of tribal land to individual Indians and, with tribal consent, to open the remaining holdings to non-Indian settlement. In accordance with the Dawes Act, members of the respondent Tribe received individual allotments and the Government then negotiated with the Tribe for the cession of the remaining, unallotted reservation lands. An agreement reached in 1892 provided that the Tribe would "cede, sell, relinquish, and convey to the United States" all of its unallotted lands; in return, the Government agreed to pay the Tribe $600,000. Article XVIII of the agreement, a saving clause, stated that nothing in its terms "shall be construed to abrogate the [1858] treaty" and that "all provisions of the said treaty . . . shall be in full force and effect, the same as though this agreement had not been made." Congress ratified the agreement in an 1894 statute, and non-Indians rapidly acquired the ceded lands.

In this case, tribal, federal, and state officials disagree as to the environmental regulations applicable to a solid waste disposal facility that lies on unallotted, non-Indian fee land, but falls within the reservation's original 1858 boundaries. The Tribe and the Federal Government contend that the site remains part of the reservation and is therefore subject to federal environmental regulations, while petitioner State maintains that the 1894 divestiture of Indian property effected a diminishment of the Tribe's territory, such that the ceded lands no longer constitute "Indian country" under 18 U. S. C. § 1151(a), and the State now has primary jurisdiction over them. The District Court declined to enjoin construction of the landfill but granted the Tribe a declaratory judgment that the 1894 Act did not alter the 1858 reservation boundaries, and consequently that the waste site lies within an Indian reservation where federal environmental regulations apply. The Eighth Circuit affirmed.

Held: The 1894 Act's operative language and the circumstances surrounding its passage demonstrate that Congress intended to diminish the Yankton Reservation. Pp. 343–358.

Syllabus

(a) States acquired primary jurisdiction over unallotted opened lands if the applicable surplus land Act freed those lands of their reservation status and thereby diminished the reservation boundaries, *Solem* v. *Bartlett*, 465 U. S. 463, 467, but the entire opened area remained Indian country if the Act simply offered non-Indians the opportunity to purchase land within established reservation boundaries, *id.*, at 470. The touchstone to determine whether a given statute diminished or retained reservation boundaries is congressional purpose, see *Rosebud Sioux Tribe* v. *Kneip*, 430 U. S. 584, 615, and Congress' intent to alter an Indian treaty's terms by diminishing a reservation must be "clear and plain," *United States* v. *Dion*, 476 U. S. 734, 738–739. The most probative evidence of congressional intent is the statutory language, but the Court will also consider the historical context surrounding the Act's passage, and, to a lesser extent, the subsequent treatment of the area in question and the pattern of settlement there. *Hagen* v. *Utah*, 510 U. S. 399, 411. Ambiguities must be resolved in favor of the Indians, and the Court will not lightly find diminishment. *Ibid.* Pp. 343–344.

(b) The plain language of the 1894 Act evinces congressional intent to diminish the reservation. Article I's "cession" language—the Tribe will "cede, sell, relinquish, and convey to the United States all their claim, right, title, and interest in and to all the unallotted lands"—and Article II's "sum certain" language—whereby the United States pledges a fixed payment of $600,000 in return—is "precisely suited" to terminating reservation status. See *DeCoteau* v. *District County Court for Tenth Judicial Dist.*, 420 U. S. 425, 445. Indeed, when a surplus land Act contains both explicit cession language, evidencing "the present and total surrender of all tribal interests," and a provision for a fixed-sum payment, representing "an unconditional commitment from Congress to compensate the Indian tribe for its opened land," a "nearly conclusive," or "almost insurmountable," presumption of diminishment arises. See *Solem*, *supra*, at 470; see also *Hagen*, *supra*, at 411. Pp. 344–345.

(c) The Court rejects the Tribe's argument that, because the 1894 Act's saving clause purported to conserve the 1858 Treaty, the existing reservation boundaries were maintained. Such a literal construction would eviscerate the 1892 agreement by impugning the entire sale. Rather, it seems most likely that the parties inserted Article XVIII, including both the general statement regarding the force of the 1858 Treaty and a particular provision ensuring that the "Yankton Indians shall continue to receive their annuities under [that treaty]," for the limited purpose of assuaging the Tribe's concerns about their entitlement to annuities. Discussion of the annuities figured prominently in the negotiations that led to the 1892 agreement, but no mention was made of the preservation of the 1858 boundaries. Pp. 345–349.

Syllabus

(d) Neither the 1894 Act's clause reserving sections of each township for schools nor its prohibition on liquor within the ceded lands supports the Tribe's position. The Court agrees with the State that the school sections clause reinforces the view that Congress intended to extinguish the reservation status of the unallotted land. See, *e. g.*, *Rosebud*, *supra*, at 601; but see *Solem*, *supra*, at 474. Moreover, the most reasonable inference from the inclusion of the liquor prohibition is that Congress was aware that the opened, unallotted areas would henceforth not be "Indian country," where alcohol already had been banned. *Rosebud*, *supra*, at 613. Pp. 349–351.

(e) Although the Act's historical context and the area's subsequent treatment are not such compelling evidence that, standing alone, they would indicate diminishment, neither do they rebut the "almost insurmountable presumption" that arises from the statute's plain terms. The manner in which the Government negotiated the transaction with the Tribe and the tenor of the legislative reports presented to Congress reveal a contemporaneous understanding that the 1894 Act modified the reservation. See *Solem*, *supra*, at 471. The legislative history itself adds little because Congress considered several surplus land sale agreements at the same time, but the few relevant references from the floor debates support a finding of diminishment. In addition, the Presidential Proclamation opening the lands to settlement contains language indicating that the Nation's Chief Executive viewed the reservation boundaries as altered. See *Rosebud*, *supra*, at 602–603. Pp. 351–354.

(f) Despite the apparent contemporaneous understanding that the 1894 Act diminished the reservation, in the years since, both Congress and the Executive Branch have described the reservation in contradictory terms and treated the region in an inconsistent manner. The mixed record reveals no dominant approach, and it carries but little force in light of the strong textual and contemporaneous evidence of diminishment. *E. g.*, *Rosebud*, *supra*, at 605, n. 27. Pp. 354–356.

(g) Demographic factors also signify diminishment: The Yankton population in the region promptly and drastically declined after the 1894 Act, and the area remains predominantly populated by non-Indians with only a few surviving pockets of Indian allotments. *Solem*, *supra*, at 471, and n. 12. The Court's holding is further reinforced by the State's assumption of jurisdiction over the ceded territory almost immediately after the 1894 Act, and by the lack of evidence that the Tribe has attempted until recently to exercise jurisdiction over nontrust lands. 99 F. 3d 1439, 1456. Finally, the Yankton Constitution, drafted in 1932 and amended in 1962, defines the Tribe's territory to include only those tribal lands within the 1858 boundaries "now owned" by the Tribe. Pp. 356–357.

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(h) The conflicting understandings about the status of the reservation, together with the fact that the Tribe continues to own land in common, caution the Court to limit its holding to the narrow question presented: whether unallotted, ceded lands were severed from the reservation. The Court need not determine whether Congress disestablished the reservation altogether in order to resolve this case, and accordingly declines to do so. See, *e. g.*, *Hagen*, *supra*, at 421. Pp. 357–358.

99 F. 3d 1439, reversed and remanded.

O'Connor, J., delivered the opinion for a unanimous Court.

Mark W. Barnett, Attorney General of South Dakota, argued the cause for petitioner. With him on the briefs was *John Patrick Guhin*, Deputy Attorney General. *Kenneth W. Cotton* filed a brief for the Southern Missouri Waste Management District, respondent under this Court's Rule 12.4, in support of petitioner.

James G. Abourezk argued the cause for respondent Yankton Sioux Tribe et al. With him on the brief were *Bobbie J. Rasmusson*, *Michael H. Scarmon*, and *Paul Bender*.

Barbara McDowell argued the cause for the United States as *amicus curiae* urging affirmance. With her on the brief were *Acting Solicitor General Waxman*, *Assistant Attorney General Schiffer*, *Deputy Solicitor General Kneedler*, and *Edward J. Shawaker*.*

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*Briefs of *amici curiae* urging reversal were filed for Charles Mix County, South Dakota, by *Tom D. Tobin* and *Matthew F. Gaffey;* for the City of Dante et al. by *Timothy R. Whalen;* for Duchesne County, Utah, by *Herbert Wm. Gillespie;* and for Lewis County, Idaho, by *Kimron R. Torgerson*.

Reid Peyton Chambers, *Arthur Lazarus, Jr.*, and *William R. Perry* filed a brief for the Standing Rock Sioux Tribe et al. as *amici curiae* urging affirmance.

A brief of *amici curiae* was filed for the State of California et al. by *Daniel E. Lungren*, Attorney General of California, and *Thomas F. Gede*, Special Assistant Attorney General, *Alan G. Lance*, Attorney General of Idaho, and *Steven W. Strack*, Assistant Attorney General, and by the Attorneys General for their respective States as follows: *Bill Pryor* of Alabama, *Bruce M. Botelho* of Alaska, *Jeremiah W. (Jay) Nixon* of Missouri,

JUSTICE O'CONNOR delivered the opinion of the Court.

This case presents the question whether, in an 1894 statute that ratified an agreement for the sale of surplus tribal lands, Congress diminished the boundaries of the Yankton Sioux Reservation in South Dakota. The reservation was established pursuant to an 1858 Treaty between the United States and the Yankton Sioux Tribe. Subsequently, under the Indian General Allotment Act, Act of Feb. 8, 1887, 24 Stat. 388, 25 U. S. C. § 331 (Dawes Act), individual members of the Tribe received allotments of reservation land, and the Government then negotiated with the Tribe for the cession of the remaining, unallotted lands. The issue we confront illustrates the jurisdictional quandaries wrought by the allotment policy: We must decide whether a landfill constructed on non-Indian fee land that falls within the boundaries of the original Yankton Reservation remains subject to federal environmental regulations. If the divestiture of Indian property in 1894 effected a diminishment of Indian territory, then the ceded lands no longer constitute "Indian country" as defined by 18 U. S. C. § 1151(a), and the State now has primary jurisdiction over them. In light of the operative language of the 1894 Act, and the circumstances surrounding its passage, we hold that Congress intended to diminish the Yankton Reservation and consequently that the waste site is not in Indian country.

I

A

At the outset of the 19th century, the Yankton Sioux Tribe held exclusive dominion over 13 million acres of land between the Des Moines and Missouri Rivers, near the boundary that currently divides North and South Dakota. H. Hoover, The Yankton Sioux 25 (1988). In 1858, the

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Frankie Sue Del Papa of Nevada, *Jan Graham* of Utah, and *William U. Hill* of Wyoming.

Yanktons entered into a treaty with the United States renouncing their claim to more than 11 million acres of their aboriginal lands in the north-central plains. Treaty of Apr. 19, 1858, 11 Stat. 743. Pursuant to the agreement, the Tribe ceded

> "all the lands now owned, possessed, or claimed by them, wherever situated, except four hundred thousand acres thereof, situated and described as follows, to wit—Beginning at the mouth of the Naw-izi-wa-koo-pah or Chouteau River and extending up the Missouri River thirty miles; thence due north to a point; thence easterly to a point on the said Chouteau River; thence down said river to the place of beginning, so as to include the said quantity of four hundred thousand acres." Art. I, *id.*, at 744.

The retained portion of the Tribe's lands, located in what is now the southeastern part of Charles Mix County, South Dakota, was later surveyed and determined to encompass 430,405 acres. See Letter from the Commissioner of Indian Affairs to the Secretary of the Interior (Dec. 9, 1893), reprinted in S. Exec. Doc. No. 27, 53d Cong., 2d Sess., 5 (1894) (hereinafter Letter). In consideration for the cession of lands and release of claims, the United States pledged to protect the Yankton Tribe in their "quiet and peaceable possession" of this reservation and agreed that "[n]o white person," with narrow exceptions, would "be permitted to reside or make any settlement upon any part of the [reservation]." Arts. IV, X, 11 Stat. 744, 747. The Federal Government further promised to pay the Tribe, or expend for the benefit of members of the Tribe, $1.6 million over a 50-year period, and appropriated an additional $50,000 to aid the Tribe in its transition to the reservation through the purchase of livestock and agricultural implements, and the construction of houses, schools, and other buildings.

Not all of this assistance was forthcoming, and the Tribe experienced severe financial difficulties in the years that followed, compounded by weather cycles of drought and devastating floods. When war broke out between the United States and the Sioux Nation in 1862, the Yankton Tribe alone sided with the Federal Government, a decision that isolated it from the rest of the Sioux Federation and caused severe inner turmoil as well. The Tribe's difficulties coincided with a period of rapid growth in the United States' population, increasing westward migration, and ensuing demands from non-Indians to open Indian holdings throughout the Western States to settlement.

In response to these "familiar forces," *DeCoteau* v. *District County Court for Tenth Judicial Dist.*, 420 U. S. 425, 431 (1975), Congress retreated from the reservation concept and began to dismantle the territories that it had previously set aside as permanent and exclusive homes for Indian tribes. See *Solem* v. *Bartlett*, 465 U. S. 463, 466 (1984). The pressure from westward-bound homesteaders, and the belief that the Indians would benefit from private property ownership, prompted passage of the Dawes Act in 1887, 24 Stat. 388. The Dawes Act permitted the Federal Government to allot tracts of tribal land to individual Indians and, with tribal consent, to open the remaining holdings to non-Indian settlement. Within a generation or two, it was thought, the tribes would dissolve, their reservations would disappear, and individual Indians would be absorbed into the larger community of white settlers. See Hearings on H. R. 7902 before the House Committee on Indian Affairs, 73d Cong., 2d Sess., 428 (1934) (statement of D. S. Otis on the history of the allotment policy). With respect to the Yankton Reservation in particular, some Members of Congress speculated that "close contact with the frugal, moral, and industrious people who will settle [on the reservation] [would] stimulate individual effort and make [the Tribe's] progress much

more rapid than heretofore." Report of the Senate Committee on Indian Affairs, S. Rep. No. 196, 53d Cong., 2d Sess., 1 (1894).

In accordance with the Dawes Act, each member of the Yankton Tribe received a 160-acre tract from the existing reservation, held in trust by the United States for 25 years. Members of the Tribe acquired parcels of land throughout the 1858 reservation, although many of the allotments were clustered in the southern part, near the Missouri River. By 1890, the allotting agent had apportioned 167,325 acres of reservation land, 95,000 additional acres were subsequently allotted under the Act of February 28, 1891, 26 Stat. 795, and a small amount of acreage was reserved for government and religious purposes. The surplus amounted to approximately 168,000 acres of unallotted lands. See Letter, at 5.

In 1892, the Secretary of the Interior dispatched a three-member Yankton Indian Commission to Greenwood, South Dakota, to negotiate for the acquisition of these surplus lands. See Act of July 13, 1892, 27 Stat. 137 (appropriating funds to enable the Secretary to "negotiate with any Indians for the surrender of portions of their respective reservations"). When the Commissioners arrived on the reservation in October 1892, they informed the Tribe that they had been sent by the "Great Father" to discuss the cession of "this land that [members of the Tribe] hold in common," Council of the Yankton Indians (Oct. 8, 1892), transcribed in S. Exec. Doc. No. 27, at 48, and they abruptly encountered opposition to the sale from traditionalist tribal leaders. See Report of the Yankton Indian Commission (Mar. 31, 1893), reprinted in S. Exec. Doc. No. 27, at 9–11 (hereinafter Report). In the lengthy negotiations that followed, members of the Tribe raised concerns about the suggested price per acre, the preservation of their annuities under the 1858 Treaty, and other outstanding claims against the United States, but they did not discuss the future boundaries of the

reservation. Once the Commissioners garnered a measure of support for the sale of the unallotted lands, they submitted a proposed agreement to the Tribe.[1]

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[1] The text of the agreement provides in relevant part:

"Article I.

"The Yankton tribe of Dakota or Sioux Indians hereby cede, sell, relinquish, and convey to the United States all their claim, right, title, and interest in and to all the unallotted lands within the limits of the reservation set apart to said Indians as aforesaid.

"Article II.

"In consideration for the lands ceded, sold, relinquished, and conveyed to the United States as aforesaid, the United States stipulates and agrees to pay to the said Yankton tribe of Sioux Indians the sum of six hundred thousand dollars ($600,000), as hereinbefore provided for.

. . . . .

"Article VII.

"In addition to the stipulations in the preceding articles, upon the ratification of this agreement by Congress, the United States shall pay to the Yankton tribe of Sioux Indians as follows: To each person whose name is signed to this agreement and to each other male member of the tribe who is eighteen years old or older at the date of this agreement, twenty dollars ($20) in one double eagle, struck in the year 1892 as a memorial of this agreement. . . .

"Article VIII.

"Such part of the surplus lands hereby ceded and sold to the United States as may now be occupied by the United States for agency, schools, and other purposes, shall be reserved from sale to settlers until they are no longer required for such purposes. But all other lands included in this sale shall, immediately after the ratification of this agreement by Congress, be offered for sale through the proper land office, to be disposed of under the existing land laws of the United States, to actual bona fide settlers only.

. . . . .

"Article XV.

"The claim of fifty-one Yankton Sioux Indians, who were employed as scouts by General Alf. Sully in 1864, for additional compensation at the rate of two hundred and twenty-five dollars ($225) each, aggregating the sum of eleven thousand four hundred and seventy-five dollars ($11,475) is hereby recognized as just, and within ninety days (90) after the ratification

Article I of the agreement provided that the Tribe would "cede, sell, relinquish, and convey to the United States" all of the unallotted lands on the reservation. Pursuant to Article II, the United States agreed to compensate the Tribe in a single payment of $600,000, which amounted to $3.60 per acre.[2] Much of the agreement focused on the payment and disposition of that sum. Article VII further provided that all the signatories and adult male members of the Tribe would receive a $20 gold piece to commemorate the agreement. Some members of the Tribe also sought unpaid wages from their service as scouts in the Sioux War, and in Article XV, the United States recognized their claim. The saving clause in Article XVIII, the core of the current disagreement between the parties to this case, stated that noth-

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of this agreement by Congress the same shall be paid in lawful money of the United States to the said scouts or to their heirs.

. . . . .

"Article XVII.

"No intoxicating liquors nor other intoxicants shall ever be sold or given away upon any of the lands by this agreement ceded and sold to the United States, nor upon any other lands within or comprising the reservations of the Yankton Sioux or Dakota Indians as described in the treaty between the said Indians and the United States, dated April 19th, 1858, and as afterwards surveyed and set off to the said Indians. The penalty for the violation of this provision shall be such as Congress may prescribe in the act ratifying this agreement.

"Article XVIII.

"Nothing in this agreement shall be construed to abrogate the treaty of April 19th, 1858, between the Yankton tribe of Sioux Indians and the United States. And after the signing of this agreement, and its ratification by Congress, all provisions of the said treaty of April 19th, 1858, shall be in full force and effect, the same as though this agreement had not been made, and the said Yankton Indians shall continue to receive their annuities under the said treaty of April 19th, 1858." 28 Stat. 314–318.

[2] In 1980, the Court of Claims concluded that the land ceded by the Tribe had a fair market value of $6.65 per acre, or $1,337,381.50, that the $600,000 paid pursuant to the 1892 agreement was "unconscionable and grossly inadequate," and that the Tribe was entitled to recover the difference. *Yankton Sioux Tribe* v. *United States*, 623 F. 2d 159, 178.

ing in the agreement's terms "shall be construed to abrogate the treaty [of 1858]" and that "all provisions of the said treaty . . . shall be in full force and effect, the same as though this agreement had not been made."

By March 1893, the Commissioners had collected signatures from 255 of the 458 male members of the Tribe eligible to vote, and thus obtained the requisite majority endorsement. The Yankton Indian Commission filed its report in May 1893, but congressional consideration was delayed by an investigation into allegations of fraud in the procurement of signatures. On August 15, 1894, Congress finally ratified the 1892 agreement, together with similar surplus land sale agreements between the United States and the Siletz and Nez Perce Tribes. Act of Aug. 15, 1894, 28 Stat. 286. The 1894 Act incorporated the 1892 agreement in its entirety and appropriated the necessary funds to compensate the Tribe for the ceded lands, to satisfy the claims for scout pay, and to award the commemorative $20 gold pieces. Congress also prescribed the punishment for violating a liquor prohibition included in the agreement and reserved certain sections in each township for common-school purposes. *Ibid.*

President Cleveland issued a proclamation opening the ceded lands to settlement as of May 21, 1895, and non-Indians rapidly acquired them. By the turn of the century, 90 percent of the unallotted tracts had been settled. See *Yankton Sioux Tribe* v. *United States*, 623 F. 2d 159, 171 (Ct. Cl. 1980). A majority of the individual allotments granted to members of the Tribe also were subsequently conveyed in fee by the members to non-Indians. Today, the total Indian holdings in the region consist of approximately 30,000 acres of allotted land and 6,000 acres of tribal land. Indian Reservations: A State and Federal Handbook 260 (1986).

Although formally repudiated with the passage of the Indian Reorganization Act in 1934, 48 Stat. 984, 25 U. S. C. § 461, the policy favoring assimilation of Indian tribes through the allotment of reservation land left behind a last-

ing legacy. The conflict between the modern-day approach to tribal self-determination and the assimilation impetus of the allotment era has engendered "a spate of jurisdictional disputes between state and federal officials as to which sovereign has authority over lands that were opened by the [surplus land] Acts and have since passed out of Indian ownership." *Solem*, 465 U. S., at 467.

B

We confront such a dispute in the instant case, in which tribal, federal, and state officials disagree as to the environmental regulations applicable to a proposed waste site. In February 1992, several South Dakota counties formed the Southern Missouri Recycling and Waste Management District (hereinafter Waste District) for the purpose of constructing a municipal solid waste disposal facility. The Waste District acquired the site for the landfill, which falls within the 1858 boundaries of the Yankton Sioux Reservation, in fee from a non-Indian. The predicate for the parties' claims in this case is that the waste site lies on land ceded in the 1894 Act, and the record supports that assumption.

In the Tribe's complaint, the proposed landfill is described as "the south one-half north one-quarter (S½ N¼), Section 6, Township 96 North, Range 65 West (S6, T96N, R65W) of the Fifth Principal Meridan *[sic]*, Charles Mix County, South Dakota." App. 24. That description corresponds to the account of a tract of land deeded to Lars K. Langeland under the Homestead Act in 1904. See App. to Brief for Respondent Southern Missouri Waste Management District 1a–2a. Because all of the land allotted to individual Indians on the Yankton Reservation was inalienable, pursuant to the Dawes Act, during a 25-year trust period, the tract acquired by a homesteader in 1904 and currently owned by the Waste District must consist of unallotted land ceded in the 1894 Act. (The Dawes Act was amended in 1906 by the Burke Act, 34 Stat. 182, 25 U. S. C. § 349, which permitted the issuance of

some fee-simple patents before the expiration of the 25-year trust period, but the restrictions on alienation remained in place as of 1904.)

When the Waste District sought a state permit for the landfill, the Yankton Tribe intervened and objected on environmental grounds, arguing that the proposed compacted clay liner was inadequate to prevent leakage. After an administrative hearing in December 1993, the State Board of Minerals and the Environment granted the solid waste permit, finding that South Dakota regulations did not require the installation of the synthetic composite liner the Tribe had requested. The Sixth Judicial Circuit affirmed the Board's decision, and no appeal was taken to the State Supreme Court.

In September 1994, the Tribe filed suit in the Federal District Court for the District of South Dakota to enjoin construction of the landfill, and the Waste District joined South Dakota as a third party so that the State could defend its jurisdiction to grant the permit. The Tribe also sought a declaratory judgment that the permit did not comport with Federal Environmental Protection Agency (EPA) regulations mandating the installation of a composite liner in the landfill. See 40 CFR § 258.40(b) (1997). The District Court held, in accordance with our decision in *South Dakota* v. *Bourland*, 508 U. S. 679, 692 (1993), that the Tribe itself could not assert regulatory jurisdiction over the non-Indian activity on fee lands. Furthermore, because the Tribe did not establish that the landfill would compromise the "political integrity, the economic security, or the health or welfare of the tribe," the court concluded that the Tribe could not invoke its inherent sovereignty under the exceptions in *Montana* v. *United States*, 450 U. S. 544, 566 (1981). Accordingly, the court declined to enjoin the landfill project, a decision the Tribe does not appeal. The District Court also determined, however, that the 1894 Act did not diminish the exterior boundaries of the reservation as delineated in the 1858

Treaty between the United States and the Tribe, and consequently that the waste site lies within an Indian reservation where federal environmental regulations apply.

On appeal by the State,[3] a divided panel of the Court of Appeals for the Eighth Circuit agreed that "Congress intended by its 1894 Act that the Yankton Sioux sell their surplus land to the government, but not their governmental authority over it." 99 F. 3d 1439, 1457 (1996). The court relied primarily on the saving clause in Article XVIII, reasoning that, given its "unusually expansive language," other sections of the 1894 Act "should be read narrowly to minimize any conflict with the 1858 treaty." *Id.*, at 1447. The court further concluded that neither the historical evidence nor the demographic development of the area could sustain a finding of diminishment. *Id.*, at 1457.

We granted certiorari to resolve a conflict between the decision of the Court of Appeals and a number of decisions of the South Dakota Supreme Court declaring that the reservation has been diminished.[4] 520 U. S. 1263 (1997). We now reverse the Eighth Circuit's decision and hold that the unallotted lands ceded as a result of the 1894 Act did not retain reservation status.

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[3] The Waste District explains that it did not appeal because the District Court's decision allowed it to go forward with construction of the proposed landfill, but it filed a brief as a respondent supporting the petitioner State in this Court because "of the likelihood that the assertion of tribal jurisdiction will continue to affect the District in this or similar contexts." Brief for Respondent Southern Missouri Waste Management District 6, n. 6. With respect to the particular issue of the landfill's liner, the Waste District's concerns appear academic. The EPA has waived the requirement of a composite liner and has permitted construction to go forward with the compacted clay liner. See *Yankton Sioux Tribe* v. *Environmental Protection Agency*, 950 F. Supp. 1471, 1482 (SD 1996).

[4] See *State* v. *Greger*, 559 N. W. 2d 854 (S. D. 1997); see also *State* v. *Thompson*, 355 N. W. 2d 349, 350 (S. D. 1984); *State* v. *Williamson*, 87 S. D. 512, 515, 211 N. W. 2d 182, 184 (1973); *Wood* v. *Jameson*, 81 S. D. 12, 18–19, 130 N. W. 2d 95, 99 (1964).

II

States acquired primary jurisdiction over unallotted opened lands where "the applicable surplus land Act freed that land of its reservation status and thereby diminished the reservation boundaries." *Solem*, 465 U. S., at 467. In contrast, if a surplus land Act "simply offered non-Indians the opportunity to purchase land within established reservation boundaries," *id.*, at 470, then the entire opened area remained Indian country. Our touchstone to determine whether a given statute diminished or retained reservation boundaries is congressional purpose. See *Rosebud Sioux Tribe* v. *Kneip*, 430 U. S. 584, 615 (1977). Congress possesses plenary power over Indian affairs, including the power to modify or eliminate tribal rights. See, *e. g.*, *Santa Clara Pueblo* v. *Martinez*, 436 U. S. 49, 56 (1978). Accordingly, only Congress can alter the terms of an Indian treaty by diminishing a reservation, *United States* v. *Celestine*, 215 U. S. 278, 285 (1909), and its intent to do so must be "clear and plain," *United States* v. *Dion*, 476 U. S. 734, 738–739 (1986).

Here, we must determine whether Congress intended by the 1894 Act to modify the reservation set aside for the Yankton Tribe in the 1858 Treaty. Our inquiry is informed by the understanding that, at the turn of this century, Congress did not view the distinction between acquiring Indian property and assuming jurisdiction over Indian territory as a critical one, in part because "[t]he notion that reservation status of Indian lands might not be coextensive with tribal ownership was unfamiliar," *Solem*, 465 U. S., at 468, and in part because Congress then assumed that the reservation system would fade over time. "Given this expectation, Congress naturally failed to be meticulous in clarifying whether a particular piece of legislation formally sliced a certain parcel of land off one reservation." *Ibid.;* see also *Hagen* v. *Utah*, 510 U. S. 399, 426 (1994) (Blackmun, J., dissenting) ("As a result of the patina history has placed on the allotment

Acts, the Court is presented with questions that their architects could not have foreseen"). Thus, although "[t]he most probative evidence of diminishment is, of course, the statutory language used to open the Indian lands," we have held that we will also consider "the historical context surrounding the passage of the surplus land Acts," and, to a lesser extent, the subsequent treatment of the area in question and the pattern of settlement there. *Id.*, at 411. Throughout this inquiry, "we resolve any ambiguities in favor of the Indians, and we will not lightly find diminishment." *Ibid.*

A

Article I of the 1894 Act provides that the Tribe will "cede, sell, relinquish, and convey to the United States all their claim, right, title, and interest in and to all the unallotted lands within the limits of the reservation"; pursuant to Article II, the United States pledges a fixed payment of $600,000 in return. This "cession" and "sum certain" language is "precisely suited" to terminating reservation status. See *DeCoteau*, 420 U. S., at 445. Indeed, we have held that when a surplus land Act contains both explicit language of cession, evidencing "the present and total surrender of all tribal interests," and a provision for a fixed-sum payment, representing "an unconditional commitment from Congress to compensate the Indian tribe for its opened land," a "nearly conclusive," or "almost insurmountable," presumption of diminishment arises. *Solem*, *supra*, at 470; see also *Hagen*, *supra*, at 411.

The terms of the 1894 Act parallel the language that this Court found terminated the Lake Traverse Indian Reservation in *DeCoteau*, *supra*, at 445, and, as in *DeCoteau*, the 1894 Act ratified a negotiated agreement supported by a majority of the Tribe. Moreover, the Act we construe here more clearly indicates diminishment than did the surplus land Act at issue in *Hagen*, which we concluded diminished reservation lands even though it provided only that "all the

unallotted lands within said reservation shall be restored to the public domain." See 510 U. S., at 412.

The 1894 Act is also readily distinguishable from surplus land Acts that the Court has interpreted as maintaining reservation boundaries. In both *Seymour* v. *Superintendent of Wash. State Penitentiary*, 368 U. S. 351, 355 (1962), and *Mattz* v. *Arnett*, 412 U. S. 481, 501–502 (1973), we held that Acts declaring surplus land "subject to settlement, entry, and purchase," without more, did not evince congressional intent to diminish the reservations. Likewise, in *Solem*, we did not read a phrase authorizing the Secretary of the Interior to "sell and dispose" of surplus lands belonging to the Cheyenne River Sioux as language of cession. See 465 U. S., at 472. In contrast, the 1894 Act at issue here—a negotiated agreement providing for the total surrender of tribal claims in exchange for a fixed payment—bears the hallmarks of congressional intent to diminish a reservation.

B

The Yankton Tribe and the United States, appearing as *amicus* for the Tribe, rest their argument against diminishment primarily on the saving clause in Article XVIII of the 1894 Act. The Tribe asserts that because that clause purported to conserve the provisions of the 1858 Treaty, the existing reservation boundaries were maintained. The United States urges a similarly "holistic" construction of the agreement, which would presume that the parties intended to modify the 1858 Treaty only insofar as necessary to open the surplus lands for settlement, without fundamentally altering the treaty's terms.

Such a literal construction of the saving clause, as the South Dakota Supreme Court noted in *State* v. *Greger*, 559 N. W. 2d 854, 863 (1997), would "impugn the entire sale." The unconditional relinquishment of the Tribe's territory for settlement by non-Indian homesteaders can by no means be reconciled with the central provisions of the 1858 Treaty,

which recognized the reservation as the Tribe's "permanent" home and prohibited white settlement there. See *Oregon Dept. of Fish and Wildlife* v. *Klamath Tribe*, 473 U. S. 753, 770 (1985) (discounting a saving clause on the basis of a "glaring inconsistency" between the original treaty and the subsequent agreement). Moreover, the Government's contention that the Tribe intended to cede some property but maintain the entire reservation as its territory contradicts the common understanding of the time: that tribal ownership was a critical component of reservation status. See *Solem*, *supra*, at 468. We "cannot ignore plain language that, viewed in historical context and given a fair appraisal, clearly runs counter to a tribe's later claims." *Klamath*, *supra*, at 774 (internal quotation marks and citation omitted).

Rather than read the saving clause in a manner that eviscerates the agreement in which it appears, we give it a "sensible construction" that avoids this "absurd conclusion." See *United States* v. *Granderson*, 511 U. S. 39, 56 (1994) (internal quotation marks omitted). The most plausible interpretation of Article XVIII revolves around the annuities in the form of cash, guns, ammunition, food, and clothing that the Tribe was to receive in exchange for its aboriginal claims for 50 years after the 1858 Treaty. Along with the proposed sale price, these annuities and other unrealized Yankton claims dominated the 1892 negotiations between the Commissioners and the Tribe. The tribal historian testified, before the District Court, that the loss of their rations would have been "disastrous" to the Tribe, App. 589, and members of the Tribe clearly perceived a threat to the annuities. At a particularly tense point in the negotiations, when the tide seemed to turn in favor of forces opposing the sale, Commissioner John J. Cole warned:

> "I want you to understand that you are absolutely dependent upon the Great Father to-day for a living. Let the Government send out instructions to your agent to cease to issue these rations, let the Government instruct

> your agent to cease to issue your clothes. . . . Let the Government instruct him to cease to issue your supplies, let him take away the money to run your schools with, and I want to know what you would do. Everything you are wearing and eating is gratuity. Take all this away and throw this people wholly upon their own responsibility to take care of themselves, and what would be the result? Not one-fourth of your people could live through the winter, and when the grass grows again it would be nourished by the dust of all the balance of your noble tribe." Council of the Yankton Indians (Dec. 10, 1892), transcribed in S. Exec. Doc. No. 27, at 74.

Given the Tribe's evident concern with reaffirmance of the Government's obligations under the 1858 Treaty, and the Commissioners' tendency to wield the payments as an inducement to sign the agreement, we conclude that the saving clause pertains to the continuance of annuities, not the 1858 borders.

The language in Article XVIII specifically ensuring that the "Yankton Indians shall continue to receive their annuities under the [1858 Treaty]" underscores the limited purpose and scope of the saving clause. It is true that the Court avoids interpreting statutes in a way that "renders some words altogether redundant." *Gustafson* v. *Alloyd Co.*, 513 U. S. 561, 574 (1995). But in light of the fact that the record of the negotiations between the Commissioners and the Yankton Tribe contains no discussion of the preservation of the 1858 boundaries but many references to the Government's failure to fulfill earlier promises, see, *e. g.*, Council of the Yankton Indians (Dec. 3, 1892), transcribed in S. Exec. Doc. No. 27, at 54–55, it seems most likely that the parties inserted and understood Article XVIII, including both the general statement regarding the force of the 1858 Treaty and the particular provision that payments would continue as specified therein, to assuage the Tribes' concerns about their past claims and future entitlements.

Indeed, apart from the pledge to pay annuities, it is hard to identify any provision in the 1858 Treaty that the Tribe might have sought to preserve, other than those plainly inconsistent with or expressly included in the 1894 Act. The Government points to Article XI of the treaty, in which the Tribe agreed to submit for federal resolution "all matters of dispute and difficulty between themselves and other Indians," 11 Stat. 747, and urges us to extrapolate from this provision that the Tribe implicitly retained jurisdiction over internal matters, and from there to apply the standard canon of Indian law that "[o]nce powers of tribal self-government or other Indian rights are shown to exist, by treaty or otherwise, later federal action which might arguably abridge them is construed narrowly in favor of retaining Indian rights." F. Cohen, Handbook of Federal Indian Law 224 (1982) (hereinafter Cohen). But the treaty's reference to tribal authority is indirect, at best, and it does not persuade us to view the saving clause as an agreement to maintain exclusive tribal governance within the original reservation boundaries.

The Tribe further contends that because Article XVIII affirms that the 1858 Treaty will govern "the same as though [the 1892 agreement] had not been made," without reference to consistency between those agreements, it has more force than the standard saving clause. While the language of the saving clause is indeed unusual, we do not think it is meaningfully distinct from the saving clauses that have failed to move this Court to find that pre-existing treaties remain in effect under comparable circumstances. See, *e. g.*, *Klamath*, 473 U. S., at 769–770; *Montana*, 450 U. S., at 548, 558–559; *Rosebud*, 430 U. S., at 623 (Marshall, J., dissenting). Furthermore, "it is a commonplace of statutory construction that the specific" cession and sum certain language in Articles I and II "governs the general" terms of the saving clause. See *Morales* v. *Trans World Airlines, Inc.*, 504 U. S. 374, 384 (1992).

Finally, the Tribe argues that, at a minimum, the saving clause renders the statute equivocal, and that confronted with that ambiguity we must adopt the reading that favors the Tribe. See *Carpenter* v. *Shaw*, 280 U. S. 363, 367 (1930). The principle according to which ambiguities are resolved to the benefit of Indian tribes is not, however, "a license to disregard clear expressions of tribal and congressional intent." *DeCoteau*, 420 U. S., at 447; see also *South Carolina* v. *Catawba Tribe, Inc.*, 476 U. S. 498, 506 (1986). In previous decisions, this Court has recognized that the precise cession and sum certain language contained in the 1894 Act plainly indicates diminishment, and a reasonable interpretation of the saving clause does not conflict with a like conclusion in this case.

C

Both the State and the Tribe seek support for their respective positions in two other provisions of the 1894 Act: a clause reserving sections of each township for schools and a prohibition on liquor within the ceded lands. Upon ratification, Congress added that "the sixteenth and thirty-sixth sections in each Congressional township . . . shall be reserved for common-school purposes and be subject to the laws of the State of South Dakota." 28 Stat. 319. This "school sections clause" parallels the enabling Act admitting South Dakota to the Union, which grants the State sections 16 and 36 in every township for the support of common schools, but expressly exempts reservation land "until the reservation shall have been extinguished and such lands restored to . . . the public domain." Act of Feb. 22, 1889, 25 Stat. 679. When considering a similar provision included in the Act ceding the Rosebud Sioux Reservation in South Dakota, the Court discerned congressional intent to diminish the reservation, "thereby making the sections available for disposition to the State of South Dakota for 'school sections.'" *Rosebud*, *supra*, at 601. The Tribe argues that the clause in the 1894 Act specifying the application of state law would be superfluous if Congress

intended to diminish the reservation. As the Court stated in *DeCoteau*, however, "the natural inference would be that state law is to govern the manner in which the 16th and 36th sections are to be employed 'for common school purposes,'" which "implies nothing about the presence or absence of state civil and criminal jurisdiction over the remainder of the ceded lands." 420 U. S., at 446, n. 33.

Although we agree with the State that the school sections clause reinforces the view that Congress intended to extinguish the reservation status of the unallotted land, a somewhat contradictory provision counsels against finding the reservation terminated. Article VIII of the 1894 Act reserved from sale those surplus lands "as may now be occupied by the United States for agency, schools, and other purposes." In *Solem*, the Court noted with respect to virtually identical language that "[i]t is difficult to imagine why Congress would have reserved lands for such purposes if it did not anticipate that the opened area would remain part of the reservation." 465 U. S., at 474.

The State's position is more persuasively supported by the liquor prohibition included in Article XVII of the agreement. The provision prohibits the sale or offering of "intoxicating liquors" on "any of the lands by this agreement ceded and sold to the United States" or "any other lands within or comprising the reservations of the Yankton Sioux or Dakota Indians as described in the [1858] treaty," 28 Stat. 318, thus signaling a jurisdictional distinction between reservation and ceded land. The Commissioners' report recommends that Congress "fix a penalty for the violation of this provision which will make it most effective in preventing the introduction of intoxicants within the limits of the reservation," Report, at 21, which could be read to suggest that ceded lands remained part of the reservation. We conclude, however, that "the most reasonable inference from the inclusion of this provision is that Congress was aware that the opened, unallotted areas would henceforth not be 'Indian

country.'" *Rosebud, supra,* at 613. By 1892, Congress already had enacted laws prohibiting alcohol on Indian reservations, see Cohen 306–307, and "[w]e assume that Congress is aware of existing law when it passes legislation," *Miles* v. *Apex Marine Corp.*, 498 U. S. 19, 32 (1990). Furthermore, the Commissioner of Indian Affairs described the provision as prohibiting "the sale or disposition of intoxicants upon any of the lands *now* within the Yankton Reservation," Letter, at 6–7 (emphasis added), indicating that the lands would be severed from the reservation upon ratification of the agreement. In *Perrin* v. *United States*, 232 U. S. 478 (1914), we implied that the lands conveyed by the 1894 Act lost their reservation status when we construed Article XVII as applying to "ceded lands formerly included in the Yankton Sioux Indian Reservation." *Id.*, at 480. We now reaffirm that the terms of the 1894 Act, including both the explicit language of cession and the surrounding provisions, attest to Congress' intent to diminish the Yankton Reservation.

III

Although we perceive congressional intent to diminish the reservation in the plain statutory language, we also take note of the contemporary historical context, subsequent congressional and administrative references to the reservation, and demographic trends. Even in the absence of a clear expression of congressional purpose in the text of a surplus land Act, unequivocal evidence derived from the surrounding circumstances may support the conclusion that a reservation has been diminished. See *Solem*, 465 U. S., at 471. In this case, although the context of the Act is not so compelling that, standing alone, it would indicate diminishment, neither does it rebut the "almost insurmountable presumption" that arises from the statute's plain terms. *Id.*, at 470.

A

The "manner in which the transaction was negotiated" with the Yankton Tribe and "the tenor of legislative Reports

presented to Congress" reveal a contemporaneous understanding that the proposed legislation modified the reservation. *Id.*, at 471. In 1892, when the Commissioner of Indian Affairs appointed the Yankton Commission, he charged its members to "negotiate with the [Tribe] for the cession of their surplus lands" and noted that the funds exchanged for the "relinquishment" of those lands would provide a future income for the Tribe. Instructions to the Yankton Indian Commission (July 27, 1892), reprinted in App. 98–99. The negotiations themselves confirm the understanding that by surrendering its interest in the unallotted lands, the Tribe would alter the reservation's character. Commissioner J. C. Adams informed members of the Tribe that once surplus lands were sold to the "Great Father," the Tribe would "assist in making the laws which will govern [members of the Tribe] as citizens of the State and nation." Council of the Yankton Indians (Oct. 8, 1892), transcribed in S. Exec. Doc. No. 27, at 48. In terms that strongly suggest a reconception of the reservation, Commissioner Cole admonished the Tribe:

> "This reservation alone proclaims the old time and the old conditions . . . . The tide of civilization is as resistless as the tide of the ocean, and you have no choice but to accept it and live according to its methods or be destroyed by it. To accept it requires the sale of these surplus lands and the opening of this reservation to white settlement.
>
> "You were a great and powerful people when your abilities and energies were directed in harmony with the conditions which surrounded you, but the wave of civilization which swept over you found you unprepared for the new conditions and you became weak. . . . [Y]ou must accept the new life wholly. You must break down the barriers and invite the white man with all the elements of civilization, that your young men may have the same opportunities under the new conditions that your fathers

had under the old." Council of the Yankton Indians (Dec. 17, 1892), transcribed *id.*, at 81.

Cole's vivid language and entreaty to "break down the barriers" are reminiscent of the "picturesque" statement that Congress would "pull up the nails" holding down the outside boundary of the Uintah Reservation, which we viewed as evidence of diminishment in *Hagen*, 510 U. S., at 417.

Moreover, the Commissioners' report of the negotiations signaled their understanding that the cession of the surplus lands dissolved tribal governance of the 1858 reservation. They observed that "now that [members of the Tribe] have been allotted their lands in severalty and have sold their surplus land—the last property bond which assisted to hold them together in their tribal interest and estate—their tribal interests may be considered a thing of the past." Report, at 19. And, in a March 1894 letter to the Chairman of the Senate Committee on Indian Affairs, several Yankton chiefs and members of the Tribe indicated that they concurred in such an interpretation of the agreement's impact. The letter urged congressional ratification of the agreement, explaining that the signatories "want[ed] the laws of the United States and the State that we live in to be recognized and observed," and that they did not view it as desirable to "keep up the tribal relation . . . as the tribal relation on this reservation is an obstacle and hindrance to the advancement of civilization." S. Misc. Doc. No. 134, 53d Cong., 2d Sess., 1 (1894).

The legislative history itself adds little because Congress considered the Siletz, Nez Perce, and Yankton surplus land sale agreements at the same time, but the few relevant references from the floor debates support a finding of diminishment. Some members noted that the cessions would restore the surplus lands to the "public domain," see 53 Cong. Rec. 6425 (1894) (remarks of Rep. McCrae); *id.*, at 6426 (remarks of Rep. Hermann), language that indicates congressional intent to diminish a reservation, see *Hagen*, *supra*, at 418;

Solem, 465 U. S., at 475. That same phrase appears in the annual report of the Commissioner on Indian Affairs that was released in September 1894, just after congressional ratification of the agreement. See Annual Report of the Commissioner on Indian Affairs 26 (Sept. 14, 1894), excerpted in App. 450–452 (noting that under the Siletz, Nez Perce, and Yankton agreements, "some 880,000 acres of land will be restored to the public domain").

Finally, the Presidential Proclamation opening the lands to settlement declared that the Tribe had "ceded, sold, relinquished, and conveyed to the United States, all [its] claim, right, title, and interest in and to all the unallotted lands within the limits of the reservation set apart to said tribe by the first article [of the 1858 Treaty]." Presidential Proclamation (May 16, 1895), reprinted in App. 453. This Court has described substantially similar language as "an unambiguous, contemporaneous, statement by the Nation's Chief Executive, of a perceived disestablishment." *Rosebud*, 430 U. S., at 602–603.

B

Despite the apparent contemporaneous understanding that the 1894 Act diminished the reservation, in the years since, both Congress and the Executive Branch have described the reservation in contradictory terms and treated the region in an inconsistent manner. An 1896 statute, for example, refers to "homestead settlers upon the Yankton Indian Reservation," 29 Stat. 16, while in a Report included in the legislative history for that statute, the Commissioner of Indian Affairs discusses the "former" reservation, H. R. Rep. No. 100, 54th Cong., 1st Sess., 2 (1896). From the 1896 statutory reference to hearings on the Indian Gaming Regulatory Act nearly a century later, Congress has occasionally, though not invariably, referred to the "Yankton Sioux Reservation."[5]

[5] Hearings on Pub. L. 100–497, The Indian Gaming Regulatory Act of 1988, before the Subcommittee on Native American Affairs of the House Committee on Natural Resources, 103d Cong., 2d Sess., 1 (1994) (held,

We have often observed, however, that "the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one." *United States* v. *Philadelphia Nat. Bank*, 374 U. S. 321, 348–349 (1963). Likewise, the scores of administrative documents and maps marshaled by the parties to support or contradict diminishment have limited interpretive value.[6] We need not linger over whether the many references to the Yankton Reservation in legislative

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according to the record, at the Fort Randall Casino Hotel on the "Yankton Sioux Reservation"); see, *e. g.,* 143 Cong. Rec. S9616 (Sept. 18, 1997) (discussion of the Marty Indian School "located on the Yankton Sioux Reservation"); 135 Cong. Rec. 1656 (1989) (description of the Lake Andes-Wagner project, which irrigates "Indian-owned land located on the Yankton Sioux Reservation"). But see 35 Stat. 808 (referring to land "on the former Yankton Reservation").

[6] See, *e. g.,* Exec. Order No. 5173 (Aug. 9, 1929) (extending the trust period on the allotted lands "on the Yankton Sioux Reservation"); Exec. Order No. 2363 (Apr. 30, 1916) (same); Letter to Chairman, Committee on Indian Affairs, from Secretary of the Interior (Feb. 1, 1921), reprinted in App. 480 (stating that "Lake Andes is within the former Yankton-Sioux Indian Reservation"); Letter to Yankton Agency from the Commissioner of Indian Affairs (Aug. 20, 1930), reprinted in App. 481 (discussing lands "heretofore constituting a part of the reservation"); Bureau of the Census, U. S. Dept. of Commerce, Pub. No. 1990 CPH–1–43, p. 175 (1991), reprinted in App. 527 (listing population figures for the Yankton Reservation).

The Tribe also highlights a 1941 opinion letter issued by Felix Cohen, then-acting Solicitor of the Department of the Interior, in which he concluded that the Yankton Reservation had not been altered by the 1894 Act because allotments were "scattered over all the reservation," and the Act was thus distinguishable from statutes that "ceded a definite part of the reservation and treated the remaining areas as a diminished reservation." See Letter of Aug. 7, 1941, reprinted in 1 U. S. Dept. of Interior, Opinions of the Solicitor of the Department of the Interior Relating to Indian Affairs 1063, 1064 (1979). The letter has not been disavowed but was apparently ignored in subsequent determinations by the agency. A 1969 memorandum on tribal courts, for example, plainly stated that the 1894 Act "diminish[ed] the area over which the [Yankton] tribe might exercise its authority." Memorandum M–36783 from Associate Solicitor, Indian Affairs, to Commissioner of Indian Affairs 1 (Sept. 10, 1969), reprinted in App. 518.

and administrative materials utilized a convenient geographical description or reflected a considered jurisdictional statement. The mixed record we are presented with "reveals no consistent, or even dominant, approach to the territory in question," and it "carries but little force" in light of the strong textual and contemporaneous evidence of diminishment. *Rosebud*, *supra*, at 605, n. 27; see also *Solem*, 465 U. S., at 478 (finding subsequent treatment that was "rife with contradictions and inconsistencies" to be "of no help to either side").

C

"Where non-Indian settlers flooded into the opened portion of a reservation and the area has long since lost its Indian character, we have acknowledged that *de facto*, if not *de jure*, diminishment may have occurred." *Id.*, at 471. This final consideration is the least compelling for a simple reason: Every surplus land Act necessarily resulted in a surge of non-Indian settlement and degraded the "Indian character" of the reservation, yet we have repeatedly stated that not every surplus land Act diminished the affected reservation. See *id.*, at 468–469. The fact that the Yankton population in the region promptly and drastically declined after the 1894 Act does, however, provide "one additional clue as to what Congress expected," *id.*, at 472. Today, fewer than 10 percent of the 1858 reservation lands are in Indian hands, non-Indians constitute over two-thirds of the population within the 1858 boundaries, and several municipalities inside those boundaries have been incorporated under South Dakota law. The opening of the tribal casino in 1991 apparently reversed the population trend; the tribal presence in the area has steadily increased in recent years, and the advent of gaming has stimulated the local economy. In addition, some acreage within the 1858 boundaries has reverted to tribal or trust land. See H. Hoover, Yankton Sioux Tribal Land History (1995), reprinted in App. 545–546. Nonetheless, the area remains "predominantly populated by non-

Indians with only a few surviving pockets of Indian allotments," and those demographics signify a diminished reservation. *Solem*, *supra*, at 471, n. 12.

The State's assumption of jurisdiction over the territory, almost immediately after the 1894 Act and continuing virtually unchallenged to the present day, further reinforces our holding. As the Court of Appeals acknowledged, South Dakota "has quite consistently exercised various forms of governmental authority over the opened lands," 99 F. 3d, at 1455, and the "tribe presented no evidence that it has attempted until recently to exercise civil, regulatory, or criminal jurisdiction over nontrust lands." *Id.*, at 1456. Finally, the Yankton Constitution, drafted in 1932 and amended in 1962, defines the Tribe's territory to include only those tribal lands within the 1858 boundaries "now owned" by the Tribe. Constitution and Bylaws of the Yankton Sioux Tribal Business and Claims Committee, Art. VI, § 1.

IV

The allotment era has long since ended, and its guiding philosophy has been repudiated. Tribal communities struggled but endured, preserved their cultural roots, and remained, for the most part, near their historic lands. But despite the present-day understanding of a "government-to-government relationship between the United States and each Indian tribe," see, *e. g.*, 25 U. S. C. § 3601, we must give effect to Congress' intent in passing the 1894 Act. Here, as in *DeCoteau*, we believe that Congress spoke clearly, and although "[s]ome might wish [it] had spoken differently, . . . we cannot remake history." 420 U. S., at 449.

The 1894 Act contains the most certain statutory language, evincing Congress' intent to diminish the Yankton Sioux Reservation by providing for total cession and fixed compensation. Contemporaneous historical evidence supports that conclusion, and nothing in the ambiguous subsequent treatment of the region substantially controverts our

reasoning. The conflicting understandings about the status of the reservation, together with the fact that the Tribe continues to own land in common, caution us, however, to limit our holding to the narrow question presented: whether unallotted, ceded lands were severed from the reservation. We need not determine whether Congress disestablished the reservation altogether in order to resolve this case, and accordingly decline to do so. Our holding in *Hagen* was similarly limited, as was the State Supreme Court's description of the Yankton reservation in *Greger*. See 510 U. S., at 421; *State* v. *Greger*, 559 N. W. 2d, at 867.

* * *

In sum, we hold that Congress diminished the Yankton Sioux Reservation in the 1894 Act, that the unallotted tracts no longer constitute Indian country, and thus that the State has primary jurisdiction over the waste site and other lands ceded under the Act. Accordingly, we reverse the judgment of the Court of Appeals for the Eighth Circuit and remand the case for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

ALLENTOWN MACK SALES & SERVICE, INC. *v.* NATIONAL LABOR RELATIONS BOARD

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 96–795. Argued October 15, 1997—Decided January 26, 1998

Mack Trucks, Inc., sold its Allentown, Pennsylvania, branch to petitioner Allentown Mack Sales & Service, Inc. Allentown thereafter operated as an independent dealership, employing 32 of the original 45 Mack employees. Although the Mack branch's service and parts employees had been represented by Local Lodge 724 of the machinists' union, a number of Mack employees suggested to the new owners, both before and immediately after the sale, that the union had lost their support or the support of bargaining-unit members generally. Allentown refused Local 724's request for recognition and for commencement of collective-bargaining negotiations, claiming a good-faith reasonable doubt as to the union's support; it later arranged an independent poll of the employees, who voted 19 to 13 against the union. The union then filed an unfair-labor-practice charge with the National Labor Relations Board. Under longstanding Board precedent, an employer who entertains a good-faith reasonable doubt whether a majority of its employees supports an incumbent union has three options: to request a formal, Board-supervised election, to withdraw recognition from the union and refuse to bargain, or to conduct an internal poll of employee support for the union. The Administrative Law Judge (ALJ) held, *inter alia*, that because Allentown lacked an "objective reasonable doubt" about Local 724's majority status, the poll violated §§ 8(a)(1) and 8(a)(5) of the National Labor Relations Act. The Board agreed and ordered petitioner to recognize and bargain with the union. The Court of Appeals enforced the order.

Held: The Board's "good-faith reasonable doubt" test for employer polling is facially rational and consistent with the Act, but its factual finding that Allentown lacked such a doubt is not supported by substantial evidence on the record as a whole. Pp. 363–380.

(a) This Court rejects Allentown's contention that, because the "good-faith reasonable doubt" standard for polls is the same as the standard for unilateral withdrawal of recognition and for employer initiation of a Board-supervised election, the Board irrationally permits employers to poll only when it would be unnecessary and legally pointless to do so. While the Board's adoption of this unitary standard is in some respects puzzling, it is not so irrational as to be "arbitrary [or] capri-

cious" under the Administrative Procedure Act. Although it makes polling useless as a means of insulating withdrawal of recognition against an unfair-labor-practice charge, there are other reasons why an employer would wish to conduct a poll. Similarly, although the Board's avowed preference for Board-supervised elections over polls should logically produce a more rigorous standard for polling, there are other reasons why that standard ought to be *less* rigorous; since it would be rational to set the polling standard either higher or lower than the threshold for a Board-supervised election, it is not irrational for the Board to split the difference. Pp. 363–366.

(b) On the evidence presented, a reasonable jury could not have found that Allentown lacked a "good-faith reasonable doubt" about whether Local 724 enjoyed continuing employee support. The Board's contrary finding rests on a refusal to credit probative circumstantial evidence, and on evidentiary demands that go beyond the substantive standard the Board purports to apply. Accepting the Board's concession that Allentown did receive reliable information that 7 of the 32 bargaining-unit employees did not support the union, the remaining 25 would have had to support the union by a margin of 17 to 8—a ratio of more than 2 to 1—if the union commanded majority support. The statements of various employees proffered by Allentown would cause anyone to doubt that degree of support, and neither the Board nor the ALJ discussed any evidence that Allentown should have weighed on the other side. The Board cannot covertly transform its presumption of continuing majority support into a working assumption that *all* of a successor's employees support the union until proved otherwise. Pp. 366–371.

(c) This Court need not determine whether, as Allentown asserts, the Board has consistently rejected or discounted similarly probative evidence in prior cases. Such a practice could not cause "good-faith reasonable doubt" to mean something more than what the phrase connotes, or render irrelevant to the Board's decision any evidence that tends to establish the existence of a good-faith reasonable doubt. Pp. 372–380.

83 F. 3d 1483, reversed and remanded.

SCALIA, J., delivered the opinion for a unanimous Court with respect to Part I, the opinion of the Court with respect to Part II, in which STEVENS, SOUTER, GINSBURG, and BREYER, JJ., joined, and the opinion of the Court with respect to Parts III and IV, in which REHNQUIST, C. J., and O'CONNOR, KENNEDY, and THOMAS, JJ., joined. REHNQUIST, C. J., filed an opinion concurring in part and dissenting in part, in which O'CONNOR, KENNEDY, and THOMAS, JJ., joined, *post*, p. 380. BREYER, J., filed an opinion concurring in part and dissenting in part, in which STEVENS, SOUTER, and GINSBURG, JJ., joined, *post*, p. 388.

Stephen D. Shawe argued the cause for petitioner. With him on the briefs were *Earle K. Shawe* and *Eric Hemmendinger.*

Jonathan E. Nuechterlein argued the cause for respondent. With him on the brief were *Acting Solicitor General Dellinger*, *Deputy Solicitor General Wallace*, *Linda Sher*, *Norton J. Come*, and *John Emad Arbab.**

JUSTICE SCALIA delivered the opinion of the Court.

Under longstanding precedent of the National Labor Relations Board, an employer who believes that an incumbent union no longer enjoys the support of a majority of its employees has three options: to request a formal, Board-supervised election, to withdraw recognition from the union and refuse to bargain, or to conduct an internal poll of employee support for the union. The Board has held that the latter two are unfair labor practices unless the employer can show that it had a "good-faith reasonable doubt" about the union's majority support. We must decide whether the Board's standard for employer polling is rational and consistent with the National Labor Relations Act, and whether the Board's factual determinations in this case are supported by substantial evidence in the record.

I

Mack Trucks, Inc., had a factory branch in Allentown, Pennsylvania, whose service and parts employees were represented by Local Lodge 724 of the International Association

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*Briefs of *amici curiae* urging reversal were filed for the Chamber of Commerce of the United States by *John S. Irving*, *Christopher Landau*, *Stephen A. Bokat*, *Robin S. Conrad*, and *Mona C. Zeiberg;* for the American Trucking Associations, Inc., by *James D. Holzhauer*, *Timothy S. Bishop*, and *Daniel R. Barney;* and for the Labor Policy Association by *Robert E. Williams* and *Daniel V. Yager.*

Laurence Gold, *Jonathan P. Hiatt*, and *Marsha S. Berzon* filed a brief for the American Federation of Labor and Congress of Industrial Organizations as *amicus curiae* urging affirmance.

of Machinists and Aerospace Workers, AFL–CIO (Local 724). Mack notified its Allentown managers in May 1990 that it intended to sell the branch, and several of those managers formed Allentown Mack Sales & Service, Inc., the petitioner here, which purchased the assets of the business on December 20, 1990, and began to operate it as an independent dealership. From December 21, 1990, to January 1, 1991, Allentown hired 32 of the original 45 Mack employees.

During the period before and immediately after the sale, a number of Mack employees made statements to the prospective owners of Allentown Mack Sales suggesting that the incumbent union had lost support among employees in the bargaining unit. In job interviews, eight employees made statements indicating, or at least arguably indicating, that they personally no longer supported the union. In addition, Ron Mohr, a member of the union's bargaining committee and shop steward for the Mack Trucks service department, told an Allentown manager that it was his feeling that the employees did not want a union, and that "with a new company, if a vote was taken, the Union would lose." 316 N. L. R. B. 1199, 1207 (1995). And Kermit Bloch, who worked for Mack Trucks as a mechanic on the night shift, told a manager that the entire night shift (then five or six employees) did not want the union.

On January 2, 1991, Local 724 asked Allentown Mack Sales to recognize it as the employees' collective-bargaining representative, and to begin negotiations for a contract. The new employer rejected that request by letter dated January 25, claiming a "good faith doubt as to support of the Union among the employees." *Id.*, at 1205. The letter also announced that Allentown had "arranged for an independent poll by secret ballot of its hourly employees to be conducted under guidelines prescribed by the National Labor Relations Board." *Ibid.* The poll, supervised by a Roman Catholic priest, was conducted on February 8, 1991; the union lost 19

to 13. Shortly thereafter, the union filed an unfair-labor-practice charge with the Board.

The Administrative Law Judge (ALJ) concluded that Allentown was a "successor" employer to Mack Trucks, Inc., and therefore inherited Mack's bargaining obligation and a presumption of continuing majority support for the union. *Id.*, at 1203. The ALJ held that Allentown's poll was conducted in compliance with the procedural standards enunciated by the Board in *Struksnes Constr. Co.*, 165 N. L. R. B. 1062 (1967), but that it violated §§ 8(a)(1) and 8(a)(5) of the National Labor Relations Act (Act), 49 Stat. 452, as amended, 29 U. S. C. §§ 158(a)(1) and 158(a)(5), because Allentown did not have an "objective reasonable doubt" about the majority status of the union. The Board adopted the ALJ's findings and agreed with his conclusion that Allentown "had not demonstrated that it harbored a reasonable doubt, based on objective considerations, as to the incumbent Union's continued majority status after the transition." 316 N. L. R. B., at 1199. The Board ordered Allentown to recognize and bargain with Local 724.

On review in the Court of Appeals for the District of Columbia Circuit, Allentown challenged both the facial rationality of the Board's test for employer polling and the Board's application of that standard to the facts of this case. The court enforced the Board's bargaining order, over a vigorous dissent. 83 F. 3d 1483 (1996). We granted certiorari. 520 U. S. 1103 (1997).

II

Allentown challenges the Board's decision in this case on several grounds. First, it contends that because the Board's "reasonable doubt" standard for employer polls is the same as its standard for unilateral withdrawal of recognition and for employer initiation of a Board-supervised election (a so-called "Representation Management," or "RM," election), the Board irrationally permits employers to poll only when it would be unnecessary and legally pointless to do so. Sec-

ond, Allentown argues that the record evidence clearly demonstrates that it had a good-faith reasonable doubt about the union's claim to majority support. Finally, it asserts that the Board has, *sub silentio* (and presumably in violation of law), abandoned the "reasonable doubt" prong of its polling standard, and recognizes an employer's "reasonable doubt" only if a majority of the unit employees renounce the union. In this Part of our opinion we address the first of these challenges; the other two, which are conceptually intertwined, will be addressed in Parts III and IV.

Courts must defer to the requirements imposed by the Board if they are "rational and consistent with the Act," *Fall River Dyeing & Finishing Corp.* v. *NLRB*, 482 U. S. 27, 42 (1987), and if the Board's "explication is not inadequate, irrational or arbitrary," *NLRB* v. *Erie Resistor Corp.*, 373 U. S. 221, 236 (1963). Allentown argues that it is irrational to require the same factual showing to justify a poll as to justify an outright withdrawal of recognition, because that leaves the employer with no legal incentive to poll. Under the Board's framework, the results of a poll can never supply an otherwise lacking "good-faith reasonable doubt" necessary to justify a withdrawal of recognition, since the employer must already have that same reasonable doubt before he is permitted to conduct a poll. Three Courts of Appeals have found that argument persuasive. *NLRB* v. *A. W. Thompson, Inc.*, 651 F. 2d 1141, 1144 (CA5 1981); see also *Mingtree Restaurant, Inc.* v. *NLRB*, 736 F. 2d 1295 (CA9 1984); *Thomas Industries, Inc.* v. *NLRB*, 687 F. 2d 863 (CA6 1982).

While the Board's adoption of a unitary standard for polling, RM elections, and withdrawals of recognition is in some respects a puzzling policy, we do not find it so irrational as to be "arbitrary [or] capricious" within the meaning of the Administrative Procedure Act, 5 U. S. C. § 706. The Board believes that employer polling is potentially "disruptive" to established bargaining relationships and "unsettling" to employees, and so has chosen to limit severely the circum-

stances under which it may be conducted. *Texas Petrochemicals Corp.*, 296 N. L. R. B. 1057, 1061 (1989), enf'd as modified, 923 F. 2d 398 (CA5 1991). The unitary standard reflects the Board's apparent conclusion that polling should be tolerated only when the employer might otherwise simply withdraw recognition and refuse to bargain.

It is true enough that this makes polling useless as a means of insulating a contemplated withdrawal of recognition against an unfair-labor-practice charge—but there is more to life (and even to business) than escaping unfair-labor-practice findings. An employer concerned with good employee relations might recognize that abrupt withdrawal of recognition—even from a union that no longer has majority support—will certainly antagonize union supporters, and perhaps even alienate employees who are on the fence. Preceding that action with a careful, unbiased poll can prevent these consequences. The "polls are useless" argument falsely assumes, moreover, that every employer will *want* to withdraw recognition as soon as he has enough evidence of lack of union support to defend against an unfair-labor-practice charge. It seems to us that an employer whose evidence met the "good-faith reasonable doubt" standard might nonetheless want to withdraw recognition only if he had conclusive evidence that the union *in fact* lacked majority support, lest he go through the time and expense of an (ultimately victorious) unfair-labor-practice suit for a benefit that will only last until the next election. See *Texas Petrochemicals*, *supra*, at 1063. And finally, it is probably the case that, though the standard for conviction of an unfair labor practice with regard to polling is identical to the standard with regard to withdrawal of recognition, the chance that a charge will be filed is significantly less with regard to the polling, particularly if the union wins.

It must be acknowledged that the Board's avowed preference for RM elections over polls fits uncomfortably with its unitary standard; as the Court of Appeals pointed out, that

preference should logically produce a more rigorous standard for polling. 83 F. 3d, at 1487. But there are other reasons why the standard for polling ought to be *less* rigorous than the standard for Board elections. For one thing, the consequences of an election are more severe: If the union loses an employer poll it can still request a Board election, but if the union loses a formal election it is barred from seeking another for a year. See 29 U. S. C. § 159(c)(3). If it would be rational for the Board to set the polling standard either higher or lower than the threshold for an RM election, then surely it is not irrational for the Board to split the difference.

III

The Board held Allentown guilty of an unfair labor practice in its conduct of the polling because it "ha[d] not demonstrated that it held a reasonable doubt, based on objective considerations, that the Union continued to enjoy the support of a majority of the bargaining unit employees." 316 N. L. R. B., at 1199. We must decide whether that conclusion is supported by substantial evidence on the record as a whole. *Fall River Dyeing*, *supra*, at 42; *Universal Camera Corp.* v. *NLRB*, 340 U. S. 474 (1951).[1] Put differently, we must decide whether on this record it would have been pos-

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[1] JUSTICE BREYER's opinion asserts that this issue is not included within the question presented by the petition. *Post*, at 388 (opinion concurring in part and dissenting in part). The question reads: "Whether the National Labor Relations Board erred in holding that a successor employer cannot conduct a poll to determine whether a majority of its employees support a union unless it already has obtained so much evidence of no majority support as to render the poll meaningless." Pet. for Cert. i. The phrase "so much . . . as to render the poll meaningless" is of course conclusory and argumentative. Fairly read, the question asks whether the Board erred by requiring *too much* evidence of majority support. That question can be answered in the affirmative if either (1) the Board's polling standard is irrational or inconsistent with the Act, or (2) the Board erroneously found that the evidence in this case was insufficient to meet that standard.

sible for a reasonable jury to reach the Board's conclusion. See, *e. g.*, *NLRB* v. *Columbian Enameling & Stamping Co.*, 306 U. S. 292, 300 (1939); *Consolidated Edison Co.* v. *NLRB*, 305 U. S. 197, 229 (1938).

Before turning to that issue, we must clear up some semantic confusion. The Board asserted at argument that the word "doubt" may mean either "uncertainty" or "disbelief," and that its polling standard uses the word only in the latter sense. We cannot accept that linguistic revisionism. "Doubt" is precisely that sort of "disbelief" (failure to believe) which consists of an uncertainty rather than a belief in the opposite. If the subject at issue were the existence of God, for example, "doubt" would be the disbelief of the agnostic, not of the atheist. A doubt is an uncertain, tentative, or provisional disbelief. See, *e. g.*, Webster's New International Dictionary 776 (2d ed. 1949) (def. 1: "A fluctuation of mind arising from defect of knowledge or evidence; uncertainty of judgment or mind; unsettled state of opinion concerning the reality of an event, or the truth of an assertion, etc."); 1 The New Shorter Oxford English Dictionary 734 (1993) (def. 1: "Uncertainty as to the truth or reality of something or as to the wisdom of a course of action; occasion or room for uncertainty"); American Heritage Dictionary 555 (3d ed. 1992) (def. 1: "A lack of certainty that often leads to irresolution").

The question presented for review, therefore, is whether, on the evidence presented to the Board, a reasonable jury could have found that Allentown lacked a genuine, reasonable uncertainty about whether Local 724 enjoyed the continuing support of a majority of unit employees.[2] In our

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[2] JUSTICE BREYER suggests that we have focused on the wrong words, and that the explanation for the Board's holding here is not that portion of its polling standard which requires "reasonable doubt" but that which requires the doubt to be "based on objective considerations." The Board has not stressed the word "objective" in its brief or argument, for the very

view, the answer is no. The Board's finding to the contrary rests on a refusal to credit probative circumstantial evidence, and on evidentiary demands that go beyond the substantive standard the Board purports to apply.

The Board adopted the ALJ's finding that 6 of Allentown's 32 employees had made "statements which could be used as objective considerations supporting a good-faith reasonable doubt as to continued majority status by the Union." 316 N. L. R. B., at 1207. (These included, for example, the statement of Rusty Hoffman that "he did not want to work in a union shop," and "would try to find another job if he had to work with the Union." *Id.*, at 1206.) The Board seemingly also accepted (though this is not essential to our analysis) the ALJ's willingness to assume that the statement of a seventh employee (to the effect that he "did not feel comfortable with the Union and thought it was a waste of $35 a month," *ibid.*) supported good-faith reasonable doubt of his support for the union—as in our view it unquestionably does. And it presumably accepted the ALJ's assessment that "7 of 32, or roughly 20 percent of the involved employees" was not alone sufficient to create "an objective reasonable doubt of union majority support," *id.*, at 1207. The Board did not specify

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good reason that the meaning of the word has nothing to do with the *force*, as opposed to the *source*, of the considerations supporting the employer's doubt. See Webster's New International Dictionary 1679 (2d ed. 1949) (def. 2: "Emphasizing or expressing the nature of reality as it is apart from self-consciousness"). Requiring the employer's doubt to be based on "objective" considerations reinforces the requirement that the doubt be "reasonable," imposing on the employer the burden of showing that it was supported by evidence external to the employer's own *(subjective)* impressions. JUSTICE BREYER asserts, instead, that the word "objective" has been redefined through a series of Board decisions ignoring its real meaning, so that it now means something like "exceedingly reliable." As we shall discuss in Part IV, the Board is entitled to create higher standards of evidentiary proof by rule, or even by explicit announcement in adjudication (assuming adequate warning); but when the Board simply repeatedly finds evidence not "objective" that is so, its decisions have no permanent deleterious effect upon the English language.

how many express disavowals would have been enough to establish reasonable doubt, but the number must presumably be less than 16 (half of the bargaining unit), since that would establish reasonable *certainty*. Still, we would not say that 20% first-hand-confirmed opposition (even with no countering evidence of union support) is alone enough to *require* a conclusion of reasonable doubt. But there was much more.

For one thing, the ALJ and the Board totally disregarded the effect upon Allentown of the statement of an eighth employee, Dennis Marsh, who said that "he was not being represented for the $35 he was paying." *Ibid.* The ALJ, whose findings were adopted by the Board, said that this statement "seems more an expression of a desire for better representation than one for no representation at all." *Ibid.* It seems to us that it is, more accurately, simply an expression of dissatisfaction with the union's performance—which *could* reflect the speaker's desire that the union represent him more effectively, but *could also* reflect the speaker's desire to save his $35 and get rid of the union. The statement would assuredly engender an *uncertainty* whether the speaker supported the union, and so could not be entirely ignored.

But the most significant evidence excluded from consideration by the Board consisted of statements of two employees regarding not merely their own support of the union, but support among the work force in general. Kermit Bloch, who worked on the night shift, told an Allentown manager that "the entire night shift did not want the Union." *Ibid.* The ALJ refused to credit this, because "Bloch did not testify and thus could not explain how he formed his opinion about the views of his fellow employees." *Ibid.* Unsubstantiated assertions that other employees do not support the union certainly do not establish *the fact of that disfavor* with the degree of reliability ordinarily demanded in legal proceedings. But under the Board's enunciated test for polling, it is not the fact of disfavor that is at issue (the poll itself is meant to establish that), but rather the existence of a reason-

able uncertainty on the part of the employer regarding that fact. On that issue, absent some reason for the employer to know that Bloch had no basis for his information, or that Bloch was lying, reason demands that the statement be given considerable weight.

Another employee who gave information concerning overall support for the union was Ron Mohr, who told Allentown managers that "if a vote was taken, the Union would lose" and that "it was his feeling that the employees did not want a union." *Ibid.* The ALJ again objected irrelevantly that "there is no evidence with respect to how he gained this knowledge." *Id.*, at 1208. In addition, the Board held that Allentown "could not legitimately rely on [the statement] as a basis for doubting the Union's majority status," *id.*, at 1200, because Mohr was "referring to Mack's existing employee complement, not to the individuals who were later hired by [Allentown]," *ibid.* This basis for disregarding Mohr's statements is wholly irrational.[3] Local 724 had never won an election, or even an informal poll, within the actual unit of 32 Allentown employees. Its claim to represent them rested entirely on the Board's presumption that the work force of a successor company has the same disposition regarding the union as did the work force of the predecessor company, if the majority of the new work force came from the old one. See *id.*, at 1197, n. 3; *Fall River Dyeing*, 482 U. S., at 43, 46–52. The Board cannot rationally adopt that presumption for purposes of imposing the duty to bargain, and adopt precisely the opposite presumption (*i. e.*, contend that there is no relationship between the sentiments of the two work forces) for purposes of determining what evidence tends to establish a reasonable doubt regarding union support. Such

[3] JUSTICE BREYER points out that the ALJ did not disregard Mohr's statement entirely, but merely found that it was insufficient to establish a good-faith reasonable doubt. That observation is accurate but irrelevant. The Board discussed Mohr's statement in its own opinion, and the language quoted above makes it clear that the Board gave it no weight at all.

irrationality is impermissible even if, as JUSTICE BREYER suggests, it would further the Board's political objectives.

It must be borne in mind that the issue here is not whether Mohr's statement clearly establishes a majority in opposition to the union, but whether it contributes to a reasonable uncertainty whether a majority in favor of the union existed. We think it surely does. Allentown would reasonably have given great credence to Mohr's assertion of lack of union support, since he was not hostile to the union, and was in a good position to assess antiunion sentiment. Mohr was a union shop steward for the service department, and a member of the union's bargaining committee; according to the ALJ, he "did not indicate personal dissatisfaction with the Union." 316 N. L. R. B., at 1208. It seems to us that Mohr's statement has undeniable and substantial probative value on the issue of "reasonable doubt."

Accepting the Board's apparent (and in our view inescapable) concession that Allentown received reliable information that 7 of the bargaining-unit employees did not support the union, the remaining 25 would have had to support the union by a margin of 17 to 8—a ratio of more than 2 to 1—if the union commanded majority support. The statements of Bloch and Mohr would cause anyone to doubt that degree of support, and neither the Board nor the ALJ discussed any evidence that Allentown should have weighed on the other side. The most pro-union statement cited in the ALJ's opinion was Ron Mohr's comment that he personally "could work with or without the Union," and "was there to do his job." *Id.*, at 1207. The Board cannot covertly transform its presumption of continuing majority support into a working assumption that *all* of a successor's employees support the union until proved otherwise. Giving fair weight to Allentown's circumstantial evidence, we think it quite impossible for a rational factfinder to avoid the conclusion that Allentown had reasonable, good-faith grounds to doubt—to be *uncertain about*—the union's retention of majority support.

IV

That conclusion would make this a fairly straightforward administrative-law case, except for the contention that the Board's factfinding here was not an aberration. Allentown asserts that, although "the Board continues to cite the words of the good faith doubt branch of its withdrawal of recognition standard," a systematic review of the Board's decisions will reveal that "it has in practice eliminated the good faith doubt branch in favor of a strict head count." Brief for Petitioner 10. The Board denies (not too persuasively) that it has insisted upon a strict head count,[4] but does defend its factfinding in this case by saying that it has regularly rejected similarly persuasive demonstrations of reasonable good-faith doubt in prior decisions. The Court of Appeals in fact accepted that defense, relying on those earlier, similar decisions to conclude that the Board's findings were supported by substantial evidence here. See 83 F. 3d, at 1488. That the current decision may conform to a long pattern is also suggested by academic commentary. One scholar, after conducting "[a] thorough review of the withdrawal of recognition case law," concluded:

> "[C]ircumstantial evidence, no matter how abundant, is rarely, if ever, enough to satisfy the good-faith doubt test. In practice, the Board deems the test satisfied only if the employer has proven that a majority of the bargaining unit has expressly repudiated the union. Such direct evidence, however, is nearly impossible to gather lawfully. Thus, the Board's good-faith doubt

[4] The Board cited in its brief a number of cases in which it found circumstantial evidence sufficient to support a "good-faith reasonable doubt." See Brief for Respondent 31–32, n. 8. Those cases do indeed reveal a genuine interest in circumstantial evidence, but the most recent of them, *J & J Drainage Products Co.*, 269 N. L. R. B. 1163 (1984), was decided more than a decade ago. Allentown contends that the Board has *abandoned* the good-faith-doubt test, not that it never existed.

> standard, although ostensibly a highly fact-dependent totality-of-the-circumstances test, approaches a *per se* rule in application . . . ." Flynn, The Costs and Benefits of "Hiding the Ball": NLRB Policymaking and the Failure of Judicial Review, 75 B. U. L. Rev. 387, 394–395 (1995) (footnotes omitted).

See also Weeks, The Union's Mid-Contract Loss of Majority Support: A Waivering Presumption, 20 Wake Forest L. Rev. 883, 889 (1984). Members of this Court have observed the same phenomenon. See *NLRB* v. *Curtin Matheson Scientific, Inc.*, 494 U. S. 775, 797 (1990) (REHNQUIST, C. J., concurring) ("[S]ome recent decisions suggest that [the Board] now requires an employer to show that individual employees have 'expressed desires' to repudiate the incumbent union in order to establish a reasonable doubt of the union's majority status"); *id.*, at 799 (Blackmun, J., dissenting) ("[T]he Board appears to require that good-faith doubt be established by express avowals of individual employees").

It is certainly conceivable that an adjudicating agency might consistently require a particular substantive standard to be established by a quantity or character of evidence so far beyond what reason and logic would require as to make it apparent that the *announced* standard is not *really* the effective one. And it is conceivable that in certain categories of cases an adjudicating agency which purports to be applying a preponderance standard of proof might so consistently demand in fact more than a preponderance, that all should be on notice from its case law that the genuine burden of proof is more than a preponderance. The question arises, then, whether, if that should be the situation that obtains here, we ought to measure the evidentiary support for the Board's decision against the standards consistently applied rather than the standards recited. As a theoretical matter (and leaving aside the question of legal authority), the Board could certainly have raised the bar for employer polling or

withdrawal of recognition by imposing a more stringent requirement than the reasonable-doubt test, or by adopting a formal requirement that employers establish their reasonable doubt by more than a preponderance of the evidence. Would it make any difference if the Board achieved precisely the same result by formally leaving in place the reasonable-doubt and preponderance standards, but consistently applying them as though they meant something other than what they say? We think it would.

The Administrative Procedure Act, which governs the proceedings of administrative agencies and related judicial review, establishes a scheme of "reasoned decisionmaking." *Motor Vehicle Mfrs. Assn. of United States, Inc.* v. *State Farm Mut. Automobile Ins. Co.*, 463 U. S. 29, 52 (1983). Not only must an agency's decreed result be within the scope of its lawful authority, but the process by which it reaches that result must be logical and rational. Courts enforce this principle with regularity when they set aside agency regulations which, though well within the agencies' scope of authority, are not supported by the reasons that the agencies adduce. See *SEC* v. *Chenery Corp.*, 318 U. S. 80 (1943); *SEC* v. *Chenery Corp.*, 332 U. S. 194 (1947). The National Labor Relations Board, uniquely among major federal administrative agencies, has chosen to promulgate virtually all the legal rules in its field through adjudication rather than rulemaking. See, *e. g., NLRB* v. *Bell Aerospace Co.*, 416 U. S. 267, 294–295 (1974). (To our knowledge, only one regulation has ever been adopted by the Board, dealing with the appropriate size of bargaining units in the health care industry. See 29 CFR § 103.30 (1997).) But adjudication is subject to the requirement of reasoned decisionmaking as well. It is hard to imagine a more violent breach of that requirement than applying a rule of primary conduct or a standard of proof which is in fact different from the rule or standard formally announced. And the consistent repetition of that breach can hardly mend it.

Reasoned decisionmaking, in which the rule announced is the rule applied, promotes sound results, and unreasoned decisionmaking the opposite. The evil of a decision that applies a standard other than the one it enunciates spreads in both directions, preventing both consistent application of the law by subordinate agency personnel (notably ALJ's), and effective review of the law by the courts. These consequences are well exemplified by a recent withdrawal-of-recognition case in which the Board explicitly reaffirmed its adherence to the preponderance-of-the-evidence standard. One of the Board's ALJ's, interpreting the agency's prior cases as many others have, had concluded that the Board in fact required " 'clear, cogent, and convincing' " evidence that the union no longer commanded a majority. *Laidlaw Waste Systems, Inc.*, 307 N. L. R. B. 1211 (1992). On review the Board rejected that standard, insisting that "in order to rebut the presumption of an incumbent union's majority status, an employer must show by a preponderance of the evidence . . . objective factors sufficient to support a reasonable and good-faith doubt of the union's majority." *Ibid.* So far, so good. The Board then went on to add, however, that "[t]his is not to say that the terms 'clear, cogent, and convincing' have no significance at all in withdrawal of recognition cases." *Ibid.* It then proceeded to make the waters impenetrably muddy with the following:

> "It is fair to say that the Board will not find that an employer has supported its defense by a preponderance of the evidence if the employee statements and conduct relied on are not clear and cogent rejections of the union as a bargaining agent, i. e., are simply not convincing manifestations, taken as a whole, of a loss of majority support. The opposite of 'clear, cogent, and convincing' evidence in this regard might be fairly described as 'speculative, conjectural, and vague'—evidence that plainly does not meet the preponderance-of-the-evidence burden of proof." *Id.*, at 1211–1212.

Each sentence of this explanation is nonsense, and the two sentences together are not even compatibly nonsensical. "Preponderance of the evidence" and "clear and convincing evidence" describe well known, contrasting standards of proof. To say, as the first sentence does, that a preponderance standard demands "clear and convincing manifestations, taken as a whole" is to convert that standard into a higher one; and to say, as the second sentence does, that whatever is not "speculative, conjectural, and vague" meets the "clear, cogent, and convincing" standard is to *re*convert that standard into a lower one. And the offsetting errors do not produce rationality but compounded confusion. If the Board's application of the preponderance standard is indeed accurately described by this passage, it is hard for the ALJ to know what to do with the next case.

A case like *Laidlaw*, or a series of cases that exemplify in practice its divorcing of the rule announced from the rule applied, also frustrates judicial review. If revision of the Board's standard of proof can be achieved thus subtly and obliquely, it becomes a much more complicated enterprise for a court of appeals to determine whether substantial evidence supports the conclusion that the required standard has or has not been met. It also becomes difficult for this Court to know, when certiorari is sought, whether the case involves the generally applicable issue of the Board's adoption of an unusually high standard of proof, or rather just the issue of an allegedly mistaken evidentiary judgment in the particular case. An agency should not be able to impede judicial review, and indeed even political oversight, by disguising its policymaking as factfinding.

Because reasoned decisionmaking demands it, and because the systemic consequences of any other approach are unacceptable, the Board must be required to apply in fact the clearly understood legal standards that it enunciates in principle, such as good-faith reasonable doubt and preponderance of the evidence. Reviewing courts are entitled to

take those standards to mean what they say, and to conduct substantial-evidence review on that basis. Even the most consistent and hence predictable Board departure from proper application of those standards will not alter the legal rule by which the agency's factfinding is to be judged.

That principle is not, as JUSTICE BREYER suggests, inconsistent with our decisions according "substantial deference to an agency's interpretation of its own regulations." *Thomas Jefferson Univ.* v. *Shalala*, 512 U. S. 504, 512 (1994). Substantive review of an agency's interpretation of its regulations is governed only by that general provision of the Administrative Procedure Act which requires courts to set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U. S. C. § 706(2)(A). It falls well within this text to give the agency the benefit of the doubt as to the meaning of its regulation. On-the-record agency factfinding, however, is also governed by a provision that requires the agency action to be set aside if it is "unsupported by substantial evidence," § 706(2)(E)—which is the very specific requirement at issue here. See also 29 U. S. C. § 160(e) ("The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive"). The "substantial evidence" test *itself* already gives the agency the benefit of the doubt, since it requires not the degree of evidence which satisfies the *court* that the requisite fact exists, but merely the degree which *could* satisfy a reasonable factfinder. See *Columbian Enameling & Stamping Co.*, 306 U. S., at 300. This is an objective test, and there is no room within it for deference to an agency's eccentric view of what a reasonable factfinder *ought* to demand. We do not, moreover (we could not possibly), search to find revisions of the agency's rules—revisions of the requisite fact that the adjudication is supposed to determine—hidden in the agency's factual findings. In the regime envisioned by JUSTICE BREYER—a regime in which inadequate

factual findings become simply a revision of the standard that the Board's (adjudicatorily adopted) rules set forth, thereby converting those findings into rule interpretations to which judges must defer—the "substantial evidence" factual review provision of the Administrative Procedure Act becomes a nullity.

The Board can, of course, forthrightly and explicitly adopt counterfactual evidentiary presumptions (which are in effect substantive rules of law) as a way of furthering particular legal or policy goals—for example, the Board's irrebuttable presumption of majority support for the union during the year following certification, see, *e. g.*, *Station KKHI*, 284 N. L. R. B. 1339, 1340 (1987), enf'd, 891 F. 2d 230 (CA9 1989). The Board might also be justified in forthrightly and explicitly adopting a rule of evidence that categorically excludes certain testimony on policy grounds, without reference to its inherent probative value. (Such clearly announced rules of law or of evidentiary exclusion would of course be subject to judicial review for their reasonableness and their compatibility with the Act.) That is not the sort of Board action at issue here, however, but rather the Board's allegedly systematic undervaluation of certain evidence, or allegedly systematic exaggeration of what the evidence must prove. See, *e. g.*, *Westbrook Bowl*, 293 N. L. R. B. 1000, 1001, n. 11 (1989) ("The Board has stated that 'testimony concerning conversations directly with the employees involved . . . is much more reliable than testimony concerning merely a few employees ostensibly conveying the sentiments of their fellows' "), quoting *Sofco, Inc.*, 268 N. L. R. B. 159, 160, n. 10 (1983). When the Board purports to be engaged in simple factfinding, unconstrained by substantive presumptions or evidentiary rules of exclusion, it is not free to prescribe what inferences from the evidence it will accept and reject, but must draw all those inferences that the evidence fairly demands. "Substantial evidence" review exists precisely to ensure that the Board achieves minimal compliance with this obliga-

tion, which is the foundation of all honest and legitimate adjudication.

For the foregoing reasons, we need not determine whether the Board has consistently rejected or discounted probative evidence so as to cause "good-faith reasonable doubt" or "preponderance of the evidence" to mean something more than what the terms connote. The line of precedents relied on by the ALJ and the Court of Appeals could not render irrelevant to the Board's decision, and hence to our review, any evidence that tends to establish the existence of a good-faith reasonable doubt. It was therefore error, for example, for the ALJ to discount Ron Mohr's opinion about lack of union support because of "the Board's historical treatment of unverified assertions by an employee about another employee's sentiments." 316 N. L. R. B., at 1208. And it was error for the Court of Appeals to rely upon the fact that "[t]he Board has consistently questioned the reliability of reports by one employee of the antipathy of other employees toward their union." 83 F. 3d, at 1488, citing *Westbrook Bowl*, *supra*, at 1001, n. 11; *Sofco, Inc.*, *supra*, at 160, n. 10. Assuming that those assessments of the Board's prior behavior are true, they nonetheless provide no justification for the Board's factual inferences here. Of course, the Board is entitled to be skeptical about the employer's claimed reliance on secondhand reports when the reporter has little basis for knowledge, or has some incentive to mislead. But that is a matter of logic and sound inference from all the circumstances, not an arbitrary rule of disregard to be extracted from prior Board decisions.

The same is true of the Board precedents holding that "an employee's statements of dissatisfaction with the quality of union representation may not be treated as opposition to union representation," and that "an employer may not rely on an employee's anti-union sentiments, expressed during a job interview in which the employer has indicated that there will be no union." 83 F. 3d, at 1488, citing *Destileria Ser-*

ralles, Inc., 289 N. L. R. B. 51 (1988), enf'd, 882 F. 2d 19 (CA1 1989), and *Middleboro Fire Apparatus, Inc.*, 234 N. L. R. B. 888, 894, enf'd, 590 F. 2d 4 (CA1 1978). It is of course true that such statements are not clear evidence of an employee's opinion about the union—and if the Board's substantive standard required clear proof of employee disaffection, it might be proper to ignore such statements altogether. But that is not the standard, and, depending on the circumstances, the statements can unquestionably be probative to some degree of the employer's good-faith reasonable doubt.

* * *

We conclude that the Board's "reasonable doubt" test for employer polls is facially rational and consistent with the Act. But the Board's factual finding that Allentown Mack Sales lacked such a doubt is not supported by substantial evidence on the record as a whole. The judgment of the Court of Appeals for the District of Columbia Circuit is therefore reversed, and the case is remanded with instructions to deny enforcement.

It is so ordered.

CHIEF JUSTICE REHNQUIST, with whom JUSTICE O'CONNOR, JUSTICE KENNEDY, and JUSTICE THOMAS join, concurring in part and dissenting in part.

I concur in the judgment of the Court and in Parts I, III, and IV. However, I disagree that the National Labor Relations Board's standard is rational and consistent with the National Labor Relations Act, and I therefore dissent as to Part II.

The Board's standard for employer polls requires a showing of reasonable doubt, based on sufficient objective considerations, that the union continues to enjoy majority support. *Texas Petrochemicals Corp.*, 296 N. L. R. B. 1057, 1061 (1989), enf'd as modified, 923 F. 2d 398 (CA5 1991); *Auciello Iron Works, Inc.* v. *NLRB*, 517 U. S. 781, 786–787 (1996);

NLRB v. *Curtin Matheson Scientific, Inc.*, 494 U. S. 775, 778 (1990). While simply stated, what this rule means in practice is harder to pin down. As suggested by the Court's opinion, *ante*, at 371–373, despite its billing as a "good-faith reasonable doubt" standard, this test appears to be quite rigorous. The Board so concedes: "It is true that the Board's 'reasonable doubt' standard is sufficiently rigorous and fact-specific that employers often cannot be certain in advance whether their evidentiary basis either for taking a poll or for withdrawing recognition will ultimately be deemed to have met that standard." Brief for Respondent 38.

The Board's standard is sufficiently stringent so as to exclude most circumstantial evidence (and quite a bit of direct evidence) from consideration and therefore to preclude polling except in extremely limited circumstances—ironically, those in which a poll has almost no practical value. It requires as a prerequisite to questioning a union's majority support that the employer have information that it is forbidden to obtain by the most effective method. See *Curtin Matheson*, *supra*, at 797 (REHNQUIST, C. J., concurring) ("I have considerable doubt whether the Board may insist that good-faith doubt be determined only on the basis of sentiments of individual employees, and at the same time bar the employer from using what might be the only effective means of determining those sentiments"); 494 U. S., at 799, and n. 3 (Blackmun, J., dissenting). The Board's argument that polls are still valuable in ensuring that the union lacks majority support *in fact*, effectively concedes that polls will have only extremely limited scope. The Board's standard also leaves little practical value for employers in polling, since a losing union can *ex post* challenge a poll on the same grounds as a withdrawal of recognition, as happened here.

The Board argues first that its employer polling standard is authorized by, and consistent with, the Act because it promotes the overriding goal of industrial peace. Polling purportedly threatens industrial peace because it "raises si-

multaneously a challenge to the union in its role as representative and a doubt in the mind of an employee as to the union's status as his bargaining representative." *Texas Petrochemicals*, *supra*, at 1061–1062; Brief for Respondent 27. This threatened disruption to the stability of the bargaining relationship and the unsettling effect on employees, it is argued, impair employee rights to bargain collectively. The Board also asserts that its employer polling standard may be the same as the standard for unilateral withdrawals of recognition, and yet be rational, because it still allows the employer to use polls to confirm a loss of majority support for the union before withdrawal of recognition. And the same standard for Representative Management (RM) elections is valid, the Board claims, because RM elections and polling have common practical and legal consequences. See *Texas Petrochemicals*, *supra*, at 1060; Brief for Respondent 36–37, n. 12.

I think the Board's reasoning comes up short on two counts. First, there is no support in the language of the Act for its treatment of polling, and second, its treatment of polling even apart from the statute is irrational.

The Act does not address employer polling. The Board's authority to regulate employer polling at all must therefore rest on its power to prohibit any practices that "interfere with, restrain, or coerce employees in the exercise" of their right to bargain collectively under § 8(a)(1), 29 U. S. C. § 158(a)(1).[1] The Board fails to demonstrate how employer polling, conducted in accord with procedural safeguards and with no overt coercion or threats of reprisal, violates

[1] The Board argues in the alternative that its standard is authorized by § 8(a)(5), even though a violation of that section was not alleged in this case. But the Board provides no explanation as to how the authority it is granted or the protection extended employees under § 8(a)(5) differs from that of § 8(a)(1). Section 8(a)(5) states: "It shall be an unfair labor practice for an employer—(5) to refuse to bargain collectively with the representatives of his employees . . . ." 29 U. S. C. § 158(a)(5).

the terms of the Act. Such polling does not directly restrain employees' rights to bargain collectively or affect the collective-bargaining relationship. If the union loses the poll, its status as collective-bargaining representative would certainly be affected, but that outcome is not necessarily one the Act prevents. That a poll may raise "doubts" in the minds of employees as to the union's support would not appear to interfere with employees' rights, particularly since a poll is permissible only once the presumption of majority support becomes rebuttable. See *Fall River Dyeing & Finishing Corp.* v. *NLRB*, 482 U. S. 27, 37–38 (1987) (recognizing the nonrebuttable presumption of majority support for one year after certification). And such "doubts" hardly appear so unsettling for employees or so disruptive of the bargaining relationship as to warrant severe restrictions on polling.

A poll conducted in accord with the Board's substantial procedural safeguards would not coerce employees in the exercise of their rights. In *Struksnes Constr. Co.*, 165 N. L. R. B. 1062, 1063 (1967), the Board, in addressing the validity of an employer poll during a union's organizing drive, held that polling does not violate the Act if "(1) the purpose of the poll is to determine the truth of the union's claim to majority, (2) this purpose is communicated to employees, (3) assurances against reprisal are given, (4) the employees are polled by secret ballot, and (5) the employer has not engaged in unfair labor practices or otherwise created a coercive atmosphere." In *Texas Petrochemicals*, 296 N. L. R. B., at 1063–1064, the Board imposed an additional requirement of advance notice of the time and place of the poll. These substantial safeguards make coercion or restraint of employees highly unlikely.[2]

[2] The Board contends the *Struksnes* standard is not appropriate where the union is already established and enjoys a presumption of majority support, as opposed to the organizing phase where the union must establish its majority support. Brief for Respondent 28. But the safeguards

Additionally, the Board's rationale gives short shrift to the Act's goal of protecting employee choice. *Auciello Iron Works*, 517 U. S., at 790–791. By ascertaining employee support for the union, a poll indirectly promotes this goal. Employees are not properly represented by a union lacking majority support. Employers also have a legitimate, recognized interest in not bargaining with a union lacking majority support. *Texas Petrochemicals*, *supra*, at 1062. The ability to poll employees thus provides the employer (and the employees) with a neutral and effective manner of obtaining information relevant to determining the employees' proper representative and the employer's bargaining obligations. See *Curtin Matheson*, 494 U. S., at 797 (REHNQUIST, C. J., concurring); see also *id.*, at 799 (Blackmun, J., concurring). Stability, while an important goal of the Act, see *Fall River*, *supra*, at 37, is not its be-all and end-all. That goal would not justify, for example, allowing a nonmajority union to remain in place (after a certification or contract bar has expired) simply by denying employers any effective means of ascertaining employee views. I conclude that the Board's standard restricts polling in the absence of coercion or restraint of employee rights and therefore is contrary to the Act.

Quite apart from the lack of statutory authority for the Board's treatment of polling, I think this treatment irrationally equates employer polls, RM elections, and unilateral withdrawals of recognition. The Board argues that having

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protect against the potentially disruptive or coercive effects of polls equally in both situations. If anything, polling would seem more unsettling before the union is established. And in both situations, a poll serves the purpose of providing a neutral determination of the employees' support for the union, where such information is clearly relevant to employers in making legitimate decisions regarding their bargaining obligations under the Act. Moreover, to raise the bar to polling on the basis of the presumption of majority support would in effect make that presumption unassailable by denying employers the most effective, and least coercive, way to obtain information on the actual level of union support.

the same standard for polls and unilateral withdrawals is reasonable because the employer can still use polls to confirm a loss of majority support. As a practical matter, this leaves little room for polling, *supra*, at 381. But even conceding some remaining value to polling, the Board's rationale fails to address the basic inconsistency of imposing the same standard on two actions having dramatically different effects. Surely a unilateral withdrawal of recognition creates a greater disruption of the bargaining relationship and greater "doubts" in the minds of employees than does a poll. Consistent with the Board's reliance on such disruption to justify its polling standard, the standard for unilateral withdrawals should surely be higher.

The Board also asserts that having the same standard for RM elections and employer polls is justified by common practical and legal consequences, *i. e.*, the risk of the union's loss of its position as bargaining representative. But this argument fails as a factual matter. As the Board admits, an RM election is binding on a losing union for one year, 29 U. S. C. § 159(c)(3), while a union losing a poll may petition for a Board election at any time.[3] Brief for Respondent 40, n. 12. These differing consequences suggest the standard for polling should be lower. The Board's "avowed preference for RM elections," without some further legal or factual grounds for support, would not appear to justify a higher standard for polling. See *ante*, at 365. But in any event, that the Board *could* perhaps justify a higher standard for polling does not mean that it is rational to have the two standards equal, especially since doing so results in RM elections and

[3] On the other hand, if the union wins an employer poll, the employer apparently must recognize the union, *Nation-Wide Plastics, Inc.*, 197 N. L. R. B. 996 (1972), which is then entitled to a conclusive presumption of majority support for a reasonable time to permit bargaining. If an agreement is reached, a contract bar will apply. *Auciello Iron Works, Inc.* v. *NLRB*, 517 U. S. 781, 791 (1996). A losing employer thus would be barred for some time from conducting another poll.

unilateral withdrawals of recognition having the same standard as well. The Board thus irrationally equates the standard for polling with the standards for both unilateral withdrawals of recognition and RM elections.

The conclusion that the Board's standard is both irrational and without support in the Act is reinforced by longstanding decisions from this Court. In *NLRB* v. *Gissel Packing Co.*, 395 U. S. 575, 616–617 (1969), an employer challenged the Board's determination that the employer's communications to its employees attempting to dissuade them from supporting the union violated § 8(a)(5). While upholding the finding of a violation on the facts presented, the Court noted that an employer's free speech right to communicate his views to his employees is firmly established and cannot be infringed by a union or the Board. Thus, § 8(c), 29 U. S. C. § 158(c), merely implements the First Amendment by requiring that the expression of "any views, argument, or opinion" shall not be "evidence of an unfair labor practice," so long as such expression contains "no threat of reprisal or force or promise of benefit" in violation of § 8(a)(1). 395 U. S., at 617. See also *Thomas* v. *Collins,* 323 U. S. 516, 537 (1945) (union solicitation of employees is protected by First Amendment); *NLRB* v. *Virginia Elec. & Power Co.,* 314 U. S. 469, 477–478 (1941) (employer's attempts to persuade employees with respect to joining or not joining union are protected by First Amendment). The Court thus concluded that First Amendment rights, codified in § 8(c), limited the Board's regulatory authority to cases where the employer's speech contained a threat of reprisal or coercion.

Under *Gissel*'s reasoning, employer solicitation of employee views is protected speech, although such solicitation can constitutionally be prohibited where it amounts to coercion or threats of reprisal. There is no logical basis for a distinction between soliciting views, as in the instant case, and communicating views. Our decisions have concluded that First Amendment protection extends equally to the

right to receive information, *Kleindienst* v. *Mandel*, 408 U. S. 753, 762–763 (1972), and to the right to solicit information or responses, *Edenfield* v. *Fane*, 507 U. S. 761, 765–766 (1993); *Virginia Bd. of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.*, 425 U. S. 748, 761 (1976). More specifically, we concluded in *Thomas, supra*, at 534, that *union* solicitation of employee views and support is protected First Amendment activity. In finding union solicitation protected, *Thomas* relied on *Virginia Elec. & Power Co., supra*, as establishing that *employer's* attempts to persuade employees were protected First Amendment activity. 323 U. S., at 536–537.

It is not, however, necessary to resolve whether the Board's standard violates the First Amendment in this case. It is sufficient that the Board's interpretation of § 8(a)(1) to limit sharply employer polling raises difficult constitutional issues about employers' First Amendment rights. We have held that when an interpretation raises such constitutional concerns, the Board's interpretation of the Act is not entitled to deference. *Edward J. DeBartolo Corp.* v. *Florida Gulf Coast Building & Constr. Trades Council*, 485 U. S. 568, 574–577 (1988); *NLRB* v. *Catholic Bishop of Chicago*, 440 U. S. 490, 506–507 (1979); see also *Rust* v. *Sullivan*, 500 U. S. 173, 190–191 (1991).

In *DeBartolo*, we held that the Board's interpretation of the Act to proscribe peaceful handbilling by a union was not permissible. The Court acknowledged the Board's special authority to construe the Act and the normal deference it is therefore accorded. The Court nevertheless concluded that the Board's interpretation was not entitled to deference because, "where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems." 485 U. S., at 575. See also *Bill Johnson's Restaurants, Inc.* v. *NLRB*, 461 U. S. 731, 742–743 (1983) (the Board's interpretation of the Act is untenable in light of First Amendment concerns

and state interests, even though its interpretation is a rational construction of the Act). As in *DeBartolo*, I conclude that § 8(a)(1) "is open to a construction that obviates deciding whether a congressional prohibition of [employer polling] on the facts of this case would violate the First Amendment." 485 U. S., at 578.

In my view, cases such as *Gissel*, *supra*, *Thomas*, *supra*, and *Virginia Elec. & Power Co.*, *supra*, mean that the Board must allow polling where it does not tend to coerce or restrain employees. The Board must decide how and when in the first instance, but its decision must be rational, it must have a basis in the Act, and, of course, it may not violate the First Amendment.

The Court, however, concludes that the Board's standard is lawful. Accepting that conclusion, *arguendo*, I agree that the Board's findings are not supported by substantial evidence. I therefore join Parts I, III, and IV of the Court's opinion.

JUSTICE BREYER, with whom JUSTICE STEVENS, JUSTICE SOUTER, and JUSTICE GINSBURG join, concurring in part and dissenting in part.

I concur in Parts I and II and dissent from Parts III and IV of the Court's opinion. In Parts III and IV, the Court holds unlawful an agency conclusion on the ground that it is "not supported by substantial evidence." *Ante*, at 380; see 29 U. S. C. § 160(e); 5 U. S. C. § 706(2)(E). That question was not presented to us in the petition for certiorari. In deciding it, the Court has departed from the half-century old legal standard governing this type of review. See *Universal Camera Corp.* v. *NLRB*, 340 U. S. 474, 490–491 (1951). It has rewritten a National Labor Relations Board (Board) rule without adequate justification. It has ignored certain evidentiary presumptions developed by the Board to provide guidance in the application of this rule. And it has failed to give the kind of leeway to the Board's factfinding authority

that the Court's precedents mandate. See, *e. g.*, *Beth Israel Hospital* v. *NLRB*, 437 U. S. 483, 504 (1978).

To decide whether an agency's conclusion is supported by substantial evidence, a reviewing court must identify the conclusion and then examine and weigh the evidence. As this Court said in 1951, "[w]hether on the record as a whole there is substantial evidence to support agency findings is a question which Congress has placed in the keeping of the Courts of Appeals." *Universal Camera*, 340 U. S., at 491. The Court held that it would "intervene only in what ought to be the rare instance when the standard appears to have been *misapprehended or grossly misapplied*." *Ibid.* (emphasis added); see *Beth Israel Hospital*, *supra*, at 507 ("'misapprehended or grossly misapplied'"); *Golden State Bottling Co.* v. *NLRB*, 414 U. S. 168, 173 (1973) ("'misapprehended or grossly misapplied'"). Consequently, if the majority is to overturn a court of appeals' "substantial evidence" decision, it must identify the agency's conclusion, examine the evidence, and then determine whether the evidence is so *obviously* inadequate to support the conclusion that the reviewing court must have seriously misunderstood the nature of its legal duty.

The majority opinion begins by properly stating the Board's conclusion, namely, that the employer, Allentown Mack Sales & Service, Inc., did not demonstrate that it

> "held a reasonable doubt, *based on objective considerations*, that the Union continued to enjoy the support of a majority of the bargaining unit employees." *Ante*, at 366 (emphasis added; internal quotation marks omitted).

The opinion, however, then omits the words I have italicized and transforms this conclusion, rephrasing it as:

> "Allentown lacked a genuine, reasonable uncertainty about whether Local 724 enjoyed the continuing support of a majority of unit employees." *Ante*, at 367.

Key words of a technical sort that the Board has used in hundreds of opinions written over several decades to express what the Administrative Law Judge (ALJ) here called "*objective* reasonable doubt" have suddenly disappeared, leaving in their place what looks like an ordinary jury standard that might reflect not an agency's specialized knowledge of the workplace, but a court's common understanding of human psychology. The only authority cited for the transformation, the dictionary, in fact offers no support, for the majority has looked up the wrong word, namely, "doubt," instead of the right word, "objective." In any event, the majority's interpretation departs from settled principles permitting agencies broad leeway to interpret their own rules, see, *e. g.*, *Thomas Jefferson Univ.* v. *Shalala*, 512 U. S. 504, 512 (1994) (courts "must give substantial deference to an agency's interpretation of its own regulations"); *Bowles* v. *Seminole Rock & Sand Co.*, 325 U. S. 410, 413–414 (1945) (same), which may be established through rulemaking or adjudication, see *NLRB* v. *Bell Aerospace Co.*, 416 U. S. 267, 294 (1974); *SEC* v. *Chenery Corp.*, 332 U. S. 194, 202 (1947).

To illustrate the problem with the majority's analysis, I must describe the factual background, the evidence, and the ALJ's findings in some detail. In December 1990, three managers at Mack Trucks (and several other investors) bought Mack. All of the 45 employees in the union's bargaining unit were dismissed. The new owners changed the company's name to Allentown and then interviewed and rehired 32 of the 45 recently dismissed workers, putting them back to work at jobs similar to those they previously held. The union, which had represented those employees for 17 years, sought continued recognition; Allentown refused it; the Board's general counsel brought unfair labor practice charges; and the ALJ found that Allentown was a "successor" corporation to Mack, 316 N. L. R. B. 1199, 1204 (1995), a finding that was affirmed by the Board, *id.*, at 1199, and was not challenged in the Court of Appeals. Because Allen-

town was found to be a "successor" employer, the union was entitled to a rebuttable presumption of majority status. See *Fall River Dyeing & Finishing Corp.* v. *NLRB*, 482 U. S. 27, 41 (1987). Absent some extraordinary circumstance, when a union enjoys a rebuttable presumption of majority status, the employer is obligated to recognize the union unless 30% of the union's employees petition the Board for a decertification election (and the union loses), *Texas Petrochemicals Corp.*, 296 N. L. R. B. 1057, 1062 (1989), enf'd as modified, 923 F. 2d 398 (CA5 1991); see 29 U. S. C. § 159(c)(1)(A)(ii); 29 CFR § 101.18(a) (1997), or the employer shows that "either (1) the union did not *in fact* enjoy majority support, or (2) the employer had a good-faith doubt, founded on a sufficient objective basis, of the union's majority support," see *NLRB* v. *Curtin Matheson Scientific, Inc.*, 494 U. S. 775, 778 (1990) (emphasis deleted; internal quotation marks and citations omitted).

Allentown took the last mentioned of these options. According to the ALJ, it sought to show that it had an "objective" good-faith doubt primarily by presenting the testimony of Allentown managers, who, in turn, reported statements made to them by 14 employees. The ALJ set aside the statements of 5 of those employees as insignificant for various reasons—for example because the employees were not among the rehired 32, because their statements were equivocal, or because they made the statements at a time too long before the transition. 316 N. L. R. B., at 1206–1207. The majority does not take issue with the ALJ's reasoning with respect to these employees. The ALJ then found that statements made by six, and possibly seven, employees (22% of the 32) helped Allentown show an "objective" reasonable doubt. *Id.*, at 1207. The majority does not quarrel with this conclusion. The majority does, however, take issue with the ALJ's decision not to count in Allentown's favor three further statements, made by employees Marsh, Bloch, and Mohr. *Id.*, at 1206–1207. The majority says that these

statements *required* the ALJ and the Board to find for Allentown. I cannot agree.

Consider Marsh's statement. Marsh said, as the majority opinion notes, that "'he was not being represented for the $35 he was paying.'" *Ante*, at 369; 316 N. L. R. B., at 1207. The majority says that the ALJ was wrong not to count this statement in the employer's favor. *Ante*, at 369. But the majority fails to mention that Marsh made this statement to an Allentown manager while the manager was interviewing Marsh to determine whether he would, or would not, be one of the 32 employees whom Allentown would reemploy. The ALJ, when evaluating all the employee statements, wrote that statements made to the Allentown managers during the job interviews were "somewhat tainted as it is likely that a job applicant will say whatever he believes the prospective employer wants to hear." 316 N. L. R. B., at 1206. In so stating, the ALJ was reiterating the Board's own normative general finding that employers should not "rely in asserting a good-faith doubt" upon "[s]tatements made by employees during the course of an interview with a prospective employer." *Middleboro Fire Apparatus, Inc.*, 234 N. L. R. B. 888, 894, enf'd, 590 F. 2d 4 (CA5 1978). The Board also has found that "'[e]mployee statements of dissatisfaction with a union are not deemed the equivalent of withdrawal of support for the union.'" *Torch Operating Co.*, 322 N. L. R. B. 939, 943 (1997) (quoting *Briggs Plumbingware, Inc.* v. *NLRB*, 877 F. 2d 1282, 1288 (CA6 1989)); see also *Destileria Serralles, Inc.*, 289 N. L. R. B. 51 (1988), 882 F. 2d 19 (CA1 1989). Either of these general Board findings (presumably known to employers advised by the labor bar), applied by the ALJ in this particular case, provides more than adequate support for the ALJ's conclusion that the employer could not properly rely upon Marsh's statement as help in creating an "objective" employer doubt.

I do not see how, on the record before us, one could plausibly argue that these relevant general findings of the Board

fall outside the Board's lawfully delegated authority. The Board in effect has said that an employee statement *made during a job interview with an employer who has expressed an interest in a nonunionized work force* will often tell us precisely *nothing* about that employee's true feelings. That Board conclusion represents an exercise of the kind of discretionary authority that Congress placed squarely within the Board's administrative and factfinding powers and responsibilities. See *Radio Officers* v. *NLRB*, 347 U. S. 17, 49–50 (1954). Nor is it procedurally improper for an agency, rather like a common-law court, (and drawing upon its accumulated expertise and exercising its administrative responsibilities) to use adjudicatory proceedings to develop rules of thumb about the likely weight assigned to different kinds of evidence. Cf. *Bell Aerospace*, 416 U. S., at 294; *Chenery*, 332 U. S., at 202.

Consider next Bloch's statement, made during his job interview with Worth, that those on the night shift (five or six employees) "did not want the Union." 316 N. L. R. B., at 1207. The ALJ thought this statement failed to provide support, both for reasons that the majority mentions ("'Bloch did not testify and thus could not explain how he formed his opinion about the views of his fellow employees'"), *ante*, at 369; 316 N. L. R. B., at 1207, and for reasons that the majority does not mention ("no showing that [the other employees] made independent representations about their union sympathies to [Allentown] and they did not testify in this proceeding"), *ibid.*

The majority says that "reason demands" that Bloch's statement "be given considerable weight." *Ante*, at 370. But why? The Board, drawing upon both reason and experience, has said it will "view with suspicion and caution" one employee's statements "purporting to represent the views of other employees." *Wallkill Valley General Hospital*, 288 N. L. R. B. 103, 109 (1988), enf'd as modified, 866 F. 2d 632 (CA3 1989); see also *Louisiana-Pacific Corp.*, 283 N. L. R. B.

1079, 1080, n. 6 (1987); *Bryan Memorial Hospital*, 279 N. L. R. B. 222, 225 (1986), enf'd 814 F. 2d 1259 (CA8 1987). Indeed, the Board specifically has stated that this type of evidence does not qualify as "objective" within the meaning of the "objective reasonable doubt" standard. *Wallkill Valley General Hospital*, *supra*, at 109–110 (finding that statement by one employee that other employees opposed the union "cannot be found to provide *objective* considerations" because statement was a "bare assertion," was "subjective," and "lacking in demonstrable foundation"; statement by another employee about the views of others was similarly "insufficiently reliable and definite to contribute to a finding of *objective* considerations" (emphases added)).

How is it unreasonable for the Board to provide this kind of guidance, about what kinds of evidence are more likely, and what kinds are less likely, to support an "objective reasonable doubt" (thereby helping an employer understand just when he may refuse to bargain with an established employee representative, in the absence of an employee-generated union decertification petition)? Why is it unreasonable for an ALJ to disregard a highly general conclusory statement such as Bloch's, a statement that names no names, is unsupported by any other concrete testimony, and was made during a job interview by an interviewer who foresees a nonunionized workforce? To put the matter more directly, how can the majority substitute its own judgment for that of the Board and the ALJ in respect to such detailed workplace-related matters, particularly on the basis of this record, where the question whether we should set aside this kind of Board rule has not even been argued?

Finally, consider the Allentown manager's statement that Mohr told him that "if a vote was taken, the Union would lose." 316 N. L. R. B., at 1207. Since, at least from the perspective of the ALJ and the Board, the treatment of this statement presented a closer question, I shall set forth the ALJ's discussion of the matter in full.

The ALJ wrote:

> "Should Respondent be allowed to rely on Mohr's opinion? As opposed to Bloch who offered the opinion that the night shift employees did not support the Union, Mohr, as union steward, was arguably in a position to know the sentiments of the service employees in the bargaining unit in this regard. However, there is no evidence with respect to how he gained this knowledge, or whether he was speaking about a large majority of the service employees being dissatisfied with the Union or a small majority. Moreover, he was referring to the existing service employee members of the Mack bargaining unit composed of 32 employees, whereas the Respondent hired only 23 of these men. Certainly the composition of the complement of employees hired would bear on whether this group did or did not support the Union. He also was not in a position to speak for the 11 parts employees of Mack or the 7 parts employees hired by Respondent. Mohr himself did not indicate personal dissatisfaction with the Union." *Id.*, at 1208.

The ALJ concluded:

> "Given the almost off-the-cuff nature of [Mohr's] statement and the Board's historical treatment of unverified assertions by an employee about other employees' sentiments, I do not find that Mohr's statements provides *[sic]* sufficient basis, even when considered with the other employee statements relied upon, to meet the Board's objective reasonable doubt standard for withdrawal of recognition or for polling employees." *Ibid.*

One can find reflected in the majority opinion some of the reasons the ALJ gave for discounting the significance of Mohr's statement. The majority says of the ALJ's first reason (namely, that "'there is no evidence with respect to how'" Mohr "'gained this knowledge'") that this reason is "irrelevan[t]." *Ante*, at 370. But why so? The lack of any

specifics provides some support for the possibility that Mohr was overstating a conclusion, say, in a job-preserving effort to curry favor with Mack's new managers. More importantly, since the absence of detail or support brings Mohr's statement well within the Board's pre-existing cautionary evidentiary principle (about employee statements regarding the views of other employees), it diminishes the reasonableness of any employer reliance.

The majority discusses a further reason, namely, that Mohr was referring to a group of 32 employees of whom Allentown hired only 23, and "the composition of the complement of employees hired would bear on whether this group did or did not support the Union." 316 N. L. R. B., at 1208. The majority considers this reason "wholly irrational," because, in its view, the Board cannot "rationally" assume that

> "the work force of a successor company has the same disposition regarding the union as did the work force of the predecessor company, if the majority of the new work force came from the old one," *ante,* at 370,

while adopting an opposite assumption

> "for purposes of determining what evidence tends to establish a reasonable doubt regarding union support," *ibid.*

The irrationality of these assumptions, however, is not obvious. The primary objective of the National Labor Relations Act is to secure labor peace. *Fall River Dyeing & Finishing Corp.* v. *NLRB,* 482 U. S., at 38. To preserve the status quo ante may help to preserve labor peace; the first presumption may help to do so by assuming (in the absence of contrary evidence) that workers wish to preserve that status quo, see *id.,* at 38–40; the second, by requiring detailed evidence before dislodging the status quo, may help to do the same. Regardless, no one has argued that these presumptions are contradictory or illogical.

The majority fails to mention the ALJ's third reason for discounting Mohr's statement, namely, that Mohr did not indicate "whether he was speaking about a large majority of the service employees being dissatisfied with the Union or a small majority." 316 N. L. R. B., at 1208. It fails to mention the ALJ's belief that the statement was "almost off-the-cuff." *Ibid.* It fails to mention the ALJ's reference to the "Board's historical treatment of unverified assertions by an employee about other employees' sentiments" (which, by itself, would justify a considerable discount). *Ibid.* And, most importantly, it leaves out the ALJ's conclusion. The ALJ did not conclude that Mohr's statement lacked evidentiary significance. Rather, the ALJ concluded that the statement did not provide "*sufficient* basis, even when considered with other employee statements relied upon, to meet the Board's objective reasonable doubt standard." *Ibid.* (emphasis added).

Given this evidence, and the ALJ's reasoning, the Court of Appeals found the Board's conclusion adequately supported. That conclusion is well within the Board's authority to make findings and to reach conclusions on the basis of record evidence, which authority Congress has granted, and this Court's many precedents have confirmed. See, *e. g.*, *Beth Israel Hospital* v. *NLRB*, 437 U. S., at 504.

In sum, the majority has failed to focus upon the ALJ's actual conclusions, it has failed to consider all the evidence before the ALJ, it has transformed the actual legal standard that the Board has long administered without regard to the Board's own interpretive precedents, and it has ignored the guidance that the Board's own administrative interpretations have sought to provide to the bar, to employers, to unions, and to its own administrative staff. The majority's opinion will, I fear, weaken the system for judicial review of administrative action that this Court's precedents have carefully constructed over several decades.

For these reasons, I dissent.

Syllabus

BROGAN *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 96–1579. Argued December 2, 1997—Decided January 26, 1998

Petitioner falsely answered "no" when federal agents asked him whether he had received any cash or gifts from a company whose employees were represented by the union in which he was an officer. He was indicted on federal bribery charges and for making a false statement within the jurisdiction of a federal agency in violation of 18 U. S. C. § 1001. A jury in the District Court found him guilty. The Second Circuit affirmed, categorically rejecting his request to adopt the so-called "exculpatory no" doctrine, which excludes from § 1001's scope false statements that consist of the mere denial of wrongdoing.

Held: There is no exception to § 1001 criminal liability for a false statement consisting merely of an "exculpatory no." Although many Court of Appeals decisions have embraced the "exculpatory no" doctrine, it is not supported by § 1001's plain language. By its terms, § 1001 covers "any" false statement—that is, a false statement "of whatever kind," *United States* v. *Gonzales*, 520 U. S. 1, 5—including the use of the word "no" in response to a question. Petitioner's argument that § 1001 does not criminalize simple denials of guilt proceeds from two mistaken premises: that the statute criminalizes only those statements that "pervert governmental functions," and that simple denials of guilt do not do so. *United States* v. *Gilliland*, 312 U. S. 86, 93, distinguished. His argument that a literal reading of § 1001 violates the "spirit" of the Fifth Amendment is rejected because the Fifth Amendment does not confer a privilege to lie. *E. g.*, *United States* v. *Apfelbaum*, 445 U. S. 115, 117. His final argument that the "exculpatory no" doctrine is necessary to eliminate the grave risk that § 1001 will be abused by overzealous prosecutors seeking to "pile on" offenses is not supported by the evidence and should, in any event, be addressed to Congress. Pp. 400–406.

96 F. 3d 35, affirmed.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, KENNEDY, and THOMAS, JJ., joined, and in which SOUTER, J., joined in part. SOUTER, J., filed a statement concurring in part and concurring in the judgment, *post*, p. 408. GINSBURG, J., filed an opinion concurring in the judgment, in which SOUTER, J., joined, *post*,

p. 408. STEVENS, J., filed a dissenting opinion, in which BREYER, J., joined, *post,* p. 418.

Stuart Holtzman argued the cause and filed briefs for petitioner.

Solicitor General Waxman argued the cause for the United States. With him on the brief were *Acting Assistant Attorney General Keeney, Deputy Solicitor General Dreeben, Edward C. DuMont,* and *Nina Goodman.**

JUSTICE SCALIA delivered the opinion of the Court.

This case presents the question whether there is an exception to criminal liability under 18 U. S. C. § 1001 for a false statement that consists of the mere denial of wrongdoing, the so-called "exculpatory no."

I

While acting as a union officer during 1987 and 1988, petitioner James Brogan accepted cash payments from JRD Management Corporation, a real estate company whose employees were represented by the union. On October 4, 1993, federal agents from the Department of Labor and the Internal Revenue Service visited petitioner at his home. The agents identified themselves and explained that they were seeking petitioner's cooperation in an investigation of JRD and various individuals. They told petitioner that if he wished to cooperate, he should have an attorney contact the United States Attorney's Office, and that if he could not afford an attorney, one could be appointed for him.

The agents then asked petitioner if he would answer some questions, and he agreed. One question was whether he had received any cash or gifts from JRD when he was a union officer. Petitioner's response was "no." At that point, the

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**Scott L. Nelson* and *Lisa Kemler* filed a brief for the National Association of Criminal Defense Lawyers as *amicus curiae* urging reversal.

agents disclosed that a search of JRD headquarters had produced company records showing the contrary. They also told petitioner that lying to federal agents in the course of an investigation was a crime. Petitioner did not modify his answers, and the interview ended shortly thereafter.

Petitioner was indicted for accepting unlawful cash payments from an employer in violation of 29 U. S. C. §§ 186(b)(1), (a)(2), and (d)(2), and making a false statement within the jurisdiction of a federal agency in violation of 18 U. S. C. § 1001. He was tried, along with several co-defendants, before a jury in the United States District Court for the Southern District of New York, and was found guilty. The United States Court of Appeals for the Second Circuit affirmed the convictions, 96 F. 3d 35 (1996). We granted certiorari on the issue of the "exculpatory no." 520 U. S. 1263 (1997).

II

At the time petitioner falsely replied "no" to the Government investigators' question, 18 U. S. C. § 1001 (1988 ed.) provided:

> "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

By its terms, 18 U. S. C. § 1001 covers "any" false statement—that is, a false statement "of whatever kind," *United States* v. *Gonzales*, 520 U. S. 1, 5 (1997) (internal quotation marks and citation omitted). The word "no" in response to a question assuredly makes a "statement," see, *e. g.*, Webster's New International Dictionary 2461 (2d ed. 1950) (def.

2: "That which is stated; an embodiment in words of facts or opinions"), and petitioner does not contest that his utterance was false or that it was made "knowingly and willfully." In fact, petitioner concedes that under a "literal reading" of the statute he loses. Brief for Petitioner 5.

Petitioner asks us, however, to depart from the literal text that Congress has enacted, and to approve the doctrine adopted by many Circuits which excludes from the scope of § 1001 the "exculpatory no." The central feature of this doctrine is that a simple denial of guilt does not come within the statute. See, *e. g.*, *Moser* v. *United States*, 18 F. 3d 469, 473–474 (CA7 1994); *United States* v. *Taylor*, 907 F. 2d 801, 805 (CA8 1990); *United States* v. *Equihua-Juarez*, 851 F. 2d 1222, 1224 (CA9 1988); *United States* v. *Cogdell*, 844 F. 2d 179, 183 (CA4 1988); *United States* v. *Tabor*, 788 F. 2d 714, 717–719 (CA11 1986); *United States* v. *Fitzgibbon*, 619 F. 2d 874, 880–881 (CA10 1980); *United States* v. *Chevoor*, 526 F. 2d 178, 183–184 (CA1 1975), cert. denied, 425 U. S. 935 (1976). There is considerable variation among the Circuits concerning, among other things, what degree of elaborated tale-telling carries a statement beyond simple denial. See generally Annot., 102 A. L. R. Fed. 742 (1991). In the present case, however, the Second Circuit agreed with petitioner that his statement would constitute a "true 'exculpatory n[o]' as recognized in other circuits," 96 F. 3d, at 37, but aligned itself with the Fifth Circuit (one of whose panels had been the very first to embrace the "exculpatory no," see *Paternostro* v. *United States*, 311 F. 2d 298 (CA5 1962)) in categorically rejecting the doctrine, see *United States* v. *Rodriguez-Rios*, 14 F. 3d 1040 (CA5 1994) (en banc).

Petitioner's argument in support of the "exculpatory no" doctrine proceeds from the major premise that § 1001 criminalizes only those statements to Government investigators that "pervert governmental functions"; to the minor premise that simple denials of guilt to Government investigators do not pervert governmental functions; to the conclusion that

§ 1001 does not criminalize simple denials of guilt to Government investigators. Both premises seem to us mistaken. As to the minor: We cannot imagine how it could be true that falsely denying guilt in a Government investigation does not pervert a governmental function. Certainly the investigation of wrongdoing is a proper governmental function; and since it is the very *purpose* of an investigation to uncover the truth, any falsehood relating to the subject of the investigation perverts that function. It could be argued, perhaps, that a *disbelieved* falsehood does not pervert an investigation. But making the existence of this crime turn upon the credulousness of the federal investigator (or the persuasiveness of the liar) would be exceedingly strange; such a defense to the analogous crime of perjury is certainly unheard of.[1] Moreover, as we shall see, the only support for the "perversion of governmental functions" limitation is a statement of this Court referring to the *possibility* (as opposed to the certainty) of perversion of function—a possibility that exists whenever investigators are told a falsehood relevant to their task.

In any event, we find no basis for the major premise that only those falsehoods that pervert governmental functions are covered by § 1001. Petitioner derives this premise from a comment we made in *United States* v. *Gilliland*, 312 U. S. 86 (1941), a case involving the predecessor to § 1001. That earlier version of the statute subjected to criminal liability "'whoever shall knowingly and willfully . . . make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit,

[1] "The government need not show that because of the perjured testimony, the grand jury threw in the towel. . . . Grand jurors . . . are free to disbelieve a witness and persevere in an investigation without immunizing a perjurer." *United States* v. *Abrams*, 568 F. 2d 411, 421 (CA5), cert. denied, 437 U. S 903 (1978). See generally 70 C. J. S. Perjury § 13, pp. 260–261 (1987).

or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, in any matter within the jurisdiction of any department or agency of the United States . . . .'" *Id.*, at 92–93. The defendant in *Gilliland*, relying on the interpretive canon *ejusdem generis*,[2] argued that the statute should be read to apply only to matters in which the Government has a financial or proprietary interest. In rejecting that argument, we noted that Congress had specifically amended the statute to cover "'any matter within the jurisdiction of any department or agency of the United States,'" thereby indicating "the congressional intent to protect the authorized functions of governmental departments and agencies from the perversion which might result from the deceptive practices described." *Id.*, at 93. Petitioner would elevate this statement to a holding that § 1001 does not apply where a perversion of governmental functions does not exist. But it is not, and cannot be, our practice to restrict the unqualified language of a statute to the particular evil that Congress was trying to remedy—even assuming that it is possible to identify that evil from something other than the text of the statute itself. The holding of *Gilliland* certainly does not exemplify such a practice, since it *rejected* the defendant's argument for a limitation that the text of the statute would not bear. And even the relied-upon dictum from *Gilliland* does not support restricting text to supposed purpose, but to the contrary acknowledges the reality that the reach of a statute often exceeds the precise evil to be eliminated. There is no inconsistency whatever between the proposition that Congress intended "to protect the authorized functions of governmental departments and agencies from the perversion which might result" and the propo-

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[2] "Under the principle of *ejusdem generis*, when a general term follows a specific one, the general term should be understood as a reference to subjects akin to the one with specific enumeration." *Norfolk & Western R. Co.* v. *Train Dispatchers*, 499 U. S. 117, 129 (1991).

sition that the statute forbids *all* "the deceptive practices described." *Ibid.*

The second line of defense that petitioner invokes for the "exculpatory no" doctrine is inspired by the Fifth Amendment. He argues that a literal reading of § 1001 violates the "spirit" of the Fifth Amendment because it places a "cornered suspect" in the "cruel trilemma" of admitting guilt, remaining silent, or falsely denying guilt. Brief for Petitioner 11. This "trilemma" is wholly of the guilty suspect's own making, of course. An innocent person will not find himself in a similar quandary (as one commentator has put it, the innocent person lacks even a "lemma," Allen, The Simpson Affair, Reform of the Criminal Justice Process, and Magic Bullets, 67 U. Colo. L. Rev. 989, 1016 (1996)). And even the honest and contrite guilty person will not regard the third prong of the "trilemma" (the blatant lie) as an available option. The *bon mot* "cruel trilemma" first appeared in Justice Goldberg's opinion for the Court in *Murphy* v. *Waterfront Comm'n of N. Y. Harbor*, 378 U. S. 52 (1964), where it was used to explain the importance of a suspect's Fifth Amendment right to remain silent when subpoenaed to testify in an official inquiry. Without that right, the opinion said, he would be exposed "to the cruel trilemma of self-accusation, perjury or contempt." *Id.*, at 55. In order to validate the "exculpatory no," the elements of this "cruel trilemma" have now been altered—ratcheted up, as it were, so that the right to remain silent, which was the *liberation* from the original trilemma, is now *itself* a cruelty. We are not disposed to write into our law this species of compassion inflation.

Whether or not the predicament of the wrongdoer run to ground tugs at the heartstrings, neither the text nor the spirit of the Fifth Amendment confers a privilege to lie. "[P]roper invocation of the Fifth Amendment privilege against compulsory self-incrimination allows a witness to remain silent, but not to swear falsely." *United States* v. *Ap-*

felbaum, 445 U. S. 115, 117 (1980). See also *United States* v. *Wong*, 431 U. S. 174, 180 (1977); *Bryson* v. *United States*, 396 U. S. 64, 72 (1969). Petitioner contends that silence is an "illusory" option because a suspect may fear that his silence will be used against him later, or may not even know that silence is an available option. Brief for Petitioner 12–13. As to the former: It is well established that the fact that a person's silence can be used against him—either as substantive evidence of guilt or to impeach him if he takes the stand—does not exert a form of pressure that exonerates an otherwise unlawful lie. See *United States* v. *Knox*, 396 U. S. 77, 81–82 (1969). And as for the possibility that the person under investigation may be unaware of his right to remain silent: In the modern age of frequently dramatized "Miranda" warnings, that is implausible. Indeed, we found it implausible (or irrelevant) 30 years ago, unless the suspect was "in custody or otherwise deprived of his freedom of action in any significant way," *Miranda* v. *Arizona*, 384 U. S. 436, 445 (1966).

Petitioner repeats the argument made by many supporters of the "exculpatory no," that the doctrine is necessary to eliminate the grave risk that § 1001 will become an instrument of prosecutorial abuse. The supposed danger is that overzealous prosecutors will use this provision as a means of "piling on" offenses—sometimes punishing the denial of wrongdoing more severely than the wrongdoing itself. The objectors' principal grievance on this score, however, lies not with the hypothetical prosecutors but with Congress itself, which has decreed the obstruction of a legitimate investigation to be a separate offense, and a serious one. It is not for us to revise that judgment. Petitioner has been unable to demonstrate, moreover, any history of prosecutorial excess, either before or after widespread judicial acceptance of the "exculpatory no." And finally, if there is a problem of supposed "overreaching" it is hard to see how the doctrine of the "exculpatory no" could solve it. It is easy enough for

an interrogator to press the liar from the initial simple denial to a more detailed fabrication that would not qualify for the exemption.

III

A brief word in response to the dissent's assertion that the Court may interpret a criminal statute more narrowly than it is written: Some of the cases it cites for that proposition represent instances in which the Court did *not* purport to be departing from a reasonable reading of the text, *United States* v. *X-Citement Video, Inc.*, 513 U. S. 64, 77–78 (1994); *Williams* v. *United States*, 458 U. S. 279, 286–287 (1982). In the others, the Court applied what it thought to be a background interpretive principle of general application. *Staples* v. *United States*, 511 U. S. 600, 619 (1994) (construing statute to contain common-law requirement of *mens rea*); *Sorrells* v. *United States*, 287 U. S. 435, 446 (1932) (construing statute not to cover violations produced by entrapment); *United States* v. *Palmer*, 3 Wheat. 610, 631 (1818) (construing statute not to apply extraterritorially to noncitizens). Also into this last category falls the dissent's correct assertion that the present statute does not "mak[e] it a crime for an undercover narcotics agent to make a false statement to a drug peddler." *Post*, at 419 (opinion of STEVENS, J.). Criminal prohibitions do not generally apply to reasonable enforcement actions by officers of the law. See, *e. g.*, 2 P. Robinson, Criminal Law Defenses § 142(a), p. 121 (1984) ("Every American jurisdiction recognizes some form of law enforcement authority justification").

It is one thing to acknowledge and accept such well defined (or even newly enunciated), generally applicable, background principles of assumed legislative intent. It is quite another to espouse the broad proposition that criminal statutes do not have to be read as broadly as they are written, but are subject to case-by-case exceptions. The problem with adopting such an expansive, user-friendly judicial rule is that there is no way of knowing when, or how, the rule is to be

invoked. As to the when: The only reason JUSTICE STEVENS adduces for invoking it here is that a felony conviction for this offense seems to him harsh. Which it may well be. But the instances in which courts may ignore harsh penalties are set forth in the Constitution, see Art. I, § 9; Art. III, § 3; Amdt. 8; Amdt. 14, § 1; and to go beyond them will surely leave us at sea. And as to the how: There is no reason in principle why the dissent chooses to mitigate the harshness by saying that § 1001 does not embrace the "exculpatory no," rather than by saying that § 1001 has no application unless the defendant has been warned of the consequences of lying, or indeed unless the defendant has been put under oath. We are again at sea.

To be sure, some of this uncertainty would be eliminated, at our stage of judging, if we wrenched out of its context the principle quoted by the dissent from Sir Edward Coke, that "*communis opinio* is of good authoritie in law,"[3] and if we applied that principle consistently to a consensus in the judgments of the courts of appeals. (Of course the courts of appeals themselves, and the district courts, would still be entirely at sea, until such time as a consensus would have developed.) But the dissent does not propose, and its author has not practiced, consistent application of the principle, see, *e. g.*, *Hubbard* v. *United States*, 514 U. S. 695, 713 (1995) (opinion of STEVENS, J.) ("We think the text of § 1001 forecloses any argument that we should simply ratify the body of cases adopting the judicial function exception"); *Chapman* v. *United States*, 500 U. S. 453, 468 (1991) (STEVENS, J., dissenting) (disagreeing with the unanimous conclusions of the Courts of Appeals that interpreted the criminal statute at

[3] Coke said this in reference not to statutory law but to the *lex communis*, which most of his illustrious treatise dealt with. 1 E. Coke, Institutes 186a (15th ed. 1794). As applied to that, of course, the statement is not only true but almost an iteration; it amounts to saying that the common law is the common law.

issue); thus it becomes yet another user-friendly judicial rule to be invoked *ad libitum*.

* * *

In sum, we find nothing to support the "exculpatory no" doctrine except the many Court of Appeals decisions that have embraced it. While *communis error facit jus* may be a sadly accurate description of reality, it is not the normative basis of this Court's jurisprudence. Courts may not create their own limitations on legislation, no matter how alluring the policy arguments for doing so, and no matter how widely the blame may be spread. Because the plain language of § 1001 admits of no exception for an "exculpatory no," we affirm the judgment of the Court of Appeals.

It is so ordered.

JUSTICE SOUTER, concurring in part and concurring in the judgment.

I join the opinion of the Court except for its response to petitioner's argument premised on the potential for prosecutorial abuse of 18 U. S. C. § 1001 as now written (*ante*, at 405–406). On that point I have joined JUSTICE GINSBURG's opinion espousing congressional attention to the risks inherent in the statute's current breadth.

JUSTICE GINSBURG, with whom JUSTICE SOUTER joins, concurring in the judgment.

Because a false denial fits the unqualified language of 18 U. S. C. § 1001, I concur in the affirmance of Brogan's conviction. I write separately, however, to call attention to the extraordinary authority Congress, perhaps unwittingly, has conferred on prosecutors to manufacture crimes. I note, at the same time, how far removed the "exculpatory no" is from the problems Congress initially sought to address when it

proscribed falsehoods designed to elicit a benefit from the Government or to hinder Government operations.

I

At the time of Brogan's offense, § 1001 made it a felony "knowingly and willfully" to make "any false, fictitious or fraudulent statements or representations" in "any matter within the jurisdiction of any department or agency of the United States." 18 U. S. C. § 1001 (1988 ed.). That encompassing formulation arms Government agents with authority not simply to apprehend lawbreakers, but to generate felonies, crimes of a kind that only a Government officer could prompt.[1]

This case is illustrative. Two federal investigators paid an unannounced visit one evening to James Brogan's home. The investigators already possessed records indicating that Brogan, a union officer, had received cash from a company that employed members of the union Brogan served. (The agents gave no advance warning, one later testified, because they wanted to retain the element of surprise. App. 5.) When the agents asked Brogan whether he had received any money or gifts from the company, Brogan responded "No." The agents asked no further questions. *After* Brogan just said "No," however, the agents told him: (1) the Government had in hand the records indicating that his answer was false; and (2) lying to federal agents in the course of an investigation is a crime. Had counsel appeared on the spot, Brogan likely would have received and followed advice to amend his

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[1] See Note, Fairness in Criminal Investigations Under the Federal False Statement Statute, 77 Colum. L. Rev. 316, 325–326 (1977) ("Since agents may often expect a suspect to respond falsely to their questions, the statute is a powerful instrument with which to trap a potential defendant. Investigators need only informally approach the suspect and elicit a false reply and they are assured of a conviction with a harsh penalty even if they are unable to prove the underlying substantive crime." (footnotes omitted)).

answer, to say immediately: "Strike that; I plead not guilty." But no counsel attended the unannounced interview, and Brogan divulged nothing more. Thus, when the interview ended, a federal offense had been completed—even though, for all we can tell, Brogan's unadorned denial misled no one.

A further illustration. In *United States* v. *Tabor*, 788 F. 2d 714 (CA11 1986), an Internal Revenue Service (IRS) agent discovered that Tabor, a notary public, had violated Florida law by notarizing a deed even though two signatories had not personally appeared before her (one had died five weeks before the document was signed). With this knowledge in hand, and without "warn[ing] Tabor of the possible consequences of her statements," *id.*, at 718, the agent went to her home with a deputy sheriff and questioned her about the transaction. When Tabor, regrettably but humanly, denied wrongdoing, the Government prosecuted her under § 1001. See *id.*, at 716. An IRS agent thus turned a violation of state law into a federal felony by eliciting a lie that misled no one. (The Eleventh Circuit reversed the § 1001 conviction, relying on the "exculpatory no" doctrine. *Id.*, at 719.)

As these not altogether uncommon episodes show,[2] § 1001 may apply to encounters between agents and their targets

[2] See, *e. g.*, *United States* v. *Stoffey*, 279 F. 2d 924, 927 (CA7 1960) (defendant prosecuted for falsely denying, while effectively detained by agents, that he participated in illegal gambling; court concluded that "purpose of the agents was not to investigate or to obtain information, but to obtain admissions," and that "they were not thereafter diverted from their course by alleged false statements of defendant"); *United States* v. *Dempsey*, 740 F. Supp. 1299, 1306 (ND Ill. 1990) (after determining what charges would be brought against defendants, agents visited them "with the purpose of obtaining incriminating statements"; when the agents "received denials from certain defendants rather than admissions," Government brought § 1001 charges); see also *United States* v. *Goldfine*, 538 F. 2d 815, 820 (CA9 1976) (agents asked defendant had he made any out-of-state purchases, investigators already knew he had, he stated he had not; based on that false statement, defendant was prosecuted for violating § 1001).

"under extremely informal circumstances which do not sufficiently alert the person interviewed to the danger that false statements may lead to a felony conviction." *United States* v. *Ehrlichman*, 379 F. Supp. 291, 292 (DC 1974). Because the questioning occurs in a noncustodial setting, the suspect is not informed of the right to remain silent. Unlike proceedings in which a false statement can be prosecuted as perjury, there may be no oath, no pause to concentrate the speaker's mind on the importance of his or her answers. As in Brogan's case, the target may not be informed that a false "No" is a criminal offense until *after* he speaks.

At oral argument, the Solicitor General forthrightly observed that § 1001 could even be used to "escalate completely innocent conduct into a felony." Tr. of Oral Arg. 36. More likely to occur, "if an investigator finds it difficult to prove some elements of a crime, she can ask questions about other elements to which she already knows the answers. If the suspect lies, she can then use the crime she has prompted as leverage or can seek prosecution for the lie as a substitute for the crime she cannot prove." Comment, False Statements to Federal Agents: Induced Lies and the Exculpatory No, 57 U. Chi. L. Rev. 1273, 1278 (1990) (footnote omitted). If the statute of limitations has run on an offense—as it had on four of the five payments Brogan was accused of accepting—the prosecutor can endeavor to revive the case by instructing an investigator to elicit a fresh denial of guilt.[3] Prosecution in these circumstances is not an instance of Gov-

[3] Cf. *United States* v. *Bush*, 503 F. 2d 813, 815–819 (CA5 1974) (after statute of limitations ran on § 1001 charge for defendant Bush's first affidavit containing a false denial, IRS agents elicited a new affidavit, in which Bush made a new false denial; court held that "Bush cannot be prosecuted for making a statement to Internal Revenue Service agents when those agents aggressively sought such statement, when Bush's answer was essentially an exculpatory 'no' as to possible criminal activity, and when there is a high likelihood that Bush was under suspicion himself at the time the statement was taken and yet was in no way warned of this possibility").

ernment "punishing the denial of wrongdoing more severely than the wrongdoing itself," *ante*, at 405; it is, instead, Government generation of a crime when the underlying suspected wrongdoing is or has become nonpunishable.

II

It is doubtful Congress intended § 1001 to cast so large a net. First enacted in 1863 as part of the prohibition against filing fraudulent claims with the Government, the false statement statute was originally limited to statements that related to such filings. See Act of Mar. 2, 1863, ch. 67, 12 Stat. 696–697. In 1918, Congress broadened the prohibition to cover other false statements made "for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States." Act of Oct. 23, 1918, ch. 194, § 35, 40 Stat. 1015–1016. But the statute, we held, remained limited to "cheating the Government out of property or money." *United States* v. *Cohn*, 270 U. S. 339, 346 (1926).

"The restricted scope of the 1918 Act [as construed in *Cohn*] became a serious problem with the advent of the New Deal programs in the 1930's." *United States* v. *Yermian*, 468 U. S. 63, 80 (1984) (REHNQUIST, J., dissenting). The new regulatory agencies relied heavily on self-reporting to assure compliance; if regulated entities could file false reports with impunity, significant Government interests would be subverted even though the Government would not be deprived of any property or money. See generally *United States* v. *Gilliland*, 312 U. S. 86, 93–95 (1941). The Secretary of the Interior, in particular, expressed concern that "there were at present no statutes outlawing, for example, the presentation of false documents and statements to the Department of the Interior in connection with the shipment of 'hot oil,' or to the Public Works Administration in connection with the transaction of business with that agency." *United States* v. *Yermian*, 468 U. S., at 80 (REHNQUIST, J., dissenting).

In response to the Secretary's request, Congress amended the statute in 1934 to include the language that formed the basis for Brogan's prosecution. See *Hubbard* v. *United States*, 514 U. S. 695, 707 (1995) ("We have repeatedly recognized that the 1934 Act was passed at the behest of 'the Secretary of the Interior to aid the enforcement of laws relating to the functions of the Department of the Interior.' ") (quoting *United States* v. *Gilliland*, 312 U. S., at 93–94). Since 1934, the statute, the relevant part of which remains the same today,[4] has prohibited the making of "any false or fraudulent statements or representations . . . in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder." Act of June 18, 1934, ch. 587, § 35, 48 Stat. 996.

As the lower courts that developed the "exculpatory no" doctrine concluded, the foregoing history demonstrates that § 1001's "purpose was to protect the Government from the affirmative, aggressive and voluntary actions of persons who take the initiative; and to protect the Government from being the victim of some positive statement which has the tendency and effect of perverting normal and proper governmental activities and functions." *Paternostro* v. *United States*, 311 F. 2d 298, 302 (CA5 1962); accord, *United States* v. *Stark*, 131 F. Supp. 190, 205 (Md. 1955). True, "the 1934 amendment, which added the current statutory language, was not limited by any specific set of circumstances that may have precipitated its passage." *United States* v. *Rodgers*, 466 U. S. 475, 480 (1984). Yet it is noteworthy that Congress enacted that amendment to address concerns quite far removed from suspects' false denials of criminal misconduct, in the course of informal interviews initiated by Government

[4] Congress separated the false claims from the false statements provisions in the 1948 recodification, see Act of June 25, 1948, §§ 287, 1001, 62 Stat. 698, 749, and made unrelated substantive changes in 1996, see False Statements Accountability Act of 1996, Pub. L. 104–292, 110 Stat. 3459.

agents. Cf. ALI, Model Penal Code § 241.3, Comment 1, p. 151 (1980) ("inclusion of oral misstatements" in § 1001 was "almost [an] accidental consequenc[e] of the history of that law").

III

Even if the encompassing language of § 1001 precludes judicial declaration of an "exculpatory no" defense, the core concern persists: "The function of law enforcement is the prevention of crime and the apprehension of criminals. Manifestly, that function does not include the manufacturing of crime." *Sherman* v. *United States*, 356 U. S. 369, 372 (1958).[5] The Government has not been blind to this concern. Notwithstanding the prosecution in this case and the others cited *supra*, at 410–411, and n. 2, the Department of Justice has long noted its reluctance to approve § 1001 indictments for simple false denials made to investigators. Indeed, the Government once asserted before this Court that the arguments supporting the "exculpatory no" doctrine "are forceful even if not necessarily dispositive." Memorandum for United States in *Nunley* v. *United States*, O. T. 1977, No. 77–5069, p. 7; see also *id.*, at 7–8 (explaining that "[t]he legislative history affords no express indication that Congress meant Section 1001 to prohibit simple false denials of guilt to government officials having no regulatory responsibilities other than the discovery and deterrence of crime").

In *Nunley*, we vacated a § 1001 conviction and remanded with instructions to dismiss the indictment, at the Solicitor General's suggestion. *Nunley* v. *United States*, 434 U. S. 962 (1977). The Government urged such a course because the prosecution had been instituted without prior approval from the Assistant Attorney General, and such permission was "normally refused" in cases like Nunley's, where the

[5] Deterrence of Government-manufactured crimes is not at stake where a false denial of wrongdoing forms the basis, not for the imposition of criminal liability, but for an adverse employment action. For that reason, *Lachance* v. *Erickson*, *ante*, p. 262, is inapposite.

statements "essentially constitute[d] mere denials of guilt." Memorandum for United States, *supra,* at 8.

Since *Nunley,* the Department of Justice has maintained a policy against bringing § 1001 prosecutions for statements amounting to an "exculpatory no." At the time the charges against Brogan were filed, the United States Attorneys' Manual firmly declared: "Where the statement takes the form of an 'exculpatory no,' 18 U. S. C. § 1001 does not apply regardless who asks the question." United States Attorneys' Manual ¶ 9–42.160 (Oct. 1, 1988). After the Fifth Circuit abandoned the "exculpatory no" doctrine in *United States* v. *Rodriguez-Rios,* 14 F. 3d 1040 (1994) (en banc), the manual was amended to read: "It is the Department's policy that it is not appropriate to charge a Section 1001 violation where a suspect, during an investigation, merely denies his guilt in response to questioning by the government." United States Attorneys' Manual ¶ 9–42.160 (Feb. 12, 1996).[6]

These pronouncements indicate, at the least, the dubious propriety of bringing felony prosecutions for bare exculpatory denials informally made to Government agents.[7] Although today's decision holds that such prosecutions can be sustained under the broad language of § 1001, the Department of Justice's prosecutorial guide continues to caution restraint in each exercise of this large authority.

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[6] While this case was pending before us, the Department of Justice issued yet another version of the manual, which deleted the words "that it is" and "appropriate" from the sentence just quoted. The new version reads: "It is the Department's policy not to charge a Section 1001 violation in situations in which a suspect, during an investigation, merely denies guilt in response to questioning by the government." United States Attorneys' Manual ¶ 9–42.160 (Sept. 1997).

[7] The Sentencing Guidelines evince a similar policy judgment. Although United States Sentencing Commission, Guidelines Manual § 3C1.1 (Nov. 1997) establishes a two-level increase for obstruction of justice, the application notes provide that a "defendant's denial of guilt (other than a denial of guilt under oath that constitutes perjury) . . . is not a basis for application of this provision." § 3C1.1, comment., n. 1.

IV

The Court's opinion does not instruct lower courts automatically to sanction prosecution or conviction under § 1001 in all instances of false denials made to criminal investigators. The Second Circuit, whose judgment the Court affirms, noted some reservations. That court left open the question whether "to violate Section 1001, a person must know that it is unlawful to make such a false statement." *United States* v. *Wiener*, 96 F. 3d 35, 40 (1996). And nothing that court or this Court said suggests that "the mere denial of criminal responsibility would be sufficient to prove such [knowledge]." *Ibid.* Moreover, "a trier of fact might acquit on the ground that a denial of guilt in circumstances indicating surprise or other lack of reflection was not the product of the requisite criminal intent," *ibid.*, and a jury could be instructed that it would be permissible to draw such an inference. Finally, under the statute currently in force, a false statement must be "materia[l]" to violate § 1001. See False Statements Accountability Act of 1996, Pub. L. 104–292, § 2, 110 Stat. 3459.

The controls now in place, however, do not meet the basic issue, *i. e.*, the sweeping generality of § 1001's language. Thus, the prospect remains that an overzealous prosecutor or investigator—aware that a person has committed some suspicious acts, but unable to make a criminal case—will create a crime by surprising the suspect, asking about those acts, and receiving a false denial. Congress alone can provide the appropriate instruction.

Congress has been alert to our decisions in this area, as its enactment of the False Statements Accountability Act of 1996 (passed in response to our decision in *Hubbard* v. *United States*, 514 U. S. 695 (1995)) demonstrates. Similarly, after today's decision, Congress may advert to the "exculpatory no" doctrine and the problem that prompted its formulation.

The matter received initial congressional consideration some years ago. Legislation to revise and recodify the federal criminal laws, reported by the Senate Judiciary Committee in 1981 but never enacted, would have established a "defense to a prosecution for an oral false statement to a law enforcement officer" if "the statement was made 'during the course of an investigation of an offense or a possible offense and the statement consisted of a denial, unaccompanied by any other false statement, that the declarant committed or participated in the commission of such offense.'" S. Rep. No. 97–307, p. 407 (1981). In common with the "exculpatory no" doctrine as it developed in the lower courts, this 1981 proposal would have made the defense "available only when the false statement consists solely of a denial of involvement in a crime." *Ibid.* It would not have protected a denial "if accompanied by any other false statement (e. g., the assertion of an alibi)." *Ibid.*[8]

The 1981 Senate bill covered more than an "exculpatory no" defense; it addressed frontally, as well, unsworn oral statements of the kind likely to be made without careful deliberation or knowledge of the statutory prohibition against false statements. The bill would have criminalized false oral statements to law enforcement officers only "where the statement is either volunteered (e. g., a false alarm or an unsolicited false accusation that another person has committed an offense) or is made after a warning, designed to impress on the defendant the seriousness of the interrogation and his obligation to speak truthfully." *Id.*, at 408.

More stringent revision, following the lead of the Model Penal Code and the 1971 proposal of a congressionally chartered law reform commission, would excise unsworn oral

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[8] See, *e. g.*, *United States* v. *Moore*, 27 F. 3d 969, 979 (CA4 1994) ("exculpatory no" doctrine covers simple denials of criminal acts, but "does not extend to misleading exculpatory stories or affirmative statements . . . that divert the government in its investigation of criminal activity").

statements from § 1001 altogether. See ALI, Model Penal Code §§ 241.3, 241.4, 241.5 (1980); National Commission on Reform of Federal Criminal Laws, Final Report §§ 1352, 1354 (1971). A recodification proposal reported by the House Judiciary Committee in 1980 adopted that approach. It would have applied the general false statement provision only to statements made in writing or recorded with the speaker's knowledge, see H. R. Rep. No. 96–1396, pp. 181–183 (1980); unsworn oral statements would have been penalized under separate provisions, and only when they entailed misprision of a felony, false implication of another, or false statements about an emergency, see *id.*, at 182. The 1971 law reform commission would have further limited § 1001; its proposal excluded from the false statement prohibition all "information given during the course of an investigation into possible commission of an offense unless the information is given in an official proceeding or the declarant is otherwise under a legal duty to give the information." National Commission on Reform of Federal Criminal Laws, Final Report § 1352(3).

In sum, an array of recommendations has been made to refine § 1001 to block the statute's use as a generator of crime while preserving the measure's important role in protecting the workings of Government. I do not divine from the Legislature's silence any ratification of the "exculpatory no" doctrine advanced in lower courts. The extensive airing this issue has received, however, may better inform the exercise of Congress' lawmaking authority.

JUSTICE STEVENS, with whom JUSTICE BREYER joins, dissenting.

Although I agree with nearly all of what JUSTICE GINSBURG has written in her concurrence—a concurrence that raises serious concerns that the Court totally ignores—I dissent for the following reasons.

The mere fact that a false denial fits within the unqualified language of 18 U. S. C. § 1001 is not, in my opinion, a sufficient reason for rejecting a well-settled interpretation of that statute. It is not at all unusual for this Court to conclude that the literal text of a criminal statute is broader than the coverage intended by Congress. See, *e. g.*, *Staples* v. *United States*, 511 U. S. 600, 605, 619 (1994); *United States* v. *X-Citement Video, Inc.*, 513 U. S. 64, 68–69 (1994) (departing from "most natural grammatical reading" of statute because of "anomalies which result from this construction," and presumptions with respect to scienter in criminal statutes and avoiding constitutional questions); *id.*, at 81 (SCALIA, J., dissenting) (stating that lower court interpretation of statute rejected by the Court was "quite obviously *the only grammatical reading*"); *Williams* v. *United States*, 458 U. S. 279, 286 (1982) (holding that statute prohibiting the making of false statements to a bank was inapplicable to depositing of a "bad check" because "the Government's interpretation . . . would make a surprisingly broad range of unremarkable conduct a violation of federal law"); *Sorrells* v. *United States*, 287 U. S. 435, 448 (1932) ("We are unable to conclude that it was the intention of the Congress in enacting [a Prohibition Act] statute that its processes of detection and enforcement should be abused by the instigation by government officials of an act on the part of persons otherwise innocent in order to lure them to its commission and to punish them"); *United States* v. *Palmer*, 3 Wheat. 610, 631 (1818) (opinion of Marshall, C. J.) (holding that although "words 'any person or persons,' [in maritime robbery statute] are broad enough to comprehend every human being[,] . . . general words must not only be limited to cases within the jurisdiction of the state, but also to those objects to which the legislature intended to apply them"). Although the text of § 1001, read literally, makes it a crime for an undercover narcotics agent to make a false statement to a drug peddler, I am confident

that Congress did not intend any such result. As JUSTICE GINSBURG has explained, it seems equally clear that Congress did not intend to make every "exculpatory no" a felony.[1]

Even if that were not clear, I believe the Court should show greater respect for the virtually uniform understanding of the bench and the bar that persisted for decades with, as JUSTICE GINSBURG notes, *ante*, at 414–415, the approval of this Court as well as the Department of Justice.[2] See *Central Bank of Denver, N. A.* v. *First Interstate Bank of Denver, N. A.*, 511 U. S. 164, 192–198 (1994) (STEVENS, J., dissenting); *McNally* v. *United States*, 483 U. S. 350, 362–364, 376 (1987) (STEVENS, J., dissenting).[3] Or, as Sir Edward Coke phrased it, "it is the common opinion, and *communis*

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[1] "[M]eaning in law depends upon an understanding of purpose. Law's words, however technical they may sound, are not magic formulas; they must be read in light of their purposes, if we are to avoid essentially arbitrary applications and harmful results." *Behrens* v. *Pelletier*, 516 U. S. 299, 324 (1996) (BREYER, J., dissenting).

[2] It merits emphasis that the Memorandum for the United States filed in support of its confession of error in *Nunley* v. *United States*, 434 U. S. 962 (1977), contains a detailed discussion of the many cases that had endorsed the "exculpatory no" doctrine after the 1934 amendment to § 1001. Memorandum for United States in *Nunley* v. *United States*, O. T. 1977, No. 77–5069, pp. 4–8.

[3] Although I do not find the disposition of this case as troublesome as the decision in *McNally*, this comment is nevertheless apt:

"Perhaps the most distressing aspect of the Court's action today is its casual—almost summary—rejection of the accumulated wisdom of the many distinguished federal judges who have thoughtfully considered and correctly answered the question these cases present. The quality of this Court's work is most suspect when it stands alone, or virtually so, against a tide of well-considered opinions issued by state or federal courts. In these cases I am convinced that those judges correctly understood the intent of the Congress that enacted this statute. Even if I were not so persuaded, I could not join a rejection of such a longstanding, consistent interpretation of a federal statute." *McNally* v. *United States*, 483 U. S., at 376–377 (STEVENS, J., dissenting).

opinio is of good authoritie in law."[4] 1 E. Coke, Institutes 186a (15th ed. 1794).

Accordingly, I respectfully dissent.

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[4] The majority's invocation of the maxim *communis error facit jus* adds little weight to their argument. As Lord Ellenborough stated in *Isherwood* v. *Oldknow*, 3 Maule & Selwyn 382, 396–397 (K. B. 1815):

"It has been sometimes said, *communis error facit jus;* but I say *communis opinio* is evidence of what the law is; not where it is an opinion merely speculative and theoretical floating in the minds of persons, but where it has been made the ground-work and substratum of practice." See also *United States* v. *The Reindeer*, 27 F. Cas. 758, 762 (No. 16,145) (CC RI 1848).

Syllabus

OUBRE *v.* ENTERGY OPERATIONS, INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 96–1291. Argued November 12, 1997—Decided January 26, 1998

In consideration for receipt of severance pay under an employment termination agreement, petitioner Oubre signed a release of all claims against her employer, respondent Entergy Operations, Inc. In procuring the release, Entergy failed to comply in at least three respects with the requirements for a release under the Age Discrimination in Employment Act (ADEA), as set forth in the Older Workers Benefit Protection Act (OWBPA): It did not (1) give Oubre enough time to consider her options, (2) give her seven days to change her mind, or (3) make specific reference to ADEA claims. After receiving her last severance payment, Oubre sued Entergy, alleging constructive discharge on the basis of her age in violation of the ADEA and state law. Entergy moved for summary judgment, claiming Oubre had ratified the defective release by failing to return or offer to return the moneys she had received. The District Court agreed and entered summary judgment for Entergy. The Fifth Circuit affirmed.

Held: As the release did not comply with the OWBPA's requirements, it cannot bar Oubre's ADEA claim. The OWBPA provides: "An individual may not waive any [ADEA] claim . . . unless the waiver is knowing and voluntary. . . . [A] waiver may not be considered knowing and voluntary unless at a minimum" it satisfies certain enumerated requirements, including the three listed above. 29 U. S. C. § 626(f)(1). Thus, the OWBPA implements Congress' policy of protecting older workers' rights and benefits via a strict, unqualified statutory stricture on waivers, and this Court is bound to take Congress at its word. By imposing specific duties on employers seeking releases of ADEA claims and delineating these duties with precision and without exception or qualification, the statute makes its command clear: An employee "may not waive" an ADEA claim unless the waiver or release satisfies the OWBPA's requirements. Oubre's release does not do so. Nor did her mere retention of moneys amount to a ratification equivalent to a valid release of her ADEA claims, since the retention did not comply with the OWBPA any more than the original release did. Accordingly, even if Entergy has correctly stated the contract ratification and equitable estoppel principles on which it relies, its argument is unavailing because the authorities it cites do not consider the OWBPA's commands. Moreover, Enter-

gy's proposed rule would frustrate the statute's practical operation as well as its formal command. A discharged employee often will have spent the moneys received and will lack the means to tender their return. These realities might tempt employers to risk noncompliance with the OWBPA's waiver provisions, knowing that it will be difficult to repay the moneys and relying on ratification. This Court ought not to open the door to an evasion of the statute by this device. Pp. 425–428.

112 F. 3d 787, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which STEVENS, O'CONNOR, SOUTER, GINSBURG, and BREYER, JJ., joined. BREYER, J., filed a concurring opinion, in which O'CONNOR, J., joined, *post*, p. 430. SCALIA, J., filed a dissenting opinion, *post*, p. 434. THOMAS, J., filed a dissenting opinion, in which REHNQUIST, C. J., joined, *post*, p. 434.

Barbara G. Haynie argued the cause for petitioner. With her on the briefs were *W. Richard House, Jr.*, and *John S. Lawrence, Jr.*

Beth S. Brinkmann argued the cause for the United States et al. urging reversal. With her on the brief were *Acting Solicitor General Dellinger*, *Deputy Solicitor General Waxman*, *J. Ray Terry, Jr.*, *Gwendolyn Young Reams*, and *Carolyn L. Wheeler.*

Carter G. Phillips argued the cause for respondent. With him on the brief were *Michael G. Thompson*, *O. H. Storey III*, *Renee W. Masinter*, and *Rosemarie Falcone.**

JUSTICE KENNEDY delivered the opinion of the Court.

An employee, as part of a termination agreement, signed a release of all claims against her employer. In consider-

*Briefs of *amici curiae* urging reversal were filed for the American Association of Retired Persons by *Cathy Ventrell-Monsees* and *Thomas Osborne;* and for the National Employment Lawyers Association by *Thomas R. Meites.*

Briefs of *amici curiae* urging affirmance were filed for the Equal Employment Advisory Council et al. by *Ann Elizabeth Reesman*, *Stephen A. Bokat*, *Robin S. Conrad*, *Edward H. Comer*, *J. Bruce Brown*, and *Edward N. Bomsey;* and for the Illinois State Chamber of Commerce by *Brian W. Bulger.*

ation, she received severance pay in installments. The release, however, did not comply with specific federal statutory requirements for a release of claims under the Age Discrimination in Employment Act of 1967 (ADEA), 81 Stat. 602, 29 U. S. C. § 621 *et seq.* After receiving the last payment, the employee brought suit under the ADEA. The employer claims the employee ratified and validated the nonconforming release by retaining the moneys paid to secure it. The employer also insists the release bars the action unless, as a precondition to filing suit, the employee tenders back the moneys received. We disagree and rule that, as the release did not comply with the statute, it cannot bar the ADEA claim.

I

Petitioner Dolores Oubre worked as a scheduler at a power plant in Killona, Louisiana, run by her employer, respondent Entergy Operations, Inc. In 1994, she received a poor performance rating. Oubre's supervisor met with her on January 17, 1995, and gave her the option of either improving her performance during the coming year or accepting a voluntary arrangement for her severance. She received a packet of information about the severance agreement and had 14 days to consider her options, during which she consulted with attorneys. On January 31, Oubre decided to accept. She signed a release, in which she "agree[d] to waive, settle, release, and discharge any and all claims, demands, damages, actions, or causes of action . . . that I may have against Entergy . . . ." App. 61. In exchange, she received six installment payments over the next four months, totaling $6,258.

The Older Workers Benefit Protection Act (OWBPA) imposes specific requirements for releases covering ADEA claims. OWBPA, § 201, 104 Stat. 983, 29 U. S. C. §§ 626(f)(1)(B), (F), (G). In procuring the release, Entergy did not comply with the OWBPA in at least three respects: (1) Entergy did not give Oubre enough time to consider her options. (2) Entergy did not give Oubre seven days after she signed

the release to change her mind. And (3) the release made no specific reference to claims under the ADEA.

Oubre filed a charge of age discrimination with the Equal Employment Opportunity Commission, which dismissed her charge on the merits but issued a right-to-sue letter. She filed this suit against Entergy in the United States District Court for the Eastern District of Louisiana, alleging constructive discharge on the basis of her age in violation of the ADEA and state law. Oubre has not offered or tried to return the $6,258 to Entergy, nor is it clear she has the means to do so. Entergy moved for summary judgment, claiming Oubre had ratified the defective release by failing to return or offer to return the moneys she had received. The District Court agreed and entered summary judgment for Entergy. The Court of Appeals affirmed, 112 F. 3d 787 (CA5 1996) *(per curiam)*, and we granted certiorari, 520 U. S. 1185 (1997).

II

The employer rests its case upon general principles of state contract jurisprudence. As the employer recites the rule, contracts tainted by mistake, duress, or even fraud are voidable at the option of the innocent party. See 1 Restatement (Second) of Contracts § 7, and Comment *b* (1979); *e. g.*, *Ellerin* v. *Fairfax Sav. Assn.*, 78 Md. App. 92, 108–109, 552 A. 2d 918, 926–927 (Md. Spec. App.), cert. denied, 316 Md. 210, 557 A. 2d 1336 (1989). The employer maintains, however, that before the innocent party can elect avoidance, she must first tender back any benefits received under the contract. See, *e. g.*, *Dreiling* v. *Home State Life Ins. Co.*, 213 Kan. 137, 147–148, 515 P. 2d 757, 766–767 (1973). If she fails to do so within a reasonable time after learning of her rights, the employer contends, she ratifies the contract and so makes it binding. 1 Restatement (Second) of Contracts, *supra*, § 7, Comments *d*, *e;* see, *e. g.*, *Jobe* v. *Texas Util. Elec. Co.*, No. 05–94–01368–CV, 1995 WL 479645, *3 (Tex. App.-Dallas, Aug. 14, 1995) (unpublished). The employer also invokes the

doctrine of equitable estoppel. As a rule, equitable estoppel bars a party from shirking the burdens of a voidable transaction for as long as she retains the benefits received under it. See, *e. g.*, *Buffum* v. *Peter Barceloux Co.*, 289 U. S. 227, 234 (1933) (citing state case law from Indiana and New York). Applying these principles, the employer claims the employee ratified the ineffective release (or faces estoppel) by retaining all the sums paid in consideration of it. The employer, then, relies not upon the execution of the release but upon a later, distinct ratification of its terms.

These general rules may not be as unified as the employer asserts. See generally Annot., 76 A. L. R. 344 (1932) (collecting cases supporting and contradicting these rules); Annot., 134 A. L. R. 6 (1941) (same). And in equity, a person suing to rescind a contract, as a rule, is not required to restore the consideration at the very outset of the litigation. See 3 Restatement (Second) of Contracts, *supra,* § 384, and Comment *b;* Restatement of Restitution § 65, Comment *d* (1936); D. Dobbs, Law of Remedies § 4.8, p. 294 (1973). Even if the employer's statement of the general rule requiring tender back before one files suit were correct, it would be unavailing. The rule cited is based simply on the course of negotiation of the parties and the alleged later ratification. The authorities cited do not consider the question raised by statutory standards for releases and a statutory declaration making nonconforming releases ineffective. It is the latter question we confront here.

In 1990, Congress amended the ADEA by passing the OWBPA. The OWBPA provides: "An individual may not waive any right or claim under [the ADEA] unless the waiver is knowing and voluntary. . . . [A] waiver may not be considered knowing and voluntary unless at a minimum" it satisfies certain enumerated requirements, including the three listed above. 29 U. S. C. § 626(f)(1).

The statutory command is clear: An employee "may not waive" an ADEA claim unless the waiver or release satisfies

the OWBPA's requirements. The policy of the OWBPA is likewise clear from its title: It is designed to protect the rights and benefits of older workers. The OWBPA implements Congress' policy via a strict, unqualified statutory stricture on waivers, and we are bound to take Congress at its word. Congress imposed specific duties on employers who seek releases of certain claims created by statute. Congress delineated these duties with precision and without qualification: An employee "may not waive" an ADEA claim unless the employer complies with the statute. Courts cannot with ease presume ratification of that which Congress forbids.

The OWBPA sets up its own regime for assessing the effect of ADEA waivers, separate and apart from contract law. The statute creates a series of prerequisites for knowing and voluntary waivers and imposes affirmative duties of disclosure and waiting periods. The OWBPA governs the effect under federal law of waivers or releases on ADEA claims and incorporates no exceptions or qualifications. The text of the OWBPA forecloses the employer's defense, notwithstanding how general contract principles would apply to non-ADEA claims.

The rule proposed by the employer would frustrate the statute's practical operation as well as its formal command. In many instances a discharged employee likely will have spent the moneys received and will lack the means to tender their return. These realities might tempt employers to risk noncompliance with the OWBPA's waiver provisions, knowing it will be difficult to repay the moneys and relying on ratification. We ought not to open the door to an evasion of the statute by this device.

Oubre's cause of action arises under the ADEA, and the release can have no effect on her ADEA claim unless it complies with the OWBPA. In this case, both sides concede the release the employee signed did not comply with the requirements of the OWBPA. Since Oubre's release did not comply

with the OWBPA's stringent safeguards, it is unenforceable against her insofar as it purports to waive or release her ADEA claim. As a statutory matter, the release cannot bar her ADEA suit, irrespective of the validity of the contract as to other claims.

In further proceedings in this or other cases, courts may need to inquire whether the employer has claims for restitution, recoupment, or setoff against the employee, and these questions may be complex where a release is effective as to some claims but not as to ADEA claims. We need not decide those issues here, however. It suffices to hold that the release cannot bar the ADEA claim because it does not conform to the statute. Nor did the employee's mere retention of moneys amount to a ratification equivalent to a valid release of her ADEA claims, since the retention did not comply with the OWBPA any more than the original release did. The statute governs the effect of the release on ADEA claims, and the employer cannot invoke the employee's failure to tender back as a way of excusing its own failure to comply.

We reverse the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

It is so ordered.

APPENDIX TO OPINION OF THE COURT

Older Workers Benefit Protection Act, § 201, 104 Stat. 983, 29 U. S. C. § 626(f):

(f) Waiver

(1) An individual may not waive any right or claim under this Act unless the waiver is knowing and voluntary. Except as provided in paragraph (2), a waiver may not be considered knowing and voluntary unless at a minimum—

(A) the waiver is part of an agreement between the individual and the employer that is written in a manner calcu-

lated to be understood by such individual, or by the average individual eligible to participate;

(B) the waiver specifically refers to rights or claims arising under this Act;

(C) the individual does not waive rights or claims that may arise after the date the waiver is executed;

(D) the individual waives rights or claims only in exchange for consideration in addition to anything of value to which the individual already is entitled;

(E) the individual is advised in writing to consult with an attorney prior to executing the agreement;

(F)(i) the individual is given a period of at least 21 days within which to consider the agreement; or

(ii) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the individual is given a period of at least 45 days within which to consider the agreement;

(G) the agreement provides that for a period of at least 7 days following the execution of such agreement, the individual may revoke the agreement, and the agreement shall not become effective or enforceable until the revocation period has expired;

(H) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the employer (at the commencement of the period specified in subparagraph (F)) informs the individual in writing in a manner calculated to be understood by the average individual eligible to participate, as to—

(i) any class, unit, or group of individuals covered by such program, any eligibility factors for such program, and any time limits applicable to such program; and

(ii) the job titles and ages of all individuals eligible or selected for the program, and the ages of all individuals in the same job classification or organizational unit who are not eligible or selected for the program.

(2) A waiver in settlement of a charge filed with the Equal Employment Opportunity Commission, or an action filed in court by the individual or the individual's representative, alleging age discrimination of a kind prohibited under section 4 or 15 may not be considered knowing and voluntary unless at a minimum—

(A) subparagraphs (A) through (E) of paragraph (1) have been met; and

(B) the individual is given a reasonable period of time within which to consider the settlement agreement.

(3) In any dispute that may arise over whether any of the requirements, conditions, and circumstances set forth in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H) of paragraph (1), or subparagraph (A) or (B) of paragraph (2), have been met, the party asserting the validity of a waiver shall have the burden of proving in a court of competent jurisdiction that a waiver was knowing and voluntary pursuant to paragraph (1) or (2).

(4) No waiver agreement may affect the Commission's rights and responsibilities to enforce this Act. No waiver may be used to justify interfering with the protected right of an employee to file a charge or participate in an investigation or proceeding conducted by the Commission.

JUSTICE BREYER, with whom JUSTICE O'CONNOR joins, concurring.

This case focuses upon a worker who received a payment from her employer and in return promised not to bring an age-discrimination suit. Her promise failed the procedural tests of validity set forth in the Older Workers Benefit Protection Act (OWBPA), 29 U. S. C. § 626(f)(1). I agree with the majority that, because of this procedural failing, the worker is free to bring her age-discrimination suit without "tendering back" her employer's payment as a precondition. As a conceptual matter, a "tender back" requirement would imply that the worker had ratified her promise by keeping

her employer's payment. For that reason, it would bar suit, including suit by a worker (without other assets) who had already spent the money he received for the promise. Yet such an act of ratification could embody some of the same procedural failings that led Congress to find the promise not to sue itself invalid. For these reasons, as the majority points out, a tender back precondition requirement would run contrary to Congress' statutory command. See *ante*, at 426–427. Cf. 1 Restatement (Second) of Contracts § 85, Comment *b* (1979) (a promise ratifying a voidable contract "may itself be voidable for the same reason as the original promise, or it may be voidable or unenforceable for some other reason"); D. Dobbs, Law of Remedies 982 (1973) ("[C]ourts must avoid allowing a recovery that has the effect of substantially enforcing the contract that has been declared unenforceable, since to do so would defeat the policy that led to the . . . rule in the first place").

I write these additional words because I believe it important to specify that the statute need not, and does not, thereby make the worker's procedurally invalid promise totally void, *i. e.*, without any legal effect, say, like a contract the terms of which themselves are contrary to public policy. See 1 Restatement (Second) of Contracts § 7, Comment *a* (1979); 2 *id.*, § 178. Rather, the statute makes the contract that the employer and worker tried to create voidable, like a contract made with an infant, or a contract created through fraud, mistake, or duress, which contract the worker may elect either to avoid or to ratify. See 1 *id.*, § 7, and Comment *b*.

To determine whether a contract is voidable or void, courts typically ask whether the contract has been made under conditions that would justify giving one of the parties a choice as to validity, making it voidable, *e. g.*, a contract with an infant; or whether enforcement of the contract would violate the law or public policy irrespective of the conditions in which the contract was formed, making it void, *e. g.*, a con-

tract to commit murder. Compare 1 *id.*, § 7, Comment *b* (voidable), with 2 *id.*, § 178, and Comment *d* (void). The statute before us reflects concern about the conditions (of knowledge and free choice) surrounding the making of a contract to waive an age-discrimination claim. It does not reflect any relevant concern about enforcing the contract's substantive terms. Nor does this statute, unlike the Federal Employers' Liability Act, 35 Stat. 65, as amended, 45 U. S. C. § 51 *et seq.*, say that a contract waiving suit and thereby avoiding liability is void. § 55. Rather, as the majority's opinion makes clear, see *ante*, at 426–427, the OWBPA prohibits courts from finding ratification in certain circumstances, such as those presented here, namely, a worker's retention of an employer's payment for an invalid release. That fact may affect ratification, but it need not make the contract void, rather than voidable.

That the contract is voidable rather than void may prove important. For example, an absolutely void contract, it is said, "is void as to everybody whose rights would be affected by it if valid." 17A Am. Jur. 2d, Contracts § 7, p. 31 (1991). Were a former worker's procedurally invalid promise not to sue absolutely void, might it not become legally possible for an employer to decide to cancel its own reciprocal obligation, say, to pay the worker, or to provide ongoing health benefits—whether or not the worker in question ever intended to bring a lawsuit? It seems most unlikely that Congress, enacting a statute meant to protect workers, would have wanted to create—as a result of an employer's failure to follow the law—any such legal threat to all workers, whether or not they intend to bring suit. To find the contract voidable, rather than void, would offer legal protection against such threats.

At the same time, treating the contract as voidable could permit an employer to recover his own reciprocal payment (or to avoid his reciprocal promise) where doing so seems

most fair, namely, where that recovery would *not* bar the worker from bringing suit. Once the worker (who has made the procedurally invalid promise not to sue) brings an age-discrimination suit, he has clearly rejected (avoided) his promise not to sue. As long as there is no "tender back" precondition, his (invalid) promise will not have barred his suit in conflict with the statute. Once he has sued, however, nothing in the statute prevents his employer from asking for restitution of his reciprocal payment or relief from any ongoing reciprocal obligation. See Restatement of Restitution § 47, Comment *b* (1936) ("A person who transfers something to another believing that the other thereby comes under a duty to perform the terms of a contract . . . is ordinarily entitled to restitution for what he has given if the obligation intended does not arise and if the other does not perform"); Dobbs, *supra,* at 994 (restitution is often allowed where benefits are conferred under voidable contract). A number of older state cases indicate, for example, that the amount of consideration paid for an invalid release can be deducted from a successful plaintiff's damages award. See, *e. g., St. Louis-San Francisco R. Co.* v. *Cox,* 171 Ark. 103, 113–115, 283 S. W. 31, 35 (1926) (amount paid for invalid release may be taken into consideration in setting remedy); *Koshka* v. *Missouri Pac. R. Co.,* 114 Kan. 126, 129–130, 217 P. 293, 295 (1923) (the sum paid for an invalid release may be treated as an item of credit against damages); *Miller* v. *Spokane Int'l R. Co.,* 82 Wash. 170, 177–178, 143 P. 981, 984 (1914) (same); *Gilmore* v. *Western Elec. Co.,* 42 N. D. 206, 211–212, 172 N. W. 111, 113 (1919).

My point is that the statute's provisions are consistent with viewing an invalid release as voidable, rather than void. Apparently, five or more Justices take this view of the matter. See *post,* at 436, n. 1 (THOMAS, J., dissenting). As I understand the majority's opinion, it is also consistent with this view, and I consequently concur in its opinion.

JUSTICE SCALIA, dissenting.

I agree with JUSTICE THOMAS that the Older Workers Benefit Protection Act (OWBPA), 29 U. S. C. § 626(f), does not abrogate the common-law doctrines of "tender back" and ratification. Because no "tender back" was made here, I would affirm the judgment.

I do not consider ratification a second basis for affirmance, since ratification cannot occur until the impediment to the conclusion of the agreement is eliminated. Thus, an infant cannot ratify his voidable contracts until he reaches majority, and a party who has contracted under duress cannot ratify until the duress is removed. See 1 E. Farnsworth, Contracts § 4.4, p. 381, § 4.19, p. 443 (1990). Of course for some contractual impediments, discovery itself is the cure. See 12 W. Jaeger, Williston on Contracts § 1527, p. 626 (3d ed. 1970) (ratification by a defrauded party may occur "after discovery of the fraud"); 2 Farnsworth, *supra*, § 9.3, at 520 (ratification by party entitled to avoid for mistake may occur after "that party is or ought to be aware of the facts"). The impediment here is not of that sort. OWBPA provides that "[a]n individual may not waive any right or claim under th[e] [Age Discrimination in Employment Act of 1967] unless the waiver is knowing and voluntary," 29 U. S. C. § 626(f)(1), and says that a waiver "may not be considered knowing and voluntary" unless it satisfies the requirements not complied with here, *ibid.* That a party later learns that those requirements were not complied with no more enables ratification of the waiver than does such knowledge at the time of contracting render the waiver effective *ab initio*.

JUSTICE THOMAS, with whom THE CHIEF JUSTICE joins, dissenting.

The Older Workers Benefit Protection Act (OWBPA), 29 U. S. C. § 626(f), imposes certain minimum requirements that waivers of claims under the Age Discrimination in Employment Act of 1967 (ADEA), 29 U. S. C. § 621 *et seq.*, must meet

in order to be considered "knowing and voluntary." The Court of Appeals held that petitioner had ratified a release of ADEA claims that did not comply with the OWBPA by retaining the benefits she had received in exchange for the release, even after she had become aware of the defect and had decided to sue respondent. The majority does not suggest that the Court of Appeals was incorrect in concluding that petitioner's conduct was sufficient to constitute ratification of the release. Instead, without so much as acknowledging the long-established principle that a statute "must 'speak directly' to the question addressed by the common law" in order to abrogate it, *United States* v. *Texas*, 507 U. S. 529, 534 (1993) (quoting *Mobil Oil Corp.* v. *Higginbotham*, 436 U. S. 618, 625 (1978)), the Court holds that the OWBPA abrogates both the common-law doctrine of ratification and the doctrine that a party must "tender back" consideration received under a release of legal claims before bringing suit. Because the OWBPA does not address either of these common-law doctrines at all, much less with the clarity necessary to abrogate them, I respectfully dissent.

It has long been established that "'[s]tatutes which invade the common law . . . are to be read with a presumption favoring the retention of long-established and familiar principles, except when a statutory purpose to the contrary is evident.'" *United States* v. *Texas*, *supra*, at 534 (quoting *Isbrandtsen Co.* v. *Johnson*, 343 U. S. 779, 783 (1952)). Congress is understood to legislate against a background of common-law principles, *Astoria Fed. Sav. & Loan Assn.* v. *Solimino*, 501 U. S. 104, 108 (1991), and thus "does not write upon a clean slate," *United States* v. *Texas*, *supra*, at 534. As a result, common-law doctrines "'ought not to be deemed to be repealed, unless the language of a statute be clear and explicit for this purpose.'" *Norfolk Redevelopment and Housing Authority* v. *Chesapeake & Potomac Telephone Co. of Va.*, 464 U. S. 30, 35–36 (1983) (quoting *Fairfax's Devisee* v. *Hunter's Lessee*, 7 Cranch 603, 623 (1813)).

The only clear and explicit purpose of the OWBPA is to define "knowing and voluntary" in the context of ADEA waivers. Prior to the statute's enactment, the Courts of Appeals had disagreed about the proper standard for determining whether such waivers were knowing and voluntary. Several courts had adopted a "totality of the circumstances" test as a matter of federal waiver law, see, *e. g.*, *Cirillo* v. *Arco Chemical Co.*, 862 F. 2d 448, 451 (CA3 1988); *Bormann* v. *AT&T Communications, Inc.*, 875 F. 2d 399, 403 (CA2), cert. denied, 493 U. S. 924 (1989); *O'Hare* v. *Global Natural Resources, Inc.*, 898 F. 2d 1015, 1017 (CA5 1990), while others had relied solely on common-law contract principles, see *Runyan* v. *National Cash Register Corp.*, 787 F. 2d 1039, 1044, n. 10, 1045 (CA6) (en banc), cert. denied, 479 U. S. 850 (1986); *Lancaster* v. *Buerkle Buick Honda Co.*, 809 F. 2d 539, 541 (CA8), cert. denied, 482 U. S. 928 (1987). In enacting the OWBPA, Congress adopted neither approach, instead setting certain minimum requirements that every release of ADEA rights and claims must meet in order to be deemed knowing and voluntary. I therefore agree with the Court that the OWBPA abrogates the common-law definition of a "knowing and voluntary" waiver where ADEA claims are involved.

From this rather unremarkable proposition, however, the Court leaps to the conclusion that the OWBPA supplants the common-law doctrines of ratification and tender back. The doctrine of ratification (also known in contract law as affirmation) provides that a party, after discovering a defect in the original release, can make binding that otherwise voidable release either explicitly or by failing timely to return the consideration received. See 1 Restatement (Second) of Contracts § 7, Comments *d*, *e* (1979); 1 E. Farnsworth, Contracts §§ 4.15, 4.19 (1990).[1] The tender back doctrine re-

[1] For the reasons noted by JUSTICE BREYER, see *ante*, at 431–432, I think it cannot be doubted that releases that fail to meet the OWBPA's requirements are merely voidable, rather than void.

quires, as a condition precedent to suit, that a plaintiff return the consideration received in exchange for a release, on the theory that it is inconsistent to bring suit against the defendant while at the same time retaining the consideration received in exchange for a promise *not* to bring such a suit. See *Buffum* v. *Peter Barceloux Co.*, 289 U. S. 227, 234 (1933) (citing state cases).

The OWBPA simply does not speak to ratification. It is certainly not the case—notwithstanding the Court's statement that the OWBPA "governs the effect under federal law of waivers or releases on ADEA claims," *ante*, at 427—that ratification can *never* apply in the context of ADEA releases. There is no reason to think that releases voidable on nonstatutory grounds such as fraud, duress, or mistake cannot be ratified: The OWBPA merely imposes requirements for knowing and voluntary waivers and is silent regarding fraud, duress, and mistake. Further, the statute makes no mention of whether there can ever be a valid ratification in the more specific instance, presented by this case, of a release of ADEA claims that fails to satisfy the statute's requirements. Instead, the statute merely establishes prerequisites that must be met for a release to be considered knowing and voluntary; the imposition of these statutory requirements says absolutely nothing about whether a release that fails to meet these prerequisites can ever be ratified.

Not only does the text of the OWBPA make no mention of ratification, but it also cannot be said that the doctrine is inconsistent with the statute. The majority appears to reason that ratification cannot apply in the ADEA context because releases would be given legal effect where they should have none. As the Court explains, "the release can have no effect on [the employee's] ADEA claim unless it complies with the OWBPA." *Ibid.* Or, put another way, because petitioner's release did not comply with the statute, "it is unenforceable against her insofar as it purports to waive or release her ADEA claim." *Ante*, at 428.

The Court's concerns, however, appear directed at ratification itself, rather than at its application in the ADEA context. Ratification *necessarily* applies where a release is unenforceable against one party at its adoption because of some deficiency; the whole point of ratification is to give legal effect to an otherwise voidable release. By defining the requirements that must be met for a release of ADEA claims to be considered knowing and voluntary, the OWBPA merely establishes one of the ways in which a release may be unenforceable at its adoption. The OWBPA does not suggest any reason why a noncomplying release cannot be made binding, despite the original defect, in the same manner as any other voidable release.

Nor does ratification conflict with the purpose of the OWBPA. Ratification occurs only when the employee realizes that the release does not comply with the OWBPA and nevertheless assents to be bound. See 12 W. Jaeger, Williston on Contracts § 1527 (3d ed. 1970) (ratification may occur only after defect is discovered); 3 Restatement (Second) of Contracts § 381 (same). This is surely consistent with the statutory purpose of ensuring that waivers of ADEA claims are knowing and voluntary.[2]

The question remains whether the OWBPA imposes requirements that a ratification must meet. Ratification of a voidable release, like the release itself, must be knowing and voluntary. Otherwise, it too is voidable by the innocent party. See 1 *id.*, § 85, Comment *b*. Although the Court does not expressly address this question, it appears that the Court's holding requires, at minimum, that the statutory requirements apply in the ratification context.

The OWBPA does not, however, clearly displace the common-law definition of "knowing and voluntary" in the

[2] Although the Court, relying on the statute's title, defines the OWBPA's purpose broadly as "protect[ing] the rights and benefits of older workers," *ante,* at 427, the statute itself suggests only the more specific purpose of preventing unknowing or involuntary waivers of ADEA rights and claims.

ratification context. The statute itself states that it applies to waivers and is absolutely silent regarding ratification or affirmation. Further, several of the statutory requirements cannot be translated easily into the ratification context. The requirements that an employee be given a period of at least 21 days to consider the agreement, 29 U. S. C. § 626(f)(1)(F)(i), and that he have a 7-day period in which to revoke the agreement, § 626(f)(1)(G), naturally apply in the context of the original release, but seem superfluous when applied to ratification. For example, when an employee has implicitly ratified the original release by retaining the consideration for several months after discovering its defects, a 21-day waiting period to consider the agreement and a 7-day revocation period have no place. An employee thus may ratify a release that fails to comply with the OWBPA.

For many of the same reasons that the OWBPA does not abrogate the doctrine of ratification, it also does not abrogate the tender back requirement. Certainly the statute does not supplant the tender back requirement in its entirety. Where a release complies with the statute but is voidable on other grounds (such as fraud), the OWBPA does not relieve an employee of the obligation to return the consideration received before suing his employer; the OWBPA does not even arguably address such a situation. And in the more specific context of a release that fails to comply with the OWBPA, the statute simply says nothing about whether there can ever be an obligation to tender back the consideration before filing suit.

Nor is the tender back requirement inconsistent with the OWBPA. Although it does create an additional obligation that would not exist but for the noncomplying release, the doctrine merely puts the employee to a choice between avoiding the release and retaining the benefit of his bargain. After all, this doctrine does not preclude suit but merely acts as a condition precedent to it; the employee need only return the consideration before the statute of limitations period has

run. And despite the Court's concern that "[i]n many instances a discharged employee likely will have spent the moneys received and will lack the means to tender their return," *ante*, at 427; see also *ante*, at 431 (BREYER, J., concurring),[3] courts have interpreted the tender back doctrine flexibly, such that immediate tender is not always required. See D. Dobbs, Law of Remedies § 9.4, p. 622 (1973); *Fleming* v. *United States Postal Service AMF O'Hare*, 27 F. 3d 259, 260 (CA7 1994). If anything, the Court's holding creates a windfall for an employee who may now retain the consideration received from his employer while at the same time filing suit.

Finally, it is clear that the statutory requirements have no application to the tender back requirement. The tender back doctrine operates not to make the voidable release binding, as does ratification, but rather precludes a party from simultaneously retaining the benefits of the release and suing to vindicate released claims. See *supra*, at 436–437. That is, the requirement to tender back is simply a condition precedent to suit; it has nothing to do with whether a waiver was knowing and voluntary. Nothing in the statute even arguably implies that the statutory requirements must be met before this obligation arises.

In sum, the OWBPA does not clearly and explicitly abrogate the doctrines of ratification and tender back. Congress, of course, is free to do so. But until it does, these common-law doctrines should apply to releases of ADEA claims, just as they do to other releases. Because the Court of Appeals determined that petitioner had indeed ratified her

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[3] The statements of the majority in this regard, like much of the majority opinion generally, imply that noncomplying releases are void as against public policy, rather than voidable. That certainly is not the case. See n. 1, *supra*. And JUSTICE BREYER does not explain why his alternative—permitting the employer to seek restitution—survives the OWBPA while the tender back requirement does not. See *ante*, at 433.

release, and there is no reason to think that this determination was in error, I would affirm. I therefore respectfully dissent.

Per Curiam

NEWSWEEK, INC. *v.* FLORIDA DEPARTMENT OF REVENUE ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

No. 97–663. Decided February 23, 1998

After respondent Florida Department of Revenue denied petitioner Newsweek a refund of sales taxes paid under an unconstitutional scheme, Newsweek filed suit, alleging that the State's failure to accord it retroactive relief violated due process under *McKesson Corp.* v. *Division of Alcoholic Beverages and Tobacco, Fla. Dept. of Business Regulation*, 496 U. S. 18. The Florida trial court granted summary judgment against Newsweek, and the District Court of Appeal affirmed, distinguishing *McKesson* as expressly predicated upon the fact that the taxpayer there had no meaningful predeprivation remedy, whereas Florida law here permits prepayment tax challenges. The court held that Newsweek was afforded due process because it could have pursued this prepayment remedy without suffering onerous penalties.

Held: Newsweek can use Florida's refund procedures to adjudicate the merits of its claim. A State has the flexibility to maintain an exclusively predeprivation remedial scheme, so long as that scheme is clear and certain. *Reich* v. *Collins*, 513 U. S. 106, 110–111. Under Florida law, however, there was a longstanding practice of permitting taxpayers to seek refunds for taxes paid under an unconstitutional statute. While a State may be free to require taxpayers to litigate first and pay later, due process prevents it from applying this requirement to taxpayers who reasonably relied on the apparent availability of a postpayment refund when paying the tax.

Certiorari granted; 689 So. 2d 361, vacated and remanded.

PER CURIAM.

Effective January 1, 1988, Florida exempted newspapers, but not magazines, from its sales tax. See Fla. Stat. §§ 212.08(7)(w), 212.05(1)(i) (Supp. 1988). In 1990, the Florida Supreme Court found this classification invalid under the First Amendment of the Constitution of the United States. See *Department of Revenue* v. *Magazine Publishers of America, Inc.*, 565 So. 2d 1304 (1990), vacated and remanded,

Miami Herald Publishing Co. v. *Dept. of Revenue*, 499 U. S. 972 (1991), reaff'd, 604 So. 2d 459 (1992). In the wake of this ruling, Newsweek, a magazine, filed a claim for a refund of sales taxes it had paid between 1988 and 1990. See Fla. Stat. § 215.26(1) (Supp. 1998) ("The Comptroller of the state may refund . . . any moneys paid into the State Treasury").

When the Department of Revenue denied the refund, Newsweek filed suit, alleging the State's failure to accord it retroactive relief violated its due process rights under *McKesson Corp.* v. *Division of Alcoholic Beverages and Tobacco, Fla. Dept. of Business Regulation*, 496 U. S. 18 (1990). The Florida trial court granted summary judgment against Newsweek, and the District Court of Appeal affirmed. Although acknowledging *McKesson*'s requirement of "meaningful backward-looking relief" when a taxpayer is forced to pay a tax before having an opportunity to establish its unconstitutionality, the District Court of Appeal held: "*McKesson* is distinguishable because that holding was expressly predicated upon the fact that the taxpayer had no meaningful predeprivation remedy." 689 So. 2d 361, 363 (1997). The court interpreted Florida law to permit prepayment tax challenges by filing an action and paying the contested amount into the court registry, posting a bond, or obtaining a court order approving an alternative arrangement. See *id.*, at 363–364 (citing Fla. Stat. § 72.011 (1987)). The court concluded Newsweek was afforded due process because it could have pursued this prepayment remedy without suffering onerous penalties. See 689 So. 2d, at 364.

The District Court of Appeal's decision failed to consider our decision in *Reich* v. *Collins*, 513 U. S. 106 (1994). There, the Georgia Supreme Court had rejected a taxpayer's refund claim filed pursuant to a general refund statute, dismissing any due process concerns because a predeprivation remedy was available. See *id.*, at 110. While assuming the constitutional adequacy of Georgia's predeprivation procedures, we nonetheless reversed because "no reasonable taxpayer

would have thought that [the predeprivation procedures] represented, in light of the apparent applicability of the refund statute, the exclusive remedy for unlawful taxes." *Id.*, at 111 (emphasis deleted). Until the Georgia Supreme Court's ruling, the taxpayer had no way of knowing from either the statutory language or case law that he could not pursue a postpayment refund and was relegated to a predeprivation remedy. See *id.*, at 111–112. We emphasized a State "has the flexibility to maintain an exclusively predeprivation remedial scheme, so long as that scheme is 'clear and certain.'" *Id.*, at 110–111. But a State may not "bait and switch" by "hold[ing] out what plainly appears to be a 'clear and certain' postdeprivation remedy and then declare, only after the disputed taxes have been paid, that no such remedy exists." *Id.*, at 111, 108.

Under Florida law, there was a longstanding practice of permitting taxpayers to seek refunds under § 215.26 for taxes paid under an unconstitutional statute. See, *e. g.*, *State ex rel. Hardaway Contracting Co.* v. *Lee*, 155 Fla. 724, 21 So. 2d 211 (1945). At Florida's urging, federal courts have dismissed taxpayer challenges, including constitutional challenges, because § 215.26 appeared to provide an adequate postpayment remedy for refunds. See Tax Injunction Act, 28 U. S. C. § 1341 ("The district courts shall not enjoin . . . any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State"); see, *e. g.*, *Osceola* v. *Florida Dept. of Revenue*, 893 F. 2d 1231, 1233 (CA11 1990); *Rendon* v. *State of Fla.*, 930 F. Supp. 601 (SD Fla. 1996). This Court, too, has interpreted Florida law to provide a postpayment remedy. See *McKesson*, *supra*, at 24, n. 4 ("It appears . . . Florida law does not require a taxpayer to pay under protest in order to preserve the right to challenge a remittance in a postpayment refund action"). The State does not dispute this settled understanding. The effect of the District Court of Appeal's decision below, however, was to cut off Newsweek's recourse to § 215.26. While

Florida may be free to require taxpayers to litigate first and pay later, due process prevents it from applying this requirement to taxpayers, like Newsweek, who reasonably relied on the apparent availability of a postpayment refund when paying the tax.

Newsweek is entitled to a clear and certain remedy and thus it can use the refund procedures to adjudicate the merits of its claim. We grant the petition for a writ of certiorari, vacate the judgment, and remand the case for proceedings not inconsistent with this opinion.

It is so ordered.

Per Curiam

ARTEAGA *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

No. 97–6749. Decided February 23, 1998*

Held: Abusive filer's motion to proceed *in forma pauperis* is denied; and for the reasons discussed in *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1, he is barred from filing any further certiorari petitions in noncriminal matters unless he first pays the required docketing fee and submits his petition in compliance with Rule 33.1.

Motion denied.

PER CURIAM.

Pro se petitioner Lorenzo Arteaga seeks leave to proceed *in forma pauperis* to file a petition for a writ of certiorari to the Ninth Circuit. The Ninth Circuit affirmed the District Court's dismissal with prejudice of petitioner's complaint for failure to amend his complaints pursuant to the District Court's instructions.

We deny petitioner leave to proceed *in forma pauperis.* He is allowed until March 16, 1998, within which to pay the docketing fee required by Rule 38 and to submit his petition in compliance with Rule 33.1. For the reasons discussed below, we also direct the Clerk of the Court not to accept any further petitions for certiorari in noncriminal matters from petitioner unless he first pays the docketing fee required by Rule 38 and submits his petition in compliance with Rule 33.1.

Petitioner has filed 20 petitions with this Court, 16 in the past two Terms. All have been denied without recorded dissent. In 1997, we invoked Rule 39.8 to deny petitioner *in forma pauperis* status. *Arteaga* v. *California*, *post*, p. 804. Petitioner nevertheless has filed another frivolous petition

*Together with *Arteaga* v. *Wilson, Governor of California, et al.*, also on motion for leave to proceed *in forma pauperis.*

with this Court. In his petition and supplemental petition, Arteaga appears to assert that he is an innocent person falsely imprisoned and to allege numerous constitutional violations and conspiracies among prison, court, and government officials. He does not address the reasons for the District Court's dismissal.

Accordingly, we enter this order barring prospective *in forma pauperis* filings by petitioner in noncriminal cases for the reasons discussed in *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*.

It is so ordered.

JUSTICE STEVENS, dissenting.

For reasons previously stated, see *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1, 4 (1992) (STEVENS, J., dissenting), and cases cited, I respectfully dissent.

Syllabus

REGIONS HOSPITAL *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 96–1375. Argued December 1, 1997—Decided February 24, 1998

Under the Medicare Act and its implementing regulations, a hospital (a provider) may obtain reimbursement for "allowable cost[s]" (including the costs of certain graduate medical education (GME) programs for interns and residents) by preparing a report at the close of each fiscal year and filing it with a "fiscal intermediary" designated by respondent Secretary. The intermediary examines the cost report, audits it when found necessary, and issues a written "notice of amount of program reimbursement" (NAPR), which determines the total amount payable for Medicare services during the reporting period. The NAPR is subject to review by the Provider Reimbursement Review Board (PRRB), the Secretary, and ultimately the courts. By regulation, the Secretary may reopen, within three years, any determination by an intermediary, the PRRB, or the Secretary herself to recoup excessive (or correct insufficient) reimbursement for a given year. In 1986, Congress changed the method for calculating reimbursable GME costs. In lieu of discrete *annual* determinations of "reasonable cost . . . actually incurred," 42 U. S. C. § 1395x(v)(1)(A), the "GME Amendment" now requires the "Secretary [to] determine, for [a] hospital's cost reporting period that began during fiscal year 1984, the average amount recognized as reasonable under [the Act] for direct [GME] costs of the hospital for each full-time-equivalent resident," § 1395ww(h)(2)(A), and directs the Secretary to use the 1984 amount, adjusted for inflation, to calculate a hospital's GME reimbursement for subsequent years, § 1395ww(h)(2). Based on indications that some "questionable" GME costs had been "erroneously reimbursed" to providers for their 1984 base year, the Secretary's "reaudit" regulation, 42 CFR § 413.86(e), interprets the GME Amendment to authorize intermediaries to conduct a second audit of the 1984 GME costs to ensure accurate reimbursements in future years. The reaudit rule permits no recoupment of excess reimbursement for years in which the reimbursement determination has become final. Rather, the rule seeks to prevent *future* overpayments and to permit recoupment of prior excess reimbursement *only* for years still within the three-year reopening window.

Syllabus

Petitioner Regions Hospital (Hospital) is eligible for GME cost reimbursement. A reaudit commenced in late 1990 yielded a determination that the Hospital's total allowable 1984 GME costs were $5,916,868, down from the original NAPR of $9,892,644. The recomputed average per-resident amount was $49,805, in contrast to the original $70,662. The Secretary sought to use this recomputed amount to determine reimbursements for future years and past years within the three-year window. The Secretary did not attempt to recoup excessive reimbursement paid to the Hospital for its 1984 GME costs, for the three-year window had already closed on that year. Appealing to the PRRB, the Hospital challenged the validity of the reaudit rule. The PRRB responded that it lacked authority to invalidate the rule. On expedited review, the District Court granted the Secretary summary judgment, concluding that § 1395ww(h)(2)(A)'s language was ambiguous, that the reaudit rule reasonably interpreted Congress' prescription, and that the reauditing did not impose an impermissible "retroactive rule." The Eighth Circuit affirmed.

Held:

1. The Secretary's reaudit rule is not impermissibly retroactive. The rule is in full accord with *Landgraf* v. *USI Film Products*, 511 U. S. 244, which explained that the legal effect of conduct should ordinarily be assessed under the law existing when the conduct took place, *id.*, at 265, but further clarified that a prescription is not made retroactive merely because it draws upon antecedent facts for its operation, *id.*, at 270, n. 24. The reaudit rule calls for the correct application of the cost reimbursement principles in effect at the time the costs were incurred, not the application of any new reimbursement principles. Cf. *Bowen* v. *Georgetown Univ. Hospital*, 488 U. S. 204, 207. Furthermore, the reaudits leave undisturbed the actual reimbursements for 1984 and any later reporting years on which the three-year reopening window had closed. The adjusted reasonable cost figures resulting from the reaudits are to be used solely to calculate reimbursements for still open and future years. P. 456.

2. The reaudit rule is a reasonable interpretation of the GME Amendment. Pp. 457–464.

(a) In determining whether an agency's interpretation of a statute is entitled to deference, a court asks first whether Congress' intent is clear as to the precise question at issue. *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842. If, by employing traditional statutory construction tools, *id.*, at 843, n. 9, the court determines that Congress' intent is clear, that ends the matter, *id.*, at 842. But if the statute is silent or ambiguous as to the specific issue,

the court next asks whether the agency's answer is based on a permissible construction of the statute. *Id.*, at 843. An agency's reading that fills a gap or defines a term in a reasonable way in light of the Legislature's design controls, even if it is not the answer the court would have reached in the first instance. *Id.*, at 843, n. 11. P. 457.

(b) While other provisions of the Medicare Act speak clearly to the timing of other "recognized as reasonable" determinations, § 1395ww(h)(2)(A) is silent, and therefore ambiguous, on the question whether Congress intended to prohibit the Secretary from reauditing a provider's statement of 1984 GME costs to eliminate past errors, outside the three-year reopening window. The statute's instruction to determine for 1984 the "amount recognized as reasonable" does not inevitably refer to the amount *originally,* or on reopening within three years, recognized as reasonable, but could plausibly be read to mean, in light of the new methodology making 1984 critical for all subsequent years, an "amount recognized as reasonable" through a reauditing process designed to catch errors that, if perpetuated, could grossly distort future reimbursements. There is no apparent support for the Hospital's contention that Congress could not have intended "recognized as reasonable" to mean two separate amounts: one for 1984 itself; and a lower, recalculated amount once the Secretary, cognizant that 1984 had become the base year for subsequent determinations, checked and discovered miscalculations. It is hard to believe that Congress intended that misclassified and nonallowable costs would continue to be recognized through the GME payment indefinitely. Thus, while the Hospital's reading is plausible, it is not the only possible interpretation. See *Sullivan* v. *Everhart,* 494 U. S. 83, 89. Pp. 457–460.

(c) The reaudit rule merits this Court's approbation because it reflects a reasonable interpretation of the law. See *Holly Farms Corp.* v. *NLRB,* 517 U. S. 392, 409. The GME Amendment's purpose was to *limit payments* to hospitals. The reaudit rule brings the base-year calculation in line with Congress' pervasive instruction for *reasonable* cost reimbursement. The rule does not permit recoupment of any time-barred 1984 overpayment, but it enables the Secretary, for open and future years, to carry out her responsibility to reimburse only reasonable costs, and to prevent payment of uncovered, improperly classified, or excessive costs. Until the GME Amendment in 1986, GME costs were determined annually; one year's determination did not control a later year's reimbursement. The GME Amendment became law at a time when many other Medicare changes were underway, so that GME costs were not given prompt scrutiny. The GME Amendment introduced the new statutory concept of per-resident GME costs; it was this

innovation that caused the Secretary to examine GME costs reimbursed in the past and to question the significant variation in costs once allowed. Concerned that providers may have been reimbursed erroneously, the Secretary attempted to assure reimbursement in future and still open years of reasonable costs, but no more. To accomplish this, the Secretary endeavored to strip from the base-period amount improper costs, *e. g.*, physician costs for activities unrelated to the GME program, malpractice costs, and excessive administrative and general service costs. The Secretary so proceeded on the assumption that Congress, when it changed the system for GME cost reimbursement, surely did not want to cement misclassified and nonallowable costs into future reimbursements, thus perpetuating literally million-dollar mistakes. Viewed in the context of the other, contemporaneous changes in Medicare and the Secretary's decision not to pursue recoupment of 1984 GME reimbursements, the three-year gap from the 1986 enactment of the GME Amendment to release of the Secretary's final regulations in 1989 was not exorbitant. The Court rejects the Hospital's "fairness" and "issue preclusion" arguments against the reaudit rule's reasonableness as an interpretation of the governing legislation. Pp. 460–464.

91 F. 3d 57, affirmed.

GINSBURG, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, KENNEDY, SOUTER, and BREYER, JJ., joined. SCALIA, J., filed a dissenting opinion, in which O'CONNOR and THOMAS, JJ., joined, *post,* p. 464.

Ronald N. Sutter argued the cause and filed briefs for petitioner.

Lisa Schiavo Blatt argued the cause for respondent. With her on the brief were *Acting Solicitor General Waxman*, *Assistant Attorney General Hunger*, *Deputy Solicitor General Kneedler*, *Deputy Assistant Attorney General Preston*, *Barbara C. Biddle*, *Neil H. Koslowe*, *Harriet S. Rabb*, *Henry R. Goldberg*, and *Thomas W. Coons.*

JUSTICE GINSBURG delivered the opinion of the Court.

Section 9202(a) of the Medicare and Medicaid Budget Reconciliation Amendments of 1985, Pub. L. 99–272, 100 Stat. 151, 171–175, 42 U. S. C. § 1395ww(h) (GME Amendment),

provides: "The Secretary [of Health and Human Services] shall determine, for the hospital's cost reporting period that began during fiscal year 1984, the average amount recognized as reasonable under this subchapter for direct graduate medical education costs of the hospital for each full-time-equivalent resident." § 1395ww(h)(2)(A). The Amendment directs the Secretary to use the 1984 amount, adjusted for inflation, to calculate a hospital's graduate medical education (GME) reimbursement for subsequent years. § 1395ww(h)(2). The Secretary interprets the GME Amendment to permit a second audit of the 1984 GME costs to ensure accurate future reimbursements, even though the GME costs had been audited previously. 42 CFR § 413.86(e) (1996). This case presents the question whether the Secretary's "reaudit" rule is a reasonable interpretation of the GME Amendment. We conclude that it is.

I

A

Under the Medicare Act and its implementing regulations, 42 U. S. C. § 1395 *et seq.*, the costs of certain educational programs for interns and residents, known as GME programs, are "allowable cost[s]" for which a hospital (a provider) may receive reimbursement. 42 CFR § 413.85(a) (1996). At the close of each fiscal year, the provider prepares a "cost repor[t]." § 405.1801(b). That report, which serves as the basis for its total allowable Medicare reimbursement, shows the provider's costs and the percentage of those costs allocated to Medicare services. §§ 413.20(b), 413.24(f). The provider files the report with a "fiscal intermediary," usually an insurance company, designated by the Secretary. 42 U. S. C. § 1395h. The intermediary examines the cost report, audits it when found necessary, and issues a written "notice of amount of program reimbursement" (NAPR). The NAPR determines the total amount payable to the provider for Medicare services during

the reporting period, 42 CFR § 405.1803 (1996), and is subject to review by the Provider Reimbursement Review Board (PRRB), the Secretary, and ultimately the courts. See 42 U. S. C. §§ 1395*oo*(a), (b), (f)(1); 42 CFR §§ 405.1835, 405.1837 (1996).

By regulation, the Secretary may reopen, within three years, any determination by a fiscal intermediary, the PRRB, or the Secretary herself "to revise any matter in issue at any such proceedings." § 405.1885(a). In other words, the Secretary can recoup excessive (or correct insufficient) reimbursement for a given year so long as the Secretary acts within the three-year reopening window.

In April 1986, Congress changed the method for calculating reimbursable GME costs. See 42 U. S. C. § 1395ww(h). In lieu of discrete *annual* determinations of "reasonable cost . . . actually incurred," § 1395x(v)(1)(A), Congress designated a baseline year, 1984, for cost determinations, *i. e.*, costs "recognized as reasonable" for that year would serve as the base figure used to calculate GME reimbursements for all subsequent years. The GME Amendment directed the Secretary to determine a per-resident amount by dividing each provider's 1984 GME costs "recognized as reasonable" by the number of full-time-equivalent residents working for the provider in 1984. § 1395ww(h)(2)(A). The 1984 per-resident amount, adjusted for inflation, would then be used to determine the provider's GME reimbursements for all fiscal years "beginning on or after July 1, 1985." Note following 42 U. S. C. § 1395ww, p. 1131. The provider's reimbursable costs for a particular year would be computed by multiplying the inflation-adjusted 1984 per-resident amount by the provider's weighted number of full-time-equivalent residents, as determined by § 1395ww(h)(4), and the hospital's Medicare patient load, § 1395ww(h)(3)(C).

In September 1988, the Secretary published a proposed regulation to implement the GME Amendment. At that

time, the Secretary reported reason to believe some "questionable" GME costs had been "erroneously reimbursed" to providers for their 1984 fiscal year, the period Congress designated in 1986 to serve continually as the base year. 53 Fed. Reg. 36591 (1988). To prevent perpetuation of past mistakes under the new GME cost-reimbursement methodology, the Secretary proposed to give fiscal intermediaries reauditing authority to ensure that future payments would be based on an "accurate" determination of providers' 1984 GME costs. *Id.*, at 36591–36592. The final regulation, published in September 1989, instructs intermediaries to verify each hospital's base-year GME costs and its average number of full-time-equivalent residents; exclude from those base-year GME costs "any nonallowable or misclassified costs, including those previously allowed under . . . this chapter"; and, upon the hospital's request, include GME costs misclassified as operating costs during the base period. 42 CFR §§ 413.86(e)(1)(ii)(A)–(C) (1996).

The Secretary made clear that the reaudit rule permitted no recoupment of excess reimbursement for years in which the reimbursement determination had become final. 54 Fed. Reg. 40302 (1989). Rather, the rule sought to prevent *future* overpayments and to permit recoupment of prior excess reimbursement *only* for years in which the reimbursement determination had not yet become final. *Id.*, at 40301, 40302; 42 CFR § 413.86(e)(1)(iii) (1996).

B

Regions Hospital (Hospital), the petitioner, is a teaching hospital eligible for GME cost reimbursement.[1] On February 28, 1986, the Hospital received from its intermediary an NAPR for the 1984 reporting period which reflected total 1984 GME costs of $9,892,644. A reaudit commenced in late

[1] When the petitioner filed its petition and briefs with the Court, it was known as "St. Paul-Ramsey Medical Center." It changed its name to "Regions Hospital" on September 15, 1997.

1990 ultimately yielded a determination that the Hospital's total allowable 1984 GME costs were $5,916,868. The recomputed average per-resident amount was $49,805, in contrast to the original $70,662. The Secretary sought to use this recomputed amount to determine reimbursements for future years and past years within the three-year reopening window of § 405.1885. The reaudit determination would not be used to recoup excessive reimbursement paid to the Hospital for its 1984 GME costs, for the three-year window had already closed on that year.

On appeal to the PRRB, the Hospital challenged the validity of the reaudit rule. The PRRB responded that it lacked authority to invalidate the Secretary's regulation, and the Hospital sought expedited judicial review under 42 U. S. C. § 1395*oo*(f)(1). On cross-motions for summary judgment, the District Court for the District of Minnesota ruled for the Secretary. Adopting the reasoning of the Court of Appeals for the District of Columbia Circuit in *Administrators of the Tulane Educational Fund* v. *Shalala*, 987 F. 2d 790 (1993), cert. denied, 510 U. S. 1064 (1994), the District Court concluded that the language of § 1395ww(h)(2)(A) was ambiguous, and that the Secretary's reaudit regulation reasonably interpreted Congress' prescription. The District Court also held that the reauditing did not impose an impermissible "retroactive rule." App. to Pet. for Cert. 7a–8a.

The Court of Appeals for the Eighth Circuit affirmed in a *per curiam* opinion, following *Tulane*. *St. Paul-Ramsey Medical Center, Inc.* v. *Shalala*, 91 F. 3d 57 (1996). In a similar case, the Sixth Circuit, rejecting *Tulane*, saw no ambiguity in the GME Amendment and alternately held that even if the provision lacked clarity, the Secretary's interpretation was unreasonable. *Toledo Hospital* v. *Shalala*, 104 F. 3d 791, 797–801 (1997), cert. pending, No. 96–2046. We granted certiorari to resolve this conflict, 520 U. S. 1250 (1997), and now affirm the Eighth Circuit's judgment.

II

The Hospital argues that the Secretary's reaudit regulation is an impermissible retroactive rule and, on that account alone, is invalid. It is an argument we need not linger over. *Landgraf* v. *USI Film Products*, 511 U. S. 244 (1994), explained that "'the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place,'" *id.*, at 265 (quoting *Kaiser Aluminum & Chemical Corp.* v. *Bonjorno*, 494 U. S. 827, 855 (1990) (SCALIA, J., concurring)), but further clarified that a prescription "'is not made retroactive merely because it draws upon antecedent facts for its operation,'" 511 U. S., at 270, n. 24 (quoting *Cox* v. *Hart*, 260 U. S. 427, 435 (1922)). The reaudit rule accords with *Landgraf*'s instruction. The rule calls for application of the cost-reimbursement principles in effect at the time the costs were incurred. A correct application of those principles, not the application of any new reimbursement principles, is the rule's objective. Cf. *Bowen* v. *Georgetown Univ. Hospital*, 488 U. S. 204, 207 (1988) (regulation at issue impermissibly invoked a new substantive standard as a basis for recouping sums previously paid to hospitals). Furthermore, the Secretary's reaudits leave undisturbed the actual 1984 reimbursements and reimbursements for any later cost-reporting year on which the three-year reopening window had closed. The adjusted reasonable cost figures resulting from the reaudits are to be used solely to calculate reimbursements for still open and future years. See *supra*, at 454.

Understandably, there is no Circuit split on this issue. Although holding against the Secretary on other grounds, the Sixth Circuit concisely stated why the reaudit rule "does not amount to an impermissibly retroactive regulation": The rule "require[s] a determination based upon events occurring in the base year," but "it does not change the standards under which the base year costs are to be determined." *Toledo Hospital* v. *Shalala*, 104 F. 3d, at 795.

III

We turn, next, to the question that has divided the Circuits: Is the Secretary's interpretation of § 1395ww(h)(2)(A), embodied in the reaudit rule, entitled to deference? Under the formulation now familiar, when we examine the Secretary's rule interpreting a statute, we ask first whether "the intent of Congress is clear" as to "the precise question at issue." *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842 (1984). If, by "employing traditional tools of statutory construction," *id.*, at 843, n. 9, we determine that Congress' intent is clear, "that is the end of the matter," *id.*, at 842. But "if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Id.*, at 843. If the agency's reading fills a gap or defines a term in a reasonable way in light of the Legislature's design, we give that reading controlling weight, even if it is not the answer "the court would have reached if the question initially had arisen in a judicial proceeding." *Id.*, at 843, n. 11.

A

We must decide whether Congress, under § 1395ww(h)(2)(A), intended to prohibit the Secretary from ensuring an accurate GME base-year amount by reauditing a provider's statement of 1984 GME costs for past errors, outside the Secretary's three-year reopening window. Put another way, does "shall determine" for the baseline year 1984 the "amount recognized as reasonable" inevitably refer to the amount *originally*, or on reopening within three years, recognized as reasonable; or could the statute plausibly be read to mean, in light of the new methodology making 1984 critical for all subsequent years, an "amount recognized as reasonable" through a reauditing process designed to catch

errors that, if perpetuated, could grossly distort future reimbursements?

Separate provisions of the Medicare Act speak clearly to the timing of other "recognized as reasonable" determinations. For example, 42 U. S. C. § 1395x(v)(1)(A) permits the Secretary to "provide for the establishment of limits [on certain costs] *to be* recognized as reasonable based on estimates of the costs necessary in the efficient delivery of needed health services." (Emphasis added.) Section 1395uu(c)(1)(B), which concerns payments to promote the closing or converting of underutilized hospital facilities, directs the Secretary, in determining the hospital's proper "transitional allowance," to acknowledge the "outstanding portion of actual debt obligations *previously* recognized as reasonable for purposes of reimbursement." (Emphasis added.)

Section 1395ww(h)(2)(A), in contrast, is silent on the matter of time, and therefore, we think, ambiguous. We agree with the Court of Appeals for the District of Columbia Circuit that "the phrase 'recognized as reasonable,' by itself, does not tell us whether Congress means to refer the Secretary to action already taken or to give directions on actions about to be taken." *Tulane*, 987 F. 2d, at 796. In other words, the phrase "recognized as reasonable" might mean costs the Secretary (1) *has* recognized as reasonable for 1984 GME cost-reimbursement purposes, or (2) *will* recognize as reasonable as a base for future GME calculations.

The Hospital urges that Congress could not have intended "recognized as reasonable" to mean two separate amounts: one for 1984 itself; and a lower, recalculated amount once the Secretary, cognizant that 1984 had become the base year for subsequent determinations, checked and discovered miscalculations. Why this must be so is not apparent. As the Secretary said, it is "hard to believe that Congress intended that misclassified and nonallowable costs [would] continue to

be recognized through the GME payment indefinitely." 54 Fed. Reg. 40301 (1989).[2]

We face these choices. Congress meant either for the Secretary to calculate future reimbursements using the figure emerging through regular NAPR review and the three-year reopening window, or for the Secretary to use the figure recognized as reasonable at a later time, informed by a more careful assessment. The Secretary realized, tardily, that the Hospital's reimbursement for 1984 (like that granted many other providers) was inconsistent with the reasonableness standards under the Medicare Act and its implementing regulations. Congress likely assumed that the Secretary would act in time to adjust the 1984 costs to achieve accuracy both in 1984 reimbursements and in future calculations.[3] Had Congress contemplated that the Secretary would not have responded to the 1986 GME Amendment swiftly enough to catch 1984 NAPR errors within the Secretary's

[2] The Hospital also raises the specter of the Secretary perpetually reauditing the base-year costs. Here, the Secretary had a compelling reason to reaudit the base-year costs, for those costs, under the new GME scheme, would be projected far into the future. The Administrative Procedure Act, 80 Stat. 392, as amended, 5 U. S. C. § 701 *et seq.*, which requires a court to "hold unlawful and set aside agency action" that is "arbitrary" or "capricious," see § 706(2)(A), should protect the Hospital from any future reaudits performed without legitimate reason.

[3] Congress more firmly instructed that the Secretary, no later than December 31, 1987, "shall report" to specific Committees of the Senate and House of Representatives on the need for revisions to provide greater uniformity in approved full-time-equivalent resident amounts. The date set for the report was inside the three-year reopening window. Note following 42 U. S. C. § 1395ww; see *post*, at 468. Missing the deadline by some years, the Secretary did not file the required report until March 24, 1992. The Secretary's failure to meet the deadline, a not uncommon occurrence when heavy loads are thrust on administrators, does not mean that official lacked power to act beyond it. See, *e. g.*, *Brock* v. *Pierce County*, 476 U. S. 253, 260 (1986) (even though the Secretary of Labor did not meet a "shall" statutory deadline, the Court "would be most reluctant to conclude that every failure of an agency to observe a procedural requirement voids subsequent agency action").

three-year reopening period, what would the Legislature have anticipated as the proper administrative course? Error perpetuation until Congress plugged the hole? Or the Secretary's exercise of authority to effectuate the Legislature's overriding purpose in the Medicare scheme: reasonable (not excessive or unwarranted) cost reimbursement?

While the Hospital's reading of the GME Amendment is plausible, it is not the "only possible interpretation." See *Sullivan* v. *Everhart*, 494 U. S. 83, 89 (1990). As Judge Wald wrote in her opinion for the D. C. Circuit: "Context is all, and . . . we believe the use of the 1984 figures for the indefinite future cautions . . . against a reading of ['recognized as reasonable'] that allows no elbow room for adjustments [to correct] prior miscalculations or errors." *Tulane*, 987 F. 2d, at 796.[4] Because the Hospital's construction is not an inevitable one,[5] we turn to the Secretary's position, examining its reasonableness as an interpretation of the governing legislation.

B

The purpose of the GME Amendment was to "*limit payments* to hospitals" for GME costs. See H. R. Conf. Rep.

[4] The Hospital contends Congress did not delegate authority to the Secretary specifically to reaudit the 1984 base-year amount, in contrast to its express delegation to "establish rules" for computing the number of full-time-equivalent residents under § 1395ww(h)(4). But "the concept of reasonable costs already was a mainstay of Medicare statutes and regulations, [so] there was no need to establish any new rulemaking authority for its determination." *Tulane*, 987 F. 2d, at 795, n. 5 (citations omitted). See 42 U. S. C. §§ 1395x(v)(1)(A), 1395hh(a)(1).

[5] The dissent acknowledges that, "in isolation the phrase 'recognized as reasonable' is ambiguous," *post*, at 466, but finds clarity when those words are read "in their entire context," *ibid.* We agree that context counts and stress in this regard what the Court has said "[o]ver and over": "'In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.'" *United States Nat. Bank of Ore.* v. *Independent Ins. Agents of America, Inc.*, 508 U. S. 439, 455 (1993) (quoting *United States* v. *Heirs of Boisdoré*, 8 How. 113, 122 (1849)).

No. 99–453, p. 482 (1985) (emphasis added). The Secretary's reaudit rule brings the base-year calculation in line with Congress' pervasive instruction for *reasonable* cost reimbursement. The rule does not permit recoupment of any time-barred 1984 overpayment, but it enables the Secretary, for open and future years, to carry out that official's responsibility to reimburse only reasonable costs, and to prevent payment of uncovered, improperly classified, or excessive costs. See *supra,* at 454.

Until the GME Amendment in 1986, GME costs were determined annually; one year's determination did not control a later year's reimbursement. The GME Amendment, which called for a base-year GME cost determination that would control payments in later years, became law at a time when other Medicare changes were underway, including installation of a new prospective payment system (PPS).[6] See 54 Fed. Reg. 40301 (1989) (acknowledging that GME costs were not given prompt scrutiny "because of the many changes that were taking place in Medicare generally"). The GME Amendment introduced the new statutory concept of per-resident GME costs; it was this innovation that caused the Secretary "to examine GME costs that ha[d] been reimbursed in the past and to question the significant variation in costs that ha[d] been allowed." 53 Fed. Reg. 36593 (1988).

Concerned that providers may have been reimbursed erroneously, the Secretary attempted to assure reimbursement in future and still open years of reasonable costs, but no more. To accomplish this, the Secretary endeavored to strip from the base-period amount improper costs, *e. g.,* physician costs for activities unrelated to the GME program, malprac-

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[6] The PPS scheme established fixed payment rates, based on patient diagnosis, for a provider's operating costs of furnishing in-patient care to program beneficiaries. See 42 U. S. C. § 1395ww(d); *Good Samaritan Hospital* v. *Shalala,* 508 U. S. 402, 406, n. 3 (1993). Costs incurred in connection with GME programs were excluded from the PPS scheme. 42 U. S. C. §§ 1395ww(a)(4) and (d)(1)(A).

tice costs, and excessive administrative and general service costs. The Secretary so proceeded on the assumption that Congress, when it changed the system for GME cost reimbursement, surely did not want to cement misclassified and nonallowable costs into future reimbursements, thus perpetuating literally million-dollar mistakes.

The Hospital maintains it is "irrational" to assume Congress intended the Secretary to reaudit 1984 GME costs outside the three-year reopening window of 42 CFR § 405.1885(a) (1996). We disagree. Because the period for reassessing 1984 NAPRs had closed, the Secretary's reauditing rule, by design, could affect only the base-year per-resident calculation used to compute reimbursements from 1985 onward. In effect, the Secretary altered the reopening period prescribed in the agency's regulations by lengthening the time for *base-year* GME cost correction. The Secretary did not enlarge the time the agency had to seek repayment of excess reimbursements in years closed under the three-year prescription; rather, the Secretary extended only the time for determining the proper amount of reimbursement due in subsequent years.

The GME Amendment necessitated comprehensive regulations, and the reaudit rule was formulated and issued as part of the full set of regulations. Viewed in the context of other, contemporaneous changes in Medicare and the Secretary's decision not to pursue recoupment of 1984 GME reimbursements, the three-year gap from the 1986 enactment of the GME Amendment to release of the Secretary's final regulations in 1989 was not exorbitant. As the D. C. Circuit said, three years is "not an unreasonable period for developing, proposing, permitting comment, and finalizing a regulatory framework for a complex statutory scheme." *Tulane*, 987 F. 2d, at 797.

The Hospital also contends Congress would not have endorsed reauditing as a fair measure, because fading memories, changes in personnel, and discarded records make it

unreasonable to demand that providers "reprove" their base-year GME costs. We note these countervailing considerations. Providers can challenge the accuracy of specific auditing principles in individual cases. 42 CFR § 413.86(e)(1)(v) (1996). Providers dissatisfied with the Secretary's determination may seek judicial review under 42 U. S. C. § 1395*oo*(f)(1). For providers who discarded their 1984 records, the Secretary offered "an equitable solution" permitting them, during the reaudit, "to furnish documentation from cost reporting periods subsequent to the base period in support of the allocation of physician compensation costs in the GME bas[e] period." See 55 Fed. Reg. 36063 (1990).[7] Furthermore, the reaudit rule allowed providers to request upward adjustment in their reimbursable PPS hospital-specific rate if the GME reaudit revealed previously claimed GME costs that should have been classified as operating costs eligible for PPS reimbursement. 42 CFR § 413.86(j)(1)(i) (1996).

Finally, the Hospital argues that because 42 CFR §§ 405.1807 and 405.1885(a) (1996) render an intermediary's determination "final and binding" after three years, the Secretary's reaudit regulation violates principles of issue preclusion. The initial 1984 GME cost determination, however, was made under the pre-GME Amendment regime, when "final and binding" referred only to year-by-year determination. An issue determined for one year (1984 only) is not the same as a base-year determination to be carried forward into the unlimited future. Furthermore, the base-year cost calculation was derived from an intermediary's determination in an NAPR, without a hearing before the PRRB on the reasonableness of the costs. Absent actual and adversarial

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[7] In fact, the Hospital took advantage of the Secretary's "equitable solution." Because the Hospital did not maintain base-year records reflecting physician time for teaching medical students, it used 1989 and 1990 time studies in endeavoring to establish the accuracy of its allocation of 1984 GME costs.

litigation about base-year GME costs, principles of issue preclusion do not hold fast. See *Cromwell* v. *County of Sac*, 94 U. S. 351, 353 (1877) ("[T]he judgment in the prior action operates as an estoppel only as to those matters in issue or points *controverted* . . . . [T]he inquiry must always be as to the point or question *actually litigated*." (emphasis added)); cf. *Thomas Jefferson Univ.* v. *Shalala*, 512 U. S. 504, 517 (1994) (declining to bind Secretary to GME cost determination previously made by intermediary).

* * *

In sum, we agree with the Secretary that the reaudit rule is not impermissibly retroactive, and that it "reflects a reasonable interpretation of the law." Thus, it "merits our approbation." *Holly Farms Corp.* v. *NLRB*, 517 U. S. 392, 409 (1996). The judgment of the Court of Appeals is accordingly

Affirmed.

JUSTICE SCALIA, with whom JUSTICE O'CONNOR and JUSTICE THOMAS join, dissenting.

The Medicare Act requires the Secretary to reimburse teaching hospitals for the Graduate Medical Education (GME) costs attributable to Medicare services. See 42 U. S. C. § 1395 *et seq.* For fiscal years 1965 through 1984, hospitals were entitled to be reimbursed for the actual "reasonable costs" incurred each year. See §§ 1395f(b)(1), x(v)(1)(A). In 1986, however, Congress directed that thereafter reimbursement rates per full-time-equivalent resident would be indexed to each hospital's 1984 GME costs "recognized as reasonable under this subchapter," divided by the number of full-time-equivalent residents that year. See § 1395ww(h)(2)(A).[1] The Court today determines that the

[1] Title 42 U. S. C. § 1395ww(h)(2)(A) provides that "[t]he Secretary shall determine, for the hospital's cost reporting period that began during fiscal year 1984, the average amount recognized as reasonable under this sub-

phrase "recognized as reasonable under this subchapter" can reasonably be construed as an authorization for the Secretary to redetermine a hospital's composite 1984 GME costs, rather than as a reference to a previously made determination; and thus concludes, pursuant to *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842 (1984), that the Secretary's reaudit regulation is lawful, see 42 CFR § 413.86(e)(1)(iii) (1996).[2] See *ante*, at 452. Because I believe that the 1984 GME costs "recognized as reasonable" in 42 U. S. C. § 1395ww(h)(2)(A) must be the "reasonable costs" for which the Secretary actually reimbursed the hospitals in 1984, I respectfully dissent.

On April 7, 1986, the enactment date of the provision tying future GME reimbursements to 1984 GME costs, the Secretary had in place a longstanding procedure for determining a hospital's reasonable GME costs. Under that procedure, the three-year window during which the Secretary could revise the 1984 determinations had not yet closed for any hospital entitled to reimbursement, see 42 CFR § 405.1885(a) (1985). Indeed, for many hospitals, like Regions, the 3-year period had not yet, or had barely, begun to run, since the 1984 costs had not yet, or had only recently, been determined. On February 28, 1986, Regions' fiscal intermediary, see 42 U. S. C. § 1395h, determined that Regions had incurred reasonable 1984 GME costs of $9,892,644 (Regions was later reimbursed for that amount); that decision became final under the Secretary's regulations on March 1, 1989. Nonetheless, in 1991, pursuant to the 1989 regulation now before the Court, Regions' fiscal intermediary reopened the

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chapter for direct graduate medical education costs of the hospital for each full-time-equivalent resident."

[2] Title 42 CFR § 413.86(e)(1)(iii) (1996) provides that "[i]f the hospital's cost report for its GME base period is no longer subject to reopening under § 405.1885 of this chapter, the intermediary may modify the hospital's base-period costs solely for purposes of computing the per resident amount."

prior determination of reasonable 1984 GME costs (albeit for the limited purpose of calculating future reimbursement rates), reducing them to $5,916,868.

In light of the procedures already in place for determining a hospital's reasonable 1984 GME costs when § 1395ww(h) was enacted, that provision's reference to a hospital's 1984 GME costs "recognized as reasonable under this subchapter" cannot reasonably be interpreted to authorize the Secretary to determine a hospital's 1984 GME costs anew. It is true, as the Court points out, that in isolation the phrase "recognized as reasonable" is ambiguous: it "might mean costs the Secretary (1) *has* recognized as reasonable for 1984 GME cost-reimbursement purposes, or (2) *will* recognize as reasonable as a base for future GME calculations." *Ante*, at 458. But as we have insisted, the words of a statute are *not* to be read in isolation; statutory interpretation is a "holistic endeavor," *United Sav. Assn. of Tex.* v. *Timbers of Inwood Forest Associates, Ltd.*, 484 U. S. 365, 371 (1988). Viewing the words "recognized as reasonable" in their entire context, they cannot reasonably be understood to authorize a new composite cost determination.

To begin with, it should be borne in mind that § 1395ww(h)(2)(A) does not provide directly for a determination of composite costs "recognized as reasonable." It provides for a determination of *the average per full-time resident* of costs recognized as reasonable. If this is to be interpreted as an authorization for a *new* "recognition of composite-cost reasonableness," so to speak, it is a most oblique and indirect authorization—so oblique and indirect as to be implausible. That new computation of composite costs, rather than the relatively mechanical averaging of those costs per full-time resident, would have been the major feature of the provision, so that one would have expected it to read something like "the Secretary shall determine each hospital's reasonable direct GME costs for the 1984 cost re-

porting period, and the average amount of those costs attributable to each full-time-equivalent resident."

It is impossible to imagine, moreover, how the words "recognized as" found their way into the provision *unless* they were meant to refer to the recognition of reasonableness already made under the pre-existing system. The interpretation that the Court accepts treats them "essentially as surplusage—as words of no consequence," *Ratzlaf* v. *United States*, 510 U. S. 135, 140–141 (1994), which, of course, we avoid when possible.

> "We are not at liberty to construe any statute so as to deny effect to any part of its language. It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word. As early as in Bacon's Abridgment, sect. 2, it was said that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.' This rule has been repeated innumerable times." *Market Co.* v. *Hoffman*, 101 U. S. 112, 115–116 (1879).

See also *United States* v. *Nordic Village, Inc.*, 503 U. S. 30, 36 (1992); *Federal Election Comm'n* v. *National Conservative Political Action Comm.*, 470 U. S. 480, 486 (1985). If § 1395ww(h)(2)(A) conferred a new cost-determination authority upon the Secretary, to be exercised in the future, it would have sufficed (and would have been normal) to direct the Secretary "to determine, for the hospital's cost reporting period that began during fiscal year 1984, the average amount recognized as reasonable under this subchapter for direct [GME] costs of the hospital for each full-time-equivalent resident." The specification of an amount "*recognized as* reasonable under this subchapter" only makes sense as a reference to a determination made (or to be made) independent of § 1395ww(h)(2)(A) itself—*i. e.*, to the amount "rec-

ognized" under the procedures already in place for determining the reasonable 1984 GME costs. Indeed, under the Secretary's interpretation the words "recognized as" become not only superfluous but positively misleading, since without them there would be no question that authority for a new determination was being conferred. It is an unacceptable interpretation which causes the critical words of the text to be (1) meaningless and (2) confusing.

That "recognized as" refers to a determination under the pre-existing regime is strongly confirmed by another provision of the statute that enacted § 1395ww(h)(2)(A) into law: "The Secretary . . . *shall report* to [specified Committees of the Senate and House of Representatives], *not later than December 31, 1987,* on whether [§ 1395ww(h)] should be revised to provide for greater uniformity in the approved *FTE resident amounts established under [§ 1395ww(h)(2)]*, and, if so, how such revisions should be implemented." § 9202(e), 100 Stat. 176 (emphases added). This surely envisions that the Secretary will know the amounts established under § 1395ww(h)(2)(A) by December 31, 1987—*well within the 3-year window for revisiting and revising any teaching hospital's actual 1984 reimbursement amounts.* The Secretary's assertion that § 1395ww(h)(2)(A) confers a *new* authority to make cost determinations can technically be reconciled with this directive for a December 31, 1987, evaluation only by saying that the new authority was supposed to be exercised before that date. But if it was supposed to be exercised before that date, it was entirely superfluous, since all prior determinations could be revised before that date under the old authority. In short, given the evaluation deadline, the Secretary's interpretation makes no sense.

Most judicial constructions of statutes solve textual problems; today's construction creates textual problems, in order to solve a practical one. The problem to which the Secretary's implausible reading of the statute is the solution is simply this: Though the Secretary had plenty of time, after

enactment of § 1395ww(h)(2)(A), to correct any erroneous determinations of 1984 GME costs before the 3-year revision window closed, she (or more precisely her predecessor) neglected to do so. We obligingly pull her chestnuts from the fire by accepting a reading of the statute that is implausible. The Court asks the following question:

> "Had Congress contemplated that the Secretary would not have responded to the 1986 GME Amendment swiftly enough to catch 1984 NAPR errors within the Secretary's three-year reopening period, what would the Legislature have anticipated as the proper administrative course? Error perpetuation until Congress plugged the hole? Or the Secretary's exercise of authority to effectuate the Legislature's overriding purpose in the Medicare scheme: reasonable (not excessive or unwarranted) cost reimbursement?" *Ante*, at 459–460.

The answer to that question is easy. But it is the wrong question. Of course it can *always* be assumed that Congress would prefer *whatever* would preserve, in light of unforeseen eventualities, "the Legislature's overriding purpose." We are not governed by legislators' "overriding purposes," however, but by the laws that Congress enacts. If one of them is improvident or ill conceived, it is not the province of this Court to distort its fair meaning (or to sanction the Executive's distortion) so that a *better* law will result. The immediate benefit achieved by such a practice in a particular case is far outweighed by the disruption of legal expectations in *all cases*—disruption of the *rule of law*—that government by *ex post facto* legislative psychoanalysis produces.

I would pronounce the Secretary's reaudit regulation ultra vires and reverse the Court of Appeals.

Syllabus

RIVET ET AL. *v.* REGIONS BANK OF LOUISIANA ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 96–1971. Argued January 21, 1998—Decided February 24, 1998

After a partnership mortgaged its interest in the Louisiana equivalent of a leasehold estate to respondent Regions Bank of Louisiana (Bank), the partnership granted a second mortgage to petitioners, and later filed for bankruptcy. The Bankruptcy Court approved a sale of the leasehold estate to the Bank. Thereafter, the Bank acquired the underlying land and sold the entire property to respondent Fountainbleau Storage Associates (FSA). Petitioners then filed this action in Louisiana state court, alleging that transfer of the property without satisfying their rights under the second mortgage violated state law. Respondents removed the action to federal court, contending that federal-question jurisdiction existed because the prior Bankruptcy Court orders extinguished petitioners' rights. The District Court denied petitioners' motion to remand, concluding from the Fifth Circuit's decision in C*arpenter* v. *Wichita Falls Independent School Dist.*, 44 F. 3d 362, that removal was properly predicated on the preclusive effect of the Bankruptcy Court orders. The court then granted summary judgment to, *inter alios*, the Bank and FSA. In affirming, the Fifth Circuit agreed that under *Carpenter* removal is proper where a plaintiff's state cause of action is completely precluded by a prior federal judgment on a federal question. The court thought *Carpenter*'s holding was dictated by the second footnote in *Federated Department Stores, Inc.* v. *Moitie*, 452 U. S. 394, 397, n. 2.

Held: Claim preclusion by reason of a prior federal judgment is a defensive plea that provides no basis for removal. Such a defense is properly made in the state proceedings, and the state courts' disposition of it is subject to this Court's ultimate review. Pp. 474–478.

(a) Respondents invoked, in support of removal, the district courts' original federal-question jurisdiction under 28 U. S. C. § 1441(b). The presence or absence of such jurisdiction is governed by the "well-pleaded complaint rule," under which "federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Caterpillar Inc.* v. *Williams*, 482 U. S. 386,

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392. Because a defense is not part of a plaintiff's properly pleaded statement of his or her claim, see, *e. g.*, *Metropolitan Life Ins. Co.* v. *Taylor*, 481 U. S. 58, 63, removal of a case to federal court may not be predicated on the presence of a federal defense, *Franchise Tax Bd. of Cal.* v. *Construction Laborers Vacation Trust for Southern Cal.*, 463 U. S. 1, 14. As a corollary to the well-pleaded defense rule, "a plaintiff may not defeat removal by omitting to plead necessary federal questions." *Id.*, at 22. If the plaintiff thus "artfully pleads" a claim, a court may uphold removal even though no federal question appears on the face of the complaint. The artful pleading doctrine allows removal where federal law completely preempts an asserted state-law claim, see *Metropolitan Life Ins. Co.*, 481 U. S., at 65–66, for a claim of that preempted character is, from its inception, a claim that can arise only under federal, not state, law. *Caterpillar*, 482 U. S., at 393. Pp. 474–476.

(b) Removal was improper here. Claim preclusion, as Federal Rule of Civil Procedure Rule 8(c) makes clear, is an affirmative defense. A case blocked by the preclusive effect of a prior federal judgment differs from a case preempted by a federal statute: The prior federal judgment does not transform the plaintiff's state-law claims into federal claims but rather extinguishes them altogether. Under the well-pleaded complaint rule, preclusion thus remains a defensive plea involving no recasting of the plaintiff's complaint, and is therefore not a proper basis for removal. The Court's marginal comment in *Moitie* noted that the Court declined, in that case-specific context, to "question . . . [the District Court's] factual finding" that the plaintiffs "had attempted to avoid removal jurisdiction by artfully casting their essentially federal[-]law claims as state-law claims." 452 U. S., at 397, n. 2 (internal quotation marks omitted). While the footnote placed *Moitie* in the "artful pleading" category, it created no preclusion exception to the rule, fundamental under currently governing legislation, that a defendant cannot remove on the basis of a federal defense. Pp. 476–478.

108 F. 3d 576, reversed and remanded.

GINSBURG, J., delivered the opinion for a unanimous Court.

John Gregory Odom argued the cause for petitioners. With him on the briefs were *Stuart E. Des Roches* and *Linda V. Farrer.*

Charles L. Stern, Jr., argued the cause for respondents. With him on the brief were *John M. Landis* and *Michael H. Rubin.*

JUSTICE GINSBURG delivered the opinion of the Court.

Congress has provided for removal of cases from state court to federal court when the plaintiff's complaint alleges a claim arising under federal law. Congress has not authorized removal based on a defense or anticipated defense federal in character. This case presents the question whether removal may be predicated on a defendant's assertion that a prior federal judgment has disposed of the entire matter and thus bars plaintiffs from later pursuing a state-law-based case. We reaffirm that removal is improper in such a case. In so holding we clarify and confine to its specific context the Court's second footnote in *Federated Department Stores, Inc.* v. *Moitie*, 452 U. S. 394, 397, n. 2 (1981). The defense of claim preclusion, we emphasize, is properly made in the state proceeding, subject to this Court's ultimate review.

I

This case arose out of a series of mortgages and conveyances involving a parcel of real property in New Orleans. In 1983, a partnership that owned the Louisiana equivalent of a leasehold estate in the property mortgaged that interest to respondent Regions Bank of Louisiana (Bank).[1] One year later, to secure further borrowing, the partnership granted a second mortgage to petitioners Mary Anna Rivet, Minna Ree Winer, Edmond G. Miranne, and Edmond G. Miranne, Jr. The partnership thereafter filed for bankruptcy, and the bankruptcy trustee sought court permission to sell the leasehold estate free and clear of all claims.

In June and August 1986 orders, the Bankruptcy Court first granted the sale application and later approved sale of the leasehold estate to the Bank, sole bidder at the public auction. The court also directed the Recorder of Mortgages

[1] The events leading to this lawsuit actually involved two predecessors of Regions, First Federal Bank and Secor Bank. For ease of discussion, we use the name Regions Bank to cover all three entities.

for Orleans Parish to cancel all liens, mortgages, and encumbrances, including the mortgages held by the Bank and petitioners. Nonetheless, petitioners' mortgage remained inscribed on the mortgage rolls of Orleans Parish. Subsequently, in 1993, the Bank acquired the underlying land from respondents Walter L. Brown, Jr., and Perry S. Brown. The Bank then sold the entire property to the current owner, respondent Fountainbleau Storage Associates (FSA).

On December 29, 1994, petitioners filed this action in Louisiana state court. They alleged that the 1993 transactions violated Louisiana law because the property was transferred without satisfying petitioners' superior rights under the second mortgage. In their prayer for relief, petitioners sought recognition and enforcement of their mortgage or, alternatively, damages. Respondents removed the action to the District Court for the Eastern District of Louisiana. Federal-question jurisdiction existed, they contended, because the prior Bankruptcy Court orders extinguished petitioners' rights under the second mortgage.

In federal court, petitioners filed a motion to remand and respondents moved for summary judgment. The District Court denied the remand motion. Relying on the Fifth Circuit's decision in *Carpenter* v. *Wichita Falls Independent School Dist.*, 44 F. 3d 362 (1995), the District Court held that removal was properly predicated on the preclusive effect of the 1986 Bankruptcy Court orders. The court then granted summary judgment to the Bank and FSA on the ground that the Bankruptcy Court's adjudication barred petitioners' suit. The District Court also granted summary judgment to the Browns, ruling that petitioners failed to state a claim against them.

The Fifth Circuit affirmed. 108 F. 3d 576 (1997). It agreed with the District Court that under *Carpenter* a defendant could remove "'where a plaintiff files a state cause of action completely precluded by a prior federal judgment on a question of federal law.'" 108 F. 3d, at 586 (quoting

Carpenter, 44 F. 3d, at 370). *Carpenter*'s holding, the Court of Appeals thought, was dictated by the second footnote to our decision in *Moitie*, 452 U. S., at 397, n. 2.

In dissent, Judge Jones maintained that removal is appropriate under *Moitie* only where a plaintiff loses in federal court on an "essentially federal" claim and, recharacterizing the claim as one based on state law, files again in state court. 108 F. 3d, at 594. She concluded that removal here was improper because there was nothing federal about petitioners' claim.

The Courts of Appeals have adopted differing views regarding the propriety of removing a state-court action to federal court on the ground that the claim asserted is precluded by a prior federal judgment.[2] We granted certiorari, 521 U. S. 1152 (1997), to resolve the matter.

II

A

A state-court action may be removed to federal court if it qualifies as a "civil action . . . of which the district courts of the United States have original jurisdiction," unless Congress expressly provides otherwise. 28 U. S. C. § 1441(a). In this case, respondents invoked, in support of removal, the district courts' original federal-question jurisdiction over "[a]ny civil action . . . founded on a claim or right arising

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[2] Compare *In re Brand Name Prescription Drugs*, 123 F. 3d 599, 612 (CA7 1997) (removal is allowed where "sole basis for filing a state suit is to get around . . . a federal judgment"), cert. pending *sub nom. Abbott Labs* v. *Huggins*, No. 97–775; and *Ultramar America, Ltd.* v. *Dwelle*, 900 F. 2d 1412, 1415–1417 (CA9 1990) (removal permitted "where a plaintiff files state claims after a federal judgment has been entered . . . on essentially the same claims," provided the federal judgment sounds in federal law), with *Travelers Indemnity Co.* v. *Sarkisian*, 794 F. 2d 754, 759–761 (CA2 1986) (removal under *Moitie* permitted only where the elements of a plaintiff's state-law claim are virtually identical to the elements of a federal claim the plaintiff previously elected to file in federal court).

under the Constitution, treaties or laws of the United States." 28 U. S. C. § 1441(b); see also 28 U. S. C. § 1331.

We have long held that "[t]he presence or absence of federal-question jurisdiction is governed by the 'well-pleaded complaint rule,' which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Caterpillar Inc.* v. *Williams*, 482 U. S. 386, 392 (1987); see also *Louisville & Nashville R. Co.* v. *Mottley*, 211 U. S. 149, 152 (1908). A defense is not part of a plaintiff's properly pleaded statement of his or her claim. See *Metropolitan Life Ins. Co.* v. *Taylor*, 481 U. S. 58, 63 (1987); *Gully* v. *First Nat. Bank in Meridian*, 299 U. S. 109, 112 (1936) ("To bring a case within the [federal-question removal] statute, a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action."). Thus, "a case may not be removed to federal court on the basis of a federal defense, . . . even if the defense is anticipated in the plaintiff's complaint, and even if both parties admit that the defense is the only question truly at issue in the case." *Franchise Tax Bd. of Cal.* v. *Construction Laborers Vacation Trust for Southern Cal.*, 463 U. S. 1, 14 (1983).

Allied as an "independent corollary" to the well-pleaded complaint rule is the further principle that "a plaintiff may not defeat removal by omitting to plead necessary federal questions." *Id.*, at 22. If a court concludes that a plaintiff has "artfully pleaded" claims in this fashion, it may uphold removal even though no federal question appears on the face of the plaintiff's complaint. The artful pleading doctrine allows removal where federal law completely preempts a plaintiff's state-law claim. See *Metropolitan Life Ins. Co.*, 481 U. S., at 65–66 (upholding removal based on the preemptive effect of § 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974); *Avco Corp.* v. *Machinists*, 390 U. S. 557, 560 (1968) (upholding removal based on the pre-

emptive effect of § 301 of the Labor Management Relations Act, 1947). Although federal preemption is ordinarily a defense, "[o]nce an area of state law has been completely pre-empted, any claim purportedly based on that pre-empted state-law claim is considered, from its inception, a federal claim, and therefore arises under federal law." *Caterpillar*, 482 U. S., at 393.

B

Petitioners' complaint sought recognition and enforcement of a mortgage. The dispute involved Louisiana parties only, and petitioners relied exclusively on Louisiana law. Respondents defended their removal of the case from state court to federal court on the ground that petitioners' action was precluded, as a matter of federal law, by the earlier Bankruptcy Court orders. We now explain why the removal was improper.

Under the doctrine of claim preclusion, "[a] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." *Moitie*, 452 U. S., at 398; see also *Baker* v. *General Motors Corp.*, *ante*, at 233, n. 5 ("a valid final adjudication of a claim precludes a second action on that claim or any part of it"). Claim preclusion (res judicata), as Rule 8(c) of the Federal Rules of Civil Procedure makes clear, is an affirmative defense. See also *Blonder-Tongue Laboratories, Inc.* v. *University of Ill. Foundation*, 402 U. S. 313, 350 (1971) ("Res judicata and collateral estoppel [issue preclusion] are affirmative defenses that must be pleaded." (italics omitted)).

A case blocked by the claim preclusive effect of a prior federal judgment differs from the standard case governed by a completely preemptive federal statute in this critical respect: The prior federal judgment does not transform the plaintiff's state-law claims into federal claims but rather extinguishes them altogether. See *Commissioner* v. *Sunnen*,

333 U. S. 591, 597 (1948) ("The judgment puts an end to the cause of action, which cannot again be brought into litigation between the parties upon any ground whatever, absent fraud or some other factor invalidating the judgment."). Under the well-pleaded complaint rule, preclusion thus remains a defensive plea involving no recasting of the plaintiff's complaint, and is therefore not a proper basis for removal.

In holding removal appropriate here, the Court of Appeals relied on a footnote—the second one—in our *Moitie* opinion. The Fifth Circuit is not alone in concluding from the *Moitie* footnote that removal properly may rest on the alleged preclusive effect of a prior federal judgment. See *supra*, at 474, n. 2. The *Moitie* footnote, however, was a marginal comment and will not bear the heavy weight lower courts have placed on it.

We granted certiorari in *Moitie* principally to address the Ninth Circuit's "novel exception to the doctrine of res judicata." 452 U. S., at 398. In that case, several actions alleging price fixing by department stores in California were consolidated in federal court and dismissed. Most of the plaintiffs appealed and obtained a reversal, but two chose instead to file separate claims in state court. The defendants removed the actions to Federal District Court, where plaintiffs unsuccessfully moved to remand and defendants successfully moved to dismiss the actions on preclusion grounds. The Court of Appeals for the Ninth Circuit agreed that removal was proper, but held that preclusion did not apply in the unique circumstances of the case. *Moitie* v. *Federated Department Stores, Inc.*, 611 F. 2d 1267 (1980).

In the course of reversing the Ninth Circuit's holding on preclusion, we noted, without elaboration, our agreement with the Court of Appeals that "at least some of the claims had a sufficient federal character to support removal." 452 U. S., at 397, n. 2. In that case-specific context, we declined to "question . . . [the District Court's] factual finding" that

the plaintiffs "had attempted to avoid removal jurisdiction by artfully casting their essentially federal[-]law claims as state-law claims." *Ibid.* (internal quotation marks omitted).

"*Moitie*'s enigmatic footnote," *Rivet*, 108 F. 3d, at 584, we recognize, has caused considerable confusion in the circuit courts. We therefore clarify today that *Moitie* did not create a preclusion exception to the rule, fundamental under currently governing legislation, that a defendant cannot remove on the basis of a federal defense.

In sum, claim preclusion by reason of a prior federal judgment is a defensive plea that provides no basis for removal under § 1441(b). Such a defense is properly made in the state proceedings, and the state courts' disposition of it is subject to this Court's ultimate review.[3]

* * *

For the foregoing reasons, the judgment of the Court of Appeals for the Fifth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

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[3] We note also that under the relitigation exception to the Anti-Injunction Act, 28 U. S. C. § 2283, a federal court may enjoin state-court proceedings "where necessary . . . to protect or effectuate its judgments." *Ibid.*

Syllabus

NATIONAL CREDIT UNION ADMINISTRATION *v.* FIRST NATIONAL BANK & TRUST CO. ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 96–843. Argued October 6, 1997—Decided February 25, 1998*

The National Credit Union Administration (NCUA) interprets § 109 of the Federal Credit Union Act (FCUA)—which provides that "[f]ederal credit union membership shall be limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district"—to permit federal credit unions to be composed of multiple, unrelated employer groups, each having its own distinct common bond of occupation. After the NCUA approved a series of charter amendments adding several unrelated employer groups to the membership of petitioner AT&T Family Federal Credit Union (ATTF), respondents, five commercial banks and the American Bankers Association, brought this action under § 10(a) of the Administrative Procedure Act (APA). They asserted that the NCUA's decision was contrary to law because § 109 unambiguously requires that the *same* common bond of occupation unite each member of an occupationally defined federal credit union. The District Court dismissed the complaint, holding that respondents lacked standing to challenge the decision because their interests were not within the "zone of interests" to be protected by § 109. The Court of Appeals for the District of Columbia Circuit disagreed and reversed. On remand, the District Court entered summary judgment against respondents, applying the analysis announced in *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, and holding that the NCUA had permissibly interpreted § 109. The Court of Appeals again reversed, concluding that the District Court had incorrectly applied *Chevron.*

Held:

1. Respondents have prudential standing under the APA to seek federal-court review of the NCUA's interpretation of § 109. Pp. 488–499.

(a) A plaintiff will have prudential standing under § 10(a) of the APA if the interest the plaintiff seeks to protect is arguably within the zone of interests to be protected or regulated by the statute in question.

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*Together with No. 96–847, *AT&T Family Federal Credit Union et al.* v. *First National Bank & Trust Co. et al.*, also on certiorari to the same court.

See, *e. g.*, *Association of Data Processing Service Organizations, Inc.* v. *Camp*, 397 U. S. 150, 152–153. P. 488.

(b) Although this Court's prior cases have not stated a clear rule for determining when a plaintiff's interest is "arguably within the zone of interests" to be protected by a statute, four of them have held that competitors of financial institutions have prudential standing to challenge agency action relaxing statutory restrictions on those institutions' activities. *Data Processing*, *supra*, at 157; *Arnold Tours, Inc.* v. *Camp*, 400 U. S. 45, 46 *(per curiam); Investment Company Institute* v. *Camp*, 401 U. S. 617, 621 *(ICI); Clarke* v. *Securities Industry Assn.*, 479 U. S. 388, 403. Pp. 488–492.

(c) In applying the "zone of interests" test, the Court does not ask whether Congress specifically intended the statute at issue to benefit the plaintiff, see, *e. g.*, *Clarke*, *supra*, at 399–400. Instead, it discerns the interests "arguably . . . to be protected" by the statutory provision and inquires whether the plaintiff's interests affected by the agency action in question are among them, see, *e. g.*, *Data Processing*, *supra*, at 153. By its express terms, § 109 limits membership in every federal credit union to members of definable "groups." Because federal credit unions may, as a general matter, offer banking services only to members, see, *e. g.*, 12 U. S. C. §§ 1757(5)–(6), § 109 also restricts the markets that every federal credit union can serve. Although these markets need not be small, they unquestionably are limited. The link between § 109's regulation of membership and its limitation on the markets that can be served is unmistakable. Thus, even if it cannot be said that Congress had the specific purpose of benefiting commercial banks, one of the interests "arguably . . . to be protected" by § 109 is an interest in limiting the markets that federal credit unions can serve. This interest is precisely the interest of respondents affected by the NCUA's interpretation of § 109. As competitors of federal credit unions, respondents certainly have an interest in limiting the markets that federal credit unions can serve, and the NCUA's interpretation has affected that interest by allowing federal credit unions to increase their customer base. Section 109 cannot be distinguished in this regard from the statutory provisions at issue in *Clarke*, *ICI*, *Arnold Tours*, and *Data Processing*. Pp. 492–495.

(d) Respondents' interest is therefore arguably within the zone of interests to be protected by § 109. Petitioners principally argue that respondents lack standing because there is no evidence that the Congress that enacted § 109 was concerned with commercial banks' competitive interests. This argument is misplaced. To accept that argument, the Court would have to reformulate the "zone of interests" test to require that Congress have specifically intended to benefit a particular

class of plaintiffs before a plaintiff from that class could have standing under the APA to sue. Petitioners also mistakenly rely on *Air Courier Conference* v. *Postal Workers*, 498 U. S. 517, 519. Unlike the plaintiffs there who were denied standing, respondents here have "competitive and direct injury," *id.*, at 528, n. 5, as well as an interest "arguably . . . to be protected" by the statute in question. Under the Court's precedents, it is irrelevant that in enacting the FCUA, Congress did not specifically intend to protect commercial banks, as is the fact that respondents' objectives in this action are not eleemosynary in nature. Pp. 495–499.

2. The NCUA's interpretation of § 109—whereby a common bond of occupation must unite only the members of each unrelated employer group—is impermissible under the first step of the analysis set forth in *Chevron*, see 467 U. S., at 842–843, because that interpretation is contrary to the unambiguously expressed intent of Congress that the *same* common bond of occupation must unite each member of an occupationally defined federal credit union. Several considerations compel this conclusion. First, the NCUA's interpretation makes the statutory phrase "common bond" surplusage when applied to a federal credit union made up of multiple unrelated employer groups, because each such "group" already has its own "common bond," employment with a particular employer. If the phrase "common bond" is to be given any meaning when the employees in such groups are joined together, a different "common bond"—one extending to each and every employee considered together—must be found to unite them. Second, the interpretation violates the established canon of construction that similar language within the same statutory section must be accorded a consistent meaning. Section 109 consists of two parallel clauses: Federal credit union membership is limited "to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district." The NCUA has never interpreted, and does not contend that it could interpret, the geographic limitation to permit a credit union to be composed of members from an unlimited number of unrelated geographic units. The occupational limitation must be interpreted in the same way. Finally, the NCUA's interpretation has the potential to read the words "shall be limited" out of the statute entirely. The interpretation would allow the chartering of a conglomerate credit union whose members included the employees of every company in the United States. Section 109 cannot be considered a *limitation* on credit union membership if at the same time it permits such a *limitless* result. Pp. 499–503.

90 F. 3d 525, affirmed.

THOMAS, J., delivered an opinion, which was for the Court except as to footnote 6. REHNQUIST, C. J., and KENNEDY and GINSBURG, JJ., joined that opinion in full, and SCALIA, J., joined except as to footnote 6. O'CONNOR, J., filed a dissenting opinion, in which STEVENS, SOUTER, and BREYER, JJ., joined, *post,* p. 503.

Solicitor General Waxman argued the cause for the federal petitioner. With him on the briefs were *Acting Solicitor General Dellinger*, *Assistant Attorney General Hunger*, *David C. Frederick*, *Douglas N. Letter*, *Jacob M. Lewis*, *Michael E. Robinson*, and *John K. Ianno*. *John G. Roberts, Jr.*, argued the cause for petitioner AT&T Family Federal Credit Union et al. With him on the briefs were *Paul J. Lambert*, *Jonathan S. Franklin*, and *Brenda S. Furlow*.

Michael S. Helfer argued the cause for respondents. With him on the briefs were *Louis R. Cohen*, *Christopher R. Lipsett*, *John J. Gill III*, and *Michael F. Crotty*.†

JUSTICE THOMAS delivered the opinion of the Court, except as to footnote 6.*

Section 109 of the Federal Credit Union Act (FCUA), 48 Stat. 1219, 12 U. S. C. § 1759, provides that "[f]ederal credit union membership shall be limited to groups having a common bond of occupation or association, or to groups within

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†Briefs of *amici curiae* urging reversal were filed for the Ad Hoc Small Employers Group et al. by *Paul G. Gaston*, *Richard J. Dines*, and *Christiane Gigi Hyland;* for the California Credit Union League by *Thomas H. Ott*, *Craig A. Horowitz*, *Wayne D. Clayton*, and *Joseph A. McDonald;* for the Consumer Federation of America, Inc., et al. by *Joseph C. Zengerle;* for the National Association of Federal Credit Unions by *John F. Cooney*, *Ronald R. Glancz*, *Melissa Landau Steinman*, *William J. Donovan*, and *Fred M. Haden;* and for the National Association of State Credit Union Supervisors by *Stanley M. Gorinson*, *John Longstreth*, and *C. Stephen Trimmier*.

Leonard J. Rubin filed a brief for the Independent Bankers Association of America et al. as *amici curiae* urging affirmance.

*JUSTICE SCALIA joins this opinion, except as to footnote 6.

a well-defined neighborhood, community, or rural district." Since 1982, the National Credit Union Administration (NCUA), the agency charged with administering the FCUA, has interpreted § 109 to permit federal credit unions to be composed of multiple unrelated employer groups, each having its own common bond of occupation. In this action, respondents, five banks and the American Bankers Association, have challenged this interpretation on the ground that § 109 unambiguously requires that the *same* common bond of occupation unite every member of an occupationally defined federal credit union. We granted certiorari to answer two questions. First, do respondents have standing under the Administrative Procedure Act to seek federal-court review of the NCUA's interpretation? Second, under the analysis set forth in *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984), is the NCUA's interpretation permissible? We answer the first question in the affirmative and the second question in the negative. We therefore affirm.

I

A

In 1934, during the Great Depression, Congress enacted the FCUA, which authorizes the chartering of credit unions at the national level and provides that federal credit unions may, as a general matter, offer banking services only to their members. Section 109 of the FCUA, which has remained virtually unaltered since the FCUA's enactment, expressly restricts membership in federal credit unions. In relevant part, it provides:

> "Federal credit union membership shall consist of the incorporators and such other persons and incorporated and unincorporated organizations, to the extent permitted by rules and regulations prescribed by the Board, as may be elected to membership and as such shall each, subscribe to at least one share of its stock and pay the

> initial installment thereon and a uniform entrance fee if required by the board of directors; *except that Federal credit union membership shall be limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district.*" 12 U. S. C. § 1759 (emphasis added).

Until 1982, the NCUA and its predecessors consistently interpreted § 109 to require that the *same* common bond of occupation unite every member of an occupationally defined federal credit union. In 1982, however, the NCUA reversed its longstanding policy in order to permit credit unions to be composed of multiple unrelated employer groups. See IRPS 82–1, 47 Fed. Reg. 16775 (1982). It thus interpreted § 109's common bond requirement to apply only to each employer group in a multiple-group credit union, rather than to every member of that credit union. See IRPS 82–3, 47 Fed. Reg. 26808 (1982). Under the NCUA's new interpretation, all of the employer groups in a multiple-group credit union had to be located "within a well-defined area," *ibid.*, but the NCUA later revised this requirement to provide that each employer group could be located within "an area surrounding the [credit union's] home or a branch office that can be reasonably served by the [credit union] as determined by NCUA." IRPS 89–1, 54 Fed. Reg. 31170 (1989). Since 1982, therefore, the NCUA has permitted federal credit unions to be composed of wholly unrelated employer groups, each having its own distinct common bond.

B

After the NCUA revised its interpretation of § 109, petitioner AT&T Family Federal Credit Union (ATTF) expanded its operations considerably by adding unrelated employer groups to its membership. As a result, ATTF now has approximately 110,000 members nationwide, only 35% of

whom are employees of AT&T and its affiliates. See Brief for Petitioner NCUA 9. The remaining members are employees of such diverse companies as the Lee Apparel Company, the Coca-Cola Bottling Company, the Ciba-Geigy Corporation, the Duke Power Company, and the American Tobacco Company. See App. 54–79.

In 1990, after the NCUA approved a series of amendments to ATTF's charter that added several such unrelated employer groups to ATTF's membership, respondents brought this action. Invoking the judicial review provisions of the Administrative Procedure Act (APA), 5 U. S. C. § 702, respondents claimed that the NCUA's approval of the charter amendments was contrary to law because the members of the new groups did not share a common bond of occupation with ATTF's existing members, as respondents alleged § 109 required. ATTF and petitioner Credit Union National Association were permitted to intervene in the action as defendants.

The District Court dismissed the complaint. It held that respondents lacked prudential standing to challenge the NCUA's chartering decision because their interests were not within the "zone of interests" to be protected by § 109, as required by this Court's cases interpreting the APA. *First Nat. Bank & Trust Co.* v. *National Credit Union Admin.*, 772 F. Supp. 609 (DC 1991). The District Court rejected as irrelevant respondents' claims that the NCUA's interpretation had caused them competitive injury, stating that the legislative history of the FCUA demonstrated that it was passed "to establish a place for credit unions within the country's financial market, and specifically not to protect the competitive interest of banks." *Id.*, at 612. The District Court also determined that respondents were not "suitable challengers" to the NCUA's interpretation, as that term had been used in prior prudential standing cases from the Court of Appeals for the District of Columbia Circuit. *Ibid.*

The Court of Appeals for the District of Columbia Circuit reversed. *First Nat. Bank & Trust Co.* v. *National Credit Union Admin.*, 988 F. 2d 1272, cert. denied, 510 U. S. 907 (1993). The Court of Appeals agreed that "Congress did not, in 1934, intend to shield banks from competition from credit unions," 988 F. 2d, at 1275, and hence respondents could not be said to be "intended beneficiaries" of § 109. Relying on two of our prudential standing cases involving the financial services industry, *Investment Company Institute* v. *Camp*, 401 U. S. 617 (1971), and *Clarke* v. *Securities Industry Assn.*, 479 U. S. 388 (1987), the Court of Appeals nonetheless concluded that respondents' interests were sufficiently congruent with the interests of § 109's intended beneficiaries that respondents were "suitable challengers" to the NCUA's chartering decision; therefore, their suit could proceed. See 988 F. 2d, at 1276–1278.[1]

On remand, the District Court applied the two-step analysis that we announced in *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984), and held that the NCUA had permissibly interpreted § 109. 863 F. Supp. 9 (DC 1994). It first asked whether, in enacting § 109, Congress had spoken directly to the precise question at issue—whether the same common bond of occupation must unite members of a federal credit union composed of multiple employer groups. See *id.*, at 12. It determined that because § 109 could plausibly be understood to permit an occupationally defined federal credit union to consist of several employer "groups," each having its own distinct common bond of occupation, Congress had not unambiguously addressed this question. See *ibid.* The District Court then

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[1] The Court of Appeals' holding that respondents had prudential standing conflicted with a decision of the United States Court of Appeals for the Fourth Circuit reached prior to this Court's decision in *Clarke* v. *Securities Industry Assn.*, 479 U. S. 388 (1987). See *Branch Bank & Trust Co.* v. *National Credit Union Administration Bd.*, 786 F. 2d 621 (1986), cert. denied, 479 U. S. 1063 (1987).

stated that it was unnecessary to decide, under the second step of *Chevron,* whether the NCUA's interpretation was reasonable, because respondents had not "seriously argued" that the interpretation was unreasonable. See 863 F. Supp., at 13–14. Accordingly, the District Court entered summary judgment against respondents. See *ibid.*

The Court of Appeals again reversed. 90 F. 3d 525 (CADC 1996). It held that the District Court had incorrectly applied the first step of *Chevron:* Congress had indeed spoken directly to the precise question at issue and had unambiguously indicated that the same common bond of occupation must unite members of a federal credit union composed of multiple employer groups. See 90 F. 3d, at 527. The Court of Appeals reasoned that because the concept of a "common bond" is implicit in the term "group," the term "common bond" would be surplusage if it applied only to the members of each constituent "group" in a multiple-group federal credit union. See *id.*, at 528. It further noted that the NCUA had not interpreted § 109's geographical limitation to allow federal credit unions to comprise groups from multiple unrelated "neighborhood[s], communit[ies], or rural district[s]" and stated that the occupational limitation should not be interpreted differently. See *id.*, at 528–529. The NCUA's revised interpretation of § 109 was therefore impermissible.[2] See *id.*, at 529. Because of the importance of the issues presented,[3] we granted certiorari. 519 U. S. 1148 (1997).

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[2] A panel of the Court of Appeals for the Sixth Circuit later reached a similar conclusion, with one judge dissenting. See *First City Bank* v. *National Credit Union Administration Bd.*, 111 F. 3d 433 (1997).

[3] According to the NCUA, since 1982, thousands of federal credit unions have relied on the NCUA's revised interpretation of § 109. See Pet. for Cert. in No. 96–843, p. 14. Moreover, following the Court of Appeals' decision on the merits, the United States District Court for the District of Columbia granted a nationwide injunction prohibiting the NCUA from approving the addition of unrelated employer groups to *any* federal credit union. See Brief for Petitioner ATTF 14, n. 5.

II

Respondents claim a right to judicial review of the NCUA's chartering decision under § 10(a) of the APA, which provides:

> "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." 5 U. S. C. § 702.

We have interpreted § 10(a) of the APA to impose a prudential standing requirement in addition to the requirement, imposed by Article III of the Constitution, that a plaintiff have suffered a sufficient injury in fact. See, *e. g.*, *Association of Data Processing Service Organizations, Inc.* v. *Camp*, 397 U. S. 150, 152 (1970) *(Data Processing)*.[4] For a plaintiff to have prudential standing under the APA, "the interest sought to be protected by the complainant [must be] arguably within the zone of interests to be protected or regulated by the statute . . . in question." *Id.*, at 153.

Based on four of our prior cases finding that competitors of financial institutions have standing to challenge agency action relaxing statutory restrictions on the activities of those institutions, we hold that respondents' interest in limiting the markets that federal credit unions can serve is arguably within the zone of interests to be protected by § 109. Therefore, respondents have prudential standing under the APA to challenge the NCUA's interpretation.

A

Although our prior cases have not stated a clear rule for determining when a plaintiff's interest is "arguably within the zone of interests" to be protected by a statute, they none-

[4] In this action, it is not disputed that respondents have suffered an injury in fact because the NCUA's interpretation allows persons who might otherwise be their customers to be members, and therefore customers, of ATTF.

theless establish that we should not inquire whether there has been a congressional intent to benefit the would-be plaintiff. In *Data Processing*, *supra*, the Office of the Comptroller of the Currency (Comptroller) had interpreted the National Bank Act's incidental powers clause, Rev. Stat. § 5136, 12 U. S. C. § 24 Seventh, to permit national banks to perform data processing services for other banks and bank customers. See *Data Processing*, *supra*, at 151. The plaintiffs, a data processing corporation and its trade association, alleged that this interpretation was impermissible because providing data processing services was not, as was required by the statute, "[an] incidental powe[r] . . . necessary to carry on the business of banking." See 397 U. S., at 157, n. 2.

In holding that the plaintiffs had standing, we stated that § 10(a) of the APA required only that "the interest sought to be protected by the complainant [be] arguably within the zone of interests to be protected or regulated by the statute . . . in question." *Id.*, at 153. In determining that the plaintiffs' interest met this requirement, we noted that although the relevant federal statutes—the National Bank Act, 12 U. S. C. § 24 Seventh, and the Bank Service Corporation Act, 76 Stat. 1132, 12 U. S. C. § 1864—did not "in terms protect a specified group[,] . . . their general policy is apparent; and those whose interests are directly affected by a broad or narrow interpretation of the Acts are easily identifiable." *Data Processing*, 397 U. S., at 157. "[A]s competitors of national banks which are engaging in data processing services," the plaintiffs were within that class of "aggrieved persons" entitled to judicial review of the Comptroller's interpretation. *Ibid.*

Less than a year later, we applied the "zone of interests" test in *Arnold Tours, Inc.* v. *Camp*, 400 U. S. 45 (1970) *(per curiam) (Arnold Tours)*. There, certain travel agencies challenged a ruling by the Comptroller, similar to the one contested in *Data Processing*, that permitted national banks to operate travel agencies. See 400 U. S., at 45. In holding

that the plaintiffs had prudential standing under the APA, we noted that it was incorrect to view our decision in *Data Processing* as resting on the peculiar legislative history of § 4 of the Bank Service Corporation Act, which had been passed in part at the behest of the data processing industry. See 400 U. S., at 46. We stated explicitly that "we did not rely on any legislative history showing that Congress desired to protect data processors alone from competition." *Ibid.* We further explained:

> "In *Data Processing* . . . [w]e held that § 4 arguably brings a competitor within the zone of interests protected by it. Nothing in the opinion limited § 4 to protecting only competitors in the data-processing field. When national banks begin to provide travel services for their customers, they compete with travel agents no less than they compete with data processors when they provide data-processing services to their customers." *Ibid.* (internal citations and quotation marks omitted).

A year later, we decided *Investment Company Institute* v. *Camp,* 401 U. S. 617 (1971) *(ICI).* In that case, an investment company trade association and several individual investment companies alleged that the Comptroller had violated, *inter alia,* § 21 of the Glass-Steagall Act, 1932,[5] by permitting national banks to establish and operate what in essence were early versions of mutual funds. We held that the plaintiffs, who alleged that they would be injured by the competition resulting from the Comptroller's action, had standing under the APA and stated that the case was controlled by *Data Processing.* See 401 U. S., at 621.

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[5] Under § 21 of the Glass-Steagall Act, it is unlawful "[f]or any person, firm, [or] corporation . . . engaged in the business of issuing . . . securities, to engage at the same time to any extent whatever in the business of receiving deposits." § 21 of the Banking Act of 1933, 48 Stat. 189, 12 U. S. C. § 378(a).

Significantly, we found unpersuasive Justice Harlan's argument in dissent that the suit should be dismissed because "neither the language of the pertinent provisions of the Glass-Steagall Act nor the legislative history evince[d] any congressional concern for the interests of petitioners and others like them in freedom from competition." *Id.*, at 640.

Our fourth case in this vein was *Clarke* v. *Securities Industry Assn.*, 479 U. S. 388 (1987) *(Clarke)*. There, a securities dealers trade association sued the Comptroller, this time for authorizing two national banks to offer discount brokerage services both at their branch offices and at other locations inside and outside their home States. See *id.*, at 391. The plaintiff contended that the Comptroller's action violated the McFadden Act, which permits national banks to carry on the business of banking only at authorized branches, and to open new branches only in their home States and only to the extent that state-chartered banks in that State can do so under state law. See *id.*, at 391–392.

We again held that the plaintiff had standing under the APA. Summarizing our prior holdings, we stated that although the "zone of interests" test "denies a right of review if the plaintiff's interests are . . . marginally related to or inconsistent with the purposes implicit in the statute," *id.*, at 399, "there need be no indication of congressional purpose to benefit the would-be plaintiff," *id.*, at 399–400 (citing *ICI*). We then determined that by limiting the ability of national banks to do business outside their home States, "Congress ha[d] shown a concern to keep national banks from gaining a monopoly control over credit and money." 479 U. S., at 403. The interest of the securities dealers in preventing national banks from expanding into the securities markets directly implicated this concern because offering discount brokerage services would allow national banks "access to more money, in the form of credit balances, and enhanced opportunities to lend money, viz., for margin purchases." *Ibid.* The case was thus analogous to *Data Processing* and *ICI:* "In those

cases the question was what activities banks could engage in at all; here, the question is what activities banks can engage in without regard to the limitations imposed by state branching law." 479 U. S., at 403.

B

Our prior cases, therefore, have consistently held that for a plaintiff's interests to be arguably within the "zone of interests" to be protected by a statute, there does not have to be an "indication of congressional purpose to benefit the would-be plaintiff." *Id.*, at 399–400 (citing *ICI*); see also *Arnold Tours*, 400 U. S., at 46 (citing *Data Processing*). The proper inquiry is simply "whether the interest sought to be protected by the complainant is *arguably* within the zone of interests to be protected . . . by the statute." *Data Processing*, 397 U. S., at 153 (emphasis added). Hence in applying the "zone of interests" test, we do not ask whether, in enacting the statutory provision at issue, Congress specifically intended to benefit the plaintiff. Instead, we first discern the interests "arguably . . . to be protected" by the statutory provision at issue; we then inquire whether the plaintiff's interests affected by the agency action in question are among them.

Section 109 provides that "[f]ederal credit union membership shall be limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district." 12 U. S. C. § 1759. By its express terms, § 109 limits membership in every federal credit union to members of definable "groups." Because federal credit unions may, as a general matter, offer banking services only to members, see, *e. g.*, 12 U. S. C. §§ 1757(5)–(6), § 109 also restricts the markets that every federal credit union can serve. Although these markets need not be small, they unquestionably are limited. The link between § 109's regulation of federal credit union membership and its limitation on the markets that federal credit unions can serve is unmistakable. Thus, even if it cannot be said

that Congress had the specific purpose of benefiting commercial banks, one of the interests "arguably . . . to be protected" by § 109 is an interest in limiting the markets that federal credit unions can serve.[6] This interest is precisely the interest of respondents affected by the NCUA's interpretation of § 109. As competitors of federal credit unions, respondents certainly have an interest in limiting the markets that federal credit unions can serve, and the NCUA's interpretation

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[6] The legislative history of § 109, upon which petitioners so heavily rely, supports this conclusion. Credit unions originated in mid-19th-century Europe as cooperative associations that were intended to provide credit to persons of small means; they were usually organized around some common theme, either geographic or associational. See General Accounting Office, Credit Unions: Reforms for Ensuring Future Soundness 24 (July 1991). Following the European example, in the 1920's many States passed statutes authorizing the chartering of credit unions, and a number of those statutes contained provisions similar to § 109's common bond requirement. See A. Burger & T. Dacin, Field of Membership: An Evolving Concept 6 (2d ed. 1992).

During the Great Depression, in contrast to widespread bank failures at both the state and national level, there were no involuntary liquidations of state-chartered credit unions. See S. Rep. No. 555, 73d Cong., 2d Sess., 2 (1934). The cooperative nature of the institutions, which state-law common bond provisions reinforced, was believed to have contributed to this result. See Credit Unions: Hearing before a Subcommittee of the Senate Committee on Banking and Currency, 73d Cong., 1st Sess., 19–20, 26 (1933). A common bond provision was thus included in the District of Columbia Credit Union Act, which Congress passed in 1932; it was identical to the FCUA's common bond provision enacted two years later. When Congress enacted the FCUA, sponsors of the legislation emphasized that the cooperative nature of credit unions allowed them to make credit available to persons who otherwise would not qualify for loans. See S. Rep. No. 555, *supra*, at 1, 3.

The legislative history thus confirms that § 109 was thought to reinforce the cooperative nature of credit unions, which in turn was believed to promote their safety and soundness and allow access to credit to persons otherwise unable to borrow. Because, by its very nature, a cooperative institution must serve a limited market, the legislative history of § 109 demonstrates that one of the interests "arguably . . . to be protected" by § 109 is an interest in limiting the markets that federal credit unions can serve.

has affected that interest by allowing federal credit unions to increase their customer base.[7]

Section 109 cannot be distinguished from the statutory provisions at issue in *Clarke*, *ICI*, *Arnold Tours*, and *Data Processing*. Although in *Clarke* the McFadden Act appeared to be designed to protect only the interest of state banks in parity of treatment with national banks, we nonetheless determined that the statute also limited "the extent to which [national] banks [could] engage in the discount brokerage business and hence limit[ed] the competitive impact on nonbank discount brokerage houses." *Clarke*, 479 U. S., at 403. Accordingly, although Congress did not intend specifically to protect securities dealers, one of the interests "arguably . . . to be protected" by the statute was an interest in restricting national bank market power. The plaintiff securities dealers, as competitors of national banks, had that interest, and that interest had been affected by the inter-

[7] Contrary to the dissent's contentions, see *post*, at 503, 509, our formulation does not "eviscerat[e]" or "abolis[h]" the zone of interests requirement. Nor can it be read to imply that, in order to have standing under the APA, a plaintiff must merely have an interest in enforcing the statute in question. The test we have articulated—discerning the interests "arguably . . . to be protected" by the statutory provision at issue and inquiring whether the plaintiff's interests affected by the agency action in question are among them—differs only as a matter of semantics from the formulation that the dissent has accused us of "eviscerating" or "abolishing," see *post*, at 504 (stating that the plaintiff must establish that "the injury he complains of . . . falls within the zone of interests sought to be protected by the statutory provision whose violation forms the legal basis for his complaint" (internal quotation marks and citation omitted)).

Our only disagreement with the dissent lies in the application of the "zone of interests" test. Because of the unmistakable link between § 109's express restriction on credit union membership and the limitation on the markets that federal credit unions can serve, there is objectively "some indication in the statute," *post*, at 517 (emphasis deleted), that respondents' interest is "arguably within the zone of interests to be protected" by § 109. Hence respondents are more than merely incidental beneficiaries of § 109's effects on competition.

pretation of the McFadden Act they sought to challenge, because that interpretation had allowed national banks to expand their activities and serve new customers. See *ibid.*

Similarly, in *ICI,* even though in enacting the Glass-Steagall Act, Congress did not intend specifically to benefit investment companies and may have sought only to protect national banks and their depositors, one of the interests "arguably . . . to be protected" by the statute was an interest in restricting the ability of national banks to enter the securities business. The investment company plaintiffs, as competitors of national banks, had that interest, and that interest had been affected by the Comptroller's interpretation allowing national banks to establish mutual funds.

So too, in *Arnold Tours* and *Data Processing,* although in enacting the National Bank Act and the Bank Service Corporation Act, Congress did not intend specifically to benefit travel agents and data processors and may have been concerned only with the safety and soundness of national banks, one of the interests "arguably . . . to be protected" by the statutes was an interest in preventing national banks from entering other businesses' product markets. As competitors of national banks, travel agents and data processors had that interest, and that interest had been affected by the Comptroller's interpretations opening their markets to national banks. See also *NationsBank of N. C., N. A.* v. *Variable Annuity Life Ins. Co.,* 513 U. S. 251 (1995) (deciding that the Comptroller had permissibly interpreted 12 U. S. C. § 24 Seventh to allow national banks to act as agents in the sale of annuities; insurance agents' standing to challenge the interpretation not questioned).

C

Petitioners attempt to distinguish this action principally on the ground that there is no evidence that Congress, when

it enacted the FCUA, was at all concerned with the competitive interests of commercial banks, or indeed at all concerned with competition. See Brief for Petitioner ATTF 21–22. Indeed, petitioners contend that the very reason Congress passed the FCUA was that "[b]anks were simply not in the picture" as far as small borrowers were concerned, and thus Congress believed it necessary to create a new source of credit for people of modest means. See *id.*, at 25.

The difficulty with this argument is that similar arguments were made unsuccessfully in each of *Data Processing*, *Arnold Tours*, *ICI*, and *Clarke*. In *Data Processing*, the Comptroller argued against standing for the following reasons:

> "[P]etitioners do not contend that Section 24 Seventh had any purpose . . . to protect the interest of potential competitors of national banks. The reason is clear: the legislative history of the Section dispels all possible doubt that its enactment in 1864 (13 Stat. 101) was for the express and sole purpose of creating a strong national banking system . . . . To the extent that the protection of a competitive interest was at the bottom of the enactment of Section 24 Seventh, it was the interest of national banks and not of their competitors." Brief for Comptroller of the Currency in *Association of Data Processing Service Organizations, Inc.* v. *Camp*, O. T. 1969, No. 85, pp. 19–20.

Similarly, in *Arnold Tours*, the Comptroller contended that the position of the travel agents was "markedly different from that of the data processors," who could find in the legislative history "some manifestation of legislative concern for their competitive position." Memorandum for Comptroller of the Currency in Opposition in *Arnold Tours, Inc.* v. *Camp*, O. T. 1970, No. 602, pp. 3–4. And in *ICI*, the Comptroller again urged us not to find standing, because—

> "[t]he thrust of the legislation, and the concern of the drafters, was to protect the banking public through the maintenance of a sound national banking system . . . .
>
> . . . . .
>
> "There was no Congressional objective to protect mutual funds or their investment advisers or underwriters." Brief for Comptroller of Currency in *Investment Company Institute* v. *Camp*, O. T. 1970, No. 61, pp. 27–29 (internal quotation marks omitted).
>
> "Indeed, the Congressional attitude toward the investment bankers can only be characterized as one of distaste. For example, in discussing the private investment bankers, Senator Glass pointed out that many of them had 'unloaded millions of dollars of worthless investment securities upon the banks of this country.'" *Id.*, at 30, n. 22 (citation omitted).

Finally, in *Clarke*, the Comptroller contended that "[t]here is no doubt that Congress had only one type of competitive injury in mind when it passed the [McFadden] Act—the type that national and state banks might inflict upon each other." Brief for Federal Petitioner in *Clarke* v. *Securities Industry Assn.*, O. T. 1985, No. 85–971, p. 24.

In each case, we declined to accept the Comptroller's argument. In *Data Processing*, we considered it irrelevant that the statutes in question "d[id] not in terms protect a specified group," because "their general policy [was] apparent[,] and those whose interests [were] directly affected by a broad or narrow interpretation of [the statutes] [were] easily identifiable." 397 U. S., at 157. In *Arnold Tours*, we similarly believed it irrelevant that Congress had shown no concern for the competitive position of travel agents in enacting the statutes in question. See 400 U. S., at 46. In *ICI*, we were unmoved by Justice Harlan's comment in dissent that the Glass-Steagall Act was passed *in spite of* its positive effects on the competitive position of investment banks. See 401 U. S., at 640. And in *Clarke*, we did not debate whether

the Congress that enacted the McFadden Act was concerned about the competitive position of securities dealers. See 479 U. S., at 403. The provisions at issue in each of these cases, moreover, could be said merely to be safety-and-soundness provisions, enacted only to protect national banks and their depositors and without a concern for competitive effects. We nonetheless did not hesitate to find standing.

We therefore cannot accept petitioners' argument that respondents do not have standing because there is no evidence that the Congress that enacted § 109 was concerned with the competitive interests of commercial banks. To accept that argument, we would have to reformulate the "zone of interests" test to require that Congress have specifically intended to benefit a particular class of plaintiffs before a plaintiff from that class could have standing under the APA to sue. We have refused to do this in our prior cases, and we refuse to do so today.

Petitioners also mistakenly rely on our decision in *Air Courier Conference* v. *Postal Workers*, 498 U. S. 517 (1991). In *Air Courier*, we held that the interest of Postal Service employees in maximizing employment opportunities was not within the "zone of interests" to be protected by the postal monopoly statutes, and hence those employees did not have standing under the APA to challenge a Postal Service regulation suspending its monopoly over certain international operations. See *id.*, at 519. We stated that the purposes of the statute were solely to increase the revenues of the Post Office and to ensure that postal services were provided in a manner consistent with the public interest, see *id.*, at 526–527. Only those interests, therefore, and not the interests of Postal Service employees in their employment, were "arguably within the zone of interests to be protected" by the statute. Cf. *Lujan* v. *National Wildlife Federation*, 497 U. S. 871, 883 (1990) (stating that an agency reporting company would not have prudential standing to challenge the agency's failure to comply with a statutory mandate to con-

duct hearings on the record). We further noted that although the statute in question regulated competition, the interests of the plaintiff employees had nothing to do with competition. See *Air Courier*, *supra*, at 528, n. 5 (stating that "[e]mployees have generally been denied standing to enforce competition laws because they lack competitive and direct injury"). In this action, not only do respondents have "competitive and direct injury," but, as the foregoing discussion makes clear, they possess an interest that is "arguably . . . to be protected" by § 109.

Respondents' interest in limiting the markets that credit unions can serve is "arguably within the zone of interests to be protected" by § 109. Under our precedents, it is irrelevant that in enacting the FCUA, Congress did not specifically intend to protect commercial banks. Although it is clear that respondents' objectives in this action are not eleemosynary in nature,[8] under our prior cases that, too, is beside the point.[9]

III

Turning to the merits, we must judge the permissibility of the NCUA's current interpretation of § 109 by employing the analysis set forth in *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984). Under that analysis, we first ask whether Congress has "directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously

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[8] The data processing companies, travel agents, investment companies, and securities dealers that challenged the Comptroller's rulings in our prior cases certainly did not bring suit to advance the noble goal of maintaining the safety and soundness of national banks, or to promote the interests of national bank depositors.

[9] Unlike some of our prudential standing cases, no suggestion is made in this action that Congress has sought to preclude judicial review of agency action. See, *e. g.*, *Block* v. *Community Nutrition Institute*, 467 U. S. 340 (1984).

expressed intent of Congress." *Id.*, at 842–843. If we determine that Congress has not directly spoken to the precise question at issue, we then inquire whether the agency's interpretation is reasonable. See *id.*, at 843–844. Because we conclude that Congress has made it clear that the *same* common bond of occupation must unite each member of an occupationally defined federal credit union, we hold that the NCUA's contrary interpretation is impermissible under the first step of *Chevron*.

As noted, § 109 requires that "[f]ederal credit union membership shall be limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district." Respondents contend that because § 109 uses the article "a"—"*i. e.*, one"—in conjunction with the noun "common bond," the "natural reading" of § 109 is that all members in an occupationally defined federal credit union must be united by one common bond. See Brief for Respondents 33. Petitioners reply that because § 109 uses the plural noun "groups," it permits multiple groups, each with its own common bond, to constitute a federal credit union. See Brief for Petitioner NCUA 29–30.

Like the Court of Appeals, we do not think that either of these contentions, standing alone, is conclusive. The article "a" could be thought to convey merely that one bond must unite only the members of each group in a multiple-group credit union, and not all of the members in the credit union taken together. See 90 F. 3d, at 528. Similarly, the plural word "groups" could be thought to refer not merely to multiple groups in a particular credit union, but rather to every single "group" that forms a distinct credit union under the FCUA. See *ibid.* Nonetheless, as the Court of Appeals correctly recognized, additional considerations compel the conclusion that the same common bond of occupation must unite all of the members of an occupationally defined federal credit union.

First, the NCUA's current interpretation makes the phrase "common bond" surplusage when applied to a federal credit union made up of multiple unrelated employer groups, because each "group" in such a credit union already has its own "common bond." See *ibid.* To use the facts of this action, the employees of AT&T and the employees of the American Tobacco Company each already had a "common bond" before being joined together as members of ATTF. The former were bonded because they worked for AT&T, and the latter were bonded because they worked for the American Tobacco Company. If the phrase "common bond" is to be given any meaning when these employees are joined together, a different "common bond"—one extending to each and every employee considered together—must be found to unite them. Such a "common bond" exists when employees of different subsidiaries of the same company are joined together in a federal credit union; it does not exist, however, when employees of unrelated companies are so joined. See *ibid.* Put another way, in the multiple employer group context, the NCUA has read the statute as though it merely stated that "[f]ederal credit union membership shall be limited to occupational groups," but that is simply not what the statute provides.

Second, the NCUA's interpretation violates the established canon of construction that similar language contained within the same section of a statute must be accorded a consistent meaning. See *Wisconsin Dept. of Revenue* v. *William Wrigley, Jr., Co.*, 505 U. S. 214, 225 (1992). Section 109 consists of two parallel clauses: Federal credit union membership is limited "to groups having a common bond of occupation or association, *or* to groups within a well-defined neighborhood, community, or rural district." 12 U. S. C. § 1759 (emphasis added). The NCUA concedes that even though the second limitation permits geographically defined credit unions to have as members more than one "group," all of the groups must come from the *same* "neighborhood,

community, or rural district." See Brief for Petitioner NCUA 37. The reason that the NCUA has never interpreted, and does not contend that it *could* interpret, the geographical limitation to allow a credit union to be composed of members from an unlimited number of unrelated geographic units, is that to do so would render the geographical limitation meaningless. Under established principles of statutory interpretation, we must interpret the occupational limitation in the same way.

Petitioners have advanced one reason why we should interpret the occupational limitation differently. They contend that whereas the geographical limitation uses the word "within" and is thus "prepositional," the occupational limitation uses the word "having" and is thus "participial" (and therefore less limiting). See Brief for Petitioner NCUA 31. There is, however, no reason why a participial phrase is inherently more open-ended than a prepositional one; indeed, certain participial phrases can narrow the relevant universe in an exceedingly effective manner—for example, "persons having February 29th as a wedding anniversary." Reading the two parallel clauses in the same way, we must conclude that, just as all members of a geographically defined federal credit union must be drawn from the same "neighborhood, community, or rural district," members of an occupationally defined federal credit union must be united by the same "common bond of occupation."

Finally, by its terms, § 109 requires that membership in federal credit unions "shall be limited." The NCUA's interpretation—under which a common bond of occupation must unite only the members of each unrelated employer group—has the potential to read these words out of the statute entirely. The NCUA has not contested that, under its current interpretation, it would be permissible to grant a charter to a conglomerate credit union whose members would include the employees of every company in the United States. Nor can it: Each company's employees would be a "group," and

each such "group" would have its own "common bond of occupation." Section 109, however, cannot be considered a *limitation* on credit union membership if at the same time it permits such a *limitless* result.

For the foregoing reasons, we conclude that the NCUA's current interpretation of § 109 is contrary to the unambiguously expressed intent of Congress and is thus impermissible under the first step of *Chevron*.[10] The judgment of the Court of Appeals is therefore affirmed.

It is so ordered.

Justice O'Connor, with whom Justice Stevens, Justice Souter, and Justice Breyer join, dissenting.

In determining that respondents have standing under the zone-of-interests test to challenge the National Credit Union Administration's (NCUA's) interpretation of the "common bond" provision of the Federal Credit Union Act (FCUA), 12 U. S. C. § 1759, the Court applies the test in a manner that is contrary to our decisions and, more importantly, that all but eviscerates the zone-of-interests requirement. In my view, under a proper conception of the inquiry, "the interest sought to be protected by" respondents in this action is not "arguably within the zone of interests to be protected" by the common bond provision. *Association of Data Processing Service Organizations, Inc.* v. *Camp*, 397 U. S. 150, 153 (1970). Accordingly, I respectfully dissent.

I

Respondents brought this suit under § 10(a) of the Administrative Procedure Act (APA), 5 U. S. C. § 702. To establish their standing to sue here, respondents must demonstrate

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[10] We have no need to consider § 109's legislative history, which, as both courts below found, is extremely "murky" and a "slender reed on which to place reliance." 90 F. 3d, at 530 (internal quotation marks and citation omitted).

that they are "adversely affected or aggrieved by agency action within the meaning of a relevant statute." *Ibid.;* see *Air Courier Conference* v. *Postal Workers*, 498 U. S. 517, 523 (1991); *Lujan* v. *National Wildlife Federation*, 497 U. S. 871, 882–883 (1990). The two aspects of that requirement correspond to the familiar concepts in standing doctrine of "injury in fact" under Article III of the Constitution and "zone of interests" under our prudential standing principles. See, *e. g.*, *Bennett* v. *Spear*, 520 U. S. 154, 162 (1997).

First, respondents must show that they are "adversely affected or aggrieved," *i. e.*, have suffered injury in fact. *Air Courier*, *supra*, at 523; *National Wildlife Federation*, *supra*, at 883. In addition, respondents must establish that the injury they assert is "within the meaning of a relevant statute," *i. e.*, satisfies the zone-of-interests test. *Air Courier*, *supra*, at 523; *National Wildlife Federation*, *supra*, at 883, 886. Specifically, "the plaintiff must establish that the injury he complains of (*his* aggrievement, or the adverse effect *upon him*), falls within the 'zone of interests' sought to be protected by the statutory provision whose violation forms the legal basis for his complaint." *National Wildlife Federation*, *supra*, at 883; see also *Air Courier*, *supra*, at 523–524.

The "injury respondents complain of," as the Court explains, is that the NCUA's interpretation of the common bond provision "allows persons who might otherwise be their customers to be . . . customers" of petitioner AT&T Family Federal Credit Union. *Ante*, at 488, n. 4. Put another way, the injury is a loss of respondents' customer base to a competing entity, or more generally, an injury to respondents' commercial interest as a competitor. The relevant question under the zone-of-interests test, then, is whether injury to respondents' commercial interest as a competitor "falls within the zone of interests sought to be protected by the [common bond] provision." *E. g.*, *Air Courier*, *supra*, at 523–524. For instance, in *Data Processing*, where the plaintiffs—like respondents here—alleged competitive injury to

their commercial interest, we found that the plaintiffs had standing because "their commercial interest was sought to be protected by the . . . provision which they alleged had been violated." *Bennett*, *supra*, at 176 (discussing *Data Processing*).

The Court adopts a quite different approach to the zone-of-interests test today, eschewing any assessment of whether the common bond provision was intended to protect respondents' commercial interest. The Court begins by observing that the terms of the common bond provision—"[f]ederal credit union membership shall be limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district," 12 U. S. C. § 1759—expressly limit membership in federal credit unions to persons belonging to certain "groups." Then, citing other statutory provisions that bar federal credit unions from serving nonmembers, see §§ 1757(5)–(6), the Court reasons that one interest sought to be protected by the common bond provision "is an interest in limiting the markets that federal credit unions can serve." *Ante*, at 493. The Court concludes its analysis by observing simply that respondents, "[a]s competitors of federal credit unions, . . . certainly *have* [that] interest . . . , and the NCUA's interpretation has affected that interest." *Ante*, at 493–494 (emphasis added).

Under the Court's approach, every litigant who establishes injury in fact under Article III will automatically satisfy the zone-of-interests requirement, rendering the zone-of-interests test ineffectual. See *Air Courier*, *supra*, at 524 ("mistak[e]" to "conflat[e] the zone-of-interests test with injury in fact"). That result stems from the Court's articulation of the relevant "interest." In stating that the common bond provision protects an "interest in limiting the markets that federal credit unions can serve," *ante*, at 493, the Court presumably uses the term "markets" in the sense of *customer* markets, as opposed to, for instance, product markets:

The common bond requirement and the provisions prohibiting credit unions from serving nonmembers combine to limit the customers a credit union can serve, not the services a credit union can offer.

With that understanding, the Court's conclusion that respondents "have" an interest in "limiting the [customer] markets that federal credit unions can serve" means little more than that respondents "have" an interest in enforcing the statute. The common bond requirement limits a credit union's membership, and hence its customer base, to certain groups, 12 U. S. C. § 1759, and in the Court's view, it is enough to establish standing that respondents "have" an interest in limiting the customers a credit union can serve. The Court's additional observation that respondents' interest has been "affected" by the NCUA's interpretation adds little to the analysis; agency interpretation of a statutory restriction will of course affect a party who has an interest in the restriction. Indeed, a party presumably will bring suit to vindicate an interest only if the interest has been affected by the challenged action. The crux of the Court's zone-of-interests inquiry, then, is simply that the plaintiff must "have" an interest in enforcing the pertinent statute.

A party, however, will invariably have an interest in enforcing a statute when he can establish injury in fact caused by an alleged violation of that statute. An example we used in *National Wildlife Federation* illustrates the point. There, we hypothesized a situation involving "the failure of an agency to comply with a statutory provision requiring 'on the record' hearings." 497 U. S., at 883. That circumstance "would assuredly have an adverse effect upon the company that has the contract to record and transcribe the agency's proceedings," and so the company would establish injury in fact. *Ibid.* But the company would not satisfy the zone-of-interests test, because "the provision was obviously enacted to protect the interests of the parties to the proceedings and not those of the reporters." *Ibid.;* see *Air Courier*,

498 U. S., at 524. Under the Court's approach today, however, the reporting company would have standing under the zone-of-interests test: Because the company is injured by the failure to comply with the requirement of on-the-record hearings, the company would certainly "have" an interest in enforcing the statute.

Our decision in *Air Courier*, likewise, cannot be squared with the Court's analysis in this action. *Air Courier* involved a challenge by postal employees to a decision of the Postal Service suspending its statutory monopoly over certain international mailing services. The postal employees alleged a violation of the Private Express Statutes (PES)—the provisions that codify the Service's postal monopoly—citing as their injury in fact that competition from private mailing companies adversely affected their employment opportunities. 498 U. S., at 524. We concluded that the postal employees did not have standing under the zone-of-interests test, because "the PES were not designed to protect postal employment or further postal job opportunities." *Id.*, at 528. As with the example from *National Wildlife Federation*, though, the postal employees would have established standing under the Court's analysis in this action: The employees surely "had" an interest in enforcing the statutory monopoly, given that suspension of the monopoly caused injury to their employment opportunities.

In short, requiring simply that a litigant "have" an interest in enforcing the relevant statute amounts to hardly any test at all. That is why our decisions have required instead that a party "establish that the *injury he complains* of . . . falls within the 'zone of interests' sought to be protected by the statutory provision" in question. *National Wildlife Federation*, *supra*, at 883 (emphasis added); see *Bennett*, 520 U. S., at 176. In *Air Courier*, for instance, after noting that the asserted injury in fact was "an adverse effect on employment opportunities of postal workers," we characterized "[t]he question before us" as "whether the adverse effect on the

employment opportunities of postal workers . . . is within the zone of interests encompassed by the PES." 498 U. S., at 524; see also *National Wildlife Federation*, *supra*, at 885–886 (noting that asserted injury is to the plaintiffs' interests in "recreational use and aesthetic enjoyment," and finding those particular interests "are among the *sorts* of interests [the] statutes were specifically designed to protect").

Our decision last Term in *Bennett* v. *Spear* is in the same vein. There, the Fish and Wildlife Service, in an effort to preserve a particular species of fish, issued a biological opinion that had the effect of requiring the maintenance of minimum water levels in certain reservoirs. A group of ranchers and irrigation districts brought suit asserting a "competing interest in the water," alleging, in part, injury to their commercial interest in using the reservoirs for irrigation water. 520 U. S., at 160. The plaintiffs charged that the Service had violated a provision of the Endangered Species Act requiring "use [of] the best scientific and commercial data available." *Id.*, at 176. We did not ask simply whether the plaintiffs "had" an interest in holding the Service to the "best data" requirement. Instead, we assessed whether the injury asserted by the plaintiffs fell within the zone of interests protected by the "best data" provision, and concluded that the economic interests of parties adversely affected by erroneous biological opinions are within the zone of interests protected by that statute. *Id.*, at 176–177 (observing that one purpose of the "best data" provision "is to avoid needless economic dislocation produced by agency officials zealously but unintelligently pursuing their environmental objectives").

The same approach should lead the Court to ask in this action whether respondents' injury to their commercial interest as competitors falls within the zone of interests protected by the common bond provision. Respondents recognize that such an inquiry is mandated by our decisions. They argue that "the competitive interests of banks *were*

among Congress's concerns when it enacted the Federal Credit Union Act," and that the common bond provision was motivated by "[c]ongressional concerns that chartering credit unions could inflict an unwanted competitive injury on the commercial banking industry." Brief for Respondents 24–25. The Court instead asks simply whether respondents have an interest in enforcing the common bond provision, an approach tantamount to abolishing the zone-of-interests requirement altogether.

II

Contrary to the Court's suggestion, *ante*, at 494–495, its application of the zone-of-interests test in this action is not in concert with the approach we followed in a series of cases in which the plaintiffs, like respondents here, alleged that agency interpretation of a statute caused competitive injury to their commercial interests. In each of those cases, we focused, as in *Bennett*, *Air Courier*, and *National Wildlife Federation*, on whether competitive injury to the plaintiff's commercial interest fell within the zone of interests protected by the relevant statute.

The earliest of the competitor standing decisions was *Association of Data Processing Service Organizations, Inc.* v. *Camp*, 397 U. S. 150 (1970), in which we first formulated the zone-of-interests requirement. There, an association of data processors challenged a decision of the Comptroller of the Currency allowing national banks to provide data processing services. The data processors alleged violation of, among other statutes, § 4 of the Bank Service Corporation Act, 76 Stat. 1132, which provided that "[n]o bank service corporation may engage in any activity other than the performance of bank services." 397 U. S., at 154–155. We articulated the applicable test as "whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute . . . in question." *Id.*, at 153.

In answering that question, we assessed whether the injury asserted by the plaintiffs was to an interest arguably within the zone of interests protected by the relevant statute. The data processors, like respondents here, asserted "economic injury" from the "competition by national banks in the business of providing data processing services." *Id.*, at 152, 154. We concluded that the data processors' "commercial interest was sought to be protected by the anti-competition limitation contained in § 4," *Bennett*, *supra*, at 176 (discussing *Data Processing*), explaining that the provision "arguably brings a competitor within the zone of interests protected by it," 397 U. S., at 156.

Our decision in *Data Processing* was soon followed by another case involving § 4 of the Bank Service Corporation Act, *Arnold Tours, Inc.* v. *Camp*, 400 U. S. 45 (1970) *(per curiam)*. *Arnold Tours* was similar to *Data Processing*, except that the plaintiffs were a group of travel agents challenging an analogous ruling of the Comptroller authorizing national banks to provide travel services. The travel agents, like the data processors, alleged injury to their commercial interest as competitors. 400 U. S., at 45. Not surprisingly, we ruled that the travel agents had established standing, on the ground that Congress did not "desir[e] to protect data processors alone from competition" through § 4. *Id.*, at 46. Unlike in this action, then, our decisions in *Arnold Tours* and *Data Processing* turned on the conclusion that economic injury to competitors fell within the zone of interests protected by the relevant statute.

We decided *Investment Company Institute* v. *Camp*, 401 U. S. 617 (1971) *(ICI)*, later in the same Term as *Arnold Tours*. The case involved a challenge by an association of investment companies to a regulation issued by the Comptroller that authorized national banks to operate mutual funds. The investment companies alleged that the regulation violated provisions of the Glass-Steagall Act, 1933, 48 Stat. 162, barring national banks from entering the business

of investment banking. We found that the investment companies had standing, but did not rest that determination simply on the notion that the companies had an interest in enforcing the prohibition against banks entering the investment business. Instead, we observed that, as in *Data Processing*, "Congress had arguably legislated against . . . competition" through the Glass-Steagall Act. 401 U. S., at 620–621.

The final decision in this series was *Clarke* v. *Securities Industry Assn.*, 479 U. S. 388 (1987). That case involved provisions of the McFadden Act, 44 Stat. 1228, allowing a national bank to establish branch offices only in its home State, and then only to the extent that banks of the home State were permitted to have branches under state law. The statute defined a "branch" office essentially as one that offered core banking services. The Comptroller allowed two banks to establish discount brokerage offices at locations outside the allowable branching area, on the rationale that brokerage services did not constitute core banking services and that the offices therefore were not "branch" offices. Representatives of the securities industry challenged the Comptroller's action, alleging a violation of the statutory branching limitations.

We held that the plaintiffs had standing under the zone-of-interests test, but again, not simply on the ground that they had an interest in enforcing the branching limits. Instead, we found that, as in *ICI*, Congress had "arguably legislated against . . . competition" through those provisions. 479 U. S., at 403 (internal quotation marks omitted). Specifically, Congress demonstrated "a concern to keep national banks from gaining a monopoly control over credit and money through unlimited branching." *Ibid.;* see also *id.*, at 410 (STEVENS, J., concurring in part and concurring in judgment) ("The general policy against branching was based in part on a concern about the national banks' potential for becoming massive financial institutions that would establish

monopolies on financial services"). The Court makes no analogous finding in this action that Congress, through the common bond provision, sought to prevent credit unions from gaining "monopoly control" over the customers of banking services.

It is true, as the Court emphasizes repeatedly, see *ante*, at 488–492, 494–498, that we did not require in this line of decisions that the statute at issue was designed to benefit the particular party bringing suit. See *Clarke*, *supra*, at 399–400. In *Arnold Tours* and *Data Processing*, for instance, it was sufficient that Congress desired to protect the interests of competitors generally through § 4 of the Bank Service Corporation Act, even if Congress did not have in mind the particular interests of travel agents or data processors. See *Arnold Tours*, *supra*, at 46. In *Clarke*, likewise, the antibranching provisions of the McFadden Act may have been intended primarily to protect state banks, and not the securities industry, from competitive injury. Respondents thus need not establish that the common bond provision was enacted specifically to benefit commercial banks, any more than they must show that the provision was intended to benefit Lexington State Bank, Piedmont State Bank, or any of the particular banks that filed this suit.

In each of the competitor standing cases, though, we found that Congress had enacted an "anticompetition limitation," see *Bennett*, 520 U. S., at 176 (discussing *Data Processing*), or, alternatively, that Congress had "legislated against . . . competition," see *Clarke*, *supra*, at 403; *ICI*, *supra*, at 620–621, and accordingly, that the plaintiff-competitor's "commercial interest was sought to be protected by the anticompetition limitation" at issue, *Bennett*, *supra*, at 176. We determined, in other words, that "the injury [the plaintiff] complain[ed] of . . . [fell] within the zone of interests sought to be protected by the [relevant] statutory provision." *National Wildlife Federation*, 497 U. S., at 883. The Court fails to undertake that analysis here.

III

Applying the proper zone-of-interests inquiry to this action, I would find that competitive injury to respondents' commercial interests does not arguably fall within the zone of interests sought to be protected by the common bond provision. The terms of the statute do not suggest a concern with protecting the business interests of competitors. The common bond provision limits "[f]ederal credit union membership . . . to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district." 12 U. S. C. § 1759. And the provision is framed as an exception to the preceding clause, which confers membership on "incorporators and such other persons and incorporated and unincorporated organizations . . . as may be elected . . . and as such shall each, subscribe to at least one share of its stock and pay the initial installment thereon and a uniform entrance fee." *Ibid.* The language suggests that the common bond requirement is an internal organizational principle concerned primarily with defining membership in a way that secures a financially sound organization. There is no indication in the text of the provision or in the surrounding language that the membership limitation was even arguably designed to protect the commercial interests of competitors.

Nor is there any nontextual indication to that effect. Significantly, the operation of the common bond provision is much different from the statutes at issue in *Clarke, ICI*, and *Data Processing.* Those statutes evinced a congressional intent to legislate against competition, *e. g.*, *Clarke*, *supra*, at 403, because they imposed direct restrictions on banks generally, specifically barring their entry into certain markets. In *Data Processing* and *ICI*, "the question was what activities banks could engage in at all," and in *Clarke*, "the question [was] what activities banks [could] engage in without regard to the limitations imposed by state branching law." 479 U. S., at 403.

The operation of the common bond provision does not likewise denote a congressional desire to legislate against competition. First, the common bond requirement does not purport to restrict credit unions from becoming large, nationwide organizations, as might be expected if the provision embodied a congressional concern with the competitive consequences of credit union growth. See Brief for Petitioner NCUA 25–26 (Navy Federal Credit Union has 1.6 million members; American Airlines Federal Credit Union has 157,000 members); see also S. Rep. No. 555, 73d Cong., 2d Sess., 2 (1934) (citing "employees of the United States Government" as a "specific group with a common bond of occupation or association").

More tellingly, although the common bond provision applies to all credit unions, the restriction operates against credit unions individually: The common bond requirement speaks only to whether a *particular* credit union's membership can include a given group of customers, not to whether credit unions *in general* can serve that group. Even if a group of would-be customers does not share the requisite bond with a particular credit union, nothing in the common bond provision prevents that same group from joining a different credit union that is within the same "neighborhood, community, or rural district" or with whose members the group shares an adequate "occupation[al] or association[al]" connection. 12 U. S. C. § 1759. Also, the group could conceivably form its own credit union. In this sense, the common bond requirement does not limit credit unions collectively from serving any customers, nor does it bar any customers from being served by credit unions.

In *Data Processing*, *ICI*, and *Clarke*, by contrast, the statutes operated against national banks generally, prohibiting all banks from competing in a particular market: Banks in general were barred from providing a specific type of service (*Data Processing* and *ICI*), or from providing services at a particular location *(Clarke)*. Thus, whereas in *Data Proc-*

essing customers could not obtain data processing services from *any* national bank, and in *Clarke* customers outside of the permissible branching area likewise could not obtain financial services from *any* national bank, in this action customers who lack an adequate bond with the members of a particular credit union can still receive financial services from a *different* credit union. Unlike the statutes in *Data Processing*, *ICI*, and *Clarke*, then, the common bond provision does not erect a competitive boundary excluding credit unions from any identifiable market.

The circumstances surrounding the enactment of the FCUA also indicate that Congress did not intend to legislate against competition through the common bond provision. As the Court explains, *ante*, at 493, n. 6, the FCUA was enacted in the shadow of the Great Depression; Congress thought that the ability of credit unions to "come through the depression without failures, when banks have failed so notably, is a tribute to the worth of cooperative credit and indicates clearly the great potential value of rapid national credit union extension." S. Rep. No. 555, at 3–4. Credit unions were believed to enable the general public, which had been largely ignored by banks, to obtain credit at reasonable rates. See *id.*, at 2–3; *First Nat'l Bank & Trust Co.* v. *National Credit Union Administration*, 988 F. 2d 1272, 1274 (CADC), cert. denied, 510 U. S. 907 (1993). The common bond requirement "was seen as the cement that united credit union members in a cooperative venture, and was, therefore, thought important to credit unions' continued success." 988 F. 2d, at 1276. "Congress assumed implicitly that a common bond amongst members would ensure both that those making lending decisions would know more about applicants and that borrowers would be more reluctant to default." *Ibid.;* see *ante*, at 493, n. 6; A. Burger & T. Dacin, Field of Membership: An Evolving Concept 7–8 (2d ed. 1992).

The requirement of a common bond was thus meant to ensure that each credit union remains a cooperative institu-

tion that is economically stable and responsive to its members' needs. See 988 F. 2d, at 1276. As a principle of internal governance designed to secure the viability of individual credit unions in the interests of the membership, the common bond provision was in no way designed to impose a restriction on all credit unions in the interests of institutions that might one day become competitors. "Indeed, the very notion seems anomalous, because Congress' general purpose was to encourage the proliferation of credit unions, which were expected to provide service to those would-be customers that banks disdained." *Id.*, at 1275; see also *Branch Bank & Trust Co.* v. *National Credit Union Administration Bd.*, 786 F. 2d 621, 625–626 (CA4 1986), cert. denied, 479 U. S. 1063 (1987).

That the common bond requirement would later come to be viewed by competitors as a useful tool for curbing a credit union's membership should not affect the zone-of-interests inquiry. The pertinent question under the zone-of-interests test is whether Congress *intended* to protect certain interests through a particular provision, not whether, irrespective of congressional intent, a provision may have the *effect* of protecting those interests. See *Clarke*, 479 U. S., at 394 (the "matter [is] basically one of interpreting congressional intent"); *id.*, at 400; 988 F. 2d, at 1276 ("To be sure, as time passed—as credit unions flourished and competition among consumer lending institutions intensified—bankers began to see the common bond requirement as a desirable limitation on credit union expansion. . . . But that fact, assuming it is true, hardly serves to illuminate the intent of the Congress that first enacted the common bond requirement in 1934"). Otherwise, competitors could bring suits challenging the interpretation of a host of provisions in the FCUA that might have the unintended effect of furthering their competitive interest, such as restrictions on the loans credit unions can make or on the sums credit unions can borrow. See 12 U. S. C. §§ 1757(5), (6).

In this light, I read our decisions as establishing that there must at least be *some* indication in the statute, beyond the mere fact that its enforcement has the effect of incidentally benefiting the plaintiff, from which one can draw an inference that the plaintiff's injury arguably falls within the zone of interests sought to be protected by that statute. The provisions we construed in *Clarke*, *ICI*, and *Data Processing* allowed such an inference: Where Congress legislates against competition, one can properly infer that the statute is at least arguably intended to protect competitors from injury to their commercial interest, even if that is not the statute's principal objective. See *Bennett*, 520 U. S., at 176–177 (indicating that zone-of-interests test is satisfied if one of several statutory objectives corresponds with the interest sought to be protected by the plaintiff). Accordingly, "[t]here [was] sound reason to infer" in those cases "that Congress intended [the] class [of plaintiffs] to be relied upon to challenge agency disregard of the law." *Clarke*, *supra*, at 403 (internal quotation marks omitted).

The same cannot be said of respondents in this action, because neither the terms of the common bond provision, nor the way in which the provision operates, nor the circumstances surrounding its enactment, evince a congressional desire to legislate against competition. This, then, is an action where "the plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit." 479 U. S., at 399. The zone-of-interests test "seeks to exclude those plaintiffs whose suits are more likely to frustrate than to further statutory objectives," *id.*, at 397, n. 12, and one can readily envision circumstances in which the interests of competitors, who have the incentive to suppress credit union expansion in all circumstances, would be at odds with the statute's general aim of supporting the growth of credit unions that are cohesive and hence financially stable.

The Court's attempt to distinguish *Air Courier*, *ante*, at 498–499, is instructive in this regard. The Court observes that here, unlike in *Air Courier*, the plaintiffs suffer "competitive and direct injury." 498 U. S., at 528, n. 5. But the lack of competitive injury was pertinent in *Air Courier* because the statutes alleged to have been violated—the PES—were "competition statutes that regulate the conduct of competitors." *Ibid.* The common bond provision, for all the noted reasons, is not a competition law, and so the mere presence of "competitive and direct injury" should not establish standing. See *Hardin* v. *Kentucky Util. Co.*, 390 U. S. 1, 5–6 (1968). Thus, while in *Air Courier* "the statute in question regulated competition [but] the interests of the plaintiff employees had nothing to do with competition," *ante*, at 499, here, the common bond provision does *not* regulate competition but the interests of the plaintiff have *everything* to do with competition. In either case, the plaintiff's injury is at best "marginally related" to the interests sought to be protected by the statute, *Clarke*, *supra*, at 399, and the most that can be said is that the provision has the incidental effect of benefiting the plaintiffs. That was not enough to establish standing in *Air Courier*, and it should not suffice here.

IV

Prudential standing principles "are 'founded in concern about the proper—and properly limited—role of the courts in a democratic society.'" *Bennett*, *supra*, at 162 (quoting *Warth* v. *Seldin*, 422 U. S. 490, 498 (1975)). The zone-of-interests test is an integral part of the prudential standing inquiry, and we ought to apply the test in a way that gives it content. The analysis the Court undertakes today, in my view, leaves the zone-of-interests requirement a hollow one. As with the example in *National Wildlife Federation*, where the reporting company suffered injury from the alleged statutory violation, but the injury to the company's commercial interest was not within the zone of interests protected by

the statute, here, too, respondents suffer injury from the NCUA's interpretation of the common bond requirement, but the injury to their commercial interest is not within the zone of interests protected by the provision. Applying the zone-of-interests inquiry as it has been articulated in our decisions, I conclude that respondents have failed to establish standing. I would therefore vacate the judgment of the Court of Appeals and remand the action with instructions that it be dismissed.

Syllabus

ALASKA *v.* NATIVE VILLAGE OF VENETIE TRIBAL GOVERNMENT ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 96–1577. Argued December 10, 1997—Decided February 25, 1998

In 1943, the Secretary of the Interior created a reservation for the Neets'aii Gwich'in Indians on approximately 1.8 million acres surrounding Venetie and another tribal village in Alaska. In 1971, Congress enacted the Alaska Native Claims Settlement Act (ANCSA), which, *inter alia*, revoked the Venetie Reservation and all but one of the other reserves set aside for Native use by legislative or Executive action, 43 U. S. C. § 1618(a); completely extinguished all aboriginal claims to Alaska land, § 1603; and authorized the transfer of $962.5 million in state and federal funds and approximately 44 million acres of Alaska land to state-chartered private business corporations to be formed by Alaska Natives, §§ 1605, 1607, 1613. Such corporations received fee simple title to the transferred land, and no federal restrictions applied to subsequent land transfers by them. § 1613. In 1973, the two Native corporations established for the Neets'aii Gwich'in elected to make use of an ANCSA provision allowing them to take title to former reservation lands in return for forgoing the statute's monetary payments and transfers of nonreservation land. See § 1618(b). The United States conveyed fee simple title to the land constituting the former Venetie Reservation to the corporations as tenants in common; thereafter, they transferred title to respondent Native Village of Venetie Tribal Government (Tribe). In 1986, Alaska entered into a joint venture with a private contractor to construct a public school in Venetie. After the contractor and the State refused the Tribe's demand for approximately $161,000 in taxes for conducting business on tribal land, the Tribe sought to collect in tribal court. In the State's subsequent suit to enjoin collection of the tax, the Federal District Court held that, because the Tribe's ANCSA lands were not "Indian country" within the meaning of 18 U. S. C. § 1151(b), the Tribe lacked the power to impose a tax upon nonmembers of the Tribe. The Ninth Circuit disagreed and reversed.

Held: The Tribe's land is not "Indian country." Pp. 526–534.

(a) As here relevant, "Indian country" means "all dependent Indian communities within the . . . United States . . . ." § 1151(b). "[D]ependent Indian communities" refers to a limited category of Indian lands that are neither reservations nor allotments (the other categories of Indian

country set forth in § 1151), and that satisfy two requirements—first, they must have been set aside by the Federal Government for the use of the Indians as Indian land; second, they must be under federal superintendence. See *United States* v. *Sandoval*, 231 U. S. 28, 46, *United States* v. *Pelican*, 232 U. S. 442, 449, and *United States* v. *McGowan*, 302 U. S. 535, 538–539. Those cases held that these two requirements were necessary for a finding of "Indian country" generally before § 1151 was enacted, and Congress codified these requirements in enacting § 1151. Section 1151 does not purport to alter the cases' definition of Indian country. Section 1151(b)'s text, moreover, was taken virtually verbatim from *Sandoval*, *supra*, at 46, which language was later quoted in *McGowan*, *supra*, at 538. The legislative history states that § 1151(b)'s definition is based on those cases, and the requirements are reflected in § 1151(b)'s text: The federal set-aside requirement ensures that the land in question is occupied by an "Indian community"; the federal superintendence requirement guarantees that that community is sufficiently "dependent" on the Federal Government that the Government and the Indians involved, rather than the States, are to exercise primary jurisdiction over the land. Pp. 526–531.

(b) The Tribe's ANCSA lands do not satisfy either of these requirements. The federal set-aside requirement is not met because ANCSA, far from designating Alaskan lands for Indian use, revoked all existing Alaska reservations "*set aside* by legislation or by Executive or Secretarial Order *for Native use*," save one. 43 U. S. C. § 1618(a) (emphasis added). Congress could not more clearly have departed from its traditional practice of setting aside Indian lands. Cf. *Hagen* v. *Utah*, 510 U. S. 399, 401. The difficulty with the Tribe's argument that the ANCSA lands were set apart for the use of the Neets'aii Gwich'in, "as such," by their acquisition pursuant to § 1618(b) is that ANCSA transferred reservation lands to private, state-chartered Native corporations, without any restraints on alienation or significant use restrictions, and with the goal of avoiding "any permanent racially defined institutions, rights, privileges, or obligations," § 1601(b); see also §§ 1607, 1613. Thus, Congress contemplated that non-Natives could own the former Venetie Reservation, and the Tribe is free to use it for non-Indian purposes.

Equally clearly, ANCSA ended federal superintendence over the Tribe's lands by revoking all existing Alaska reservations but one, see § 1618(a), and by stating that ANCSA's settlement provisions were intended to avoid a "lengthy wardship or trusteeship," § 1601(b). Although ANCSA exempts the Tribe's land, as long as it has not been sold, leased, or developed, from adverse possession claims, real property taxes, and certain judgments, see § 1636(d), these protections simply

do not approach the level of active federal control and stewardship over Indian land that existed in this Court's prior cases. See, *e. g.*, *McGowan*, *supra*, at 537–539. Moreover, Congress' conveyance of ANCSA lands to state-chartered and state-regulated private business corporations is hardly a choice that comports with a desire to retain *federal* superintendence. The Tribe's contention that such superintendence is demonstrated by the Government's continuing provision of health, social, welfare, and economic programs to the Tribe is unpersuasive because those programs are merely forms of general federal aid, not indicia of active federal control. Moreover, the argument is severely undercut by the Tribe's view of ANCSA's primary purposes, namely, to effect Native self-determination and to end paternalism in federal Indian relations. The broad federal superintendence requirement for Indian country cuts against these objectives, but this Court is not free to ignore that requirement as codified in § 1151. Whether the concept of Indian country should be modified is a question entirely for Congress. Pp. 532–534.

101 F. 3d 1286, reversed.

THOMAS, J., delivered the opinion for a unanimous Court.

John G. Roberts, Jr., argued the cause for petitioner. With him on the briefs were *Gregory G. Garre*, *Bruce M. Botelho*, Attorney General of Alaska, *Barbara J. Ritchie*, Deputy Attorney General, and *D. Rebecca Snow* and *Elizabeth J. Barry*, Assistant Attorneys General.

Heather R. Kendall-Miller argued the cause for respondents. With her on the brief was *Lloyd Benton Miller*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of California et al. by *Daniel E. Lungren*, Attorney General of California, and *Thomas F. Gede*, Special Assistant Attorney General, and by the Attorneys General for their respective States as follows: *Bill Pryor* of Alabama, *Grant Woods* of Arizona, *Gale A. Norton* of Colorado, *Richard Blumenthal* of Connecticut, *Robert A. Butterworth* of Florida, *Jim Ryan* of Illinois, *Jeffrey A. Modisett* of Indiana, *Richard P. Ieyoub* of Louisiana, *Scott Harshbarger* of Massachusetts, *Frank J. Kelley* of Michigan, *Mike Moore* of Mississippi, *Jeremiah (Jay) W. Nixon* of Missouri, *Joseph P. Mazurek* of Montana, *Frankie Sue Del Papa* of Nevada, *Dennis C. Vacco* of New York, *Michael F. Easley* of North Carolina, *Heidi Heitkamp* of North Dakota, *Mike Fisher* of Pennsylvania, *Betty D. Montgomery* of Ohio, *Jeffrey B. Pine* of Rhode Island, *Mark Barnett* of South Dakota, *Jan Graham* of Utah, *William H. Sorrell* of Vermont, and *William U. Hill* of Wyoming;

JUSTICE THOMAS delivered the opinion of the Court.

In this case, we must decide whether approximately 1.8 million acres of land in northern Alaska, owned in fee simple by the Native Village of Venetie Tribal Government pursuant to the Alaska Native Claims Settlement Act, is "Indian country." We conclude that it is not, and we therefore reverse the judgment below.

I

The Village of Venetie, which is located in Alaska above the Arctic Circle, is home to the Neets'aii Gwich'in Indians. In 1943, the Secretary of the Interior created a reservation for the Neets'aii Gwich'in out of the land surrounding Venetie and another nearby tribal village, Arctic Village. See App. to Pet. for Cert. 2a. This land, which is about the size of Delaware, remained a reservation until 1971, when Congress enacted the Alaska Native Claims Settlement Act (ANCSA), a comprehensive statute designed to settle all land claims by Alaska Natives. See 85 Stat. 688, as amended, 43 U. S. C. § 1601 *et seq.*

In enacting ANCSA, Congress sought to end the sort of federal supervision over Indian affairs that had previously

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for the Alaska Fish & Wildlife Federation and Outdoor Council, Inc., et al. by *James Martin Johnson* and *Gregory Frank Cook;* and for the Council of State Governments et al. by *Richard Ruda*, *Charles F. Lettow*, and *Michael R. Lazerwitz.*

Briefs of *amici curiae* urging affirmance were filed for the Navajo Nation et al. by *Paul E. Frye*, *Judith K. Bush*, and *James R. Bellis;* for the Tanana Chiefs Conference by *Bertram E. Hirsch*, *Michael J. Walleri*, *Bruce J. Ennis, Jr.*, and *Thomas Perrelli;* for Koniag, Inc., by *R. Collin Middleton*, *William H. Timme*, and *Timothy W. Seaver;* and for Indian Law Professors by *Richard B. Collins*, *David H. Getches*, *Raphael J. Moses*, *Robert N. Clinton*, *Carole E. Goldberg*, and *Ralph W. Johnson.*

Briefs of *amici curiae* were filed for the Alaska Federation of Natives et al. by *Arlinda F. Locklear*, *David S. Case*, *Carol H. Daniel*, *Douglas Pope*, *Hans Walker, Jr.*, and *Marsha Kostura Schmidt;* for the Metlakatla Indian Community by *S. Bobo Dean* and *Marsha Kostura Schmidt;* and for Shee Atika, Inc., by *Bruce N. Edwards.*

marked federal Indian policy. ANCSA's text states that the settlement of the land claims was to be accomplished

> "without litigation, with maximum participation by Natives in decisions affecting their rights and property, without establishing any permanent racially defined institutions, rights, privileges, or obligations, [and] *without creating a reservation system or lengthy wardship or trusteeship.*" § 1601(b) (emphasis added).

To this end, ANCSA revoked "the various reserves set aside . . . for Native use" by legislative or Executive action, except for the Annette Island Reserve inhabited by the Metlakatla Indians, and completely extinguished all aboriginal claims to Alaska land. §§ 1603, 1618(a). In return, Congress authorized the transfer of $962.5 million in state and federal funds and approximately 44 million acres of Alaska land to state-chartered private business corporations that were to be formed pursuant to the statute; all of the shareholders of these corporations were required to be Alaska Natives. §§ 1605, 1607, 1613. The ANCSA corporations received title to the transferred land in fee simple, and no federal restrictions applied to subsequent land transfers by them.

Pursuant to ANCSA, two Native corporations were established for the Neets'aii Gwich'in, one in Venetie, and one in Arctic Village. In 1973, those corporations elected to make use of a provision in ANCSA allowing Native corporations to take title to former reservation lands set aside for Indians prior to 1971, in return for forgoing the statute's monetary payments and transfers of nonreservation land. See § 1618(b). The United States conveyed fee simple title to the land constituting the former Venetie Reservation to the two corporations as tenants in common; thereafter, the corporations transferred title to the land to the Native Village of Venetie Tribal Government (Tribe).

In 1986, the State of Alaska entered into a joint venture agreement with a private contractor for the construction of a public school in Venetie, financed with state funds. In December 1986, the Tribe notified the contractor that it owed the Tribe approximately $161,000 in taxes for conducting business activities on the Tribe's land. When both the contractor and the State, which under the joint venture agreement was the party responsible for paying the tax, refused to pay, the Tribe attempted to collect the tax in tribal court from the State, the school district, and the contractor.

The State then filed suit in Federal District Court for the District of Alaska and sought to enjoin collection of the tax. The Tribe moved to dismiss the State's complaint, but the District Court denied the motion. It held that the Tribe's ANCSA lands were not Indian country within the meaning of 18 U. S. C. § 1151(b), which provides that Indian country includes all "dependent Indian communities within the borders of the United States"; as a result, "the Trib[e] [did] not have the power to impose a tax upon non-members of the tribe such as the plaintiffs." *Alaska ex rel. Yukon Flats School Dist.* v. *Native Village of Venetie Tribal Government*, No. F87–0051 CV (HRH) (D. Alaska, Aug. 2, 1995), App. to Pet. for Cert. 79a.

The Court of Appeals for the Ninth Circuit reversed. 101 F. 3d 1286 (1996). The Court held that a six-factor balancing test should be used to interpret the term "dependent Indian communities" in § 1151(b), see *id.*, at 1292–1293, and it summarized the requirements of that test as follows:

> "[A] dependent Indian community requires a showing of federal set aside and federal superintendence. These requirements are to be construed broadly and should be informed in the particular case by a consideration of the following factors:
>
> "(1) the nature of the area; (2) the relationship of the area inhabitants to Indian tribes and the federal government; (3) the established practice of government agen-

> cies toward that area; (4) the degree of federal ownership of and control over the area; (5) the degree of cohesiveness of the area inhabitants; and (6) the extent to which the area was set aside for the use, occupancy, and protection of dependent Indian peoples." *Id.*, at 1294.

Applying this test, the Court of Appeals concluded that the "federal set aside" and "federal superintendence" requirements were met and that the Tribe's land was therefore Indian country. *Id.*, at 1300–1302.

Judge Fernandez wrote separately. In his view, ANCSA was intended to be a departure from traditional Indian policy: "It attempted to preserve Indian tribes, but simultaneously attempted to sever them from the land; it attempted to leave them as sovereign entities for some purposes, but as sovereigns without territorial reach." *Id.*, at 1303. Noting that the majority's holding called into question the status of all 44 million acres of land conveyed by ANCSA, he wrote that "[w]ere we writing on a clean slate, I would eschew the tribe's request and would avoid creating the kind of chaos that the 92nd Congress wisely sought to avoid." *Id.*, at 1304. He nonetheless concluded that Ninth Circuit precedent required him to concur in the result. *Ibid.* We granted certiorari to determine whether the Court of Appeals correctly determined that the Tribe's land is Indian country. 521 U. S. 1103 (1997).

II

A

"Indian country" is currently defined at 18 U. S. C. § 1151. In relevant part, the statute provides:

> "[T]he term 'Indian country' . . . means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government . . . , (b) all dependent Indian communities within the borders of

> the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."

Although this definition by its terms relates only to federal criminal jurisdiction, we have recognized that it also generally applies to questions of civil jurisdiction such as the one at issue here. See *DeCoteau* v. *District County Court for Tenth Judicial Dist.*, 420 U. S. 425, 427, n. 2 (1975).[1]

Because ANCSA revoked the Venetie Reservation, and because no Indian allotments are at issue, whether the Tribe's land is Indian country depends on whether it falls within the "dependent Indian communities" prong of the statute, § 1151(b).[2] Since 18 U. S. C. § 1151 was enacted in 1948, we have not had an occasion to interpret the term "dependent Indian communities." We now hold that it refers to a limited category of Indian lands that are neither reservations nor allotments, and that satisfy two requirements—first, they must have been set aside by the Federal Government for the use of the Indians as Indian land; second, they must be under federal superintendence. Our holding is based on our conclusion that in enacting § 1151, Congress codified these two requirements, which previously we had held necessary for a finding of "Indian country" generally.

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[1] Generally speaking, primary jurisdiction over land that is Indian country rests with the Federal Government and the Indian tribe inhabiting it, and not with the States. See, *e. g.*, *South Dakota* v. *Yankton Sioux Tribe*, *ante*, at 343.

[2] As noted, only one Indian reservation, the Annette Island Reserve, survived ANCSA. Other Indian country exists in Alaska post-ANCSA only if the land in question meets the requirements of a "dependent Indian communit[y]" under our interpretation of § 1151(b), or if it constitutes "allotments" under § 1151(c).

Before § 1151 was enacted, we held in three cases that Indian lands that were not reservations could be Indian country and that the Federal Government could therefore exercise jurisdiction over them. See *United States* v. *Sandoval*, 231 U. S. 28 (1913); *United States* v. *Pelican*, 232 U. S. 442 (1914); *United States* v. *McGowan*, 302 U. S. 535 (1938).[3] The first of these cases, *United States* v. *Sandoval*, posed the question whether the Federal Government could constitutionally proscribe the introduction of "intoxicating liquor" into the lands of the Pueblo Indians. 231 U. S., at 36. We rejected the contention that federal power could not extend to the Pueblo lands because, unlike Indians living on reservations, the Pueblos owned their lands in fee simple. *Id.*, at 48. We indicated that the Pueblos' title was not fee simple title in the commonly understood sense of the term. Congress had recognized the Pueblos' title to their ancestral lands by statute, and Executive orders had reserved additional public lands "for the [Pueblos'] use and occupancy." *Id.*, at 39. In addition, Congress had enacted legislation with respect to the lands "in the exercise of the Government's guardianship over th[e] [Indian] tribes and their affairs," *id.*, at 48, including federal restrictions on the lands' alienation.[4] Congress therefore could exercise jurisdiction over the Pueblo lands, under its general power over "all dependent Indian communities within its borders, whether within its original territory or territory subsequently acquired, and whether within or without the limits of a State." *Id.*, at 46.

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[3] We had also held, not surprisingly, that Indian reservations were Indian country. See, *e. g.*, *Donnelly* v. *United States*, 228 U. S. 243, 269 (1913).

[4] One such law was Rev. Stat. § 2116, 25 U. S. C. § 177, which rendered invalid any conveyance of Indian land not made by treaty or convention entered into pursuant to the Constitution, and which we later held applicable to the Pueblos. See *United States* v. *Candelaria*, 271 U. S. 432, 441–442 (1926).

In *United States* v. *Pelican*, we held that Indian allotments—parcels of land created out of a diminished Indian reservation and held in trust by the Federal Government for the benefit of individual Indians—were Indian country. 232 U. S., at 449. We stated that the original reservation was Indian country "simply because *it had been validly set apart for the use of the Indians as such, under the superintendence of the Government.*" *Ibid.* (emphasis added). After the reservation's diminishment, the allotments continued to be Indian country, as "the lands remained Indian lands set apart for Indians under governmental care; . . . we are unable to find ground for the conclusion that they became other than Indian country through the distribution into separate holdings, the Government retaining control." *Ibid.*

In *United States* v. *McGowan*, we held that the Reno Indian Colony in Reno, Nevada, was Indian country even though it was not a reservation. 302 U. S., at 539. We reasoned that, like Indian reservations generally, the colony had been "'validly set apart for the use of the Indians . . . under the superintendence of the Government.'" *Ibid.* (quoting *United States* v. *Pelican*, *supra*, at 449) (emphasis deleted). We noted that the Federal Government had created the colony by purchasing the land with "funds appropriated by Congress" and that the Federal Government held the colony's land in trust for the benefit of the Indians residing there. 302 U. S., at 537, and n. 4. We also emphasized that the Federal Government possessed the authority to enact "regulations and protective laws respecting th[e] [colony's] territory," *id.*, at 539, which it had exercised in retaining title to the land and permitting the Indians to live there. For these reasons, a federal statute requiring the forfeiture of automobiles carrying "intoxicants" into the Indian country applied to the colony; we noted that the law was an example of the protections that Congress had extended to all "'dependent Indian communities'" within the territory of the United

States. *Id.*, at 538 (quoting *United States* v. *Sandoval*, *supra*, at 46) (emphasis deleted).

In each of these cases, therefore, we relied upon a finding of both a federal set-aside and federal superintendence in concluding that the Indian lands in question constituted Indian country and that it was permissible for the Federal Government to exercise jurisdiction over them. Section 1151 does not purport to alter this definition of Indian country, but merely lists the three different categories of Indian country mentioned in our prior cases: Indian reservations, see *Donnelly* v. *United States*, 228 U. S. 243, 269 (1913)*;* dependent Indian communities, see *United States* v. *McGowan*, *supra*, at 538–539; *United States* v. *Sandoval*, *supra*, at 46; and allotments, see *United States* v. *Pelican*, *supra*, at 449. The entire text of § 1151(b), and not just the term "dependent Indian communities," is taken virtually verbatim from *Sandoval*, which language we later quoted in *McGowan.* See *United States* v. *Sandoval*, *supra*, at 46; *United States* v. *McGowan*, *supra*, at 538. Moreover, the Historical and Revision Notes to the statute that enacted § 1151 state that § 1151's definition of Indian country is based "on [the] latest construction of the term by the United States Supreme Court in *U. S. v. McGowan* . . . following *U. S. v. Sandoval.* (See also *Donnelly v. U. S.*) . . . . Indian allotments were included in the definition on authority of the case of *U. S. v. Pelican.*" See Notes to 1948 Act, following 18 U. S. C. § 1151, p. 276 (citations omitted).

We therefore must conclude that in enacting § 1151(b), Congress indicated that a federal set-aside *and* a federal superintendence requirement must be satisfied for a finding of a "dependent Indian community"—just as those requirements had to be met for a finding of Indian country before 18 U. S. C. § 1151 was enacted.[5] These requirements are re-

[5] In attempting to defend the Court of Appeals' judgment, the Tribe asks us to adopt a different conception of the term "dependent Indian communities." Borrowing from Chief Justice Marshall's seminal opinions

flected in the text of § 1151(b): The federal set-aside requirement ensures that the land in question is occupied by an "Indian community";[6] the federal superintendence requirement guarantees that the Indian community is sufficiently "dependent" on the Federal Government that the Federal Government and the Indians involved, rather than the States, are to exercise primary jurisdiction over the land in question.[7]

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in *Cherokee Nation* v. *Georgia*, 5 Pet. 1 (1831), and *Worcester* v. *Georgia*, 6 Pet. 515 (1832), the Tribe argues that the term refers to *political* dependence, and that Indian country exists wherever land is owned by a federally recognized tribe. Federally recognized tribes, the Tribe contends, are "domestic dependent nations," *Cherokee Nation* v. *Georgia*, *supra*, at 17, and thus *ipso facto* under the superintendence of the Federal Government. See Brief for Respondents 23–24.

This argument ignores our Indian country precedents, which indicate both that the Federal Government must take some action setting apart the land for the use of the Indians "as such," and that it is *the land in question*, and not merely the Indian tribe inhabiting it, that must be under the superintendence of the Federal Government. See, *e. g.*, *United States* v. *McGowan*, 302 U. S. 535, 539 (1938) ("The Reno Colony has been validly set apart for the use of the Indians. It is under the superintendence of the Government. The Government retains title to the lands which it permits the Indians to occupy"); *United States* v. *Pelican*, 232 U. S. 442, 449 (1914) (noting that the Federal Government retained "ultimate control" over the allotments in question).

[6] The federal set-aside requirement also reflects the fact that because Congress has plenary power over Indian affairs, see U. S. Const., Art. I, § 8, cl. 3, some explicit action by Congress (or the Executive, acting under delegated authority) must be taken to create or to recognize Indian country.

[7] Although the Court of Appeals majority also reached the conclusion that § 1151(b) imposes federal set-aside and federal superintendence requirements, it defined those requirements far differently, by resort to its "textured" six-factor balancing test. See 101 F. 3d 1286, 1293 (CA9 1996). Three of those factors, however, were extremely far removed from the requirements themselves: "the nature of the area"; "the relationship of the area inhabitants to Indian tribes and the federal government"; and "the degree of cohesiveness of the area inhabitants." *Id.*, at 1300–1301. The Court of Appeals majority, however, accorded those factors virtually

B

The Tribe's ANCSA lands do not satisfy either of these requirements. After the enactment of ANCSA, the Tribe's lands are neither "validly set apart for the use of the Indians as such," nor are they under the superintendence of the Federal Government.

With respect to the federal set-aside requirement, it is significant that ANCSA, far from designating Alaskan lands for Indian use, revoked the existing Venetie Reservation, and indeed revoked all existing reservations in Alaska "*set aside* by legislation or by Executive or Secretarial Order *for Native use*," save one. 43 U. S. C. § 1618(a) (emphasis added). In no clearer fashion could Congress have departed from its traditional practice of setting aside Indian lands. Cf. *Hagen* v. *Utah*, 510 U. S. 399, 401 (1994) (holding that by diminishing a reservation and opening the diminished lands to settlement by non-Indians, Congress had extinguished Indian country on the diminished lands).

The Tribe argues—and the Court of Appeals majority agreed, see 101 F. 3d, at 1301–1302—that the ANCSA lands were set apart for the use of the Neets'aii Gwich'in, "as such," because the Neets'aii Gwich'in acquired the lands pursuant to an ANCSA provision allowing Natives to take title to former reservation lands in return for forgoing all other ANCSA transfers. Brief for Respondents 40–41 (citing 43 U. S. C. § 1618(b)). The difficulty with this contention is that ANCSA transferred reservation lands to private, state-chartered Native corporations, without any restraints on alienation or significant use restrictions, and with the goal of avoiding "any permanent racially defined institutions, rights,

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the same weight as other, more relevant ones: "the degree of federal ownership of and control over the area," and "the extent to which the area was set aside for the use, occupancy, and protection of dependent Indian peoples." *Id.*, at 1301. By balancing these "factors" against one another, the Court of Appeals reduced the federal set-aside and superintendence requirements to mere considerations.

privileges, or obligations." § 1601(b); see also §§ 1607, 1613. By ANCSA's very design, Native corporations can immediately convey former reservation lands to non-Natives, and such corporations are not restricted to using those lands for Indian purposes. Because Congress contemplated that non-Natives could own the former Venetie Reservation, and because the Tribe is free to use it for non-Indian purposes, we must conclude that the federal set-aside requirement is not met. Cf. *United States* v. *McGowan*, 302 U. S., at 538 (noting that the land constituting the Reno Indian Colony was held in trust by the Federal Government for the benefit of the Indians); see also *United States* v. *Pelican*, 232 U. S., at 447 (noting federal restraints on the alienation of the allotments in question).

Equally clearly, ANCSA ended federal superintendence over the Tribe's lands. As noted above, ANCSA revoked the Venetie Reservation along with every other reservation in Alaska but one, see 43 U. S. C. § 1618(a), and Congress stated explicitly that ANCSA's settlement provisions were intended to avoid a "lengthy wardship or trusteeship." § 1601(b). After ANCSA, federal protection of the Tribe's land is essentially limited to a statutory declaration that the land is exempt from adverse possession claims, real property taxes, and certain judgments as long as it has not been sold, leased, or developed. See § 1636(d). These protections, if they can be called that, simply do not approach the level of superintendence over the Indians' land that existed in our prior cases. In each of those cases, the Federal Government actively controlled the lands in question, effectively acting as a guardian for the Indians. See *United States* v. *McGowan*, *supra*, at 537–539 (emphasizing that the Federal Government had retained title to the land to protect the Indians living there); *United States* v. *Pelican*, *supra*, at 447 (stating that the allotments were "under the jurisdiction and control of Congress for all governmental purposes, relating to the guardianship and protection of the Indians"); *United States*

v. *Sandoval*, 231 U. S., at 37, n. 1 (citing federal statute placing the Pueblos' land under the "'absolute jurisdiction and control of the Congress of the United States'"). Finally, it is worth noting that Congress conveyed ANCSA lands to state-chartered and state-regulated private business corporations, hardly a choice that comports with a desire to retain *federal* superintendence over the land.

The Tribe contends that the requisite federal superintendence is present because the Federal Government provides "desperately needed health, social, welfare, and economic programs" to the Tribe. Brief for Respondents 28. The Court of Appeals majority found this argument persuasive. 101 F. 3d, at 1301. Our Indian country precedents, however, do not suggest that the mere provision of "desperately needed" social programs can support a finding of Indian country. Such health, education, and welfare benefits are merely forms of general federal aid; considered either alone or in tandem with ANCSA's minimal land-related protections, they are not indicia of active federal control over the Tribe's land sufficient to support a finding of federal superintendence.

The Tribe's federal superintendence argument, moreover, is severely undercut by its view of ANCSA's primary purposes, namely, to effect Native self-determination and to end paternalism in federal Indian relations. See, *e. g.*, Brief for Respondents 44 (noting that ANCSA's land transfers "foster[ed] greater tribal self-determination" and "renounc[ed] [Bureau of Indian Affairs] paternalism"). The broad federal superintendence requirement for Indian country cuts against these objectives, but we are not free to ignore that requirement as codified in 18 U. S. C. § 1151. Whether the concept of Indian country should be modified is a question entirely for Congress.

The judgment of the Court of Appeals is reversed.

It is so ordered.

Reporter's Note

The next page is purposely numbered 801. The numbers between 534 and 801 were intentionally omitted, in order to make it possible to publish the orders with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

ORDERS FOR OCTOBER 6, 1997, THROUGH MARCH 2, 1998

OCTOBER 6, 1997

Affirmed on Appeal

No. 96–1680. SILVER, SPEAKER OF THE HOUSE FOR THE NEW YORK STATE ASSEMBLY, ET AL. *v.* DIAZ ET AL.;

No. 96–1904. ACOSTA ET AL. *v.* DIAZ ET AL.; and

No. 96–2008. LAU ET AL. *v.* DIAZ ET AL. Affirmed on appeals from D. C. E. D. N. Y. Reported below: 978 F. Supp. 96.

Certiorari Granted—Vacated and Remanded

No. 96–1598. O'LEARY ET AL. *v.* MACK ET AL. C. A. 7th Cir. Motion of respondent John Mack for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *City of Boerne* v. *Flores*, 521 U. S. 507 (1997). Reported below: 80 F. 3d 1175.

No. 96–1853. BURLINGTON NORTHERN RAILROAD CO. *v.* ESTATE OF RED WOLF ET AL. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Strate* v. *A–1 Contractors*, 520 U. S. 438 (1997). Reported below: 106 F. 3d 868.

No. 96–8308. LANCASTER *v.* FLORIDA. Sup. Ct. Fla. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Lynce* v. *Mathis*, 519 U. S. 433 (1997). Reported below: 687 So. 2d 1299.

No. 96–8531. LAMB *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Lynce* v. *Mathis*, 519 U. S. 433 (1997). Reported below: 687 So. 2d 1304.

No. 96–8978. GOMEZ *v.* DETELLA, WARDEN. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis*

granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Lindh* v. *Murphy*, 521 U. S. 320 (1997). Reported below: 106 F. 3d 192.

No. 96–9072. PITSONBARGER *v.* GRAMLEY, WARDEN. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Lindh* v. *Murphy*, 521 U. S. 320 (1997). Reported below: 103 F. 3d 1293.

Miscellaneous Orders

No. A–185 (97–5685). DWIGHT B. *v.* JERRY LYNN C. Ct. App. Cal., 4th App. Dist. Application for stay, addressed to JUSTICE GINSBURG and referred to the Court, denied.

No. A–196. LYNCH ET AL. *v.* UNITED STATES. C. A. 2d Cir. Application for stay, addressed to JUSTICE THOMAS and referred to the Court, denied.

No. D–1794. IN RE DISBARMENT OF ECHOLS. Motion for reconsideration of order of disbarment denied. [For earlier order herein, see, *e. g.*, 520 U. S. 1262.]

No. D–1809. IN RE DISBARMENT OF LANDAN. Disbarment entered. [For earlier order herein, see 520 U. S. 1262.]

No. M–1. GUERRERO-MARTINEZ *v.* UNITED STATES. Motion for leave to file petition for writ of certiorari under seal with redacted copies of the public record granted.

No. M–2. WEBSTER *v.* INDIANA. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner denied.

No. M–3. REYNOLDS *v.* CASPARI, SUPERINTENDENT, MISSOURI EASTERN CORRECTIONAL CENTER, ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. M–4. MILTON *v.* SOUTHWESTERN BELL TELEPHONE CO.;
No. M–5. MOLSON ET UX. *v.* STANDARD FEDERAL BANK;
No. M–6. MARTINEZ *v.* OFFICE OF PERSONNEL MANAGEMENT;
No. M–7. BARDSLEY *v.* POWELL, TRACHTMAN, LOGAN, CARRLE & BOWMAN ET AL.;

No. M–10. McKay *v.* Toyota Motor Manufacturing, U. S. A., Inc.;

No. M–11. Pearson *v.* John Hancock Mutual Life Insurance Co.;

No. M–13. Weiss *v.* La Terraza Apartments;

No. M–14. Boitnott *v.* Cascarano; and

No. M–15. Hwa Ja Kim et al. *v.* Wills & Van Metre, Inc. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. M–8. Bilzerian *v.* HSSM #7 Limited Partnership. Motion to direct the Clerk to file petition for writ of certiorari with an appendix not in compliance with this Court's Rule 33.1 denied.

No. 105, Orig. Kansas *v.* Colorado. Second Report of the Special Master received and ordered filed. Exceptions to the Report with supporting briefs may be filed within 45 days. Replies, if any, with supporting briefs may be filed within 30 days. [For earlier order herein, see, *e. g.*, 519 U. S. 1005.]

No. 96–552. Agostini et al. *v.* Felton et al.; and

No. 96–553. Chancellor, Board of Education of the City of New York, et al. *v.* Felton et al., 521 U. S. 203. Motion of respondents to retax costs denied.

No. 96–1163. Mallott & Peterson et al. *v.* Stadtmiller et al., 520 U. S. 1239. Motion of respondent Beatrice Stadtmiller for attorney's fees denied without prejudice to refiling in the United States Court of Appeals for the Ninth Circuit.

No. 96–1570. NYNEX Corp. et al. *v.* Discon, Inc. C. A. 2d Cir.;

No. 96–1793. Cedar Rapids Community School District *v.* Garret F., a Minor, by His Mother and Next Friend, Charlene F. C. A. 8th Cir.;

No. 97–49. Portland General Electric Co. *v.* Columbia Steel Casting Co., Inc. C. A. 9th Cir.; and

No. 97–144. Pearson *v.* Hines. C. A. 9th Cir. The Acting Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 96–1579. BROGAN *v.* UNITED STATES. C. A. 2d Cir. [Certiorari granted, 520 U. S. 1263.] Motion of respondent Reinaldo Roman for leave to proceed further herein *in forma pauperis* granted.

No. 96–1769. OHIO ADULT PAROLE AUTHORITY ET AL. *v.* WOODARD. C. A. 6th Cir. [Certiorari granted, 521 U. S. 1117.] Motion for appointment of counsel granted, and it is ordered that Michael J. Benza, Esq., of Columbus, Ohio, be appointed to serve as counsel for respondent in this case.

No. 96–1936. FAIRPORT INTERNATIONAL EXPLORATION, INC. *v.* SHIPWRECKED VESSEL KNOWN AS CAPTAIN LAWRENCE, IN REM, ET AL. C. A. 6th Cir. Motion of Columbus-America Discovery Group, Inc., for leave to file a brief as *amicus curiae* granted.

No. 96–1962. COHEN *v.* LITTLE SIX, INC., DBA MYSTIC LAKE CASINO. Sup. Ct. Minn. Motion of respondent for sanctions denied.

No. 96–7901. TREST *v.* CAIN, WARDEN. C. A. 5th Cir. [Certiorari granted, 520 U. S. 1239.] Motion of petitioner to enlarge the record granted. Motion of respondent to enlarge the record granted.

No. 96–9413. IN RE TYLER;

No. 96–9513. ARTEAGA *v.* CALIFORNIA. C. A. 9th Cir.; and

No. 97–5124. IN RE TYLER. Motions of petitioners for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioners are allowed until October 27, 1997, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 97–472. JONES, SECRETARY OF STATE OF CALIFORNIA *v.* BATES ET AL. C. A. 9th Cir. Motion of petitioner to expedite consideration of the petition for writ of certiorari before judgment denied.

No. 97–5051. DIGIOVANNI *v.* PENNSYLVANIA. Super. Ct. Pa.;

No. 97–5299. TALMAGE *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 4th Cir.; and

No. 97–5770. IN RE JOHNSON. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed

until October 27, 1997, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 96–2044. IN RE KOST;
No. 96–9360. IN RE SCOTT;
No. 96–9503. IN RE BENNETT;
No. 97–62. IN RE MCDONALD;
No. 97–370. IN RE HOPE;
No. 97–5087. IN RE ZANI;
No. 97–5121. IN RE OKORO;
No. 97–5173. IN RE CARREIRO;
No. 97–5273. IN RE SMITH;
No. 97–5288. IN RE ANDERSON;
No. 97–5358. IN RE MICHAELS;
No. 97–5499. IN RE POLLARD;
No. 97–5547. IN RE WILLIS;
No. 97–5682. IN RE GRAVES; and
No. 97–5772. IN RE MOORE. Petitions for writs of habeas corpus denied.

No. 96–8553. IN RE KORANDO;
No. 96–9035. IN RE GEORGI;
No. 96–9140. IN RE THOMPSON;
No. 96–9226. IN RE FRANKLIN;
No. 96–9280. IN RE SCOTT;
No. 96–9341. IN RE REIMAN;
No. 96–9345. IN RE SCHAFFER;
No. 96–9451. IN RE MAYS;
No. 96–9570. IN RE MOLINA;
No. 97–179. IN RE KORNAFEL;
No. 97–200. IN RE UNITED STATES EX REL. HAYCOCK;
No. 97–222. IN RE DROBNY ET UX.;
No. 97–5103. IN RE LANE;
No. 97–5134. IN RE BANKS;
No. 97–5242. IN RE CLARK;
No. 97–5243. IN RE CLARK;
No. 97–5244. IN RE CLARK;
No. 97–5257. IN RE FRANKLIN;
No. 97–5332. IN RE KARAGIANNOPOULOS ET AL.;
No. 97–5371. IN RE BAEZ;

No. 97–5461. IN RE AKPAETI; and
No. 97–5585. IN RE LINDOW. Petitions for writs of mandamus denied.

No. 96–1870. IN RE MCMAHON;
No. 96–9081. IN RE AZUBUKO;
No. 96–9479. IN RE OTIS;
No. 96–9529. IN RE JOYNER JENNINGS;
No. 97–5122. IN RE BIERLEY;
No. 97–5123. IN RE BIERLEY;
No. 97–5305. IN RE WICKWARE; and
No. 97–5550. IN RE LEE. Petitions for writs of mandamus and/or prohibition denied.

Certiorari Denied

No. 96–1440. STILL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 102 F. 3d 118.

No. 96–1550. MARYLAND STATE DEPARTMENT OF EDUCATION, DIVISION OF REHABILITATION SERVICES *v.* DEPARTMENT OF VETERANS AFFAIRS ET AL.; and
No. 96–1551. NATIONAL FEDERATION OF THE BLIND ET AL. *v.* DEPARTMENT OF VETERANS AFFAIRS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 98 F. 3d 165.

No. 96–1556. LOUGH *v.* BRUNSWICK CORP., DBA MERCURY MARINE. C. A. Fed. Cir. Certiorari denied. Reported below: 86 F. 3d 1113.

No. 96–1557. CALHOON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 97 F. 3d 518.

No. 96–1559. OWENS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 103 F. 3d 953.

No. 96–1595. ARIZONA ET AL. *v.* UNITED STATES ET AL.; and
No. 96–1596. CALIFORNIA ET AL. *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 104 F. 3d 1095 (No. 96–1595) and 1086 (No. 96–1596).

No. 96–1607. DUWAMISH INDIAN TRIBE ET AL. *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 98 F. 3d 1159.

No. 96–1614. LODER *v.* CITY OF GLENDALE ET AL.; and
No. 96–1814. CITY OF GLENDALE ET AL. *v.* LODER. Sup. Ct. Cal. Certiorari denied. Reported below: 14 Cal. 4th 846, 927 P. 2d 1200.

No. 96–1617. PUEBLO OF SANTA ANA ET AL. *v.* KELLY, UNITED STATES ATTORNEY FOR THE DISTRICT OF NEW MEXICO, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 104 F. 3d 1546.

No. 96–1627. VAN ZELST ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 7th Cir. Certiorari denied. Reported below: 100 F. 3d 1259.

No. 96–1648. RICHENBERG *v.* COHEN, SECRETARY OF DEFENSE, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 97 F. 3d 256.

No. 96–1653. OSAREN *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 5th Cir. Certiorari denied. Reported below: 105 F. 3d 656.

No. 96–1661. AMCOR CAPITAL CORP. ET AL. *v.* GOOLKASIAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 106 F. 3d 406.

No. 96–1695. ATTALA COUNTY ET AL. *v.* TEAGUE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 92 F. 3d 283.

No. 96–1703. BUSH & BURCHETT, INC. *v.* HERMAN, SECRETARY OF LABOR, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 117 F. 3d 932.

No. 96–1717. FREE AIR CORP. *v.* FEDERAL COMMUNICATIONS COMMISSION. C. A. D. C. Cir. Certiorari denied.

No. 96–1720. JONES *v.* TEXAS. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 96–1733. FEEZOR ET AL. *v.* BABBITT, SECRETARY OF THE INTERIOR, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 100 F. 3d 556.

No. 96–1738. RYBAR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 103 F. 3d 273.

No. 96–1740. GESKE & SONS, INC. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 103 F. 3d 1366.

No. 96–1743. JOHNSON & HIGGINS, INC. *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 2d Cir. Certiorari denied. Reported below: 91 F. 3d 1529.

No. 96–1753. COUNTY OF NAPA *v.* SCHUTT. C. A. 9th Cir. Certiorari denied. Reported below: 105 F. 3d 666.

No. 96–1758. MCCLURE ET VIR *v.* CITY OF LONG BEACH ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 104 F. 3d 365.

No. 96–1759. KIRK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 105 F. 3d 997.

No. 96–1760. HILL ET UX. *v.* GATEWAY 2000, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 105 F. 3d 1147.

No. 96–1762. WASHINGTON RESTAURANT MANAGEMENT, INC. *v.* VONS COS., INC. Sup. Ct. Cal. Certiorari denied. Reported below: 14 Cal. 4th 434, 926 P. 2d 1085.

No. 96–1763. SPIEGEL *v.* MESCALL ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 281 Ill. App. 3d 1136, 701 N. E. 2d 838.

No. 96–1764. SPIEGEL ET UX. *v.* HOLLYWOOD TOWERS CONDOMINIUM ASSN. ET AL. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 283 Ill. App. 3d 992, 671 N. E. 2d 350.

No. 96–1770. MILLER ET AL. *v.* PROVENZ ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 102 F. 3d 1478.

No. 96–1772. FLICK *v.* WEDDINGTON PRODUCTIONS, INC. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–1773. ASTORIA FEDERAL SAVINGS & LOAN ASSN. *v.* NEW YORK ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 222 App. Div. 2d 36, 644 N. Y. S. 2d 926.

No. 96–1782. ADAMS ET AL. *v.* CUMBERLAND FARMS, INC., ET AL. Sup. Jud. Ct. Mass. Certiorari denied.

No. 96–1785. DISCON, INC. *v.* NYNEX CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 93 F. 3d 1055.

No. 96–1786. ILLINOIS *v.* KRUEGER. Sup. Ct. Ill. Certiorari denied. Reported below: 175 Ill. 2d 60, 675 N. E. 2d 604.

No. 96–1787. DANA CORP., PARISH DIVISION *v.* NEWTON. C. A. 3d Cir. Certiorari denied. Reported below: 107 F. 3d 862.

No. 96–1788. CITIZENS UNITED *v.* UNITED STATES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 103 F. 3d 651.

No. 96–1789. MARTINEZ-SERRANO *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 94 F. 3d 1256.

No. 96–1791. FLINN *v.* PRUDENTIAL PROPERTY & CASUALTY INSURANCE CO. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 96 F. 3d 1456.

No. 96–1792. OVERBEEK *v.* HEIMBECKER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 101 F. 3d 1225.

No. 96–1794. SOON DUCK KIM ET AL. *v.* CITY OF NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 90 N. Y. 2d 1, 681 N. E. 2d 312.

No. 96–1795. DORAND *v.* RIGHT UP YOUR ALLEY, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 105 F. 3d 656.

No. 96–1797. HENSON *v.* CITY OF GREENSBORO. C. A. 4th Cir. Certiorari denied. Reported below: 107 F. 3d 866.

No. 96–1798. LEAP ET AL. *v.* MALONE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 106 F. 3d 401.

No. 96–1799. REIDY ET AL. *v.* TRAVELERS INSURANCE CO. C. A. 1st Cir. Certiorari denied. Reported below: 107 F. 3d 1.

No. 96–1800. RINI *v.* UNITED VAN LINES, INC. C. A. 1st Cir. Certiorari denied. Reported below: 104 F. 3d 502.

No. 96–1801. SMOLKO *v.* GTE SERVICE CORP. C. A. 11th Cir. Certiorari denied. Reported below: 107 F. 3d 28.

No. 96–1802. DURHAM *v.* HEALTH NET ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 337.

No. 96–1804. HWANG *v.* HARRIS ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 96–1805. DOE ET AL. *v.* SUNDQUIST, GOVERNOR OF TENNESSEE, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 106 F. 3d 702.

No. 96–1806. MARYLAND PSYCHIATRIC SOCIETY, INC. *v.* WASSERMAN, SECRETARY, MARYLAND DEPARTMENT OF HEALTH AND MENTAL HYGIENE, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 102 F. 3d 717.

No. 96–1809. REINERT *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 451 Pa. Super. 577, 677 A. 2d 1267.

No. 96–1813. IBP, INC., ET AL. *v.* WILSON. Sup. Ct. Iowa. Certiorari denied. Reported below: 558 N. W. 2d 132.

No. 96–1815. VOLLERT *v.* CITY OF HOUSTON. C. A. 5th Cir. Certiorari denied. Reported below: 106 F. 3d 398.

No. 96–1816. PRODELL ET AL. *v.* NEW YORK ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 222 App. Div. 2d 178, 645 N. Y. S. 2d 589.

No. 96–1818. FEDERAL ELECTION COMMISSION *v.* MAINE RIGHT TO LIFE COMMITTEE, INC., ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 98 F. 3d 1.

No. 96–1819. DOE *v.* MASSACHUSETTS DEPARTMENT OF SOCIAL SERVICES ET AL. Sup. Jud. Ct. Mass. Certiorari denied.

No. 96–1820. GOLD, CHAPTER 7 TRUSTEE FOR DETRICK, ET AL. *v.* PANALPINA, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 108 F. 3d 529.

No. 96–1821. BROWN ET UX. *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. Fed. Cir. Certiorari denied. Reported below: 86 F. 3d 1179.

No. 96–1822. ROSANO *v.* ADELPHI UNIVERSITY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 104 F. 3d 354.

No. 96–1826. HALASH *v.* MICHIGAN. Cir. Ct. Wayne County, Mich. Certiorari denied.

No. 96–1827. HESS, ON BEHALF OF HESS ET AL., MINORS *v.* HESS. C. A. 6th Cir. Certiorari denied. Reported below: 103 F. 3d 129.

No. 96–1828. CHAPARRO *v.* IBP, INC. C. A. 10th Cir. Certiorari denied. Reported below: 104 F. 3d 367.

No. 96–1831. ROBERTSON ET UX. *v.* CITY OF SOUTH GATE ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–1832. SMITH *v.* BLUE CROSS BLUE SHIELD OF KANSAS, INC. C. A. 10th Cir. Certiorari denied. Reported below: 102 F. 3d 1075.

No. 96–1833. GARDNER ET UX. *v.* STAGER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 103 F. 3d 886.

No. 96–1836. BROCHU *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 927 S. W. 2d 745.

No. 96–1837. HOUSTON BROKERAGE, INC., ET AL. *v.* MCDONALD ET UX., INDIVIDUALLY AND AS NEXT FRIENDS AND GUARDIANS OF MCDONALD, A MINOR, ET AL. Ct. App. Tex., 13th Dist. Certiorari denied. Reported below: 928 S. W. 2d 633.

No. 96–1838. ALEXANDER *v.* RUSH NORTH SHORE MEDICAL CENTER. C. A. 7th Cir. Certiorari denied. Reported below: 101 F. 3d 487.

No. 96–1840. COCHRAN *v.* PLANNED PARENTHOOD ASSOCIATION OF SAN MATEO COUNTY ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 96–1841. LOUISIANA ET AL. *v.* MISTRETTA ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 111 F. 3d 893.

No. 96–1843. SMITH *v.* UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT ET AL. C. A. 10th Cir. Certiorari denied.

No. 96–1844. MMP INVESTMENTS, INC. *v.* LANDER CO., INC. C. A. 7th Cir. Certiorari denied. Reported below: 107 F. 3d 476.

No. 96–1847. NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT ET AL. *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 106 F. 3d 1190.

No. 96–1848. YODER ET VIR *v.* HONEYWELL, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 104 F. 3d 1215.

No. 96–1849. LARY *v.* CHATER, COMMISSIONER OF SOCIAL SECURITY, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 98 F. 3d 1353.

No. 96–1851. JONES *v.* WATSON ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 106 F. 3d 774.

No. 96–1854. CVELBAR *v.* CBI-ILLINOIS, INC. C. A. 7th Cir. Certiorari denied. Reported below: 106 F. 3d 1368.

No. 96–1855. SCHULTZ *v.* MCDONNELL DOUGLAS CORP. C. A. 8th Cir. Certiorari denied. Reported below: 105 F. 3d 1258.

No. 96–1856. RHOMBERG ET AL. *v.* WILSON, GOVERNOR OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 339.

No. 96–1858. COLE *v.* KIMBERLY-CLARK CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 102 F. 3d 524.

No. 96–1860. HANRAHAN *v.* WILLIAMS ET AL. Sup. Ct. Ill. Certiorari denied. Reported below: 174 Ill. 2d 268, 673 N. E. 2d 251.

No. 96–1861. FETTY ET AL. *v.* PENSION BENEFIT GUARANTY CORPORATION. C. A. 10th Cir. Certiorari denied. Reported below: 104 F. 3d 367.

No. 96–1862. FIRST JERSEY SECURITIES, INC., ET AL. *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 1450.

No. 96–1863. HINDERA *v.* THAI ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 102 F. 3d 554.

No. 96–1864. FROHNE *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 928 S. W. 2d 570.

No. 96–1867. LIBERTARIAN PARTY OF FLORIDA ET AL. *v.* SMITH, FLORIDA SECRETARY OF STATE, ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 687 So. 2d 1292.

No. 96–1871. MAXWELL *v.* BRATTON, POLICE COMMISSIONER, NEW YORK CITY POLICE DEPARTMENT, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 102 F. 3d 664.

No. 96–1874. CHALMERS *v.* TULON COMPANY OF RICHMOND. C. A. 4th Cir. Certiorari denied. Reported below: 101 F. 3d 1012.

No. 96–1875. HOOKER *v.* PRODUCERS TRACTOR CO. Sup. Ct. Ark. Certiorari denied.

No. 96–1877. FIELDS *v.* ESTATE OF FIELDS ET AL. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 686 So. 2d 598.

No. 96–1878. OMNI HOMES, INC. *v.* BOARD OF SUPERVISORS, PRINCE WILLIAM COUNTY, VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 253 Va. 59, 481 S. E. 2d 460.

No. 96–1879. SAMMARCO *v.* FORD MOTOR CO. Sup. Ct. Minn. Certiorari denied. Reported below: 561 N. W. 2d 916.

No. 96–1881. GAZZA *v.* NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION. Ct. App. N. Y. Certiorari denied. Reported below: 89 N. Y. 2d 603, 679 N. E. 2d 1035.

No. 96–1882. EHRLANDER *v.* DEPARTMENT OF TRANSPORTATION OF ALASKA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 110 F. 3d 68.

No. 96–1883. FEHN *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 9th Cir. Certiorari denied. Reported below: 97 F. 3d 1276.

No. 96–1885. FRILLZ, INC. *v.* ALVAREZ, ADMINISTRATOR OF SMALL BUSINESS ADMINISTRATION. C. A. 1st Cir. Certiorari denied. Reported below: 104 F. 3d 515.

No. 96–1886. BECKER *v.* PENA, SECRETARY OF ENERGY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 877.

No. 96–1887. ZSCHACH ET AL. *v.* LUCAS, PRENDERGAST, ALBRIGHT, GIBSON & NEWMAN ET AL. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 96–1888. TATUM *v.* VANLINER INSURANCE COMPANY OF FENTON, MISSOURI. C. A. 8th Cir. Certiorari denied. Reported below: 104 F. 3d 223.

No. 96–1889. MUSCO CORP. ET AL. *v.* QUALITE, INC., DBA QUALITE SPORTS LIGHTING, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 106 F. 3d 427.

No. 96–1890. BERELLEZ ET AL. *v.* ALVAREZ-MACHAIN. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 696.

No. 96–1891. MIKKILINENI *v.* CITY OF HOUSTON ET AL. C. A. 5th Cir. Certiorari denied.

No. 96–1892. MCLAMB *v.* ARIZONA. Ct. App. Ariz. Certiorari denied. Reported below: 188 Ariz. 1, 932 P. 2d 266.

No. 96–1893. JENKINS *v.* EIGHTH DISTRICT COURT CLERKS ET AL. Sup. Ct. Utah. Certiorari denied.

No. 96–1894. TANFORD ET AL. *v.* BRAND ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 104 F. 3d 982.

No. 96–1895. MW AG, INC., ET AL. *v.* NEW HAMPSHIRE INSURANCE CO. C. A. 8th Cir. Certiorari denied. Reported below: 107 F. 3d 644.

No. 96–1897. MID SOUTH CONTROLS & SERVICES, INC. *v.* HEBERT. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 688 So. 2d 1171.

No. 96–1900. ARIZONA *v.* WRIGHT. Ct. App. Ariz. Certiorari denied.

No. 96–1901. EMERSON, DBA EMERSON AVIATION *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 107 F. 3d 77.

No. 96–1902. BUTLER *v.* GENERAL MOTORS CORP. C. A. 4th Cir. Certiorari denied. Reported below: 110 F. 3d 1003.

No. 96–1905. RAINBOW GROUP, LTD., ET AL. *v.* CASEY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 109 F. 3d 765.

No. 96–1906. LOWE *v.* NUECES COUNTY, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 103 F. 3d 126.

No. 96–1907. OLIVARES *v.* NATIONAL AERONAUTICS AND SPACE ADMINISTRATION. C. A. 4th Cir. Certiorari denied. Reported below: 103 F. 3d 119.

No. 96–1908. McDevitt *v.* Disciplinary Board of the Supreme Court of New Mexico et al. C. A. 10th Cir. Certiorari denied. Reported below: 108 F. 3d 341.

No. 96–1909. Foster *v.* International Business Machines Corp. et al. C. A. 5th Cir. Certiorari denied. Reported below: 103 F. 3d 125.

No. 96–1910. Felinska *v.* New England Teamsters and Trucking Industry Pension Fund. C. A. 1st Cir. Certiorari denied. Reported below: 99 F. 3d 1128.

No. 96–1911. Nicholson *v.* Nevada State Bar. Sup. Ct. Nev. Certiorari denied. Reported below: 113 Nev. 1641, 970 P. 2d 1122.

No. 96–1912. Wagstaff *v.* Virginia. Ct. App. Va. Certiorari denied.

No. 96–1913. Hodge *v.* Dalton, Secretary of the Navy. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 705.

No. 96–1914. Delnero *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 100 F. 3d 970.

No. 96–1915. Kelly et al. *v.* Staples et al. C. A. 6th Cir. Certiorari denied. Reported below: 97 F. 3d 118.

No. 96–1916. Quinn-L Capital Corp. et al. *v.* Royal Insurance Company of America et al. C. A. 5th Cir. Certiorari denied. Reported below: 105 F. 3d 656.

No. 96–1917. Hawkins, Individually and as Personal Representative of the Estate of Gilliam, Deceased *v.* McNeil Pharmaceutical. Ct. App. D. C. Certiorari denied. Reported below: 686 A. 2d 567.

No. 96–1919. DP Partners, Limited Partnership, et al. *v.* Hall Financial Group, Inc. C. A. 5th Cir. Certiorari denied. Reported below: 106 F. 3d 667.

No. 96–1920. In re Acuna. Sup. Ct. Cal. Certiorari denied.

No. 96–1924. Knox *v.* Nevada Department of Motor Vehicles and Public Safety. Sup. Ct. Nev. Certiorari denied. Reported below: 113 Nev. 1632, 970 P. 2d 1113.

No. 96–1926. Williams et vir *v.* Franklin First Federal Savings Bank et al. Super. Ct. Pa. Certiorari denied. Reported below: 451 Pa. Super. 641, 679 A. 2d 266.

No. 96–1927. CITY OF DALLAS ET AL. *v.* KIRKS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 91 F. 3d 769.

No. 96–1928. LOWER BRULE SIOUX TRIBE *v.* SOUTH DAKOTA. C. A. 8th Cir. Certiorari denied. Reported below: 104 F. 3d 1017.

No. 96–1929. GREEN *v.* PHILADELPHIA HOUSING AUTHORITY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 105 F. 3d 882.

No. 96–1930. GAREN *v.* SUPREME COURT OF WASHINGTON ET AL. Sup. Ct. Wash. Certiorari denied.

No. 96–1932. MAINIERO *v.* JORDAN, ADMINISTRATOR, WISCONSIN DEPARTMENT OF PROBATION AND PAROLE, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 105 F. 3d 361.

No. 96–1933. E. F., A MINOR, BY AND THROUGH MISSISSIPPI PROTECTION AND ADVOCACY SYSTEM, INC., AS GUARDIAN AD LITEM, ET AL. *v.* SCAFIDI, DIRECTOR, DIVISION OF CHILDREN AND YOUTH SERVICES, DEPARTMENT OF MENTAL HEALTH, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 110 F. 3d 793.

No. 96–1934. BEVERLY HEALTH AND REHABILITATION SERVICES, INC. *v.* FEINSTEIN, GENERAL COUNSEL, NATIONAL LABOR RELATIONS BOARD. C. A. D. C. Cir. Certiorari denied. Reported below: 103 F. 3d 151.

No. 96–1935. SPIEGEL *v.* CITY OF CHICAGO ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 106 F. 3d 209.

No. 96–1937. JACKSON SQUARE ASSOCIATES *v.* DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, BUFFALO OFFICE-REGION II. C. A. 2d Cir. Certiorari denied. Reported below: 108 F. 3d 329.

No. 96–1938. WESBANCO BANK BARNESVILLE, FKA FIRST NATIONAL BANK OF BARNESVILLE *v.* CUSTOMER CREDITORS. C. A. 6th Cir. Certiorari denied. Reported below: 106 F. 3d 1255.

No. 96–1939. NORTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 108 F. 3d 133.

No. 96–1940. JAQUES ADMIRALTY LAW FIRM *v.* ACANDS, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 83 F. 3d 426.

No. 96–1941. KITZE *v.* VIRGINIA. Ct. App. Va. Certiorari denied. Reported below: 23 Va. App. 213, 475 S. E. 2d 830.

No. 96–1942. CMI, INC. *v.* INTOXIMETERS, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 95 F. 3d 1168.

No. 96–1943. STALLWORTH *v.* HERMAN, SECRETARY OF LABOR. C. A. D. C. Cir. Certiorari denied. Reported below: 107 F. 3d 923.

No. 96–1944. NORTON ET AL. *v.* FEDERAL TRADE COMMISSION ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 108 F. 3d 345.

No. 96–1945. MUSSER *v.* DAMROW ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 338.

No. 96–1946. NIELSON *v.* SYRETT CORP. C. A. 10th Cir. Certiorari denied. Reported below: 107 F. 3d 20.

No. 96–1947. STANTON *v.* DISTRICT OF COLUMBIA COURT OF APPEALS. Ct. App. D. C. Certiorari denied. Reported below: 682 A. 2d 655.

No. 96–1949. SMELSER *v.* NORFOLK & WESTERN RAILWAY CO. C. A. 6th Cir. Certiorari denied. Reported below: 105 F. 3d 299.

No. 96–1950. TRIVEDI *v.* COOPER. C. A. 2d Cir. Certiorari denied.

No. 96–1951. VAUGHT ET AL. *v.* SHOWA DENKO K. K. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 107 F. 3d 1137.

No. 96–1952. HOLT *v.* LEWIS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 109 F. 3d 771.

No. 96–1953. KNOX ET VIR *v.* SANDOZ PHARMACEUTICALS CORP. C. A. 5th Cir. Certiorari denied. Reported below: 110 F. 3d 793.

No. 96–1954. BALLENGER *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 345 N. C. 626, 481 S. E. 2d 84.

No. 96–1955. HOLSUM BAKERS OF PUERTO RICO, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. D. C. Cir. Certiorari denied. Reported below: 107 F. 3d 922.

No. 96–1956. COLE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 96–1958. CITY OF OCEANSIDE ET AL. *v.* SHAFER. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 96–1959. MAYER, EXECUTRIX OF THE ESTATE OF MAYER, DECEASED *v.* CORNELL UNIVERSITY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 107 F. 3d 3.

No. 96–1960. WANG LABORATORIES, INC. *v.* MITSUBISHI ELECTRONICS AMERICA, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 103 F. 3d 1571.

No. 96–1961. GORDON *v.* BOARD OF EDUCATION FOR THE CITY OF NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 108 F. 3d 1369.

No. 96–1964. MERRIAM *v.* UNITED STATES; and
No. 97–5255. HAYES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 1162.

No. 96–1965. MARTIN *v.* SHAW'S SUPERMARKETS, INC. C. A. 1st Cir. Certiorari denied. Reported below: 105 F. 3d 40.

No. 96–1966. VALSAMIS, INC., ET AL. *v.* CORNHILL INSURANCE PLC ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 106 F. 3d 80.

No. 96–1967. AROMA MANUFACTURING, INC. *v.* ALTERNATIVE PIONEERING SYSTEMS, INC., DBA AMERICAN HARVEST (two judgments). C. A. Fed. Cir. Certiorari denied. Reported below: 108 F. 3d 1394.

No. 96–1968. GRANT *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied.

No. 96–1969. RIVER OAKS FURNITURE, INC., ET AL. *v.* ANSIN ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 105 F. 3d 745.

No. 96–1970. SHRETTA ET AL. *v.* CITY OF MARIETTA ET AL.; and
No. 96–2035. VARSALONA'S ITALIAN RESTAURANT, DBA BOOMER'S, ET AL. *v.* CITY OF MARIETTA ET AL. Sup. Ct. Ga. Certiorari denied. Reported below: 267 Ga. 683, 482 S. E. 2d 347.

No. 96–1972. DERTHICK ET AL. *v.* BASSETT-WALKER, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 106 F. 3d 390.

No. 96–1973. LU *v.* HADLOCK ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 108 F. 3d 328.

No. 96–1974. CREDICORP, INC., ET AL. *v.* DEPARTMENT OF BANKING AND FINANCE OF FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 684 So. 2d 746.

No. 96–1975. COULTER ET AL. *v.* METROPOLITAN LIFE INSURANCE CO.; SMITH *v.* METROPOLITAN LIFE INSURANCE CO.; and CORRIERE ET AL. *v.* METROPOLITAN LIFE INSURANCE CO. C. A. 3d Cir. Certiorari denied.

No. 96–1976. SOTO *v.* FLORES ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 103 F. 3d 1056.

No. 96–1977. LIED *v.* UNITED STATES;
No. 96–9480. WALLACE *v.* UNITED STATES;
No. 97–320. GALLEGOS *v.* UNITED STATES; and
No. 97–5688. PENA-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 110 F. 3d 1120.

No. 96–1978. RAMOS *v.* NEMETZ ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 111 F. 3d 127.

No. 96–1979. HENNON *v.* COOPER, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 109 F. 3d 330.

No. 96–1980. DEL BUONO *v.* REYNOLDS WEIGEL ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 101 F. 3d 694.

No. 96–1981. BELL *v.* PLANNED PARENTHOOD LEAGUE OF MASSACHUSETTS, INC. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 424 Mass. 573, 677 N. E. 2d 204.

No. 96–1983. COBB *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 99 F. 3d 664.

No. 96–1984. CROW TRIBE OF INDIANS *v.* MONTANA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 92 F. 3d 826 and 98 F. 3d 1194.

No. 96–1985. HUME *v.* WALLIS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 1385.

No. 96–1986. NARO ET UX. *v.* HAMILTON TOWNSHIP ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 96–1989. LOUIS E. OLIVERO & ASSOCIATES ET AL. *v.* WESTERN STATES INSURANCE CO. ET AL. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 283 Ill. App. 3d 307, 670 N. E. 2d 333.

No. 96–1990. SANDERS *v.* FULTON COUNTY BOARD OF EDUCATION ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 96 F. 3d 1457.

No. 96–1991. SWAFFAR *v.* SWAFFAR, EXECUTOR OF THE ESTATE OF SWAFFAR, DECEASED. Sup. Ct. Ark. Certiorari denied. Reported below: 327 Ark. 235, 938 S. W. 2d 552.

No. 96–1992. RABIN ET UX. *v.* AMERICA'S FAVORITE CHICKEN CO. ET AL. C. A. 5th Cir. Certiorari denied.

No. 96–1993. CARLISLE *v.* ROBINETT. Ct. App. Tex., 2d Dist. Certiorari denied. Reported below: 928 S. W. 2d 623.

No. 96–1994. DENTY *v.* SMITHKLINE BEECHAM CORP. C. A. 3d Cir. Certiorari denied. Reported below: 109 F. 3d 147.

No. 96–1995. COHEN *v.* TIRABASSI. Cir. Ct. Howard County, Md. Certiorari denied.

No. 96–1996. GORDON ET AL. *v.* COUNTY OF ROCKLAND. C. A. 2d Cir. Certiorari denied. Reported below: 110 F. 3d 886.

No. 96–1997. ZIMMER *v.* NAUMANN, PARISH COUNCIL CHAIRPERSON, ET AL. Ct. App. Minn. Certiorari denied.

No. 96–1998. TYRREL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 103 F. 3d 124.

No. 96–1999. MCLAUGHLIN *v.* WASHINGTON STATE BAR ASSN. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 95 F. 3d 1157.

No. 96–2000. MGM GRAND AIR, INC. *v.* MICELI ET UX. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 51 Cal. App. 4th 702, 59 Cal. Rptr. 2d 311.

No. 96–2001. TEXAS PHARMACY ASSN. ET AL. *v.* PRUDENTIAL INSURANCE COMPANY OF AMERICA. C. A. 5th Cir. Certiorari denied. Reported below: 105 F. 3d 1035.

No. 96–2003. GRENELL *v.* CONFORTI ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 111 F. 3d 126.

No. 96–2004. SUNDELL *v.* CISCO SYSTEM, INC. C. A. 5th Cir. Certiorari denied. Reported below: 111 F. 3d 892.

No. 96–2005. TEXAS *v.* COOK. Ct. Crim. App. Tex. Certiorari denied. Reported below: 940 S. W. 2d 623.

No. 96–2006. ROGGIO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 107 F. 3d 26.

No. 96–2007. SMITH *v.* GORDON COUNTY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 107 F. 3d 25.

No. 96–2009. ROCANOVA *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 109 F. 3d 127.

No. 96–2010. RHYMER *v.* YOKOHAMA TIRE CORP. C. A. 4th Cir. Certiorari denied. Reported below: 106 F. 3d 391.

No. 96–2011. RIGGINS ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 107 F. 3d 872.

No. 96–2012. LU *v.* CHOATE, HALLS & STEWART ET AL. C. A. 1st Cir. Certiorari denied.

No. 96–2013. PATE *v.* SERVICE MERCHANDISE CO., INC., ET AL. Ct. App. Tenn. Certiorari denied. Reported below: 959 S. W. 2d 569.

No. 96–2014. STEELE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 91 F. 3d 1046.

No. 96–2015. FIDELITY TECHNOLOGIES CORP. *v.* BUTLER ET AL. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 685 So. 2d 676.

No. 96–2016. DONOHOO ET AL. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION. C. A. 8th Cir. Certiorari denied. Reported below: 103 F. 3d 1409.

No. 96–2017. SNAP-DRAPE, INC. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 98 F. 3d 194.

No. 96–2019. KRANYIK *v.* CITY OF WEST MELBOURNE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 105 F. 3d 672.

No. 96–2020. HOUSTON *v.* FINNELL ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 100 F. 3d 956.

No. 96–2021. BOUYE ET AL. *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 325 S. C. 260, 484 S. E. 2d 461.

No. 96–2022. HUDSON, BY AND THROUGH HER PARENT, HUDSON *v.* BLOOMFIELD HILLS PUBLIC SCHOOLS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 108 F. 3d 112.

No. 96–2023. O'HARA *v.* BAYLINER ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 89 N. Y. 2d 636, 679 N. E. 2d 1049.

No. 96–2024. MORAN *v.* MORAN. Ct. App. Ariz. Certiorari denied. Reported below: 188 Ariz. 139, 933 P. 2d 1207.

No. 96–2025. JEFFERSON *v.* UNITED STATES;
No. 96–9447. ARCHER *v.* UNITED STATES;
No. 97–5730. MCNEALY *v.* UNITED STATES; and
No. 97–5754. BRAZEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 102 F. 3d 1120.

No. 96–2026. DUNN *v.* MIAMI HERALD PUBLISHING CO. ET AL. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 689 So. 2d 1302.

No. 96–2027. CHARLY INTERNATIONAL ET AL. *v.* MCA RECORDS, INC. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 338.

No. 96–2028. TU YING CHEN, INDIVIDUALLY, AND AS ADMINISTRATRIX OF THE ESTATE OF SHOU FONG CHEN *v.* SCHRAMM ET AL. Ct. App. Colo. Certiorari denied.

No. 96–2029. BURLINGTON NORTHERN & SANTA FE RAILWAY CO., FKA BURLINGTON NORTHERN RAILROAD CO. *v.* BYRD. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 939 S. W. 2d 416.

No. 96–2030. GUIDO ET AL. *v.* CUVO ET AL. Commw. Ct. Pa. Certiorari denied. Reported below: 678 A. 2d 424.

No. 96–2031. CITY OF NEW ORLEANS *v.* DEPARTMENT OF LABOR. C. A. 5th Cir. Certiorari denied. Reported below: 108 F. 3d 614.

No. 96–2032. SCHLOTZ ET UX. *v.* HYUNDAI MOTOR CO. ET AL. Ct. App. Minn. Certiorari denied. Reported below: 557 N. W. 2d 613.

No. 96–2033. MCARTY *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 96–2034. SFIC PROPERTIES, INC. *v.* INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, DISTRICT LODGE 94, LOCAL LODGE 311, AKA IAMAWD. C. A. 9th Cir. Certiorari denied. Reported below: 103 F. 3d 923.

No. 96–2036. WAUGH *v.* INTERNAL REVENUE SERVICE. C. A. 8th Cir. Certiorari denied. Reported below: 109 F. 3d 489.

No. 96–2037. SCHAFFER ET UX. *v.* AGRIBANK, FCB, ET AL. Ct. App. Minn. Certiorari denied.

No. 96–2038. SUTTON *v.* UNITED STATES;
No. 96–2043. NOVOA *v.* UNITED STATES;
No. 96–2049. JOBE *v.* UNITED STATES; and
No. 96–2050. JOBE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 101 F. 3d 1046.

No. 96–2039. CAMPFIELD *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 44 Conn. App. 6, 687 A. 2d 903.

No. 96–2040. KCAL–TV CHANNEL 9 *v.* LOS ANGELES NEWS SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 1119.

No. 96–2042. GRAY *v.* IDAHO. Ct. App. Idaho. Certiorari denied. Reported below: 129 Idaho 784, 932 P. 2d 907.

No. 96–2047. COPANOS *v.* FOOD AND DRUG ADMINISTRATION ET AL. C. A. D. C. Cir. Certiorari denied.

No. 96–2048. ABURAHMAH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 17.

No. 96–2051. HEALTHPARTNERS OF SOUTHERN ARIZONA, DBA PARTNERS HEALTH PLAN OF ARIZONA, INC. *v.* ATKINS. C. A. 9th Cir. Certiorari denied.

No. 96–2052. BECERRA, INDIVIDUALLY AND AS NEXT FRIEND OF DOE, A MINOR *v.* HOUSTON INDEPENDENT SCHOOL DISTRICT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 105 F. 3d 1042.

No. 96–2053. COOKE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 107 F. 3d 863.

No. 96–2055. HARVARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 103 F. 3d 412.

No. 96–8088. GATELY *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 451 Pa. Super. 622, 679 A. 2d 252.

No. 96–8311. GINN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 104 F. 3d 369.

No. 96–8312. FAULKNER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 103 F. 3d 684.

No. 96–8368. POLLARD *v.* EDGAR, GOVERNOR OF ILLINOIS, ET AL. Sup. Ct. Ill. Certiorari denied.

No. 96–8379. COOPER *v.* TAYLOR, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 103 F. 3d 366.

No. 96–8436. ADKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 102 F. 3d 111.

No. 96–8470. FEMALE JUVENILE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 103 F. 3d 14.

No. 96–8478. PRIOR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 107 F. 3d 654.

No. 96–8489. THOMAS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 344 N. C. 639, 477 S. E. 2d 450.

No. 96–8501. ALBANO SANTOS *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 11th Cir. Certiorari denied.

No. 96–8548. WALKER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 96–8569. GUTIERREZ-TAVARES *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 92 F. 3d 1192.

No. 96–8580. SINGLETON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 107 F. 3d 1091.

No. 96–8589. HOWARD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 105 F. 3d 667.

No. 96–8598. TAGBERING *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 96–8694. THOMPSON *v.* BROWN, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 104 F. 3d 376.

No. 96–8719. LAVALAIS *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 685 So. 2d 1048.

No. 96–8721. MATHIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 107 F. 3d 9.

No. 96–8730. GREEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 102 F. 3d 553.

No. 96–8769. PONDEXTER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 942 S. W. 2d 577.

No. 96–8793. THACKER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 96–8823. JANECKA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 937 S. W. 2d 456.

No. 96–8845. GEDDIE *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 345 N. C. 73, 478 S. E. 2d 146.

No. 96–8851. BALDWIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 106 F. 3d 415.

No. 96–8870. HARTLEY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 686 So. 2d 1316.

No. 96–8873. RUFF *v.* SMITH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 96–8875. STROUD *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 345 N. C. 106, 478 S. E. 2d 476.

No. 96–8883. MORENO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 102 F. 3d 994.

No. 96–8897. NORVILLE ET UX. *v.* DELL CORP. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 283 Ill. App. 3d 1115, 708 N. E. 2d 852.

No. 96–8900. ANGELLO *v.* NORTHERN MARIANA ISLANDS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 106 F. 3d 406.

No. 96–8901. ARGUETA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 96–8904. GATES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 101 F. 3d 709.

No. 96–8905. SCHWARZ *v.* SPALDING. Sup. Ct. Utah. Certiorari denied.

No. 96–8908. ROBERTS *v.* GLANZ. C. A. 10th Cir. Certiorari denied. Reported below: 106 F. 3d 414.

No. 96–8909. TOWNS *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 174 Ill. 2d 453, 675 N. E. 2d 614.

No. 96–8918. ATHERTON *v.* ARLINGTON COUNTY BOARD ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 104 F. 3d 358.

No. 96–8922. HUALDE-REDIN ET AL. *v.* ROYAL BANK OF PUERTO RICO ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 91 F. 3d 121.

No. 96–8924. ALLEN *v.* DILLEY ET AL. Ct. App. Ore. Certiorari denied. Reported below: 142 Ore. App. 205, 920 P. 2d 181.

No. 96–8925. BURNS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 107 F. 3d 23.

No. 96–8926. CARSON *v.* CHARTER MEDICAL. C. A. 9th Cir. Certiorari denied.

No. 96–8927. DELONG *v.* CITY OF STRONGSVILLE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 97 F. 3d 1452.

No. 96–8929. DRAKE *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 96–8930. DAVIS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 96–8943. MCKNIGHT *v.* MISSOURI DIVISION OF FAMILY SERVICES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 105 F. 3d 662.

No. 96–8945. MORGAN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 96–8946. RAKOV *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 103 F. 3d 114.

No. 96–8958. MCINTYRE *v.* CARTER, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 105 F. 3d 647.

No. 96–8963. JARRETT *v.* TOXIC ACTION WASH ET AL. C. A. 6th Cir. Certiorari denied.

No. 96–8964. JOHNSON *v.* WELBY ET AL. C. A. 3d Cir. Certiorari denied.

No. 96–8965. MCKINNEY *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 96–8966. CHAMBERS *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 546 Pa. 370, 685 A. 2d 96.

No. 96–8967. BELL *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 938 S. W. 2d 35.

No. 96–8969. SALES *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 327 Ark. xxiv.

No. 96–8970. HARRIS *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 704 So. 2d 1286.

No. 96–8971. FABIAN *v.* DE RESTREPO ET AL. C. A. 11th Cir. Certiorari denied.

No. 96–8972. DERDEN *v.* ANDERSON, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 105 F. 3d 656.

No. 96–8973. HUDSON-GARDNER *v.* SOUTH CAROLINA DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 104 F. 3d 358.

No. 96–8975. HAIRSTON *v.* LOVE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 107 F. 3d 7.

No. 96–8976. ESTEVES *v.* BROCK ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 106 F. 3d 674.

No. 96–8982. BARKER *v.* TCF BANK SAVINGS FSB. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 14.

No. 96–8983. PANOS *v.* OLIVER. Sup. Ct. Wash. Certiorari denied.

No. 96–8984. CARTER *v.* ONTIVEROS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 108 F. 3d 334.

No. 96–8988. HARRISON *v.* BAILEY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 107 F. 3d 870.

No. 96–8989. CRISLIP *v.* NEWTON, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 107 F. 3d 20.

No. 96–8991. LOWE *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 96–8993. MOSS *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 282 Ill. App. 3d 1123, 707 N. E. 2d 304.

No. 96–8999. SAMPLE *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 96–9001. HACKER *v.* HACKER. Ct. App. Wash. Certiorari denied. Reported below: 81 Wash. App. 1006.

No. 96–9003. GRAVES *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 96–9004. ENEIAS *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 690 So. 2d 1299.

No. 96–9009. WILSON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 96–9011. TAYLOR *v.* NORTH CAROLINA. Super. Ct. N. C., Cumberland County. Certiorari denied.

No. 96–9012. ROGOVICH *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 188 Ariz. 38, 932 P. 2d 794.

No. 96–9017. WILLIS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 96–9018. WASHINGTON *v.* LOUISIANA DEPARTMENT OF CORRECTIONS ET AL. C. A. 5th Cir. Certiorari denied.

No. 96–9019. TRUSTY *v.* PARKER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 107 F. 3d 12.

No. 96–9021. MATHURA *v.* COUNCIL FOR HUMAN SERVICES HOME CARE SERVICES, INC. C. A. 2d Cir. Certiorari denied. Reported below: 107 F. 3d 3.

No. 96–9024. MORRISON *v.* HALL, DIRECTOR, OREGON DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 105 F. 3d 665.

No. 96–9026. MICHAU *v.* ORR ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 103 F. 3d 118.

No. 96–9028. ALVAREZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 14 Cal. 4th 155, 926 P. 2d 365.

No. 96–9030. SOTO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 106 F. 3d 1040.

No. 96–9031. MOORE *v.* GOMEZ ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 94 F. 3d 652.

No. 96–9033. MEZA *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 96–9037. DELANEY *v.* TROUTMAN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 107 F. 3d 11.

No. 96–9040. STEWART *v.* KYLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AND DIAGNOSTIC/CLASSIFICATION CENTER, CAMP HILL, ET AL. C. A. 3d Cir. Certiorari denied.

No. 96–9041. STARR *v.* SHILLINGER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 107 F. 3d 21.

No. 96–9047. VALENTINE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 688 So. 2d 313.

No. 96–9050. ROSEMOND *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 108 F. 3d 332.

No. 96–9052. MCGRAW *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 688 So. 2d 764.

No. 96–9056. MCMILLAN *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 231 App. Div. 2d 841, 648 N. Y. S. 2d 63.

No. 96–9057. LAWRENCE *v.* GAMMON, SUPERINTENDENT, MOBERLY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 96–9058. MEJIAS *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 41 Conn. App. 695, 678 A. 2d 6.

No. 96–9062. PRELLWITZ *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 96–9063. PESEK *v.* LINCOLN COUNTY ET AL. Ct. App. Wis. Certiorari denied. Reported below: 204 Wis. 2d 111, 552 N. W. 2d 899.

No. 96–9064. CHARRON *v.* THOMPSON ET AL. Sup. Ct. Mo. Certiorari denied. Reported below: 939 S. W. 2d 885.

No. 96–9065. SCHAFFER *v.* KIRKLAND ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 111 F. 3d 127.

No. 96–9074. BENNETT *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 96–9075. PYLE *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 96–9076. WHITFIELD *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 939 S. W. 2d 361.

No. 96–9078. WRIGHT *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 451 Pa. Super. 607, 678 A. 2d 836.

No. 96–9080. BOOKER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 96–9082. SPRIGGS ET AL. *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 102 F. 3d 1245.

No. 96–9083. SANDERS *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 104 F. 3d 376.

No. 96–9084. REITZ *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 547 Pa. 332, 690 A. 2d 222.

No. 96–9085. REEVES *v.* NOVAK ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 109 F. 3d 768.

No. 96–9086. STOUFFER *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 96–9087. J. A., A JUVENILE *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 679 So. 2d 316.

No. 96–9088. WHITFIELD *v.* PRUNTY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 96–9089. TAHA *v.* SMITH ET AL. Ct. App. Ind. Certiorari denied. Reported below: 670 N. E. 2d 135.

No. 96–9090. THOMPSON *v.* KENTUCKY. Cir. Ct. Kenton County, Ky. Certiorari denied.

No. 96–9091. WHITSON *v.* SCHERMER, CHIEF BANKRUPTCY JUDGE, UNITED STATES BANKRUPTCY COURT FOR THE EASTERN

DISTRICT OF MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 104 F. 3d 364.

No. 96–9093. WILLIAMS *v.* ALLSTATE INSURANCE CO. C. A. 7th Cir. Certiorari denied. Reported below: 111 F. 3d 134.

No. 96–9095. HOSKINS *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 96–9097. HOKE *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 96–9099. FRAZER *v.* MILLINGTON ET AL. Sup. Ct. Va. Certiorari denied. Reported below: 252 Va. 195, 475 S. E. 2d 811.

No. 96–9106. JOHNSON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 928 P. 2d 309.

No. 96–9107. MYERS *v.* MICHELA. Ct. App. Ariz. Certiorari denied.

No. 96–9108. JONES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 944 S. W. 2d 642.

No. 96–9109. LOMAX *v.* LANDWEHR ET AL. Ct. App. Wis. Certiorari denied. Reported below: 204 Wis. 2d 196, 554 N. W. 2d 841.

No. 96–9111. KENNEDY *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 96–9113. ARTEAGA *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. C. A. 9th Cir. Certiorari denied.

No. 96–9118. FRACTION *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 107 F. 3d 863.

No. 96–9119. ANTONOV *v.* COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC SOCIAL SERVICES. C. A. 9th Cir. Certiorari denied. Reported below: 103 F. 3d 137.

No. 96–9121. TATE *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 424 Mass. 236, 675 N. E. 2d 772.

No. 96–9125. SPRADLIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 105 F. 3d 672.

No. 96–9126. PADRON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–9141. PEREZ *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 96–9143. CURRY *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 124 N. C. App. 459, 477 S. E. 2d 702.

No. 96–9144. AYBAR *v.* DRUG ENFORCEMENT ADMINISTRATION ET AL. C. A. 2d Cir. Certiorari denied.

No. 96–9146. BROWN *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 233 App. Div. 2d 228, 650 N. Y. S. 2d 529.

No. 96–9148. MOORE *v.* LOUIS ET AL. C. A. 11th Cir. Certiorari denied.

No. 96–9154. WIEDMER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 100 F. 3d 960.

No. 96–9155. WILLIAMS *v.* BORG, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 1387.

No. 96–9156. BAILEY *v.* IGNACIO, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 106 F. 3d 406.

No. 96–9161. MUNGIN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 689 So. 2d 1026.

No. 96–9163. MATTHEWS *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 105 F. 3d 907.

No. 96–9166. HARE *v.* SACCHETT, ACTING WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 96–9167. HUGHES *v.* CITY OF CLEVELAND. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 96–9169. HARRIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 104 F. 3d 1465.

No. 96–9170. HERNANDEZ *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 102 F. 3d 554.

No. 96–9176. DUPONT *v.* MASSACHUSETTS DEPARTMENT OF CORRECTION ET AL. C. A. 1st Cir. Certiorari denied.

No. 96–9177. DUPONT *v.* DUBOIS, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTION, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 99 F. 3d 1128.

No. 96–9178. THOMPSON *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 96–9180. JAFAR *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 96–9182. KILGORE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 688 So. 2d 895.

No. 96–9183. NEAL *v.* GRAMLEY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 99 F. 3d 841.

No. 96–9184. CAMARANO *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 96–9188. CRAVER *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 547 Pa. 17, 688 A. 2d 691.

No. 96–9190. CARTER *v.* SARGENT, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 96–9191. ANTONELLI *v.* FOSTER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 104 F. 3d 899.

No. 96–9192. VAN HOUTEN *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 424 Mass. 327, 676 N. E. 2d 460.

No. 96–9194. TAYLOR *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL INSTITUTE. C. A. 7th Cir. Certiorari denied. Reported below: 108 F. 3d 1380.

No. 96–9195. WOODS *v.* MUTUAL OF OMAHA. Ct. App. Tenn. Certiorari denied.

No. 96–9196. ARTEAGA *v.* SANTA CLARA DEPARTMENT OF FAMILY AND CHILDREN'S SERVICES. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 96–9197. ARTEAGA *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 96–9198. REID *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY. C. A. 3d Cir. Certiorari denied.

No. 96–9200. ROBINSON *v.* TRIGG, SUPERINTENDENT, RECEPTION DIAGNOSTIC CENTER, PLAINFIELD. C. A. 7th Cir. Certiorari denied.

No. 96–9201. FULTZ *v.* WHITE, SUPERINTENDENT, ALGOA CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 107 F. 3d 875.

No. 96–9202. SIEGEL *v.* CALIFORNIA FEDERAL BANK. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–9203. ROWELL *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 96–9204. PROCTOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 878.

No. 96–9210. BOYD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 107 F. 3d 867.

No. 96–9211. CASTERLINE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 103 F. 3d 76.

No. 96–9214. SAYLES *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 285 Ill. App. 3d 1110, 709 N. E. 2d 319.

No. 96–9215. RUSH *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 96–9216. FOWLER *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 106 F. 3d 390.

No. 96–9217. DIKE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 101 F. 3d 692.

No. 96–9218. GELABERT *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied.

No. 96–9219. GEE *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 96–9221. DENNIS *v.* BUTTERWORTH, ATTORNEY GENERAL OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 108 F. 3d 343.

No. 96–9223. FRENCH *v.* THOMAS, SHERIFF, HARRIS COUNTY, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied.

No. 96–9224. HIGGINS *v.* HIGGINS ET AL. C. A. 7th Cir. Certiorari denied.

No. 96–9227. MOORE ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 109 F. 3d 1456.

No. 96–9228. MAGWOOD *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 689 So. 2d 959.

No. 96–9229. MCGINNIS *v.* BROWN, SECRETARY OF VETERANS AFFAIRS. C. A. 7th Cir. Certiorari denied.

No. 96–9230. MOORE *v.* PARMENTER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 104 F. 3d 367.

No. 96–9231. LENHART *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 96–9232. JOHNINSON *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 96–9233. STRANG *v.* ARMS CONTROL AND DISARMAMENT AGENCY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 99 F. 3d 1153.

No. 96–9234. SUBLETT *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 282 Ill. App. 3d 1108, 707 N. E. 2d 298.

No. 96–9236. LYLE *v.* MAGNOLIA STATE ENTERPRISES, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 105 F. 3d 654.

No. 96–9238. WILLIAMS *v.* THALACKER, SUPERINTENDENT, NORTH CENTRAL CORRECTIONAL FACILITY. C. A. 8th Cir. Certiorari denied. Reported below: 106 F. 3d 405.

No. 96–9240. WILSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 878.

No. 96–9241. WALKER *v.* APPELLATE DIVISION, SUPREME COURT OF NEW YORK, FIRST JUDICIAL DEPARTMENT, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 108 F. 3d 330.

No. 96–9242. WELSAND *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 96–9245. CARLSON *v.* UNITED STATES;
No. 97–5056. BREWER *v.* UNITED STATES; and
No. 97–5159. HUBERT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 110 F. 3d 793.

No. 96–9246. HAIGHT *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 938 S. W. 2d 243.

No. 96–9248. ELMORE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 108 F. 3d 23.

No. 96–9249. FINKLEA *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 147 N. J. 211, 686 A. 2d 322.

No. 96–9250. SHROFF *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 114 F. 3d 1205.

No. 96–9251. PERKINS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 345 N. C. 254, 481 S. E. 2d 25.

No. 96–9252. SHROFF *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 96–9253. PARKER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 108 F. 3d 28.

No. 96–9254. SCHWARZ *v.* CLINTON, PRESIDENT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 96–9256. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 107 F. 3d 869.

No. 96–9257. TOROK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 100 F. 3d 949.

No. 96–9258. TASSE *v.* MAYHUE CORP. ET AL. C. A. 11th Cir. Certiorari denied.

No. 96–9259. TYLER *v.* CARNAHAN, GOVERNOR OF MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied.

No. 96–9260. WOLFORD *v.* BURNS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 105 F. 3d 668.

No. 96–9261. CASTANEDA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 110 F. 3d 798.

No. 96–9262. ALSTON *v.* NORTH CAROLINA. Super. Ct. N. C., Warren County. Certiorari denied.

No. 96–9263. ROSS *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 696 So. 2d 831.

No. 96–9264. STARNS *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 284 Ill. App. 3d 1146, 708 N. E. 2d 1286.

No. 96–9265. PORTILLO ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 110 F. 3d 61.

No. 96–9266. SHAW *v.* PRUNTY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 96–9267. COLBURN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 113 F. 3d 1232.

No. 96–9268. WALKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 112 F. 3d 1171.

No. 96–9269. TOLIVER *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 96–9270. PROPST *v.* NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 105 F. 3d 648.

No. 96–9271. BRUCE ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 109 F. 3d 323.

No. 96–9272. SAMS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 104 F. 3d 1407.

No. 96–9273. JOHNSON *v.* SECKINGER, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 99 F. 3d 1155.

No. 96–9274. JACOBSON *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 109 F. 3d 769.

No. 96–9275. LANG *v.* STAR HERALD. C. A. 8th Cir. Certiorari denied. Reported below: 107 F. 3d 1308.

No. 96–9276. JENNINGS *v.* DUCKWORTH, SUPERINTENDENT, INDIANA STATE REFORMATORY. C. A. 7th Cir. Certiorari denied. Reported below: 108 F. 3d 1379.

No. 96–9277. MOORE *v.* NESBITT ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 107 F. 3d 12.

No. 96–9278. MATHISEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 103 F. 3d 142.

No. 96–9279. SMITH *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 686 A. 2d 537.

No. 96–9281. PHILLIPS *v.* ANDERSON, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 96–9282. SCHEXNAYDER *v.* LOUISIANA. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 685 So. 2d 357.

No. 96–9283. CARPENTER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 108 F. 3d 1380.

No. 96–9284. BROOKS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 114 F. 3d 106.

No. 96–9285. BAKER *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 689 So. 2d 1009.

No. 96–9286. CONTRERAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 108 F. 3d 1255.

No. 96–9287. LAFAYETTE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–9288. MAYFIELD *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 14 Cal. 4th 668, 928 P. 2d 485.

No. 96–9289. McGee *v.* Endicott, Superintendent, Columbia Correctional Institution. C. A. 7th Cir. Certiorari denied.

No. 96–9290. Johnson *v.* Nixon et al. C. A. 8th Cir. Certiorari denied.

No. 96–9292. Kirby *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 109 F. 3d 765.

No. 96–9294. Pebworth *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 168.

No. 96–9295. Sapp *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 690 So. 2d 581.

No. 96–9296. Ponder *v.* Dye, Sheriff, Tillamook County, Oregon. C. A. 9th Cir. Certiorari denied.

No. 96–9297. Ponder *v.* Baldwin, Superintendent, Eastern Oregon Correctional Institution. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 1386.

No. 96–9298. Clay *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 106 F. 3d 392.

No. 96–9299. Odumosu *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 96–9300. Boharski *v.* Boharski. Sup. Ct. Mont. Certiorari denied. Reported below: 282 Mont. 529, 934 P. 2d 1040.

No. 96–9301. Banks *v.* United States District Court for the Western District of Missouri. C. A. 8th Cir. Certiorari denied.

No. 96–9302. Betts *v.* Angelone, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 105 F. 3d 646.

No. 96–9303. Palmisano *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 104 F. 3d 354.

No. 96–9304. Singleton *v.* Norris, Director, Arkansas Department of Correction. C. A. 8th Cir. Certiorari denied. Reported below: 108 F. 3d 872.

No. 96–9305. PARNELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 109 F. 3d 768.

No. 96–9306. RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 96–9307. BRADY *v.* BRADY ET AL.; and BRADY *v.* BRADY. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 96–9308. REYNA *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 96–9309. ARTEAGA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 96–9310. STROTHERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 109 F. 3d 769.

No. 96–9311. DAVID *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 106 F. 3d 392.

No. 96–9312. GORDON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 107 F. 3d 5.

No. 96–9313. HEATH *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 6th Cir. Certiorari denied. Reported below: 103 F. 3d 129.

No. 96–9314. GARCIA *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 206 Wis. 2d 678, 558 N. W. 2d 706.

No. 96–9315. HENNING *v.* LOVE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON. C. A. 3d Cir. Certiorari denied. Reported below: 107 F. 3d 861.

No. 96–9316. DURAN *v.* UNITED STATES;
No. 96–9420. STANDS *v.* UNITED STATES; and
No. 96–9541. DURAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 105 F. 3d 1565.

No. 96–9317. HAYDEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 106 F. 3d 393.

No. 96–9318. ESHKOL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 1025.

No. 96–9319. DE LA VEGA *v.* CHATER, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 337.

No. 96–9320. HOSCH *v.* BANDAG, INC. C. A. 4th Cir. Certiorari denied. Reported below: 108 F. 3d 1372.

No. 96–9322. HERBERT *v.* CAIN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 96–9323. HARMON *v.* HARGETT, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 107 F. 3d 21.

No. 96–9324. GOODSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 106 F. 3d 392.

No. 96–9325. GONZALEZ-QUEZADA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 1386.

No. 96–9326. HARNER *v.* FRANKLIN COUNTY JUVENILE PROBATION ET AL. C. A. 3d Cir. Certiorari denied.

No. 96–9327. HENDERSON *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 99 F. 3d 1130.

No. 96–9328. ARTEAGA *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 96–9329. ARTEAGA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 96–9330. MAUS *v.* SMITH. C. A. 7th Cir. Certiorari denied.

No. 96–9331. EVANS *v.* HORN. C. A. 3d Cir. Certiorari denied. Reported below: 111 F. 3d 126.

No. 96–9332. BREAKLEY *v.* HINKLE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 105 F. 3d 646.

No. 96–9333. CITIZEN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 96–9334. COMER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 96–9335. JAMISON *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 107 F. 3d 866.

No. 96–9336. JAMES *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied.

No. 96–9337. LANG *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 111 F. 3d 128.

No. 96–9338. ANDERSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 108 F. 3d 478.

No. 96–9339. MARTINEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 92 F. 3d 1173.

No. 96–9340. LAVERTU *v.* BOROFSKY, LEWIS & AMODEO-VICKERY. Dist. Ct. N. H., City of Portsmouth. Certiorari denied.

No. 96–9342. POSEY *v.* NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 108 F. 3d 1373.

No. 96–9343. JIMENEZ RUIZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 96–9344. PURCELL ET UX. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 18.

No. 96–9346. BACON *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 345 N. C. 348, 483 S. E. 2d 179.

No. 96–9347. BECHARA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 478.

No. 96–9348. ROUDEBUSH *v.* OHIO. Ct. App. Ohio, Wayne County. Certiorari denied.

No. 96–9349. BROWN *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 46 M. J. 371.

No. 96–9350. ADAMS *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 96–9351. McDonnell *v.* Woods, Attorney General of Arizona. C. A. 9th Cir. Certiorari denied.

No. 96–9352. McDuff *v.* Texas. Ct. Crim. App. Tex. Certiorari denied. Reported below: 939 S. W. 2d 607.

No. 96–9353. Jackson *v.* Norris, Director, Arkansas Department of Correction. C. A. 8th Cir. Certiorari denied. Reported below: 105 F. 3d 405.

No. 96–9354. Torres *v.* School District No. 2 of Madison County, Nebraska, et al. C. A. 8th Cir. Certiorari denied. Reported below: 107 F. 3d 876.

No. 96–9355. Zertuche *v.* First Interstate Bank of Arizona, N. A. Ct. App. Ariz. Certiorari denied.

No. 96–9356. Wilson *v.* Grant et al. Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 297 N. J. Super. 128, 687 A. 2d 1009.

No. 96–9357. Williams *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 106 F. 3d 416.

No. 96–9358. Viltrakis *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 1159.

No. 96–9359. Wanless *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied.

No. 96–9361. Heacock *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 476.

No. 96–9362. Hughes *v.* Crandell et al. C. A. 9th Cir. Certiorari denied.

No. 96–9363. Hawkins *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 104 F. 3d 437.

No. 96–9364. Hoxsie *v.* Kerby, Warden, et al. C. A. 10th Cir. Certiorari denied. Reported below: 108 F. 3d 1239.

No. 96–9365. Hartline *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 111 F. 3d 896.

No. 96–9366. Flynn *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 108 F. 3d 1377.

No. 96–9367. DOCKERY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 110 F. 3d 796.

No. 96–9368. FORD *v.* GASTON, DEPUTY WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 107 F. 3d 865.

No. 96–9369. GUINN *v.* ZAVARAS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 100 F. 3d 967.

No. 96–9370. GARCIA *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 678 N. E. 2d 1296.

No. 96–9371. SCHWARZ *v.* WOODRUFF, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 111 F. 3d 140.

No. 96–9372. RAZACK *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 4th Cir. Certiorari denied. Reported below: 108 F. 3d 1372.

No. 96–9373. RAWLINS *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 96–9374. SHEETS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 101 F. 3d 706.

No. 96–9375. QURESHI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 110 F. 3d 797.

No. 96–9377. WINSTON *v.* CARTER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 477.

No. 96–9378. KORELIS *v.* RAMADA HOTEL. C. A. 2d Cir. Certiorari denied.

No. 96–9379. LA GRANGE *v.* LONGORIA. C. A. 5th Cir. Certiorari denied.

No. 96–9380. TORO-PELAEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 107 F. 3d 819.

No. 96–9381. VELAZQUEZ-CONTRERAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 103 F. 3d 141.

No. 96–9383. VAN BARNES *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 96–9384. WOOTEN *v.* HARTWIG, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 108 F. 3d 1380.

No. 96–9385. WASHINGTON *v.* TEXAS PRISON SYSTEM ET AL. (two judgments). C. A. 5th Cir. Certiorari denied.

No. 96–9386. REEDY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 105 F. 3d 649.

No. 96–9387. PARSONS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 107 F. 3d 874.

No. 96–9388. PETTIES *v.* UNITED STATES POSTAL SERVICE. C. A. 2d Cir. Certiorari denied. Reported below: 112 F. 3d 505.

No. 96–9389. HARRISON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 103 F. 3d 986.

No. 96–9390. HAUT *v.* UNITED STATES (two judgments). C. A. 3d Cir. Certiorari denied. Reported below: 107 F. 3d 864 (first judgment) and 213 (second judgment).

No. 96–9391. HENYARD *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 689 So. 2d 239.

No. 96–9392. HUNT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 1387.

No. 96–9393. SCHMIDT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 105 F. 3d 82.

No. 96–9395. ALLEN *v.* NORTH CAROLINA. Super. Ct. N. C., Halifax County. Certiorari denied.

No. 96–9396. CORDERO *v.* LALOR, JUDGE OF GREENE COUNTY COURT, ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 89 N. Y. 2d 521, 678 N. E. 2d 482.

No. 96–9397. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 108 F. 3d 1377.

No. 96–9398. BEEMAN *v.* IOWA. C. A. 8th Cir. Certiorari denied. Reported below: 108 F. 3d 181.

No. 96–9399. SMALL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 110 F. 3d 798.

No. 96–9400. SHOMADE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 113 F. 3d 1252.

No. 96–9401. RODRIGUEZ-AGUIRRE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 108 F. 3d 1228.

No. 96–9402. PEDRAZA *v.* UNITED STATES; and
No. 97–5007. MILLER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: No. 96–9402, 108 F. 3d 1370.

No. 96–9403. SIMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 103 F. 3d 133.

No. 96–9404. ANZIVINO *v.* LEWIS ET AL. Ct. App. Ariz. Certiorari denied.

No. 96–9405. REDD *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 96–9406. RIDDICK *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 105 F. 3d 648.

No. 96–9407. RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 106 F. 3d 397.

No. 96–9408. COBB *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 698 So. 2d 800.

No. 96–9409. SCEARCY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 108 F. 3d 1374.

No. 96–9410. PITERA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 96–9411. PLEASANT *v.* NUTRITION, INC. Ct. App. D. C. Certiorari denied.

No. 96–9412. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 106 F. 3d 1173.

No. 96–9414. WILSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 105 F. 3d 219.

No. 96–9415. WASHINGTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 109 F. 3d 335.

No. 96–9416. TRAICOFF *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 82 Wash. App. 1066.

No. 96–9417. WATTS *v.* WEST, SECRETARY OF THE ARMY, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 106 F. 3d 420.

No. 96–9418. RIES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 100 F. 3d 1469.

No. 96–9419. REDDY *v.* REDLANDS COMMUNITY HOSPITAL ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–9421. BAZILE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 96–9423. FUHR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 110 F. 3d 794.

No. 96–9424. HIGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 18.

No. 96–9425. ELLIS *v.* HENRY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 97 F. 3d 1459.

No. 96–9426. FANNY *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 126 N. J. 331, 598 A. 2d 889.

No. 96–9427. GUTHRIE *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 689 So. 2d 951.

No. 96–9428. DUCKETT *v.* GODINEZ, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 109 F. 3d 533.

No. 96–9429. FOSTER *v.* CHAMPION, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 107 F. 3d 20.

No. 96–9430. MYERS, AKA FIELDS, AKA DUDLEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 116 F. 3d 470.

No. 96–9431. MMAHAT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 106 F. 3d 89.

No. 96–9432. MACKEY *v.* DYKE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 111 F. 3d 460.

No. 96–9433. MARRERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 110 F. 3d 794.

No. 96–9434. MIKELS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 110 F. 3d 71.

No. 96–9435. MINCY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 110 F. 3d 65.

No. 96–9436. BROWN *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 690 So. 2d 276.

No. 96–9437. BOW *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 110 F. 3d 70.

No. 96–9438. HOLMES *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 671 N. E. 2d 841.

No. 96–9440. MARTIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 111 F. 3d 892.

No. 96–9442. PARKER *v.* WERTENBERGER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 111 F. 3d 127.

No. 96–9443. MOORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 106 F. 3d 415.

No. 96–9444. OSPINA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 105 F. 3d 671.

No. 96–9445. CORNES *v.* DETELLA, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 108 F. 3d 1379.

No. 96–9446. COUCH *v.* MCCLURE ET AL. Super. Ct. Richmond County, Ga. Certiorari denied.

No. 96–9448. CALLEJA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 103 F. 3d 121.

No. 96–9449. LEWIS *v.* SKANDALAKIS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 106 F. 3d 417.

No. 96–9450. MERCER *v.* CITY OF MOUNT VERNON, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 111 F. 3d 123.

No. 96–9452. MILES *v.* LASALLE FINANCIAL SERVICES, INC., ET AL. C. A. 7th Cir. Certiorari denied.

No. 96–9453. LaFountain *v.* Caruso. C. A. 6th Cir. Certiorari denied.

No. 96–9454. Mountain *v.* Brennan, Superintendent, Albion Correctional Institution. C. A. 3d Cir. Certiorari denied.

No. 96–9455. Lowe *v.* Cantrell. C. A. 10th Cir. Certiorari denied. Reported below: 105 F. 3d 669.

No. 96–9456. Ernst *v.* Child & Youth Services of Chester County et al. C. A. 3d Cir. Certiorari denied. Reported below: 108 F. 3d 486.

No. 96–9457. Thrower *v.* Anderson, Warden. C. A. 6th Cir. Certiorari denied.

No. 96–9458. Castro *v.* United States. C. A. 2d Cir. Certiorari denied.

No. 96–9459. Brooks *v.* Normandy Middle School et al. C. A. 8th Cir. Certiorari denied. Reported below: 108 F. 3d 1381.

No. 96–9460. Caldwell *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 107 F. 3d 27.

No. 96–9461. Bell *v.* Flores et al. C. A. 10th Cir. Certiorari denied. Reported below: 94 F. 3d 655.

No. 96–9462. Aziz *v.* Groose, Superintendent, Jefferson City Correctional Center. C. A. 8th Cir. Certiorari denied.

No. 96–9463. Braden *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 103 F. 3d 128.

No. 96–9464. Bailey *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 96–9465. Carmouche *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 96–9466. Marshall *v.* New Jersey. Sup. Ct. N. J. Certiorari denied. Reported below: 148 N. J. 89, 690 A. 2d 1.

No. 96–9467. Koonce et al. *v.* United States; and
No. 97–5602. Koonce *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 477.

No. 96–9468. JORDAN *v.* GAMMON, SUPERINTENDENT, MOBERLY CORRECTIONAL INSTITUTION. C. A. 8th Cir. Certiorari denied. Reported below: 105 F. 3d 662.

No. 96–9469. MURRAY *v.* GROOSE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 106 F. 3d 812.

No. 96–9471. CUNNINGHAM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 103 F. 3d 141.

No. 96–9472. ORTLAND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 109 F. 3d 539.

No. 96–9473. SADEGHY *v.* KERNAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 878.

No. 96–9474. SMITH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 107 F. 3d 876.

No. 96–9475. BANKS *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 694 So. 2d 741.

No. 96–9476. ANTONELLI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 106 F. 3d 403.

No. 96–9477. BATISTA *v.* WALKER, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 104 F. 3d 355.

No. 96–9478. REUTTER *v.* CRANDEL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 109 F. 3d 575.

No. 96–9481. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 111 F. 3d 896.

No. 96–9482. TAYLOR *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 78 Ohio St. 3d 15, 676 N. E. 2d 82.

No. 96–9483. WOODHOUSE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 109 F. 3d 347.

No. 96–9484. TACKETT *v.* DISCENZA ET AL. C. A. 6th Cir. Certiorari denied.

No. 96–9485. RICHARDSON *v.* OLD REPUBLIC SURETY CO. C. A. D. C. Cir. Certiorari denied. Reported below: 107 F. 3d 923.

No. 96–9486. OBERMEYER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 110 F. 3d 71.

No. 96–9487. SOMERS *v.* THURMAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 109 F. 3d 614.

No. 96–9488. BEST *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied.

No. 96–9489. SCHROTT *v.* CALLITHEN ET AL. C. A. 3d Cir. Certiorari denied.

No. 96–9490. ZIGLAR *v.* ALABAMA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 108 F. 3d 344.

No. 96–9491. WHITTLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 116 F. 3d 1493.

No. 96–9492. ABDUL-AKBAR *v.* DELAWARE DEPARTMENT OF CORRECTION ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 111 F. 3d 125.

No. 96–9493. BALTHAZAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 111 F. 3d 893.

No. 96–9494. BEATON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 110 F. 3d 70.

No. 96–9495. BERRY *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 267 Ga. 605, 481 S. E. 2d 203.

No. 96–9496. ADAMS *v.* NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 96–9497. COLLINS *v.* UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT. C. A. 5th Cir. Certiorari denied.

No. 96–9498. ANDRADE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 111 F. 3d 892.

No. 96–9499. AL-MOSAWI *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 929 P. 2d 270.

No. 96–9500. BELTRAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 109 F. 3d 365.

No. 96–9501. BROW *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 96–9502. RODGER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 100 F. 3d 90.

No. 96–9504. ADESANYA *v.* GUNN ET AL. C. A. 9th Cir. Certiorari denied.

No. 96–9507. PATTERSON *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 324 S. C. 5, 482 S. E. 2d 760.

No. 96–9508. STANBERRY *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 687 So. 2d 226.

No. 96–9509. SHARP *v.* ROBERTS, STATE TREASURER OF MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 96–9510. ALVAREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 96–9511. BOGDANOFF *v.* FARMON, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 106 F. 3d 406.

No. 96–9512. BUGH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 112 F. 3d 514.

No. 96–9514. CARDONA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 110 F. 3d 798.

No. 96–9515. YOUNG *v.* NEW JERSEY DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES ET AL. C. A. 3d Cir. Certiorari denied.

No. 96–9516. TULALI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 878.

No. 96–9517. HILL *v.* FARMERS HOME GROUP. Ct. App. Minn. Certiorari denied.

No. 96–9518. HODGE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 112 F. 3d 1172.

No. 96–9519. HINES *v.* COSTELLO, SUPERINTENDENT, MID-STATE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 96–9520. DE LA VEGA *v.* CHATER, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 337.

No. 96–9521. GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 110 F. 3d 71.

No. 96–9522. GRAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 112 F. 3d 517.

No. 96–9523. GARDELEY *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 14 Cal. 4th 605, 927 P. 2d 713.

No. 96–9524. HANLEY *v.* MADDOX ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 111 F. 3d 126.

No. 96–9525. HEARN *v.* HOFBAUER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 96–9526. GATES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 107 F. 3d 864.

No. 96–9527. MARTORANO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 114 F. 3d 1173.

No. 96–9528. JAMES, AKA MITCHELL, AKA SMITH *v.* THICKENS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 105 F. 3d 647.

No. 96–9530. MCDONALD *v.* INLAND CONTAINER CORP. Sup. Ct. Ga. Certiorari denied.

No. 96–9531. KINDER *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 942 S. W. 2d 313.

No. 96–9532. LEWIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 110 F. 3d 417.

No. 96–9533. JAMES *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 687 So. 2d 1304.

No. 96–9534. JAMES *v.* BARCLIFT ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 97 F. 3d 1468.

No. 96–9535. LONAY *v.* STOOKEY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 106 F. 3d 409.

No. 96–9536. JANNEH *v.* RUNYON, POSTMASTER GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 108 F. 3d 329.

No. 96–9537. JOHNSON *v.* GUDMANSON, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 96–9538. HARDISON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 106 F. 3d 393.

No. 96–9539. HAYES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 110 F. 3d 65.

No. 96–9540. HEKIMAIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 119 F. 3d 2.

No. 96–9543. FAGBEMI *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 96–9544. TOCK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 114 F. 3d 1174.

No. 96–9545. WILLIAMS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 96–9546. THOMAS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 96–9548. WILLIS *v.* FLORIDA DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES. Sup. Ct. Fla. Certiorari denied. Reported below: 689 So. 2d 1073.

No. 96–9549. WINESTOCK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 110 F. 3d 62.

No. 96–9550. VRETTOS *v.* BOGDEN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 114 F. 3d 1174.

No. 96–9551. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 109 F. 3d 772.

No. 96–9552. MAHN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 108 F. 3d 1379.

No. 96–9553. GRAHAM *v.* TURPIN, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 96–9554. COTTEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 110 F. 3d 61.

No. 96–9555. BEHLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 100 F. 3d 632.

No. 96–9556. BAKHSHEKOOEI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 110 F. 3d 70.

No. 96–9557. WILLIAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 110 F. 3d 50.

No. 96–9558. WILSON *v.* WORKERS' COMPENSATION APPEALS BOARD ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–9559. SMITH *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 685 A. 2d 380.

No. 96–9560. SINGLETON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 107 F. 3d 12.

No. 96–9561. HALL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 109 F. 3d 1227.

No. 96–9562. JONES *v.* LOUISIANA STATE BAR ASSN. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 475.

No. 96–9563. LLOYD *v.* UNITY MUTUAL LIFE INSURANCE CO. C. A. 2d Cir. Certiorari denied. Reported below: 108 F. 3d 1369.

No. 96–9564. MAUCHLIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 114 F. 3d 1173.

No. 96–9565. JACKSON *v.* KANTOLA ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 110 F. 3d 64.

No. 96–9566. TRUESDALE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 105 F. 3d 650.

No. 96–9567. TUNG *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 96–9568. WILLIAMS *v.* TORREY. Ct. App. N. M. Certiorari denied.

No. 96–9569. VAN POYCK ET AL. *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 106 F. 3d 1558.

No. 96–9571. JAMES *v.* MINTER ET AL. C. A. 5th Cir. Certiorari denied.

No. 96–9572. ANDERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 108 F. 3d 342.

No. 96–9573. HENDERSON *v.* UNITED STATES (two judgments). C. A. 11th Cir. Certiorari denied. Reported below: 103 F. 3d 148 (first judgment); 108 F. 3d 343 (second judgment).

No. 96–9574. BOWRING ET AL. *v.* ELLIS, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 96–9575. CASSELL *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 103 F. 3d 61.

No. 96–9576. CARRIZAL *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 96–9577. BAKI, AKA CALHOUN *v.* WOOD, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 96–9578. CROWDER *v.* ROYAL INSURANCE CORP. ET AL. C. A. 7th Cir. Certiorari denied.

No. 97–1. ALSTON ET AL. *v.* ARIZONA EX REL. HOUSEWORTH, SUPERINTENDENT OF BANKS. Ct. App. Ariz. Certiorari denied.

No. 97–2. WESTINGHOUSE ELECTRIC CORP. *v.* GENERAL CIRCUIT BREAKER & ELECTRIC SUPPLY, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 106 F. 3d 894.

No. 97–3. TOTAL MEDICAL MANAGEMENT, INC. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 104 F. 3d 1314.

No. 97–4. FIREMAN'S FUND INSURANCE CO., INC. *v.* PAINEWEBBER REAL ESTATE SECURITIES, INC., ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 97–5. LEWIS, AKA REYNOLDS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 111 F. 3d 897.

No. 97–6. JENKINS *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 97–8. STANFIELD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 109 F. 3d 976.

No. 97–9. HONEYWELL, INC., ET AL. *v.* MINNESOTA LIFE AND HEALTH INSURANCE GUARANTY ASSN. C. A. 8th Cir. Certiorari denied. Reported below: 110 F. 3d 547.

No. 97–10. SALAZAR *v.* CASSEL. Ct. App. N. M. Certiorari denied.

No. 97–11. MURR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 106 F. 3d 402.

No. 97–12. ROWE *v.* WALGREEN CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 109 F. 3d 768.

No. 97–13. DREW ET AL. *v.* RICOH CORP. C. A. 4th Cir. Certiorari denied. Reported below: 110 F. 3d 59.

No. 97–15. DAWSON *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 106 F. 3d 397.

No. 97–17. HALL, TRUSTEE, ET AL. *v.* FEDERAL FINANCIAL CO. C. A. 4th Cir. Certiorari denied. Reported below: 108 F. 3d 46.

No. 97–18. DAVID *v.* CITY AND COUNTY OF DENVER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 101 F. 3d 1344.

No. 97–19. SMITH *v.* SUPREME COURT OF COLORADO (two judgments). Sup. Ct. Colo. Certiorari denied. Reported below: 937 P. 2d 724 (first judgment).

No. 97–20. NELMIDA *v.* SHELLY EUROCARS, INC., DBA BMW OF HONOLULU, LTD., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 112 F. 3d 380.

No. 97–21. MAYS *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 691 So. 2d 1044.

No. 97–22. SCHRAGER *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 285 Ill. App. 3d 1110, 709 N. E. 2d 319.

No. 97–24. BAILEY *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 97–25. LIBERTARIAN PARTY OF ILLINOIS ET AL. *v.* REDNOUR ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 108 F. 3d 768.

No. 97–28. GLANTON, TRUSTEE OF THE BARNES FOUNDATION, ET AL. *v.* DAVIS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 107 F. 3d 1044.

No. 97–30. DETERESI *v.* CITY OF LOS ANGELES ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 97–32. WEST *v.* MORRISON'S HOSPITALITY GROUP ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 108 F. 3d 344.

No. 97–33. MILLER *v.* ALABAMA STATE BAR. Sup. Ct. Ala. Certiorari denied.

No. 97–34. HICKS *v.* WESTINGHOUSE MATERIALS CO. ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 78 Ohio St. 3d 95, 676 N. E. 2d 872.

No. 97–35. GREGG *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 142 Ore. App. 312, 920 P. 2d 182.

No. 97–36. RENDON ET AL. *v.* EXCEL CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 106 F. 3d 1197.

No. 97–37. STEERE *v.* JEPPESEN SANDERSON, INC. C. A. 10th Cir. Certiorari denied. Reported below: 108 F. 3d 341.

No. 97–38. CANNON *v.* BRISTOL, TENNESSEE, BOARD OF EDUCATION ET AL. C. A. 6th Cir. Certiorari denied.

No. 97–39. NAUMOV *v.* UNIVERSITY OF PITTSBURGH. C. A. 3d Cir. Certiorari denied. Reported below: 107 F. 3d 862.

No. 97–40. BUSKIRK ET AL. *v.* GEORGIA ET AL. Sup. Ct. Ga. Certiorari denied. Reported below: 267 Ga. 769, 482 S. E. 2d 286.

No. 97–41. YOUNG *v.* ILLINOIS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 111 F. 3d 134.

No. 97–43. ST. CHARLES COUNTY *v.* MISSOURI FAMILY HEALTH COUNCIL. C. A. 8th Cir. Certiorari denied. Reported below: 107 F. 3d 682.

No. 97–45. STERN *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 97–46. TALASILA, INC., ET AL. *v.* HERMAN, SECRETARY OF LABOR. C. A. 5th Cir. Certiorari denied.

No. 97–48. DOUGLASS *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied.

No. 97–50. HALE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 106 F. 3d 402.

No. 97–51. MURRAY *v.* TRANS UNION CORP. C. A. 1st Cir. Certiorari denied. Reported below: 101 F. 3d 680.

No. 97–52. SASS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 111 F. 3d 139.

No. 97–54. HUDGINS *v.* BROWN, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 124 F. 3d 224.

No. 97–56. PETERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 110 F. 3d 616.

No. 97–57. PALMER *v.* LAVALLEY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 107 F. 3d 415.

No. 97–60. KENTUCKY RIGHT TO LIFE, INC., ET AL. *v.* STENGEL, COMMONWEALTH ATTORNEY, JEFFERSON COUNTY, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 108 F. 3d 637.

No. 97–61. JACKSON *v.* ZAPATA HAYNIE CORP. ET AL.; ARTHUR ET AL. *v.* ZAPATA HAYNIE CORP. ET AL.; and KING-HILL ET AL. *v.* ZAPATA HAYNIE CORP. ET AL. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 690 So. 2d 90 (first judgment), 86 (second judgment), and 91 (third judgment).

No. 97–63. CREATIVE STRATEGY FUND I ET AL. *v.* PRUDENTIAL SECURITIES, INC. C. A. 11th Cir. Certiorari denied. Reported below: 107 F. 3d 26.

No. 97–64. MANH TRAN *v.* WAYNE STATE UNIVERSITY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 110 F. 3d 65.

No. 97–66. RIVERS ET AL. *v.* ROADWAY EXPRESS, INC. C. A. 6th Cir. Certiorari denied. Reported below: 111 F. 3d 131.

No. 97–67. SHEEHAN *v.* WHITLEY, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 110 F. 3d 794.

No. 97–68. WESTOWNE SHOES, INC., ET AL. *v.* BROWN GROUP, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 104 F. 3d 994.

No. 97–69. HUNT *v.* NORTH CAROLINA. Super Ct. N. C., Robeson County. Certiorari denied.

No. 97–70. INTERNATIONAL FIDELITY INSURANCE CO. *v.* BOARD OF TRUSTEES OF OPERATING ENGINEERS LOCAL 825 FUND SERVICE FACILITIES. Sup. Ct. N. J. Certiorari denied. Reported below: 148 N. J. 561, 691 A. 2d 339.

No. 97–71. DEKALB STONE, INC. *v.* DEKALB COUNTY, GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 106 F. 3d 956.

No. 97–72. MOORE ET AL. *v.* STICKS BILLIARDS, INC., ET AL. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 97–73. DARLING ET AL. *v.* MACPHERSON, INC., ET AL. Ct. App. Wash. Certiorari denied. Reported below: 82 Wash. App. 1064.

No. 97–74. VALOT ET AL. *v.* SOUTHEAST LOCAL SCHOOL DISTRICT BOARD OF EDUCATION ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 107 F. 3d 1220.

No. 97–76. GROSS ET AL. *v.* CITY OF PITTSBURGH. C. A. 3d Cir. Certiorari denied. Reported below: 111 F. 3d 126.

No. 97–78. YIAMOUYIANNIS *v.* LOWE ET AL. Ct. App. Ohio, Delaware County. Certiorari denied.

No. 97–80. DEHONEY *v.* SOUTH CAROLINA DEPARTMENT OF CORRECTIONS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 105 F. 3d 646.

No. 97–81. DELAWARE RIVER AND BAY AUTHORITY *v.* INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 68, AFL–CIO, ET AL. Sup. Ct. N. J. Certiorari denied. Reported below: 147 N. J. 433, 688 A. 2d 569.

No. 97–83. GERMAN ROMAN CATHOLIC CONGREGATION OF ST. MICHAEL'S CHURCH ET AL. *v.* WUERL, BISHOP, ROMAN CATHOLIC DIOCESE OF PITTSBURGH. Super. Ct. Pa. Certiorari denied. Reported below: 455 Pa. Super. 682, 687 A. 2d 864.

No. 97–84. DILLING MECHANICAL CONTRACTORS, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 7th Cir. Certiorari denied. Reported below: 107 F. 3d 521.

No. 97–85. SCHMIDTENDORFF *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 208 Wis. 2d 373, 561 N. W. 2d 352.

No. 97–86. VIATOR ET AL. *v.* DELCHAMPS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 109 F. 3d 1124.

No. 97–87. DISTRIBUTEL, INC. *v.* ALASKA. Sup. Ct. Alaska. Certiorari denied. Reported below: 933 P. 2d 1137.

No. 97–88. CUNNINGHAM ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 113 F. 3d 289.

No. 97–89. LEDBETTER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 108 F. 3d 1388.

No. 97–90. PUCHNER *v.* KRUZIKI, WAUKESHA COUNTY SHERIFF, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 111 F. 3d 541.

No. 97–91. FRONKO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 114 F. 3d 1173.

No. 97–93. SCHAEFER *v.* FEFFERMAN, DBA UPTOWN PROPERTY MANAGEMENT. App. Dept., Super. Ct. Cal., San Diego County. Certiorari denied.

No. 97–94. PAPIKE *v.* TAMBRANDS, INC. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 737.

No. 97–96. ASAM *v.* OWENS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 113 F. 3d 1251.

No. 97–97. PREUSS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 97–98. PAN-AMERICAN LIFE INSURANCE CO. ET AL. *v.* CYPRESS FAIRBANKS MEDICAL CENTER, INC. C. A. 5th Cir. Certiorari denied. Reported below: 110 F. 3d 280.

No. 97–99. CENTEX BATESON CONSTRUCTION CO., INC. *v.* DEPARTMENT OF TAXATION AND REVENUE OF NEW MEXICO. Ct. App. N. M. Certiorari denied.

No. 97–101. NOELLE *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 97–102. CATERINA ET AL. *v.* BLAKELY BOROUGH ET AL. Commw. Ct. Pa. Certiorari denied.

No. 97–103. ROSADO *v.* MERRILL, DIRECTOR, CHARLESTON CORRECTIONAL FACILITY. C. A. 1st Cir. Certiorari denied. Reported below: 109 F. 3d 62.

No. 97–105. VIRGINIA BEACH BOARD OF ZONING APPEALS ET AL. *v.* JANEZECK. Cir. Ct., City of Virginia Beach, Va. Certiorari denied.

No. 97–106. THOMAS ET AL. *v.* METROPOLITAN LIFE INSURANCE CO. ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 111 F. 3d 963.

No. 97–107. LINDSAY ET AL. *v.* THIOKOL CORP. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 112 F. 3d 1068.

No. 97–108. HAGOOD *v.* ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT ET AL. Ct. Civ. App. Ala. Certiorari denied. Reported below: 695 So. 2d 48.

No. 97–110. BRODEUR ET AL. *v.* ASHKER. C. A. 9th Cir. Certiorari denied. Reported below: 112 F. 3d 392.

No. 97–111. KIRKLAND *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 107 F. 3d 872.

No. 97–114. HARRIS *v.* ARLINGTON COUNTY, VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 108 F. 3d 1372.

No. 97–116. HIGHTOWER ET AL. *v.* DOANE PRODUCTS CO. C. A. 11th Cir. Certiorari denied. Reported below: 107 F. 3d 27.

No. 97–117. VENTURA *v.* CITY OF INDEPENDENCE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 108 F. 3d 1378.

No. 97–118. TULARE COUNTY DEPARTMENT OF HEALTH SERVICES *v.* MORAN. C. A. 9th Cir. Certiorari denied. Reported below: 99 F. 3d 1146.

No. 97–119. STUTZ MOTOR CAR OF AMERICA, INC. *v.* REEBOK INTERNATIONAL LTD. C. A. Fed. Cir. Certiorari denied. Reported below: 113 F. 3d 1258.

No. 97–120. COSGROVE *v.* SHEARSON LEHMAN BROTHERS. C. A. 6th Cir. Certiorari denied. Reported below: 105 F. 3d 659.

No. 97–121. IN RE WELLS. Sup. Ct. Ind. Certiorari denied.

No. 97–125. PROTECTIVE LIFE INSURANCE CO. *v.* LAZARD FRERES & CO. C. A. 2d Cir. Certiorari denied. Reported below: 108 F. 3d 1531.

No. 97–128. MCKINNEY ET AL. *v.* EMERY AIR FREIGHT CORP., DBA EMERY WORLDWIDE, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 1385.

No. 97–130. BANDERAS, AKA BANDERAS ORTHOPAEDIC CLINIC, ET AL. *v.* DOMAN. Ct. App. Ga. Certiorari denied. Reported below: 224 Ga. App. 198, 480 S. E. 2d 252.

No. 97–131. A–1 APPLIANCE ET AL. *v.* DEUTSCHE FINANCIAL SERVICES CORP. C. A. 3d Cir. Certiorari denied. Reported below: 107 F. 3d 6.

No. 97–132. ALLUSTIARTE ET UX. *v.* COOPER. C. A. 9th Cir. Certiorari denied. Reported below: 105 F. 3d 664.

No. 97–134. BELL *v.* ALDEN OWNERS, INC. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 97–136. GUSTILO ET AL. *v.* MARAVILLA GUSTILO, INDIVIDUALLY AND AS FORMER ADMINISTRATRIX OF THE ESTATE OF GUSTILO, DECEASED, AND AS GUARDIAN OF MARAVILLA GUSTILO, ET AL. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 97–138. ELLIS *v.* TRANSAMERICA OCCIDENTAL LIFE INSURANCE CO. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 337.

No. 97–139. CHADWICK *v.* ANDREWS, WARDEN, ET AL. (two judgments). Super. Ct. Pa. Certiorari denied. Reported below: 454 Pa. Super. 700, 685 A. 2d 1039.

No. 97–140. HINE *v.* OKLAHOMA EX REL. OKLAHOMA BAR ASSN. Sup. Ct. Okla. Certiorari denied. Reported below: 937 P. 2d 996.

No. 97–142. TILLMAN CORP. *v.* FIDELITY & CASUALTY COMPANY OF NEW YORK. C. A. 7th Cir. Certiorari denied. Reported below: 112 F. 3d 302.

No. 97–143. WRIGHT *v.* SLATER, SECRETARY OF TRANSPORTATION. C. A. 4th Cir. Certiorari denied. Reported below: 107 F. 3d 869.

No. 97–148. ARIZONA DEPARTMENT OF CORRECTIONS ET AL. *v.* HOOK ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 1397.

No. 97–150. GRACIA ET AL. *v.* TREVINO, INDIVIDUALLY AND AS EXECUTIVE DIRECTOR OF THE HOUSING AUTHORITY OF THE CITY OF BROWNSVILLE, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 105 F. 3d 1053.

No. 97–153. JOHNSTON *v.* TIDEWATER MARINE SERVICE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 478.

No. 97–154. FLANAGAN *v.* JUDICIAL REVIEW COUNCIL OF CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 240 Conn. 157, 690 A. 2d 865.

No. 97–157. UNITED STATES EX REL. FINDLEY *v.* FPC-BORON EMPLOYEES' CLUB ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 105 F. 3d 675.

No. 97–158. GREEN ET VIR *v.* TOWN OF BROOKLINE. C. A. 1st Cir. Certiorari denied. Reported below: 111 F. 3d 122.

No. 97–159. BLACK *v.* ZARING HOMES, INC. C. A. 6th Cir. Certiorari denied. Reported below: 104 F. 3d 822.

No. 97–161. AIZAWA *v.* JAPAN ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–162. SPRANGER *v.* RUNYON, POSTMASTER GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 112 F. 3d 517.

No. 97–164. HANSEN *v.* SEA RAY BOATS, INC. C. A. 10th Cir. Certiorari denied. Reported below: 107 F. 3d 21.

No. 97–165. JONES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 112 F. 3d 299.

No. 97–167. BJURMAN ET AL., CO-EXECUTORS OF WILL OF BJURMAN *v.* TRANSAMERICA CORPORATION EMPLOYEES HEALTH CARE PLAN. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 1384.

No. 97–168. BELL *v.* NEW JERSEY ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 97–169. KRAVANDER *v.* LOH ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 97–171. DECARO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 109 F. 3d 1304.

No. 97–173. HEBERLIG *v.* SOBINA, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–175. GIANNETTI *v.* DEOCK. Super. Ct. N. J., App. Div. Certiorari denied.

No. 97–176. BORLAND *v.* EMERSON ET AL. Ct. App. Tex., 3d Dist. Certiorari denied. Reported below: 927 S. W. 2d 709.

No. 97–177. ADAMS ET AL. *v.* CITY OF JERSEY CITY. C. A. 3d Cir. Certiorari denied. Reported below: 114 F. 3d 1171.

No. 97–178. FAIRECHILD *v.* UNITED AIRLINES, INC., ET AL. Sup. Ct. Haw. Certiorari denied. Reported below: 84 Haw. 127, 930 P. 2d 1015.

No. 97–181. FAFARMAN *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 104 F. 3d 365.

No. 97–182. BELL, T/A WES OUTDOOR ADVERTISING CO. *v.* NEW JERSEY DEPARTMENT OF TRANSPORTATION (two judgments). Super. Ct. N. J., App. Div. Certiorari denied.

No. 97–183. WHITE ET AL. *v.* DOWNS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 512.

No. 97–184. WADE *v.* CITY OF INGLEWOOD. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 1387.

No. 97–187. NELSON *v.* MCCLATCHY NEWSPAPERS, INC., ET AL. Sup. Ct. Wash. Certiorari denied. Reported below: 131 Wash. 2d 523, 936 P. 2d 1123.

No. 97–190. DOUBLE R INC., DBA DOUBLE R VENDING, INC., ET AL. *v.* LEARY. C. A. 11th Cir. Certiorari denied. Reported below: 104 F. 3d 371.

No. 97–191. PRESCOTT *v.* G. I. W. INDUSTRIES, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 109 F. 3d 772.

No. 97–192. MARTIN *v.* COHEN, SECRETARY OF DEFENSE, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 113 F. 3d 1250.

No. 97–193. BARRETT *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 111 F. 3d 947.

No. 97–194. CARLISLE *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 97–198. CORNISH *v.* DISTRICT OF COLUMBIA BOARD ON PROFESSIONAL RESPONSIBILITY. Ct. App. D. C. Certiorari denied. Reported below: 691 A. 2d 156.

No. 97–199. GUO *v.* RYLAND GROUP, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 103 F. 3d 117.

No. 97–201. GUPTA ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 1385.

No. 97–202. SARSFIELD *v.* OFFICE OF THE COMPTROLLER OF THE CURRENCY. C. A. 9th Cir. Certiorari denied. Reported below: 105 F. 3d 666.

No. 97–203. BOATWRIGHT *v.* HERMAN, SECRETARY OF LABOR, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 119 F. 3d 2.

No. 97–205. TANGARI *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 44 Conn. App. 187, 688 A. 2d 1335.

No. 97–206. WORTHINGTON *v.* LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT ET AL. Ct. App. La., 2d Cir. Certiorari denied. Reported below: 681 So. 2d 1315.

No. 97–207. KREMETIS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 97–212. BURNSTINE *v.* CALIFORNIA DEPARTMENT OF MOTOR VEHICLES. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 51 Cal. App. 4th 1428, 60 Cal. Rptr. 2d 89.

No. 97–213. BUCHBINDER ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied.

No. 97–224. DIERSEN *v.* CHICAGO CAR EXCHANGE, INC. C. A. 7th Cir. Certiorari denied. Reported below: 110 F. 3d 481.

No. 97–227. ESTATE OF COLON, DECEASED, BY PERSONAL REPRESENTATIVE MARTINEZ, ET AL. *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 114 F. 3d 1184.

No. 97–229. HARMON *v.* CSX TRANSPORTATION, INC. C. A. 6th Cir. Certiorari denied. Reported below: 110 F. 3d 364.

No. 97–233. PENCHISHEN *v.* STROH BREWERY CO. C. A. 3d Cir. Certiorari denied. Reported below: 116 F. 3d 469.

No. 97–234. YUZARY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 112 F. 3d 507.

No. 97–237. LEWIS *v.* BOCA APPEALS BOARD OF CLARKSBURG ET AL. Sup. Ct. App. W. Va. Certiorari denied.

No. 97–239. ALOI ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 94 F. 3d 53.

No. 97–240. WRIGHT ET AL., DBA F/V A. A. BARANOV *v.* NATIONAL MARINE FISHERIES SERVICE; NORADOUN ET AL., DBA F/V SEA PEARL *v.* NATIONAL MARINE FISHERIES SERVICE; and KENT ET AL. *v.* NATIONAL MARINE FISHERIES SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 112 F. 3d 518 (first judgment), 517 (second judgment), and 516 (third judgment).

No. 97–244. PHONOMETRICS, INC. *v.* RADISSON HOTELS INTERNATIONAL, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 113 F. 3d 1254.

No. 97–245. ALVARADO *v.* EL PASO INDEPENDENT SCHOOL DISTRICT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 111 F. 3d 893.

No. 97–248. DANO RESOURCE RECOVERY, INC. *v.* DISTRICT OF COLUMBIA. C. A. D. C. Cir. Certiorari denied.

No. 97–249. ESTATE OF RAY, DECEASED, ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 112 F. 3d 194.

No. 97–250. SCHILDT *v.* SOUVAL, 8TH DISTRICT PROSECUTOR, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 113 F. 3d 1247.

No. 97–254. ALEXANDER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 108 F. 3d 853.

No. 97–255. JONES *v.* SUPREME COURT OF THE UNITED STATES ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 114 F. 3d 1191.

No. 97–256. MCGIRT *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 345 N. C. 624, 481 S. E. 2d 288.

No. 97–257. VOINCHE *v.* CENTRAL INTELLIGENCE AGENCY. C. A. 5th Cir. Certiorari denied. Reported below: 119 F. 3d 3.

No. 97–258. MILLER *v.* STONEHEDGE/FASA-TEXAS JDC, LIMITED PARTNERSHIP. C. A. 5th Cir. Certiorari denied. Reported below: 110 F. 3d 793.

No. 97–262. EPLAND, PERSONAL REPRESENTATIVE OF THE ESTATE OF EPLAND, DECEASED *v.* LUMBERMEN'S MUTUAL CASUALTY CO. ET AL. Sup. Ct. Minn. Certiorari denied. Reported below: 564 N. W. 2d 203.

No. 97–264. FIORE, T/A FIORE TRUCKING AND CONTRACTING *v.* PENNSYLVANIA. Commw. Ct. Pa. Certiorari denied. Reported below: 676 A. 2d 723.

No. 97–268. RICHBURG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 108 F. 3d 344.

No. 97–272. LEASURE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 110 F. 3d 61.

No. 97–274. BOND *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 46 M. J. 86.

No. 97–275. SHAFFER *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 46 M. J. 94.

No. 97–281. C. R. W. *v.* OFFICE OF BAR ADMISSIONS, SUPREME COURT OF GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 267 Ga. 534, 481 S. E. 2d 511.

No. 97–283. STEVENS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–284. LARSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 114 F. 3d 1196.

No. 97–290. ASTON *v.* MISSOURI ET AL. Sup. Ct. Mo. Certiorari denied.

No. 97–292. SAMPSON *v.* BEDOYA, JUDGE, CIRCUIT COURT OF COOK COUNTY, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 108 F. 3d 1379.

No. 97–297. WOJCIK *v.* UNIVERSITY OF TEXAS AT SAN ANTONIO. C. A. 5th Cir. Certiorari denied. Reported below: 114 F. 3d 1180.

No. 97–304. NORRIS *v.* DEPARTMENT OF DEFENSE ET AL. C. A. D. C. Cir. Certiorari denied.

No. 97–316. HALL *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 46 M. J. 145.

No. 97–325. CHILDS *v.* PAINEWEBBER INC. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 336.

No. 97–351. POTTS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 106 F. 3d 410.

No. 97–363. FORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 107 F. 3d 868.

No. 97–5001. COVINGTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 510.

No. 97–5002. COLLINS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 109 F. 3d 1413.

No. 97–5003. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 116 F. 3d 1491.

No. 97–5004. QUEVADO *v.* BALDOR ET AL. Sup. Ct. Vt. Certiorari denied. Reported below: 166 Vt. 641, 693 A. 2d 1057.

No. 97–5006. PILCO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 114 F. 3d 332.

No. 97–5009. MITCHELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 97–5010. MASTERS *v.* CITY OF BELLFLOWER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 98 F. 3d 1346.

No. 97–5011. STEPHENS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 110 F. 3d 61.

No. 97–5012. RIVERA-ROBLES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 878.

No. 97–5013. SANDOVAL-REYNOSO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 110 F. 3d 71.

No. 97–5014. SAVOY *v.* SAVOY. Sup. Ct. Tex. Certiorari denied.

No. 97–5015. MBADIWE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 109 F. 3d 768.

No. 97–5016. MOODY *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 345 N. C. 563, 481 S. E. 2d 629.

No. 97–5017. JAMISON *v.* MORTON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–5018. MAYBERRY *v.* MAKEL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–5022. LIDMAN *v.* BARONE ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–5024. MCKELLIP *v.* SORRELL, ANDERSON, LEHRMAN, WANNER & THOMAS ET AL. C. A. 5th Cir. Certiorari denied.

No. 97–5025. MILLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 105 F. 3d 552.

No. 97–5026. SUTHERLAND *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 939 S. W. 2d 373.

No. 97–5027. MIRANDA *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 282 Ill. App. 3d 1105, 707 N. E. 2d 296.

No. 97–5028. JARRETT *v.* TOXIC ACTION WASH, AKA OHIO CITIZEN ACTION. C. A. 6th Cir. Certiorari denied. Reported below: 103 F. 3d 129.

No. 97–5029. KILLION *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 107 F. 3d 881.

No. 97–5034. PRADO *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 97–5035. BOYD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 111 F. 3d 893.

No. 97–5036. RAGOZZINO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 110 F. 3d 65.

No. 97–5037. LONDONO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 109 F. 3d 769.

No. 97–5040. LEAR *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 175 Ill. 2d 262, 677 N. E. 2d 895.

No. 97–5041. MOLLER *v.* CALIFORNIA DEPARTMENT OF SOCIAL SERVICES. C. A. 9th Cir. Certiorari denied. Reported below: 105 F. 3d 665.

No. 97–5043. MCCRIGHT *v.* GOMEZ, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–5044. FISHER *v.* BURKE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 113 F. 3d 1234.

No. 97–5045. RAYMER *v.* ENRIGHT ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 113 F. 3d 172.

No. 97–5046. HOWZE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 109 F. 3d 1313.

No. 97–5047. GALGIANI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 119 F. 3d 2.

No. 97–5048. PRINCE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 110 F. 3d 921.

No. 97–5049. DELGADO-FLORES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 340.

No. 97–5050. GREGORY *v.* LOVE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–5052. FULTZ *v.* WHITE, SUPERINTENDENT, ALGOA CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 107 F. 3d 875.

No. 97–5053. FOSTER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 97–5054. HORNBUCKLE *v.* GROOSE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 106 F. 3d 253.

No. 97–5055. HARRIS *v.* WEST, SECRETARY OF THE ARMY. C. A. 8th Cir. Certiorari denied.

No. 97–5057. BASILE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 109 F. 3d 1304.

No. 97–5058. THOMPSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 110 F. 3d 72.

No. 97–5059. WEEKES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 116 F. 3d 471.

No. 97–5060. MEL T. ET AL. *v.* CALIFORNIA DEPARTMENT OF SOCIAL SERVICES. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 97–5061. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 113 F. 3d 1233.

No. 97–5062. TROUTMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 110 F. 3d 793.

No. 97–5063. WALKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 111 F. 3d 893.

No. 97–5064. TOMBLIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 97–5065. VARGAS-HERNANDEZ *v.* UNITED STATES;
No. 97–5336. DOMARCO-SANCHEZ *v.* UNITED STATES; and
No. 97–5421. ARCINIEGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 113 F. 3d 1243.

No. 97–5066. CUNNINGHAM *v.* BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM. C. A. D. C. Cir. Certiorari denied.

No. 97–5067. THYMES ET AL. *v.* METROPOLITAN LIFE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 103 F. 3d 140.

No. 97–5068. TIMMONS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 107 F. 3d 872.

No. 97–5069. POYNTON *v.* UNITED STATES ET AL. C. A. 8th Cir. Certiorari denied.

No. 97–5070. FAZON *v.* BROWN, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 113 F. 3d 1255.

No. 97–5071. BLOUNT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 111 F. 3d 129.

No. 97–5072. ROLLER *v.* GUNN, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 107 F. 3d 227.

No. 97–5073. BRAXTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 777.

No. 97–5074. COOMBS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 97–5075. BONAT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 106 F. 3d 1472.

No. 97–5077. PEABODY *v.* HOFBAUER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–5078. HUNT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 878.

No. 97–5079. GREEN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 116 F. 3d 464.

No. 97–5080. HENDERSON *v.* TANSY, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 108 F. 3d 1388.

No. 97–5081. GARCIA *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 561 N. W. 2d 599.

No. 97–5083. HUFFMAN *v.* SUPERIOR COURT OF CALIFORNIA, MONTEREY COUNTY. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 97–5084. PECORARO *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 175 Ill. 2d 294, 677 N. E. 2d 875.

No. 97–5085. VIGIL *v.* SHANKS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 110 F. 3d 74.

No. 97–5086. WALKER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 97–5090. PERRY *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 111 F. 3d 963.

No. 97–5091. VALDES *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 108 F. 3d 342.

No. 97–5092. JONES *v.* HOUSEWORTH. C. A. 6th Cir. Certiorari denied.

No. 97–5093. JAMES *v.* DOE ET AL. C. A. 7th Cir. Certiorari denied.

No. 97–5094. MONTALVO *v.* BORG, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 97–5096. WOODS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 345 N. C. 294, 480 S. E. 2d 647.

No. 97–5098. ARMSTRONG *v.* SHILLINGER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 107 F. 3d 20.

No. 97–5099. BARFIELD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 112 F. 3d 1171.

No. 97–5100. COLEMAN *v.* BEILEIN, SHERIFF. C. A. 2d Cir. Certiorari denied.

No. 97–5101. CANADA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 110 F. 3d 260.

No. 97–5102. MARTINEZ *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 104 F. 3d 769.

No. 97–5104. MUNGIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 114 F. 3d 1181.

No. 97–5105. WOODS *v.* INTERNAL REVENUE SERVICE. C. A. 11th Cir. Certiorari denied. Reported below: 114 F. 3d 1201.

No. 97–5107. MARSHALL *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 97–5108. SAEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 111 F. 3d 132.

No. 97–5109. CONNER *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 345 N. C. 319, 480 S. E. 2d 626.

No. 97–5111. RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 114 F. 3d 1180.

No. 97–5112. ROY *v.* MADDOCK, INTERIM DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 242.

No. 97–5113. VARGAS *v.* GARNER, COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Ga. Certiorari denied.

No. 97–5114. THOMPSON *v.* DRUG ENFORCEMENT ADMINISTRATION ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 105 F. 3d 663.

No. 97–5115. CHAMBERS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 345 N. C. 184, 481 S. E. 2d 44.

No. 97–5117. TILLIS *v.* KERNAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–5118. TROTTER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 690 So. 2d 1234.

No. 97–5119. WASHINGTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 106 F. 3d 1488.

No. 97–5120. WILSON *v.* HARPER ET AL. C. A. 8th Cir. Certiorari denied.

No. 97–5126. SESLER *v.* PITZER, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 110 F. 3d 569.

No. 97–5127. QUINTANA *v.* UNITED STATES; and
No. 97–5220. QUINTANA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 113 F. 3d 1250.

No. 97–5128. PARKER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 111 F. 3d 140.

No. 97–5129. SANTOS-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 114 F. 3d 1181.

No. 97–5130. SHEPPARD *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 97–5131. COLLINS *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 691 So. 2d 918.

No. 97–5132. BROWNE *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 113 Nev. 305, 933 P. 2d 187.

No. 97–5135. VRETTOS *v.* REZZA ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–5136. CURRY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 111 F. 3d 132.

No. 97–5137. SAUNDERS *v.* TAYLOR ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–5138. THOMAS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–5139. GILBERT *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 345 Md. 577, 693 A. 2d 806.

No. 97–5140. FLIEGER *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 97–5141. HUGHES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 110 F. 3d 1281.

No. 97–5142. PIERCE *v.* GINN, SUPERINTENDENT, GREENE CORRECTIONAL CENTER. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 510.

No. 97–5143. FROST *v.* MEADOWS, WARDEN. Super. Ct. Baldwin County, Ga. Certiorari denied.

No. 97–5144. HIGGASON *v.* COTTRELL ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 114 F. 3d 1191.

No. 97–5146. STEFFEN *v.* KERNAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 97–5147. RODRIGUEZ-CALDERON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 111 F. 3d 135.

No. 97–5148. SANDERS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 109 F. 3d 768.

No. 97–5149. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 111 F. 3d 101.

No. 97–5150. LITTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 110 F. 3d 61.

No. 97–5151. MMAHAT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 106 F. 3d 89.

No. 97–5152. WEBER *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 97–5153. MAO-SHIUNG WEI *v.* HACKETTSTOWN COMMUNITY HOSPITAL ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 97–5154. RUIZ TORRES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 104 F. 3d 351.

No. 97–5155. WILLIAMS ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 110 F. 3d 66.

No. 97–5156. WATKIS *v.* KUEHNE & NAGEL, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 107 F. 3d 10.

No. 97–5157. ADAME *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 114 F. 3d 1182.

No. 97–5158. ABDULLAH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 107 F. 3d 863.

No. 97–5160. FISHER *v.* WYATT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 476.

No. 97–5161. DETRICH *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 188 Ariz. 57, 932 P. 2d 1328.

No. 97–5162. HUTSON *v.* SOUTH CAROLINA DEPARTMENT OF CORRECTIONS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 108 F. 3d 1372.

No. 97–5163. HEWITT *v.* LAWSON. Ct. Sp. App. Md. Certiorari denied.

No. 97–5164. QUILLEN *v.* SOUTHWEST VIRGINIA PRODUCTION CREDIT ASSN. Sup. Ct. Va. Certiorari denied.

No. 97–5165. RAINERI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 97–5166. FERRERA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 107 F. 3d 537.

No. 97–5167. GUNTHER *v.* NIAGARA MOHAWK POWER CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 112 F. 3d 504.

No. 97–5168. FONTENOT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 97–5169. ZANDERS *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD. C. A. 3d Cir. Certiorari denied.

No. 97–5170. WASHINGTON *v.* BRUSSTAR. Ct. App. Mich. Certiorari denied.

No. 97–5171. REED *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 97–5172. ROGERS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 102 F. 3d 641.

No. 97–5174. CHISHOLM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 110 F. 3d 61.

No. 97–5175. BOOTH *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 111 F. 3d 1.

No. 97–5177. BROADWELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 105 F. 3d 671.

No. 97–5178. COVERT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 117 F. 3d 940.

No. 97–5179. LIVINGSTON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 107 F. 3d 297.

No. 97–5180. MITCHELL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 114 F. 3d 1198.

No. 97–5181. LEON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 111 F. 3d 140.

No. 97–5182. MORTON *v.* GTE NORTH, INC. C. A. 5th Cir. Certiorari denied. Reported below: 114 F. 3d 1182.

No. 97–5183. MONTES-FIERRO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 110 F. 3d 74.

No. 97–5184. MITCHELL *v.* KEMNA, SUPERINTENDENT, WESTERN MISSOURI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 109 F. 3d 494.

No. 97–5185. LAWRENCE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 691 So. 2d 1068.

No. 97–5186. JONES *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 690 So. 2d 568.

No. 97–5188. LONGSTAFF *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 113 F. 3d 1249.

No. 97–5189. SARMIENTO-MALDONADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 105 F. 3d 653.

No. 97–5190. OSER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 107 F. 3d 1080.

No. 97–5191. SILVA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 112 F. 3d 506.

No. 97–5192. SMITH *v.* COMMERCE CLUB, INC. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 97–5193. MCGOWAN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–5194. MARTINEZ ET AL. *v.* BEAVER STAIRS CO. ET AL. C. A. 6th Cir. Certiorari denied.

No. 97–5196. COLON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 111 F. 3d 124.

No. 97–5197. JOHNSON *v.* MUNICIPAL COURTS OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 100 F. 3d 962.

No. 97–5198. MOSS *v.* MCGINNIS, DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS, ET AL. C. A. 6th Cir. Certiorari denied.

No. 97–5199. MCDONALD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 511.

No. 97–5200. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 475.

No. 97–5201. PRIBYTKOV *v.* NEW JERSEY INSTITUTE OF TECHNOLOGY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 97–5202. MELONCON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 18.

No. 97–5203. WILLIAMS *v.* HENDERSON, SUPERINTENDENT, CENTENNIAL CORRECTIONAL FACILITY, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 110 F. 3d 74.

No. 97–5204. WILLIAMS *v.* MCCLELLAN, SUPERINTENDENT, SOUTHPORT CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 97–5205. STRICKLAND *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 97–5206. BOARDLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 510.

No. 97–5208. BERKERY *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 3d Cir. Certiorari denied. Reported below: 111 F. 3d 125.

No. 97–5209. LANGFORD *v.* DAY, DIRECTOR, MONTANA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 110 F. 3d 1380.

No. 97–5210. STERLING *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 103 F. 3d 145.

No. 97–5211. DAVIS ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 116 F. 3d 473.

No. 97–5212. DEMAR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 110 F. 3d 798.

No. 97–5213. FILIPOS *v.* FILIPOS. Super. Ct. Pa. Certiorari denied. Reported below: 455 Pa. Super. 700, 688 A. 2d 1232.

No. 97–5214. WALKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 110 F. 3d 796.

No. 97–5215. HICKS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 697 A. 2d 805.

No. 97–5216. THOMAS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 111 F. 3d 426.

No. 97–5217. DELGADO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 97–5219. HANLEY *v.* BENSON, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 97–5221. WILLIAMSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 111 F. 3d 140.

No. 97–5222. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 475.

No. 97–5223. CONYERS *v.* VOORHIES. C. A. 6th Cir. Certiorari denied.

No. 97–5224. BENNETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 476.

No. 97–5225. CHAVEZ *v.* SHANKS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 111 F. 3d 140.

No. 97–5226. BORSICK *v.* COURT OF COMMON PLEAS OF OHIO, ERIE COUNTY, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 107 F. 3d 11.

No. 97–5227. WHITE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 477.

No. 97–5228. JAMES *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 694 So. 2d 738.

No. 97–5229. MCFARLAND *v.* HINKLE, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 97–5230. STEVENS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 683 A. 2d 452.

No. 97–5231. ROSS *v.* THOMPSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 105 F. 3d 648.

No. 97–5232. BEVERLY *v.* WALKER, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 118 F. 3d 900.

No. 97–5233. WATKINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 111 F. 3d 132.

No. 97–5234. TROLLINGER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 477.

No. 97–5235. WALKER *v.* COLORADO. Sup. Ct. Colo. Certiorari denied. Reported below: 932 P. 2d 303.

No. 97–5236. BARNEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 114 F. 3d 1173.

No. 97–5237. AGUILERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 475.

No. 97–5239. ISONG *v.* UNITED STATES (two judgments). C. A. 6th Cir. Certiorari denied. Reported below: 111 F. 3d 428 (first judgment) and 41 (second judgment).

No. 97–5240. MILLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 115 F. 3d 361.

No. 97–5241. MICHAEL *v.* MOATS, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 108 F. 3d 1372.

No. 97–5245. BASILE *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 942 S. W. 2d 342.

No. 97–5247. STEWARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 113 F. 3d 1251.

No. 97–5248. ALTSCHUL *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 97–5249. SPENCER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 691 So. 2d 1062.

No. 97–5250. MILLER *v.* CORCORAN, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 115 F. 3d 1136.

No. 97–5251. KYKTA *v.* WASHINGTON, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS. C. A. 7th Cir. Certiorari denied. Reported below: 107 F. 3d 873.

No. 97–5252. BRENSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 104 F. 3d 1267.

No. 97–5254. DEERWESTER *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 281 Ill. App. 3d 1148, 701 N. E. 2d 843.

No. 97–5256. HAYNES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 108 F. 3d 1374.

No. 97–5258. FOROUGHI *v.* INDUSTRIAL COMMISSION OF ARIZONA ET AL. Ct. App. Ariz. Certiorari denied.

No. 97–5259. HOLMAN *v.* TEXAS. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 97–5260. EPPS *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 696 So. 2d 342.

No. 97–5261. HARP *v.* MORTON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–5262. HILI *v.* GOORD, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES, ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 236 App. Div. 2d 756, 654 N. Y. S. 2d 833.

No. 97–5263. REED *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 97 F. 3d 1462.

No. 97–5265. SEALS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–5266. ORTIZ-VILLA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 111 F. 3d 139.

No. 97–5267. PEYTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 113 F. 3d 1250.

No. 97–5268. SMITH *v.* WARD, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 510.

No. 97–5271. JERNIGAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 111 F. 3d 139.

No. 97–5272. SIMPSON *v.* CAMPBELL COUNTY SCHOOL SYSTEM ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 113 F. 3d 1232.

No. 97–5274. LEONARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 116 F. 3d 492.

No. 97–5275. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 116 F. 3d 492.

No. 97–5276. LILLARD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 113 F. 3d 1243.

No. 97–5277. MONK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 110 F. 3d 74.

No. 97–5278. LISK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 114 F. 3d 1173.

No. 97–5279. MARTINEZ *v.* BCF ENGINEERING, INC. C. A. 6th Cir. Certiorari denied.

No. 97–5280. KIRBY *v.* ALABAMA DEPARTMENT OF CORRECTIONS ET AL. C. A. 11th Cir. Certiorari denied.

No. 97–5281. BERKERY *v.* BALLY'S HEALTH & TENNIS CORP. ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 116 F. 3d 941.

No. 97–5283. SHEHEE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 107 F. 3d 12.

No. 97–5284. MCCLURE *v.* CITY OF CHARLOTTE. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 509.

No. 97–5285. LOZANO *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 97–5286. MAUS *v.* MURPHY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 97–5287. BROACHWALA *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 277 Ill. App. 3d 1109, 698 N. E. 2d 721.

No. 97–5289. BUC-HANAN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 97–5290. ROBERSON *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 97–5291. CASTRO-SEVERINO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 112 F. 3d 506.

No. 97–5292. ABBEY *v.* PATENT AND TRADEMARK OFFICE BOARD OF PATENT APPEALS AND INTERFERENCES. C. A. Fed. Cir. Certiorari denied. Reported below: 111 F. 3d 144.

No. 97–5293. LAMBERT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 105 F. 3d 649.

No. 97–5294. MAUS *v.* MURPHY, WARDEN, ET AL. Sup. Ct. Wis. Certiorari denied. Reported below: 211 Wis. 2d 535, 568 N. W. 2d 301.

No. 97–5297. WILEY *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 691 So. 2d 959.

No. 97–5298. WILSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 109 F. 3d 767.

No. 97–5301. TATUM *v.* CORRECTIONAL MEDICAL SYSTEMS ET AL. Ct. Sp. App. Md. Certiorari denied.

No. 97–5302. VARGAS *v.* WHITWORTH ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 117 F. 3d 1432.

No. 97–5303. WELLS *v.* JONES, SUPERINTENDENT, WAKE CORRECTIONAL CENTER. C. A. 4th Cir. Certiorari denied.

No. 97–5304. WARDLAW *v.* WATERS, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 108 F. 3d 1375.

No. 97–5306. POWELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 478.

No. 97–5307. SIVAK *v.* IDAHO. Sup. Ct. Idaho. Certiorari denied.

No. 97–5308. RAMEY-GILLIS *v.* KAISER PERMANENTE. Ct. Sp. App. Md. Certiorari denied. Reported below: 111 Md. App. 758.

No. 97–5309. VERMEULEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 114 F. 3d 1201.

No. 97–5312. ATTWOOD *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 696 So. 2d 342.

No. 97–5313. BECHT *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 236 App. Div. 2d 792, 653 N. Y. S. 2d 878.

No. 97–5314. CSORBA *v.* VARO, INC. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 477.

No. 97–5315. HAMMER *v.* BOWLEN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–5316. DUHON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 114 F. 3d 1181.

No. 97–5317. DI-JING HU *v.* JOHN HANCOCK MUTUAL LIFE INSURANCE CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 337.

No. 97–5318. DEJESUS *v.* UNITED STATES; and
No. 97–5523. CASIANO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 113 F. 3d 420.

No. 97–5319. GRONQUIST *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 82 Wash. App. 1066.

No. 97–5320. ECHOLS *v.* BAKER, ATTORNEY GENERAL OF GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 112 F. 3d 1173.

No. 97–5321. GONZALEZ *v.* TURNER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 112 F. 3d 516.

No. 97–5322. HERRON *v.* CORNELL. C. A. 8th Cir. Certiorari denied. Reported below: 105 F. 3d 662.

No. 97–5323. WATKINS *v.* WHITE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 110 F. 3d 72.

No. 97–5324. MCDONNELL *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 114 F. 3d 1176.

No. 97–5325. PRAINO ET UX. *v.* BOARD OF EDUCATION OF WAPPINGERS CENTRAL SCHOOL DISTRICT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 112 F. 3d 505.

No. 97–5326. SHANNON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 110 F. 3d 382.

No. 97–5327. RALSTON *v.* FRANK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–5329. THOMAS *v.* CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1322.

No. 97–5330. MILNER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–5331. MCCRAY *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 97–5334. BLANDINO *v.* BURNS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 106 F. 3d 406.

No. 97–5335. WALTER *v.* AUSTIN INDUSTRIAL, INC. C. A. 5th Cir. Certiorari denied.

No. 97–5337. DAVIS, AKA JOHNSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 112 F. 3d 118.

No. 97–5339. DAVENPORT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 113 F. 3d 1250.

No. 97–5340. BARKER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 97–5341. SZUCHON *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 548 Pa. 37, 693 A. 2d 959.

No. 97–5342. ANDERSON *v.* GROOSE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 97–5344. LAWHORN *v.* FLEMING, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 110 F. 3d 60.

No. 97–5345. CRAWFORD *v.* OKLAHOMA ET AL. Ct. Crim. App. Okla. Certiorari denied.

No. 97–5346. BAILEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 106 F. 3d 404.

No. 97–5349. SONES *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 97–5350. CITIZEN *v.* TEXAS. C. A. 5th Cir. Certiorari denied.

No. 97–5351. BORROTO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 104 F. 3d 369.

No. 97–5352. ANDERSON *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 284 Ill. App. 3d 708, 672 N. E. 2d 1314.

No. 97–5353. CSORBA *v.* ITT AEROSPACE/COMMUNICATIONS DIVISION, DIVISION OF ITT DEFENSE & ELECTRONICS, INC. C. A. 7th Cir. Certiorari denied.

No. 97–5355. JOHNSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 112 F. 3d 518.

No. 97–5356. MADEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 114 F. 3d 155.

No. 97–5357. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 117 F. 3d 1414.

No. 97–5359. MURPHY *v.* BUREAU OF PRISONS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 116 F. 3d 1489.

No. 97–5360. MILLER, AKA WOODS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 97–5361. SHERMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 106 F. 3d 394.

No. 97–5362. SHALOM *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 113 F. 3d 1236.

No. 97–5364. WALTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 19.

No. 97–5365. PENDERGRASS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 113 F. 3d 1236.

No. 97–5367. ABDUL-AKBAR *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 696 A. 2d 396.

No. 97–5368. CUNNINGHAM *v.* GOORD, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES, ET AL. C. A. 2d Cir. Certiorari denied.

No. 97–5369. CURIALE *v.* MYSTROM, MAYOR, ANCHORAGE, ALASKA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–5372. COKER *v.* JONES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 111 F. 3d 131.

No. 97–5373. HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 105 F. 3d 1330.

No. 97–5374. GLASS *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 285 Ill. App. 3d 1114, 709 N. E. 2d 321.

No. 97–5375. BURKE *v.* COLORADO. Ct. App. Colo. Certiorari denied. Reported below: 937 P. 2d 886.

No. 97–5376. REID *v.* REID. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 97–5377. SCHREIBER *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 558 N. W. 2d 474.

No. 97–5379. SPENCER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 512.

No. 97–5380. ROBINSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 108 F. 3d 745.

No. 97–5382. HARDING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 112 F. 3d 1171.

No. 97–5384. MACKLIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 104 F. 3d 1046.

No. 97–5385. NANCE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 113 F. 3d 1250.

No. 97–5387. KELLY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 116 F. 3d 470.

No. 97–5389. MCCULLOUGH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 340.

No. 97–5390. LUCIOUS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 114 F. 3d 1183.

No. 97–5391. LAMPKIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 107 F. 3d 9.

No. 97–5392. BROWNING *v.* UNITED PARCEL SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 112 F. 3d 515.

No. 97–5394. ZAMORA-DELGADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 112 F. 3d 518.

No. 97–5395. SMITH ET AL. *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 448 Pa. Super. 189, 670 A. 2d 1172.

No. 97–5396. PRICE *v.* ARPAIO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 485.

No. 97–5397. STEPHENSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 479.

No. 97–5398. ROGERS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 105 F. 3d 667.

No. 97–5399. STEPHENS *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, ET AL.; STEPHENS *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, ET AL.; STEPHENS

v. NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, ET AL.; STEPHENS *v.* REPUBLIC TOBACCO CO.; and STEPHENS *v.* NEWBERRY ET AL. C. A. 8th Cir. Certiorari denied.

No. 97–5400. LAMBERT *v.* NORTH CAROLINA. Super. Ct. N. C., Pasquotank County. Certiorari denied.

No. 97–5401. WOOLLEY *v.* ZIMMERMAN, SUPERINTENDENT, PENNSYLVANIA STATE CORRECTIONAL INSTITUTION AT WAYMART, ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–5402. TRICARICO *v.* BOARD OF REVIEW OF NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 97–5403. BETHLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 114 F. 3d 1183.

No. 97–5405. TENNER *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 175 Ill. 2d 372, 677 N. E. 2d 859.

No. 97–5407. WIGHT *v.* BOARD OF DENTAL EXAMINERS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 110 F. 3d 72.

No. 97–5408. SIKORA *v.* HOPKINS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 108 F. 3d 978.

No. 97–5409. ROGERS *v.* CUYSON ET AL. App. Ct. Ill., 5th Dist. Certiorari denied.

No. 97–5410. SMITH *v.* ARIZONA. Ct. App. Ariz. Certiorari denied. Reported below: 188 Ariz. 263, 935 P. 2d 841.

No. 97–5411. RAMIREZ *v.* UNITED STATES; and
No. 97–5515. HOTCHKISS ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 112 F. 3d 849.

No. 97–5412. PERRY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 113 F. 3d 1236.

No. 97–5413. SIMMONS *v.* BLODGETT, DEPUTY DIRECTOR, DIVISION OF PRISONS, WASHINGTON DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 110 F. 3d 39.

No. 97–5414. LAWSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 697 So. 2d 511.

No. 97–5415. JOHNSON *v.* HILL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 113 F. 3d 1241.

No. 97–5416. WOFFORD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 122 F. 3d 787.

No. 97–5417. FERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 112 F. 3d 517.

No. 97–5418. THIBODEAU *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 97–5419. BROOKS *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 695 So. 2d 184.

No. 97–5422. CLAYTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 1114.

No. 97–5424. GRAHOVAC *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 114 F. 3d 1196.

No. 97–5425. FOLEY *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 942 S. W. 2d 876.

No. 97–5426. WILLIAMS *v.* MAKEL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–5427. CORTO *v.* JOHN F. KENNEDY CENTER FOR THE PERFORMING ARTS. C. A. D. C. Cir. Certiorari denied.

No. 97–5428. BARNES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 17.

No. 97–5429. SWINDLE *v.* LOVE, DEPUTY COMMISSIONER, EASTERN REGION, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–5430. WOODLEY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 695 So. 2d 297.

No. 97–5431. TOWNES *v.* CITY OF ST. LOUIS, MISSOURI. C. A. 8th Cir. Certiorari denied. Reported below: 112 F. 3d 514.

No. 97–5432. ELLISON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 113 F. 3d 77.

No. 97–5433. COOPER *v.* COSTELLO, SUPERINTENDENT, MID-STATE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 112 F. 3d 503.

No. 97–5434. WITTMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 97–5435. FARR *v.* MADISON GAS & ELECTRIC. Ct. App. Wis. Certiorari denied.

No. 97–5436. FAIN *v.* COUNTY OF SACRAMENTO, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 112 F. 3d 515.

No. 97–5437. AULTMAN *v.* STEPANIK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–5439. HUTSON *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 273 Ill. App. 3d 1129, 690 N. E. 2d 1097.

No. 97–5440. WHEELER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 106 F. 3d 394.

No. 97–5442. JUDD *v.* NEW MEXICO. Ct. App. N. M. Certiorari denied.

No. 97–5443. KABEDE *v.* CALIFORNIA MEDICAL FACILITY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 112 F. 3d 516.

No. 97–5444. CONNER *v.* LENTZ ET AL. Ct. App. Kan. Certiorari denied. Reported below: 23 Kan. App. 2d ——, 930 P. 2d 27.

No. 97–5445. RHODES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 945 S. W. 2d 115.

No. 97–5447. REIMAN *v.* ARNETT. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 97–5448. RUIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 120 F. 3d 265.

No. 97–5450. HENRY, AKA CORELLI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 111 F. 3d 111.

No. 97–5451. SATTAZAHN *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 451 Pa. Super. 629, 679 A. 2d 257.

No. 97–5452. RODRIGUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 112 F. 3d 26.

No. 97–5453. SIEMSEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 18.

No. 97–5454. SCHWARTZ *v.* CITY OF BETHEL PARK, PENNSYLVANIA. C. A. 3d Cir. Certiorari denied.

No. 97–5456. SCHWARZ *v.* CLINTON, PRESIDENT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 116 F. 3d 942.

No. 97–5458. CONWAY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 111 F. 3d 135.

No. 97–5462. BRILL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 17.

No. 97–5463. SMITH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 113 F. 3d 1244.

No. 97–5465. MANN *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 188 Ariz. 220, 934 P. 2d 784.

No. 97–5470. CARLSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 87 F. 3d 440.

No. 97–5471. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 116 F. 3d 492.

No. 97–5472. WADE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 114 F. 3d 103.

No. 97–5473. WASHINGTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 117 F. 3d 1430.

No. 97–5474. PAPESH *v.* BROOKSHIRE, DIRECTOR OF ADMINISTRATION, MARYLAND WORKERS' COMPENSATION COMMISSION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 107 F. 3d 867.

No. 97–5476. TOLIVER *v.* MCCAUGHTRY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 97–5477. TERRY *v.* SHULER, ADMINISTRATOR, WACKENHUT CORRECTIONAL CORP., ET AL. Sup. Ct. Okla. Certiorari denied.

No. 97–5480. DELACORTE *v.* UNITED STATES; and
No. 97–5520. RIOJAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 113 F. 3d 1243.

No. 97–5482. DORAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 113 F. 3d 1236.

No. 97–5483. TAYLOR *v.* NELSON ET AL. C. A. 7th Cir. Certiorari denied.

No. 97–5484. BAILEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 758.

No. 97–5485. JOHNSON *v.* HARTWIG, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 97–5486. JAMES *v.* HINKLE ET AL. C. A. 5th Cir. Certiorari denied.

No. 97–5487. JASSO-TREVINO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 113 F. 3d 1247.

No. 97–5489. LAURENZANA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 113 F. 3d 689.

No. 97–5490. PYRON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 113 F. 3d 1247.

No. 97–5491. COOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 105 F. 3d 648.

No. 97–5493. FADAYIRO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 114 F. 3d 1173.

No. 97–5494. HUTCHINSON *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 97–5496. ANTONELLI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 97–5498. PILGRIM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 106 F. 3d 393.

No. 97–5500. RENTERIA *v.* DONAHUE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 92 F. 3d 1197.

No. 97–5501. CUNNINGHAM *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 108 F. 3d 120.

No. 97–5503. TAYLOR *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 111 F. 3d 56.

No. 97–5504. WHITE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 110 F. 3d 61.

No. 97–5505. WITHERS *v.* SCOTT, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 121 F. 3d 703.

No. 97–5506. TURNER *v.* DRANE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 109 F. 3d 766.

No. 97–5507. ALTSCHUL *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 97–5508. BAKER *v.* MANVILLE TRUST. C. A. 2d Cir. Certiorari denied. Reported below: 108 F. 3d 1369.

No. 97–5509. FARMER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 114 F. 3d 1177.

No. 97–5511. GHANA *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–5514. HODGSON *v.* BENSON, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 97–5517. MCDEVITT *v.* KYLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AND DIAGNOSTIC/CLASSIFICATION CENTER AT CAMP HILL, ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–5518. VOLEL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 112 F. 3d 507.

No. 97–5521. CARLOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 113 F. 3d 1243.

No. 97–5522. KYZER *v.* LEVENTHALL ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 111 F. 3d 135.

No. 97–5524. BAIRD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 109 F. 3d 856.

No. 97–5525. BRUNSON *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 327 Ark. 567, 940 S. W. 2d 440.

No. 97–5526. MURDOCK *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 97–5527. BONHOMME-ARDOUIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 111 F. 3d 897.

No. 97–5529. ALEXANDER *v.* ROE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 97–5532. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 97–5533. XUYEN THI VU *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 111 F. 3d 130.

No. 97–5535. THOMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 100 F. 3d 951.

No. 97–5536. MCKNIGHT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 116 F. 3d 473.

No. 97–5539. DRONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 120 F. 3d 266.

No. 97–5540. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 114 F. 3d 1200.

No. 97–5541. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 1476.

No. 97–5543. RODRIGUEZ *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 284 Ill. App. 3d 1134, 708 N. E. 2d 1282.

No. 97–5544. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 113 F. 3d 1232.

No. 97–5545. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 116 F. 3d 493.

No. 97–5549. LISBY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 1478.

No. 97–5553. ATKINS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–5554. PARKER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 111 F. 3d 133.

No. 97–5555. SLATER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 121 F. 3d 722.

No. 97–5557. BROOKS *v.* BARRY, WARDEN, ET AL. Ct. App. Ga. Certiorari denied. Reported below: 223 Ga. App. 648, 478 S. E. 2d 616.

No. 97–5558. REYES *v.* DEPARTMENT OF DEFENSE. C. A. Fed. Cir. Certiorari denied. Reported below: 113 F. 3d 1257.

No. 97–5560. HARRIS *v.* WHITE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 113 F. 3d 1241.

No. 97–5561. DEROSA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 1476.

No. 97–5562. GRAHAM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 114 F. 3d 1200.

No. 97–5563. DONESTEVEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 95 F. 3d 59.

No. 97–5565. NELSON, AKA HORN *v.* GRIMMETT, SHERIFF, LOGAN COUNTY, WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 199 W. Va. 604, 486 S. E. 2d 588.

No. 97–5566. HARRIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 878.

No. 97–5567. HOLMES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 97–5568. EIDSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 108 F. 3d 1336.

No. 97–5569. SHULZE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 107 F. 3d 876.

No. 97–5571. GAINES *v.* NORTH CAROLINA; and
No. 97–5613. HARRIS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 345 N. C. 647, 483 S. E. 2d 396.

No. 97–5572. CALIA *v.* KEMNA, SUPERINTENDENT, WESTERN MISSOURI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 97–5577. RHODES *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 106 F. 3d 429.

No. 97–5578. PERALTA, AKA MARTINEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 113 F. 3d 383.

No. 97–5579. KING *v.* BUREAU OF INDIAN AFFAIRS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 338.

No. 97–5580. TRAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 110 F. 3d 61.

No. 97–5582. OTIS *v.* THISIUS ET AL. Ct. App. Minn. Certiorari denied.

No. 97–5584. MAUS *v.* KENNEDY. Sup. Ct. Wis. Certiorari denied. Reported below: 210 Wis. 2d 49, 565 N. W. 2d 539.

No. 97–5587. DAVIS, AKA CARGO *v.* WHITE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH, ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–5589. GRIST *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 112 F. 3d 451.

No. 97–5592. HAYES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 110 F. 3d 798.

No. 97–5594. WICKS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 114 F. 3d 1190.

No. 97–5596. SETH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 116 F. 3d 470.

No. 97–5597. CROWDER *v.* UNITED STATES ET AL. (two judgments). C. A. 3d Cir. Certiorari denied.

No. 97–5598. ACHIEKWELU *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 747.

No. 97–5601. MONIER *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 116 F. 3d 942.

No. 97–5605. ADAMS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 97–5606. BLAIR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 114 F. 3d 1200.

No. 97–5614. DOE, AKA BAMONTE, AKA ASHBY, AKA ADENIYI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 116 F. 3d 470.

No. 97–5618. SLIWOWSKI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 114 F. 3d 1173.

No. 97–5619. SMITH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 114 F. 3d 1196.

No. 97–5620. SPENCER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 114 F. 3d 1178.

No. 97–5624. MARSHALL *v.* PARKE, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied.

No. 97–5626. JACKSON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 113 F. 3d 249.

No. 97–5627. RAMEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 510.

No. 97–5628. NAVARRETE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 113 F. 3d 1230.

No. 97–5629. MORALES *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 97–5630. MALAKI *v.* YAZDI. C. A. 9th Cir. Certiorari denied.

No. 97–5632. WINN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 97–5634. LIPMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 114 F. 3d 1173.

No. 97–5635. LEVERITT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 107 F. 3d 1482.

No. 97–5638. DAVIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 99 F. 3d 1138.

No. 97–5640. CHEELY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 114 F. 3d 1196.

No. 97–5646. HUGHES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 114 F. 3d 1189.

No. 97–5648. HOLLAND *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 116 F. 3d 1353.

No. 97–5651. GELZER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 97–5652. DUENAS, AKA KELLY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 116 F. 3d 492.

No. 97–5654. FISHER *v.* LOVE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 116 F. 3d 467.

No. 97–5658. MESHAW *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 117 F. 3d 1416.

No. 97–5661. SIMONSON *v.* SIMONSON-KUTH. Ct. App. Minn. Certiorari denied.

No. 97–5662. EDMONDS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 116 F. 3d 942.

No. 97–5664. MCLAUGHLIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 97–5665. ASIBOR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 109 F. 3d 1023.

No. 97–5667. SHAHID *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 117 F. 3d 322.

No. 97–5670. NARANJO-CUEVO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 113 F. 3d 1249.

No. 97–5671. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 116 F. 3d 491.

No. 97–5674. VASQUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 104 F. 3d 369.

No. 97–5675. TREVINO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 120 F. 3d 265.

No. 97–5680. SMITH *v.* VALDEZ, ASSOCIATE WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 113 F. 3d 1247.

No. 97–5681. COLE, FKA HEBERT *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 35 M. J. 266.

No. 97–5683. GONZALEZ, AKA GONZALES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 113 F. 3d 1243.

No. 97–5686. SMITH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 116 F. 3d 857.

No. 97–5687. ROUNSAVALL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 115 F. 3d 561.

No. 97–5690. QUINTANILLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 114 F. 3d 1181.

No. 97–5692. WRIGHT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 113 F. 3d 1230.

No. 97–5701. PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 1477.

No. 97–5702. PORTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 113 F. 3d 1233.

No. 97–5705. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 114 F. 3d 435.

No. 97–5706. BARNES *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 686 So. 2d 633.

No. 97–5708. MENDEZ-VERDEJO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 114 F. 3d 1196.

No. 97–5710. PATTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 114 F. 3d 174.

No. 97–5711. SCOTT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 113 F. 3d 1249.

No. 97–5712. NESBITT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 113 F. 3d 1233.

No. 97–5718. SHERRILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 110 F. 3d 61.

No. 97–5722. AMER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 110 F. 3d 873.

No. 97–5723. BURK *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS. C. A. 10th Cir. Certiorari denied.

No. 97–5724. JOHNSON *v.* ROBBINSDALE INDEPENDENT SCHOOL DISTRICT NO. 281 ET AL. C. A. 8th Cir. Certiorari denied.

No. 97–5726. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 114 F. 3d 476.

No. 97–5731. NOBLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 105 F. 3d 666.

No. 97–5733. DAVIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 97–5734. FARUQ, AKA WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 113 F. 3d 1233.

No. 97–5739. GLENDORA *v.* SULLIVAN ET AL. C. A. 2d Cir. Certiorari denied.

No. 97–5740. MINER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 108 F. 3d 967.

No. 97–5741. ALVIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 116 F. 3d 1493.

No. 97–5743. STOCKS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 104 F. 3d 308.

No. 97–5744. FLY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 97–5747. THOMAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 121 F. 3d 719.

No. 97–5749. GAYTAN-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 1487.

No. 97–5750. KATALINICH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 113 F. 3d 1475.

No. 97–5751. KNOX *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 97–5753. BROWN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 113 F. 3d 1238.

No. 97–5756. DAVIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 97–5761. HANSEN *v.* PITZER, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 108 F. 3d 1379.

No. 97–5763. HOLLOWAY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 1478.

No. 97–5766. ACOSTA ACEVEDA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 113 F. 3d 1247.

No. 97–5768. MILIAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 122 F. 3d 1078.

No. 97–5775. MORRIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 97–5776. CARROLL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 113 F. 3d 1232.

No. 97–5779. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 113 F. 3d 1233.

No. 97–5783. ROUSE ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 111 F. 3d 561.

No. 97–5785. BOYCE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 110 F. 3d 797.

No. 97–5787. TINEO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 112 F. 3d 518.

No. 97–5793. CLARK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 114 F. 3d 1189.

No. 97–5796. BRUNSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 113 F. 3d 1247.

No. 97–5804. COTTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 114 F. 3d 1196.

No. 97–5817. CALDWELL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 116 F. 3d 470.

No. 97–5821. LYONS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 114 F. 3d 1178.

No. 97–5824. AMOR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 96–1566. FOWLKES *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to amend the petition for writ of certiorari granted. Certiorari denied. Reported below: 100 F. 3d 970.

No. 96–1647. ROMNEY *v.* LIN. C. A. 2d Cir. Motion of Building and Construction Trades Department et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 94 F. 3d 74 and 105 F. 3d 806.

No. 96–1712. STAPLES *v.* KELLY ET AL. C. A. 6th Cir. Motion of National Fair Housing Alliance et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 97 F. 3d 118.

No. 96–1777. E. I. DU PONT DE NEMOURS & CO. *v.* BUSH RANCH, INC., ET AL. C. A. 11th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 99 F. 3d 363.

No. 97–47. RIDGEWAY ET AL. *v.* PFIZER, INC., ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 103 F. 3d 128.

No. 96–1811. MORRIS ET AL. *v.* WRIGHT ET AL. C. A. 6th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 111 F. 3d 414.

No. 97–152. AMERICAN AIRLINES, INC. *v.* CRIALES. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 105 F. 3d 93.

No. 97–188. WASHINGTON, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS *v.* HALL. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 106 F. 3d 742.

No. 96–1852. BASILE *v.* TOWN OF SOUTHAMPTON. Ct. App. N. Y. Motion of Pacific Legal Foundation for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 89 N. Y. 2d 974, 678 N. E. 2d 489.

No. 96–1884. ALLEN ET AL. *v.* GYPSY CHURCH OF THE NORTHWEST, BY AND THROUGH MARKS, TRUSTEE, ET AL. C. A. 9th Cir. Motion of petitioners to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 102 F. 3d 1012.

No. 96–1896. GARDNER ET UX. *v.* UNITED STATES. C. A. 9th Cir. Motion of David Haight for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 107 F. 3d 1314.

No. 96–1898. MASSACHUSETTS SCHOOL OF LAW AT ANDOVER, INC. *v.* AMERICAN BAR ASSN. ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE KENNEDY took no part in the consideration or decision of this petition. Reported below: 107 F. 3d 1026.

No. 96–1899. INSULTHERM, INC., ET AL. *v.* TANK INSULATION INTERNATIONAL, INC. C. A. 5th Cir. Motion of American Intellectual Property Law Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 104 F. 3d 83.

No. 96–1957. HILL *v.* FLORIDA. Sup. Ct. Fla. Motion of Friends of Paul Jennings Hill for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 688 So. 2d 901.

No. 96–8796. VEY *v.* CLINTON, PRESIDENT OF THE UNITED STATES, ET AL. C. A. 3d Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 97–31. CALDERON, WARDEN, ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA (GORDON, REAL PARTY IN INTEREST). C. A. 9th Cir. Motion of

respondent Patrick Bruce Gordon for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 107 F. 3d 756.

No. 97–44. DOMENICK ET AL. *v.* FONAR CORP. C. A. 2d Cir. Motion of Independent Service Network International for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 105 F. 3d 99.

No. 97–55. KEATING, GOVERNOR OF OKLAHOMA, ET AL. *v.* OKLAHOMA EX REL. OKLAHOMA TAX COMMISSION. Ct. App. Okla. Motions of Pascale Gelly, Oklahoma Citizens for a Sound Economy, Orval Matteson and Florence Matteson, and Oklahomans for Integrity in Government for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 935 P. 2d 398.

No. 97–124. LEAVITT *v.* KESSEL. Sup. Ct. App. W. Va. Motion of Academy of California Adoption Lawyers for leave to file a brief as *amicus curiae* granted. Certiorari denied.

No. 97–220. TEXAS MANUFACTURED HOUSING ASSN., INC. *v.* CITY OF LA PORTE ET AL. C. A. 5th Cir. Motion of National Foundation of Manufactured Home Owners et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 114 F. 3d 1182.

No. 97–228. GAMMA-10 PLASTICS, INC. *v.* AMERICAN PRESIDENT LINES, LTD., ET AL. C. A. 8th Cir. Motion of Thomas Schoenbaum for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 105 F. 3d 387.

No. 97–230. GENERAL ELECTRIC CO. ET AL. *v.* FONAR CORP. ET AL. C. A. Fed. Cir. Motion of Intellectual Property Owners for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 107 F. 3d 1543.

No. 97–5031. AVERY *v.* BRODEUR, COMMISSIONER, NEW HAMPSHIRE DEPARTMENT OF CORRECTIONS. Sup. Ct. N. H. Certiorari denied. JUSTICE SOUTER took no part in the consideration or decision of this petition.

No. 97–5354. BREEST *v.* BRODEUR, COMMISSIONER, NEW HAMPSHIRE DEPARTMENT OF CORRECTIONS. Sup. Ct. N. H. Certiorari denied. JUSTICE SOUTER took no part in the consideration or decision of this petition.

No. 97–5296. PARHAM *v.* COCA-COLA CO. C. A. 4th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 105 F. 3d 648.

Rehearing Denied

No. 96–1741. HUCK, DERIVATIVELY ON BEHALF OF SEA AIR SHUTTLE CORP. *v.* DAWSON ET AL., 520 U. S. 1276;

No. 96–1825. BODDIE *v.* UNITED STATES, 521 U. S. 1105;

No. 96–8295. LOHSE *v.* CHATER, COMMISSIONER OF SOCIAL SECURITY, 520 U. S. 1217; and

No. 96–8715. NELSON *v.* INTERNAL REVENUE SERVICE, 520 U. S. 1236. Petitions for rehearing denied.

No. 96–8743. BENNEY *v.* SHAW INDUSTRIES, INC., ET AL., 521 U. S. 1112. Petition for rehearing denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition.

OCTOBER 8, 1997

Miscellaneous Order

No. 97–6214 (A–251). IN RE GREEN. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

OCTOBER 14, 1997

Certiorari Granted—Vacated and Remanded

No. 97–58. DOHERTY, DIRECTOR, ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY *v.* PENNINGTON, INDIVIDUALLY AND ON BEHALF OF OTHER SIMILARLY SITUATED PERSONS. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of Pub. L. 105–33, 111 Stat. 251, Title V, Subtitle E, § 5401. Reported below: 110 F. 3d 502.

Miscellaneous Orders

No. D–1822. IN RE DISBARMENT OF CADE. Disbarment entered. [For earlier order herein, see 521 U. S. 1134.]

No. D–1825. IN RE DISBARMENT OF HINES. Disbarment entered. [For earlier order herein, see 521 U. S. 1134.]

No. D–1827. IN RE DISBARMENT OF TALLO. Disbarment entered. [For earlier order herein, see 521 U. S. 1134.]

No. D–1830. IN RE DISBARMENT OF HALLER. Disbarment entered. [For earlier order herein, see 521 U. S. 1135.]

No. D–1836. IN RE DISBARMENT OF ZOLOT. Disbarment entered. [For earlier order herein, see 521 U. S. 1136.]

No. D–1837. IN RE DISBARMENT OF QUINN. Disbarment entered. [For earlier order herein, see 521 U. S. 1136.]

No. D–1838. IN RE DISBARMENT OF CROWLEY. Disbarment entered. [For earlier order herein, see 521 U. S. 1136.]

No. D–1856. IN RE DISBARMENT OF PROCTOR. William H. Proctor, of Baltimore, Md., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1857. IN RE DISBARMENT OF CHRISTENSEN. Nelson Christensen, of Seattle, Wash., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1858. IN RE DISBARMENT OF AARON. Philip Irwin Aaron, of Syosset, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1859. IN RE DISBARMENT OF BEDELL. Timothy James Bedell, of Flushing, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–16. CONNER *v.* THALACKER, SUPERINTENDENT, NORTH CENTRAL CORRECTIONAL FACILITY, ET AL.;

No. M–17. AL-MATIN *v.* KUHLMANN, SUPERINTENDENT, SULLIVAN CORRECTIONAL FACILITY; and

No. M–18. ROBERTSON *v.* FRASER, WARDEN. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 65, Orig. TEXAS *v.* NEW MEXICO. Motion of the River Master for fees and expenses granted, and the River Master is

awarded $4,071.59 for the period April 1 through June 30, 1997, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 520 U. S. 1227.]

No. 120, Orig. NEW JERSEY *v.* NEW YORK. Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. [For earlier order herein, see, *e. g.*, 521 U. S. 1149.]

No. 96–1470. QUALITY KING DISTRIBUTORS, INC. *v.* L'ANZA RESEARCH INTERNATIONAL, INC. C. A. 9th Cir. [Certiorari granted, 520 U. S. 1250.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 96–1581. SOUTH DAKOTA *v.* YANKTON SIOUX TRIBE ET AL. C. A. 8th Cir. [Certiorari granted, 520 U. S. 1263.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 96–1337. COUNTY OF SACRAMENTO ET AL. *v.* LEWIS ET AL., PERSONAL REPRESENTATIVES OF THE ESTATE OF LEWIS, DECEASED. C. A. 9th Cir. [Certiorari granted, 520 U. S. 1250.] Motion of Grand Lodge of the Fraternal Order of Police for leave to file a brief as *amicus curiae* granted.

No. 96–1578. PHILLIPS ET AL. *v.* WASHINGTON LEGAL FOUNDATION ET AL. C. A. 5th Cir. [Certiorari granted, 521 U. S. 1117.] Motion of Massachusetts Bar Foundation for leave to file a brief as *amicus curiae* granted.

No. 97–53. ROBERTS, GUARDIAN FOR JOHNSON *v.* GALEN OF VIRGINIA, INC., FORMERLY DBA HUMANA HOSPITAL-UNIVERSITY OF LOUISVILLE, DBA UNIVERSITY OF LOUISVILLE HOSPITAL. C. A. 6th Cir. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 97–215. CALDERON, WARDEN *v.* THOMPSON. C. A. 9th Cir. [Certiorari granted, 521 U. S. 1136 and 1140.] Motion of Criminal Justice Legal Foundation for leave to file a brief as *amicus curiae* granted.

No. 97–5868. IN RE FIGUEROA; and

No. 97–5966. IN RE DOYLE. Petitions for writs of habeas corpus denied.

No. 97–253. In re Hutchinson, Personal Representative of the Estate of Hutchinson, Deceased;

No. 97–5438. In re Gowing; and

No. 97–5725. In re Wapnick. Petitions for writs of mandamus denied.

No. 97–5333. In re Onyeagoro; and

No. 97–5570. In re Cheves et al. Petitions for writs of mandamus and/or prohibition denied.

Certiorari Granted

No. 96–1829. Montana et al. *v.* Crow Tribe of Indians et al. C. A. 9th Cir. Certiorari granted. Reported below: 92 F. 3d 826 and 98 F. 3d 1194.

No. 97–300. Stewart, Director, Arizona Department of Correction, et al. *v.* Martinez-Villareal. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Motion of Criminal Justice Legal Foundation for leave to file a brief as *amicus* curiae granted. Certiorari granted. Reported below: 118 F. 3d 628.

No. 97–5310. Beach et ux. *v.* Ocwen Federal Bank. Sup. Ct. Fla. Motion of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted limited to the following question: "May an action for the statutory right of rescission provided by the Truth-in-Lending Act, 15 U. S. C. § 1635, be revived as a defense in recoupment beyond the 3-year limit on the right of rescission set forth in § 1635(f)?" Reported below: 692 So. 2d 146.

Certiorari Denied

No. 96–1497. City of Moreno Valley et al. *v.* Desert Outdoor Advertising, Inc., et al. C. A. 9th Cir. Certiorari denied. Reported below: 103 F. 3d 814.

No. 96–1830. Tractor Supply Co., Inc. *v.* Pryner; and

No. 97–123. Pryner *v.* Tractor Supply Co., Inc. C. A. 7th Cir. Certiorari denied. Reported below: 109 F. 3d 354.

No. 96–1921. Brown et al. *v.* Federal Deposit Insurance Corporation. C. A. D. C. Cir. Certiorari denied. Reported below: 106 F. 3d 442.

No. 96–1948. STUDENT LOAN MARKETING ASSN. *v.* RILEY, SECRETARY OF EDUCATION. C. A. D. C. Cir. Certiorari denied. Reported below: 104 F. 3d 397.

No. 96–9247. HUGHES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 96–9422. DEL RIO *v.* ATTORNEY GENERAL OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 15.

No. 97–77. AYERS, WARDEN *v.* MITCHELL. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 1337.

No. 97–82. LINDBLOM *v.* FEDERAL BUREAU OF INVESTIGATION. C. A. D. C. Cir. Certiorari denied. Reported below: 102 F. 3d 600.

No. 97–155. FLORIDA SEED CO., INC., ET AL. *v.* MONSANTO CO. C. A. 11th Cir. Certiorari denied. Reported below: 105 F. 3d 1372.

No. 97–160. TABB *v.* DILLARD DEPARTMENT STORES, INC. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 478.

No. 97–195. MIRANDA *v.* CITY OF EL PASO ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 111 F. 3d 893.

No. 97–196. WHITE-PAGE, INDIVIDUALLY AND AS NEXT FRIEND OF THE MINOR CHILDREN OF PAGE, ET AL. *v.* HARRIS COUNTY, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 114 F. 3d 1183.

No. 97–204. WHITE, DECEASED, BY HER PERSONAL REPRESENTATIVE, WHITE, ET AL. *v.* CHAMBLISS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 731.

No. 97–211. GRAND FRATERNITY ROSAE CRUCIS *v.* MOYER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 114 F. 3d 1172.

No. 97–214. KURZ ET AL. *v.* PHILADELPHIA ELECTRIC CO. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 96 F. 3d 1544.

No. 97–219. PENOBSCOT INDIAN NATION *v.* KEY BANK OF MAINE ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 112 F. 3d 538.

No. 97–221. SHERS *v.* CITY AND COUNTY OF SAN FRANCISCO ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 97–225. SHEA, INDIVIDUALLY AND AS TRUSTEE FOR THE HEIRS OF SHEA, DECEASED *v.* ESENSTEN ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 107 F. 3d 625.

No. 97–238. MUNIZ *v.* SOLANO COUNTY. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 97–242. WEXLER & WEXLER *v.* RYAN. C. A. 7th Cir. Certiorari denied. Reported below: 113 F. 3d 91.

No. 97–243. MUMFORD *v.* BASINSKI. C. A. 6th Cir. Certiorari denied. Reported below: 105 F. 3d 264.

No. 97–246. VICKERS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 97–247. PLACER COUNTY *v.* GUTOWSKY. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 256.

No. 97–251. SAACKS *v.* CITY OF NEW ORLEANS ET AL. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 687 So. 2d 432.

No. 97–252. HUTCHINSON, PERSONAL REPRESENTATIVE OF THE ESTATE OF HUTCHINSON, DECEASED *v.* PFEIL ET UX. C. A. 10th Cir. Certiorari denied. Reported below: 105 F. 3d 562.

No. 97–259. ANSARI *v.* PAHLAVI ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 113 F. 3d 17.

No. 97–261. DILLON ET AL. *v.* NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT ET AL. Ct. App. Ind. Certiorari denied. Reported below: 670 N. E. 2d 902.

No. 97–263. READ *v.* MEDICAL X-RAY CENTER, P. C. C. A. 8th Cir. Certiorari denied. Reported below: 110 F. 3d 543.

No. 97–266. WOODSON *v.* SCOTT PAPER CO. C. A. 3d Cir. Certiorari denied. Reported below: 109 F. 3d 913.

No. 97–267. MYERS *v.* MOFFITT ET AL. Sup. Ct. N. H. Certiorari denied.

No. 97–270. PEACOCK *v.* GREAT WESTERN MORTGAGE CORP. C. A. 3d Cir. Certiorari denied. Reported below: 110 F. 3d 222.

No. 97–273. OXXFORD CLOTHES XX, INC. *v.* EXXON CORP. C. A. 5th Cir. Certiorari denied. Reported below: 109 F. 3d 1070.

No. 97–277. KIRK ET AL. *v.* TOWN OF OSCEOLA. Ct. App. Ind. Certiorari denied. Reported below: 669 N. E. 2d 1060.

No. 97–278. BROBST *v.* BLAIR COUNTY DEPARTMENT OF COSTS AND FINES. Super. Ct. Pa. Certiorari denied. Reported below: 451 Pa. Super. 589, 678 A. 2d 822.

No. 97–287. BIGELOW ET AL. *v.* DALLAS & MAVIS FORWARDING CO., INC., A SUBSIDIARY OF JUPITER TRANSPORTATION CO. Ct. App. Ky. Certiorari denied.

No. 97–291. KIRMAN ET VIR *v.* COMPAGNIE FRANCAISE DE CROISIERES. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 97–294. JONES *v.* PETERSON, SUPERINTENDENT, WASHINGTON CORRECTIONS CENTER, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 338.

No. 97–298. FLOTILLA, INC. *v.* FLORIDA GAME AND FRESHWATER FISH COMMISSION ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 116 F. 3d 491.

No. 97–299. OSBORNE *v.* SEMINOLE COUNTY. C. A. 11th Cir. Certiorari denied. Reported below: 119 F. 3d 10.

No. 97–301. SMITH *v.* CIBA-GEIGY CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 114 F. 3d 1181.

No. 97–302. ARMOR ET UX. *v.* MICHELIN TIRE CORP. C. A. 4th Cir. Certiorari denied. Reported below: 113 F. 3d 1231.

No. 97–305. DELANEY *v.* RODRIGUEZ. C. A. 5th Cir. Certiorari denied.

No. 97–306. GEE ET AL. *v.* SOUTHWEST AIRLINES CO. C. A. 9th Cir. Certiorari denied. Reported below: 110 F. 3d 1400.

No. 97–332. BONILLA MONTALVO *v.* BANCO BILBAO VIZCAYA, FKA BANCO COMERCIAL MAYAGUEZ, ET AL. C. A. 1st Cir. Certiorari denied.

No. 97–336. UNITED STATES EX REL. BERGE *v.* BOARD OF TRUSTEES OF THE UNIVERSITY OF ALABAMA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 104 F. 3d 1453.

No. 97–340. IN RE MILLIGAN. C. A. Fed. Cir. Certiorari denied. Reported below: 111 F. 3d 144.

No. 97–345. CALDWELL *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 114 F. 3d 216.

No. 97–352. ADAM *v.* DICKINSON PLACE CHARITABLE CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 119 F. 3d 1.

No. 97–354. JACOB *v.* METROLASER, INC., ET AL. Sup. Ct. N. M. Certiorari denied.

No. 97–357. QUINTERO-CRUZ *v.* WARD, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 97–377. FASI *v.* GANNETT CO., INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 114 F. 3d 1194.

No. 97–388. LDG TIMBER ENTERPRISES, INC. *v.* GLICKMAN, SECRETARY OF AGRICULTURE. C. A. Fed. Cir. Certiorari denied. Reported below: 114 F. 3d 1140.

No. 97–392. MONTEFOLKA *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 287 Ill. App. 3d 199, 678 N. E. 2d 1049.

No. 97–415. DROBNY ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 7th Cir. Certiorari denied. Reported below: 113 F. 3d 670.

No. 97–417. ESSEX ELECTRO ENGINEERS, INC. *v.* WIDNALL, SECRETARY OF THE AIR FORCE. C. A. Fed. Cir. Certiorari denied. Reported below: 116 F. 3d 461.

No. 97–443. HALE *v.* NATIONAL CENTER FOR STATE COURTS. Sup. Ct. Va. Certiorari denied.

No. 97–455. KEARNS *v.* RUNYON, POSTMASTER GENERAL, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 108 F. 3d 1382.

No. 97–456. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 109 F. 3d 502.

No. 97–460. RAPANOS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 115 F. 3d 367.

No. 97–466. JONES *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 114 Md. App. 471, 691 A. 2d 229.

No. 97–476. AVRETT *v.* POLY-AMERICA, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 110 F. 3d 794.

No. 97–5008. LARRY *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 345 N. C. 497, 481 S. E. 2d 907.

No. 97–5042. NANNEY *v.* RANEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–5088. AMAYA-ALVARADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 111 F. 3d 893.

No. 97–5095. MCNEAL *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 175 Ill. 2d 335, 677 N. E. 2d 841.

No. 97–5097. THICKSTUN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 110 F. 3d 1394 and 111 F. 3d 139.

No. 97–5116. WALDRIP *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 267 Ga. 739, 482 S. E. 2d 299.

No. 97–5187. LAGRONE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 942 S. W. 2d 602.

No. 97–5264. CUNNINGHAM *v.* RUBIN, SECRETARY OF THE TREASURY, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 97–5270. BOWE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 110 F. 3d 796.

No. 97–5383. I. D. P., JUVENILE MALE, ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 102 F. 3d 507.

No. 97–5441. WHITE *v.* HOFFMAN-LA ROCHE, INC. C. A. 11th Cir. Certiorari denied. Reported below: 112 F. 3d 1172.

No. 97–5449. EAST *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 345 N. C. 535, 481 S. E. 2d 652.

No. 97–5455. SIVAK *v.* IDAHO ET AL. Sup. Ct. Idaho. Certiorari denied.

No. 97–5457. ELDER *v.* NEW JERSEY TRANSIT CORP. Super. Ct. N. J., App. Div. Certiorari denied.

No. 97–5459. BENDER *v.* MESSER ET AL. Sup. Ct. N. D. Certiorari denied. Reported below: 564 N. W. 2d 291.

No. 97–5466. MAUS *v.* SMITH ET AL. Ct. App. Wis. Certiorari denied.

No. 97–5467. MYERS *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 85 F. 3d 635.

No. 97–5468. WRIGHT, AKA EL MUHAMMAD *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 52 Cal. App. 4th 203, 59 Cal. Rptr. 2d 316.

No. 97–5478. TICHENOR *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 89 N. Y. 2d 769, 680 N. E. 2d 606.

No. 97–5479. HART *v.* WILSON, GOVERNOR OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–5481. ENGLISH *v.* REDMAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–5488. LEON *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 16.

No. 97–5497. SHOCKLEY *v.* KEARNEY, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–5502. CHRISTY *v.* FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 113 F. 3d 1250.

No. 97–5510. HILL *v.* MAXWELL ET AL. Ct. App. Minn. Certiorari denied.

No. 97–5512. EDDINGTON *v.* GROOSE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 97–5513. HARBISON *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied.

No. 97–5516. MULTANI *v.* NEWSWEEK, INC., ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 90 N. Y. 2d 838, 683 N. E. 2d 334.

No. 97–5519. MCSMITH *v.* TAVARES. Ct. App. Ga. Certiorari denied.

No. 97–5530. LAMBERT *v.* THOMPSON, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 113 F. 3d 1241.

No. 97–5534. TRIPLETT *v.* SHEAHAN ET AL. C. A. 7th Cir. Certiorari denied.

No. 97–5537. BROWN *v.* GRIFFIN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 508.

No. 97–5542. FEELY *v.* D'ORANGE. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 1393.

No. 97–5548. WARREN *v.* KUYKENDALL ET AL. C. A. 5th Cir. Certiorari denied.

No. 97–5551. JONES *v.* WENDEL ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 1477.

No. 97–5552. SLAGLE *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 677 N. E. 2d 639.

No. 97–5556. BARBER *v.* THOMAS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 114 F. 3d 1201.

No. 97–5559. FAIN *v.* KERNS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 112 F. 3d 515.

No. 97–5564. HAYES *v.* BESSINGER, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 509.

No. 97–5573. TAYLOR *v.* PURKETT, SUPERINTENDENT, FARMINGTON CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 97–5574. TAYLOR *v.* BOX, MAYOR OF THE CITY OF ROCKFORD, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied.

No. 97–5575. BIBBS *v.* MACDONALD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–5576. BARROIS *v.* UNIDENTIFIED PARTY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 475.

No. 97–5581. COGGINS *v.* 297 LENOX REALTY CO. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 108 F. 3d 1369.

No. 97–5583. HUBBARD *v.* ALABAMA ALCOHOLIC BEVERAGE CONTROL BOARD ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 105 F. 3d 672.

No. 97–5588. GIBSON *v.* CAIN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 97–5590. DIXON *v.* MUELLER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 105 F. 3d 664.

No. 97–5591. GUINN *v.* TACHA, JUDGE, UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT, ET AL. C. A. 10th Cir. Certiorari denied.

No. 97–5593. JENKINS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 692 So. 2d 893.

No. 97–5595. DICKENS *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 187 Ariz. 1, 929 P. 2d 468.

No. 97–5599. SMITH *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 176 Ill. 2d 217, 680 N. E. 2d 291.

No. 97–5600. MINK *v.* GENERAL MOTORS CORP. Ct. App. Mich. Certiorari denied.

No. 97–5603. RUBIO *v.* SMITH, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 114 F. 3d 1195.

No. 97–5608. MCREYNOLDS *v.* COMMISSIONER, OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES OF NEW YORK, ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 238 App. Div. 2d 453, 656 N. Y. S. 2d 358.

No. 97–5609. BAUHAUS *v.* OKLAHOMA ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 113 F. 3d 1245.

No. 97–5611. HEIT *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 97–5615. MAY *v.* BALDWIN, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 109 F. 3d 557.

No. 97–5616. CORTO *v.* NATIONAL SCENERY STUDIOS. C. A. 2d Cir. Certiorari denied. Reported below: 112 F. 3d 503.

No. 97–5622. HERRING *v.* SCHOTTEN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–5625. MCCARTY *v.* DORSEY, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 113 F. 3d 1246.

No. 97–5631. BROWN *v.* KOENICK ET AL. C. A. D. C. Cir. Certiorari denied.

No. 97–5633. WARREN *v.* BRUNELLE, SUPERINTENDENT, WYOMING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 97–5636. SAFFORD *v.* DOE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 116 F. 3d 466.

No. 97–5639. CARR *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 267 Ga. 547, 480 S. E. 2d 583.

No. 97–5653. HOLDER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–5663. HIGHTOWER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 475.

No. 97–5669. ALLEN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–5703. PULLIAM *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 176 Ill. 2d 261, 680 N. E. 2d 343.

No. 97–5719. SANTOS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 97–5736. HILL *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 97–5764. SINEGAL *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–5769. KALASHO *v.* PANZER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 113 F. 3d 1235.

No. 97–5780. LEVY *v.* MCQUIGG ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 110 F. 3d 60.

No. 97–5786. ARMSTEAD *v.* UNITED STATES; and
No. 97–5803. ARMSTEAD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 114 F. 3d 504.

No. 97–5789. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 115 F. 3d 241.

No. 97–5791. SJEKLOCHA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 114 F. 3d 1085.

No. 97–5792. SCHERPING *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 117 F. 3d 1053.

No. 97–5795. BRINSON *v.* BALDWIN, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 106 F. 3d 406.

No. 97–5800. REED *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 114 F. 3d 1053.

No. 97–5801. MONTALVO SILGUERO *v.* UNITED STATES;
No. 97–5802. TORRES *v.* UNITED STATES; and
No. 97–5929. BELTRAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 114 F. 3d 520.

No. 97–5805. VILLARREAL *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 687 So. 2d 256.

No. 97–5809. SHELTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 108 F. 3d 977.

No. 97–5810. WATKINS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 284 Ill. App. 3d 1125, 708 N. E. 2d 1278.

No. 97–5812. SUTTLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 111 F. 3d 895.

No. 97–5813. ZARAGOZA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 123 F. 3d 472.

No. 97–5814. WASHINGTON *v.* NEVILLE (three judgments). Ct. App. Mich. Certiorari denied.

No. 97–5815. BENJAMIN *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 3d Cir. Certiorari denied. Reported below: 124 F. 3d 185.

No. 97–5820. MAGUIRE *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 454 Pa. Super. 681, 685 A. 2d 210.

No. 97–5822. MEDENBACH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 487.

No. 97–5823. JORDAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 112 F. 3d 14.

No. 97–5826. GIFFORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 113 F. 3d 1251.

No. 97–5828. HUOR *v.* CALIFORNIA; and
No. 97–5849. HENG I *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 97–5834. GUTIERREZ-SILVA ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 114 F. 3d 734.

No. 97–5835. HANKINS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 114 F. 3d 1198.

No. 97–5836. DEPUEW *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 97–5842. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 97–5845. BOTTONE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 111 F. 3d 293.

No. 97–5851. ROWELL *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 326 S. C. 313, 487 S. E. 2d 185.

No. 97–5852. RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 117 F. 3d 1418.

No. 97–5855. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 110 F. 3d 65.

No. 97–5857. TURNER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 477.

No. 97–5858. TAYLOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 97–5861. COLBERT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 395.

No. 97–5862. JOYCE *v.* THOMPSON, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 112 F. 3d 516.

No. 97–5864. BROCK *v.* CARROLL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 107 F. 3d 241.

No. 97–5865. BURNS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 97–5867. COLEMAN *v.* NETHERLAND, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 97–5870. HARRINGTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 114 F. 3d 517.

No. 97–5874. RIVAS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 114 F. 3d 332.

No. 97–5875. RIDDICK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 124 F. 3d 189.

No. 97–5876. SECK *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 97–5877. ROSS *v.* UNITED STATES; and
No. 97–5971. BRIMAGE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 115 F. 3d 73.

No. 97–5878. RICHMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 511.

No. 97–5880. RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 120 F. 3d 274.

No. 97–5883. LANGWORTHY *v.* GOICOCHEA. Ct. App. Md. Certiorari denied. Reported below: 345 Md. 719, 694 A. 2d 474.

No. 97–5884. LEVENTHAL *v.* MOSELEY ET AL. Ct. App. Ga. Certiorari denied. Reported below: 224 Ga. App. 80, 479 S. E. 2d 427.

No. 97–5892. WHITLOW *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 124 F. 3d 218.

No. 97–5895. SHELTON *v.* CALLAHAN, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. Reported below: 111 F. 3d 138.

No. 97–5899. UNDERWOOD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 106 F. 3d 394.

No. 97–5902. GIRALDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 111 F. 3d 21.

No. 97–5906. JOHNSON *v.* ROBBINSDALE INDEPENDENT SCHOOL DISTRICT, NO. 281, ET AL. C. A. 8th Cir. Certiorari denied.

No. 97–5909. MAYLES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 97–5911. WAGNER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 97–5912. RUFIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 117 F. 3d 1431.

No. 97–5917. HEBRON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 689 A. 2d 587.

No. 97–5918. RAMON GONI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 120 F. 3d 269.

No. 97–5923. CROWDER *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–5925. WILLIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 114 F. 3d 1190.

No. 97–5926. WHEELER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 121 F. 3d 702.

No. 97–5930. CALLOWAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 116 F. 3d 1129.

No. 97–5931. DINGLE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 114 F. 3d 307.

No. 97–5932. DANIELS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 118 F. 3d 1578.

No. 97–5933. JEFFERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 110 F. 3d 794.

No. 97–5934. LONDONO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 116 F. 3d 58 and 466.

No. 97–5937. KINARD *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 689 A. 2d 587.

No. 97–5941. STERLING *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 120.

No. 97–5942. REMY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 117 F. 3d 1430.

No. 97–5946. SCHOFIELD *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 114 F. 3d 350.

No. 97–5953. WILEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 488.

No. 97–5954. CHAVEZ-VALENCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 127.

No. 97–5967. GLASPER, AKA MANN, AKA PORTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 119 F. 3d 1.

No. 97–5970. BRINTLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 117 F. 3d 1433.

No. 97–5972. STANCELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 117 F. 3d 1433.

No. 97–5973. VILLA-CHAPARRO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 115 F. 3d 797.

No. 97–5977. FREEMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 114 F. 3d 1189.

No. 97–5979. FAIRCLOTH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 110 F. 3d 61.

No. 97–5981. GONZALEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 114 F. 3d 1192.

No. 97–5982. CELAYA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 486.

No. 97–5984. CORREA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 114 F. 3d 314.

No. 97–5988. ROBINSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 113 F. 3d 1244.

No. 97–5990. JOHNSON ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 114 F. 3d 1189.

No. 97–5991. LEAK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 114 F. 3d 1178.

No. 97–5997. BAILEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 111 F. 3d 1229.

No. 97–5999. COOPER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 117 F. 3d 1431.

No. 97–6003. TAYLOR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 102 F. 3d 767.

No. 97–6007. MORGAN, AKA JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 116 F. 3d 492.

No. 97–6009. MANCUS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 118 F. 3d 1579.

No. 97–6011. REYES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 105 F. 3d 651.

No. 97–6014. CHRIESTMON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 114 F. 3d 1183.

No. 97–6015. CABAN *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 210 Wis. 2d 598, 563 N. W. 2d 501.

No. 97–6019. FREEMAN *v.* UPCHURCH, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 483.

No. 96–1824. LEE ET AL. *v.* HARCLEROAD ET AL. C. A. 9th Cir. Motion of petitioners to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 107 F. 3d 1382.

No. 97–59. DE MEO *v.* SMITH BARNEY, INC., ET AL. C. A. 2d Cir. Petition for writ of certiorari or mandamus denied.

No. 97–65. YOUNG ET AL. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION ET AL. C. A. 4th Cir. Motion of petitioners to strike the brief in opposition of respondents denied. Certiorari denied. Reported below: 103 F. 3d 1180.

No. 97–95. UBC SOUTHERN COUNCIL OF INDUSTRIAL WORKERS, LOCAL UNION NO. 2713 *v.* BRUCE HARDWOOD FLOORS. C. A. 5th Cir. Motions of National Academy of Arbitrators and American Arbitration Association for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 103 F. 3d 449.

No. 97–226. ACKLES *v.* LUTTRELL ET AL. Sup. Ct. Neb. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 252 Neb. 273, 561 N. W. 2d 573.

No. 97–286. MARYLAND *v.* DENNIS. Ct. App. Md. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 345 Md. 649, 693 A. 2d 1150.

No. 97–472. JONES, SECRETARY OF STATE OF CALIFORNIA *v.* BATES ET AL. C. A. 9th Cir. Certiorari before judgment denied.

Rehearing Denied

No. 96–1750. MEDICO *v.* MEDICO ET AL., 521 U. S. 1121;

No. 96–1810. ROSENBAUM *v.* ROSENBAUM (two judgments), 521 U. S. 1105; and

No. 96–8674. MICKENS *v.* VIRGINIA, 520 U. S. 1269. Petitions for rehearing denied.

No. 96–7981. PHILLIPS *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, 520 U. S. 1199. Motion for leave to file petition for rehearing denied.

OCTOBER 20, 1997

Miscellaneous Orders. (See also No. 97–5370, *ante,* p. 1.)

No. A–213 (97–5951). SANDERS *v.* BEHR ET UX. Ct. App. Colo. Application for stay, addressed to JUSTICE O'CONNOR and referred to the Court, denied.

No. D–1814. IN RE DISBARMENT OF SHIEH. Disbarment entered. [For earlier order herein, see 521 U. S. 1101.]

No. D–1823. IN RE DISBARMENT OF BALDAUFF. Disbarment entered. [For earlier order herein, see 521 U. S. 1134.]

No. D–1831. IN RE DISBARMENT OF SCOTT. Disbarment entered. [For earlier order herein, see 521 U. S. 1135.]

No. D–1832. IN RE DISBARMENT OF WELCKER. Disbarment entered. [For earlier order herein, see 521 U. S. 1135.]

No. D–1840. IN RE DISBARMENT OF GILBERT. Ronald Bart Gilbert, of Miami, Fla., 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 admitted to the practice of law before this Court. The rule to show cause, issued on September 29, 1997 [521 U. S. 1147], is discharged.

No. D–1860. IN RE DISBARMENT OF SCHOENEMAN. Charles W. Schoeneman, of Arlington, Va., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1861. IN RE DISBARMENT OF WILSON. Douglas Downes Wilson, of Roanoke, Va., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1862. IN RE DISBARMENT OF MANSON. Joseph F. Manson III, of Fairfax, Va., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1863. IN RE DISBARMENT OF FUTRELL. Tim Futrell, of Cambridge, Mass., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1864. IN RE DISBARMENT OF SOLBER. Peter V. Solber, of Chicago, Ill., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1865. IN RE DISBARMENT OF LEIBOWITZ. Saul R. Leibowitz, of Chicago, Ill., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1866. IN RE DISBARMENT OF HEINEMANN. Loren Lennis Heinemann, of Orland Park, Ill., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–19. ANDERSON *v.* HOPKINS, WARDEN;

No. M–20. GONZALEZ ET AL. *v.* WING, COMMISSIONER, NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES, ET AL.; and

No. M–21. PEREZ *v.* BUREAU OF PRISONS ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 96–1037. KIOWA TRIBE OF OKLAHOMA *v.* MANUFACTURING TECHNOLOGIES, INC. Ct. Civ. App. Okla. [Certiorari granted, 521 U. S. 1117.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 96–8653. GRAY *v.* MARYLAND. Ct. App. Md. [Certiorari granted, 520 U. S. 1273.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 96–1769. OHIO ADULT PAROLE AUTHORITY ET AL. *v.* WOODARD. C. A. 6th Cir. [Certiorari granted, 521 U. S. 1117.] Motion of respondent to substitute David H. Bodiker, Esq., as appointed counsel granted.

No. 97–5666. TSCHANZ *v.* SWEETWATER COUNTY SCHOOL DISTRICT NUMBER ONE ET AL. C. A. 10th Cir.; and

No. 97–5850. JOHNSON *v.* OPPEL ET AL. C. A. 8th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until November 10, 1997, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 97–6035. IN RE CLARK. Petition for writ of mandamus denied.

Certiorari Granted

No. 97–16. OHIO FORESTRY ASSN., INC. *v.* SIERRA CLUB ET AL. C. A. 6th Cir. Certiorari granted. Reported below: 105 F. 3d 248.

No. 97–42. EASTERN ENTERPRISES *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY, ET AL. C. A. 1st Cir. Certiorari granted. Reported below: 110 F. 3d 150.

No. 97–147. ATLANTIC MUTUAL INSURANCE CO. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 3d Cir. Certiorari granted. Reported below: 111 F. 3d 1056.

No. 96–8732. EDWARDS ET AL. *v.* UNITED STATES. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 105 F. 3d 1179.

Certiorari Denied

No. 96–1982. AGUIRRE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 108 F. 3d 1284.

No. 96–9441. MARTIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 109 F. 3d 1177.

No. 96–9470. AQUINO-CHACON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 109 F. 3d 936.

No. 97–75. NORTHEAST OHIO COALITION FOR THE HOMELESS ET AL. *v.* CITY OF CLEVELAND. C. A. 6th Cir. Certiorari denied. Reported below: 105 F. 3d 1107.

No. 97–104. GUTIERREZ DE MARTINEZ ET AL. *v.* LAMAGNO ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 111 F. 3d 1148.

No. 97–109. GENS, DBA HELEN GENS AND ASSOCIATES *v.* FEDERAL DEPOSIT INSURANCE CORPORATION. C. A. 1st Cir. Certiorari denied. Reported below: 112 F. 3d 569.

No. 97–112. TAX ANALYSTS *v.* DEPARTMENT OF JUSTICE ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 107 F. 3d 923.

No. 97–126. MATTERN *v.* EASTMAN KODAK CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 104 F. 3d 702.

No. 97–172. PHILLIPS ET AL. *v.* BOROUGH OF KEYPORT ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 107 F. 3d 164.

No. 97–280. WILLIAMSON ET VIR *v.* LIBERTY NATIONAL LIFE INSURANCE CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 111 F. 3d 893.

No. 97–295. SMITH ET VIR *v.* HARTFORD INSURANCE GROUP ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 111 F. 3d 127.

No. 97–310. WEINBERGER, ADMINISTRATOR OF THE ESTATE OF WEINBERGER, DECEASED *v.* WISCONSIN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 105 F. 3d 1182.

No. 97–311. GILBARCO, INC. *v.* OCTEL COMMUNICATIONS CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 113 F. 3d 1255.

No. 97–312. CUNNINGHAM *v.* SCHLUMBERGER WELL SERVICES. C. A. 5th Cir. Certiorari denied. Reported below: 117 F. 3d 1416.

No. 97–313. GUTHMANN, ADMINISTRATOR OF THE ESTATE OF GUTHMANN, DECEASED *v.* CROUSE IRVING MEMORIAL HOSPITAL ET AL. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 234 App. Div. 2d 1012, 1018, and 1020, 652 N. Y. S. 2d 459, 460, 565, and 566.

No. 97–318. WEST, A MINOR CHILD BY AND THROUGH HER PARENT AND NEXT FRIEND, NORRIS *v.* WAYMIRE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 114 F. 3d 646.

No. 97–319. CHEZ SEZ VIII, INC., T/A UNITED VIDEO ET AL. *v.* VERNIERO, ATTORNEY GENERAL OF NEW JERSEY, ET AL. Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 297 N. J. Super. 331, 688 A. 2d 119.

No. 97–323. LAPIDUS *v.* VANN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 112 F. 3d 91.

No. 97–324. GUIDO ET UX., DBA EAST SIDE FLOOR AND WALL *v.* CITY OF FAIRMONT. Cir. Ct. Marion County, West Virginia. Certiorari denied.

No. 97–327. CONSUMERS EDUCATION AND PROTECTIVE ASSN. ET AL. *v.* PENNSYLVANIA MILK MARKETING BOARD ET AL. Commw. Ct. Pa. Certiorari denied. Reported below: 683 A. 2d 972.

No. 97–331. BAKER HUGHES INC. ET AL. *v.* JIM ARNOLD CORP. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 109 F. 3d 1567.

No. 97–342. CARRERAS *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 936 S. W. 2d 727.

No. 97–353. SHIEH *v.* SUPREME COURT OF CALIFORNIA ET AL. Sup. Ct. Cal. Certiorari denied.

No. 97–384. RESHARD ET AL., CO-PERSONAL REPRESENTATIVES OF THE ESTATE OF RESHARD *v.* BRITT ET AL. C. A. 11th Cir. Certiorari denied.

No. 97–386. POLARIS INSURANCE CO., LTD. *v.* AQUA-MARINE CONSTRUCTORS, INC. C. A. 9th Cir. Certiorari denied. Reported below: 110 F. 3d 663.

No. 97–393. CAMOSCIO *v.* MULLIGAN, CHIEF JUSTICE, SUPERIOR COURT OF MASSACHUSETTS, ET AL. App. Ct. Mass. Certiorari denied. Reported below: 42 Mass. App. 1108, 676 N. E. 2d 1175.

No. 97–394. BROWN ET VIR *v.* UNIROYAL, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 108 F. 3d 1306.

No. 97–401. PRACTICE MANAGEMENT INFORMATION CORP. *v.* AMERICAN MEDICAL ASSN. C. A. 9th Cir. Certiorari denied. Reported below: 121 F. 3d 516.

No. 97–407. TEMPO, INC., DBA TEMPO WEST, INC. *v.* WEST, SECRETARY OF THE ARMY. C. A. Fed. Cir. Certiorari denied. Reported below: 108 F. 3d 1391.

No. 97–413. DIAMANT BOART, INC. *v.* MARTIN, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF MARTIN, DECEASED. C. A. 4th Cir. Certiorari denied. Reported below: 114 F. 3d 1176.

No. 97–425. BELL, T/A WES OUTDOOR ADVERTISING CO. *v.* NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION. Super. Ct. N. J., App. Div. Certiorari denied.

No. 97–431. SELF *v.* AUBURN STEEL CO., INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 116 F. 3d 481.

No. 97–469. PLATEK ET AL. *v.* DUQUESNE CLUB. C. A. 3d Cir. Certiorari denied. Reported below: 107 F. 3d 863.

No. 97–473. GILL ET AL. *v.* RHODE ISLAND ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 107 F. 3d 1.

No. 97–481. SHILDMYER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 112 F. 3d 518.

No. 97–487. GERACI ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 125 F. 3d 851.

No. 97–493. WILKERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 84 F. 3d 692.

No. 97–494. KIEPFER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 110 F. 3d 793.

No. 97–495. BLACK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 116 F. 3d 198.

No. 97–497. CRAWFORD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 115 F. 3d 1397.

No. 97–507. BRACKETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 113 F. 3d 1396.

No. 97–525. CASTLEBERRY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 116 F. 3d 1384.

No. 97–5033. BARTON *v.* NORROD ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 106 F. 3d 1289.

No. 97–5253. BORNKESSEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 476.

No. 97–5393. RADVON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 114 F. 3d 1173.

No. 97–5546. WILLIAMS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 97–5621. SLAGEL *v.* SHELL PETROLEUM, INC., ET AL. C. A. 7th Cir. Certiorari denied.

No. 97–5641. SUMMERS *v.* CHAMPION, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 108 F. 3d 1388.

No. 97–5642. SEYMORE *v.* SHAWVER & SONS, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 111 F. 3d 794.

No. 97–5645. GEASE *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 548 Pa. 165, 696 A. 2d 130.

No. 97–5647. GARBER *v.* LOS ANGELES MUNICIPAL COURT. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 97–5649. WISE *v.* MCANINCH, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 113 F. 3d 1236.

No. 97–5650. BREWER *v.* COMPTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–5656. GARCIA *v.* OHIO; CALO *v.* OHIO; WHITE *v.* OHIO; RICHARD *v.* OHIO; and RICHARD *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 97–5657. NORRIS *v.* JOHNSON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 114 F. 3d 1182.

No. 97–5660. CRAIG *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 699 So. 2d 865.

No. 97–5668. COPPLE *v.* MECHEM FINANCIAL, INC., ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–5672. KIT *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 97–5673. HIZBULLAHANKHAMON *v.* GOORD, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES, ET AL. C. A. 2d Cir. Certiorari denied.

No. 97–5676. TATUM *v.* LANHAM, COMMISSIONER, MARYLAND DIVISION OF CORRECTION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 120 F. 3d 262.

No. 97–5677. ARTEAGA *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. C. A. 9th Cir. Certiorari denied.

No. 97–5678. SINGLETON *v.* BAKER, ATTORNEY GENERAL OF GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 111 F. 3d 897.

No. 97–5679. PATRICK *v.* IOWA. Ct. App. Iowa. Certiorari denied. Reported below: 562 N. W. 2d 192.

No. 97–5684. GUDINAS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 693 So. 2d 953.

No. 97–5685. DWIGHT B. *v.* JERRI LYNN C. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 97–5689. ARCHER *v.* VALLEY HEALTH CARE CORP., DBA METHODIST HOSPITAL OF SACRAMENTO. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 97–5693. MULBERRY *v.* HENDERSON, SUPERINTENDENT, CENTENNIAL CORRECTIONAL FACILITY. C. A. 10th Cir. Certiorari denied. Reported below: 116 F. 3d 1489.

No. 97–5694. MAHAPATRA *v.* ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 113 F. 3d 1232.

No. 97–5695. LEWIS *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 97–5696. IKELIONWU *v.* BURR ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 111 F. 3d 123.

No. 97–5697. SMITH *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 113 F. 3d 1257.

No. 97–5698. BLACKWELL *v.* CONDON, ATTORNEY GENERAL OF SOUTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 107 F. 3d 865.

No. 97–5707. BRONSHTEIN *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 547 Pa. 460, 691 A. 2d 907.

No. 97–5709. LAMB *v.* LAMB. Sup. Ct. Alaska. Certiorari denied.

No. 97–5715. SACCO *v.* NEW YORK ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 124 F. 3d 188.

No. 97–5735. LANE *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 116 F. 3d 468.

No. 97–5773. MURPHY *v.* UNITED STATES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 116 F. 3d 1489.

No. 97–5774. MENDOZA *v.* BROWN, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 119 F. 3d 13.

No. 97–5777. BRAUN *v.* BARTLETT ET AL. C. A. 8th Cir. Certiorari denied.

No. 97–5799. RUSSELL *v.* BRIGMAN, SUPERINTENDENT, BLADEN COUNTY, NORTH CAROLINA CORRECTIONAL UNIT, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 114 F. 3d 1177.

No. 97–5816. WOLFGRAM *v.* WELLS FARGO BANK ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 53 Cal. App. 4th 43, 61 Cal. Rptr. 2d 694.

No. 97–5847. BARFIELD *v.* BELLSOUTH TELECOMMUNICATIONS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 1477.

No. 97–5871. DECATOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 511.

No. 97–5873. GOTTSCHALK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 486.

No. 97–5879. HYDE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 486.

No. 97–5889. ADKINS *v.* DIXON ET AL. Sup. Ct. Va. Certiorari denied. Reported below: 253 Va. 275, 482 S. E. 2d 797.

No. 97–5905. HICKS *v.* WORKERS' COMPENSATION APPEALS BOARD ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 97–5913. SLOAN *v.* ROBERTS ET AL. Sup. Ct. Va. Certiorari denied.

No. 97–5922. SPEEDE *v.* THOMPSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 114 F. 3d 1177.

No. 97–5924. PERELMAN *v.* DAVILA ET AL. (two judgments). C. A. 9th Cir. Certiorari denied. Reported below: 112 F. 3d 515.

No. 97–5938. MENY *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 97–5976. GIBSON *v.* WEST, SECRETARY OF THE ARMY. C. A. 3d Cir. Certiorari denied.

No. 97–5986. PADGETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 106 F. 3d 393.

No. 97–5987. QUARLES *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 696 A. 2d 1334.

No. 97–5998. BOTTONE *v.* UNITED STATES; and
No. 97–6016. RIVERA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: No. 97–6016, 111 F. 3d 293.

No. 97–6001. PEAKE *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 116 F. 3d 473.

No. 97–6002. VINCENT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 109 F. 3d 771.

No. 97–6017. DUARTE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 124 F. 3d 186.

No. 97–6021. GEORGES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 486.

No. 97–6022. GOODEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 721.

No. 97–6023. FLORES-MIRELES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 112 F. 3d 337.

No. 97–6028. BLUMEYER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 114 F. 3d 758.

No. 97–6038. BOGLE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 114 F. 3d 1271.

No. 97–6039. MENDOZA ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 1155.

No. 97–6040. MARTIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 116 F. 3d 702.

No. 97–6041. MALANITINI *v.* UNITED STATES;
No. 97–6052. WHEATON *v.* UNITED STATES; and
No. 97–6084. GAINEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 119 F. 3d 4.

No. 97–6042. MCKEOWN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 108 F. 3d 1380.

No. 97–6045. ROBERTSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 121 F. 3d 719.

No. 97–6046. OWENS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 97–6047. PORTILLO-RODRIGUEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 117 F. 3d 1429.

No. 97–6057. BENDOLPH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 116 F. 3d 470.

No. 97–6060. SELLMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 116 F. 3d 473.

No. 97–6066. WESTERFIELD *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 116 F. 3d 466.

No. 97–6083. ELLINGTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 112 F. 3d 1172.

No. 97–6085. HUDSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 100 F. 3d 1409.

No. 97–6086. FOY, AKA GREEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 122 F. 3d 1078.

No. 97–6090. BROADEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 1486.

No. 97–6091. ALVAREZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 116 F. 3d 1489.

No. 97–6095. RAMIREZ-CRUZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 113 F. 3d 1244.

No. 97–6096. GUTIERREZ RIVERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 119 F. 3d 4.

No. 97–6100. DUK KYUNG KIM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 105 F. 3d 1579.

No. 97–6102. MCCOUNLY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 117 F. 3d 1433.

No. 97–6106. VERNA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 113 F. 3d 499.

No. 97–6110. WHITE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 116 F. 3d 1481.

No. 97–6119. MAINVILLE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 114 F. 3d 1189.

No. 97–6120. BRUCE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 97–6135. BYRD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 770.

No. 97–6138. CARROLL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 510.

No. 97–6143. MORFA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 117 F. 3d 459.

No. 97–6150. CASEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 114 F. 3d 1177.

No. 97–6177. LATNEY *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 108 F. 3d 1446.

No. 96–9187. BROWN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

Opinion of JUSTICE STEVENS, with whom JUSTICE SOUTER, JUSTICE GINSBURG, and JUSTICE BREYER join, respecting the denial of the petition for writ of certiorari.

In Texas, although juries are required to assess a capital defendant's "future dangerousness" before sentencing him to death, he is prohibited from presenting truthful information to the jury about when he would be eligible for parole if sentenced to life. In the present case, the petitioner would have been required to

spend 35 years in prison before becoming eligible for parole if he had been sentenced to life imprisonment.[1] He sought to present this truthful information to the jury, coupled with evidence that people become less dangerous over time. He was prohibited from doing so by Texas law.

There is obvious tension between this rule and our basic holding in *Simmons* v. *South Carolina*, 512 U. S. 154 (1994). As JUSTICE SCALIA correctly observed, a logical application of that holding would permit "the admission of evidence showing that parolable life-sentence murderers are in fact almost never paroled, or are paroled only after age 70; . . . or evidence showing that, though under current law the defendant *will* be parolable in 20 years, the recidivism rate for elderly prisoners released after long incarceration is negligible." *Id.*, at 184–185 (dissenting opinion); see also *id.*, at 172–174 (SOUTER, J., concurring).[2]

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[1] Texas has since amended its parole law: A prisoner sentenced to life imprisonment for a capital felony is now ineligible for parole for at least 40 years. Tex. Code Crim. Proc. Ann., Art. 42.18, § 8(b)(2) (Vernon Supp. 1997).

[2] Poll data from various States support the conclusion that full information would have an impact on jurors' decisionmaking. In Nebraska, for example, although 80.4% of people support capital punishment in the abstract, only 51.6% prefer the death penalty when the alternative is life imprisonment when the defendant would be ineligible for parole for 25 years. See Bowers, Vandiver, & Dugan, A New Look at Public Opinion on Capital Punishment: What Citizens and Legislators Prefer, 22 Am. J. Crim. L. 77, 101, 105 (1994). Indeed, support for the death penalty dropped in each State when life imprisonment was presented as an alternative, when the defendant would be parole ineligible for 25 years. See *id.*, at 89–90 (support for death penalty dropped from 77% to 62% in Arkansas, from 64% to 45% in Virginia, and from 75% to 53% in Georgia when alternative was life imprisonment when defendant would be parole ineligible for 25 years). Not surprisingly, the death penalty becomes even less attractive as the length of parole ineligibility increases. See *id.*, at 105 (while 51.6% of people in Nebraska prefer the death penalty when the alternative is life imprisonment when defendant would be parole ineligible for 25 years, only 46.4% prefer the death penalty when defendant would be parole ineligible for 40 years).

The poll data also support the argument that the life-without-parole option considered in *Simmons* is different in degree, but not in kind, from the sentencing options at issue here, see *Simmons*, 512 U. S., at 184–185 (SCALIA, J., dissenting). In Georgia, for example, while 75% of people support the death penalty in the abstract, support for the death penalty drops to 53% when a defendant would be parole ineligible for 25 years, and to 46% when a defendant would never be eligible for parole. See Bowers, 22 Am. J. Crim. L., at 89–90. Similarly, in Nebraska, while 80.4% of the population

The situation in Texas is especially troubling. In Texas, the jury determines the sentence to be imposed after conviction in a significant number of noncapital felony cases. In those noncapital cases, Texas law *requires* that the jury be given an instruction explaining when the defendant will become eligible for parole.[3] Thus, the Texas Legislature has recognized that, without such an instruction, Texas jurors may not fully understand the range of sentencing options available to them. Perversely, however, in capital cases, Texas law *prohibits* the judge from letting the jury know when the defendant will become eligible for parole if he is not sentenced to death. The Texas rule unquestionably tips the scales in favor of a death sentence that a fully informed jury might not impose.

My primary purpose in writing, however, is not to comment on the merits of petitioner's constitutional claims, but to reiterate the important point that the Court's action in denying certiorari does not constitute either a decision on the merits of the questions presented, see *Singleton* v. *Commissioner*, 439 U. S. 940, 942 (1978) (opinion of STEVENS, J., respecting denial of certiorari), or

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supports capital punishment in the abstract, death penalty support drops to 51.6% when the defendant would be parole ineligible for 25 years, to 46.4% when the defendant would be parole ineligible for 40 years, and to 42.9% when the defendant would never be eligible for parole. See *id.*, at 101, 103, 105. Indeed, in Kansas, support for the death penalty drops to the *same level* (49%) when people are presented with the alternative of life without parole or life imprisonment with 40 years of parole ineligibility. See *id.*, at 90.

[3] "In the penalty phase of the trial of a felony case in which the punishment is to be assessed by the jury rather than the court, if the offense of which the jury has found the defendant guilty is listed in Section 3g(a)(1), Article 42.12, of this code or if the judgment contains an affirmative finding under Section 3g(a)(2), Article 42.12, of this code, unless the defendant has been convicted of a capital felony the court shall charge the jury in writing as follows:

. . . . .

"'Under the law applicable in this case, if the defendant is sentenced to a term of imprisonment, he will not become eligible for parole until the actual time served equals one-half of the sentence imposed or 30 years, whichever is less, without consideration of any good conduct time he may earn. If the defendant is sentenced to a term of less than four years, he must serve at least two years before he is eligible for parole. Eligibility for parole does not guarantee that parole will be granted.'" Tex. Code Crim. Proc. Ann., Art. 37.07, § 4(a) (Vernon Supp. 1997); see also *id.*, §§ 4(b)–(c).

an appraisal of their importance. Moreover, as was true of the underlying issue raised in three related cases in 1983,[4] and resolved three years later in *Batson* v. *Kentucky*, 476 U. S. 79 (1986), the likelihood that the issue will be resolved correctly may increase if this Court allows other tribunals "to serve as laboratories in which the issue receives further study before it is addressed by this Court."[5]

No. 97–79. OVERCASH, GUARDIAN AD LITEM *v.* DOE ET UX. Sup. Ct. S. C. Motion of Alliance for Rights of Children et al. for leave to file a brief as *amici curiae* granted. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 97–92. IEYOUB, ATTORNEY GENERAL OF LOUISIANA, ET AL. *v.* CAUSEWAY MEDICAL SUITE ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE SCALIA would grant the petition for writ of certiorari. Reported below: 109 F. 3d 1096.

No. 97–135. OLD VAIL PARTNERS *v.* COUNTY OF RIVERSIDE ET AL. C. A. 9th Cir. Motion of National Association of Home Builders et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 108 F. 3d 338.

No. 97–307. OSRAM SYLVANIA PRODUCTS, INC. *v.* VON DER AHE ET AL. C. A. 9th Cir. Motions of American Petroleum Institute, Grocery Manufacturers of America, Inc., and Hewlett-Packard Co. et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 111 F. 3d 137 and 653.

No. 97–5133. PRESTON *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Motion of petitioner to strike respondent's brief in opposition denied. Certiorari denied. Reported below: 100 F. 3d 596.

Rehearing Denied

No. 96–1436. DE WIEST *v.* DEHAENE ET AL., 520 U. S. 1170. Motion of petitioner for leave to proceed further herein *in forma*

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[4] *McCray* v. *New York*, 461 U. S. 961 (1983) (cert. denied); *Miller* v. *Illinois*, 461 U. S. 961 (1983) (cert. denied); *Perry* v. *Louisiana*, 461 U. S. 961 (1983) (cert. denied).

[5] *McCray*, 461 U. S., at 962–963 (opinion of STEVENS, J., respecting denial of certiorari).

pauperis granted. Motion for leave to file petition for rehearing denied.

OCTOBER 21, 1997

Miscellaneous Order

No. 97–6364 (A–274). IN RE BANNISTER. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

OCTOBER 24, 1997

Dismissal Under Rule 46

No. 97–467. DENGLE *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 5th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 122 F. 3d 1066.

OCTOBER 28, 1997

Certiorari Denied

No. 97–6541 (A–307). RANSOM *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 126 F. 3d 716.

OCTOBER 31, 1997

Certiorari Granted

No. 97–174. CASS COUNTY, MINNESOTA, ET AL. *v.* LEECH LAKE BAND OF CHIPPEWA INDIANS. C. A. 8th Cir. Certiorari granted. Reported below: 108 F. 3d 820.

No. 97–372. UNITED STATES *v.* UNITED STATES SHOE CORP. C. A. Fed. Cir. Certiorari granted. Reported below: 114 F. 3d 1564.

No. 96–8986. HOHN *v.* UNITED STATES. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to the following question: "In light of the fact that the Court of Appeals denied the petitioner's request

for a certificate of appealability, does this Court have jurisdiction to grant certiorari, vacate, and remand this case per the suggestion of the Acting Solicitor General?" Jeffrey S. Sutton, Esq., of Columbus, Ohio, a member of the Bar of this Court, is invited to brief and argue this case as *amicus curiae* against this Court's jurisdiction. Reported below: 99 F. 3d 892.

November 3, 1997

Certiorari Granted—Vacated and Remanded

No. 96–1430. United States *v.* Schleibaum. C. A. 10th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Johnson* v. *United States*, 520 U. S. 461 (1997). Reported below: 102 F. 3d 1043.

Miscellaneous Orders

No. A–269. In re Banks. Ct. App. D. C. Application for stay, addressed to Justice Breyer and referred to the Court, denied.

No. D–1821. In re Disbarment of Siddiqi. Disbarment entered. [For earlier order herein, see 521 U. S. 1134.]

No. D–1833. In re Disbarment of Tobin. Disbarment entered. [For earlier order herein, see 521 U. S. 1135.]

No. D–1843. In re Disbarment of Tuccori. Lawrence Stanley Tuccori, of Fresno, Cal., 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 admitted to the practice of law before this Court. The rule to show cause, issued on September 29, 1997 [521 U. S. 1148], is discharged.

No. D–1867. In re Disbarment of Mann. Stanley B. Mann, of Encino, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1868. In re Disbarment of Kenyon. Karl L. Kenyon, of Anderson, S. C., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, re-

quiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1869. IN RE DISBARMENT OF STEINBERG. Henry Mathew Steinberg, of San Francisco, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–22. HEDGES *v.* STUMBO ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. M–23. IN RE DOE. Motion for leave to file petition for writ of certiorari under seal denied.

No. 96–679. PISCATAWAY TOWNSHIP BOARD OF EDUCATION *v.* TAXMAN. C. A. 3d Cir. [Certiorari granted, 521 U. S. 1117.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 96–827. CRAWFORD-EL *v.* BRITTON. C. A. D. C. Cir. [Certiorari granted, 520 U. S. 1273.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 96–1578. PHILLIPS ET AL. *v.* WASHINGTON LEGAL FOUNDATION ET AL. C. A. 5th Cir. [Certiorari granted, 521 U. S. 1117.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 96–1400. CALIFORNIA ET AL. *v.* DEEP SEA RESEARCH, INC., ET AL. C. A. 9th Cir. [Certiorari granted, 520 U. S. 1263.] Motion of the Acting Solicitor General for divided argument granted, and the time for oral argument is allotted as follows: petitioners, 25 minutes; respondent Deep Sea Research, Inc., 25 minutes; and the Acting Solicitor General, 10 minutes. Motion of Columbus-America Discovery Group et al. for leave to participate in oral argument as *amici curiae* denied.

No. 96–8516. BOUSLEY *v.* BROOKS, WARDEN. C. A. 8th Cir. [Certiorari granted, 521 U. S. 1152.] Motion for appointment of counsel granted, and it is ordered that L. Marshall Smith, Esq.,

of St. Paul, Minn., be appointed to serve as counsel for petitioner in this case.

No. 97–215. CALDERON, WARDEN *v.* THOMPSON. C. A. 9th Cir. [Certiorari granted, 521 U. S. 1136 and 1140.] Motion of respondent for leave to proceed further herein *in forma pauperis* granted.

No. 97–475. EL AL ISRAEL AIRLINES, LTD. *v.* TSUI YUAN TSENG. C. A. 2d Cir. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 97–5748. LARSON *v.* OHLANDER. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until November 24, 1997, 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.

No. 97–6284. IN RE WOODS. Petition for writ of habeas corpus denied.

No. 97–5758. IN RE FUENTES; and
No. 97–5854. IN RE OKPALA. Petitions for writs of mandamus denied.

No. 97–5811. IN RE REEVES. Petition for writ of mandamus and/or prohibition denied.

No. 97–5806. IN RE WASHINGTON. Petition for writ of prohibition denied.

Certiorari Denied

No. 96–1839. WILES *v.* UNITED STATES; and
No. 96–8626. SCHLEIBAUM *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: No. 96–1839, 102 F. 3d 1043 and 106 F. 3d 1516; No. 96–8626, 102 F. 3d 1043.

No. 96–2041. BOYD ET AL. *v.* BROWNER, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 107 F. 3d 922.

No. 96–2045. SOSNE *v.* REINERT & DUREE ET AL.; and
No. 97–7. REINERT & DUREE ET AL. *v.* SOSNE, BANKRUPTCY TRUSTEE FOR JUST BRAKES CORPORATE SYSTEMS, INC. C. A. 8th Cir. Certiorari denied. Reported below: 108 F. 3d 881.

No. 96–2054. EAST COLUMBIA BASIN IRRIGATION DISTRICT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 105 F. 3d 517.

No. 96–9542. GIBSON *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 547 Pa. 71, 688 A. 2d 1152.

No. 96–9547. WHITE *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 939 S. W. 2d 887.

No. 97–133. ZIMOMRA *v.* ALAMO RENT-A-CAR, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 111 F. 3d 1495.

No. 97–137. ANDERSON *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 106 F. 3d 406.

No. 97–141. RIGGS *v.* DOCTOR'S ASSOCIATES, INC. C. A. 2d Cir. Certiorari denied. Reported below: 107 F. 3d 126.

No. 97–145. DISTAJO ET AL. *v.* DOCTOR'S ASSOCIATES, INC.; and No. 97–146. DISTAJO ET AL. *v.* DOCTOR'S ASSOCIATES, INC. C. A. 2d Cir. Certiorari denied. Reported below: No. 97–146, 107 F. 3d 126.

No. 97–163. SWANSON *v.* GENERAL SERVICES ADMINISTRATION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 110 F. 3d 1180.

No. 97–170. ROSS BROTHERS CONSTRUCTION CO. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 113 F. 3d 1235.

No. 97–180. BARR ET UX. *v.* ANNE ARUNDEL MEDICAL CENTER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 508.

No. 97–185. NEW BREED LEASING CORP. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 9th Cir. Certiorari denied. Reported below: 111 F. 3d 1460.

No. 97–186. WEISS ET AL. *v.* ALASKA ET AL. Sup. Ct. Alaska. Certiorari denied. Reported below: 939 P. 2d 380.

No. 97–189. MOBILETEL, INC. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 107 F. 3d 888.

No. 97–208. National Academy of Sciences *v.* Animal Legal Defense Fund et al. C. A. D. C. Cir. Certiorari denied. Reported below: 104 F. 3d 424.

No. 97–235. Leech Lake Band of Chippewa Indians *v.* Cass County et al. C. A. 8th Cir. Certiorari denied. Reported below: 108 F. 3d 820.

No. 97–265. Gjerde *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 110 F. 3d 595.

No. 97–317. Gutierrez, Governor of Guam, et al. *v.* Guam Society of Obstetricians and Gynecologists et al. C. A. 9th Cir. Certiorari denied. Reported below: 100 F. 3d 691.

No. 97–322. Alexander *v.* Whitman, Governor of New Jersey, et al. C. A. 3d Cir. Certiorari denied. Reported below: 114 F. 3d 1392.

No. 97–334. Milden et ux. *v.* Joseph, Trustee. C. A. 9th Cir. Certiorari denied. Reported below: 111 F. 3d 138.

No. 97–341. Oldfather et al. *v.* CIGNA Insurance Co., fka INA Underwriters Insurance Co. C. A. 9th Cir. Certiorari denied. Reported below: 111 F. 3d 138.

No. 97–344. Wilson *v.* Washington et al. Ct. App. Wash. Certiorari denied. Reported below: 84 Wash. App. 332, 929 P. 2d 448.

No. 97–347. Kaucky *v.* Southwest Airlines Co. C. A. 7th Cir. Certiorari denied. Reported below: 109 F. 3d 349.

No. 97–349. Silver *v.* Lincoln National Life Insurance Co., as Assignee of the Santa Fe Private Equity Fund II, L. P. C. A. 7th Cir. Certiorari denied. Reported below: 114 F. 3d 1191.

No. 97–350. Taiwo Okusami *v.* Psychiatric Institute of Washington, Inc., et al. C. A. D. C. Cir. Certiorari denied. Reported below: 81 F. 3d 1147.

No. 97–356. Nicholson et al. *v.* World Business Network, Inc., et al. C. A. 11th Cir. Certiorari denied. Reported below: 105 F. 3d 1361.

No. 97–358. PRICE ET AL. *v.* FCC NATIONAL BANK. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 285 Ill. App. 3d 661, 673 N. E. 2d 1068.

No. 97–360. UNITED STATES SURGICAL CORP. *v.* ETHICON, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 103 F. 3d 1554.

No. 97–362. BROWN ET UX., INDIVIDUALLY AND AS GUARDIANS AND NATURAL PARENTS OF BROWN ET AL. *v.* AMERICAN MOTORISTS INSURANCE CO. C. A. 3d Cir. Certiorari denied. Reported below: 111 F. 3d 125.

No. 97–364. NIDDS *v.* SCHINDLER ELEVATOR CORP. C. A. 9th Cir. Certiorari denied. Reported below: 113 F. 3d 912.

No. 97–366. MCGAHREN, PERSONAL REPRESENTATIVE OF THE ESTATE OF MCGAHREN *v.* FIRST CITIZENS BANK & TRUST CO. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 111 F. 3d 1159.

No. 97–368. WHITE *v.* PROVIDENT LIFE & ACCIDENT INSURANCE CO. C. A. 4th Cir. Certiorari denied. Reported below: 114 F. 3d 26.

No. 97–374. SIGMON ET AL. *v.* SOUTHWEST AIRLINES CO. C. A. 5th Cir. Certiorari denied. Reported below: 110 F. 3d 1200.

No. 97–379. DARAKSHAN ET AL. *v.* CITY OF BERKELEY ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 97–380. BESTROM *v.* BANKERS TRUST CO. C. A. 8th Cir. Certiorari denied. Reported below: 114 F. 3d 741.

No. 97–383. VOINCHE *v.* FEDERAL BUREAU OF INVESTIGATION. C. A. D. C. Cir. Certiorari denied.

No. 97–389. SMILEY *v.* KENTUCKY. Cir. Ct. Hardin County, Ky. Certiorari denied.

No. 97–390. HARRIS *v.* JENSEN ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 116 F. 3d 1492.

No. 97–396. EDWARDS *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 328 Ark. 394, 943 S. W. 2d 600.

No. 97–397. RINELLA *v.* ROBINSON, ADMINISTRATOR, ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION, SUPREME COURT OF ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 175 Ill. 2d 504, 677 N. E. 2d 909.

No. 97–398. FORGIONE *v.* COMMERCIAL CREDIT CORP. App. Ct. Conn. Certiorari denied.

No. 97–408. PATENT OFFICE PROFESSIONAL ASSN. *v.* FEDERAL LABOR RELATIONS AUTHORITY. C. A. D. C. Cir. Certiorari denied.

No. 97–418. ADVANCE REPRODUCTION CO., INC. *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 110 F. 3d 63.

No. 97–420. J. E. MERIT CONSTRUCTORS, INC. *v.* DAVIS. C. A. 5th Cir. Certiorari denied. Reported below: 119 F. 3d 1.

No. 97–422. ANDERSON *v.* PANOS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 111 F. 3d 494.

No. 97–432. HEIMANN *v.* DEPARTMENT OF AGRICULTURE. C. A. 8th Cir. Certiorari denied. Reported below: 104 F. 3d 139.

No. 97–434. IN RE SMITH. C. A. 10th Cir. Certiorari denied.

No. 97–437. SPAHN, GUARDIAN OF FOLZ *v.* WITTMAN, GUARDIAN AD LITEM FOR FOLZ, ET AL. Sup. Ct. Wis. Certiorari denied. Reported below: 210 Wis. 2d 558, 563 N. W. 2d 485.

No. 97–441. SMITH, ADMINISTRATOR OF THE ESTATE OF SMITH, DECEASED, ET AL. *v.* HARTFORD ACCIDENT & INDEMNITY CO. ET AL. Sup. Ct. Kan. Certiorari denied. Reported below: 262 Kan. 570, 938 P. 2d 1281.

No. 97–447. MARTIN *v.* CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 116 F. 3d 466.

No. 97–452. DEJESUS *v.* STEPANIK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 118 F. 3d 1575.

No. 97–457. WEDDELL *v.* HOCHMAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 878.

No. 97–470. BIGGINS *v.* HAZEN PAPER CO. ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 111 F. 3d 205.

No. 97–477. MICHALOWSKI *v.* NEW JERSEY DEPARTMENT OF LABOR, BOARD OF REVIEW. Super. Ct. N. J., App. Div. Certiorari denied.

No. 97–480. ROOT ET AL. *v.* BOLLMAN HAT CO., SPONSOR OF THE BOLLMAN HAT COMPANY HEALTH AND WELFARE BENEFITS PLAN. C. A. 3d Cir. Certiorari denied. Reported below: 112 F. 3d 113.

No. 97–483. CROSS *v.* NICHOLS ET AL. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 97–490. CURASI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 106 F. 3d 415.

No. 97–496. ADAMS FORD BELTON, INC. *v.* MISSOURI MOTOR VEHICLE COMMISSION ET AL. Sup. Ct. Mo. Certiorari denied. Reported below: 946 S. W. 2d 199.

No. 97–500. ZELMA, ON BEHALF OF SHAWNE L. FOR THE APPOINTMENT OF A GUARDIAN AD LITEM *v.* MCLEOD ET AL. C. A. 2d Cir. Certiorari denied.

No. 97–506. ULRICH *v.* ST. PAUL RAMSEY HOSPITAL ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 113 F. 3d 1239.

No. 97–509. CERWINSKI *v.* INSURANCE SERVICES OFFICE, INC. C. A. 2d Cir. Certiorari denied. Reported below: 112 F. 3d 503.

No. 97–513. FRY *v.* ALLERGAN MEDICAL OPTICS. Sup. Ct. R. I. Certiorari denied. Reported below: 695 A. 2d 511.

No. 97–517. HAEGER *v.* EDMOND ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 113 F. 3d 1252.

No. 97–519. BAK *v.* RUNYON, POSTMASTER GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 112 F. 3d 515.

No. 97–531. AVAITECA, S. A. *v.* ROMAN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 120 F. 3d 265.

No. 97–534. WHEELER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 120 F. 3d 266.

No. 97–538. TERHUNE, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS *v.* MCBATH. C. A. 9th Cir. Certiorari denied. Reported below: 121 F. 3d 716.

No. 97–555. SEARS *v.* MASSACHUSETTS BOARD OF REGISTRATION OF CHIROPRACTORS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 425 Mass. 1011, 680 N. E. 2d 1172.

No. 97–558. NAPOLEON *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 46 M. J. 279.

No. 97–571. GLENOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 119 F. 3d 9 and 11.

No. 97–579. RESORT PROPERTIES, INC. *v.* MISERANDINO ET UX. Ct. App. Md. Certiorari denied. Reported below: 345 Md. 43, 691 A. 2d 208.

No. 97–589. DAHOD, AKA DAHODWALA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 106 F. 3d 1547.

No. 97–593. BOWERS *v.* MISSOURI STATE EMPLOYEES' RETIREMENT SYSTEM BOARD OF TRUSTEES. C. A. 8th Cir. Certiorari denied. Reported below: 116 F. 3d 480.

No. 97–5038. SIMMONS *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 944 S. W. 2d 165.

No. 97–5176. BRADLEY *v.* OHIO. Ct. App. Ohio, Scioto County. Certiorari denied.

No. 97–5378. BUSH *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 942 S. W. 2d 489.

No. 97–5404. JONES *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 267 Ga. 592, 481 S. E. 2d 821.

No. 97–5446. RIDDLE *v.* BELLSOUTH BUSINESS SYSTEMS. C. A. 11th Cir. Certiorari denied. Reported below: 110 F. 3d 798.

No. 97–5475. MING YOU *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 113 F. 3d 1233.

No. 97–5528. BRADFORD *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 14 Cal. 4th 1005, 929 P. 2d 544.

No. 97–5691. SMITH *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 944 S. W. 2d 901.

No. 97–5713. POWELL *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 113 Nev. 41, 930 P. 2d 1123.

No. 97–5714. SMITH *v.* GILMORE, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 111 F. 3d 55.

No. 97–5716. JAMES *v.* DELGADO ET AL. C. A. 5th Cir. Certiorari denied.

No. 97–5717. SKOLNICK *v.* DORIA, SHERIFF, DUPAGE COUNTY, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied.

No. 97–5720. MOORE *v.* FENNEMA ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–5721. SMITH *v.* COMMITTEE OF THE SUPREME COURT OF SOUTH CAROLINA ON CHARACTER AND FITNESS. Sup. Ct. S. C. Certiorari denied.

No. 97–5728. CORTEZ *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 108 F. 3d 1395.

No. 97–5729. LOVE *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 97–5746. ROLL *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 942 S. W. 2d 370.

No. 97–5755. GRIFFIN *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–5759. EDWARDS *v.* KANSAS. Sup. Ct. Kan. Certiorari denied.

No. 97–5762. HARRIS *v.* KAVER ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 108 F. 3d 1381.

No. 97–5765. SCHIRNER ET UX. *v.* WICOMICO COUNTY PLANNING AND ZONING COMMISSION ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 112 Md. App. 776.

No. 97–5767. ANDERSON *v.* SOUTHERN STEVEDORING CO., INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 1477.

No. 97–5771. JOHNS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 285 Ill. App. 3d 1091, 709 N. E. 2d 311.

No. 97–5778. LOVETT *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 693 So. 2d 986.

No. 97–5781. SULLIVAN *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 97–5782. JACKSON *v.* DUCKWORTH, SUPERINTENDENT, INDIANA STATE REFORMATORY. C. A. 7th Cir. Certiorari denied. Reported below: 112 F. 3d 878.

No. 97–5788. A. B. R. *v.* VERMONT DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES. Sup. Ct. Vt. Certiorari denied. Reported below: 166 Vt. 642, 693 A. 2d 1058.

No. 97–5790. VOLOSIN *v.* CONSTRUCTION CONTRACTORS BOARD ET AL. Ct. App. Ore. Certiorari denied. Reported below: 145 Ore. App. 482, 928 P. 2d 366.

No. 97–5797. CHAPMAN *v.* LECUREUX, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–5807. CALHOUN *v.* BALL CORP. C. A. 10th Cir. Certiorari denied. Reported below: 113 F. 3d 1245.

No. 97–5818. CERATO *v.* MORTON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–5819. JONES *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 15 Cal. 4th 119, 931 P. 2d 960.

No. 97–5825. DOLENC *v.* DISTRICT ATTORNEY OF ALLEGHENY COUNTY, PENNSYLVANIA, ET AL. Sup. Ct. Pa. Certiorari denied.

No. 97–5827. FLORENCIO FERNANDEZ *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 97–5830. GUILLEN *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 97–5831. HUDSON *v.* CONSUMER POWER CO. C. A. 6th Cir. Certiorari denied.

No. 97–5832. FABIAN *v.* METROPOLITAN DADE COUNTY, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 102 F. 3d 554.

No. 97–5833. HART *v.* CONGRESS OF THE UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 97–5837. LOCKHART *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON. C. A. Fed. Cir. Certiorari denied. Reported below: 114 F. 3d 1205.

No. 97–5838. NISCHAN *v.* CONNECTICUT NATURAL FOOD MARKET, INC. App. Ct. Conn. Certiorari denied. Reported below: 45 Conn. App. 903, 692 A. 2d 873.

No. 97–5839. LONG *v.* MORTON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–5840. LEVY *v.* FAIRFAX COUNTY, VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 110 F. 3d 60.

No. 97–5841. JACKSON *v.* JOHNSON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 114 F. 3d 1202.

No. 97–5843. VRETTOS *v.* CALLAHAN, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 3d Cir. Certiorari denied. Reported below: 118 F. 3d 1579.

No. 97–5844. WOLLESEN *v.* SACASA. Ct. Sp. App. Md. Certiorari denied. Reported below: 114 Md. App. 728.

No. 97–5848. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 110 F. 3d 61.

No. 97–5853. SMITH *v.* SERVA-PORTION, INC. Sup. Ct. Ohio. Certiorari denied. Reported below: 78 Ohio St. 3d 1504, 679 N. E. 2d 5.

No. 97–5856. ASWEGAN *v.* EMMETT. C. A. 8th Cir. Certiorari denied. Reported below: 113 F. 3d 109.

No. 97–5860. WILLIAMS ET UX. *v.* STONE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 109 F. 3d 890.

No. 97–5863. BUJAN *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 698 So. 2d 808.

No. 97–5866. BRYAN *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 935 P. 2d 338.

No. 97–5869. FLETCHER *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 125 N. C. App. 505, 481 S. E. 2d 418.

No. 97–5881. CLASE-ESPINAL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 115 F. 3d 1054.

No. 97–5890. BELL *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 97–5894. OKORO *v.* STRUBBE ET AL. C. A. 7th Cir. Certiorari denied.

No. 97–5908. LOVE *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 97–5910. CHANEY *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 237 App. Div. 2d 999, 655 N. Y. S. 2d 739.

No. 97–5915. STENGER *v.* WOOD, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 110 F. 3d 70.

No. 97–5939. JACKSON *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 114 F. 3d 1187.

No. 97–5943. SMITH *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 698 So. 2d 219.

No. 97–5944. HAYES *v.* CORRECTION MANAGEMENT AFFILIATES, INC. C. A. 10th Cir. Certiorari denied. Reported below: 107 F. 3d 880.

No. 97–5947. SWIFT *v.* MAZURKIEWICZ, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW. C. A. 3d Cir. Certiorari denied.

No. 97–5950. ANONYMOUS *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 2d Cir. Certiorari denied. Reported below: 122 F. 3d 1055.

No. 97–5996. JACKSON *v.* LARKINS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–6004. TWENTER *v.* MISSOURI. C. A. 8th Cir. Certiorari denied.

No. 97–6006. JOHNSTON *v.* VARNER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 118 F. 3d 1576.

No. 97–6008. MICKELSEN *v.* REYNOLDS. Ct. App. Idaho. Certiorari denied.

No. 97–6012. SORIA *v.* BROWN, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 118 F. 3d 747.

No. 97–6013. WELLS *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 2d Cir. Certiorari denied. Reported below: 113 F. 3d 1230.

No. 97–6018. DIAZ-CRUZ *v.* BOARD OF REVIEW. Super. Ct. N. J., App. Div. Certiorari denied.

No. 97–6020. DEKEYSER *v.* LARKINS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–6024. SMITH *v.* CASELLAS, CHAIRMAN, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 119 F. 3d 33.

No. 97–6026. ALLEN *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 899 S. W. 2d 296.

No. 97–6034. BAILEY *v.* SNYDER, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–6037. ANDERSON *v.* MCKUNE, WARDEN. Ct. App. Kan. Certiorari denied. Reported below: 23 Kan. App. 2d 803, 937 P. 2d 16.

No. 97–6061. SATTERFIELD *v.* UNITED STATES; and
No. 97–6094. SHEPPARD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 118 F. 3d 1579.

No. 97–6067. WILLIAMS *v.* CHRYSLER CORP. C. A. D. C. Cir. Certiorari denied.

No. 97–6070. CONNELLY *v.* BOROUGH OF FOREST HILLS, PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 118 F. 3d 1574.

No. 97–6073. ANDREWS *v.* LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 97–6075. CARTER *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD. C. A. 3d Cir. Certiorari denied.

No. 97–6079. FRENZEL *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 938 P. 2d 867.

No. 97–6089. BROWN *v.* UPHOFF, DIRECTOR, WYOMING DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 114 F. 3d 1198.

No. 97–6103. MINK *v.* GENERAL MOTORS CORP. C. A. 6th Cir. Certiorari denied. Reported below: 121 F. 3d 708.

No. 97–6105. HOCHSTEIN *v.* HOPKINS, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 113 F. 3d 143.

No. 97–6116. PRICE *v.* MAZURKIEWICZ ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–6137. BROWN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 689 A. 2d 588.

No. 97–6139. ADEWUSI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 1486.

No. 97–6142. SCHERPING *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 117 F. 3d 1053.

No. 97–6152. MAYS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 97–6153. MECCA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 118 F. 3d 1579.

No. 97–6154. COMEAUX *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 119 F. 3d 4.

No. 97–6155. HINES ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 110 F. 3d 61.

No. 97–6159. EVANS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 112 F. 3d 517.

No. 97–6160. GREENE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 116 F. 3d 1481.

No. 97–6161. RODRIGUEZ *v.* CHILES, GOVERNOR OF FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 694 So. 2d 53.

No. 97–6163. WHITE ET AL. *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 116 F. 3d 903.

No. 97–6164. TENCER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 107 F. 3d 1120.

No. 97–6167. BROWN ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 511.

No. 97–6168. BALDWIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 124 F. 3d 205.

No. 97–6171. WILD *v.* WOOTEN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 97–6174. SWINT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 118 F. 3d 1579.

No. 97–6175. RICHARDSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 118 F. 3d 1579.

No. 97–6176. SHIDELER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 119 F. 3d 11.

No. 97–6180. GODINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 119 F. 3d 7.

No. 97–6183. HERNANDEZ-FLORES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 120 F. 3d 265.

No. 97–6184. HICKS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 116 F. 3d 903.

No. 97–6185. PFEIL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 116 F. 3d 489.

No. 97–6187. ORTIZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 112 F. 3d 506.

No. 97–6188. HUDSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 116 F. 3d 473.

No. 97–6190. STATONEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 487.

No. 97–6196. MARKS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 97–6198. MOST *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 1487.

No. 97–6199. NELSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 1487.

No. 97–6201. KILLINGSWORTH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 117 F. 3d 1159.

No. 97–6202. MENDOZA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 118 F. 3d 707.

No. 97–6205. STALLINGS *v.* DELO, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 117 F. 3d 378.

No. 97–6211. MCCRORY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 118 F. 3d 1578.

No. 97–6219. WATSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 117 F. 3d 1421.

No. 97–6221. LURZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 118 F. 3d 1579.

No. 97–6222. MCFARLAND *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 116 F. 3d 316.

No. 97–6225. CHAPPELL ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 116 F. 3d 1474.

No. 97–6226. WALKER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 117 F. 3d 417.

No. 97–6227. VARSAMAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 117 F. 3d 1426.

No. 97–6228. THOMPSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 120 F. 3d 271.

No. 97–6232. TAYLOR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 119 F. 3d 625.

No. 97–6242. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 120 F. 3d 266.

No. 97–6245. GAINEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 111 F. 3d 834.

No. 97–6249. CLAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 117 F. 3d 317.

No. 97–6254. ARMENDARIZ-AMAYA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 117 F. 3d 1179.

No. 97–6258. LAMAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 117 F. 3d 459.

No. 97–6266. ASH ET VIR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 117 F. 3d 1421.

No. 97–6268. MORELAND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 119 F. 3d 8.

No. 97–6269. RAMOS GONZALEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 112 F. 3d 1325.

No. 97–6275. GUERRERO-MARTINEZ, AKA GUERRERO, AKA MARTINEZ-GUERRERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 878.

No. 97–6293. RODRIGUEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 116 F. 3d 1002.

No. 97–6294. GLENN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 121 F. 3d 704.

No. 97–6296. GAINES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 122 F. 3d 324.

No. 97–6309. WIEDMER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 116 F. 3d 481.

No. 97–6325. FREDERICK *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 211 Wis. 2d 888, 568 N. W. 2d 653.

No. 97–27. COMMONWEALTH SECRETARY OF VIRGINIA *v.* MISERANDINO ET UX. Ct. App. Md. Motions of Virginia Creditors Bar Association and Virginia Credit Union League for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 345 Md. 43, 691 A. 2d 208.

No. 97–337. GENENTECH, INC. *v.* NOVO NORDISK A/S ET AL. C. A. Fed. Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 108 F. 3d 1361.

No. 97–369. COALITION FOR ECONOMIC EQUITY ET AL. *v.* WILSON, GOVERNOR OF CALIFORNIA, ET AL. C. A. 9th Cir. Motions of California National Organization for Women et al. and Human Rights Advocates for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 122 F. 3d 692.

No. 97–376. WARREN PUBLISHING, INC. *v.* MICRODOS DATA CORP. ET AL. C. A. 11th Cir. Motions of Information Industry Association and Newsletter Publishers Association et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 115 F. 3d 1509.

NOVEMBER 4, 1997

Certiorari Denied

No. 97–6127 (A–329). FULLER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 114 F. 3d 491.

NOVEMBER 6, 1997

Certiorari Denied

No. 97–6661 (A–347). FULLER *v.* TEXAS. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented

to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied.

NOVEMBER 7, 1997

Certiorari Denied

No. 97–6672 (A–348). MATTHEWS *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied.

NOVEMBER 10, 1997

Certiorari Granted—Vacated and Remanded

No. 97–5538. CARTER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Lindh* v. *Murphy*, 521 U. S. 320 (1997) . Reported below: 110 F. 3d 1098.

Miscellaneous Orders

No. D–1870. IN RE DISBARMENT OF ALLEN. Juliette Z. Allen, of Tustin, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring her to show cause why she should not be disbarred from the practice of law in this Court.

No. D–1871. IN RE DISBARMENT OF TOKARS. Fredric W. Tokars, of Atlanta, Ga., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–24. MANZANO *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION; and

No. M–25. LEWIS *v.* RUNYON, POSTMASTER GENERAL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 96–1279. ROGERS *v.* UNITED STATES. C. A. 11th Cir. [Certiorari granted, 520 U. S. 1239.] Motion of petitioner for leave to file a supplemental brief after argument granted.

No. 96–8732. EDWARDS ET AL. *v.* UNITED STATES. C. A. 7th Cir. [Certiorari granted, *ante*, p. 931.] Motion for appointment of counsel granted, and it is ordered that J. Michael McGuinness, Esq., of Elizabethtown, N. C., be appointed to serve as counsel for petitioner Vincent Edwards in this case.

No. 97–218. LARSEN, MARYLAND INSURANCE COMMISSIONER *v.* AMERICAN MEDICAL SECURITY, INC., ET AL. C. A. 4th Cir. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 97–5900. GISRIEL *v.* OCEAN CITY BOARD OF SUPERVISORS OF ELECTION ET AL. Ct. App. Md. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until December 1, 1997, 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.

No. 97–5965. GLENDORA *v.* DiPAOLA. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioner is allowed until December 1, 1997, 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.

No. 97–6308. IN RE TYLER. Petition for writ of mandamus and/or prohibition denied.

No. 97–6059. IN RE STEWART. Petition for writ of prohibition denied.

Certiorari Denied

No. 96–1587. CITY OF ALBUQUERQUE *v.* BROWNER, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY. C. A. 10th Cir. Certiorari denied. Reported below: 97 F. 3d 415.

No. 96–7833. BAILIE ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 99 F. 3d 1147.

No. 96–8862. SMITH *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 280 Mont. 158, 931 P. 2d 1272.

No. 96–9382. THOMAS *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 691 So. 2d 1154.

No. 97–217. Toski *v.* McDonnell et al. C. A. 11th Cir. Certiorari denied. Reported below: 104 F. 3d 369.

No. 97–223. Evans *v.* Maryland. Cir. Ct. Baltimore County, Md. Certiorari denied.

No. 97–231. Almand *v.* DeKalb County et al. C. A. 11th Cir. Certiorari denied. Reported below: 103 F. 3d 1510.

No. 97–260. Beard *v.* Walsh. C. A. 9th Cir. Certiorari denied. Reported below: 106 F. 3d 411.

No. 97–269. Individuals for Responsible Government, Inc., et al. *v.* Washoe County et al. C. A. 9th Cir. Certiorari denied. Reported below: 110 F. 3d 699.

No. 97–271. Thompson, Trustee in Bankruptcy for McConville et ux. *v.* Margen et al.; and

No. 97–446. Margen et al. *v.* Thompson, Trustee in Bankruptcy for McConville et ux. C. A. 9th Cir. Certiorari denied. Reported below: 110 F. 3d 47.

No. 97–321. Rooney, By and Through His Next Best Friend, Rooney, His Father, et al. *v.* Watson, Deputy Sheriff, et al. C. A. 11th Cir. Certiorari denied. Reported below: 101 F. 3d 1378.

No. 97–333. Williams et al. *v.* WMX Technologies, Inc., fka Waste Management, Inc., et al. C. A. 5th Cir. Certiorari denied. Reported below: 112 F. 3d 175.

No. 97–381. Jenkins, a Minor, by Her Mother, Hall, et al. *v.* Herring et al. C. A. 11th Cir. Certiorari denied. Reported below: 115 F. 3d 821.

No. 97–400. Essex County Utilities Authority et al. *v.* Atlantic Coast Demolition & Recycling, Inc., et al.; and

No. 97–430. Shinn, Commissioner, New Jersey Department of Environmental Protection *v.* Atlantic Coast Demolition & Recycling, Inc., et al. C. A. 3d Cir. Certiorari denied. Reported below: 112 F. 3d 652.

No. 97–402. Harmon et ux. *v.* OKI Systems et al. C. A. 7th Cir. Certiorari denied. Reported below: 115 F. 3d 477.

No. 97–405. Roman Catholic Diocese of Brooklyn *v.* Kenneth R., by His Mother and Natural Guardian, Diana R., et al. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 229 App. Div. 2d 159, 654 N. Y. S. 2d 791.

No. 97–409. Ruhrgas, A. G. *v.* Marathon Oil Co. et al. C. A. 5th Cir. Certiorari denied. Reported below: 115 F. 3d 315.

No. 97–410. Monroe *v.* Missouri Pacific Railroad Co. et al. C. A. 7th Cir. Certiorari denied. Reported below: 115 F. 3d 514.

No. 97–411. Tobin et al. *v.* General Electric Co. et al. C. A. 3d Cir. Certiorari denied. Reported below: 118 F. 3d 1578.

No. 97–412. Mathy et ux. *v.* Virginia Department of Taxation. Sup. Ct. Va. Certiorari denied. Reported below: 253 Va. 356, 483 S. E. 2d 802.

No. 97–414. Mozzochi *v.* Freedom of Information Commission et al. App. Ct. Conn. Certiorari denied. Reported below: 44 Conn. App. 463, 688 A. 2d 363.

No. 97–416. Thompson, Individually and as Guardian ad Litem for Thompson, a Minor, et al. *v.* Steen. C. A. 9th Cir. Certiorari denied. Reported below: 110 F. 3d 716.

No. 97–421. Grand Lockwood Partners Limited Partnership *v.* Maxwell House Coffee Co. et al. C. A. 5th Cir. Certiorari denied. Reported below: 115 F. 3d 282.

No. 97–424. Superior Court for the Judicial District of Hartford/New Britain at Hartford *v.* Aparo. C. A. 2d Cir. Certiorari denied. Reported below: 129 F. 3d 113.

No. 97–426. Woythal *v.* Tex-Tenn Corp. C. A. 6th Cir. Certiorari denied. Reported below: 112 F. 3d 243.

No. 97–427. National Association of Home Builders of the United States et al. *v.* City of Los Angeles. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 485.

No. 97–429. In re Andrade et al. C. A. 5th Cir. Certiorari denied.

No. 97–433. Lamvermeyer *v.* Denison University et al. C. A. 6th Cir. Certiorari denied. Reported below: 114 F. 3d 1187.

No. 97–436. SASCHO, INC. *v.* DAP PRODUCTS, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 113 F. 3d 1255.

No. 97–438. HOWARD *v.* ANDERSON ET AL. C. A. 2d Cir. Certiorari denied.

No. 97–440. D. R., BY HIS PARENTS AND LEGAL GUARDIANS, M. R. AND B. R. *v.* EAST BRUNSWICK BOARD OF EDUCATION. C. A. 3d Cir. Certiorari denied. Reported below: 109 F. 3d 896.

No. 97–442. THOMAS *v.* BAXTER. C. A. 4th Cir. Certiorari denied. Reported below: 110 F. 3d 60.

No. 97–445. CAMOSCIO *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 42 Mass. App. 1112, 677 N. E. 2d 720.

No. 97–448. RASHID *v.* MARINE MIDLAND BANK, FKA MARINE MIDLAND BANK, N. A. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 230 App. Div. 2d 776, 646 N. Y. S. 2d 621.

No. 97–468. LEFFEL *v.* VALLEY FINANCIAL SERVICES ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 113 F. 3d 787.

No. 97–484. CLEMONS *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 946 S. W. 2d 206.

No. 97–522. NURSE *v.* UNITED AIR LINES, INC. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 877.

No. 97–545. MILTON HAMBRICE, INC. *v.* STATE FARM FIRE & CASUALTY CO. C. A. 8th Cir. Certiorari denied. Reported below: 114 F. 3d 722.

No. 97–575. BENJAMIN ET UX. *v.* BINA. Sup. Jud. Ct. Me. Certiorari denied.

No. 97–585. GREER *v.* LOUISIANA ET AL. C. A. 5th Cir. Certiorari denied.

No. 97–587. DUCHOW *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 114 F. 3d 1181.

No. 97–590. KNAPP ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 120 F. 3d 928.

No. 97–595. SPARTAN MILLS *v.* BANK OF AMERICA ILLINOIS. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 1251.

No. 97–618. LAL *v.* NIX ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–631. BECK *v.* UNITED STATES ATTORNEY FOR THE DISTRICT OF DELAWARE. C. A. 3d Cir. Certiorari denied. Reported below: 124 F. 3d 185.

No. 97–637. BOWNDS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 114 F. 3d 1183.

No. 97–648. COKER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 111 F. 3d 293.

No. 97–661. DEWS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 114 F. 3d 1189.

No. 97–5110. CISNEROS-CABRERA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 110 F. 3d 746.

No. 97–5195. BUSH *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 695 So. 2d 138.

No. 97–5207. MILOJEVICH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 113 F. 3d 1243.

No. 97–5238. MILLER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 97–5885. MCREYNOLDS *v.* DIRECTOR, BROOKLYN DEVELOPMENTAL CENTER;

No. 97–5886. MCREYNOLDS *v.* NEW YORK; and

No. 97–5907. MCREYNOLDS *v.* GIULIANI, MAYOR OF THE CITY OF NEW YORK, ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 238 App. Div. 2d 249, 656 N. Y. S. 2d 871.

No. 97–5887. JOHARI *v.* JOHARI. Ct. App. Minn. Certiorari denied.

No. 97–5888. CRAWFORD *v.* MORAN. App. Ct. Ill., 3d Dist. Certiorari denied.

No. 97–5893. WILLACY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 696 So. 2d 693.

No. 97–5896. WRIGHT *v.* SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 105 F. 3d 650.

No. 97–5897. WIGGINS *v.* STAINER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 1387.

No. 97–5898. WATSON *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 117 F. 3d 1423.

No. 97–5904. STAMPS *v.* STAMPS. Ct. App. Tenn. Certiorari denied.

No. 97–5914. LEMLEY *v.* LEMLEY. Ct. Sp. App. Md. Certiorari denied. Reported below: 112 Md. App. 772.

No. 97–5919. ENAND *v.* MONTGOMERY COUNTY, MARYLAND, ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 113 Md. App. 732.

No. 97–5920. LITTLEJOHN *v.* CASPARI, SUPERINTENDENT, MISSOURI EASTERN CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 97–5921. JACOBSON *v.* MCILWAIN ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 114 F. 3d 1200.

No. 97–5927. CLEWELL ET UX. *v.* UPJOHN CO. C. A. 3d Cir. Certiorari denied. Reported below: 111 F. 3d 125.

No. 97–5928. SEVERANCE *v.* HOFBAUER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–5940. JOSEPH *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 697 So. 2d 511.

No. 97–5948. SMITH *v.* SUGG ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 113 F. 3d 1239.

No. 97–5949. QUALLS *v.* FERRITOR ET AL. Sup. Ct. Ark. Certiorari denied. Reported below: 329 Ark. 235, 947 S. W. 2d 10.

No. 97–5951. SANDERS *v.* BEHR ET UX. Ct. App. Colo. Certiorari denied. Reported below: 940 P. 2d 1084.

No. 97–5955. VASQUEZ *v.* BEXAR COUNTY ADULT DETENTION CENTER. C. A. 5th Cir. Certiorari denied. Reported below: 106 F. 3d 397.

No. 97–5958. EFFINGER *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 947 S. W. 2d 805.

No. 97–5959. HENNESS *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 79 Ohio St. 3d 53, 679 N. E. 2d 686.

No. 97–5960. GREEN *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 97–5961. FORD *v.* PHILADELPHIA FEDERAL CREDIT UNION. C. A. 3d Cir. Certiorari denied. Reported below: 116 F. 3d 467.

No. 97–5963. HARRIS *v.* WHITE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 110 F. 3d 68.

No. 97–5964. DYMITS *v.* SAN MATEO COUNTY MUNICIPAL COURT. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 97–5969. CEJA *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 97 F. 3d 1246.

No. 97–5974. WEINREICH *v.* LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY. C. A. 9th Cir. Certiorari denied. Reported below: 114 F. 3d 976.

No. 97–5978. ERDMAN *v.* MICHIGAN. C. A. 6th Cir. Certiorari denied.

No. 97–5980. ERTELT *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 558 N. W. 2d 860.

No. 97–5985. OLANREWAJU *v.* IMMIGRATION AND NATURALIZATION SERVICE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 107 F. 3d 23.

No. 97–5989. MARTINEZ ET AL. *v.* SIMKINS ET AL. C. A. 6th Cir. Certiorari denied.

No. 97–5992. MCMURTREY *v.* ARIZONA. Super. Ct. Ariz., Pima County. Certiorari denied.

No. 97–5993. KAMPFER *v.* GOKEY. C. A. 2d Cir. Certiorari denied.

No. 97–5994. JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 97–6000. STRABLE *v.* SOUTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 120 F. 3d 262.

No. 97–6025. SMITH *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied. Reported below: 117 Ohio App. 3d 656, 691 N. E. 2d 324.

No. 97–6043. JOHNSON *v.* MORTON, SUPERINTENDENT, NEW JERSEY STATE PRISON. C. A. 3d Cir. Certiorari denied.

No. 97–6074. NICOL *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 509.

No. 97–6108. VINCENT *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 455 Mich. 110, 565 N. W. 2d 629.

No. 97–6111. WEBB *v.* PULITZER PUBLISHING CO. C. A. 8th Cir. Certiorari denied. Reported below: 117 F. 3d 1423.

No. 97–6112. TISDALE *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 116 F. 3d 481.

No. 97–6121. CROCKER *v.* ROBINSON, WESTERN REGIONAL DIRECTOR, PENNSYLVANIA BOARD OF PROBATION AND PAROLE, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 114 F. 3d 1171.

No. 97–6129. RIVERA *v.* PARKER ET AL. C. A. 11th Cir. Certiorari denied.

No. 97–6130. JOHNSTON *v.* FRANK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 118 F. 3d 1576.

No. 97–6136. CARRASQUILLO *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–6147. BUCKOM *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 126 N. C. App. 368, 485 S. E. 2d 319.

No. 97–6151. CHAPIN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–6156. EVANS *v.* HORN, COMMISSIONER, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 118 F. 3d 1575.

No. 97–6165. ATUAHENE *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 4th Cir. Certiorari denied.

No. 97–6182. BROWN *v.* NEW MEXICO. Sup. Ct. N. M. Certiorari denied. Reported below: 123 N. M. 413, 941 P. 2d 494.

No. 97–6193. O'NEAL *v.* CHEVRON U. S. A. INC. ET AL. Sup. Ct. Haw. Certiorari denied. Reported below: 84 Haw. 128, 930 P. 2d 1016.

No. 97–6197. ALLEN *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 97–6215. WAINWRIGHT *v.* BOOZ, ALLEN & HAMILTON, INC. C. A. 4th Cir. Certiorari denied. Reported below: 107 F. 3d 869.

No. 97–6223. JOHNSON *v.* WASHINGTON, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 119 F. 3d 513.

No. 97–6235. RICKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 119 F. 3d 10.

No. 97–6239. CASTILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 97–6246. GREEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 111 F. 3d 515.

No. 97–6248. BOLIN *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 693 So. 2d 583.

No. 97–6252. OCHSNER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 97–6257. LANKFORD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 97–6261. LOVE *v.* UNITED STATES POSTAL SERVICE. C. A. Fed. Cir. Certiorari denied. Reported below: 119 F. 3d 16.

No. 97–6265. BENJAMIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 116 F. 3d 1204.

No. 97–6267. AVILA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 117 F. 3d 1179.

No. 97–6273. RIOS *v.* CALIFORNIA. App. Dept., Super. Ct. Cal., County of Los Angeles. Certiorari denied.

No. 97–6279. CHOHAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 122 F. 3d 1057.

No. 97–6280. CASH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 114 F. 3d 1201.

No. 97–6286. PEACH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 113 F. 3d 1247.

No. 97–6290. SANTIAGO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 97–6292. PECOR *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 286 Ill. App. 3d 71, 675 N. E. 2d 141.

No. 97–6305. FRANKLIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 511.

No. 97–6307. WEEDEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 117 F. 3d 1429.

No. 97–6310. WEBB *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 115 F. 3d 711.

No. 97–6312. CARLISLE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 118 F. 3d 1271.

No. 97–6313. BENTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 113 F. 3d 1239.

No. 97–6314. WILSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 114 F. 3d 1178.

No. 97–6316. VALLERY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 108 F. 3d 155.

No. 97–6320. ATKINS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 116 F. 3d 1566.

No. 97–6321. VIDAL MARQUEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 114 F. 3d 1198.

No. 97–6323. MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 119 F. 3d 4.

No. 97–6330. RAMON GORDILS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 117 F. 3d 99.

No. 97–6332. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 110 F. 3d 797.

No. 97–6334. GIGNAC *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 119 F. 3d 67.

No. 97–6337. MACKEY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 117 F. 3d 24.

No. 97–6345. HUBBLE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 121 F. 3d 704.

No. 97–6346. HEATH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 122 F. 3d 682.

No. 97–6348. HUNT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 117 F. 3d 1414.

No. 97–6351. MORRIS ET AL. *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 116 F. 3d 501.

No. 97–6357. ROBINSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 110 F. 3d 1320.

No. 97–6360. RAMIREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 101 F. 3d 708.

No. 97–6362. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 121 F. 3d 705.

No. 97–6365. ACEVEDO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 117 F. 3d 1429.

No. 97–6366. JUVENILE NO. 4 *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 118 F. 3d 298.

No. 97–6367. LOTT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 121 F. 3d 718.

No. 97–6368. JONES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 122 F. 3d 1058.

No. 97–6374. URIARTE-GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 1387.

No. 97–6377. ALTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 120 F. 3d 114.

No. 97–6378. SHUGART *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 117 F. 3d 838.

No. 97–6380. SCHANCK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 120 F. 3d 273.

No. 97–6383. LEWIS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 97–6386. SIMMONS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 121 F. 3d 722.

No. 97–6392. BIRBAL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 113 F. 3d 342.

No. 97–6393. CHATMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 119 F. 3d 1335.

No. 97–6394. MORRIS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 97–6397. MADDEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 116 F. 3d 1474.

No. 97–6405. DAVIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 106 F. 3d 409.

No. 97–6407. FIELDS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 113 F. 3d 313.

No. 97–6419. BEMIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 96–9105. MARRERO *v.* PENNSYLVANIA. Sup. Ct. Pa. Motion of Defender Association of Philadelphia for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 546 Pa. 596, 687 A. 2d 1102.

No. 97–209. TOLCHIN *v.* SUPREME COURT OF NEW JERSEY ET AL. C. A. 3d Cir. Motions of Philadelphia Bar Association and Michael D. Fettner for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 111 F. 3d 1099.

No. 97–210. OFFICIAL COMMITTEE OF TORT CLAIMANTS *v.* DOW CORNING CORP. ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 113 F. 3d 565.

No. 97–5956. NEAL *v.* LUCENT TECHNOLOGIES, INC., ET AL. C. A. 11th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 112 F. 3d 1172.

No. 97–387. SCHUYLKILL ENERGY RESOURCES, INC. *v.* PENNSYLVANIA POWER & LIGHT CO. C. A. 3d Cir. Motion of Attorney General of Pennsylvania for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 113 F. 3d 405.

No. 97–423. AVITTS ET AL. *v.* AMOCO PRODUCTION CO. ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 111 F. 3d 30.

Rehearing Denied

No. 96–1804. HWANG *v.* HARRIS ET AL., *ante*, p. 810;

No. 96–1956. COLE *v.* UNITED STATES, *ante*, p. 818;

No. 96–8881. MARR *v.* WRIGHT, SUPERINTENDENT, CLALLAM BAY CORRECTIONAL FACILITY, 521 U. S. 1124;

No. 96–8905. SCHWARZ *v.* SPALDING, *ante*, p. 826;

No. 96–9254. SCHWARZ *v.* CLINTON, PRESIDENT OF THE UNITED STATES, ET AL., *ante*, p. 837;

No. 96–9371. SCHWARZ *v.* WOODRUFF, INC., ET AL., *ante*, p. 845;

No. 96–9486. OBERMEYER *v.* UNITED STATES, *ante*, p. 852;

No. 97–5151. MMAHAT *v.* UNITED STATES, *ante*, p. 878;

No. 97–5454. SCHWARTZ *v.* CITY OF BETHEL PARK, PENNSYLVANIA, *ante*, p. 895;

No. 97–5456. SCHWARZ *v.* CLINTON, PRESIDENT OF THE UNITED STATES, ET AL., *ante,* p. 895;

No. 97–5662. EDMONDS *v.* UNITED STATES, *ante,* p. 902; and

No. 97–5883. LANGWORTHY *v.* GOICOCHEA, *ante,* p. 924. Petitions for rehearing denied.

NOVEMBER 13, 1997

Miscellaneous Order

No. 97–6726 (A–365). IN RE MU'MIN. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Petition for writ of habeas corpus and petition for writ to preserve jurisdiction denied.

Certiorari Denied

No. 97–6612 (A–346). MU'MIN *v.* PRUETT, WARDEN. C. A. 4th Cir. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 125 F. 3d 192.

NOVEMBER 14, 1997

Certiorari Granted

No. 97–282. FARAGHER *v.* CITY OF BOCA RATON. C. A. 11th Cir. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, December 29, 1997. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, January 28, 1998. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, February 18, 1998. This Court's Rule 29.2 does not apply. Reported below: 111 F. 3d 1530.

No. 97–288. LEWIS ET VIR, INDIVIDUALLY, AS PARENTS, AS NEXT FRIENDS, AND AS ADMINISTRATORS OF THE ESTATE OF LEWIS, DECEASED *v.* BRUNSWICK CORP. C. A. 11th Cir. Certiorari granted. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, December 29, 1997. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m.,

Wednesday, January 28, 1998. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, February 18, 1998. This Court's Rule 29.2 does not apply. Reported below: 107 F. 3d 1494.

No. 97–463. TEXTRON LYCOMING RECIPROCATING ENGINE DIVISION, AVCO CORP. *v.* UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA ET AL. C. A. 3d Cir. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, December 29, 1997. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, January 28, 1998. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, February 18, 1998. This Court's Rule 29.2 does not apply. Reported below: 117 F. 3d 119.

NOVEMBER 17, 1997

Dismissal Under Rule 46

No. 97–644. LARION *v.* SANDUL. C. A. 6th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 119 F. 3d 1250.

Reversed on Appeal. (See No. 97–122, *ante*, p. 34.)

Certiorari Granted—Vacated and Remanded

No. 96–8916. SWOFFORD *v.* DOBUCKI, WARDEN. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Lindh* v. *Murphy*, 521 U. S. 320 (1997). Reported below: 101 F. 3d 1218.

Miscellaneous Orders

No. D–1858. IN RE DISBARMENT OF AARON. Philip Irwin Aaron, of Syosset, N. Y., 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 admitted to the practice of law before this Court. The rule to show cause, issued on October 14, 1997 [*ante*, p. 910], is discharged.

No. D–1872. IN RE DISBARMENT OF MANNS. Dollie Stafford Manns, of Bloomington, Ind., is suspended from the practice of

law in this Court, and a rule will issue, returnable within 40 days, requiring her to show cause why she should not be disbarred from the practice of law in this Court.

No. D–1873. IN RE DISBARMENT OF GRZYBEK. John E. Grzybek, of St. Paul, Minn., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1874. IN RE DISBARMENT OF FRUITBINE. Daniel Richard Fruitbine, of New York, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1875. IN RE DISBARMENT OF FELTON. John F. Felton, of New York, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–26. TREUTELAAR *v.* WISCONSIN. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner denied.

No. 96–568. ONCALE *v.* SUNDOWNER OFFSHORE SERVICES, INC., ET AL. C. A. 5th Cir. [Certiorari granted, 520 U. S. 1263.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted to be divided as follows: petitioner, 20 minutes; the Solicitor General, 10 minutes.

No. 96–1569. BOGAN ET AL. *v.* SCOTT-HARRIS. C. A. 1st Cir. [Certiorari granted, 520 U. S. 1263.] Motion of Westboro Baptist Church for leave to file a brief as *amicus curiae* out of time denied.

No. 96–1578. PHILLIPS ET AL. *v.* WASHINGTON LEGAL FOUNDATION ET AL. C. A. 5th Cir. [Certiorari granted, 521 U. S. 1117.] Motion of respondents for divided argument denied.

No. 96–1923. COHEN *v.* DE LA CRUZ ET AL. C. A. 3d Cir. [Certiorari granted, 521 U. S. 1152.] Motion of petitioner Edward Cohen to dispense with printing the joint appendix granted.

No. 97–5968. ZAIDI *v.* NORTHERN VIRGINIA HOSPITAL CORP. ET AL. Sup. Ct. Va. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until December 8, 1997, 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.

No. 97–523. IN RE FLEMING; and

No. 97–6114. IN RE HOFMANN. Petitions for writs of mandamus denied.

Certiorari Denied

No. 96–9439. ELISONDO *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–236. TUSA ET AL. *v.* UNITED STATES; and

No. 97–5469. SALVATORE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 110 F. 3d 1131.

No. 97–276. SOUTH DAKOTA ET AL. *v.* UNITED STATES, ON BEHALF OF THE CHEYENNE RIVER SIOUX TRIBE AND ITS MEMBERS, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 105 F. 3d 1552.

No. 97–285. BUSTER ET AL. *v.* GREISEN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 104 F. 3d 1186.

No. 97–293. CORN *v.* CITY OF LAUDERDALE LAKES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 95 F. 3d 1066.

No. 97–444. CARGILL COMMUNICATIONS, INC. *v.* MINERS. C. A. 8th Cir. Certiorari denied. Reported below: 113 F. 3d 820.

No. 97–450. HILL *v.* J. J. B. HILLIARD, W. L. LYONS, INC., ET AL.; and

No. 97–459. BRAB *v.* HILL. Ct. App. Ky. Certiorari denied. Reported below: 945 S. W. 2d 948.

No. 97–479. STROH DIE CASTING CO. *v.* ATLANTIC STATES LEGAL FOUNDATION, INC. C. A. 7th Cir. Certiorari denied. Reported below: 116 F. 3d 814.

No. 97–488. SCHIRM *v.* UNION PACIFIC RAILROAD CO. C. A. 8th Cir. Certiorari denied.

No. 97–489. COLELLI *v.* SANDT, DBA 1ST KLAS MARINA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 118 F. 3d 1574.

No. 97–491. CLUTE *v.* SOUTH CAROLINA. Ct. App. S. C. Certiorari denied. Reported below: 324 S. C. 584, 480 S. E. 2d 85.

No. 97–492. JOHN F. VICKERS MASONRY *v.* GIUSEPPE FURRER, S. P. A. Sup. Ct. Ariz. Certiorari denied.

No. 97–498. ALLEN ET AL. *v.* MONTGOMERY HOSPITAL ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 548 Pa. 299, 696 A. 2d 1175.

No. 97–510. POWER *v.* RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 118 F. 3d 1577.

No. 97–515. TSIPOURAS *v.* MESHBESHER, BIRRELL & DUNLAP, LTD., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 108 F. 3d 1382.

No. 97–518. DAVIS ET AL. *v.* TABACHNICK ET AL. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 425 Mass. 1010, 680 N. E. 2d 1171.

No. 97–529. MILES *v.* SUNBELT NATIONAL BANK ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 477.

No. 97–536. GARDNER *v.* DEPARTMENT OF THE TREASURY. C. A. Fed. Cir. Certiorari denied. Reported below: 114 F. 3d 1207.

No. 97–567. TEXAS COMMERCE BANK-SAN ANGELO, N. A., ET AL. *v.* SHURLEY ET UX. C. A. 5th Cir. Certiorari denied. Reported below: 115 F. 3d 333.

No. 97–596. RIGGS ET AL. *v.* BURSON, ATTORNEY GENERAL OF TENNESSEE, ET AL. Sup. Ct. Tenn. Certiorari denied. Reported below: 941 S. W. 2d 44.

No. 97–617. BOWLIN *v.* FLORIDA. Cir. Ct. Polk County, Fla. Certiorari denied.

No. 97–619. ORTIZ *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied.

No. 97–629. SHONG-CHING TONG *v.* TURNER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 103 F. 3d 141.

No. 97–633. WHITEFORD *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 127 F. 3d 1097.

No. 97–649. ASAM *v.* HANCOCK, JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA. C. A. 11th Cir. Certiorari denied. Reported below: 117 F. 3d 1432.

No. 97–654. MEDINA, PARENT OF MEDINA, DECEASED, ET AL. *v.* DEVINE, JUDGE, 190TH JUDICIAL DISTRICT COURT, HARRIS COUNTY, TEXAS. C. A. 5th Cir. Certiorari before judgment denied.

No. 97–655. KLIMAS *v.* KARAGOZIAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 112 F. 3d 516.

No. 97–662. HARTFORD STEAM BOILER INSPECTION & INSURANCE CO. *v.* I/N KOTE. C. A. 7th Cir. Certiorari denied. Reported below: 115 F. 3d 1312.

No. 97–678. HERZOG *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 111 F. 3d 307.

No. 97–684. PATCH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 114 F. 3d 131.

No. 97–690. COMMERCIAL REALTY ST. PETE, INC. *v.* FEDERAL COMMUNICATIONS COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 116 F. 3d 941.

No. 97–694. ROACH *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 108 F. 3d 1477.

No. 97–700. DANIELS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 107 F. 3d 25.

No. 97–703. RIMELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 97–708. DELUCA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 117 F. 3d 356.

No. 97–5051. DIGIOVANNI *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 455 Pa. Super. 671, 687 A. 2d 854.

No. 97–5145. DAUGHTRY *v.* DENNEHY. C. A. 1st Cir. Certiorari denied.

No. 97–5423. WASHINGTON ET AL. *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 106 F. 3d 983.

No. 97–5604. WEBER *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 113 F. 3d 1258.

No. 97–5643. SARGA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 113 F. 3d 1249.

No. 97–5644. BELL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 113 F. 3d 1345.

No. 97–5655. DURHAM *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 97–5659. MCALPINE *v.* UNITED STATES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 112 F. 3d 1429.

No. 97–5704. STRONG *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 114 F. 3d 1192.

No. 97–5962. HERNANDEZ *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 108 F. 3d 554.

No. 97–5975. ROLLING *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 695 So. 2d 278.

No. 97–5983. BRADFORD *v.* WHITE ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–6005. LANE *v.* NATIONAL DATA CORP. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 113 F. 3d 1250.

No. 97–6010. JONES *v.* WASHINGTON, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS. C. A. 7th Cir. Certiorari denied.

No. 97–6027. CALVIN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied.

No. 97–6030. MOMIENT-EL *v.* DETELLA, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 118 F. 3d 535.

No. 97–6031. MANALO *v.* TERRITORY OF GUAM. C. A. 9th Cir. Certiorari denied. Reported below: 110 F. 3d 69.

No. 97–6036. BRANTLEY *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 268 Ga. 151, 486 S. E. 2d 169.

No. 97–6044. MAHDAVI *v.* ONE HUNDRED STATE, COUNTY, AND CITY OFFICIALS. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 97–6048. PALO *v.* PITCHER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–6049. BUCHANAN *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 698 So. 2d 799.

No. 97–6050. WIGGINS *v.* PICKETT, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 1387.

No. 97–6051. THOMAS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 693 So. 2d 951.

No. 97–6054. BONDS, AKA WILLIAMS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 237 App. Div. 2d 1000, 655 N. Y. S. 2d 740.

No. 97–6056. ESPINOZA CRUZ *v.* TEXAS. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 97–6058. PLANCARTE *v.* ROE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 110 F. 3d 69.

No. 97–6062. LEWIS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 478.

No. 97–6063. NUNLEY *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 97–6064. ISRAEL *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 119 F. 3d 10.

No. 97–6065. VANDIVER *v.* HAWLEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–6068. SMITH *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 97–6071. AWOFOLU *v.* LOS ANGELES COUNTY SUPERIOR COURT ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 97–6072. BURACZEWSKA *v.* CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied.

No. 97–6076. CLARK *v.* MARYLAND ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 116 F. 3d 472.

No. 97–6077. CHAPMAN *v.* KOZAKIEWICZ, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 111 F. 3d 125.

No. 97–6081. HUNTER *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 97–6092. BOWLING *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 942 S. W. 2d 293.

No. 97–6097. JYAN *v.* FRANKOVICH ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 338.

No. 97–6098. MACIEL *v.* GOMEZ, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–6099. LOTT *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 695 So. 2d 1239.

No. 97–6101. JORDAN *v.* DORSEY, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 116 F. 3d 489.

No. 97–6109. WALKER *v.* DRAGOVICH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–6115. CROSS *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 105 F. 3d 646.

No. 97–6122. BUCHANAN *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 104 F. 3d 365.

No. 97–6124. KING *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 79 Ohio St. 3d 1480, 683 N. E. 2d 786.

No. 97–6132. LEGROS *v.* OHIO. Ct. App. Ohio, Seneca County. Certiorari denied.

No. 97–6148. DIXIE *v.* RENO, ATTORNEY GENERAL, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 97–6149. SISSON *v.* HERMAN, SECRETARY OF LABOR, ET AL. C. A. 6th Cir. Certiorari denied.

No. 97–6236. MARTIN *v.* GUILLORY, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 509.

No. 97–6291. RAMUS *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 10th Cir. Certiorari denied. Reported below: 116 F. 3d 1489.

No. 97–6300. CAMMON *v.* RENO, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 97–6341. WILLIAMS *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 97–6358. PAYNE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 119 F. 3d 637.

No. 97–6370. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 117 F. 3d 849.

No. 97–6381. POWELL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 113 F. 3d 464.

No. 97–6388. HARRIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 114 F. 3d 1187.

No. 97–6390. DENMARK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 124 F. 3d 200.

No. 97–6395. TAM DUY NGUYEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 117 F. 3d 796.

No. 97–6408. ALLISON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 120 F. 3d 71.

No. 97–6409. VILLA MORENA, AKA JAVIER MORENO, ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 121 F. 3d 705.

No. 97–6411. JOKINEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 124 F. 3d 200.

No. 97–6414. ARTEAGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 117 F. 3d 388.

No. 97–6416. STRACENER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 117 F. 3d 1417.

No. 97–6417. SHAY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 111 F. 3d 307.

No. 97–6423. CUEVAS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 116 F. 3d 481.

No. 97–6427. SANTACRUZ-NARANJO *v.* UNITED STATES; and No. 97–6443. HERNANDEZ-GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 119 F. 3d 7.

No. 97–6437. POLK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 118 F. 3d 286.

No. 97–6439. MCDANIEL, AKA COOKSEY, AKA HANSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 117 F. 3d 1417.

No. 97–6440. MCKINNEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 124 F. 3d 206.

No. 97–6441. JUVENILE NO. 1 *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 118 F. 3d 298.

No. 97–6444. IZQUIERDO CRUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 121 F. 3d 705.

No. 97–6446. BARBER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 119 F. 3d 276.

No. 97–6449. BELTRAN-BUSTAMANTE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 119 F. 3d 7.

No. 97–6454. FELIX *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 120 F. 3d 273.

No. 97–6458. JAVIER NEVAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 129 F. 3d 608.

No. 97–6460. JAKOVICH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 119 F. 3d 7.

No. 97–6461. MACKLIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 119 F. 3d 8.

No. 97–6465. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 121 F. 3d 710.

No. 97–6471. MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 121 F. 3d 718.

No. 97–6476. MAGANA DE GODINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 119 F. 3d 8.

No. 97–6482. GRAVES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 124 F. 3d 189.

No. 97–6483. EHMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 119 F. 3d 7.

No. 97–6487. HEARN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 97–6497. TRISTAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 120 F. 3d 269.

No. 97–462. MARYLAND *v.* HUGHES. Ct. App. Md. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 346 Md. 80, 695 A. 2d 132.

No. 97–6718 (A–359). EDDMONDS *v.* ILLINOIS. Sup. Ct. Ill. Application for stay of execution of sentence of death, presented to JUSTICE STEVENS, and by him referred to the Court, denied. Certiorari denied.

Rehearing Denied

No. 96–1559. OWENS *v.* UNITED STATES, *ante*, p. 806;

No. 96–1926. WILLIAMS ET VIR *v.* FRANKLIN FIRST FEDERAL SAVINGS BANK ET AL., *ante*, p. 815;

No. 96–9154. WIEDMER *v.* UNITED STATES, *ante*, p. 833;

No. 96–9194. TAYLOR *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL INSTITUTE, *ante*, p. 834;

No. 96–9431. MMAHAT *v.* UNITED STATES, *ante*, p. 848;

No. 97–325. CHILDS *v.* PAINEWEBBER INC., *ante*, p. 870;

No. 97–5408. SIKORA *v.* HOPKINS ET AL., *ante*, p. 892; and

No. 97–5516. MULTANI *v.* NEWSWEEK, INC., ET AL., *ante*, p. 919. Petitions for rehearing denied.

No. 96–7883. BARRETT *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY, 520 U. S. 1175. Motion for leave to file petition for rehearing denied.

No. 97–5296. PARHAM *v.* COCA-COLA CO., *ante*, p. 909. Petition for rehearing denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

NOVEMBER 18, 1997

Certiorari Denied

No. 97–6708 (A–359). BURRIS *v.* PARKE, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Application for stay of execution of sentence of death, presented to JUSTICE STEVENS, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS, JUSTICE SOUTER, and JUSTICE GINSBURG would grant the application for stay of execution and the petition for writ of certiorari. Reported below: 116 F. 3d 256.

No. 97–6780 (A–371). STEWART *v.* GILMORE, WARDEN. C. A. 7th Cir. Application for stay of execution of sentence of death, presented to JUSTICE STEVENS, and by him referred to the Court, denied. Certiorari denied. Reported below: 129 F. 3d 1268.

NOVEMBER 19, 1997

Miscellaneous Order

No. A–333 (97–746). GENERAL MOTORS CORP. *v.* GREAR ET AL.; and IN RE GENERAL MOTORS CORP. C. A. 6th Cir. Application for stay, presented to JUSTICE STEVENS, and by him referred to the Court, denied.

Certiorari Denied

No. 97–6790 (A–373). BURRIS *v.* PARKE, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Application for stay of execution of sentence of death, presented to JUSTICE STEVENS, and by him referred to the Court, denied. Certiorari denied. Reported below: 130 F. 3d 782.

NOVEMBER 21, 1997

Miscellaneous Order

No. 96–8516. BOUSLEY *v.* BROOKS, WARDEN. C. A. 8th Cir. [Certiorari granted, 521 U. S. 1152.] Thomas C. Walsh, Esq., of

St. Louis, Mo., is invited to brief and argue this case as *amicus curiae* in support of the judgment below.

Rehearing Denied

No. 97–5179 (A–379). LIVINGSTON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 880. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Petition for rehearing denied.

NOVEMBER 26, 1997

Certiorari Granted

No. 97–156. BRAGDON *v.* ABBOTT ET AL. C. A. 1st Cir. Certiorari granted limited to Questions 1, 2, and 3 presented by the petition. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, January 9, 1998. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 6, 1998. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 6, 1998. This Court's Rule 29.2 does not apply. Reported below: 107 F. 3d 934.

No. 97–371. NATIONAL ENDOWMENT FOR THE ARTS ET AL. *v.* FINLEY ET AL. C. A. 9th Cir. Certiorari granted. Brief of the Solicitor General is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, January 9, 1998. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 6, 1998. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 6, 1998. This Court's Rule 29.2 does not apply. Reported below: 100 F. 3d 671.

No. 97–428. AIR LINE PILOTS ASSN. *v.* MILLER ET AL. C. A. D. C. Cir. Certiorari granted limited to Question 1 presented by the petition. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, January 9, 1998. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 6, 1998. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday,

March 6, 1998. This Court's Rule 29.2 does not apply. Reported below: 108 F. 3d 1415.

No. 97–581. PENNSYLVANIA BOARD OF PROBATION AND PAROLE *v.* SCOTT. Sup. Ct. Pa. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. In addition to this question, the parties are invited to brief and argue the following question: "Must a search of a parolee's residence be based on reasonable suspicion to be valid under the Fourth Amendment where the parolee has consented to searches as a condition of his parole?" Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, January 9, 1998. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 6, 1998. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 6, 1998. This Court's Rule 29.2 does not apply. Reported below: 548 Pa. 418, 698 A. 2d 32.

Certiorari Denied

No. 97–6860 (A–388). WILLIAMS *v.* NEBRASKA. Sup. Ct. Neb. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. Reported below: 253 Neb. 111, 568 N. W. 2d 246.

DECEMBER 1, 1997

Miscellaneous Orders

No. D–1876. IN RE DISBARMENT OF GERMAIN. Thomas M. Germain, of Windsor, Conn., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1877. IN RE DISBARMENT OF POLLAN. Steven E. Pollan, of South Orange, N. J., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1878. IN RE DISBARMENT OF KERSNER. Steven P. Kersner, of Washington, D. C., is suspended from the practice of

law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1879. IN RE DISBARMENT OF BERNSTEIN. Louis H. Bernstein, of Santa Monica, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–27. WESTERN MOHEGAN TRIBE AND NATION OF NEW YORK *v.* UNITED STATES ET AL. Motion seeking leave to invoke the Court's original jurisdiction denied.

No. M–28. LONG *v.* FUND MANAGER ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 120, Orig. NEW JERSEY *v.* NEW YORK. Motion of Western Mohegan Tribe and Nation of New York for leave to file a brief as *amicus curiae* denied. [For earlier order herein, see, *e. g.*, *ante*, p. 911.]

No. 96–827. CRAWFORD-EL *v.* BRITTON. C. A. D. C. Cir. [Certiorari granted, 520 U. S. 1273.] Motion of respondent for reallocation of oral argument time granted, and the time is to be divided as follows: 20 minutes for respondent and 10 minutes for the Solicitor General as *amicus curiae.*

No. 96–1337. COUNTY OF SACRAMENTO ET AL. *v.* LEWIS ET AL., PERSONAL REPRESENTATIVES OF THE ESTATE OF LEWIS, DECEASED. C. A. 9th Cir. [Certiorari granted, 520 U. S. 1250.] Motion of Gabriel Torres et al. for leave to participate in oral argument as *amici curiae* and for divided argument denied.

No. 96–1768. FELTNER *v.* COLUMBIA PICTURES TELEVISION, INC. C. A. 9th Cir. [Certiorari granted, 521 U. S. 1151.] Motion of Howard B. Abrams for leave to file a brief as *amicus curiae* granted.

No. 96–8732. EDWARDS ET AL. *v.* UNITED STATES. C. A. 7th Cir. [Certiorari granted, *ante*, p. 931.] Motion for appointment of counsel granted, and it is ordered that Steven Shobat, Esq., of Chicago, Ill., be appointed to serve as counsel for petitioner Karl V. Fort in this case.

No. 96–9413. IN RE TYLER; and

No. 96–9513. ARTEAGA *v.* CALIFORNIA. C. A. 9th Cir. Motions of petitioners for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 804] denied.

No. 97–303. HUMANA INC. ET AL. *v.* FORSYTH ET AL. C. A. 9th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 97–6272. VRETTOS *v.* PLAINFIELD POST OFFICE ET AL. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioner is allowed until December 22, 1997, 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.

No. 97–755. IN RE SMITH;

No. 97–6596. IN RE MYERS;

No. 97–6645. IN RE BOHNKE; and

No. 97–6676. IN RE GRAVES. Petitions for writs of habeas corpus denied.

No. 97–6141. IN RE RELIFORD;

No. 97–6162. IN RE SNAVELY;

No. 97–6251. IN RE SANDERS; and

No. 97–6274. IN RE OKOLO. Petitions for writs of mandamus denied.

Certiorari Denied

No. 96–8868. CANTU *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 939 S. W. 2d 627.

No. 97–129. SAWYER, JUDGE, JACKSON COUNTY CIRCUIT COURT *v.* OREGON EX REL. HUDDLESTON, DISTRICT ATTORNEY OF JACKSON COUNTY. Sup. Ct. Ore. Certiorari denied. Reported below: 324 Ore. 597, 932 P. 2d 1145.

No. 97–151. CHRISTIAN ET AL. *v.* CITY OF GLADSTONE. C. A. 8th Cir. Certiorari denied. Reported below: 108 F. 3d 929.

No. 97–308. PIKEVILLE UNITED METHODIST HOSPITAL OF KENTUCKY, INC. *v.* UNITED STEELWORKERS OF AMERICA, AFL–CIO, ET AL. C. A. 6th Cir. Certiorari denied.

No. 97–326. Orleans Parish School Board *v.* United States Gypsum Co. et al. C. A. 5th Cir. Certiorari denied. Reported below: 114 F. 3d 66.

No. 97–328. Truth Seeker Co., Inc., et al. *v.* Jackson et al. C. A. 9th Cir. Certiorari denied. Reported below: 105 F. 3d 665.

No. 97–335. Vander Zee *v.* Reno, Attorney General, et al. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 1477.

No. 97–339. Michigan Mutual Insurance Co., Subrogee of Center Manufacturing, Inc. *v.* Osram Sylvania, Inc., fka GTE Products Corp. C. A. 6th Cir. Certiorari denied. Reported below: 111 F. 3d 131.

No. 97–346. Zeta Chi Fraternity *v.* New Hampshire. Sup. Ct. N. H. Certiorari denied. Reported below: 142 N. H. 16, 696 A. 2d 530.

No. 97–355. Finerty et al. *v.* National Labor Relations Board. C. A. D. C. Cir. Certiorari denied. Reported below: 113 F. 3d 1288.

No. 97–359. Greenwood et al. *v.* Societe Francaise de Transportes Maritime et al. C. A. 5th Cir. Certiorari denied. Reported below: 111 F. 3d 1239.

No. 97–367. Lumpkin *v.* Brown, Mayor, City and County of San Francisco, et al. C. A. 9th Cir. Certiorari denied. Reported below: 109 F. 3d 1498.

No. 97–373. Van Poyck *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 694 So. 2d 686.

No. 97–403. Johnson, Individually and on Behalf of All Present and Future Inmates of the Texas Department of Criminal Justice, Institutional Division *v.* Rodriguez, Chairman, Texas Board of Pardons and Paroles, et al. C. A. 5th Cir. Certiorari denied. Reported below: 110 F. 3d 299.

No. 97–435. Ritter et ux. *v.* Ross, Rock County Treasurer, et al. Ct. App. Wis. Certiorari denied. Reported below: 207 Wis. 2d 477, 558 N. W. 2d 909.

No. 97–439. JARRETT *v.* GREEN, PERSONAL REPRESENTATIVE OF THE ESTATE OF GREEN, DECEASED, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 111 F. 3d 1295.

No. 97–503. JOHNSON ET AL. *v.* KNOWLES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 113 F. 3d 1114.

No. 97–504. FORSYTH ET AL. *v.* HUMANA INC. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 114 F. 3d 1467.

No. 97–508. DOUG MOCKETT & CO., INC. *v.* PLUMLEY. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 97–514. CADLE CO. *v.* JOHNSON. Ct. Civ. App. Ala. Certiorari denied. Reported below: 690 So. 2d 558.

No. 97–528. GUNERATNE *v.* ST. MARY'S HOSPITAL. C. A. 5th Cir. Certiorari denied. Reported below: 119 F. 3d 3.

No. 97–533. SHELL OIL CO. *v.* STUDIENGESELLSCHAFT KOHLE M. B. H. C. A. Fed. Cir. Certiorari denied. Reported below: 112 F. 3d 1561.

No. 97–539. IRELAND *v.* TUNIS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 113 F. 3d 1435.

No. 97–540. ZYZY, INC., ET AL. *v.* CITY OF EAGLE PASS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 120 F. 3d 265.

No. 97–542. DIXSON *v.* RUFF, TRUSTEE. C. A. 11th Cir. Certiorari denied. Reported below: 116 F. 3d 491.

No. 97–544. NOVA DESIGNS, INC., DBA PERFORMANCE DIVER *v.* ELECTRONICS INSTRUMENTATION & TECHNOLOGY, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 114 F. 3d 1195.

No. 97–546. FIGTER LTD. *v.* TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA. C. A. 9th Cir. Certiorari denied. Reported below: 118 F. 3d 635.

No. 97–547. CASEY *v.* ARIZONA MAIL ORDER ET AL. Ct. App. Ariz. Certiorari denied.

No. 97–549. DAVIS *v.* BOARD OF ASSESSORS OF THE TOWN OF RAYNHAM. App. Ct. Mass. Certiorari denied. Reported below: 42 Mass. App. 1121, 680 N. E. 2d 132.

No. 97–551. BARGE ET UX. *v.* ST. PAUL FIRE & MARINE INSURANCE CO. Ct. App. Ga. Certiorari denied. Reported below: 225 Ga. App. 392, 483 S. E. 2d 883.

No. 97–553. HALL *v.* ATLANTA PUBLIC SCHOOL SYSTEM. C. A. 11th Cir. Certiorari denied. Reported below: 112 F. 3d 1173.

No. 97–554. TUCKER *v.* OUTWATER. C. A. 2d Cir. Certiorari denied. Reported below: 118 F. 3d 930.

No. 97–556. SUNDSTRAND CORP. *v.* BLACKBURN ET UX. C. A. 7th Cir. Certiorari denied. Reported below: 115 F. 3d 493.

No. 97–560. RIDDER *v.* CITY OF SPRINGFIELD ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 108 F. 3d 1377.

No. 97–561. SPAIN ET AL. *v.* HASEOTES ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 116 F. 3d 464.

No. 97–562. BILLIOT ET UX. *v.* LOUISIANA IN THE INTEREST OF BILLIOT ET AL. 32d Jud. Dist. Ct. La., Terrebonne Parish. Certiorari denied.

No. 97–563. FORMAN ET AL. *v.* CITY OF RICHMOND ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 104 F. 3d 950.

No. 97–565. MEDINA ET AL. *v.* MILLER, AGENT, CALIFORNIA DEPARTMENT OF JUSTICE, BUREAU OF NARCOTICS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 114 F. 3d 1195.

No. 97–566. RUBINSTEIN *v.* RAMAPO COLLEGE ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 97–572. CYR ET AL. *v.* CITY OF DALLAS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 114 F. 3d 1180.

No. 97–574. TINSLEY *v.* TRW INC. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 113 F. 3d 1232.

No. 97–578. TORRES *v.* PISANO ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 116 F. 3d 625.

No. 97–588. HARRIS *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 97–592. CAMOSCIO *v.* QUIROGA ET AL. App. Ct. Mass. Certiorari denied. Reported below: 43 Mass. App. 1104, 681 N. E. 2d 899.

No. 97–598. MUEGLER *v.* HARRE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 113 F. 3d 909.

No. 97–599. DOE, BY AND THROUGH HIS PARENTS AND NEXT FRIENDS, DOE ET VIR *v.* BOARD OF EDUCATION OF OAK PARK & RIVER FOREST HIGH SCHOOL DISTRICT 200 ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 115 F. 3d 1273.

No. 97–608. REDNER *v.* CITY OF TAMPA ET AL. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 696 So. 2d 361.

No. 97–609. HOWARD *v.* GAUGHAN. Sup. Ct. Va. Certiorari denied.

No. 97–616. BONANNO *v.* DEPARTMENT OF LABOR. C. A. 2d Cir. Certiorari denied.

No. 97–624. CERCEO ET AL. *v.* SHMIDHEISER. C. A. 4th Cir. Certiorari denied. Reported below: 114 F. 3d 1175.

No. 97–630. BLUEPRINT ENGINES, INC. *v.* JADAIR INC. ET AL. Sup. Ct. Wis. Certiorari denied. Reported below: 209 Wis. 2d 187, 562 N. W. 2d 401.

No. 97–665. SPIEGEL *v.* RABINOVITZ. C. A. 7th Cir. Certiorari denied. Reported below: 121 F. 3d 251.

No. 97–667. MILLER *v.* SILVERSTEIN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 122 F. 3d 1056.

No. 97–685. WAITE *v.* CARPENTER ET AL. Ct. App. Neb. Certiorari denied. Reported below: 5 Neb. App. xlviii.

No. 97–695. FARIA *v.* CLARK, TAX ADMINISTRATOR OF RHODE ISLAND. Dist. Ct. R. I. Certiorari denied.

No. 97–713. DONOVAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 104 F. 3d 362.

No. 97–716. MAYO *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 97–718. REYNOLDS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 110 F. 3d 71.

No. 97–724. MARCELLO ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 120 F. 3d 1338.

No. 97–725. AMER ET UX. *v.* MICHIGAN FAMILY INDEPENDENCE AGENCY. Ct. App. Mich. Certiorari denied.

No. 97–728. HALL *v.* HIPPS, JACKSON COUNTY DISTRICT ATTORNEY, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 120 F. 3d 261.

No. 97–732. STEAGALL *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 119 F. 3d 506.

No. 97–734. SMITH *v.* LANG. C. A. 7th Cir. Certiorari denied. Reported below: 114 F. 3d 1192.

No. 97–736. GENTRY *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied.

No. 97–739. MONTAGUE *v.* WEST, SECRETARY OF THE ARMY, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 121 F. 3d 713.

No. 97–5328. COX *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 546 Pa. 515, 686 A. 2d 1279.

No. 97–5699. JIMENEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 111 F. 3d 139.

No. 97–5727. LUGO *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 97–5732. HODGES *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 944 S. W. 2d 346.

No. 97–5742. SKILLICORN *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 944 S. W. 2d 877.

No. 97–5757. GRAVETTE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 106 F. 3d 392.

No. 97–5784. COOK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 97–5794. ALSTON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 112 F. 3d 32.

No. 97–5846. BURGESS *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 176 Ill. 2d 289, 680 N. E. 2d 357.

No. 97–5891. TRAWICK *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 698 So. 2d 162.

No. 97–5903. GREENE *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 268 Ga. 47, 485 S. E. 2d 741.

No. 97–5995. NORDE *v.* WARD ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 104 F. 3d 349.

No. 97–6087. FORE *v.* DENNY'S INC. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 112 F. 3d 516.

No. 97–6088. PYLES ET VIR *v.* OCI MORTGAGE CORP. C. A. 11th Cir. Certiorari denied. Reported below: 113 F. 3d 1251.

No. 97–6093. CHILDERS *v.* OHIO. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 97–6104. JAMES *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 695 So. 2d 1229.

No. 97–6113. ALI *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 97–6117. MATHIS *v.* CIAMBRONE ET AL. C. A. 7th Cir. Certiorari denied.

No. 97–6118. LONG *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 97–6125. HANSON *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 548 Pa. 625, 693 A. 2d 966.

No. 97–6128. RIVERA *v.* AROCHO. C. A. 11th Cir. Certiorari denied.

No. 97–6131. MAXWELL *v.* SAENZ ET AL. C. A. 6th Cir. Certiorari denied.

No. 97–6133. WHEELER LLOYD *v.* PRUDENTIAL INSURANCE COMPANY OF AMERICA ET AL. C. A. 2d Cir. Certiorari denied.

No. 97–6134. BARKER *v.* GOMEZ, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 120 F. 3d 268.

No. 97–6140. CLICK *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 695 So. 2d 209.

No. 97–6144. KOON *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 704 So. 2d 756.

No. 97–6145. JOHNSON *v.* JOHNSON ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 112 F. 3d 513.

No. 97–6157. EDWARDS *v.* CARLSON, JUDGE, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN. C. A. 6th Cir. Certiorari denied.

No. 97–6158. GALBREATH *v.* NEW YORK CITY BOARD OF EDUCATION. C. A. 2d Cir. Certiorari denied. Reported below: 111 F. 3d 123.

No. 97–6166. BURCH *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 346 Md. 253, 696 A. 2d 443.

No. 97–6169. YOUNG *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 113 F. 3d 1233.

No. 97–6170. TYLER *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 346 N. C. 187, 485 S. E. 2d 599.

No. 97–6172. WOODS *v.* CNA INSURANCE CO. ET AL. Ct. App. Tenn. Certiorari denied.

No. 97–6173. WELLS *v.* WELLS. Ct. App. Colo. Certiorari denied.

No. 97–6178. SEUFFER *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied.

No. 97–6181. DAVIS *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 97–6189. HESLOP *v.* MORTON ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–6191. PRITCHETT *v.* PITCHER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 117 F. 3d 959.

No. 97–6192. SIVAK *v.* IDAHO ET AL. Sup. Ct. Idaho. Certiorari denied.

No. 97–6194. MARTINEZ ET AL. *v.* MICHIGAN. C. A. 6th Cir. Certiorari denied. Reported below: 117 F. 3d 1420.

No. 97–6195. LEE *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 327 Ark. 692, 942 S. W. 2d 231.

No. 97–6204. RICH *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 346 N. C. 50, 484 S. E. 2d 394.

No. 97–6208. RIJOS *v.* DELTA AIRLINES, INC. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 17.

No. 97–6209. MOSLEY *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 97–6210. LOYA *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 284 Ill. App. 3d 1121, 708 N. E. 2d 1276.

No. 97–6212. MASON *v.* HERALD MAIL CO.; and MASON *v.* CREEDEN. C. A. 4th Cir. Certiorari denied. Reported below: 108 F. 3d 1372.

No. 97–6224. MCCARTNEY *v.* LOUISIANA. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 684 So. 2d 416.

No. 97–6229. TYLER *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA. C. A. 8th Cir. Certiorari denied.

No. 97–6230. YORK *v.* LARKINS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS. C. A. 3d Cir. Certiorari denied.

No. 97–6234. AYALA *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 90 N. Y. 2d 490, 685 N. E. 2d 492.

No. 97–6237. OWEN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 696 So. 2d 715.

No. 97–6238. JONES *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 329 Ark. 62, 947 S. W. 2d 339.

No. 97–6240. POWELL *v.* WAL-MART, INC. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 692 So. 2d 544.

No. 97–6241. BIROS *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 78 Ohio St. 3d 426, 678 N. E. 2d 891.

No. 97–6244. GRIFFIN *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 108 F. 3d 1369.

No. 97–6247. GRIFFIN *v.* LEHMAN, COMMISSIONER, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 124 F. 3d 187.

No. 97–6253. SMITH *v.* OHIO DEPARTMENT OF HUMAN SERVICES. Ct. App. Ohio, Clermont County. Certiorari denied. Reported below: 115 Ohio App. 3d 755, 686 N. E. 2d 320.

No. 97–6260. LABANKOFF ET AL. *v.* PAGE ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 97–6262. JAMHOURY *v.* DRAKE ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–6263. JORDAN *v.* WITHROW, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–6264. PREWITT *v.* HUGGINS ET AL. C. A. 5th Cir. Certiorari denied.

No. 97–6271. WATERS *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 97–6276. LANCASTER *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 697 So. 2d 859.

No. 97–6277. MONROE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 118 F. 3d 1073.

No. 97–6297. FABIAN *v.* CITY OF MIAMI. C. A. 11th Cir. Certiorari denied. Reported below: 116 F. 3d 1492.

No. 97–6302. BLANDINO *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 113 Nev. 1613, 970 P. 2d 1093.

No. 97–6326. DEMAREY *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari denied.

No. 97–6333. WADE *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 200 W. Va. 637, 490 S. E. 2d 724.

No. 97–6336. SCOTT *v.* GOORD, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES, ET AL. C. A. 2d Cir. Certiorari denied.

No. 97–6340. JOHNSON *v.* WOODS, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 97–6356. SMITH *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 121 F. 3d 717.

No. 97–6359. QUINN *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 200 W. Va. 432, 490 S. E. 2d 34.

No. 97–6363. ATLEY, AKA SEMENIUK *v.* IOWA. Sup. Ct. Iowa. Certiorari denied. Reported below: 564 N. W. 2d 817.

No. 97–6384. LONGEST *v.* DALTON, SECRETARY OF THE NAVY, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 124 F. 3d 204.

No. 97–6387. ROMAN *v.* DEPARTMENT OF THE ARMY. C. A. Fed. Cir. Certiorari denied. Reported below: 121 F. 3d 728.

No. 97–6391. FORMICA *v.* TOWN OF HUNTINGTON ET AL. C. A. 2d Cir. Certiorari denied.

No. 97–6399. MITCHELL *v.* JUVENILE DEPARTMENT OF MULTNOMAH COUNTY, OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 325 Ore. 479, 940 P. 2d 518.

No. 97–6403. TUCKER *v.* SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 114 F. 3d 1177.

No. 97–6406. EIDSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 108 F. 3d 1336.

No. 97–6415. COSGROVE *v.* SEARS, ROEBUCK & CO. C. A. 2d Cir. Certiorari denied. Reported below: 104 F. 3d 355.

No. 97–6421. STEPHENS *v.* WIDNALL, SECRETARY OF THE AIR FORCE. C. A. D. C. Cir. Certiorari denied.

No. 97–6425. SMITH *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 478.

No. 97–6430. DUDONIS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–6450. HEINEMANN *v.* THE POCAHONTAS TIMES ET AL. Sup. Ct. App. W. Va. Certiorari denied.

No. 97–6451. DUNN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 120 F. 3d 269.

No. 97–6468. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 122 F. 3d 1064.

No. 97–6469. CRAWFORD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 121 F. 3d 710.

No. 97–6470. CONSTABLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 122 F. 3d 1074.

No. 97–6473. SOLOMON *v.* DOLAN, ACTING COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 113 F. 3d 1230.

No. 97–6475. REED *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–6478. HAWKINS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 124 F. 3d 189.

No. 97–6484. SIMPSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 120 F. 3d 263.

No. 97–6495. MARTINEZ *v.* SLATER, SECRETARY OF TRANSPORTATION. C. A. 10th Cir. Certiorari denied. Reported below: 124 F. 3d 217.

No. 97–6498. WILLIAMS *v.* CUNNINGHAM, SHERIFF DEPUTY, VENTURA COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–6500. PALMER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 97–6506. PAUL *v.* MCFADIN, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 117 F. 3d 1428.

No. 97–6507. ROBINSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 97–6512. ARZOLA-ANAYA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 121 F. 3d 723.

No. 97–6514. GUTMANS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 116 F. 3d 1491.

No. 97–6521. ADAMS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 124 F. 3d 189.

No. 97–6522. OGIKE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 97–6523. FONT RAMIREZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 97–6524. SPRUILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 118 F. 3d 221.

No. 97–6525. PERRY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 121 F. 3d 718.

No. 97–6526. RIVERS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 121 F. 3d 1043.

No. 97–6529. RICHARDSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 116 F. 3d 473.

No. 97–6534. WILLIAMS ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 139 F. 3d 902.

No. 97–6535. CLARK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 97–6536. SHEPHERD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 487.

No. 97–6539. SANDERS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 124 F. 3d 189.

No. 97–6542. CANTILLO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 121 F. 3d 721.

No. 97–6547. MEYERS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 95 F. 3d 1475.

No. 97–6549. MONLLOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 121 F. 3d 718.

No. 97–6551. MORRISON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 113 F. 3d 1020.

No. 97–6552. KONOP *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 122 F. 3d 1057.

No. 97–6556. STILES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 116 F. 3d 481.

No. 97–6560. VARGAS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 116 F. 3d 195.

No. 97–6562. LAGOS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 108 F. 3d 1374.

No. 97–6563. COMER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 120 F. 3d 263.

No. 97–6569. ELAM *v.* FLORIDA ET AL. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 689 So. 2d 1232.

No. 97–6570. GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 122 F. 3d 1078.

No. 97–6571. WRIGHT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 117 F. 3d 1265.

No. 97–6572. GRIFFIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 114 F. 3d 1202.

No. 97–6577. SHORTER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 114 F. 3d 1192.

No. 97–6578. BOVIE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 120 F. 3d 271.

No. 97–6579. COTNER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 124 F. 3d 189.

No. 97–6580. RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 122 F. 3d 1067.

No. 97–6581. ROYBAL *v.* SHANKS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 120 F. 3d 271.

No. 97–6585. MOSLEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 124 F. 3d 189.

No. 97–6588. GRAJALES-MONTOYA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 117 F. 3d 356.

No. 97–6592. HAYS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 120 F. 3d 271.

No. 97–6595. PECKHAM *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 114 F. 3d 758.

No. 97–6599. SLEPSKI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 121 F. 3d 710.

No. 97–289. WOOD, SUPERINTENDENT, WALLA WALLA STATE PENITENTIARY *v.* JEFFRIES. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 114 F. 3d 1484.

No. 97–478. STRUCTURAL FIBERS, INC., ET AL. *v.* KULCH. Sup. Ct. Ohio. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 78 Ohio St. 3d 134, 677 N. E. 2d 308.

No. 97–527. TRIPPETT *v.* FAGAN. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 117 F. 3d 1420.

No. 97–557. PANGALOS *v.* PRUDENTIAL INSURANCE COMPANY OF AMERICA. C. A. 3d Cir. Motion of respondent for damages and costs pursuant to this Court's Rule 42.2 denied. Certiorari denied. Reported below: 118 F. 3d 1577.

Rehearing Denied

No. 96–1551. NATIONAL FEDERATION OF THE BLIND ET AL. *v.* DEPARTMENT OF VETERANS AFFAIRS ET AL., *ante*, p. 806;

No. 96–1794. SOON DUCK KIM ET AL. *v.* CITY OF NEW YORK., *ante*, p. 809;

No. 96–1887. ZSCHACH ET AL. *v.* LUCAS, PRENDERGAST, ALBRIGHT, GIBSON & NEWMAN ET AL., *ante*, p. 813;

No. 96–1896. GARDNER ET UX. *v.* UNITED STATES, *ante*, p. 907;

No. 96–1932. MAINIERO *v.* JORDAN, ADMINISTRATOR, WISCONSIN DEPARTMENT OF PROBATION AND PAROLE, ET AL., *ante*, p. 816;

No. 96–1966. VALSAMIS, INC., ET AL. *v.* CORNHILL INSURANCE PLC ET AL., *ante*, p. 818;

No. 96–1967. AROMA MANUFACTURING, INC. *v.* ALTERNATIVE PIONEERING SYSTEMS, INC., DBA AMERICAN HARVEST (two judgments), *ante*, p. 818;

No. 96–8312. FAULKNER *v.* UNITED STATES, *ante*, p. 824;

No. 96–8897. NORVILLE ET UX. *v.* DELL CORP., *ante*, p. 826;

No. 96–8973. HUDSON-GARDNER *v.* SOUTH CAROLINA DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION ET AL., *ante*, p. 828;

No. 96–9065. SCHAFFER *v.* KIRKLAND ET AL., *ante*, p. 830;

No. 96–9155. WILLIAMS *v.* BORG, WARDEN, ET AL., *ante*, p. 833;

No. 96–9167. HUGHES *v.* CITY OF CLEVELAND, *ante*, p. 833;

No. 96–9202. SIEGEL *v.* CALIFORNIA FEDERAL BANK, *ante*, p. 835;

No. 96–9282. SCHEXNAYDER *v.* LOUISIANA, *ante*, p. 839;

No. 96–9319. DE LA VEGA *v.* CHATER, COMMISSIONER OF SOCIAL SECURITY, *ante*, p. 842;

No. 96–9322. HERBERT *v.* CAIN, WARDEN, ET AL., *ante*, p. 842;

No. 96–9341. IN RE REIMAN, *ante*, p. 805;

No. 96–9356. WILSON *v.* GRANT ET AL., *ante*, p. 844;

No. 96–9366. FLYNN *v.* UNITED STATES, *ante*, p. 844;

No. 96–9421. BAZILE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 848;

No. 96–9436. BROWN *v.* MISSISSIPPI, *ante*, p. 849;

No. 96–9453. LAFOUNTAIN *v.* CARUSO, *ante*, p. 850;

No. 96–9457. THROWER *v.* ANDERSON, WARDEN, *ante*, p. 850;

No. 96–9553. GRAHAM *v.* TURPIN, WARDEN, ET AL., *ante*, p. 855;

No. 97–9. HONEYWELL, INC., ET AL. *v.* MINNESOTA LIFE AND HEALTH INSURANCE GUARANTY ASSN., *ante*, p. 858;

No. 97–55. KEATING, GOVERNOR OF OKLAHOMA, ET AL. *v.* OKLAHOMA EX REL. OKLAHOMA TAX COMMISSION, *ante*, p. 908;

No. 97–136. GUSTILO ET AL. *v.* MARAVILLA GUSTILO, INDIVIDUALLY AND AS FORMER ADMINISTRATRIX OF THE ESTATE OF GUSTILO, DECEASED, AND AS GUARDIAN OF MARAVILLA GUSTILO, ET AL., *ante*, p. 864;

No. 97–168. BELL *v.* NEW JERSEY ET AL., *ante*, p. 866;

No. 97–182. BELL, T/A WES OUTDOOR ADVERTISING CO. *v.* NEW JERSEY DEPARTMENT OF TRANSPORTATION (two judgments), *ante*, p. 866;

No. 97–198. CORNISH *v.* DISTRICT OF COLUMBIA BOARD ON PROFESSIONAL RESPONSIBILITY, *ante*, p. 867;

No. 97–425. BELL, T/A WES OUTDOOR ADVERTISING CO. *v.* NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, *ante*, p. 933;

No. 97–5004. QUEVADO *v.* BALDOR ET AL., *ante*, p. 870;

No. 97–5069. POYNTON *v.* UNITED STATES ET AL., *ante*, p. 874;

No. 97–5201. PRIBYTKOV *v.* NEW JERSEY INSTITUTE OF TECHNOLOGY, *ante*, p. 881;

No. 97–5213. FILIPOS *v.* FILIPOS, *ante*, p. 882;

No. 97–5287. BROACHWALA *v.* ILLINOIS, *ante*, p. 886;

No. 97–5308. RAMEY-GILLIS *v.* KAISER PERMANENTE, *ante*, p. 887;

No. 97–5314. CSORBA *v.* VARO, INC., *ante*, p. 887;

No. 97–5353. CSORBA *v.* ITT AEROSPACE/COMMUNICATIONS DIVISION, DIVISION OF ITT DEFENSE & ELECTRONICS, INC., *ante*, p. 889;

No. 97–5509. FARMER *v.* UNITED STATES, *ante*, p. 897;

No. 97–5560. HARRIS *v.* WHITE, WARDEN, ET AL., *ante*, p. 899;

No. 97–5630. MALAKI *v.* YAZDI, *ante*, p. 901;

No. 97–5677. ARTEAGA *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, *ante*, p. 935; and

No. 97–5682. IN RE GRAVES, *ante*, p. 805. Petitions for rehearing denied.

DECEMBER 2, 1997

Dismissal Under Rule 46

No. 96–679. PISCATAWAY TOWNSHIP BOARD OF EDUCATION *v.* TAXMAN. C. A. 3d Cir. [Certiorari granted, 521 U. S. 1117.] Writ of certiorari dismissed under this Court's Rule 46.1.

Certiorari Denied

No. 97–847 (A–389). SATCHER *v.* PRUETT, WARDEN. C. A. 4th Cir. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 126 F. 3d 561.

No. 97–6939 (A–393). WILLIAMS *v.* HOPKINS, WARDEN. C. A. 8th Cir. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. Reported below: 130 F. 3d 333.

DECEMBER 5, 1997

Certiorari Granted

No. 96–1866. GEBSER ET AL. *v.* LAGO VISTA INDEPENDENT SCHOOL DISTRICT. C. A. 5th Cir. Certiorari granted. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, January 16, 1998. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 13, 1998. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March, 13, 1998. This Court's Rule 29.2 does not apply. Reported below: 106 F. 3d 1223.

No. 97–391. CALDERON, WARDEN, ET AL. *v.* ASHMUS, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED. C. A. 9th Cir. Motion of Criminal Justice Legal Foundation for leave to file a brief as *amicus curiae* granted. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Questions 1 and 2 presented by the petition. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, January 16, 1998. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 13, 1998. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March, 13, 1998. This Court's Rule 29.2 does not apply. Reported below: 123 F. 3d 1199.

DECEMBER 8, 1997

Certiorari Granted—Vacated and Remanded

No. 96–8876. LINEHAN *v.* MINNESOTA ET AL. (two judgments). Sup. Ct. Minn. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and case remanded for further consideration in light of *Kansas* v. *Hendricks*, 521 U. S. 346 (1997). Reported below: 557 N. W. 2d 171 (first judgment) and 167 (second judgment).

No. 97–309. AMERICAN BIBLE SOCIETY ET AL. *v.* RICHIE, GUARDIAN OF THE ESTATE OF PETER; and

No. 97–314. AMERICAN COUNCIL ON GIFT ANNUITIES ET AL. *v.* RICHIE, GUARDIAN OF THE ESTATE OF PETER. C. A. 5th Cir. Certiorari granted, judgment vacated, and cases remanded for

further consideration in light of the Charitable Donation Antitrust Immunity Act of 1997, Pub. L. 105–26, 111 Stat. 241. Reported below: 110 F. 3d 1082.

No. 97–5901. HODGKISS *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States*, 516 U. S. 137 (1995). Reported below: 116 F. 3d 116.

Miscellaneous Orders

No. D–1839. IN RE DISBARMENT OF SARANELLO. Disbarment entered. [For earlier order herein, see 521 U. S. 1147.]

No. D–1841. IN RE DISBARMENT OF SEGAL. Disbarment entered. [For earlier order herein, see 521 U. S. 1147.]

No. D–1842. IN RE DISBARMENT OF STEWARD. Disbarment entered. [For earlier order herein, see 521 U. S. 1147.]

No. D–1845. IN RE DISBARMENT OF KADISH. Disbarment entered. [For earlier order herein, see 521 U. S. 1148.]

No. D–1847. IN RE DISBARMENT OF WOLHAR. Disbarment entered. [For earlier order herein, see 521 U. S. 1148.]

No. D–1848. IN RE DISBARMENT OF GILLERAN. Disbarment entered. [For earlier order herein, see 521 U. S. 1148.]

No. D–1849. IN RE DISBARMENT OF PICKETT. Disbarment entered. [For earlier order herein, see 521 U. S. 1148.]

No. D–1850. IN RE DISBARMENT OF MARCUS. Disbarment entered. [For earlier order herein, see 521 U. S. 1149.]

No. D–1880. IN RE DISBARMENT OF JOHNSON. Michael Richards Johnson, of Newark, Ohio, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1881. IN RE DISBARMENT OF DICE. Michael R. Dice, of Denver, Colo., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to

show cause why he should not be disbarred from the practice of law in this Court.

No. D–1882. IN RE DISBARMENT OF PAPSIDERO. John F. Papsidero, of Buffalo, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1883. IN RE DISBARMENT OF FIERER. Robert G. Fierer, of Atlanta, Ga., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1884. IN RE DISBARMENT OF BLOODWORTH. John David Jones Bloodworth, of Suwanee, Ga., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–12. ALVORD *v.* FLORIDA. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner denied.

No. M–29. HATCH *v.* MCKENZIE ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. M–30. GONZALEZ *v.* UNITED STATES. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. 96–1581. SOUTH DAKOTA *v.* YANKTON SIOUX TRIBE ET AL. C. A. 8th Cir. [Certiorari granted, 520 U. S. 1263.] Motion of respondent Yankton Sioux Tribe to strike supplemental brief of respondent Southern Missouri Waste Management District granted.

No. 96–1584. CAMPBELL *v.* LOUISIANA. Ct. App. La., 3d Cir. [Certiorari granted, 521 U. S. 1151.] Motion of the parties to expand the record granted.

No. 96–8732. EDWARDS ET AL. *v.* UNITED STATES. C. A. 7th Cir. [Certiorari granted, *ante,* p. 931.] Motion for appointment of counsel granted, and it is ordered that Robert A. Handelsman, Esq., of Chicago, Ill., be appointed to serve as counsel for peti-

tioner Joseph Tidwell in this case. Motion for appointment of counsel granted, and it is ordered that Mark D. DeBofsky, Esq., of Chicago, Ill., be appointed to serve as counsel for petitioner Reynolds Wintersmith in this case.

No. 97–215. CALDERON, WARDEN *v.* THOMPSON. C. A. 9th Cir. [Certiorari granted, 521 U. S. 1136 and 1140.] Motion for appointment of counsel granted, and it is ordered that Andrew S. Love, Esq., of San Francisco, Cal., be appointed to serve as counsel for respondent in this case.

No. 97–6723. IN RE KING. Petition for writ of habeas corpus denied.

No. 97–6287. IN RE SNAVELY. Petition for writ of mandamus denied.

No. 97–6283. IN RE WEATTER. Petition for writ of mandamus and/or prohibition denied.

No. 97–6594. IN RE RUTHERFORD. Petition for writ of prohibition denied.

Certiorari Denied

No. 96–1009. GOODHART ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 89 F. 3d 1461.

No. 96–1346. PARADIES ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 98 F. 3d 1266.

No. 96–7960. MARMOLEJO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 89 F. 3d 1185.

No. 96–9293. CROW *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 110 F. 3d 793.

No. 97–378. MAIER ET AL. *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 114 F. 3d 1032.

No. 97–532. PACESETTER CONSTRUCTION CO., INC. *v.* CARPENTERS 46 NORTHERN CALIFORNIA COUNTIES CONFERENCE BOARD. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 436.

No. 97–537. LOPEZ *v.* RICCA-STROUD. C. A. 7th Cir. Certiorari denied. Reported below: 116 F. 3d 1191.

No. 97–582. TRUSTEES OF BOSTON UNIVERSITY *v.* LINKAGE CORP. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 425 Mass. 1, 679 N. E. 2d 191.

No. 97–597. NAVARRO *v.* FUJI HEAVY INDUSTRIES, LTD. C. A. 7th Cir. Certiorari denied. Reported below: 117 F. 3d 1027.

No. 97–601. FEDERAL ELECTION COMMISSION *v.* WILLIAMS. C. A. 9th Cir. Certiorari denied. Reported below: 104 F. 3d 237.

No. 97–604. TANIK *v.* SOUTHERN METHODIST UNIVERSITY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 775.

No. 97–610. KRAMER *v.* NEW JERSEY SUPREME COURT ET AL. Sup. Ct. N. J. Certiorari denied. Reported below: 149 N. J. 19, 691 A. 2d 816.

No. 97–611. GRAVES *v.* VESUVIUS USA. C. A. 5th Cir. Certiorari denied. Reported below: 114 F. 3d 1184.

No. 97–612. ANNE ARUNDEL COUNTY, MARYLAND *v.* ANDREWS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 114 F. 3d 1175.

No. 97–615. TRUSERV CORP. *v.* CALIFORNIA EX REL. LUNGREN, ATTORNEY GENERAL, ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 53 Cal. App. 4th 1373, 62 Cal. Rptr. 2d 368.

No. 97–620. SPENCER ESTATES ET AL. *v.* HENNEFER ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 97–621. OJAVAN INVESTORS, INC., ET AL. *v.* CALIFORNIA COASTAL COMMISSION ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 54 Cal. App. 4th 373, 62 Cal. Rptr. 2d 803.

No. 97–622. BOGART ET AL. *v.* CALIFORNIA COASTAL COMMISSION. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 97–623. DEKALB COUNTY SCHOOL DISTRICT ET AL. *v.* SCHRENKO, SUPERINTENDENT OF SCHOOLS FOR GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 109 F. 3d 680.

No. 97–628. MYERS, INDIVIDUALLY AND AS GUARDIAN AD LITEM FOR BENNETT ET AL. *v.* VENTURA COUNTY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 114 F. 3d 1195.

No. 97–635. Fort Smith Railroad Co. *v.* American Train Dispatchers Department of the Brotherhood of Locomotive Engineers. C. A. 7th Cir. Certiorari denied. Reported below: 121 F. 3d 267.

No. 97–640. American Citigas Co. *v.* Vorys, Sater, Seymour & Pease. C. A. 6th Cir. Certiorari denied. Reported below: 114 F. 3d 1190.

No. 97–645. Payne *v.* Department of Justice et al. C. A. 5th Cir. Certiorari denied. Reported below: 121 F. 3d 704.

No. 97–666. Pierce *v.* Department of Labor. C. A. 6th Cir. Certiorari denied. Reported below: 116 F. 3d 1481.

No. 97–672. Benjamin *v.* Aroostook Medical Center et al. C. A. 1st Cir. Certiorari denied. Reported below: 113 F. 3d 1.

No. 97–675. Bradshaw *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 119 F. 3d 7.

No. 97–696. Fafarman *v.* Environmental Protection Agency et al. C. A. D. C. Cir. Certiorari denied.

No. 97–697. Harrington et al. *v.* Harris et al. C. A. 5th Cir. Certiorari denied. Reported below: 118 F. 3d 359.

No. 97–712. Mathis, Special Administrator for Mathis, Deceased *v.* Fairman et al. C. A. 7th Cir. Certiorari denied. Reported below: 120 F. 3d 88.

No. 97–760. Zwerling *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 107 F. 3d 5.

No. 97–771. Sea-Fone, Ltd. *v.* Communications Satellite Corp. (COMSAT) et al. C. A. 4th Cir. Certiorari denied. Reported below: 117 F. 3d 1414.

No. 97–778. Hill *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 116 F. 3d 1493.

No. 97–5282. Polley *v.* United States; and
No. 97–5338. Davenport *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 478.

No. 97–5607. McManus *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 121 F. 3d 704.

No. 97–5610. BOSCHETTI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 1486.

No. 97–5612. GONZALEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 110 F. 3d 647.

No. 97–5700. PASTOR-ALVAREZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 113 F. 3d 1230.

No. 97–5752. TALLEY *v.* HERMAN, SECRETARY OF LABOR, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 114 F. 3d 1173.

No. 97–5936. JENNINGS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 97–6233. TUCKER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 115 F. 3d 276.

No. 97–6278. MCKELLIP *v.* SORRELL, ANDERSON, LEHRMAN, WANNER & THOMAS ET AL. C. A. 5th Cir. Certiorari denied.

No. 97–6281. KOENIG *v.* MARYLAND ET AL. Ct. App. Md. Certiorari denied. Reported below: 344 Md. 497, 687 A. 2d 970.

No. 97–6282. CHRISTOPHER *v.* CIRCLE K CONVENIENCE STORES, INC., ET AL. Sup. Ct. Okla. Certiorari denied. Reported below: 937 P. 2d 77.

No. 97–6285. BROWNING *v.* CENTINELA HOSPITAL MEDICAL CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 117 F. 3d 1424.

No. 97–6288. SHARP *v.* CALKINS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 114 F. 3d 1188.

No. 97–6295. HOLT *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 15 Cal. 4th 619, 937 P. 2d 213.

No. 97–6298. GORDON *v.* DETROIT PUBLIC SCHOOLS ET AL. Ct. App. Mich. Certiorari denied.

No. 97–6299. GOODING *v.* CORBETT, ATTORNEY GENERAL OF PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–6301. FLOURNOY *v.* BRANHAM ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 121 F. 3d 715.

No. 97–6303. HENLEY *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 97–6304. GILBERT *v.* MOTHERAL, JUDGE, DISTRICT COURT OF TEXAS, HARRIS COUNTY. Sup. Ct. Tex. Certiorari denied.

No. 97–6306. ERDMAN *v.* GRAYSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–6311. CAIN *v.* STEGALL, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 111 F. 3d 131.

No. 97–6315. SMITH ET VIR *v.* ELLIOTT. Sup. Ct. Del. Certiorari denied. Reported below: 698 A. 2d 410.

No. 97–6317. THOMPSON *v.* JOHNSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–6318. WHITE *v.* FORTNER, SUPERINTENDENT, OKALOOSA CORRECTIONAL INSTITUTION, ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 687 So. 2d 1308.

No. 97–6322. NELSON *v.* PETERSON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 119 F. 3d 4.

No. 97–6324. EDWARDS *v.* BREW. C. A. 4th Cir. Certiorari denied. Reported below: 113 F. 3d 1231.

No. 97–6327. DAVIS *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 97–6328. CALLOWAY *v.* ELO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–6329. DUNKLEY *v.* NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 122 F. 3d 1055.

No. 97–6331. BUCKNER *v.* TORO ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 116 F. 3d 450.

No. 97–6335. BECK *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 253 Va. 373, 484 S. E. 2d 898.

No. 97–6338. MOORE *v.* HARRIMAN CITY SCHOOLS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 110 F. 3d 64.

No. 97–6339. MAYBERRY *v.* GABRY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 123 F. 3d 909.

No. 97–6342. SPRING BROOK FIELD *v.* CITY OF ORLANDO. Cir. Ct. Orange County, Fla. Certiorari denied.

No. 97–6398. KIRBY *v.* BURTON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 97–6424. SAMMONS *v.* KANSAS. Sup. Ct. Kan. Certiorari denied.

No. 97–6429. DELOR *v.* ATX TELECOMMUNICATION SERVICES. C. A. 3d Cir. Certiorari denied. Reported below: 124 F. 3d 186.

No. 97–6433. TURNER *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 129 F. 3d 134.

No. 97–6434. TURNER *v.* UNITED STATES; TURNER *v.* DEPARTMENT OF JUSTICE; and TURNER *v.* INTERNAL REVENUE SERVICE ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 124 F. 3d 1309 (second judgment).

No. 97–6464. BAKER *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 676 N. E. 2d 1111.

No. 97–6489. DENISON *v.* DAUPHIN COUNTY PRISON ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–6502. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 116 F. 3d 480.

No. 97–6510. YOST *v.* HUFFMAN, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 512.

No. 97–6550. MAKOWSKI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 120 F. 3d 1078.

No. 97–6554. ROMAN *v.* WASHINGTON, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS. C. A. 7th Cir. Certiorari denied. Reported below: 124 F. 3d 204.

No. 97–6559. ARCH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 97–6574. ROBINSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 124 F. 3d 189.

No. 97–6575. ROMERO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 118 F. 3d 576 and 128 F. 3d 1198.

No. 97–6583. STOKES *v.* SCHNEIDER ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–6593. O'LEARY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 120 F. 3d 271.

No. 97–6600. ORO-BARAHONA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 122 F. 3d 1067.

No. 97–6603. MYERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 123 F. 3d 350.

No. 97–6605. QUINTANILLA ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 18.

No. 97–6606. CHESTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 121 F. 3d 700.

No. 97–6607. CONLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 125 F. 3d 851.

No. 97–6608. CEDENO ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 119 F. 3d 1.

No. 97–6609. BYRD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 770.

No. 97–6611. ACUNA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 121 F. 3d 721.

No. 97–6615. MCFATRIDGE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 120 F. 3d 271.

No. 97–6617. RAMIREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 124 F. 3d 221.

No. 97–6618. O'NEILL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 123 F. 3d 813.

No. 97–6619. ROBINSON *v.* ORANGE COUNTY, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 116 F. 3d 492.

No. 97–6621. CALL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 113 F. 3d 1239.

No. 97–6622. CRAWFORD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 129 F. 3d 1256.

No. 97–6623. OLIVER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 124 F. 3d 221.

No. 97–6624. PARRISH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 121 F. 3d 722.

No. 97–6627. CORBIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 121 F. 3d 710.

No. 97–6629. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 122 F. 3d 1355.

No. 97–6631. BARONE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 114 F. 3d 1284.

No. 97–6632. WHITLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 116 F. 3d 1491.

No. 97–6637. WHYTE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 97–6638. GRIDER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 121 F. 3d 713.

No. 97–6639. GARNER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 112 F. 3d 517.

No. 97–6640. BROADWATER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 122 F. 3d 1078.

No. 97–6642. RODRIGUEZ-GUERRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 119 F. 3d 342.

No. 97–6651. MCDANIELS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 120 F. 3d 263.

No. 97–6652. LEE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 97–6656. MORIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 116 F. 3d 491.

No. 97–6659. ALLEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 124 F. 3d 191.

No. 97–6666. HOLLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 121 F. 3d 710.

No. 97–6668. FOLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 120 F. 3d 263.

No. 97–6683. GALLARDO *v.* HURLEY, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 127 F. 3d 1095.

No. 97–6690. KNOX *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 112 F. 3d 802.

No. 97–375. STEINHORST *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. JUSTICE GINSBURG took no part in the consideration or decision of this petition. Reported below: 695 So. 2d 1245.

No. 97–606. MIAMI UNIVERSITY *v.* THE MIAMI STUDENT. Sup. Ct. Ohio. Motion of Ohio Public Universities for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 79 Ohio St. 3d 168, 680 N. E. 2d 956.

Rehearing Denied

No. 96–8971. FABIAN *v.* DE RESTREPO ET AL., *ante,* p. 828;

No. 96–9084. REITZ *v.* PENNSYLVANIA, *ante,* p. 831;

No. 96–9113. ARTEAGA *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, *ante,* p. 832;

No. 96–9310. STROTHERS *v.* UNITED STATES, *ante,* p. 841;

No. 96–9329. ARTEAGA *v.* CALIFORNIA, *ante,* p. 842;

No. 96–9334. COMER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante,* p. 842;

No. 97–5153. MAO-SHIUNG WEI *v.* HACKETTSTOWN COMMUNITY HOSPITAL ET AL., *ante,* p. 878;

No. 97–5170. WASHINGTON *v.* BRUSSTAR, *ante,* p. 879;

No. 97–5631. BROWN *v.* KOENICK ET AL., *ante,* p. 921;

No. 97–5689. ARCHER *v.* VALLEY HEALTH CARE CORP., DBA METHODIST HOSPITAL OF SACREMENTO, *ante,* p. 936;

No. 97–5832. FABIAN *v.* METROPOLITAN DADE COUNTY, FLORIDA, ET AL., *ante,* p. 956; and

No. 97–6001. PEAKE *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, *ante,* p. 938. Petitions for rehearing denied.

DECEMBER 9, 1997

Miscellaneous Order

No. 97–7063 (A–422). IN RE LOCKHART. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

Certiorari Denied

No. 97–7052 (A–419). LOCKHART *v.* TEXAS. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied.

DECEMBER 11, 1997

Miscellaneous Order

No. A–431. BEAVERS *v.* PRUETT, WARDEN. Application for certificate of appealability and stay of execution of sentence of death, presented to JUSTICE STEVENS, and by him referred to the Court, denied.

Certiorari Denied

No. 97–6999 (A–408). BEAVERS *v.* PRUETT, WARDEN. C. A. 4th Cir. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 125 F. 3d 847.

DECEMBER 12, 1997

Certiorari Granted

No. 96–1654. MUSCARELLO *v.* UNITED STATES. C. A. 5th Cir.; and

No. 96–8837. CLEVELAND ET AL. *v.* UNITED STATES. C. A. 1st Cir. Motion of petitioners in No. 96–8837 for leave to proceed *in forma pauperis* granted. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Briefs of petitioners are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, January 23, 1998. Brief of the Solicitor General is to be filed with the Clerk and served upon

opposing counsel on or before 3 p.m., Friday, February 20, 1998. Reply briefs, if any, are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 18, 1998. This Court's Rule 29.2 does not apply. Reported below: No. 96–1654, 106 F. 3d 636; No. 96–8837, 106 F. 3d 1056.

No. 97–454. UNITED STATES *v.* CPC INTERNATIONAL, INC., ET AL. C. A. 6th Cir. Certiorari granted. Brief of the Solicitor General is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, January 23, 1998. Briefs of respondents are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 20, 1998. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 18, 1998. This Court's Rule 29.2 does not apply. Reported below: 113 F. 3d 572.

No. 97–679. AMERICAN TELEPHONE & TELEGRAPH CO. *v.* CENTRAL OFFICE TELEPHONE, INC. C. A. 9th Cir. Motion of United States Telephone Association et al. for leave to file a brief as *amici curiae* granted. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, January 23, 1998. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 20, 1998. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 18, 1998. This Court's Rule 29.2 does not apply. JUSTICE O'CONNOR took no part in the consideration or decision of this motion and this petition. Reported below: 108 F. 3d 981.

No. 96–8422. BRYAN *v.* UNITED STATES. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Questions 1 and 2 presented by the petition. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, January 23, 1998. Brief of the Solicitor General is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 20, 1998. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 18, 1998. This Court's Rule 29.2 does not apply. JUSTICE O'CONNOR took no part in the consideration or

decision of this motion and this petition. Reported below: 122 F. 3d 90.

DECEMBER 15, 1997

Dismissal Under Rule 46

No. 97–763. HARRIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari dismissed under this Court's Rule 46.2. Reported below: 117 F. 3d 1421.

Certiorari Granted—Vacated and Remanded

No. 96–1299. HERMAN, SECRETARY OF LABOR *v.* S. A. HEALY CO. C. A. 7th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Hudson* v. *United States*, *ante*, p. 93. Reported below: 96 F. 3d 906.

No. 96–1602. ROBERTS *v.* KLING. C. A. 10th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Kalina* v. *Fletcher*, *ante*, p. 118. Reported below: 104 F. 3d 316.

Miscellaneous Orders

No. D–1844. IN RE DISBARMENT OF DAVIS. Disbarment entered. [For earlier order herein, see 521 U. S. 1148.]

No. D–1854. IN RE DISBARMENT OF FISHER. Disbarment entered. [For earlier order herein, see 521 U. S. 1149.]

No. D–1860. IN RE DISBARMENT OF SCHOENEMAN. Disbarment entered. [For earlier order herein, see *ante*, p. 929.]

No. D–1862. IN RE DISBARMENT OF MANSON. Disbarment entered. [For earlier order herein, see *ante*, p. 929.]

No. D–1863. IN RE DISBARMENT OF FUTRELL. Disbarment entered. [For earlier order herein, see *ante*, p. 929.]

No. D–1885. IN RE DISBARMENT OF GARVER. Scott A. Garver, of Waterbury, Conn., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1886. IN RE DISBARMENT OF POLLACK. Michael A. Pollack, of New York, N. Y., is suspended from the practice of law

in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1887. IN RE DISBARMENT OF ANDREWS. Earl Ray Andrews, of Athens, Tex., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1888. IN RE DISBARMENT OF MOORE. Patrick Shawn Moore, of Prospect Heights, Ill., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1889. IN RE DISBARMENT OF JAMISON. Anthony Jamison, of Chicago, Ill., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1890. IN RE DISBARMENT OF STERN. Paul A. Stern, of Chicago, Ill., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 105, Orig. KANSAS *v.* COLORADO. Motion of the Special Master for fees and reimbursement of expenses granted, and the Special Master is awarded a total of $114,817.19 for the period October 19, 1996, through September 9, 1997, to be paid equally by Kansas and Colorado. [For earlier order herein, see, *e. g.*, *ante*, p. 803.]

No. 108, Orig. NEBRASKA *v.* WYOMING ET AL. Motion of the Special Master for compensation and reimbursement of expenses granted, and the Special Master is awarded a total of $45,333.99 for the period June 16 through December 5, 1997, to be paid as follows: 30% by Nebraska, 30% by Wyoming, 15% by Colorado, and 25% by the United States. [For earlier order herein, see, *e. g.*, 521 U. S. 1116.]

No. 96–1584. CAMPBELL *v.* LOUISIANA. Ct. App. La., 3d Cir. [Certiorari granted, 521 U. S. 1151.] Motion of the parties to allow into the record a joint stipulation of counsel granted.

No. 97–6447. IN RE WARD; and

No. 97–6737. IN RE GUICE. Petitions for writs of mandamus denied.

No. 97–6372. IN RE TYLER ET AL. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied

No. 96–8140. GIBA *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 142 Ore. App. 597, 922 P. 2d 731.

No. 96–8341. COOKSEY *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 94 F. 3d 1214.

No. 97–166. MCCLENDON ET AL. *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 131 Wash. 2d 853, 935 P. 2d 1334.

No. 97–279. KATSOULIS *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 7th Cir. Certiorari denied. Reported below: 109 F. 3d 1185.

No. 97–348. MORGAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 113 F. 3d 1230.

No. 97–395. TANABE SEIYAKU CO., LTD., ET AL. *v.* INTERNATIONAL TRADE COMMISSION ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 109 F. 3d 726.

No. 97–406. TABCHOURI *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 5th Cir. Certiorari denied. Reported below: 119 F. 3d 3.

No. 97–419. CLARK ET UX., AS NEXT FRIENDS OF CLARK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 476.

No. 97–449. CONFEDERATED TRIBES OF SILETZ INDIANS OF OREGON *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 110 F. 3d 688.

No. 97–453. ELKO COUNTY GRAND JURY *v.* SIMINOE. C. A. 9th Cir. Certiorari denied. Reported below: 109 F. 3d 554.

No. 97–458. LAKELAND LOUNGE OF JACKSON, INC. *v.* CITY OF JACKSON. Sup. Ct. Miss. Certiorari denied. Reported below: 688 So. 2d 742.

No. 97–465. ALTA BATES CORP. ET AL. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 482.

No. 97–486. BRUMLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 728.

No. 97–548. BROWN *v.* PIZZA HUT OF AMERICA, INC. C. A. 10th Cir. Certiorari denied. Reported below: 113 F. 3d 1245.

No. 97–573. KIDD ET AL. *v.* EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 119 F. 3d 11.

No. 97–626. BELOIT CORP. *v.* VALMET PAPER MACHINERY, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 105 F. 3d 1409 and 112 F. 3d 1169.

No. 97–636. CRILEY ET AL. *v.* DELTA AIR LINES, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 119 F. 3d 102.

No. 97–639. BARNES *v.* MONTGOMERY COUNTY BOARD OF EDUCATION. C. A. 6th Cir. Certiorari denied. Reported below: 114 F. 3d 1186.

No. 97–646. DENNY'S INC. *v.* THOMAS. C. A. 10th Cir. Certiorari denied. Reported below: 111 F. 3d 1506.

No. 97–647. QUINLEY *v.* STATE FARM INSURANCE CORP. C. A. 11th Cir. Certiorari denied. Reported below: 113 F. 3d 1251.

No. 97–653. ORESKOVICH *v.* OUR LADY OF LOURDES HEALTH CENTER ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–658. CHECKRITE LTD., INC. *v.* CHARLES. C. A. 9th Cir. Certiorari denied. Reported below: 119 F. 3d 739.

No. 97–659. NATIONAL COLLEGIATE ATHLETIC ASSN. ET AL. *v.* TARKANIAN ET UX. Sup. Ct. Nev. Certiorari denied. Reported below: 113 Nev. 610, 939 P. 2d 1049.

No. 97–660. WALKER *v.* CONSOLIDATED BISCUIT CO. C. A. 6th Cir. Certiorari denied. Reported below: 116 F. 3d 1481.

No. 97–668. FIRST MERCURY SYNDICATE, INC. *v.* TOWNSHIP OF BUFFALO ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–671. CARABELLO *v.* CARABELLO ET AL. Ct. App. Ky. Certiorari denied.

No. 97–673. BARCLAY *v.* ALABAMA GAS CORP. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 109 F. 3d 770.

No. 97–677. SAYLOR ET UX. *v.* SAYLOR ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 118 F. 3d 507.

No. 97–680. KOLODZIEJ *v.* SMITH ET AL. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 425 Mass. 518, 682 N. E. 2d 604.

No. 97–683. ARRON *v.* UNITED STATES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 113 F. 3d 1245.

No. 97–688. WASHINGTON *v.* PANG. Sup. Ct. Wash. Certiorari denied. Reported below: 132 Wash. 2d 852, 940 P. 2d 1293.

No. 97–692. WORLEY, ADMINISTRATRIX OF THE ESTATE OF WORLEY, DECEASED, ET AL. *v.* RICHMOND COUNTY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 120 F. 3d 273.

No. 97–714. TERRA INTERNATIONAL, INC. *v.* MISSISSIPPI CHEMICAL CORP. C. A. 8th Cir. Certiorari denied. Reported below: 119 F. 3d 688.

No. 97–764. INTERACTIVE AMERICA CORP. *v.* FEDERAL COMMUNICATIONS COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 116 F. 3d 941.

No. 97–780. MARTIN, ADMINISTRATOR OF THE ESTATE OF MARTIN, DECEASED *v.* BLUE CROSS & BLUE SHIELD OF VIRGINIA, INC. C. A. 4th Cir. Certiorari denied. Reported below: 115 F. 3d 1201.

No. 97–787. HENNEPIN COUNTY *v.* BEN OEHRLEINS & SONS & DAUGHTER, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 115 F. 3d 1372.

No. 97–789. WALKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 121 F. 3d 702.

No. 97–810. LAVENDER *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 46 M. J. 485.

No. 97–811. LORENZEN *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 47 M. J. 8.

No. 97–818. PANKHURST *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 118 F. 3d 345.

No. 97–5386. JEUDY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 114 F. 3d 1202.

No. 97–5666. TSCHANZ *v.* SWEETWATER COUNTY SCHOOL DISTRICT NUMBER ONE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 110 F. 3d 73.

No. 97–6344. GORDON *v.* E. L. HAMM & ASSOCIATES, INC. C. A. 11th Cir. Certiorari denied. Reported below: 100 F. 3d 907.

No. 97–6349. MARTINEZ *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 23 Kan. App. 2d ——, 938 P. 2d 201.

No. 97–6350. MURPHY *v.* WORKERS' COMPENSATION APPEALS BOARD OF CALIFORNIA ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 97–6355. MCREYNOLDS *v.* COMMISSIONER OF SOCIAL SERVICES OF THE CITY OF NEW YORK. Ct. App. N. Y. Certiorari denied.

No. 97–6361. SALTER *v.* GLENN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 116 F. 3d 473.

No. 97–6369. NEUMAN *v.* RIVERS. C. A. 6th Cir. Certiorari denied. Reported below: 125 F. 3d 315.

No. 97–6371. LLOYD *v.* AMERICAN TRANSIT INSURANCE CO. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 122 F. 3d 1056.

No. 97–6373. WILLIAMS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 97–6379. RILEY *v.* DORTON. C. A. 4th Cir. Certiorari denied. Reported below: 115 F. 3d 1159.

No. 97–6385. RAMSEY *v.* CITY OF LAUREL ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 477.

No. 97–6389. GERWIG *v.* NEWMAN ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–6396. JOHNSON *v.* KANSAS DEPARTMENT OF CORRECTIONS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 117 F. 3d 1428.

No. 97–6400. THOMAS *v.* GEORGIA STATE BOARD OF ELECTIONS ET AL. C. A. 11th Cir. Certiorari denied.

No. 97–6401. YORK *v.* TURNER, WARDEN, ET AL. (two judgments). C. A. 6th Cir. Certiorari denied.

No. 97–6404. BAGLEY *v.* TOLLE, JUDGE, TEXAS CRIMINAL DISTRICT COURT NUMBER 3, DALLAS COUNTY, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 117 F. 3d 1417.

No. 97–6412. LORAH *v.* BAUGHMAN ET AL. C. A. D. C. Cir. Certiorari denied.

No. 97–6418. TYLER *v.* PURKETT, SUPERINTENDENT, FARMINGTON CORRECTIONAL CENTER, ET AL. (two judgments). C. A. 8th Cir. Certiorari denied.

No. 97–6422. BROWN *v.* UTAH. C. A. 10th Cir. Certiorari denied. Reported below: 111 F. 3d 140.

No. 97–6431. TERRALL *v.* CITY OF RENO, NEVADA, ET AL. (two judgments). Sup. Ct. Nev. Certiorari denied. Reported below: 113 Nev. 1656, 970 P. 2d 1137.

No. 97–6432. TURNER *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Va. Certiorari denied.

No. 97–6435. TURNER *v.* UNITED STATES; TURNER *v.* VIRGINIA; TURNER *v.* WOOD, JUDGE, CIRCUIT COURT OF VIRGINIA, CITY OF STAUNTON; TURNER *v.* WILSON, JUDGE, UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA, ET AL.; and TURNER *v.* INTERNAL REVENUE SERVICE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 122 F. 3d 1063 (first judgment); 114 F. 3d 1177 (second and third judgments); 122 F. 3d 1063 (fourth judgment); 116 F. 3d 1474 (fifth judgment).

No. 97–6445. COLLINS *v.* SMITH, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 121 F. 3d 714.

No. 97–6452. HARVEY *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 484.

No. 97–6481. GEYER *v.* DEPARTMENT OF JUSTICE. C. A. Fed. Cir. Certiorari denied. Reported below: 116 F. 3d 1497.

No. 97–6486. RODRIGUEZ *v.* WATTS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 119 F. 3d 3.

No. 97–6488. ESSELL *v.* DRUG ENFORCEMENT ADMINISTRATION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 121 F. 3d 715.

No. 97–6490. GORDY *v.* BELTRAM. C. A. 5th Cir. Certiorari denied. Reported below: 120 F. 3d 265.

No. 97–6499. THOMPSON *v.* FEDERAL BUREAU OF INVESTIGATION. C. A. 8th Cir. Certiorari denied. Reported below: 121 F. 3d 713.

No. 97–6519. GADDY *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 698 So. 2d 1150.

No. 97–6538. PARCHUE *v.* ROE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 97–6543. CAGLE *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 346 N. C. 497, 488 S. E. 2d 535.

No. 97–6548. LEBRON *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 238 App. Div. 2d 150, 656 N. Y. S. 2d 201.

No. 97–6586. ROBINSON *v.* ARVONIO, SUPERINTENDENT, EAST JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–6625. SCOTT *v.* RAINEY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 120 F. 3d 262.

No. 97–6649. MOOMCHI *v.* WILSON & PRYOR ET AL. C. A. 10th Cir. Certiorari denied.

No. 97–6657. BROWN *v.* RUBIN, SECRETARY OF THE TREASURY. C. A. D. C. Cir. Certiorari denied.

No. 97–6660. THOMAS ET AL. *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 114 F. 3d 228.

No. 97–6663. FRYAR *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 425 Mass. 237, 680 N. E. 2d 901.

No. 97–6664. OSBORN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 120 F. 3d 59.

No. 97–6674. HOWELL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 97–6675. HARRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 511.

No. 97–6679. FRANTZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 114 F. 3d 1203.

No. 97–6680. WILLIAMS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 118 F. 3d 717.

No. 97–6688. BEST *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 120 F. 3d 262.

No. 97–6692. MILLS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 122 F. 3d 346.

No. 97–6702. PAYNE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 122 F. 3d 1078.

No. 97–6704. O'REILLY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 487.

No. 97–6705. JACKSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 124 F. 3d 206.

No. 97–6707. LINDO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 119 F. 3d 11.

No. 97–6709. MCGINLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 121 F. 3d 718.

No. 97–6712. LANDERMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 109 F. 3d 1053 and 116 F. 3d 119.

No. 97–6715. COBBLAH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 118 F. 3d 549.

No. 97–6716. ANZALDO-CASILLAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 120 F. 3d 269.

No. 97–6719. MAYS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 97–6720. MASSEY *v.* SMITH, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 110 F. 3d 60.

No. 97–6722. LADEJOBI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 109 F. 3d 1023.

No. 97–6725. LEATHERWOOD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 122 F. 3d 1078.

No. 97–6727. DAVIDSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 122 F. 3d 531.

No. 97–6730. EKE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 117 F. 3d 19.

No. 97–6731. GONZALES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 486.

No. 97–6732. HICKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 121 F. 3d 701.

No. 97–6740. CASCIANO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 124 F. 3d 106.

No. 97–6742. MONTEBELLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 122 F. 3d 1066.

No. 97–6744. MUHAMMAD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 97–6745. MARTEL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 97–6748. BUTLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 122 F. 3d 1063.

No. 97–6751. VISCONTI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 124 F. 3d 192.

No. 97–6753. WATTS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 121 F. 3d 187.

No. 97–6755. REYNOLDS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 121 F. 3d 703.

No. 97–6763. BOLTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 121 F. 3d 700.

No. 97–6765. WRIGHT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 116 F. 3d 466.

No. 97–6766. WRIGHT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 117 F. 3d 849.

No. 97–6770. BEAMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 121 F. 3d 700.

No. 97–6771. PEARSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 113 F. 3d 758.

No. 97–6774. SAYLES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 121 F. 3d 701.

No. 97–6782. WILLIAMS *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 107 F. 3d 869.

No. 97–6784. CARRINGTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 124 F. 3d 220.

No. 97–6785. LARKIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 118 F. 3d 1253.

No. 97–6786. MONROY-VARGAS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 97–6788. MOSER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 123 F. 3d 813.

No. 97–6792. MCCOY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 97–6793. JOHNSON, AKA DAVID *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 116 F. 3d 1474.

No. 97–6795. MCPHADEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 121 F. 3d 718.

No. 97–6803. LEWIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 117 F. 3d 980.

No. 97–6807. TAYLOR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 121 F. 3d 713.

No. 97–6808. WESTBROOK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 125 F. 3d 996.

No. 97–6809. WALKER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 119 F. 3d 403 and 121 F. 3d 710.

No. 97–6812. ABDUL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 122 F. 3d 477.

No. 97–6817. MORALES VARGAS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 97–605. BEN OEHRLEINS & SONS & DAUGHTER, INC., ET AL. *v.* HENNEPIN COUNTY. C. A. 8th Cir. Motions of BFI Waste Systems of North America, Inc., Mayors' Task Force Against Waste Flow, National Restaurant Association, and Americans for Tax Reform Foundation et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 115 F. 3d 1372.

No. 97–632. DADDARIO *v.* CAPE COD COMMISSION. Sup. Jud. Ct. Mass. Motions of Defenders of Property Rights and American Association for Small Property Ownership et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 425 Mass. 411, 681 N. E. 2d 833.

No. 97–656. CENTRAL OFFICE TELEPHONE, INC. *v.* AMERICAN TELEPHONE & TELEGRAPH CO. C. A. 9th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 108 F. 3d 981.

Rehearing Denied

No. 96–1961. GORDON *v.* BOARD OF EDUCATION FOR THE CITY OF NEW YORK, *ante,* p. 818;

No. 96–8619. ABELLAN *v.* FAIRMONT HOTEL, 520 U. S. 1278;

No. 96–9024. MORRISON *v.* HALL, DIRECTOR, OREGON DEPARTMENT OF CORRECTIONS, ET AL., *ante,* p. 829;

No. 96–9083. SANDERS *v.* UNITED STATES, *ante,* p. 831;

No. 96–9089. TAHA *v.* SMITH ET AL., *ante,* p. 831;

No. 96–9229. MCGINNIS *v.* BROWN, SECRETARY OF VETERANS AFFAIRS, *ante,* p. 836;

No. 96–9301. BANKS *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI, *ante,* p. 840;

No. 96–9369. GUINN *v.* ZAVARAS ET AL., *ante*, p. 845;

No. 96–9517. HILL *v.* FARMERS HOME GROUP, *ante*, p. 853;

No. 96–9533. JAMES *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 854;

No. 96–9534. JAMES *v.* BARCLIFT ET AL., *ante*, p. 854;

No. 97–45. STERN *v.* TEXAS, *ante*, p. 859;

No. 97–263. READ *v.* MEDICAL X-RAY CENTER, P. C., *ante*, p. 914;

No. 97–292. SAMPSON *v.* BEDOYA, JUDGE, CIRCUIT COURT OF COOK COUNTY, ET AL., *ante*, p. 870;

No. 97–5028. JARRETT *v.* TOXIC ACTION WASH, AKA OHIO CITIZEN ACTION, *ante*, p. 872;

No. 97–5133. PRESTON *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, *ante*, p. 943;

No. 97–5134. IN RE BANKS, *ante*, p. 805;

No. 97–5156. WATKIS *v.* KUEHNE & NAGEL, INC., ET AL., *ante*, p. 878;

No. 97–5164. QUILLEN *v.* SOUTHWEST VIRGINIA PRODUCTION CREDIT ASSN., *ante*, p. 879;

No. 97–5228. JAMES *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 883;

No. 97–5371. IN RE BAEZ, *ante*, p. 805;

No. 97–5510. HILL *v.* MAXWELL ET AL., *ante*, p. 918;

No. 97–5576. BARROIS *v.* UNIDENTIFIED PARTY ET AL., *ante*, p. 920;

No. 97–5632. WINN *v.* UNITED STATES, *ante*, p. 901;

No. 97–5685. DWIGHT B. *v.* JERRI LYNN C., *ante*, p. 936;

No. 97–5814. WASHINGTON *v.* NEVILLE (three judgments), *ante*, p. 923;

No. 97–5905. HICKS *v.* WORKERS' COMPENSATION APPEALS BOARD ET AL., *ante*, p. 937;

No. 97–6024. SMITH *v.* CASELLAS, CHAIRMAN, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *ante*, p. 958; and

No. 97–6119. MAINVILLE *v.* UNITED STATES, *ante*, p. 940. Petitions for rehearing denied.

No. 96–1557. CALHOON *v.* UNITED STATES, *ante*, p. 806; and

No. 96–1911. NICHOLSON *v.* NEVADA STATE BAR, *ante*, p. 815. Motions of petitioners for leave to proceed further herein *in forma pauperis* granted. Petitions for rehearing denied.

JANUARY 7, 1998

Dismissal Under Rule 46

No. 97–742. JONES, SECRETARY OF STATE OF CALIFORNIA *v.* BATES ET AL. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 127 F. 3d 839.

JANUARY 9, 1998

Certiorari Granted

No. 97–501. RICCI *v.* VILLAGE OF ARLINGTON HEIGHTS. C. A. 7th Cir. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, February 23, 1998. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 25, 1998. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 10, 1998. This Court's Rule 29.2 does not apply. Reported below: 116 F. 3d 288.

No. 97–704. DOOLEY, PERSONAL REPRESENTATIVE OF THE ESTATE OF CHUAPOCO, ET AL. *v.* KOREAN AIR LINES CO., LTD. C. A. D. C. Cir. Certiorari granted. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, February 23, 1998. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 25, 1998. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 10, 1998. This Court's Rule 29.2 does not apply. Reported below: 117 F. 3d 1477.

No. 97–731. UNITED STATES *v.* BEGGERLY ET AL. C. A. 5th Cir. Certiorari granted. Brief of the Solicitor General is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, February 23, 1998. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 25, 1998. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 10, 1998. This Court's Rule 29.2 does not apply. Reported below: 114 F. 3d 484.

No. 97–6270. CARON *v.* UNITED STATES. C. A. 1st Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted.

Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, February 23, 1998. Brief of the Solicitor General is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 25, 1998. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 10, 1998. This Court's Rule 29.2 does not apply.

JANUARY 12, 1998

Miscellaneous Orders

No. A–407 (97–907). IN RE MARTIN. C. A. Fed. Cir. Application for stay, addressed to JUSTICE BREYER and referred to the Court, denied.

No. A–439. PLYLER ET AL. *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Application to vacate stay of mandate, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. D–1851. IN RE DISBARMENT OF SMITH. Disbarment entered. [For earlier order herein, see 521 U. S. 1149.]

No. D–1853. IN RE DISBARMENT OF THORNTON. Disbarment entered. [For earlier order herein, see 521 U. S. 1149.]

No. D–1859. IN RE DISBARMENT OF BEDELL. Disbarment entered. [For earlier order herein, see *ante*, p. 910.]

No. D–1861. IN RE DISBARMENT OF WILSON. Disbarment entered. [For earlier order herein, see *ante*, p. 929.]

No. D–1865. IN RE DISBARMENT OF LEIBOWITZ. Disbarment entered. [For earlier order herein, see *ante*, p. 930.]

No. D–1866. IN RE DISBARMENT OF HEINEMANN. Disbarment entered. [For earlier order herein, see *ante*, p. 930.]

No. D–1867. IN RE DISBARMENT OF MANN. Disbarment entered. [For earlier order herein, see *ante*, p. 945.]

No. D–1868. IN RE DISBARMENT OF KENYON. Disbarment entered. [For earlier order herein, see *ante*, p. 945.]

No. D–1869. IN RE DISBARMENT OF STEINBERG. Disbarment entered. [For earlier order herein, see *ante*, p. 946.]

No. D–1871. IN RE DISBARMENT OF TOKARS. Disbarment entered. [For earlier order herein, see *ante*, p. 964.]

No. D–1874. IN RE DISBARMENT OF FRUITBINE. Disbarment entered. [For earlier order herein, see *ante*, p. 980.]

No. D–1875. IN RE DISBARMENT OF FELTON. Disbarment entered. [For earlier order herein, see *ante*, p. 980.]

No. D–1891. IN RE DISBARMENT OF SINGER. Donald I. Singer, of Des Plains, Ill., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1892. IN RE DISBARMENT OF PAIRO. Richard Hughes Pairo, of Ocean City, Md., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1893. IN RE DISBARMENT OF CALHOUN. Paul W. Calhoun, Jr., of Vidalia, Ga., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1894. IN RE DISBARMENT OF CHRISTIE. Robert Michael Christie, of East Orange, N. J., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1895. IN RE DISBARMENT OF JACKSON. Clayton R. Jackson, of Sausalito, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1896. IN RE DISBARMENT OF BARNTHOUSE. William Joseph Barnthouse, of Littleton, Colo., is suspended from the practice of law in this Court, and a rule will issue, returnable within

40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1897. IN RE DISBARMENT OF HANTMAN. H. Roger Hantman, of Bayport, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1898. IN RE DISBARMENT OF POREDA. Benjamin A. Poreda, of Trenton, N. J., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1899. IN RE DISBARMENT OF GAMMONS. Mark E. Gammons, of Rocky River, Ohio, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1900. IN RE DISBARMENT OF BARRERA. Alfonso Barrera, Jr., of Henderson, Nev., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1901. IN RE DISBARMENT OF AZORSKY. Morley M. Azorsky, of California, Pa., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1902. IN RE DISBARMENT OF GARDNER. Timothy Martin Gardner, of Clayton, Mo., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1903. IN RE DISBARMENT OF FISHER. Bradley J. Fisher, of Springfield, Mo., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1904. IN RE DISBARMENT OF QUINT. Hillard Jay Quint, of Atlanta, Ga., is suspended from the practice of law in this Court,

and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–24. MANZANO *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. Motion for reconsideration of order denying motion to direct the Clerk to file petition for writ of certiorari out of time [*ante*, p. 964] denied.

No. M–31. COLE *v.* MILLARD FILLMORE HOSPITAL;
No. M–32. LAZARO *v.* UNITED STATES;
No. M–33. MANN *v.* UNIVERSITY OF CINCINNATI ET AL.; and
No. M–34. CORNELIUS *v.* EXXON COMPANY USA ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 120, Orig. NEW JERSEY *v.* NEW YORK. Motion of Western Mohegan Tribe and Nation of New York for reconsideration of order denying leave to file a brief as *amicus curiae* [*ante*, p. 993] denied.

No. 96–1693. HOPKINS, WARDEN *v.* REEVES. C. A. 8th Cir. [Certiorari granted, 521 U. S. 1151.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 96–1923. COHEN *v.* DE LA CRUZ ET AL. C. A. 3d Cir. [Certiorari granted, 521 U. S. 1152.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 96–1925. CATERPILLAR INC. *v.* INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, ET AL. C. A. 3d Cir. [Certiorari granted, 521 U. S. 1152.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 96–1768. FELTNER *v.* COLUMBIA PICTURES TELEVISION, INC. C. A. 9th Cir. [Certiorari granted, 521 U. S. 1151.] Motion of American Intellectual Property Law Association for leave to file a brief as *amicus curiae* granted.

No. 96–8516. BOUSLEY *v.* BROOKS, WARDEN. C. A. 8th Cir. [Certiorari granted, 521 U. S. 1152.] Motion of the Solicitor Gen-

eral for divided argument granted to be divided as follows: petitioner, 20 minutes; the Solicitor General, 20 minutes; *amicus curiae* in support of the judgment below, 20 minutes. Motion of the Solicitor General to substitute the United States as respondent granted.

No. 96–8732. EDWARDS ET AL. *v.* UNITED STATES. C. A. 7th Cir. [Certiorari granted, *ante*, p. 931.] Motion for appointment of counsel granted, and it is ordered that Donald P. Sullivan, Esq., of Rockford, Ill., be appointed to serve as counsel for petitioner Horace Joiner in this case.

No. 96–8986. HOHN *v.* UNITED STATES. C. A. 8th Cir. [Certiorari granted, *ante*, p. 944.] Motion of the Solicitor General for divided argument granted to be divided as follows: petitioner, 25 minutes; the Solicitor General, 10 minutes; *amicus curiae* in support of the judgment below, 25 minutes.

No. 97–42. EASTERN ENTERPRISES *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY, ET AL. C. A. 1st Cir. [Certiorari granted, *ante*, p. 931.] Motion of Davon Inc. for leave to file a brief as *amicus curiae* granted.

No. 97–300. STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTION, ET AL. *v.* MARTINEZ-VILLAREAL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 912.] Motion of Criminal Justice Legal Foundation for leave to file a brief as *amicus curiae* granted.

No. 97–372. UNITED STATES *v.* UNITED STATES SHOE CORP. C. A. Fed. Cir. [Certiorari granted, *ante*, p. 944.] Motion of Arctic Cat et al. for leave to file a brief as *amici curiae* granted.

No. 97–454. UNITED STATES *v.* BESTFOODS ET AL. C. A. 6th Cir. [Certiorari granted *sub nom. United States* v. *CPC International, Inc.*, *ante*, p. 1024.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 97–826. AT&T CORP. ET AL. *v.* IOWA UTILITIES BOARD ET AL.; and AT&T CORP. ET AL. *v.* CALIFORNIA ET AL.;

No. 97–829. MCI TELECOMMUNICATIONS CORP. *v.* IOWA UTILITIES BOARD ET AL.; and MCI TELECOMMUNICATIONS CORP. *v.* CALIFORNIA ET AL.; and

No. 97–831. FEDERAL COMMUNICATIONS COMMISSION ET AL. *v.* IOWA UTILITIES BOARD ET AL.; and FEDERAL COMMUNICA-

TIONS COMMISSION ET AL. *v.* CALIFORNIA ET AL. C. A. 8th Cir. Motions of petitioners to expedite consideration of petitions for writs of certiorari granted, and the several petitions for writs of certiorari will be considered by the Court at its January 23, 1998, conference. JUSTICE O'CONNOR took no part in the consideration or decision of this motion.

No. 97–6750. ATUAHENE *v.* NEW JERSEY DEPARTMENT OF TRANSPORTATION. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until February 2, 1998, 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.

No. 97–7089. IN RE SHOWN. Petition for writ of habeas corpus denied.

No. 97–722. IN RE BENNETT;
No. 97–6503. IN RE LEHMAN ET AL.;
No. 97–6513. IN RE GOWING; and
No. 97–6555. IN RE RENTSCHLER. Petitions for writs of mandamus denied.

No. 97–6628. IN RE REEVES. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied

No. 96–1405. SMITHS INDUSTRIES MEDICAL SYSTEMS, INC. *v.* KERNATS, A MINOR, BY KERNATS, HER MOTHER AND NEXT FRIEND, ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 283 Ill. App. 3d 455, 669 N. E. 2d 1300.

No. 96–1493. CAVALLO *v.* STAR ENTERPRISE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 100 F. 3d 1150.

No. 96–1611. COLLAGEN CORP. *v.* FIORE ET VIR. Ct. App. Ariz. Certiorari denied. Reported below: 187 Ariz. 400, 930 P. 2d 477.

No. 96–1742. BELSHE, DIRECTOR, CALIFORNIA DEPARTMENT OF HEALTH SERVICES *v.* ORTHOPAEDIC HOSPITAL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 103 F. 3d 1491.

No. 96–1987. NIPPON PAPER INDUSTRIES CO., LTD. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 109 F. 3d 1.

No. 97–23. GOEWEY, BY HIS NEXT FRIEND, GOEWEY, ET AL. *v.* FLUOR DANIEL, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 106 F. 3d 390.

No. 97–149. KHALIFE ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 106 F. 3d 1300.

No. 97–338. AKTEPE ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 105 F. 3d 1400.

No. 97–361. COMBS *v.* MEADOWCRAFT CO., DBA PLANTATION PATTERNS. C. A. 11th Cir. Certiorari denied. Reported below: 106 F. 3d 1519.

No. 97–385. WELLS *v.* GOBER, ACTING SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 114 F. 3d 1207.

No. 97–474. ESTATE OF SHAPIRO, DECEASED *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 111 F. 3d 1010.

No. 97–485. CONNECTICUT ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 116 F. 3d 466.

No. 97–502. THAI PHAM *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 6th Cir. Certiorari denied.

No. 97–511. RHOADES OIL CO. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 116 F. 3d 489.

No. 97–516. HARKER *v.* UNITED STATES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 112 F. 3d 513.

No. 97–524. SILVA *v.* RAM. C. A. 9th Cir. Certiorari denied. Reported below: 118 F. 3d 1306.

No. 97–535. HOPKINS *v.* FORD ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 687 So. 2d 285.

No. 97–541. ARREST THE INCINERATOR REMEDIATION (A. I. R.), INC. *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 116 F. 3d 1018.

No. 97–543. MARTIN ET UX. *v.* HORTON ET AL. Ct. App. Mich. Certiorari denied. Reported below: 215 Mich. App. 88, 544 N. W. 2d 651.

No. 97–552. DOMINO'S PIZZA, INC. *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 113 F. 3d 1249.

No. 97–559. RIDDER *v.* CITY OF SPRINGFIELD ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 109 F. 3d 288.

No. 97–564. SRS TECHNOLOGIES, INC. *v.* DEPARTMENT OF DEFENSE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 510.

No. 97–568. HAPGOOD *v.* CITY OF WARREN. Ct. App. Ohio, Trumbull County. Certiorari denied.

No. 97–577. D. L. BAKER, INC. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 105 F. 3d 647.

No. 97–580. SHAKESPEARE CO. *v.* SILSTAR CORPORATION OF AMERICA, INC. C. A. 4th Cir. Certiorari denied. Reported below: 110 F. 3d 234.

No. 97–584. COX *v.* GUILFORD COUNTY BOARD OF EDUCATION. C. A. 4th Cir. Certiorari denied. Reported below: 117 F. 3d 1413.

No. 97–586. HARTMANN, A MINOR, BY HIS PARENTS AND NEXT FRIENDS, HARTMANN ET VIR, ET AL. *v.* LOUDOUN COUNTY BOARD OF EDUCATION; and

No. 97–769. LOUDOUN COUNTY BOARD OF EDUCATION *v.* HARTMANN, A MINOR, BY HIS PARENTS AND NEXT FRIENDS, HARTMANN ET VIR, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 118 F. 3d 996.

No. 97–600. KRONBERG ET AL. *v.* CHICAGO TITLE INSURANCE CO. ET AL. App. Ct. Conn. Certiorari denied.

No. 97–603. BOWATER INC. AND SUBSIDIARIES *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 108 F. 3d 12.

No. 97–607. MCCARRON *v.* FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER OF MERITOR SAVINGS BANK AND IN ITS OWN CAPACITY. C. A. 3d Cir. Certiorari denied. Reported below: 111 F. 3d 1089.

No. 97–614. VACCARO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 115 F. 3d 1211.

No. 97–642. MCGRAW, ATTORNEY GENERAL OF WEST VIRGINIA *v.* BETTER GOVERNMENT BUREAU, INC. C. A. 4th Cir. Certiorari denied. Reported below: 106 F. 3d 582.

No. 97–674. LIPIN *v.* AMERICAN NATIONAL RED CROSS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 113 F. 3d 1229.

No. 97–676. FORD *v.* LAWRENCE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 120 F. 3d 275.

No. 97–681. ASHTON *v.* DEPARTMENT OF VETERANS AFFAIRS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 116 F. 3d 465.

No. 97–682. SERAPION *v.* MARTINEZ ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 119 F. 3d 982.

No. 97–687. WOOD, TRUSTEE OF THE WOOD FAMILY TRUST *v.* BAINBRIDGE, TRUSTEE, ELDEN W. BAINBRIDGE TRUST, JUNE 13, 1968, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 488.

No. 97–691. MICHAEL F., BY HIS NEXT FRIENDS AND PARENTS, BARRY F. ET UX. *v.* CYPRESS-FAIRBANKS INDEPENDENT SCHOOL DISTRICT. C. A. 5th Cir. Certiorari denied. Reported below: 118 F. 3d 245.

No. 97–693. SWEKEL, PERSONAL REPRESENTATIVE OF THE ESTATE OF SWEKEL, DECEASED *v.* HARRINGTON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 119 F. 3d 1259.

No. 97–701. HIGH RIDGE ASSN., INC. *v.* GREEN ET UX. Ct. App. Md. Certiorari denied. Reported below: 346 Md. 65, 695 A. 2d 125.

No. 97–702. SEACOR MARINE, INC. *v.* CHEVRON U. S. A. INC. C. A. 5th Cir. Certiorari denied. Reported below: 106 F. 3d 1232.

No. 97–707. HUARD *v.* O'CONNOR. C. A. 1st Cir. Certiorari denied. Reported below: 117 F. 3d 12.

No. 97–709. SMITH ET AL. *v.* GWINNETT COUNTY. Sup. Ct. Ga. Certiorari denied. Reported below: 268 Ga. 179, 486 S. E. 2d 151.

No. 97–710. KILCOYNE *v.* BENTLEY COLLEGE ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 114 F. 3d 1169.

No. 97–711. ALLRED *v.* MOORE & PETERSON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 117 F. 3d 278.

No. 97–717. TRINITY INDUSTRIES, INC. *v.* JOHNSTOWN AMERICA CORP. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 114 F. 3d 1206.

No. 97–721. COUNTY OF SAN JOAQUIN ET AL. *v.* CALIFORNIA WATER RESOURCES CONTROL BOARD ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 54 Cal. App. 4th 1144, 63 Cal. Rptr. 2d 277.

No. 97–727. ANDERSON, DIRECTOR, CALIFORNIA DEPARTMENT OF SOCIAL SERVICES, ET AL. *v.* LAND ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 55 Cal. App. 4th 69, 63 Cal. Rptr. 2d 717.

No. 97–729. ANONYMOUS *v.* WILENTZ, CHIEF JUSTICE, SUPREME COURT OF NEW JERSEY, ET AL. (three judgments). C. A. 3d Cir. Certiorari denied.

No. 97–730. ANONYMOUS *v.* KAYE, CHIEF JUDGE, COURT OF APPEALS OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 104 F. 3d 355.

No. 97–733. DAVID B. ET AL., THROUGH THEIR GUARDIAN AD LITEM, MURPHY *v.* MCDONALD, DIRECTOR, ILLINOIS DEPARTMENT OF CHILDREN AND FAMILY SERVICES. C. A. 7th Cir. Certiorari denied. Reported below: 116 F. 3d 1146.

No. 97–735. TROUT *v.* CITY OF BLUE ASH. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 97–738. CITY OF OMAHA *v.* DOANE. C. A. 8th Cir. Certiorari denied. Reported below: 115 F. 3d 624.

No. 97–744. HINKEL *v.* HINKEL ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 121 F. 3d 364.

No. 97–748. WATSON *v.* HILL, SUPERINTENDENT, ODOM CORRECTIONAL INSTITUTE. C. A. 4th Cir. Certiorari denied. Reported below: 110 F. 3d 62.

No. 97–749. SCHWARTZ, DBA BARRY K. SCHWARTZ PARTNERSHIP, ET AL. *v.* SULLIVAN. C. A. 9th Cir. Certiorari denied. Reported below: 113 F. 3d 1241.

No. 97–751. SHAHAR *v.* BOWERS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 114 F. 3d 1097.

No. 97–752. STEELE ET AL. *v.* CITY OF WALLA WALLA. C. A. 9th Cir. Certiorari denied. Reported below: 113 F. 3d 1242.

No. 97–756. BURGE ET AL. *v.* BEHR ET UX. Ct. App. Colo. Certiorari denied. Reported below: 940 P. 2d 1084.

No. 97–757. EINHEBER *v.* PUBLIC EMPLOYMENT RELATIONS BOARD OF CALIFORNIA (UNIVERSITY OF CALIFORNIA AT BERKELEY, REAL PARTY IN INTEREST). Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 97–759. CILECEK *v.* INOVA HEALTH SYSTEM SERVICES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 115 F. 3d 256.

No. 97–761. WEAVER ET AL. *v.* WOOD ET AL. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 425 Mass. 270, 680 N. E. 2d 918.

No. 97–762. STAR ENTERPRISE *v.* SMITH ET AL.; and
No. 97–770. TEXACO INC. *v.* SMITH ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 117 F. 3d 1417.

No. 97–768. WAHRMAN *v.* WAHRMAN ET AL. C. A. 8th Cir. Certiorari denied.

No. 97–772. PRICE *v.* MALERBA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 1486.

No. 97–773. DIRUSSA *v.* DEAN WITTER REYNOLDS, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 121 F. 3d 818.

No. 97–781. TAYLOR *v.* MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 943 S. W. 2d 675.

No. 97–793. BISEL ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 121 F. 3d 707.

No. 97–798. OSBORNE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 109 F. 3d 772.

No. 97–800. MARTIN CADILLAC CO., INC. *v.* DIVISION OF LABOR STANDARDS ENFORCEMENT, CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS, ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 97–802. GENERAL PRACTICE ASSOCIATES, INC., ET AL. *v.* HUMANA INC. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 103 F. 3d 138.

No. 97–803. JENKINS *v.* FLORIDA KEYS COMMUNITY COLLEGE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 120 F. 3d 274.

No. 97–809. BEDI *v.* GRONDIN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 127 F. 3d 33.

No. 97–813. AMERSIG GRAPHICS, INC., ET AL. *v.* ESTATE OF WIDENER, DECEASED, ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 697 A. 2d 281.

No. 97–815. TIMEHIN *v.* CITY AND COUNTY OF SAN FRANCISCO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 486.

No. 97–821. SCOTT *v.* WESTERN STATE UNIVERSITY COLLEGE OF LAW. C. A. 9th Cir. Certiorari denied. Reported below: 112 F. 3d 517.

No. 97–823. GRACIA *v.* VOLVO EUROPA TRUCK, N. V. C. A. 7th Cir. Certiorari denied. Reported below: 112 F. 3d 291.

No. 97–825. MILLNER *v.* ITT AEROSPACE/COMMUNICATIONS DIVISION OF ITT CORP., INC. C. A. 7th Cir. Certiorari denied. Reported below: 124 F. 3d 204.

No. 97–835. NELSON *v.* REHABILITATION ENTERPRISES OF NORTH EASTERN WYOMING, INC. C. A. 10th Cir. Certiorari denied. Reported below: 124 F. 3d 217.

No. 97–838. VERNON *v.* WILLIAMS, WARDEN. Dist. Ct. N. M., Bernalillo County. Certiorari denied.

No. 97–840. HEANING *v.* NYNEX-NEW YORK, AKA NEW YORK TELEPHONE CO. C. A. 2d Cir. Certiorari denied.

No. 97–848. MANATT, INDIVIDUALLY AND AS FATHER OF MANATT, DECEASED, ET AL. *v.* UNION PACIFIC RAILROAD CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 122 F. 3d 514.

No. 97–857. DALE *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 48 M. J. 329.

No. 97–861. WASHINGTON *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 46 M. J. 477.

No. 97–865. WEBSTER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 125 F. 3d 1024.

No. 97–866. CHRISTIAN ET AL. *v.* BEARGRASS CORP. ET AL. Ct. App. Ky. Certiorari denied.

No. 97–867. HELMS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 47 M. J. 1.

No. 97–869. RICHARDSON *v.* DISTRICT OF COLUMBIA BAR ET AL. C. A. D. C. Cir. Certiorari denied.

No. 97–871. WILLIAMS ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 124 F. 3d 411.

No. 97–879. GUO *v.* RYLAND GROUP, INC., ET AL. C. A. 4th Cir. Certiorari denied.

No. 97–894. TRUPIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 117 F. 3d 678.

No. 97–896. SWANNER ET UX. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 121 F. 3d 702.

No. 97–898. JLM AVIATION INTERNATIONAL, INC., ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 122 F. 3d 1066.

No. 97–904. INNOCENCIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 118 F. 3d 278.

No. 97–911. COTOIA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 113 F. 3d 1230.

No. 97–912. BAKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 121 F. 3d 700.

No. 97–925. URBINA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 121 F. 3d 721.

No. 97–926. LIGHTBOURN ET AL. *v.* GARZA, SECRETARY OF STATE OF TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 118 F. 3d 421.

No. 97–931. WEST INDIES TRANSPORT, INC., ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 127 F. 3d 299.

No. 97–933. HAMILTON *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 47 M. J. 32.

No. 97–935. DRESEN *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 47 M. J. 122.

No. 97–936. HICKS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 47 M. J. 90.

No. 97–937. HOWARD *v.* MARYLAND ADMINISTRATIVE BOARD OF ELECTION LAWS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 122 F. 3d 1061.

No. 97–938. ROGERS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 124 F. 3d 218.

No. 97–939. CIOCCHETTI *v.* DISTRICT COURT OF COLORADO, JEFFERSON COUNTY, ET AL. Ct. App. Colo. Certiorari denied.

No. 97–5023. MARTINEZ *v.* UNITED STATES; and
No. 97–5738. GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 112 F. 3d 1089.

No. 97–5125. SCHAEFER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 107 F. 3d 1280.

No. 97–5363. WASHINGTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 114 F. 3d 1180.

No. 97–5420. GRESHAM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 118 F. 3d 258.

No. 97–5531. MCDUFF *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 97–5748. LARSON *v.* OHLANDER. C. A. 10th Cir. Certiorari denied. Reported below: 114 F. 3d 1531.

No. 97–5859. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 111 F. 3d 130.

No. 97–5872. HORSMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 114 F. 3d 822.

No. 97–5900. GISRIEL *v.* OCEAN CITY BOARD OF SUPERVISORS OF ELECTION ET AL. Ct. App. Md. Certiorari denied. Reported below: 345 Md. 477, 693 A. 2d 757.

No. 97–5916. WILLIAMS *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 79 Ohio St. 3d 1, 679 N. E. 2d 646.

No. 97–5957. KUPLEN *v.* HARDY ET AL. Ct. App. N. C. Certiorari denied.

No. 97–5968. ZAIDI *v.* NORTHERN VIRGINIA HOSPITAL CORPORATION ET AL. Sup. Ct. Va. Certiorari denied.

No. 97–6029. HARDING *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 115 F. 3d 1479.

No. 97–6053. KERR *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 97–6082. GAITHER *v.* FRENCH, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 509.

No. 97–6179. CHAMBERS, AKA HOLMES *v.* UNITED STATES;
No. 97–6206. BATES *v.* UNITED STATES;
No. 97–6213. MILLER *v.* UNITED STATES;
No. 97–6216. WILSON *v.* UNITED STATES;
No. 97–6217. ALLEN *v.* UNITED STATES; and
No. 97–6496. RICHARDSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 1066.

No. 97–6200. MCNEILL *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 346 N. C. 233, 485 S. E. 2d 284.

No. 97–6218. WILCHER *v.* MISSISSIPPI (two judgments). Sup. Ct. Miss. Certiorari denied. Reported below: 697 So. 2d 1087 (first judgment) and 1123 (second judgment).

No. 97–6250. ARCE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 118 F. 3d 335.

No. 97–6352. MALONEY *v.* WORKERS' COMPENSATION APPEALS BOARD OF CALIFORNIA ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 97–6402. WHITE *v.* CROW ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 109 F. 3d 770.

No. 97–6413. JONES *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 188 Ariz. 388, 937 P. 2d 310.

No. 97–6420. SAVAGE *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 97–6426. SUBIA *v.* FUENTES ET AL. C. A. 5th Cir. Certiorari denied.

No. 97–6428. DAMREN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 696 So. 2d 709.

No. 97–6438. PHILPOT *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 268 Ga. 168, 486 S. E. 2d 158.

No. 97–6453. GILBERT *v.* DOBBS, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 97–6455. SHEEHY ET UX. *v.* PARKER ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 454 Pa. Super. 715, 685 A. 2d 1052.

No. 97–6456. SHEEHY ET UX. *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–6459. MYERS *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 699 So. 2d 1285.

No. 97–6462. JONES *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 97–6463. JOHNSON *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 112 F. 3d 516.

No. 97–6466. ROBINSON *v.* SMITH ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 123 F. 3d 429.

No. 97–6474. SMITH *v.* OHIO DEPARTMENT OF HUMAN SERVICES. Ct. App. Ohio, Clermont County. Certiorari denied.

No. 97–6477. DEVLIN *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied.

No. 97–6479. HOLLOWELL *v.* JOHNSON. C. A. 8th Cir. Certiorari denied. Reported below: 119 F. 3d 650.

No. 97–6480. EAST *v.* SEIDEMAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 15.

No. 97–6485. SOSA *v.* HINOJOSA ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 114 F. 3d 1182.

No. 97–6491. HOUSE *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 288 Ill. App. 3d 1101, 711 N. E. 2d 823.

No. 97–6493. ROLLER *v.* TUGGLE. C. A. 11th Cir. Certiorari denied. Reported below: 116 F. 3d 493.

No. 97–6501. YUAN JIN *v.* UNIVERSITY OF PENNSYLVANIA. C. A. 3d Cir. Certiorari denied.

No. 97–6504. MCCLAIN *v.* PRICE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH, ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–6508. SPAZIANO *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 697 So. 2d 863.

No. 97–6509. POWELL *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 112 F. 3d 966.

No. 97–6511. THOMAS *v.* HILL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 122 F. 3d 1074.

No. 97–6515. HILL *v.* OKLAHOMA. Sup. Ct. Okla. Certiorari denied.

No. 97–6516. TAVAKOLI-NOURI *v.* MITCHELL. Ct. Sp. App. Md. Certiorari denied. Reported below: 115 Md. App. 751.

No. 97–6517. BRUSH *v.* ARIZONA DEPARTMENT OF REVENUE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 483.

No. 97–6520. JAMES *v.* SCOTT, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. C. A. 5th Cir. Certiorari denied.

No. 97–6527. PEEPLES *v.* ANDERSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–6528. OMAWALLI *v.* ANDERSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–6530. BRIGHT *v.* CARUSO. C. A. 6th Cir. Certiorari denied.

No. 97–6531. BERGMANN *v.* CANDLER COUNTY DEPARTMENT OF FAMILY AND CHILDREN SERVICES ET AL. C. A. 11th Cir. Certiorari denied.

No. 97–6532. PAGE *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 346 N. C. 689, 488 S. E. 2d 225.

No. 97–6537. SAUNDERS *v.* HARTFORD FIRE INSURANCE CO. C. A. 2d Cir. Certiorari denied.

No. 97–6540. ASHLEY *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied.

No. 97–6545. MCBRIDE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 97–6546. MCINTYRE *v.* NEVADA. C. A. 9th Cir. Certiorari denied.

No. 97–6553. RICHARDSON *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 346 N. C. 520, 488 S. E. 2d 148.

No. 97–6558. SKOLNICK ET AL. *v.* CLINTON ET AL. C. A. 7th Cir. Certiorari denied.

No. 97–6561. LIBBERTON *v.* ARIZONA. Super. Ct. Ariz., Maricopa County. Certiorari denied.

No. 97–6564. ROBERTS *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 948 S. W. 2d 577.

No. 97–6565. BRACEWELL ET AL. *v.* LOBMILLER ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 116 F. 3d 1493.

No. 97–6566. COGGINS *v.* FIRST FAMILY FINANCIAL SERVICES, INC. C. A. 11th Cir. Certiorari denied. Reported below: 117 F. 3d 1432.

No. 97–6573. DYER *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 97–6576. SMITH *v.* GRIMES, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 116 F. 3d 469.

No. 97–6582. ROMAN *v.* TENET, DIRECTOR OF CENTRAL INTELLIGENCE. C. A. 2d Cir. Certiorari denied.

No. 97–6584. LEAPHART *v.* GACH ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 72 F. 3d 129.

No. 97–6587. HILL *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 97–6589. GILLIS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 346 N. C. 221, 485 S. E. 2d 271.

No. 97–6590. FORD *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 97–6591. GARCIA *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 691 So. 2d 1209.

No. 97–6597. WILLIAMS *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 114 F. 3d 177.

No. 97–6598. LATTIMORE *v.* COUNTY OF MONTEREY. C. A. 9th Cir. Certiorari denied. Reported below: 100 F. 3d 963.

No. 97–6601. ROACH *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 97–6604. MAUS *v.* MURPHY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 97–6613. JONES *v.* ZIMMERMAN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 116 F. 3d 1473.

No. 97–6614. MACRI *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 697 So. 2d 1217.

No. 97–6616. MCREYNOLDS *v.* NEW YORK ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 238 App. Div. 2d 249, 656 N. Y. S. 2d 871.

No. 97–6620. SWAIN *v.* DETROIT BOARD OF EDUCATION ET AL. Ct. App. Mich. Certiorari denied.

No. 97–6626. POOLE *v.* WHITEHURST ET AL. Sup. Ct. Tex. Certiorari denied.

No. 97–6630. RODRIQUEZ *v.* BATCHELLER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 127 F. 3d 1096.

No. 97–6633. WILLIAMS *v.* OBREGON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 124 F. 3d 191.

No. 97–6634. WEBBER *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 97–6635. DELANEY *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 425 Mass. 587, 682 N. E. 2d 611.

No. 97–6636. WIKE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 698 So. 2d 817.

No. 97–6643. WILLIS *v.* UNIVERSITY OF LOUISVILLE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 121 F. 3d 710.

No. 97–6644. CSOKA *v.* UNITED STATES ET AL. C. A. 7th Cir. Certiorari denied.

No. 97–6646. ARNOLD *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 113 F. 3d 1352.

No. 97–6647. MIMS *v.* BURTON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 116 F. 3d 492.

No. 97–6648. LITZENBERG *v.* LITZENBERG. C. A. 4th Cir. Certiorari denied. Reported below: 116 F. 3d 472.

No. 97–6650. JOSEPH *v.* CITY OF NEW ORLEANS, LOUISIANA. C. A. 5th Cir. Certiorari denied. Reported below: 122 F. 3d 1067.

No. 97–6653. MCBRIDE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–6654. MARTS *v.* HINES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 117 F. 3d 1504.

No. 97–6655. JARQUIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 110 F. 3d 65.

No. 97–6658. BRANSON *v.* CITY OF LOS ANGELES ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 97–6662. TURNMIRE *v.* BERNHARDT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–6665. HAMILTON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 937 P. 2d 1001.

No. 97–6670. GARDNER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–6671. GLENDORA *v.* TELE-COMMUNICATIONS, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 129 F. 3d 113.

No. 97–6673. GLENDORA *v.* MARSHALL ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 129 F. 3d 113.

No. 97–6678. HARRIS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–6681. HERTZ *v.* STORER ET AL. Sup. Ct. Alaska. Certiorari denied. Reported below: 943 P. 2d 725.

No. 97–6682. DENNEY *v.* JONES. Ct. App. Kan. Certiorari denied. Reported below: 24 Kan. App. 2d ——, 944 P. 2d 197.

No. 97–6693. TAYLOR *v.* LEAVY ET AL. C. A. 7th Cir. Certiorari denied.

No. 97–6694. ORBAN *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 123 F. 3d 727.

No. 97–6696. SIMMONS *v.* GTE NORTH, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 116 F. 3d 1483.

No. 97–6697. SCOTT *v.* BRUNDAGE. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 97–6700. CORRAL *v.* HAIR ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–6701. VICENTE-GUZMAN *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 9th Cir. Certiorari denied.

No. 97–6711. CASTANEDA *v.* TEXAS. Ct. App. Tex., 6th Dist. Certiorari denied.

No. 97–6724. CEDILLO *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 124 F. 3d 1266.

No. 97–6729. HUGHES *v.* DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 121 F. 3d 708.

No. 97–6738. MCDERMOTT *v.* KANSAS ASSOCIATES, INC. Ct. Sp. App. Md. Certiorari denied.

No. 97–6743. LASLEY *v.* GEORGETOWN UNIVERSITY. C. A. D. C. Cir. Certiorari denied.

No. 97–6752. BANNAN *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 120 F. 3d 260.

No. 97–6754. ROWKOSKY *v.* LARKINS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, PENNSYLVANIA. C. A. 3d Cir. Certiorari denied.

No. 97–6759. SULLIVAN *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 425 Mass. 449, 681 N. E. 2d 1184.

No. 97–6804. NAVARRO-DUARTE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 121 F. 3d 718.

No. 97–6805. MITCHELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 124 F. 3d 222.

No. 97–6814. BURGESS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 102 F. 3d 1120.

No. 97–6818. WOERNER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–6819. WOODRUFF *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied.

No. 97–6824. GREAVES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 121 F. 3d 701.

No. 97–6825. ESCOTTO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 121 F. 3d 81.

No. 97–6827. GONZALEZ-PORTILLO ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 121 F. 3d 1122.

No. 97–6828. HENDERSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 97–6829. HARMON *v.* UNITED STATES; and
No. 97–6839. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 120 F. 3d 564.

No. 97–6830. RODGERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 122 F. 3d 1129.

No. 97–6831. KNOX *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 97–6832. REIDT *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. C. A. 9th Cir. Certiorari denied.

No. 97–6834. BLAKENEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 124 F. 3d 220.

No. 97–6840. TUGWELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 125 F. 3d 600.

No. 97–6841. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 120 F. 3d 575.

No. 97–6843. BRYAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 114 F. 3d 1186.

No. 97–6844. SOLANO-GODINES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 120 F. 3d 957.

No. 97–6845. BOUNDS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–6848. BLUE-SKY *v.* CALIFORNIA DEPARTMENT OF CORRECTIONS ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–6852. ROMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 121 F. 3d 136.

No. 97–6855. BERGNE *v.* GOMEZ, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–6856. ARGUELLES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 122 F. 3d 1067.

No. 97–6857. BARTLEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 123 F. 3d 466.

No. 97–6869. BROWN *v.* KEARNEY, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–6872. BATES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 139 F. 3d 902.

No. 97–6873. ARIAS-SANTOS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 120 F. 3d 271.

No. 97–6874. BURTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 129 F. 3d 607.

No. 97–6875. BREWER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 122 F. 3d 1066.

No. 97–6876. BRAGG *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 97–6878. CROFT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 118 F. 3d 1578.

No. 97–6879. CROFT *v.* DETELLA, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 97–6880. BEAVEN *v.* MCBRIDE, SUPERINTENDENT, WESTVILLE CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied. Reported below: 124 F. 3d 203.

No. 97–6883. KNOX *v.* HARRISON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–6884. MYERS, AKA MEYERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 121 F. 3d 710.

No. 97–6885. MCDONALD *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 121 F. 3d 7.

No. 97–6888. PACHECO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 121 F. 3d 841.

No. 97–6893. FLEMING *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 698 A. 2d 503.

No. 97–6897. FLETCHER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 129 F. 3d 1256.

No. 97–6901. HOFFMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 124 F. 3d 200.

No. 97–6903. FLETCHER *v.* UNITED STATES; and
No. 97–6917. WATTS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 121 F. 3d 187.

No. 97–6904. GONZALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 121 F. 3d 928.

No. 97–6906. DASS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 127 F. 3d 1110.

No. 97–6909. ARROYO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 125 F. 3d 842.

No. 97–6910. MITCHELL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 113 F. 3d 1528.

No. 97–6911. LECROY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 113 F. 3d 1251.

No. 97–6914. LEE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 122 F. 3d 1067.

No. 97–6916. BANKS *v.* MCCAUGHTRY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 97–6918. WATSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 129 F. 3d 118.

No. 97–6919. TAYLOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 120 F. 3d 273.

No. 97–6920. WINTERS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 117 F. 3d 346.

No. 97–6921. YOUNG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 115 F. 3d 834.

No. 97–6926. WILLIAMS *v.* JEDNORSKI, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 122 F. 3d 1065.

No. 97–6927. TAYLOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 1487.

No. 97–6928. ZAGNOJNY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 97–6931. JEFFERSON *v.* OHIO. Ct. App. Ohio, Montgomery County. Certiorari denied.

No. 97–6935. PATTERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 121 F. 3d 701.

No. 97–6937. STOKES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 119 F. 3d 11.

No. 97–6938. SAIA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 118 F. 3d 65.

No. 97–6941. ANTONIO-CRUZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 121 F. 3d 717.

No. 97–6942. ARNOLD *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 97–6943. CHRISTOPHER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 124 F. 3d 208.

No. 97–6944. COPPOLA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 97–6945. CASTILLO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 122 F. 3d 1057.

No. 97–6946. CULPEPPER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 116 F. 3d 1493.

No. 97–6947. CRUZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 120 F. 3d 1.

No. 97–6948. MEADER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 118 F. 3d 876.

No. 97–6950. MCALLISTER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 119 F. 3d 198.

No. 97–6951. MATTHEWS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 114 F. 3d 112.

No. 97–6952. NEYSMITH, AKA BLAKE *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 122 F. 3d 1062.

No. 97–6956. BONNER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 124 F. 3d 200.

No. 97–6957. CONWAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 122 F. 3d 841.

No. 97–6959. RIOS-FAVELA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 118 F. 3d 653.

No. 97–6962. MARTIN *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 121 F. 3d 699.

No. 97–6963. LEASURE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 122 F. 3d 837.

No. 97–6966. LAMBROS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 124 F. 3d 209.

No. 97–6967. SCARPA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 125 F. 3d 68.

No. 97–6970. ROBINSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 121 F. 3d 971.

No. 97–6971. BRISTOW *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 110 F. 3d 754.

No. 97–6973. DICKERSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 122 F. 3d 1074.

No. 97–6974. HERROD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 121 F. 3d 701.

No. 97–6976. HYDE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 122 F. 3d 1075.

No. 97–6978. WASHINGTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 122 F. 3d 1075.

No. 97–6981. HOLLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 128 F. 3d 733.

No. 97–6982. ESTEP *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 124 F. 3d 222.

No. 97–6985. WRIGHT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 129 F. 3d 118.

No. 97–6986. NWOKEJI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 117 F. 3d 19.

No. 97–6987. GAINES ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 116 F. 3d 1491.

No. 97–6988. LEWIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 115 F. 3d 1531.

No. 97–6989. JACKSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 124 F. 3d 607.

No. 97–6990. ROSS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 123 F. 3d 1181.

No. 97–6996. MAKI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 117 F. 3d 1426.

No. 97–6998. STEWART *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 119 F. 3d 8.

No. 97–7004. BYRD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 124 F. 3d 1298.

No. 97–7006. MATHIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 125 F. 3d 852.

No. 97–7007. MCCLANAHAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 114 F. 3d 1196.

No. 97–7027. HAYDEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 120 F. 3d 271.

No. 97–7030. GOSSAGE *v.* HUGHES, CHAIRPERSON, KENTUCKY PAROLE BOARD. C. A. 6th Cir. Certiorari denied.

No. 97–7031. EDWARDS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 124 F. 3d 205.

No. 97–7033. BULLOCK ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 124 F. 3d 201.

No. 97–7034. BOOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 127 F. 3d 1207.

No. 97–7035. WALETZKI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 124 F. 3d 206.

No. 97–7037. REYES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 125 F. 3d 74.

No. 97–7043. BANKSTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 121 F. 3d 1411.

No. 97–7045. BAROCIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 122 F. 3d 1074.

No. 97–7049. MARTIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 108 F. 3d 1374.

No. 97–7050. NEFF *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 129 F. 3d 119.

No. 97–7051. JAMES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 124 F. 3d 1298.

No. 97–7056. SKURDAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 97–7057. WRIGHT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 116 F. 3d 1491.

No. 97–7060. MARR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 129 F. 3d 1257.

No. 97–7064. HOLTON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 116 F. 3d 1536.

No. 97–7066. GUESS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 124 F. 3d 200.

No. 97–7067. GREEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 129 F. 3d 1256.

No. 97–7070. GONSALVES ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 121 F. 3d 1416.

No. 97–7073. SMITH *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 97–7077. BEJARANO-RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 122 F. 3d 1074.

No. 97–7078. FIGUEROA-ROMERO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 114 F. 3d 1170.

No. 97–7080. FERNANDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 128 F. 3d 732.

No. 97–7082. HUNT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 122 F. 3d 1063.

No. 97–7086. GIBSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 114 F. 3d 1178.

No. 97–7090. DICKERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 129 F. 3d 611.

No. 97–7095. ELLIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 121 F. 3d 908.

No. 97–7096. GARCIA-VENEGAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 124 F. 3d 213.

No. 97–7099. WILSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 121 F. 3d 187.

No. 97–471. KANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM *v.* BLACKWELL, SANDERS, MATHENY, WEARY & LOMBARDI ET AL. C. A. 8th Cir. Certiorari denied. JUSTICE O'CONNOR, JUSTICE SOUTER, and JUSTICE GINSBURG would grant the petition for writ of certiorari, vacate the judgment, and remand the case for further consideration in light of *Kansas Public Employees Retirement System* v. *Reimer & Koger Associates, Inc.*, 262 Kan. 635, 941 P. 2d 1321 (1997). Reported below: 114 F. 3d 679.

No. 97–520. GENERAL AMERICAN LIFE INSURANCE CO. *v.* IT CORP. ET AL. C. A. 9th Cir. Motions of Southwest Administrators, Inc., and American Council on Life Insurance et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 107 F. 3d 1415.

No. 97–550. DFA INVESTMENT DIMENSIONS GROUP INC. ET AL. *v.* MUNFORD, INC.; and

No. 97–591. MUNFORD, EXECUTRIX OF THE ESTATE OF MUNFORD, DECEASED, ET AL. *v.* MUNFORD, INC. C. A. 11th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of these petitions. Reported below: 98 F. 3d 604.

No. 97–670. BELLOWS *v.* AMOCO OIL CO. ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE BREYER took no part in the consid-

eration or decision of this petition. Reported below: 118 F. 3d 268.

No. 97–594. UNISYS CORP. *v.* CESKA SPORITELNA, A. S. C. A. 3d Cir. Motion of Ford Motor Co. et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 116 F. 3d 467.

No. 97–613. MURPHY *v.* LINDH. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 124 F. 3d 899.

No. 97–767. CASE CORP. *v.* FREEMAN. C. A. 4th Cir. Motion of Chemical Manufacturers Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 118 F. 3d 1011.

No. 97–846. NEWPORT ET VIR *v.* MISSOURI ARMY NATIONAL GUARD ET AL. C. A. 8th Cir. Motion of petitioners for leave to proceed as veterans granted. Certiorari denied. Reported below: 112 F. 3d 513.

No. 97–6602. STAFFORD *v.* E. I. DU PONT DE NEMOURS & CO. ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition.

Rehearing Denied

No. 96–8796. VEY *v.* CLINTON, PRESIDENT OF THE UNITED STATES, ET AL., 520 U. S. 937;

No. 96–8873. RUFF *v.* SMITH, WARDEN, *ante,* p. 826;

No. 96–9242. WELSAND *v.* UNITED STATES, *ante,* p. 837;

No. 96–9309. ARTEAGA *v.* CALIFORNIA, *ante,* p. 841;

No. 96–9328. ARTEAGA *v.* CALIFORNIA, *ante,* p. 842;

No. 96–9452. MILES *v.* LASALLE FINANCIAL SERVICES, INC., ET AL., *ante,* p. 849;

No. 96–9461. BELL *v.* FLORES ET AL., *ante,* p. 850;

No. 96–9567. TUNG *v.* CALIFORNIA, *ante,* p. 856;

No. 97–80. DEHONEY *v.* SOUTH CAROLINA DEPARTMENT OF CORRECTIONS ET AL., *ante,* p. 861;

No. 97–102. CATERINA ET AL. *v.* BLAKELY BOROUGH ET AL., *ante,* p. 863;

No. 97–334. MILDEN ET UX. *v.* JOSEPH, TRUSTEE, *ante,* p. 949;

No. 97–442. THOMAS *v.* BAXTER, *ante,* p. 968;

No. 97–473. GILL ET AL. *v.* RHODE ISLAND ET AL., *ante,* p. 934;

No. 97–509. CERWINSKI *v.* INSURANCE SERVICES OFFICE, INC., *ante,* p. 952;

No. 97–5024. MCKELLIP *v.* SORRELL, ANDERSON, LEHRMAN, WANNER & THOMAS ET AL., *ante,* p. 871;

No. 97–5138. THOMAS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante,* p. 877;

No. 97–5483. TAYLOR *v.* NELSON ET AL., *ante,* p. 896;

No. 97–5519. MCSMITH *v.* TAVARES, *ante,* p. 919;

No. 97–5574. TAYLOR *v.* BOX, MAYOR OF THE CITY OF ROCKFORD, ILLINOIS, ET AL., *ante,* p. 919;

No. 97–5643. SARGA *v.* UNITED STATES, *ante,* p. 984;

No. 97–5887. JOHARI *v.* JOHARI, *ante,* p. 969;

No. 97–5888. CRAWFORD *v.* MORAN, *ante,* p. 969;

No. 97–5898. WATSON *v.* UNITED STATES POSTAL SERVICE ET AL., *ante,* p. 970;

No. 97–5908. LOVE *v.* OHIO, *ante,* p. 957;

No. 97–5919. ENAND *v.* MONTGOMERY COUNTY, MARYLAND, ET AL., *ante,* p. 970;

No. 97–5927. CLEWELL ET UX. *v.* UPJOHN CO., *ante,* p. 970;

No. 97–5944. HAYES *v.* CORRECTION MANAGEMENT AFFILIATES, INC., *ante,* p. 957;

No. 97–5955. VASQUEZ *v.* BEXAR COUNTY ADULT DETENTION CENTER, *ante,* p. 971;

No. 97–5976. GIBSON *v.* WEST, SECRETARY OF THE ARMY, *ante,* p. 938;

No. 97–5980. ERTELT *v.* NORTH DAKOTA, *ante,* p. 971;

No. 97–5994. JOHNSON *v.* UNITED STATES, *ante,* p. 972;

No. 97–6067. WILLIAMS *v.* CHRYSLER CORP., *ante,* p. 958;

No. 97–6073. ANDREWS *v.* LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, *ante,* p. 959;

No. 97–6109. WALKER *v.* DRAGOVICH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL., *ante,* p. 986;

No. 97–6215. WAINWRIGHT *v.* BOOZ, ALLEN & HAMILTON, INC., *ante,* p. 973;

No. 97–6284. IN RE WOODS, *ante,* p. 947;

No. 97–6297. FABIAN *v.* CITY OF MIAMI, *ante,* p. 1003; and

No. 97–6309. WIEDMER *v.* UNITED STATES, *ante,* p. 962. Petitions for rehearing denied.

No. 97–130. BANDERAS, AKA BANDERAS ORTHOPAEDIC CLINIC, ET AL. *v.* DOMAN, *ante*, p. 864. Motion of petitioners for leave to proceed further herein *in forma pauperis* granted. Petition for rehearing denied.

No. 97–5998. BOTTONE *v.* UNITED STATES, *ante*, p. 938. Motion for leave to file petition for rehearing denied.

Assignment Order

An order of THE CHIEF JUSTICE designating and assigning Justice White (retired) to perform judicial duties in the United States Court of Appeals for the Ninth Circuit during the period from March 12 through March 13, 1998, and for such time as may be required to complete unfinished business, pursuant to 28 U. S. C. § 294(a), is ordered entered on the minutes of this Court, pursuant to 28 U. S. C. § 295.

JANUARY 15, 1998

Miscellaneous Order

No. A–511 (97–7521). GOSCH *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, granted pending the disposition of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for writ of certiorari is granted, the stay shall continue pending the sending down of the judgment of this Court.

JANUARY 16, 1998

Certiorari Granted

No. 97–461. WISCONSIN DEPARTMENT OF CORRECTIONS ET AL. *v.* SCHACHT. C. A. 7th Cir. Certiorari granted. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 27, 1998. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 27, 1998. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, April 13, 1998. This Court's Rule 29.2 does not apply. Reported below: 116 F. 3d 1151.

No. 97–643. UNITED STATES *v.* CABRALES. C. A. 8th Cir. Certiorari granted. Brief of the Solicitor General is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 27, 1998. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 27, 1998. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, April 13, 1998. This Court's Rule 29.2 does not apply. Reported below: 109 F. 3d 471 and 115 F. 3d 621.

No. 97–873. UNITED STATES *v.* BALSYS. C. A. 2d Cir. Certiorari granted. Brief of the Solicitor General is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 27, 1998. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 27, 1998. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, April 13, 1998. This Court's Rule 29.2 does not apply. Reported below: 119 F. 3d 122.

No. 97–5737. FORNEY *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 27, 1998. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 27, 1998. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, April 13, 1998. This Court's Rule 29.2 does not apply. Reported below: 108 F. 3d 228.

No. 97–6146. MONGE *v.* CALIFORNIA. Sup. Ct. Cal. Motion of California Public Defenders Association for leave to file a brief as *amicus curiae* granted. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to the following question: "Does the Double Jeopardy Clause apply to noncapital sentencing proceedings that have the hallmarks of a trial on guilt or innocence?" Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 27, 1998. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 27, 1998. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday,

April 13, 1998. This Court's Rule 29.2 does not apply. Reported below: 16 Cal. 4th 826, 941 P. 2d 1121.

January 20, 1998

Miscellaneous Orders

No. D–1870. In re Disbarment of Allen. Juliette Z. Allen, of Tustin, Cal., having requested to resign as a member of the Bar of this Court, it is ordered that her name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on November 10, 1997 [*ante*, p. 964], is discharged.

No. D–1905. In re Disbarment of Fiddes. William Torrance Fiddes, Jr., of Houston Tex., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1906. In re Disbarment of Neely. George Robert Neely, of Houston, Tex., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1907. In re Disbarment of Rome. David H. Rome, of Longmeadow, Mass., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–27. Western Mohegan Tribe and Nation of New York *v.* United States et al. Motion for reconsideration of order denying leave to invoke the Court's original jurisdiction [*ante*, p. 993] denied.

No. M–35. Gerwig *v.* Department of Education; and

No. M–36. Sherman *v.* Sherman et al. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 105, Orig. Kansas *v.* Colorado. Exceptions of Colorado to Second Report of the Special Master overruled without prejudice to Colorado's right to renew those exceptions at the conclu-

sion of the Special Master's remedial proceedings. [For earlier order herein, see, *e. g., ante,* p. 1026.]

No. 96–8732. EDWARDS ET AL. *v.* UNITED STATES. C. A. 7th Cir. [Certiorari granted, *ante,* p. 931.] Further consideration of motion of petitioner Joseph Tidwell to reconsider order denying certiorari on Question 2 [*ante,* p. 931] deferred.

No. 96–1693. HOPKINS, WARDEN *v.* REEVES. C. A. 8th Cir. [Certiorari granted, 521 U. S. 1151.] Motion for appointment of counsel granted, and it is ordered that Paula Hutchinson, Esq., of Lincoln, Neb., be appointed to serve as counsel for respondent in this case.

No. 96–8837. CLEVELAND ET AL. *v.* UNITED STATES. C. A. 1st Cir. [Certiorari granted, *ante,* p. 1023.] Motion for appointment of counsel granted, and it is ordered that Norman S. Zalkind, Esq., of Boston, Mass., be appointed to serve as counsel for petitioner Enrique Gray-Santana in this case. Motion for appointment of counsel granted, and it is ordered that John H. Cunha, Jr., Esq., of Boston, Mass., be appointed to serve as counsel for petitioner Donald E. Cleveland in this case.

No. 97–6789. MOOMCHI *v.* NEW MEXICO CORRECTIONS DEPARTMENT ET AL. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioner is allowed until February 10, 1998, 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.

No. 97–1015. IN RE BEARDSLEE;
No. 97–7153. IN RE ISELEY; and
No. 97–7222. IN RE JOHNSON. Petitions for writs of habeas corpus denied.

No. 97–7561 (A–522). IN RE CEJA. Application for stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. Petition for writ of habeas corpus denied. JUSTICE STEVENS and JUSTICE BREYER would grant the application for stay of execution.

No. 97–6796. IN RE SCHIEFEN; and
No. 97–6820. IN RE WHITFIELD. Petitions for writs of mandamus denied.

Certiorari Denied

No. 96–1749. MARTIN ET VIR *v.* TELECTRONICS PACING SYSTEMS, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 105 F. 3d 1090.

No. 97–26. EDDY ET VIR *v.* POLYMER TECHNOLOGY CORP. ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 449 Pa. Super. 730, 674 A. 2d 323.

No. 97–343. BURT, WARDEN *v.* RASHAD. C. A. 6th Cir. Certiorari denied. Reported below: 108 F. 3d 677.

No. 97–365. BRANDT *v.* SHOP 'N SAVE WAREHOUSE FOODS, INC. C. A. 8th Cir. Certiorari denied. Reported below: 108 F. 3d 935.

No. 97–382. SABLAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 114 F. 3d 913.

No. 97–404. FISHER *v.* VASSAR COLLEGE. C. A. 2d Cir. Certiorari denied. Reported below: 114 F. 3d 1332.

No. 97–451. FIRST VIRGINIA BANK *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 110 F. 3d 75.

No. 97–499. FELTMANN *v.* SIEBEN, INC., DBA PLAZA MOTORS. C. A. 8th Cir. Certiorari denied. Reported below: 108 F. 3d 970.

No. 97–505. EARLES ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 113 F. 3d 796.

No. 97–583. AMERTEX ENTERPRISES, LTD. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 108 F. 3d 1392.

No. 97–602. BANKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 115 F. 3d 916.

No. 97–638. CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON ET AL. *v.* TRANSIT CASUALTY COMPANY IN RECEIVERSHIP. C. A. 8th Cir. Certiorari denied. Reported below: 119 F. 3d 619.

No. 97–651. SEWELL *v.* TOWN OF LAKE HAMILTON. C. A. 11th Cir. Certiorari denied. Reported below: 117 F. 3d 488.

No. 97–652. MARKS ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 116 F. 3d 1496.

No. 97–657. CARROLL *v.* FEDERAL EXPRESS CORP. C. A. 9th Cir. Certiorari denied. Reported below: 113 F. 3d 163.

No. 97–719. STUART, SECRETARY, AS HEAD OF THE FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, ET AL. *v.* AMERICAN EXPRESS TAX & BUSINESS SERVICES, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 117 F. 3d 1376.

No. 97–753. MILWAUKEE BRANCH OF THE NAACP ET AL. *v.* THOMPSON, GOVERNOR OF WISCONSIN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 116 F. 3d 1194.

No. 97–776. CAMPBELL *v.* CAMPBELL. Ct. App. Minn. Certiorari denied.

No. 97–788. PRESCOTT CONVENTION CENTER, INC. *v.* SCOTT, DIRECTOR, ARIZONA DEPARTMENT OF REVENUE, ET AL.; and

No. 97–796. YAVAPAI-PRESCOTT INDIAN TRIBE *v.* SCOTT, DIRECTOR, ARIZONA DEPARTMENT OF REVENUE, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 117 F. 3d 1107.

No. 97–790. BLOUNT, EXECUTIVE DIRECTOR, VACAVILLE STATE HOSPITAL, ET AL. *v.* WASHINGTON. C. A. 9th Cir. Certiorari denied. Reported below: 124 F. 3d 215.

No. 97–797. YANKEE ENTERPRISES, INC. *v.* DUNKIN' DONUTS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 121 F. 3d 703.

No. 97–804. COUNTY OF STANISLAUS ET AL. *v.* PACIFIC GAS & ELECTRIC CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 114 F. 3d 858.

No. 97–806. CHANDROSS *v.* ARENA ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 97–807. HUTCHINSON *v.* FISERV C. I. R., INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 121 F. 3d 708.

No. 97–808. FULTON, PERSONAL REPRESENTATIVE OF THE ESTATE OF LUCAS, DECEASED, ET AL. *v.* SANDERS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 124 F. 3d 197.

No. 97–812. TAXPAYERS OF KING COUNTY *v.* KING COUNTY ET AL. Sup. Ct. Wash. Certiorari denied. Reported below: 133 Wash. 2d 584, 949 P. 2d 1260.

No. 97–814. CITY OF CLEVELAND *v.* NATION OF ISLAM ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 124 F. 3d 196.

No. 97–816. VINE ET AL. *v.* FULLER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 117 F. 3d 1425.

No. 97–817. MARTIN *v.* GOODYEAR AUTO SERVICE CENTER. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 509.

No. 97–819. GREENE *v.* GREENBERG ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 97–828. EXCALIBUR GROUP, INC. *v.* CITY OF MINNEAPOLIS. C. A. 8th Cir. Certiorari denied. Reported below: 116 F. 3d 1216.

No. 97–832. HINES *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 15 Cal. 4th 997, 938 P. 2d 388.

No. 97–850. UNITED STATES EX REL. MCKENZIE *v.* BELLSOUTH TELECOMMUNICATIONS, INC., DBA SOUTH CENTRAL BELL TELEPHONE CO. C. A. 6th Cir. Certiorari denied. Reported below: 123 F. 3d 935.

No. 97–852. KAVANAU *v.* SANTA MONICA RENT CONTROL BOARD. Sup. Ct. Cal. Certiorari denied. Reported below: 16 Cal. 4th 761, 941 P. 2d 851.

No. 97–858. INO INO, INC., ET AL. *v.* CITY OF BELLEVUE. Sup. Ct. Wash. Certiorari denied. Reported below: 132 Wash. 2d 103, 937 P. 2d 154.

No. 97–859. JORDAHL ET AL. *v.* DEMOCRATIC PARTY OF VIRGINIA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 122 F. 3d 192.

No. 97–895. SEBASTIAN *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 243 Conn. 115, 701 A. 2d 13.

No. 97–900. MADDEN *v.* INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS WORKERS ET AL. C. A. 2d Cir. Certiorari denied.

No. 97–941. ALVAREZ ET AL. *v.* CITY OF WESTMORLAND ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 119 F. 3d 5.

No. 97–951. DUPRE ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 117 F. 3d 810.

No. 97–964. SCHELKLE *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 47 M. J. 110.

No. 97–6107. WILSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 1066.

No. 97–6243. BUSH *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 97–6255. AYBAR *v.* CRISPIN-REYES ET AL.; and
No. 97–6256. MORALES LABOY *v.* CRISPIN-REYES ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 118 F. 3d 10.

No. 97–6259. MCBRIDE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 122 F. 3d 1067.

No. 97–6343. ZANKICH *v.* SANTOS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 1387.

No. 97–6375. PETERSON *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 674 N. E. 2d 528.

No. 97–6436. CARPENTER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 15 Cal. 4th 312, 935 P. 2d 708.

No. 97–6472. MOORE *v.* ANDERSON, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 119 F. 3d 2.

No. 97–6684. RICHARDSON *v.* SOUTHERN UNIVERSITY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 118 F. 3d 450.

No. 97–6685. STRICKLAND *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 346 N. C. 443, 488 S. E. 2d 194.

No. 97–6686. SHEEHAN *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA. C. A. 9th Cir. Certiorari denied.

No. 97–6687. WILSON *v.* EVANS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 117 F. 3d 1429.

No. 97–6695. PREWITT *v.* ALEXANDER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 114 F. 3d 1183.

No. 97–6713. MOLLETT *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 939 P. 2d 1.

No. 97–6714. MAYFIELD *v.* DETROIT NEWS ET AL. Ct. App. Mich. Certiorari denied.

No. 97–6717. MACPHEE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 97–6721. JONES *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 97–6728. GLEAN *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 268 Ga. 260, 486 S. E. 2d 172.

No. 97–6733. HALL ET UX. *v.* BROOKSIDE COMMUNITY, INC. Sup. Ct. Del. Certiorari denied. Reported below: 694 A. 2d 47.

No. 97–6734. HENTZ *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 97–6735. GREEN *v.* GAITHER, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 117 F. 3d 1430.

No. 97–6736. ERDMAN *v.* STEGALL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–6739. BROOKS *v.* CITY OF WINSTON-SALEM ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 120 F. 3d 260.

No. 97–6741. VILLAFUERTE *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 111 F. 3d 616.

No. 97–6746. MARTS *v.* FOTI ET AL. C. A. 5th Cir. Certiorari denied.

No. 97–6756. SHELTON *v.* PITTSBURG COUNTY, OKLAHOMA, BOARD OF COMMISSIONERS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 124 F. 3d 217.

No. 97–6757. RUTHERFORD *v.* ALDERMAN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 120 F. 3d 262.

No. 97–6758. PALMISANO *v.* LARKIN ET AL. C. A. 7th Cir. Certiorari denied.

No. 97–6762. AKPAETI *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 97–6764. YOUNG *v.* NAGLE, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 122 F. 3d 1078.

No. 97–6767. YOUNKIN *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 701 A. 2d 785.

No. 97–6768. WILLIAMS *v.* FULCOMER, DEPUTY COMMISSIONER, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, WESTERN REGION, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 114 F. 3d 1174.

No. 97–6769. WARD *v.* RAVENSWOOD VILLAGE NURSING HOME. C. A. 4th Cir. Certiorari denied. Reported below: 120 F. 3d 264.

No. 97–6772. PETERSON *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 97–6776. SMITH *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 97–6777. SMITH *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–6778. RANDALL *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 116 F. 3d 491.

No. 97–6787. LAWRENCE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 698 So. 2d 1219.

No. 97–6791. NGHIEM *v.* TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 97–6794. MARTINEZ LOZANO *v.* COURT OF CRIMINAL APPEALS OF TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 97–6798. RUDD *v.* HASTY ET AL. C. A. 5th Cir. Certiorari denied.

No. 97–6799. SMITH *v.* SERVAPORTION. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 97–6800. PEGGS *v.* NEW YORK. App. Term, Sup. Ct. N. Y., 9th and 10th Jud. Dists. Certiorari denied.

No. 97–6801. SILVER *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 693 So. 2d 988.

No. 97–6802. SMITH *v.* SERVAPORTION. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 97–6815. WARREN *v.* LUCAS COUNTY DEPARTMENT OF HUMAN SERVICES. C. A. 6th Cir. Certiorari denied. Reported below: 113 F. 3d 1236.

No. 97–6816. WATSON *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 97–6821. WHITFIELD *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS; WHITFIELD *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS; and WHITFIELD *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS. C. A. 5th Cir. Certiorari denied.

No. 97–6859. BEY *v.* MORTON, SUPERINTENDENT, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 124 F. 3d 524.

No. 97–6861. SMITH *v.* DIROSA, JUDGE, ORLEANS PARISH CIVIL DISTRICT COURT, DIVISION D. C. A. 5th Cir. Certiorari denied. Reported below: 120 F. 3d 265.

No. 97–6866. BURTON *v.* SILCOX ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 119 F. 3d 10.

No. 97–6867. COREY *v.* UNITED STATES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 124 F. 3d 216.

No. 97–6882. BOWEN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 698 So. 2d 248.

No. 97–6975. GRETZLER *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTION. C. A. 9th Cir. Certiorari denied. Reported below: 112 F. 3d 992.

No. 97–7012. NARANJO *v.* UNITED STATES; and
No. 97–7105. WILLIAMS ET AL. *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 116 F. 3d 1498.

No. 97–7020. SOLIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 124 F. 3d 192.

No. 97–7022. GRIFFIN-EL *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 97–7032. BALL *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 347 Md. 156, 699 A. 2d 1170.

No. 97–7041. STOKES *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 698 A. 2d 671.

No. 97–7046. JARVOUHEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 117 F. 3d 440.

No. 97–7061. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 111 F. 3d 136.

No. 97–7100. WOODRUFF *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 122 F. 3d 1185.

No. 97–7101. BAILEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 115 F. 3d 1222.

No. 97–7102. POTTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 124 F. 3d 1300.

No. 97–7103. PEVARNIK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 129 F. 3d 1257.

No. 97–7109. MOORE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 127 F. 3d 35.

No. 97–7111. WHITE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 127 F. 3d 1097.

No. 97–7119. SCHREINER *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 97–7120. CARO RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 122 F. 3d 1075.

No. 97–7122. BLACK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 124 F. 3d 193.

No. 97–7123. ALVAREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 130 F. 3d 443.

No. 97–7126. RASCO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 123 F. 3d 222.

No. 97–7131. OCHOA *v.* ARIZONA. Ct. App. Ariz. Certiorari denied. Reported below: 189 Ariz. 454, 943 P. 2d 814.

No. 97–7132. RUIZ-MENDOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 97–7134. MINTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 121 F. 3d 705.

No. 97–7136. LASZCYNSKI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 97–7138. MATHIEU *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 121 F. 3d 713.

No. 97–7140. ALONSO-ALONSO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 127 F. 3d 34.

No. 97–7148. CARTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 124 F. 3d 200.

No. 97–7150. POLLARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 119 F. 3d 11.

No. 97–7156. HANDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 122 F. 3d 690.

No. 97–7159. GUTIERREZ-CERVANTEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 132 F. 3d 460.

No. 97–7160. GREGORY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 124 F. 3d 200.

No. 97–7161. GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 129 F. 3d 606.

No. 97–7162. FREEMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 122 F. 3d 1064.

No. 97–7170. MCCAFFERTY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 121 F. 3d 718.

No. 97–7180. CROOK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 124 F. 3d 213.

No. 97–7187. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 120 F. 3d 275.

No. 97–7200. KINGSTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 109 F. 3d 1436 and 129 F. 3d 518.

No. 97–7201. KOGER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 125 F. 3d 849.

No. 97–7207. MELIUS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 123 F. 3d 1134.

No. 97–747. PARKER *v.* METROPOLITAN LIFE INSURANCE CO. ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 121 F. 3d 1006.

No. 97–791. BURCH *v.* COCA-COLA CO. C. A. 5th Cir. Motion of American Society of Addiction Medicine et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this motion and this petition. Reported below: 119 F. 3d 305.

No. 97–822. FAIR ET AL. *v.* CITY OF SAN BUENAVENTURA ET AL. Ct. App. Cal., 2d App. Dist. Motions of First Assembly of God in Ventura and Pacific Justice Institute for leave to file briefs as *amici curiae* granted. Certiorari denied.

No. 97–6811. AYERS, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, ET AL. *v.* FORDICE, GOVERNOR OF MISSISSIPPI, ET AL. C. A. 5th Cir. Motion of National Association for Equal Opportunity in Higher Education et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 111 F. 3d 1183.

No. 97–7534 (A–517). CEJA *v.* ARIZONA. Super. Ct. Ariz., Maricopa County. Application for stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE BREYER would grant the application for stay of execution.

No. 97–7562 (A–523). CEJA *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTION, ET AL. C. A. 9th Cir. Application for stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE BREYER would grant the application for stay of execution. Reported below: 134 F. 3d 1368.

Rehearing Denied

No. 96–9196. ARTEAGA *v.* SANTA CLARA DEPARTMENT OF FAMILY AND CHILDREN'S SERVICES, *ante*, p. 835;

No. 96–9197. ARTEAGA *v.* CALIFORNIA, *ante*, p. 835;

No. 97–384. RESHARD ET AL., CO-PERSONAL REPRESENTATIVES OF THE ESTATE OF RESHARD *v.* BRITT ET AL., *ante*, p. 933;

No. 97–574. TINSLEY *v.* TRW INC. ET AL., *ante*, p. 997;

No. 97–755. IN RE SMITH, *ante*, p. 994;

No. 97–5051. DIGIOVANNI *v.* PENNSYLVANIA, *ante*, p. 983;

No. 97–5280. KIRBY *v.* ALABAMA DEPARTMENT OF CORRECTIONS ET AL., *ante*, p. 885;

No. 97–5390. LUCIOUS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 891;

No. 97–5915. STENGER *v.* WOOD, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY, ET AL., *ante*, p. 957;

No. 97–5921. JACOBSON *v.* MCILWAIN ET AL., *ante*, p. 970;

No. 97–5969. CEJA *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTION, ET AL., *ante*, p. 971;

No. 97–6097. JYAN *v.* FRANKOVICH ET AL., *ante*, p. 986;

No. 97–6187. ORTIZ *v.* UNITED STATES, *ante*, p. 961;

No. 97–6433. TURNER *v.* UNITED STATES, *ante*, p. 1019; and

No. 97–6434. TURNER *v.* UNITED STATES; TURNER *v.* DEPARTMENT OF JUSTICE; and TURNER *v.* INTERNAL REVENUE SERVICE ET AL., *ante*, p. 1019. Petitions for rehearing denied.

No. 97–703. RIMELL *v.* UNITED STATES, *ante*, p. 983. Motion of petitioner for leave to proceed further herein *in forma pauperis* granted. Petition for rehearing denied.

JANUARY 23, 1998

Miscellaneous Order

No. A–490. LOPEZ ET AL. *v.* MONTEREY COUNTY, CALIFORNIA, ET AL. Application for stay of judgment of the United States

District Court for the Northern District of California, case No. C–91–20559, entered December 22, 1997, presented to JUSTICE O'CONNOR, and by her referred to the Court, granted pending the timely docketing of an appeal in this Court. Should the jurisdictional statement be timely filed, this order shall remain in effect pending this Court's action on the appeal. If the appeal is dismissed or the judgment affirmed, this order shall terminate automatically. In the event jurisdiction is noted or postponed, this order will remain in effect pending the sending down of the judgment of this Court.

Certiorari Granted

No. 97–569. BURLINGTON INDUSTRIES, INC. *v.* ELLERTH. C. A. 7th Cir. Motion of Chamber of Commerce of the United States of America for leave to file a brief as *amicus curiae* granted. Certiorari granted limited to Question 1 presented by the petition. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 4, 1998. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, March 30, 1998. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, April 14, 1998. This Court's Rule 29.2 does not apply. Reported below: 123 F. 3d 490.

No. 97–634. PENNSYLVANIA DEPARTMENT OF CORRECTIONS ET AL. *v.* YESKEY. C. A. 3d Cir. Certiorari granted. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 4, 1998. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, March 30, 1998. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, April 14, 1998. This Court's Rule 29.2 does not apply. Reported below: 118 F. 3d 168.

No. 97–689. GEISSAL, BENEFICIARY AND REPRESENTATIVE OF THE ESTATE OF GEISSAL, DECEASED *v.* MOORE MEDICAL CORP. ET AL. C. A. 8th Cir. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 4, 1998. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, March 30, 1998. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on

or before 3 p.m., Tuesday, April 14, 1998. This Court's Rule 29.2 does not apply. Reported below: 114 F. 3d 1458.

JANUARY 26, 1998

Affirmed on Appeal

No. 97–743. KING *v.* ILLINOIS BOARD OF ELECTIONS ET AL. Affirmed on appeal from D. C. N. D. Ill. JUSTICE SCALIA, JUSTICE KENNEDY, and JUSTICE THOMAS would note probable jurisdiction and set case for oral argument. Reported below: 979 F. Supp. 619.

Miscellaneous Orders

No. A–481. QUARTERMANN *v.* QUARTERMANN. Sup. Ct. Ga. Application for stay, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. A–489. BREWER *v.* MARSHALL. Application for bail, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. D–1856. IN RE DISBARMENT OF PROCTOR. Disbarment entered. [For earlier order herein, see *ante*, p. 910.]

No. D–1879. IN RE DISBARMENT OF BERNSTEIN. Disbarment entered. [For earlier order herein, see *ante*, p. 993.]

No. D–1908. IN RE DISBARMENT OF TRAMMEL. George Ward Trammell III, of Long Beach, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 96–1829. MONTANA ET AL. *v.* CROW TRIBE OF INDIANS ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 912.] Motion of the Solicitor General for divided argument granted.

No. 97–16. OHIO FORESTRY ASSN., INC. *v.* SIERRA CLUB ET AL. C. A. 6th Cir. [Certiorari granted, *ante*, p. 931.] Motion of the Solicitor General for divided argument granted to be divided as follows: petitioner, 15 minutes; the Solicitor General, 15 minutes; respondents, 30 minutes.

No. 97–174. CASS COUNTY, MINNESOTA, ET AL. *v.* LEECH LAKE BAND OF CHIPPEWA INDIANS. C. A. 8th Cir. [Certiorari granted, *ante*, p. 944.] Motion of the Solicitor General for leave

to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 97–288. LEWIS ET VIR, INDIVIDUALLY, AS PARENTS, AS NEXT FRIENDS, AND AS ADMINISTRATORS OF THE ESTATE OF LEWIS, DECEASED *v.* BRUNSWICK CORP. C. A. 11th Cir. [Certiorari granted, *ante*, p. 978.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 97–282. FARAGHER *v.* CITY OF BOCA RATON. C. A. 11th Cir. [Certiorari granted, *ante*, p. 978.] Motion of National Employment Lawyers Association for leave to file a brief as *amicus curiae* granted.

No. 97–463. TEXTRON LYCOMING RECIPROCATING ENGINE DIVISION, AVCO CORP. *v.* UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA ET AL. C. A. 3d Cir. [Certiorari granted, *ante*, p. 979.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument denied.

No. 97–843. DAVIS, AS NEXT FRIEND OF LASHONDA D. *v.* MONROE COUNTY BOARD OF EDUCATION ET AL. C. A. 11th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 97–5737. FORNEY *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1072.] Allen R. Snyder, Esq., of Washington, D. C., is invited to brief and argue this case as *amicus curiae* in support of the judgment below.

No. 97–6836. WEE ET UX. *v.* ANDREWS ET AL. C. A. 2d Cir. Motion of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until February 17, 1998, within which to pay the docketing fee requred by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 97–1083. IN RE COLE. Petition for writ of habeas corpus denied.

No. 97–784. IN RE GOULD;
No. 97–6924. IN RE WHITE; and
No. 97–7154. IN RE LANGWORTHY. Petitions for writs of mandamus denied.

No. 97–6889. IN RE HAMPEL ET VIR. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 97–826. AT&T CORP. ET AL. *v.* IOWA UTILITIES BOARD ET AL.; and AT&T CORP. ET AL. *v.* CALIFORNIA ET AL.;

No. 97–829. MCI TELECOMMUNICATIONS CORP. *v.* IOWA UTILITIES BOARD ET AL.; and MCI TELECOMMUNICATIONS CORP. *v.* CALIFORNIA ET AL.;

No. 97–830. ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES ET AL. *v.* IOWA UTILITIES BOARD ET AL.;

No. 97–831. FEDERAL COMMUNICATIONS COMMISSION ET AL. *v.* IOWA UTILITIES BOARD ET AL.; and FEDERAL COMMUNICATIONS COMMISSION ET AL. *v.* CALIFORNIA ET AL.;

No. 97–1075. AMERITECH CORP. ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.;

No. 97–1087. GTE MIDWEST INC. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.;

No. 97–1099. U S WEST, INC. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.; and

No. 97–1141. SOUTHERN NEW ENGLAND TELEPHONE CO. ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. 8th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. JUSTICE O'CONNOR took no part in the consideration or decision of these petitions. Reported below: Nos. 97–826 (first judgment), 97–829 (first judgment), 97–830, 97–831 (first judgment), 97–1075, 97–1087, 97–1099, and 97–1141, 120 F. 3d 753; Nos. 97–826, 97–829, and 97–831 (second judgments), 124 F. 3d 934.

Certiorari Denied

No. 97–399. SIDALI *v.* IMMIGRATION AND NATURALIZATION SERVICE ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–512. SIERRA CLUB *v.* CITY OF SAN ANTONIO ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 112 F. 3d 789.

No. 97–521. TACKETT ET VIR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 113 F. 3d 603.

No. 97–699. COOPER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 112 F. 3d 515.

No. 97–705. KERR-MCGEE CORP. ET AL. *v.* FARLEY, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF FARLEY, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 115 F. 3d 1498.

No. 97–706. CENTURY OFFSHORE MANAGEMENT CORP. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 111 F. 3d 443.

No. 97–737. ALEXANDER S. ET AL. *v.* BOYD ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 113 F. 3d 1373.

No. 97–754. WAGNER ET UX. *v.* DEVINE ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 122 F. 3d 53.

No. 97–783. FLOWERS *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 691 So. 2d 1047.

No. 97–785. BONNEAU CO. *v.* MAGNIVISION, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 115 F. 3d 956.

No. 97–792. JENKINS ET AL. *v.* MEDFORD, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS SHERIFF OF BUNCOMBE COUNTY, NORTH CAROLINA, ET AL.; and

No. 97–986. MEDFORD, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS SHERIFF OF BUNCOMBE COUNTY, NORTH CAROLINA, ET AL. *v.* JENKINS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 119 F. 3d 1156.

No. 97–820. BRIGMAN *v.* CSX TRANSPORTATION, INC. Sup. Ct. Va. Certiorari denied.

No. 97–827. MCGOWAN *v.* TEXACO INC. C. A. 2d Cir. Certiorari denied. Reported below: 108 F. 3d 1370.

No. 97–841. CHEATHAM ET AL. *v.* MONROE, COMMISSIONER, ALABAMA DEPARTMENT OF REVENUE, ET AL. Ct. Civ. App. Ala. Certiorari denied. Reported below: 703 So. 2d 389.

No. 97–842. HILLARY *v.* TRANS WORLD AIRLINES, INC. C. A. 8th Cir. Certiorari denied. Reported below: 123 F. 3d 1041.

No. 97–849. CROUCH ET AL. *v.* SECRETARY OF STATE OF SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 121 F. 3d 697.

No. 97–862. PAPAPANOS *v.* LUFTHANSA GERMAN AIRLINES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 124 F. 3d 221.

No. 97–864. STRONG *v.* STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 117 F. 3d 1414.

No. 97–868. NACCO INDUSTRIES, INC. *v.* TRACY, OHIO TAX COMMISSIONER. Sup. Ct. Ohio. Certiorari denied. Reported below: 79 Ohio St. 3d 314, 681 N. E. 2d 900.

No. 97–880. MCCORD *v.* MILLWARD, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–882. CORRINET *v.* UNITED NATIONS ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–890. YON ET AL. *v.* FLORIDA DEPARTMENT OF CORRECTIONS. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 698 So. 2d 1227.

No. 97–891. SHEETZ, INC. *v.* VANDEVENDER. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 200 W. Va. 591, 490 S. E. 2d 678.

No. 97–893. MATIMAK TRADING CO. LTD. *v.* KHALILY, DBA UNITEX MILLS, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 118 F. 3d 76.

No. 97–899. DENNIS *v.* SCOTT PAPER CO. C. A. 11th Cir. Certiorari denied. Reported below: 116 F. 3d 1493.

No. 97–903. TIMMERMAN *v.* MCLAUGHLIN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 125 F. 3d 852.

No. 97–909. MADDOX *v.* CAPITOL BANKERS LIFE INSURANCE CO. ET AL. C. A. 7th Cir. Certiorari denied.

No. 97–913. HALL *v.* JACOBS ET AL. C. A. 11th Cir. Certiorari denied.

No. 97–923. VOTION *v.* COUNTY OF ATASCOSA ET AL. C. A. 5th Cir. Certiorari denied.

No. 97–985. NUNLEY *v.* CITY OF LOS ANGELES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 121 F. 3d 716.

No. 97–994. GOROD *v.* DEPARTMENT OF EMPLOYMENT AND TRAINING OF BOSTON ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 125 F. 3d 841.

No. 97–1014. DONNELL *v.* OFFICE OF DISCIPLINARY COUNSEL OF OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 79 Ohio St. 3d 501, 684 N. E. 2d 36.

No. 97–1020. M. A. BAHETH & CO., INC. *v.* SCHOTT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 118 F. 3d 1082.

No. 97–1024. DOLLAR *v.* UNITED STATES; and
No. 97–7166. GANDY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 123 F. 3d 813.

No. 97–1033. SMITH *v.* LOUISIANA-PACIFIC CORP. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 120 F. 3d 270.

No. 97–1042. HIMBER *v.* POWERS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 114 F. 3d 1184.

No. 97–1052. ARRIEH *v.* CITY OF MILWAUKEE. Ct. App. Wis. Certiorari denied. Reported below: 211 Wis. 2d 762, 565 N. W. 2d 291.

No. 97–6186. ROBINSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 116 F. 3d 1474.

No. 97–6354. LEE *v.* MORTON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–6533. CAMERON ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 120 F. 3d 468.

No. 97–6567. AKPAETI *v.* FLORIDA DISTRICT COURT OF APPEAL, THIRD DISTRICT; and AKPAETI *v.* TERRANOVA CORP. Sup. Ct. Fla. Certiorari denied. Reported below: 699 So. 2d 689 (first judgment); 697 So. 2d 1215 (second judgment).

No. 97–6677. WILLIAMS *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 85 Wash. App. 1032.

No. 97–6698. BADDOUR *v.* CARY. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 97–6747. CUMMINGS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 346 N. C. 291, 488 S. E. 2d 550.

No. 97–6773. PORTER *v.* GILMORE, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 112 F. 3d 1308 and 122 F. 3d 351.

No. 97–6826. HOOD *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 53 Cal. App. 4th 965, 62 Cal. Rptr. 2d 137.

No. 97–6833. RODGERS *v.* COURT OF COMMON PLEAS OF OHIO, COLUMBIANA COUNTY, ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 80 Ohio St. 3d 1407, 684 N. E. 2d 701.

No. 97–6837. TYLER *v.* SCOTT, FORMER DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 124 F. 3d 192.

No. 97–6838. WARD *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–6842. BANOS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–6846. WEEKS *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 119 F. 3d 1342.

No. 97–6847. BURNETT *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 97–6849. RIVERA *v.* FLORIDA DEPARTMENT OF CORRECTIONS. Dist. Ct. App. Fla., 1st Dist. Certiorari denied.

No. 97–6850. RIVERA *v.* FLORIDA DEPARTMENT OF CORRECTIONS. Dist. Ct. App. Fla., 1st Dist. Certiorari denied.

No. 97–6851. SIMPSON *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 686 So. 2d 599.

No. 97–6864. SMITH *v.* O'BRIEN ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–6865. MUNOZ *v.* BENZ. C. A. 5th Cir. Certiorari denied.

No. 97–6868. ALTSCHUL *v.* TEXAS BOARD OF PARDONS AND PAROLES. Sup. Ct. Tex. Certiorari denied.

No. 97–6870. BROWNING *v.* MAHAN ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–6871. BUSSEY *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD. C. A. 3d Cir. Certiorari denied.

No. 97–6877. AYSISAYH *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 701 So. 2d 867.

No. 97–6881. BOWMAN *v.* SIEFIED ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 117 F. 3d 1428.

No. 97–6887. SCOTT *v.* SZCZERBICKI ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 115 Md. App. 750.

No. 97–6890. LABANKOFF ET AL. *v.* GREBEN ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 97–6891. HOANG *v.* ADIA PERSONNEL SERVICES. C. A. 9th Cir. Certiorari denied.

No. 97–6892. GALE *v.* PEROVIC ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 124 F. 3d 203.

No. 97–6894. DARNE *v.* WEBER. Ct. App. Wis. Certiorari denied.

No. 97–6895. DOWTIN-EL *v.* TYSKIEWICZ, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–6896. ENGELKING *v.* DRUG ENFORCEMENT ADMINISTRATION. C. A. D. C. Cir. Certiorari denied. Reported below: 119 F. 3d 980.

No. 97–6898. MAXHIMER *v.* CITY OF GLENDALE. Ct. App. Ariz. Certiorari denied.

No. 97–6899. JONES *v.* THE PEP BOYS, MANNY, MOE, AND JACK OF CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 97–6900. JACKSON *v.* DEPARTMENT OF CORRECTIONS OF LOUISIANA. C. A. 5th Cir. Certiorari denied. Reported below: 124 F. 3d 194.

No. 97–6902. BRIGGS *v.* IGNACIO, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–6905. FORTY *v.* FLORIDA. Cir. Ct. Pinellas County, Fla. Certiorari denied.

No. 97–6907. HALL *v.* MINNESOTA ET AL. Ct. App. Minn. Certiorari denied.

No. 97–6912. KELLEY *v.* ROLFS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 124 F. 3d 211.

No. 97–6913. NANCE *v.* PIKE, SHERIFF, WYTHE COUNTY, VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 122 F. 3d 1062.

No. 97–6922. WATKIS *v.* THRASHER ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 117 F. 3d 1431.

No. 97–6923. WICKLIFFE *v.* SUPERIOR COURT OF INDIANA, MARION COUNTY, ET AL. Sup. Ct. Ind. Certiorari denied.

No. 97–6925. TRIESTMAN *v.* DEPARTMENT OF JUSTICE, OFFICE OF PROFESSIONAL RESPONSIBILITY. C. A. D. C. Cir. Certiorari denied.

No. 97–6929. TULK *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 97–6930. TYLER *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 97–6936. RAINWATER *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 425 Mass. 540, 681 N. E. 2d 1218.

No. 97–6953. KENLEY *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 952 S. W. 2d 250.

No. 97–6960. JOHNSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 696 So. 2d 326.

No. 97–6961. YAHWEH *v.* ZAVARAS, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 114 F. 3d 1199.

No. 97–6992. ADAMS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 347 N. C. 48, 490 S. E. 2d 220.

No. 97–7003. WELLINGTON *v.* BRODEUR, COMMISSIONER, NEW HAMPSHIRE DEPARTMENT OF CORRECTIONS. C. A. 1st Cir. Certiorari denied.

No. 97–7005. SALAZAR *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 97–7015. WILSON *v.* CHANG. C. A. 1st Cir. Certiorari denied.

No. 97–7028. DARNE *v.* WISCONSIN ET AL. C. A. 7th Cir. Certiorari denied.

No. 97–7055. PALMER *v.* CIRCUIT COURT OF ILLINOIS, COOK COUNTY. C. A. 7th Cir. Certiorari denied. Reported below: 117 F. 3d 351.

No. 97–7093. EDMUNSON *v.* SAVKO ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 127 F. 3d 1095.

No. 97–7094. GRIFFIN *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 97–7104. PEREZ *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 119 F. 3d 1422.

No. 97–7107. BROWN *v.* MARYLAND DEPARTMENT OF JUVENILE JUSTICE. Ct. Sp. App. Md. Certiorari denied.

No. 97–7118. RAGLAND *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 124 F. 3d 1299.

No. 97–7129. SALEEM *v.* HELMAN, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 124 F. 3d 205.

No. 97–7135. LUSK *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 112 F. 3d 1103.

No. 97–7146. PEDROZA-ORTIZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 121 F. 3d 841.

No. 97–7155. HURD *v.* DISTRICT COURT OF IOWA, IDA COUNTY. Ct. App. Iowa. Certiorari denied.

No. 97–7163. EVERHART *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 124 F. 3d 213.

No. 97–7191. FONSECA-CARO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 114 F. 3d 906.

No. 97–7205. JENDRZEJEWSKI *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 455 Mich. 495, 566 N. W. 2d 530.

No. 97–7209. PLUNKETT *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 125 F. 3d 873.

No. 97–7211. SNEAD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 97–7216. OKPALA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 111 F. 3d 895.

No. 97–7217. BAXTER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 128 F. 3d 670.

No. 97–7219. JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 123 F. 3d 831.

No. 97–7221. MESA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 127 F. 3d 791.

No. 97–7226. WARE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 124 F. 3d 214.

No. 97–7227. UY, AKA MONTEBELLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 129 F. 3d 606.

No. 97–7230. HAGER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 125 F. 3d 863.

No. 97–7231. DAWSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 124 F. 3d 218.

No. 97–7232. BYOUS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 129 F. 3d 607.

No. 97–7233. FUENTEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 124 F. 3d 208.

No. 97–7234. SPEAR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 124 F. 3d 218.

No. 97–7236. REISENAUER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 121 F. 3d 719.

No. 97–7237. ANTONIO-CRUZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 121 F. 3d 717.

No. 97–7242. WHEELER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 129 F. 3d 1266.

No. 97–7248. YOSSIF *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 97–7258. EDWARDS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 1487.

No. 97–7259. COLE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 124 F. 3d 218.

No. 97–7261. LLUIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 128 F. 3d 732.

No. 97–7264. BOMSKI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 125 F. 3d 1115.

No. 97–7265. CROPP ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 127 F. 3d 354.

No. 97–7266. SANCHEZ COX *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 125 F. 3d 1097.

No. 97–7267. CALTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 129 F. 3d 607.

No. 97–627. CLARKE, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES, ET AL. *v.* WEAVER. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 120 F. 3d 852.

No. 97–854. MICROSOFT CORP. ET AL. *v.* VIZCAINO ET AL. C. A. 9th Cir. Motions of Information Technology Association of America et al. and Chamber of Commerce of the United States

et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 120 F. 3d 1006.

No. 97–907. IN RE MARTIN. C. A. Fed. Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 120 F. 3d 256.

No. 97–953. CALDERON, WARDEN *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA (BEELER, REAL PARTY IN INTEREST). C. A. 9th Cir. Motion of respondent Rodney G. Beeler for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 128 F. 3d 1283.

Rehearing Denied

No. 96–1009. GOODHART ET AL. *v.* UNITED STATES, *ante*, p. 1014;

No. 96–7960. MARMOLEJO *v.* UNITED STATES, *ante*, p. 1014;

No. 96–9320. HOSCH *v.* BANDAG, INC., *ante*, p. 842;

No. 97–332. BONILLA MONTALVO *v.* BANCO BILBAO VIZCAYA, FKA BANCO COMERCIAL MAYAGUEZ, ET AL., *ante*, p. 915;

No. 97–560. RIDDER *v.* CITY OF SPRINGFIELD ET AL., *ante*, p. 997;

No. 97–615. TRUSERV CORP. *v.* CALIFORNIA EX REL. LUNGREN, ATTORNEY GENERAL, ET AL., *ante*, p. 1015;

No. 97–621. OJAVAN INVESTORS, INC., ET AL. *v.* CALIFORNIA COASTAL COMMISSION ET AL., *ante*, p. 1015;

No. 97–622. BOGART ET AL. *v.* CALIFORNIA COASTAL COMMISSION, *ante*, p. 1015;

No. 97–671. CARABELLO *v.* CARABELLO ET AL., *ante*, p. 1029;

No. 97–5140. FLIEGER *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, *ante*, p. 877;

No. 97–5160. FISHER *v.* WYATT ET AL., *ante*, p. 878;

No. 97–5949. QUALLS *v.* FERRITOR ET AL., *ante*, p. 970;

No. 97–6432. TURNER *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 1031; and

No. 97–6435. TURNER *v.* UNITED STATES; TURNER *v.* VIRGINIA; TURNER *v.* WOOD, JUDGE, CIRCUIT COURT OF VIRGINIA, CITY OF STAUNTON; TURNER *v.* WILSON, JUDGE, UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA, ET AL.; and TURNER *v.* INTERNAL REVENUE SERVICE ET AL., *ante*, p. 1031. Petitions for rehearing denied.

FEBRUARY 3, 1998

Miscellaneous Orders

No. 97–7716 (A–560). IN RE TUCKER. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

No. 97–7764 (A–566). IN RE TUCKER. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Petition for writ of habeas corpus denied. JUSTICE O'CONNOR and JUSTICE KENNEDY took no part in the consideration or decision of this application and this petition.

Certiorari Denied

No. 97–7698 (A–550). TUCKER *v.* TEXAS. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. Reported below: 973 S. W. 2d 950.

No. 97–7768 (A–569). TUCKER *v.* TEXAS BOARD OF PARDONS AND PAROLES ET AL. C. A. 5th Cir. Application for temporary restraining order, preliminary injunction, and stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUSTICE O'CONNOR and JUSTICE KENNEDY took no part in the consideration or decision of this application and this petition.

FEBRUARY 5, 1998

Dismissal Under Rule 46

No. 97–886. SOCIETY EXPEDITIONS, INC., ET AL. *v.* CHAN ET UX. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 123 F. 3d 1287.

FEBRUARY 6, 1998

Dismissal Under Rule 46

No. 97–7249. FUENTES *v.* UNITED STATES. C. A. 11th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 129 F. 3d 615.

Certiorari Denied

No. 97–7747 (A–564). MACKALL *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir.

Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 131 F. 3d 442.

FEBRUARY 17, 1998

Dismissal Under Rule 46

No. 97–1057. TUCHMAN *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari dismissed under this Court's Rule 46.1. Reported below: 242 Conn. 345, 699 A. 2d 952.

FEBRUARY 18, 1998

Dismissal Under Rule 46

No. 97–1088. MIDWEST OPERATING ENGINEERS WELFARE FUND ET AL. *v.* WILLIAMS. C. A. 7th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 125 F. 3d 1138.

FEBRUARY 20, 1998

Miscellaneous Order

No. 97–826. AT&T CORP. ET AL. *v.* IOWA UTILITIES BOARD ET AL.; and AT&T CORP. ET AL. *v.* CALIFORNIA ET AL.;

No. 97–829. MCI TELECOMMUNICATIONS CORP. *v.* IOWA UTILITIES BOARD ET AL.; and MCI TELECOMMUNICATIONS CORP. *v.* CALIFORNIA ET AL.;

No. 97–830. ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES ET AL. *v.* IOWA UTILITIES BOARD ET AL.;

No. 97–831. FEDERAL COMMUNICATIONS COMMISSION ET AL. *v.* IOWA UTILITIES BOARD ET AL.; and FEDERAL COMMUNICATIONS COMMISSION ET AL. *v.* CALIFORNIA ET AL.;

No. 97–1075. AMERITECH CORP. ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.;

No. 97–1087. GTE MIDWEST INC. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.;

No. 97–1099. U S WEST, INC. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.; and

No. 97–1141. SOUTHERN NEW ENGLAND TELEPHONE CO. ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. 8th Cir. [Certiorari granted, *ante,* p. 1089.] Motion of the Solicitor General for a consolidated briefing schedule granted in part and

denied in part. Petitioners may file briefs, not to exceed 50 pages, only on the questions presented in their petitions on or before April 3, 1998. Cross-petitioners/respondents may file briefs, not to exceed 75 pages, that both respond to petitioners and address the questions presented in the cross-petitions on or before May 18, 1998. Petitioners may file briefs, not to exceed 50 pages, that both reply on their issues and respond to cross-petitioners' issues on or before June 17, 1998. Cross-petitioners may file briefs, not to exceed 25 pages, that only reply to cross-respondents' briefs on or before July 17, 1998. JUSTICE O'CONNOR took no part in the consideration or decision of this motion.

Certiorari Denied

No. 97–7888 (A–625). LANGFORD *v.* MONTANA ET AL. Sup. Ct. Mont. Application for stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. Certiorari denied. Reported below: 287 Mont. 107, 951 P. 2d 1357.

FEBRUARY 23, 1998

Certiorari Granted—Vacated and Remanded. (See also No. 97–663, *ante,* p. 442.)

No. 97–113. HURDLE *v.* SEARS, ROEBUCK & CO. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Oubre* v. *Entergy Operations, Inc., ante,* p. 422. Reported below: 116 F. 3d 476.

No. 97–6376. COURNOYER *v.* UNITED STATES. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *South Dakota* v. *Yankton Sioux Tribe, ante,* p. 329. Reported below: 118 F. 3d 1279.

Miscellaneous Orders. (See also No. 97–6749, *ante,* p. 446.)

No. A–339. ODUS *v.* UNITED STATES. Application for release, addressed to JUSTICE O'CONNOR and referred to the Court, denied.

No. D–1571. IN RE DISBARMENT OF PECK. Due to mistaken identity, the orders entered June 29 [515 U. S. 1172] and October 2, 1995 [516 U. S. 802], are vacated.

No. D–1852. IN RE DISBARMENT OF GREENE. Disbarment entered. [For earlier order herein, see 521 U. S. 1149.]

No. D–1857. IN RE DISBARMENT OF CHRISTENSEN. Disbarment entered. [For earlier order herein, see *ante,* p. 910.]

No. D–1864. IN RE DISBARMENT OF SOLBER. Disbarment entered. [For earlier order herein, see *ante,* p. 929.]

No. D–1873. IN RE DISBARMENT OF GRZYBEK. Disbarment entered. [For earlier order herein, see *ante,* p. 980.]

No. D–1877. IN RE DISBARMENT OF POLLAN. Disbarment entered. [For earlier order herein, see *ante,* p. 992.]

No. D–1881. IN RE DISBARMENT OF DICE. Disbarment entered. [For earlier order herein, see *ante,* p. 1012.]

No. D–1882. IN RE DISBARMENT OF PAPSIDERO. Disbarment entered. [For earlier order herein, see *ante,* p. 1013.]

No. D–1886. IN RE DISBARMENT OF POLLACK. Disbarment entered. [For earlier order herein, see *ante,* p. 1025.]

No. D–1887. IN RE DISBARMENT OF ANDREWS. Disbarment entered. [For earlier order herein, see *ante,* p. 1026.]

No. D–1890. IN RE DISBARMENT OF STERN. Paul A. Stern, of Chicago, Ill., 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 admitted to the practice of law before this Court. The rule to show cause, issued on December 15, 1997 [*ante,* p. 1026], is discharged.

No. D–1893. IN RE DISBARMENT OF CALHOUN. Paul W. Calhoun, Jr., of Vidalia, Ga., 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 admitted to the practice of law before this Court. The rule to show cause, issued on January 12, 1998 [*ante,* p. 1040], is discharged.

No. D–1900. IN RE DISBARMENT OF BARRERA. Motion to defer consideration denied. Disbarment entered. [For earlier order herein, see *ante,* p. 1041.]

No. D–1909. IN RE DISBARMENT OF BERNSTEIN. Jeff Bernstein, of Flushing, N. Y., is suspended from the practice of law in

this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1910. IN RE DISBARMENT OF CARANCHINI. Gwen G. Caranchini, of Kansas City, Mo., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring her to show cause why she should not be disbarred from the practice of law in this Court.

No. D–1911. IN RE DISBARMENT OF HOUSTON. Sandra K. Houston, of Fort Worth, Tex., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring her to show cause why she should not be disbarred from the practice of law in this Court.

No. D–1912. IN RE DISBARMENT OF GUPTON. Kevin Guy Gupton, of Sacramento, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1913. IN RE DISBARMENT OF SHELDRAKE. Warren Edward Sheldrake, of Irvington, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1914. IN RE DISBARMENT OF GURSTEL. Norman Keith Gurstel, of Minneapolis, Minn., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1915. IN RE DISBARMENT OF SPEERS. Peter C. Speers III, of The Woodlands, Tex., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1916. IN RE DISBARMENT OF CAMPBELL. Ronald Kent Campbell, of Raleigh, N. C., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–38. WOODSON *v.* CALIFORNIA ATTORNEY GENERAL;

No. M–39. CURTIS *v.* VAUGHN, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION, ET AL.;

No. M–40. TOWNSON & ALEXANDER, INC. *v.* PARK;

No. M–41. RISK MANAGERS INTERNATIONAL, INC., ET AL. *v.* WILLIAMS ET AL.; and

No. M–43. BROWN *v.* UNITED STATES. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. M–42. MITCHELL *v.* CITY OF DETROIT ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. M–44. BRADFORD *v.* CALIFORNIA. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner denied.

No. 96–8422. BRYAN *v.* UNITED STATES. C. A. 2d Cir. [Certiorari granted, *ante,* p. 1024.] Motion for appointment of counsel granted, and it is ordered that Roger B. Adler, Esq., of New York, N. Y., be appointed to serve as counsel for petitioner in this case.

No. 97–42. EASTERN ENTERPRISES *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY, ET AL. C. A. 1st Cir. [Certiorari granted, *ante,* p. 931.] Motion of the Solicitor General for divided argument granted.

No. 97–282. FARAGHER *v.* CITY OF BOCA RATON. C. A. 11th Cir. [Certiorari granted, *ante,* p. 978.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 97–581. PENNSYLVANIA BOARD OF PROBATION AND PAROLE *v.* SCOTT. Sup. Ct. Pa. [Certiorari granted, *ante,* p. 992.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 97–371. NATIONAL ENDOWMENT FOR THE ARTS ET AL. *v.* FINLEY ET AL. C. A. 9th Cir. [Certiorari granted, *ante,* p. 991.] Motion of Family Research Institute of Wisconsin for leave to file a brief as *amicus curiae* granted.

No. 97–372. UNITED STATES *v.* UNITED STATES SHOE CORP. C. A. Fed. Cir. [Certiorari granted, *ante,* p. 944.] Motion of Arctic Cat et al. for leave to participate in oral argument as *amici*

curiae, for divided argument, and for additional time for oral argument denied.

No. 97–569. BURLINGTON INDUSTRIES, INC. *v.* ELLERTH. C. A. 7th Cir. [Certiorari granted, *ante*, p. 1086.] Motion of Ernest T. Rossiello, Esq., to permit Elena M. Dimo-Poulos, Esq., to present oral argument *pro hac vice* denied.

No. 97–643. UNITED STATES *v.* CABRALES. C. A. 8th Cir. [Certiorari granted, *ante*, p. 1072.] Motion of the Solicitor General to dispense with printing the joint appendix granted. Motion of respondent for leave to proceed further herein *in forma pauperis* granted. Motion for appointment of counsel granted, and it is ordered that John W. Rogers, Esq., of Columbus, Mo., be appointed to serve as counsel for respondent in this case.

No. 97–795. PINAL CREEK GROUP *v.* NEWMONT MINING CORP. ET AL. C. A. 9th Cir.; and

No. 97–1054. CHASE MANHATTAN BANK, AS TRUSTEE OF THE IBM RETIREMENT PLAN TRUST FUND *v.* CITY AND COUNTY OF SAN FRANCISCO ET AL. C. A. 9th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 97–6146. MONGE *v.* CALIFORNIA. Sup. Ct. Cal. [Certiorari granted, *ante*, p. 1072.] Motion for appointment of counsel granted, and it is ordered that Cliff Gardner, Esq., of San Francisco, Cal., be appointed to serve as counsel for petitioner in this case.

No. 97–6544. IN RE BATES;
No. 97–6557. IN RE BATES;
No. 97–6862. IN RE ROWE;
No. 97–7276. IN RE BATES;
No. 97–7611. IN RE FOLLETT;
No. 97–7671. IN RE EASTERWOOD; and
No. 97–7691. IN RE COSSELMON. Petitions for writs of habeas corpus denied.

No. 97–1199. IN RE RICE;
No. 97–7029. IN RE HOLCOMB;
No. 97–7165. IN RE HARKLESS;
No. 97–7257. IN RE WHITFIELD; and
No. 97–7311. IN RE LANE. Petitions for writs of mandamus denied.

No. 97–983. In re Sever;
No. 97–1053. In re Perkel;
No. 97–7074. In re Okereke;
No. 97–7125. In re Bates;
No. 97–7244. In re Bates; and
No. 97–7334. In re Warren. Petitions for writs of mandamus and/or prohibition denied.

Certiorari Granted

No. 97–930. Buckley, Secretary of State of Colorado *v.* American Constitutional Law Foundation, Inc., et al. C. A. 10th Cir. Certiorari granted. Reported below: 120 F. 3d 1092.

Certiorari Denied

No. 96–1988. Sears, Roebuck & Co. et al. *v.* Long. C. A. 3d Cir. Certiorari denied. Reported below: 105 F. 3d 1529.

No. 96–2002. Ameritech Corp. et al. *v.* Raczak et al. C. A. 6th Cir. Certiorari denied. Reported below: 103 F. 3d 1257.

No. 96–7999. Roman *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 96 F. 3d 35.

No. 97–570. Duchesne County et al. *v.* Ute Indian Tribe of the Uintah and Ouray Reservation. C. A. 10th Cir. Certiorari denied. Reported below: 114 F. 3d 1513.

No. 97–576. Bandila Shipping Inc. et al. *v.* Ghotra et al., Minors, by Ghotra, Their Guardian ad Litem, et al.; and
No. 97–758. Ghotra et al., Minors, by Ghotra, Their Guardian ad Litem, et al. *v.* Bandila Shipping Inc. et al. C. A. 9th Cir. Certiorari denied. Reported below: 113 F. 3d 1050.

No. 97–698. Layman *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 116 F. 3d 105.

No. 97–720. Saipan Hotel Corp., dba Hafadai Beach Hotel *v.* National Labor Relations Board (two judgments). C. A. 9th Cir. Certiorari denied. Reported below: 114 F. 3d 994 (first judgment); 116 F. 3d 485 (second judgment).

No. 97–741. Burlington Northern & Santa Fe Railway Co. *v.* Smith et al. C. A. 5th Cir. Certiorari denied. Reported below: 118 F. 3d 416.

No. 97–750. ALASKA *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 119 F. 3d 16.

No. 97–765. GNADT *v.* CASTRO ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 117 F. 3d 1413.

No. 97–766. HARBOR BANCORP & SUBSIDIARIES ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 115 F. 3d 722.

No. 97–774. NEWTON COUNTY WILDLIFE ASSN. ET AL. *v.* ROGERS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 113 F. 3d 110.

No. 97–777. WEBCOR PACKAGING, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 6th Cir. Certiorari denied. Reported below: 118 F. 3d 1115.

No. 97–779. FRIENDS OF THE VIETNAM VETERANS MEMORIAL ET AL. *v.* STANTON, DIRECTOR, NATIONAL PARK SERVICE, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 116 F. 3d 495.

No. 97–782. BEALS *v.* KIEWIT PACIFIC CO., INC. C. A. 9th Cir. Certiorari denied. Reported below: 114 F. 3d 892.

No. 97–786. CLIFTON ET AL. *v.* FEDERAL ELECTION COMMISSION. C. A. 1st Cir. Certiorari denied. Reported below: 114 F. 3d 1309.

No. 97–794. CONSOLIDATED EDISON COMPANY OF NEW YORK ET AL. *v.* PENA, SECRETARY OF ENERGY, ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 117 F. 3d 538.

No. 97–824. SHORT *v.* CITY OF WEST POINT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 125 F. 3d 853.

No. 97–833. MASSACHUSETTS STATE POLICE ASSN. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 1st Cir. Certiorari denied. Reported below: 125 F. 3d 1.

No. 97–836. NORTH CAROLINA *v.* FEDERAL ENERGY REGULATORY COMMISSION; and

No. 97–839. ROANOKE RIVER BASIN ASSN. *v.* FEDERAL ENERGY REGULATORY COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 112 F. 3d 1175.

No. 97–844. DISTRICT ATTORNEY OF BUCKS COUNTY ET AL. *v.* SMITH. C. A. 3d Cir. Certiorari denied. Reported below: 120 F. 3d 400.

No. 97–845. WARDEN ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 111 F. 3d 139.

No. 97–851. LAWSON ET AL. *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 124 F. 3d 198.

No. 97–853. COWAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 116 F. 3d 1360.

No. 97–855. HARRIS ET AL. *v.* JOHNSON. Sup. Ct. Miss. Certiorari denied. Reported below: 705 So. 2d 819.

No. 97–856. GARCIA ET AL. *v.* REYES ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 698 So. 2d 257.

No. 97–860. OWNER-OPERATOR INDEPENDENT DRIVERS ASSN., INC., ET AL. *v.* BISSELL, MEMBER, TENNESSEE PUBLIC SERVICE COMMISSION, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 124 F. 3d 199.

No. 97–863. TAI ANH PHAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 121 F. 3d 149.

No. 97–874. SCHNEIDER *v.* GEORGE A. HORMEL & CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 125 F. 3d 852.

No. 97–875. KAYMARK *v.* BOLEY. C. A. 3d Cir. Certiorari denied. Reported below: 123 F. 3d 756.

No. 97–876. BIRGEL *v.* BOARD OF COMMISSIONERS OF BUTLER COUNTY, OHIO. C. A. 6th Cir. Certiorari denied. Reported below: 125 F. 3d 948.

No. 97–881. MARCHON EYEWEAR, INC., ET AL. *v.* TURA LP ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 112 F. 3d 1146.

No. 97–887. W. P. ET AL., INDIVIDUALLY AND AS REPRESENTATIVES OF A CLASS PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 23(a) AND 23(b)(2) *v.* VERNIERO, ATTORNEY GENERAL OF NEW JERSEY, ET AL.; and

No. 97–1074. VERNIERO, ATTORNEY GENERAL OF NEW JERSEY, ET AL. *v.* W. P. ET AL., INDIVIDUALLY AND AS REPRESENTATIVES OF A CLASS PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 23(a) AND 23(b)(2). C. A. 3d Cir. Certiorari denied. Reported below: 119 F. 3d 1077.

No. 97–901. MCLELAND *v.* SYNCOR INTERNATIONAL CORP. C. A. 4th Cir. Certiorari denied. Reported below: 120 F. 3d 262.

No. 97–906. BLANKENSHIP *v.* PARKE CARE CENTERS, INC., DBA BARBARA PARKE CONVALESCENT CENTER, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 123 F. 3d 868.

No. 97–915. AMBANC LA MESA LIMITED PARTNERSHIP *v.* LIBERTY NATIONAL ENTERPRISES. C. A. 9th Cir. Certiorari denied. Reported below: 115 F. 3d 650.

No. 97–916. ABROMSON ET AL. *v.* AMERICAN PACIFIC CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 114 F. 3d 898.

No. 97–919. VIDEO EXPRESS ET AL. *v.* OHIO EX REL. ECKSTEIN. Ct. App. Ohio, Fayette County. Certiorari denied. Reported below: 119 Ohio App. 3d 261, 695 N. E. 2d 38.

No. 97–922. PONDER ET UX. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 117 F. 3d 549.

No. 97–927. OLIVIERI *v.* RODRIGUEZ. C. A. 7th Cir. Certiorari denied. Reported below: 122 F. 3d 406.

No. 97–929. DEVINE ET AL. *v.* INDIAN RIVER COUNTY SCHOOL BOARD. C. A. 11th Cir. Certiorari denied. Reported below: 121 F. 3d 576.

No. 97–932. GUETERSLOH *v.* TEXAS ET AL. Ct. App. Tex., 3d Dist. Certiorari denied. Reported below: 930 S. W. 2d 284.

No. 97–940. SIMMONS *v.* WEBSTER COUNTY. Ct. App. Ga. Certiorari denied. Reported below: 225 Ga. App. 830, 485 S. E. 2d 501.

No. 97–942. ALTOSINO ET AL. *v.* WARRIOR & GULF NAVIGATION CO. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 121 F. 3d 1421.

No. 97–943. LOZANO *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY CO. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 97–944. CRADDOCK ET AL. *v.* CIRCUIT COURT OF VIRGINIA, PRINCE WILLIAM COUNTY. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 508.

No. 97–946. O'LEARY *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 122 F. 3d 1070.

No. 97–947. ALFIERI ET VIR *v.* M. F. SMITH & ASSOCIATES, INC., ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 97–948. JACK ECKERD CORP. *v.* SHANNON. C. A. 11th Cir. Certiorari denied. Reported below: 113 F. 3d 208.

No. 97–950. GRIER *v.* TITAN CORP. C. A. 4th Cir. Certiorari denied. Reported below: 121 F. 3d 698.

No. 97–955. DUNLAP *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 97–956. LUFTHANSA GERMAN AIRLINES *v.* KRYS ET UX. C. A. 11th Cir. Certiorari denied. Reported below: 119 F. 3d 1515.

No. 97–957. TOYS "R" US, INC., ET AL. *v.* YUSUF AHMED ALGHANIM & SONS, W. L. L. C. A. 2d Cir. Certiorari denied. Reported below: 126 F. 3d 15.

No. 97–958. ESTATE OF BLUE ET AL. *v.* LOS ANGELES COUNTY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 120 F. 3d 982.

No. 97–959. GUNN *v.* DEPARTMENT OF AGRICULTURE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 118 F. 3d 1233.

No. 97–961. CONDIT ET AL. *v.* HAMILTON COUNTY, OHIO, ET AL. Ct. App. Ohio, Hamilton County. Certiorari denied. Reported below: 118 Ohio App. 3d 384, 692 N. E. 2d 1081.

No. 97–962. SOLID WASTE TRANSFER & RECYCLING, INC. *v.* NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION ET AL. Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 299 N. J. Super. 577, 691 A. 2d 846.

No. 97–963. WISLAND *v.* ADMIRAL BEVERAGE CORP. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 119 F. 3d 733.

No. 97–966. CATERPILLAR INC. *v.* COMMISSIONER OF REVENUE OF MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 568 N. W. 2d 695.

No. 97–968. M/V IKAN SELAYANG ET AL. *v.* SOGEM-AFRIMET, INC. C. A. 2d Cir. Certiorari denied. Reported below: 122 F. 3d 1057.

No. 97–971. WURZBERGER *v.* VERMONT. Sup. Ct. Vt. Certiorari denied. Reported below: 167 Vt. 119, 702 A. 2d 105.

No. 97–972. DUKE, INDIVIDUALLY AND AS TRUSTEE FOR STRICKLAND, ET AL. *v.* MARSHALL & CO., INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 114 F. 3d 188.

No. 97–973. COCHRANE *v.* TUDOR OAKS LIMITED PARTNERSHIP. C. A. 8th Cir. Certiorari denied. Reported below: 124 F. 3d 978.

No. 97–974. DAVIS ET AL. *v.* EAST BATON ROUGE PARISH SCHOOL BOARD ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 127 F. 3d 34.

No. 97–975. EGUIZABAL *v.* WELLESLEY COLLEGE. C. A. 1st Cir. Certiorari denied.

No. 97–976. JONES *v.* COOPER INDUSTRIES, INC. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 938 S. W. 2d 118.

No. 97–979. CITY OF MOUNT VERNON ET AL. *v.* STONE. C. A. 2d Cir. Certiorari denied. Reported below: 118 F. 3d 92.

No. 97–980. OHIO *v.* HARPSTER. C. A. 6th Cir. Certiorari denied. Reported below: 128 F. 3d 322.

No. 97–981. ARLEAUX *v.* ARLEAUX. Ct. App. Iowa. Certiorari denied.

No. 97–987. RUSSELL ET AL. *v.* WILKINSON ET AL. C. A. 2d Cir. Certiorari denied.

No. 97–989. TIMMONS *v.* RAK REE ENTERPRISES, INC. Ct. Common Pleas, Pickaway County, Ohio. Certiorari denied.

No. 97–991. TUKES *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 97–992. AMERICAN CONSTITUTIONAL LAW FOUNDATION, INC., ET AL. *v.* BUCKLEY, SECRETARY OF STATE OF COLORADO. C. A. 10th Cir. Certiorari denied. Reported below: 120 F. 3d 1092.

No. 97–995. BROWNING-FERRIS, INC., ET AL. *v.* SUN CO., INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 124 F. 3d 1187.

No. 97–996. DEATON *v.* DEPARTMENT OF AGRICULTURE. C. A. Fed. Cir. Certiorari denied. Reported below: 124 F. 3d 227.

No. 97–997. REISS ET UX. *v.* CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 228 App. Div. 2d 59, 650 N. Y. S. 2d 480.

No. 97–1000. MCDONNELL DOUGLAS CORP. *v.* STAFFORD ET AL.; and MCDONNELL DOUGLAS CORP. *v.* SYKES. C. A. 9th Cir. Certiorari denied. Reported below: 106 F. 3d 409 (first judgment); 103 F. 3d 140 (second judgment).

No. 97–1001. WALDAU *v.* COUGHLIN ET AL. C. A. D. C. Cir. Certiorari denied.

No. 97–1002. KOBRIN *v.* UNIVERSITY OF MINNESOTA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 121 F. 3d 408.

No. 97–1003. ISBELL *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA (HERMAN, REAL PARTY IN INTEREST). C. A. 9th Cir. Certiorari denied.

No. 97–1007. FINN *v.* UNITED STATES;
No. 97–7036. PEMBERTON *v.* UNITED STATES; and
No. 97–7245. BROWN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 121 F. 3d 1157.

No. 97–1009. WALKUP, ATTORNEY GENERAL OF TENNESSEE, ET AL. *v.* BOARD OF COMMISSIONERS OF SHELBY COUNTY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 121 F. 3d 244.

No. 97–1010. BELL BROTHERS ET AL. *v.* BANK ONE, LAFAYETTE, N. A., FKA PURDUE NATIONAL BANK. C. A. 7th Cir. Certiorari denied. Reported below: 116 F. 3d 1158.

No. 97–1011. ZIMAN ET UX. *v.* NEW YORK ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 235 App. Div. 2d 369, 653 N. Y. S. 2d 17.

No. 97–1013. O'LEARY *v.* ROMAN CATHOLIC CHURCH OF SACRAMENTO ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–1016. REMUS, TRUSTEE FOR SUPERIOR METAL SHREDDERS, INC. *v.* CITY OF KALAMAZOO. C. A. 6th Cir. Certiorari denied. Reported below: 125 F. 3d 856.

No. 97–1017. MOULTON *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 47 M. J. 227.

No. 97–1019. O'CONNOR *v.* DAVIS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 126 F. 3d 112.

No. 97–1021. EVANGELISTA ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 122 F. 3d 112.

No. 97–1022. HALE, PRESIDENT OF THE NAVAJO NATION, ET AL. *v.* SECAKUKU, CHAIRMAN OF THE HOPI TRIBAL COUNCIL, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 118 F. 3d 1371.

No. 97–1026. BUSH *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 47 M. J. 305.

No. 97–1027. CABRAL *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 47 M. J. 268.

No. 97–1029. LINDGREN *v.* ANDERSON. C. A. 9th Cir. Certiorari denied. Reported below: 114 F. 3d 1193.

No. 97–1030. LPP CLAIMANTS *v.* CONTINENTAL AIRLINES; and No. 97–1036. FORMER EASTERN PILOTS GRANTED THE RIGHT TO SUBSTITUTE COUNSEL *v.* CONTINENTAL AIRLINES. C. A. 3d Cir. Certiorari denied. Reported below: 125 F. 3d 120.

No. 97–1031. TSIPOURAS *v.* MINNESOTA. Ct. App. Minn. Certiorari denied. Reported below: 567 N. W. 2d 271.

No. 97–1034. CARPENTER *v.* ISRAEL ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 120 F. 3d 361.

No. 97–1037. MAXWELL *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 97–1038. EVANS COOLING SYSTEMS, INC., ET AL. *v.* GENERAL MOTORS CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 125 F. 3d 1448.

No. 97–1043. JOHNSON *v.* BAYLOR UNIVERSITY. C. A. 5th Cir. Certiorari denied. Reported below: 129 F. 3d 607.

No. 97–1044. FOREMAN *v.* BABCOCK & WILCOX CO. C. A. 5th Cir. Certiorari denied. Reported below: 117 F. 3d 800.

No. 97–1045. GALIETTE *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 46 Conn. App. 63, 698 A. 2d 336.

No. 97–1046. MCDONALD *v.* ST. LOUIS SOUTHWESTERN RAILROAD. C. A. 8th Cir. Certiorari denied. Reported below: 124 F. 3d 208.

No. 97–1047. UNITED STATES ET AL. *v.* VALLEY BROADCASTING CO., DBA KVBC (TV), CHANNEL 13, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 1328.

No. 97–1049. LYNN ET AL. *v.* MURPHY. C. A. 2d Cir. Certiorari denied. Reported below: 118 F. 3d 938.

No. 97–1050. WITHAM *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 47 M. J. 297.

No. 97–1051. SMITH ET AL. *v.* HARRIS. C. A. 9th Cir. Certiorari denied. Reported below: 126 F. 3d 1189.

No. 97–1059. SANDERSON *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 129 F. 3d 134.

No. 97–1065. MARTIN *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied.

No. 97–1066. SUPER YOUNG INDUSTRIES *v.* PACIFIC EMPLOYERS INSURANCE CO. ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 97–1068. GASS ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 10th Cir. Certiorari denied. Reported below: 125 F. 3d 861.

No. 97–1070. WESTINGHOUSE ELECTRIC CORP. *v.* RYDER. C. A. 3d Cir. Certiorari denied. Reported below: 128 F. 3d 128.

No. 97–1076. AMERICAN RELOCATION NETWORK INTERNATIONAL, INC. *v.* WAL-MART STORES, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 121 F. 3d 707.

No. 97–1077. KIRK, ADMINISTRATRIX OF THE ESTATE OF KIRK *v.* DELAWARE COUNTY SHERIFF'S DEPARTMENT ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 124 F. 3d 198.

No. 97–1079. STALLWORTH *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 717 So. 2d 896.

No. 97–1081. PINCHER *v.* ROCKWELL INTERNATIONAL CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 488.

No. 97–1082. ESTATE OF PHILLIPS ET AL. *v.* CITY OF MILWAUKEE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 123 F. 3d 586.

No. 97–1084. GEORGE, INDIVIDUALLY AND AS NEXT FRIEND AND NATURAL GUARDIAN OF GEORGE ET AL., MINORS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 116 F. 3d 484.

No. 97–1085. COMMERCE BANK, N. A. *v.* DIMARIA CONSTRUCTION, INC. Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 300 N. J. Super. 9, 692 A. 2d 54.

No. 97–1086. ORAND ET AL. *v.* ADAMS ET AL. C. A. 5th Cir. Certiorari denied.

No. 97–1089. MUNDAY *v.* WASTE MANAGEMENT OF NORTH AMERICA, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 126 F. 3d 239.

No. 97–1090. NATIONAL UNION FIRE INSURANCE CO. ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 115 F. 3d 1415.

No. 97–1093. SHIFMAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 124 F. 3d 31.

No. 97–1094. CASEY *v.* FLORIDA. Cir. Ct. Palm Beach County, Fla. Certiorari denied.

No. 97–1097. THE CORNER POCKET OF SIOUX FALLS, INC., ET AL. *v.* POWERHOUSE TECHNOLOGIES, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 123 F. 3d 1107.

No. 97–1102. CULLEN *v.* GIBSON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 124 F. 3d 197.

No. 97–1106. HEYLIGER *v.* STATE UNIVERSITY AND COMMUNITY COLLEGE SYSTEM OF TENNESSEE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 126 F. 3d 849.

No. 97–1108. NASH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 115 F. 3d 1431.

No. 97–1111. CHAN *v.* WODNICKI, INDIVIDUALLY AND IN HIS FORMER CAPACITY AS DEPUTY SUPERINTENDENT OF THE CHICAGO POLICE DEPARTMENT. C. A. 7th Cir. Certiorari denied. Reported below: 123 F. 3d 1005.

No. 97–1114. LUGO *v.* PRUNTY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 121 F. 3d 716.

No. 97–1120. CANFIELD *v.* VAN ATTA BUICK/GMC TRUCK, INC. C. A. 2d Cir. Certiorari denied. Reported below: 127 F. 3d 248.

No. 97–1122. SMITH *v.* OREGON STATE BAR. Ct. App. Ore. Certiorari denied. Reported below: 149 Ore. App. 171, 942 P. 2d 793.

No. 97–1123. ROOTS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 124 F. 3d 218.

No. 97–1124. KLEINSCHMIDT INC. ET AL. *v.* COOK COUNTY, ILLINOIS, ET AL. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 287 Ill. App. 3d 312, 678 N. E. 2d 1065.

No. 97–1126. CAPITAL COMMUNICATIONS FEDERAL CREDIT UNION *v.* BOODROW. C. A. 2d Cir. Certiorari denied. Reported below: 126 F. 3d 43.

No. 97–1129. GREEN *v.* GERBER PRODUCTS CO. C. A. Fed. Cir. Certiorari denied. Reported below: 121 F. 3d 728.

No. 97–1131. CRAWFORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 121 F. 3d 700.

No. 97–1135. KNOLL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 116 F. 3d 994.

No. 97–1136. FARRISH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 122 F. 3d 146.

No. 97–1143. IN RE RICHARDSON. Ct. App. D. C. Certiorari denied. Reported below: 692 A. 2d 427.

No. 97–1146. PRIBBLE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 127 F. 3d 583.

No. 97–1154. FRITZ *v.* BOND ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 129 F. 3d 1254.

No. 97–1156. MOLINARY, TRUSTEE OF THE SUSAN PRUITT CLOUD LAND TRUST *v.* POWELL MOUNTAIN COAL CO., INC., DBA WAX COAL CO. C. A. 4th Cir. Certiorari denied. Reported below: 125 F. 3d 231.

No. 97–1162. SHARP *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 117 F. 3d 1432.

No. 97–1166. MCCASKILL *v.* WEST, SECRETARY OF THE ARMY. C. A. 10th Cir. Certiorari denied. Reported below: 124 F. 3d 217.

No. 97–1167. REINER ET AL. *v.* SIKORA ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 124 F. 3d 199.

No. 97–1169. AZIZ *v.* SLATER, SECRETARY OF TRANSPORTATION. C. A. D. C. Cir. Certiorari denied.

No. 97–1170. TT TELEFILM, GMBH & CO. *v.* THE MOVIE GROUP, INC., ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 97–1174. BIGSBY *v.* RUNYON, POSTMASTER GENERAL, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 129 F. 3d 610.

No. 97–1176. FLUOR CORP. AND AFFILIATES *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 126 F. 3d 1397.

No. 97–1185. STROTHER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 129 F. 3d 114.

No. 97–1215. FUENTES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 129 F. 3d 615.

No. 97–1224. SELTZER *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 7th Cir. Certiorari denied. Reported below: 124 F. 3d 205.

No. 97–1225. VEST, DBA DOCTORS CLINIC *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 116 F. 3d 1179.

No. 97–1227. MAGALLON ET AL. *v.* UNITED STATES; and
No. 97–7603. GONZALES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 124 F. 3d 214.

No. 97–6220. WHREN *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 111 F. 3d 956.

No. 97–6382. JACKSON *v.* ANDERSON, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied. Reported below: 112 F. 3d 823.

No. 97–6457. MORTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 117 F. 3d 1426.

No. 97–6505. PHIPPS ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 124 F. 3d 200.

No. 97–6518. IGBONWA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 120 F. 3d 437.

No. 97–6610. BISHOP *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 268 Ga. 286, 486 S. E. 2d 887.

No. 97–6641. PEOPLES *v.* UNITED STATES; and
No. 97–6667. GREEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 119 F. 3d 1176.

No. 97–6669. VAN CLEAVE *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 674 N. E. 2d 1293.

No. 97–6689. NOSKE *v.* UNITED STATES; and
No. 97–6781. NOSKE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 117 F. 3d 1053.

No. 97–6699. BAKR *v.* JOHNSON, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 121 F. 3d 707.

No. 97–6703. SPREITZER *v.* PETERS, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 114 F. 3d 1435.

No. 97–6706. JOZAITIS *v.* FORT DEARBORN LIFE INSURANCE CO. C. A. 8th Cir. Certiorari denied. Reported below: 117 F. 3d 1422.

No. 97–6750. ATUAHENE *v.* NEW JERSEY DEPARTMENT OF TRANSPORTATION. C. A. 3d Cir. Certiorari denied. Reported below: 127 F. 3d 1094.

No. 97–6760. SHABAZZ *v.* GABRY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 123 F. 3d 909.

No. 97–6761. RECTOR *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 120 F. 3d 551.

No. 97–6779. STAFFORD *v.* FULTON-DEKALB HOSPITAL AUTHORITY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 120 F. 3d 273.

No. 97–6783. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 124 F. 3d 200.

No. 97–6806. MITCHELL *v.* REES, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 114 F. 3d 571.

No. 97–6810. CAREY ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 120 F. 3d 509.

No. 97–6858. MCCULLOUGH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 129 F. 3d 608.

No. 97–6908. STERBENZ *v.* CITY OF ORMOND BEACH ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 120 F. 3d 274.

No. 97–6932. JOHNSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 696 So. 2d 317.

No. 97–6933. MCCARTHY *v.* AYERS. C. A. 2d Cir. Certiorari denied.

No. 97–6934. RIEGER *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied.

No. 97–6940. BURNS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 699 So. 2d 646.

No. 97–6954. JOHNSON *v.* KALOKATHIS. Sup. Ct. Wyo. Certiorari denied.

No. 97–6955. IVY *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 122 F. 3d 675.

No. 97–6964. LOWE *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 698 So. 2d 857.

No. 97–6965. JAMERSON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 97–6972. GOCHICOA *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 118 F. 3d 440.

No. 97–6979. WEATHERSPOON *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 97–6980. YOUNG *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS. C. A. 5th Cir. Certiorari denied.

No. 97–6983. EDWARDS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 232 App. Div. 2d 342, 649 N. Y. S. 2d 408.

No. 97–6991. CARSON *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 97–6994. BURGESS *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–6995. BAAH *v.* BOARD OF TRUSTEES OF CALIFORNIA STATE UNIVERSITY. C. A. 9th Cir. Certiorari denied. Reported below: 122 F. 3d 1069.

No. 97–6997. ROCHON *v.* BLACKBURN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 97–7000. LAMBRIX *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 698 So. 2d 247.

No. 97–7001. WELLS *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 698 So. 2d 497.

No. 97–7009. JOHNSON *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–7010. LORD *v.* LORD. App. Ct. Conn. Certiorari denied. Reported below: 44 Conn. App. 370, 689 A. 2d 509.

No. 97–7011. MURPHY *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 97–7014. BLESSING *v.* BLESSING. Ct. App. Ohio, Ottawa County. Certiorari denied.

No. 97–7016. WHITFIELD *v.* TEXAS (three judgments). Ct. Crim. App. Tex. Certiorari denied.

No. 97–7017. RAIA *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 97–7018. RICHMOND *v.* EMBRY, SUPERINTENDENT, FREMONT CORRECTIONAL FACILITY. C. A. 10th Cir. Certiorari denied. Reported below: 122 F. 3d 866.

No. 97–7019. PARKER *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 952 S. W. 2d 209.

No. 97–7021. GUADAGNO *v.* WALLACK ADER LEVITHAN ASSOCIATES. C. A. 2d Cir. Certiorari denied. Reported below: 125 F. 3d 844.

No. 97–7023. DOE *v.* PATAKI, GOVERNOR OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 120 F. 3d 1263.

No. 97–7025. GILMOUR *v.* ROGERSON, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 117 F. 3d 368.

No. 97–7026. ERWIN *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 55 Cal. App. 4th 15, 63 Cal. Rptr. 2d 617.

No. 97–7040. WILLIAMS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 97–7044. BELL *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 699 So. 2d 674.

No. 97–7047. LANE *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 956 S. W. 2d 874.

No. 97–7048. LOMAX *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI. C. A. 8th Cir. Certiorari denied.

No. 97–7053. LARSON *v.* COURT OF CRIMINAL APPEALS OF TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 97–7054. SMITH *v.* WOLF ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 111 F. 3d 127.

No. 97–7059. MASTRACCHIO *v.* VOSE, DIRECTOR, RHODE ISLAND DEPARTMENT OF CORRECTIONS. Sup. Ct. R. I. Certiorari denied. Reported below: 698 A. 2d 706.

No. 97–7062. LAWRENCE *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 699 So. 2d 1374.

No. 97–7068. HEIM *v.* NEBRASKA ET AL. C. A. 8th Cir. Certiorari denied.

No. 97–7071. HUALDE-REDIN *v.* ROYAL BANK OF PUERTO RICO ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 111 F. 3d 122.

No. 97–7072. RODRIGUEZ *v.* O'KEEFE, WARDEN. C. A. 2d Cir. Certiorari denied. Reported below: 122 F. 3d 1057.

No. 97–7075. RICHARDSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 286 Ill. App. 3d 1123, 709 N. E. 2d 1011.

No. 97–7076. RANDALL *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–7079. HISHAW *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 97–7081. HAM *v.* SNIDER. C. A. D. C. Cir. Certiorari denied.

No. 97–7083. GREENE *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–7084. DIGGS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 454 Pa. Super. 702, 685 A. 2d 1041.

No. 97–7085. HICKS *v.* POLUNSKY ET AL. C. A. 5th Cir. Certiorari denied.

No. 97–7087. FOOTMAN *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 107 F. 3d 24.

No. 97–7088. PHILLIPS *v.* GOBER, ACTING SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 132 F. 3d 53.

No. 97–7091. RAMON FONTES *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–7092. GILBERT *v.* COLLIER ET AL. C. A. 11th Cir. Certiorari denied.

No. 97–7097. HAMILTON *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 699 So. 2d 29.

No. 97–7098. EDWARDS *v.* CITY OF MANCHESTER, NEW HAMPSHIRE, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 121 F. 3d 695.

No. 97–7106. YOUNG *v.* MURRAY ET AL. Commw. Ct. Pa. Certiorari denied. Reported below: 692 A. 2d 1192.

No. 97–7108. ISREAL *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 125 F. 3d 837.

No. 97–7110. GATTIS *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 697 A. 2d 1174.

No. 97–7112. SIMS *v.* AMUNDSON ET AL. C. A. 10th Cir. Certiorari denied.

No. 97–7113. FABIAN *v.* JUSTO ET AL. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 698 So. 2d 919.

No. 97–7114. DIXON *v.* MARION POLICE DEPARTMENT ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 114 F. 3d 1191.

No. 97–7115. HAMMON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 15 Cal. 4th 1117, 938 P. 2d 986.

No. 97–7124. THOMPSON *v.* NAGLE, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 118 F. 3d 1442.

No. 97–7127. GONZALES SAMAYOA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 15 Cal. 4th 795, 938 P. 2d 2.

No. 97–7128. SIMMONS *v.* MEFFORD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 122 F. 3d 1073.

No. 97–7130. STEWART *v.* HOFFMAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 122 F. 3d 1073.

No. 97–7133. STRINGER *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 97–7139. NEAL *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 346 N. C. 608, 487 S. E. 2d 734.

No. 97–7141. JOHNSON *v.* RENDELL ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–7142. ZAWODNIAK *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 329 Ark. 179, 946 S. W. 2d 936.

No. 97–7143. TIMMONS *v.* ROE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 97–7144. TURK *v.* WHITE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 106 F. 3d 409 and 116 F. 3d 1264.

No. 97–7145. TAMEZ *v.* CITY OF SAN MARCOS, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 118 F. 3d 1085.

No. 97–7147. BRADFORD *v.* LOUISIANA STATE UNIVERSITY MEDICAL CENTER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 129 F. 3d 606.

No. 97–7149. BROWN *v.* VIRGINIA. Ct. App. Va. Certiorari denied. Reported below: 24 Va. App. 1, 480 S. E. 2d 112.

No. 97–7151. LEWIS *v.* GOBER, ACTING SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 16 F. 3d 419.

No. 97–7152. ISELEY *v.* PENNSYLVANIA DEPARTMENT OF CORRECTIONS ET AL. Sup. Ct. Pa. Certiorari denied.

No. 97–7158. HOLDEN *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 346 N. C. 404, 488 S. E. 2d 514.

No. 97–7167. SEDIVY *v.* NEBRASKA. Ct. App. Neb. Certiorari denied. Reported below: 5 Neb. App. 745, 567 N. W. 2d 784.

No. 97–7168. SMITH *v.* DAVIDSON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 127 F. 3d 40.

No. 97–7169. MCDONALD *v.* MAZURKIEWICZ, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–7172. LOCKHART *v.* MUNICIPAL COURT OF TACOMA, WASHINGTON, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 119 F. 3d 6.

No. 97–7174. OWEN *v.* WILLE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 117 F. 3d 1235.

No. 97–7175. BRANSON *v.* MARTIN ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 56 Cal. App. 4th 300, 65 Cal. Rptr. 2d 401.

No. 97–7176. BRYANT *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 116 F. 3d 1477.

No. 97–7177. RICHARDS *v.* ILLINOIS HUMAN RIGHTS COMMISSION ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 287 Ill. App. 3d 1118, 710 N. E. 2d 572.

No. 97–7178. SPRUNK *v.* ROWE ET AL. Ct. App. Ariz. Certiorari denied.

No. 97–7181. AMIRI *v.* ROLEX WATCH U. S. A., INC. C. A. D. C. Cir. Certiorari denied. Reported below: 132 F. 3d 1480.

No. 97–7182. CALHOUN *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 147 Ore. App. 243, 933 P. 2d 986.

No. 97–7183. VARGAS *v.* RAY, CHAIRMAN, GEORGIA BOARD OF PARDONS AND PAROLES, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 132 F. 3d 47.

No. 97–7184. CROSS *v.* CITY OF COLUMBIA, MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied.

No. 97–7185. CONYERS *v.* LOS ANGELES POLICE DEPARTMENT. C. A. 6th Cir. Certiorari denied.

No. 97–7186. CURIALE *v.* GRAHAM, ATTORNEY GENERAL OF UTAH, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 124 F. 3d 216.

No. 97–7188. DAVIS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 698 So. 2d 1182.

No. 97–7189. DALE *v.* SUPERIOR COURT OF CALIFORNIA, SAN LUIS OBISPO COUNTY (two judgments). Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 97–7190. DOMBROWSKI *v.* CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 116 F. 3d 465.

No. 97–7192. GIBBS *v.* ANDERSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–7194. BAADE *v.* COLUMBIA HOSPITAL FOR WOMEN ET AL. C. A. D. C. Cir. Certiorari denied.

No. 97–7195. HARTLINE *v.* PIMA COUNTY SHERIFF'S DEPARTMENT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 122 F. 3d 1071.

No. 97–7196. GIVENS *v.* ROE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 122 F. 3d 1071.

No. 97–7197. CALLAHAN *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 97–7198. BROWN *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 124 F. 3d 73.

No. 97–7199. STRETTON *v.* ROSS ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 97–7206. MICHAU *v.* LEE ET AL.; and MICHAU *v.* KINARD ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 114 F. 3d 1176.

No. 97–7208. MCCOY *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 97–7210. PALMER *v.* BELL ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 124 F. 3d 204.

No. 97–7212. KAMARA *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 4th Cir. Certiorari denied. Reported below: 120 F. 3d 261.

No. 97–7214. DENNIS *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 79 Ohio St. 3d 421, 683 N. E. 2d 1096.

No. 97–7215. REED *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 97–7220. PALM *v.* CITY OF LITTLETON, COLORADO. Ct. App. Colo. Certiorari denied.

No. 97–7223. PHAGAN *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 268 Ga. 272, 486 S. E. 2d 876.

No. 97–7224. BENTLEY *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 241 App. Div. 2d 984, 661 N. Y. S. 2d 689.

No. 97–7225. MAGEE *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 97–7228. KONSTANTOPOULOS ET AL. *v.* WESVACO CORP. C. A. 3d Cir. Certiorari denied. Reported below: 112 F. 3d 710.

No. 97–7229. FELLER *v.* HOFBAUER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–7235. SLINEY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 699 So. 2d 662.

No. 97–7238. OWENS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 286 Ill. App. 3d 1122, 709 N. E. 2d 1011.

No. 97–7239. WHITEHEAD *v.* TENET, DIRECTOR OF CENTRAL INTELLIGENCE. C. A. D. C. Cir. Certiorari denied.

No. 97–7240. THOMASON *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 268 Ga. 298, 486 S. E. 2d 861.

No. 97–7243. BAGLEY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 134 F. 3d 366.

No. 97–7246. TERIO *v.* TERIO. Ct. App. N. Y. Certiorari denied. Reported below: 90 N. Y. 2d 935, 686 N. E. 2d 1368.

No. 97–7247. WRIGHT *v.* MCANINCH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 97–7254. HESS ET AL. *v.* SCHLUNTZ. Ct. App. Neb. Certiorari denied. Reported below: 5 Neb. App. xxxvii.

No. 97–7255. FANNIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 127 F. 3d 38.

No. 97–7256. WHITE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 117 F. 3d 1431.

No. 97–7260. HENDERSON *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 118 F. 3d 1283.

No. 97–7262. SIMMONS *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 955 S. W. 2d 729.

No. 97–7263. SIMMONS *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 955 S. W. 2d 752.

No. 97–7268. MENKE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 125 F. 3d 859.

No. 97–7269. SANTOS-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 125 F. 3d 860.

No. 97–7270. ROYAL *v.* BARBO, ADMINISTRATOR, NORTHERN STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–7271. SOTO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 121 F. 3d 721.

No. 97–7272. POWELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 124 F. 3d 655.

No. 97–7274. KING *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 127 F. 3d 483.

No. 97–7277. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 121 F. 3d 700.

No. 97–7279. LYONS *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 951 S. W. 2d 584.

No. 97–7280. NELSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 117 F. 3d 1430.

No. 97–7281. HELTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 127 F. 3d 819.

No. 97–7282. FALLS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 117 F. 3d 1075.

No. 97–7284. AMAYA-RUIZ *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTION. C. A. 9th Cir. Certiorari denied. Reported below: 121 F. 3d 486.

No. 97–7285. WEIR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 114 F. 3d 1201.

No. 97–7286. CONYERS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 132 F. 3d 1482.

No. 97–7289. WOODSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 125 F. 3d 850.

No. 97–7290. TAYLOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 127 F. 3d 1108.

No. 97–7291. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 125 F. 3d 852.

No. 97–7292. WATSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 124 F. 3d 201.

No. 97–7294. HALL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 124 F. 3d 1298.

No. 97–7295. HOWARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 128 F. 3d 732.

No. 97–7296. GONZALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 121 F. 3d 928.

No. 97–7297. NURU *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 127 F. 3d 38.

No. 97–7299. LOSOYA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 127 F. 3d 1107.

No. 97–7301. DORSEY *v.* RUTHERFORD COUNTY, NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 121 F. 3d 698.

No. 97–7302. SOTO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 121 F. 3d 721.

No. 97–7305. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 124 F. 3d 193.

No. 97–7306. PINTO *v.* STINSON, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 129 F. 3d 114.

No. 97–7307. ODANUYI *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 287 Ill. App. 3d 1114, 710 N. E. 2d 570.

No. 97–7308. WEINTRAUB *v.* APFEL, COMMISSIONER OF SOCIAL SECURITY. C. A. 2d Cir. Certiorari denied. Reported below: 125 F. 3d 846.

No. 97–7309. TABRON *v.* HOOD, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 121 F. 3d 717.

No. 97–7312. LEISINGER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 122 F. 3d 605.

No. 97–7313. O'DNEAL *v.* ROBERTS, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY, ET AL. C. A. 5th Cir. Certiorari denied.

No. 97–7314. ZAMBRANO *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 116 F. 3d 1498.

No. 97–7315. WINBUSH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 124 F. 3d 201.

No. 97–7316. WILSON *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 285 Ill. App. 3d 1104, 709 N. E. 2d 317.

No. 97–7317. STEHLIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 122 F. 3d 1078.

No. 97–7321. SPURLOCK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 121 F. 3d 701.

No. 97–7322. ORTIZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 125 F. 3d 630.

No. 97–7323. SOMMERS *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 97–7324. QUILCA-CARPO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 118 F. 3d 719.

No. 97–7325. SCHIFFLET *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 97–7326. MORRISON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 125 F. 3d 856.

No. 97–7328. KEMMISH *v.* UNITED STATES (two judgments). C. A. 9th Cir. Certiorari denied. Reported below: 120 F. 3d 937.

No. 97–7329. KESELICA *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 97–7330. LOVELACE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 123 F. 3d 650.

No. 97–7335. TILLI *v.* SMITH ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 129 F. 3d 1256.

No. 97–7336. NEWTON *v.* MOTEN. C. A. 10th Cir. Certiorari denied. Reported below: 124 F. 3d 217.

No. 97–7341. RITZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 125 F. 3d 864.

No. 97–7343. POMPEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 121 F. 3d 381.

No. 97–7344. ALVAREZ SOTOPAZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 131 F. 3d 150.

No. 97–7345. SIMON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 286 Ill. App. 3d 1124, 709 N. E. 2d 1012.

No. 97–7346. BAGGETT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 129 F. 3d 128.

No. 97–7349. SANDERS *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 702 A. 2d 927.

No. 97–7352. CALDERON-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 124 F. 3d 213.

No. 97–7355. ARTERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 121 F. 3d 1256.

No. 97–7356. CORROW *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 119 F. 3d 796.

No. 97–7357. WILKINSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 124 F. 3d 971.

No. 97–7359. CLARK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 112 F. 3d 510.

No. 97–7361. MITCHELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 97–7367. NOA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 127 F. 3d 1314.

No. 97–7371. HOOVER *v.* LEONARDO, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 97–7372. DUMBRIQUE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 95 F. 3d 1159.

No. 97–7374. FLANAGAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 123 F. 3d 83.

No. 97–7375. GOMEZ-PELAYO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 127 F. 3d 1107.

No. 97–7376. HILTON *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 45 Conn. App. 207, 694 A. 2d 830.

No. 97–7377. FERGUSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 125 F. 3d 1115.

No. 97–7378. HEWLETT *v.* CORBETT, ATTORNEY GENERAL OF PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied.

No. 97–7380. FERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 122 F. 3d 1074.

No. 97–7381. FUENTES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 113 F. 3d 1249.

No. 97–7383. GASTER *v.* MCKIE, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 122 F. 3d 1061.

No. 97–7392. STOKES *v.* ANDERSON, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied. Reported below: 123 F. 3d 858.

No. 97–7396. BETHEA *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 126 F. 3d 124.

No. 97–7397. CANADY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 126 F. 3d 352.

No. 97–7400. WEST *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 125 F. 3d 856.

No. 97–7403. BOOZE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 108 F. 3d 378.

No. 97–7406. MARINO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 125 F. 3d 845.

No. 97–7407. NAVEO-MORCELLO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 132 F. 3d 31.

No. 97–7408. MARTIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 127 F. 3d 669.

No. 97–7409. TODD *v.* HAWK, DIRECTOR, FEDERAL BUREAU OF PRISONS, ET AL. C. A. 5th Cir. Certiorari denied.

No. 97–7413. HERNANDEZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 953 S. W. 2d 275.

No. 97–7414. GOLDEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 120 F. 3d 263.

No. 97–7415. GUTIERREZ-MORAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 125 F. 3d 863.

No. 97–7416. EDDS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 129 F. 3d 612.

No. 97–7419. GREGORY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 125 F. 3d 856.

No. 97–7423. MOORE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 122 F. 3d 1154.

No. 97–7424. JACKSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 97–7425. RAMOS-OSEGUERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 120 F. 3d 1028.

No. 97–7428. FLOWERS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 347 N. C. 1, 489 S. E. 2d 391.

No. 97–7433. STUTSON *v.* UNITED STATES (two judgments). C. A. 11th Cir. Certiorari denied. Reported below: 128 F. 3d 733 (first judgment); 127 F. 3d 37 (second judgment).

No. 97–7436. CONARD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 124 F. 3d 200.

No. 97–7437. BLAGOUE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 117 F. 3d 1431.

No. 97–7438. MARKS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 125 F. 3d 863.

No. 97–7439. CHI-CHEONG LI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 115 F. 3d 874.

No. 97–7440. JONES *v.* BERNSTEIN. C. A. 3d Cir. Certiorari denied. Reported below: 129 F. 3d 1255.

No. 97–7442. LHERISSON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 132 F. 3d 31.

No. 97–7443. LAMPKIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 129 F. 3d 615.

No. 97–7444. MONTGOMERY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 124 F. 3d 206.

No. 97–7445. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 124 F. 3d 209.

No. 97–7446. NICHOLS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 124 F. 3d 1265.

No. 97–7447. ROBINSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 125 F. 3d 860.

No. 97–7449. RICKS *v.* THOMAS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 125 F. 3d 848.

No. 97–7450. SMYKALSKI *v.* STENDER, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 129 F. 3d 122.

No. 97–7453. BABILONIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 120 F. 3d 274.

No. 97–7454. KELSEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 121 F. 3d 718.

No. 97–7455. ROBERTSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 699 So. 2d 1343.

No. 97–7456. BARRY *v.* BERGEN COUNTY PROBATION DEPARTMENT ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 128 F. 3d 152.

No. 97–7460. SCOTT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 108 F. 3d 1380.

No. 97–7461. RINCON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 97–7462. CHAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 125 F. 3d 849.

No. 97–7463. BLUM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 97–7464. BEAMON *v.* MARYLAND. C. A. 4th Cir. Certiorari denied. Reported below: 125 F. 3d 847.

No. 97–7466. SWEET *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 132 F. 3d 1454.

No. 97–7468. CANTLEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 130 F. 3d 1371.

No. 97–7469. CLYMER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 97–7471. WHITAKER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 127 F. 3d 595.

No. 97–7473. LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 108 F. 3d 339.

No. 97–7477. LAMPLEY *v.* UNITED STATES; and
No. 97–7554. LAMPLEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 127 F. 3d 1231.

No. 97–7481. ABBONDANZO *v.* AUTOMATIC SWITCH CO. C. A. 3d Cir. Certiorari denied. Reported below: 135 F. 3d 763.

No. 97–7486. MAYO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 127 F. 3d 1100.

No. 97–7490. BOWERS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 289 Ill. App. 3d 1132, 713 N. E. 2d 830.

No. 97–7491. CATER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 119 F. 3d 11.

No. 97–7494. GROSS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 133 F. 3d 911.

No. 97–7495. GONZALEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 127 F. 3d 1097.

No. 97–7496. GAMBLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 122 F. 3d 1074.

No. 97–7497. HINDS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 125 F. 3d 849.

No. 97–7498. DOE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 125 F. 3d 1249.

No. 97–7501. FRANCO-RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 122 F. 3d 1074.

No. 97–7502. PELLEGRINO *v.* SOUTH DAKOTA ET AL. C. A. 8th Cir. Certiorari denied.

No. 97–7503. JOHN DOE #1 *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 97–7507. GEORGE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 127 F. 3d 1107.

No. 97–7516. STRABLE *v.* SOUTH CAROLINA DEPARTMENT OF JUSTICE. C. A. 4th Cir. Certiorari denied. Reported below: 121 F. 3d 700.

No. 97–7517. BARNER *v.* BENSON, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 97–7523. BLOUNT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 123 F. 3d 831.

No. 97–7524. CASS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 127 F. 3d 1218.

No. 97–7525. THOMPSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 97–7527. SLAUGHTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 129 F. 3d 616.

No. 97–7528. PETROSIAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 126 F. 3d 1232.

No. 97–7530. OLIVIERI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 100 F. 3d 284.

No. 97–7538. JOSEPH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 129 F. 3d 612.

No. 97–7539. NOIL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 129 F. 3d 612.

No. 97–7540. Loza-Romero *v.* United States; and
No. 97–7622. Contreras Rodriguez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 122 F. 3d 1075.

No. 97–7545. Armstrong *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 127 F. 3d 1107.

No. 97–7546. Stokes *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 124 F. 3d 39.

No. 97–7548. Sparks *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 127 F. 3d 1108.

No. 97–7549. Love *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 125 F. 3d 856.

No. 97–7550. Meza *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 127 F. 3d 545.

No. 97–7551. Neal *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 127 F. 3d 1100.

No. 97–7555. Tobon *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 133 F. 3d 908.

No. 97–7556. White *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 129 F. 3d 115.

No. 97–7557. Naidas *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 127 F. 3d 1103.

No. 97–7559. Silva *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 129 F. 3d 128.

No. 97–7563. Scott *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 127 F. 3d 1107.

No. 97–7564. Ortiz *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 136 F. 3d 882.

No. 97–7566. Robinson *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 119 F. 3d 1205.

No. 97–7567. Owens *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 129 F. 3d 611.

No. 97–7575. Magana *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 118 F. 3d 1173.

No. 97–7579. CELESTINE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 127 F. 3d 1107.

No. 97–7580. TARIQ A-R Y *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 347 Md. 484, 701 A. 2d 691.

No. 97–7581. VALLES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 129 F. 3d 611.

No. 97–7586. JAMES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 129 F. 3d 1268.

No. 97–7592. WATKINSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 130 F. 3d 443.

No. 97–7593. TARBOX *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 129 F. 3d 1253.

No. 97–7596. LARSEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 127 F. 3d 984.

No. 97–7598. NETTER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 124 F. 3d 209.

No. 97–7599. LITTLE, AKA FRANKLIN, ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 122 F. 3d 1064.

No. 97–7600. HALEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 129 F. 3d 612.

No. 97–7602. HALL ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 116 F. 3d 1253.

No. 97–7607. FLORES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 129 F. 3d 611.

No. 97–7610. HAAKE *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 119 F. 3d 10.

No. 97–7612. THONG VANG *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 128 F. 3d 1065.

No. 97–7618. NATHAN J. (JUVENILE) *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 127 F. 3d 1110.

No. 97–7619. KING *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 129 F. 3d 612.

No. 97–7620. LOCKRIDGE *v.* UNITED STATES POSTAL SERVICE. C. A. Fed. Cir. Certiorari denied. Reported below: 121 F. 3d 727.

No. 97–7621. COLLINS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 133 F. 3d 912.

No. 97–7623. WESTINE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 97–7624. WALKER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 129 F. 3d 1266.

No. 97–7625. WATSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 97–7627. PECINA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 129 F. 3d 607.

No. 97–7628. MCGILL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 125 F. 3d 642.

No. 97–7631. MCNEAIR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 127 F. 3d 1100.

No. 97–7632. MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 129 F. 3d 607.

No. 97–7636. RODRIGUEZ-VASQUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 127 F. 3d 1108.

No. 97–7637. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 132 F. 3d 1460.

No. 97–7639. PICCOLO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 129 F. 3d 1257.

No. 97–7640. BUSH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 126 F. 3d 1298.

No. 97–7643. BALLAM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 131 F. 3d 148.

No. 97–7645. BARRETT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 127 F. 3d 1107.

No. 97–7651. SMITH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 131 F. 3d 1392.

No. 97–7653. DEWBRE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 119 F. 3d 7.

No. 97–7665. PALMA RUEDAS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 121 F. 3d 841.

No. 97–7666. PARKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 129 F. 3d 118.

No. 97–7668. ONOFRE-SEGARRA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 126 F. 3d 1308.

No. 97–7674. WATKINS *v.* MORGAN, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 124 F. 3d 206.

No. 97–7676. WAGNER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 127 F. 3d 1108.

No. 97–650. DALLAS MORNING NEWS *v.* UNITED STATES ET AL. C. A. 10th Cir. Motion of respondent Terry L. Nichols for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 119 F. 3d 806.

No. 97–745. CHOINA *v.* E. I. DU PONT DE NEMOURS & CO. C. A. 5th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 121 F. 3d 703.

No. 97–905. GALVAO *v.* GILLETTE CO. C. A. 1st Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 121 F. 3d 695.

No. 97–6993. CRAIG *v.* MARTIN. C. A. 10th Cir. Certiorari before judgment denied.

No. 97–7521. GOSCH *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 136 F. 3d 138.

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

Although my vote is to deny certiorari, I add this further word on the earlier order staying petitioner's execution, for which I also voted, *ante*, p. 1071. One consideration bearing on a decision to order a stay is the prospect for relief if the case should be taken for review. *Barefoot* v. *Estelle*, 463 U. S. 880, 895 (1983). Although the stress placed on this factor assumes, of course, that this Court can adequately make such an assessment, the peculiar

circumstances of this case made it unusually difficult for me to come to any confident judgment about possible entitlement to relief in the short time of some 90 minutes between our receipt of the ruling of the Court of Appeals and the time then set for petitioner's execution. This was so in part because the grounds for relief raised by petitioner included claims under *Strickland* v. *Washington*, 466 U. S. 668 (1984), and *Giglio* v. *United States*, 405 U. S. 150 (1972), on each of which there were potential evidentiary issues dependent on a state-court record, subject to conditional deference by the District Court under 28 U. S. C. § 2254(e). My own difficulty reflected disagreement within the Court of Appeals over the adequacy of less than a day's time (instead of the normal briefing and argument period) for that court to review the soundness of the District Court's reliance on the state-court evidence and findings. Given the importance of adequate review on a first (and, presumably, only) federal habeas petition, I voted to stay the execution to allow further time to examine claims coming to us in such unusual circumstances.

Rehearing Denied

No. 96–1987. NIPPON PAPER INDUSTRIES CO., LTD. *v.* UNITED STATES, *ante*, p. 1044;

No. 96–8341. COOKSEY *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, *ante*, p. 1027;

No. 97–39. NAUMOV *v.* UNIVERSITY OF PITTSBURGH, *ante*, p. 859;

No. 97–515. TSIPOURAS *v.* MESHBESHER, BIRRELL & DUNLAP, LTD., ET AL., *ante*, p. 982;

No. 97–588. HARRIS *v.* NEW JERSEY, *ante*, p. 997;

No. 97–5242. IN RE CLARK, *ante*, p. 805;

No. 97–5243. IN RE CLARK, *ante*, p. 805;

No. 97–5244. IN RE CLARK, *ante*, p. 805;

No. 97–5282. POLLEY *v.* UNITED STATES, *ante*, p. 1016;

No. 97–5351. BORROTO *v.* UNITED STATES, *ante*, p. 889;

No. 97–5621. SLAGEL *v.* SHELL PETROLEUM, INC., ET AL., *ante*, p. 934;

No. 97–5841. JACKSON *v.* JOHNSON ET AL., *ante*, p. 956;

No. 97–6000. STRABLE *v.* SOUTH CAROLINA, *ante*, p. 972;

No. 97–6070. CONNELLY *v.* BOROUGH OF FOREST HILLS, PENNSYLVANIA, *ante*, p. 959;

No. 97–6117. MATHIS *v.* CIAMBRONE ET AL., *ante*, p. 1000;

No. 97–6136. CARRASQUILLO *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 972;

No. 97–6278. MCKELLIP *v.* SORRELL, ANDERSON, LEHRMAN, WANNER & THOMAS ET AL., *ante*, p. 1017;

No. 97–6306. ERDMAN *v.* GRAYSON, WARDEN, *ante*, p. 1018;

No. 97–6372. IN RE TYLER ET AL., *ante*, p. 1027;

No. 97–6415. COSGROVE *v.* SEARS, ROEBUCK & CO., *ante*, p. 1004;

No. 97–6620. SWAIN *v.* DETROIT BOARD OF EDUCATION ET AL., *ante*, p. 1057;

No. 97–6738. MCDERMOTT *v.* KANSAS ASSOCIATES, INC., *ante*, p. 1060;

No. 97–6832. REIDT *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, *ante*, p. 1061; and

No. 97–7035. WALETZKI *v.* UNITED STATES, *ante*, p. 1067. Petitions for rehearing denied.

No. 97–718. REYNOLDS *v.* UNITED STATES, *ante*, p. 998. Motion of petitioner for leave to proceed further herein *in forma pauperis* granted. Petition for rehearing denied.

No. 97–6389. GERWIG *v.* NEWMAN ET AL., *ante*, p. 1031. Motion for leave to file petition for rehearing denied.

FEBRUARY 24, 1998

Miscellaneous Order

No. 97–8054 (A–641). IN RE POWELL. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Petition for writ of habeas corpus denied. JUSTICE STEVENS would grant the application for stay of execution.

FEBRUARY 27, 1998

Probable Jurisdiction Noted

No. 97–1374. CLINTON, PRESIDENT OF THE UNITED STATES, ET AL. *v.* CITY OF NEW YORK ET AL. Appeal from D. C. D. C. Motion of the parties to expedite consideration and to expedite briefing schedule granted. Probable jurisdiction noted. Brief of the Solicitor General is to be filed with the Clerk and served upon

opposing counsel on or before 3 p.m., Friday, March 13, 1998. Briefs of appellees are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 3, 1998. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, April 13, 1998. This Court's Rule 29.2 does not apply. Oral argument is set for Monday, April 27, 1998. Reported below: 985 F. Supp. 168.

March 2, 1998

Certiorari Granted—Vacated and Remanded

No. 96–2046. Shalala, Secretary of Health and Human Services *v.* Toledo Hospital. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Regions Hospital* v. *Shalala*, *ante*, p. 448. Reported below: 104 F. 3d 791.

No. 97–625. Dryden et al. *v.* Madison County, Florida. Sup. Ct. Fla. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Newsweek, Inc.* v. *Florida Dept. of Revenue*, *ante*, p. 442. Reported below: 696 So. 2d 728.

No. 97–1048. National Association for the Advancement of Colored People, Minneapolis Branch, et al. *v.* Metropolitan Council. C. A. 8th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Rivet* v. *Regions Bank of La.*, *ante*, p. 470. Reported below: 125 F. 3d 1171.

Miscellaneous Orders

No. D–1878. In re Disbarment of Kersner. Disbarment entered. [For earlier order herein, see *ante*, p. 992.]

No. D–1885. In re Disbarment of Garver. Disbarment entered. [For earlier order herein, see *ante*, p. 1025.]

No. D–1917. In re Disbarment of Barton. Robert W. Barton, of Harrisburg, Pa., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1918. In re Disbarment of Bouldin. Jay William Bouldin, of Jonesboro, Ga., is suspended from the practice of law

in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–36. SHERMAN *v.* SHERMAN ET AL. Motion for reconsideration of order denying motion to direct the Clerk to file petition for writ of certiorari out of time [*ante*, p. 1073] denied.

No. M–45. JOERGER *v.* RENO, ATTORNEY GENERAL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 97–300. STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTION, ET AL. *v.* MARTINEZ-VILLAREAL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 912.] Motion for appointment of counsel granted, and it is ordered that Sean D. O'Brien, Esq., of Kansas City, Mo., be appointed to serve as counsel for respondent in this case.

No. 97–634. PENNSYLVANIA DEPARTMENT OF CORRECTIONS ET AL. *v.* YESKEY. C. A. 3d Cir. [Certiorari granted, *ante*, p. 1086.] Motion of respondent for leave to proceed further herein *in forma pauperis* granted.

No. 97–956. LUFTHANSA GERMAN AIRLINES *v.* KRYS ET UX., *ante*, p. 1111. Motion of respondents for attorney's fees denied.

No. 97–7737. IN RE RODRIGUEZ;
No. 97–7785. IN RE WADE;
No. 97–7801. IN RE SADLIER;
No. 97–7802. IN RE SADLIER; and
No. 97–7835. IN RE LEBLANC. Petitions for writs of habeas corpus denied.

Certiorari Granted

No. 97–889. WRIGHT *v.* UNIVERSAL MARITIME SERVICE CORP. ET AL. C. A. 4th Cir. Certiorari granted. Reported below: 121 F. 3d 702.

Certiorari Denied

No. 96–2018. AEDC FEDERAL CREDIT UNION ET AL. *v.* FIRST CITY BANK ET AL.; and
No. 97–100. NATIONAL CREDIT UNION ADMINISTRATION *v.* FIRST CITY BANK ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 111 F. 3d 433.

No. 97–641. PREMO, DIRECTOR, CALIFORNIA DEPARTMENT OF REHABILITATION *v.* MARTIN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 119 F. 3d 764.

No. 97–837. STIGILE ET AL. *v.* CLINTON, PRESIDENT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 110 F. 3d 801.

No. 97–870. L. B. FOSTER CO. *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 3d Cir. Certiorari denied. Reported below: 123 F. 3d 746.

No. 97–877. COCKRELL *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 116 F. 3d 1472.

No. 97–883. GRADY *v.* SOVEREIGN ORDER OF SAINT JOHN OF JERUSALEM, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 119 F. 3d 1236.

No. 97–885. ENGELHART ET AL. *v.* CONSOLIDATED RAIL CORPORATION ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 127 F. 3d 1095.

No. 97–888. MISSOURI ET AL. *v.* LIDDELL ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 126 F. 3d 1049.

No. 97–892. IN RE LONARDO ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 119 F. 3d 960.

No. 97–902. STRAWBERRY *v.* ALBRIGHT, SECRETARY OF STATE. C. A. D. C. Cir. Certiorari denied. Reported below: 111 F. 3d 943.

No. 97–908. LEATH *v.* AMERICAN MEDICAL INTERNATIONAL INC. C. A. 5th Cir. Certiorari denied. Reported below: 125 F. 3d 852.

No. 97–914. JEFFERSON *v.* BERTSCH, AKA BERTSCH & CO., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 124 F. 3d 204.

No. 97–920. CALIFORNIA *v.* SMITH. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 97–921. THOMPSON *v.* LONG. Ct. App. Ga. Certiorari denied. Reported below: 225 Ga. App. 719, 484 S. E. 2d 666.

No. 97–949. GILL *v.* SYSTEM PLANNING CORP. C. A. 4th Cir. Certiorari denied. Reported below: 121 F. 3d 698.

No. 97–967. KELLY *v.* BOSSIER CITY. Ct. App. La., 2d Cir. Certiorari denied. Reported below: 693 So. 2d 16.

No. 97–970. SMITH ET AL. *v.* ALLEN, PERSONAL REPRESENTATIVE OF ALLEN, DECEASED; and

No. 97–978. CITY OF MUSKOGEE *v.* ALLEN, PERSONAL REPRESENTATIVE OF ALLEN, DECEASED. C. A. 10th Cir. Certiorari denied. Reported below: 119 F. 3d 837.

No. 97–1004. AHMED *v.* GREENWOOD ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 118 F. 3d 886.

No. 97–1063. VEDALIER *v.* FALCON DRILLING CO., INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 129 F. 3d 608.

No. 97–1067. COLEMAN OIL CO., INC. *v.* CIRCLE K CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 127 F. 3d 904.

No. 97–1073. NELSON *v.* GRISHAM ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 132 F. 3d 1481.

No. 97–1092. TRAVIS *v.* BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 122 F. 3d 259.

No. 97–1096. GOROD *v.* MASSACHUSETTS ET AL. C. A. 1st Cir. Certiorari denied.

No. 97–1100. WONDER ET AL. *v.* HYLAND. C. A. 9th Cir. Certiorari denied. Reported below: 117 F. 3d 405 and 127 F. 3d 1135.

No. 97–1107. LAUGHLIN ET AL. *v.* PEROT ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 124 F. 3d 207.

No. 97–1110. DICK *v.* PEOPLES BANK OF BLOOMINGTON. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 286 Ill. App. 3d 1147, 709 N. E. 2d 1021.

No. 97–1116. ZAMAN (TAHIRKHAILI) *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 190 Ariz. 208, 946 P. 2d 459.

No. 97–1119. HAEGER *v.* SULLIVAN, ASSISTANT DEKALB COUNTY SOLICITOR, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 121 F. 3d 723.

No. 97–1127. HOTCHKISS *v.* SUPREME COURT OF THE UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 122 F. 3d 1071.

No. 97–1153. CASS *v.* NEW YORK. App. Term, Sup. Ct. N. Y., 9th and 10th Jud. Dists. Certiorari denied.

No. 97–1155. MOORE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 122 F. 3d 1064.

No. 97–1161. OLSON *v.* SUN BANK. C. A. 11th Cir. Certiorari denied. Reported below: 110 F. 3d 797.

No. 97–1168. BRAGG *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 97–1172. LIEVSAY *v.* WESTERN FINANCIAL SAVINGS BANK ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 118 F. 3d 661.

No. 97–1206. SCHMIER *v.* JENNINGS ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 97–1274. VARGAS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 48 M. J. 387.

No. 97–6080. EAVES *v.* CHAMPION, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 113 F. 3d 1246.

No. 97–6347. HOFFMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 119 F. 3d 2.

No. 97–6949. MEDINA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 97–6968. SAINTFORT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 124 F. 3d 221.

No. 97–6984. CHAIKEN *v.* VV PUBLISHING CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 119 F. 3d 1018.

No. 97–7013. MORRIS *v.* BELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 124 F. 3d 198.

No. 97–7042. COMEAUX *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 699 So. 2d 16.

No. 97–7157. HOLMAN *v.* PAGE, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 126 F. 3d 876.

No. 97–7287. WILLIAMS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 16 Cal. 4th 153, 940 P. 2d 710.

No. 97–7293. TAVAKOLI-NOURI *v.* WASHINGTON HOSPITAL CENTER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 121 F. 3d 700.

No. 97–7310. TOWNSEND *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 97–7318. WILKINSON *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Dist. Ct. App. Fla., 2d Dist. Certiorari denied.

No. 97–7319. WILDER *v.* KNIGHT ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 120 F. 3d 272.

No. 97–7327. LANDON *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 97–7350. PALONIS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 287 Ill. App. 3d 1114, 710 N. E. 2d 570.

No. 97–7363. MARROQUIN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 97–7370. LEBRON *v.* RUSSO ET AL. C. A. 2d Cir. Certiorari denied.

No. 97–7412. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 97–7417. FLOWERS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 97–7421. JOHNSTON *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 957 S. W. 2d 734.

No. 97–7422. LANGLEY *v.* IOWA. C. A. 8th Cir. Certiorari denied. Reported below: 129 F. 3d 122.

No. 97–7441. BERNAL *v.* LYTLE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 125 F. 3d 861.

No. 97–7457. RAMEY *v.* GOBER, ACTING SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 120 F. 3d 1239.

No. 97–7472. VIOLETT *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 97–7479. STRABLE *v.* ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 121 F. 3d 700.

No. 97–7508. GROSS *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS. C. A. 1st Cir. Certiorari denied.

No. 97–7509. GODETT *v.* RENO, ATTORNEY GENERAL, ET AL. C. A. 11th Cir. Certiorari denied.

No. 97–7518. ANDREWS *v.* MATESANZ, SUPERINTENDENT, BAY STATE CORRECTIONAL CENTER. C. A. 1st Cir. Certiorari denied.

No. 97–7519. BREWER *v.* MARSHALL, SHERIFF, NORFOLK COUNTY, MASSACHUSETTS. C. A. 1st Cir. Certiorari denied. Reported below: 119 F. 3d 993.

No. 97–7529. PAYNE *v.* INGLE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 127 F. 3d 1106.

No. 97–7574. MCDONALD *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 347 Md. 452, 701 A. 2d 675.

No. 97–7590. SCHWARTZ *v.* EMHART GLASS MACHINERY, INC., ET AL. C. A. 9th Cir. Certiorari denied.

No. 97–7594. ADAMS *v.* DEPARTMENT OF THE NAVY. C. A. Fed. Cir. Certiorari denied. Reported below: 129 F. 3d 134.

No. 97–7633. KELLEY *v.* MISSOURI. Ct. App. Mo., Southern Dist. Certiorari denied. Reported below: 953 S. W. 2d 73.

No. 97–7634. JOHNSON *v.* ROE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 132 F. 3d 39.

No. 97–7638. RUFFIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 129 F. 3d 114.

No. 97–7642. ALVARADO *v.* UNITED STATES;
No. 97–7680. JOHNSTON *v.* UNITED STATES;
No. 97–7684. ADAMS *v.* UNITED STATES; and
No. 97–7686. LOWERY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 127 F. 3d 380.

No. 97–7661. HAYWARD *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 97–7663. DEES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 125 F. 3d 261.

No. 97–7681. REECE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 127 F. 3d 34.

No. 97–7683. TYNDALL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 129 F. 3d 123.

No. 97–7688. CHANG HAN CHEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 131 F. 3d 375.

No. 97–7690. SUAREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 130 F. 3d 442.

No. 97–7693. SOBRILSKI *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 127 F. 3d 669.

No. 97–7696. MONTANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 131 F. 3d 140.

No. 97–7699. BALL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 124 F. 3d 208.

No. 97–7701. GUERRERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 132 F. 3d 1454.

No. 97–7703. UZUEGBUNAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 120 F. 3d 264.

No. 97–7705. REYES-CRUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 134 F. 3d 367.

No. 97–7713. TAYLOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 130 F. 3d 444.

No. 97–7714. TENORIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 127 F. 3d 1108.

No. 97–7715. TESTERMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 129 F. 3d 1261.

No. 97–7717. LITTLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 125 F. 3d 849.

No. 97–7718. MCGILL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 129 F. 3d 128.

No. 97–7719. MCNEIL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 129 F. 3d 609.

No. 97–7726. TORRES-ECHAVARRIA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 129 F. 3d 692.

No. 97–7746. CARTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 129 F. 3d 1265.

No. 97–7750. EREVIA-SUAREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 132 F. 3d 40.

No. 97–7752. DEPACE *v.* UNITED STATES; and
No. 97–7753. DEPACE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 120 F. 3d 233.

No. 97–7761. AMAYA-SANCHEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 132 F. 3d 43.

No. 97–775. ABBOTT LABORATORIES ET AL. *v.* HUGGINS. C. A. 7th Cir. Certiorari denied. JUSTICE O'CONNOR and JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 123 F. 3d 599.

No. 97–1028. MACRI ET AL. *v.* KING COUNTY. C. A. 9th Cir. Motion of Pacific Legal Foundation et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 126 F. 3d 1125.

No. 97–1071. MARSHALL, WARDEN, ET AL. *v.* TURNER. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 121 F. 3d 1248.

No. 97–1210. BLUE CROSS & BLUE SHIELD OF MICHIGAN *v.* BPS CLINICAL LABORATORIES ET AL. Ct. App. Mich. Motion of

Michigan Manufacturers Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 217 Mich. App. 687, 552 N. W. 2d 919.

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No. 96–1279. ROGERS *v.* UNITED STATES, *ante*, p. 252;

No. 96–9379. LA GRANGE *v.* LONGORIA, *ante*, p. 845;

No. 96–9536. JANNEH *v.* RUNYON, POSTMASTER GENERAL, *ante*, p. 854;

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No. 97–6899. JONES *v.* THE PEP BOYS, MANNY, MOE, AND JACK OF CALIFORNIA, *ante*, p. 1094;

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